

MINISTRY OF INTERNAL AFFAIRS OF UKRAINE
NATIONAL ACADEMY OF INTERNAL AFFAIRS

SCIENTIFIC JOURNAL
OF THE NATIONAL ACADEMY OF INTERNAL AFFAIRS

Scientific Journal

Volume 29, No. 4
2024

Kyiv
2024

ISSN 2410-3594
E-ISSN 2786-7382
Doi: 10.56215/naia-herald/4.2024

Co-founders:

National Academy of Internal Affairs,
LLC “Scientific Journals”

Year of foundation: 1996

*Recommended for printing and distribution
via the Internet by the Academic Council
of National Academy of Internal Affairs
(Minutes No. 24 of November 26, 2024)*

Media identifier in the Register of Media Entities R30-02450

Decision of the National Council of Ukraine
on Television and Radio Broadcasting
of 11 January 2024 No. 26

The collection is included in the list of professional publications of Ukraine

Category “B”. Branch of sciences – legal, specialty – 081 “Law”
(order of the Ministry of Education and Science of Ukraine of October 15, 2019, No. 1301)

**The collection is presented international scientometric databases, repositories
and scientific systems:** ERIH PLUS, Google Scholar, Vernadsky National Library of Ukraine,
Electronic repository NAIA, DOAJ, Polska Bibliografia Naukowa, UCSB Library,
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University of Hull Library, University of Oslo Library, Zandy,
OUCI (Open Ukrainian Citation Index), Worldcat

Scientific Journal of the National Academy of Internal Affairs / Ed. by S. Cherniavskiy
(Editor-in-Chief) et al. Kyiv: National Academy of Internal Affairs, 2024. Vol. 29, No. 4. 101 p.

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МІНІСТЕРСТВО ВНУТРІШНІХ СПРАВ УКРАЇНИ
НАЦІОНАЛЬНА АКАДЕМІЯ ВНУТРІШНІХ СПРАВ

НАУКОВИЙ ВІСНИК

НАЦІОНАЛЬНОЇ АКАДЕМІЇ ВНУТРІШНІХ СПРАВ

Науковий журнал

Том 29, № 4
2024

Київ
2024

ISSN 2410-3594
E-ISSN 2786-7382
Doi: 10.56215/naia-herald/4.2024

Співзасновники:

Національна академія внутрішніх справ,
ТОВ «Наукові журнали»

Рік заснування: 1996

*Рекомендовано до друку та поширення
через мережу Інтернет Вченою радою
Національної академії внутрішніх справ
(протокол № 24 від 26 листопада 2024 р.)*

Ідентифікатор медіа в Реєстрі суб'єктів у сфері медіа R30-02450

Рішення Національної ради України
з питань телебачення і радіомовлення
від 11 січня 2024 року № 26

Збірник входить до переліку фахових видань України

Категорія «Б». Галузь наук – юридичні, спеціальність – 081 «Право»
(наказ Міністерства освіти і науки України від 15 жовтня 2019 р. № 1301)

**Збірник представлено у міжнародних наукометричних базах даних,
репозитаріях та пошукових системах:** ERIH PLUS, Google Scholar, Національна
бібліотека України імені В. І. Вернадського, Електронний репозитарій НАВС,
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Leipzig University Library, European University Institute, SOLO – Search Oxford Libraries
Online, University of Hull Library, University of Oslo Library, Zenty,
OUCI (Open Ukrainian Citation Index), Worldcat

Науковий вісник Національної академії внутрішніх справ : наук. журн. / [редкол.:
С. Чернявський (голов. ред.) та ін.]. – Київ : Нац. акад. внутр. справ, 2024. – Т. 29, № 4. – 101 с.

Адреса редакції:

Національна академія внутрішніх справ
03035, пл. Солом'янська, 1, м. Київ, Україна
Тел.: +38 (044) 520-08-47
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SCIENTIFIC JOURNAL
OF THE NATIONAL ACADEMY OF INTERNAL AFFAIRS
Volume 29, No. 4

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SCIENTIFIC JOURNAL
OF THE NATIONAL ACADEMY OF INTERNAL AFFAIRS
Volume 29, No. 4

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Features of the prosecutor's procedural guidance during the investigation of criminal offences in the field of official activity

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■ **Abstract.** The purpose of this study was to analyse the key aspects of the prosecutor's procedural powers within the framework of pre-trial investigation of criminal offences under Articles 364-370 of the Criminal Code of Ukraine. To fulfil this purpose, various methods were employed, including system-functional, formal legal, logical and dogmatic, modelling, classification, comparative legal, and statistical methods. It was found that the prosecutor is vested with broad powers in the procedural guidance of pre-trial investigation, supervising the implementation of procedural actions and providing relevant instructions. The study emphasised the necessity of improving the skills of law enforcement agencies in investigating white-collar and corruption crimes, which is critical for effective counteraction to offences. It was indicated that crimes in the field of official activity are often associated with abuse of office to influence investigators and other participants in criminal proceedings, including prosecutors and heads of pre-trial investigation bodies. The study analysed the practices of the USA, Brazil, Bulgaria, and Hungary regarding the regulation and specifics of prosecutors' work in the investigation of such offences. It was summarised that the US practices with grand juries can ensure further verification of evidence, Brazil's practices with AI-ACT can increase the transparency of processes, while Bulgaria's practices of transferring cases to specialised courts can reduce corruption risks. However, adapting these practices in Ukraine will require the consideration of the specific features of the national legal system. Thus, the practical significance of this study lies in the possibility of using its findings for the qualified implementation of international practices in the organisation of the prosecutor's procedural guidance during the investigation of white-collar crime

■ **Keywords:** white-collar crimes; corruption crimes; pre-trial investigation; undue advantage; supervisory activity; prosecutor's instructions; artificial intelligence

■ Introduction

The relevance of investigating the specific features of the prosecutor's procedural guidance in the investigation of criminal offences in official activity is conditioned by the necessity of ensuring effective law enforcement in the context of combating white-collar crime. The successful implementation of reforms in Ukraine aimed at harmonisation with European standards is a key stage in the country's integration into the European legal and social environment.

Usually, white-collar crimes function as a tool for committing graver and more serious offences. For example, white-collar crimes can serve as a precondition for crimes such as smuggling, violation of budgetary legislation, money laundering, and other offences arising from abuse of power or authority.

The prosecutor plays a key role in criminal proceedings, from pre-trial investigation to trial. Their functions include coordinating the work of

■ Suggested Citation:

Amelin, O. (2024). Features of the prosecutor's procedural guidance during the investigation of criminal offences in the field of official activity. *Scientific Journal of the National Academy of Internal Affairs*, 29(4), 9-21. doi: 10.56215/naia-herald/4.2024.09.

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■ Received: 10.08.2024; Revised: 02.11.2024; Accepted: 26.11.2024



investigative bodies, controlling the legality of evidence collection, and procedural decision-making. However, this broad scope of powers also carries the risk of involving the prosecutor in illegal schemes aimed at achieving criminal goals that undermine legal and social stability. Therefore, preventing and combating such abuses is critical to ensuring the rule of law and achieving European standards in the legal sector of Ukraine. The effective performance of the prosecutor's duties requires the development of effective legal mechanisms, which makes the study of this topic extremely relevant.

O. Amelin *et al.* (2024) investigated the issue of independence of judges and prosecutors in Ukraine. It was found that in practice, there are many problematic aspects that complicate the effective and guaranteed implementation of this principle in the activities of representatives of the judicial and prosecutorial systems. These problems include insufficient funding of salaries and organisational processes in courts and prosecutor's offices, legal gaps in the regulation of the status and functioning of judicial and prosecutorial self-government bodies, as well as imperfect mechanisms of selection and resignation. A.V. Poplavska (2024) considers the issue of maintaining public prosecution in court concerning offences related to official and professional activities, particularly in the context of public services. V.D. Hvozdetkyi & A.O. Lyash (2021) studied the specifics of prosecutorial oversight of compliance with legal requirements during the pre-trial investigation of corruption offences and crimes of a corrupt nature. S.O. Sofiev & A.A. Teslitsky (2024) investigated the specific features of the activities of the prosecutor's office of Ukraine under martial law and the expansion of the powers of the prosecutor's office in criminal proceedings.

A.Y. Pratomo *et al.* (2021), A. Hutahaean & E. Indarti (2020), and I. Miha (2024) examined the features of the prosecutor's exercise of powers in criminal prosecution online. It was found that such an approach can substantially reduce the time spent on holding hearings, since the parties can attend the hearing remotely, without the need for physical presence in the courtroom. This also simplifies coordination between participants in the criminal procedure, enabling prompt exchange of information and real-time procedural actions. Furthermore, the online format minimises the costs associated with organising hearings, as it does not require transport or security costs for the transport of suspects or defendants.

Thus, the overall burden on the judicial system is reduced, as well as the budgetary costs of criminal trials. D. Pamungkas (2020), B. Panjaitan *et al.* (2022) focused on the role of prosecutors in combating money laundering crimes in the United States and Indonesia. The findings showed that money laundering investigations are effective. This is achieved through systematic management of the process, which contributes to the quick and efficient handling of cases. The key objective is to facilitate the identification and investigation of the proceeds of crime, which is directly related to the collection of evidence.

In turn, A.K. Suud (2020), and S. Lal & K. Rashied (2023) addressed the cooperation between the police investigation department and the prosecutor's office as key elements of the criminal justice system. The studies focused on the benefits of an independent prosecutor's office, as is stipulated in some common law jurisdictions. Such a prosecutor's office would have its dedicated funding and would be staffed by qualified lawyers who would advise the police and other agencies and assess whether a case should be brought to court. The lawyers could guide decisions on whether to continue or discontinue prosecutions when there is no prospect of a trial. A possible solution would be to establish a legal unit within the police department to provide guidance on the preparation of charges. Despite numerous studies, the issue of procedural guidance at the pre-trial investigation stage is still understudied. This highlights the need for further theoretical substantiation and determines the relevance of this study.

Therefore, the purpose of this study was to investigate the key aspects which negatively affect the exercise of the prosecutor's procedural powers within the framework of pre-trial investigation of criminal offences under Articles 364-370 of the Criminal Code of Ukraine¹.

■ Materials and Methods

Within the framework of this study, a comprehensive assessment was made of the regulations governing criminal liability for these offences, specifically the provisions of Chapter XVII of the Criminal Code of Ukraine². The study also examined the provisions of the Criminal Procedure Code of Ukraine³, the Law of Ukraine No. 1697-VII "On the Prosecutor's Office"⁴, as well as departmental regulations governing the organisation of prosecutors' activities in criminal proceedings, including the Order of the Office of the Prosecutor General of Ukraine No. v0309905-21 "On

¹ Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

² Ibidem, 2001.

³ Criminal Procedure Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

⁴ Law of Ukraine No. 1697-VII "On the Prosecutor's Office". (2014, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/1697-18#Text>.

Organisation of Prosecutors' Activities in Criminal Proceedings"¹.

The study also covered international legal acts, namely Directive 2014/42/EU of the European Parliament and of the Council "On the Freezing and Confiscation of Instrumentalities and Proceeds of Crime in the European Union"², which contains recommendations and requirements for the fight against corruption and the confiscation of illegally acquired assets. For a comparative analysis, the study employed the Criminal Procedure Code of Bulgaria³ (2019) and Act No. XC "On Criminal Procedures of Hungary"⁴, as well as the legislative acts governing whistleblower protection in these countries, such as the Whistleblower Protection Act⁵ and the Law of Bulgaria "On Confiscation of Illegally Acquired Property"⁶. The analysis of enforcement acts also included Act CLXIII on the Prosecution Service of Hungary⁷. Statistics on the work of the prosecutor's office (2024) was used to assess the effectiveness of law enforcement and identify trends in the fight against corruption.

The study employed various legal methods, which ensured a comprehensive analysis of the exercise of procedural guidance by prosecutors in the investigation of white-collar crime. The system-functional method allowed for an in-depth analysis of the effectiveness of the prosecutor's procedural powers. This approach helped to assess the current state of procedural guidance, identify its strengths and weaknesses, and identify the need to improve the relevant legal framework to increase the effectiveness of combating white-collar crime. The systemic and structural method was applied to investigate the interrelationships between various elements of the prosecutor's activity in procedural guidance, specifically, the interaction between the prosecutor and investigative units, the court, and other participants to the criminal procedure. This helped to establish the systemic nature of prosecutorial supervision and ensure its effectiveness.

The formal legal method was employed to examine the legal provisions governing the prosecutor's activities in procedural supervision, including

the analysis of legislative provisions relating to the rights and duties of the prosecutor, and the specifics of their interaction with pre-trial investigation bodies. This method enabled a clear understanding of legal institutions and the role of the prosecutor in criminal proceedings. The classification method was used to systematise phenomena according to certain criteria, which helped to clearly define the categories and subcategories of offences in the field of official activity. The comparative legal method was used to investigate the practice of procedural guidance in various jurisdictions, such as the United States of America, Brazil, Hungary, and Bulgaria. Descriptive statistics methods were used to present and analyse data from the Prosecutor General's Office (Statistics on the work of..., 2024). This helped to assess the effectiveness of procedural guidance based on quantitative indicators, identify trends in law enforcement, and substantiate recommendations for improving law enforcement practice.

■ Results

On 24 February 2022, due to the military aggression of Russia, martial law was introduced in Ukraine, which led to substantial changes in the work of the law enforcement system and public authorities, including the prosecutor's office. This regime imposed extra responsibilities on the prosecutor's office to ensure national security and law and order in a situation of heightened threat, which was explored in a separate study by O.Y. Amelin (2024). At the same time, the reform of law enforcement agencies and the harmonisation of criminal legislation with international standards have changed the powers of the prosecutor, particularly in terms of overseeing the legality of pre-trial investigations and the application of preventive measures, ensuring the achievement of justice goals.

Investigations into white-collar crimes, such as corruption offences, have special characteristics. White-collar crimes are often associated with high-level positions and may include complex schemes of undue advantage that require in-depth

¹ Order of the Office of the Prosecutor General of Ukraine No. v0309905-21 "On Organization of Prosecutors' Activities in Criminal Proceedings". (2021, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/v0309905-21#Text>.

² Directive of the European Parliament and of the Council No. 2014/42/EU "On the Freezing and Confiscation of Instrumentalities and Proceeds of Crime in the European Union". (2014, April). Retrieved from <https://eur-lex.europa.eu/eli/dir/2014/42/oj>.

³ Criminal Procedure Code of Bulgaria. (2019, November). Retrieved from [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2019\)034-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2019)034-e).

⁴ Law of Hungary No. XC "On Criminal Procedures of Hungary". (2017, February). Retrieved from <https://www.wipo.int/wipolex/en/legislation/details/18617>.

⁵ Whistleblower Protection Act. (1989, July). Retrieved from https://whistleblower.house.gov/sites/evo-subsites/whistleblower.house.gov/files/wysiwyg_uploaded/Whistleblower_Protection_Act_Fact_Sheet.pdf.

⁶ Law of Bulgaria "On Confiscation of Illegally Acquired Property". (2018, January). Retrieved from <https://lex.bg/en/laws/ldoc/2137180227>.

⁷ Law of Hungary No. CLXIII "On the Prosecution Service of Hungary". (2011, April). Retrieved from [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2012\)015-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2012)015-e).

analysis and special skills to solve. Thus, in 2023 alone, 10,360 criminal offences were registered under Articles 364-370 of the Criminal Code of Ukraine (Fig. 1). White-collar crimes are usually committed by individuals holding positions in government

agencies or local governments. These persons may abuse their official position, which may be manifested in the form of influence on investigators and other participants in the criminal procedure, including prosecutors and heads of pre-trial investigation bodies.

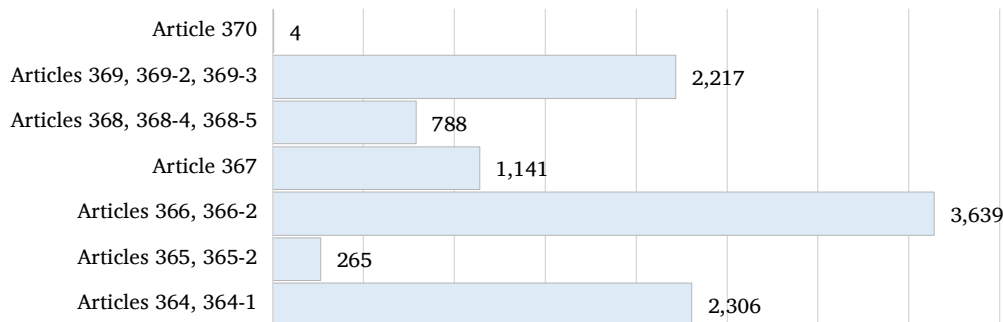


Figure 1. Number of registered criminal offences under Articles 364-370 of the Criminal Code of Ukraine¹ in 2023

Source: created by the authors of this study based on Statistics on the work of the prosecutor's office (2024)

The Ukrainian legislation, specifically in the provisions of Article 36 of the Criminal Procedure Code of Ukraine², has vested the prosecutor with a wide range of powers, making the latter the key person responsible for the results of the pre-trial investigation. The prosecutor not only organises and directs the investigation process, but also determines its key priorities by coordinating the actions of the investigating authorities. They oversee the legality of all stages of criminal proceedings at the pre-trial stage, including by making significant procedural decisions that substantially affect the final outcome of the investigation. Furthermore, the prosecutor is responsible for observing

the rights and freedoms of all participants in the criminal proceedings, ensuring that the investigation is conducted with maximum speed, objectivity, and comprehensiveness (Articles 2 and 36 of the CPC³). Such oversight is intended not only to ensure the efficiency of criminal proceedings, but also to strengthen confidence in justice by ensuring fair protection of the rights of each party. At the same time, the practice of reviewing disciplinary complaints against prosecutors demonstrates cases of violation of the requirements of departmental acts, criminal and criminal procedural legislation in the exercise of procedural guidance in white-collar criminal proceedings (Table 1).

Table 1. Generalisation of departmental practice of violations of the legislation by prosecutors in the exercise of procedural guidance in white-collar criminal proceedings

No.	Decision No.	Summary	Decisions of the Qualification and Disciplinary Commission of Prosecutors
1	No. 59dp-2 ⁴	In early December 2020, Prosecutor R.I. Voronka, who was providing procedural guidance in criminal proceedings No. (confidential information), at the request of PERSON_2 agreed to assist his associate PERSON_1 in establishing the circumstances of the investigation. At the end of January 2021, R.I. Voronka had an intention to receive an undue benefit from PERSON_1 and PERSON_2, and in July 2021, R.I. Voronka received USD 2 thousand from PERSON_2	The Commission found that R.I. Voronka had intentionally committed a disciplinary offence under items 5 and 6 of part one of Article 43 of the Law No. 1697-VII ⁵ , discrediting the title of prosecutor, raising doubts about his objectivity, impartiality, and independence, and systematically grossly violating the rules of prosecutorial ethics. R.I. Voronka was subjected to a disciplinary sanction in the form of dismissal from the prosecutor's office

¹ Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

² Criminal Procedure Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

³ Ibidem, 2012.

⁴ Decision of the Qualification and Disciplinary Commission of Prosecutors No. 59dp-22 "On Imposing a Disciplinary Sanction on R. Voronka, Prosecutor of the First Department of Procedural Guidance of the Department of Procedural Guidance in Criminal Proceedings of Investigators of the Territorial Department of the State Bureau of Investigation of the Lviv Regional Prosecutor's Office". (2022, May). Retrieved from <https://kdkp.gov.ua/decision/2022/05/25/2241>.

⁵ Law of Ukraine No. 1697-VII "On the Prosecutor's Office". (2014, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/1697-18#Text>.

Table 1. Continued

No.	Decision No.	Summary	Decisions of the Qualification and Disciplinary Commission of Prosecutors
2	No. 58dp-22 ¹	Prosecutors I.V. Pryschepa and H.E. Kravtsov, having sufficient experience, failed to perform their duties properly by concluding a plea agreement that did not meet the requirements of the law and the interests of society. I.V. Pryschepa failed to inform the court of the circumstances that indicated the illegality of the agreement, while H.E. Kravtsov failed to prevent its submission to the court. This resulted in the failure to perform the tasks of the criminal proceedings, and while the case was reviewed repeatedly, it did not eliminate the consequences of the violation.	Prosecutors I.V. Pryschepa and H.E. Kravtsov violated Article 75 of the Criminal Code of Ukraine ² , Articles 470, 472 of the CPC of Ukraine and item 7 of Section V of Procedure No. 51 by committing disciplinary offences under item 1 of part one of Article 43 of the Law of Ukraine No. 1697-VII ³ , which indicates improper performance of their official duties. Each of them received a disciplinary sanction in the form of a reprimand.
3	No. 167dp-23 ⁴	Prosecutor S.V. Syvak violated the requirements of part one of Article 28 and part two of Article 283 of the CPC of Ukraine ⁵ by approving indictments in criminal proceedings and sending them to court outside the pre-trial investigation period, which led to a violation of the suspects' right to a hearing within a reasonable time or to closure of the case. This resulted in the closure of the cases by the Liubar and Berdychiv courts based on item 10 of part one of Article 284 of the CPC of Ukraine ⁶ , which rendered the consideration of the issue of criminal liability impossible. Despite the expiry of the investigation period, the prosecutor unreasonably objected to the closure of the proceedings and filed appeals, which is contrary to the requirements of the legislation.	After a comprehensive analysis of the materials of the disciplinary proceedings and considering the procedural independence of the prosecutor, the Commission reached an agreed conclusion that the revealed violations of the law indicate that prosecutor S.V. Syvak committed a disciplinary offence related to improper performance of official duties, liability for which is stipulated by item 1 of part one of Article 43 of the Law of Ukraine "On the Prosecutor's Office" ⁷ . The prosecutor was subjected to a disciplinary sanction in the form of a reprimand.

Source: compiled by the authors

When considering the specific features of prosecutors' procedural guidance during the investigation of white-collar crime, the decisions of the Qualification and Disciplinary Commission of Prosecutors can be used to conclude on the existence of major violations in their actions that adversely affect the effectiveness of pre-trial investigation. In the case of prosecutor R.I. Voronka, this was a gross violation of ethics and obtaining undue advantage, which discredits the prosecutor's office. Prosecutors I.V. Pryschepa and H.E. Kravtsov committed disciplinary offences by failing to properly perform their official duties and permitting the conclusion of an agreement contrary to the law and the public interest⁸. Prosecutor S.V. Syvak, in turn, violated the terms of the pre-trial investigation, which led to a violation of the suspects' rights to hear cases within a reasonable

time and the closure of proceedings⁹. These cases demonstrate the significance of prosecutors' proper performance of their duties, compliance with the legislation and ethical standards to ensure effective investigation of crimes in the field of official activity. Pursuant to part 2 of Article 36 of the Criminal Procedure Code of Ukraine¹⁰, the prosecutor has broad powers that enable them to actively influence the course of the investigation and its outcomes, including both assisting and obstructing the investigation.

The prosecutor, having a strong influence on the pre-trial investigation process, supervises the collection of evidence, including material (money, clothing, other items) and ideal (testimony) traces of the crime. At the same time, there are risks that the prosecutor may use their powers to manipulate the investigation, including delaying or distorting

¹ Decision of the Qualification and Disciplinary Commission of Prosecutors No. 58dp-22 "On Imposing Disciplinary Sanctions on the Deputy Head of the Zhytomyr District Prosecutor's Office of Zhytomyr Region H.E. Kravtsov and Prosecutor of the Zhytomyr District Prosecutor's Office of Zhytomyr Region I.V. Pryschepa". (2022, May). Retrieved from <https://kdkp.gov.ua/decision/2022/05/25/2240>.

² Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

³ Law of Ukraine No. 1697-VII "On the Prosecutor's Office". (2014, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/1697-18#Text>.

⁴ Decision of the Qualification and Disciplinary Commission of Prosecutors No. 167dp-23 "On Imposing a Disciplinary Sanction on the Deputy Head of the Chudniv District Prosecutor's Office of Zhytomyr Region S. Syvak". (2023, August). Retrieved from <https://kdkp.gov.ua/decision/2023/08/24/4188>.

⁵ Criminal Procedure Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

⁶ *Ibidem*, 2012.

⁷ Law of Ukraine No. 1697-VII "On the Prosecutor's Office". (2014, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/1697-18#Text>.

⁸ Decision of the Qualification and Disciplinary Commission of Prosecutors No. 58dp-22 "On Imposing Disciplinary Sanctions on the Deputy Head of the Zhytomyr District Prosecutor's Office of Zhytomyr Region H.E. Kravtsov and Prosecutor of the Zhytomyr District Prosecutor's Office of Zhytomyr Region I.V. Pryschepa". (2022, May). Retrieved from <https://kdkp.gov.ua/decision/2022/05/25/2240>.

⁹ Decision of the Qualification and Disciplinary Commission of Prosecutors No. 167dp-23 "On Imposing a Disciplinary Sanction on the Deputy Head of the Chudniv District Prosecutor's Office of Zhytomyr Region S. Syvak". (2023, August). Retrieved from <https://kdkp.gov.ua/decision/2023/08/24/4188>.

¹⁰ Criminal Procedure Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

the facts, which will adversely affect the quality of the evidence base. Thus, during the VIII Conference on Criminal Law and Procedure organised by the Ukrainian Bar Association (Judges of the HACC..., 2021), Oleksandra Yanovska, a judge of the Criminal Court of Cassation of the Supreme Court, stressed the need to respond to the problem of querulousness (excessive propensity to file lawsuits), as well as to cases of abuse of the right to appeal to the court by both the defence and the prosecution. Specifically, it was emphasised that frequent absences of lawyers and prosecutors from court hearings, abuse of the right to a trial, manipulation of the facts of the case and arguments presented in the contested decisions require the courts to develop effective mechanisms to respond adequately to such situations. From the materials of the Decision of the Qualification and Disciplinary Commission of Prosecutors No. 56dp-24 "On Imposing a Disciplinary Sanction on Prosecutor D.V. Bondar of the Fastiv District Prosecutor's Office of Kyiv Region"¹, it follows that the prosecutor, while holding the position of a prosecutor, grossly violated professional ethics, namely, he allowed unlawful off-duty relations with persons who had a private interest in criminal cases where he was a senior prosecutor, and received personal benefits for the use of his official powers. It should also be understood that due to the temporary expansion of the powers of the prosecutor's office under martial law, the procedural guidance of the prosecutor during the investigation of criminal offences in the field of official activity is of particular concern. Specifically, under certain conditions, the head of the relevant prosecutor's office is empowered to act as an investigating judge, as prescribed by item 2 of part one of Article 615 of the CPC of Ukraine². Despite the expansion of powers, the prosecutor is obliged to follow Article 206 of the CPC, which guarantees the protection of individual rights. At the same time, it is still possible to appeal against the prosecutor's actions under Chapter 26 of the CPC, which ensures judicial control and protection of individual rights, avoiding the inadmissibility of evidence (Article 87 of the CPC of Ukraine).

The analysis of the ideal and material traces of a crime is critical for establishing the objective truth and bringing the perpetrators to justice. In cases of white-collar crime, the process of proof has its specific features. To fully understand the mechanism of the criminal act, the investigator, prosecutor, investigating judge, and the court must establish whether the

official breached their duties related to their official position and by what actions this person caused substantial damage to the rights, freedoms, and interests of citizens, state, public, or legal entities. These features are conditioned by the specifics of the subjects of such crimes and the objective characteristics of the actions defined in Articles 364-370 of the Criminal Code of Ukraine³.

Procedural guidance by a prosecutor in the United States of America in the investigation of white-collar crime is marked by distinctive features that reflect the specifics of the country's legal system and the nature of such crimes. In the United States, white-collar crime investigations are conducted at both the federal and state levels. Federal prosecutors working for the US Department of Justice investigate violations of federal laws. At the same time, state prosecutors, known as district attorneys (What is a DA, 2024), are responsible for initiating criminal proceedings based on the discovery of non-compliance with local legislation. This division of functions creates a comprehensive legal framework for the investigation of white-collar crime. In the United States, prosecutors are actively involved in pre-trial investigations, working closely with law enforcement agencies such as the Federal Bureau of Investigation, the Department of Homeland Security, and other specialised agencies. They not only supervise the investigation, but also provide legal advice to investigators, assist in the collection of evidence and the formation of charges.

Many prosecutor's offices have specialised units that investigate corruption and other white-collar crimes. For example, the U.S. Department of Justice has a Public Integrity Section (PIN) (2024) that specialises in detecting white-collar crime at the federal level. The US whistleblower protection system also plays a major role in investigating white-collar crime. Laws, such as the Whistleblower Protection Act⁴, provide protection for individuals who report corruption and other misconduct in the workplace. Prosecutors often use information provided by whistleblowers as key evidence in their cases. One of the unique features of the US legal system is the use of a grand jury to assess whether the evidence is sufficient to bring charges. Prosecutors present evidence to the grand jury, which decides whether to bring charges (Types of juries, 2024). This provides an extra level of scrutiny of the validity of the investigation and charges. In the United States, prosecutors are actively using plea agreements (Plea Bargaining, 2024) with witnesses

¹ Decision of the Qualification and Disciplinary Commission of Prosecutors No. 56dp-24 "On Imposing a Disciplinary Sanction on Prosecutor D.V. Bondar of the Fastiv District Prosecutor's Office of Kyiv Region". (2024, April). Retrieved from <https://kdkp.gov.ua/decision/2024/04/24/4411>.

² Criminal Procedure Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

³ Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

⁴ Whistleblower Protection Act. (1989, July). Retrieved from https://whistleblower.house.gov/sites/evo-subsites/whistleblower.house.gov/files/wysiwyg_uploaded/Whistleblower_Protection_Act_Fact_Sheet.pdf.

and suspects who agree to help the investigation in exchange for a reduced sentence. This enables a more efficient collection of evidence and identification of complex corruption schemes. An alternative method of enforcement is deferred prosecution agreements (DPAs) under the Defence Production Act of 1950¹, which is a crucial tool in the fight against economic crimes. Prosecutors use these agreements to determine the extent of punishment and rehabilitation, satisfying the prosecution's principles. Companies can avoid criminal charges if they meet the agreed conditions, which helps to reduce negative consequences and promote changes in corporate behaviour.

Law enforcement authorities in the United States can significantly influence the corporate sector using criminal liability mechanisms, which contributes to the development of an effective corporate culture in the fight against corruption. The procedural guidance of the prosecutor in the investigation of white-collar crime in the United States is characterised by a strong level of integration and cooperation between various law enforcement agencies. This includes the involvement of specialised units, such as federal investigative agencies, in conducting investigations, gathering evidence, conducting searches, and interviewing suspects and witnesses. Grand juries are used to review evidence and make decisions on charges, which helps to ensure the objectivity and comprehensiveness of investigations. Cooperation agreements allow for leniency in exchange for the provision of valuable information or cooperation with the investigation. These elements contribute to the effective detection of white-collar crime, thereby ensuring that law and order is upheld in the corporate sector.

In Brazil, the procedural guidance provided by prosecutors in the context of investigating white-collar crime also has its specific features, reflecting both national legal traditions and modern technological approaches to fighting corruption. For instance, Brazil is actively using artificial intelligence tools (AI-ACT) developed to detect and prevent corruption in the public sector. Most of the AI-ACTs in Brazil (Menezes, 2024) are related to monitoring public spending and auditing public procurement. Prosecutors use these tools to automate procedures and increase transparency in public finances, enabling them to detect violations more effectively. The type of corruption tackled by AI-ACT depends on who develops and uses the tools. In the case of top-down initiatives, the focal point of each tool is linked to official

government roles and the law enforcement agencies that implement them. This ensures clear management and control of the anti-corruption process. Bottom-up initiatives in Brazil have a broader focus and include crowdsourcing information from the public about delays in the construction of schools and other infrastructure projects. Technologically proficient civil servants and the public are engaged in the fight against corruption using digital data and modern technologies. The preference given to artificial intelligence tools demonstrates the active involvement of civil servants and the public in the use of digital data to fight corruption. Improvements in the quality and availability of technology, as well as a large amount of open and publicly available data, are driving the fight against corruption in Brazil. Thus, the procedural guidance provided by prosecutors in the investigation of white-collar crime in Brazil is marked by the active use of modern technologies, including artificial intelligence tools, which increases transparency and efficiency of public administration. One of the notable achievements of the recent anti-corruption reforms in Bulgaria was the transfer of high-profile corruption cases from local district courts and prosecutors' offices to the Specialised Criminal Court and the Specialised Prosecutor's Office. According to Article 35, item 3 of the Law on Confiscation of Illegally Acquired Property², these bodies have special competence to deal with the most severe criminal offences.

The transfer of cases to the Specialised Criminal Court helped to overcome local dependencies that often arose in district courts, especially in cases of corruption among local officials. This greatly reduced corruption risks among judges and increased the efficiency of investigations. Legislation established bodies specialising in the most severe cases, including organised crime and terrorism, as well as high-profile corruption cases (Vassileva, 2022). This contributed to the development of a consistent judicial practice and accelerated the criminal procedure. According to the provisions of Directive of the European Parliament and of the Council No. 2014/42/EU³, the improvement of legal regulation in the field of securing and confiscation of illegally obtained property has led to the expansion of the possibilities for confiscation of assets and the introduction of effective mechanisms for managing seized property until its confiscation.

The procedural rules set out in Articles 72 and 72a of the Criminal Procedural Code of Bulgaria⁴ (seizure of property) guarantee the proper enforcement

¹ Defense Production Act. (1950, September). Retrieved from <https://sgp.fas.org/crs/natsec/R43767.pdf>.

² Law of Bulgaria "On Confiscation of Illegally Acquired Property". (2018, January). Retrieved from <https://lex.bg/en/laws/ldoc/2137180227>.

³ Directive of the European Parliament and of the Council No. 2014/42/EU "On the Freezing and Confiscation of Instrumentalities and Proceeds of Crime in the European Union". (2014, April). Retrieved from <https://eur-lex.europa.eu/eli/dir/2014/42/oj>.

⁴ Criminal Procedure Code of Bulgaria. (2019, November). Retrieved from [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2019\)034-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2019)034-e).

of property sanctions, including fines and confiscation. Thus, the Bulgarian practices in prosecutorial procedural guidance in white-collar crime investigations highlight the significance of specialised institutions, improved legal frameworks, and effective coordination between multiple agencies for the successful fight against corruption. At the stage of investigating white-collar crime in Hungary, both the prosecutor and the court may be responsible for the task. This process involves several key aspects that are regulated in detail by Hungarian criminal procedural legislation.

Firstly, the prosecutor in Hungary plays a key role in the pre-trial investigation. The prosecutor coordinates the activities of the investigating authorities, provides legal counselling, and supervises compliance with the law during the investigation. The prosecutor can initiate necessary investigative actions, such as interrogations, searches, or seizure of documents, and decide on the further development of the case. Secondly, in cases where the investigation reveals the need for further expertise or specialised checks, the investigating authority may engage the court. The court may be involved in making decisions that are not within the competence of the prosecutor, including issuing search or arrest warrants, approving requests for technical expertise, and other procedural acts. Thus, the tasks performed during the investigation may include the use of undercover means, as set out in section 214(4)(f) of the Act No. XC on Criminal Procedures of Hungary¹. The use of such means requires the authorisation of the prosecutor and must be approved by a judge. If the investigating authority considers it necessary to carry out a procedural action or make a decision within the powers of the prosecutor's office or the court, the responsible head of the investigating authority shall submit a respective proposal to the court. The prosecutor's office supervises the legality of the investigation, controlling the compliance of the procedures of the investigating authorities with the law. It is entitled to cancel unlawful decisions, demand the elimination of offences, consider applications for legal defence, and take other measures. The prosecutor not only oversees, but also directly manages the investigation, taking all necessary supervisory measures, including direct orders to the investigating authorities to perform or prohibit certain procedural actions, change the decisions of the investigating authorities, or demand their implementation. Pursuant to the Law on Confiscation of Illegally Acquired Property², the prosecutor is entitled to give instructions directly during the investigation, entrusting the investigating authorities

with the performance of concrete procedural actions and requiring the counter-terrorism and crime prevention authorities to carry out the relevant procedures. Thus, the procedural guidance exercised by the public prosecutor in Hungary in the investigation of white-collar crime offences includes comprehensive oversight and management, which ensures the legality and effectiveness of the investigation. If specific needs are identified during the investigation, the prosecutor and the court can act together to ensure the effectiveness of the investigation process. Hungarian legislation clearly delineates the responsibilities and functions between these bodies to maximise their effectiveness in combating white-collar crime.

For Ukraine, it is crucial to consider international practices in prosecutorial oversight of white-collar crime investigations, adapting them to the national context and needs. For instance, the grand jury system, which is widely used in the United States of America, provides an added level of verification and independence in the assessment of evidence and decision-making. While this approach can ensure objectivity and fairness in procedural guidance, it may be challenging to adapt for Ukraine due to its centralised justice model, which involves strong governmental influence on decision-making. In Ukraine, prosecutors often work within a strict chain of command, which may limit their independence in making procedural decisions. Furthermore, the introduction of the grand jury system would require substantial changes in legislation and law enforcement practice, as this institution is not typical for the Ukrainian legal system, which is based on other principles of pre-trial investigation and criminal proceedings. At the same time, Brazil's approach to using AI-ACT to automate and monitor processes can substantially increase the transparency and efficiency of investigations. Specifically, the use of artificial intelligence to automate routine tasks and monitoring can help to process information faster and reduce corruption. Furthermore, crowdsourcing of information can strengthen public control over corruption by ensuring greater public participation in the fight against misconduct.

Thus, the adaptation of the procedural powers of the prosecutor in Ukraine in the investigation of white-collar crimes requires the consideration of the specifics of the crisis circumstances. To ensure the effectiveness and transparency of investigations in crisis situations, it is equally essential to ensure control over the quality and outcomes of investigations. This may include independent oversight, monitoring of processes, and the establishment of mechanisms to

¹ Law of Hungary No. XC "On Criminal Procedures of Hungary". (2017, February). Retrieved from <https://www.wipo.int/wipolex/en/legislation/details/18617>.

² Law of Bulgaria "On Confiscation of Illegally Acquired Property". (2018, January). Retrieved from <https://lex.bg/en/laws/ldoc/2137180227>.

detect and prevent corruption and abuse. The training of prosecutors should include elements specifically geared towards working in crisis situations. This may include trainings, seminars, and other forms of professional development to help them adapt to new conditions and requirements. The measures taken in this area to improve the skills of law enforcement officers, including prosecutors, in investigating white-collar and corruption crimes are critical to ensuring the effectiveness of the fight against crime. For example, the training course “Procedural management and support of public prosecution in criminal proceedings on the facts of committing official and corruption criminal offences” (2024) was held from 23 to 25 April 2024. Therewith, the use of international practices may contribute to the improvement of national practice. Thus, the adaptation of procedural guidelines requires a comprehensive approach that combines international practices with national specifics and the unique challenges of the crisis.

■ Discussion

The principal tasks of the prosecutor in the procedural supervision of the pre-trial investigation include overseeing the legality of the actions of investigators, ensuring that the investigation follows the requirements of the criminal procedural legislation, and coordinating the work of law enforcement agencies.

The role of the prosecutor at the initial stages of the criminal procedure is key to determining their further position during the trial. K. Kremens (2020), and K. Kremens & W. Jasiński (2024) addressed the fact that the relationship between the prosecutor's office and public authorities can substantially affect the course of investigations, especially in politically sensitive cases. However, this issue is still complex, as the influence of state authorities is not always transparent. Critics of this dependence point out that even with formal independence, the prosecutor's office may be under pressure from political factors, which adversely affects its performance and causes distrust in society. On the other hand, countries with stronger democratic institutions demonstrate a greater level of prosecutorial independence, which helps to avoid political manipulation of investigations. In this context, the role of the prosecutor's office in Ukraine requires careful analysis, as the national system often faces comparable challenges, especially in cases involving white-collar and corruption offences.

