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FOREWORD

Issue 27, Volume 4 of *Legal Horizons* brings together a diverse and conceptually rich collection of scholarly works that address enduring theoretical questions and pressing contemporary challenges in law, governance, and human rights. The contributions in this issue reflect the journal's commitment to fostering interdisciplinary dialogue, historical reflection, and forward-looking legal analysis within both national and international contexts.

Several articles engage with the historical and theoretical foundations of legal institutions and doctrine. The issue opens with the article by S. Prylipko and V. Korolyova, **"STAFFING OF JUDICIAL INSTITUTIONS UNDER THE JUDICIAL REFORM OF 1864"**, which offers a historical-legal analysis of judicial human resources as a foundational element of effective justice. By revisiting the judicial reform of the nineteenth century, the authors provide insights that remain relevant for understanding modern challenges of judicial independence and institutional capacity.

Comparative and transnational legal perspectives are developed in S. Masadikov's study, **"COMMON AND CIVIL LAW APPROACHES TO DOCUMENTARY EVIDENCE IN INTERNATIONAL ARBITRATION".** The article examines doctrinal differences and points of convergence between legal traditions, contributing to ongoing debates on procedural harmonization in international arbitration. Issues of legal doctrine and interpretation are further explored in O. Kunets' article, **"THE RELATIONSHIP BETWEEN JUDICIAL INTERPRETATION AND THE SPECIFICATION OF LEGAL NORMS: THEORETICAL APPROACHES"**, which systematizes theoretical models of judicial reasoning and their role in the development of law.

Public administration and democratic accountability form another important thematic block of the issue. V. Ladychenko and I. Lozinskyi, in "**AREAS AND FORMS OF PUBLIC CONTROL OVER THE ACTIVITIES OF EXECUTIVE BODIES"**, analyze mechanisms of public oversight as a prerequisite for transparency and good governance. Closely connected to this is M. Lysak's article, **"THE MECHANISM FOR ENSURING HUMAN RIGHTS UNDER CONTEMPORARY STATE-BUILDING CONDITIONS"**, which conceptualizes human rights protection as an integral component of modern state development.

The human-rights-oriented transformation of law enforcement is addressed in I. Sofina's contribution, **"THEORETICAL APPROACHES TO DETERMINING THE FUNCTIONAL PURPOSE OF THE NATIONAL POLICE IN THE CONTEXT OF HUMAN RIGHTS".** The author emphasizes the shift from a predominantly coercive model of policing toward a service-based and rights-centered approach.

Special attention in this issue is given to the protection of vulnerable groups and to legal responses under extraordinary conditions. N. Stepanenko and D. Rudenko, in **"CHILD RIGHTS IN THE FAMILY: LEGAL MECHANISMS FOR PREVENTING VIOLENCE AND DISCRIMINATION"**, examine preventive and protective legal instruments aimed at safeguarding children's rights within the family. Y. Hotsuliak's article, **"COMPULSORY EXPROPRIATION AND PROPERTY COMPENSATION UNDER MARTIAL LAW IN TRANSITIONAL JUSTICE"**, addresses complex questions of property rights, compensation, and justice in the context of martial law and post-conflict transition.

The issue concludes with the article by O. Korystin and G. Sobko, **"CURRENT STATE AND PROSPECTS FOR THE DEVELOPMENT OF THE SYSTEM OF CRIMINAL LAW PROTECTION**

OF SEXUAL FREEDOM AND SEXUAL INTEGRITY OF THE INDIVIDUAL IN UKRAINE”, which provides a thorough analysis of contemporary criminal law mechanisms and outlines directions for their further improvement in line with international standards.

