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НАЦІОНАЛЬНА АКАДЕМІЯ ВНУТРІШНІХ СПРАВ

НАУКОВИЙ ВІСНИК
НАЦІОНАЛЬНОЇ АКАДЕМІЇ ВНУТРІШНІХ СПРАВ

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Current trends in public involvement in crime prevention policing

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■ **Abstract.** The relevance of this study is substantiated by the need to implement a strategy of public influence on crime, to improve police-public interaction in the field of crime prevention, new forms and methods of which can be implemented in the activities of the National Police. The purpose of this study was to provide a comprehensive investigation of the practices of involvement of the public, community-based organisations, and individuals in police activities aimed at preventing offences, and of the legal framework in this area. According to the purpose and objectives set, the study employed general and special methods and techniques of scientific cognition, including the methods of analysis, synthesis, classification and grouping, which made it possible to investigate a wide scope of scientific discussions on the issues raised. Based on the analysis of secondary sources, it was found that researchers state a prominent level of public trust in the police and other law enforcement agencies, as well as in state and local governments in economically developed countries. Most researchers attribute this to the positive results and consequences of involving the public, community-based organisations, and individuals in policing activities to prevent crime, protect public safety and order, and protect the rights and freedoms of citizens. It was found that in the modern scientific discourse, such successes are associated with the establishment of effective channels of communication between the police and the public and legislative regulation of such interaction. In this regard, the study elucidated the views of researchers on the approaches to regulatory support for the involvement of the public, community-based organisations, and individuals in police activities in preventing offences in different countries. The study argued the need for legislative consolidation of certain forms and methods of involvement of the public, community-based organisations, and individuals in police activities aimed at protecting public safety and order, protecting life, health and property of citizens, and preventing criminal offences. The review of the current state of scientific research on the issue formed the basis for further theoretical developments in the field of organising effective interaction between law enforcement agencies and society

■ **Keywords:** community engagement; interaction; community police; crime prevention; public safety

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Introduction

The topic of involvement of the public, community-based organisations, and individuals in police activities to protect public safety and order, life, health and property of citizens, as well as to prevent criminal offences, has become of particular significance for modern Ukraine, since, with the exception of the declarative Law of Ukraine "On Citizens' Participation in the Protection of Public Order and the State Border" of 22.06.2000[1], the regulatory framework for public influence on crime is limited. It is this Law that still regulates the involvement of public associations in the protection of public security and order, the protection of the state border, and their assistance to law enforcement agencies in preventing offences. As of 2023, there is an inconsistency at the legislative level regarding the procedural prerequisites for the involvement of community-based organisations and individuals in police activities in the field of crime prevention. That is why the experience of different countries in engaging the public, community-based organisations, and individuals in policing to prevent crime is valuable in terms of public influence on crime.

Involvement of the public, community-based organisations, and individuals in police activities to protect public safety and order, life, health, and property of citizens, and prevent criminal offences is particularly relevant due to the problems of defence and countering external military aggression, which requires the involvement of community representatives in the defence of the country. That is why, in today's environment, there is a need for additional public involvement in interaction with the police to ensure the safety of citizens and their property, as well as to assist law enforcement in preventing offences. Thus, investigation of the world practices of involving the public, community-based organisations, and individuals in police activities to protect public safety and order, protect life, health, property of citizens, and prevent criminal offences is one of the most relevant issues for further improvement of the National Police of Ukraine.

According to S.V. Medvedenko *et al.* (2019), involvement of the public in law enforcement and interaction of law enforcement agencies with the population has always contributed to the maintenance of law and order. The current state of development of society requires the application of up-to-date approaches and principles of police interaction with the public, including the involvement of the public, community-based organisations, and individuals in police activities to prevent offences. Ukraine is striving to integrate into the European community and meet European standards, including in policing, which encourages law enforcement agencies to abandon old methods and constantly search for new ways, be more open to society, and serve people using modern means and new effective methods. As pointed out by V.G. Androsyuk *et al.* (2018), the history and current trends of police-public interaction in crime prevention and public involvement in law enforcement and safe environment represent a significant source of information. This source is not only possible, but also crucial to use, selecting the best and appropriate forms and methods for the conditions and characteristics of Ukraine.

Considering the findings of A. Wantenaar & D. Govender (2023) that interaction between the police and society is a key factor in reducing crime, the leadership of Ukraine's highest state authorities should pay attention to positive practices and approaches to engaging community-based organisations and citizens in crime prevention when formulating state internal policy. K.V. Kysyliova (2021) shares this opinion. The findings of Mangai *et al.* (2023) also support this view, showing that community policing is a modern policing paradigm that improves police-public relations, prevents crime, reduces disorder and anti-social behaviour, promotes a sense of security, and improves police and community accountability. U. Kabanda (2022) noted that community policing reduces the probability of crime and influences the behaviour of potential victims of crime at the grassroots level. It is in this context that N. Ekici *et al.* (2022) noted that community involvement in public order is a best practice in modern policing and is becoming an increasingly popular strategy for law enforcement agencies internationally, used in many countries.

Considering such consensus on the positive impact of police-public interaction, further developments in this area require a generalisation of international practices. The purpose of this study was to provide a comprehensive coverage of current scientific research on the experience of involving the public, community-based organisations, and individuals in police activities in preventing offences.

The specific purpose makes provision for the analysis of the regulatory framework for the involvement of the public, community-based organisations, and individuals in crime prevention at the level of individual countries in comparison with the legislation of Ukraine; investigation of the current state and forms of involvement of the public, community-based organisations, and individuals in crime prevention in different countries; assessment of the results of individual countries in implementing crime prevention programmes by local communities

[1] Law of Ukraine No. 1835-III "On the Participation of Citizens in the Protection of Public Order and the State Border". (2000, June). Retrieved from https://zakon.rada.gov.ua/laws/show/1835-14#Text.

This study employed general and special methods and techniques of scientific cognition. Using heuristic methods and methods of analysis, the study analysed certain aspects of regulatory support for police-public interaction in preventing offences and the coverage of the world practices of administrative and tort legislation in the field of combating criminal offences in the scientific literature. In analysing secondary sources, the study employed the methods of classification and grouping to better understand current trends in the field of investigating the topic of police-public interaction in preventing criminal offences.

Community involvement in policing

One of the key components of police interaction with the public in preventing crime is the practice of regulatory support for the involvement of the public in preventing crime. The international practices are an intermediate element between the criminological theory of involving the public, community-based organisations, and individuals in crime prevention policing and its direct implementation. As indicated by M.G. Kolodyazhnyi (2017), the legislative consolidation of the norms of ensuring the involvement of the public, community-based organisations, and individuals in police activities in preventing offences is a form of expression of theoretical provisions for law enforcement practice.

The opinions of V.G. Androsyuk *et al.* (2018) are correct, who noted that the implementation of international practices in legal regulation, including the use of psychological support for police interaction with the public in preventing offences, will optimise the communication competence of police officers, improve their activities in the modern realities of life in many countries, promote public trust in the activities of police officers in preventing offences, establish their partnerships, and reorient the professional activities of police officers towards providing assistance to citizens. As shown by the research of A. Chand *et al.* (2022), the public's perceptions of police performance are shaped by their experiences and interactions with the police, which can affect trust, perceived legitimacy, and future cooperation between the public and the police in preventing criminal offences.

According to A. Wantenaar & D. Govender (2023), community policing plays a key role in reducing crime. In their study, the researchers aptly noted that community members and community-based organisations are involved in the Community Policing Forum (CPF) and subsequent assistance to the police, a private security force in the South West Tshwane Police Area in Gauteng, South Africa (SAPS). Individual interviews were conducted with 36 participants specially selected from the police stations of Laudium, Lyttelton, and Verdabrug. The findings showed that due to a range of factors, the police alone cannot reduce crime in communities. The researchers recommended a multidisciplinary approach wherein the CPF, private security firms, and community members cooperate with the police to mobilise community policing expertise and use all forces, means, and resources to achieve a safe environment for all citizens.

The introduction of the First Nations Policing Programme (FNPP) in Canada in 1992 was intended to provide professional and culturally appropriate policing that meets the needs of the community, with the public and community-based organisations involved in policing, but these efforts have not achieved the desired results. In their paper "Policing in the Community: Perceptions of Officers Working with Indigenous Communities", N. Jones *et al.* (2019) examined police performance based on a survey of 827 police officers who policed indigenous communities in 2014, comparing the results of surveys conducted in 1996 and 2007 by different groups of researchers who asked the same questions of police officers who policed these places. The survey results showed that community perceptions of the police have changed, as police officers in 2014 were less likely to favour key aspects of community policing, such as getting to know community members, seeking help from the community or receiving assistance from community-based organisations, and the number of police officers was increasing.

As noted by J. Mutupha & Y. Zhu (2022), the Government of Malawi has adopted the concept of community policing as a means of promoting public involvement in the police's crime fighting activities. Considering that community policing has been in existence in Malawi for over a decade, this study was conducted to holistically identify the challenges associated with community policing with a view to providing empirically validated strategies for effective implementation. In their study, J. Mutupha & Y. Zhu (2022) used a case study approach. Purposive sampling was used, on the one hand, to select the research site, the central regions of Malawi, and to select police officers working as community policing coordinators and community members working in community policing forums. A quota sample was used to select police officers and community members from each district. Finally, convenience sampling was used to select police officers and community representatives within each district's quota. Focus group discussions were held with 16 community police forums; interviews were conducted with 16 Community Policing coordinators; and a questionnaire collected data from 144 community members and 200 police officers. The findings showed that community members are dissatisfied with the way police officers implement community policing, as the police do not provide sufficient protection from criminals and generally treat the community poorly.

Community members were involved in community policing mainly because of the deteriorating crime situation in the community, their personal fear of crime, and the need to be recognised by the police. Factors that impede the implementation of community policing include a lack of knowledge about community policing on the part of police officers; a lack of recognition of community involvement in police activities; corruption; lack of confidentiality; poor working relationships; and a lack of resources. The concept of community policing continues to receive unprecedented attention in police reforms around the world. Every year, the number of reports on the application of this concept in police work increases.

M. Mangai *et al.* (2023) explored the perspectives of community policing in South Africa, specifically on the strategy of citizen engagement in crime prevention, focusing on the work of the Johannesburg Police. The findings of the cited study proved the effectiveness of community involvement in the activities of sectoral police, street patrols, and the use of social media by citizens as partners of the police in crime prevention. However, certain challenges were also identified, such as resource constraints and difficulties in the regions where the police operate. This study has contributed to a broader understanding of community-police partnerships for practical outcomes in South African crime prevention policing, suggesting areas for improvement and adaptation. This knowledge can help optimise efforts to strengthen police-community relations, build public trust, and ultimately improve crime prevention outcomes. South Africa is one of the countries that imported the concept of community policing from Western Europe and North America. Community policing was introduced in the SAPS Act in 1998/1999 and was adopted as the operational philosophy of SAPS. Based on the results of a study of community policing in South Africa by G. Lamb (2021), the effectiveness of community policing is still debatable, although some researchers (Peyton *et al.*, 2019; Khahla, 2023) argue that it has been successful in creating legitimacy and improving service delivery.

According to A. Abaho (2023), contemporary changes in crime reveal the need for stronger intelligence-led policing methods for sustainable community-police partnerships and improved community engagement in public safety and crime prevention. Community involvement and partnerships with law enforcement are essential to identifying threats and vulnerabilities, collecting, analysing, and sharing crime data, and addressing vital community issues. Since 1989, the Uganda Police Force has focused on building the image, trust, and confidence of the police in helping the community prevent crime. The introduction of crime prevention tools and local defence units (LDUs) to support the police in fighting crime, patrolling neighbourhoods, and gathering intelligence has instead led to allegations of excessive use of force, human rights abuses, and complicity in crimes. Intelligence-led policing (ILP) aims to improve community safety based on analysed information for strategic, operational, and tactical advantages in crime prevention. The police were given priority in preventing crime, while the collection of intelligence for investigating and preventing crime stayed the responsibility of the community. This recommended the community-based policing integrated with ILP to effectively detect, prevent, and combat crime and improve policing.

H. Lee *et al.* (2019) investigated the determinants of community support for police work in a small town. Specifically, community representatives are willing to cooperate with the police and take part in various crime prevention programmes, which depends on the community's perception of police work. The results of the survey showed that most respondents support the involvement of community representatives in police activities. The researchers also examined the significance of demographic factors, community characteristics, as well as public perception and experience of community involvement in crime prevention.

The community policing approach to crime prevention and public safety and order, which is considered an English-American method, has gained popularity and positive impact on crime and is now widespread throughout the world. The need for differentiated local implementation has raised important questions about the major features of community involvement in policing for the development of programmes and plans for police practitioners. The study by M. O'Neill *et al.* (2023) was based on interviews with 323 community representatives and police officers in eight countries. The researchers proposed a dynamic model for engaging community members in policing. This original model outlined the conditions, actions, and goals of the so-called Community Policing (CAP), as well as the key components necessary for effective community involvement in policing. The CAP model is being adapted while maintaining a sense of what Community Policing does as a unique and identifiable method of policing.

M.M. McCarthy *et al.* (2019) investigated the impact of community-oriented policing in 64 socially disadvantaged communities in Australia. The study proved that a community-oriented approach to policing has an impact on police performance and varies with the level of violent crime. The results of multilevel Poisson modelling showed that there is no general relationship between informal and formal involvement of community members in policing. However, the essential conditions of police interaction with the community have had an impact on the prevention of violent crime.

A. Koci & T. Gjuraj (2019) investigated the practices of involving community representatives in policing in Albania, where the police is central to ensuring public safety and order on the democratic principles of policing in the country. The involvement of community representatives in policing is consolidated in national and local police strategies, which require close cooperation between the police, local authorities, and non-governmental organisations in identifying and addressing the needs of local police. The implementation of this initiative is an attempt of reforms in Albania to reorient the police towards ensuring respect for human rights, which affects the relationship between the police and citizens. This concept can be considered as a valuable tool for improving police communication with the public and encouraging community members and police to work together to reduce crime.

G. Mesko *et al.* (2019) analysed the relationship between police officers and residents in Slovenia. The study focused on police officers' and residents' perceptions of mutual respect, quality of relations and willingness to cooperate with police officers in performing the main tasks of community policing. The survey sample consisted of 520 police officers and 1,266 residents from 24 Slovenian municipalities and police stations. The results of t-tests and analysis of variance showed that there are differences in perceptions of relationships and willingness to cooperate with police officers in their principal tasks. The results of the regression analysis showed that the factors of the quality of relations and willingness to cooperate with the police depend on the performance of tasks by community members to help the police, gender, personal income, and the size of the municipality.

It is worth agreeing with the opinion of O. Kostiushko (2019), who based the concept of police-public interaction in crime prevention on the "9 principles of modern police work" drafted by British Home Secretary Robert Peel, who in 1829, opposing the existing private police, introduced the concept of municipal police in London, which focused on crime prevention and systematic patrolling. The most important of the principles is that the police should maintain communication with the public, as the police is a representative of the public, and police officers should involve representatives of the public, community-based organisations, and individuals in police activities related to the protection of the rights and freedoms of citizens, their property, protection of public safety and order, and prevention of offences. As an aspect of involving the public, community-based organisations, and individuals in police activities in preventing offences, S.V. Medvedenko (2019) considers communication as a process of information exchange between the police and community representatives, which contributes to increasing the level of public confidence in police activities in preventing offences.

According to C.C. Chu *et al.* (2021), public involvement in policing can prevent crime, increase citizen participation, and contribute to the democratisation of policing. Starting in the mid-1990s, Taiwanese police agencies began to involve community members in their work. The practice includes planning forums between the police and the community on security and policing issues. One of the key principles of community policing is the involvement of citizens in the activities of the police to ensure public safety and order.

A. Al Manhali *et al.* (2022) have shown that globally, the concept of community policing has been applied in a variety of individual strategies to meet the needs of specific environments and is based on common goals that include engaging the community to assist police activities to ensure public safety and prevent crime. In parallel, police agencies and public authorities have developed a range of targeted campaigns to support and enhance community involvement in policing to help build safer communities. Combining soft power with community engagement in policing is a central objective of the Abu Dhabi Police (United Arab Emirates). At the same time, the findings of Chinese researchers Y.N. Wu *et al.* (2021) showed a positive impact of the use of CCTV cameras by the police on the effectiveness of collective interaction between the public and the police, and formal and informal social control through CCTV contributes to the public's willingness to cooperate with the police.

According to S. Dlamini (2020), policing in multiracial communities is an important and contemporary challenge for the police, as culturally diverse local environments pose many social and organisational challenges in terms of community relations, problem solving, and security. That is why the quality of community involvement in policing in local communities is an important research topic in criminology and police training and requires special competencies.

Having analysed the coverage of police activities in individual countries in the scientific literature, it can be concluded that there is a general consensus among researchers that economically developed countries adhere to global standards of policing, and therewith, each country has its history of law enforcement development, unique features of customs and mentality of the population, as well as its own specifics that determine certain features and forms of police interaction with the public. J. Pyo (2023) points out that a prominent level of public trust in the police, state institutions, and community-based organisations is an indicator of the development of the rule of law and, accordingly, trust in the police is an objective criterion for determining the effectiveness of its activities.

Accoridng to J. Üblacker & T. Lucas (2023), many large German cities have expanded the capacity and legal powers of their municipal policing services to focus the points of engagement of the public, community-based organisations, and individuals in policing in central areas characterised by a concentration of social problems, reinvestment in the built environment and a prevailing sense of insecurity and a need to improve the quality of life. The researchers examined the specific features of local cultures of police oversight and their relationship to community policing. The researchers concluded how the habit of control of the local community population influences changes in police activities to ensure public safety and order and prevent offences, and through neighbourhood-specific requirements, social control was formed and used. Requirements for maintaining order come from both the supply side of the community's permanent residents, businesspeople, and the demand side of new residents. Germany also uses the concept of community policing, which involves the public, community-based organisations, and individuals in policing to prevent crime. The principal tasks of the police in this area include measures to ensure interaction between the police and the public in the performance of their professional duties. Thus, the involvement of the public, community-based organisations, and individuals in crime prevention policing in Germany is a prerequisite for effective policing.

■ Problems of implementing international practices of police-public relations into national practice and legislation

M.G. Kolodyazhnyi (2014; 2017) refers to the international legal acts that lay the foundations for involving the public, community-based organisations, and individuals in police activities to prevent offences as documents of relevant international institutions operating in this area. International institutions include the United Nations as a general international organisation that, specifically, issues special documents on ensuring police-public interaction in preventing crime. In terms of the strategy of involving the public, community-based organisations, and individuals in police activities to prevent crime, its significance and specific features of application in practice should be considered together with other international legal documents regulating this activity. These include the UN Resolution "Measures to Promote Effective Crime Prevention"[1], which states the crucial role of active involvement of the public, community-based organisations, and individuals in policing in the field of crime prevention, ensuring public safety and order, protecting the rights, interests, and property of citizens in society. It is the involvement of the public, community-based organisations, and individuals in police activities to prevent crime that forms an essential element of police work and can be expressed in the identification and implementation of priority preventive measures, public trust in police activities, and control over these activities. This international act also addresses the doctrinal foundations of community involvement and partnerships, which are essential elements of the modern concept of crime prevention and explains the concept of "community" in the context of involving the public, community-based organisations, and individuals in policing activities to prevent crime at the local level. One of the key principles of crime prevention is cooperation of various subjects of preventive activity.

M.A. Hansen & J.C. Navarro (2023), having investigated the US Global Police Report, noted that between 2020 and 2021, there was the largest decline in trust in local police than in other regions of the world (Gallup, 2022). Citizen surveys on public trust in the police in 2020 and 2012 recorded values below 50% for the first time since the Global Law and Order Report began recording public attitudes towards the police (Gallup, 2023). In 2022, according to the data collection, there was a record small number of citizens who trusted the police (45%) in the thirty years of the M.A. Hansen *et al.* (2022) data survey. These trends are significant because, as noted by M.A. Bolger *et al.* (2021), people with less trust in the police are less likely to cooperate with the police. At the same time, a study by C.S. Coper *et al.* (2022) proves that such cooperation increases trust and respect for patrol police.

V.G. Androsyuk *et al.* (2018), noting the partnership of the police with the public and the formation of its trust, the combination of principles and methods of communication in professional policing, rightly emphasised the facilitation of EU institutions to this process. The researchers noted that police activity does not merely refer to preventing offences, but also to taking preventive and proactive measures to avert the commission of any offences. The Organisation for Security and Cooperation in Europe (OSCE) encourages police cooperation with the public and the involvement of individuals in crime prevention activities, which contributes to the successful fight against crime, development, and improvement of the quality of life of citizens in society. It is emphasised that involvement of citizens and public organisations in police activities aimed at preventing offences, ensuring public order and safety of citizens in society requires mutual obligations and accountability

[1] UN Economic and Social Council Resolution No. 2002/13 "Measures to Promote Effective Crime Prevention". (2002, July). Retrieved from https://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/resolution_2002-13.pdf.

between the police and the public. It is also important to consider the provisions of UN declarations in ensuring public involvement in crime prevention. Specifically, the materials of the last three UN congresses on crime prevention and criminal justice focus on the implementation of this strategy in the law enforcement practice of different countries. For instance, it is emphasised that effective action in the field of crime prevention and criminal justice requires the involvement of national, regional, interregional, and international institutions, intergovernmental and non-governmental public organisations. This also includes the media and the private sector, and it is important to define their respective roles and contributions to law enforcement.

The public, community-based organisations, and individuals in crime prevention policing are involved according to the priority areas stipulated by such key international legal instruments as the European Code of Police Ethics[1] and the Declaration on Police[2], which recommend that states organise their police following professional standards of the public, community-based organisations, and individual involvement in crime prevention policing. The police should not only ensure public safety and order, prevent crime, but also perform social and service functions to help citizens in various areas of life, which is confirmed by the studies of E. Loeffler & T. Bovaird (2020) and J. Laufs & Z. Waseem (2020).

The Bangkok Declaration[3], adopted at the Eleventh UN Congress, in Clause 9, stipulates the important role of individuals and the public, civil society, non-governmental and community organisations in contributing to the prevention of crime and terrorism and in combating them. Clause 34 of the Declaration prescribes the need to consider measures to prevent the growth of urban crime, including by improving international cooperation and building the capacity of law enforcement and judicial authorities in this area and by promoting the involvement of local authorities in cooperation with civil society.

The Salvador Declaration[4], adopted at the Twelfth UN Congress, in Clause 33, defines the responsibility of states to develop and adopt policies in the field of crime prevention, as well as to monitor their implementation and evaluate their results. Clearly, these efforts should be based on the broad participation and cooperation of all stakeholders, including civil society. Clause 34 of the same declaration points to the significance of strengthening partnerships between the public and private sectors in preventing and combating crime in all its forms and manifestations. It is worth agreeing with the opinion of M.G. Kolodyazhnyi (2017) on mutual and effective exchange of information, knowledge, and practices of public authorities in the development, improvement, and implementation of measures to prevent offences.

The successful practices of police work, as evidenced by the above opinions of researchers, convinces of the need for regulatory mechanisms that can be used in the work of the National Police of Ukraine. The key to the experience of police interaction with the public is the focus on developing professional knowledge of police officers, among which the most important is the resolution of conflict situations among the population through the involvement of the public, community-based organisations, and individuals in police activities.

V.G. Androsyuk *et al.* (2018) investigated the legal acts of some countries in the field of community involvement in policing. Thus, Article 5 of the Organic Law of the Kingdom of Spain No. 2 of 13 March 1986 on Security Forces and Corps[5] prescribes the principles of police interaction with the public, which include the ability to establish communication between police officers and the public. Article 4 of the Law on the Organisation of the Public Security Police of the Republic of Portugal No. 53 of 2007[6] states that the Public Security Police are not entitled to settle conflicts of a private nature and can only perform public order actions in such cases.

Having analysed the international and Ukrainian practices of legal regulation of police communication with the public, V.G. Androsyuk *et al.* (2018) noted that the Law of Ukraine "On the National Police"[7] stipulates that the principal factors of involvement of the community and individual citizens in the direct work of police officers in the field of protection of human rights and freedoms, public security and order, as well as prevention of criminal offences, include

[1] Recommendation of the Committee of Ministers to the Member States of the Council of Europe No. Rec (2001)10 "On a European Code of Police Ethics". (2001, September). Retrieved from http://pravo.org.ua/files/Criminal %20justice/rec1.pdf.
[2] Resolution of the Parliamentary Assembly of the Council of Europe No. 690 (1979) "On the Police". (1979, April). Retrieved from https://pace.coe.int/pdf/b665278876aaf96f6c0da9ef97f75b4d5e6facb095940fd07465d1ce5c673c34/res.%20690.pdf
[3] Report of the Eleventh United Nations Congress No. A/Conf.203/18 "On Crime Prevention and Criminal Justice". (2005, April). Retrieved from https://www.unodc.org/documents/congress/Documentation/11Congress/ACONF203_18_e_V0584409.pdf.
[4] Report of the Twelfth United Nations Congress No. A/Conf.213/18 "On Crime Prevention and Criminal Justice" (2010, April). Retrieved from https://www.unodc.org/documents/crime-congress/12th-Crime-Congress/Documents/A_CONF.213_18/V1053828e.pdf.
[5] Organic Law of the Kingdom of Spain No. 2/1986 "On Security Forces and Corps". (1986, March). Retrieved from https://www.boe.es/buscar/act.php?id=BOE-A-1986-6859.
[6] Law of the Republic of Portugal No. 53/2007 "On the Organization of the Public Security Police of the Republic of Portugal". Retrieved from https://diariodarepublica.pt/dr/detalhe/lei/53-2007-641142.
[7] Law of Ukraine No. 580-VIII "On the National Police". (2015, July). Retrieved from https://zakon.rada.gov.ua/laws/show/580-19.

such principles of professional activity as openness, transparency (Article 9), interaction with the population based on partnership (Article 11).

Notably, the right of Ukrainian citizens to freedom of association in public organisations for the exercise and protection of their rights and freedoms is prescribed in Article 36 of the Constitution of Ukraine[1]. Following the Law of Ukraine "On the Participation of Citizens in the Protection of Public Order and the State Border"[2], citizens of Ukraine are entitled to establish public associations according to the procedure established by this Law to take part in the protection of public order and the state border, as well as to assist law enforcement agencies in preventing offences. According to the Law, the involvement of the public, community-based organisations, and individuals is necessary to protect the life and health of citizens, the interests of society and the state from unlawful encroachments, as well as to assist in the rescue of people and property in case of natural disasters and other emergencies. Public order and state border protection organisations can be established based on public amateurism, including general groups of public formations and specialised groups that provide support to the National Police and the State Border Guard Service of Ukraine[3].

It is worth agreeing with the conclusions drawn by K.S. Izbash & N.V. Dombrovan (2022), who noted that the involvement of the public, community-based organisations, and individuals in police activities in preventing offences should be as follows: management of territorial police units meets with representatives of local self-government bodies to discuss police activities and identify current problems of public safety and ways to solve them; police representatives inform the public about the state of law and order in their jurisdiction and conduct legal education classes for the public; when engaging the public, community-based organisations, and individuals in crime prevention activities, representatives of the police and the community develop joint projects and activities to improve the effectiveness of the police in fulfilling its tasks and meeting the urgent needs of the community. Therefore, to improve and effectively perform their duties of protecting public safety and order, it is necessary to ensure the involvement of representatives of the public, community-based organisations, and individuals in police activities, considering the needs of the local community and certain groups of its population. At the same time, as rightly pointed out by V. Bondarenko & S. Yesimov (2019), the development of such legislation should factor in public opinion on this issue, which will serve to increase trust and ensure the legitimacy of law enforcement agencies.

In this regard, there is a substantiated need to consolidate legislatively the forms and methods of involving the public, community-based organisations, and individuals in police activities aimed at ensuring public safety and order and preventing criminal offences. Such legislative regulation should consider the need to create stable channels of information exchange between the public and police officers, as well as help police officers improve their competencies necessary for them to perform a wide range of tasks related to interaction with citizens and perform service functions.

Conclusions

By accumulating the views of researchers and legal positions, this study analysed the current state and principal forms of public influence on crime, involvement of the public, community-based organisations, and individuals in police activities in preventing offences in several countries. The practices of some countries in engaging the public, community-based organisations, and individuals in policing activities to protect public safety and order, protect life, health, and property of citizens, and prevent criminal offences is an example for implementing public influence on crime in countries that suffer from the problem of low public trust in law enforcement agencies.

The study analysed the types of police interaction with the public in preventing crime in different countries of the world. It was found that in modern scientific thought, the involvement of the public, community-based organisations, and individuals in police activities in preventing offences is considered a crucial factor in protecting the rights and interests of citizens, their property, ensuring public safety and order in society. Most researchers believe that an integral part of involving the public, community-based organisations, and individuals in crime prevention policing is communication, exchange of information between the police and the community, which ensures effective performance of tasks by the police and contributes to the increase in public trust in the police. According to scientists, such ties between society and the police will not only help to fight crime better, but also prevent it. Some studies suggest that public engagement is not only a method of police work, but also the basis for its effective operation, which should be considered as a guarantee of

[1] Constitution of Ukraine. (1996, June). Retrieved from http://zakon.rada.gov.ua/laws/show/254к/96-вр.
[2] Law of Ukraine No. 1835-III "On the Participation of Citizens in the Protection of Public Order and the State Border". (2000, June). Retrieved from https://zakon.rada.gov.ua/laws/show/1835-14#Text.
[3] Ibidem, 2000.

increased legitimacy of police activity and strengthening of social control. In this regard, the study substantiated the need to consolidate legislatively the forms and methods of involvement of the public, community-based organisations, and individuals in police activities aimed at protecting public safety and order, protecting life, health, and property of citizens, and preventing criminal offences. According to the researchers, such legislative regulation should consider the need to create stable channels of information exchange between society and police officers and to improve their communication skills. In this regard, a promising area for future research is to analyse the current state of police-society relations in countries with low levels of trust in law enforcement agencies to identify problems that impede effective police-community cooperation.

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Conflict of Interest

The author of this study declares no conflict of interest.

References

[1] Abaho, A. (2023). Rethinking community security in Uganda: Integrating community policing with intelligence-led policing. *African Security Review*, 32(4), 368-386. doi: 10.1080/10246029.2023.2226115.

[2] Al Manhali, A., Al Kaabi, F., & Al Hanaee, M. (2022). We are all police – Abu Dhabi police community engagement initiative. *Policing: A Journal of Policy and Practice*, 16(2), 236-248. doi: 10.1093/police/paac013.

[3] Androsyuk, V.G., Galustyan, O.V., Malogolova, O.O., & Motil, I.I. (2018). *Foreign experience of effective police communication: An analytical review*. Kyiv: National Academy of Internal Affairs.

[4] Bolger, M.A., Lytle, D.J., & Bolger, P.C. (2021). What matters in citizen satisfaction with police: A meta-analysis. *Journal of Criminal Justice*, 72, article number 101760. doi: 10.1016/j.jcrimjus.2020.101760.

[5] Bondarenko, V., & Yesimov, S. (2019). Public opinion as an assessment criterion of the National Police activities. *Social and Legal Studios*, 2(1), 39-45. doi: 10.32518/2617-4162-2019-1-39-45F.

[6] Chand, A., Karan, M., & Goundar, P. (2022). Public perceptions of police in Fiji. *Journal of Contemporary Criminal Justice*, 38(3), 295-310. doi: 10.1177/10439862221096942.

[7] Chu, C.C., Tsai, T.J., Meng, F.S., & Wang, C.Y. (2021). Effective citizen engagement in community policing: The lessons and experience of Taiwan. *Chinese Public Administration Review*, 12(2), 116-131. doi: 10.1177/153967542101200202.

[8] Dlamini, S. (2020). A comparative analysis of the quality of Community Police Forums in local Cato Manor & Glenwood communities, South Africa. *Cogent Social Sciences*, 6(1), article number 1809141. doi: 10.1080/23311886.2020.1809141.

[9] Ekici, N., Akdogan, H., Kelly, R., & Gultekin, S. (2022). A meta-analysis of the impact of community policing on crime reduction. *Journal of Community Safety and Well-Being*, 7(3), 111-121. doi: 10.35502/jcswb.244.

[10] Ekins, E. (2019). *Policing in America: Understanding public attitudes toward the police. Results from the Cato Institute 2019*. Retrieved from https://www.cato.org/survey-reports/policing-america.

[11] Foster, D.T., Rossler, M.T., & Shear, K. (2023). An empirical analysis of police behaviour. *Police Practice and Research*, 25(1), 53-70. doi: 10.1080/15614263.2023.2181168.

[12] Gallup. (2022). *Global law and order: 2022*. Retrieved from https://www.gallup.com/analytics/356963/gallup-global-law-and-order-report.aspx.

[13] Gallup. (2023). *Confidence in institutions*. Retrieved from https://news.gallup.com/poll/1597/Confidence-Institutions.aspx.

[14] Hansen, M.A., & Navarro, J.C. (2023). Gender and racial gaps in support for policing and correctional reforms: Are the gaps a consequence of political partisanship? *Crime and Delinquency*, 69(9), 1672-1699. doi: 10.1177/00111287211064788.

[15] Hansen, M.A., Navarro, J.C., & Malvitz, S.A. (2022). Assessing law enforcement websites: A comparative analysis exploring types, quantity, and quality of information available. *Policing: An International Journal*, 45(2), 298-314. doi: 10.1108/PIJPSM-09-2021-0128.

[16] Izbash, K.S., & Dombrovan, N.V. (2022). Normative and legal provision of interaction of the national police of Ukraine with the public and the population on the basis of partnership. *South Ukrainian Law Journal*, 1-2, 241-246. doi: 10.32850/sulj.2022.1-2.42.

[17] Jones, N.A., Ruddell, R., & Summerfield, T. (2019) Community policing: Perceptions of officers policing indigenous communities. *Canadian Journal of Criminology and Criminal Justice*, 61(1), 41-65. doi: 10.3138/cjccj.2017-0060.r2.
[18] Kabanda, U. (2022). *Crime prevalence and the value of community policing on human safety and security in Africa*. Firenze: European University Institute. doi: 10.2870/755815.
[19] Khahla, C. (2023). *South Africa's crime stats reveal a troubling trend in rising violence*. Retrieved from https://www.citizen.co.za/news/south-africa/crime/crime-stats-trend-violence-2023.
[20] Koci, A., & Gjuraj, T. (2019) The relationship between community policing and human rights in Albania's police reform. *International Journal of Human Rights*, 23(4), 512-530. doi: 10.1080/13642987.2016.1157962.
[21] Kolodyazhnyi, M.G. (2014). International dimension of normative provision of public participation in crime prevention. *The Issue of Combating Crime*, 27, 110-120.
[22] Kolodyazhnyi, M.G. (2017). *Modern foreign experience of public influence on crime*. Kharkiv: Pravo.
[23] Koper, C.S., Taylor, B.G., Liu, W., & Wu, X. (2022). Police activities and community views of police crime hot spots. *Justice Quarterly*, 39(7), 1400-1427. doi: 10.1080/07418825.2022.2111325.
[24] Kostiushko, O. (2019). Concept and historical aspect of the emergence of community-oriented policing philosophy. *Current Issues of National Jurisprudence*, 2, 51-56.
[25] Kysyliova, K.V. (2021). Features of public involvement in the implementation of police activities in Georgia. *Bulletin of Luhansk State University of Internal Affairs Named After E.O. Didorenko*, 2(94), 119-128. doi: 10.33766/2524-0323.94.119-128.
[26] Lamb, G. (2021). Safeguarding the republic? The South African police service, legitimacy and the tribulations of policing a violent democracy. *Journal of Asian and African Studies*, 56(1), 92-108. doi: 10.1177/0021909620946853.
[27] Laufs, J., & Waseem, Z. (2020). A systematic review and best practices for police response to COVID-19. *International Journal of Disaster Risk Reduction*, 51, article number 101812. doi: 10.1016/j.ijdrr.2020.101812.
[28] Lee, H., Kim, D., Woo, Y., & Reyns, B. (2019). Determinants of citizen support for community-oriented policing. *Police Practice and Research*, 20(1), 34-47. doi: 10.1080/15614263.2017.1396459.
[29] Loeffler, E., & Bovaird, T. (2020). Assessing the impact of co-production on pathways to outcomes in public services: The case of policing and criminal justice. *International Public Management Journal*, 23(2), 205-223. doi: 10.1080/10967494.2019.1668895.
[30] Mangai, M., Masiya, T., & Masemola, G. (2023). Engaging communities as partners: Policing strategies in Johannesburg. *Safer Communities*, 23(1), 86-102. doi: 10.1108/SC-04-2023-0012.
[31] McCarthy, M.M., Porter, L.E., Townsley, M., Geoffrey, P., & Alpert, G.P. (2019). The effect of community-oriented policing on police use of force: Does community matter? *Policing: An International Journal*, 42(4), 556-70. doi: 10.1108/PIJPSM-10-2018-0148.
[32] Medvedenko, S.V. (2019). Foreign experience of police interaction with the public on the example of Great Britain and Belgium. In *Actual problems of the state and law* (pp. 135-142). Odesa: Helvetica.
[33] Mesko, G., Pirnat, U., Erculj, V.I., & Hacin, R. (2019). Analysis of the nature and quality of relations between police officers and residents in Slovenia. *Journal of Criminalistics and Criminology*, 70(2), 176-195.
[34] Mutupha, J., & Zhu, Y. (2022). Community policing in Malawi: Citizen involvement, satisfaction and challenges. *African and Asian Studies*, 21(1-2), 26-57. doi: 10.1163/15692108-12341524.
[35] O'Neill, M., van der Giessen, M., Bayerl P.S., Hail, Y., Aston, E., & Houtsonen, J. (2023). Conditions, actions and purposes (CAP): A dynamic model for community policing in Europe. *Policing: A Journal of Policy and Practice*, 17, article number paad014. doi: 10.1093/police/paad014.
[36] Peyton, K., Sierra-Arévalo, M., & Rand, D.G. (2019). A field experiment on community policing and police legitimacy. *PNAS*, 116(40), 19894-19898. doi: 10.1073/pnas.1910157116.
[37] Pyo, J. (2023). Development and validation of multidimensional scales of public confidence in criminal justice. *Criminal Justice Review*. doi: 10.1177/07340168231157241.
[38] Üblacker, J., & Lucas, T. (2023). Local cultures of control, order maintenance policing, and gentrification: A comparison of railway station districts in three German cities. *Journal of Urban Affairs*. doi: 10.1080/07352166.2023.2174870.
[39] Wantenaar, A., & Govender, D. (2023). Experiences of community policing forum members in liaison with SAPS, private security and community members regarding community policing. *African Security Review*, 32(4), 458-472. doi: 10.1080/10246029.2023.2248095.
[40] Wu, Y.N., Sun, I.Y., & Hu, R. (2021). Cooperation with police in China. Surveillance cameras, neighborhood efficacy and policing. *Social Science Quarterly*, 102(1), 433-453. doi: 10.1111/ssqu.12903.