The actions of the prosecutor during criminal investigations are also conditioned by subordination to senior managers. V. Mitsilegas (2021) and E.A. Gonzalez-Ocantos *et al.* (2023) argue that procedural guidance means the absolute power of the prosecutor in criminal proceedings, which is confirmed by the fact that the prosecutor usually does not create procedural documents on their own but coordinates

them. At the same time, G. Ferguson (2022) and R. Flasher *et al.* (2022) emphasised that procedural guidance covers the management of concrete criminal cases, while supervision of covert operational activities concerns a variety of criminal proceedings and investigative cases. However, the phrase ‘resolution of other matters according to the law during criminal proceedings’ is not sufficiently concretised. This concept may cover aspects of the work of prosecutors that were previously attributed to their powers to supervise the observance of laws during pre-trial investigations. This issue has not yet been clearly regulated in Ukrainian legislation. The findings of the studies show that procedural guidance should be considered as a specific and multifaceted element of criminal procedural management by the prosecutor, which includes the organisation of pre-trial investigation through a wide range of legal powers.

Studies conducted by Z. van Der Wal (2021) and A.S. Prakoso & A. Richard (2024), J. Krštenic & S. Karovic (2024) indicate that the current system of prosecutor's powers may excessively limit the investigator's autonomy. The researchers propose to review these powers, reducing them or reorienting them in favour of the head of the pre-trial investigation body, to ensure greater independence in the procedural management of the investigation. A. Hermanto & B. Riyadi (2020), and V. Vari (2023) pointed out that excessive discretionary powers of prosecutors can lead to abuse, which can contribute to corruption in the prosecution service. The researchers believe that discretionary powers in state institutions should be limited and monitored by external agencies to ensure checks and balances between state institutions and the public sector.

The specific feature of the Bulgarian system, where the decision of the appellate prosecutor is final and cannot be appealed by others, raises a series of issues. For instance, V. Terziev *et al.* (2020a; 2020b) noted the paradoxical situation where administrative managers cannot interfere with the work of subordinate prosecutors, although they formally have supervisory powers. Such a structure may limit the effectiveness of supervision of prosecutors and lead to a lack of accountability at higher levels of management. Compared to other countries where supervisors can correct the decisions of their subordinates, the Bulgarian model appears to be too rigid, which may negatively affect transparency and accountability in the justice system. This suggests that, despite the formal autonomy of prosecutors, complications in communication between levels of management may reduce the overall effectiveness of prosecutorial oversight and draw criticism from international experts.

Prosecutorial activity in the investigation of white-collar crimes has certain distinctive features. L. Adiguna (2021) and N. Capus & M. Bozinova (2023)

emphasised that the determination by prosecutors of the real damage caused to the state as a result of corruption offences is an integral part of the investigation, but this approach has its drawbacks. However, focusing on purely financial losses can lead to ignoring other aspects of corruption, such as the systemic degradation of state institutions and loss of public trust. Furthermore, the identification of losses, albeit based on regulations, does not always reflect the full complexity of corruption schemes, which requires not only formal compliance with legal requirements, but also an in-depth analytical approach and cooperation with other agencies. Thus, while the formal framework for prosecutors is important, it may limit the effectiveness of investigations in cases of complex corruption schemes that require innovative approaches and interagency cooperation.

The enforcement agreements that are the subject of studies by Q. Bu (2021) and Z. Guo (2023), have certainly become a valuable tool in the fight against bribery, enabling more efficient handling of such cases, but the question of their universality and effectiveness in other legal systems is still open. While DPAs have shown success in promoting accountability and deterring wrongdoing, the critical point is the extent to which they can deliver real behavioural change for perpetrators, rather than simply avoiding prosecution. In the context of Ukraine, the introduction of DPAs requires adaptation to a legal system that differs from those countries where this tool is already in use. There is a risk that, if not implemented properly, it could lead to increased corruption risks, as it leaves room for avoidance of severe punishment.

On the other hand, technologies like AI-ACT, as highlighted by F. Odilla (2023; 2024), do have considerable potential to increase transparency and fight against misconduct in office, but a critical analysis showed that their implementation is accompanied by substantial challenges. Firstly, the problem of unpreparedness of personnel to work with automated systems may reduce their effectiveness, as even the most advanced algorithms will not bring the expected outcomes without proper human expertise. Secondly, the large amount of data generated by such systems creates the risk of "information overload", which can lead to the ignoring of crucial signals. Despite positive results, such as the recovery of public funds and support for criminal investigations, the success of AI-ACT in the fight against corruption is still an incomplete picture. One of the challenges is the need to develop complementary methods for analysing big data to avoid losing sight of small but meaningful details. Thus, the implementation of both DPA and AI-ACT, while promising considerable benefits, requires careful consideration, adaptation, and improvement in the Ukrainian legal system to avoid potential risks and ensure maximum effectiveness.

Thus, the prosecutor's exercise of procedural guidance during the investigation of criminal offences in the field of official activity is a complex and responsible process that requires extensive professional training and interagency cooperation. Effective management of the investigation of such offences ensures not only justice, but also strengthens public confidence in law enforcement agencies and the judicial system. The management of white-collar crime investigations carries a host of challenges, including possible attempts to obstruct investigations, pressure on investigators and prosecutors, and the need to ensure the highest level of confidentiality and security. To improve procedural management, it is necessary to introduce the latest techniques, improve the qualifications of prosecutors, and ensure effective control over the enforcement of legislation.

■ Conclusions

Under martial law, the state must protect the rights of citizens and effectively counter threats to national security. Temporary expansion of the powers of the prosecutor's office under certain conditions is expedient to ensure law and order. Despite the challenging environment, the prosecutor's office continues to perform its functions, providing procedural guidance to pre-trial investigations according to the Constitution and international law. The principal purpose is to protect human rights and the interests of the state. To ensure the effectiveness of the pre-trial investigation, it is necessary that the prosecutor actively uses their powers to lead this process. The role of the prosecutor includes organising and supervising the procedural activities of the investigator, as well as taking part in the collection and analysis of evidence in criminal proceedings.

The specific features of the work of prosecutors in the context of procedural guidance in the investigation of white-collar crime in Ukraine are manifested through a clear requirement to follow the legal procedures for their appointment and participation in proceedings. In cases of white-collar crimes, there are often situations when prosecutors do not properly perform their official duties, allowing plea bargaining that is contrary to the law and the public interest, violate the terms of pre-trial investigation, which leads to the closure of criminal proceedings and violation of the rights of suspects, and become subjects of corruption offences themselves, which indicates a severe violation of ethical standards and discredits the prosecution service overall. These cases demonstrate the need to increase the responsibility of prosecutors for the proper procedural management of pre-trial investigations and ensuring the observance of the rights and legitimate interests of participants in the criminal procedure. This practice emphasises the special responsibility of prosecutors

in ensuring compliance with procedural rules, which is crucial for the successful conduct of investigations and supporting the prosecution in cases of white-collar crime.

Positive aspects of international practices in procedural guidance demonstrated considerable benefits for improving the efficiency of justice. The American practice of using a grand jury promotes independence in the evaluation of evidence, ensuring greater objectivity in decisions. Brazil's AI-ACT system, which automates the monitoring and management of processes, greatly increases the transparency and efficiency of court proceedings. Bulgaria demonstrates the effectiveness of specialised courts and

prosecutors in reducing corruption risks and improving the quality of justice in sensitive cases. Promising areas for further research include the analysis of prosecutor training programmes in Ukraine and abroad, the impact of judicial practice on procedural guidance, and the institutional and organisational aspects that influence this.

■ Acknowledgements

None.

■ Conflict of Interest

The author of this study declares no conflict of interest.

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Особливості здійснення прокурором процесуального керівництва під час розслідування кримінальних правопорушень у сфері службової діяльності

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■ **Анотація.** Метою цього дослідження було вивчення основних аспектів процесуальних повноважень прокурора в межах досудового розслідування кримінальних правопорушень, передбачених статтями 364–370 Кримінального кодексу України. Для досягнення цієї мети застосовано різноманітні методи, зокрема системно-функціональний, формально-юридичний, логіко-догматичний, моделювання, класифікація, порівняльно-правовий та статистичний методи. Встановлено, що прокурор наділений широкими повноваженнями в процесуальному керівництві досудовим розслідуванням, здійснюючи нагляд за виконанням процесуальних дій і надаючи відповідні вказівки. Акцентовано на необхідності підвищення кваліфікації правоохоронних органів у розслідуванні службових і корупційних злочинів, що є критично важливим для ефективної протидії правопорушенням. Зазначено, що злочини у сфері службової діяльності часто пов'язані із зловживанням службовим становищем для впливу на слідчих та інших учасників кримінального провадження, включаючи прокурорів і керівників органів досудового розслідування. Розглянуто досвід США, Бразилії, Болгарії та Угорщини щодо регулювання та специфіки роботи прокурорів під час розслідування таких правопорушень. Узагальнено, що досвід США з гран-журі може забезпечити додаткову перевірку доказів, досвід Бразилії з AI-АСТ здатен підвищити прозорість процесів, а досвід Болгарії з передання справ до спеціалізованих судів може знизити корупційні ризики. Проте адаптація цих практик в Україні потребуватиме врахування специфіки національної правової системи. Тож практичне значення дослідження полягає в можливості використати його результати для кваліфікованого впровадження міжнародного досвіду в організацію здійснення прокурором процесуального керівництва під час розслідування кримінальних правопорушень у сфері службової діяльності

■ **Ключові слова:** службовий злочин; корупційний злочин; досудове розслідування; неправомірна вигода; наглядова діяльність; вказівка прокурора; штучний інтелект

UDC 341.2

Doi: 10.56215/naia-herald/4.2024.22

Relevance of international legal and national standards of safety of navigation and the role of classification societies in the context of modern challenges and innovations in shipbuilding

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■ **Abstract.** The relevance of international legal and national safety standards for shipping is growing due to modern challenges, such as innovations in shipbuilding, climate change and growing requirements for environmental safety, which underlines the important role of classification societies in this process. The purpose of the study was to analyse the impact of international and national safety standards on modern shipbuilding and to assess the role of classification societies in ensuring the safe operation of ships. The study applied the methods of system analysis, comparative law and empirical modelling. The main results of the study were the identification of the need for further harmonisation of international legal standards with national requirements, improvement of the role of classification societies in monitoring innovations in shipbuilding, and formulation of proposals for improving the environmental safety of shipping. In addition, the paper identified the prospects for using the latest technologies to improve safety standards in maritime transport. In particular, the article focused on the role of classification societies in ensuring that ships comply with these standards, as well as their contribution to the introduction of innovations in shipbuilding. The study contained an analysis of current regulations and standards governing shipping safety, as well as cases of their implementation in practice. The key changes in ship safety requirements in view of current risks, including environmental challenges and increased quality requirements, were identified. The practical value of the work lies in the possibility of using the results obtained by both regulatory authorities and shipbuilding companies to improve internal safety standards and support international certification

■ **Keywords:** technological innovation; autonomous shipping; environmental regulations; integration; standards

■ Introduction

Shipping safety is one of the key conditions for the efficient functioning of the global economy. In the context of globalisation and rapid technological development, the maritime industry is facing a number of new challenges that require constant adaptation and improvement of shipping safety standards. Modern shipping is facing new challenges such as piracy, terrorism, cyber-attacks on navigation systems and environmental risks associated with climate change.

This requires a review of existing safety standards and the creation of new legal mechanisms to ensure the protection of sea lanes and ships.

Innovations in shipbuilding, including the use of alternative fuels, new materials and technologies (e.g. autonomous ships), create new opportunities but also raise questions about the safety of such vessels. Traditional safety standards do not always adequately address these innovations, and new international

■ Suggested Citation:

Vroniuk, N. (2024). Relevance of international legal and national standards of safety of navigation and the role of classification societies in the context of modern challenges and innovations in shipbuilding. *Scientific Journal of the National Academy of Internal Affairs*, 29(4), 22-34. doi: 10.56215/naia-herald/4.2024.22.

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■ Received: 27.07.2024; Revised: 30.10.2024; Accepted: 26.11.2024



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and national regulations are needed. Increasing attention to environmental protection, in particular in connection with the International Convention for the Prevention of Pollution from Ships (MARPOL)¹, creates additional challenges for the shipbuilding industry. The introduction of environmentally friendly technologies on ships should be accompanied by the adaptation of international and national safety standards. Classification societies (CS) play a pivotal role in ensuring the safety of shipping, as they carry out certification, technical control and inspection of ships. In the context of innovation in shipbuilding, their role becomes even more important as they act as intermediaries between government regulators, shipbuilders, and ship operators. In the context of globalisation and active integration into the international economy, it is relevant for Ukraine to comply with international shipping safety standards. This not only helps to improve the country's image, but also opens up new opportunities for international trade. Thus, the study of international and national shipping safety standards, as well as the role of classification societies in the context of modern challenges and innovations, is extremely important for improving maritime safety and maintaining the stable development of the global maritime industry.

The issue of international legal and national standards of shipping safety has been the subject of research by many scholars. According to a study by O. Aneziris *et al.* (2021), achieving the International Maritime Organisation's (IMO) greenhouse gas emission reduction targets requires significant efforts, especially in the introduction of new technologies and alternative fuels. The main challenge is the high cost and technological uncertainty that affects global decision-making.

The study by M. Issa *et al.* (2022) highlights the challenges of introducing autonomous vessels, especially in the context of safety and compliance with international regulations. The main challenge is legal uncertainty, as current legislation does not always take into account the specifics of such technologies, which can complicate their integration into global shipping. T.C. Nwokedi *et al.* (2023) focus on the role of classification societies in maintaining maritime security under the Abuja Memorandum of Understanding. The authors emphasize the effectiveness of cooperation between international and local regulatory bodies in ensuring safety standards. A. Joseph

& D. Dalaklis (2021) highlight the importance of the International Convention "On the Safety of Life at Sea"² in reducing risks in shipping, noting that the instrument continues to play a key role in ensuring maritime safety, in particular in response to new challenges posed by innovation and environmental threats. R. Baumler *et al.* (2021) focus on the human factor in the context of IMO's maritime safety measures. They conclude that, despite significant technical improvements, the human factor remains the main issue affecting shipping safety.

The review shows that there are several unexplored aspects in the existing research on the integration of new technologies and innovations in shipping safety. These shortcomings open up opportunities for further research in these areas. The purpose of the article was to study international and national shipping safety standards, and to determine the role of classification societies in ensuring compliance with these standards, as well as to assess the impact of innovations in shipbuilding on the development and adaptation of safety standards in the face of modern challenges. The objectives of the study were to analyse international shipping safety standards and assess national regulations governing the activities of classification societies.

■ Materials and Methods

To study the role of classification societies in ensuring compliance with safety standards in shipping and shipbuilding, several methodological approaches were used to provide a comprehensive view of the topic. This approach provided a deeper understanding of how classification societies influence maritime safety through the supervision of ship construction, maintenance, and certification of compliance with international standards.

A systematic analysis of Ukrainian and international regulations, such as conventions, was carried out. This method helped to clarify the legal framework governing the activities of classification societies and to identify the main requirements for shipping safety. This made it possible to determine how national legislation implements international standards. International regulations were analysed, in particular conventions governing maritime safety, such as International Convention "On the Safety of Life at Sea"³, The International Safety Management (ISM) Code⁴, International Convention on Standards of

¹ International Convention for the Prevention of Pollution from Ships (MARPOL). (1973, November). Retrieved from [https://www.imo.org/en/about/Conventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-\(MARPOL\).aspx](https://www.imo.org/en/about/Conventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-(MARPOL).aspx).

² International Convention "On the Safety of Life at Sea". (1974, November). Retrieved from <https://ips.ligazakon.net/document/MU74K04U>.

³ Ibidem, 1974.

⁴ International Safety Management (ISM) Code. (1998, July). Retrieved from <https://www.imo.org/en/ourwork/humanelement/pages/ISMCode.aspx>.

Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW-F)¹, Maritime Labour Convention (MLC)², MARPOL³, Basel Convention “On the Control of Transboundary Movements of Hazardous Wastes and Their Disposal”⁴, BWM Convention⁵, Directive of the European Parliament and of the Council No. 2009/16/EU⁶, Directive of the European Parliament and of the Council No. 2014/90/EU⁷.

The article also analysed national legislation on shipping safety, such as the Merchant Shipping Code of Ukraine⁸, the Law of Ukraine No. 1054-IX “On Inland Water Transport”⁹, the Resolution of the Cabinet of Ministers of Ukraine No. 240 “On Amendments to the Regulation on the State Service of Maritime and Inland Water Transport and Shipping of Ukraine”¹⁰, as well as laws on the ratification of international standards^{11,12,13}.

International and national shipping safety standards were analysed, including the legislation of EU countries such as Greece¹⁴, Norway (Norway to build the world's..., 2024), France¹⁵ and Germany^{16,17}. The case study method was used to investigate specific cases of innovation in shipbuilding and its impact on safety standards, such as autonomous ships, the introduction of alternative fuels and the use of composite materials. The study examined situations where new technologies or innovations have led to changes or

improvements in safety standards. At the same time, examples of the implementation of shipping safety standards were analysed using classification societies such as Lloyd's Register and DNV GL (Chu *et al.*, 2023).

The methods of scientific cognition used provided a comprehensive approach to the study of the role of classification societies, allowing to collect and analyse information from various sources. This contributed to the formation of a comprehensive understanding of their role in ensuring compliance with safety standards for shipping and shipbuilding, as well as the identification of the main challenges and opportunities for further development in this area.

■ Results

Modern challenges and innovations in shipbuilding. Modern challenges in shipbuilding have a significant impact on the industry, particularly in the context of global environmental requirements, new technologies and safety of navigation. International regulations, in particular from the IMO, are aimed at reducing greenhouse gas emissions and pollutants such as sulphur and nitrogen oxides. IMO 2020 has significantly reduced the permissible level of sulphur emissions, which has become a major challenge for the shipbuilding industry. Shipbuilding companies are looking for ways to reduce their carbon footprint,

¹ International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW-F). (1995, July). Retrieved from <https://www.imo.org/en/ourwork/humanelement/pages/stcw-f-convention.aspx>.

² Maritime Labour Convention. (2006, February). Retrieved from <https://www.ilo.org/international-labour-standards/maritime-labour-convention-2006>.

³ International Convention for the Prevention of Pollution from Ships (MARPOL). (1973, November). Retrieved from [https://www.imo.org/en/about/Conventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-\(MARPOL\).aspx](https://www.imo.org/en/about/Conventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-(MARPOL).aspx).

⁴ Basel Convention “On the Control of Transboundary Movements of Hazardous Wastes and Their Disposal”. (1999, July). Retrieved from https://zakon.rada.gov.ua/laws/show/995_022#Text.

⁵ International Convention for the Control and Management of Ships' Ballast Water and Sediments (BWM). (2004, February). Retrieved from [https://www.imo.org/en/About/Conventions/Pages/International-Convention-for-the-Control-and-Management-of-Ships'-Ballast-Water-and-Sediments-\(BWM\).aspx](https://www.imo.org/en/About/Conventions/Pages/International-Convention-for-the-Control-and-Management-of-Ships'-Ballast-Water-and-Sediments-(BWM).aspx).

⁶ Directive of the European Parliament and of the Council No. 2009/16/EU “On State Control of Ports”. (2009, April). Retrieved from https://zakon.rada.gov.ua/laws/show/984_005-09#Text.

⁷ Directive of the European Parliament and of the Council No. 2014/90/EU “On Shipboard Equipment and Repealing Council Directive 96/98/EU”. (2014, August). Retrieved from https://zakon.rada.gov.ua/laws/show/984_008-14#Text.

⁸ Merchant Shipping Code of Ukraine. (1995, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/176/95-pp#Text>.

⁹ Law of Ukraine No. 1054-IX “On Inland Water Transport”. (2020, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/1054-20#Text>.

¹⁰ Resolution of the Cabinet of Ministers of Ukraine No. 240 “On Amendments to the Regulation on the State Service of Maritime and Inland Water Transport and Shipping of Ukraine”. (2023, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/240-2023-p#Text>.

¹¹ Resolution of the Cabinet of Ministers of Ukraine No. 350 “On the Acceptance by Ukraine of the 1981, 1989 and 1990 Amendments and the 1988 Protocol to the International Convention for the Safety of Life at Sea, 1974”. (1992, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/350-92-p#Text>.

¹² Resolution of the Verkhovna Rada of Ukraine No. 3939-XII “On Ratification of the Convention on the protection of the Black Sea from pollution”. (1994, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/3939-12#Text>.

¹³ Law of Ukraine No. 464/96-VR “On Ukraine's Accession to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978”. (1996, November). Retrieved from <https://zakon.rada.gov.ua/laws/show/464/96-pp#Text>.

¹⁴ Law of the Greece No. 743 “On the Protection of the Marine Environment and Arrangement of Other Matters Related Thereto”. (1977, October). Retrieved from <https://leap.unep.org/en/countries/gr/national-legislation/law-no-743-protection-marine-environment-and-arrangement-other>.

¹⁵ French Transport Code. (2024, October). Retrieved from https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000023086525/.

¹⁶ Federal Maritime Responsibility Act of the Germany. (2002, July). Retrieved from <https://www.gesetze-im-internet.de/>.

¹⁷ Shipbuilding and Maritime Infrastructure Act of Germany. (2016, June). Retrieved from https://www.gesetze-im-internet.de/englisch_bseeschg/englisch_bseeschg.pdf.

including through the use of new energy sources. The shipping industry needs more energy-efficient solutions to reduce fuel consumption and environmental impact. Shipbuilding companies are required to integrate innovative approaches to ship and engine design, including the use of AI-based solutions to optimize routes and reduce energy consumption.

One of the main challenges is the introduction of alternative energy sources, such as liquefied natural gas (LNG), hydrogen energy, ammonia, or battery-powered electric ships. These technologies help to reduce carbon dioxide emissions, but their implementation requires infrastructure upgrades and significant investments. The industry is moving towards ship automation, including autonomous ships that can operate without a crew. This not only increases efficiency, but also reduces safety risks. However, the introduction of autonomous systems requires the development of new legal frameworks and safety standards.

The introduction of new technologies, including green solutions, is an expensive process. Shipbuilding companies are forced to balance environmental requirements with financial costs, which affects their ability to adapt to change. Overall, the shipbuilding industry is actively transforming under the influence of global challenges. Integration of environmental requirements, the latest technologies and enhanced safety measures are crucial for its sustainable development. For Ukraine, the development of shipbuilding is strategically important, as the country has access to the Black Sea. The integration of innovations such as the use of alternative energy sources and digital technologies can help modernize Ukraine's shipbuilding industry and increase its competitiveness in the global market.

Modern shipbuilding uses lighter and stronger materials, such as composites, to reduce the weight of ships and improve their fuel efficiency. The introduction of new technologies such as rotor sails and solar panels allows the use of renewable energy sources to propel ships, which reduces fuel consumption. The use of artificial intelligence, the Internet of Things (IoT) and big data to monitor the status of ships in real-time, optimise routes and predict technical failures can significantly improve the efficiency of ship management. Fully autonomous or partially autonomous ships are already being tested. They are able to carry out maritime operations with minimal human intervention, potentially reducing human error and improving safety of navigation. The use of modular technologies in ship construction can significantly

reduce the time and cost of ship assembly. Modular structures are easier to repair and modernize (Melnyk *et al.*, 2023). Thus, shipbuilding faces a number of challenges, but innovations open up new opportunities for efficient, environmentally friendly and safe development of the industry, which, in turn, requires improving the regulatory framework in this area.

International and national legislation in the field of shipping and shipbuilding. The IMO is a specialised UN agency that coordinates activities in the field of maritime safety and pollution prevention. Since its foundation in 1948, the IMO has been implementing and maintaining international safety standards, including International Convention "On the Safety of Life at Sea"¹ (1974) and MARPOL² (1973). In addition, the IMO is actively involved in the creation of new regulations and policies to respond to modern environmental and technological challenges. The organisation develops new protocols and amendments to conventions to ensure that regulations remain relevant and effective in the face of climate change and technological developments. One of the most important modern environmental standards is the implementation of IMO 2020, which significantly limits sulphur emissions from ships. Since 1 January 2020, the maximum sulphur content in marine fuels has been reduced from 3.5% to 0.5%. This is forcing shipping companies to switch to more environmentally friendly fuels, install exhaust gas cleaning systems (scrubbers) or use alternative energy sources such as LNG. These changes are part of IMO's broader strategy to reduce greenhouse gas emissions from shipping by 50% by 2050.

At the same time, international standards are aimed at ensuring the safety of human life, protecting the environment, and improving the quality of ship construction and operation. Thus, the International Convention "On the Safety of Life at Sea"³ is one of the most crucial international treaties governing the safety of navigation. It was adopted in 1914 after the Titanic disaster, and the current version was adopted in 1974. Convention sets minimum standards for ship design, equipment, and operation to ensure the safety of human life at sea. The International Convention "focuses on safety of navigation, including requirements for ship design, equipment, and operation. The main goal is to ensure the safety of life at sea, but it does not contain direct environmental standards. Although Convention requires compliance with technical standards that may indirectly affect environmental performance (e.g., carbon emission

¹ International Convention "On the Safety of Life at Sea". (1974, November). Retrieved from <https://ips.ligazakon.net/document/MU74K04U>.

² International Convention for the Prevention of Pollution from Ships (MARPOL). (1973, November). Retrieved from [https://www.imo.org/en/about/Conventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-\(MARPOL\).aspx](https://www.imo.org/en/about/Conventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-(MARPOL).aspx).

³ International Convention "On the Safety of Life at Sea". (1974, November). Retrieved from <https://ips.ligazakon.net/document/MU74K04U>.

requirements), the main focus is on ship safety rather than environmental performance. Updates to the convention do not always respond promptly to new environmental challenges, such as ship pollution or climate change.

The International Safety Management¹ is part of the International Convention “On the Safety of Life at Sea”² and regulates safety management on ships and in shipping companies. Its goal is to reduce the risk of accidents through systematic safety management. The STCW-F³ defines international standards for seafarers’ training, certification, and watchkeeping. The MLC⁴ was adopted by the International Labour Organisation (ILO) and sets standards for working conditions for seafarers. It ensures the rights of seafarers to decent working conditions, medical care and rest, which is important for maintaining safe navigation through improved working conditions. The MARPOL⁵ aims to prevent pollution of the marine environment from ships, including operational and accidental emissions. It was adopted in 1973 and subsequently supplemented by the 1978 Protocol. The Basel Convention⁶ regulates the transport of hazardous wastes and their disposal, in particular from ships. It provides control over the transport of such substances to avoid environmental disasters in the event of ship accidents. The BWM Convention⁷ regulates the management of ballast water on ships to prevent the invasion of alien species into ecosystems. Requirements include the treatment of ballast water before it is discharged into the sea.

Thus, the international legal standards developed by the IMO are critical to ensuring safe navigation and protecting the environment. They are constantly evolving in response to new technological and environmental challenges, helping the industry to adapt to modern requirements and standards. International shipping and shipbuilding safety standards are key to

ensuring crew safety and environmental protection. They are constantly being updated to meet modern technological and environmental challenges, such as decarbonisation and the use of new types of energy. The IMO plays a key role in this process, developing global standards and promoting their implementation in global shipping practices.

National shipping safety standards in the European Union (EU) have several common features, which are determined by EU legislation, but each country also implements its own specific requirements depending on local needs and geographical conditions. Major international standards, such as International Convention “On the Safety of Life at Sea”⁸, MARPOL⁹ and others, are binding on all EU member states, but additional regulations are being developed at the EU level to implement higher safety and environmental requirements than the global standards.

The European Maritime Safety Agency (EMSA) is responsible for monitoring the implementation of safety and environmental standards. It helps EU member states implement safety standards, provides technical assistance and audits maritime administrations. Each EU country is obliged to implement EU directives into its national legislation. For example, Directive No. 2009/16/EU¹⁰ obliges countries to carry out a thorough inspection of foreign vessels entering EU ports to verify their compliance with international safety standards. Directive of the European Parliament and of the Council No. 2014/90/EU¹¹ regulates the standards of marine equipment in the EU. It obliges national shipping control authorities to ensure that equipment on ships meets safety requirements and has an EU certificate of conformity. In some EU countries with large coastal areas and ports, national standards may be more stringent or adapted to local conditions (Table 1).

¹ International Safety Management (ISM) Code. (1998, July). Retrieved from <https://www.imo.org/en/ourwork/humanelement/pages/ISMCode.aspx>.

² International Convention “On the Safety of Life at Sea”. (1974, November). Retrieved from <https://ips.ligazakon.net/document/MU74K04U>.

³ International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW-F). (1995, July). Retrieved from <https://www.imo.org/en/ourwork/humanelement/pages/stcw-f-convention.aspx>.

⁴ Maritime Labour Convention. (2006, February). Retrieved from <https://www.ilo.org/international-labour-standards/maritime-labour-convention-2006>.

⁵ Ibidem, 2006.

⁶ International Convention for the Prevention of Pollution from Ships (MARPOL). (1973, November). Retrieved from [https://www.imo.org/en/about/Conventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-\(MARPOL\).aspx](https://www.imo.org/en/about/Conventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-(MARPOL).aspx).

⁷ International Convention for the Control and Management of Ships’ Ballast Water and Sediments (BWM). (2004, February). Retrieved from [https://www.imo.org/en/About/Conventions/Pages/International-Convention-for-the-Control-and-Management-of-Ships'-Ballast-Water-and-Sediments-\(BWM\).aspx](https://www.imo.org/en/About/Conventions/Pages/International-Convention-for-the-Control-and-Management-of-Ships'-Ballast-Water-and-Sediments-(BWM).aspx).

⁸ International Convention “On the Safety of Life at Sea”. (1974, November). Retrieved from <https://ips.ligazakon.net/document/MU74K04U>.

⁹ International Convention for the Prevention of Pollution from Ships (MARPOL). (1973, November). Retrieved from [https://www.imo.org/en/about/Conventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-\(MARPOL\).aspx](https://www.imo.org/en/about/Conventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-(MARPOL).aspx).

¹⁰ Directive of the European Parliament and of the Council No. 2009/16/EU “On State Control of Ports”. (2009, April). Retrieved from https://zakon.rada.gov.ua/laws/show/984_005-09#Text.

¹¹ Directive of the European Parliament and of the Council No. 2014/90/EU “On Shipboard Equipment and Repealing Council Directive 96/98/EU”. (2014, August). Retrieved from https://zakon.rada.gov.ua/laws/show/984_008-14#Text.

Table 1. Peculiarities of standards in the EU coastal states

Greece	Greece has one of the largest ferry systems in Europe, with numerous islands. National standards include specific requirements for the design and operation of ferries, as well as for passenger safety systems. Particular attention is paid to fire-fighting systems on ships due to high temperatures in summer ¹ .
Norway (associated with the EU through the European Economic Area)	Norway, a world leader in the use of electric and hybrid ships, has introduced additional standards to reduce CO ₂ emissions (Norway to build the world's..., 2024). Oslo became the first port in the world to offer infrastructure for charging electric ships. Due to the harsh weather conditions and the Arctic zone, Norway has additional safety requirements for ships operating in polar waters.
France	France, as a country with major ports, including Marseille and Le Havre, pays special attention to the transport of dangerous goods. Standards for tankers require additional safety measures and monitoring of vessels to prevent accidents and oil spills ² (French Transport Code, 2024).
Germany	Germany, as one of the leading countries in shipbuilding, has strict requirements for cargo ships, in particular, in terms of their design and navigation equipment ^{3,4} . Hamburg, as one of the largest European ports, is actively implementing innovative technologies to improve safety. The German shipping industry is focusing on the development of low-emission ships and the introduction of hybrid engines.

Source: compiled by the author

In general, national shipping safety standards in the EU are closely linked to European legislation, which sets the basic regulatory framework. At the same time, member states adapt these standards to their specific needs and geographical conditions. The EU is a global leader in the implementation of environmental standards and the latest technologies in shipbuilding and shipping, which helps ensure high safety and environmental protection.

In Ukraine, national shipping safety standards are developed in line with international norms and requirements set by the IMO and are gradually being harmonised with European legislation. The main Ukrainian regulations and standards are aimed at regulating maritime safety, shipbuilding, environmental protection, and seafarers' working conditions. In particular, the Merchant Shipping Code of Ukraine⁵ is the main document regulating all aspects of maritime shipping, including ship safety, navigation, shipping and environmental protection. The Code is aligned with international requirements, but continues to be

improved to integrate the latest international standards. The Law of Ukraine No. 1054-IX⁶ stipulates that classification and technical supervision of inland waterway vessels is carried out by a classification society chosen by the shipowner. In accordance with the Resolution of the Cabinet of Ministers of Ukraine No. 240⁷, approved by the Resolution of the Cabinet of Ministers of Ukraine No. 212⁸, the State Service of Maritime and Inland Water Transport and Shipping of Ukraine (Shipping Administration) is a central executive body that implements state policy in the areas of maritime and inland water transport and shipping.

The Shipping Administration is responsible for implementing international ship safety standards and ensuring their compliance with IMO requirements. It supervises vessels operating under the Ukrainian flag, conducts inspections of vessels in ports and certifies crews, ensures compliance with and fulfillment of obligations undertaken under international agreements in the spheres of sea and inland water transport and shipping. As part of its efforts to integrate

¹ Law of the Greece No. 743 "On the Protection of the Marine Environment and Arrangement of Other Matters Related Thereto". (1977, October). Retrieved from <https://leap.unep.org/en/countries/gr/national-legislation/law-no-743-protection-marine-environment-and-arrangement-other>.

² French Transport Code. (2024, October). Retrieved from https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000023086525/.

³ Federal Maritime Responsibility Act of the Germany. (2002, July). Retrieved from <https://www.gesetze-im-internet.de/>.

⁴ Shipbuilding and Maritime Infrastructure Act of Germany. (2016, June). Retrieved from https://www.gesetze-im-internet.de/englisch_bseeschg/englisch_bseeschg.pdf.

⁵ Merchant Shipping Code of Ukraine. (1995, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/176/95-бп#Text>.

⁶ Law of Ukraine No. 1054-IX "On Inland Water Transport". (2020, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/1054-20#Text>.

⁷ Resolution of the Cabinet of Ministers of Ukraine No. 240 "On Amendments to the Regulation on the State Service of Maritime and Inland Water Transport and Shipping of Ukraine". (2023, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/240-2023-п#Text>.

⁸ Resolution of the Cabinet of Ministers of Ukraine No. 212 "Some Issues of Optimising the Functioning of Central Executive Authorities in the Areas of Maritime and Inland Water Transport and Shipping". (2022, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/212-2022-%D0%BF#Text>.

into the EU, Ukraine is actively harmonizing its national shipping safety standards with EU requirements. Ukraine has already ratified most of the major IMO conventions, including International Convention "On the Safety of Life at Sea"¹, MARPOL² and STCW-F³. Following the signing of the Association Agreement⁴, Ukraine has committed itself to harmonising its legislation with EU directives and regulations in the field of maritime transport. This includes the implementation of EU directives on port state control of ships, environmental protection and maritime safety. Ukraine is gradually introducing requirements to reduce sulphur emissions in line with international environmental standards and EU directives.

Ukraine has significant potential in shipbuilding due to its geographical location, access to the Black and Azov Seas, a developed network of inland waterways and a rich history of shipbuilding. Ukraine's main shipyards are located in Mykolaiv, Kherson, Kyiv and Odesa, which provides access to waterways and convenient transport links. Successful harmonisation with European standards, modernisation of port and shipbuilding infrastructure, and the development of skilled personnel will help Ukraine to take an important place in the global shipping market. National shipping safety standards in Ukraine are based on international and European standards and continue to evolve in response to new challenges and technological innovations. Harmonisation with European requirements, modernisation of infrastructure and improvement of safety management systems will contribute to the improvement of the level of safety of shipping in Ukraine and the country's integration into the global transport network.

International standards developed by the IMO have a significant impact on the reform of Ukraine's shipbuilding and shipping industry. The International Convention "On the Safety of Life at Sea"⁵, the MARPOL⁶ and the STCW-F⁷ define the basic requirements for ship safety and environmental standards that must be implemented in Ukrainian national legislation. This forces Ukrainian shipbuilding companies to update their processes and equipment to meet global

requirements. Ukraine has ratified international agreements to reduce greenhouse gas emissions and other harmful substances (IMO, 2020). The implementation of these standards affects the reform of the shipbuilding industry, as it forces companies to look for more environmentally friendly solutions, such as the use of energy-efficient technologies in ships and the transition to cleaner fuels (LNG, hydrogen). International standards require modernisation of ships and maritime infrastructure to improve safety and environmental performance (Baumler *et al.*, 2021). For example, the requirements for life-saving equipment, firefighting systems and modern navigation aids are constantly changing and require Ukrainian shipbuilders and shipowners to comply with new regulations. The gradual adaptation to the emission requirements in the SECA zones is influencing changes in shipbuilding processes in Ukraine. This requires switching to more environmentally friendly fuels and modernising existing vessels to reduce emissions.

Cooperation with international classification societies plays an important role in raising the quality and safety standards of the Ukrainian shipbuilding industry. Classification societies, such as Lloyd's Register, Bureau Veritas, DNV GL, and others, certify ships for compliance with international standards and check their technical condition (Chu *et al.*, 2023). Classification societies certify ships and infrastructure for compliance with international safety and environmental requirements. Cooperation with these organisations provides Ukrainian shipbuilding companies with access to the global market, as certified vessels can operate in international waters. International classification societies are actively implementing the latest technologies in shipbuilding and shipping. Cooperation with them will allow Ukrainian companies to introduce modern technologies (e.g., electric or hydrogen-fuelled vessels), increasing their competitiveness. Classification societies provide technical support and expertise to Ukrainian companies. This applies not only to new ship designs, but also to the modernisation of the existing fleet in accordance with standards. Cooperation with well-known

¹ Resolution of the Cabinet of Ministers of Ukraine No. 350 "On the Acceptance by Ukraine of the 1981, 1989 and 1990 Amendments and the 1988 Protocol to the International Convention for the Safety of Life at Sea, 1974". (1992, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/350-92-п#Text>.

² Resolution of the Verkhovna Rada of Ukraine No. 3939-XII "On Ratification of the Convention on the Protection of the Black Sea from Pollution". (1994, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/3939-12#Text>.

³ Law of Ukraine No. 464/96-VR "On Ukraine's Accession to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978". (1996, November). Retrieved from <https://zakon.rada.gov.ua/laws/show/464/96-вр#Text>.

⁴ Association Agreement Between Ukraine, of the One Part, and the European Union, the European Atomic Energy Community and their Member States, of the Other Part. (2014, March). Retrieved from https://zakon.rada.gov.ua/laws/show/984_011#Text.

⁵ International Convention "On the Safety of Life at Sea". (1974, November). Retrieved from <https://ips.ligazakon.net/document/MU74K04U>.

⁶ International Convention for the Prevention of Pollution from Ships (MARPOL). (1973, November). Retrieved from [https://www.imo.org/en/about/Conventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-\(MARPOL\).aspx](https://www.imo.org/en/about/Conventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-(MARPOL).aspx).

⁷ International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW-F). (1995, July). Retrieved from <https://www.imo.org/en/ourwork/humanelement/pages/stcw-f-convention.aspx>.

classification societies increases the confidence of international partners in Ukrainian shipbuilders and shipowners, promoting ship exports and attracting investment in the industry.