Together, the articles in this issue of *Legal Horizons* provide nuanced perspectives on law’s capacity to respond to historical legacies, societal transformation, and contemporary crises. We trust that this volume will be of interest to scholars, practitioners, and policymakers, and will stimulate further research and debate on the evolving horizons of legal science.
— Editorial Board, Legal Horizons

Yurii Harust,
Editor-in-Chief
Legal Horizons

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STAFFING OF JUDICIAL INSTITUTIONS UNDER THE JUDICIAL REFORM OF 1864

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Abstract

The article analyzes the staffing of judicial institutions under the judicial reform of 1864. It is noted that the judicial reform was initiated in connection with the need to update the legislation and introduce new principles for the functioning of judicial institutions, and the main goal of the reform was to create a democratic court based on the traditions of the judiciary of European countries. It is emphasized that among the important innovations of the reform was the creation of peace and general justice, which covered most criminal and civil cases. It is noted that the peace courts functioned as a separate system, different from the general courts, with their own legal regulation, which included the involvement of peasants in civic life, emphasizing the equality of all before the law. It is emphasized that an important aspect of the reform was the election of justices of the peace, which ensured control over the electoral process, and elections were held by county zemstvo assemblies or city dumas, taking into account age, educational and property qualifications. It is noted that certain restrictions were established for candidates for the position of justice of the peace regarding persons who were under investigation, convicted of crimes, as well as those who were dismissed from service, which was aimed at ensuring the integrity and professionalism of judges in the new system. It is noted that in the conditions of the judicial reform, there was a clear shortage of qualified personnel, since the majority of judges had only a gymnasium education, which turned out to be insufficient for effective judicial activity. It is noted that judicial activity during the implementation of the reform became an independent sphere, which required reforming the mechanism for selecting judges, and therefore physical, social, moral and intellectual conditions were established for members of district courts. It is stated that the reform of judicial statutes introduced a new procedure for recruiting judges, which ensured their independence and professionalism. At the same time, it is substantiated that the introduction of mandatory legal education for judges increased the level of professionalism in the judicial system. It is also emphasized that the irremovability of judges and their financial security became important conditions for ensuring the independence of judges, judges could be transferred only with their own consent, and dismissal was possible only by court decision.

Key words: staffing; court; judges; judicial reform of 1864; judicial statutes

Introduction

The formation of a modern Ukrainian democratic legal state at the current stage of development requires ensuring the rule of law, which involves the establishment of mutual responsibility between the citizen and the state. One of the key components of this process is the functioning of an independent judiciary, which contributes to full compliance with the principle of accessibility of justice as a guarantee of effective protection of human and citizen rights and freedoms. Access to justice is considered as the ability of each individual to freely apply to judicial bodies and other legal institutions, to participate in legal proceedings at all their stages. This aspect is an important criterion for assessing the effectiveness of the judicial system in the state. Proper provision of access to justice creates conditions for the implementation of a wide range of fundamental rights, including the right to judicial protection, participation in legal proceedings, equality and adversarial status of the parties, as well as the right to a fair trial.

The judicial reform of 1864 became one of the key parts of the large-scale transformations carried out in the second half of the 19th century as part of the modernization of the state apparatus of the Russian Empire. The main task of this reform was to introduce a new judicial system that would meet the requirements of objectivity, transparency and accessibility of justice. As a result of the reform, the outdated and cumbersome judicial structure inherent in the feudal system was eliminated, and new institutions with a clear division of competences were introduced. The fundamental principles of the updated system were the independence of judges, the adversarial nature of the process, the openness of court sessions and the guarantee of the right of every citizen to legal protection. The reform also defined two main forms of judicial proceedings: civil and criminal. The institute of jurors acquired special importance, as it allowed society to take an active part in the administration of justice. The judicial system, reformed in 1864, was recognized as one of the most progressive in Europe at that time. The main principles of this reform contributed to the establishment of the rule of law and the strengthening of citizens' trust in justice. Although the system was not without certain shortcomings and limitations, it laid a solid foundation for the further development of the legal system in the territories of the former empire.

The judicial reform of 1864 put forward high requirements for judges, which laid the foundations of a professional and independent judiciary. First of all, candidates for judicial positions had to have a solid legal education and relevant practical experience. An important condition was the independence of judges from the executive branch: their irremovability in office was introduced and mechanisms for protection against external interference in official activities were provided. Only persons with an impeccable reputation and high moral qualities could hold a judicial position, which contributed to the growth of trust in the judicial system.