Сучасні тенденції залучення громадськості до поліцейської діяльності в запобіганні правопорушенням

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■ **Анотація.** Актуальність статті обґрунтована необхідністю реалізації стратегії громадського впливу на злочинність, удосконалення взаємодії поліції з громадськістю у сфері запобігання злочинності, нові форми та методи якої можуть бути імплементовані в діяльність Національної поліції. Метою статті є комплексне дослідження досвіду залучення громади, громадських організацій та окремих громадян до поліцейської діяльності в запобіганні правопорушенням, нормативно-правового забезпечення в цій сфері. Відповідно до поставлених мети й завдань у статті використано загальні та спеціальні прийоми та методи наукового пізнання, серед яких: методи аналізу, синтезу, класифікації та групування, які надали можливість опрацювати широкий спектр наукових дискусій з порушеної проблематики. На основі аналізу вторинних джерел встановлено, що дослідники констатують високий рівень довіри суспільства до поліції та інших правоохоронних органів, а також до органів державної влади й місцевого самоврядування в економічно розвинутих країнах. Більшість учених пов'язує це з позитивними результатами та наслідками залучення громади, громадських організацій та окремих громадян до поліцейської діяльності щодо запобігання правопорушенням, охорони публічної безпеки та порядку, захисту прав і свобод громадян. Встановлено, що в сучасному науковому дискурсі такі успіхи пов'язують з налагодженням ефективних каналів комунікації між поліцією та громадськістю і законодавчим регулюванням такої взаємодії. У зв'язку із цим з'ясовано погляди вчених щодо підходів до нормативно-правового забезпечення залучення громади, громадських організацій та окремих громадян до поліцейської діяльності в запобіганні правопорушенням у різних країнах. Аргументовано необхідність законодавчого закріплення певних форм і методів залучення громади, громадських організацій та окремих громадян до поліцейської діяльності з охорони публічної безпеки та порядку, захисту життя, здоров'я, власності громадян, запобігання кримінальним правопорушенням. Здійснений огляд сучасного стану наукового опрацювання проблематики формує підґрунтя для подальших теоретичних напрацювань у сфері організації ефективної взаємодії між правоохоронними органами й суспільством

■ **Ключові слова:** залучення громади; взаємодія; громадська поліція; запобігання правопорушенням; публічна безпека

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Legal aspects of international cooperation in combating organised crime

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■ **Abstract.** In the context of intensification of globalisation processes, researchers' attention is drawn to organised forms of crime, which are substantially more difficult to counteract if criminal offences have transnational features. Considering this, it is vital to investigate the content of international treaties aimed at combating transnational organised crime. Thus, the purpose of this study was to identify certain legal features of international cooperation in combating organised crime for further implementation of promising provisions in the work of law enforcement agencies in this area. The methodological framework of the study was formed by both general scientific and special methods of scientific cognition. The study also employed systemic, informational and functional approaches, as well as terminological, systemic-structural, formal-logical, and comparative legal methods of scientific cognition. The study confirmed that organised crime does not recognise the existing borders of states and constantly crosses them. At the same time, law enforcement agencies are quite limited in their actions by these borders, which substantially affects their ability to combat crime, especially organised crime. It was found that the legal framework for international cooperation in combating crime, including organised crime, is gradually being formed, but this process is influenced by the concept of primacy of national law over international law. The study proved that the current terminology of international treaties may not correspond to the terminology used in the national legislation of modern countries, but unification of legislation is reasonably necessary for effective crime prevention. The practical value of the findings obtained is that they can be used to further improve the legal framework for international cooperation

■ **Keywords:** interaction; responsibility; Europol; Interpol; international treaty; police; law enforcement agencies

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Introduction

The modern world is increasingly characterised by globalisation processes that affect a wide range of human relationships. Criminals are quite successful in crossing state borders, but law enforcement agencies are usually quite limited in their ability to conduct investigations in other countries, as well as to search for and prosecute persons hiding from pre-trial investigation, prosecutors, courts, or from serving their criminal sentences.

However, there exist certain intertwined patterns in this context. According to R. Sadouk (2023), the global arena has observed the emergence of two closely linked trends: firstly, a significant rise in transnational crimes presenting substantial challenges to nations, and secondly, a noticeable uptick in international instruments and avenues to counter them. Nonetheless, the introduction of such mechanisms does not imply the absence of challenges in their implementation.

International cooperation can take place under international treaties that are valid in almost any part of the world, albeit with certain reservations, or it can be valid in a particular part of the globe, i.e., it can be regional in nature. The mechanism of international cooperation in combating crime is still in its infancy, including in the European space. Thus, Y. Tan & S. Yang (2023) note the role of the European Union Agency for Criminal Justice Cooperation (Eurojust) in the work of joint investigation teams, as well as the participation of national authorities in this. Moreover, N. Ilchyshyn *et al.* (2023) underscore the importance of global legal collaboration within the realm of criminal justice, addressing emerging obstacles and strategies to surmount them. They particularly emphasize the diverse array of international cooperation mechanisms facilitated by entities like Interpol, Europol, the Hague Conference on Private International Law, and others.

One of the systemic problems of modern times is the destruction of the stable order in the world and the mechanisms of ensuring security. The main precondition for this situation is armed aggression and active hostilities of high intensity in the geographical centre of Europe. As a result, a considerable number of dangerous war crimes have been committed. Therewith, O. Kaluzhna & O. Shunevych (2022) highlight that scrutinizing potential issues within the criminal procedural framework for prosecuting war crimes stands as a focal point in both Ukrainian law enforcement practice and legal scholarship. Ukraine has encountered unprecedented challenges for its national judicial system regarding the potential utilization of international justice mechanisms to hold accountable military personnel, officers, and officials from the aggressor nation. In March 2022, the Prosecutor of the International Criminal Court initiated an investigation into war crimes committed in Ukraine. A collaborative investigation team is currently engaged in activities, while Ukrainian pre-trial investigation authorities, facilitated by the Prosecutor General's Office of Ukraine, are establishing cooperation with the aforementioned court.

The problem of international cooperation in combating crime has been the subject of scientific research, although interrelated and focused on various aspects. Thus, the expansion of access to justice through legal aid initiatives has been investigated, including through the international regulatory framework, practical approaches, and some findings from the field (Socher, 2023). V. Kotsur *et al.* (2023) highlighted the concepts of international security institutions and international agreements and how ignoring their requirements affects the global situation in the world. R. García-Llave & L. Perdomo (2022) considered the issues of mutual support under the international law of the sea to combat drug trafficking by sea, specifically, analysing individual agreements, comparing established mechanisms of cooperation, as well as the use of force and firearms.

Nevertheless, there is still a set of issues related to the interaction of law enforcement agencies of different countries in countering modern manifestations of crime. Given the above, the purpose of this study was to identify certain legal provisions governing international cooperation in combating organised crime, and to further implement the most promising of them in the work of law enforcement agencies in this area. The fulfilment of the specified purpose involved completing the following tasks: to consider the legal aspects of international cooperation in combating organised crime, to analyse the specific features of implementation of international treaties into national legislation, and to highlight further prospects for improving the legal framework for combating organised crime.

Literature Review

The scholarly literature extensively examines global cooperation in preventing and addressing terrorism, particularly focusing on domestic measures and the financing of terrorists and terrorist groups, whether directly or indirectly through other entities. Scholars emphasize that international efforts to combat terrorism encompass not only criminalizing terrorist acts but also criminalizing terrorist financing (Ginting & Talbot, 2023). Moreover, there is a thorough exploration of the potential to enhance the seamless international exchange of information and evidence, alongside an emphasis on bolstering the procedural rights of involved parties (Vermeulen & Kusak, 2023).

V. Zavydniak *et al.* (2022) delved into the primary realms and modalities of international collaboration among nations to counter transnational econom-

ic crimes. Specifically, they explored the interaction between legal frameworks of various countries in regulating international cooperation against such crimes. They also outlined the spectrum of public relations emerging in connection with these endeavors within the scope of public international law, shedding light on key trends in combating transnational economic crime at the global level. Furthermore, O. Omelchuk *et al.* (2022) analysed the efforts of law enforcement agencies in combating crime and corruption offenses. This included an examination of collaboration between law enforcement bodies and governmental authorities, as well as with partner organizations and agencies at regional, national, and international levels. Additionally, they scrutinized the regulations and practices of preventive law enforcement within the European Union concerning joint initiatives of law enforcement agencies and civil society in this domain. The legal aspects of money laundering mechanisms derived from cybercrime were the subject of scientific research. It is noted that cyber-laundering of illegal proceeds has long been a global problem for states around the world. In the area of anti-money laundering, this should be considered through the dissemination of international standards. Furthermore, the existing methods of laundering the proceeds of cybercrime were analysed. Only through active international cooperation can these problems be solved (Nizovtsev *et al.*, 2022).

B. Zhetpisbaeva *et al.* (2022) investigate the problem of modern terrorism, which has already spread to almost the entire world. The researchers analyse a range of political and legal documents that are both international and regional in scope. This helped to propose a range of consolidated measures to combat terrorism more effectively. C. Singh (2022) discusses some of the challenges facing international criminal justice, specifically in relation to the UK's response to terrorism, including how systems respond to and prevent such crimes, and the many legal, political, and policy issues that arise, such as inter-jurisdictional cooperation, policing, and the erosion of civil liberties, including privacy. W. Aloklah (2022) scrutinized global endeavors aimed at investigating severe instances of chemical weapons deployment. This examination encompassed the actions orchestrated by the Organisation for the Prohibition of Chemical Weapons, in collaboration with the United States of America, along with advancements made in dismantling the Syrian chemical weapons program. Concurrently, the international community's response to chemical weapons usage is being evaluated within the framework of international law, highlighting its shortcomings in holding perpetrators accountable and providing restitution to the victim. A nation can be destroyed not only physically but also by depriving it of its cultural heritage. A. Gerecka-Żołyńska & Z. Branicka (2023) considered forms of cooperation between states on the return of lost cultural property, specifically, comments were made on finding the best model of such cooperation.

The fundamental role and importance of the International Criminal Court in conducting a joint investigation was identified. Specifically, researchers note that this court has a wide range of possibilities to prosecute perpetrators of war crimes and crimes against humanity (Ablamskyi *et al.*, 2023). Various models of international collaboration have been devised to address criminal offenses in the realm of information and communications. These models are available for utilization by competent authorities within the criminal justice domain (Kambarov *et al.*, 2023). Other studies focused on international cooperation and victim protection in cyberspace, in particular under Protocol II of the Budapest Convention on Cybercrime. The discussion of victims of cybercrime was part of a comprehensive analysis of contemporary manifestations of transnational crime. In addition, the study examined the specifics of the activities of European organisations, such as Eurojust and Europol, which have long been working in this area, in particular, assisting national authorities in the fight against cybercrime (Spiezia, 2022). The role of Europol and Eurojust in supporting Member States in their efforts to effectively combat foreign terrorist fighters, including in their cooperation with other partners, is already being discussed (Weyembergh & Theodorakakou, 2023). The cross-border nature of drug-related crimes has forced EU countries to cooperate in criminal prosecutions. Therewith, certain instruments to ensure such cooperation are considered, namely the framework decision on the European Arrest Warrant (Zając, 2023).

Thus, many academics have addressed the investigation of certain issues related to the interaction of law enforcement agencies of different states in the detection and investigation of criminal offences. At the same time, not all problems of legal support for such work have been the subject of scientific research. Considering the above, there is a need to investigate certain provisions of international law and national legislation to unify the legal framework for international cooperation in combating organised crime to improve the work of authorised law enforcement agencies in this area.

Materials and Methods

This study used a systematic approach to investigation of the legal framework of international cooperation in combating crime. This approach helped to analyse the object of the study through the components of the system, as well as their interrelationships within a particular organisational structure. At the same time, the systematic approach helped to

establish the specifics of the legal framework for international cooperation in combating organised crime through the use of the method of systematic analysis of international and national legislation. The study of the essence of the problem in the context of informatisation also involved the use of an information approach capable of presenting the comprehensiveness of the legal support system. Furthermore, given that international cooperation corresponds to the process of synchronising certain actions, statements, and ideas to achieve a goal, it was appropriate to use a functional approach that helped to reflect the dynamics of the object of study, which is implemented in a synchronous context.

Using the terminological method, the study examined concepts related to the legal aspects of international cooperation in combating organised crime. The systemic-structural method was used for a comprehensive scientific analysis of the structure of international treaties and current national legislation related to international cooperation in combating organised crime. The use of the formal-logical method helped to analyse the trends in the development of legal norms governing international cooperation in combating organised crime. The comparative legal method was used as the basis for the analysis of definitions from the legislation. To obtain reliable and valid results, the above methods were applied in a mutual relationship and interdependence.

The regulatory framework for this study was based on international treaties and the national legislation of Ukraine in the field of international cooperation in combating organised crime. The international legal acts in this regard include the United Nations Convention against Transnational Organised Crime (hereinafter – the Convention)[1], as well as its supplementary protocols: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children[2], Protocol against the Smuggling of Migrants by Land, Sea and Air[3], Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition[4]. The Ukrainian legal act that is the core of the legal framework for combating organised crime and defines the organisational basis of law enforcement in this area is the Law of Ukraine "On the Legal Foundations of Combating Organised Crime"[5]. The importance of analysing the requirements of these documents is substantiated by the fact that the Convention and its Protocols prescribe international legal mechanisms to combat transnational organised crime and are unique international treaties in this area with a scope of application almost all over the world. At the same time, their comparative analysis along with the said Law of Ukraine provides an opportunity to discuss the specific features of implementation of international legal norms into national legislation, which affects the state of cooperation of different countries in the fight against organised crime.

Results

Organised crime poses the greatest danger to the state, society and individuals, and the fight against it is much more difficult if the criminal offences committed have transnational characteristics. This is why it is important to publish the results of the analysis of international treaties aimed at combating not only crimes committed by organised groups and organisations, but also when such crimes are transnational in nature. Particular attention in this regard should be paid to the United Nations Convention against Transnational Organised Crime[6], adopted by UN General Assembly resolution 55/25 of 15 November 2000 and ratified by Ukraine with reservations and declarations on 4 February 2004[7]. The purpose of this Convention is to promote cooperation to prevent and combat transnational organised crime more effectively. It is necessary to analyse certain terms and peculiarities of implementation of the relevant provisions in national legislation on the example of Ukraine.

[1] United Nations Convention against Transnational Organised Crime. (2000, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_789#Text.

[2] Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime. (2000, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_791#Text.

[3] Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organised Crime. (2000, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_790#Text.

[4] Protocol Against the Illicit Manufacturing and Trafficking in Firearms, Their Parts and Components and Ammunition, Supplementing the United Nations Convention against Transnational Organised Crime. (2001, May). Retrieved from https://zakon.rada.gov.ua/laws/show/995_792#Text.

[5] Law of Ukraine No. 2341-III "On the Legal Foundations of Combating Organised Crime". (1993, June). Retrieved from https://zakon.rada.gov.ua/laws/show/3341-12#Text.

[6] United Nations Convention against Transnational Organised Crime. (2000, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_789#Text.

[7] Law of Ukraine No. 1433-IV "On Ratification of the United Nations Convention against Transnational Organised Crime and the Protocols Supplementing it (the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children and the Protocol Against the Smuggling of Migrants by Land, Sea and Air)". (2004, February). Retrieved from https://zakon.rada.gov.ua/laws/show/1433-15#Text.

Thus, Article 2 of the Convention[1] defines the concept of an organised criminal group, which may consist of three or more persons, and must be structured, acting in concert over a period of time with the purpose of committing at least one or more serious crimes or crimes defined in this Convention for the purpose of obtaining financial or other material gain, either directly or indirectly. Furthermore, another term from an anologous field is used. Thus, a structured group is defined as a group deliberately formed to commit a crime immediately, but which does not necessarily: firstly, have a developed structure; secondly, have a negotiated continuous nature of participation (membership); and thirdly, have formally defined roles for the existing members of such a group. It was found that the national legislation of Ukraine uses several terms of analogous meaning, but which, although similar to these, have quite substantial differences. In Ukraine, the fight against organised crime has a purpose of eliminating the causes and conditions that contribute to the existence of organised crime, localising it, and, if possible, neutralising and eliminating it, as well as establishing control over it, as stated in Article 2 of the Law of Ukraine "On the Legal Foundations for Combating Organised Crime"[2]. At the same time, Article 1 of this Law states that organised crime means a set of criminal offences committed in connection with the creation and operation of organised criminal groups. The types and signs of such criminal offences, as well as criminal law measures against the perpetrators, are established by the Criminal Code of Ukraine[3] (hereinafter – the Code).

The Code itself deals with related issues in Article 28. Thus, a criminal offence committed without prior conspiracy between the perpetrators is considered to be committed by a group of persons if two or more, i.e., several persons, took part in it. At the same time, a criminal offence is considered to have been committed by a group of persons by prior conspiracy if it was jointly committed by two or more persons, i.e., several persons, but they must agree to commit it jointly before it begins, i.e., in advance. Next, the terminology is used that is closer to the concept of an organised criminal group, specifically, a criminal offence is considered to have been committed as part of an organised group if three or more persons who have previously united in a stable association to commit one or more criminal offences with a single plan known to all to commit one or more criminal offences, took park in the preparation for it and/or its commission. A mandatory feature is the distribution of functions among the members of this group aimed at achieving this plan. The specific feature of the national legislation of Ukraine is that there is still a criminal offence that is considered to be committed not just by a group of persons, even an organised group, but also by a criminal organisation. The number of persons involved is not less than five, and their association must be stable and hierarchical, organised by members or structural units for joint activities by prior agreement. The goals of a criminal organisation include ensuring the functioning of its own and other criminal groups, as well as coordinating and/or managing the illegal activities of other persons, liability for which is prescribed by the Criminal Code. Furthermore, the purpose of a criminal organisation may be the direct commission of crimes by its members, but only grave and/or especially grave crimes (Table 1).

Table 1. Terms related to the commission of a criminal offence by a group of persons in international treaties and national legislation of Ukraine

United Nations Convention against Transnational Organised Crime, Article 2[4]	Law of Ukraine "On the Legal Foundations for Combating Organised Crime", Article 1[5]	Criminal Code of Ukraine, Article 28[6]
• a structured group; • an organised criminal group.	• organised crime; • an organised criminal association.	• a group of persons; • a group of persons by prior agreement; • an organised group; • criminal organisation.

Source: developed by the author of this study based on the analysis of certain legal provisions of the current legislation of Ukraine and international treaties

[1] United Nations Convention Against Transnational Organised Crime. (2000, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_789#Text.
[2] Law of Ukraine No. 2341-III "On the Legal Foundations of Combating Organised Crime". (1993, June). Retrieved from https://zakon.rada.gov.ua/laws/show/3341-12#Text.
[3] Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[4] United Nations Convention Against Transnational Organised Crime. (2000, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_789#Text.
[5] Law of Ukraine No. 2341-III "On the Legal Foundations of Combating Organised Crime". (1993, June). Retrieved from https://zakon.rada.gov.ua/laws/show/3341-12#Text.
[6] Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.

There are a range of terms in the Convention that require analysis of the specific features of their use. These include a serious crime, which means a crime that is punishable by imprisonment for a maximum term of at least four years or a more severe penalty. It was found that the national legislation of Ukraine does not use this term, but when the Convention was ratified, it was determined that in criminal law this concept corresponds to the concepts of a grave crime and an especially grave crime. At the same time, when ratified, the Law[1] stipulates that a crime is considered grave if it is punishable only by imprisonment for a term of 5-10 years, i.e., not less than five and not more than ten years, and especially grave if it is punishable by life imprisonment or imprisonment for a term of more than 10 years, i.e,. above ten years. Therewith, according to Article 12 of the Criminal Code of Ukraine[2], a grave crime is an act or inaction, i.e., an act for which the sanction is the main punishment, firstly, in the form of no more than 10 years of imprisonment or, secondly, a fine that may not exceed twenty-five thousand (25,000) tax-free minimum incomes. At the same time, an act or inaction is considered an especially grave crime, i.e., an act for which the sanction is the most basic punishment in the form of, firstly, life imprisonment or, secondly, imprisonment for more than 10 years, and, thirdly, a fine of more than twenty-five thousand (25,000) tax-free minimum incomes (Table 2).

Table 2. Terms related to the classification of criminal offences in international treaties and national legislation of Ukraine

United Nations Convention against Transnational Organised Crime, Article 2[3]	The Law of Ukraine "On Ratification of the United Nations Convention against Transnational Organised Crime and the Protocols Supplementing it...", Article 1[4]	Criminal Code of Ukraine, Article 12[5]
A serious crime is an offence for which imprisonment for a maximum term of at least four years or a more severe punishment is prescribed.	A grave crime is an offence punishable only by imprisonment for a term of not less than five and not more than ten (5–10) years An especially grave crime is an offence punishable by, firstly, imprisonment for a term exceeding ten (10) years or, secondly, life imprisonment.	A grave crime is an act stipulated by this Criminal Code, i.e., an act or inaction for which the most basic punishment is, firstly, a fine of not more than twenty-five thousand (25,000) tax-free minimum incomes or, secondly, imprisonment for a term not exceeding ten years. An especially grave crime is an act stipulated in the Criminal Code, i.e., an act or inaction for which the most basic punishment is prescribed in the form of, firstly, a fine in excess of twenty-five thousand (25,000) tax-free minimum incomes, and, secondly, imprisonment for a term exceeding ten years or, thirdly, life imprisonment.

Source: developed by the author of this study based on the analysis of certain legal provisions of the current legislation of Ukraine and international treaties.

On 15 November 2000, the UN General Assembly adopted and signed the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the Convention by

[1] Law of Ukraine No. 1433-IV "On Ratification of the United Nations Convention against Transnational Organised Crime and the Protocols Supplementing it (the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children and the Protocol Against the Smuggling of Migrants by Land, Sea and Air)". (2004, February). Retrieved from https://zakon.rada.gov.ua/laws/show/1433-15#Text.

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

[3] United Nations Convention against Transnational Organised Crime. (2000, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_789#Text.

[4] Law of Ukraine No. 1433-IV "On Ratification of the United Nations Convention against Transnational Organised Crime and the Protocols Supplementing it (the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children and the Protocol Against the Smuggling of Migrants by Land, Sea and Air)". (2004, February). Retrieved from https://zakon.rada.gov.ua/laws/show/1433-15#Text.

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

Resolution 55/25[1], which was ratified in Ukraine on 4 February 2004. The aim is to prevent and combat human trafficking, with specific attention directed towards women and children. Therewith, the objectives also include support and protection of victims of trafficking in persons, while respecting human rights, and, to achieve these objectives, the promotion of international cooperation among the States Parties to the Convention. Notably, this Protocol is interpreted in conjunction with the Convention. The provisions of the Convention shall apply *mutatis mutandis* to this Protocol, except as otherwise provided therein. It is important that simultaneously with this Protocol, the Protocol Against the Smuggling of Migrants by Land, Sea and Air[2] was adopted and signed, and subsequently ratified by the same UN General Assembly Resolution, which also complements the Convention. Preventing and combating the smuggling of migrants is stated as its objective, but with the rights of smuggled migrants being protected. Furthermore, cooperation between States Parties is encouraged to achieve this objective. This Protocol shall also be interpreted together with the Convention, and the provisions of the Convention shall also apply *mutatis mutandis*. Later, on 31 May 2001, UN General Assembly Resolution 55/255 approved another Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition[3], which also supplemented the Convention, and which Ukraine joined on 2 April 2013[4]. Preventing, combating, and eradicating the illicit trafficking in and manufacture of firearms, ammunition, their components and parts, and combating such trafficking is the purpose of this Protocol, as well as strengthening cooperation between States Parties to that end, and facilitating and promoting it (Table 3).

Table 3. Chronology of the adoption of certain international treaties and Ukraine's accession to them

Convention[5]	**Protocol supplementing the Convention**	**Date of adoption (UN General Assembly resolution)**	**Date of ratification (accession) by Ukraine**
UN Convention Against Transnational Organised Crime	–	15 November 2000	4 February 2004
	Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children[6]	15 November 2000	4 February 2004
	Protocol Against the Smuggling of Migrants by Land, Sea and Air[7]	15 November 2000	4 February 2004[8]
	Protocol Against the Illicit Manufacturing and Trafficking in Firearms, Their Parts and Components and Ammunition[9]	31 May 2001	2 April 2013[10]

Source: developed by the author of this study based on the analysis of certain legal provisions of the current legislation of Ukraine and international treaties

[1] Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime. (2000, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_791#Text.

[2] Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organised Crime. (2000, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_790#Text.

[3] Protocol Against the Illicit Manufacturing and Trafficking in Firearms, Their Parts and Components and Ammunition, Supplementing the United Nations Convention against Transnational Organised Crime. (2001, May). Retrieved from https://zakon.rada.gov.ua/laws/show/995_792#Text.

[4] Law of Ukraine No. 159-VII "On the Accession of Ukraine to the Protocol Against the Illicit Manufacturing and Trafficking in Firearms, Their Parts and Components and Ammunition, Supplementing the United Nations Convention Against Transnational Organised Crime". (2013, April). Retrieved from https://zakon.rada.gov.ua/laws/show/159-18#n2.

[5] United Nations Convention against Transnational Organised Crime. (2000, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_789#Text.

[6] Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime. (2000, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_791#Text.

[7] Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organised Crime. (2000, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_790#Text.

[8] Law of Ukraine No. 1433-IV "On Ratification of the United Nations Convention against Transnational Organised Crime and the Protocols Supplementing it (the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children and the Protocol Against the Smuggling of Migrants by Land, Sea and Air)". (2004, February). Retrieved from https://zakon.rada.gov.ua/laws/show/1433-15#Text.

[9] Protocol Against the Illicit Manufacturing and Trafficking in Firearms, Their Parts and Components and Ammunition, Supplementing the United Nations Convention against Transnational Organised Crime. (2001, May). Retrieved from https://zakon.rada.gov.ua/laws/show/995_792#Text.

[10] Law of Ukraine No. 159-VII "On the Accession of Ukraine to the Protocol Against the Illicit Manufacturing and Trafficking in Firearms, Their Parts and Components and Ammunition, Supplementing the United Nations Convention Against Transnational Organised Crime". (2013, April). Retrieved from https://zakon.rada.gov.ua/laws/show/159-18#n2.

The process of establishing the legal framework for international cooperation in combating crime should not be considered complete, because, firstly, there is potential for its improvement to adequately respond to organised crime, which is increasingly becoming transnational, and, secondly, the world is constantly changing and, accordingly, the work of law enforcement agencies must respond dynamically to these changes, and for this purpose there must be an appropriate legal framework.

Discussion

Many scholars have addressed various aspects of the organisation and establishment of the legal framework for international cooperation in combating crime. It is worth noting the principal areas of research they conduct. Today, there is a strong link between corruption and other serious and dangerous types of crime that successfully cross the borders of modern states. Thus, R. Arifin *et al.* (2023) investigated the transformation of corruption into a transnational problem and collective efforts to combat it, emphasising the significance of international cooperation in the recovery of misappropriated assets. R. Orlovskyi (2023) discussed the legalisation of the proceeds of crime committed by organised criminal groups in the context of European and Ukrainian standards. It was noted that the phenomenon of money laundering obtained by criminal groups is a negative factor for the global development of the international community. The growing scale of such unlawful acts, as well as the imperfection of legal mechanisms and the weakness of organisational measures to combat them indicate the urgency of this problem, which threatens both the security of the state and society and law and order. The issue of combating corruption and money laundering is one aspect of the overall problem of combating organised crime, and therefore the cited research complements the present study.

A. Masyhar *et al.* (2023) and S. San (2022) investigated the specific features of combating transnational threats such as international cyberterrorism, as well as the role of Interpol in this regard. The latter examined transnational policing from a human rights perspective in interaction with national political regimes, specifically, the functioning of the Red Notice system of the International Criminal Police Organisation INTERPOL. S. San focuses on the factors that strengthen international police cooperation between authoritarian and democratic countries. Firstly, this refers to forced cooperation to minimise the threats associated with planning and committing transnational crimes. Secondly, international cooperation between countries with different ideological and national views is facilitated by the principle of depoliticising international policing to the extent possible. Thirdly, professional culture also has a substantial impact, as it separates the police from various manifestations of national rivalries and promotes solidarity and professional police mutual support. V. Rohalska *et al.* (2022) studied the institution of extradition in criminal procedural legislation and European standards. G. Heyer (2022) explored the role of international police liaison officers and their operational strategies within international police cooperation. It was highlighted that since the early 1970s, these officers have played a pivotal role in fostering and nurturing relationships as well as cooperation among police forces and other law enforcement entities. The studies reviewed above examine various aspects of interaction between the authorised bodies of equal states in the fight against crime, but the solution to the problem is not limited to this; therefore, in combating organised crime, the identification of certain legal features of international cooperation for further implementation of promising provisions in the work of law enforcement agencies in this regard is a promising continuation of these studies.

H. De Vries (2023) investigated the development of the structure of international criminal law, specifically in the vertical mode of interaction, which includes horizontal cooperation between states and vertical cooperation with the International Criminal Court. W. Kühn (2023) provided an overview of the powers of the newly established European Public Prosecutor's Office as a supranational body investigating criminal offences affecting the financial interests of the European Union. R. García (2023) discussed the European Arrest Warrant, the procedures for its issuance and the protection of the constitutional order of the EU Member States, namely, the reasons for their non-execution, the mistakes made by the public authorities of individual countries and how these mistakes affect the deterioration of mutual trust between the EU Member States. Notably, it is advisable to continue investigating the capabilities of certain legal institutions in the international fight against crime, specifically, in terms of determining certain legal features of international cooperation in combating organised crime, which substantiates the logic of supplementing the scientific developments under consideration with the present study.

The problem of combating organised crime at the international level has not been fully considered, although this is probably not possible within the framework of individual research papers, given its global scale. Despite the well-founded conclusions and proposals to address certain aspects of the problem, there are still issues that need to be addressed. Therefore, the published findings of the study on identifying certain legal provisions governing international cooperation in combating organised crime

for further implementation of the most promising ones in the work of law enforcement agencies in this area do not contradict the conceptual results of scientific achievements of other researchers, but complement them, occupying a niche of their own in the establishment of the legal framework for international cooperation in combating organised crime.

The conducted study related to the organisation and legal framework for combating various manifestations of crime will underlie further analysis of the essence of the problems that are still to be resolved, which will help to improve the relevant cooperative work of law enforcement agencies of different countries and international institutions in combating criminal offences.

Conclusions

The study of the legal aspects of international cooperation in combating organised crime allows drawing certain conclusions. The danger of crimes increases considerably if they are committed by groups of people, especially by prior conspiracy. However, the threat to the protected interests of an individual, the state and society increases even more if criminal offences are committed as part of organised groups and criminal organisations. It was found that organised crime does not recognise the borders of modern states and successfully overcomes them. Therewith, law enforcement agencies are quite limited by these same borders, which substantially affects their ability to combat organised crime. The internationalisation of crime is becoming more pronounced. Organised criminal groups operate on a global scale, using innovative technologies and international networks to further their goals. This requires an in-depth analysis of the legal framework and mechanisms of international cooperation to effectively combat this threat. Law enforcement agencies need support and coordination with other countries to successfully fight organised crime.

In response to modern challenges, legal frameworks for international cooperation in combating organised crime are gradually being developed, but each state, considering the principle of sovereignty, independently decides whether to accede to certain international treaties and with or without reservations. The study found that the key role here is played by the concept of supremacy, i.e., primacy, of national law over international law. This means that the primacy of national law is recognised, and international treaties and their provisions should be applied only when they do not contradict national law. It was proved that, considering the above, the terminology of international treaties may not correspond to that used in national legislation. Thus, by analysing certain provisions of international legal acts and Ukrainian legislation, the study proved that certain terms are used differently to define analogous events, namely, such as “structured group”, “organised criminal group”, “organised crime”, “organised criminal association”, “group of persons”, “group of persons by prior conspiracy”, “organised group”, “criminal organisation”, “serious crime”, “grave crime”, “especially grave crime”.

Further unification of the terminology used in the legal regulation of international cooperation in general and in the fight against organised crime specifically should be considered promising.

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Conflict of Interest

None.

References

[1] Ablamskyi, S., Tchobo, D., Romaniuk, V., Šimić, G., & Ilchyshyn, N. (2023). Assessing the responsibilities of the international criminal court in the investigation of war crimes in Ukraine. *Novum Jus*, 17(2), 353-374. doi: 10.14718/NovumJus.2023.17.2.14.

[2] Aloklah, W. (2022). International efforts against impunity for the use of chemical weapons in Syria. *Journal of International Criminal Justice*, 20(3), 541-569. doi: 10.1093/jicj/mqac023.

[3] Arifin, R., Riyanto, S., & Putra, A. (2023). Collaborative efforts in ASEAN for global asset recovery frameworks to combat corruption in the digital era. *Legality: Jurnal Ilmiah Hukum*, 31(2), 329-343. doi: 10.22219/ljih.v31i2.29381.

[4] De Vries, H. (2023). Vertical cooperation in international criminal law. A mode of structure formation in world society. *Journal of the Sociology of Law*, 43(2), 247-278. doi: 10.1515/zfrs-2023-2014.

[5] García, R. (2023). European arrest warrant and the surrender procedures and defense of the constitutional order of the EU member States. *Araucaria*, 25(53), 359-381. doi: 10.12795/araucaria.2023.i53.14.

[6] García-Llave, R., & Perdomo, L. (2022). Mutual assistance in the framework of the international law of the sea against illicit drug trafficking by sea: The case of Spain and Colombia. *Revista Electronica de Estudios Internacionales*, 43. doi 10.17103/reei.43.14.

[7] Gerecka-Żołyńska, A., & Branicka, Z. (2023). Forms of cooperation between states to recover lost cultural goods – comments on the search for an optimal model. *Santander Art and Culture Law Review*, 9(1), 37-54. doi: 10.4467/2450050XSNR.23.004.18116.