One of the key functions of classification societies is to assess the latest technologies in shipbuilding, including the use of alternative energy sources to reduce emissions and improve the energy efficiency of ships (Nwokedi *et al.*, 2023). Classification societies are working on the certification and implementation of such technologies. Classification societies such as DNV GL and Bureau Veritas are actively certifying LNG ships and developing standards for the safe operation of LNG ships. The use of hydrogen as a fuel for ships requires new safety standards, in particular for the storage and transportation of hydrogen on ships. Lloyd's Register is working to develop rules for the certification of hydrogen fuel cell ships. Classification societies certify hybrid ships that use both conventional engines and battery systems. Such projects support environmental standards by reducing CO₂ emissions.

Autonomous ships are a new stage in the development of shipping, and classification societies play a key role in setting standards and certifying such vessels. DNV GL and Lloyd's Register are leading the way in creating rules for the certification of autonomous vessels that can operate without a crew or with minimal personnel. This includes remote control, automation and safety systems. As autonomous vessels depend on digital systems, cybersecurity becomes critical. Classification societies are assessing the resilience of such systems to cyberattacks and introducing new standards to ensure their safe operation (Aslam *et al.*, 2020). The introduction of autonomous vessels poses new challenges for classification societies, as these vessels require new approaches to safety assessment and technical surveillance. Classification societies are developing new standards for such vessels (Maritime autonomous surface ships, 2024), including requirements for navigation systems, cybersecurity, and control systems. Autonomous vessel technology is developing rapidly, leading to changes in approaches to maritime safety. Autonomous vessels can significantly improve the efficiency of shipping, but they also pose new threats, such as cybersecurity and the reliability of artificial intelligence systems.

Adapting standards for autonomous vessels is challenging, as these technologies significantly change traditional approaches to safety, navigation, and ship management. For the effective introduction of autonomous vessels into global shipping, classification societies, government agencies, and international organisations need to develop new standards that take into account the specific risks and challenges associated with autonomy (Shahbakhsh *et al.*, 2022). Autonomous vessels rely heavily on

sophisticated navigation systems that include sensors, radar, Automatic Identification Systems (AIS), Global Positioning System (GPS), and artificial intelligence. These systems must operate without crew intervention and provide accurate and safe navigation. Standards should include requirements for redundancy of navigation systems so that if the primary system fails, the backup system can operate. Install systems to remotely monitor navigation data from shore-based control centres to support the autonomous vessel. Ensuring that mapping systems meet the highest standards of accuracy, including regular updates of navigation charts databases. One of the biggest risks to autonomous vessels is the threat of cyber hacking or cyberattacks that could disrupt control systems or affect navigation (Serra & Fancello, 2020). Autonomous vessels rely on connected systems that can be vulnerable to attacks. Introduce mandatory cybersecurity standards for autonomous vessels, including permanent data encryption, intrusion detection systems, and regular audits. Autonomous vessels should have redundant control systems isolated from external connections to maintain essential functions in the event of cyberattacks (Wiśnicki *et al.*, 2021). It is important to ensure that crew at shore-based centres and responsible professionals receive cybersecurity training to manage autonomous systems. Autonomous vessels use artificial intelligence (AI)-based control systems to make real-time decisions. These systems analyse information from navigation and sensor systems to ensure the safe movement of the vessel. Standards need to be established for testing AI systems to ensure their reliability and accuracy in different marine environments. This includes scenario modelling and stress tests to determine how AI systems react in challenging situations. For autonomous vessels, standards need to be in place for remote monitoring and intervention in the event of AI issues. This may include the ability to return control of the vessel to a shore-based centre in the event of an autonomous system failure. The standards should require transparency in the AI decision-making process to understand how the vessel will react to different situations. Adapting standards for autonomous vessels requires a comprehensive approach covering technical, legal, and cybersecurity aspects. Classification societies need to rethink traditional approaches to safety and technical surveillance, developing new standards that will ensure the safe and efficient operation of autonomous vessels in international waters.

These organisations actively cooperate with government agencies, international organizations and private companies to ensure that vessels meet modern safety requirements. Government authorities often involve classification societies in the process of developing and updating national standards and regulations for shipping safety. This applies

especially to new requirements related to innovative technologies and alternative energy sources. Classification societies carry out regular inspections and audits of ships in accordance with established state procedures. This ensures that ships meet safety requirements during their operation. Classification societies work closely with the IMO, and other international bodies that set global standards in shipbuilding and shipping. Classification societies are involved in the development of new standards and regulations within the IMO, such as the International Convention “On the Safety of Life at Sea”¹ and MARPOL². Their expertise is important for the implementation of realistic and effective safety standards. The classification societies are members of working groups of the IMO and other international organisations that develop recommendations and practices for shipbuilding. For example, their involvement is essential in the development of standards for new types of ships, such as autonomous or electric ships. Classification societies work closely with shipbuilders, shipowners, and other commercial entities to implement safety standards, technical innovations and environmental requirements. Classification societies work with shipbuilding companies at the design and construction stage to ensure that projects meet international standards. They check technical specifications, structural safety and the correct installation of equipment. Private companies cooperate with classification societies in the development and certification of new technologies, such as hydrogen or LNG fuel systems, electric ships and autonomous control systems. The societies provide technical guidance and conduct tests to verify the reliability and safety of new technologies. Companies order certification of new vessels and equipment from classification societies to ensure that they meet international requirements. Such certification allows private companies to successfully operate their vessels on the global market.

Thus, classification societies play an important role in ensuring safety, certification, and innovation in shipbuilding and shipping. Their activities include assessing compliance with international standards and developing rules for the latest technologies, such as autonomous ships. Classification societies play a crucial role in ensuring that ships meet international safety standards and promote the introduction of the latest technologies in shipbuilding through cooperation with government agencies, international organisations and private companies. Through their certification, technical supervision and advisory

mechanisms, they help to maintain a high level of safety globally and stimulate innovation in the shipbuilding industry.

The international maritime industry, including shipping and shipbuilding, is facing new challenges that require further development of existing standards. Current challenges include the introduction of autonomous vessels, increased environmental safety requirements, combating cyber threats and the integration of the latest technologies. International standards developed by the IMO and other regulators need to evolve to meet these new realities. The development of autonomous vessels will require updated standards that address safety, monitoring, cybersecurity, and liability in emergency situations. Existing standards are designed for crewed vessels, so new rules are needed for risk assessment and testing of autonomous systems. With the proliferation of digital technologies in shipping, cybersecurity is becoming a critical issue. Standards should provide comprehensive protection against possible attacks on navigation and control systems, including backup solutions to ensure the reliability of ships.

The IMO is already implementing emission reduction requirements including IMO (2020), but further standards should focus on promoting the use of renewable energy sources, the development of hydrogen, electric and other environmentally friendly technologies. Global efforts to decarbonize shipping will require the creation of new regulations to control emissions and promote environmental innovation (Hasanspahić *et al.*, 2020). Further development of international standards and innovations is critical for improving shipping safety and modernizing shipbuilding in Ukraine. Stimulating investment in the latest technologies, modernising infrastructure and working closely with international partners will allow Ukraine to achieve quality results in the global shipbuilding industry, meeting current challenges and trends.

■ Discussion

The present study allows us to trace trends in the development of shipping safety standards and their impact on the efficiency of shipping operations. It is important to note that international organisations, such as the IMO, are constantly updating safety regulations to reflect new challenges and technological advances. The article analyses the key aspects of interaction between national and international standards that ensure the safety of navigation. This includes a study of national legislative initiatives

¹ International Convention “On the Safety of Life at Sea”. (1974, November). Retrieved from <https://ips.ligazakon.net/document/MU74K04U>.

² International Convention for the Prevention of Pollution from Ships (MARPOL). (1973, November). Retrieved from [https://www.imo.org/en/about/Conventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-\(MARPOL\).aspx](https://www.imo.org/en/about/Conventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-(MARPOL).aspx).

that adapt international standards to the specifics of local conditions, as well as the role of classification societies in monitoring compliance with these standards. This is important for understanding how innovative technologies, such as shipping automation and the use of artificial intelligence, can improve safety and efficiency. The study demonstrates how the latest technologies, including sensors and monitoring systems, can reduce accident risks and improve ship management. Studying these changes allows us to understand how the adaptation of international standards to new conditions can contribute not only to improving safety, but also to the development of the competitiveness of shipping companies in the global market. This is critical in the context of globalisation and economic integration.

In today's environment, shipping is undergoing significant changes under the influence of Digitalisation 4.0 technologies and new environmental requirements. Y. Ichimura *et al.* (2022) and A. Sepehri *et al.* (2022) highlight the need to adapt standards to support the industry in the face of digital transformation. These authors point out the importance of developing new criteria for risk assessment and integrating automated monitoring systems, which are essential elements of modern ship management. Countries should not only adapt their internal processes, but also actively cooperate with other market participants – shipowners, technology providers and government regulators. This may include joint research and development of new standards that take into account technological innovations and their impact on the safety and efficiency of shipping.

A study by S. Fu *et al.* (2022) supports this view by proposing a quantitative approach to accident cause analysis. This approach allows for better identification of the risks that accompany the introduction of new technologies and offers models for improving crew training and risk management. At the same time, studies by M. Kim *et al.* (2020) and S. Qazi *et al.* (2023) highlight the need to introduce new business models that consider the growing impact of autonomous technologies and electrification on shipping. Despite numerous studies, there are different approaches to addressing the challenges, which are not always consistent. A. Sepehri *et al.* (2022) highlight the importance of integrating automated systems for accident monitoring and prevention, but this model may be limited in the face of unpredictable weather events or technical failures. Classification societies should be prepared not only to implement new technologies, but also to ensure their smooth operation in the face of real risks, which are not always taken into account in theoretical models.

A study by Z. Tan *et al.* (2021) highlights the importance of emission control policies (ECA) in China, but demonstrates the challenges of enforcement

as some ships try to avoid the requirements by using routes or less environmentally friendly fuels. This example highlights the need to integrate innovative monitoring technologies to help reduce non-compliance. This calls into question the general standards for environmental control, which may not be effective enough without proper support from technology. The findings, including the development of new standards for automated monitoring and control systems, are consistent with K. Liu *et al.* (2021) and S. Xu *et al.* (2021). These studies highlight the importance of introducing new risk assessment methods that take into account the impact of new environmental regulations. This will allow for better identification of potential risks associated with the electrification of ships and the introduction of new fuels such as LNG or hydrogen.

The innovations contribute to the integration of environmental standards into modern shipping, which is also supported by J.A. Felício *et al.* (2021), who highlight the impact of environmental practices on the sustainability of the industry. However, it should be recognised that technology cannot be a one-size-fits-all solution to all problems. For example, S. Yildiz *et al.* (2021) showed that the human factor remains a key element in cases of accidents. This means that even with the most advanced technologies, such as autonomous systems or automated control systems, human error is still a major source of risk. This requires not only technical innovations, but also improved training and staff development, as outlined by Y. Ichimura *et al.* (2022) and A. Sepehri (2022). S. Fu *et al.* (2022) also point out certain limitations of quantitative models describing accidents. Such models may not fully account for all external factors, such as changes in weather conditions, human factors or technical failures that are difficult to predict using statistical methods.

Classification societies need to take into account technological innovations and changes in global environmental policy. The introduction of standards for autonomous vessels, as noted by M. Kim *et al.* (2020) and S. Qazi *et al.* (2023), is an important step in the development of the industry. However, CSs should focus not only on standards, but also on staff training to support these technologies, as highlighted in many studies. In addition, it is necessary to intensify cooperation with other market participants – government regulators, shipowners, and technology providers – to develop standards that cover all aspects of shipping safety and efficiency. The findings are in line with those of M. Issa *et al.* (2019), who show that ship electrification can be an important factor in reducing emissions. In this context, classification societies should develop new standards not only to ensure the safe operation of such ships, but also to integrate automated monitoring and control systems

that can track environmental indicators, including greenhouse gas emissions.

Comparing different approaches to the adaptation of standards in the current environment, it can be concluded that the successful development of shipping requires the flexibility of classification societies to introduce new methods of risk assessment and technological innovations. Although technology plays a crucial role in improving safety, it cannot replace the human factor, which remains a key element in accident prevention. The results complement the research of other authors, demonstrating that the successful integration of new technologies in shipping depends on the ability of classification societies to adapt to change and create new standards for ships with alternative energy sources, emission monitoring systems and automated control systems. In addition, it is important to improve the skills of personnel and cooperate with other market participants to develop new technologies that will make the industry more sustainable and environmentally friendly.

■ Conclusions

The study analysed the main international and national safety standards, their impact on shipbuilding, and the role of classification societies in ensuring these standards. It also examines how modern technologies, including automation and digitalisation, are changing approaches to safety in shipping. The results show that the integration of the latest technologies into shipbuilding and operation processes significantly increases the level of safety and efficiency of maritime transport. International standards, such as the International Convention “On the Safety of Life at Sea” and MARPOL conventions and the rules developed by the IMO, are the basis of the global shipping safety system. Their alignment with national standards ensures an adequate level of protection of human life, property, and the environment.

The findings confirm that international and national safety standards are critical to ensuring the safety of shipping, especially in the context of globalisation and rapid technological development. The importance of these standards lies in the fact that they not only help to reduce the risks associated with accidents, but also ensure the competitive-

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ness of shipping companies in the global market. Classification societies are important entities that provide an independent assessment of the condition of ships and their compliance with international safety standards. The main functions of classification societies include inspection and certification of ships, and providing technical advice on the latest technologies and innovations in shipbuilding, such as alternative fuels and autonomous vessels. Their contribution to maintaining a high level of safety is critical in the face of rapid technological change. International Convention “On the Safety of Life at Sea” standards are not sufficient to ensure environmental sustainability in the construction of new ships, while EU standards are more focused on reducing negative environmental impact. To achieve greater environmental friendliness in shipbuilding, it is necessary to integrate these two approaches, updating and adapting international standards to modern environmental challenges.

In the near future, shipping safety standards will be adapted to new challenges such as climate change, cyber threats and new types of cargo. Innovations in shipbuilding, such as the development of autonomous ships and green technologies, will require updating both international and national standards. International organisations, such as IMO, together with classification societies, should be actively involved in the development of these new standards, ensuring that innovations are aligned with safety requirements to maintain a high level of shipping safety worldwide. Promising areas for further research in this area may include a deeper study of the impact of environmental standards on shipbuilding, as well as the development of new approaches to safety that would take into account changes in the global environment. In particular, researchers should pay attention to the integration of artificial intelligence into ship safety monitoring systems and their potential impact on shipping safety.

■ Acknowledgements

None.

■ Conflict of Interest

None.

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Актуальність міжнародно-правових і національних стандартів безпеки судноплавства та роль класифікаційних товариств у контексті сучасних викликів та інновацій у суднобудуванні

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■ **Анотація.** Актуальність міжнародно-правових і національних стандартів безпеки судноплавства зростає у зв'язку із сучасними викликами, такими як інновації в суднобудуванні, зміни клімату та підвищення вимог до екологічної безпеки, що підтверджує важливу роль класифікаційних товариств у цьому процесі. Метою роботи був аналіз впливу міжнародних і національних стандартів безпеки на сучасне суднобудування та оцінка ролі класифікаційних товариств у забезпеченні безпечної експлуатації суден. У дослідженні застосовано методи системного аналізу, порівняльного правознавства та емпіричного моделювання. Основними результатами роботи стало встановлення необхідності подальшої гармонізації міжнародно-правових стандартів з національними вимогами, удосконалення ролі класифікаційних товариств у моніторингу інновацій у суднобудуванні, а також формулювання пропозицій щодо підвищення екологічної безпеки судноплавства. Крім того, у роботі виявлено перспективи використання новітніх технологій для покращення стандартів безпеки в морському транспорті. Зокрема, акцентовано увагу на ролі класифікаційних товариств у забезпеченні відповідності суден цим стандартам, а також на їхньому внеску у впровадження інновацій у суднобудуванні. Дослідження містить аналіз сучасних нормативних актів і стандартів, що регулюють безпеку судноплавства, а також випадків їх реалізації на практиці. Визначено ключові зміни у вимогах до безпеки суден з огляду на сучасні ризики, зокрема екологічні виклики та підвищені вимоги до якості. Практична цінність роботи полягає в можливості використання отриманих результатів як нормативно-правовими органами, так і суднобудівними підприємствами для вдосконалення внутрішніх стандартів безпеки та підтримки міжнародної сертифікації

■ **Ключові слова:** технологічні інновації; автономне судноплавство; екологічні норми; інтеграція; стандарти

UDC 094(355.02:061.1ЄC)
Doi: 10.56215/naia-herald/4.2024.35

Retrospective and prospects of the legal framework for European Integration in security and defence

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■ **Abstract.** The study addressed the historical background and development of the regulatory framework for European defence policy, starting with the Treaty of Brussels in 1948, and the establishment of the Western Union and the Western European Union. Based on the analysis of such documents as the Maastricht, Amsterdam and Nice Treaties, the mechanisms of defence cooperation within the EU and its main goals, primarily the strengthening of strategic autonomy, were determined. The study also analysed the Berlin-Plus agreement, which established mechanisms for cooperation between the EU and NATO, while promoting the development of independent European defence and security capabilities. The key role of the Lisbon Treaty in formulating the foundations of the EU's Common Security and Defence Policy was identified. The importance and prospects of implementing Article 42(7) of the Treaty, which enshrines the principle of mutual assistance of member states in the event of an armed attack, as well as permanent structured cooperation for deeper defence integration, was highlighted. These provisions increase the EU's strategic autonomy and consolidate European defence cooperation, defining it as an important component of the EU's Common Foreign and Security Policy. The relevance of further improving the EU legal framework in response to new threats was determined, in particular, due to Russian aggression in Ukraine, as well as growing tensions in other regions. The need to strengthen legal mechanisms that will ensure more effective decision-making processes within the EU CSDP and strengthen security cooperation among member states was emphasised. The research relevance is determined by the possibility of using its results as a theoretical basis for the development of the EU's common defence policy and further integration in the security sector in the context of current geopolitical challenges

■ **Keywords:** Western European Union; Brussels Treaty; Lisbon Treaty; common security and defence policy; European defence integration

■ Introduction

Current trends in international relations are pushing the European Union (EU) towards greater integration in the security and defence sector. Firstly, the greatest threat is the expansionist policy of Russia, particularly its military aggression against Ukraine, which has been going on for more than 10 years. In addition, the activities of terrorist groups with centres both in Europe and in neighbouring regions remain a

significant security challenge. Several factors, including the re-election of US President D. Trump, increase the uncertainty of the future security architecture in Europe, prompting EU countries to develop a common vision of their defence and strengthen cooperation in this area to achieve the EU's strategic autonomy. This issue is equally important for Ukraine, whose foreign policy priority is to become a member

■ Suggested Citation:

Hrushetskyi, B. (2024). Retrospective and prospects of the legal framework for European Integration in security and defence. *Scientific Journal of the National Academy of Internal Affairs*, 29(4), 35-46. doi: 10.56215/naia-herald/4.2024.35.

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■ Received: 01.08.2024; Revised: 03.11.2024; Accepted: 26.11.2024



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of the EU, which is enshrined in the Constitution¹. At the same time, the central task remains the restoration and protection of state sovereignty and territorial integrity in the face of Russian aggression, which has been ongoing since 2014. It is necessary to assess how Ukrainian membership in the EU may affect its security and defence capabilities to what extent it will enhance its security and what prospects it will open for the development of the national military-industrial complex. Thus, it is necessary to thoroughly study European integration in the security and defence sector, the potential inherent in its regulatory mechanisms, and the existing challenges on this path.

To determine the current state of European defence integration, it is necessary to analyse the essence of key legal acts in this area, their interconnectedness, strengths and weaknesses, the evolution of their norms, and implementation, as well as problems and obstacles to implementation. The study of the achievements and problems of the legal framework is key to forecasting further directions of development of European integration in the field of security and defence, in the context of new geopolitical challenges.

The legal framework for European defence integration was the subject of a study by S. Keukeleire & T. Delreux (2022), which addressed the EU's foreign policy, including its defence and security dimensions. The researchers emphasise the importance of the Berlin-Plus agreement², the PESCO initiative and Article 42(7) of the Treaty of Lisbon³, which are key elements in the development of the EU's strategic autonomy. S. Clapp (2022) analysed the implementation of the Strategic Compass, a document that defines the EU's priorities in the field of security and defence. In particular, the author emphasised the importance of Article 42(7) of the Lisbon Treaty and the PESCO mechanisms, stressing their potential to enhance the EU's strategic autonomy. E. Perot (2019) investigated the implementation of the idea of collective defence in the normative documents of the European and Euro-Atlantic community. The author compared the relevant provisions of the Washington Treaty of 1949⁴ and the Lisbon Treaty of 2007⁵. The main ideas of a study by J.J. Andersson (2023) concerned joint defence procurement within the EU. The paper assesses the role of the European Defence Agency in coordinating joint projects. V. Szép *et al.* (2021) investigated the legal framework and governance structures for EU defence

activities. The study analysed the key provisions of the Treaty of Lisbon⁶ that governs the EU's Common Security and Defence Policy (CSDP), with a particular focus on Articles 42(7) (mutual defence) and 46 (structured cooperation – PESCO). N. Koval (2018) explored the role of PESCO in strengthening the EU's security capabilities and analysed the prospects for Ukraine within the framework of cooperation with the EU. In particular, the study analysed how PfP can support EU partners, such as Ukraine, in their efforts to strengthen defence capabilities in the context of current challenges, including Russian aggression. A study by M. Stetsiuk (2023) analysed the historical development of European defence integration and the current challenges facing the EU in this area. The author examined the role of the Western European Union (WEU) as the first defence integration mechanism in Europe.

The study aimed to investigate the evolution of the legal framework for European integration in the field of security and defence. To this end, the following tasks were implemented:

1) to analyse the key documents of the Western Union/Western European Union adopted in the late 1940s and early 1990s and identify their impact on further European integration in the field of security and defence;

2) to describe the dynamics of the development of the EU legal framework in the field of security and defence in the late 1980s – 2000s;

3) to identify the achievements and shortcomings of the legal framework of the Common European Security and Defence Policy/CSDP.

■ Materials and Methods

The study was based on the theory of functionalism, which is the study of gradual integration in a particular area through the creation of joint institutions and mechanisms. In particular, the evolution of cooperation in the security sector was traced through the innovations introduced in interstate treaties of the mid-twentieth and first quarter of the twenty-first century. A systemic approach was used to analyse European defence integration as a single system consisting of individual elements and links between them. This was used to comprehensively study the phenomenon, regardless of institutional affiliation (Western Union, WEU, EEC, EU, NATO). The historical method identified key events in the development of European

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

² EU-NATO Declaration on ESDP. (2002, December). Retrieved from <https://www.nato.int/docu/pr/2002/p02-142e.htm>.

³ Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union. (2008, April). Retrieved from <https://data.consilium.europa.eu/doc/document/ST-6655-2008-INIT/en/pdf>.

⁴ North Atlantic Treaty. (1949, April). Retrieved from https://www.nato.int/cps/en/natohq/official_texts_17120.htm.

⁵ Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union. (2008, April). Retrieved from <https://data.consilium.europa.eu/doc/document/ST-6655-2008-INIT/en/pdf>.

⁶ *Ibidem*, 2008.

defence integration. The historical retrospective provided a context for understanding the current state of the EU's CSDP. The comparative method was used to identify the advantages and disadvantages of European defence integration compared to Euro-Atlantic integration.

The main source base included several legal documents: The Brussels Treaty¹, Single European Act², Treaty on European Union³, Petersberg Declaration⁴, Treaty of Amsterdam⁵, Franco-British St. Malo Declaration⁶, Cologne European Council Declaration⁷ and Helsinki European Council Declaration⁸, Berlin Plus Agreement⁹, Treaty of Lisbon¹⁰, as well as the Constitution of Ukraine¹¹. The study of the legal documents used in the research described the legal framework, mechanisms and directions of development of European defence integration in greater detail. Additional information was obtained from the official web resources of the EU institutions. Analytical reports and articles by the EU High Representative were used (EU External Action & Borrell, 2021; EU External Action, 2024), as well as materials from periodicals (Times of Malta, 2017).

■ Results and Discussion

European security and defence integration dates to the adoption of the Brussels Treaty¹². In 1948, five Western European countries (the United Kingdom, France, Belgium, the Netherlands and Luxembourg) formed the Western Union as an institution of collective defence in the event of either a threat of aggression from the Soviet Union or revanchist forces coming to power in the former Axis states. The first option was, of course, more plausible in the realities of the beginning of the Cold War. In addition to provisions relating to political and cultural cooperation, the Brussels Treaty contained a clear commitment to the collective defence of the signatory states: "If

one of the signatory states is the object of an armed attack in Europe, the other signatory states will provide the attacked party with all military and other assistance and support within their power".

In 1954, Italy and the Federal Republic of Germany joined the Modified Brussels Treaty¹³, which retained the Article on collective defence. Since then, the Western European Union (WEU) was formed based on the Western Union, which in theory was the first security and defence integration association to include most of the leading Western European countries. In practice, however, the WEU was "in the shadow" of a more powerful defence structure – the North Atlantic Treaty Organisation (NATO), which included not only the signatories to the Brussels Treaty but also the United States and Canada. Therefore, for almost the entire period of its existence, the WEU has not become a fully functioning collective security organisation and has not formed its military structure (Mitriayeva, 2008). Periodic attempts to intensify activities within the WEU were unsuccessful, although the Brussels Treaty remained in force.

At the turn of the 1980s and 1990s, the issue of European defence integration became relevant again. J. Howorth (2020) identifies three main reasons for this:

- 1) after the end of the Cold War, Europe ceased to be the centre of American foreign policy interests;
- 2) Europe has gradually emerged as a global player capable of implementing its security policy;
- 3) the security situation around the united Europe (conflicts in the post-Soviet space and the former Yugoslavia) has seriously deteriorated.

Therefore, an attempt was made to intensify the activities of the Alliance based on the principle of "autonomy" of European forces from US troops, if necessary. A key step in this direction was the agreement between the WEU states concluded in 1992,

¹ The Brussels Treaty. (1948, March). Retrieved from https://www.cvce.eu/en/obj/the_brussels_treaty_17_march_1948-en-3467de5e-9802-4b65-8076-778bc7d164d3.html.

² Single European Act. (1987, February). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:11986U/TXT>.

³ Treaty on European Union. (1992, February). Retrieved from https://www.cvce.eu/content/publication/2010/5/3/e92737d6-7557-4ea1-9ca5-123368a7fb88/publishable_en.pdf.

⁴ Petersberg Declaration Made by the WEU Council of Ministers. (1992, June). Retrieved from https://www.cvce.eu/en/obj/petersberg_declaration_made_by_the_weu_council_of_ministers_bonn_19_june_1992-en-16938094-bb79-41ff-951c-f6c7aae8a97a.html.

⁵ Treaty of Amsterdam. (1997, October). Retrieved from <https://treaties.fcd.o.gov.uk/data/Library2/pdf/1999-TS0052.pdf>.

⁶ Franco-British St. Malo Declaration. (1998, December). Retrieved from https://www.cvce.eu/content/publication/2008/3/31/f3cd16fb-fc37-4d52-936f-c8e9bc80f24f/publishable_en.pdf.

⁷ Helsinki European Council. (1999, December). Retrieved from https://www.europarl.europa.eu/summits/hell1_en.htm#b.

⁸ Cologne European Council Declaration. (1999, June). Retrieved from https://www.cvce.eu/content/publication/2003/6/6/ee393bf3-d96f-46b8-8897-15546a0e1c0d/publishable_en.pdf;

⁹ EU-NATO Declaration on ESDP. (2002, December). Retrieved from <https://www.nato.int/docu/pr/2002/p02-142e.htm>.

¹⁰ Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union. (2008, April). Retrieved from <https://data.consilium.europa.eu/doc/document/ST-6655-2008-INIT/en/pdf>.

¹¹ Constitution of Ukraine (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254κ/96-bp?lang=en#Text>.

¹² Brussels Treaty. (1948, March). Retrieved from https://www.cvce.eu/en/obj/the_brussels_treaty_17_march_1948-en-3467de5e-9802-4b65-8076-778bc7d164d3.html.

¹³ Modified Brussels Treaty. (1954, October). Retrieved from https://www.cvce.eu/en/obj/modified_brussels_treaty_paris_23_october_1954-en-7d182408-0ff6-432e-b793-0d1065ebe695.html#:~:text=The%20Brussels%20Treaty%20of%201954,accede%20to%20the%20modified%20Treaty.

called the Petersberg Tasks¹. The document stated that, independently of NATO, military units of the WEU member states acting under the direction of the WEU may be used for humanitarian and rescue tasks, peacekeeping tasks, and tasks of combat forces in crisis management, including peacekeeping².

Based on the agreement, several peacekeeping operations were conducted under the auspices of the WEU during the Balkan conflicts of the 1990s, in Mostar (Bosnia and Herzegovina) and Albania (Pagani, 1998). To support the functioning of the WEU, the Eurocorps was established in Strasbourg, which was joined by representatives of five countries (France, Germany, Belgium, the Netherlands, and Luxembourg) in 1992-1996. In addition, the British-Dutch and Spanish-Italian amphibious forces, the Institute for Security Studies, and the satellite and situation centres were launched under the auspices of the EU (Turchenko, 2015). However, these operations were very limited in nature, involving mainly police rather than military forces, and therefore could not fully fulfil the task of establishing peace in the region.

Even this limited autonomous activity of the WEU quickly lost its relevance. Moreover, the issue of the expediency of the organisation's existence was discussed. European security and defence cooperation intensified in the second half of the 1980s and early 1990s within the framework of a completely different integration track. At that time, European political cooperation began to emerge based on economic integration structures (the European Coal and Steel Community, the European Economic Community, and Euratom), culminating in the creation of the European Union. Security issues became part of this political cooperation. For the first time, they were officially enshrined in the Single European Act of 1987³. The document confirmed the readiness of member states to "coordinate more closely their positions on the political and economic aspects of security". The military aspect was still not mentioned in the document.

In five years, political, economic and military aspects of security will become part of European political integration. The basis for this was established in the Maastricht Treaty of 1992⁴, which proclaimed the creation of the European Union. Article J.4 of this document stated: "The common foreign and security policy shall include all matters relating to the security of the Union, including the possible establishment of a common defence policy which may eventually lead to a common defence". The Maastricht Treaty estab-

lished a different definition of the terms "common defence policy" and "common defence". Common defence policy was defined as the first step towards common defence. The Treaty did not contain clear commitments in defence integration. It envisaged the formation of a common defence policy only in an indefinite perspective, as internal contradictions between EU states prevented more specific formulations. As for the issue of common defence, it was described vaguely.

One of the most important was the issue of combining European defence with existing NATO commitments. In addition, Europeans lacked the modern defence technologies available in the United States in several key areas, including intelligence, unmanned systems, space-based capabilities, integrated air and missile defence, and military transport aviation (Grand, 2024). Europe's capabilities were also insufficient to protect its interests outside the continent independently to participate fully in preventing threats such as the proliferation of weapons of mass destruction or in addressing issues such as security in the Middle East and the Persian Gulf.

A striking example of the inability of European countries to conduct large-scale military operations independently was the intervention in Libya in 2011, initiated by France and the United Kingdom. This operation demonstrated that European countries lacked capabilities in the areas of military intelligence and surveillance, smart munitions, transportation, and aerial refuelling. In many cases, it was only the US capabilities that saved the operation from potential failure (Keukeleire & Delreux, 2022). Therefore, European defence integration was impossible until the issue of its compatibility with NATO was resolved. Therefore, European defence integration has long been opposed by countries such as the United Kingdom and Denmark, which have traditionally been the most cooperative with NATO.

The other two additional protocols to the Maastricht Treaty⁵, adopted at the request of the United Kingdom and the Netherlands, stated that the European Union's policy should not interfere with the national defence policies of its member states and should not contradict NATO's policy. The idea of integrating the Western European Union into the future EU was also blocked, even though the Maastricht Treaty contained a provision stating that the WEU was "an integral part of the development of the Union". However, the implementation of this provision

¹ Petersberg Declaration Made by the WEU Council of Ministers. (1992, June). Retrieved from https://www.cvce.eu/en/obj/petersberg-declaration_made_by_the_weu_council_of_ministers_bonn_19_june_1992-en-16938094-bb79-41ff-951c-f6c7aae8a97a.html.

² Ibidem, 1992.

³ Single European Act. (1987, February). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:11986U/TXT>.

⁴ Treaty on European Union. (1992, February). Retrieved from https://www.cvce.eu/content/publication/2010/5/3/e92737d6-7557-4ea1-9ca5-123368a7fb88/publishable_en.pdf.

⁵ Ibidem, 1992.

was blocked by the UK for a long time. Therefore, during the 1990s, European operations were conducted within the framework of the WEU, not the EU.

In the late 1990s, the discussion of European defence integration started to transition to the level of practical implementation. On the one hand, the Europeans were pushed to do so by the growing and escalating Kosovo crisis. On the other hand, the key obstacle in this process, namely the critical position of the United Kingdom, has disappeared. The British government of T. Blair, who assumed power in May 1997, demonstrated a much greater commitment to deepening European integration. The newly appointed British Foreign Secretary R. Cook announced that relations with the EU should be developed “in a constructive spirit of partnership, not in a barren spirit of opposition” (Mölder, 2018). Due to the change in the British government’s position, in June 1997, the European Council summit adopted the Amsterdam Treaty¹, which specified the future directions of European defence integration. As envisaged, the European Council would have the right to decide on the establishment of a common defence policy and even a common defence in the future.

During the development and negotiation of the treaty, debates on how the activities of the WEU and the EU’s common defence policy would relate to each other arose. Three options were considered: to keep the WEU separate from the EU without any significant changes in their relations, to gradually merge the two organisations, or to include some of the WEU’s powers in the Amsterdam Treaty. In the end, the third option was chosen as the most acceptable to all parties (Pagani, 1998).

Thus, the Amsterdam Treaty² Recorded an important decision in the discussions on the future of the WEU. A decision was made to move away from activating the WEU as a separate institution: the Treaty provided for the possibility of its integration into the EU, subject to a separate decision of the European Council. Moreover, the Amsterdam Treaty incorporated the provisions of the WEU’s Petersberg tasks³. It stated that the common defence policy in the treaty implied the joint implementation of humanitarian, rescue and peacekeeping tasks, as well as combat force tasks for crisis management. At the same time, the Amsterdam Treaty provided for an exception for one of the EU member states – Denmark, whose

government and population were marked by considerable Euroscepticism at the time. A separate protocol to the Amsterdam Treaty⁴ excluded Denmark from European defence integration, in accordance with its own wishes. “Denmark shall not participate in the formulation and implementation of decisions and actions of the Union relating to defence, but shall not prevent the development of closer cooperation between the Member States in this field”, the additional protocol stated.

After the signing of the Amsterdam Treaty, the development of a common defence policy accelerated. The key principles of defence integration were enshrined in the Saint-Malo Declaration⁵, adopted in December 1998 during a meeting between French President Jacques Chirac and British Prime Minister Tony Blair. The declaration stated that the EU “should have the capacity for autonomous action, backed by appropriate military capabilities, decision-making mechanisms for their use and readiness to respond to international crises”.

The idea of the EU’s “strategic autonomy”, as enshrined in the Saint-Malo Declaration⁶, has become the basis for the further development of European defence integration. On the one hand, this does not mean complete independence from the support of NATO allies, especially the United States – transatlantic ties remain fundamental to European security and there is no powerful political force in the EU that would deny this. On the other hand, the idea of “strategic autonomy” includes the ability to act independently in the security sphere when American involvement is not needed or impossible for some reason.

Negotiations with the United States began on the relationship between European defence projects and NATO. In particular, in 1998, just a few days after the Saint-Malo Declaration, US Secretary of State Madeleine Albright announced that the US supported European defence integration if it met several important principles: the continuity of transatlantic ties, no duplication of EU and NATO structures, and no discrimination against non-EU NATO members, such as the US, Canada, and Turkey (Vladu, 2016).

Following these successful steps, the issue of European defence integration was placed on the European agenda. The Amsterdam Treaty⁷ entered into force in 1999 after the ratification process, so the

¹ Treaty of Amsterdam. (1997, October). Retrieved from <https://treaties.fcdo.gov.uk/data/Library2/pdf/1999-TS0052.pdf>.

² Ibidem, 1997.

³ Petersberg Declaration Made by the WEU Council of Ministers (1992, June). Retrieved from https://www.cvce.eu/en/obj/petersberg_declaration_made_by_the_weu_council_of_ministers_bonn_19_june_1992-en-16938094-bb79-41ff-951c-f6c7aae8a97a.html.

⁴ Treaty of Amsterdam. (1997, October). Retrieved from <https://treaties.fcdo.gov.uk/data/Library2/pdf/1999-TS0052.pdf>.

⁵ Franco-British St. Malo Declaration. (1998, December). Retrieved from https://www.cvce.eu/content/publication/2008/3/31/f3cd16fb-fc37-4d52-936f-c8e9bc80f24f/publishable_en.pdf.

⁶ Ibidem, 1998.

⁷ Treaty of Amsterdam. (1997, October). Retrieved from <https://treaties.fcdo.gov.uk/data/Library2/pdf/1999-TS0052.pdf>.

way to defence integration was open. The EU states decided not to delay further steps and announced the launch of a common defence policy in the same year.

Based on the Saint-Malo Declaration¹, the Cologne Declaration² was adopted at the 1999 European Council Summit, which defined the main parameters of integration processes in the security and defence sector. According to the Declaration, a common European Security and Defence Policy (CSDP) was announced as part of the Common Foreign and Security Policy (CFSP). The Declaration declared that the Petersberg Tasks³ should now be carried out within the EU, not the WEU, and the purpose of the WEU would be negated. Subsequently, the WEU institutions were gradually integrated into the EU. The EU Institute for Security Studies (Paris) and the EU Satellite Centre (near Madrid) were transferred to the EU. In 2011, WEU finally ceased to exist. In addition to the conditions set out in the Amsterdam Treaty, the Cologne Declaration also paid important attention to strengthening cooperation between member states in the defence sector, in particular in the areas of intelligence, strategic transport, command and control, and harmonisation of planning. It also envisaged strengthening military-industrial cooperation, in particular concerning arms procurement.

At the end of 1999, the Cologne Declaration⁴ was supplemented by the Helsinki Declaration⁵, which defined the key goals of the CSDP and tasks for the coming years. The EU was to acquire independence in decision-making and military operations under its auspices. The goal was even proclaimed – by 2003, to develop a military force of 50-60,000 soldiers that could be deployed to a crisis area within 60 days and stay there for at least 1 year. This ambitious task was not fulfilled, but other decisions were implemented, including the creation of bodies responsible for security and defence policy. The mechanism for forming contingents of the armed forces was determined. It was emphasised that the decision to send armed forces to participate in the operation is taken by the EU member state independently. The declaration also declared that the EU's security and defence bodies should not duplicate NATO structures.

An important clarification was made in the Treaty of Nice in 2001⁶, which declared the CSDP part of the Common Foreign and Security Policy (CFSP).

Thus, the CSDP was directly subordinated to the European Council, which is an intergovernmental rather than a supranational institution. The role of the supranational institutions – the European Parliament and the European Commission – in defining the CSDP was insignificant. This was intended to allay the fears of certain member states that the EU was seeking to limit their sovereignty in such a sensitive area as national security and defence.