An equally important aspect was the age requirement – candidates had to reach a certain age, which indicated their maturity and accumulated life experience. The emphasis was also placed on the principles of impartiality, professionalism and strict adherence to laws and legal norms. This approach formed the basis for a modern understanding of the essence of justice.

Today, the relevance of the issue of reforming the judicial system is only increasing. Ensuring the independence of the judiciary, high qualifications of the judiciary, guaranteeing fair trial and legal certainty are of paramount importance. Effective legal protection, unity of judicial practice and transparency of decisions are key aspects designed to ensure citizens' access to the judicial system. All this will become a guarantee of proper protection of the rights and freedoms of every citizen from any unlawful encroachments.

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For the effective development of the justice system in Ukraine, it is necessary to focus on the realization that the modernization of public administration, including the complex of judicial institutions, and increasing the efficiency of the activities of judicial bodies must be accompanied by reliable legal support for this process. It is important to take into account the historical and legal experience of forming an independent democratic judicial system.

The issue of staffing judicial institutions in the context of the judicial reform of 1864 attracts considerable attention in modern academic literature. The variety of research approaches contributes to a broader understanding of the complexity of the challenges associated with this process. The collective monograph entitled "Judicial Power in Ukraine: Historical Origins, Patterns, Peculiarities of Development" (2014) emphasizes the specifics of the reform and its implementation. The authors of the book presented a thorough analysis of the functioning of the judiciary in Ukraine during the period when it was part of the Russian Empire. The procedures for administering justice both before and after the 1864 reform are described in detail, and the changes caused by subsequent judicial counter-reforms are also analyzed. The monograph carefully reveals the essence, content and forms of implementation of judicial power in the historical period under study, with an emphasis on historical experience that deserves consideration in the context of modern judicial reform in Ukraine.

Of particular interest are the works of Yu. Levchuk (Levchuk, 2016; 2017), which covered in detail the aspects of organizing judicial supervision over the activities of courts and officials and ensuring the functioning of the Kyiv Judicial Chamber. In particular, the issues of the legal principles of the formation of the judicial chamber, its procedural activities in the field of considering civil cases, as well as personnel and material and technical support are covered.

Among modern studies, the works of O. Tavartkiladze (Tavartkiladze, 2019), who focused on studying the activities of the Odessa Judicial Chamber, are particularly noteworthy. He carried out a comprehensive analysis of the functioning of this body of justice in the context of considering criminal and civil cases, as well as their various categories, and investigated the institution of judicial expertise in the processes considered by the chamber. In addition, the scientist focused in detail on the history of the creation of the chamber, its organizational and legal structure as part of the legal institutions of the Russian Empire. Considerable attention was also paid to the reform of the judicial system in the Russian Empire in the period of 1860–1870 and the role of the prosecutor in the work of the Odessa Judicial Chamber.

The issue of the impact of judicial reform on justice remains the subject of active scientific research. In this context, the articles of O. Gariaga and A. Frantz are of important analytical value. The authors conducted an in-depth analysis of the justice system in Ukrainian territories after the 1864 reform (Garyaga, Frantz, 2020) and investigated the functioning of the institution of justices of the peace within the framework of the judicial system of the Russian Empire at that time (Garyaga, Frantz, 2021).

Despite a significant amount of scientific research, a number of fundamental questions remain open. First of all, the historiographic analysis of access to justice under the judicial statutes of 1864 was studied mainly in the context of transformations of the judicial system of the Russian Empire, especially in connection with the judicial reform of the second half of the 19th century. Secondly, studies of the legislative norms of the statutes and the policy of autocracy in Ukraine of the late 19th and early 20th centuries focused mainly on the practical aspects of judicial reform and its role in the socio-political transformations of the state. Thirdly, most works that to some extent analyze the practical implementation of the democratic norms of the judicial statutes of 1864 have a limited source base. At the moment, there are no specialized monographs or scientific articles that comprehensively cover this topic. The existing historiographic base provides material only partially.