[8] Ginting, J., & Talbot, P. (2023). Fundraising aspect of international terrorism organization in ASEAN: Legal and political aspects. *Lex Scientia Law Review*, 7(1), 1-30. doi: 10.15294/lesrev.v7i1.60074.
[9] Heyer, G. (2022). International police liaison officers: An examination of the experiences of New Zealand Police International Liaison Officers. *Policing (Oxford),* 16(1), 29-43. doi: 10.1093/police/paab051.
[10] Ilchyshyn, N., Brusakova, O., Krykun, V., & Myroshnychenko, Y. (2023). International legal cooperation in the field of criminal justice: New challenges and ways to overcome them. *Journal of Law and Sustainable Development*, 11, article number e0767.
[11] Kaluzhna, O., & Shunevych, K. (2022). Evidence In the international criminal court – the role of forensic experts: The Ukrainian context. *Access to Justice in Eastern Europe*, 5, 52-65. doi: 10.33327/AJEE-18-5.4-a000435.
[12] Kambarov, A., Karazhanov, M., Smagulov, A., & Kumisbekov, S. (2023). Topical issues in the fight against criminal offences in the field of informatisation and communications. *Law, State and Telecommunications Review*, 15(1), 177-190. doi: 10.26512/lstr.v15i1.44728.
[13] Kotsur, V., Kuprii, T., Semenets-Orlova, I., Skliar, N., Drakokhrust, T., & Berezovska-Chmil, O. (2023). Security issues on the european continent in conditions of Russia's aggression against Ukraine. *Revista de Gestao Social e Ambiental*, 17(6), article number e03578. doi: 10.24857/rgsa.v17n6-026.
[14] Kühn, W. (2023). The European Public Prosecutor's Office – the protection of the EU's financial interests as supranational integration project. *Journal for European Law Studies: ZEuS*, 26(2), 151-188. doi: 10.5771/1435-439X-2023-2-151.
[15] Masyhar, A., Utari, I., & Usman, S.A. (2023). Legal challenges of combating international cyberterrorism: The NCB Interpol Indonesia and global cooperation. *Legality: Jurnal Ilmiah Hukum*, 31(2), 344-366. doi: 10.22219/ljih.v31i2.29668.
[16] Nizovtsev, Y., Parfylo, O., Barabash, O., Kyrenko, S., & Smetanina, N. (2022). Mechanisms of money laundering obtained from cybercrime: The legal aspect. *Journal of Money Laundering Control*, 25(2), 297-305. doi: 10.1108/JMLC-02-2021-0015.
[17] Omelchuk, O., Haiur, I., Kozytska, O., Prysiazhna, A., & Khmelevska, N. (2022). Analysis of the activities of law enforcement authorities in the field of combating crime and corruption offences. *Journal of Money Laundering Control*, 25(3), 700-716. doi: 10.1108/JMLC-07-2021-0073.
[18] Orlovskyi, R. (2023). Legalization of criminally obtained property committed by organized criminal groups: European and Ukrainian standards. *Juridicas CUC*, 19(1), 197-230. doi: 10.17981/juridcuc.19.1.2023.07.
[19] Rohalska, V., Bronevytska, O., & Buciunas, G. (2022). Extradition in the criminal procedural legislation of Ukraine: Compliance with the European standards. *Journal of Liberty and International Affairs,* 8(1), 138-152. doi: 10.47305/JLIA2281138r.
[20] Sadouk, R. (2023). International cooperation, criminal justice and human rights: The missing link. *International Annals of Criminology*, 61(2), 103-130. doi: 10.1017/cri.2023.18.
[21] San, S. (2022). Transnational policing between national political regimes and human rights norms: The case of the Interpol Red Notice system. *Theoretical Criminology*, 26(4), 601-619. doi: 10.1177/13624806221105280.
[22] Singh, C. (2022). The Panoply of challenges facing international criminal justice: The United Kingdom's response to defining and responding to terrorism. *Global Jurist*, 22(2), 307-349. doi: 10.1515/gj-2021-0036.
[23] Socher, J. (2023). Enhancing access to justice through donor-led legal aid initiatives: International normative framework, practical approaches, and some findings from the field. *Law and Development Review*, 16(1), 1-22. doi: 10.1515/ldr-2021-0144.
[24] Spiezia, F. (2022). International cooperation and protection of victims in cyberspace: Welcoming Protocol II to the Budapest Convention on Cybercrime. *ERA Forum*, 23(1), 101-108. doi: 10.1007/s12027-022-00707-8.
[25] Tan, Y., & Yang, S. (2023). The Joint Investigation Team in Ukraine: An opportunity for the International Criminal Court? *Chinese Journal of International Law*, 22(1), 103-119. doi: 10.1093/chinesejil/jmad005.
[26] Vermeulen, G., & Kusak, M. (2023). Unblurring the fuzzy line between specialty and data protection in EU mutual legal assistance after the european investigation order. *European Journal on Criminal Policy and Research*, 29(4), 647-667. doi: 10.1007/s10610-023-09539-9.
[27] Weyembergh, A., & Theodorakakou, G. (2023). The role of Europol and Eurojust in countering the threat of FTFs: An evolving mandate. *New Journal of European Criminal Law*, 14(2), 157-182. doi: 10.1177/20322844231166359.

[28] Zając, D. (2023). The European arrest warrant in designer drugs cases. With or without verification of double criminality? *European Journal on Criminal Policy and Research*, 29(2), 247-261. doi: 10.1007/s10610-021-09487-2.
[29] Zavydniak, V., Zavydniak, I., Omelchuk, L., Polunina Lilia, V., & Suprun-Kovalchuk, T. (2022). States' main directions and forms of international cooperation against transnational economic crimes. *Revista Cientifica General Jose Maria Cordova*, 20(38), 323-339. doi: 10.21830/19006586.904.
[30] Zhetpisbaeva, B., Taitorina, B., Nukusheva, A., Baisalova, G., & Ayupova, Z. (2022). The age of terror: How to combine efforts for counteraction at the level of international and national law? *Security Journal*, 35(4), 1006-1022. doi: 10.1057/s41284-021-00310-5.

Правові аспекти міжнародного співробітництва в протидії організованій злочинності

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■ **Анотація.** В умовах інтенсифікації глобалізаційних процесів увагу дослідників привертають організовані форми злочинності, протидія яким істотно ускладнюється, якщо кримінальним правопорушенням властиві транснаціональні ознаки. З огляду на це, актуальним є вивчення змісту міжнародних договорів, спрямованих на боротьбу з транснаціональною організованою злочинністю. Цим обумовлена мета публікації щодо визначення окремих правових особливостей міжнародного співробітництва в протидії організованій злочинності для подальшої імплементації перспективних положень у роботу правоохоронних органів у цій сфері. Методологічну основу дослідження становлять як загальнонаукові, так і спеціальні методи наукового пізнання: термінологічний, системно-структурний, формально-логічний, порівняльно-правовий. Крім того, використано системний, інформаційний та функціональний підходи, а також термінологічний, системно-структурний, формально-логічний і порівняльно-правовий методи наукового пізнання. У межах дослідження підтверджено, що організована злочинність не визнає наявних кордонів держав і постійно їх долає. Водночас правоохоронні органи доволі обмежені у своїх діях цими кордонами, що істотно позначається на можливостях протидії злочинності, передусім організованій. Встановлено, що поступово утворюється правове забезпечення міжнародного співробітництва в протидії злочинності, зокрема організованій, однак на цей процес впливає концепція примату національного права над міжнародним. Доведено, що актуальна термінологія міжнародних договорів може не відповідати тій, яку використовують у національному законодавстві сучасних країн, проте уніфікація законодавства є обґрунтовано необхідною для ефективної протидії злочинності. Практична цінність одержаних результатів полягає в тому, що їх можна використати для подальшого вдосконалення правових засад міжнародного співробітництва

■ **Ключові слова:** взаємодія; відповідальність; Європол; Інтерпол; міжнародний договір; поліція; правоохоронні органи

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Ways to implement risk management in the fight against organised crime

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■ **Abstract.** The aggravation of the state of operations under martial law poses a threat to a wide range of rights, interests of individuals and society. To prevent further deterioration of the crime situation, it is necessary to find progressive mechanisms to combat organised crime. The purpose of this study was to formulate scientifically sound proposals for the development of mechanisms for combating organised crime and counteracting the establishment of corrupt ties by criminals in institutions, organisations, and enterprises, especially those belonging to the national security system. According to the purpose and specifics of the subject under study, the historical approach, comparative legal, and systemic-structural methods were employed. The study outlined the content of the processes of organising the management of subsystems involved in ensuring national security. The need to ensure its effective implementation is evidenced by statistical data on the complication of the operational situation in certain regions, the general socio-political situation and threatening trends in the criminalisation of society. The state of stagnation does not correspond to the course of the most secure development of society, and therefore the main task of the state is to actively protect citizens from dangerous anti-social, criminal, and violent manifestations. It was substantiated that the success of counteracting these negative phenomena depends primarily on the unification of certain mechanisms at both the international and domestic levels, including standards. It was proved that legal forms of combating organised crime should be improved towards the betterment of standards in the risk management system, specifically, ensuring information security, and stimulating the protection of information flows. It was argued that the introduction of the term "compliance audit" into certain laws of Ukraine defining the basic principles of implementation of the state financial control, audit of financial statements, and organisation of audit activities will provide a positive effect in combating these negative phenomena. The findings of this study can serve as the basis for the preparation of forecast and programme

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documents by supreme audit institutions, anti-corruption bodies, and the business community to counteract manifestations of organised crime, identify and eliminate corrupt ties with criminals

■ **Keywords:** standard; implementation; counteraction; corruption; compliance audit

■ Introduction

Identifying ways to use global trends in law enforcement activities, the effectiveness of which directly affects the state of law enforcement, is one of the strategic scientific tasks today. Work in this area requires coordination not only among the bodies in charge of managing the security forces, but also among all central executive bodies whose activities are related to financial control. Only if they combine their efforts and resources will it be possible to implement promising scenarios for the development and use of the world's best science and technology in law enforcement. The investigation of scientific research and practical results of the work of the actors in the system of combating organised crime and corruption during the martial law and the related aggravation of the operational situation suggests that increased attention is being paid to the problems of introducing advanced technologies and practices.

An essential component of the risk management process in the fight against organised crime is an understanding of the nature of the negative phenomenon of corruption and the legal mechanisms for countering it. Thus, according to F. Odilla (2023), corruption poses a threat to future human development, economic progress, and public health. This is a complex phenomenon with various forms of manifestation. According to the scientist, one of the important tools for fighting corruption is the use of innovative technologies. According to B. Rider (2023), the analysis of a range of financial crimes that are systematically committed around the world confirms the need for national and international regulators to introduce new regulatory instruments aimed at preventing and hindering illegal actions of banks and their representatives. Such tools will help to promote best compliance practices in financial institutions. However, regulations on the structures and functions of such institutions are not mandatory and allow banks to make their own choices. The researcher also investigated the implementation of the compliance function as a mechanism for combating financial crimes, specifically bribery and corruption.

According to F. Chan *et al.* (2023), despite calls to tackle white-collar corruption and corporate crime, the role of corporations in the supply of bribes to foreign officials is still unclear. In their study, the researchers analyse the structure of the process of transnational corporate bribery from the perspective of the theory of possibilities. A sample of individuals and organisations that were subject to enforcement actions by the United States Department of Justice's Fraud Section in 2011-2016 for violating the Foreign Corrupt Practices Act of 1977[1]. Using a mixed-methods research approach, the researchers characterised the reasons for the prevalence and nature of the relevant negative phenomena, focused on the development of mechanisms for processing data on bribery and provided a description of the content of transnational corporate bribery, proved the importance of the corporate role in bribery of foreign states and overcoming bribery, and highlighted certain areas for improving the counteraction to this phenomenon. In terms of considering legal measures, in combination with theoretical, legal, and practical achievements in the fight against organised crime and corruption, the study of M. Kravtsova *et al.* (2017) is relevant, which argues that criminal justice researchers should import the theory of institutional corruption from political science to clearly outline a range of problems in the criminal justice system. S. Huntington (2002) argued that social and economic modernisation leads to a greater prevalence of corruption, creating new sources of enrichment and power whose relation to politics is not determined by the dominant traditional norms of society, and also involves the expansion of government powers and the increase in activities subject to state regulation. O. Huss *et al.* (2019) analyse different approaches to anti-corruption activities of civil society institutions and activists at the local level in Ukraine. Corruption was considered as a systemic problem, which is more effective than a narrow understanding of it by an individual.

From the standpoint of a historical approach to the problem, I. Kubbe & A. Engelbert (2018) investigated the factors influencing corruption in Europe. Considering corruption as a multifaceted social phenomenon, the authors propose to develop international and domestic models of combating corruption at the micro and macro levels. The cited study describes a range of factors that underlie the "democratic culture" in Europe, which by their nature prevent the growth of corruption. The creation of capable democratic institutions and the promotion of norms and values of citizens aimed at identifying and punishing corrupt officials are also positive. The promotion of democracy has been the best way to

[1] Foreign Corrupt Practices Act. (1977, December). Retrieved from https://www.justice.gov/criminal/criminal-fraud/foreign-corrupt-practices-act.

prevent the spread of corruption in Europe, while the dissemination of territorial and cultural knowledge among the population about the factors influencing corruption will contribute to the effective prevention of this negative phenomenon.

Therefore, the purpose of this study was to formulate scientifically based proposals for the development of mechanisms for combating organised crime and counteracting the establishment of corrupt ties by criminals in institutions, organisations, and enterprises, especially those included in the national security system.

Materials and Methods

It is relevant and appropriate for the investigation of the issues under study to generalise methodological approaches to the formation of legal forms of response to such a socially dangerous phenomenon as organised crime and its manifestation – corruption, which will allow for further effective response to threats and ensure sustainable development of certain social systems, and provide guarantees for their proper existence. The combined application of scientific cognition methods was used to fulfil the purpose of this study. The study employed a historical approach to examine the effectiveness of legal forms of combating organised crime and corruption and the specific features of the state's response to the threats posed by these negative phenomena, depending on many factors that occurred at certain stages of society's development. The historical and comparative method made it possible to understand the ontology of the emergence and development of legal relations, the patterns of their development and trends in these processes; to establish the interdependence between the phenomena that make up the scope of the study. This method was used to investigate the history of the emergence and development of a set of measures, the systematisation of which will ensure the ability to act according to the established rules, regulations, requirements, and internal standards referred to as "compliance", which historically began in the United States. The method was used to establish the evolutionary changes and development of international and national audit legislation. The comparative legal method helped to compare the provisions of Ukrainian and international law. The use of this method allowed formulating a position on the introduction of compliance audits into the process of auditing financial activities, establishing a link between "compliance" and combating organised crime, and outlining new ways to ensure Ukraine's sustainable development. The system-structural method was employed to investigate the standards of "compliance", specifically, anti-corruption management, risk management, management system audits, as well as the principles and guidelines for organising a compliance audit as part of the processes of combating organised crime.

Upon investigating this issue through the lens of the national policy of combating organised crime, the study analysed the scientific studies of Ukrainian and international researchers. The regulatory framework included regulations governing the functioning of the corruption prevention system; content and procedure of application of preventive anti-corruption mechanisms, rules on elimination of the consequences of corruption offences; audit of financial statements, conduct of audit activity and relations arising during its conduct; implementation of state financial control, as well as standards that have prospects for application in the relevant field[1,2,3,4]. Their use helped to draw the most general picture of the definition of the content and guarantees of the implementation of the principle under study. To obtain reliable and real research results, the above methods were used in mutual connection and interdependence.

Results

The complexity of the problem of combating organised crime determines the specificity of ways to solve it and involves theoretical development and practical testing of best schemes to ensure the functioning of the mechanism for managing social processes arising from the presence of risks in various spheres of life. Its substantive aspect requires work on the development of legal forms of compliance audit as a component of the processes of combating organised crime, the main purpose of which is to implement state policy in practice, by performing general and special tasks by each of the participants in this work. The process of modelling the relevant systems involves an entire range of activities to determine the purpose, tasks, functions, and established links between organisational entities. Theoretically, the construction of a specific mechanism, the purpose and procedure of which is determined by the provisions of governing documents, and its multifunctional form will allow increasing the efficiency of management of the processes of

[1] Law of Ukraine No. 3341-XII "On the Legal Foundations of Combating Organized Crime". (1993, June). Retrieved from https://zakon.rada.gov.ua/laws/show/3341-12#Text.
[2] Law of Ukraine No. 1700-VII "On the Prevention of Corruption". (2014, October). Retrieved from https://zakon.rada.gov.ua/laws/show/1700-18#Text.
[3] Law of Ukraine No. 2258-VIII "On the Audit of Financial Statements and Audit Activity". (2017, December). Retrieved from https://zakon.rada.gov.ua/laws/show/2258-19#Text.
[4] Law of Ukraine No. 2939-XII "On the Fundamental Principles of the Public Financial Control in Ukraine". (1993, January). Retrieved from https://zakon.rada.gov.ua/laws/show/2939-12#Text.

combating organised crime, achieving the desired results with less cost. The formulation of the legal framework for the relevant processes is perceived as the principal task of ensuring national security.

The contradiction lies in the fact that the direct link between national security relations and state measures to combat the phenomena that violate them establishes the scope of powers of executive authorities to protect these relations. Therefore, the national policy in the field of national security is of concern, when the object of state activity in the field of protection of national security relations is becoming an increasingly wide range of issues, the solutions to which relate to the regulation of economic relations, not security. The danger of such a substitution lies in the excessive strengthening of the security institution in the internal governance of the state, the possibility of using security forces in almost all spheres of public life, i.e., the formation of a military-police state. The policy of expanding the scope of issues related to the protection of society and the individual by security measures creates the possibility of restricting human rights in case of unjustified, excessive state interference in human life.

The content of national security policy, which is based on a system of checks and balances with respect for the fundamental right to protection (security), can be illustrated by the example of international practices in this area. In Western Europe and North America, national security is primarily concerned with protecting individuals from criminal attacks, protecting state institutions and the foundations of democracy. This shows that ensuring national security is one of the motives that determines the policy of improving the system of state coercion and, admittedly, the system of state governance. Striking a balance between these measures is a political challenge.

Effective risk management and safeguarding the rights and interests of citizens requires a set of preventive measures. This requires not only the conscientious work of the state apparatus, but also of all local government participants who are at risk of corruption. This is especially important because organised crime tends to establish corrupt links for its criminal purposes (Huss *et al.*, 2020; Moroz *et al.*, 2023).

National security necessitates the creation of an extensive system of legal instruments, the level of use of which determines the effectiveness of the security mechanism. The process of modelling security systems is challenging and involves complexity, i.e., it involves the application of provisions from various scientific fields. The complex nature of the consideration is based on a multidimensional (political, economic, sociological, psychological, etc.) perception of the subject matter, and the use of the socio-legal approach allows establishing connections between such concepts as “organised crime” and “corruption”, and creating new scientific and practical systems aimed at solving problems in this area. Within the framework of social engineering, the need should be considered as a complex scientific and theoretical system that contains a body of knowledge about a social phenomenon, an evaluation criterion for the life development of subjects of social relations and characterises the degree of disruption caused by negative manifestations of the social environment.

One of the aspects of the organisation and functioning of the social system is to determine the most complete number of factors that set the mechanism of regulation of social relations in motion, on which the nature of the system itself, its purpose, objectives, and functions depend. The fight against organised crime should be considered as an optimised system that should ensure the technological interaction of all its subsystems and the focus of each of them according to a single system-wide plan. The technological approach to managing this system implies the existence of a control centre that receives information on the functional areas of the macro system. The analytical units are elements of this centre. Formalised schemes of subordination of social actors to this centre and a formalised procedure for their interaction allow for the integration of information flows into a single direction. The centre is a carrier of the system-wide purpose, which implies providing it with a full set of tools to implement measures aimed at fulfilling this purpose. The status of information flow and the authority to implement it serve as the basis for the development of the organisational management structure. As an example, a subsystem built following these rules can be an analytics-driven model of policing, as is the case in the Intelligence Led Policing model (Korystin & Denysenko, 2023).

This model underlies the social system, its elements are evaluative, synthetic, and belong to the technological function of social activity; attention to it is determined by the fact that it is one of the global trends aimed at preventing offences, considering social and economic, organisational and legal, psychological and pedagogical, moral and ethical, cultural and educational, and other factors.

The appropriate approach to modelling promising legal mechanisms for taking comprehensive, effective measures to combat organised crime and corruption is a national matter, including the use of the compliance system. The perception of corruption as a manifestation of organised crime is fundamental, which makes the compliance system a component of the overall system of combating these negative phenomena and ensuring the national security of Ukraine.

The same applies to the use of the compliance audit mechanism, which allows maximising the efficiency of the system and focusing efforts on the principal financial control functions, primarily those of

the group of bodies authorised to carry out risk management. The directive nature of the organisation of the activities of the authorised bodies helps to eliminate excessive control and allows for the implementation of all decisions made by the main management body with minimal distortion of their content.

Organised crime has a large amount of money, which allows them to increase their potential, using the latest advances in science and technology for criminal purposes, and to really compete with law enforcement agencies in terms of efficiency, technical capabilities, use of information resources, information and communication technologies, etc. The threat of organised crime having access to nuclear, chemical, radiological, and bacteriological weapons is also a concern. It is possible to effectively counteract growing threats by using the most advanced technical developments and techniques.

Paying attention to the issues related to the specific concepts of the forms of state response to risks, among which a special place is occupied by methods, control technologies CAC/COSP/WG.4/2023/5 (Report of the meeting of the Intergovernmental ..., 2023), it is necessary to search for the most effective practices of its implementation for the purpose of their introduction in Ukraine, which may include the use of the compliance methodology. This statement is supported by the positive experience of implementing risk management measures.

It is difficult to overestimate the role of information technology in risk management. When acknowledging the need for a cybernetic model of the organisational structure of risk management, it is necessary to consider the danger of their use for criminal purposes due to corruption, which is dangerous both for the individual system and the entire society. This should be considered when developing legal forms of combating organised crime by creating mechanisms of prevention and counterbalance. Possible dangerous aspects of the functioning of the cybernetic control structure include the availability of criminal information and the ability to manipulate it through the use of planned misinformation. The danger lies in the fact that the determination of quantitative and qualitative indicators of information necessary for the organisation of stable management in the social sphere, which involves processing by means of computer technology in digital and graphic form, is perceived in a virtual format as a subject and an object of management. In terms of implementing financial control tasks and organising an effective compliance audit, it is necessary to have well-developed procedures for exchanging information at both international and national levels. A special role in this matter is played by the structures tasked with countering money laundering (Financial Intelligence Unit, FATF, MONEYVAL, the Eurasian Group on Combating Money Laundering and Terrorist Financing (EAG), the Egmont Group of Financial Intelligence Units of the World, Council of Europe and the European Commission, the United Nations Office on Drugs and Crime (UNODC), the World Bank, the International Monetary Fund, the Organisation for Security and Cooperation in Europe (OSCE), the GUAM Organization for Democracy and Economic Development, and other organisations operating at the international level (Vnukova & Hlebko, 2020).

At the same time, there is a need to pay attention to alternative systems of responding to the negative processes taking place in the modern world, which by their very nature can directly or indirectly affect the sustainable development of states. This makes risk management mechanisms relevant. It is natural for the state to use a system of standards in risk management. According to the goals and objectives set for the system as a whole and for a separate management unit, it is a complex system, which determines the presence of many elements in its structure that allow it to be used in the organisation and implementation of compliance audit.

The risk management system is based on a certain set of international and national standards, which contain provisions that allow for their use in compliance audit mechanisms. In the organisational aspect of this management, the list of terms contained in ISO/IEC Guide 73[1] plays a significant role. Based on this international document, the internal standard DSTU ISO Guide 73:2013 Risk Management was developed[2]. In Ukraine, DSTU ISO 31000:2014 Risk Management was in force. Principles and Guidelines (ISO 31000:2009; IDT)[3], which was subsequently replaced by DSTU ISO 31000:2018 Risk Management. Principles and guidelines (ISO 31000:2018, IDT)[4]. Standards are available that contain methods for general risk assessment at the national (domestic) level, specifically, DSTU IEC/ISO 31010:2013 Risk Management. Methods of general risk assessment (IEC/ISO 31010:2009, IDT)[5], which focuses on the concepts, processes, and selection of risk assessment methods, and DSTU ISO/TR 31004:2018

[1] ISO/IEC Guide 73:2009. (2009). Retrieved from https://www.iso.org/ru/standard/44651.html.
[2] ISO Guide 73:2013. (2013). Retrieved from https://khoda.gov.ua/image/catalog/files/dstu%2073.pdf.
[3] ISO 31000:2014. (2014). Retrieved from https://online.budstandart.com/ua/catalog/doc-page.html?id_doc=76874.
[4] ISO 31000:2018. (2018). Retrieved from https://alison.com/course/iso-31000-2018-enterprise-risk-management-framework-for-risk-leaders?utm_source=google&utm_medium=cpc&utm_campaign=Performance-Max_Tier-5_Audience-Targeting&gad_source=1&gclid=EAIaIQobChMIlZmsnMmXgwMVJZqDBx12IAoaEAAYAiAAEgLLbvD_BwE.
[5] IEC/ISO 31010:2013. (2013). Retrieved from https://khoda.gov.ua/image/catalog/files/dstu%2031010.pdf.

(ISO/TR 31004:2013, IDT) Risk management. ISO 31000 Implementation Guide[1].

The originality of the compliance system in the fight against organised crime can be characterised by the fact that international practices show the need to use this mechanism in management decision-making procedures, but there are no examples of its existence. The analytical materials of the International Compliance Association (Governance, Risk and Compliance, n.d.) are useful. In the United States of America, the use of this mechanism is regulated by law. The US Foreign Corrupt Practices Act (FCPA) is noteworthy, as it created a legal mechanism to counteract this phenomenon, which inherently threatens the national development of this country. Financial control, in its broadest sense, also has elements of compliance at its core, but the latter is already characterised by signs of an independent system in the current environment. This is confirmed by the legislation of certain countries, including Ukraine[2]. It can help improve performance audits and identify promising and rational areas for redistributing public financial resources. This is also confirmed by documents, specifically, the US Department of Justice's Corporate Compliance Programme Assessment Guide (2023); the US Treasury's Office of Foreign Assets Control's Core Compliance Requirements (2019); the UK Serious Fraud Office's Compliance Programme Assessment Guide (2020); Bribery Act 2010 Guidance (2010), which contains recommendations for companies to implement anti-corruption standards and procedures; the US Sentencing Commission's guidelines (2018 Guidelines Manual Annotated, 2018).

A range of documents should be considered when organising the functioning of compliance, including: ISO 37301:2021 Compliance Management System – Requirements with application guidance[3]; ISO 37001:2016 Anti-Corruption Management System – Requirements with guidance for use[4]; ISO 37002:2021 Whistleblowing Management Systems – Guidelines[5]; ISO 19011:2018 Guidelines for conducting management system audits[6]; IEC 62740:2015 Root cause analysis[7]. The latter is used in the development of the internal audit methodology of the compliance management system, the change management methodology, the non-conformity management methodology, and corrective actions are carried out using this standard. ISO 19600 Compliance Management System – Guidelines[8] is functionally related to the compliance management system (FDIC, n.d.). The compliance system is based on the requirements of the following standards and documents:

- New compliance standard – ISO 37301:2021 Compliance management system – Requirements with guidance for use[9];
- standard adopted by the International Organisation for Standardisation (ISO) in April 2021, replacing ISO 19600:2014[10]. It is crucial and fundamental that the requirements of this document are of a general nature and are intended to apply to all organisations, regardless of the type, size, and nature of their activities, and whether they are in the public, private, or non-profit sectors. This provision opens the prospect of using the mechanism stipulated in it in the fight against organised crime and corruption. Despite all the advantages of this document, the prospect of its use in the activities of certain facilities with different functional areas is decided by their managers. They also assess the possibility of obtaining a positive effect both in the external and internal environment of the organisation. At the same time, the use of this standard in planning processes and the creation of alternative models confirms that developers are based on international practices, aiming to eliminate risks as much as possible, which ensures the prospect of achieving a positive effect from the goals and objectives of a particular project;
- ISO 37001:2016 Anti-Corruption Management System – Requirements with guidance for use[11] and the requirements of the new ISO 37002:2021 Whistleblowing Management Systems – Guidance[12];

[1] ISO/TR 31004:2018. (2018). Retrieved from https://zakon.isu.net.ua/norm/478454-menedzhment-rizikiv-nastanova-z-vprovadzhennya-iso-31000-isotr-310042013-idt.
[2] Law of Ukraine No. 2939-XII "On the Fundamental Principles of the Public Financial Control in Ukraine". (1993, January). Retrieved from https://zakon.rada.gov.ua/laws/show/2939-12#Text.
[3] ISO 37301:2021. (2021). Retrieved from https://www.iso.org/obp/ui/?fbclid=IwAR2_mKFAR5SQPCqaw0iGlEYeDyvvD6fFtnSS1FeIPy0phPabTule521UK5s#iso:std:iso:37301:ed-1:v1:en.
[4] ISO 37001:2016. (2016). Retrieved from https://professional.lexisnexis.com/en-int/eddm-iso37001?gad_source=1&gclid=EAIaIQobChMIitXhpsOXgwMVdoCDBx2FKw0REAAYASAAEgLqrPD_BwE.
[5] ISO 37002:2021. (2021). Retrieved from https://www.iso.org/ru/standard/65035.html.
[6] ISO 19011:2018. (2018). Retrieved from https://zakon.isu.net.ua/sites/default/files/normdocs/dstu_iso_19011_2019.pdf.
[7] IEC 62740:2015. (2015). Retrieved from https://webstore.iec.ch/publication/21810.
[8] ISO 19600:2014. (2014). Retrieved from https://www.iso.org/ru/standard/62342.html.
[9] ISO 37301:2021. (2021). Retrieved from https://www.iso.org/obp/ui/?fbclid=IwAR2_mKFAR5SQPCqaw0iGlEYeDyvvD6fFtnSS1FeIPy0phPabTule521UK5s#iso:std:iso:37301:ed-1:v1:en.
[10] ISO 19600:2014. (2014). Retrieved from https://www.iso.org/ru/standard/62342.html.
[11] ISO 37001:2016. (2016). Retrieved from https://professional.lexisnexis.com/en-int/eddm-iso37001?gad_source=1&gclid=EAIaIQobChMIitXhpsOXgwMVdoCDBx2FKw0REAAYASAAEgLqrPD_BwE
[12] ISO 37002:2021. (2021). Retrieved from https://www.iso.org/ru/standard/65035.html.

▪ "Guidance on Evaluating Corporate Compliance Programmes" (2023) of the US Department of Justice (2023); "Core Compliance Requirements of the Office of Foreign Assets Control" (2019); "Guidance on Evaluating Compliance Programmes" of the UK Serious Fraud Office (2020);

▪ ISO 31000:2018 Risk Management standard. Principles and Guidelines[1];

▪ EN IEC 31010:2022 Risk management – risk assessment methods[2];

▪ conducting internal audits of the compliance management system using the requirements of ISO 19011:2018 Guidelines for conducting management system audits[3].

The development of an internal audit methodology for the compliance management system, a change management methodology, a methodology for managing non-conformities and taking corrective actions is carried out using the IEC 62740:2015 Root Cause Analysis standard[4]. ISO 19600 Compliance Management System – Guidelines[5] is an international standard that provides guidance to help organisations develop, implement, maintain, evaluate, and improve a Compliance Management System (CMS) (FDIC, n.d.).

In determining the elements of an effective compliance system, three international documents that set out the elements of an effective compliance programme should be used as a basis, namely:

▪ the UK Bribery Act 2010 Guidance (2010)[6], which provides guidance to companies on how to implement anti-bribery standards and procedures;

▪ Criteria for an effective compliance and ethics programme as set out in the US Sentencing Commission Guidelines Manual (USA, 2018)[7];

▪ International standard ISO 37301:2021 Compliance management systems – Requirements with guidance for use[8] (Korshun, 2021).

It is the comprehensiveness of this approach that makes it possible to expand the mechanisms for ensuring the effectiveness of combating corruption as a manifestation of organised crime, using, among other things, the potential of financial control. One of such steps could be to amend the Laws of Ukraine "On the Audit of Financial Statements and Auditing Activities" (Articles 1, 7, 8, 14, 15, 40)[9] and "On the Fundamental Principles of Public Financial Control in Ukraine" (Articles 2, 3, 5, 8)[10] in terms of introducing an organisational and functional form of ensuring the ability of the audit entity to implement its tasks in the internal and external areas of its work – "compliance audit".

To create algorithms based on which the relevant compliance will function, implementing the above approaches, it is necessary to use a set of standards, namely the internal standard DSTU ISO Guide 73:2013 Risk Management. Glossary of terms (ISO Guide 73:2009, IDT)[11]; DSTU ISO 31000:2018 Risk management. Principles and guidelines (ISO 31000:2018, IDT)[12], DSTU IEC/ISO 31010:2013 Risk management. Methods of general risk assessment (IEC/ISO 31010:2009, IDT)[13], DSTU ISO/TR 31004:2018 (ISO/TR 31004:2013, IDT) Risk management. ISO 31000 Implementation Guide[14], IEC 62740:2015 Root Cause Analysis[15]. The area of lawmaking should be based on the example of the proposal to amend the Laws of Ukraine "On the Audit of Financial Statements and Auditing Activities" (Articles 1, 7, 8, 14, 15, 40)[16] and "On the Fundamental Principles of

[1] ISO 31000:2018. (2018). Retrieved from https://alison.com/course/iso-31000-2018-enterprise-risk-management-framework-for-risk-leaders?utm_source=google&utm_medium=cpc&utm_campaign=Performance-Max_Tier-5_Audience-Targeting&gad_source=1&gclid=EAIaIQobChMIlZmsnMmXgwMVJZqDBx12IAoaEAAYAiAAEgLLbvD_BwE.
[2] EN IEC 31010:2022. (2022). Retrieved from https://online.budstandart.com/ua/catalog/doc-page.html?id_doc=100889.
[3] ISO 19011:2018. (2018). Retrieved from https://zakon.isu.net.ua/sites/default/files/normdocs/dstu_iso_19011_2019.pdf.
[4] IEC 62740:2015. (2015). Retrieved from https://webstore.iec.ch/publication/21810.
[5] ISO 19600:2014. (2014). Retrieved from https://www.iso.org/ru/standard/62342.html.
[6] Bribery Act 2010 Guidance. (2010). Retrieved from https://www.gov.uk/government/publications/bribery-act-2010-guidance.
[7] US Sentencing Commission Guidelines Manual. (2018, November). Retrieved from https://www.thefederalcriminalattorneys.com/federal-sentencing-guidelines.
[8] ISO 37301:2021. (2021). Retrieved from https://www.iso.org/obp/ui/?fbclid=IwAR2_mKFAR5SQPCqaw0iGlEYeDyvvD6fFtnSS1FeIPy0phPabTule521UK5s#iso:std:iso:37301:ed-1:v1:en.
[9] Law of Ukraine No. 2258-VIII "On the Audit of Financial Statements and Audit Activity". (2017, December). Retrieved from https://zakon.rada.gov.ua/laws/show/2258-19#Text.
[10] Law of Ukraine No. 2939-XII "On the Fundamental Principles of the Public Financial Control in Ukraine". (1993, January). Retrieved from https://zakon.rada.gov.ua/laws/show/2939-12#Text.
[11] ISO Guide 73:2013. (2013). Retrieved from https://khoda.gov.ua/image/catalog/files/dstu%2073.pdf.
[12] ISO 31000:2018. (2018). Retrieved from https://alison.com/course/iso-31000-2018-enterprise-risk-management-framework-for-risk-leaders?utm_source=google&utm_medium=cpc&utm_campaign=Performance-Max_Tier-5_Audience-Targeting&gad_source=1&gclid=EAIaIQobChMIlZmsnMmXgwMVJZqDBx12IAoaEAAYAiAAEgLLbvD_BwE.
[13] IEC/ISO 31010:2013. (2013). Retrieved from https://khoda.gov.ua/image/catalog/files/dstu%2031010.pdf.
[14] ISO/TR 31004:2018. (2018). Retrieved from https://zakon.isu.net.ua/norm/478454-menedzhment-rizikiv-nastanova-z-vprovadzhennya-iso-31000-isotr-310042013-idt.
[15] IEC 62740:2015. (2015). Retrieved from https://webstore.iec.ch/publication/21810.
[16] Law of Ukraine No. 2258-VIII "On the Audit of Financial Statements and Audit Activity". (2017, December). Retrieved from https://zakon.rada.gov.ua/laws/show/2258-19#Text.

Public Financial Control in Ukraine" (Articles 2, 3, 5, 8)[1] in terms of introducing an organisational and functional form of ensuring the ability of the audit entity to implement its tasks in the internal and external areas of its work – "compliance audit".

When developing algorithms based on the specifics of a particular area of social activity, compliance can become a tool not only for special bodies responsible for regular work on reviewing and identifying corruption risks and vulnerabilities, but also for a much wider range of actors. Objectively, this creates a basis for using compliance in the fight against organised crime.

The research hypothesis concerned the essence of organised crime, which is manifested at the regulatory, instrumental, and other levels. In modern conditions, new legal mechanisms for combating them are being formed, specifically, compliance audit and its embodiment in the form of a relatively independent complex of specific components of the financial control system. The development of the concept of compliance audit as an element of theoretical and legal knowledge based on international practices will become one of the foundations of an integrated approach to the development of an effective risk management system in Ukraine, and the conclusions obtained will contribute to further improvement of scientific research in other areas of legal research. Notably, Ukrainian scholars have paid attention to the problem of developing compliance mechanisms, and their position is not objectionable. On the contrary, they deserve support. Thus, V. Gura (2023) suggests that "compliance" should be interpreted as "the compliance of the enterprise and its internal policies, rules, and procedures with national and international legislation, moral and ethical standards of doing business, control over all processes, implementation of compliance risk management in the system of combating corruption and strengthening economic security". This definition does not contradict the meaning of the concept as defined by the International Compliance Association. It is also important that the study identified and thoroughly described the principal components of the compliance system, including the purpose of compliance control, its objectives, principles, and functions. The areas of internal and external compliance control were defined. Confirmation of the existence of the system property, which is the basis for the present study, is provided by T. Klumko & O. Melnuk (2015), who argue that the compliance system is a universal and internationally recognised system aimed at countering threats and managing risks. Its key purpose is to ensure that the company's activities follow the law, rules, guidelines, and standards.

To build the relevant system discussed above, the emphasis is placed on the introduction of compliance audit into the process of auditing financial activities, one of the arguments for this step is the proof by O. Konoplina & L. Voronina (2017) that anti-corruption audit is a factor of financial and economic security. This conclusion further confirms the significance of compliance for ensuring national security and sustainable development of the state. This approach meets the requirements of the new compliance standard ISO 37301:2021 Compliance Management System – Requirements with guidance for use[2]. Notably, the requirements of this document are of a general, non-departmental nature.

The assertion that compliance audit is a component of financial control is confirmed by T. Kobeleva (2020), who made the following reasonable conclusions: compliance control is a new type of control. The implementation and use of this system can substantially reduce compliance risks. Kobeleva uses a good phrase "ensuring the required level of security compliance". The researcher also substantiated the theoretical and methodological provisions for monitoring key indicators of compliance security. For the first time, two monitoring functions for practical use were proposed, based on tangential (as the principal indicators that reflect the degree of compliance threats to an enterprise and consider the four components of the country's economic security: energy, financial, social, innovation, and investment) and arctangential (including essential components of compliance security: financial, political and legal, energy and interface) dependencies. T. Kobeleva & P. Pererva (2019) include integral indicators of compliance risk and compliance security in the basis of the monitoring function.