In 2002, relations between the EU and NATO in the field of security and defence were normalised. Representatives of the two international organisations signed a series of documents called the Berlin Plus package. The basis of this package was the EU-NATO Declaration⁷ on European Security and Defence Policy. The document confirmed that NATO remained the basis for the collective security of its members, while NATO committed itself to supporting the European Union, in particular by providing access to planning. It was announced that European countries that were members of NATO, but not the EU, would be fully involved in the CSDP. This meant recognising NATO as the “first among equals” among European security structures (Pieper & Lak, 2019). As noted by S. Keukeleire & T. Delreux (2022), “Berlin Plus was both pragmatic (Europeans did not have the basic equipment and logistics needed for high-intensity military operations on their own) and symbolic (it institutionalised what is essential for many member states and the United States - the relationship between NATO and EU institutions)”.

There are many positive examples of EU-NATO cooperation in the defence sector. For instance, for a long time, an important problem for the armed forces of EU member states was the lack of a fleet of aerial refuelling aircraft. This caused regular problems during the operation in Libya in 2011 (Quintana *et al.*, 2014). Therefore, in 2012, the European Defence Agency initiated the construction of such refuelling aircraft for EU states. Since there were no joint development and procurement mechanisms within the EU at that time, the project was implemented under the auspices of the NATO Support and Procurement Agency. The programme has been successfully implemented: Airbus has built nine refuelling aircraft, and the tenth aircraft is being completed (MMF, 2020; Andersson, 2023).

¹ Franco-British St. Malo Declaration. (1998, December). Retrieved from https://www.cvce.eu/content/publication/2008/3/31/f3cd16fb-fc37-4d52-936f-c8e9bc80f24f/publishable_en.pdf.

² Cologne European Council Declaration. (1999, June). Retrieved from https://www.cvce.eu/content/publication/2003/6/6/ee393bf3-d96f-46b8-8897-15546a0e1c0d/publishable_en.pdf.

³ Petersberg Declaration Made by the WEU Council of Ministers. (1992, June). Retrieved from https://www.cvce.eu/en/obj/petersberg-declaration_made_by_the_weu_council_of_ministers_bonn_19_june_1992-en-16938094-bb79-41ff-951c-f6c7aae8a97a.html.

⁴ Cologne European Council Declaration. (1999, June). Retrieved from https://www.cvce.eu/content/publication/2003/6/6/ee393bf3-d96f-46b8-8897-15546a0e1c0d/publishable_en.pdf.

⁵ Helsinki European Council. (1999, December). Retrieved from https://www.europarl.europa.eu/summits/hel1_en.htm#b.

⁶ Treaty of Nice. (2001, March). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12001C/TXT>.

⁷ EU-NATO Declaration on ESDP. (2002, December). Retrieved from <https://www.nato.int/docu/pr/2002/p02-142e.htm>.

The legal framework for European integration in the security and defence sector was further developed by the Lisbon Treaty¹ (signed in 2007, entered into force in 2009), whose key objective was to unify and reform EU legislation to make European policies and institutions more effective. As the Lisbon Treaty is currently in force, it requires special attention and analysis. Compared to the previous treaties, the Treaty contained a much larger set of provisions related to security and defence integration. These provisions were, on the one hand, more specific and, on the other hand, more ambitious and focused on deeper integration in the future. First of all, the changes affected the name of the policy itself. The Common European Security and Defence Policy (CESDP) was renamed the Common Security and Defence Policy of the European Union (CSDP).

The Lisbon Treaty clarified the institutional nature of the CSDP, as well as the decision-making and implementation procedures within the policy. The EU CSDP was finally integrated into the architecture of the EU's Common Foreign and Security Policy (CFSP) as an integral part of it, as stated in Article 42(1)². The EU High Representative was designated responsible for the implementation of both the CFSP in general and the CSDP in particular. The European Council can take decisions within the framework of the CSDP by consensus, for example, to initiate peacekeeping operations, on the initiative of the High Representative or a Member State.

The Lisbon Treaty retained the key provisions of the WEU's Petersberg Tasks³, while significantly expanding their content. In particular, it states: "The Alliance may use civilian and military means, including joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peacekeeping tasks, and combat force tasks for crisis management, including peacekeeping and post-conflict stabilisation. All of these tasks can contribute to the fight against terrorism, including by supporting third countries in the fight against terrorism on their territory".

However, the treaty extends beyond the previous documents by including several provisions on additional important areas of defence integration. Some of them were already implemented in practice, such as the activities of the European Defence Agency, established in 2004 to better coordinate member states

in the development of national armed forces and capabilities. The Lisbon Treaty⁴ Contains an extensive Article 42.3 on this issue: "Member States undertake to progressively improve their military capabilities. The Defence Research, Development, Procurement and Armaments Agency (hereinafter referred to as the European Defence Agency) shall identify operational requirements, promote measures to meet those requirements, contribute to the identification and... implementation of any measures necessary to strengthen the industrial and technological base of the defence sector, participate in the definition of European capabilities and armaments policy and assist the Council in assessing the improvement of military capabilities". The provision in EU legislation on the European Defence Agency, headed by the EU High Representative, has strengthened the role of the supranational component in European defence integration and contributed to the "Brusselsisation" of this process (Maurer & Wright, 2021).

Many of the provisions of the Lisbon Treaty⁵ defence integration, such as those of the Maastricht Treaty, was adopted for the future. Some of them were implemented after a certain period, while others were not. For instance, the common defence policy already existed at the time of the adoption of the Lisbon Treaty, while the provision on common defence was not implemented because there was no unanimous decision of the European Council. Moreover, the question of what a decision of the European Council to launch a common defence should resemble remains unresolved. Hypothetically, this decision could relate to the transfer of a part of national sovereignty in the military sphere to the EU, in particular, a change in the voting system – from consensus to qualified majority – or the introduction of an obligation for member states to participate in EU operations. In any case, such a decision by the European Council would require ratification by member states (Szép *et al.*, 2021).

Another debatable issue is the mechanisms of such joint defence, given the membership of several neutral and non-aligned states in the EU. The development of security and defence policy and the adoption of the Lisbon Treaty⁶ required neutral and non-aligned countries within the EU (Austria, Ireland, Malta, Cyprus, and by 2023-2024, Sweden and Finland) to decide on issues such as collective defence, participation in rapid reaction forces and

¹ Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union. (2008, April). Retrieved from <https://data.consilium.europa.eu/doc/document/ST-6655-2008-INIT/en/pdf>.

² *Ibidem*, 2008.

³ Petersberg Declaration Made by the WEU Council of Ministers. (1992, June). Retrieved from https://www.cvce.eu/en/obj/petersberg_declaration_made_by_the_weu_council_of_ministers_bonn_19_june_1992-en-16938094-bb79-41ff-951c-f6c7aae8a97a.html.

⁴ *Ibidem*, 1992.

⁵ Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union. (2008, April). Retrieved from <https://data.consilium.europa.eu/doc/document/ST-6655-2008-INIT/en/pdf>.

⁶ *Ibidem*, 2008.

EU military operations. In this regard, a positive response was given. For instance, Austria adopted a special amendment to its Constitution (Article 23f)¹ after joining the EU, which stipulates that despite its policy of neutrality, the country participates in the EU's Common Foreign and Security Policy, including the Common Defence Policy. Thus, the essence of neutrality in these European countries has been significantly modified and legally limited in recent years (Clapp, 2022).

An important step towards the formation of the EU's common defence was the implementation of the Lisbon Treaty's PESCO² provisions. The provisions of Articles 42(6) and 46 stipulated that member states could initiate more intensive forms of security integration and establish strong commitments to each other if their military capabilities were at a high level. In practice, it was difficult to put these conditions into practice for some time due to the resistance of the United Kingdom, whose conservative governments have traditionally been sceptical about deepening European integration. Only the beginning of Brexit made it possible to create PESCO (Keukeleire & Delreux, 2022). A separate agreement on the formation of PESCO was concluded in 2017. It was signed by 25 of the 27 EU member states. Denmark and Malta did not join. At that time, Denmark did not participate in the CSDP at all. Malta expressed reservations that PESCO could contradict its policy of neutrality (Times of Malta, 2017).

As of 2024, several projects are being implemented under PESCO to promote greater integration in the security and defence sector. For instance, 23 states, led by the Netherlands, have joined the project, which aims to remove bureaucratic and other obstacles to the movement of troops and equipment across the EU, including non-EU countries such as the United States, Canada, and the United Kingdom. Another is the EUFOR Crisis Response Capability (EUFOR CROC) project (Koval, 2018). PESCO projects also cover the development of new conventional weapons, such as ground-launched combat missiles guided by drones (EU External Action & Borrell, 2021). At the same time, there are concerns that structural cooperation not between all but only some states may mean deepening divisions between member states, given the dominance of the "Europe of different speeds" approach (Krzyszowski & Krzymowska, 2019). Ukraine is not currently a member of

PESCO, but some projects, such as the European Medical Command, are already instrumental in the EU's support for Ukraine (Hanaba & Kondratiuk, 2024).

However, the most promising element in the formation of the EU's future common defence is Article 42(7) of the Lisbon Treaty³, which contains provisions on mutual defence: "If a Member State is the victim of armed aggression on its territory, other Member States shall have the obligation to provide assistance and support by all means within their power in accordance with Article 51 of the Charter of the United Nations". The terms of this Article are similar to Article 5 of the North Atlantic Treaty establishing NATO⁴. For instance, Article 5 of the North Atlantic Treaty also states: "each of the parties... will assist the party or parties attacked by taking such action as it deems appropriate, individually or in co-operation with other parties". The key difference is that the Lisbon Treaty does not contain a provision that an attack on one of the countries is an attack on all countries (Smyrnova, 2011).

Moreover, Article 42(7) of the Lisbon Treaty⁵ is highly general and does not provide specific plans and scenarios on what kind of assistance each country can provide. Therefore, this allows different EU member states to interpret the provisions of the Article arbitrarily. For instance, neutral Austria and Ireland say that they are not able to fulfil the terms of this article. Poland and the Baltic states are concerned that the terms of Article 42(7) do not imply American guarantees within NATO, and are therefore also quite sceptical (Clapp, 2022). In particular, Lithuania sees the CSDP as an additional security tool compared to NATO's guarantees, which can be effective only in certain areas where NATO has fewer capabilities (hybrid threats, information operations, economic warfare) (Palavenis, 2019).

Instead, the four largest EU member states – France, Germany, Spain and Italy – actively support the practical implementation of this article. They are also supported by Sweden and Finland, which until recently were not NATO members and are neighbours of aggressive Russia, as well as Greece and Cyprus, which have territorial disputes with NATO member Turkey (Clapp, 2022). Therefore, E. Perot (2019) stated that "in practice, only NATO presents itself as a full-fledged collective defence organisation, while the exact role that the EU is expected to take in this area is unclear. In fact, many citizens and even

¹ Federal Constitutional Law of Austria. (2004, December). Retrieved from https://constitutionnet.org/sites/default/files/Austria%20FULL_%20Constitution.pdf.

² Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union. (2008, April). Retrieved from <https://data.consilium.europa.eu/doc/document/ST-6655-2008-INIT/en/pdf>.

³ Ibidem, 2008.

⁴ North Atlantic Treaty. (1949, April). Retrieved from https://www.nato.int/cps/en/natohq/official_texts_17120.htm.

⁵ Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union. (2008, April). Retrieved from <https://data.consilium.europa.eu/doc/document/ST-6655-2008-INIT/en/pdf>.

politicians are likely to ignore the existence of this aspect of the European Union, an organisation that has been perceived mainly as a project of economic and political integration". However, changes in the interpretation and implementation of Article 42(7) towards closer European defence cooperation should not be ruled out in the future.

In practice, Article 42(7) of the Lisbon Treaty¹ was used only once: in 2015, when the terrorist attacks in Paris were committed. Back then, EU countries provided various types of assistance to France, from intelligence sharing to participation in military operations against ISIS in Syria and Iraq. The existence of this Article itself provides the foundation for deepening European defence cooperation. It is the normative basis for supporters of closer integration in this area. For example, in 2015, the German government justified the need for greater German involvement in operations abroad by the activation of Article 42(7) by France (Perot, 2019). Further practical development of the provisions set out in the Article is promising. Experts identify several areas for strengthening cooperation under this provision: first, to develop scenarios for the use of Article 42(7), and second, to conduct training and exercises on the implementation of these scenarios (Clapp, 2022).

Given the sharply negative change in the security environment around the EU due to the beginning of Russian aggression against Ukraine in 2014, including a full-scale invasion in 2022, as well as the deterioration of the situation in the Middle East, the EU's legal framework needs to be further improved. According to EU High Representative Josep Borrell, after the EU has taken steps to address the most urgent needs of Ukraine and its member states, "it is time to move from emergency response to long-term EU readiness" (EU External Action, 2024).

The most important prerequisite for further intensive development of the CSDP towards a defence union is the introduction of the principle of qualified majority voting for relevant decisions, as currently, the position of one country can disrupt the adoption of urgent decisions. For instance, Hungary periodically blocks decisions within the framework of the EU's CSDP, in particular on assistance to Ukraine under the European Peace Instrument. European institutions, including the European Commission and the European Parliament, support the idea of extending the qualified majority principle to voting on human rights, sanctions, and civilian missions (Latici, 2021). Changing the voting procedure requires

amending the Lisbon Treaty², as it only provides for decision-making by consensus.

Another area for reforming the EU CSDP is to strengthen the supranational approach. The Lisbon Treaty mainly assigns tasks to individual member states and their contingents, including the financing of peacekeeping missions. Instead, there should be a greater emphasis on the activities of multinational units led by joint institutions financed by EU funds. Certain steps towards this have been taken since 2017: the Military Planning and Exercise Capability was created, the European Peace Instrument was launched, and the EU Rapid Deployment Force is being prepared (Jakobsson & Sjökvist, 2024). However, these institutions cover a relatively small share of all activities under the EU CSDP and are even smaller compared to the overall military capabilities of EU member states.

Instead, several amendments and additions to the Lisbon Treaty³ can be proposed. Article 41, which deals with the financing of the EU's Common Foreign and Security Policy, should specify that the financing of military or defence operations is carried out not only by member states but also by a common European defence fund created based on contributions from all EU members. Article 42 could provide for the establishment of permanent multinational military contingents under the direct authority of the EU Council and provide for a mechanism for the integration of national military units into such units voluntarily. Article 31 should provide for qualified majority voting, in particular on security and defence issues. Collectively, these amendments will render the EU CSDP more effective and bring the EU closer to strengthening its supranational approach to security and defence.

Thus, the conclusions of S. Keukeleire & T. Delreux (2022) on the importance of PESCO in reducing the EU's dependence on NATO are confirmed by the findings of this study. On the other hand, the authors focus more on the practical implementation of defence projects. In contrast, the present study emphasises the historical analysis and evolution of the agreements, which provides a deeper understanding of the basis of the current legal and political arrangements. With this in mind, the paper confirms the conclusions of V. Szép *et al.* (2021) on the significance of the Lisbon Treaty⁴ for the development of the EU's collective defence and complemented by considerations on how it could be modified to make European defence more effective.

The proposals outlined in the article, in particular on funding, subordination of multinational

¹ Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union. (2008, April). Retrieved from <https://data.consilium.europa.eu/doc/document/ST-6655-2008-INIT/en/pdf>.

² *Ibidem*, 2008.

³ *Ibidem*, 2008.

⁴ *Ibidem*, 2008.

contingents and qualified majority voting, are in line with the conclusions of M. Stetsiuk (2024) that the transformation of the EU into a full-fledged defence union “would require significant political changes in the EU itself, up to and including the delegation of part of their sovereign rights by member states to EU institutions”. At the same time, unlike J. Howorth (2020), the author does not consider the need for a new bilateral defence treaty between the US and the EU and the subordination of the CSDP to NATO structures. Instead of forming a new legal framework, the author suggests improving the existing one (Lisbon Treaty, Berlin Plus Agreements) and fully realising its potential.

■ Conclusions

The legal framework for European integration in the security and defence sector has gone through a long evolutionary path since the late 1940s to the present day. It was laid down by the 1948 Treaty of Brussels, which became the basis for the creation of the Western Union. Later, in 1954, the Western European Union was formed as a collective defence organisation based on the updated Brussels Treaty, but its influence remained limited due to the dominant role of NATO. In the 1990s, after the end of the Cold War and given new threats, such as the wars in the Balkans, the issue of European defence autonomy became relevant again, which became the basis for the development of new defence policies.

The beginning of a new stage of European defence integration was marked by the 1992 Petersberg Tasks, which enshrined the functions of the WEU in peacekeeping, humanitarian assistance and crisis management. Later, these tasks were gradually integrated into EU policy as part of the Common Foreign and Security Policy (CFSP). The Treaty of Amsterdam (1997) enshrined these tasks in the EU legal framework, making them part of the Common European Security and Defence Policy (CSDP), which allowed the EU to conduct military operations autonomously from NATO. At the same time, the EU sought to maintain cooperation with NATO to avoid duplication of efforts and to ensure access to NATO

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resources, which was done through a series of agreements grouped under the name Berlin Plus.

The Lisbon Treaty, signed in 2007, was a significant step in the development of European defence integration. It changed its name to the Common Security and Defence Policy (CSDP) and expanded its functions. The Lisbon Treaty defined the CSDP as an integral part of the CFSP. The status of the European Defence Agency was established, which was to ensure cooperation in military procurement, modernisation of the armed forces of the member states and development of the technological base of the defence sector. The most promising provisions of the Lisbon Treaty for further implementation were those on collective assistance and permanent structured cooperation (PESCO).

Despite challenges, such as different visions of common defence among member states, the EU continues to implement the provisions of the CSDP-related legal acts, focusing on increasing autonomy and strategic readiness in the face of modern threats, in particular after the outbreak of the war in Ukraine, which has further strengthened the relevance of security and defence integration. It is promising to shift away from the consensus model of decision-making within the framework of the EU CSDP, as well as to enshrine certain supranational principles in the defence and security spheres in legal documents, which may be the subject of further research. Improving the regulatory framework in this area in terms of harmonising the provisions of individual agreements may be the subject of further research.

■ Acknowledgements

The author would like to thank Oleksandra Dvurechenska, Associate Professor of the Department of International Relations and Audit, National Technical University “Dnipro Polytechnic”, PhD in History, and Oleksandr Shevchuk, Head of the Department of International Relations and Foreign Policy, Petro Mohyla Black Sea National University, Doctor of Political Science, for their assistance in choosing the research topic.

■ Conflict of Interest

None.

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Ретроспектива і перспектива нормативно-правової бази європейської інтеграції у сфері безпеки й оборони

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■ **Анотація.** У статті досліджено історичні передумови та розвиток нормативного забезпечення європейської оборонної політики, починаючи з Брюссельського договору 1948 року, створення Західного Союзу та Західноєвропейського Союзу. На основі аналізу таких важливих документів, як Маастрихтський, Амстердамський і Ніццький договори, визначено механізми оборонної співпраці в межах ЄС та її основні цілі, насамперед посилення стратегічної автономії. Окремо розглянуто угоду «Берлін-плюс», яка забезпечує механізми взаємодії між ЄС та НАТО, водночас сприяючи розвитку незалежних європейських спроможностей у сфері оборони та безпеки. Визначено ключову роль Лісабонського договору у формулюванні засад Спільної політики безпеки й оборони ЄС. Окреслено важливість і перспективність реалізації статті 42(7) договору, яка закріплює принцип взаємної допомоги країн-членів у випадку збройного нападу, а також постійного структурованого співробітництва для поглибленої оборонної інтеграції. Ці положення підвищують стратегічну автономію ЄС і закріплюють європейську оборонну співпрацю, визначаючи її як важливу складову Спільної зовнішньої політики і політики безпеки ЄС. Засвідчено актуальність подальшого вдосконалення правової бази ЄС у відповідь на нові загрози, зокрема агресію Росії в Україні, а також напруження в інших регіонах. Акцентовано на необхідності зміцнення правових механізмів, що забезпечать ефективніші процеси прийняття рішень у межах СПБО ЄС, а також посилять кооперацію в питаннях безпеки серед країн-членів. Практична значущість статті полягає в можливості використати її результати як теоретичний фундамент розбудови спільної оборонної політики ЄС та подальшої інтеграції у сфері безпеки в умовах сучасних геополітичних викликів

■ **Ключові слова:** Західноєвропейський Союз; Брюссельський договір; Лісабонський договір; спільна політика безпеки й оборони; європейська оборонна інтеграція

UDC 341.9:339.9

Doi: 10.56215/naia-herald/4.2024.47

Legal regulation of cryptocurrencies in Europe: Challenges of harmonisation and development prospects

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■ **Abstract.** The study aimed to identify key challenges in the field of legislative harmonisation and to outline the prospects for developing cryptocurrencies in the European Union, the United Kingdom and Ukraine. The study used hermeneutical, comparative and historical methods. The study defined crypto asset, its concept and content, in particular, the types into which it is divided (asset-linked token, electronic money token, and service token). The study analysed cryptocurrency regulations in the jurisdictions of the European Union, the United Kingdom, and Ukraine. At the same time, the study addressed the trends and prospects for legal regulation of virtual assets in these countries. The study established that the fragmented regulatory approach applied in the UK has led to uncertainty, which has had a negative impact on innovation and investment in the cryptocurrency sector. The study revealed significant differences in the regulation of cryptocurrencies in different countries, which create substantial obstacles to the harmonisation of legislation and further development of the market. At the same time, there is a general tendency to tighten the regulation of cryptocurrencies to prevent their use for illegal activities, such as money laundering and terrorist financing, and to ensure investor protection. This study emphasises the importance of enacting the Law of Ukraine “On Virtual Services”, which will become the only legal act in Ukraine that will regulate relations in the field of crypto assets

■ **Keywords:** virtual assets; tokens; legislative harmonisation; regulatory act; illegal activity

■ Introduction

The growing popularity and widespread use of cryptocurrencies around the world necessitated effective mechanisms for their legal regulation. This need is particularly evident in Europe, where there is a significant diversity of legal systems and approaches to regulating cryptocurrencies. This situation poses serious challenges to the harmonisation of legislation in this area and ensuring the sustainable development of the cryptocurrency market. Therefore, there is a need to unify the legal rules governing cryptocurrencies at the European level. This is determined by the absence of uniform rules may have several negative consequences for the development of the cryptocurrency market and the financial system.

V. Benson *et al.* (2024), and C. Wronka (2023) highlighted that the heterogeneity of regulatory approaches in different European countries may lead

to fragmentation of the cryptocurrency market. This means that companies and investors will be forced to navigate different requirements and restrictions depending on the jurisdiction, which complicates business operations and may lead to the displacement of innovative projects to countries with more liberal regulations. The legal status of cryptocurrencies, their place in financial transactions, and the potential risks they pose to financial stability and investor protection continue to be the subject of active scientific debate and research. K.G. Nekit (2018), for instance, conducted an in-depth analysis of various global approaches to determining the legal status of cryptocurrencies. In addition, the study noted that the harmonisation of regulations would facilitate international cooperation and enhance the effectiveness of legal provisions aimed at regulating cryptocurrencies.

■ Suggested Citation:

Tsvytkov, A. (2024). Legal regulation of cryptocurrencies in Europe: Challenges of harmonisation and development prospects. *Scientific Journal of the National Academy of Internal Affairs*, 29(4), 47-60. doi: 10.56215/naia-herald/4.2024.47.

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■ Received: 22.07.2024; Revised: 25.10.2024; Accepted: 26.11.2024



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A.M. Tarasyuk & V.A. Lazorenko (2024) focused on the potential use of cryptocurrencies as a new form of bills of exchange, which opens new prospects for their use in financial transactions, but at the same time raises the question of the need to adapt existing bills of exchange legislation. The authors determined that the introduction of cryptocurrencies into existing financial systems can improve the efficiency of payment services. However, this requires a thorough analysis of legislative and regulatory changes to ensure their stability and security. In particular, the study emphasised the importance of a comprehensive use of the opportunities and risks associated with crypto assets. R.C. Costin (2023) considered the issues of jurisdictional conflicts, the complexity of law enforcement, and the problem of too rapid changes in the cryptocurrency market compared to the stability of the legal framework. The author stressed how difficult it is to develop effective regulations that can properly address the risks associated with money laundering and fraud, as well as consumer protection in the cryptocurrency space. G. Soana (2024) analysed the effectiveness and problematic aspects of the European Union's anti-money laundering legislation. The study emphasised that although the adopted legal norms were aimed at increasing the level of transparency and tracking of cryptocurrency transactions, significant gaps remained in the application and compliance with the legislation (primarily concerning decentralised finance and self-organised wallets). G. Soana (2024) pointed out that the evolution of digital technologies is outpacing the development of the regulatory framework, which makes it difficult to combat financial crime. The author noted that a more flexible approach to legal regulation is needed to overcome these problems and prevent the use of crypto assets for illegal purposes.

Their research highlights the importance of establishing effective mechanisms to control the circulation of cryptocurrencies to prevent their use in illegal activities. Taken together, these studies demonstrated the complexity and multifaceted nature of the legal regulation of cryptocurrencies. They emphasised the need for a comprehensive approach that considers both the potential benefits of cryptocurrencies, and the risks associated with them. This included defining a clear legal status of cryptocurrencies, developing rules for their use in financial transactions, and establishing effective mechanisms for controlling and supervising this market.

However, despite a significant amount of research, there are still gaps in understanding the specifics of the legal regulation of cryptocurrencies in different European countries, as well as the challenges

and prospects for harmonising legislation in this area. Insufficient attention has been paid to a comparative analysis of regulatory approaches in the European Union, the United Kingdom and Ukraine, as well as to the issues of contributing virtual assets to the authorised capital of banks and the role of central banks in regulating the cryptocurrency market. Thus, S.D. Norton (2024) analysed the impact of the free banking concept, according to which the issuance of competitive currency is carried out by private institutions rather than central banks, on approaches to regulating cryptocurrencies. This study has shown that the implementation of the principles of free banking theory will increase the stability and efficiency of financial systems. It also provides insights into how to regulate digital currencies in a rapidly changing environment.

The purpose of this study was to determine the legal regulation of cryptocurrencies in the European Union, the United Kingdom and Ukraine, and to identify key challenges and prospects in legislative harmonisation. The primary objectives of the study were:

- 1) to analyse the legal acts regulating crypto assets in the EU, the UK and Ukraine;
- 2) to identify the main trends in legal regulation in the states;
- 3) to identify the challenges facing the creation of an effective legal framework for cryptocurrency.

■ Materials and Methods

To conduct a study on the legal regulation of crypto assets in Europe to identify the challenges of harmonisation and development prospects in Europe, the experience of the European Union as a whole and the experience of Ukraine and the United Kingdom separately were used. The choice of analysing the legislation of Ukraine and the United Kingdom was determined by these states are not EU members and are not subject to the binding nature of the EU treaties (despite Ukraine's status as a candidate for EU membership). To interpret the legal acts and analyse them, the hermeneutic method was used to study the concepts and content of crypto assets, asset reference tokens, service tokens, electronic money tokens, crypto asset exchange service providers, etc. Hermeneutics was used in the study to not only establish these definitions but also to consider them in the context of the broader legal discourse. This, in turn, made it possible to explore in more detail how these terms are used in different jurisdictions. Thus, during the research on national legal acts, the following legislative documents were studied and analysed: the Law of Ukraine "On Virtual Assets"¹, as well as the Draft Law on Amendments to the Tax Code of Ukraine and

¹ Law of Ukraine No. 2074-IX "On Virtual Assets". (2022, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/2074-20#Text>.

Other Legislative Acts of Ukraine Regarding the Regulation of the Turnover of Virtual Assets in Ukraine¹.

However, the legal regulation of cryptocurrencies in Europe are primarily guided by international treaties, such as the Regulation of the European Parliament and of the Council No. 2023/1114² (MiCA), No. 2023/1113³; No. 2015/847⁴; No. 2018/1673⁵ (6AMLD); Financial Services and Markets Act 2023⁶ (FSMA); the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017⁷ (MLRs).

A comparative method was used to evaluate the existing definitions of crypto assets, as well as to identify common features and differences in the legal regulation of cryptocurrencies, and to identify key trends and challenges in this area. During the study of legal acts, they were compared with each other, especially concerning the definition of certain concepts (crypto assets), their tasks and objectives, and the purpose of certain legislation. A systematic comparison of Ukrainian and international legislation was conducted. In addition, this method made it possible to determine how different state approaches can influence the harmonisation process and impede it.

Among the general theoretical methods and research techniques, the historical method was central

to the study. It was used to trace the development of the regulatory framework in the field of cryptocurrencies in the European Union, the United Kingdom, and Ukraine. Awareness of this historical aspect was significant for assessing the effectiveness of existing regulations and the prospects for further development of cryptocurrency legislation.

■ Results

Legal regulation of cryptocurrencies in the EU.

The first comprehensive legal act regulating the cryptocurrency market in the European Union is the MiCA⁸. This document became effective on 29 June 2023, with Titles III and IV of the MiCA coming into force on 30 June 2024, while the full version is expected to enter into force on 30 December 2024. Since 30 June, it was established that any public offer or authorisation to trade in ART and EMT is subject to a strict control regime (The MiCa Regulation explained..., 2024). The MiCA was developed to consolidate the regulation of crypto assets at the EU level and to create a single, coherent legal framework for crypto asset owners and service providers that are not regulated by existing financial services regulations (Carata & Knottenbelt, 2024). Figure 1 shows in more detail the timeframe over which the MiCA provisions are being implemented.

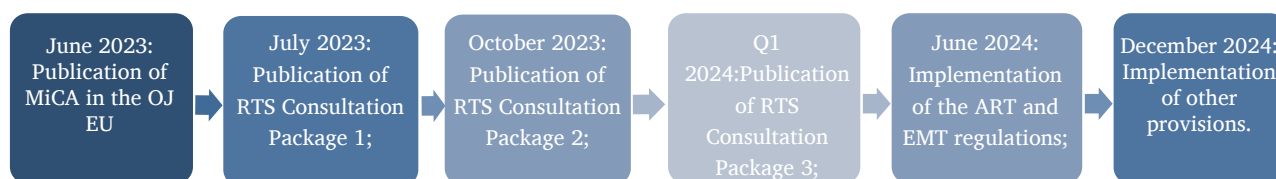


Figure 1. Periodicity of MiCA implementation

Source: compiled by the authors based on F. Windak (2024)

The main objectives of MiCA were: 1) to create a common legal act regulating cryptocurrencies at the EU level; 2) to promote fair trade, in particular by prohibiting insider trading or other ways of

¹ Draft Law of Ukraine No. 10225-1 “On Amendments to the Tax Code of Ukraine and Other Legislative Acts of Ukraine Regarding the Regulation of the Turnover of Virtual Assets in Ukraine”. (2023, November). Retrieved from <https://itd.rada.gov.ua/billinfo/Bills/Card/43232>.

² Regulation of the European Parliament and of the Council No. 2023/1114 “On Markets in Crypto-Assets, and Amending Regulations (EU) No. 1093/2010 and (EU) No. 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937”. (2023, May). Retrieved from <https://eur-lex.europa.eu/eli/reg/2023/1114/oj>.

³ Regulation of the European Parliament and of the Council No. 2023/1113 “On Information Accompanying Transfers of Funds and Certain Crypto-Assets and Amending Directive (EU) 2015/849”. (2023, May). Retrieved from <https://eur-lex.europa.eu/eli/reg/2023/1113/oj>.

⁴ Regulation of the European Parliament and of the Council No. 2015/847 “On Information Accompanying Transfers of Funds and Repealing Regulation (EC) No. 1781/2006”. (2015, May). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32015R0847>.

⁵ Directive of the European Parliament and of the Council No. 2018/1673 “On Combating Money Laundering by Criminal Law”. (2023, October). Retrieved from <https://eur-lex.europa.eu/eli/dir/2018/1673/oj>.

⁶ Financial Services and Markets Act of UK. (2023, June). Retrieved from <https://www.legislation.gov.uk/ukpga/2023/29/contents>.

⁷ Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations of UK. (2017, June). Retrieved from <https://www.legislation.gov.uk/uksi/2017/692/contents>.

⁸ Regulation of the European Parliament and of the Council No. 2023/1114 “On Markets in Crypto-Assets, and Amending Regulations (EU) No. 1093/2010 and (EU) No. 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937”. (2023, May). Retrieved from <https://eur-lex.europa.eu/eli/reg/2023/1114/oj>.

manipulating the cryptocurrency market; 3) to define the procedure for the functioning of the cryptocurrency market in areas not regulated by existing financial legislation; 4) to ensure the stability of the cryptocurrency market, in particular, the creation of reserve capital and liquidity by the issuer, which will help during market fluctuations; 5) to introduce clear and simple rules for cryptocurrency service providers and token holders; 6) to ensure that consumers of this market are informed, which will minimise the risks they may face; 7) to guarantee a transparent and secure cryptocurrency system to attract more market participants (The MiCa Regulation explained..., 2024; Micagni, 2024).

Part 5 of Article 3 of the MiCA¹ defines a crypto asset as an electronic representation of value or right that can be transferred and accumulated using distributed ledger technology or similar technologies in a digital format. In particular, this Article identifies the types of tokens regulated by this legal act, including: 1) an asset-referenced token (ART) is a type of crypto asset that is not related to electronic money tokens and is intended to maintain a stable market value. This is done through a link to another asset or right (or a combination thereof), including one or more official currencies (Article 3(6)). An example is Tether Gold, which maintains an inherent value relative to the value of gold; 2) e-money token (EMT), which aims to maintain a stable monetary value by using a link to one official currency (Article 3(7)). Examples of EMTs are USDT (Tether) and USDC (Circle), which maintain their value against the US dollar, and EURS (Statis), EURC (Circle) and EURT (Tether) against the euro (The MiCa Regulation explained..., 2024); 3) and a utility token, which serves solely to provide access to goods or services provided by their issuer (Article 3(9)). Examples include OMG (OMG network), and Siacoin (Sia network) (The MiCa Regulation explained..., 2024). In general, ART and EMT tokens are stable assets that are created to support a sustainable cryptocurrency market.

Important provisions of the MiCA² are related to the activities of crypto asset issuers and providers, which concern market transparency and consumer protection. The MiCA aims to introduce authorisation and comprehensive reporting in official

documents, as well as to create a strong governance system. This, in turn, is being done to help increase the level of trust in the cryptocurrency market in the EU and create a safe investment environment. In general, these legislative initiatives aim to reduce the risks associated with virtual assets and strengthen market stability (The EU markets in crypto assets..., 2024).

Another significant regulation in the field of cryptocurrency regulation is Regulation (EU) No. 2023/1113³. The main objective of the Regulation is to counteract offenders engaged in money laundering through crypto assets. Part 10 of Article 3 contains provisions defining the concept of transfer of crypto assets, which involves a transaction to move crypto assets from one distributed ledger, crypto asset account or other medium intended for storing these assets to another. Such an operation is performed by at least one provider acting on behalf of the sender or beneficiary, even if they are the same person.

This Regulation expands and supplements, particularly the direct inclusion of crypto asset transfers in regular payment services (Forthcoming new rules on..., 2023). The Regulation establishes strict reporting standards for cryptocurrency service providers, which are similar to those for conventional financial institutions. It aims to increase the level of transparency and traceability of financial transactions, as well as to contribute to the effective fight against financial crime (Halász, 2024). Article 10 of Regulation (EU) No. 2023/1113⁴ stipulates that intermediary payment service providers are responsible for storing the payment information received (regarding the payer and the recipient) during the transfer of funds. This increases the level of trust between the parties involved in these relationships and helps to attract new buyers and sellers of cryptocurrencies. Regarding Regulation No. 2015/847⁵, even though Article 1 of Regulation states that this document regulates the control of information concerning the payer and the recipient between whom funds are transferred in any currency, this provision does not include cryptocurrencies. Despite the absence of a specific rule on the place of a virtual asset in this Regulation, this concept is also not provided for in Article 3 of Regulation, which contains a list of basic definitions (as it

¹ Regulation of the European Parliament and of the Council No. 2023/1114 “On Markets in Crypto-Assets, and Amending Regulations (EU) No. 1093/2010 and (EU) No. 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937”. (2023, May). Retrieved from <https://eur-lex.europa.eu/eli/reg/2023/1114/oj>.

² Ibidem, 2023.

³ Regulation of the European Parliament and of the Council No. 2023/1113 “On Information Accompanying Transfers of Funds and Certain Crypto-Assets and Amending Directive (EU) 2015/849”. (2023, May). Retrieved from <https://eur-lex.europa.eu/eli/reg/2023/1113/oj>.

⁴ Ibidem, 2023.

⁵ Regulation of the European Parliament and of the Council No. 2015/847 “On Information Accompanying Transfers of Funds and Repealing Regulation (EC) No. 1781/2006”. (2015, May). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32015R0847>.

was in MiCA¹ and Regulation (EU) No. 2023/1113²). However, this document is still important in the regulation of crypto assets, as it laid the groundwork for the control of financial transfers within the EU and became the basis for the creation of Regulation 2023/1113³.

The 6AMLD⁴ was developed to combat financial crime, which complemented the previous directive and established cybercrime as one of the crimes in the financial sector. In particular, the 6AMLD aims to address the offence of money laundering and to establish liability for its commission. Thus, Articles 5 (establishing fines for individuals) and 8 (sanctions for legal entities) of the Directive provide for sanctions for committing this crime. Under Article 8 of the 6AMLD, the sanctions are: deprivation of the possibility to use public funding, including tenders, grants and benefits; appointment of judicial supervision; inability to use public benefits or assistance; suspension from business activities; court-ordered liquidation procedure; termination of the operation of the facilities used in the commission of the offence. Thus, this legal act has strengthened the system of sanctions against money laundering and established stricter rules for its compliance. It also emphasised the need for cooperation between national and international financial control authorities. In general, the

legal regulation of the cryptocurrency market in the EU has undergone large-scale changes aimed at protecting consumer rights, increasing the transparency of financial transactions, monitoring the confidentiality of seller and buyer information, and ensuring the overall stability of the market. By developing the MiCA⁵, the European Union has laid the groundwork for creating a secure and transparent environment for crypto asset transactions.

Legal regulation of cryptocurrencies in the UK and Ukraine. Since the UK and Ukraine are not EU member states, their legislation is not binding on these countries, which in turn creates the need to develop effective legislation. In both countries, the legal regulation of virtual assets lags far behind that of the EU. However, despite the rapid development of cryptocurrencies, states are making efforts to create an effective consumer protection framework. Thus, the UK aims to create effective and extensive legislation in the field of crypto assets. This is primarily due to the need to close the gaps in the existing legislation regarding the absence of this currency in the UK financial regulations (as demonstrated by the collapse of Voyager Digital, FTX, and Celsius Network) (Vidal-Tomás *et al.*, 2023; Wood & Murray, 2024). Figure 2 shows a graph of the cryptocurrency market, which determined the moment of the FTX platform's collapse.

Market cap mayhem

The market cap of cryptocurrencies has recovered from the 2022 low it hit amid the collapse of FTX, but remains well below its 2021 high of nearly \$3 trillion.



Figure 2. Cryptocurrency market chart for the period 2020-2023

Source: H. Lang *et al.* (2023)

¹ Regulation of the European Parliament and of the Council No. 2023/1114 “On Markets in Crypto-Assets, and Amending Regulations (EU) No. 1093/2010 and (EU) No. 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937”. (2023, May). Retrieved from <https://eur-lex.europa.eu/eli/reg/2023/1114/oj>.

² Regulation of the European Parliament and of the Council No. 2023/1113 “On Information Accompanying Transfers of Funds and Certain Crypto-Assets and Amending Directive (EU) 2015/849”. (2023, May). Retrieved from <https://eur-lex.europa.eu/eli/reg/2023/1113/oj>.

³ *Ibidem*, 2023.

⁴ Directive of the European Parliament and of the Council No. 2018/1673 “On Combating Money Laundering by Criminal Law”. (2023, October). Retrieved from <https://eur-lex.europa.eu/eli/dir/2018/1673/oj>.