The purpose of this article is to study the staffing of judicial institutions under the judicial reform of 1864, to determine the specifics of the application of accumulated experience in the modern conditions of reforming the judicial system in Ukraine. Specific objectives include: revealing the prerequisites and features of the introduction of judicial statutes in the process of reforming the judicial system in the Russian Empire; analyzing the legislative norms of judicial statutes regarding the functioning of judicial institutions; highlighting the specifics of the application of the norms of judicial statutes in the field of staffing of courts in the second half of the 19th century.

Materials and Methods

The methodology of this study is based on the application of a complex of general scientific and special methods of scientific knowledge, which provided the opportunity to conduct a comprehensive analysis of the staffing of judicial institutions in the context of the judicial reform of 1864. To solve the research problem, theoretical approaches were combined with the analysis of practical materials obtained on the basis of studying the legislation of that time, legal documents and the functioning of courts. The basis of the study was the use of the dialectical method, which allowed to deeply reveal the subject of the study and achieve the set goals and objectives. The use of this method contributed to a detailed analysis of state and legal phenomena and processes in their relationship with society, which made it possible to identify patterns and trends in the functioning of the judicial system in the Ukrainian territories of the Russian Empire during the implementation of the reform of 1864. During the work on the study, special scientific methods were also used. The method of system analysis was used to study the sources and regulatory framework. The use of the historical method made it possible to trace the dynamics of changes in the justice system in the Ukrainian provinces during the second half of the 19th - early 20th centuries. The institutional method became the key to identifying the specifics of the activities of judicial bodies in Ukrainian lands. Using the structural-functional method, it was possible to investigate the real activities of judicial institutions. The use of the historical-comparative method made it possible to assess the content and essence of judicial reforms in the context of their comparison with previous periods. The normative-comparative method provided an analysis of the norms of the judicial statutes of 1864 and their impact on the process of administering justice. A comprehensive consideration of the practice of resolving civil and criminal cases became possible thanks to comparative legal analysis. The legal-technical method helped to trace the mechanisms of making specific decisions in the courts, in particular in the context of implementing the regulatory provisions of the reform.

The empirical basis of the study was the legislative acts that were in force throughout the Russian Empire in the second half of the 19th century. This included decrees and orders of the heads of state of that time, as well as judicial statutes, which became the basis for the implementation of the judicial reform of 1864. The statutes consisted of four sections: the first - "Establishment of Judicial Institutions", which can be equated to the modern law on the judiciary; the second and third - "Statute of Criminal Procedure" and "Statute of Civil Procedure", represented two procedural codes; the fourth - "Statute on Punishments Imposed by Justices of the Peace", actually performed the function of a code for the consideration of cases by justices of the peace. The study was conducted in several stages. First, the relevance of the topic was determined and the main directions of analysis were outlined. Particular attention was paid to an overview of the state of scientific development of the problem and analysis of the source base. The work studied the prerequisites and specifics of the implementation of judicial statutes within the

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framework of the reform of the judicial system of the Russian Empire. A separate aspect was the assessment of legislative provisions on personnel policy and the study of the impact of personnel provision on the effectiveness of the functioning of judicial institutions in the second half of the 19th century. The research methodology was based on the integration of theoretical principles with practical approaches, which provided the opportunity to obtain a comprehensive and in-depth result. The use of various methods and the analysis of a wide range of sources contributed to the achievement of objectivity and depth of conclusions. This allowed the formulation of reasoned recommendations, ensuring the complexity and comprehensiveness of the research work.

Results and Discussion

One of the key innovations of the reform was the introduction of justice of the peace. Its jurisdiction covered most criminal and civil cases related to the everyday life of citizens. The task of the reformers was to assign to the peace courts an important social mission - to integrate the peasant population into the general civil life, built on the principles of equality of all before the law (Tsvik & Petryshyn, 2008). In this context, it is worth supporting the opinion of O. Slynko (2019) that the proposed model belonged to the continental (French) model of the institution of the peace court.

The peace justice system was created as a separate, autonomous component of the judicial system, which significantly differed from the traditional approach to the organization of courts in the practice of that time. This was also expressed in the delimitation of the legal regulation of the activities of peace and general courts. The procedures of proceedings in peace courts were clearly regulated by the provisions of the chapter "Procedure of Proceedings in Peace Court Institutions" in accordance with the Statute of Criminal Procedure (Articles 33–199) and the Statute of Civil Procedure (Articles 29–201). Regarding the imposition of penalties, justices of the peace were guided by the provisions of the Statute on Punishments imposed by justices of the peace (Kravchuk, 2016).