L. Hnylytska (2017) emphasised the need to define methodological tools for the use of compliance audit. However, today this task can be performed using the standards containing the requirements for the compliance system, which are listed above. The correctness of the chosen methodology for solving the problem under study is also supported by other scientific findings of the researcher (Hnylytska, 2015). Thus, Hnylytska clearly states that the conceptual approach in the field of national security is to apply methods for identifying the interdependence of the impact of national security in the economic sphere of Ukraine on the state of economic security of business

[1] Law of Ukraine No. 2939-XII "On the Fundamental Principles of the Public Financial Control in Ukraine". (1993, January). Retrieved from https://zakon.rada.gov.ua/laws/show/2939-12#Text.

[2] ISO 37301:2021. (2021). Retrieved from https://www.iso.org/obp/ui/?fbclid=IwAR2_mKFAR5SQPCqaw0iGlEYeDyvvD6fFtnSS1FeIPy0phPabTule521UK5s#iso:std:iso:37301:ed-1:v1:en.

entities and vice versa. In turn, corruption hinders this, which poses a threat to national security in general.

The present study is complemented by the findings of M. Mozharovsky (2021), who focuses on identifying the specific features of compliance that underlie industry affiliation as the most common and widely used internal control mechanisms. Mozharovsky uses the terms "compliance risks", "compliance procedures", "anti-corruption compliance", "tax compliance", "corporate compliance", "labour compliance", "compliance standards", "compliance control", which can be considered as an argument for using the term "compliance audit" in this study.

P. Matveev & M. Mozharovskyi (2021) investigated the positive experience of the United States and the United Kingdom in the development of compliance systems. Researchers reveal such terms as "compliance norms", "compliance measures", "compliance functions", which practically characterise "compliance" as a component of the process of managerial influence. Thus, this confirms the thesis that "compliance" can also be used in the organisation of the work of organised crime actors. The initial thesis that compliance in its functionality should be considered as a mechanism for managing risks, including those arising from organised crime, is confirmed in the study by N. Moskalenko (2018), who, based on the requirements of fair implementation of legislation, ethical standards adopted by S.J. Griffith (2016), emphasises that compliance includes mechanisms for preventing and detecting violations of the law. The vision of some researchers, namely V. Ivanov & I. Lavryk (2016), of compliance as a phenomenon with functional features and its formal characteristics is novel. It is used to combat crime (legalisation of proceeds of crime, terrorist financing). It also provides evidence of the legitimacy of using compliance in combating organised crime and improving the legal forms of combating this negative phenomenon. S. Telenyk (2020) supports the fact that compliance is a practice-oriented form of control that is strategic and long-term in nature. However, the author of the present study cannot agree with this thesis, because by its very nature this phenomenon can be carried out based on planning, which has different levels, and this is what is considered when formulating amendments to the current legislation.

The perception of the fight against organised crime as a complex system necessitates the introduction of new forms of risk management, which are currently implemented in systems designed to solve other problems in different areas. Compliance control is such a universal form. The correctness of such steps is confirmed both at the theoretical and practical levels, for which the most appropriate is the "experiment on the spread of compliance control in combating manifestations of organised crime", the development of this form in practice. This can include combating trafficking in persons, arms, drugs, etc. As noted above, the implementation of compliance control is implemented through standardisation, i.e., such a decision can be made both at the national and departmental levels, specifically by law enforcement agencies and security forces.

Conclusions

When considering risk management in the fight against organised crime from a procedural perspective, it is important to correlate it with social impact. Since the process of influence consists of many operations and controlled expenditures of force, the choice should fall on those procedures that would ensure the effective, complete implementation of operational tasks by the subjects of security measures. An essential characteristic of the compliance control procedure is the presence of such a property as managerial influence, which makes them expedient and ensures the achievement of concrete results. Through the exercise of managerial influence, compliance control measures are included in the system of social regulation as an important factor in ensuring security.

Security procedures are not fundamentally different from the management measures that take place in other areas of social regulation. Management activities are social in nature and require an appropriate mechanism for their implementation. It is fundamental that compliance in the mechanism of combating organised crime and counteracting the establishment of corrupt ties by criminals in institutions, organisations, and enterprises, especially those included in the national security system, is ensured by the interconnection between preventive and law enforcement approaches.

The periodicity of the system's development is related to the cycles that the system goes through in its development as a social entity. A set of phenomena, works, processes that constitute a complete circle of system development over a certain period. The cyclical development of the social system requires precision, accuracy, and coherence of all elements, and it improves control and organisation of work. The cycle of social processes consists of the following stages: emergence of social relations on a small scale; spreading and gradual definition; substantial impact on large social masses; loss of the leading position of one group of social relations and its replacement by another; dissolution in new social relations; their final disappearance without a trace. The introduction of compliance control into the system of fighting organised crime as a component of risk management may symbolise the next stage of its development.

The most promising for further research in this area is to identify ways and features of the implementation of the International Standard ISO 37301:2021 Compliance Management Systems – Requirements

with guidance for use. The political, legal, economic, psychological, and complex aspects of assessing the qualitative and quantitative indicator of compliance control will be reflected in a formalised external and internal control mechanism. In this case, the role of the Central Management Apparatus involved in the fight against organised crime will also be assessed, with a view to introducing new forms of countering this evil and modernising risk management mechanisms.

Paradoxically, the use of compliance control implies the desire to achieve transparency in the activities of law enforcement and security forces, although the system is characterised by secrecy. The activities of these bodies should be subject to detailed analysis to identify dangerous symptoms or facts that pose a threat to the normal functioning of the system, and compliance will also play a role in this. That is why the practical aspects of implementing compliance in the activities of law enforcement agencies require further investigation.

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Conflict of Interest

None.

References

[1] 2018 Guidelines manual annotated. (2018). Retrieved from https://www.ussc.gov/guidelines/guidelines-archive/2018-guidelines-manual-annotated.

[2] Chan, F., Boratto, R., Gibbs, C., & Speers, M. (2023). Unraveling the patterns of complexity in transnational corporate bribery. *International Criminal Justice Review,* 0(0). doi: 10.1177/10575677231199046.

[3] Compliance Management System. (n.d.). Retrieved from https://www.fdic.gov/regulations/resources/director/presentations/cms.pdf.

[4] Evaluation of Corporate Compliance Programs. (2023). Retrieved from https://www.justice.gov/criminal-fraud/page/file/937501/download.

[5] FDIC. (n.d.). Compliance Management Systems (CMS). *Division of Depositor and Consumer Protection.* Retrieved from https://www.fdic.gov/regulations/resources/director/presentations/cms.pdf.

[6] Governance, risk and compliance. (n.d.) Retrieved from https://www.int-comp.org/learn-and-develop/subject-areas/governance-risk-and-compliance/.

[7] Griffith, S.J. (2016). Corporate governance in an era of compliance. *William & Mary Law Review,* 57(6), article number 2766661.

[8] Gura, V. (2023). The compliance system is a way to combatting corruption. *Economics and Society,* 52. doi: 10.32782/2524-0072/2023-52-77.

[9] Hnylytska, L.V. (2015). The influence of national security on the state of economic security of economic entities in the conditions of the innovation and investment stage of the development of the world economy. *Accounting and Auditing,* 2-3, 61-69.

[10] Hnylytska, L.V. (2017). Anti-corruption audit as a means of combating corporate fraud. *Independent Auditor,* 20(2), 8-14.

[11] Huntington, S. (2002). Modernization and corruption. In A. Heidenheimer & M. Johnston (Eds.), *Political corruption: Concepts and contexts* (pp. 377-388). New Brunswick: Transaction Publishers.

[12] Huss, O., Bader M., Meleshevych, A., & Nesterenko, O. (2019). *Analysing contextual factors for anti-corruption activism in the regions of Ukraine*. Leiden: Leiden University, Anti-Corruption Research and Education Centre of National University Kyiv-Mohyla Academy.

[13] Huss, O., Bader M., Meleshevych, A., & Nesterenko, O. (2020). Effectiveness of anti-corruption activism in Ukraine's regions: The role of local context, political will, institutional factors, and structural factors. *Demokratizatsiya: The Journal of Post-Soviet Democratization,* 28(2), 201-227.

[14] Ivanov, V.B., & Lavryk, I.F. (2016). Compliance as a system of combating corruption and preventing risks at the level of business entities. *Bulletin of the National Transport University. Series "Economic Sciences"*, 3(36), 80-86.

[15] Klymko, T.Yu., & Melnyk, O.O. (2015). Corporate compliance as a preventive measure to combat fraud. *Economics and Finance*, 6-7, 20-27.

[16] Kobeleva, T.O. (2020). *Compliance-safety of an industrial enterprise: Theory and methods*. Kharkiv: Planeta-print.

[17] Kobeleva, T.O., & Pererva, P.G. (2019). Compliance-security monitoring of the enterprise using the tangential function. *Bulletin of the Khmelnytskyi National University. Economic Sciences*, 5, 140-146.

[18] Konoplina, O.O., & Voronina, L.V. (2017). Anti-corruption audit as a factor of financial and economic security. In *Strategic analytics and anti-corruption audit in the system of ensuring financial and economic security of the state, region, business entities* (pp. 105-107). Kharkiv: Kharkiv National University of Urban Economy named after O.M. Beketova.

[19] Korshun, A. (2021). *Compliance check: What is needed to implement an effective compliance model in the company*. Retrieved from https://thepage.ua/ua/experts/komplayens-check-sho-potribno-dlya-vprovadzhennya-efektivnoyi-komplayens-modeli-v-kompaniyi.
[20] Korystin, O.E., & Denysenko, B.A. (2023). Content and interpretation of the term "intelligenc" in the context of the intelligence-led policing model (ILP). *South Ukrainian Law Journal,* 1, 72-79. doi: 10.32850/sulj.2023.1.13.
[21] Kravtsova, M., Oshchepkov, A., & Welzel, C. (2017). Values and corruption: Do postmaterialists justify bribery? *Journal of Cross-cultural Psychology*, 48(2), 225-242. doi: 10.1177/0022022116677579.
[22] Kubbe, I., & Engelbert, A. (2018). Corruption and the impact of democracy. *Crime, Law and Social Change*, 70, 175-178. doi: 10.1007/s10611-017-9732-0.
[23] Matveev, P.S., & Mozharovskyi, M.Yu. (2021). Theoretical and legal foundations of compliance measures of economic entities in Ukraine. *Actual Problems of the State and Law,* 113-125. doi: 10.32837/apdp.v0i90.3215.
[24] Moroz, V.P., Chaplinskyi, K.O., Boguslavskyi, M.G., & Voloshina, M.O. (2023). *Combating organized crime in Ukraine: Modernity and prospects*. Dnipro: DDUVS.
[25] Moskalenko, N.V. (2018). Theoretical aspects of the introduction of compliance control in Ukraine. *Herald of Economics. Series: Finances, Accounting, Taxation*, 2, 106-112.
[26] Mozharovskyi, M.Yu. (2021). Theoretical and legal analysis of the definition of the concept of "compliance" and its types. *Pravo.ua,* 2, 139-148. doi: 10.32782/LAW.UA.2021.2.21.
[27] Odilla, F. (2023). Bots against corruption: Exploring the benefits and limitations of AI-based anti-corruption technology. *Crime, Law and Social Change*, 80, 353-396. doi: 10.1007/s10611-023-10091-0.
[28] Report of the meeting of the Intergovernmental Working Group on the Prevention of Corruption, held in Vienna from 14 to 16 June 2023. (2023). Retrieved from https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup4/2023-June-12/CAC-COSP-WG.4-2023-5 R.pdf.
[29] Rider, B. (2023). Introduction to "A research agenda for economic crime and development". In Rider, B. (Ed.), *A research agenda for economic crime and development* (pp. 1-47). Northampton: Edward Elgar publishing inc. doi: 10.4337/9781783475797.
[30] Starting an OFAC Compliance Program. (2015). Retrieved from https://ofac.treasury.gov/faqs/topic/1596.
[31] Telenyk, S.S. (2020). Regarding the definition of the concept of infrastructural compliance of critical infrastructure objects. *Law and Society,* 2(2), 222-235. doi: 10.32842/2078-3736/2020.2-2.34.
[32] UK Serious Fraud Office issues guidance for evaluating compliance programmes, Echoes DOJ guidance. (2020). Retrieved from https://www.mofo.com/resources/insights/200124-uk-serious-fraud-issues.
[33] Vnukova, N.M., & Hlebko, S.V. (Eds.). (2020). *Modern economic and legal risk-oriented means of regulating the development of the financial services market*. Kharkiv: Research Institute PZIR National Academy of Sciences of Ukraine.

Шляхи впровадження управління ризиками в боротьбу з організованою злочинністю

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■ **Анотація.** Загострення оперативної обстановки в умовах воєнного стану створює загрозу широкому колу прав, інтересів особи й суспільства. Для недопущення подальшого ускладнення криміногенної ситуації необхідним є пошук прогресивних механізмів боротьби з організованою злочинністю. Метою роботи визначено формування науково обґрунтованих пропозицій щодо розвитку механізмів боротьби з організованою злочинністю, протидії встановленню злочинцями корупційних зв'язків в установах, організаціях, підприємствах, передусім у тих, які належать до системи національної безпеки. Відповідно до поставленої мети та специфіки предмета дослідження, використано історичний підхід, порівняльно-правовий і системно-структурний методи. Окреслено зміст процесів організації управління підсистемами, що задіяні у справі забезпечення національної безпеки. Необхідність її ефективного забезпечення засвідчують статистичні дані про ускладнення оперативної обстановки в окремих регіонах, загальна соціально-політична обстановка та загрозливі тенденції криміналізації суспільства. Стан стагнації не відповідає курсу максимально безпечного розвитку суспільства, тому головним завданням держави є активний захист громадян від небезпечних антисоціальних, злочинних і насильницьких виявів. Обґрунтовано, що успішність протидії цим негативним явищам залежить передусім від уніфікації окремих механізмів як на міжнародному, так і внутрішньодержавних рівнях, це стосується і стандартів. Доведено, що вдосконалення організаційно-правових форм боротьби з організованою злочинністю слід здійснювати в напрямі покращення стандартів у системі управління ризиками, зокрема забезпечення інформаційної безпеки, стимулювання захисту інформаційних потоків. Аргументовано, що впровадження терміна «комплаєнс-аудит» до окремих законів України, що визначають основні засади реалізації державного фінансового контролю, аудиту фінансової звітності й організації аудиторської діяльності, забезпечить позитивний ефект у боротьбі з цими негативними явищами. Результати роботи можуть бути основою процесів підготовки прогнозних і програмних документів вищими ревізійними установами, антикорупційними органами, бізнес-середовищем щодо протидії виявам організованої злочинності, виявлення та ліквідації корупційних зв'язків зі злочинцями

■ **Ключові слова:** стандарт; упровадження; протидія; корупція; комплаєнс-аудит

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The problem of slavery and human trafficking: International law and scientific discourse

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■ **Abstract.** The expansion of the range of issues related to modern slavery and human trafficking is associated with the intensification of scientific research in this area, which raises the issue of classification and systematization of research in this area. The publication aims at defining the main criteria for systematizing scientific works in the field of combating slavery and human trafficking, and at classifying and analysing one of the selected segments of this body of research. In the context of analysing the process of researching a particular area of scientific interest, the main tools used are the principles of objectivity, scientificity and systematicity, while general scientific methods of cognition – deduction and retrospective, as well as special legal methods – comparative legal and legal forecasting. The analysis of the content and issues of scientific reports on research conducted in the field of combating human trafficking has shown both their high professional level and their focus on processing and summarizing factual data that are mostly not available in the format of ordinary scientific articles. It has also been established that scientific reports are mostly focused on solving practical problems, which increases the benefit of using the formulated conclusions not only in scientific, but also in law enforcement and social work. The practical value of the study lies in the fact that for the first time, an attempt was made to conduct a systematic analysis of a selected segment of works on the problem of modern slavery and human trafficking

■ **Keywords:** illegal human trafficking; enslavement; exploitation; forced labour; human rights; transnational crime

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Introduction

An inherent feature of the development of the modern world is the tendency of constant growth of global risks, which, in turn, requires a consolidated response from the international community. One of the components of these processes is the growth and expansion of the scope of activities of transnational criminal groups, which are inextricably linked to the global network of terrorist organizations, posing the most real threats to the existing world order. Human trafficking plays a key role in financing the activities of both criminal groups and terrorist organizations. Aware of the danger of the spread of this form of criminal activity, the international community, in its efforts to overcome it, proceeds from the need to apply a comprehensive approach to combating the shameful phenomena of modern slavery and human trafficking. This option includes not only improving the legislative and law enforcement component, but also stimulating public outcry and deepening a range of diverse scientific research aimed at studying and exposing various forms and areas of criminal activity (Langier *et al.* 2021).

According to T. Landman (2020), one of the many paradoxes of the modern world is the confrontation between the struggle to preserve, respect and expand human rights and the existence (and sometimes even growth) of such a shameful phenomenon as slavery and human trafficking in a wide variety of forms and forms. There is no doubt that the existence of slavery and the slave trade is in blatant contradiction to absolutely all civilizational values and legal norms of today's democratic world. At the same time, human trafficking is (at least formally) condemned and prohibited even by most non-democratic states. Understanding the existence and scale of the problem, the fight against this shameful phenomenon is currently one of the priorities of public authorities (primarily law enforcement agencies), non-governmental institutions and civil society in general, as emphasized in the study by O. Nnamuchi (2022).

Also, the study by A. Russell (2018) "Human Trafficking: A Research Synthesis on Human-Trafficking Literature in Academic Journals from 2000-2014" is noteworthy. Along with this study by A. Russell's study, it is worth noting the work of R. Mahalingam (2019) "Human trafficking from a multidisciplinary perspective: A literature review". The approach proposed by the author can be considered quite original, although in terms of the presentation of factual material, this work largely overlaps with the works of E. Gozdziak (2005; 2015). Thus, the range of research on this issue is indeed very wide in a variety of fields of knowledge – from jurisprudence and criminology to sociology, journalism and political science.

Ukrainian historiography is virtually devoid of comprehensive studies that would analyse the diverse sources on the problem of human trafficking. The vast majority of works are limited to a more or less brief literature review. Here, it is possible to cite the work of O. Skriabin (2020), dedicated to the problems of combating human trafficking in Ukraine and neighbouring countries, the article by S. Pavlenko (2021), in which the author discusses the issue of human trafficking for labour exploitation.

On the other hand, there is a fairly large number of in-depth studies that include an analysis of specialized works. However, such studies are quite logically focused on highlighting certain narrow professional problems, and the provisions of other researchers' works are integrated into the authors' position. This can be illustrated by the work of A. Andrushko (2021), which highlights the interpretation of the objective side of the crime of human trafficking, or the collective work "Human trafficking as a crime against human freedom", which focuses on defining the definitions of criminal acts related to human trafficking and forced exploitation and examines the practice of Lithuanian courts in considering such cases (Perkumienė *et al.* 2023). However, there are still very few works focused on the analysis of the current body of work. Therefore, for a deeper and more qualitative study of the existing base of scientific and journalistic works, it is advisable to segment this array and conduct further study of it according to the identified constituent elements.

The purpose of this work is to analyse a separate segment of works in the field of combating slavery and human trafficking, which is represented by scientific reports of research conducted on the basis of both academic institutions and non-profit public foundations.

Materials and Methods

The implementation of the tasks was made possible by applying the principles of objectivity, scientificity and systematicity, as well as a dialectical approach to scientific analysis. Based on these principles, the methodological structure of the study was built. This structure includes: general scientific methods of knowledge – deduction and retrospective, as well as special legal methods – comparative legal and legal forecasting.

The method of deduction formed the main approaches for the process of processing, analysing and systematizing various types and kinds of works on the issues of modern slavery and human trafficking. The application of this method made it possible to conduct an in-depth structural analysis, which, in turn, laid the foundation for achieving the research goal of forming a scientifically sound systematization of works on the identified issues. The use of the retrospective method in the course of the study was also aimed at achieving the main goal, but in the context of understanding the continuity

(evolution) of consideration of similar issues in different time periods. This also applies to the analysis in a situation where one author has a number of works on a particular issue. The application of the comparative legal method in parallel with the systemic and structural approach made it possible, on the one hand, to identify structural elements and define comparison criteria, and, on the other hand, to conduct a comparative analysis, thus forming another element for the proposed systematization. The method of legal forecasting was used to formulate conclusions and practical recommendations based on the results of the study.

Aware of the global nature of the problem of slavery and human trafficking and the multi-vector nature of the international community's efforts to combat this phenomenon, the definition of the conceptual and categorical apparatus of the study is of fundamental methodological importance. It is based on the definitions defined by international legal acts that have been ratified by most countries, and at the same time serve as a basis for further development of both theoretical and applied issues of combating slavery and human trafficking. A good example of a comprehensive study of the problem of defining and using definitions of the concepts of slavery, human trafficking, forced labour and others can be found in the work of J. Harnoncourt & M. Paredes (2023). The basic interpretations of slavery and the slave trade, which are used in most international legal acts, were introduced by the Slavery Convention of 1926 (as amended by the 1953 Protocol). Paragraphs 1 and 2 of Article 1 provide the following definitions of these concepts: "Slavery is the state or condition of being subject to the attributes of ownership, or to some of them", "The slave trade shall include any act of seizing, acquiring or yielding a person for the purpose of selling him or her into slavery; any act of acquiring a slave for the purpose of selling or exchanging him or her; any act of yielding by sale or exchange a slave acquired for the purpose of selling or exchanging him or her, as well as generally any act of trading or transporting slaves[1]".

The source base of the work is based on the analysis of the provisions of the framework of international legal acts that are directly dedicated to, or contain provisions aimed at prohibiting and overcoming, the phenomena of modern slavery and human trafficking in all forms. For the purposes of this article, this analysis is of fundamental importance in the context of identifying and further applying definitions of basic concepts as one of the categories of historical and legal analysis of scientific works and their further systematization. At the same time, in this case, it is worth talking about an array of diverse scientific reports on the research as one of the elements of the source base of the work (Project Polaris, n.d.; International Justice Mission, n.d.). The analysis of this type of scientific work has made it possible not only to update certain areas of research on human trafficking, but also to open up further prospects for finding ways to combat both this phenomenon and its various consequences.

Results and Discussion

Basic concepts and their definitions in international pacts. Today, slavery is prohibited under all major international covenants that enshrine human rights. These include: Article 8, paragraph 1, of the International Covenant on Civil and Political Rights[2]; Article 5 of the African Charter on Human and Peoples' Rights[3]; Article 6, paragraph 1, of the American Convention on Human Rights[4]; Article 4, paragraph 1, of the European Convention on Human Rights[5]. The slave trade is prohibited in accordance with Article 8, paragraph 1, of the International Covenant on Civil and Political Rights, Article 5 of the African Charter on Human and Peoples' Rights, and Article 6, paragraph 1, of the American Convention on Human Rights. The unfree state of a person is prohibited under Article 8, paragraph 1, of the International Covenant on Civil and Political Rights, Article 6, paragraph 1, of the American Convention on Human Rights and Article 4, paragraph 1, of the European Convention on Human Rights. At the same time, attention should also be paid to the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery. Article 1 of this document significantly expands the range of basic concepts by interpreting such definitions as debt bondage, servitude and forced marriage for money[6].

[1] Slavery Convention of 25 September 1926, as Amended by the Protocol. (1953, December). Retrieved from https://zakononline.com.ua/documents/show/141093__141093.

[2] International Covenant on Civil and Political Rights. (1973, October). Retrieved from https://zakon.rada.gov.ua/laws/show/995_043#Text.

[3] African Charter No. 26363 "On Human and Peoples' Rights". (1981, June). Retrieved from https://treaties.un.org/doc/Publication/UNTS/Volume%201520/volume-1520-I-26363-English.pdf.

[4] American Convention No. 17955 "On Human Rights: "Pact of San José, Costa Rica". (1969, November). Retrieved from https://treaties.un.org/doc/publication/unts/volume%201144/volume-1144-i-17955-english.pdf.

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

[6] Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery. (1957, September). Retrieved from https://zakononline.com.ua/documents/show/140716__529193.

Closely related to these provisions are the rules governing the prohibition of forced labour. These provisions are contained in the following international legal acts: The International Covenant on Civil and Political Rights (Article 8, paragraph 3), the American Convention on Human Rights (Article 6, paragraph 2), and the European Convention on Human Rights (Article 4, paragraph 2). At the same time, the International Labour Organization Conventions No. 29 of 1930 on Forced or Compulsory Labour and No. 105 of 1957 on the Abolition of Forced Labour, which regulate most of the provisions set out in general international covenants, play an important role here. Thus, Convention No. 29, which is a framework Convention, defines forced labour as a phenomenon that has the characteristics of work (or service) required of a person under threat of punishment and to which the person did not voluntarily agree (Article 2, paragraph 1[1]). This Convention also defines cases when forced labour may be permitted (military service, execution of a court sentence, declaration of a state of emergency, etc.) However, these cases of exceptions were significantly amended by Convention No. 105 of 1957[2]. In general, the problem of forced labour is widely represented in modern research works of various kinds. A widespread approach is one that exposes the systemic nature of illegal human trafficking and its directions, as well as reveals the essence of the processes of forced exploitation and combating it (Leach, 2022).

Given the prevalence of the phenomenon of forced prostitution, it is usually distinguished as a separate segment of criminal activity that has signs of various illegal acts, such as slavery, forced servitude, forced labour and some others. In this context, the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 1949 remains the framework. Articles 1 and 2 of this Convention define the following as criminal acts that should be punishable by criminal penalties: inducement or coercion to engage in prostitution, exploitation of prostitution, keeping, managing, or financing brothels or knowingly providing premises for the establishment of brothels[3].

Another document that is related to the definition of concepts in this area is the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (or the Palermo Protocol of 2000), which was adopted to supplement the UN Convention against Transnational Organized Crime. According to paragraph A, Article 3 of this Protocol, the concept of trafficking in persons is defined as actions for the purpose of exploitation of persons, carried out by means of recruitment, transportation, transfer, harbouring or receipt of persons through the threat or use of force. It also defines other forms of coercion such as abduction, fraud, deception, abuse of power or of a person's position of vulnerability. It also takes into account the possibility of bribery (in the form of payments or benefits) to obtain the consent of a person who controls another person (this includes, for example, parents, guardians, community elders and others[4]). It is also worth paying attention to the further interpretation of these provisions in the Council of Europe Convention on Action against Trafficking in Human Beings of 2005[5].

In this context, it is also worth paying attention to Articles 32, 34, 35 and 36 of the Convention on the Rights of the Child, which define the main provisions on the prohibition of various forms of child exploitation (including sexual exploitation), as well as "prevention of the abduction of children, sale of children or traffic in children for any purpose or in any form[6]". The 2000 Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography is of particular importance for understanding the issue under consideration in this paper. Article 2 of the Optional Protocol sets out the definitions of the concepts of the sale of children, child prostitution and child pornography. Article 3 of the Optional Protocol obliges States Parties to criminalize the acts defined in Article 2 and specifies the relevant offences[7]. The areas of combating the sale and exploitation of children are currently considered by many authors, for example, J. Charles-Voltaire *et al.* (2023). Today, child trafficking and exploitation (especially sexual exploitation) are one of the most shameful manifestations of

[1] Convention No. 29 "On Forced or Compulsory Labour". (1956, August). Retrieved from https://zakon.rada.gov.ua/laws/show/993_136#Text.
[2] Convention No. 105 "On the Abolition of Forced Labour". (1957, June). Retrieved from https://zakon.rada.gov.ua/laws/show/993_013#Text.
[3] Convention On the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. (1949, December). Retrieved from https://zakon.rada.gov.ua/laws/show/995_162#Text.
[4] Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime. (2000, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_791#Text.
[5] Council of Europe Convention on Action Against Trafficking in Human Beings. (2005, April). Retrieved from https://zakon.rada.gov.ua/laws/show/994_858#Text.
[6] Convention On the Rights of the Child. (2005, December). Retrieved from https://zakon.rada.gov.ua/laws/show/995_021#Text
[7] Optional Protocol to the Convention On the Rights of the Child On the Sale of Children, Child Prostitution and Child Pornography. (2003, May). Retrieved from https://zakon.rada.gov.ua/laws/show/995_b09#Text.

modern slavery and therefore require a comprehensive approach to combating them in all areas – from law enforcement to social and research activities.

It should also be noted that sanctions for crimes related to slavery, servitude and human trafficking provide for the extradition of criminals between participating countries. International law specifically states that the prohibition of slavery and servitude must be ensured in all cases and situations, including the declaration of a state of emergency, martial law, or any other state of emergency. This provision is enshrined in Article 4(2) of the International Covenant on Civil and Political Rights[1], Article 27(2) of the American Convention on Human Rights[2], and Article 15(2) of the European Convention on Human Rights.[3]

Thus, while analysing the provisions of international legal documents, a number of categorical concepts can be identified that can form the basis for the formation of a classification scheme for scientific works on the problem of slavery and human trafficking. In defining certain groups of works, one should rely on the definitions of the types of criminal acts against a person regarding coercion to involuntary servitude, human trafficking in various forms, forced labour, etc. The interpretation of the qualification of criminal acts, the circumstances of these crimes, etc. also plays an important role in the characterization of certain groups and subgroups of crimes.

Specialized research as a component of anti-trafficking activities. When analysing contemporary approaches to highlighting, studying, and understanding the phenomena of slavery and human trafficking in the world today, it is necessary to consider, firstly, a fairly wide range of people of different professions who have devoted their work to this issue. When studying works focused on combating this scourge, it is possible to propose a typology based on the nature, goals, and methods of preparation of certain works. It seems reasonable to distinguish three main groups (which in future research should also be divided into separate structural components): scientific research on this topic (they have a fairly wide range – from research reports to research articles and full-fledged scientific monographs); various journalistic works (here, it is worth paying great tribute to journalists and public figures who have done a lot to highlight the phenomenon of modern slavery, as well as to collect factual material about it and draw public attention to it).

However, in preparing this work, we faced a major problem, namely, a huge amount of factual material, which made it impossible to analyse the available data in a sufficiently thorough manner within one relatively small study. Based on the principles of objectivity, scientificity and systematicity, we concluded that it is advisable to divide the issues identified in the subject of this paper into several separate works interconnected by one subject, but divided by research topic. Thus, the present work is devoted to the study, analysis, and systematization of a clearly underestimated, insufficiently studied, and used segment of scientific works – reports on specialized research that are either commissioned or conducted under the auspices of various scientific and public-political institutions, as well as international projects and programmes aimed at combating human trafficking, the activities of which are presented on Internet resources.

Therefore, the scope of this study will exclude the segment of scientific works represented by articles in scientific journals, as well as individual and collective monographs. This segment is very large in scope, includes works related to different areas of scientific knowledge, and therefore requires a separate study in the context of its analysis and systematization. A similar situation is also observed with the segment of journalistic works of various nature and orientation, which makes it advisable to analyse it in a separate work. A group of documents related to the activities of national and international institutions (whose sphere of functioning is focused on combating human trafficking and working with its victims) should also be separated into a separate work due to the specific nature, content, and methodology of their preparation.

Reports on specialized research are quite diverse and ambiguous both in terms of their content and presentation. They include factual reviews, analytical reports, and even full-fledged scientific papers based on standard schemes of scientific articles in professional journals. Given the large number of such works, it seems appropriate to consider some examples that are quite vividly representative of different types of such reports.

One of the most common types here is the work aimed at collecting, processing and analysing factual material of various kinds. In most cases, such studies are focused either on one rather narrow problem or on a separate region (usually determined in accordance with a specific order or the direction of the client institution). Sometimes these two characteristics can also be combined.

[1] International Covenant on Civil and Political Rights. (1973, October). Retrieved from https://zakon.rada.gov.ua/laws/show/995_043#Text.
[2] American Convention No. 17955 “On Human Rights: “Pact of San José, Costa Rica”. (1969, November). Retrieved from https://treaties.un.org/doc/publication/unts/volume%201144/volume-1144-i-17955-english.pdf.
[3] European Convention on Human Rights. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004#Text.

A striking example of a work that combines both factual and analytical components is one of the reports by N. Liv (2019), who is a researcher at the Interdisciplinary Centre of the International Institute for Counter-Terrorism, Herzliya, Israel. Her research focuses on the use of the Internet by terrorist organizations. She is the author of the institute's quarterly cyber reviews, as well as research reports on cyber-related issues. One of the main themes in her work is the trafficking of women on the Dark Net and its potential link to terrorist financing.

At the beginning of the presentation of the main material of the study, N. Liv (2019) defines the main concepts that characterize the subject and purpose of the work. The basis for their definition is the provisions enshrined in the Palermo Protocol of 2000. In characterizing the scale of the phenomenon of modern slavery and human trafficking, the researcher relies on the analysis of open data provided in the reports of international organizations. However, the main subject of her work is the study of the place of the Dark Net in the global traffic of captive persons, sources of their supply, methods of illegal trade, and possible use of money obtained by criminal activity. Thus, based on the analysis of correspondence in this network and contacts with sellers, the author was able to identify a network of trafficking in women and identify schemes of their activities (Liv, 2019). The researcher devoted a separate section of her study to analysing the sources of human trafficking. According to her report, the main source of the slave trade is North and West Africa, as well as some areas of armed conflict such as Sudan. They provide the bulk of women for sale on the Dark Net, with their subsequent use in the illegal sex industry. The author was also able to prove that the authors of the ads for the sale of women on the Dark Net are part of an extensive criminal network. Summing up her research, the researcher identifies the main groups (including terrorist groups) that, in her opinion, are involved in the organization of illegal human trafficking from the African region and the creation of schemes for the sale of female slaves on the Dark Net.

A slightly different example is the report "Human trafficking: In the shadows of the law" by F.Y. Ne (2018), who is a senior analyst at the S. Rajaratnam Centre for Non-Traditional Studies at the Nanyang Technological University in Singapore. On the one hand, this work is of a general theoretical nature, but at the same time, it can serve as a vivid example of a regionally focused study. In the first part of the report, the author pays great attention to the analysis of international legal acts and the application of their provisions in the legal practice of Southeast Asian countries (Ne, 2018). The second part is devoted to the description of the problem associated with the interpretation of both individual concepts (such as "slavery", "unfree state", "human trafficking" and others) and international law provisions by the legislation of Southeast Asian countries, which gives rise to a number of problems in the application of the law by law enforcement agencies. It is also important here that the author identifies ways to implement international law into the system of national legislation (Ne, 2018).

When describing research reports as one of the components of the general type of scientific publications on the problems of modern slavery and human trafficking, it is worth paying attention to works that have a global character of disclosure of the problem. A good example of such research is the work of J. Bigio & R. Vogelstein (2019). At the time of the reports' preparation, both authors were senior researchers at the Council on Foreign Relations, one of the most respected non-governmental organizations in the United States. Today, J. Bigio is USAID's Senior Coordinator for Gender Equality and Women's Empowerment, and R. Vogelstein is Special Assistant to the President of the United States for Gender Policy.

In order to understand the specifics of this type of research, two reports can be cited that illustrate the conceptual approaches to their preparation. The first is entitled "The Security Implications of Human Trafficking" and is a major fundamental study that reaches the level of recommendations for US foreign and domestic policy on the whole range of problems related to human trafficking. Based on the fact that human trafficking and forced labour, with a total volume of approximately $150 billion per year, are currently one of the most prominent types of transnational crime, J. Bigio & R. Vogelstein (2019) define this phenomenon as one of the main challenges to the national security of the United States and the entire civilized world. That is why they devoted the first part of their work to the characterization of the regional localization of sources of human trafficking and the main types of this activity, taking into account their transformation.

The second structural part of the work is devoted to identifying and explaining the risks posed to the United States and all Western democracies by the spread of human trafficking and related crimes. For example, the authors note that both terrorist groups and dictatorial regimes are undergoing quite fundamental changes in their activities, as they use "enslavement as a policy rather than a covert practice, using human trafficking not only for forced labour and profit, but also as a strategic tool for the subjugation of civilians" (Bigio & Vogelstein, 2019). Although, on the other hand, the banal profit from forced labour and the sale of people into slavery cannot be discounted, especially since a significant portion of the proceeds goes to fund purely terrorist organizations. The authors also draw attention

to the situation in our country: "In Ukraine, Russia's annexation of Crimea and the military events in eastern Ukraine have also led to an increase in human trafficking. Poverty, displacement, and limited access to international assistance have made the local population, especially women, vulnerable to exploitation by criminal organizations" (Bigio & Vogelstein, 2019). The report also identifies the following risks: increased regional instability and social tensions, the destruction of traditional family ties, and the marginalization of a large part of the population. In particular, the researchers draw the attention of government institutions to the facts that even official contractors of the US Department of Defence have used the labour of forced labourers, and that members of peacekeeping forces have been accused of sexual offences, which significantly undermines the foundations of Western democratic society.