⁵ Regulation of the European Parliament and of the Council No. 2023/1114 “On Markets in Crypto-Assets, and Amending Regulations (EU) No. 1093/2010 and (EU) No. 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937”. (2023, May). Retrieved from <https://eur-lex.europa.eu/eli/reg/2023/1114/oj>.

Figure 2 shows the three main points of the graph that were crucial for the creation of effective crypto asset legislation: November 8, 2021 – the historical high of cryptocurrencies; May 8, 2022 – TerraUSD lost its peg to the dollar (which implies a loss of stability and the emergence of volatility); November 11, 2022 – FTX’s bankruptcy filing. One of the main pieces of legislation relating to crypto assets in the UK is the FSMA¹, which is an updated version of the Financial Services and Markets Act 2000². Section 417 of the FSMA³ defines a crypto asset as any digital representation of value or contractual rights protected by cryptography that can be transferred, stored or sold electronically. In this case, such a representation uses a special technology that supports the registration or storage of data (in particular, distributed ledger technology). This statement is fully consistent with the definition in the MiCA⁴, but the peculiarity is that the UK government may make changes to this definition depending on the development of the virtual currency industry (Marshall *et al.*, 2023). According to the FSMA, crypto assets have been included in the definition of “investment” and are subject to a general prohibition on engaging in “controlled activities”. This applies to both investment management and the issuance of electronic money unless authorised by the Financial Conduct Authority (FCA) or exempted from FSMA 2000⁵ (Sulimierska & Sikorska, 2023; CMS expert guide to crypto regulation in..., 2024). While section 182 provides for the use of digital settlement assets (DSAs) for the regulation of stablecoins. Thus, DSAs are defined as electronic representations of value or rights used to settle payment obligations and are subject to regulatory oversight by the UK Treasury and the Bank of England.

Another legal act that is key in regulating the issue of crypto assets, in particular, the control of cryptocurrency service providers from the perspective of anti-money laundering, is the MLRs⁶. Part 2 of Chapter 1, Regulation 14(A) of the MLR provides that a crypto asset exchange service provider is a legal entity or individual that provides one or more services through its business activities. This includes if such a person acts as a developer or issuer of the relevant crypto assets, providing the following services: exchange or arrangement of crypto assets for money or vice versa; exchange, arrangement or agreement to

replace one crypto asset with another; operation of equipment that allows the exchange of cryptocurrency for money and vice versa through automated operations. At the same time, entities within the scope of MLR are responsible for implementing anti-money laundering measures. In particular, the UK has introduced the “travel rule”, under which businesses related to crypto assets are required to regularly collect, verify and transmit information on the movement of cryptocurrencies (CMS expert guide to crypto regulation in..., 2024).

The FCA has confirmed the next step in the implementation of its virtual asset policy, including a plan for 2024/2025 to introduce a special procedure to combat abuse in the crypto asset market. In addition, the FCA has adopted updated guidance on financial inducement on social media, including recommendations on cryptocurrency advertising (Staples & Asolo, 2024). In general, the UK’s legal framework for regulating cryptocurrencies is not comprehensive enough, as it does not cover all types of cryptocurrencies or related transactions. However, given its withdrawal from the EU in 2020 and the absence of a regulatory framework on this issue, the United Kingdom quickly began to adjust the legislation.

Ukraine is similar in its policy to the UK, as it is also on the way to developing its approach to the legal regulation of cryptocurrencies. Ukraine does not have comprehensive legislation on cryptocurrencies, and in particular, the national legislation does not contain any provisions on this type of currency. In general, Ukrainian authorities started to support the crypto assets sphere not so long ago, for example, in 2014, the National Bank of Ukraine stated that the cryptocurrency Bitcoin has no real value and cannot be used as a means of payment for individuals and legal entities in Ukraine, as it does not comply with the national legislation of Ukraine (Galkevich, 2024). This statement was aimed at preventing possible illegal acts such as money laundering or other illegal financial transactions. However, given the rapid development of operations in the cryptocurrency market by Ukrainian citizens, the Government’s goal was to create a legal framework that would effectively regulate this issue. In 2022, the Verkhovna Rada of Ukraine (VRU) adopted the Law of Ukraine “On Virtual Assets”⁷, which was aimed at regulating

¹ Financial Services and Markets Act of UK. (2023, June). Retrieved from <https://www.legislation.gov.uk/ukpga/2023/29/contents>.

² Financial Services and Markets Act of UK. (2000, June). Retrieved from <https://www.legislation.gov.uk/ukpga/2000/8/introduction>.

³ Financial Services and Markets Act of UK. (2023, June). Retrieved from <https://www.legislation.gov.uk/ukpga/2023/29/contents>.

⁴ Regulation of the European Parliament and of the Council No. 2023/1114 “On Markets in Crypto-Assets, and Amending Regulations (EU) No. 1093/2010 and (EU) No. 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937”. (2023, May). Retrieved from <https://eur-lex.europa.eu/eli/reg/2023/1114/oj>.

⁵ Financial Services and Markets Act of UK. (2000, June). Retrieved from <https://www.legislation.gov.uk/ukpga/2000/8/introduction>.

⁶ Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations of UK. (2017, June). Retrieved from <https://www.legislation.gov.uk/uksi/2017/692/contents>.

⁷ Law of Ukraine No. 2074-IX “On Virtual Assets”. (2022, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/2074-20#Text>.

relations arising in the field of cryptocurrencies. This Law was to enter into force after the Draft Law¹ came into force (as of 2024, the law has the status of “being addressed in the committee”).

The adoption of the Law of Ukraine No. 2074-IX² is important for ensuring the regulation of cryptocurrencies in Ukraine, which will be a step towards creating a reliable and effective legal framework on this issue. Paragraph 1 of part 1 of Article 1 of the Law establishes the definition of a virtual asset, which is an object of civil rights and an intangible good subject to a value assessment and expressed electronically in the form of a data set. The virtual asset circulation system ensures the availability and circulation of this asset. Such an asset may be used to certify property rights, including the right to reclaim other objects of civil rights. Article 4 of the Law defines the legal status of virtual assets and establishes that the specifics of their circulation are specified in the Civil Code of Ukraine and this Law. Part 6 of this Article provides for two types of financial virtual assets: issued by a Ukrainian resident and backed by currency values; and backed by securities or their derivatives. Part 7 prohibits the use of crypto assets as a payment currency in Ukraine to exchange goods or services. Under Article 17 of the Law, the National Securities and Stock Market Commission and the National Bank of Ukraine will exercise control over virtual assets on behalf of the state. Their main task will be to carry out comprehensive measures to regulate, monitor and supervise the virtual asset market, regulate the activities of providers of these services, and prevent and combat offences and abuses in the virtual asset market.

This draft law outlines the main obligations and rights of cryptocurrency market participants, establishes licensing mechanisms that protect the interests of investors, and emphasises the need to comply with legal regulations. The adoption of this Law will lay the foundation for the further development of the crypto industry in Ukraine, as well as facilitate investment and integration into the international digital asset market. The Law of Ukraine “On Virtual Assets”³ will be the first in the country to officially define the status of crypto assets and other important

provisions on this issue.

Comparing cryptocurrency legislation in the UK and Ukraine, the UK has been much more successful in creating a legal framework in this area, while the Ukrainian government is delaying the introduction of a single legal act to regulate this currency. Thus, as of 2024, there is no regulatory act in Ukraine that controls the crypto industry market, which in turn increases the level of financial crime. However, given Ukraine’s status as a future EU candidate, there is an urgent need to harmonise legislation. Thus, the EU, the UK, and Ukraine demonstrate different approaches to establishing control over the crypto asset market. Thus, the EU has developed the MiCA⁴, which aims to create a harmonised regulatory space in all EU member states to regulate the crypto asset market. While in the UK, after leaving the EU, a more simplified version of the regulation was adopted, which is implemented through FSMA 2023⁵. This law has integrated crypto assets into the current financial legislation, but its provisions do not have the same universality as the MiCA. Meanwhile, Ukraine is developing its regulatory framework based on the Law of Ukraine No. 2074-IX⁶, which, once enacted, will legalise the circulation of cryptocurrencies. It will also appoint the National Securities and Stock Market Commission as the main regulatory authority. Ukraine’s approach focuses on encouraging innovation while at the same time implementing preventive measures to combat financial crime.

General trends and challenges in the field of cryptocurrencies. Increased regulation is one of the most notable trends in all three jurisdictions. This is manifested in the introduction of stricter customer identification, transaction monitoring and suspicious activity reporting requirements for cryptocurrency-related service providers. This approach reflects the growing awareness of the risks associated with the use of cryptocurrencies for illicit activities such as money laundering and terrorist financing (Asif & Unar, 2024). In addition, the increased regulation is aimed at providing greater investor protection (as stated in the Law of Ukraine No. 2074-IX⁷), especially considering the high volatility of cryptocurrencies and the risk of fraud in this market.

¹ Draft Law of Ukraine No. 10225-1 “On Amendments to the Tax Code of Ukraine and Other Legislative Acts of Ukraine Regarding the Regulation of the Turnover of Virtual Assets in Ukraine”. (2023, November). Retrieved from <https://itd.rada.gov.ua/billinfo/Bills/Card/43232>.

² Law of Ukraine No. 2074-IX “On Virtual Assets”. (2022, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/2074-20#Text>.

³ Ibidem, 2022.

⁴ Regulation of the European Parliament and of the Council No. 2023/1114 “On Markets in Crypto-Assets, and Amending Regulations (EU) No. 1093/2010 and (EU) No. 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937”. (2023, May). Retrieved from <https://eur-lex.europa.eu/eli/reg/2023/1114/oj>.

⁵ Financial Services and Markets Act of UK. (2023, June). Retrieved from <https://www.legislation.gov.uk/ukpga/2023/29/contents>.

⁶ Law of Ukraine No. 2074-IX “On Virtual Assets”. (2022, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/2074-20#Text>.

⁷ Ibidem, 2022.

The trend towards consistency, consumer protection, and innovation is evident in the legal regulation of crypto assets within the EU. The prerequisite for the implementation of MiCA¹ was the initiative of the European Commission in 2020, which was presented as part of a large-scale strategy in the field of digital finance. The impetus for this proposal was the need to fill the gaps in legislation that arose as a result of the dynamic growth of the cryptocurrency market. It was driven by the desire to ensure the most transparent environment for businesses and investors while protecting the interests of consumers without restricting technological progress (Conlon *et al.*, 2024). Another factor that influenced the creation of a unified legal framework was the collapse of cryptocurrency exchanges (in particular, the FTX exchange) (Wood & Murray, 2024), which undermined the financial stability of states (Crypto regulation..., 2022).

The dynamic pace of innovation in the field of cryptocurrencies indicates that state regulatory authorities should remain particularly vigilant and respond promptly to changes that go beyond the established norms (Divissenko, 2023). In general, EU legislation in the field of crypto assets regulation is transforming. This is accompanied by the adoption of the MiCA² as a comprehensive regulatory framework aimed at harmonising, protecting consumer rights and promoting innovation. As the legislative landscape changes, stakeholders must continue to adapt to the new realities. This will ensure that regulations are properly enforced without hindering economic growth in the changing digital asset environment. In particular, the full implementation of the MiCA will set a precedent for other countries seeking to implement effective cryptocurrency legislation. Meanwhile, the UK's crypto asset regulation is based on a gradual approach that identifies the areas with most risk. Given the growing popularity of stablecoins and the possible risks, the government has paid special attention to them. This initiative is aimed at realising the benefits of using stablecoins while minimising the possible risks arising from their use. One of the main trends in the UK cryptocurrency regulation is the focus on consumer protection and financial crime prevention. The FCA has established strict requirements for the promotion

of financial services, which stipulate that all activities related to crypto assets must be objective, transparent and not misleading (Ertan, 2023; Crypto assets in the UK..., 2024).

Despite significant progress in the regulation of crypto assets, there are still gaps in the regulation of certain types of cryptocurrencies, in particular, non-fungible tokens (NFTs) and unregulated tokens. The presence of these gaps, in turn, causes uncertainty in the activities of individuals and legal entities operating in this area (Sullivan *et al.*, 2024). In general, the trends in the regulation of virtual assets in the UK demonstrate an orientation towards the formation of a holistic legal framework focused on both consumer protection and the development of the cryptocurrency industry. With the development of the FSMA (2023) and a phased approach focusing on high-risk areas such as stablecoins, the country is actively developing and striving to create an effective legal framework.

The legal regulation of crypto assets in Ukraine is in an uncertain state, particularly the Law of Ukraine "On Virtual Assets"³, which was adopted by the VRU in 2022 and has not entered into force as of November 2024. Despite the significant success in drafting the Law and its approval, there was a problem with its immediate implementation due to the martial law in Ukraine. In 2023, the Draft Law on Amendments to the Tax Code of Ukraine and Other Legislative Acts of Ukraine⁴ was submitted (Tuban, 2023). These innovations are aimed at simplifying regulatory procedures for businesses involved in transactions with virtual assets. These laws will help to create transparency in the digital economy and attract investment by defining the status of cryptocurrencies and tax liabilities (What is known about the legalisation of..., 2023). Trends in the regulation of cryptocurrencies in Ukraine in 2022-2024 indicate significant changes in the creation of a comprehensive legal framework. Such a framework can simultaneously promote innovation, protect consumer rights and harmonise legislation with international standards. A key moment in the formation of the cryptocurrency market was the adoption of the Law of Ukraine No. 2074-IX⁵, which launched the process of establishing legal regulation of this market.

¹ Regulation of the European Parliament and of the Council No. 2023/1114 "On Markets in Crypto-Assets, and Amending Regulations (EU) No. 1093/2010 and (EU) No. 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937". (2023, May). Retrieved from <https://eur-lex.europa.eu/eli/reg/2023/1114/oj>.

² *Ibidem*, 2023.

³ Law of Ukraine No. 2074-IX "On Virtual Assets". (2022, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/2074-20#Text>.

⁴ Draft Law of Ukraine No. 10225-1 "On Amendments to the Tax Code of Ukraine and Other Legislative Acts of Ukraine Regarding the Regulation of the Turnover of Virtual Assets in Ukraine". (2023, November). Retrieved from <https://itd.rada.gov.ua/billinfo/Bills/Card/43232>.

⁵ Law of Ukraine No. 2074-IX "On Virtual Assets". (2022, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/2074-20#Text>.

In the context of the rapid development of the cryptocurrency market and related technologies, one of the key challenges for regulators is to ensure that legal regulations are technologically neutral. This means that legislation should be sufficiently flexible and adaptable so as not to impede the introduction and development of new cryptocurrency technologies, but rather to facilitate their integration into the financial system. Too strict or outdated regulations can lead to negative consequences for the development of the cryptocurrency industry (Frediani, 2024).

First, it may create artificial barriers to entry for new companies and projects, limiting competition and innovation. Secondly, it may cause innovative projects to be displaced to other jurisdictions with a more favourable regulatory environment, which will negatively affect the economic development and investment attractiveness of the country. An example of such a situation is the overly strict regulation of ICOs (Initial Coin Offerings), particularly in China. For instance, in 2017, the Chinese government banned ICOs because it considered them a threat to the financial state of the state, while the Chinese central bank considered ICOs to be a suspicious activity involved in crime or fraud (Bellavitis *et al.*, 2021; ICO regulations..., 2024). This not only deprived China (and other countries in similar circumstances, such as South Korea) of potential investment and jobs, but also made it more difficult to monitor the activities of these projects and protect investors (Hu, 2024). For example, N. Kshetri (2023) noted that such a ban and strict restrictions on ICOs create obstacles to innovation and stimulate competition between companies seeking to enter the market. S.D. Howell *et al.* (2019) shared the same opinion.

Another important aspect is the need to strike a balance between regulation and innovation. On the one hand, regulation is necessary to ensure financial stability, protect investors and combat illegal activities such as money laundering and terrorist financing. On the other hand, excessive regulation can stifle innovation and impede market development, limiting the ability to create new products and services that can benefit society. Thus, ensuring effective international cooperation in the regulation of cryptocurrencies is critical to the successful development of this market. The absence of agreed international standards leads to regulatory arbitrage, with companies and investors choosing jurisdictions with the least stringent requirements (e.g., Singapore and Hong Kong, which, unlike China, have relaxed requirements) (Singapore and Hong Kong..., 2024; Uzoubo *et al.*, 2024). This not only undermines the efforts

of individual countries to combat money laundering and terrorist financing but also poses risks to financial stability at the global level. An example of such a country is India, as the state has lost cryptocurrency companies by setting too strict rules. This led to the fact that these companies moved to the territory of another state, which made it much more difficult for the Indian government to regulate money laundering regulations (Shine, 2024).

Therefore, it is necessary to develop international cooperation and coordination in the field of cryptocurrency regulation to ensure an effective and balanced regulatory environment at the global level. This may include the exchange of information and experience between regulators from different countries, the development of common standards and approaches to regulation, and the creation of mechanisms for joint monitoring and control of the cryptocurrency market. An example of successful international cooperation was the exchange of information and experience between central banks of different countries on the development and implementation of Central bank digital currency – initial considerations (2024). Such cooperation helped to increase the level of financial inclusion and efficiency of settlement mechanisms. This, in turn, minimised risks in the cryptocurrency market in countries and strengthened economic stability.

■ Discussion

The legal regulation of cryptocurrencies in Europe has made significant progress since the adoption of the MiCA¹. Its overall goal is to ensure the harmonisation of regulations across EU member states, provide transparency and security to cryptocurrency-related service providers, and protect consumer rights. The UK, on the other hand, has chosen a more fragmented approach to regulation, which has led to uncertainty that hinders the development of innovations in the cryptocurrency sector. At the same time, Ukraine seeks to introduce a national legal framework for virtual assets, using the experience of both European and global practices and standards. However, the issue of legislative consistency and the need to ensure proper state control remain relevant. In particular, the development of the regulatory framework will play a crucial role in determining the future environment for e-finance. However, specific regulatory approaches differ from country to country. The European Union seeks to harmonise legislation and create a single market for crypto assets, which should promote innovation and ensure a high level of investor protection. This approach is supported by many researchers who

¹ Regulation of the European Parliament and of the Council No. 2023/1114 “On Markets in Crypto-Assets, and Amending Regulations (EU) No. 1093/2010 and (EU) No. 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937”. (2023, May). Retrieved from <https://eur-lex.europa.eu/eli/reg/2023/1114/oj>.

point out the importance of unifying regulatory norms for the effective functioning of the cryptocurrency market in Europe. S. Daskalova & D. Kumanov (2024) emphasised that the fragmented regulatory landscape in Europe creates uncertainty for businesses and investors, complicates cross-border transactions, and may lead to the displacement of innovative projects to jurisdictions with more liberal regulation.

Comparing this study with the study by S. Daskalova & D. Kumanov (2024), similar results regarding the importance and necessity of regulatory consolidation to reduce uncertainty for businesses and investors were drawn. However, this study focuses on this importance on consumer protection, while their study puts more emphasis on investors. There was also a commonality regarding the negative impact of a fragmented regulatory landscape, which highlighted the importance of holistic legal regulation in promoting a safe and competitive environment for cryptocurrency markets. Thus, reducing the risks associated with regulatory arbitrage and strengthening the overall integrity of the market. A. Mishra (2024), analysing global trends in the regulation of cryptocurrencies, also emphasised the importance of harmonisation and the creation of a single legal framework that will facilitate the development of the cryptocurrency industry and provide legal certainty for all market participants. In particular, the author noted that although cryptocurrencies have become a new type of capital, their legal status remains unclear in many countries, which has led to regulatory uncertainty. The Article emphasises the need for a coherent and comprehensive regulatory framework to combat financial crimes and ensure the stable development of cryptocurrencies. Both studies emphasise the urgent need to harmonise regulatory aspects to provide legal certainty for cryptocurrency industry players and facilitate market development. However, the statement of A. Mishra's (2024) assertion regarding the importance of creating a coherent legal framework to combat financial crime reflects more global issues than those identified in this study, concerning the EU MiCA regulation¹ and its focus on anti-money laundering. While A. Mishra looked at the global regulatory uncertainty situation, this study went more in-depth to examine specific regional issues and trends. In particular, the fragmented regulatory landscape in the UK compared to the more coherent regulatory framework in the EU.

T. Burgess (2024) highlighted the complexity of regulating cryptocurrencies in a multi-jurisdictional

environment where the lack of global standards can lead to regulatory arbitrage. Companies and investors may choose jurisdictions with less stringent requirements, making it more difficult to fight financial crime and posing risks to financial stability. Overall, both studies found that there are problems associated with the lack of international standards that are common to all countries. This absence may lead to regulatory arbitrage, as businesses engaged in cryptocurrency activities tend to choose the jurisdiction of a state that has less stringent regulations. This, in turn, hinders economic stability and the fight against crime.

The issue of contributing virtual assets to the authorised capital of banks is subject to mixed opinions. In most EU countries, this is either prohibited or significantly restricted due to the risks associated with the volatility of cryptocurrencies and their potential use in illegal activities. At the same time, the experience of Switzerland, where banks are allowed to include certain types of cryptocurrencies in their assets subject to strict requirements, demonstrates the possibility of integrating cryptocurrencies into the banking system². This is confirmed by M.X. Caetano *et al.* (2024), highlighting the need to address the impact of cryptocurrencies on centralised financial institutions and develop appropriate regulatory mechanisms. The authors noted that the integration of cryptocurrencies into the banking system could lead to significant changes in banks' business models, operational processes, and risk management. The study also emphasises that the rapid increase in demand for cryptocurrencies is creating uncertainty in traditional financial systems, necessitating the modernisation of legislation. M.X. Caetano *et al.* (2024), along with this study, pointed to the need to develop appropriate regulations to address the transformational impact of cryptocurrencies on banking systems. Both studies emphasise the fact that there is uncertainty about cryptocurrencies (in particular, their status) in state regulation. This establishes the need to adapt state regulations following international standards and regulations.

The state regulation of the cryptocurrency market in Europe is carried out at different levels and using different instruments. In the EU, the European Central Bank and the European Commission are central, while in the UK and Ukraine, the main regulators are national financial institutions. This demonstrates the importance of cooperation and coordination between different regulators to ensure effective control over the cryptocurrency market. The results are consistent

¹ Regulation of the European Parliament and of the Council No. 2023/1114 "On Markets in Crypto-Assets, and Amending Regulations (EU) No. 1093/2010 and (EU) No. 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937". (2023, May). Retrieved from <https://eur-lex.europa.eu/eli/reg/2023/1114/oj>.

² Swiss Federal Act on Banks and Savings Banks. (1934, November). Retrieved from <https://assets.kpmg.com/content/dam/kpmgsites/ch/pdf/ch-banking-act-en.pdf>.

with the findings of C. Wronka (2024), emphasising the importance and necessity of harmonising regulations. In particular, C. Wronka (2024) noted that effective regulation of the cryptocurrency market requires close cooperation between central banks, financial regulators and other government agencies responsible for combating financial crime and investor protection. A study by H.L. Ba & Ö.Ş. Şen (2024) identified that the variability in national approaches to cryptocurrency regulation can be explained by various political and economic factors, such as the level of financial sector development, the degree of integration into the global economy, and the political orientation of the government. In particular, the researchers determined that countries with developed financial sectors and advanced economies tend to impose stricter regulations than those in other countries. Overall, their study provides an analysis of the complex interaction of national and international aspects in the formation of cryptocurrency legislation, which affects the global emerging economy and has implications for the global political economy. This study is consistent with the research by H.L. Ba & Ö.Ş. Şen (2024) on the existing differences in the legal frameworks of the EU, the UK and Ukraine, reflecting their unique political and economic aspects. They emphasise the complexity of the interaction between national and international factors in developing a coherent legal framework for crypto assets.

The study determined that legal regulation of cryptocurrencies in the EU, the UK and Ukraine faces several challenges that require a systematic and comprehensive approach. Adaptation of regulations is a key factor in ensuring the security and transparency of the crypto asset market, as well as the protection of consumer and investor rights. At the same time, it is necessary to address the political and economic peculiarities of individual countries, which influence the formation of the regulatory framework.

■ Conclusions

The study analysed the legal regulation of crypto assets in the European Union, the United Kingdom and Ukraine. This identified both common trends related to the need to combat money laundering and terrorist financing and significant differences in the approaches of these jurisdictions. The study determined that a crypto asset is a type of digital asset that involves the use of encryption to ensure security and operates based on blockchain technology. Harmonisation of the regulatory framework is important to promote innovation and simultaneously ensure consumer protection and financial stability.

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The goal of this harmonisation is to create a single legal framework that will ensure consistency across jurisdictions, which will reduce uncertainty for businesses and investors.

The study determined that the EU is committed to harmonising legislation and creating a single market for crypto assets, with the development of the MiCA designed to enhance transparency and security for crypto asset service providers and consumer protection. However, there are challenges in jurisdictions such as the UK, where a fragmented regulatory approach has led to uncertainty regarding the legal regulation of innovation and investment in the cryptocurrency market. Ukraine is creating more flexible legislation, considering the experience of other countries (in particular, the EU experience), which will allow for effective legal regulation of crypto assets. Compared to Ukraine, both countries need to harmonise regulations to create a safe environment for attracting investment and innovation in the cryptocurrency market.

The study highlighted that while the EU's approach is to create a unified market for crypto assets, differences in regulation in individual countries can lead to regulatory arbitrage, in which businesses choose jurisdictions with more favourable regulation. Overall, a comprehensive regulatory framework is needed that not only responds to the current challenges but also anticipates future developments in the rapidly evolving cryptocurrency space. As countries struggle with these challenges, cooperation between regulators at both the national and international levels is essential to create a safe and effective legal environment for cryptocurrency transactions. Further development of legislation in this area will significantly affect the prospects for digital finance, as well as the perception and use of cryptocurrencies in the economic space in general. The study is limited to the analysis of three jurisdictions: the EU, the UK, and Ukraine, which cannot be used to conclude on global trends in cryptocurrency regulation. Further research could be aimed at expanding the geographical coverage of the analysis, including more quantitative indicators to assess the development of cryptocurrency infrastructure, as well as a detailed study of cryptocurrency taxation in different jurisdictions.

■ Acknowledgements

None.

■ Conflict of Interest

The author of this study declares no conflict of interest.

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Правове регулювання криптовалют у Європі: проблеми гармонізації та перспективи розвитку

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■ **Анотація.** Метою дослідження було виявлення ключових проблем у сфері гармонізації законодавства й окреслення перспектив розвитку криптовалют у Європейському Союзі, Великій Британії та Україні. У дослідженні використано герменевтичний, порівняльний та історичний методи. Визначено поняття криптоактиву, його сутність і зміст, зокрема види (токен, пов'язаний з активом, токен електронних грошей і токен послуг). У дослідженні проаналізовано регулювання криптовалют у юрисдикціях Європейського Союзу, Великої Британії та України. Водночас розглянуто тенденції та перспективи правового регулювання віртуальних активів у цих країнах. Встановлено, що фрагментарний підхід до регулювання, який застосовують у Великій Британії, призвів до невизначеності, що негативно позначилося на інноваціях та інвестиціях у криптовалютному секторі. Виявлено істотні відмінності в регулюванні криптовалют у різних країнах, які створюють суттєві перешкоди для гармонізації законодавства й подальшого розвитку ринку. Водночас загальною є тенденція до посилення регулювання криптовалют з метою запобігання їх використанню для незаконної діяльності, такої як відмивання коштів і фінансування тероризму, а також для забезпечення захисту інвесторів. Дослідження засвідчує важливість прийняття Закону України «Про віртуальні послуги», який стане єдиним нормативно-правовим актом у державі, що регулюватиме відносини у сфері криптоактивів

■ **Ключові слова:** віртуальні активи; токени; гармонізація законодавства; нормативно-правовий акт; незаконна діяльність

Theoretical legal analysis of abuse of power or official authority by a military official in martial law or combat situation: Key aspects

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■ **Abstract.** The relevance of this study is conditioned by the increasing significance of legal mechanisms in ensuring law and order, discipline, and responsibility of military leadership under martial law and combat situation. The purpose of this study was to theoretically investigate the key aspects affecting the qualification and investigation of criminal offences under Article 426-1 of the Criminal Code of Ukraine and to identify the problems and shortcomings related to the application of current legislation in proving the guilt of the perpetrator of such an offence. The methodological toolkit included a set of general scientific and special methods of legal analysis. The legal method was employed to analyse current legislation, the historical legal method – to investigate the evolution of legal provisions, the comparative legal method – to compare various approaches to the application of national legislation in practice, etc. This analysis was aimed at determining the place of the criminal offence under study in the system of forensic classification of military criminal offences. The study identified the elements determining the specifics of their investigation and providing them with a forensic characterisation to develop effective methods for investigating abuse of power or authority by military personnel. Based on the findings, the study provided a theoretical legal characterisation of the subject of the offence under study, which is a military officer. The study analysed such legal categories as special period, martial law, and combat situation. The specifics of abuse of power and official authority in the military sphere were identified. The study described the key aspects of military subordination and clarified the concepts of a military commander and a military superior. The study proposed to supplement the provisions of the Law of Ukraine “On Military Duty and Military Service” in the part relating to the category of “military official” to ensure harmonisation of legislative provisions governing legal relations in the military sphere with criminal law provisions prescribing liability for offences against the established procedure for military service

■ **Keywords:** military criminal offences; military official; military commander; military chief; military discipline; disciplinary authority; criminal liability

■ Introduction

The abuse of power or official authority by a military official as a separate criminal offence has appeared in the current legislation relatively recently. It is evident

that with the beginning of the anti-terrorist operation in eastern Ukraine (from April 2014 to April 2018), there was a need to criminalise certain actions of

■ Suggested Citation:

Kostiuk, I. (2024). Theoretical legal analysis of abuse of power or official authority by a military official in martial law or combat situation: Key aspects. *Scientific Journal of the National Academy of Internal Affairs*, 29(4), 61-74. doi: 10.56215/naia-herald/4.2024.61.

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■ Received: 04.08.2024; Revised: 28.10.2024; Accepted: 26.11.2024



military personnel from among the commanding officers. In 2015, the Law of Ukraine No. 290-VIII¹ was adopted at the national level, amending the criminal legislation of Ukraine, the provisions of which were supplemented by Article 426-1. However, in historical terms, this type of criminal offence is not new. In 1995, the Law of Ukraine No. 282/95-BP² was adopted, according to which the Criminal Code of Ukraine³ (CC of Ukraine) of 1960 was amended with respect to official crimes, where Chapter XI was supplemented by Article 254-2, which established liability for abuse of power or official authority by a military official. Comparison of this provision suggests that it is close to Article 426-1 of the CC of Ukraine⁴, the only difference being the status of the subject of the offence and the specificity of some of the ways of committing it. At the same time, Article 426-1 applies exclusively to military officials and is completely blanket in nature, which makes it necessary to refer to legislative and subordinate acts that provide the relevant legal assessment of the actions of the subject of this offence.

The interest in this subject stems from the ambiguity of the provisions of the criminal legislation of Ukraine of the 1960s and 2001s regarding the “abuse” and “exceeding” of power or official authority by military personnel. Comparison of Articles 254 and 254-2 of the CC of Ukraine of 1960⁵ (Yatsenko & Shakuna, 1998) with Articles 423 and 424 of the CC of Ukraine of 2001⁶ (Melnyk & Havronyuk, 2001) shows that the disposition of Article 254, which established liability for “abuse” of power or official authority, corresponds to Article 424, which defined liability for “exceeding” these powers. At the same time, Article 254-2, which stipulated liability for “abuse” of power or official authority, correlates with Article 423, which prescribed punishment for “abuse” of the said authority.

From a practical standpoint, the interest is also actualised by empirical analysis of court decisions. An illustrative example is the Decision of the Criminal Court of Cassation in case No. 216/1675/22 of 5 July 2023⁷, where the pre-trial investigation and prosecution authorities failed to prove the guilt of the accused military official in the abuse of power and official authority under martial law, which led to the death of a subordinate. The theoretical analysis of the key aspects of the criminal offence under study will

contribute to a more thorough understanding of its legal nature. This will ensure further improvement of the legal framework and doctrinal approaches to the investigation of military unlawful acts related to the violation of the order of performance of official duties.

Prominent studies in this area include a series of modern scientific findings by Ukrainian lawyers on criminal liability and punishment for military criminal offences. M. Komissarov *et al.* (2024) investigated the issues of qualification of military criminal offences committed under martial law at the theoretical and applied level. N. Stefaniv (2023) made a general description of military criminal offences from the perspective of a judge of the Supreme Court of Ukraine. O. Obodovsky (2021) analysed the general aspects of military criminal offences and their characteristics. I. Vartyletska & O. Sharman (2021) examined the specific features of the qualification of criminal offences committed during the special period of martial law. M. Yankovy (2023) highlighted the problematic aspects of investigating criminal offences committed by military personnel during armed conflict.

The interest in the offence under study is enhanced by the statistical data provided by N. Dmytrenko & O. Shkuta (2022), which indicate the latent nature of these acts due to the conservatism of the military system. This paradigm is also confirmed by foreign research. Specifically, analysing the socio-psychological determinants of deviant behaviour among the military, D. Messervey & E. Squires (2021) determine that the illegal activities of the military are influenced by various factors of dispositional (individual), situational (external), and systemic (institutional) origin. The researchers addressed the elevated level of concealment of these offences and the influence of the country’s military and political leadership on this circumstance. The explanation for this is that the military sphere has a specific and strategic nature, where offences are formally directed against the state. As L. Medvid (2020) notes in this regard, crime among the military command effectively undermines the functioning of the country, and its consequences threaten national security and shape public opinion on the level of safety and security of citizens.

The blatant nature of this offence necessitates a comprehensive theoretical legal analysis of the key aspects of abuse of power or authority by military

¹ Law of Ukraine No. 290-VIII “On Amendments to the Criminal Code of Ukraine Regarding Exceeding Authority or Official Powers by a Military Official”. (2015, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/290-19#n5>.

² Law of Ukraine No. 282/95-BP “On Amendments and Supplements to Certain Legislative Acts of Ukraine Regarding the Liability of Officials”. (1995, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/282/95-%D0%B2%D1%80#Text>.

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⁴ Criminal Code of Ukraine. (2001, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/2001-05#Text>.

⁵ Criminal Code of Ukraine. (1960, December). Retrieved from https://zakononline.com.ua/documents/show/140565__529152.

⁶ Criminal Code of Ukraine. (2001, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/2001-05#Text>.

⁷ Judgment of the Criminal Court of Cassation as Part of the Supreme Court of Ukraine in Case No. 216/1675/22. (2023, July). Retrieved from <http://iplex.com.ua/doc.php?regnum=112088025&red=100003a60553feaa7cff2f5374c362be92a373&d=5>.

personnel. In this context, it is essential to examine the legal status of a military official, its relationship with power and official authority, disciplinary power, and statutory measures of influence. Particular attention should be paid to the determination of the purpose of the motivation for the unlawful activity, the distinctive differences between the legal regime of martial law and the combat situation, as well as the issues of military subordination and cause and effect relationships that may affect the unlawful activity of military personnel.

The findings of recent legal research do not provide sufficiently clear answers to address these issues. Focusing on the criminal law aspects of this offence, A. Zvenigorodskiy & O. Kizyun (2022) and Sh. Dovlatov *et al.* (2023) formulate an axiomatic statement that the subject of this offence is a person with the official status of a military official, its subjective side is characterised by an intentional form of guilt, while motives and purpose are crucial elements for a fair sentence.

In this context, it was necessary to investigate the established theoretical legal aspects of abuse of power or official authority by a military official in martial law or a combat situation, which affect the specific qualifications and degree of responsibility of the offenders. Proceeding from this, the purpose of this study was to develop theoretical foundations and practical recommendations for improving criminal legislation and law enforcement practice in the investigation of criminal offences related to abuse of power or authority by a military official during martial law or in a combat situation.

■ Materials and Methods

The choice of the subject of this study determined its methodology, which forms the method and conceptual framework of analysis depending on the subject matter and the tasks set. To solve the tasks set, the study employed the method of regulatory legal analysis, which involved a systematic examination of regulations to assess their effectiveness, consistency, and possible shortcomings. The method of legal integration was also used, which helped to interpret

the content of the current legislation and substantiate its improvement. The retrospective legal analysis was used to compare the current legislation with the previous ones, to investigate the evolution of legal provisions, the causes and consequences of their changes and amendments, and to analyse possible legal gaps in the new versions.

To evaluate legal categories, clarify definitions, and develop proposals for improving the current legislation, this study employed a multifactor analysis method that enables comparative legal and formal legal analysis of various approaches to the issues under study. The modelling method contributed to the formulation of conclusions and proposals aimed at improving the investigation of military criminal offences related to the abuse of power or official authority by military personnel under martial law or in a combat situation.

The basis of the legal analysis in this study was formed by legislative and subordinate legal acts, the provisions of which regulate certain issues of military legal relations, specifically in the part related to such categories as military official, power and official functions, disciplinary power, statutory measures of influence, military subordination, special period, martial law, combat situation, etc. These regulations included the Constitution of Ukraine¹, the Criminal Code of Ukraine², the Law of Ukraine “On Military Duty and Military Service”³, “On Mobilisation Training and Mobilisation”⁴, “On the Legal Regime of Martial Law”⁵, “On the Disciplinary Statute of the Armed Forces of Ukraine”⁶, “On the Statute of the Internal Service of the Armed Forces of Ukraine”⁷, as well as other legislative acts that served as the basis for the completion of the tasks set according to the subject of this study.

■ Results and Discussion

Analysis of the term “military official”. To implement the provisions of Article 19 of the UN Convention against Corruption⁸, into the Ukrainian legislation, the Law No. 746-VII⁹ was adopted in 2014. According to this act, the criminal legislation of Ukraine was amended to decriminalise the criminal

¹ Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

² Criminal Code of Ukraine. (2001, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/2001-05#Text>.

³ Law of Ukraine No. 2232-XII. “On Military Duty and Military Service”. (1992, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/2232-12#Text>.

⁴ Law of Ukraine No. 3543-XII “On Mobilisation Training and Mobilisation”. (1993, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/3543-12#Text>.

⁵ Law of Ukraine No. 389-VIII “On the Legal Regime of Martial Law”. (2015, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/389-19#Text>.

⁶ Law of Ukraine No. 551-XIV “On the Disciplinary Statute of the Armed Forces of Ukraine”. (1999, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/551-14#Text>.

⁷ Law of Ukraine No. 548-XIV “On the Statute of the Internal Service of the Armed Forces of Ukraine”. (1999, March). Retrieved from <https://zakonrada.gov.ua/laws/show/548-14#Text>.

⁸ UN Convention against Corruption. (2003, October). Retrieved from https://zakon.rada.gov.ua/laws/show/995_c16#Text.

⁹ Law of Ukraine No. 746-VII “On Amendments to the Criminal and Criminal Procedural Codes of Ukraine Regarding the Implementation into National Legislation of the Provisions of Article 19 of the UN Convention against Corruption”. (2014, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/746-18#Text>.

offences under Articles 423 and 424. Concurrently, the term “military official” was introduced, by which the legislator referred to military commanders and other military personnel who permanently or temporarily hold positions involving the performance of organisational, administrative, or economic functions, or perform such duties on special instructions of an authorised commander (Article 425)¹. A comparable definition is contained in the provisions of Article 172-13 of the Code of Ukraine on Administrative Offences², however, the legislation on administrative liability uses the conjunction “or” between the phrases “organisational and managerial” and “administrative and economic” functions.

The ambiguity of the context of the term under study is reinforced by the provisions of the Law of Ukraine No. 2232-XII³. In part 12 of Article 6 of this act, the content of this category is formulated analogously to the definition contained in administrative legislation, although the term “military executive” is used. This substantially affects the characterisation of the subject of the offence under study and creates grounds for providing a legal correction of the terms “military executive” and “military official”. Although the terms “executive” and “official” are widely used in Ukrainian legislation, their correlation is not addressed in any regulation. This causes complications in the legal application and legal interpretation of these terms, which, despite certain similarities, have differences.

The Constitution of Ukraine⁴ also provides ambiguous definitions of these terms. Thus, according to the Constitution, state authorities and local self-government bodies, their officials are obliged to act only based on the grounds, within the limits, and in the manner prescribed by the Constitution and laws of Ukraine (Article 19); everyone is entitled to appeal to state authorities, local self-government bodies, their officials and employees, who are obliged to provide a reasonable response to the appeal within the time limit specified by law (Article 40); entrepreneurial activity of deputies, officials and employees of state authorities and local self-government bodies is limited by law (Article 42); everyone is guaranteed the right to appeal the decisions, actions, and inaction of the state authorities, local self-government bodies, and their executives and officials (Article 55), etc.

In the Law of Ukraine No. 3475-IV⁵ the term “executive” is defined as the head of the civil service in a

state body. The Law of Ukraine No. 2493-III⁶, defines this concept by analogous criteria, where Article 2 states that a local self-government executive is, firstly, a person employed by local self-government bodies, secondly, has the relevant official powers to perform organisational and administrative, advisory and consultative functions, and thirdly, receives a salary from the local budget. In other words, an “executive” is defined as a subject of legal relations who primarily performs organisational, administrative, and advisory functions. In turn, an “official”, apart from organisational and administrative functions, performs administrative and economic functions. This suggests that organisational and managerial, advisory and administrative, and economic functions reflect different aspects of management and organisational functioning. However, these categories are interrelated and complement each other within the overall management process. For example, organisational and managerial functions form the basis of management activities, determining how other functions should be organised and implemented. They provide the structure and order necessary for the effective completion of tasks. Advisory and consultative functions support the organisational and managerial functions by providing expert opinions and recommendations for making informed management decisions. These activities help to clarify the strategies and approaches used in management processes. Meanwhile, administrative and business functions implement the practical aspects of management, providing resources for day-to-day operations. They facilitate the implementation of organisational and managerial functions by providing material and financial resources.

Thus, it is worth supporting the theoretical legal opinion proposed by N. Yarmysh (2015), according to which any executive is by definition an official, but not all officials are executives. An official exercises official powers that cover the rights and duties associated with the performance of functions within the civil service, including the military. These functions relate to the performance of tasks related to the representation of the interests of the state or an organisation, including administrative, managerial, economic, etc.

At the same time, an executive exercises official powers, which are characterised by concrete rights and duties assigned to a particular position in the organisational and staffing structure. These powers

¹ Criminal Code of Ukraine. (2001, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/2001-05#Text>.

² Code of Ukraine on Administrative Offences. (1984, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/80731-10#Text>.

³ Law of Ukraine No. 2232-XII “On Military Duty and Military Service”. (1992, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/2232-12#Text>.

⁴ Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

⁵ Law of Ukraine No. 3475-IV “On the State Service of Special Communication and Information Protection of Ukraine”. (2006, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/3475-15#Text>.

⁶ Law of Ukraine No. 2493-III “About Service in Local Self-Government Bodies”. (2001, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/2493-14#Text>.

determine the responsibility, rights, and obligations of the person holding the position, which is part of the labour relationship. However, not all officials are executives, as official powers can be broader than executive ones. They may cover persons who perform governmental or other state functions, but do not necessarily hold a concrete position in the hierarchy of the organisational structure. In other words, for executives, their duties are always conditioned by a particular position, which is fixed in the staffing table. Officials, on the other hand, are broader categories that cover entities that have public functions and can act based on the orders or powers without being permanently assigned to a concrete position.

In the context of the military service, this can be illustrated at the level of command. For instance, a platoon commander is an executive officer. This is a person who holds a specific position in the organisational structure of a military unit. Their duties are clearly defined in their job description, which may include managing the platoon, organising military training, monitoring the execution of orders, etc. In this case, the platoon commander exercises the executive powers associated with their concrete position.

Officials can include a military commander or other servicepeople performing official duties that include organisational and managerial, advisory and administrative, and economic functions. For example, a senior officer who temporarily performs administrative support duties for a military unit but does not hold a separate position in the staffing table. They may be temporarily appointed to this function but are responsible as an official. That is, an executive holds a concrete position in the structure of the military unit and performs their duties according to this position. An official, on the other hand, may perform analogous or broader functions, but it is not necessary that they hold a concrete position to perform these functions.

Another example is the executive officer of a military unit's chief of staff. This is an officer who holds a clearly defined position in the command structure of a military unit. Their functions and responsibilities are set out in the staffing table and job description. For example, they are responsible for organising the planning of operations, coordinating actions between units and maintaining official records. In this case, the chief of staff is an executive, as their rights and duties are clearly related to their position.

An officer who performs the duties of a company commander in the absence of the main commander is an official. This officer may not hold this position in the staffing table, but temporarily performs its

functions, for instance, during the leave, illness, or death of the main commander. In such a situation, the officer performs official duties, including supervising company personnel, controlling the execution of orders, and administrative and economic functions, but without being formally appointed to the position. In other words, an executive holds a permanent position with clear responsibilities and powers set out in the staffing table. An official may temporarily perform official duties without being formally appointed to a permanent position, but their duties must be covered by the above-mentioned powers.

An example of an official who permanently performs their duties is the commander of a military unit, who is an official who permanently holds a certain position and performs duties involving organisational, administrative, and economic functions. Their powers include command of personnel, planning and conducting military operations, responsibility for logistical support of the unit, and ensuring the implementation of military discipline. In this case, the commander of a military unit is both an executive, since they hold a certain position in the staffing table, and an official, since their functions cover the performance of duties related to the management of personnel and material resources. This means that the functions and powers of an executive must be assigned to a concrete position in a military unit, while in parallel, they may perform official duties that involve the organisation, control, and management of the activities of a military unit.

Therefore, to clarify the term "military official", it is necessary to supplement part 12 of Article 6 of the Law of Ukraine "On Military Duty and Military Service"¹, where the term "military executive" is set out in the following wording: "a military executive is a person from among the military personnel who holds a full-time position and performs official (service) powers (rights and duties) related to organisational and managerial, administrative and economic, and advisory functions in the military sphere, or who is specially or temporarily authorised to perform these functions in accordance with the law". These amendments will enable a more precise characterisation of a "military official" as a subject of a criminal offence, since in this case it is a military officer who performs not only official duties but also executive ones.

Analysis of the terms "special period", "martial law", and "combat situation". With the development of social relations and changes in the military-political situation, in 2008, the term "special period" was introduced into Ukrainian legislation². This prompted the addition of new qualifying

¹ Law of Ukraine No. 2232-XII. "On Military Duty and Military Service". (1992, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/2232-12#Text>.

² Law of Ukraine No. 1932-XII "On the Defence of Ukraine. Law of Ukraine". (1991, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/1932-12#Text>.

features to the criminal offence under study, which distinguished between the abuse of power or authority by a military official in peace, a special period, martial law, or a combat situation. Thus, additional circumstances were introduced into the current criminal legislation that affect the socially dangerous nature of this act and increase the responsibility for their commission.

The special period has a legislative rationale that is closely related to such categories as “mobilisation”, “demobilisation”, and “martial law” (Article 1 of the Law of Ukraine “On Mobilisation Training and Mobilisation”¹). However, this study did not aim to reproduce the norms already defined by the legislation. Its purpose was to investigate the essence, content, and meaning of this concept using scientific approaches.

When analysing the term “martial law”, which is defined in the legislative act of Ukraine of the same name², it is worth paying attention to such a term as “legal regime”. This term has received considerable attention in the scientific literature. Specifically, when exploring the term “legal regime”, O. Yakovlev (2015), L. Vakaryuk (2016), and N. Kovalenko (2019) considered it as a set of legal provisions and mechanisms regulating the procedure and conditions for the functioning of a certain area of social relations. In the general context, this concept is abstract in nature, establishing rules of conduct, rights and obligations, as well as restrictions for concrete subjects within a particular legal relationship or field of activity.

Legal regimes are classified according to various criteria that depend on the nature of legal relations, as well as the purpose and specifics of the conditions of its application. For instance, they can be divided into constitutional law, civil law, criminal law, administrative law, etc. Depending on the purpose and specifics of legal relations, these regimes can be differentiated into a state of emergency, martial law, etc. In terms of territorial scope, a legal regime may be of national or local significance.

In other words, legal regimes cover multiple spheres of public life and provide legal regulation of various types of social relations proceeding from the concrete conditions of their application. In this context, they can be classified as special and exceptional. In effect, these regimes are legal instruments established by law to ensure effective management, security, and control in particular situations or conditions. They define special or exceptional rules and procedures that apply in particular cases or areas of activity. The key differences between them lie in their purpose, scope of application, and the degree of restrictions imposed. Specifically, special legal regimes

are introduced to regulate concrete areas of activity or certain situations that require an increased level of security and control. Since these regimes are applied to specific situations or activities, their impact may be both local and narrowly targeted.

At the same time, exceptional legal regimes are introduced in extraordinary cases, usually in response to emergency circumstances that threaten security, law and order, public administration, sovereignty, and territorial integrity of the state. These regimes have a wider scope, depending on the nature of the emergency and its consequences. They may cover the entire territory of the country or a significant part of it. Exceptional legal regimes impose stricter limitations that affect the fundamental rights and freedoms of citizens, as well as the activities of enterprises, institutions, and organisations, regardless of their form of ownership. This is explained by the fact that emergencies require urgent, large-scale, and effective measures of influence, response, and control from the state.

Thus, the key criterion for the introduction of an exceptional legal regime is the emergence of extraordinary circumstances that threaten national security, public order, public health, or the environment. In other words, situations when normal conditions of human life are disrupted, caused by accidents, catastrophes, natural disasters, dangerous events of terrorist, and unconstitutional nature or secondary factors of social or military origin. In this interaction, extraordinary circumstances form extraordinary conditions that lead to the introduction of a state of emergency in the country.

The state of emergency is an exclusive measure introduced to eliminate the consequences of extraordinary circumstances caused by certain events, to normalise the situation, restore law and order in the state. Under these conditions, the military and law enforcement agencies must reorganise their activities in such a way as to ensure the fastest possible elimination of the consequences of the emergency, normalise the situation and restore law and order in the country. However, it is extremely challenging to achieve these goals by conventional methods, which is why, depending on the concrete circumstances, exceptional legal regimes of emergency or martial law are temporarily introduced. According to S. Gizimchuk (2021), in specific conditions, these legal regimes allow for the application of exclusive measures aimed at eliminating or minimising the consequences of emergency circumstances and often involve temporary restrictions on the rights and freedoms of citizens, as well as the use of supplementary resources and powers of certain state bodies to respond to a crisis effectively.

¹ Law of Ukraine No. 389-VIII “On the Legal Regime of Martial Law”. (2015, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/389-19#Text>.

² Ibidem, 2015.

Depending on their origin, special legal regimes are divided into natural, anthropogenic, social, or military¹. Military emergencies usually arise as a result of an armed conflict, hostilities, or other military events that lead to significant destruction, human casualties, disruption of the population's living conditions, and major changes in the political, economic, social, and state-building spheres of society. An example of such situations is military aggression and its concomitant consequences, including massive destruction of infrastructure facilities, numerous civilian casualties, destabilisation of the economic system, disruption of social order, and changes in the system of public administration.

Thus, martial law is an exceptional legal regime that is temporarily introduced in a state as a result of military emergency. It involves the introduction of specific measures to ensure national security, including restrictions on the rights and freedoms of citizens, mobilisation of resources, strengthening of control over territories and infrastructure, as well as coordination of activities of the authorities and military structures to effectively respond to military threats. The Law of Ukraine "On the Legal Regime of Martial Law"² emphasises this point.

In other words, the introduction of martial law is the result of military aggression and military actions of the enemy state against a sovereign subject of international relations. In this context, the military response authorities are entrusted with the key functions, including coordination of military and civilian efforts, operational management of resources, maintenance of public order and security, implementation of defence and threat neutralisation measures, as well as ensuring an effective response to situations arising under martial law or in a combat situation.

When examining the term "combat situation", it should be noted that its definition is expressed both in the commentary to Article 402 of the CC of Ukraine³ and in the scientific context by S. Gizimchuk (2021), K. Gurchenko (2023), M. Yankovyi (2023), etc. Having analysed different opinions on this concept, the study concluded that the combat situation referred to in Section XIX of the Criminal Code of Ukraine is a derivative of military operations. It is a direct result and reflection of active military operations that affect the situation on the battlefield. Military actions form the conditions that determine the combat situation, including the location of troops, strategic and tactical changes, the effect on the civilian population and other aspects of the situation. This means that martial law, albeit imposed in connection with

military aggression, can also apply to areas where no hostilities are taking place. In other words, this legal regime can cover both the areas of hostilities and other territories to ensure security and law and order in the context of military aggression. A combat situation may arise in the context of military operations or armed conflict, even if martial law is not formally introduced in the country. In this context, martial law is an exceptional legal regime that is introduced in the state as a whole and particularly in connection with the threat of military aggression or hostilities, but this does not mean that hostilities or a martial law situation are possible only in the presence of martial law.

Apparently, the legislator intended to distinguish between the composition of the criminal offence under study, in cases where unlawful acts are committed under martial law outside the areas of hostilities, and in cases where these acts are committed in other conditions, including martial law within the areas of hostilities or military operations (combat situation). In this regard, as researchers rightly point out, such a distinction is a prerequisite for a more accurate determination of the qualifying circumstances of a criminal offence under which criminal liability may arise, which affects the severity of the consequences caused by the unlawful actions of a military officer (Bondaevsky, 2012; Bayda & Sklez, 2019).

Therefore, when investigating an abuse of power or official authority by a military official committed under martial law or in a combat situation, it is important to establish the time of the criminal offence. Specifically, two important circumstances need to be clarified. Firstly, whether the military officer was on duty at the time of the offence, as this allows assessing the legality of their actions within the scope of their official duties. Determining when a military officer was on duty is also essential to ascertain whether the suspect was acting within their competence when committing the offence. This applies not only to the perpetrator, but also to the victim, if any, as their status at the time of the incident may affect the further legal assessment of the situation and the establishment of liability.

Secondly, it is equally vital to establish the period when the criminal offence was committed, as this may affect the qualification of the act and the determination of the degree of liability. The period of the offence is important for the correct correlation of the perpetrator's actions with the conditions of martial law or combat situation, which may directly affect liability and punishment.

¹ Code of Civil Protection of Ukraine. (2012, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/5403-17#Text>.

² Law of Ukraine No. 389-VIII "On the Legal Regime of Martial Law". (2015, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/389-19#Text>.

³ Criminal Code of Ukraine. (2001, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/2001-05#Text>.

Analysis of the concepts of abuse of powers of authority and official powers. Having formed as a separate corpus delicti of a criminal offence, the legislator considers “abuse of power or authority” by a military official to mean intentional actions that, firstly, clearly exceed the limits of the powers of authority or official position granted to that person – rights and duties (part 1), and secondly, involve the use of measures of influence that do not conform to statutory norms or disciplinary authority (part 2), provided that these actions caused substantial damage or grave consequences¹. These circumstances are the key criteria that distinguish this criminal offence from a military disciplinary offence, which is also confirmed by the findings of V. Shkarpytska (2018), A. Podolyak & Yu. Dyomin (2021).

Unlike abuse of authority or official position, abuse of powers is committed exclusively through active conduct that clearly exceeds the competence of a military official. This means that the perpetrator, being aware of the limits of their powers, deliberately performs actions that clearly violate the scope of their rights and duties. In this context, the intellectual element of intent is the person’s awareness of the socially dangerous nature of their actions and the foresight of the possibility or inevitability of harmful consequences (Review of judicial practice..., 2023). In other words, the person committing this criminal offence is aware of exceeding the limits of their powers and understands that the actions committed are not within their competence.

Depending on the specifics of the activity, according to P. Gorinov & K. Mereniuk (2022), the scope and limits of powers should be carefully detailed in regulations. This is also confirmed by the relevant provisions of the Constitution of Ukraine², according to which the legislative, executive, and judicial branches of government exercise their powers within the limits set by the Constitution and in the manner prescribed by the laws of Ukraine (Article 6). State bodies, local self-government bodies, and their executives are obliged to act exclusively based on and within the limits of the powers prescribed by both direct-action provisions and other legislative acts (Article 19).

The term “powers” does not have a universal definition, but it is widely used in public service and is combined with various categories related to public administration. Among these categories, it is worth highlighting such terms as powers of authority, own (self-governing) powers, delegated powers, state-executive powers, local self-government powers, etc. (Kovbasyuk *et al.*, 2010). Based on the analysis of the above categories, official powers should be

understood as a set of rights and obligations granted to officials to perform their official functions within the established competence. They are regulated by laws and regulations and are aimed at ensuring the effective performance of tasks of public authorities or local self-government bodies, as well as at achieving the goals of state or public activity. Service powers cover both the power and organisational aspects of service activities that regulate the interaction between the subjects of governance. They include all the rights and obligations granted to officials to perform their functions, including administrative, managerial, and powers of authority.

At the same time, “powers of authority” are a specific type of official powers that relate to the ability and opportunity to influence the activities and behaviour of others. In other words, all powers of authority are inherently official, but not all official powers are powers of authority. An example of such authority in the military is the duty to train junior personnel. An instructor or a senior member of the armed forces may be responsible for teaching recruits the basics of military service. These powers are aimed at imparting knowledge and skills, but do not involve direct management or control over the actions of recruits.

Thus, service powers are closely related to such terms as “civil service” and “civil servant” as defined in Article 1 of the Law of Ukraine “On Civil Service”³. An analysis of these terms suggests that civil service is performed by civil servants who hold positions in state bodies and their structures, have the relevant official powers necessary to perform the tasks of the state, and receive salaries from public funds. The scope of the civil service is covered by the boundaries of official activity, which means that it operates within the framework of certain rules and regulations that govern the behaviour of employees and their discipline. In this context, according to V. Sokurenko (2015), a civil servant is obliged to perform their official duties in good faith, show respect for citizens, superiors, and colleagues, maintain a high culture of communication, and avoid actions that may harm the interests of the civil service or negatively affect the reputation of civil servants.

An analogous approach applies to military officers whose responsibility is determined by a negative assessment of their behaviour in terms of state interests. Such behaviour is contrary to the requirements of military discipline and may result in the application of measures of influence by authorised officials. Depending on the consequences, according to O. Kizyun (2020), Sh. Dovlatov *et al.* (2023), this

¹ Criminal Code of Ukraine. (2001, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/2001-05#Text>.

² Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

³ Law of Ukraine No. 889-VII “On Civil Service”. (2015, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/889-19#Text>.

responsibility may entail the application of both disciplinary measures in the form of disciplinary sanctions and criminal law measures in the form of criminal penalties.

According to the Disciplinary Statute of the Armed Forces of Ukraine¹, military discipline involves strict and absolute compliance by all military officers with the order and rules stipulated by military regulations and applicable legislation. It is based on the military officers' awareness of their military duty, responsibility for the defence of sovereignty, independence, and territorial integrity, as well as loyalty to the military oath (Items 1, 2). In other words, military officers are obliged to faithfully perform the duties of military service, obey lawful orders of commanders, the provisions of the Constitution and laws of Ukraine, and ensure the non-disclosure of military secrets and classified information (Medvid, 2020). In the exercise of their powers under martial law or in a combat situation, military officers must act according to the generally recognised principles of international humanitarian law, the violation of which leads to the application of criminal sanctions not only of a national but also of an international nature (Rubanenko, 2024).

Thus, within the framework of military service, military discipline is closely related to disciplinary power, which serves as a tool for maintaining military law and order. It is exercised through the right of commanders and superiors to impose disciplinary sanctions on subordinate military personnel who have violated the military oath, military regulations, orders, and other legislative and subordinate legal acts regulating the activities of military personnel. Disciplinary measures may include admonitions, reprimands, severe reprimands, deprivation of the military rank, demotion, and other sanctions stipulated by the relevant statutes. The procedure for applying these sanctions, the scope of the commander's powers in this area and other procedural aspects of disciplinary proceedings are regulated by the relevant military regulations, the violation of which may result in criminal liability.

In this context, it is necessary to distinguish between disciplinary authority and statutory measures of influence. The difference between them is that disciplinary authority relates to the exercise by the commander of their powers to impose disciplinary sanctions for violations of military discipline. Statutory measures of influence, on the other hand, cover a wide range of actions, including organisational and managerial decisions that can be taken to ensure the

proper performance of military duties, even without violations. Understanding this distinction allows for effective management in military structures, ensuring a balance between coercion and incentives to perform duties.

Special attention should be paid to the rights of military personnel to use physical force, as well as special means and weapons in the performance of their duties. These actions can be considered as statutory measures of influence, as they are performed within the framework of military regulations and provisions governing the behaviour of military personnel in various circumstances, including ensuring military discipline and performing official tasks. For example, according to Item 21-1 of the Statute of the Internal Service², a commander (chief) in an exceptional period, including martial law or in a combat situation, is entitled to resort to violent measures of physical influence or special means to detain a military person who commits unlawful acts classified as military criminal offences to stop them. This force must be used in a manner that does not cause severe harm to the offender's health. In a combat situation, the commander is entitled to resort to the use of firearms or to order their use if no other methods are effective in stopping the offender's unlawful actions, while avoiding the death of a servicemember. In cases where circumstances permit, the commander is obliged to warn in advance the person against whom statutory measures of influence may be applied by announcing their intentions loudly or by firing a warning shot in the air.

Thus, the scope of official powers of military officials is covered by a wide range of regulations and personnel documentation issued on their basis, including functional duties, job descriptions, regulations, charters, orders, instructions, and laws that regulate the rights and obligations of military personnel. In case of violation of the law, military officers bear legal responsibility, which, depending on the consequences, may include criminal liability for abuse of authority or official powers. Abuse of authority or official powers covers such key aspects as official powers, powers of authority, discipline, legality, disciplinary power, disciplinary measures, and other statutory measures of influence that determine the mechanism of control and responsibility within the military service.

Analysis of the purpose and motives for abuse of authority or official powers. Depending on the method of committing the offence under Article 426-1 of the CC of Ukraine³, one can distinguish between

¹ Law of Ukraine No. 551-XIV "On the Disciplinary Statute of the Armed Forces of Ukraine". (1999, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/551-14#Text>.

² Law of Ukraine No. 548-XIV "On the Statute of the Internal Service of the Armed Forces of Ukraine". (1999, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/548-14#Text>.

³ Criminal Code of Ukraine. (2001, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/2001-05#Text>.

selfish and violent motives, which are typical for this context. Selfish motives include the actions of a military person that clearly exceed the limits of their powers and are aimed at achieving personal gain. These may include actions aimed at satisfying personal ambitions, needs, or desires for increased control, including to enhance prestige among subordinates, gain advantages in the military team, increase status, or obtain illicit enrichment. Violent motivations involve the use of physical or psychological violence by a servicemember that exceeds the limits of their authority or official powers. Such actions may be used as a means of achieving personal goals, for instance, to control subordinates, to force them to follow orders, to subdue individuals or groups of individuals, or to conceal illegal actions.

The abuse of authority or official powers by a military official should not contain conditional restrictions based on concrete contextual circumstances and should not cause substantial damage or grave consequences to the state, public, or personal interests of citizens. Considering the legal status of the subject of this offence, these actions in the educational and scientific literature include actions that are entrusted to other officials or require collegial decision-making; actions that require separate permission or a relevant situation; and actions that no one is entitled to perform or authorise (Savchenko & Kryshevych, 2012). The qualification of the studied criminal offence is possible only if the actions of a military officer are related to their official powers, but clearly exceed them. That is, actions that have no connection with their powers cannot be qualified as abuse of authority or official powers. Therefore, the criminal acts of a military official must be caused by their official position and be directly related to the rights and duties granted to them. This is also emphasised by the Plenum of the Supreme Court of Ukraine¹ where it is noted that in the absence of such a connection, the perpetrator's actions are subject to qualification under other Articles of the CC of Ukraine², where the subject is a general one.

Thus, from the standpoint of social relations, the abuse of power or official authority by a military official is a form of arbitrariness, which involves the unlawful commission of actions to satisfy one's own (personal) needs (interests) or achieve other personal goals. These actions violate the norms and rules of military service, public order, and military discipline, which are essential for society and law and order overall. In this respect, the only defined subject

of a criminal offence is a military official, who is a military person from among the senior staff who permanently or temporarily holds positions related to the performance of organisational and managerial, administrative and economic functions, or advisory functions, or performs these activities on behalf of an authorised person or governing body.

Analysis of the military chain of command and military subordination within the scope of official duties. In the military sphere, senior officers are covered by such concepts as commander and/or chief. An analysis of the Internal Service Statute of the Armed Forces of Ukraine³ suggests that a commander is a military officer who leads a military unit, subunit, or other military organisational unit and is responsible for its general condition, combat readiness, performance of tasks, as well as for the moral and psychological state of subordinates, their training and discipline. The commander has permanent powers to manage the unit under their command.

A chief is a more general term that covers any official who has the powers to direct other military personnel within the scope of their duties. A chief may supervise subordinates on a permanent or temporary basis, particularly in connection with the performance of certain tasks or during the joint performance of official duties. A chief can be any military member who is senior in rank or position, regardless of whether they are a unit commander. According to the particular structure of military relations, determined by rank, position, and/or the nature of the duties performed, a chief in the hierarchical structure may be subordinate to a commander. This subordination occurs within the scope of official duties since the latter has higher powers and responsibility for managing the unit or the unit as a whole.

Thus, the chief may execute orders of the commander and report to them in the performance of assigned tasks. At the same time, in certain situations, a chief may have autonomy in managing subordinates and not report directly to the commander. This subordination is dynamic and depends on the concrete circumstances and the duties being performed. Thus, the hierarchical relationship between a superior and a commander may change according to the objective needs of the service, which requires flexibility in management and performance of duties.

For instance, in the context of combat operations, a chief may act independently in cases where an urgent response is required, demonstrating the dynamism of hierarchical relations in the military structure.

¹ Decision of the Judicial Panel of the Supreme Court of Ukraine No. n0140700-01. (2001, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/n0140700-01#Text>.

² Criminal Code of Ukraine. (2001, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/2001-05#Text>.

³ Law of Ukraine No. 548-XIV "On the Statute of the Internal Service of the Armed Forces of Ukraine". (1999, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/548-14#Text>.

For example, during an offensive operation in a combat situation, a company commander receives a task from the senior command to capture strategically significant high ground. They order their subordinates – the company's chief of staff and platoon commander – to prepare and carry out the task assigned.

During the operation, the company's chief of staff, who is responsible for planning and coordinating the operation, notices that the enemy has intensified its forces on the flank. In this regard, they decide to redirect part of the forces to hold this flank without waiting for instructions from the company commander, as the situation requires a rapid response. This example is a confirmation of the chief's autonomy in the face of changing battlefield conditions. Although the chief of staff is subordinate to the commander, in this situation the chief's decisions help to avoid possible losses and preserve the combat capability of the unit. Otherwise, if such a decision led to the loss of combat capability of the unit, irreversible damage to military equipment or other military property, or substantial changes in the tactical situation on the battlefield to the benefit of the enemy, in the absence of combat immunity, the person is liable under Article 426-1 of the CC of Ukraine¹.

In the military sphere, subordination relations are covered by the principle of unity of command. It entitles the commander or chief to make decisions independently, give orders, and ensure their implementation according to the requirements of the legislation. The hierarchical structure includes two principal forms of subordination. The first concerns the relationship between a leader and subordinates by rank, which determines vertical subordination. The other involves horizontal subordination according to the official position of the military member, which regulates the performance of duties within a particular position regardless of rank and determines functional subordination within the scope of official authority.

In other words, according to military ranks and positions, some military officers may be chiefs, while others may be subordinates. Specifically, for enlisted personnel (soldiers and seamen), the superiors are non-commissioned officers and sergeants within the same military unit. For sergeants, petty officers, as well as soldiers and seamen, the superiors are junior officers of the same military unit. Commanding officers for privates, sergeants, non-commissioned officers, and junior officers are senior officers. For all these categories of military personnel, the commanders are generals and admirals of the respective command.

A superior officer is a person to whom a military member is subordinate on a permanent or temporary basis according to their official duties. The chain of command is regulated by orders of the military unit,

statutes, or relevant regulations. In cases where the service relations between military personnel are not clearly defined, the superior in position is determined as the chief during the joint performance of official tasks, and in case of equal positions – the senior in military rank. The chief has the powers to give orders to subordinates and demand their execution, while the subordinate is obliged to obey and execute the received orders without question.

An order may be issued to an individual military member or a group of military members orally, in writing, or by means of technical means of communication. The issuance of orders is permitted only within the scope of official duties and in the interests of the service, as the competence of the chief, as well as the right to issue orders, is limited to the scope of official powers. Requirements that are not related to the performance of official tasks, are caused by the personal interests of the chief or contradict the interests of the service cannot be regarded as an order. Similarly, a requirement from a chief formulated in a non-statutory form that degrades the dignity of a subordinate cannot be considered a lawful order.

■ Conclusions

Thus, the subject of the criminal offence under study is a person who must have an official connection with military service, be an authorised representative of a military unit or military command and control body, and hold a military position established by the staff list. This person must be a military officer or have an equivalent status confirmed by law and be subject to the rules of military service. The position must be related to the performance of organisational and managerial or administrative duties that include the powers to lead, organise military activities, or administrative work of the relevant military unit.

The scope of service powers of military personnel is regulated by a considerable number of regulations and personnel documents, including functional duties, job descriptions, regulations, charters, orders, instructions, and laws that define their competence. In case of violation of legal provisions, military members bear legal responsibility, the degree of which depends on the nature and consequences of the actions committed. The abuse of these powers covers such aspects as the exercise of official and authority, compliance with discipline and the rule of law, the use of disciplinary power, the implementation of statutory measures of influence and responsibility within the framework of military service both in peacetime and during a special period, martial law, or a combat situation.

In the context of social relations, the abuse of power or official authority by a military officer can

¹ Criminal Code of Ukraine. (2001, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/2001-05#Text>.

be viewed as a form of arbitrariness, which involves actions motivated by selfish or violent motives. These actions violate the established norms of military service, public order, and military discipline, which are essential for society and law and order. The only correct subject of the criminal offence under study is a military officer of a senior level who performs official duties on a permanent or temporary basis. In the military hierarchy, military officers can be superiors and subordinates. This subordination has two forms – by rank or position. The terms “commander” and “chief” cover commanding officers: a commander has permanent authority to manage a unit and personnel subordinate to them by rank. A chief may exercise leadership on a permanent or temporary basis, particularly in connection with the performance of certain tasks or duties. A superior may be any service member who is senior in rank or position, regardless of whether they have command responsibilities.

When investigating cases of abuse of authority or official powers by a military officer, special attention should be paid to the time and period of the unlawful acts. It is vital to establish whether the military officer was on duty at the time of the act, which

allows assessing the legality of their behaviour within the scope of their official rights and powers. This applies to both the offender and the victim, as their status may affect the legal qualification of the criminal case. Determining the period of the act is crucial for the correct qualification of the offence, especially in the context of peacetime, a special period, martial law, or a combat situation, which affects the level of responsibility and the degree of punishment.

In the future, it is necessary to investigate the theoretical and forensic aspects of classification and characteristics of abuse of authority or official powers by a military official committed under martial law and combat situation in greater detail.

■ Acknowledgements

The research was carried out in accordance with the individual plan of the author’s dissertation work at the Department of Criminalistics and Forensic Medicine of the National Academy of Internal Affairs.

■ Conflict of Interest

The author of this study declares no conflict of interest.

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Теоретико-правовий аналіз перевищення влади чи службових повноважень військовою службовою особою в умовах воєнного стану або бойової обстановки: ключові аспекти

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■ **Анотація.** Актуальність дослідження зумовлена посиленням значення правових механізмів у забезпеченні законності, правопорядку, дисципліни й відповідальності військового керівництва в умовах воєнного стану та бойової обстановки. Мета статті полягала в теоретичному дослідженні основних аспектів, що впливають на кваліфікацію та розслідування кримінальних правопорушень, передбачених ст. 426-1 Кримінального кодексу України, а також у виявленні проблем і недоліків, пов'язаних із застосуванням норм чинного законодавства під час доказування вини суб'єкта цього правопорушення. Методологічний інструментарій охоплював комплекс загальнонаукових і спеціальних методів правового аналізу. Використано нормативно-правовий метод для аналізу чинного законодавства, історико-правовий метод для дослідження еволюції правових норм, порівняльно-правовий метод для порівняння різних підходів до застосування норм національного законодавства в практичній діяльності тощо. Цей аналіз було спрямовано на визначення місця досліджуваного складу кримінального правопорушення в системі криміналістичної класифікації військових кримінальних правопорушень. Виокремлено елементи, які детермінують специфіку їх розслідування та надання їм криміналістичної характеристики для розроблення ефективних методик розслідування перевищення військовослужбовцями влади чи службових повноважень. За результатами дослідження було надано теоретико-правову характеристику суб'єкту досліджуваного правопорушення, яким є військова службова особа. Проаналізовано такі правові категорії, як особливий період, воєнний стан і бойова обстановка. Визначено специфіку перевищення влади і службових повноважень у військовій сфері. Надано характеристику основним аспектам військової субординації, уточнено поняття військового командира і військового начальника. Запропоновано доповнити норми Закону України «Про військовий обов'язок і військову службу» у частині, що стосується категорії «військова посадова особа», задля забезпечення узгодження законодавчих норм, які регулюють правовідносини у військовій сфері, з кримінально-правовими нормами, що передбачають відповідальність за правопорушення проти встановленого порядку несення військової служби

■ **Ключові слова:** військові кримінальні правопорушення; військовослужбовець; військовий командир; військовий начальник; військова дисципліна; дисциплінарна влада; кримінальна відповідальність

UDC 340.5:347.122

Doi: 10.56215/naia-herald/4.2024.75

The genesis of the concept and essence of the legal status of an individual in the Romano-Germanic and Anglo-Saxon legal families: Comparative analysis of Ukrainian and US legislation

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■ **Abstract.** The study was conducted to comprehensively analyse the peculiarities of formation and regulation of the legal status of an individual in Ukraine and the USA as representatives of the Romano-Germanic and Anglo-Saxon legal systems, respectively. In the study, a comparative analysis of legislative acts and regulations defining the legal status of individuals in these countries was carried out, and an assessment of legislative regulation in this area was conducted. The study determined that the legal status of individuals in Ukraine is based on a single centralised approach, where stability and clarity of rules contribute to legal predictability. This is reflected in strict rules regarding the clear definition of age limits for legal capacity and complex procedures for foreigners and refugees in labour rights. In the US, legal status is more dependent on case law and laws that differ from state to state, enabling a tailored approach to local circumstances. In the field of labour rights and refugee support, the American system, thanks to its flexibility, provides foreigners with greater opportunities for employment and quick adaptation. Judicial accountability in the United States ensures a quick response to rights violations, while centralised oversight in Ukraine provides uniformity in rule application across the country. Ukraine also has strictly regulated personal data protection rules, which ensures a high level of confidentiality but also creates certain difficulties in accessing information for individuals. Another important aspect is the strict regulation of political rights, which limits the possibility of foreigners' participation in government, emphasising the priority of national security and stability. The results are important for establishing a clear characterisation and emphasising the differences in the formation of the legal status of an individual, which is embodied in the priority given to stability and predictability in the Ukrainian system and the focus on adaptability and individual rights in the American system

■ **Keywords:** disability; anti-discrimination norm; codification; integration of employees with disabilities; decentralisation

■ Introduction

The issue of the legal status of an individual is central to modern jurisprudence, as it reflects the unique features of legal systems and determines the rights and obligations of an individual in a particular society. Globalisation, migration and close interaction between countries with different legal traditions have

increased the need for comparative research to help harmonise human rights at the international level. The differences between the Romano-Germanic and Anglo-Saxon systems create difficulties in harmonising the legal status of individuals, creating barriers to integration and the enforcement of rights. The

■ Suggested Citation:

Mirzoian, R. (2024). The genesis of the concept and essence of the legal status of an individual in the Romano-Germanic and Anglo-Saxon legal families: Comparative analysis of Ukrainian and US legislation. *Scientific Journal of the National Academy of Internal Affairs*, 29(4), 75-87. doi: 10.56215/naia-herald/4.2024.75.

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■ Received: 02.08.2024; Revised: 01.11.2024; Accepted: 26.11.2024



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analysis of the Ukrainian and American legal systems, which represent these traditions, can be used to assess different approaches to the formation of legal status. The absence of a comprehensive comparison of these approaches underscores the need for a more detailed study of their features and effectiveness in the modern legal field.

The issue of the legal status of an individual is an important aspect of modern jurisprudence, which reflects the interaction between the legal systems of different countries, determining the rights and obligations of an individual in a particular society. Globalisation and increasing migration processes create a need for a deeper understanding of the legal status of persons in different legal jurisdictions and arouse interest in comparing legal approaches. T. Mikhailina & Y. Gotsulyak (2021) addressed the typology of legal families, which contributes to the analysis of the features of the Romano-Germanic and Anglo-Saxon systems that underlie the regulation of the legal status of an individual. The relevance of comparing different approaches to the legal status of an individual is determined by the fact that the Romano-Germanic and Anglo-Saxon legal systems provide different levels of adaptability and stability for citizens and residents. V. Nepyivoda & I. Nepyivoda (2020) analysed the influence of Anglo-American case law on the development of the Ukrainian legal system, which was used to assess the adaptability of law enforcement in the context of the gradual introduction of elements of the Anglo-Saxon tradition.

Interpretation of administrative regulation is critical in ensuring the legal status of a person in centralised legal systems where the state plays a key role in ensuring stability. The study by O. Yanushkevich (2020) analysed the legal status of persons involved in the performance of state or public duties, which highlights the role of administrative regulation in shaping their legal status.

The analysis of labour rights is necessary for assessing the legal status of a person in different legal systems, especially in the context of the rights of foreigners. O. Alexandrov (2019) examined the conflict of laws in the regulation of labour relations with a foreign element, which provides a wider interpretation of the mechanisms of legal regulation of foreigners' rights in the field of employment. However, the researcher did not compare the approaches used in other legal systems, particularly the Anglo-Saxon one.

Judicial review is the main instrument for ensuring the legal status of an individual in the Romano-Germanic system. A. Melnyk (2021) analysed the nature of judicial precedent and judicial practice, focusing on their development in the Anglo-Saxon and Romano-Germanic legal families, which contributes to the determination of the differences in the functioning of judicial systems. The issue of the legal

status of refugees and stateless persons is particularly relevant in the context of growing migration flows. The study by K. Buhaichuk *et al.* (2021) analysed the legal aspects of migration regulation as a factor of national security, which highlights the importance of regulatory support for refugee rights for the stability of the state. However, the lack of comparative analysis with the legal systems of other countries, such as the United States, where the regulation of refugee integration is decentralised, limits the understanding of different approaches to ensuring the rights of this category of persons in the global context.

The protection of social rights, including those of persons with disabilities, is an important aspect that reflects the level of development of social support in the legal system. O. Triukhan *et al.* (2020) and G. Kazarian *et al.* (2019) addressed the legal guarantees and regulatory environment that ensure the protection of the labour rights of persons with disabilities in Ukraine and create conditions for their employment in managerial positions. However, these studies focus on the national context, without comparing the Ukrainian system with foreign models, which limits the possibility of assessing the effectiveness of the social guarantees provided in the international dimension.