The third structural part of the report is devoted to recommendations for the policy of the United States and its allies and partners in overcoming the identified risks. Firstly, the report identifies ways to improve the activities of state institutions designed to combat this scourge and to develop the existing legal framework. Secondly, the authors point out in which specific cases the rhetoric of the US government and the US Presidential Administration significantly diverges from the actual actions regarding sanctions against regimes that support various forms of human trafficking and unfree will. Thirdly, attention is drawn to the need for more substantial funding for national security and intelligence programmes aimed at identifying and disrupting human trafficking routes and intergovernmental cooperation in this area (Bigio & Vogelstein, 2019). Specific activities in these areas include a range of measures. This includes the detection and elimination of criminal networks and terrorist groups. An important sector is prevention, awareness-raising and education, which should rely on various agencies (e.g. USAID) and state institutions. At the same time, specific proposals are made for the development of programmes by the US Department of State and some other institutions aimed at protecting victims of human trafficking and, at the same time, revising migration policy towards a real fight against human trafficking.

In the context of comparative analysis and understanding of the evolution of the problem, it is also worth paying attention to the report by the same authors, "Ending human trafficking in the twenty-first century" (Bigio & Vogelstein, 2021). This report contains substantially updated data on the state of human trafficking, types of modern slavery, and types of forced labour and servitude. At the same time, Jamille Bigio and Rachel Vogelstein provide a significantly expanded description of the threats to US national security posed by the spread of these types of criminal activity, and propose a system of measures to respond to these threats.

A type of global report is the comprehensive report prepared by teams of researchers from various international and national foundations. In most cases, the distinguishing feature of such works is a much wider scope of factual material and a multi-level analysis of the issues under consideration. An example of such work is the 2018 report of the Presidential Task Force on Combating Trafficking in Persons of the International Bar Association (IBA), one of the world's most respected legal organizations. The structure of this work is the closest to standard research articles that meet the requirements of IMRAD. It contains separate sections on the problem statement, research methodology, definition, and interpretation of key concepts, presentation of the research findings and, finally, recommendations. The report focuses on one of the most pressing issues in the fight against modern slavery today – the relationship between human trafficking and corruption in its various forms and manifestations (IBA, 2018).

First, the report notes that the fact that corruption and human trafficking are linked is now considered axiomatic. The researchers provide statistical data on corruption risk ratings according to Transparency International and the US State Department's Watch List. Secondly, they identify the main types of risks posed by corruption in the fight against human trafficking: "corruption allows the crime of human trafficking to remain invisible; promotes impunity even when trafficking is detected; facilitates trafficking chains in the country; and increases the risk of revictimisation for victims of trafficking" (IBA, 2018). Thirdly, based on the evidence, the study identifies the main risk groups among civil servants who contribute to the spread of human trafficking. At the same time, the study notes that in different countries, from the United States to India, there are many examples of government officials themselves being involved in human trafficking. In addition, the authors provide a detailed description, supported by factual data, of all types of corruption offences related to human trafficking (IBA, 2018). This echoes many other specialized studies, such as the work of A.B.M. García (2019), where the author uses the situation of North Korean refugees in China to demonstrate, among other things, the attitude of the authorities to the flourishing of human trafficking, especially of girls and women.

A separate structural element of the paper is the conclusions and recommendations on how to combat these phenomena and trends. The authors propose the following components of anti-corruption efforts: raising public awareness of the link between corruption and human trafficking; creating a unified legal framework to combat both corruption and human

trafficking; improving the capacity of authorities to detect, investigate and enforce corruption in the field of human trafficking; targeting key resources to the highest risk areas; inevitability of punishment for corrupt officials; monitoring and reviewing anti-corruption and anti-trafficking strategies.

Here we should ask ourselves what exactly, in the context of scientific progress, the study, and analysis of the presented research reports gives us. Two fundamental conclusions are quite obvious. On the one hand, this type of scientific work potentially accumulates a really significant amount of factual material that is often not available when considered in ordinary scientific articles. Thus, reports can be viewed as a source base for further research on a particular issue. However, on the other hand, the reports often serve as analytical works in their own right, creating an interesting symbiosis of factual collection and scientific research. At the same time, while studying the body of research on human trafficking, we came to the conclusion that not all the potential of such factual and analytical sources as research reports is fully exploited, especially in the Ukrainian scientific space.

Non-state initiatives to combat human trafficking. A very important role in the fight against the shameful phenomenon of modern slavery and human trafficking is played by various projects whose activities are presented, among other things, on Internet resources. Unfortunately, the vast amount of factual and analytical information collected by these projects is little used by researchers and practitioners alike.

One of the most well-known projects is Polaris. As stated on its website: "Founded in 2002, the Polaris Project was named after the North Star, which people once held in slavery in the United States used as a guide to navigate their way to freedom. Today, we are creating a roadmap for that journey and lighting the way ahead" (Project Polaris, n.d.).

Several important areas of activity are worth highlighting here. The first is the National Survey of Survivors. The slogan of this programme is "Learning from and with survivors". It is a research project developed in close partnership with survivors of human trafficking to gather information to help other survivors. The data collected through this programme is widely shared with individual researchers working in the field, as well as with government and international institutions. One of the main goals is to develop strategies to combat human trafficking (National survivor study, n.d.).

Another important area of activity is in the financial sector. Since 2002, the Polaris project has trained more than 2,000 specialists in financial services and anti-money laundering. At the same time, the project has been actively involved in the creation of a new public platform that allows these professionals to share knowledge, information, and best practices in real time. Polaris has also been instrumental in launching a new UN initiative to help victims of trafficking obtain bank accounts that they would otherwise not be able to access due to poor credit history and other issues related to their status as victims of trafficking (Our work, n.d.). The area of training and rehabilitation of trafficking victims should be highlighted separately. The system of group therapy and the widest possible support for victims is widely used here (Human trafficking training, n.d.). In general, the project is constantly transforming, supplemented by new directions, programmes, and even areas of activity.

Another very well-known project is the International Justice Mission. The main goal of the project is to combat all manifestations of modern slavery and human trafficking; collect information and conduct research; cooperate with law enforcement agencies around the world and prosecute criminals; train volunteers and multidisciplinary professionals; assist victims of human trafficking and rehabilitate them (International Justice Mission, n.d.). According to the project's 2022 activity report, 9295 victims of violence were assisted and rehabilitated; 434 people were freed from slavery; 4097 people suspected of crimes related to human trafficking were detained, 1179 of whom were convicted; 20746 law enforcement officers working on human trafficking crimes were trained; and 20114 volunteers were trained (International Justice Mission. 2022…, n.d.). This is the most complete representation of the activities of this project. The International Justice Mission operates around the world – headquartered in the United States, with offices and representative offices in Guatemala and Bolivia, Cambodia, and the Philippines (International Justice Mission. Our work, n.d.).

Thus, the work of these projects (as well as similar initiatives) is centred on preventing crimes in the field of human trafficking and combating the consequences of this criminal activity. An integral part of this work is the accumulation of a large amount of factual material that reveals various areas and types of criminal activity in the field of human trafficking and can be useful in developing methods of combating it. At the same time, the collected material is also used to prepare analytical documents related to the specifics of their activities. The experience gained by these projects in rehabilitating victims of human trafficking is also important, and may be useful to any institution specializing in this area.

The variety of works on the problems of modern slavery and human trafficking is quite wide. However, at the same time, it is important to emphasize that to date, there have been very few studies that aim to analyse the existing body of work. In the vast majority of domestic works, the review of the available literature on the problem is limited to the literature review itself. A somewhat similar situation can be

observed in many foreign authors, who usually analyse narrowly focused literature relevant to the subject of their research. Another feature of works on the problem of modern slavery and human trafficking is that a significant number of authors tend to rely primarily on factual data, giving secondary importance to the analysis of other scientific studies. An example is the monographic study by J.M. Wilson & E. Dalton (2007). In the introduction to the work, the authors define the subject of the study, its objectives, and methodological principles, describing the main sources and literature references. From the point of view of J.M. Wilson & E. Dalton (2007), the research we have today has not yet gone beyond assessing the scale of the problem, but when describing individual works on this topic, the authors highlight only certain aspects that are relevant to the problems raised in their study.

In fact, out of the vast amount of scientific literature available, there is only a small percentage of studies focused on analysing the body of work on human trafficking. A leading expert in this field is the Director of Research at the Institute for the Study of International Migration (ISIM) and one of the editors of the International Migration journal. A striking example of a work that provides a comprehensive analysis of the existing body of research is E. Gozdziak & E. Collett (2005) "Research on human trafficking in North America: A review of literature". The paper deals with a whole range of issues: the evolution of the interpretation of the concepts of "slavery" and "human trafficking" and their time span, different approaches to definitions and diverse definitions, analyses of factual (primarily statistical) data and methods of their preparation, and the authors express their views on the methodology of working with data sets for the analysis of human trafficking. This work is very useful both for a general acquaintance with the subject and for developing a methodology for researching approaches and concepts to considering ways to counter trafficking in human beings.

It is also worth paying attention to other studies conducted with the direct participation of E. Gozdziak. Firstly, this is the report "Data and research on human trafficking: Bibliography of research-based literature", prepared for several institutions, including the US Department of Justice (Bump & Gozdziak, 2008). As well as a similar report for 2008-2014 (Gozdziak *et al.*, 2015). These reports are characterized by a very in-depth analysis of the bibliographic base and offer a slightly different structural approach – in addition to the general theoretical part, they provide analysis according to different types of scientific papers. It is also worth noting that the latter work is essentially the only work that analyses various reports on specialized research. In general, the works of E. Gozdziak can be seen as the best option for systematizing the scientific literature on modern slavery and human trafficking.

A modern understanding of the ways to combat this phenomenon can be traced in the works of J. Chuang (2014) and J. Kaye *et al.* (2014). The constant modification of criminal groups involved in human trafficking, the transformation of their methods and activities, on the one hand, cause the need to expose criminal practices (in which the efforts of civilian specialists – journalists, volunteers, and researchers – also play an important role), and on the other hand, the need to constantly improve the appropriate methods and means of combating them. However, it is also important to understand that this struggle is not limited to the criminal sphere, but deeply penetrates political, religious, cultural, and other types of social relations. For example, the economic aspect of this activity is revealed in J. Chuang (2006) "Beyond a snapshot: Preventing human trafficking in the global economy", where the author focuses on the place of human trafficking in the global economy and ways to exclude this phenomenon from global economic flows.

In general, it can be said that works analysing the available literature on modern slavery and human trafficking are indeed rare against the background of a huge array of scientific, journalistic, and other works. The problem of reports of specialized studies has hardly ever been addressed by researchers. Given the current situation with these studies, it is possible to safely say that further research in this area is promising.

Conclusions

In the course of this study, a number of conclusions were drawn. It is worth noting that today domestic scholars and lawyers working in practice have a sufficient knowledge of international law and are aware of the practice of its application by public authorities of other countries. At the same time, however, it can also be stated that they often miss out on sources of information that could be extremely useful for both theoretical research and practical application in the context of acquiring and implementing new, often best practices. For the field of scientific research, it is extremely useful to get acquainted with the methodology and practice of preparing complex scientific papers based on the processing of a large amount of factual material, which can often be obtained from open sources of both national and international institutions, foundations, and public organizations.

A study of the experience of modern scientific research in the field of combating human trafficking leads to the conclusion that the system of commissioning specialized research by various foundations, as well as state or international organizations, is beneficial for the development of scientific progress. In the main, research reports have proven to be

sufficiently high-quality and professionally prepared scientific papers with a broad factual base, various tools, and practically oriented recommendations. International practice shows that it is advisable to include in training programmes, especially retraining programmes for law enforcement personnel involved in combating human trafficking, familiarization with the modern information field, accumulated databases, and the practice of interaction between NGOs and government authorities. It would be quite useful for Ukrainian state institutions and NGOs to study the experience of developing and applying methods of working with victims of human trafficking, which is one of the main areas of activity of many international foundations.

It is also worth paying attention to the great prospects for continuing to study scientific works on the problems of combating slavery and human trafficking. In addition to purely scientific interest, systematization of approaches to addressing human trafficking, as well as consolidation of recommendations and proposed methods of work, can be extremely useful for the practical activities of law enforcement agencies and social protection and rehabilitation structures.

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Conflict of Interest

None.

References

[1] Andrushko, A. (2021). The material element of human trafficking. *Bulletin of the Penitentiary Association of Ukraine*, 3(17), 40-75. doi: 10.34015/2523-4552.2021.3.04.

[2] Bigio, J., & Vogelstein, R. (2019). The security implications of human trafficking. *Council on Foreign Relations*. Retrieved from http://www.jstor.org/stable/resrep21427.1.

[3] Bigio, J., & Vogelstein, R. (2021). Ending human trafficking in the twenty-first century. *Council on Foreign Relations*. Retrieved from http://www.jstor.org/stable/resrep32745.

[4] Bump, M., & Gozdziak, E. (2008). *Data and research on human trafficking: Bibliography of research-based literature*. Georgetown: Institute for the Study of International Migration.

[5] Charles-Voltaire, J., French, S., & Bernadel, L.V. (2023). Modern anti-trafficking legislation and harmful traditional practices: Haiti's Restavek system. *Journal of Global South Studies,* 40(1), 116-144. doi: 10.1353/gss.2023.0010.

[6] Chuang, J. (2006). Beyond a snapshot: Preventing human trafficking in the global economy. *Indiana Journal of Global Legal Studies*, 13(1), 137-163. doi: 10.1353/gls.2006.0002.

[7] Chuang, J. (2014). Exploitation creep and the unmaking of human trafficking law. *The American Journal of International Law*, 108(4), 609-649. doi: 10.5305/amerjintelaw.108.4.0609.

[8] García, A.B.M. (2019). Denouncing human trafficking in China: North Korean women's memoirs as evidence. *State Crime Journal*, 8(1), 59-79. doi: 10.13169/statecrime.8.1.0059.

[9] Gozdziak, E., & Collett, E. (2005). Research on human trafficking in North America: A review of literature. *International Migration*, 43, 99-128. doi: 10.1111/j.0020-7985.2005.00314.x.

[10] Gozdziak, E., Graveline, S., Skippings, W., & Song, M. (2015). *Bibliography of research-based literature on human trafficking: 2008-2014*. Georgetown: Georgetown University.

[11] Harnoncourt, J., & Paredes, M. (2023). Theorizing human trafficking and unfree labor. *Journal of Global South Studies*, 40(1), 173-212. doi: 10.1353/gss.2023.0012.

[12] Human trafficking training. (n.d.). Retrieved from https://polarisproject.org/training/.

[13] IBA. (2018). *A report by the IBA's Presidential Task Force against human trafficking*. Retrieved from https://www.ibanet.org/Task-Forces.

[14] International Justice Mission. (n.d.). Retrieved from https://www.ijm.org/.

[15] International Justice Mission. 2022 year in review. (n.d.). Retrieved from https://www.ijm.org/2022-year-in-review.

[16] International Justice Mission. Our work. (n.d.). Retrieved from https://www.ijm.org/our-work.

[17] Kaye, J., Winterdyk, J., & Quarterman, L. (2014). Beyond criminal justice: A case study of responding to human trafficking in Canada. *Canadian Journal of Criminology and Criminal Justice*, 56(1), 23-48. doi: 10.3138/cjccj.2012.E33.

[18] Landman, T. (2020). Measuring modern slavery: Law, human rights, and new forms of data. *Human Rights Quarterly*, 42(2), 303-331. doi: 10.1353/hrq.2020.0019.

[19] Langier, M., Johnson, P.A., Johnson, J.C., Fischer, J., & Mardon, A. (2021). Exploitation on the Rise: Modern slavery and COVID-19. *Academia Letters*, article number 2568. doi: 10.20935/AL2568.

[20] Leach, R. (2022). Ending demand for modern-day slavery: An analysis of human trafficking in the global marketplace. *Indiana Journal of Global Legal Studies*, 29(1), 233-259.

[21] Liv, N. (2019). Human trafficking. An examination of a potential connection between the trafficking of women on the Darknet and the financing of terrorism. *International Institute for Counter-Terrorism (ICT)*. Retrieved from https://www.ict.org.il/UserFiles/Trafficking%20of%20Women%20on%20the%20Darknet.pdf.
[22] Mahalingam, R. (2019) Human trafficking from a multidisciplinary perspective: A literature review. *Asian Journal of Social Science Research*, 2(2).
[23] National survivor study. (n.d.). Retrieved from https://polarisproject.org/national-survivor-study/.
[24] Ne, F.Y. (2018). *Human trafficking: In the shadows of the law*. Retrieved from http://www.jstor.org/stable/resrep26880.
[25] Nnamuchi, O. (2022). Justiciability of socioeconomic rights in Nigeria and its critics: Does international law provide any guidance? *The Age of Human Rights Journal*, 19, 137-164. doi: 10.17561/tahrj.v19.7561.
[26] Our work. (n.d.). Retrieved from https://polarisproject.org/our-work/.
[27] Pavlenko, S. (2021). Current state of human trafficking for the purpose of labor exploitation in Ukraine and the world. *Current Issues of National Jurisprudence*, 1, 120-126. doi: 10.15421/392126.
[28] Perkumienė, D., Kiliokienė, R., Javaitienė, K., & Černulienė S. (2023). Human trafficking as a crime against human freedom. *Humanities Studies: Collection of Scientific Papers*, 14(91), 119-125. doi: 10.32782/hst-2023-14-91-14.
[29] Project Polaris. (n.d.). Retrieved from https://polarisproject.org/.
[30] Russell, A. (2018). Human trafficking: A research synthesis on human-trafficking literature in academic journals from 2000-2014. *Journal of Human Trafficking*, 4(2), 114-136. doi: 10.1080/23322705.2017.1292377.
[31] Skriabin, O. (2020). Current issues of combating human trafficking in Ukraine and the countries of the commonwealth of independent states: Comparative legal aspect. *Scientific Notes of Vernadskyi National University. Series: Legal Sciences*, 31(70), 99-104. doi: 10.32838/TNU-2707-0581/2020.6/17.
[32] Wilson, J.M., & Dalton, E. (2007). *Human trafficking in Ohio: Markets, responses, and considerations*. Santa Monica: RAND Corporation. doi: 10.7249/mg689.

Проблема рабства й торгівлі людьми: міжнародне право та науковий дискурс

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■ **Анотація.** Розширення спектру проблем, пов'язаних із сучасним рабством і торгівлею людьми, зумовило інтенсифікацію наукового пошуку в цій сфері, що актуалізує проблему класифікації та систематизації досліджень у цій галузі. Публікація має на меті визначення основних критеріїв щодо систематизації наукових праць у сфері боротьби з рабством і торгівлею людьми, а також здійснення класифікації та аналізу одного з виокремлених сегментів цього масиву досліджень. У контексті аналізу процесу дослідження певної сфери наукових інтересів основним інструментарієм використано принципи об'єктивності, науковості й системності, і водночас загальнонауковий метод пізнання – ретроспективний, а також спеціально-юридичні методи – порівняльно-правовий та правового прогнозування. Аналіз змісту і проблематики наукових звітів щодо проведених у сфері боротьби з торгівлею людьми досліджень засвідчив як їх високий фаховий рівень, так і спрямування на опрацювання та узагальнення фактологічних даних, що переважно не доступні для формату звичайних наукових статей. Також встановлено, що наукові звіти здебільшого зорієнтовані на розв'язання проблем практичного змісту, що підвищує корисність використання сформульованих висновків не тільки в науковій, а й у правоохоронній та соціальній роботі. Практична цінність дослідження полягає в тому, що вперше здійснено спробу проведення системного аналізу виокремленого сегменту праць, присвячених проблемі сучасного рабства й торгівлі людьми

■ **Ключові слова:** незаконний людський трафік; невільний стан; експлуатація; примусова праця; права людини; транснаціональна злочинність

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International standards for the application of the presumption of innocence in criminal proceedings

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■ **Abstract.** The presumption of innocence is an internationally recognized standard of criminal justice. However, law enforcement practice shows a lack of legal certainty regarding the understanding and implementation of certain provisions of this principle of criminal proceedings. The purpose of the publication is to identify and systematize the internationally recognized standards of guaranteeing the right to the presumption of innocence. The study used such methods of cognition as comparison, analysis, generalization, and a systematic approach, which made it possible to describe the results and substantiate the conclusions drawn. It is determined that, according to the case law of the European Court of Human Rights, the purpose of the presumption of innocence is to: ensure a fair trial by preventing accusatory judicial bias; prevent the formation of premature public opinion regarding the guilt/innocence of the accused, which may adversely affect the impartiality of the court; and protect persons who have been acquitted or whose proceedings have been closed on rehabilitative grounds. Ensuring the presumption of innocence requires ensuring that this right is real, not imaginary. It is established that when determining whether the principle of presumption was violated by public officials when informing the public about the progress of criminal proceedings, the European Court of Human Rights takes into account whether the officials' statement prompted the public to believe in the guilt of the person before the court passed a verdict and whether these statements could have influenced the assessment of the facts when making a court decision. When assessing statements made by public officials, it is necessary to distinguish between a statement of suspicion of committing a criminal offence and a statement that a person has committed a criminal offence in the absence of a conviction; to consider the context in which the statement was made and to take into account the actual content of the statements. The author substantiates the rules of the presumption of innocence in time: it is valid until the court verdict enters into force; a guilty verdict does not cancel a person's right to the presumption of innocence until it enters into force; the adoption of an acquittal or the closure of criminal proceedings on rehabilitative grounds requires that a person be found innocent and treated accordingly. The study will ensure unified law enforcement practice of pre-trial investigation bodies, prosecutors, and courts in respect of compliance with the rules of the presumption of innocence, which will contribute to the rule of law

■ **Keywords:** publicity of the case; bias; guilty verdict; acquittal; fairness of the court decision; European Court of Human Rights

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Introduction

The presumption of innocence is a fundamental right declared by both national legislation and the European Convention on Human Rights[1] (ECHR) or the International Covenant on Civil and Political Rights. Respect for the right to presumption of innocence guarantees a fair trial, which is the most popular demand of society. Legislation in all rule-of-law states pays due attention to the regulation of provisions that ensure the implementation of the presumption of innocence. However, an analysis of the case law of the European Court of Human Rights (ECHR) shows that there are numerous cases of violations of this fundamental right. Violation of the rules of presumption of innocence is caused by both the lack of legal certainty in the regulation of certain aspects of it and the need to find an adequate way of behaving when determining the balance between the public interest in bringing perpetrators to justice and the legitimate interests of the suspect or accused to be treated as innocent. After all, according to the rules of presumption of innocence, a person is presumed innocent until the court verdict enters into force. This problem becomes especially acute in cases of serious high-profile crimes, when society needs information concerning identifying the perpetrators of these crimes, but at the same time, the disclosure of certain information should not violate the requirements of the principle of presumption of innocence.

The presumption of innocence in criminal proceedings has been the subject of research by many scholars. For example, one group of scholars studied the general theoretical provisions of the presumption of innocence. In particular, F. Yu (2022) examined the legal nature of the presumption of innocence and concluded that the presumption of innocence is a special type of presumption that involves a duty to recognize the innocence of the accused and a policy of acting on the basis of the accused's innocence, all in order to avoid greater harm from wrongful convictions (false acquittals are less harmful). G. Mamka (2018), studying the principles of criminal proceedings in general, concluded that the presumption of innocence is an unconditional, but open to refutation, assertion that a person is not guilty of a criminal offence. This statement has a substantive, logical and methodological connection with the obligation to prove guilt by presenting arguments. T. Svoboda (2023) focused on the historical development of the presumption of innocence and concluded that the presumption of innocence is one of the most important and ancient legal principles. Another group of scholars has studied the presumption of innocence in the context of the conventional right to a fair trial. In particular, O. Boyko (2021) expressed the opinion that the principle of presumption of innocence is a necessary component of the right to a fair trial and ensures the realization of this right. The author argues that although the principle of presumption of innocence does not limit the authorities in disclosing information about investigations, it is important that they do so carefully and with respect for the principle of presumption of innocence. In her study, M. Forejtová (2022) draws attention to the presumption of innocence in court decisions and the need to comply with the rules of judicial impartiality, arguing that the guilty verdicts that approved plea agreements with all co-defendants raise serious doubts about the impartiality of the court.

Studies of the presumption of innocence in terms of the problems of proving guilt are quite relevant – J. Rozenbergs (2022), R. Stoykova (2021), which also draws attention to the peculiarities of collecting digital evidence. M. Coleman (2021) explores the problems of the presumption of innocence through the exercise of the right to defence. V.M. Tertyshnyk (2018) points out the need to develop an integrative model and improve the legal definition of the presumption of innocence, taking into account the constitutional principles of justice, international instruments, legal positions of the ECHR and modern case law and scientific doctrine.

Attention should also be drawn to the works of scholars who have studied the presumption of innocence in the context of its individual aspects. Thus, M.L. Villamarín Lopez (2021) studied the issue of the presumption of innocence during pre-trial detention and draws attention to the contradictions in this aspect of the EU Presumption of Innocence Directive 2016. W.C. Iheme (2020), in his research, focuses on the role of the media in the failure to comply with the rules of the presumption of innocence during the era of slavery and in the modern period, which led to the trend of mass incarceration of black people.

The above analysis of scholarly works suggests that scholars have not addressed the problem of a comprehensive study of law enforcement practice regarding the implementation of the right to the presumption of innocence with the definition and systematization of standards developed by the ECHR case law on the application of the right to the presumption of innocence in criminal proceedings.

The purpose of the study is to define and systematize international standards for the application of the presumption of innocence in criminal proceedings, which will help to avoid law enforcement errors and contribute to the formation of a well-established practice of unifying the rules for the application of this principle of criminal procedure.

In order to achieve the stated goal and ensure the reliability of the results obtained, a combination of general scientific and special methods of cognition was used. In particular, the author used such gen-

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

Materials and Methods

eral theoretical research methods as description, comparison, analysis, synthesis, generalization, and a systematic approach, which made it possible to identify the subject of research, describe the results of the observations made, compare the provisions of criminal procedure legislation with the provisions of international law, and substantiate the conclusions of the study. In particular, to determine the European standards for the application of the presumption of innocence in criminal proceedings, the author summarized the case law of the ECHR. The author also used special methods of scientific research of jurisprudence phenomena, namely, comparative legal, systemic, and structural, and formal legal methods. The comparative legal method was used in analysing the provisions of criminal procedure legislation and the provisions of the European Convention on Human Rights, and in formulating conclusions on the main approaches to the interpretation of the presumption of innocence. The formal legal method was used to analyse the legal acts regulating the content of the presumption of innocence in criminal proceedings. The systemic-structural method was used to determine the main approaches of the ECHR to the interpretation of the rules of application of the presumption of innocence in criminal proceedings. These methods were used in conjunction with each other, which made it possible to conduct a complete and comprehensive study and substantiate the scientific conclusions and proposals made.

The normative basis of the study is the norms of international law – the European Convention on Human Rights[1], the International Covenant on Civil and Political Rights[2], which guarantee the right of a suspect (accused) to the presumption of innocence. The author analyses the provisions of the Constitution of Ukraine[3], the Criminal Procedure Code (CPC) of Ukraine[4], and the Criminal Code of Ukraine[5] which define the rules for the implementation of the presumption of innocence in criminal proceedings. The study focused on the analysis of judgements of the European Court of Human Rights, which developed international standards for guaranteeing the right to the presumption of innocence, in particular, the following judgements: "Allenet de Ribemont v. France" in 1995, "Lavents v. Lettonie" in 2003, "Grabchuk v. Ukraine" in 2006, "Panteleyenko v. Ukraine" in 2006, "Nešťák v. Slovakia" in 2007, "Shagin v. Ukraine" in 2009, "Konstas v. Greece" in 2011, "Dovzhenko v. Ukraine" in 2012, "Allen v. The United Kingdom" in 2013, "Krivolapov v. Ukraine" in 2018. These judgments contain important legal conclusions, precedents, and interpretations that form the standards and norms in guaranteeing the presumption of innocence at the international level. The study of such judgments provides an in-depth understanding of the factors that influence the determination of innocence and how this is practically implemented in court decisions.

Results and Discussion

The presumption of innocence is enshrined in Ukrainian legislation in the following provisions: Article 62 of the Constitution of Ukraine[6], Article 2(2) of the Criminal Code of Ukraine[7], Article 17 of the CPC of Ukraine[8]. These provisions of law enshrine the presumption of innocence as a constitutional principle of criminal proceedings and define the following rule: a person is presumed innocent of a criminal offence and cannot be subjected to criminal punishment until his or her guilt is proved in accordance with the law and established by a court verdict that has entered into force. In addition, it is worth noting that the presumption of innocence is an internationally recognized principle of criminal proceedings. This requirement is enshrined in both Article 14(2) of the International Covenant on Civil and Political Rights[9] and Article 6(2) of the ECHR[10], which states that everyone charged with a criminal offence has the right to be presumed innocent until proven guilty according to law[11,12].

Complaints about non-compliance with Article 6(2) of the ECHR are often the subject of applications to the ECHR. In this regard, the case law has developed generally accepted standards for guaranteeing the right to the presumption of innocence in criminal proceedings, emphasizing that this right is a structural component of the right guaranteed by Article 6 ECHR[13] – the right to a fair trial.

[1] European Convention on Human Rights. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004.
[2] International Covenant on Civil and Political Rights. (1966, December). Retrieved from https://treaties.un.org/doc/treaties/1976/03/19760323%2006-17%20am/ch_iv_04.pdf.
[3] Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text.
[4] Criminal Procedure Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-1775.
[5] Criminal Code of Ukraine. (2001, May). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[6] Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text.
[7] Criminal Code of Ukraine. (2001, May). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[8] Ibidem, 2001.
[9] International Covenant on Civil and Political Rights. (1966, December). Retrieved from https://treaties.un.org/doc/treaties/1976/03/19760323%2006-17%20am/ch_iv_04.pdf.
[10] European Convention on Human Rights. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004.
[11] International Covenant on Civil and Political Rights. (1966, December). Retrieved from https://treaties.un.org/doc/treaties/1976/03/19760323%2006-17%20am/ch_iv_04.pdf.
[12] European Convention on Human Rights. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004.
[13] Ibidem, 1950.

In the overall structure of the right to a fair trial, the presumption of innocence plays an important role, as it pursues a specific goal – to prevent the formation of a biased opinion of both the court and society regarding the guilt of a person. Scholars who have studied the presumption of innocence have paid attention to this issue. In particular, V.T. Nor (2011) argues that the presumption of innocence prohibits the court from forming a premature opinion about the guilt of a person in committing a criminal offence. This approach to determining the purpose of the presumption of innocence is fully consistent with the decisions of the ECHR. Thus, in the 2021 case of "Dovzhenko v. Ukraine", it was stated that the presumption of innocence enshrined in Article 6(2) of the ECHR, in its relevant aspect, prevents the negative impact of biased statements made in connection with the consideration of certain criminal cases on the fairness of the trial (paragraph 47)[1].

In the 2018 case of "Krivolapov v. Ukraine", the applicant claimed that state officials had been involved in a media campaign around his criminal conviction before the court's verdict of guilty. Such activities of the officials, according to the applicant, influenced public opinion, which led to an accusatory bias in the resolution of his criminal proceedings. Although the Government of Ukraine argued that the authorities only informed the public about the course of the investigation in the high-profile criminal proceedings, the ECHR concluded that the statements of the investigators and SBU officials in the media did not meet the requirements of prudence and care. As such statements undoubtedly pointed to the guilt of the person making the statement. In particular, all information about the person was made public, and he was called a falsifier and a murderer. These allegations were voiced in a documentary film created with the support of the state authorities. Based on the above facts, the ECHR concluded that the statements of state officials caused the public to believe that Krivolapov was guilty even before the court's guilty verdict and influenced the assessment of the facts by the relevant court. And such actions are a violation of the requirements of paragraph 2 of Article 6 of the ECHR (paragraphs 127-132[2]).

The judgment in the 2013 case of "Allen v. The United Kingdom" specifies the purpose of the presumption of innocence in case of acquittal. In particular, the judgment states that the general purpose of the presumption of innocence is to protect persons who have been acquitted in criminal proceedings and persons in respect of whom a decision to close criminal proceedings has been made, from being treated by state officials as persons guilty of a criminal offence. After all, without a defence that would guarantee the recognition of an acquittal or a decision to close criminal proceedings, the guarantees of a fair trial may become theoretical and illusory[3]. That is, when a court acquits a person or decides to close criminal proceedings on rehabilitative grounds, no government official should express doubts about the acquittal that has entered into force.

Thus, the above allows stating that the case law of the ECHR has developed the following rules for determining the purpose of the presumption of innocence:

- ensuring the fairness of the trial by preventing accusatory judicial bias;
- preventing the formation of premature (before the verdict is passed) public opinion on the guilt/innocence of the accused, which may also negatively affect the impartiality of the trial;
- protection of persons who have been acquitted or whose proceedings have been closed on rehabilitative grounds from being treated as perpetrators of a criminal offence.

Analysis of law enforcement practice shows that violations of the presumption of innocence most often occur when state officials comment on the course of investigations in high-profile criminal proceedings. Despite the fact that media coverage of criminal investigations in some cases leads to violations of the presumption of innocence, at the same time, it is impossible to prohibit informing citizens about the circumstances of criminal proceedings in which a court verdict has not yet been delivered. After all, civil society is interested in knowing how the investigation or trial is going, which allows it to exercise the right of the public to control the fairness of court decisions.

This right is guaranteed both by the CPC of Ukraine, in particular, Article 27 of the CPC of Ukraine[4] enshrines the principle of publicity and openness of court proceedings, and by the provisions of Article 6(1) of the ECHR[5], which declares that everyone has the right to a public hearing. Para. 38 of the ECHR judgment in the case of "Allenet de Ribemont v. France" of 1995 states that freedom of

[1] Judgment of the European Court of Human Rights in the case of No. 36650/03 "Dovzhenko v. Ukraine". (2012, January). Retrieved from https://hudoc.echr.coe.int/?i=001-174579.
[2] Judgment of the European Court of Human Rights in the Case of No. 5406/07 "Krivolapov v. Ukraine". (2018, October). Retrieved from https://hudoc.echr.coe.int/?i=001-191985.
[3] Judgment of the European Court of Human Rights in the case of No. 25424/09 "Allen v. The United Kingdom". (2013, July). Retrieved from http://hudoc.echr.coe.int/eng?i=001-122859.
[4] Criminal Procedure Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-1775.
[5] European Convention on Human Rights. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004.

expression guaranteed by Article 10 of the Convention[1] also includes the right to freedom of receipt and dissemination of information. Therefore, the provision of paragraph 2 of Article 6 of the Convention[2] cannot prevent the authorities from informing the public about an ongoing criminal investigation, but requires that the authorities do so reasonably and prudently, in accordance with the requirements of the presumption of innocence[3]. A similar requirement is enshrined in the Recommendation of the Committee of Ministers of the Council of Europe on the provision of information on criminal proceedings through the media, which states that views and information on proceedings before the courts should be transmitted or disseminated through the media [4]where this does not prejudice the principle of the presumption of innocence. Thus, as a general rule, the media may cover information about court proceedings. At the same time, the question arises: where is the line that determines whether the presumption of innocence is violated or not as a result of commenting on court proceedings or covering the course of pre-trial investigation in the media?

In determining the violation of the principle of presumption of innocence, the ECHR in its judgments has repeatedly drawn attention to the inadmissibility of commenting by authorized officials on the course of investigation of criminal proceedings against persons against whom there has not yet been a court verdict. T.I. Fuley (2012), summarizing the ECHR decisions, correctly notes that the presumption of innocence is usually violated in the following cases: when the prosecution or politicians comment on the circumstances of criminal proceedings, asserting the guilt of a person before the trial is completed; when an interim court decision is made asserting the guilt of a person; when a person suspected of committing a crime is detained and a decision is made to apply a preventive measure to him/her.

An analysis of the judgments concerning Ukraine reveals a number of violations of the presumption of innocence that occurred in statements by public figures and led the public to believe in the guilt of the person even before the court's verdict. In the 2012 judgment in the case of "Dovzhenko v. Ukraine", statements by senior police officials, which were repeatedly quoted in newspaper articles, clearly referred to the applicant, although his name was not mentioned in these articles. The clear indication of the applicant's name is not necessary to fall within the scope of the presumption of innocence. In assessing the content of the statements, it is sufficient that one of the newspaper articles referred to the detainee as a "criminal" without any qualification. Such an assessment of the statement by high-ranking law enforcement officials was perceived by the public as a proven fact and therefore should be equated with a statement of guilt of a person in committing a criminal offence of which he was only suspected (paragraphs 51-52[5]). In the 2009 judgment in "Shagin v. Ukraine", the Court limited itself to assessing a statement by the First Deputy Prosecutor of the city of Kyiv, which was quoted in the same way by three different publications. The statement read as follows: "According to our calculations, the killers received about 100 thousand dollars from Shagin for the execution of the "orders"… The actual leader of this group was Shagin. His orders (to kill) were of a systematic nature". In assessing this statement, the Court concluded that such wording indicated that the prosecutor considered it proven that Shagin had ordered and paid for the killings, and that the prosecutor had doubts only about the exact amount paid for the killings. This statement was made long before the guilty verdict was delivered (paragraphs 85-86[6]). In the 2018 case of "Krivolapov v. Ukraine", the statements of the investigators and SBU officials regarding the proceedings against Krivolapov were an obvious statement of his guilt, as the information about the applicant's identity was disclosed to the public, and he was called a falsifier and a murderer. Such allegations were repeatedly voiced in a documentary film produced with the support of the State authorities and contained a video recording of the applicant's confession to the police (paragraphs 130-131[7]).