Thus, the analysis of the literature indicates a high interest in the topic, but a comprehensive comparison of the Ukrainian and American systems leaves open questions about the effectiveness of legal protection of foreigners and refugees, mechanisms for the integration of persons with disabilities, and the adaptability of legal systems to changes in the socio-economic environment. The study aimed to conduct a comprehensive analysis of approaches to the formation of the legal status of a person in the context of the Romano-Germanic and Anglo-Saxon legal systems in the example of Ukraine and the United States. The main objectives are to study the regulation of labour rights, analyse the mechanisms of social integration and compare approaches to ensuring individual legal guarantees in these systems.

■ Materials and Methods

In this study, the legal status of an individual in Ukraine and the United States was analysed by comparing the key legal acts of both countries regulating legal capacity, legal capacity, labour rights, citizenship, personal data protection and anti-discrimination mechanisms. To establish the peculiarities of legal approaches in the Romano-Germanic and Anglo-Saxon legal families, the author made a systematic comparison of the structure and content of the provisions and studied the mechanisms of their application. Particular attention was devoted to the practical implementation of legal provisions and the way these mechanisms affect the legal status of individuals in the social and legal context.

The analysis of Ukrainian legislation covered the provisions of the Civil Code of Ukraine¹ to establish how the legal capacity and legal capacity of individuals, as well as their personal non-property and property rights are regulated. To study the impact of citizenship on legal status, the provisions of Law of Ukraine No. 2235-II “On Citizenship of Ukraine”² were used, which outline the procedure for acquiring and terminating citizenship. To analyse the status of foreigners, the provisions of the Law of Ukraine No. 3773-VI “On the Legal Status of Foreigners and Stateless Persons”³ were used, which was used to study the peculiarities of legal regulation of foreigners’ stay in Ukraine. The Labour Code of Ukraine⁴ was used as a basis for analysing the mechanisms for ensuring equality in labour relations and combating discrimination, which allowed to establishment of approaches to guaranteeing social rights. The Law of Ukraine No. 2297-VI “On Personal Data Protection”⁵ was used to study the legal framework for personal data protection, which provided the basis for analysing the requirements for processing and storing information about individuals.

As part of the study of American law, the provisions of the United States Constitution⁶ and the Fourteenth Amendment were examined to establish the principles of equal protection before the law and due process. To analyse anti-discrimination mechanisms, the Civil Rights Act⁷ was used to explore legal instruments to ensure equal opportunities and prevent discrimination in various spheres of public life. The Americans with Disabilities Act⁸ was employed to determine how the US legal system regulates the rights of persons with disabilities and promotes their social integration. An important place in the study was occupied by the Privacy Act⁹, which served as a source for analysing the mechanisms of processing and storage of personal information at the federal level.

The comparative analysis was conducted by comparing the provisions of Ukrainian and American legislation to identify the main differences and common

features in the approaches to regulating the legal status of individuals. The study examined approaches to the legal regulation of the rights of foreigners by comparing the provisions of the Law of Ukraine No. 3773-VI “On the Legal Status of Foreigners and Stateless Persons”¹⁰ with the Fourteenth Amendment to the Constitution of the United States¹¹. The protection of personal data was analysed by comparing the Law of Ukraine No. 2297-VI “On Personal Data Protection”¹² and the Privacy Act¹³, which established the difference in approaches to ensuring confidentiality. The anti-discrimination mechanisms were studied by comparing the provisions of the Labour Code of Ukraine¹⁴ with the Civil Rights Act¹⁵, which revealed the specifics of approaches to ensuring equal opportunities in labour relations. This approach enabled a comprehensive analysis of legal systems and provided a complete overview of how different legal traditions affect the regulation of the legal status of individuals.

■ Results

The Ukrainian legal system, formed within the Romano-Germanic tradition, defines the legal status of an individual through a set of rights and obligations enshrined in codified acts. The genesis of this concept in Ukraine is based on the ideas of legal equality, social justice and legal certainty that began to emerge as early as the adoption of the first systematic legal collections. In the modern legal system, the essence of an individual’s legal status is reflected in regulations, such as codes and specialised laws, which define the scope of legal capacity and legal capacity of individuals. Administrative and judicial control ensures that these rights and obligations are exercised in specific life situations. The main goal of such a system is to create a stable legal environment where the rights of each individual are clearly defined, minimising the risk of violation or ambiguous interpretation.

An important feature of the Ukrainian approach is the systematic codification that forms the basis of legal stability. Codes, such as the Civil Code of

¹ Civil Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/435-15>.

² Law of Ukraine No. 2235-II “On Citizenship of Ukraine”. (2001, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/2235-14>.

³ Law of Ukraine No. 3773-VI “On the Legal Status of Foreigners and Stateless Persons”. (2011, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/3773-17>.

⁴ Labour Code of Ukraine. (1996, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/322-08>.

⁵ Law of Ukraine No. 2297-VI “On Personal Data Protection”. (2010, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/2297-17>.

⁶ Constitution of the United States. (1787, September). Retrieved from <https://www.archives.gov/founding-docs/constitution>.

⁷ Civil Rights Act. (1964, July). Retrieved from <https://www.archives.gov/milestone-documents/civil-rights-act>.

⁸ Americans with Disabilities Act. (1990, July). Retrieved from <https://www.dol.gov/general/topic/disability/ada>.

⁹ Privacy Act. (1974, December). Retrieved from <https://www.justice.gov/opcl/privacy-act-1974>.

¹⁰ Law of Ukraine No. 3773-VI “On the Legal Status of Foreigners and Stateless Persons”. (2011, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/3773-17>.

¹¹ Constitution of the United States. (1787, September). Retrieved from <https://www.archives.gov/founding-docs/constitution>.

¹² Law of Ukraine No. 2297-VI “On Personal Data Protection”. (2010, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/2297-17>.

¹³ Privacy Act. (1974, December). Retrieved from <https://www.justice.gov/opcl/privacy-act-1974>.

¹⁴ Labour Code of Ukraine. (1996, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/322-08>.

¹⁵ Civil Rights Act. (1964, July). Retrieved from <https://www.archives.gov/milestone-documents/civil-rights-act>.

Ukraine¹, set out the basic provisions on legal capacity and legal transactions and regulate a wide range of personal and property rights. However, this structure may limit the flexibility of the system, as any changes require lengthy legislative procedures. This is especially evident when society faces new challenges, such as in personal data protection or labour relations. Administrative bodies play an important role in enforcing the law, while courts in most cases apply the rules already established (Enders, 2020).

In the United States, where the legal system developed within the Anglo-Saxon tradition, the genesis of the concept of the legal status of an individual was different. Case law was the primary factor, with each important court decision creating new approaches to understanding rights and freedoms. This process of gradual formation of norms ensured the flexibility of the system, allowing it to adapt to new social conditions (Collinson, 2020). Laws in American law serve as general principles, but their interpretation and development depend on case law. The legal status of an individual is formed not only through legislation but also through individual court decisions that set new standards of legal regulation. This flexibility of the US system provides for a quick response to changes

but also creates a certain unpredictability. Different court instances may interpret the same rules differently, which makes it difficult to ensure uniformity of law enforcement. At the same time, this approach contributes to the development of law in line with the current needs of society, as court decisions address the individual circumstances of each case. Citizens actively apply to courts to protect their rights, which increases the role of the judiciary in regulating relations between individuals and the state.

As shown in Table 1, the difference between the legal approaches of Ukraine and the United States has a significant impact on the legal status of individuals. In the Romano-Germanic tradition, which is common to Ukraine, codification provides clarity and stability, but it limits the system's ability to adapt quickly to new challenges. In the Anglo-Saxon system, characteristic of the United States, judicial interpretation and precedent are given priority, which creates a more flexible legal environment, although it increases dependence on case law. As a result, these two legal systems demonstrate different models of interaction between the state and the individual, each with its strengths and weaknesses in ensuring the legal status of individuals.

Table 1. Main features of the Romano-Germanic and Anglo-Saxon legal families

Criteria	Romano-Germanic legal family (Ukraine)	Anglo-Saxon legal family (USA)
Sources of law	Codified acts (laws, codes)	Precedents, court decisions and laws
The role of case law	Limited role in the creation of law	Significant role in shaping legal norms
Flexibility of adjustment	Less flexibility, stability of regulations	High flexibility through the development of precedents
Priority in regulation	Emphasis on detailed regulation of norms	Emphasis on the interpretation of rules by the judiciary
Reaction to changes	Slow adaptation to new challenges	Fast adaptation through court decisions
System stability	High due to codification	Depends on the development of case law
Ways to protect your rights	Focused on administrative and legislative mechanisms	The important role of courts and personal lawsuits

Source: compiled by the author based on R. Arnold & J. Ginsburg (2020), and M. Stuckey (2020)

Ukrainian legislation regulates the legal capacity and capacity to act of individuals clearly and systematically, based on a detailed codification. Article 25 of the Civil Code of Ukraine² (2003) stipulates that legal capacity arises from the moment of birth and ceases upon death. This provision ensures that all individuals, regardless of their circumstances, have the same opportunity to have rights and obligations throughout their lives. However, this formalisation of legal capacity does not consider special circumstances, such as those of persons with serious illnesses or disabilities that require special regulation or support.

The legal capacity of individuals is regulated based on age and the ability of the individual to exercise their rights and perform their duties independently. Article 30 of the Civil Code of Ukraine³ defines full legal capacity at the age of 18, which allows a person to enter contracts and perform other legally significant actions without restrictions. However, the strict imposition of this age does not account for cases where minors demonstrate the ability to act independently in certain situations. An exception to this rule is marriage, which grants full legal capacity even before the age of 18, but this possibility remains limited.

¹ Civil Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/435-15>.

² Ibidem, 2003.

³ Ibidem, 2003.

Partial capacity is regulated by Article 32 of the Civil Code of Ukraine¹. It allows persons aged 14 to 18 to enter certain transactions with the consent of their parents or guardians. This provision aims to protect the interests of minors, but at the same time limits their autonomy by creating barriers to independent decision-making. This can make it difficult for adolescents to participate in legal relations, especially in cases where they already assume responsibility, such as in labour or entrepreneurial activities.

The procedure for restricting legal capacity is regulated by Article 36 of the Civil Code of Ukraine², which provides for the possibility of restricting a person's legal capacity due to addiction or mental disorders, which is approved by the court. While this mechanism guarantees the protection of the rights of the person and their environment, it is more focused on restrictions than on rehabilitation or support. Restoration of legal capacity under Article 42 of the Civil Code is possible only by court order, which can delay the process even if the person's condition improves quickly.

In the United States, legal capacity and legal standing are determined based on the principle of equal access to rights enshrined in the Fourteenth Amendment of the Constitution of the United States³. However, unlike Ukraine, which has a unified regulatory system, the US regulates these issues from state to state, which creates a variety in law enforcement. For example, in California, the age of legal capacity is 18 under Section 6500 of the California Family Code⁴, but in some cases, younger persons may make legal decisions if the court allows it. This approach allows for more flexibility in addressing the circumstances of each case. Judicial practice is prominent in determining and limiting legal capacity. Section 1801 of the California Guardianship Act⁵ establishes the possibility of appointing guardianship for persons who are unable to manage their property or make important decisions on their own. The judicial system allows for quick adaptation of decisions to changes in a person's condition, which increases the effectiveness of protecting their rights. However, this flexibility also creates a risk of heterogeneity in the application of the law across states, which can make it difficult to ensure uniformity of case law.

In the United States, legal capacity and capacity are regulated not only by state laws but also by

federal acts, such as the Americans with Disabilities Act⁶. Title I of the Act adds an important component to the regulation of legal capacity by requiring government agencies, employers and public facilities to provide "reasonable accommodations" for individuals with disabilities. This includes accessible workplaces, special equipment, and adaptations to public services that facilitate their full participation in society. Thanks to such norms, the US legal system goes beyond formal restrictions and focuses on active support for people with special needs.

A key difference between Ukrainian and US law is the balance between stability and flexibility in the regulation of legal capacity and capacity to act. Ukrainian law guarantees a unified approach to the determination of legal capacity through strict rules governing age limits and conditions for the restriction of rights. This ensures legal certainty but limits the ability to address the individual needs of individuals.

In the United States, courts have broader powers to establish and review capacity, which ensures response to specific circumstances in a person's life. However, this creates a challenge in ensuring uniformity of enforcement at the national level, as different states may interpret the same principles differently. While Ukraine offers stability through centralised regulation, the US system favours individualised solutions, which allows for a more precise match to the needs of individuals but makes it difficult to ensure uniformity of practice.

Ukrainian labour law defines the basic rights of employees and establishes obligations for employers but remains largely codified and unclear. The main provisions are contained in the Labour Code of Ukraine⁷. According to Article 2(1) of the Labour Code, everyone has the right to work and equal access to jobs. However, the regulatory framework has certain limitations in terms of adaptation to modern conditions, such as remote employment and the development of flexible forms of work. This makes it difficult for employees to effectively exercise their rights in the new economic environment.

Anti-discrimination provisions in Ukrainian labour law proclaim equal rights for all individuals regardless of gender, age or nationality. Article 21 of the Labour Code of Ukraine⁸ prohibits any form of discrimination in employment, but the lack of effective

¹ Civil Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/435-15>.

² *Ibidem*, 2003.

³ Constitution of the United States. (1787, September). Retrieved from <https://www.archives.gov/founding-docs/constitution>.

⁴ California Family Code. (1994, January). Retrieved from https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1.&lawCode=FAM.

⁵ California Guardianship Act. (1990, November). Retrieved from https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PROB§ionNum=1510.

⁶ Americans with Disabilities Act. (1990, July). Retrieved from <https://www.dol.gov/general/topic/disability/ada>.

⁷ Labour Code of Ukraine. (1996, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/322-08>.

⁸ *Ibidem*, 1996.

mechanisms to monitor and sanction violations limits the implementation of these provisions. The legislation also does not provide for specific measures to support older workers or persons with disabilities.

Gender equality in employment is also enshrined in Ukrainian legislation, in the Law of Ukraine No. 2866-IV “On Ensuring Equal Rights and Opportunities for Women and Men”¹. However, despite the existence of relevant provisions, the actual level of gender equality remains low, especially in terms of access to leadership positions and equal pay (Varych, 2022). The lack of inspection methods by state authorities reduces the effectiveness of compliance with these norms.

In the United States, labour law not only proclaims equal rights but also ensures their actual implementation through a range of federal and local regulations. One of the key instruments is Title VII of the Civil Rights Act², which prohibits discrimination based on race, sex, religion or national origin. This regulation requires employers to treat all employees equally when hiring, firing or promoting them.

Protection against age discrimination is governed by the Age Discrimination in Employment Act³. This law applies to employees over the age of 40 and prohibits any action by employers that may adversely affect the employment or promotion of such persons. The principle of equal opportunity is also enshrined in the complaint mechanisms handled by the Equal Employment Opportunity Commission (EEOC), which has the authority to investigate and sanction employers in the event of violations.

Workplace adaptation for people with disabilities is regulated by the Americans with Disabilities Act⁴. Title I of the Act requires employers to provide “reasonable accommodations” for such employees unless it imposes an undue financial or organisational burden. This requirement includes adaptations to the work environment and work schedules that enable people with disabilities to actively participate in the workplace without restriction.

A comparison of Ukrainian and American labour laws has revealed significant differences in both the structure of the norms and the mechanisms for their implementation. The American system is more oriented towards the practical enforcement of equal

rights through clear control procedures and the possibility of appealing to institutions such as the EEOC, while in Ukraine, control over the implementation of anti-discrimination norms remains insufficient.

The US addresses age discrimination. The Age Discrimination in Employment Act⁵ provides employees over 40 with effective protection measures, while in Ukraine there are no or only declarative rules on the protection of older workers in labour relations. This creates a significant gap in labour market opportunities for older people between the two countries. The integration of employees with disabilities also varies significantly. In the United States, employers are required not only to avoid discrimination but also to actively provide workplace adaptations following Title I of the Americans with Disabilities Act⁶, which facilitates the real participation of such employees in the labour process. In Ukraine, however, anti-discrimination regulations concerning persons with disabilities do not have such flexibility and are limited to general prohibitions of discrimination without specific requirements for employers to adapt working conditions.

Ukrainian legislation establishes the legal status of foreigners and stateless persons through a set of provisions, in particular the Law of Ukraine No. 3773-VI “On the Legal Status of Foreigners and Stateless Persons”⁷, which defines the rights, obligations and procedure for the stay of these persons in the country. Article 3 of this Law guarantees equal socio-economic rights for foreigners on a par with citizens, with the exception of political rights, such as participation in elections and the right to hold positions in the civil service. This model ensures basic legal equality in access to services and opportunities, but at the same time establishes certain restrictions for foreigners that make it impossible for them to fully integrate politically.

The impact of citizenship on a person’s legal status is regulated by the Law of Ukraine No. 2235-II “On Citizenship of Ukraine”⁸, which defines the conditions for acquiring and losing citizenship. Article 6 of the Law provides that citizenship may be acquired by birth or through naturalisation. However, the naturalisation procedure provides for additional requirements, such as long-term residence on the

¹ Law of Ukraine No. 2866-IV “On Ensuring Equal Rights and Opportunities for Women and Men”. (2005, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/2866-15>.

² Civil Rights Act. (1964, July). Retrieved from <https://www.archives.gov/milestone-documents/civil-rights-act>.

³ Age Discrimination in Employment Act. (1967, December). Retrieved from <https://www.eeoc.gov/statutes/age-discrimination-employment-act-1967>.

⁴ Americans with Disabilities Act. (1990, July). Retrieved from <https://www.dol.gov/general/topic/disability/ada>.

⁵ Age Discrimination in Employment Act. (1967, December). Retrieved from <https://www.eeoc.gov/statutes/age-discrimination-employment-act-1967>.

⁶ Americans with Disabilities Act. (1990, July). Retrieved from <https://www.dol.gov/general/topic/disability/ada>.

⁷ Law of Ukraine No. 3773-VI “On the Legal Status of Foreigners and Stateless Persons”. (2011, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/3773-17>.

⁸ Law of Ukraine No. 2235-II “On Citizenship of Ukraine”. (2001, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/2235-14>.

territory of Ukraine, knowledge of the state language and legal sources of income. Article 19 sets out the grounds for the loss of citizenship, including in the case of voluntary acquisition of another citizenship or submission of false information when applying for Ukrainian citizenship. This approach underscores the importance of citizenship as a measure of the full legal integration of a person.

Administrative procedures for obtaining temporary and permanent residence permits are quite complex and lengthy, which can create significant barriers to the exercise of foreigners' rights, in the field of work or education (Alexandrov, 2019). Although they formally have the right to work and study, long waits for a decision can limit access to these opportunities. In addition, there are no specialised integration programmes for foreigners and stateless persons in Ukraine, which makes it difficult for them to adapt to the country's socio-economic environment.

In the United States, the legal status of foreigners and stateless persons is shaped by federal regulations and the principle of equal protection of rights enshrined in the Fourteenth Amendment to the Constitution of the United States¹. This document guarantees equal access to justice and basic social services to all persons, regardless of citizenship. Foreigners are entitled to all socio-economic rights, including the right to work and access to educational and healthcare services, but this is preceded by a complex process of obtaining permanent residence. Political rights also remain the exclusive prerogative of citizens, which underscores the importance of citizenship as a factor for full integration.

The US legislation emphasises support for refugees and stateless persons through the provisions of the Refugee Act². According to Section 207 of this law, refugees have access to educational and vocational programmes, as well as social services that facilitate their rapid adaptation. They have the right to employment and housing allowances, as well as the possibility to appeal administrative decisions through the judicial system, which guarantees an additional level of legal protection.

Naturalisation procedures in the United States are more flexible than in Ukraine. The principle of birthright citizenship (*jus soli*), enshrined in the Fourteenth Amendment to the Constitution of the United States³, grants citizenship to all persons born in the country, regardless of the citizenship of their parents. Naturalisation for adults is subject to several conditions, such as passing an English language test and knowledge of the fundamentals of the constitutional

system. This ensures a more inclusive approach to citizenship, facilitating the integration of new generations of foreigners into social life.

A comparison of the legal regulation of the status of foreigners and stateless persons in Ukraine and the United States reveals important differences in public policy priorities and approaches to the integration of these persons into society. One of the features of the American system is the emphasis on flexibility of procedures and the creation of conditions for rapid integration through extensive social programmes and legal protection mechanisms (Ruble, 2020). This is manifested in access to legal instruments, such as the possibility of appealing administrative decisions in court, which contributes to the stability of the legal status of foreigners.

The Ukrainian model, centred around clear administrative procedures, is more focused on the formal determination of the status of persons, but the lack of integration tools limits their social inclusion. In the United States, due to the developed refugee support system, integration measures are comprehensive, which allows for a focus on the active involvement of these persons in public life. In Ukraine, however, priorities are shifted towards strengthening control over compliance with migration legislation, which sometimes creates additional barriers for foreigners and stateless persons (Buhaichuk *et al.*, 2021).

The integration of foreigners and stateless persons in Ukraine requires a re-examination of priorities with a focus on developing support programmes similar to those in the United States. While the United States has long implemented social and professional programmes to integrate such persons, Ukraine needs to develop the infrastructure to provide social support and adaptation at the legislative level.

In the context of the Romano-Germanic legal family, to which Ukraine belongs, personal data protection is an important element of the legal status of an individual. The Law of Ukraine No. 2297-VI "On Personal Data Protection"⁴ envisages a comprehensive system that regulates the processing of personal data by both public and private entities. This reflects the general trends in legal regulation in Romano-Germanic countries, where the universality of norms and clarity of legal standards are key principles. The mandatory consent to data processing enshrined in Article 6 of the Law reflects the desire to ensure legal predictability and privacy protection. However, in practice, this approach faces challenges due to insufficient oversight and lack of institutional support for implementation.

¹ Constitution of the United States. (1787, September). Retrieved from <https://www.archives.gov/founding-docs/constitution>.

² Refugee Act. (1980, March). Retrieved from <https://www.govinfo.gov/content/pkg/STATUTE-94/pdf/STATUTE-94-Pg102.pdf>.

³ Constitution of the United States. (1787, September). Retrieved from <https://www.archives.gov/founding-docs/constitution>.

⁴ Law of Ukraine No. 2297-VI "On Personal Data Protection". (2010, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/2297-17>.

Another aspect that affects the effectiveness of the regulation is the lack of sufficient compensation mechanisms for breaches of privacy standards. Although Article 8 of the Law of Ukraine No. 2297-VI “On Personal Data Protection”¹ guarantees individuals the right to access their data and the possibility to correct or delete inaccurate information, in practice citizens often face bureaucratic barriers. This indicates that formal compliance with European standards does not always mean that individuals can protect their rights. In Ukraine, personal data protection remains a part of the broader legal status of individuals but requires stronger control to ensure more effective application of the rules.

The US personal data protection system, which is a member of the Anglo-Saxon legal family, is based on a decentralised and sectoral approach. In this model, privacy protection is regulated by different laws depending on the area of activity. For example, Section 552 of the Privacy Act² sets out rules for

government agencies, focusing on transparency and accountability of data processing. At the same time, it does not apply to the private sector, where other sectoral laws, such as the Health Insurance Portability and Accountability Act³ or the Gramm-Leach-Bliley Act⁴ (1999), are in force. This approach reflects the general tendency of Anglo-Saxon law to be flexible and adaptable to the needs of individual industries.

State laws, such as sections 1798.100-1798.199 of the California Consumer Privacy Act⁵, further strengthen consumer protection by providing individuals with the ability to request the deletion of their data and control its processing. This approach helps to strengthen the legal position of individuals, but at the same time creates legal fragmentation due to the lack of a unified national standard. This emphasises the importance of individual responsibility for the protection of individual rights and the availability of effective enforcement mechanisms, which is a characteristic feature of the Anglo-Saxon system (Table 2).

Table 2. Comparison of approaches to personal data protection: Ukraine and the USA

Aspect	Ukraine	USA
Form of regulation	A single law for all areas	Sectoral laws for different industries
Centralisation of norms	High (single control system)	Low (several levels of regulation)
Management approaches	Limited powers of supervisory authorities	Strong control through the judiciary
Sanctions for violations	Insufficiently specific	Severe sanctions in certain areas (e.g., healthcare and finance)
Right to rectification and deletion of data	Provided for, but implementation is difficult	Wide opportunities through state laws
Protection tools for consumers	There are no special mechanisms for consumers	There are controls in place, such as in the California Consumer Privacy Act ⁶ .
Availability of compensation for violations	There are no effective compensation mechanisms	Possibility of compensation through lawsuits
Flexibility for business	Limited due to strict regulatory requirements	High, thanks to flexible regulation in different states

Source: compiled by the author based on Law of Ukraine No. 2297-VI “On Personal Data Protection”⁷ and Privacy Act⁸

Based on the data shown in table 2, it is possible to argue that the desire for unified regulation in Ukraine is evident, where all entities, regardless of their field of activity, must comply with the same rules, which is in line with the principle of formalism inherent in the Romano-Germanic system, but the imperfect supervision and sanction mechanisms make it difficult to achieve effective protection. In the United States, the decentralised approach of the

Anglo-Saxon system provides flexibility and adaptation to the needs of specific industries. However, such fragmentation creates legal uncertainty and can make it difficult to enforce rights, especially when data subjects interact with companies operating in different jurisdictions. However, greater opportunities for challenging violations through the courts and the availability of effective control tools through laws such as the California Consumer Privacy

¹ Law of Ukraine No. 2297-VI “On Personal Data Protection”. (2010, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/2297-17>.

² Privacy Act. (1974, December). Retrieved from <https://www.justice.gov/opcl/privacy-act-1974>.

³ Health Insurance Portability and Accountability Act. (1996, August). Retrieved from <https://www.cdc.gov/phlp/php/resources/health-insurance-portability-and-accountability-act-of-1996-hipaa.html>.

⁴ Gramm-Leach-Bliley Act. (1999, November). Retrieved from <https://www.ftc.gov/legal-library/browse/statutes/gramm-leach-bliley-act>.

⁵ California Consumer Privacy Act. (2018, September). Retrieved from <https://oag.ca.gov/privacy/ccpa>.

⁶ Ibidem, 2018.

⁷ Law of Ukraine No. 2297-VI “On Personal Data Protection”. (2010, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/2297-17>.

⁸ Privacy Act. (1974, December). Retrieved from <https://www.justice.gov/opcl/privacy-act-1974>.

Act¹ strengthen the position of the individual and increase the level of responsibility of data controllers.

At the same time, in both systems, personal data protection is essential to the legal status of individuals. In Ukraine, this necessity is caused by the desire to integrate into the European legal space and ensure an adequate level of privacy protection, while in the United States, the emphasis is on individual rights and accountability of data processing subjects.

Thus, Ukraine and the United States, as representatives of different legal systems (Romano-Germanic and Anglo-Saxon, respectively), have significant differences that affect the models of legal regulation of the concept and essence of an individual. In Ukraine, legal status is ensured through clear codification and centralised regulation, which contributes to legal certainty and stability, but limits the flexibility of the system. At the same time, the US system is based on case law and decentralised regulation, which allows for rapid adaptation to new challenges but creates a risk of legal uncertainty due to different approaches at the state and federal levels. Each model has strengths and weaknesses: the Ukrainian system prioritises stability and administrative control, while the US system emphasises litigation and individual responsibility, which creates a more dynamic legal framework for protecting the rights of individuals.

■ Discussion

Different legal families – the Romano-Germanic family, to which Ukraine belongs, and the Anglo-Saxon family, represented by the US system – have significant differences in their approaches to the formation of the legal status of an individual. Ukraine uses centralised codification and a unified system of rules, while the US uses a flexible approach through a combination of case law and sectoral regulation. These different models provide unique features in the provision and regulation of legal status, which is the basis for the following discussion of the significance of these results, their importance and consistency with existing scholarship.

Different priorities may be chosen concerning the legal status of an individual, which directly depends on the legal family. In Ukraine, the results showed that formalism and clear regulation are key characteristics of the legal status of an individual, which is consistent with the findings of G. Milios (2020), who noted that the Romano-Germanic legal system favours strict codification to ensure legal certainty. Instead, the US uses a decentralised approach, where case law largely shapes the legal status of an individual, which confirms the observation of I. Wurman (2022), studied the impact of case law on the

regulation of the rights of individuals. This distinction is important because it indicates different ways of achieving legal predictability: in Ukraine, it is ensured through a unified system of rules, and in the United States, through the flexibility of case law.

The legal systems of Ukraine and the United States reflect different approaches to ensuring the legal status of individuals. The Ukrainian system, based on centralised administrative regulation, guarantees stability and predictability, which is consistent with the findings of D. Grimm (2020) regarding the importance of the doctrine of fundamental rights for the formation of a unified legal culture and ensuring the stability of legal regulation. In contrast, in the United States, where case law plays a key role, legal status is shaped by the adaptability of case law. This correlates with the position of S. Watson (2020), who notes the influence of Roman law on the Western legal tradition, emphasising the importance of flexible approaches to the protection of rights. The results show that the Ukrainian system, although it ensures clarity and uniformity of law enforcement, may be less effective in responding quickly to new social challenges. In contrast, the US system, due to its flexibility, allows for more effective adaptation to changes, although this sometimes creates legal heterogeneity between states.

Approaches to the protection of the political rights of individuals in the legal systems of Ukraine and the United States differ significantly, which affects the formation of their legal status. The analysis shows that the Ukrainian system relies on strict regulation, restricting foreigners' participation in elections and access to public service, which is consistent with the findings of J. Bäumlér (2020) on the need to restrict political rights to maintain stability in multi-level democracies such as Germany. However, in the United States, the political rights of foreigners are regulated more flexibly, which is confirmed by P. Collins (2020), who emphasises the possibility of foreigners' participation in local elections in some states. This is not consistent with the Ukrainian approach, as centralised regulation is aimed at maintaining homogeneity. The reason for these differences lies in the differences in historical traditions: The United States, as a federal state, allows states to set their own rules, while Ukraine has a unitary approach to preserve political stability.

The study also highlighted the different approaches to determining the legal capacity of an individual in the legal systems of both countries. In Ukraine, legal capacity is regulated by clear rules and age limits, which is in line with the findings of A. Phelan & P. Rickard-Clarke (2020), who emphasise the

¹ California Consumer Privacy Act. (2018, September). Retrieved from <https://oag.ca.gov/privacy/ccpa>.

importance of stable, person-centred approaches to protecting the rights of persons with diminished capacity, including older people. In the United States, legal capacity is determined at the state level, which allows for flexibility and consideration of local circumstances. According to B. Eyraud (2021), this ensures a more sensitive response to specific cases, for example, in the context of dementia, but at the same time can create heterogeneity in the application of the rules. The analysis shows that the Ukrainian system ensures predictability and uniformity for all citizens, while the American model allows for a more adaptive approach to addressing capacity issues, but at the expense of an increased risk of legal discrepancies between states.

Different levels of access to labour rights are also a significant difference between the analysed legal systems. In Ukraine, employment opportunities for foreigners are limited and are accompanied by complex administrative procedures, which is confirmed by K. Reid *et al.* (2020), who noted a high level of bureaucracy in this area. In the US, the system is more open to foreigners. J. Shannon and R. Hunter (2020) argue that the Civil Rights Act¹ significantly improved access to employment for all, including foreigners, by removing discriminatory barriers. However, this claim is inconsistent with the analysis, which shows that access to employment in the US still faces limitations, such as the complexity of employment procedures in different states and dependence on local regulations. The Ukrainian system, while requiring reforms, demonstrates less flexibility, indicating the need to reduce administrative barriers for foreigners.

Ukrainian legal regulation relies on providing stability and predictability through codified rules and clearly defined procedures, which is in line with the trends of the Romano-Germanic legal tradition. This correlates with the findings of C. Günzl (2021), who emphasises the importance of codification for maintaining legal stability. At the same time, the results of this study do not fully agree with the statements of L. Walker *et al.* (2020), who emphasise the benefits of the flexibility of the American legal system. The analysis shows that although flexibility does allow the American system to adapt to changes in social and economic conditions, it also creates risks of uneven application of rules between states, which can reduce the predictability of legal regulation. Thus, the Ukrainian model provides stability, but is less adaptive to new challenges, while the flexibility of the American system is accompanied by an increased risk of legal uncertainty.

The role of administrative control in ensuring the legal status of individuals in Ukraine is carried out through centralised supervisory bodies, which is

in line with the traditions of the Romano-Germanic legal family. This confirms the conclusions of J. Olszanowski (2020), who, analysing the model of administrative supervision in Poland, emphasises that a centralised approach contributes to the stability of legal regulation, which is also relevant for Ukraine. In contrast, in the United States, where enforcement is provided by the judicial system, flexibility and adaptability are preferred. As noted by S. Legarre & C. Handy (2020), in states that retain elements of civil law, the combination of judicial precedent and clear administrative rules allows for more effective regulation of the legal status of individuals. However, the conclusions of S. Legarre & C. Handy, who emphasise the benefits of combining the flexibility of judicial precedent with clear administrative rules, are not consistent with the results of the study. The analysis shows that such flexibility while promoting an individual approach, can lead to legal uncertainty due to different applications of the rules in different states, while in Ukraine, centralised control ensures stability and uniformity of legal regulation.

The sectoral approach to personal data protection in the United States allows for the specifics of each industry to be considered, creating flexible regulatory mechanisms. As noted by L. Bradford *et al.* (2020), such a system ensures an adequate level of protection in high-risk areas, including healthcare. However, the results of the study show that this flexibility can lead to fragmentation and uneven data protection, which makes effective oversight difficult. The universal approach used in Ukraine provides stability and predictability through a single regulatory framework. This correlates with the findings of W. Kerber & K. Zolna (2020), emphasising the importance of uniform regulation for legal stability. At the same time, the results also highlight that a one-size-fits-all model may be less effective in responding quickly to the specific needs of different industries.

The analysis of the legal status of stateless persons and refugees revealed significant differences between the systems, especially in terms of integration support. In the United States, adaptation programmes play an important role in ensuring social integration and maintaining security. As noted by L. Roots (2021), US migration policy is based on a comprehensive approach that combines legal protection with social measures. However, the analysis shows that even with this approach, the effectiveness of these programmes may depend on regional differences and limited funding, which reduces their overall effectiveness. Instead, the statement of E. Puspayu *et al.* (2020) seems to be debatable, as they emphasise the sufficiency of basic legal protection in line with international standards, but do not

¹ Civil Rights Act. (1964, July). Retrieved from <https://www.archives.gov/milestone-documents/civil-rights-act>.

address the need for social programmes for long-term integration. The analysis shows that the Ukrainian model, which focuses only on legal status, is significantly inferior to the American model in providing comprehensive support that includes social aspects.

Thus, the identified features indicate that the formation of the legal status of an individual has characteristic differences relating to the conditions of development of different legal systems. Comparison with the works of other researchers confirms that the Romano-Germanic system seeks to ensure stability and predictability, while the Anglo-Saxon system focuses on flexibility and adaptability.

■ Conclusions

The most significant difference in the Ukrainian system is its focus on centralised regulation, which is designed to provide clarity and predictability for citizens through a single codified approach. This provides stability to the legal environment but reduces the flexibility to quickly adapt to new societal needs and changes. The American system, by contrast, relies more on judicial precedents and the capabilities of individual states, which facilitates the creation of different legal solutions following local circumstances and increases the scope for individual approaches. However, this also causes legal heterogeneity, which can create obstacles to the exercise of citizens' rights in different states.

Access to political rights in Ukraine for foreigners is much more restricted compared to the US approach, where states have the right to set individual conditions for foreigners to participate in local elections. The Ukrainian approach to legal capacity is based on fixed age limits, which ensures predictability but limits the possibility of an individualised approach, as observed in the US system, where states have the right to adapt the relevant rules. At the same time, in the United States, the area of labour rights and refugee support is more open to foreigners. In Ukraine, however, this area is subject to stricter regulation, focused on legislative restrictions, which limits the opportunities for foreigners to integrate into the country's social life and economic relations. The Ukrainian system focuses on national

interests and legal stability, which creates a stable environment but also hinders the development of more flexible approaches that are needed to adapt to new socio-economic conditions. The American system, which emphasises individual rights and social inclusion, accommodates local needs in terms of labour rights and refugee support, with each state free to set regulations. This facilitates the integration of foreigners but makes it difficult to implement a unified policy on the legal status of individuals at the national level, which creates difficulties for the exercise of rights in different jurisdictions.

Each of the legal systems forms the legal status of an individual based on specific control and management mechanisms, which create certain unique features. In the Ukrainian legal system, the main instrument is centralised supervision by state authorities, which ensures the uniform application of the rules throughout the territory. At the same time, this approach limits the possibility of rapid adaptation at the local level, which reduces flexibility in addressing specific situations. In the United States, the judicial system plays a key role in ensuring the legal status of individuals, allowing for prompt resolution of issues and providing an individualised approach. This dependence on judicial practice increases the adaptability of the legal system but may create differences in legal regulation between states.

Thus, the comparative analysis of the legal systems of Ukraine and the United States has revealed unique approaches and peculiarities in the formation of the legal status of an individual in each country. However, the focus on two countries is a certain limitation of the study, which narrows the scope of comparison. In further research, it would be advisable to expand the sample of analysed countries in different legal families to obtain a more comprehensive picture of approaches to regulating the legal status of an individual.

■ Acknowledgements

None.

■ Conflict of Interest

The author of this study declares no conflict of interest.

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Гене́за поняття і сутність правового статусу фізичної особи в романо-германській та англосаксонській правових сім'ях: порівняльний аналіз законодавства України й США

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■ **Анотація.** Дослідження було проведено з метою комплексного аналізу особливостей формування та регулювання правового статусу фізичної особи в Україні й США як представників романо-германської та англосаксонської правових систем відповідно. Здійснено порівняльний аналіз законодавчих актів і нормативних положень, які встановлюють правовий статус фізичних осіб у зазначених країнах, досліджено особливості законодавчого регулювання в цій сфері. З'ясовано, що в Україні правовий статус фізичних осіб ґрунтується на єдиному централізованому підході, де стабільність і чіткість норм сприяють правовій передбачуваності. Це полягає в суворих правилах, що стосуються чіткого визначення вікових меж дієздатності та складних процедур для іноземців і біженців у сфері трудових прав. У США правовий статус безпосередньо залежить від судової практики й законів, які різняться в кожному штаті, що дає змогу адаптувати підхід до місцевих особливостей. У сфері трудових прав і підтримки біженців американська система завдяки гнучкості забезпечує іноземцям ширші можливості для працевлаштування та швидкої адаптації. Судова підзвітність у США надає можливість одразу реагувати на порушення прав, натомість централізований нагляд в Україні гарантує однакове застосування норм у всій країні. В Україні також чітко регламентовано норми щодо захисту персональних даних, що забезпечує високий рівень конфіденційності, водночас створює певні складнощі в доступі до інформації для фізичних осіб. Крім того, важливим аспектом є суворе регулювання політичних прав, яке обмежує можливості участі іноземців у державному управлінні, акцентуючи на пріоритеті національної безпеки й стабільності. Отримані результати є важливими для чіткої характеристики та визначення розбіжностей у формуванні правового статусу фізичної особи, що втілюється в наданні пріоритету стабільності й передбачуваності в українській системі та зосередженні на адаптивності й індивідуальних правах в американській

■ **Ключові слова:** обмежена дієздатність; антидискримінаційна норма; кодифікація; інтеграція працівників з інвалідністю; децентралізація

UDC 341.9:342.7

Doi: 10.56215/naia-herald/4.2024.88

The jurisdiction and advisory functions of the Permanent Court of International Justice: Historical development and effect

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■ **Abstract.** The study focused on clarifying the principal issues concerning the origin of the Permanent Court jurisdiction, concentrating on its sources, constraints, state recognition, exclusive authority to render advisory opinions, legal nature and purpose. The study used a comprehensive approach, including an analysis of historical documents, statutes, and regulations of the Permanent Court. The research has discerned distinctive elements of this body's jurisdiction and its involvement in shaping the international legal framework. A comparative analysis of advisory opinion mechanisms in different legal systems was conducted, which allowed identifying the peculiarities and uniqueness of the Permanent Court's approach. The research determined that the authority of the Permanent Court was characterised by flexibility, allowing states to determine the level of its binding nature. Its advisory jurisdiction was an innovative mechanism that contributed to the effective functioning of the League of Nations by developing valuable legal solutions. Although the advisory opinions were not binding, they had considerable authority and significance for the development of international cooperation. The advisory jurisdiction was established independently of other legal systems, which emphasised its uniqueness. The research has established that the Permanent Court has significantly contributed to the evolution of jurisprudence and methods of peaceful conflict resolution. Its experience and practice have laid the foundation for the modern system of justice and the fundamental principles of law, promoting cooperation and mutual understanding in international relations. This study's practical significance is found in its examination of the Permanent Court's role in advancing international justice and peaceful dispute resolution mechanisms, which may inform enhancements to contemporary legal systems and international relations

■ **Keywords:** competence of judicial bodies; global relations; advisory jurisdiction; settlement of international disputes; advisory opinion

■ Introduction

The examination of the jurisdiction of the Permanent Court of International Justice (PCIJ) has facilitated an understanding of the operational dynamics of this historically significant institution, as well as the evolution of international justice principles and their influence on contemporary legal frameworks. The examination of the PCIJ's jurisdiction is especially

pertinent given the contemporary challenges posed by globalisation, the increasing frequency of international conflicts, and the necessity for efficient legal conflict resolution. Understanding the jurisdiction of the PCIJ is also important for exploring the relationship between law and state sovereignty. The PCIJ operated in an era when the notion of state autonomy

■ Suggested Citation:

Polezhaka, K. (2024). The jurisdiction and advisory functions of the Permanent Court of International Justice: Historical development and effect. *Scientific Journal of the National Academy of Internal Affairs*, 29(4), 88-98. doi: 10.56215/naia-herald/4.2024.88.