Analysing the above facts, the ECHR concludes that the violation/compliance with the requirements of Article 6 paragraph 2 ECHR depends on positive or

[1] European Convention on Human Rights. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004.
[2] Ibidem, 1950.
[3] Judgment of the European Court of Human Rights in the Case No. 15175/89 "Allenet de Ribemont v. France". (1995, February). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57914%22]}.
[4] Recommendation of the Committee of Ministers of the Council of Europe to Member States No. REC (2003)13 "On the Procedure for Providing Information on Criminal Proceedings Through the Media". (2003, July). Retrieved from https://cedem.org.ua/library/rekomendatsiya-rec-2003-13-shhodo-nadannya-informatsiyi-cherez-zasoby-masovoyi-informatsiyi-stosovno-kryminalnogo-sudochynstva/.
[5] Judgment of the European Court of Human Rights in the Case No. 36650/03 "Dovzhenko v. Ukraine". (2012, January). Retrieved from https://hudoc.echr.coe.int/?i=001-174579.
[6] Judgment of the European Court of Human Rights in the Case No. 20437/05 "Shagin v. Ukraine" (2009, December). Retrieved from https://hudoc.echr.coe.int/?i=001-96112.
[7] Judgment of the European Court of Human Rights in the Case No. 5406/07 "Krivolapov v. Ukraine". (2018, October). Rights. from https://hudoc.echr.coe.int/?i=001-191985.

negative answers to the following questions: did the public statement by the authorities prompt the opinion of the guilt of the person, and could this statement influence the assessment of the facts by the relevant judicial authority? In addition, in the judgment of the ECHR in the case of "Krivolapov v. Ukraine" 2018, the Court draws attention to its well-established principle that Article 6(2) of the ECHR prohibits officials from declaring a person guilty before a court verdict[1] is delivered. Officials may only inform the public about the progress of criminal proceedings, in particular, by highlighting the facts of serving notices of suspicion, detention or confession, provided that such statements are reasonable and prudent. At the same time, important attention should be paid to the choice of words used by officials to comment on the course of investigation of high-profile criminal proceedings (paragraph 129[2]).

In accordance with the ECHR case-law, a number of standards have been developed for assessing reports and comments on criminal proceedings by public officials. In particular, in the case of "Dovzhenko v. Ukraine" in 2012, it is stated that it is important to fundamentally distinguish between a statement of suspicion of a person of committing a criminal offence and a statement of a criminal offence, which is announced in the absence of a court verdict. Particular attention is paid to the choice of words in the statements of officials if they are made public before the trial and conviction of a person of a criminal offence (paragraph 48[3]). In addition, it is necessary to draw a conclusion about the violation of the presumption of innocence by a certain statement of a public official in the context of the specific circumstances under which this statement was made (paragraph 48[4]). The actual content of the statement, rather than its literal form, is also important. For example, the Government of Latvia in the case of "Lavents v. Lettonie" argued that its representatives had never officially called the applicant guilty. However, the Court noted that in an interview, the judge stated that she did not know whether the verdict would be partially acquittal or guilty. According to the ECHR, such a statement indicates that the judge is already convinced of the applicant's guilt, if not in full, then at least on one of the charges. This wording excludes the possibility of finding the applicant completely innocent. In another interview, the judge expressed her great surprise at the fact that the defendant persisted in pleading not guilty to all charges. In addition, the judge suggested in the interview that the defendant should prove his innocence to the court, which is a gross violation of the rules of presumption of innocence (paragraphs 126-127[5]).

The foregoing suggests that the principle of presumption of innocence is violated in cases where a statement by a public official has led the public to believe in the guilt of a person even before a court verdict is delivered and if these statements could have influenced the assessment of the facts in the court decision. When assessing statements made by the authorities to inform the public about the course of an investigation or trial in criminal proceedings that cause public outcry, it is necessary to distinguish between a statement of suspicion of a person of committing a criminal offence and information that a person has committed a criminal offence in the absence of a final court decision; to take into account the context in which the statement was made; and to take into account the actual content of the statements made by the authorities.

In addition to the above, it is necessary to pay attention to the issue of determining the rules of the principle of presumption of innocence in time. This issue is addressed both in the ECHR judgments and in national court practice. Thus, an analysis of the provisions of the CPC of Ukraine, the Criminal Code of Ukraine, the Constitution of Ukraine, and the ECHR leads to the conclusion that a person has the right to be presumed innocent of a criminal offence until his or her guilt is established by a court verdict that has entered into force. Thus, according to paragraph 2 of Article 6 of the ECHR[6], everyone accused of a criminal offence is presumed innocent until proven guilty according to the procedure established by law. A similar provision is contained in part 1 of Article 17 of the CPC of Ukraine[7], which specifies that until a person's guilt is proved in accordance with the procedure established by the Criminal Procedure Code of Ukraine and a court decision of guilt is delivered that has entered into force, that person cannot be subjected to criminal punishment. The CPC of Ukraine defines the moment when the verdict of the court of first instance comes into force: 1) if no appeal has been filed, then

[1] European Convention on Human Rights. (1950). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004.
[2] Judgment of the European Court of Human Rights in the case No. 5406/07 "Krivolapov v. Ukraine". (2018, October). Retrieved from https://hudoc.echr.coe.int/?i=001-191985.
[3] Judgment of the European Court of Human Rights in the Case No. 36650/03 "Dovzhenko v. Ukraine". (2012, January). Retrieved from https://hudoc.echr.coe.int/?i=001-174579.
[4] Ibidem, 2012.
[5] Judgment of the European Court of Human Rights in the Case No. 58442/00 "Lavents v. Lettonie". (2002, November). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-65362%22]}.
[6] European Convention on Human Rights. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004.
[7] Criminal Procedure Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-1775.

after the deadline for filing an appeal (thirty days) has expired; 2) if an appeal has been filed against a court decision, and it has not been cancelled, then the verdict of the court of first instance comes into force after the relevant decision has been made by the court of appeal (parts 1, 2 of Article 532 of the CPC of Ukraine[1]).

This indicates that the right to the presumption of innocence is valid until the verdict enters into force. In other words, the principle of presumption of innocence applies to the following stages of criminal proceedings: pre-trial investigation, preparatory proceedings, trial, and appeal proceedings (if the parties file an appeal). The ECHR has drawn attention to this issue, in particular, in the case of "Konstas v. Greece" of 2011, which stated that the presumption of innocence cannot cease to apply at the appeal stage because the accused was convicted in the first instance. To conclude otherwise would contradict the purpose of the appellate stage, where the appellate court is obliged to review the decision of the first instance court on issues of fact and law. In such cases, the presumption of innocence will not apply to proceedings aimed at reviewing and setting aside a court judgement that has not yet entered into force (paragraph 36 of the judgement[2]). However, the rules of presumption of innocence no longer apply to the stage of cassation review of a court decision. After all, unlike the appellate procedure, cassation appeals are subject to court decisions that have already entered into force.

At the same time, it should be noted that finding a person guilty by a court verdict that has entered into force does not cancel the right to be treated as an innocent person, which he or she had before the entry into force of this court verdict. Thus, the ECHR judgment in the case of "Nešťák v. Slovakia" emphasizes that the fact that the applicant was eventually found guilty and sentenced to a certain term of imprisonment cannot deprive him of his original right to be presumed innocent until proven guilty according to law (paragraph 90[3]). In this case, it is noted that the presumption of innocence under Article 6(2) will be violated if a court decision or a statement by a public official regarding a person accused of a criminal offence reflects the opinion that he or she is guilty before his or her guilt has been proved in accordance with the procedure established by law. In the absence of a formal conclusion, it is sufficient that there is some justification indicating that the court or the relevant official considers the accused guilty, while the premature expression of such an opinion by the court itself inevitably contradicts the presumption of innocence. Thus, in the case at bar, the regional court in its interim decision asserted that the applicant had proved the commission of the criminal offence charged against him and noted that the motive for the crime was financial needs, and the manner of its commission indicated the degree of corruption of the applicant. According to the ECHR, such allegations, which are set out not in the verdict, but in the interim court decision, imply the applicant's guilt before it has been proved in accordance with the procedure established by law (paragraphs 88, 89[4]).

The relevant statement is also contained in the decision of the Supreme Court of 2018 in case No. 461/3797/17[5], which notes that before the official court findings on the guilt of a person are made, it is sufficient to announce the assumption of guilt of a person in committing a criminal offence to violate the principle of presumption of innocence. This rule is quite relevant for such court decisions as a preventive measure or a search warrant. All court decisions are published in the State Register of Court Decisions, and erroneous judgements made in them about the guilt of a person in committing a criminal offence would contradict the principle of presumption of innocence.

Particular attention should be paid to determining the effect of the rules of presumption of innocence for persons in respect of whom an acquittal was delivered or proceedings were closed on rehabilitative grounds. Thus, in the judgment in the case of "Grabchuk v. Ukraine" of 2006, it is noted that the rules of the presumption of innocence apply to cases of closure of criminal proceedings. In particular, the said judgment of the ECHR states that the limits of paragraph 2 of Article 6 of the Convention also apply to court decisions made after the termination of criminal prosecution or acquittal (paragraph 42[6]). And in the case of Allen v. The United Kingdom of 2013, it is stated that the presumption of innocence protects persons who have been acquitted by a court or against whom criminal proceedings have been closed from being treated as guilty of the alleged crime. After all, without a defence that would ensure respect for an acquittal or a decision to close criminal

[1] Criminal Procedure Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-1775.
[2] Judgment of the European Court of Human Rights in the Case No. 53466/07 "Konstas v. Greece" (2011, May). Retrieved from http://hudoc.echr.coe.int/eng?i=001-104858.
[3] Judgment of the European Court of Human Rights in the Case No. 65559/01 "Nešťák v. Slovakia". (2007, February). Retrieved from http://hudoc.echr.coe.int/eng?i=001-79608.
[4] Ibidem, 2007.
[5] Resolution of the Supreme Court of Ukraine in the case No. 461/3797/17. (2018, May). Retrieved from https://reyestr.court.gov.ua/Review/74021985.
[6] Judgment of the European Court of Human Rights in the case No. 8599/02 "Grabchuk v. Ukraine". (2006, Septembeer). Retrieved from https://hudoc.echr.coe.int/?i=001-76950.

proceedings, the guarantees of a fair trial will be imaginary, not real. After the criminal proceedings are completed, the reputation of the person and the way this person is perceived by society is also at stake[1].

Therefore, the above allows identifying the following rules of the presumption of innocence in time: this guarantee is valid until the court verdict enters into force (it is valid at the stage of pre-trial investigation, preparatory court proceedings, trial, and appeal proceedings); finding a person guilty in accordance with the procedure established by law does not cancel his/her original right to the presumption of innocence, which he/she had at the time when the verdict was not yet passed; the adoption of an acquittal or dismissal of criminal proceedings on rehabilitative grounds requires respect for the lawful decision to find a person not guilty and the appropriate treatment of the person.

Violations of the principle of presumption of innocence are quite common in other European countries. Thus, T.I. Fuley (2012), having analysed the practice of the ECHR, identifies the following violations of paragraph 6 ECHR, which were committed by the authorities when informing the public about the course of criminal proceedings: the message that the applicant is an instigator of murder, which the police commissioner announced at a press conference in the presence of other high-ranking police officers; the statement of the Prosecutor General in the media that there is sufficient evidence of the guilt of the Minister of Defence, and the statement of the Speaker of the Parliament that he is confident that the Minister of Defence received a bribe for the promise of illegal services; information set out in the order of the Prosecutor General on dismissal from office in connection with the commission of a criminal offence by the applicant, which was issued immediately after the commencement of criminal proceedings and before the court's guilty verdict; statements by high-ranking officials about the guilt of the person, despite the existence of an acquittal.

When studying the presumption of innocence, scholars have often paid attention to the standards of implementation of this rule in the case law of the ECHR (Syza, 2018). Such studies have been conducted in the context of proving the circumstances of a criminal offence (Myroshnychenko, 2016), in the context of ensuring the rule of law (Mykhaylenko, 2019) or guaranteeing the right to a fair trial (Zelenskyi, 2017). At the same time, the problem of publishing information about a criminal offence in compliance with the rules of presumption of innocence is only addressed in some studies (Khablo & Boyko, 2022). In particular, this issue is raised in the works of W.C. Iheme (2020), F. Seoane Pérez & L. Valera-Ordaz (2021) and O.Yu. Khablo (2022). The research of these scholars focuses on the problem of determining the limits of admissibility of disclosure in the media of information about a person suspected of committing a criminal offence and information about the progress of criminal proceedings. After all, in this case, there is a problem of maintaining the balance between the right of a suspect or accused person to the presumption of innocence and the right guaranteed by Article 27 of the CPC of Ukraine[2] and Article 6(1) of the ECHR[3], which states that everyone has the right to a public hearing.

Thus, K. Chumak (2017) argues that journalists who report on high-profile crimes can always use the provisions of the Law of Ukraine "On Information"[4] regarding socially important information. At the same time, the scholar emphasizes that a journalist should be prepared to defend his or her belief that the public's right to receive such information outweighs the right of another person to keep it secret. In contrast, V. Nor (2011) notes that the media and journalists have the right, and even the obligation, as "guardians of democracy" to inform the public about criminal offences and persons under pre-trial investigation, as well as the progress of the trial. However, this should be done without expressions or language that could lead the public to believe that a person is guilty or deserves severe punishment before the case is tried and without the expectation of such a verdict. F. Seoane Pérez & L. Valera-Ordaz (2021) also believe that published information from the media should not convince the public and jury of the guilt of a suspect. It is noted that although the press largely adheres to the presumption of innocence, insufficient attention is paid to oral statements, which leads to bias in the coverage of information.

It is worth noting that the opinion of scholars who believe that this problem should be solved from the point of view of maintaining a balance between the public interest, which involves informing about criminal proceedings, and the interests of the suspect or accused, who should be guaranteed the right to the presumption of innocence. It is in the context of finding a balance of public and private interests that compete in criminal proceedings that further scientific research on the presumption of innocence in criminal proceedings should be carried out.

[1] Judgment of the European Court of Human Rights in the case No. 25424/09 "Allen v. The United Kingdom". (2013, July). Retrieved from http://hudoc.echr.coe.int/eng?i=001-122859.
[2] Criminal Procedure Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-1775.
[3] European Convention on Human Rights. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004.
[4] Law of Ukraine No. 2657-XII "On Information". (1992, November). Retrieved from https://zakon.rada.gov.ua/laws/show/2657-12#Text.

Conclusions

The above study allows determining and summarizing internationally recognized standards of application of the presumption of innocence rules that guarantee the fairness of trials and the rule of law in criminal proceedings. In particular, ensuring the presumption of innocence in criminal proceedings requires ensuring that this right is effective, not theoretical or imaginary. The implementation of the presumption of innocence principle is a prerequisite for a fair court decision, as it prevents the formation of an accusatory judicial bias or premature public opinion on the guilt (innocence) of the accused, and ensures respect for the court decision. In deciding whether the principle of presumption of innocence was violated by public officials when informing the public about the progress of criminal proceedings, the ECHR is guided by the answers to the following questions: did the officials' statements prompt the public to believe in the guilt of the person before the court passed the sentence, and could these statements have influenced the assessment of the facts in the court decision? When assessing statements made by the authorities, it is necessary to distinguish between a notice of suspicion of a person of committing a criminal offence and a statement that a person has committed a criminal offence in the absence of a final court verdict, to consider the context in which such a statement was made and to consider the actual content of the statements. The presumption of innocence has a certain time limit. Thus, it is valid until the court verdict enters into force. At the same time, the entry into force of a court verdict of guilty does not cancel the initial right of a person to the presumption of innocence that was in force before that moment. The adoption of an acquittal or the closure of criminal proceedings on rehabilitative grounds requires that the person be found not guilty and treated accordingly. Considering and adhering to these rules, developed by the case law of the ECHR, in law enforcement practice will ensure a well-established and unified application of the presumption of innocence as a principle of criminal proceedings, which will contribute to the adoption of a fair court decision and the establishment of the rule of law as a general legal value. At the same time, the above summary of international standards for the implementation of the presumption of innocence rules will not only help to ensure the unification of law enforcement practice, but will also serve as a basis for developing qualitative changes and additions to criminal procedure legislation. Determining the content of these amendments should be the task of further research in this area.

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None.

Conflict of Interest

None.

References

[1] Boyko, O.V. (2021). The presumption of innocence as a security of the right to a fair trial. *Law and Society,* 2(1), 171-177. doi: 10.32842/2078-3736/2021.2.25.

[2] Chumak, K. (2017). Presumption of innocence in national legislation and practice of the European Court of Human Rights. *Scientific Journal of the National Academy of the Prosecutor's Office of Ukraine*, 2(14), 177-183.

[3] Coleman, M. (2021). Right without remedy? The development of the presumption of innocence at the International Criminal Court. *International Criminal Law Review*, 22(5-6), 875-894. doi: 10.1163/15718123-bja10107.

[4] Forejtová, M. (2022). The impartiality of judge and the principle of presumption of innocence in the light of recent ECTHR case law. *Czech Yearbook of Public and Private International Law*, 13, 144-158.

[5] Fuley, T. (2012). Presumption of innocence: Conceptual approaches. *Word of the National School of Judges of Ukraine*, 1(1), 39-53.

[6] Iheme, W.C. (2020). Blackness in America and the presumption of innocence: How the American police and mass media poisoned everything. *The Journal of Human Rights, Semi-Annual*, 15(2), 153-174.

[7] Khablo, O.Yu. (2022). Ensuring the presumption of innocence when informing the public in mass media about criminal proceedings. In *Communication as a factor of transparency of social interaction: Psychological, historical, legal, economic and political dimensions* (pp. 227-234). Olsztyn: Elk. Printing Department UWM in Olsztyn.

[8] Khablo, O.Yu., & Boyko, O.V. (2022). *The right to a fair trial in the criminal justice system of Ukraine*. Kyiv: Kafedra Publishing Center.

[9] Mamka, G.M. (2018). *Fundamentals of criminal proceedings*. Kyiv: Greta.

[10] Mykhaylenko, V.V. (2019). *Implementation of the principle of the rule of law in criminal proceedings*. Kyiv: Palivoda A.V.

[11] Myroshnychenko, T.M. (2016). Implementation of the principle of presumption of innocence in the process of criminal procedural evidence. *Scientific Bulletin of the Uzhhorod National University. Series: Law*, 40(2), 118-122.

[12] Nor, V.T. (2011). Presumption of innocence as a constitutional basis of criminal proceedings and its application in the practice of the European Court of Human Rights. *Journal of the National University "Ostroh Academy". Series: Law*, 1(3), 1-24.
[13] Rozenbergs, J. (2022). Permissibility of the reverse burden of proof and its limits in criminal proceedings in the context of the presumption of innocence. *Law: Journal of the University of Latvia*, 15, 266-281. doi: 10.22364/jull.15.18.
[14] Seoane Pérez, F., & Valera-Ordaz, L. (2021). Stolen innocence? Observance of the EU directive on presumption of innocence by Spanish crime reporting. *Communication and Society*, 34(3), 15-30.
[15] Stoykova, R. (2021). Digital evidence: Unaddressed threats to fairness and the presumption of innocence. *Computer Law and Security Review*, 42, article number 105575. doi: 10.1016/j.clsr.2021.105575.
[16] Svoboda, T. (2023). Historical development of the presumption of innocence. *Legal-Historical Studies*, 53(1), 149-163. doi: 10.14712/2464689X.2023.10.
[17] Syza, N.P., & Matohnyuk, O.D. (2018). Presumption of innocence as a component of the right to a fair trial in the practice of the European Court of Human Rights. *Herald of Criminal Justice*, 3, 36-44.
[18] Tertyshnyk, V.M. (2018). Presumption of innocence: an integral legal principle and its application in the performance of the defense function. *Legal Position*, 1(20), 120-126.
[19] Villamarín López, M.L. (2021). Recent European Court of Justice case-law on Directive 2016/343 on the presumption of innocence (Milev, RH & DK): Are pre-trial detentions covered by this instrument? *ERA Forum*, 22(1), 137-146. doi: 10.1007/s12027-021-00657-7.
[20] Yu, F. (2022). Putting the "presumption" back in the "presumption of innocence". *International Journal of Evidence and Proof*, 26(4), 342-358. doi: 10.1177/13657127221124361.
[21] Zelenskyi, S.M. (2017). Presumption of innocence as a guarantee of justice in criminal proceedings. *Law and Society*, 5, 244-249.

Міжнародні стандарти застосування презумпції невинуватості в кримінальному процесі

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■ **Анотація.** Презумпція невинуватості є міжнародно визнаним стандартом кримінального судочинства. Утім правозастосовна практика засвідчує відсутність правової визначеності щодо розуміння та порядку реалізації окремих положень цієї засади кримінального провадження. Метою публікації є визначення та систематизація міжнародно визнаних стандартів гарантування права на презумпцію невинуватості. Під час дослідження застосовано такі методи пізнання, як порівняння, аналіз, узагальнення, системний підхід, що надали можливість описати результати й обґрунтувати отримані висновки. Визначено, що згідно з практикою Європейського суду з прав людини метою застосування презумпції невинуватості є: забезпечення справедливого суду шляхом недопущення обвинувального судового ухилу; запобігання формуванню передчасної громадської думки щодо винуватості/невинуватості обвинуваченого, що може негативно позначитися на неупередженості суду; захист осіб, щодо яких було ухвалено виправдувальний вирок або щодо яких провадження було закрито за реабілітуючими підставами. Забезпечення презумпції невинуватості передбачає необхідність гарантування того, що це право буде реальним, а не уявним. Встановлено, що під час з'ясування, чи було порушено принцип презумпції посадовими особами державних органів під час інформування суспільства про рух кримінальних проваджень, Європейський суд з прав людини враховує, чи спонукала заява посадових осіб громадськість повірити у винуватість особи до винесення судом вироку та чи могли ці твердження вплинути на оцінку фактів під час винесення судового рішення. Оцінюючи повідомлення представників влади, необхідно розрізняти заяву про підозру у вчиненні кримінального правопорушення та заяву про те, що особа здійснила кримінальне правопорушення за відсутності вироку; ураховувати, у контексті яких обставин було зроблено заяву, і зважати на реальний зміст висловлювань. Обґрунтовано правила дії презумпції невинуватості в часі: діє до моменту набрання вироком суду законної сили; обвинувальний вирок суду не відміняє право особи на презумпцію невинуватості до моменту набрання ним законної сили; ухвалення виправдувального вироку чи закриття кримінального провадження з реабілітуючих підстав вимагає визнання особи невинуватою та відповідного поводження з нею. Проведене дослідження забезпечить уніфіковану правозастосовну практику діяльності органів досудового розслідування, прокуратури та суду щодо дотримання правил дії презумпції невинуватості, що сприятиме утвердженню верховенства права

■ **Ключові слова:** публічність розгляду справи; упередженість; обвинувальний вирок; виправдувальний вирок; справедливість судового рішення; Європейський суд з прав людини

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Transfer pricing: A European perspective for Ukrainian legislation and practice

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■ **Abstract.** The transfer pricing issue is urgent for Ukraine considering the extreme need to attract funds (including from foreign partners) for the reconstruction of the state in the conditions of martial law and post-war times. Given the above, the purpose of this study was to cover the specific features of the implementation practice and court resolutions regarding the transfer pricing disputes in Ukraine, as well as the prospects for implementing the relevant provisions of supranational directives of the European Union. The formal-logical and concrete-legal tools, including the abstraction, formal legal and comparative legal methods, helped to cover the legal status of participants in legal relations, application of the "arm's length" principle, corresponding and compensating adjustments, procedure and functional characteristics of transfer pricing, evaluating the documentation, guaranteeing access to information sources of the appropriate quantity and quality, considering the practice of the Supreme Court of Ukraine regarding transfer pricing and the regulations of the European Union Transfer Pricing Directive. The study proved that confirming the amounts of expenses is to be implemented following the legally defined procedure for transfer pricing regarding the obligations to increase the financial result of the tax (reporting) period, proper tax reporting and control, responsibility for non-submission/overdue submission of a report on controlled transactions. The application of the "arm's length" principle was established considering such imperative criteria as determining the taxable profit and checking the factual price in the relations with non-residents, comparability of economic transactions in the context of assessing the factual controlled transaction. Criteria for the comparability of economic transactions were summarised related to assessing the essential properties of the transaction itself, the nature of assets and risks, goods transferred and/or the services rendered, fundamental and dynamic strategies of behaviour, economic status, performed functions of associated participants in legal relations. The practical value of this study for researchers, law enforcement bodies, and stakeholders lies in the coverage of the European perspective on transfer pricing implementation for Ukraine

■ **Keywords**: the "arm's length" principle; comparability of transactions; risk analysis; connected entities; associated enterprises

■ Introduction

Transactions involving a foreign element correspond to the cross-border context of the current day-to-day economic activity of taxpayers, which calls for a comprehensive investigation of the features of recognising economic transactions as controlled, the application of methods for establishing the compliance of the conditions of a controlled transaction with the "arm's length" principle, confirming the amounts of expenses following the legally defined procedure for transfer pricing, prosecution for non-submission/overdue submission of a report on controlled transactions.

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In the Ukrainian doctrine, transfer pricing is considered the pricing process, methods of profit transfer, tools, and means to reduce the tax base. According to O.I. Andrus (2018), the pricing process covers the formation of prices, the lowest of economically substantiated internal prices, at which calculations could be made between different divisions of a single company or between members of a united group of companies. The researcher also singled out the specified relations between structural divisions of the same company or between affiliated companies in case that the object of trade crosses the customs border (Korol *et al.*, 2021), between related parties, during the sale of goods and provision of services and intangible assets between associated enterprises, bringing transaction prices in line with market prices (Hurochkina & Rozhko, 2019). According to K. Malinka & S. Polischuk (2019), methods of profit transfer have been developed in the form of exchange of goods and services between different divisions of the company. V.V. Serzhanov & A.R. Molenda (2023) described such a tool used to minimise taxable income, one of the strategies used by companies in aggressive tax planning to reduce the tax base in countries with high levels of taxation. As indicated by I.V. Zhyhlei *et al.* (2021), means of minimising tax manipulations are possible in settlements with non-residents.

At the same time, transfer pricing has become an inseparable part of price formation by taxpayers, which are usually transnational corporations, specifically, the European ones, which operate on the territory of Ukraine. Currently, a supranational framework of activity in transfer pricing is being implemented in Europe regarding the harmonisation of the principles and format of activity, implementation of the "arm's length" principle within the entire European Union. In the conditions of martial law and post-war times, the aforementioned thesis is crucial, as it allows integrating the tax system of Ukraine into the general European one, attracting investors, strengthening cooperation with Ukrainian companies by creating favourable conditions for business, and supporting the national producers of goods. The transfer pricing issue is vital for Ukraine considering the extreme need to attract funds (including from foreign partners) for the reconstruction of the state in the conditions of martial law and post-war times.

The European researchers consider transfer pricing in context of appropriate models, a stock-take of transfer pricing (Kumar *et al.*, 2021), a dynamic dimension of such category (Rogers & Oats, 2022), and risk analysis (Buus, 2018). The given definitions indicate the cross-border dimension of transfer pricing. It is worth agreeing that the process of such pricing between the specified participants in legal relations has a methodological basis and an instrumental dimension of implementation. On the other hand, there are risks associated with using such a tool in business activities, including abuses and violations in the context of tax evasion.

The purpose of this study was to cover the specifics of the implementation practice and court resolutions regarding the transfer pricing disputes in Ukraine, as well as the prospects for implementing the relevant provisions of supranational directives of the European Union.

Materials and Methods

The researching methodology of the transfer pricing issues is connected with the use of a complex approach by combining the formal-logical (induction and deduction, analysis and synthesis) and concrete-legal tools (formal-dogmatic method) to fully and exhaustively characterise the specific features of the economic transactions recognition in transfer pricing, the main principles of evaluating the comparability of transactions (about foreign economic business transactions for the sale and/or purchase of goods and/or services through commission agents, i.e., non-residents, business transactions carried out with non-residents registered in the states (territories) included in the list of states (territories) where income tax rates (corporate tax) are 5 or more percentage points lower than in Ukraine), methods of establishing compliance of the controlled operations conditions with the "arm's length" principle (on the priority of applying the methods of establishing compliance with the conditions of a controlled operation, the method of a comparative uncontrolled price, the application of separate methods of establishing compliance with the conditions of a controlled operation).

The abstraction method helped to cover the issue of confirming the amounts of expenses following the legislatively defined procedure for transfer pricing regarding the implementation of obligations to increase the financial result of the tax (reporting) period by the amount of 30% of the value of goods, if the business operation is not controlled and the amount of such expenses is not confirmed by the taxpayer at prices determined according to the "arm's length" principle, as well as declaring the decision not to apply adjustments to the financial result before taxation on all differences. The application of the formal-legal method has contributed to the formulation of the author's vision regarding the prospects for developing the European perspective on transfer pricing for Ukraine related to the implementation of the "soft law" provisions specified in the relevant directives, establishment of the legal status of the participants of the transfer pricing relations, comparison of the price in a controlled transaction, conformity of the value of goods with prices, the decision not to apply adjustments to the financial result, confirmation of the amounts of expenses, implementation of the procedure for providing information, including on comparable uncontrolled transactions, declaration of

the adopted administrative acts considering the adjustments of the financial results, tax reporting and control regarding the implementation of the "arm's length" principle and powers of the controlling body, conducting tax audits, taking into account the violation of the value criterion, the bringing of taxpayers to financial responsibility, the application of fines in case of non-compliance with the deadlines established by law and/or failure to submit tax reports.

The comparative legal method was used to consider the features of the recently adopted directives of the European Union and ways of their implementation into the national legislation of Ukraine in the context of establishing a supranational legal field and standardised unified procedures for participants in relevant relations involving a foreign element.

The source base of the study included the practice of the Supreme Court regarding transfer pricing (for 2019-2022) and the regulations of the European Union Transfer Pricing Directive[1]. The application of the specified sources of law helped possible to cover the current approaches to the interpretation of the essence and principles of transfer pricing, as well as to make proposals for developing this legal institution in the cross-border dimension.

Results and Discussion

The transfer pricing relationship is related to the following key aspects (Table 1): recognising transactions as controlled; tax disputes regarding operations with a foreign element; application of the methods based on the "arm's length" principle; implementation of procedures; tax reporting and control; financial responsibility. The fundamental dimension of the transfer pricing relations is associated with the establishment of their purpose when economic transactions affect the subject of taxation or have the potential to do so (considering the approach outlined in the resolution of the Supreme Court in the case No. П/811/3371/15[2]). As an example, this could include the reflection of other operating income and expenses, amortisation deductions for intangible assets during the calculation of annual income in the context of an increase or decrease in the object of taxation, specifically, in relation to the exchange rate differences (given the approach set forth in the decision of the Supreme Court in the case No. 0740/860/18[3]). That is, the target characteristics of the specified relations have a dynamic nature and factor in the economic characteristics of business operations and financial results that the taxpayer seeks to achieve and achieves.

Table 1. Legal relations regarding transfer pricing

Recognition of business transactions as controlled	▪ Signs of a controlled operation; ▪ Ownership of corporate rights; ▪ Establishment of the characteristics of goods/works/services, etc
The "arm's length" principle	▪ Priority of applying the methods; ▪ Sources of information for pricing, etc
Tax reporting and control	▪ Obligation to declare; ▪ Report submission procedure, order and reliability of display operations; ▪ Authority to send a request for the provision of documents, etc
Responsibility	Application of fines.

Source: compiled by the author based on the Supreme Court's practice[4,5,6,7,8,9,10,11].

[1] Proposal for a Council Directive "On Transfer Pricing". (2023, September). Retrieved from https://taxation-customs.ec.europa.eu/system/files/2023-09/COM_2023_529_1_EN_ACT_part1_v7.pdf.
[2] Resolution of the Supreme Court in the Case No. П/811/3371/15. (2021, March). Retrieved from https://reyestr.court.gov.ua/Review/95945862.
[3] Resolution of the Supreme Court in the Case No. 0740/860/18. (2020, September). Retrieved from https://reyestr.court.gov.ua/Review/91818225.
[4] Resolution of the Supreme Court in the Case No. 817/1737/17. (2019, October). Retrieved from https://reyestr.court.gov.ua/Review/84899759.
[5] Resolution of the Supreme Court in the Case No. 620/528/19. (2020, January). Retrieved from https://reyestr.court.gov.ua/Review/87388273.
[6] Resolution of the Supreme Court in the Case No. 826/2198/18. (2020, September). Retrieved from https://reyestr.court.gov.ua/Review/91919369.
[7] Resolution of the Supreme Court in the Case No. 804/2326/16. (2021, January). Retrieved from https://reyestr.court.gov.ua/Review/94236886.
[8] Resolution of the Supreme Court in the Case No. 826/12668/17. (2021, February). Retrieved from https://reyestr.court.gov.ua/Review/95579935.
[9] Resolution of the Supreme Court in the Case No. 520/4404/19. (2021, June). Retrieved from https://reyestr.court.gov.ua/Review/97735580.
[10] Resolution of the Supreme Court in the Case No. 580/2610/19. (2021, November). Retrieved from https://reyestr.court.gov.ua/Review/101404514.
[11] Resolution of the Supreme Court in the Case No. 440/1053/19. (2022, June). Retrieved from https://reyestr.court.gov.ua/Review/105086314.

The principles of transfer pricing relations, apart from the general principles of taxation, consider the following: the connection of the participants of economic relations, regardless of their status as a resident or non-resident; foreign economic dimension of activity; normative characteristics regarding the inclusion of the state in the relevant list (as confirmed by the conclusions of the Supreme Court in the case No. 200/5682/19-a[1]). The fundamental dimension of transfer pricing focuses on the essential characteristics of economic transactions, and not on the status of participants in legal relations as non-residents or residents. The regulatory framework is also considered, specifically, regarding the favourable economic climate for the activities of taxpayers in the respective country.

Transfer pricing methods are primarily related to the implementation of the "arm's length" principle when the payer's income exceeds UAH 150 million and the volume of transactions with counterparties is over UAH 10 million. These are the following principal methods:

- priority of comparative uncontrolled price (taking into account the approaches of the Supreme Court in the cases No. 817/1737/17[2], No. 826/17841/17[3]) regarding the range of prices, volumes of operations, quality characteristics of costs / services (considering the legal position of the Supreme Court in the case No. 580/2610/19[4]);
- establishing compliance with the conditions of the controlled operation, considering the net profit according to the profitability index of operations and the prices of analogous sales (which was confirmed by the conclusions of the Supreme Court in the case No. 826/17841/17[5]).

The implementation of the "arm's length" principle is associated with the implementation of relevant calculations of the minimum limit of the economic characteristics of economic operations in relation to the payer's income and the volume of transactions with counterparties. Tax compliance is significant in the context of evaluating transactions as controlled, accounting profitability index and price similarities.

An example could be the rapeseed sale in the context of comparing the price intervals in the operations (considering the approaches of the Supreme Court in the case No. 1340/3525/18[6]). In this case, EXW and DAP bases were used to adjust the price for transportation costs, factoring in that rapeseed is a commodity. The results of such operation are influenced by the conditions of comparable and controlled operations, including the quantity and quality of goods, terms of execution, conditions of payment and distribution between the parties, risks and benefits, conditions of transportation. The proportionality of the price of the aforementioned goods is to be determined based on the average price on the commodity exchange for a decade before the implementation of the corresponding controlled transaction. Terms of delivery on an EXW basis refer to the adjustment for the cost of transport costs. As a result of concluding a contract on the terms of DAP, the payer has maximum obligations for the delivery of goods on a vehicle ready for unloading. The described functions differ from the FOB delivery terms in that the cost of transshipment of the goods on board the sea vessel is not included in the supplier's costs.

Another example is the comparison of the price in a controlled transaction of natural gas sale in the context of a price adjustment, due to the lack of information on comparable uncontrolled transactions in official sources of information during transportation of natural gas, specifically, from the European hub to the territory of Ukraine (which was confirmed by the conclusions of the Supreme Court in the cases No. 826/17841/17[7], No. 817/1737/17[8]). Considering the priority of the method of comparative uncontrolled price (analogues of sale), the profitability indicator is to be determined in a separate controlled operation or in the aggregate of such operations, and not in relation to the activity of the payer as a whole, despite the available administrative costs in the aggregate for all operations. The determination of the net profitability of the controlled operation and the comparability of the European counterparty companies with the taxpayer is determined considering the

[1] Resolution of the Supreme Court in the Case No. 200/5682/19-a. (2020, February). Retrieved from https://reyestr.court.gov.ua/Review/87559769.
[2] Resolution of the Supreme Court in the Case No. 817/1737/17. (2019, October). Retrieved from https://reyestr.court.gov.ua/Review/84899759.
[3] Resolution of the Supreme Court in the Case No. 826/17841/17. (2021, January). Retrieved from https://reyestr.court.gov.ua/Review/94328301.
[4] Resolution of the Supreme Court in the Case No. 580/2610/19. (2021, November). Retrieved from https://reyestr.court.gov.ua/Review/101404514.
[5] Resolution of the Supreme Court in the Case No. 826/17841/17. (2021, January). Retrieved from https://reyestr.court.gov.ua/Review/94328301.
[6] Resolution of the Supreme Court in the Case No. 1340/3525/18. (2023, March). Retrieved from https://reyestr.court.gov.ua/Review/109759320.
[7] Resolution of the Supreme Court in the Case No. 826/17841/17. (2021, January). Retrieved from https://reyestr.court.gov.ua/Review/94328301.
[8] Resolution of the Supreme Court in the Case No. 817/1737/17. (2019, October). Retrieved from https://reyestr.court.gov.ua/Review/84899759.

criteria of independence, entry into financial and industrial groups, the possibility of conducting wholesale trade, and the category of the company.

Criteria for the comparability of economic transactions are associated with the economic results of interaction between legal entities and/or individuals, specifically, in the context of the accounting of goods on the customer's balance account and the essence of the sale of such goods (considering the positions of the Supreme Court, cited in the case No. 815/6134/16[1]), ownership of corporate rights and the economic result of the relevant representative relations (as confirmed by the Supreme Court in the case No. 620/528/19[2]), attracting funds into deposits and determining the resident's share in the authorised capital (factoring in the approach outlined in the ruling of the Supreme Court in the case No. 820/2540/16[3]), the application of the "pellet premiums Atlantic blast furnace 65% Fe" approach (considering the legal position of the Supreme Court in the case No. 440/1053/19[4]), accrual and payment of interest under the loan agreement (considering the conclusions of the Supreme Court in the case No. 820/2290/17[5]). Within the described comparative assessment of economic transactions, it is vital to factor in the content of primary documents, conditions, or economic results of activity, indicators of the profitability of the controlled transaction, the amount of taxable profit, financial indicators of comparable transactions, price ranges/intervals.

Confirmation of the amounts of expenses following the legislatively defined procedure for transfer pricing is related to the establishment of the grounds for declaring the decision not to apply adjustments to the financial result, conformity of the value of goods with prices, etc. The financial result and its possible adjustments are factored in (considering the approaches of the Supreme Court in the case No. 826/2198/18[6]), as well as compliance of the goods value with the determined prices, substantiation of the adopted decision considering the comparability of economic transactions based on economic and comparative analysis, evaluation of information sources (regarding the positions of the Supreme Court in the case No. 620/1040/19[7]). This refers to considering the indicators of the financial result within the reporting tax period, observing the rules of accounting, submitting a report on the valuation of the property as documentation confirming the amount of costs at prices.

Transfer pricing relations are also associated with the establishment of the legal status of the participants of these relations, the specific features of the implementation of the procedure for providing information and reporting, etc. Transfer pricing control relationships are related to the assessment of available tax information, specifically, based on tax monitoring (considering the approach set forth in the decision of the Supreme Court in the case No. 520/4404/19[8]). Submission of the defined information is necessary in case of its absence (considering the conclusions of the Supreme Court in the case No. 818/1786/17[9]). By submitting a report on controlled transactions, the taxpayer acknowledges the existence of such an obligation (regarding the positions of the Supreme Court in the case No. 810/4044/15[10]). Exclusion of a country from the relevant list does not exempt from the obligation to submit the specified reporting (considering the conclusions outlined in the ruling of the Supreme Court in the case No. 826/12668/17[11]). Therefore, the submission of reports within the framework of transfer pricing relations is associated with the assessment of the information provided by taxpayers, considering the criteria defined by the current legislation.

Ukrainian transfer pricing standards do not fully factor in the European approaches. Specifically,

[1] Resolution of the Supreme Court in the Case No. 815/6134/16. (2020, July). Retrieved from https://reyestr.court.gov.ua/Review/90497867.
[2] Resolution of the Supreme Court in the Case No. 620/528/19. (2020, January). Retrieved from https://reyestr.court.gov.ua/Review/87388273.
[3] Resolution of the Supreme Court in the Case No. 820/2540/16. (2020, December). Retrieved from https://reyestr.court.gov.ua/Review/93859349.
[4] Resolution of the Supreme Court in the Case No. 440/1053/19. (2022, June). Retrieved from https://reyestr.court.gov.ua/Review/105086314.
[5] Resolution of the Supreme Court in the Case No. 820/2290/17. (2020, December). Retrieved from https://reyestr.court.gov.ua/Review/93595492.
[6] Resolution of the Supreme Court in the Case No. 826/2198/18. (2020, September). Retrieved from https://reyestr.court.gov.ua/Review/91919369.
[7] Resolution of the Supreme Court in the Case No. 620/1040/19. (2020, January). Retrieved from https://reyestr.court.gov.ua/Review/87453779.
[8] Resolution of the Supreme Court in the Case No. 520/4404/19. (2021, June). Retrieved from https://reyestr.court.gov.ua/Review/97735580.
[9] Resolution of the Supreme Court in the Case No. 818/1786/17. (2019, December). Retrieved from https://reyestr.court.gov.ua/Review/86551772.
[10] Resolution of the Supreme Court in the Case No. 810/4044/15. (2023, June). Retrieved from https://reyestr.court.gov.ua/Review/111663168.
[11] Resolution of the Supreme Court in the Case No. 826/12668/17. (2021, February). Retrieved from https://reyestr.court.gov.ua/Review/95579935.

the European Union Transfer Pricing Directive[1] refers to the supranational dimension of such relations (Fig. 1). This refers to methodological, institutional, organisational, and documentary dimensions of transfer pricing, considering typical European practices.

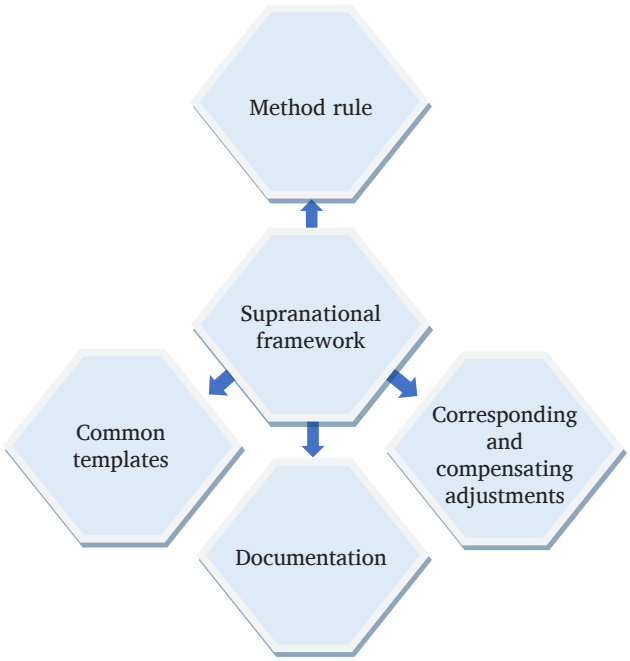

Figure 1. The European dimension of transfer pricing.
Source: compiled by the author of this study based on the European Union Transfer Pricing Directive[2].

The prescriptions of the specified directive are necessary for the implementation at the national level regarding the intergroup transactions driven by the common interests of the group as a whole with the proper tax calculations, selection of the most appropriate method, avoidance of double taxation and over-taxation, plans and monitoring, evaluation and reporting arrangements, etc. In summary, transfer pricing has a cross-border nature and a procedural dimension, is characterised by interpersonal interaction of taxpayers, and is determined by the set goals and the achieved economic result. In this context, managerial, economic, and social characteristics of transfer pricing, sub-specialism within tax practice, risk, and profit allocation between strategy and routine could be considered useful for application.

The interpretation of the essence, order of applying the principles and comparability of operations within the framework of transfer pricing relations are still a debatable issue. It is worrisome that transfer pricing is still considered a negative phenomenon in the doctrine, despite the statutory consolidation of this legal category as a lawful behaviour of taxpayers, subject to compliance with established requirements. P. Pavone (2020) distinguishes legal transfer pricing from the manipulative one in terms of the logic of reciprocity and interdependence, tax authorities' perspective, tax audit activities, symptoms of manipulation. S.K. Padhi (2019) proposed the following basic doctrinal approaches regarding legal transfer pricing: empirical studies; theoretical approaches, covering economic theory, mathematical programming, accounting theory, organisational behaviour theory, strategic management theory. This primarily refers to the status of associated enterprises and controlled transactions according to the methods (Gorgieva-Trajkovska *et al.*, 2019): traditional (comparable uncontrolled price, resale price, cost plus) and transactional profit methods (net margin, profit split). The economic basis of transfer pricing and its psychological dimension determined by the economic-corporate motives, needs and interests of taxpayers emerge from the aforementioned approaches.

The above suggests that the world's leading models of transfer pricing are a legitimate form of behaviour of a participant in legal relations, subject to compliance with the requirements regarding principles and methods, conducting monitoring and control measures to assess the results of activities. The contemporary doctrine reveals national transfer pricing models presented in such countries as Austria, Belgium, Brazil, Cyprus, Denmark, Germany, Greece, India, Indonesia, Ireland, Israel, Italy, Japan, Luxembourg, Mexico, Netherlands, Nigeria, Poland, Portugal, Spain, Switzerland, the United Kingdom, the United States, Venezuela, and others (Edge & Robertson, 2020). One can agree with the view on a stocktake of transfer pricing standing together with strategic tools, compliance, and management considering business conglomerates and multinational enterprises (Kumar *et al.*, 2021). T. Buus (2018) and H. Rogers & L. Oats (2022) rightly noted a dynamic dimension of such category considering Bourdieusian concepts, transfer pricing risk analysis targets and tools. In the latest doctrine, transfer pricing gravitates more towards legitimate methods of behaviour, factoring in the nature of transactions and the strategic purpose of taxpayers' activities as an indicator of a company's market power. It is possible to support the research approaches that highlight the specific features of the dynamic dimension of transfer pricing, considering the laws of the market economy based on strategic

[1] Proposal for a Council Directive "On Transfer Pricing". (2023, September). Retrieved from https://taxation-customs.ec.europa.eu/system/files/2023-09/COM_2023_529_1_EN_ACT_part1_v7.pdf.
[2] Proposal for a Council Directive on transfer pricing. (2023, September). Retrieved from https://taxation-customs.ec.europa.eu/system/files/2023-09/COM_2023_529_1_EN_ACT_part1_v7.pdf.

planning and the motivational component of the legal activity of the taxpayer.

At the same time, the administrative dimension of transfer pricing at the state and non-state levels stays an unresolved issue. It is appropriate to support the approach proposed by S. Favourate *et al.* (2022), according to which transfer pricing is both economic and political issue separating the economic decisions from the political economy of taxation. J.L. Blouin *et al.* (2018) emphasise governmental corporate coordination. J. van Dijck (2020) proposed governing models in line with private platforms and public values. J. Demko-Rihter *et al.* (2023) discuss market-based, cost-based, and negotiated models. The described scientific approaches illustrate the intergroup managerial and financial dimension of transfer pricing, according to which the legal corporate strategy of the taxpayer determines the process of formation of the transfer price between a certain group of related private law entities, specifically, with the transfer of tax bases between countries and the redistribution of profits. The proposed public and private management models minimise "shadow schemes" and avoid double taxation by reducing part of the costs and bringing transfer prices to market prices.

The innovative dimension of transfer pricing, highlighted by N. Capatina-Verdes *et al.* (2022), covers the following research subjects: ethics, sustainability, algorithmic pricing (Li, 2022), digital finance (Pavlidis, 2021). In terms of these approaches in practical application, it is necessary to consider the globalisation and decentralisation of activities of taxpayers, strengthening competitive advantages, enhanced cooperation and information exchange, reevaluating and reviewing motives and values of multidivisional companies, reducing corruption. S. Favourate *et al.* (2022) developed focused recommendations on transfer pricing which could be implemented worldwide:

- legislative – creating effective and robust dispute resolution mechanism; restriction of service fees to parent companies, as well as the deductibility of interest; encouragement of transparency on cross border transactions, country-by-country reporting requirements, coordination activities, and information sharing;
- administrative – capacity building; stakeholder engagement; thin capitalisation rules, withholding taxes on certain incomes; effective audit; risk identification and management; comparable data; tax education.

Consequently, for the proper implementation of transfer pricing in the cross-border dimension, a significant role is played by the ethical legal and organisational framework of economic activity and cooperation between related companies with a focus on the concept of sustainable development. A correctly selected system of redistribution of financial resources could become a reference point for decision-making within the limits of taxpayers' foreign economic activities, considering profitability indicators and the market price range. Determination of the clear legality limits of such activity allows reducing corruption risks and criminal manifestations of behaviour in financial relations, as well as promoting the integration of markets and legal systems in contemporary processes of globalisation.

Conclusions

Thus, the European perspective on transfer pricing for Ukraine is related to the implementation of the "soft law" provisions specified in the relevant directives on corresponding and compensating adjustments; legal status of participants in legal relations, including peculiarities of association "enterprises" functioning, considering the intergroup orientation of economic entities behaviour; functional characteristics, specifically, increased application of the "arm's length" principle within economic transactions, guaranteeing access to information sources of the appropriate quantity and quality in the context of forming and evaluating the documentation from participants in legal relations, as well as avoidance of double taxation.

Application of the "arm's length" principle has an imperative and facultative focus on transfer pricing. In terms of the approaches consolidated in the tax legislation of Ukraine, the following imperative criteria are to be considered: determination of the taxable profit; verification of the factual price. The relations are to be with non-residents (permanent representative offices, registered in countries with a low level of taxation, etc.), when the payer's income exceeds UAH 150 million and the volume of transactions with counterparties over UAH 10 million. Optional is the situation in case of an alternative to such enforcement of adjusting the financial result before taxation, when the transactions are not controlled.

Criteria for the comparability of economic transactions are to be primarily related to assessing the factual controlled transaction regarding: essential properties of the transaction itself, the nature of assets and risks, goods transferred and/or the services provided; fundamental and dynamic strategies of behaviour, economic status, performed functions of associated participants in legal relations. The second stage of assessment should be characterised by a comparison of controlled and uncontrolled transactions based on economic relevance in the individual subject-territorial dimension, i.e., in a concrete situation of law enforcement by the third-party economic entities.

Prospects for further research on the European context of transfer pricing are related to the substantiation of the national strategy and the plan of

measures for its implementation, considering national characteristics during the formulation of specific implementation steps, developing a comprehensive vision for the integration of national and supranational legal systems.

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Conflict of Interest

None.

References

[1] Andrus, O.I. (2018). The transfer pricing in Ukraine: The problems and the prospects of development. *Modern Problems of Economics and Business,* 22, 6-13.
[2] Blouin, J.L., Robinson, L.A., & Seidman, J.K. (2018). Conflicting transfer pricing incentives and the role of coordination. *Contemporary Accounting Research*, 35(1), 87-116. doi: 10.1111/1911-3846.12375.
[3] Buus, T. (2018). Risks and transfer pricing regulation at the multinational enterprises' routine units: A literature review. *Prague Economic Papers*, 27(6), 621-636. doi: 10.18267/j.pep.678.
[4] Capatina-Verdes, N. (2022). Transfer pricing and related party transactions: A bibliometric analysis. *Central European Economic Journal*, 9(56), 237-253. doi: 10.2478/ceej-2022-0014.
[5] Demko-Rihter, J., Sekerez, V., Spasić, D., & Conić, N. (2023). The neglected focus on managerial aspect of transfer pricing policy in multidivisional companies – case of Serbia. *Systems*, 11(5), article number 257. doi: 10.3390/systems11050257.
[6] Edge, S., & Robertson, D. (Eds.). (2020). *The transfer pricing law review. Fourth edition*. London: Meridian House.
[7] Favourate, S., Mashiri, E., & Warima, S. (2022). Enhancing the effectiveness of transfer pricing regulation enforcement in reducing base erosion and profit shifting in African countries. A scoping review. *Journal of Accounting, Finance and Auditing Studies,* 8(1), 99-131. doi: 10.32602/jafas.2022.005.
[8] Gorgieva-Trajkovska, O., Georgieva Svrtinov, V., Dimitrova, J., & Koleva, B. (2019). Transfer pricing – definition and methods. *Knowledge – International Journal, Scientific Papers,* 35(1), 167-173.
[9] Hurochkina, V., & Rozhko, Y. (2019). Transfer pricing: Judicial Ukrainian practice and evaluation methods of tax rights. *Economics and Enterrprise Management,* 6(74), 45-57. doi: 10.32782/2520-2200/2019-6-32.
[10] Korol, S.Y., Umantsiv, H.V., & Shushakova, I.K. (2021). Development of transfer pricing in the conditions of globalization. *Economic Theory and Law,* 2(45), 87-100. doi: 10.31359/2411-5584-2021-45-2-87.
[11] Kumar, S., Pandey, N., Lim, W.M., Chatterjee, A.N., & Pandey, N. (2021). What do we know about transfer pricing? Insights from bibliometric analysis. *Journal of Business Research,* 134, 275-287. doi: 10.1016/j.jbusres.2021.05.041.
[12] Li, Z. (2022). Affinity-based algorithmic pricing: A dilemma for EU data protection law. *Computer Law & Security Review,* 46, article number 105705. doi: 10.1016/j.clsr.2022.105705.
[13] Malinka, K., & Polischuk, S. (2019). Problems of transfer price functioning in Ukraine and its improvement in the conditions of economic unemployment. *Market Infrastructure,* 27, 53-59.
[14] Padhi, S.K. (2019). Transfer pricing a review of literature. *International Journal of Advanced Research in Management,* 10(1), 1-7.
[15] Pavlidis, G. (2021). Europe in the digital age: Regulating digital finance without suffocating innovation. *Law, Innovation and Technology*, 13(2), 464-477. doi: 10.1080/17579961.2021.1977222.
[16] Pavone, P. (2020). Transfer pricing: Business or tax process? Difficult equilibrium between two dimensions. *Revista Espacios,* 41(5), 21-30.
[17] Rogers, H., & Oats, L. (2022). Transfer pricing: Changing views in changing times. *Accounting Forum,* 46(1), 83-107. doi: 10.1080/01559982.2021.1926778.
[18] Serzhanov, V.V., & Molenda, A.R. (2023). Motives for the use of transfer pricing by enterprises. *Uzhhorod National University Herald,* 1(61), 121-127. doi: 10.24144/2409-6857.2023.1(61).121-127.
[19] Van Dijck, J. (2020). Governing digital societies: Private platforms, public values. *Computer Law & Security Review,* 36, article number 105377. doi: 10.1016/j.clsr.2019.105377.
[20] Zhyhlei, I.V., Lehenchuk, S.F., & Orlov, I.V. (2021). Transfer pricing as a means of minimizing tax manipulations in settlements with non-residents. *Problems of Theory and Methodology of Accounting, Control and Analysis,* 3(50), 14-22. doi: 10.26642/pbo-2021-3(50)-14-22.

Трансфертне ціноутворення: європейська перспектива для українського законодавства та практики

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■ **Анотація.** Питання трансфертного ціноутворення є актуальним для України з огляду на необхідність залучення коштів (зокрема від іноземних партнерів) для відбудови держави в умовах воєнного стану та післявоєнного часу. З огляду на викладене, дослідження має на меті виявити специфіку практики реалізації та судових рішень щодо спорів у сфері трансфертного ціноутворення в Україні, а також перспективи імплементації відповідних положень наднаціональних директив Європейського Союзу. Формально-логічний та конкретно-юридичний інструментарій (а саме абстракція, формальний та порівняльно-правовий методи) дав змогу висвітлити правовий статус учасників правовідносин, застосування принципу «витягнутої руки», відповідні компенсаційні коригування, порядок та функціональні характеристики трансфертного ціноутворення, оцінку документації, забезпечення доступу до джерел інформації належної кількості та якості в контексті практики Верховного Суду щодо трансфертного ціноутворення та норм Директиви Європейського Союзу про трансфертне ціноутворення. Доведено, що підтвердження сум витрат слід здійснювати відповідно до законодавчо визначеного порядку трансфертного ціноутворення щодо зобов'язань стосовно збільшення фінансового результату податкового (звітного) періоду, належного податкового звітування та контролю, відповідальності за невиконання зобов'язань щодо підвищення фінансового результату податкового (звітного) періоду, подання/несвоєчасного подання звіту про контрольовані операції. Проаналізовано застосування принципу «витягнутої руки» з огляду на такі імперативні критерії, як визначення оподатковуваного прибутку та перевірка фактичної ціни у відносинах із нерезидентами, зіставність господарських операцій у контексті оцінки фактичної контрольованої операції. Узагальнено критерії порівнянності економічних операцій, пов'язані з оцінкою основних властивостей операції, характеру активів і ризиків, товарів, які передають, та/або наданих послуг, фундаментальних і динамічних стратегій поведінки, економічного статусу, виконуваних функцій асоційованих учасників правовідносин. Практична значущість статті для дослідників, правозастосовних органів і зацікавлених сторін полягає у висвітленні європейської перспективи впровадження трансфертного ціноутворення в Україні

■ **Ключові слова:** принцип витягнутої руки; зіставність операцій; аналіз ризиків; пов'язані особи; асоційовані підприємства

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The existence of judge's authority norm in preliminary review as an embodiment of the principle of immediate procedures in civil procedure law

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■ **Abstract**. A significant issue in the Indonesian legal system is the accessibility to justice in civil proceedings. This problem primarily arises from the rigid and time-consuming formal requirements, which hinder many individuals from effectively resolving their cases. Failure to meet these formal prerequisites often leads to case dismissals, ultimately impeding the application of the principle of a fast court process. This study aims to explore the extent of judge's authority in assessing these formal requirements during the preliminary review in Indonesia. It adopts a normative juridical research approach, focusing on legislative and conceptual aspects. Primary, secondary, and tertiary legal sources are analysed using various interpretation techniques, including grammatical and systematic interpretations. The findings reveal two contrasting viewpoints: the principle of a passive judge, which views judges as mere court observers without active involvement, and the emerging perspective emphasizing the role of an active judge. The concept of an active judge allows judges to advise plaintiffs on improving their claims if they fail to meet formal requirements, preventing the dismissal of their cases. In administrative and constitutional court proceedings, some mechanisms exist for reviewing and completing claims during the preliminary phase. However, it is essential to note that judges

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in civil proceedings lack a specific legal basis for providing guidance and recommendations to plaintiffs, and such actions are considered optional rather than obligatory. This lack of concrete implementation of the principles of expediency and access to justice in civil proceedings results in a backlog of cases and numerous cases being dismissed. The results of the study can be used in further regulatory adjustments regarding judge's authority norm for ensuring preliminary review conduct

■ **Keywords**: active role of judges; speedy trial; access to justice; dismissal procedure; court

■ Introduction

The legal consequences of the Declared Inadmissible verdict, which have happened several times, made people think that seeking access to justice is very difficult, such as the mechanism for court proceedings which are still long-winded, meaning that the procedure mechanism for court proceedings can be considered as still too rigid because since the legal consequences of the Declared Inadmissible decisions emerged in the middle of the trial before discussing the subject of the case that wanted to be tried at the trial, every person who files a lawsuit in Indonesia is still constrained by rigid formal administrative requirements so that it can be said to be far from the objectives of justice of law. Based on Article 123 paragraph (1) of the Revised Inland Regulations (Herzien Inlandsch Reglement – HIR)[1] juncto Circular of Supreme Court Number 4 of 1996[2], it means that the contents of the lawsuit in the main case cannot be tried, so the next step that must be chosen is to appeal the decision "Niet ontvankelijke verklaard" (declared inadmissible) or correct the contents of the lawsuit to file a new lawsuit. Still, most plaintiffs through their legal representatives take the initiative to revise the lawsuit and submit it again to court. It turned out that even though it had been corrected, it was still declared unacceptable, so that in practice, particularly among the advocates as the plaintiff's legal representatives, many have complained about the issue in filing lawsuits which were often submitted. Still, after many several times of correction in the lawsuit, in the end they give up submitting the lawsuit.

Researcher M. Sarmah & S. Bohra (2023) discussed the importance of the right to a speedy trial and the effectiveness of expedited trial plans in the criminal justice system. It highlights the necessity of balancing expediency with the rights of the accused and the public need for just and equitable justice. The Speedy Trial Act is praised for establishing deadlines for courts to adhere to, potentially reducing delays. Additionally, the significance of habeas corpus in protecting personal freedom is emphasized, along with the potential for human rights organizations to utilize it to seek the release of individuals in prolonged detention. The research suggested a review of current laws and court regulations to ensure fairness in the trial process and judicial efficiency.

A.M.Q. Toqsanbaeva (2023) studies the active role of judges in civil proceedings within the context of modern legislation. It discusses the evolution of judicial roles from passive arbiters to more active participants in seeking truth and ensuring justice. Two procedural systems are examined: the adversarial procedure, where judges have limited intervention, and the inquisitorial procedure, where judges play a more active role in investigating and managing cases. The text highlights the importance of balancing private interests with the public interest in achieving fair and efficient justice. Various manifestations of the judge's active role are discussed, including case management, reconciliation of parties, and the application of procedural penalties. The importance of judicial mediation and alternative dispute resolution methods is also emphasized. Overall, the text underscores the significance of judges' proactive involvement in civil proceedings to ensure timely, fair, and effective resolution of disputes.

In the topic of civil procedure law, O. Fahren (2020) explores civil procedure law by researching bankruptcy cases. Bankruptcy in commercial courts is governed by the principle of simple proof, a unique aspect of civil procedural law. This principle streamlines complex financial matters, expediting proceedings by focusing on essential evidence. However, diverse interpretations of the rules can lead to inconsistent outcomes. Research focuses on understanding how this principle is applied in practice and its impact on bankruptcy petition requirements. By clarifying these aspects, O. Fahren aims to enhance understanding of how civil procedural law operates in bankruptcy cases within commercial courts.

S. Sultan's (2013) research delves into the concept of formal truth in resolving civil disputes from the perspective of Islamic legal philosophy. It questions the existence and application of the doctrine of formal truth within Islamic jurisprudence, emphasizing the importance of substantive-progressive truth that prioritizes human welfare and justice. It argues that the principle of formal truth in civil judgments

[1] Revised Inland Regulations. (1950, June). Retrieved from https://www.hukumonline.com/pusatdata/detail/27228/herzien-inlandsch-reglement-%28h.i.r%29-%28s.-1941-44%29-reglemen-indonesia-yang-diperbaharui-%28r.i.b.%29/document.

[2] Circular of Supreme Court of the Republic of Indonesia No. 4. (1996, August). Retrieved from https://jdih.mahkamahagung.go.id/legal-product/sema-no-4-tahun-1996/detail.

is not aligned with Islamic legal philosophy, which emphasizes the active involvement of judges in seeking and establishing truth based on thorough deliberation and conviction. The research highlights the divergence between formal truth and the principles of prioritization in Islamic legal philosophy, suggesting that true justice in civil judgments stems from a deeper understanding of human needs and the promotion of societal welfare.

S. Sunarto (2016) studied the principle of an active judge in civil cases entails the judge taking an engaged role throughout the pre-trial phase. Research highlights situations where judges are positioned to actively resolve civil cases. Findings emphasize that judges play an active role in informing both parties about their legal rights, including the right to pursue legal remedies and present evidence during hearings. This proactive stance ensures that all parties involved are fully aware of their rights and responsibilities, contributing to a fair and transparent legal process.

The implementation of civil justice must be carried out consistently based on the principle of fast justice to achieve justice and public order. So far, civil procedural law still does not recognize the concept of dismissal process or preliminary examination. This study will further analyse judge's authority to examine and conduct preliminary review in civil law framework. Ensuring the immediate process of trial principle is consequently implemented in the correlation of guaranteeing the access to justice is the purpose of this study.

Materials and Methods

During the study, a comprehensive analysis of papers addressing the issues was conducted. The research method in this journal article was a normative juridical research method. The author used this method to study and analyse existing regulations in preparing arguments regarding the urgency of legal regulations regarding preparatory examinations as an embodiment of the fast trial principle in the Civil Procedure Law. Then, the authors employed a statutory approach, where the author will study and further dissect the relevance of the civil procedural law system with the principles of justice faced with the issue of the high volume of civil cases resulting in the difficulty of seeking justice for the society. The conceptual approach was undertaken by understanding various perspectives and doctrines within the field of law, then from the results of this understanding, the researcher obtains a legal concept towards a norm that did not exist previously. Historical approach with the aim to seeking legal rules from their inception until the present, whether in written or unwritten form. Researchers use a historical approach to trace the origins of civil procedural law and civil procedural law philosophically, juridically, and sociologically, as well as how civil procedural law has changed in Indonesia. Through this exploration, researchers will obtain supporting bases for the application of preparatory examination processes to realize the principles of fast, light, and simple justice within the framework of civil procedural law, as well as the form of application of preparatory examination processes in civil procedural law. Lastly, the author uses a philosophical approach to help researchers to examine legal issues in this study fundamentally and comprehensively to obtain research results that reflect the characteristics of philosophy consisting of ontological teachings (essence), axiological teachings (values), and teleological teachings (goals). The application of the examination process of preparation for the realization of the principles of fast, light, and simple justice within the framework of civil procedural law, as well as the form of application of the examination process of preparation in civil procedural law.

The legal materials used were primary, secondary, and tertiary legal materials which were analysed using deductive analysis techniques. This research analysed the Revised Inland Regulations, Code of Civil Procedure, Law No. 14 of 1970 "On Basic Provisions on Judicial Authority", Law No. 48 of 2009 "On Concerning Judicial Authority", Supreme Court Decision No. 209 K/Sip/1970 and other materials that regulate the powers and duties of judges in Indonesia.

Results and Discussion

The administration of Indonesian justice is based on the principles of simple, fast and low costs (Law Concerning Judicial Power, No. 48 of 2009, Article 2, Paragraph 4)[1]. These principles, especially the principle of immediate justice, are universal principles adhered to by all judiciaries in the world. They were born inductively from public expectations for fast settlement of cases to immediately provide justice, legal certainty, and benefits. The principles of the civil procedural law system in Indonesia currently use the HIR[2] and the Civil Procedure Law (Rechtreglement voor de Buitengewesten – RBg)[3]. It focuses on formal requirements and the principle of passive judges which are applied absolutely in civil procedural law which causes the judiciary tend to be passive or not pursuing, even though the lawsuit submitted by the plaintiff

[1] Law of the Republic of Indonesia No. 48 "On Concerning Judicial Authority". (2009, October). Retrieved from https://peraturan.bpk.go.id/Details/38793/uu-no-48-tahun-2009.
[2] Revised Inland Regulations. (1950, June). Retrieved from https://www.hukumonline.com/pusatdata/detail/27228/herzien-inlandsch-reglement-%28h.i.r%29-%28s.-1941-44%29-reglemen-indonesia-yang-diperbaharui-%28r.i.b.%29/document.
[3] Provisions Governing the Administration of Justice in Regions Outside the Java and Madura. (1927). Retrieved from https://pta-jambi.go.id/attachments/article/1110/RBg.pdf.

does not yet meet the formal requirements of civil procedural law. The failure to fulfil these formal requirements is an opportunity for the defendant at the trial to file an exception to request that the plaintiff's lawsuit cannot be accepted, where the consequences of an unacceptable lawsuit are to be submitted as a new lawsuit with improvements. This causes losses in both effectiveness and efficiency of time, as well as wasted costs resulting in the failure to fulfil the principles of obtaining justice, the principle of openness, and the principles of simple, fast and low-cost justice.

Dismissal Process in State Administrative Courts and Preliminary Review in the trial in Constitutional Court is based on the principle of equality before the law between the public and authorized officials, all of whom are equal before the law in carrying out justice for citizens, because the concept in the State Administrative Court, the citizens often become opponent for the ruler of the state, namely the Officials of State Administrative.

If compared carefully, the combined volume of cases submitted to the Court of State Administrative and the Constitutional Court will not be comparable to the number of cases submitted in the civil law scope. District Courts are located in all regions in Indonesia in accordance with the high need for resolving cases in this domain, while the Court of State Administrative and the Constitutional Court are only located in several provinces and the Indonesian capital.

Judges have a greater responsibility to implement the principles of law and justice. They are required to decide cases based on applicable law because this is the main basis that regulates the judge's actions. This is necessary as a control against potential abuse of power by judges, so that decisions taken by judges can be considered accountable and must be respected by all parties involved in the judicial process (Merta & Junaidi, 2020). In carrying out their duties, judges adhere strictly to the principles and regulations contained in the civil procedural law. These rules are legal instruments that regulate how material law is implemented. In civil procedural law, there are several key principles, namely (Prasetya, 2020): principle of Judge must wait; principle of passive judge; principle of active judge; principle of judge must hear both side (*audi et alteram partem*); principle of simple, fast, and low-cost process in case trial.

The aforementioned principles of Civil Procedure Law must be implemented correctly by the judge as the subject who presides over the trial from the first hearing until the case is decided (Merta & Junaidi, 2020). In civil procedural law, there is a principle known as "Judges must wait". This principle stipulates that the initiative to file a lawsuit or case is given entirely to the interested parties or those involved in the case. This means that the judge will only start acting on his role when a lawsuit or case is officially submitted to him. In this context, the judge is considered to be the party who "waits" or is passive until an official application is submitted to the court. This principle is stated in articles 118 & 142 of RBg[1].

Judge's authority to examine and provide direction in the examination process of formal requirements at the civil trial stage before entering the examination of the main case is limited to the conservative principle of passive judge, which means the judge cannot take the initiative or interfere profoundly in the case being submitted. In fact, Article 119 of the HIR states: "The chief judge of the district court has the power to give advice and assistance to the plaintiff or his representative regarding the submission of the lawsuit"[2]. The article also explains that: "This regulation is beneficial for people in seeking access to justice, who usually have no knowledge of the law in general and are not familiar with the examination of civil cases in particular, and are also unable to afford the assistance of a legal advisor. This regulation is actually contrary to the general prohibition on judges in cases that have been submitted to their court, or which they can reasonably expect will be submitted to them, either directly or indirectly, to provide advice or assistance to the conflicting parties or their lawyers, but it turns out to be in accordance with the spirit of the Basic Law on Justice (Law No. 14 of 1970) Article 5 paragraph (2) which states that in case trials, the Court assists justice seekers and tries as hard as possible to overcome all obstacles to achieve justice in simple, fast and cost-efficient process"[3].

According to Supreme Court jurisprudence, changes to claims or additional claims during a case trial in court can be permitted as long as these changes do not change the basis of the initial claim (*posita*) and do not harm the defendant's interest in his efforts to defend himself. This is in accordance with the opinion contained in the Supreme Court Decision No. 209 K/Sip/1970[4], dated March 6, 1971, which emphasized that "changes in claims must not conflict with the principles of civil procedural law, as long

[1] Provisions Governing the Administration of Justice in Regions Outside the Java and Madura. (1927). Retrieved from https://pta-jambi.go.id/attachments/article/1110/RBg.pdf.
[2] Revised Inland Regulations. (1950, June). Retrieved From https://www.hukumonline.com/pusatdata/detail/27228/herzien-inlandsch-reglement-%28h.i.r%29-%28s.-1941-44%29-reglemen-indonesia-yang-diperbaharui-%28r.i.b.%29/document.
[3] Law of the Republic of Indonesia No. 14 "On Basic Provisions on Judicial Authority". (1970, October). Retrieved from https://peraturan.bpk.go.id/Details/47929/uu-no-14-tahun-1970.
[4] Decision of the Supreme Court of the Republic of Indonesia No. 209 K/Sip/1970. (1970, March). Retrieved from https://putusan3.mahkamahagung.go.id/direktori/putusan/23202.html.

as they do not change or deviate from the material events that become the subject of the case, even though there are no subsidiary claims, in order to maintain the implementation of the principles of fair trial." The decision emphasizes the importance of ensuring that these changes will not affect the main issue of the case, so that the parties can maintain their rights and interests to undergo a fair trial process.

The principle of passive or active judges is still a matter of pros and cons among judges and legal practitioners today. M. Yahya Harahap stated that the principles adopted in the beginning was the passive principle, while the active principle was a novel principle that emerged as an effort to challenge the existing passive principle (Fikriyah, 2019). The Australian Federal Court abandoned the passive principle seventeen years ago. The judges do not just listen to the disputing parties at trial, but they actively control the trial so that the case can be resolved quickly (Weda *et al.*, 2021). The judge also actively encouraged the parties to end the dispute in a peaceful settlement.

Explicitly normative in the HIR[1], RBg[2] and the Code of Civil Procedure (Reglement op de Burgelijke Rechtsvordering – Rv)[3] do not mention the terms passive or active judge. In civil procedural law, the position of judges to be passive was only adhered to by Rv, which applies to the European group and is no longer valid but still used by judges in Indonesia. In this system, the judge only supervises the proceedings so that the parties act in accordance with procedural law. Empirically normatively, the principles of passive and active judges are equally used by judges in civil law trials. However, this does not mean that the relationship between the two is complementary. Both are fundamental and have their respective functions (Suadi & Hum, 2021). Many legal practitioners and academics agree that civil law is generally known for the principle of passive judges. This is understandable because private law focuses on regulating individual interests with clear boundaries. However, it is crucial to understand that the role of judges in the civil justice system is much more complex than simply applying existing laws. When a case is submitted to court, the judge has more responsibility to implement justice and ease of litigation in the process of resolving the case.

Article 5 paragraph (1) of Law No. 48 of 2009[4] concerning judicial power states: "Judges and constitutional judges are obliged to explore, follow and understand the legal values for society", which means that judges must be active in providing space for justice to people seeking access to justice, not only giving unacceptable decisions, so that the main case that should be tried, becomes invalidated due to the unacceptable decision. To realize the judge's obligation to explore and provide a sense of justice to society, changes are needed in the concept of civil procedural law in the future (Rijanto, 2019).

Judges' activeness is really needed, especially if justice seekers are not represented by advocates. As chairman of the trial, the judge does not play a passive role, but must actively overcome all handicaps and obstacles for the trial to proceed smoothly. Regarding the principle of passive judges, its application is limited to judges who cannot determine the extent of the case and the initiative to file or end the case is completely determined by the parties. After a civil case is officially submitted by the parties to court, the judge must begin to be active starting from the pre-trial stage. Article 4 paragraph (2) Law No. 48 of 2009[5] concerning Judicial Power is the juridical legitimacy of judges' activities. This provision emphasizes that the court helps justice seekers and tries to overcome all handicaps and obstacles to achieve justice in a simple, fast and low-cost process. Simple means that the examination and resolution of the case are carried out effectively and efficiently, while low cost means that the costs to settle the case can be afforded by the public. HIR[6] and RBg[7] had placed judges in an active position in the pre-trial, trial and post-trial (execution) stages (Afriana, 2022).