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■ Received: 21.07.2024; Revised: 23.10.2024; Accepted: 26.11.2024



was dominant in global relations. An analysis of how the PCIJ balanced the importance of guaranteeing effective international justice with respect for the principle of non-interference in the internal affairs of states can provide valuable lessons for contemporary international tribunals dealing with similar challenges in today's multipolar world. The PCIJ ceased to operate in 1946, its legacy remains relevant today. The legal principles and procedures established by the PCIJ have become the basis for many modern international judicial institutions.

International judicial bodies derive their authority and operational scope from jurisdiction, according to J.A. Hofbauer's (2020) analysis. It determines which cases the court has the right to consider, which decisions it can make and which legal rules it can apply. The jurisdiction of the PCIJ was delineated in the Statute of the Court¹ and many international accords, although it has also altered throughout the Court's operations, influenced by worldwide occurrences and the progression of law.

M.C. Bassiouni (2024) conducted a comprehensive examination of the draft criminal code and statute for the tribunal, emphasising the necessity to enhance mechanisms for addressing crimes. This research represents a significant advancement in criminal law, as the author has meticulously analysed the procedures of culpability for international crimes, specifically genocide and crimes against humanity. E. Strauss (2022) analysed how NGOs influence judicial systems through social movements that advance human rights and justice, potentially enhancing international tribunal effectiveness.

J.J. Crawford *et al.* (2023) examined both the court's judicial and advisory jurisdiction, focusing on how these functions help to ensure the peaceful resolution of disputes. The study also emphasised the importance of the International Court in strengthening the legal order through the development of law. M.J. Oyarzabal (2024) proposed to review the existing procedure for the election of judges to the International Court, focusing on the need for reforms to increase transparency and fairness. The author developed recommendations for reforming the process without amending the statute, in particular through better control by the international community and more transparent appointment of judges.

The study by S. Fobbe (2022) presents unique corpora of judgments for the International Court and the PCIJ, which provide new opportunities for empirical

analysis of legal decisions. The Article compares the jurisdictional functions and the impact of both courts on the development of law, in particular, the format and content of their decisions. H.A. Ikononou *et al.* (2023) focuses on the diplomatic efforts and legal initiatives of the Scandinavian states, which played an important role in shaping legal norms through the PCIJ. The authors demonstrate how these nations have employed diplomacy to influence the legal framework, highlighting the significance of the PCIJ as both a diplomatic and legal tool.

Despite a significant number of studies on the PCIJ, this topic remains insufficiently studied in legal science. This is especially true of jurisdictional issues, which have not yet received a comprehensive and in-depth analysis in Ukrainian research. This gap in scientific knowledge creates the need for a study that would take into account both foreign experience and the specifics of the Ukrainian legal system and its integration into the world.

■ Materials and Methods

This scientific work is founded on the examination of primary documents that directly document the operations of the PCIJ, such as the Statute of the Permanent Court², as well as the Covenant of the League of Nations³, Sixteen report of the Permanent Court of International Justice (1945). These materials enabled the investigation of the origins of advisory jurisdiction from its inception to its codification in the Statute⁴, as well as an understanding of how the Court interpreted and applied the pertinent provisions in specific cases, the arguments employed to justify its positions, and the implications of these conclusions for international law and interstate relations.

An integral part of this scientific work was the analysis of the works of leading legal scholars of the period under study of the first half – mid-twentieth century, in particular, M.O. Hudson (1923; 1931; 1943), A.H. Feller & E.W. Allen (1933), N.W. Rowell (1933), H. Lauterpacht (1993). Their works created a theoretical basis and reflected various views on the place and significance of advisory jurisdiction in the system of law. This allowed for a comprehensive understanding of the context and issues of this institution through the prism of its vision during the period of direct functioning of this court and its impact on subsequent international institutions.

A comparative analysis was carried out to identify the common and distinctive features between the

¹ Statute of the Permanent Court of International Justice. (1929, September). Retrieved from <https://www.un-ilibrary.org/content/books/9789210559096s003-c002/read>

² *Ibidem*, 1929..

³ Covenant of the League of Nations. (1919, June). Retrieved from <https://www.un Geneva.org/en/covenant-lon>.

⁴ Statute of the Permanent Court of International Justice. (1929, September). Retrieved from <https://www.un-ilibrary.org/content/books/9789210559096s003-c002/read>.

advisory jurisdiction of the PCIJ and similar mechanisms in national legal systems and other international institutions. The experience of France and the United Kingdom, which have institutions that provide advisory opinions, as well as other organisations such as the Universal Postal Union and the International Civil Aviation Organisation (ICAO), was studied. This made it possible to assess the uniqueness and specificity of the PCIJ advisory jurisdiction in the context of other legal systems, as well as to identify potential sources of its formation and borrowing.

This study involved such key methods as historical and genetic analysis, process tracing and comparative legal analysis. The historical and genetic analysis allowed us to trace the formation of the jurisdiction of the PCIJ in the context of historical events and political processes of the time, identify the factors that influenced its formation and development, and find out how the attitude of states and the scientific community towards it has transformed. The legal analysis was aimed at studying the legal norms governing the jurisdiction of the PCIJ and their interpretation by the Court, which allowed defining the legal framework and boundaries of this institution, as well as analysing specific cases such as *The Mavrommatis Palestine Concession*¹, *“Case of the S.S.” Wimbledon*², *“Status of the Eastern Carelia”*³, *“Legal Status of the Eastern Greenland”*⁴ (1933), in which it was applied, including the first request for an advisory opinion on the legality of the admission of a delegate from Dutch workers and the Eastern Karelia case, where the Court determined the limits of its competence. The comparative legal approach has helped to identify similarities and differences between the jurisdiction of the PCIJ and similar mechanisms in national legal systems and other international organisations, which has contributed to a deeper understanding of its features and significance in the evolution of law.

■ Results and Discussion

The alteration of political foundations, emerging economic challenges confronting the international

community at regional and sub-regional tiers, a transformation in the trajectory of international relations, and intensifying conflicts among states – these factors, perpetuating existing trends, have culminated in the establishment and enhancement of international relations. The creation of the PCIJ was a significant advancement in the ongoing endeavour to devise mechanisms for the peaceful resolution of international conflicts (Arhire, 2023).

The establishment of the PCIJ originated from the 1919 Paris Convention⁵ on air navigation regulation. Article 14 of the Covenant of the League of Nations⁶ to create an International Court for dispute resolution (Hudson, 1943). A key debate centred on jurisdiction, leading to a compromise where general jurisdiction remained voluntary. States could only bring disputes to the Court by mutual agreement. However, Article 36 included an optional clause allowing states to accept compulsory jurisdiction reciprocally through signed reservations.

Article 36 stipulated that the Court’s compulsory jurisdiction could be limited to disputes of a legal nature and applied to such categories of legal disputes as: interpretation of international treaties, questions of law, fact-finding (the Court may establish facts that, if confirmed, may indicate a breach by a state of its international obligations), and determination of the amount of compensation. As of January 1, 1932, forty-seven nations had ratified the Protocol on the mandatory jurisdiction of the Court, including France, Belgium, Germany, Italy, Spain, Austria, and Hungary. Some countries signed with reservations, some without. The Protocol was in force between thirty-six states (Rowell, 1933).

The origins of the Court’s jurisdictional authority have profoundly impacted its functions. The Court’s jurisdiction is founded on four principal categories of documents. The first group included the Covenant⁷ and the Statute as amended in 1920⁸, according to which the Court was empowered to resolve any disputes submitted to it by the parties and to give opinions. The second group of sources consisted of international treaties and conventions^{9,10,11}. A notable source

¹ Judgment of the Permanent Court of International Justice in Case “Greece v. Britain”. (1924, August). Retrieved from http://www.worldcourts.com/IIIMII/eng/decisions/1924.08.30_mavrommatis.htm.

² Judgment of the Permanent Court of International Justice in Case “S.S. “Wimbledon”: United Kingdom, France, Italy & Japan v. Germany”. (1923, August). Retrieved from http://www.worldcourts.com/IIIMII/eng/decisions/1923.08.17_wimbledon.htm.

³ Advisory Opinion of the Permanent Court of International Justice in Case “Status of the Eastern Carelia”. (1923, July). Retrieved from http://www.worldcourts.com/IIIMII/eng/decisions/1923.07.23_eastern_carelia.htm.

⁴ Judgment of the Permanent Court of International Justice in Case “Legal status of the Eastern Greenland. Denmark v. Norway”. (1933, September). Retrieved from https://worldcourts.com/pcij/eng/decisions/1933.04.05_greenland.htm.

⁵ Paris Convention. (1919, October). Retrieved from http://library.arcticportal.org/1580/1/1919_Paris_convention.pdf.

⁶ Covenant of the League of Nations. (1919, June). Retrieved from <https://www.ungeneva.org/en/covenant-lon>.

⁷ Ibidem, 1919.

⁸ Statute of the Permanent Court of International Justice. (1920, December). Retrieved from <https://www.refworld.org/legal/constinstr/lon/1920/en/57478>.

⁹ Covenant of the League of Nations. (1919, June). Retrieved from <https://www.ungeneva.org/en/covenant-lon>.

¹⁰ Paris Convention. (1919, October). Retrieved from http://library.arcticportal.org/1580/1/1919_Paris_convention.pdf.

¹¹ General Postal Union. (1874, October). Retrieved from https://avalon.law.yale.edu/19th_century/usmu010.asp.

of the Court's jurisdiction was the General Act for the Pacific Settlement of International Disputes¹, enacted by the League Assembly in 1928 and effective from 1930 for the governments that signed and ratified it. This legislation pertains to all forms of international conflicts. The last source that established the jurisdiction of the PCIJ was international agreements that stipulated the resort to an alternative international court (International Court of Justice, 2024). As noted by N.W. Rowell (1933), such an appeal could be

made either in an agreement on the establishment of another court or in another relevant document. Such appeals could relate to jurisdictional issues, decisions beyond the scope of authority (Permanent Court of International Justice, 1945), or the merits of the case. Table 1 summarises the main sources relied upon by the PMC in exercising its jurisdiction. These sources included both constituent documents and international agreements that defined the Court's competence to resolve various categories of disputes.

Table 1. Sources of the jurisdiction of the Permanent Chamber of International Justice

Source	Description
Covenant of the League of Nations and Statute of the PCIJ 1920 ²	The court possessed jurisdiction to adjudicate all matters that the parties could submit to it. The Covenant granted the Court the authority to resolve disputes and issue advisory opinions, while the Statute of the PCIJ 1920 ³ delineated the resolution of conflicts.
International treaties and conventions	It was assumed that certain disputes or questions in connection with them, arising between countries, would be referred to the Court for consideration.
1928 General Act ⁴ (pacific settlement of international disputes)	Covered all categories of international disputes.
International agreements	An appeal to another international court was envisaged.

Source: created by the author

To comprehend the importance of the Court and the extensive array of topics under its jurisdiction, it is prudent to consult the yearly reports, which include data on some treaties, conventions, and other papers presented to the Court. The Sixteen report of the Permanent Court of International Justice (1945) documented over six hundred such sources. It is important to acknowledge that, under Article 34 only states were participants in the proceedings. Nonetheless, a case initiated by a private individual could be contemplated, contingent upon the Court acknowledging that a state-endorsed a claim from its citizen against a foreign state and, on behalf of its citizen, pursued the proceedings as a matter of "international character". This was the circumstance in the matter of "Greece v. Britain"⁵, where the Greek government filed a lawsuit against the British government, arguing that it had unlawfully failed to recognize the rights belonging to Mavrommatis and demanding monetary compensation. The British government raised a preliminary objection to the Court's jurisdiction, contending that the matter involved a disagreement between a Greek citizen and the British government, rather than a dispute between the United

Kingdom and another member of the League. Nonetheless, the Court determined that while the case initially included a conflict between Mavrommatis and the United Kingdom, it subsequently evolved into an international legal dispute owing to the involvement of the Greek government, so transforming it into a dispute between two sovereign states. Thus, when a state commits to safeguarding the rights of its citizen and commences international litigation on their behalf, it is fundamentally defending its rights and interests within the relations framework.

Having studied the Statute 1929⁶ in terms of the procedure for applying to the Court and initiating proceedings, it is important to emphasize that Article 40 of this document regulates the ways of submitting cases to the Court. Parties can bring matters before the Court through either a special agreement notification or a written application to the Registrar. Both methods require specifying the dispute and parties involved, with their consent to the Court's jurisdiction. Alternative application procedures also exist. This may constitute a unilateral statement by any state asserting the right to commence proceedings under the optional clause on the mandatory

¹ General Act (Pacific Settlement of International Disputes). (1928, September). Retrieved from <https://cil.nus.edu.sg/wp-content/uploads/2017/08/1928-General-Act-of-Arbitration.pdf>.

² Statute of the Permanent Court of International Justice. (1920, December). Retrieved from <https://www.refworld.org/legal/constinstr/lon/1920/en/57478>.

³ Ibidem, 1920.

⁴ General Act (Pacific Settlement of International Disputes). (1928, September). Retrieved from <https://cil.nus.edu.sg/wp-content/uploads/2017/08/1928-General-Act-of-Arbitration.pdf>.

⁵ Judgment of the Permanent Court of International Justice in Case "Greece v. Britain". (1924, August). Retrieved from http://www.worldcourts.com/IIIMII/eng/decisions/1924.08.30_mavrommatis.htm.

⁶ Statute of the Permanent Court of International Justice. (1929, September). Retrieved from <https://www.un-ilibrary.org/content/books/9789210559096s003-c002/read>.

jurisdiction of the Court, or an application filed under any treaty or convention that includes provisions on the Court's jurisdiction. An example, *Denmark v. Norway*¹, which was brought to the Court on 12 July 1931 on the basis of an optional reservation. The subject of dispute in this case was the legal status of Eastern Greenland. An illustration of proceedings initiated on the basis of a treaty or convention is the *Wimbledon Case*². This case emerged during the Treaty of Versailles, wherein the PCIJ addressed matters concerning sovereignty, the incorporation of treaty duties into domestic law, and jurisprudence pertaining to the utilisation of international channels. The Court proceedings may also be commenced at the request of the Council or the Assembly for an opinion. Considering the aforementioned, a distinct and highly contentious facet of the Court's jurisdictional authority was its ability to issue opinions (Trindade, 1945).

The preliminary draft of the Court's Statute³, developed by the Advisory Committee of Jurists, stipulated in Article 36 would issue advisory views on any international subject or dispute presented by the Council or the Assembly (International Court of Justice, 2024). This provision has ignited intense discussion over the alignment of advisory roles with the primary objective of the judicial entity. Concerns were raised that such powers could evolve into a system of mandatory jurisdiction. As a result of these disagreements and "the desire to avoid involving the Court in an area that had no clearly defined international precedent and no foreseeable future" (Aljaghoub, 2005), the Assembly decided to remove the advisory power from the Statute. The PCIJ quickly resolved concerns about its advisory powers by definitively establishing its authority to issue such opinions in its first ruling.

The issue of advisory jurisdiction again proved to be one of the most difficult during the development of the PCIJ Regulations. In the 1924 Regulations, jurisdiction was regulated by Articles 71-74. Thus, the advisory jurisdiction was provided for in Article 14 defined the relevant procedure. Statute 1929⁴ were adopted and entered into force in 1936, which, among other things, consolidated the established practice of the PCIJ with regard to opinions. Articles 65-68 were added to the Statute, which confirmed the provisions of the 1926 Rules of Court and established rules and procedures for requesting and giving advisory opinions. As for the procedure for applying to the Court for an advisory opinion, according to

Article 65, "the question on which the advisory opinion of the Court is sought shall be submitted in the form of a written request signed by the President of the Assembly, the President of the Council of the League or the Secretary-General of the League on behalf of the Assembly or the Council. The request shall clearly state the question on which an opinion is sought and shall be accompanied by all documents capable of clarifying the question". Upon receipt of the request, the Court analysed it and decided whether it was appropriate to give an advisory opinion. This decision was made at the Court's sole discretion and taking into account the special criteria set out in the Protocol. In general, the clarification of the rules for giving advisory opinions under the 1929 Protocol contributed to the clear, consistent and effective performance of this important function of the Court, and strengthened the role of the Court in promoting the rule of law in international affairs, as noted by M.O. Hudson (1931). During the entire period of its active work from 1920 to 1946, the Court issued 27 advisory opinions, which dealt with a wide range of problems, many of which were of international importance. This is almost as many interstate disputes as the Court considers. Therefore, the main and controversial issue for many scholars and lawyers was the legal nature of these opinions and the purpose of their introduction. As noted by Judge M.O. Hudson (1931) in his report on the Court's eight-year work, an opinion is what it claims to be, i.e., advisory, and it is in no way a judgment under Article 60, nor a judgment under Article 59. An essential addition was the description of the Court's work, in which M.O. Hudson (1931) drew attention to the number of opinions given and the fact that the peculiarity of the Court's jurisdiction will be established as an important part of its work.

The Permanent Court was the first judicial body with such exclusive advisory competence. According to many scholars, the purpose of introducing advisory jurisdiction was to assist the Council and Assembly of the League in clarifying legal issues related to disputes between states that were referred to it. The paper by A. Aust (2010) highlights the significance of advisory jurisdiction for the League of Nations, a predominantly political entity, which sought to mitigate decision-making challenges by consulting the PCIJ on judicial matters.

Since advisory jurisdiction was a new instrument in the judicial system, like anything new, it was not

¹ Judgment of the Permanent Court of International Justice in Case "Legal status of the Eastern Greenland. *Denmark v. Norway*". (1933, September). Retrieved from https://worldcourts.com/pcij/eng/decisions/1933.04.05_greenland.htm.

² Judgment of the Permanent Court of International Justice in Case "S.S. "Wimbledon": *United Kingdom, France, Italy & Japan v. Germany*". (1923, August). Retrieved from http://www.worldcourts.com/ΠΙΠΠΠ/eng/decisions/1923.08.17_wimbledon.htm.

³ Statute of the Permanent Court of International Justice. (1929, September). Retrieved from <https://www.un-ilibrary.org/content/books/9789210559096s003-c002/read>.

⁴ *Ibidem*, 1929.

always clear and raised many questions. Lawyers, in particular, the vast majority of them from America, who were hesitant to join the Permanent Court protocol (Fitzmaurice & Tams, 2013), criticised this innovation and believed that revisiting old ideas about the judicial system could undermine the credibility of the Court, and preferred to limit the Court's work to traditional powers to resolve disputes between specific parties. The Senate's apprehensions on potential interference in domestic matters precluded the United States from joining the Permanent Court in the 1920s. President Roosevelt was denied by the Senate when he attempted to associate the United States with the Permanent Court in 1935 (Jacoby, 1936).

However, it was not only American jurists who held the position that advisory opinions could not be part of the court's functions due to their non-binding nature. Judge Ch. De Visscher (1929) also shared this view. As the advisory opinion was merely the Court's interpretation of certain controversial issues, it prompted many jurists, including the Court itself, to reflect on the binding nature of the decisions and their significance as an element of the judicial function. According to many researchers and lawyers, the key was the understanding of

the concept of "judicial function". Judge M.O. Hudson (1931), who positively perceived the new possibility of the Court to give opinions, noted that the term "judicial function" does not have a clear definition (Gişi, 2016). He outlined key judicial qualities across legal systems: public decision-making, stakeholder participation, thorough legal analysis with reasoned judgments, objectivity, and impartiality. Despite all the debate around the PCIJ, J. Hostie (2017) believes that in its final form, the PCIJ was nothing more than the most powerful technocratic advisory body at the disposal of the Council and the Assembly. The debate over the jurisdiction of the PCIJ reflected a difficult balance between the need for effective international justice and the need to respect the sovereign rights of states. Proponents of advisory jurisdiction emphasised its importance for the functioning of the League, the development of law and the promotion of the peaceful settlement of disputes. Conversely, opponents articulated apprehensions over the alignment of such jurisdiction with the conventional court role, its non-binding character, and the possibility of intruding into the internal affairs of states. The main arguments of both sides are presented in Table 2.

Table 2. Arguments for and against the advisory jurisdiction of the PCIJ

In favour of	Against
Promotion of the effective functioning of the League of Nations	Incompatibility with the traditional judicial function
Providing valuable legal advice	Non-binding nature of advisory opinions
Assistance in decision-making to political bodies	Undermining confidence in the Court
Facilitating the peaceful resolution of disputes	Possible intrusion into the domestic affairs of states
Development of international law	Lack of a clear precedent in law
Strengthening the rule of law	Risk of being used as a loophole for enforcement jurisdiction

Source: created by the author based on O. Spiermann (2005), M. Fitzmaurice & C.J. Tams (2013), K. Leeuwen & M. Rasmussen (2021)

The history of the origin of advisory competence is rather unclear, as this practice has not yet been applied in international bodies. A specific prototype of an opinion exists within the national court systems of numerous countries. In France, for example, there was a body called the Conseil d'Etat, which, being an executive body, also performed judicial functions. However, in accordance with the Law of France "On Tribunal of Conflicts"¹, it was finally transformed into the Court, which continued to exercise judicial functions while maintaining its advisory role. In the United Kingdom, the Judicial Committee of the Privy Council, in accordance with the provisions of Section 4 of the Judicial Committee Act 1833², was empowered to

provide the monarch with opinions on legal matters. The monarch, in turn, could entrust this Judicial Committee with the consideration of any other matters of his or her choice; and the Committee was then to consider them and report to the monarch in the prescribed manner. It is worth mentioning Article 15 of the Universal Postal Convention of 9 October 1874³, which imposed on the International Bureau of the Universal Postal Union the obligation to provide opinions on disputed issues at the request of the parties concerned. In addition, the Paris Convention 1919⁴ empowered the International Commission for Aeronautical Navigation, in accordance with Article 34, to give opinions on matters those states could submit to it.

¹ Law of France "On Tribunal of Conflicts". (1872, May). Retrieved from <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000521091>.

² Judicial Committee Act. (1833). Retrieved from <https://www.legislation.gov.uk/ukpga/Will4/3-4/41/section/4>.

³ General Postal Union. (1874, October). Retrieved from https://avalon.law.yale.edu/19th_century/usmu010.asp.

⁴ Paris Convention. (1919, October). Retrieved from http://library.arcticportal.org/1580/1/1919_Paris_convention.pdf.

Although there are similarities between the mechanisms of advisory opinions in national legal systems and certain international organisations, it is challenging to assert that these mechanisms significantly influenced the development of the jurisdiction of the PCIJ (Sthoeger, 2023). As noted by M. Fitzmaurice & C.J. Tams (2013), the diverse experience of national legal systems was not decisive and did not have a significant impact on this process. Moreover, there is no evidence that this experience was systematically analysed during the drafting of the Statute. Considering that the function has been a contentious instrument in the Court's operations, the majority of justices have abstained from exercising this extraordinary authority.

The Council approved the initial request for an opinion on 12 May 1922. The issue was to the legality of the designated representative of Dutch workers participating in the third session of the International Labour Conference, as stipulated by Article 389(3) of the Versailles Treaty¹. The Court responded affirmatively, asserting that the stipulations of Article 389(3) of the Treaty represent a highly desirable yet challenging objective. The Dutch government has exerted all possible efforts to secure an agreement that optimally guarantees worker representation in the nation. The government, having established an accord with all the most representative industrial associations, appointed a workers' delegate in collaboration with those associations, which encompassed the majority of the nation's workforce.

The Council sent the Court's ruling to the Director of the International Labour Office, who then elaborated on its content in a report to the fourth session of the International Labour Conference, emphasising practical elements and recommendations that could assist States. Despite the practical value of opinions, there are cases when the Court cannot provide them. In the case of Eastern Carelia², the Court determined that there are certain categories of matters on which it should not give opinions, even if the Council requests such an opinion. In 1923, upon receiving a request from the Council for an opinion on the interpretation of certain provisions of a peace treaty between Finland and Russia, the Court concluded that it could not issue an opinion, as Russia had neither acceded to the Court's Statute nor accepted its jurisdiction, thereby requiring the consent of both parties for such an opinion to be provided. States cannot be compelled to resolve international disputes through

mediation, arbitration, or other peaceful means without their consent - a key principle of state sovereignty under international law. This category includes theoretical inquiries that are abstract and lack practical application (though they may influence law and policy), requests to determine future legislation, questions that undermine the voluntary nature of international judicial proceedings by attempting to bypass jurisdictional consent, and matters concerning abstract Covenant³ interpretation or states' domestic authority (Aljaghoub, 2005).

Thus, the jurisdiction of the PCIJ was characterised by considerable flexibility, allowing states to determine the degree of its binding nature. This confirms the observation of M.O. Hudson (1943) emphasised the importance of the optional clause in expanding the Court's competence by allowing states to voluntarily recognize its jurisdiction in certain categories of disputes. At the same time, the study showed that even in the absence of compulsory jurisdiction, the PCIJ was actively used by states to resolve disputes, which demonstrates its authority and trust in this judicial body. This observation complements the findings of M. Aljaghoub (2005) and M.O. Hudson (1923), who emphasise the importance of voluntary jurisdiction in the activities of the PCIJ and its impact on the development of law, demonstrating that states were willing to use the PCIJ to resolve disputes even without prior recognition of its jurisdiction. Thus, it can be argued that the flexibility of the jurisdiction of the PCIJ contributed to its effectiveness and accessibility for states wishing to resolve their disputes peacefully, allowing them to choose the most appropriate way of interaction with the Court and thus contributing to the strengthening of the legal order.

The jurisdiction of the PCIJ has emerged as a unique instrument that enhances the operational efficacy of the League of Nations by offering significant legal counsel on many matters. This is confirmed by A. Aust (2010), who pointed out the importance of advisory jurisdiction for the League of Nations as a political body that needed legal expertise for decision-making. The research indicated that the opinions of the PCIJ, albeit their non-binding character, possessed considerable authority and impact on the development of international practice. This aligns with H. Lauterpacht's (1993) research, which highlighted the significance of international courts in the evolution of law, particularly via their advisory

¹ Advisory Opinion of the Permanent Court of International Justice in Case "Designation of the Workers' Delegate for the Netherlands at the Third Session of the International Labour Conference". (1922, May). Retrieved from <https://jusmundi.com/en/document/other/fr-designation-du-delegue-ouvrier-neerlandais-a-la-troisieme-session-de-la-conference-internationale-du-travail-requete-pour-avis-consultatif-monday-22nd-may-1922>.

² Advisory Opinion of the Permanent Court of International Justice in Case "Status of the Eastern Carelia". (1923, July). Retrieved from http://www.worldcourts.com/ПЦИЖ/eng/decisions/1923.07.23_eastern_carelia.htm.

³ Covenant of the League of Nations. (1919, June). Retrieved from <https://www.ungeneva.org/en/covenant-lon>.

functions. The decisions of the PCIJ have significantly influenced the development of legal norms and have bolstered the rule of law globally. This fact demonstrates that the authority and influence of an international court is not always determined solely by the binding nature of its decisions, but may be based on the quality and validity of the legal arguments contained in its opinions.

An important conclusion of the study is that the development of the jurisdiction of the PCIJ was autonomous from other legal systems. This contradicts some previous studies and underlines the uniqueness and originality of this mechanism within the framework of the PCIJ. As noted by M. Fitzmaurice & C.J. Tams (2013), the BCP has independently developed this instrument, adapting it to the needs of the community. This shows the PCIJ's inventive capacity to establish new methods for resolving international disputes, significantly contributing to the evolution of law and showcasing its leadership in advancing international justice. This study's analysis indicates that the jurisdiction of the PCIJ, especially regarding opinions, has been a topic of vigorous dispute and contention. This was also pointed out by the Court's contemporaries, for example, A.H. Feller & E.W. Allen (1933), who analysed the limits of the jurisdiction of the PCIE and its relationship with the principle of state sovereignty. Of particular concern was the possibility of using advisory jurisdiction to circumvent the principle of voluntary participation in international judicial proceedings, turning it into an instrument of compulsory jurisdiction.

The European Court of Human Rights (ECHR) uses the mechanism of advisory jurisdiction to develop law in European countries. Although the ECHR judgments are binding on the Council of Europe member states, like the PCIJ, the court also performs an advisory function, providing opinions at the request of the Committee of Ministers of the Council of Europe. As noted by J. Dute & T. Goffin (2024), the ECtHR actively implements the legal standards developed since the time of the PCIJ and enshrines them in its judgments, influencing the legal systems of the member states.

The International Criminal Court (ICC) operates under the Rome Statute, which defines its mandate to try the most serious international crimes. Although the ICC primarily administers criminal justice, it can also have an advisory role, for example, in cooperation with the UN or other international organisations. N. Palmer & T. Hamilton (2022) emphasised that the PCIJ contributed to the development of the basic principles of justice that are used in the ICC's work today. Despite the fact that the ICC's advisory opinions are limited to the field of criminal law, its

practice, like the decisions of the PCIJ, is based on the same ideas of legal responsibility and justice that were laid down in the days of the PCIJ.

The Court of Justice of the European Union, according to the Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union¹, has an advisory function, providing preliminary opinions on the interpretation of EU law at the request of national courts. These opinions are not obligatory for national courts; yet, they substantially influence the evolution of legal norms inside the EU. The importance of this role is reflected in the study by X. Tracol (2023), who argued that the EU Court of Justice's case law on preliminary opinions is based on the legal tradition established by the PCIJ. This allows EU Member States to effectively interact at the legal level and unify legislative approaches. Thus, the advisory functions of the PCIJ have become an integral part of modern international judicial practices, in particular within the framework of the EU's legal integration. The advisory opinions of the Venice Commission, as well as the decisions of the PCIJ, have a significant impact on the legal order, despite the fact that they are not binding. The Venice Commission provides expert opinions on constitutional law, democracy and human rights, which helps states to reform their legislation. S. Granata-Menghini (2022) noted that the role of the Venice Commission is key to ensuring constitutional justice, especially in the context of the rise of populism. As emphasised by F. Duranti (2024), the Commission's opinions influence the formation of governmental structures, which contributes to the strengthening of legal standards in the Council of Europe member states.

This confirms the importance of consultative mechanisms in law, which allow states to receive authoritative legal clarifications and promote the peaceful settlement of disputes, even if they are not legally binding. The study also found that the PCIJ has actively used its advisory jurisdiction, issuing numerous advisory opinions on a variety of issues. The PCIJ's experience can benefit contemporary international courts that provide advisory opinions by elucidating best practices and methodologies for this function, while underscoring the significance of advisory jurisdiction in fortifying the international legal framework and fostering the peaceful resolution of conflicts.

■ Conclusions

Given the evolution of law and international relations, the Permanent Court has played a significant role in conflict resolution. The Court has delivered 32 judgements and issued 27 advisory opinions. The authority of the Permanent Court to adjudicate

¹ Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union. (2016, June). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12016ME%2FTXT>.

disputes is explicitly delineated in its Statute. Although the jurisdiction, according to the Statute, was optional, there were cases that gave the Court “compulsory jurisdiction”. This “compulsory jurisdiction” was granted by states in a declaration. In this case, the states were obliged to refer the case to the Court. The Permanent Court was also granted exclusive competence to facilitate the work of the Council and Assembly of the League. In the formulation of the Statute, the Advisory Committee of Jurists included in Article 36 the provision for the Court to issue opinions on matters of international significance or disputes submitted by the Council or the Assembly. This provision, however, gave rise to an active debate on the relevance of powers to the Court’s overall tasks and fears that such powers could become a form of compulsory jurisdiction. As a result of these discussions, and in view of the “desire not to limit the Court in a field which had no clear international past and was uncertain as to its international future”, the Assembly decided not to include advisory powers in the final Statute. In 1929, amendments to the Statute of the PCIJ were drafted, which entered into force in 1936, enshrining the PCIJ’s practice of advisory opinions and adding certain articles. Thus, the new version of the Statute, in accordance with Title IV, Articles 66-68 of the Statute of the Court, set out the procedure for filing an application, hearing a case and issuing an advisory opinion.

The Advisory Opinion was not a judgment in cases under Articles 59 and 60 of the Statute of the Court.

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It should also be added that there is no evidence that the committee of lawyers who drafted the Statute and certain provisions of the Court’s competence relied on the experience of advisory jurisdiction of national systems or other international bodies. However, we can conclude that the main difference between the advisory opinions of the PCIJ and other international bodies is their legal status and scope. In addition, it is worth emphasizing that the Court could only issue such opinions to states that are in dispute and accept the Court’s jurisdiction. When a state rejects the Court’s jurisdiction, it cannot provide an advisory opinion without infringing upon that state’s sovereign right to decide whether to submit disputes for judicial review.

Examining the correlation between the jurisdiction of the PCIJ and the operations of contemporary organisations, such as the International Labor Organisation and the International Maritime Organisation, is promising. This will elucidate the mechanisms of interaction between the PCIJ and other international organisations, together with their influence on the jurisdiction and operations of the PCIJ, and the evolution of law overall.

■ Acknowledgements

None.

■ Conflict of Interest

The author of this study declares no conflict of interest.

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Юрисдикція та консультативні функції Постійної палати міжнародного правосуддя: історичний розвиток і вплив

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■ **Анотація.** У статті зосереджено увагу на з'ясуванні основних питань, що стосуються формування юрисдикції Постійної палати міжнародного правосуддя, її джерелах, обмеженнях, державному визнанні, виключних повноваженнях щодо надання консультативних висновків, правовій природі й меті діяльності. У дослідженні використано комплексний підхід, що передбачав аналіз історичних документів, статутів і регламентів Постійної палати. Виокремлено визначальні елементи юрисдикції цього органу та його участі у формуванні міжнародно-правової бази. Здійснено порівняльний аналіз механізмів консультативних висновків у різних правових системах, що надало можливість визначити особливості й унікальність підходу Постійної палати. З'ясовано, що повноваження Постійної палати вирізнялися гнучкістю, що давало змогу державам самостійно встановлювати рівень їх обов'язковості. Її консультативна юрисдикція була інноваційним механізмом, що сприяв ефективному функціонуванню Ліги Націй та прийняттю важливих правових рішень. Хоча консультативні висновки не були обов'язковими до виконання, вони мали авторитет і важливе значення для розвитку міжнародного співробітництва. Консультативну юрисдикцію було створено незалежно від інших правових систем, що засвідчувало її унікальність. Констатовано, що Постійна палата зробила вагомий внесок в еволюцію юриспруденції та методів мирного врегулювання конфліктів. Цей досвід і практика заклали фундамент сучасної системи правосуддя та основоположних принципів права, сприяючи співробітництву і взаєморозумінню в міжнародних відносинах. Практичне значення цього дослідження полягає в окресленні ролі Постійної палати в розвитку міжнародного правосуддя та механізмів мирного врегулювання спорів, що може сприяти вдосконаленню сучасних правових систем і міжнародних відносин

■ **Ключові слова:** компетенція судових органів; глобальні відносини; консультативна юрисдикція; вирішення міжнародних спорів; консультативний висновок

Doi: 10.56215/naia-herald/4.2024.99

Correction to Article “Best practices in police personal security: A systematic review”

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Уточнення до статті «Передовий досвід забезпечення особистої безпеки поліцейського: систематичний огляд»

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My name is Madelyn Harris and I'm one of the authors of the study “Black grief matters: Undergraduate students' experiences grieving police murders of Black Americans”.

In the article by M. Lohvynenko (2024) “Best practices in police personal security: A systematic review” (published in the Scientific Journal of the National Academy of Internal Affairs), there was an error in the fifth paragraph of the “Police training as a factor in ensuring their personal safety” section.

The findings of a study by M. Harris & K. O'Brien (2024) were misrepresented as support for the negative psychological outcomes that police officers experience as a result of job-related stressors. M.G. Harris & K.M. O'Brien's (2024) study, “Black grief matters: Undergraduate students' experiences grieving police murders of Black Americans” explored negative psychological outcomes experienced by Black undergraduate students as they grieved police murders of Black Americans; it did not examine stressors or psychological outcomes among police officers.

The findings of M.G. Harris & K.M. O'Brien's (2024) study are specific to the grieving experiences of Black college students and cannot be generalised to profession-related stress experienced by law enforcement officers.

I would like to thank the editorial team for the opportunity to provide clarification on my research.

■ References

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■ Suggested Citation:

Harris, M. (2024). Correction to Article “Best practices in police personal security: A systematic review”. *Scientific Journal of the National Academy of Internal Affairs*, 29(4), 99. doi: 10.56215/naia-herald/4.2024.99.

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SCIENTIFIC JOURNAL
OF THE NATIONAL ACADEMY OF INTERNAL AFFAIRS

Scientific Journal

Volume 29, No. 4. 2024

Founded in 1996. Published four times per year

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

Managing Editor:

O. Korotkyi

Editing English-language texts:

S. Vorovsky, K. Kasianov

Desktop publishing:

O. Glinchenko

Signed for print November 26, 2024. Format 60*84/8
Conventional printed pages 11.8
Circulation 100 copies

Editors office address:

National Academy of Internal Affairs
03035, 1 Solomianska Sq., Kyiv, Ukraine
Tel.: +38 (044) 520-08-47
E-mail: info@lawscience.com.ua
<https://lawscience.com.ua/uk>

**НАУКОВИЙ ВІСНИК
НАЦІОНАЛЬНОЇ АКАДЕМІЇ ВНУТРІШНІХ СПРАВ**

Науковий журнал

Том 29, № 4. 2024

Заснований у 1996 р. Виходить чотири рази на рік

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

Відповідальний редактор:

О. Короткий

Редагування англomовних текстів:

С. Воровський, К. Касьянов

Комп'ютерна верстка:

О. Глінченко

Підписано до друку 26 листопада 2024 р. Формат 60*84/8

Умов. друк. арк. 11,8

Наклад 100 прим.

Адреса видавництва:

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