In addition, many members of the public lack knowledge of legal procedures and often feel confused or do not understand how to engage in court. This can negatively impact their efforts to file a lawsuit and their ability to defend themselves in the judicial process. One of the common problems that often occurs is a lack of understanding of the formal requirements that must be taken into account when preparing a

[1] Revised Inland Regulations. (1950, June). Retrieved from https://www.hukumonline.com/pusatdata/detail/27228/herzien-inlandsch-reglement-%28h.i.r%29-%28s.-1941-44%29-reglemen-indonesia-yang-diperbaharui-%28r.i.b.%29/document.
[2] Provisions Governing the Administration of Justice in Regions Outside the Java and Madura. (1927). Retrieved from https://pta-jambi.go.id/attachments/article/1110/RBg.pdf.
[3] Code of Civil Procedure. (1950, June). Retrieved from https://kepaniteraan.mahkamahagung.go.id/images/peraturan/undang-undang/rv_reglement%20op%20de%20rechtvordering.pdf.
[4] Law of the Republic of Indonesia No. 48 "On Concerning Judicial Authority". (2009, October). Retrieved from https://peraturan.bpk.go.id/Details/38793/uu-no-48-tahun-2009.
[5] Ibidem, 2009.
[6] Revised Inland Regulations. (1950, June). Retrieved from https://www.hukumonline.com/pusatdata/detail/27228/herzien-inlandsch-reglement-%28h.i.r%29-%28s.-1941-44%29-reglemen-indonesia-yang-diperbaharui-%28r.i.b.%29/document.
[7] Provisions Governing the Administration of Justice in Regions Outside the Java and Madura. (1927). Retrieved from https://pta-jambi.go.id/attachments/article/1110/RBg.pdf.

lawsuit in accordance with the formal civil law or applicable civil procedural law. Many parties ignore these guidelines and end up filing lawsuits that do not comply with legal requirements, which can ultimately make the lawsuit inadmissible by the court.

Sometimes, plaintiffs in their lawsuits may misclassify the basis of their lawsuit, by stating that the defendant has committed an unlawful act, even though in fact the legal relationship between the plaintiff and the defendant is based on an agreement (default). This is an example of ignorance of the law, which can result in confusion in the legal process (Putra, 2023). Therefore, judge's activeness in guiding the parties involved in the case, especially those who do not have legal experience, is very important. Judges must be able to provide directions, explain procedures, and help parties understand their rights and obligations in the judicial process. This will help create a more fair and more equitable justice system, where everyone has the same opportunity to access justice before the law.

In carrying out his role, a judge must always prioritize the principle of impartiality. This principle is the main foundation in ensuring that every party involved in the justice process has the same opportunity to access and obtain justice. Impartiality requires judges to act without bias or personal views influencing their legal decisions. In the context of Indonesian law, this principle has been mandated by Article 5 (1) of Law 4/2004[1] which expressly states that courts judge shall examine a case according to the law without discriminating between people.

Apart from that, Article 5 (2) of Law 4/2004[2] also emphasizes the role of the court in assisting justice seekers and trying to overcome all handicaps and obstacles that may arise in the judicial process. The aim of this provision is to ensure that justice can be served at a simple, fast and at an affordable cost for all parties involved. This is important because slow, complicated and expensive judicial processes can be a barrier to individuals seeking access to justice.

In practice, the wisdom and activeness of a judge is fundamental to achieve this goal. The judge must be able to conduct the trial efficiently, ensure that the parties to the proceedings understand the applicable procedures, and provide the necessary guidance to ensure that their rights are fulfilled. In situations where parties to a proceeding may have difficulty formulating their claims or understanding the proper legal basis, a judge can provide the necessary guidance so that the judicial process runs smoothly. Thus, the wisdom and activeness of judges in upholding the value of impartiality, assisting justice seekers, and overcoming obstacles in justice are key elements in creating an efficient, fair and equitable justice system. To achieve justice through the courts, judges have a critically vital role in ensuring that the rights and obligations of each party are respected, and that justice can truly be achieved.

Analysis of regulation on judicial authority in the implementation of preliminary examination. The principle of courts should be conducted in a simple, fast and at low-cost process has been crystallized in the Article 4 paragraph (2) of Law No. 48 of 2009[3]. This article has the meaning of sociological or juridical benefits to speed up access to justice and provide greater access to justice for the community. It is stated in Article 4 paragraph (2) of Law No. 48 of 2009 concerning Judicial Power which reads: "The court helps justice seekers and tries to overcome all handicaps and obstacles to achieve justice in a simple, fast and low-cost process"[4]. The word "simple" means: no exaggeration; there are not many additions and supplements. In the Elucidation to Article 2 paragraph (4) of Law 48/2009[5], it is stated that "What is meant by "simple" is that the examination and resolution of cases is carried out in an efficient and effective manner". The definition of efficient in examining and resolving cases is related to the used time, costs, and procedures or events, while the meaning of effective is related to the judge's decision. A decision is said to be effective if the decision has three elements, namely executable/implementable, providing legal certainty and fostering legal unity.

As stated above, the General Explanation No. 8 of Law 14/1970 also states: "The provision that justice is carried out in a simple, fast and at low-cost process must still be adhered to, which is reflected in the law on criminal procedural law and civil procedural law which contains regulations regarding a much simpler procedure for examination and proof"[6]. The manifestation of "simple" means that the examination and resolution of cases must be carried out efficiently and effectively as stipulated in Article 2 paragraph (4) of Law 48/2009[7] that justice is carried out in simple, fast and at low cost. Simple can also be interpreted as a process that is not convoluted, not complicated, clear, straightforward, non-interpretable, easy to understand,

[1] Law of the Republic of Indonesia No. 4 "On Concerning Judicial Power". (2004, April). Retrieved from https://peraturan.bpk.go.id/Details/40464/uu-no-4-tahun-2004.
[2] Ibidem, 2004.
[3] Law of the Republic of Indonesia No. 48 "On Concerning Judicial Authority". (2009, October). Retrieved from https://peraturan.bpk.go.id/Details/38793/uu-no-48-tahun-2009.
[4] Ibidem, 2009.
[5] Ibidem, 2009.
[6] Ibidem, 2009.
[7] Ibidem, 2009.

easy to carry out, easy to apply, systematic, as well as concrete, both from the perspective of justice seekers and law enforcers who have very diverse levels of qualifications, both in terms of educational potential, socio-economic conditions, culture and so on.

The word "fast" means: immediate; quick; movement, travel in a short time (Center for Language Guidance and Development, 1976). In the Explanation to Article 4 paragraph (2) of Law 14/1970[1], the meaning of the word fast is stated: "There is no need for complicated examinations and procedures that can take years to process…". The word "cost" means: money spent to do something; costs. Meanwhile, the word "low" means easy to carry out (regarding payment). So low-costs are defined as costs that can be paid. In the Elucidation to Article 2 paragraph (4) of Law 48/2009[2], it is stated that "What is meant by" low costs" refers to the costs for settling the case that can be afforded by the people".

Low costs imply that seeking justice through judicial institutions means that people do not just have hope for a guarantee of justice in it, but there must be a guarantee that justice is not expensive, justice cannot be materialized and justice is independent and free from prices that undermine the value of justice itself. Low costs are intended to be borne by the people. High costs of trial generally cause the concerning parties to be reluctant to submit rights claims to the court.

One model of simplifying the case process is the resolution of cases using a fast procedure oriented towards filing a lawsuit examination using a simple procedure at the general court of first instance (Rahman & Wicaksono, 2016). The Fast Trial Procedure is applied in the general court environment to make its implementation more effective so that cases with a certain value can be decided instantly at the first level. In the initial stage, the Fast Trial Procedure will be implemented in the District Court (not a special court). Still, it will be carried out in a certain room to show its specialization in procedural law and simple administration. The Fast Trial Procedure can also convene in locations where minor cases or people's daily cases have the potential to arise through "zitting Plaats". "Zitting Plaats" itself is an out-of-court hearing place located within the court's jurisdiction and functions as a permanent hearing forum for holding trials for all types of cases filed by justice seekers.

It must be admitted that dispute resolution at the District Court level is inefficient, the resolution period is long, the case costs are also high, and not to mention expensive attorney fees, even though civil disputes require fast and simple resolution, they still need binding legal force as is the case with a court decision (Hidayat, 2023). Therefore, with the birth of regulations regarding models for resolving civil disputes using simple procedures, it is hoped that this will be a step to reducing legal mechanisms and processes in resolving civil disputes, which will have an impact on increasing the trust of the justice-seeking people towards law enforcement in Indonesia.

On the other hand, in terms of implementing the low-cost principle, there are two types of legal assistance, the first is *prodeo* legal assistance and the second is *pro bono* legal assistance; regarding Guidelines for Providing Legal Services In Court for Underprivileged People. Meanwhile, *pro bono* legal assistance is legal assistance provided by advocates for free of charge, which is regulated in Article 22 paragraph (1) of Law No. 18 of 2003[3] concerning Advocates which strictly regulates, that advocates are obliged to provide free legal assistance to those seeking justice but unable to afford it (Many & Sofian, 2021). The word "mandatory" has made *pro bono* legal assistance a necessity for every Indonesian advocate.

In the civil trial process, in particular, no scheme or mechanism applies the fast principle. Many people are trapped by lengthy legal processes in seeking justice. The implementation of the fast principle contained in Article 4 paragraph (2) of the Judicial Power Law[4] should be reflected in the existence of regulations to create completeness and consistency in the application of the law in the entire scope of the judiciary. This lack of completeness creates a situation where people cannot access justice quickly and effectively (Sitorus, 2018). The main problem that often occurs is that many lawsuit cases are decided as inadmissible. With this decision, the plaintiff has to repeat the submission of the lawsuit to the court with uncertainty whether the lawsuit will be accepted. Based on this problem, laws, and regulations in Indonesia already have a fair fundamental basis which is contained in Article 4 Paragraph (2) of the Law on Judicial Power to further regulate the realization of the implementation of fast trial, especially in the scope of civil justice.

Analysis of Articles 119 and 132 HIR in the frame of preparatory examination. The formulation of the claim letter prepared and submitted by

[1] Law of the Republic of Indonesia No. 14 "On Basic Provisions on Judicial Authority". (1970, October). Retrieved from https://peraturan.bpk.go.id/Details/47929/uu-no-14-tahun-1970.
[2] Law of the Republic of Indonesia No. 48 "On Concerning Judicial Authority". (2009, October). Retrieved from https://peraturan.bpk.go.id/Details/38793/uu-no-48-tahun-2009.
[3] Law of the Republic of Indonesia No. 18 "On Advocates". (2003, April). Retrieved from https://peraturan.bpk.go.id/Details/43018/uu-no-18-tahun-2003.
[4] Law of the Republic of Indonesia No. 48 "On Concerning Judicial Authority". (2009, October). Retrieved from https://peraturan.bpk.go.id/Details/38793/uu-no-48-tahun-2009.

the plaintiff is the basis of the lawsuit and becomes a reference in the examination and trial of the case decision in court. If the lawsuit does not meet the formal requirements for a lawsuit, the legal consequence is that the lawsuit will be declared as inadmissible. Requirements regarding the content of the lawsuit are contained in Article 8 of the Rv[1] which requires that the claim in the lawsuit contains the identity of the parties, and concrete arguments regarding the existence of a legal event which is the basis and reasons for the claim or better known as *fundamentum petendi* or *posita*, and the demands or *petitum*.

In pre-trial, namely the examination of the formal requirements, the formulation of the lawsuit letter is required to meet the formal requirements according to the applicable legal provisions and statutory regulations. The formal requirements, as regulated in Article 118 and Article 120 of HIR[2], are:

1) Submitted (addressed) to District Court in accordance with Relative Competency;
2) Given date;
3) Signed by plaintiff of its lawyer;
4) Identity of the parties;
5) Fundamentum Petendi (basis of claim);
6) *Petitum* / demand (plaintiff's main demands);
7) Formulation of Accesoir claim.

For the lawsuit submitted to court by the plaintiff to be in accordance with the formulation of the lawsuit or the lawsuit is not vague, it is the authority of the chief judge of the court to provide advice to the plaintiff as regulated in Article 119 of HIR[3]. Law No. 48 of 2009[4] concerning Judicial Power also states in Article 4 paragraph (2) "The court assists justice seekers and tries to overcome all handicaps and obstacles to achieve simple, fast and low-cost justice"[5]. The manifestation of the active judge principle in the process of submitting a lawsuit in the district court can be in the form of explaining the form of the lawsuit (Makalew *et al.*, 2023), offering changes in the contents of the lawsuit if it turns out there are mistakes, so that the *posita* (the arguments for the lawsuit) and the *petitum* (the main points of the plaintiff's claim) can be clear and sound as it should be.

Judge's authority to examine and provide direction in the formal requirements examination process at the civil trial stage before entering the main case examination is limited by the conservative principle of passive judge, which means the judge does not take the initiative or interfere more deeply in the case being submitted. In fact, Article 119 of HIR reads: "The Chief Judge of the district court has the power to provide advice and assistance to the plaintiff or his representative regarding the submission of a lawsuit"[6]. The text of the explanation of the article is: "This regulation is beneficial for people seeking justice, who usually have no knowledge of the law in general and are not familiar with the examination of civil cases in particular, and cannot afford the help of a legal advisor. This regulation is actually contrary to the general prohibition on judges in cases that have been submitted to their court, or which they can reasonably expect will be submitted to them, either directly or indirectly, to provide advice or assistance to the conflicting parties or their lawyers, but it turns out to be in accordance with the law. with the spirit of the Basic Law on Justice (Law No. 14/1970) Article 5 paragraph (2) which states that in cases, the Court assists justice seekers and gives its best aid to overcome all obstacles to achieve justice in a simple, fast and low-cost process"[7].

This article authorizes the Chief Judge of the Court to provide aid and assistance to the plaintiff in completing the formal requirements. This article is intended for people who lack knowledge about legal and court procedures and provisions. Thus, it can be said that in the HIR system, the role of judges is not as passive as in the Rv system. If Article 119 of HIR[8] is genuinely implemented, then the possibility of the lawsuit being declared inadmissible because it was incomplete will certainly not occur, unless the incompleteness or imperfection is only discovered during the trial.

According to Supreme Court jurisprudence, changes to claims or additional claims in a case submitted to court can be permitted as long as these changes do not change the basis of the initial claim (*posita*) and do not harm the interests of the defendant in his efforts to defend himself. This is in accordance

[1] Code of Civil Procedure. (1950, June). Retrieved from https://kepaniteraan.mahkamahagung.go.id/images/peraturan/undang-undang/rv_reglement%20op%20de%20rechtvordering.pdf.
[2] Ibidem, 1950.
[3] Revised Inland Regulations. (1950, June). Retrieved From https://www.hukumonline.com/pusatdata/detail/27228/herzien-inlandsch-reglement-%28h.i.r%29-%28s.-1941-44%29-reglemen-indonesia-yang-diperbaharui-%28r.i.b.%29/document.
[4] Law of the Republic of Indonesia No. 48 "On Concerning Judicial Authority". (2009, October). Retrieved from https://peraturan.bpk.go.id/Details/38793/uu-no-48-tahun-2009.
[5] Ibidem, 2009.
[6] Code of Civil Procedure. (1950, June). Retrieved from https://kepaniteraan.mahkamahagung.go.id/images/peraturan/undang-undang/rv_reglement%20op%20de%20rechtvordering.pdf.
[7] Law of the Republic of Indonesia No. 14 "On Basic Provisions on Judicial Authority". (1970, October). Retrieved from https://peraturan.bpk.go.id/Details/47929/uu-no-14-tahun-1970.
[8] Code of Civil Procedure. (1950, June). Retrieved from https://kepaniteraan.mahkamahagung.go.id/images/peraturan/undang-undang/rv_reglement%20op%20de%20rechtvordering.pdf.

with the opinion contained in the Supreme Court Decision No. 209 K/Sip/1970[1], dated March 6, 1971, which emphasized that "changes in claims must not conflict with the principles of civil procedural law, as long as they do not change or deviate from the occurring material events". become the subject of the case, even though there are no subsidiary claims, to maintain the implementation of the principles of fair trial". In other words, the Supreme Court recognizes the need for flexibility in submitting changes or additions to claims so that the legal process can run more fairly, without compromising the basic principles of civil procedural law. Meanwhile, judges' activeness is also contained in Article 132 of HIR, which reads: "The Chief Judge has the right, when examining, to provide information to both parties and will indicate that the law and information they can use if he deems necessary, so that the case proceeds well and in an orderly manner"[2].

This regulation, similar in nature to the regulation in Article 119 of HIR[3], is essentially contrary to the principle that a judge in settling a case submitted to the court, or which he can reasonably suspect will be brought before him, is directly or indirectly prohibited from giving advice or assistance to the conflicting parties or their lawyer, however, it is very useful for the smooth running of the court in general and for the interests of both parties in particular, and this is also in accordance with the spirit of the Basic Law on Justice (Law No. 14/1970) Article 5 paragraph (2) which determines that in civil cases, the Court assists those seeking justice and tries as hard as possible to overcome all obstacles to achieve simple, fast and low-cost justice[4].

Judge activeness according to the HIR and RBg systems is based on the provisions in Article 132 of HIR[5] and Article 156 of RBg[6] which give freedom to Judges to provide appropriate information to both conflicting parties and provide explanations to the conflicting parties regarding the existence of the right to take legal action and the right to present evidence at trial. This is intended so that the examination of the case can run well and in an orderly manner. The forms of information referred to include, among other things, the form of the lawsuit, regarding changes to the lawsuit, including if there are mistakes in the lawsuit so that the *posita* and *petitum* can be more clear and more meaningful as they should be, but any changes in the lawsuit must not exceed/contradict the limits of the material events that form the basis of the plaintiff's claim (*petitum*) and changes to the claim cannot be made by the defendant.

When examining civil cases, judges actively lead the trial, run the proceedings, and assist both parties in the case in finding the truth (Sunarto, 2016). However, when examining civil cases, the judge must follow through and the judge is bound to the events presented by the parties (*secundum allegata iudicare*). In order to implement the principle of "fast", civil judges must begin to be active in trials, namely the process of examining the plaintiff's formal requirements and the plaintiff's abilities. The judge must be active in studying the case file after the case file has been handed over to him, which is one of the most important initial stages in the judicial process. This stage involves analysis and in-depth understanding of legal documents related to the case. In this context, the judge must ensure that all necessary information is available, including evidence, testimony and legal arguments from both parties. The judge must consider various factors, such as the availability of the parties, witnesses, and experts who will testify at the trial. Apart from that, the judge must also pay attention to the location of the residence of the conflicting parties. This is important so that the parties can prepare themselves well to attend the trial. Next, the judge must order the bailiff to summon the parties to the lawsuit. The validity of the summons is vital, because this will directly impact on the validity of the trial as a whole. If there is a mistake in the summons process, then the trial may be deemed invalid. Therefore, judges must ensure that all legal procedures have been followed correctly, that the rights of the parties have been safeguarded, and that any decisions taken are based on evidence and applicable law. In this way, a judicial process based on the principle of fast, simple, and low cost can be realized. All of these steps are interrelated and contribute to the final outcome of a legal case.

Judge's authority in formal examination in the scope of State Administrative Court and Constitutional Court. The formal requirements as stipulated in the civil procedural law provide a reason for the defendant to submit an exception against the

[1] Decision of the Supreme Court of the Republic of Indonesia No. 209 K/Sip/1970. (1970, March). Retrieved from https://putusan3.mahkamahagung.go.id/direktori/putusan/23202.html.
[2] Code of Civil Procedure. (1950, June). Retrieved from https://kepaniteraan.mahkamahagung.go.id/images/peraturan/undang-undang/rv_reglement%20op%20de%20rechtvordering.pdf.
[3] Ibidem, 1950.
[4] Law of the Republic of Indonesia No. 14 "On Basic Provisions on Judicial Authority". (1970, October). Retrieved from https://peraturan.bpk.go.id/Details/47929/uu-no-14-tahun-1970.
[5] Revised Inland Regulations. (1950, June). Retrieved from https://www.hukumonline.com/pusatdata/detail/27228/herzien-inlandsch-reglement-%28h.i.r%29-%28s.-1941-44%29-reglemen-indonesia-yang-diperbaharui-%28r.i.b.%29/document.
[6] Provisions Governing the Administration of Justice in Regions Outside the Java and Madura. (1927). Retrieved from https://pta-jambi.go.id/attachments/article/1110/RBg.pdf.

lawsuit submitted by the plaintiff to be declared inadmissible by the panel of judges (Putra *et al.*, 2020). It is necessary to find new laws to reform the civil justice bureaucracy in Indonesia. Matters relating to administration and formal requirements for filing a lawsuit can be done in a preliminary examination mechanism to improve a lawsuit that has not meet the requirements in formal civil provisions, where the preliminary examination hearing mechanism has been established and implemented in other general court jurisdictions, namely in the state procedural law of the administrative court which is known as the dismissal procedure mechanism/preparatory examination, and the procedural law of the constitutional court known as the preliminary review.

Deliberative meeting, which commonly also known as the Dismissal Process, or screening stage, is regulated in Article 62 of Law No. 5 of 1986 concerning the State Administrative Court (PTUN)[1]. In this deliberative meeting, the chief of the court examines the submitted lawsuit, whether the lawsuit meets the requirements as regulated in the State Administrative Court Law and whether it is within the authority of the State Administrative Court to try it. This provision was made considering that the State Administrative Court is a new agency in Indonesia, so many people still do not fully understand the functions, duties, and authority of the State Administrative Court, as well as the procedural law that applies to it. This means that if all lawsuits go straight to the Trial Examination, it is feared that it will only be a waste of time, not only for the Plaintiff but also for the Court and the Defendant, even though the Defendant here is a State Administrative Official who generally has quite busy executive duties (Zurahmah, 2014).

A conclusion can be drawn that the consideration for doing the dismissal procedure is to create efficiency in the procedural process in PTUN trials. Based on the argument above, submitting all lawsuits without a filter will waste time and material for the defendant officials carrying out a mandate/functional public interest. This kind of proceeding should also be carried out in civil trials, which have a higher urgency regarding the private interests of each individual. However, to date there is no process similar to the dismissal procedure in the PTUN, where in practice, many declared inadmissible decisions occur due to defects in the formal requirements in civil trials. This really hinders the realization of the principle of fast, simple and low-cost justice because the plaintiff has to repeatedly file a lawsuit just because of a formal error without any guidance or direction from the Panel of Judges.

The process or stage of examining formal requirements before examining a case in court can be found in the procedural law of the Constitutional Court, which is called preliminary examination. Clarity of petition's material is one of the areas of preliminary examination, so the issue requested for trial can be formulated and understood clearly, both by the applicant and by the constitutional judge. This is certainly necessary so that the trial examination can be carried out effectively and focus on the requested issues. In this preliminary examination, the constitutional judge is obliged to provide advice to the applicant on completing and/or revising the application. The provisions of Article 39 paragraph (2) of the Constitutional Court Law[2] provide a time limit for applicants to complete or revise their application of no later than 14 (fourteen) days.

In terms of determining the extent of the case, and the initiative to file or end the case is determined entirely by the parties involved in the case, where in that case the judge must be passive. However, after a civil case is officially submitted by the litigant to the Court, the Judge must show an active attitude. However, in practice, procedural law actually becomes an obstacle in achieving the material truth of a case or even becomes an obstacle in accessing justice. This is reflected in the number of lawsuits declared as Not Accepted (NO), where the court decided not to investigate further regarding the subject of the case being filed. If examine it more deeply, civil matters are the highest volume of problems in society. Thus, this correlates with the effectiveness and efficiency of the court in implementing procedural law or the trial process. The court decided that the NO Decision contributed to the obstruction of law enforcement and access to material justice needed by the community.

Normatively, the existence of judges does not mean that judges are obliged to provide direction or guidance regarding the examination of formal requirements in a separate process, and judges also have no attachment or obligation to provide direction or guidance to litigants regarding the completion of formal requirements properly and in accordance with the rules. Judges play an important role in accelerating access to justice for anyone who needs it (Ramadhan & Rafiqi, 2021). However, in practice judges can rely on the principles of civil procedural law, one of which is the principle of active judge. In practice in Indonesia, judges are trapped in the paradigm of passive judges, which is misunderstood to mean that judges cannot interfere at all in a civil trial. In fact, passive judges in the civil justice process

[1] Law of the Republic of Indonesia No. 5 "On Administrative Court". (1986, November). Retrieved from https://peraturan.bpk.go.id/Details/46914/uu-no-5-tahun-1986.
[2] Law of the Republic of Indonesia No. 24 "On Constitutional Court". (2003, February). Retrieved from https://peraturan.bpk.go.id/Details/44069/uu-no-24-tahun-2003.

are limited to not interfere in determining the extent of the case. So, the judge has the authority to provide guidance and direction to the plaintiffs to guide them in improving all their formal requirements.

If viewed from the perspective of legal benefits, according to John Stuart Mill, legal benefits are seen from the elements of enjoyment, prosperity, and happiness as well as minimizing suffering in the implementation of the law in society (Septiansyah & Ghalib, 2018). The judge's actions or initiatives based on the principle of an active judge to provide direction and input to the parties in completing and improving their formal requirements will facilitate access to justice in society and reduce the number of cases being decided by NO Decision. The principle of utility must be prioritized in an effort to carry out prosperity and order between individuals in society (Pratiwi, 2022). With many cases being decided with a NO Decision, it will cause the community suffering because they have to go through a long and drawn-out trial or legal process.

In practice, civil procedural law sometimes becomes an obstacle in achieving material truth in a case or accessing justice. Many "Lawsuit is Unacceptable" decisions limit people's access to justice. Civil judges should be able to provide direction to litigants to ensure formal requirements are met. This will make it easier for the public to access justice and reduce the "Lawsuit is Unacceptable" decisions.

Judges being active in providing direction, is in accordance with the principle of active judges, helping to achieve legal benefits and justice in society. Judges do not have a normative obligation to provide guidance on formal requirements, but as a practical matter, they can do so to ensure the process runs smoothly. The judge may not interfere with the extent of the subject of the case, which is determined by the litigants. In the context of the dynamics of the civil trial process, with the large number of "Lawsuit is Unacceptable" decisions, judges should provide direction and wisdom to litigants regarding improving formal requirements. Society needs this guidance for better access to justice.

S. Sunarto (2016) highlighted the implementation of the active principle, whether the preliminary review had been conducted or not. He stated that judge has the power to be proactive on resolving trials. Scientist concluded that judge has the right to inform and educate the parties involved in the trial about the procedure and formal requirements for conducting a trial. The research delves into the long-standing debate surrounding the involvement of civil law judges in Indonesia, specifically focusing on the principle of passive judgeship versus active judgeship. Drawing from legal traditions within the Indonesian justice system, this research analyzed for a passive role of judges. According to this perspective, judges are expected to adhere strictly to established procedural laws, such as the HIR, which dictates that they refrain from making decisions on matters not explicitly raised by the plaintiff. This view emphasizes judges' responsibilities to oversee proceedings without actively interfering in the judicial process, thereby upholding the principle of passive judgeship.

On the other hand, S. Sunarto's study contends that judges should adopt an active role throughout the civil litigation process. This proactive approach entails judges actively engaging with parties involved in legal proceedings, providing guidance, and explaining legal rights and procedures. S. Sunarto's research underscores the importance of judges intervening to address formalities and streamline the legal process, particularly to minimize the occurrence of unfavourable decisions, such as cases being dismissed due to technicalities.

In comparing the results of the two research studies, several similarities and differences emerge. Firstly, both studies acknowledge the traditional view of passive judgeship as prevalent within the Indonesian legal system. However, while the first research maintains the importance of adhering strictly to this passive role, S. Sunarto's research emphasizes a shift towards a more active judgeship model. Regarding support or disagreement with conclusions, the first research may support its findings by emphasizing the importance of upholding established legal norms and traditions. It might be argued that maintaining a passive judgeship role ensures adherence to procedural fairness and consistency within the legal system. Conversely, S. Sunarto's research may argue that the active judgeship model is necessary to address shortcomings within the legal process, such as delays and inefficiencies, and to ensure access to justice for all parties involved.

While this research may prioritize upholding legal traditions and minimizing disruptions to established practices, S. Sunarto's research may prioritize innovation and adaptation to address contemporary challenges within the legal system. Through a comparative analysis of both research perspectives, the study seeks to provide a comprehensive understanding of the debate surrounding judges' roles in civil cases in Indonesia. By examining the implications of passive versus active judgeship principles at different stages of civil litigation, the research aims to contribute valuable insights to ongoing discussions on judicial reform and the administration of justice within the Indonesian legal system.

Conclusions

In the debate regarding the role of civil law judges in Indonesia, there are two conflicting views. Long-standing traditions in the Indonesian justice system recommend that judges act passively, in line with the principle of passive judges regulated in

legislation, such as the Civil Procedure Law (HIR). This principle states that judges are not permitted to give decisions on matters that the plaintiff does not request. This traditional view also emphasizes that the judge's job is only to supervise the proceedings in accordance with the applicable stages and procedures, without actively interfering in the judicial process.

Meanwhile, within the scope of the PTUN and Constitutional Court, it is known that there is a form of implementation of the active judge principle, namely by establishing a mechanism of preparatory examination or the Dismissal Process as well as a Preliminary Examination which aims to perfect the lawsuit submitted to the court. In this process, the judge is required to provide advice to the plaintiff or applicant regarding formal matters that can potentially complicate and prolong a trial process of the case in the court of law.

The presence of judges in civil preparatory examinations has no legal basis. Still, it is only limited to basic principles or in the form of an appeal for judges to take active initiatives in the trial process. Until now, there has been no manifestation of the "fast" principle or the principle of access to justice within the scope of civil justice which can answer the problem of the accumulation of cases filed in the court as well as many cases being decided with the Lawsuit is Unacceptable decision. The existence of the judge's authority to provide advice or direction regarding procedures for completing or improving administrative and formal matters in a lawsuit is only an optional initiative, not an obligation that the judge must carry out.

Future research in this area could investigate the effectiveness and impact of different models of judicial behaviour in civil proceedings in Indonesia.

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None.

■ References

[1] Afriana, A. (2022). Basic principles of passive and active judge in civil court. *Journal of Bina Mulia Law*, 7(1), 142-154. doi: 10.23920/Jbmh.V7i1.1078.

[2] Fahren, O. (2020). *The application of the principle of simple proof in bankruptcy cases in commercial courts (a special characteristic in the civil procedural law system)*. (PhD thesis, University of North Sumatra, Medan, Indonesia).

[3] Fikriyah, U. (2019). The active role of judges in examining witness testimonies in trials: Towards professional judges in the era of information technology advancement. *Al-Adalah*, 22(2), article number 145. doi: 10.35719/Aladalah.V22i2.19.

[4] Hidayat, D. (2023). Implementation and obstacles in civil dispute resolution. *Indonesian Legal Development Journal*, 5(1), 47-69. doi: 10.14710/jphi.v5i1.47-69.

[5] Makalew, J.M., Korah, R., & Gerungan, C.A. (2023). Juridical analysis of the *Niet ontvankelijke verklaard* (no) lawsuit in land disputes in civil procedure law. *Lex Administratum*, 11(2).

[6] Many, N., & Sofian, A. (2021). Free legal assistance (*pro bono*) as realization of access to justice for the poor in Indonesia. *Media Information of Social Welfare Research*, 44(3), 269-278.

[7] Marzuki, P.M. (2019). *Legal research: Revised edition*. Jakarta: Kencana Prenada Media Group.

[8] Merta, M.M., & Junaidi, J. (2020). Passive judge principles in Reglement Op De Rechtsvordering (R.V) and active judge principles in Herziene Indonesisch Reglement (HIR) in the Resolution of civil cases in court. *Journal of Legal Science*, 13(1), 60-77. doi: 10.31942/jqi.v13i1.3426.

[9] Prasetya, U. (2020). Analysis of the *Audi et alteram partem* principle in civil case trial process (Case No. 20/Pdt.G/2019/PN Pwr). *Amnesty: Law Journal*, 2(2), 57-75. doi: 10.37729/amnesti.v2i2.657.

[10] Pratiwi, E. (2022). Jeremy Bentham's utilitarianism theory: Purpose of law or legal product testing method? *Constitutional Journal*, 19(2), 268-293. doi: 10.31078/jk1922.

[11] Putra, I.G.A.K.B.W.A., Widiati, I.A.P., & Ujianti, N.M.P. (2020). Non-receivable lawsuit (Niet Ontvankelijke Verklaard) in plaintiff divorce lawsuits in badung religious court. *Legal Construction Journal*, 1(2), 305-309. doi: 10.22225/jkh.2.1.2565.305-309.

[12] Putra, R.H.M.H. (2023). Analysis of the basis of judges' consideration and legal consequences in rejecting divorce lawsuits that cannot be accepted (Niet Ontvankelijke Verklaard) in court from the perspective of civil procedure law. *Unes Law Review*, 6(2), 4843-4856. doi: 10.31933/unesrev.v6i2.1298.

[13] Rahman, F., & Wicaksono, D.A. (2016). Existence and characteristics of conditional decisions of the constitutional court. *Constitutional Journal*, 13(2), 348-378. doi: 10.31078/jk1326.

[14] Ramadhan, F., & Dwi Rafiqi, I. (2021). Study of constitutional court decisions cancelling all norms in the law. *Legality: Jurnal Ilmiah Hukum*, 29(2), 286-308. doi: 10.22219/ljih.v29i2.15434.

[15] Rijanto, B. (2019). *Module entitled history, sources, and principles of civil procedure law*. Tangerang Selatan: Universitas Terbuka.

[16] Sarmah, M., & Bohra, S. (2023). Right to speedy trial: Access to justice. *Law Journal*, 11(6), 965-983.
[17] Septiansyah, Z.B., & Ghalib, M. (2018). Utilitarianism concept in legal philosophy and its implementation in Indonesia. *Journal of Islamic Law and Social Institutions*, 34(1), 27-34.
[18] Sitorus, S. (2018). Legal efforts in civil cases (objection, appeal, cassation, judicial review and third-party objection). *Hikmah Journal*, 15(1), 63-71.
[19] Suadi, H.A., & Hum, S.M. (2021). *Renewal of civil procedure law in Indonesia*. Jakarta: Prenadamedia Group.
[20] Sultan, S. (2013). *The value of justice in the principle of formal truth in civil cases: A perspective from islamic legal philosophy*. (Doctoral dissertation, Islamic University of Alauddin Makassar, Makassar, Indonesia).
[21] Sunarto, S. (2016). Principle of active judge in civil cases. *Law and Justice Journal*, 5(2), 249-276. doi: 10.25216/jhp.5.2.2016.249-276.
[22] Toqsanbaeva, A.M.Q. (2023). The active role of the judge in the civil procedure in the context of the modern legislation. *Science and Innovation*, 1(8), 467-473. doi: 10.5281/zenodo.7443296.
[23] Weda, N.K.D.N.I., Arjaya, I.M., & Seputra, I.P.G. (2021). Application of the active judge principle (*dominus litis*) in hearings at the state administrative court (Case study Decision No.1/G/2017/PTUN. DPS.). *Journal of Legal Preferences*, 2(1), 27-32. doi: 10.22225/jph.2.1.3048.27-32.

Норма про наявність повноважень судді в попередньому розгляді справи як втілення принципу невідкладного провадження в цивільному процесуальному праві

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■ **Анотація.** Суттєвою проблемою індонезійської правової системи є доступність правосуддя в цивільному процесі. Ця проблема пов'язана насамперед із жорсткими й трудомісткими формальними вимогами, які перешкоджають ефективно вирішувати справи. Недотримання цих формальних передумов часто призводить до закриття справ, що стоїть на заваді застосування принципу невідкладного судового процесу. Ця публікація має на меті дослідити ступінь повноважень судді в оцінюванні цих формальних вимог під час попереднього розгляду справи в Індонезії. Для цього застосовано нормативно-правовий підхід до дослідження з акцентом на законодавчих і концептуальних аспектах. Первинні, вторинні та третинні правові джерела проаналізовано з використанням різних методів аналізу, зокрема граматичний та систематичний. Висновки виявляють дві протилежні позиції: принцип пасивного судді, згідно з яким судді є спостерігачами судового процесу без активної участі, і нову перспективу, що визначає роль активного судді. Концепція активного судді дає змогу суддям консультувати позивачів щодо вдосконалення їхніх позовних вимог, якщо вони не відповідають формальним вимогам, запобігаючи закриттю їхніх справ. В адміністративному та конституційному судочинстві передбачено певні механізми для перегляду та доопрацювання позовів на попередньому етапі. Однак важливо зазначити, що в цивільному судочинстві судді не мають конкретної правової бази для надання порад та рекомендацій позивачам, тож такі дії вважають факультативними. Відсутність конкретної реалізації принципів оперативності й доступності правосуддя в цивільному судочинстві призводить до накопичення нерозглянутих справ і численних відмов у відкритті провадження у справах. Результати дослідження може бути використано для подальшого нормативного регулювання норми про повноваження судді щодо забезпечення проведення попереднього судового розгляду

■ **Ключові слова:** активна роль судді; невідкладний судовий розгляд; доступ до правосуддя; процедура відводу; суд

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