One of the important features was that justices of the peace were elected. Such selectivity was probably due to two factors: first, the difficulties of the authorities in finding a large number of candidates for these positions; second, the authorities' confidence in the effective functioning of the mechanisms for controlling and correcting the electoral process. Elections were held by county zemstvo assemblies or city dumas among persons who met certain requirements: reaching the age of 25, having secondary or higher education, or three years of work experience in positions that provide the necessary qualifications for the conduct of judicial proceedings. The criteria also included property qualifications (Kravchuk, 2016).

At the same time, restrictions were established for holding the position of justice of the peace. Persons who were under investigation or trial for crimes or offenses, as well as those who had been sentenced to imprisonment or more severe punishments, could not be appointed to such a position. In addition, the list of restrictions included persons excluded from service in judicial or spiritual structures due to vicious behavior, deprived of membership in communities or noble assemblies by the decision of the relevant estates to which they belonged; as well as those who were declared insolvent debtors or placed under guardianship due to wastefulness. Similar restrictions also applied to clergy (Obrusna, 2012).

It is worth emphasizing that the justice of the peace was semi-professional in nature. Justices of the peace were entrusted with the function of reconciliation, and they had to resolve conflicts and disputes mostly not according to formal laws, but guided by conscience and local customs. At the same time, the legislator did not impose a mandatory requirement for such judges to have a legal education. However, this was explained by the fact that in the conditions of the weak level of development of legal education at that time, it was almost impossible to find several thousand lawyers to perform the duties of justices of the peace alone. More attention was paid to the personal qualities of candidates: knowledge of local traditions, common sense, wisdom of life and a friendly attitude towards people (Kravchuk, 2016).

There was an obvious shortage of educated specialists to occupy such positions. For the most part, justices of the peace in the provinces, especially in the first decades after the reforms, had only a gymnasium education, which turned out to be insufficient for effective activity in this position. An additional obstacle was the established property qualification. Although formally the state had enough representatives of the nobility who met the property requirements, far from all of them were interested in working in the judicial sphere (Birkovich, 2020). It is not surprising that at the beginning of the formation of the corps of justices of the peace in many provinces and counties there was a serious shortage of candidates. In some regions there were even no people willing to participate in the elections for the position of justice of the peace. In connection with the above circumstances, the county zemstvo assemblies carried out the process of electing justices of the peace from among persons who formally did not meet the established qualifications, but had gained high public trust and recognition due to their merits and useful activities. The election procedure was organized according to the following mechanism: the list of candidates for the position of justice of the peace was formed by the county representative of the nobility in agreement with the local authorities and the current justices of the peace of each district approximately three months before the elections. This list included all justices of the peace – both district and honorary – who permanently resided in the given county and met the established legislative requirements for holding a judicial position (Sereda, 2014). The formed list was sent to the governor for final approval and was published in provincial publications two months before the elections. During the next term, the zemstvo assemblies considered applications for amendments to the list. After the final version of the list was adopted, the names of the candidates were announced publicly, which served as part of the official procedure for holding elections. The status of elected justice of the peace was granted to those candidates who received the largest number of votes. Judicial practice gradually formed as an autonomous and specific branch of administrative activity, which necessitated the revision of the organizational and legal procedures for selecting candidates for judicial positions and delegating relevant powers to them. To ensure the effective functioning of judicial institutions of general jurisdiction, such as district courts, court chambers, and the cassation senate, there was an urgent need for highly qualified and professional personnel. The solution to this problem largely depended on the implementation of qualifications detailed in the legislation (Prokopenko, 2016).

The position of a district court judge required candidates to meet a number of important criteria:

1. Physical (natural) conditions. Persons with certain physical disabilities, such as blindness, deafness, muteness, or loss of consciousness, could not serve as judges, as this contradicted the general prohibition on their admission to the civil service. The law also specified that only men were allowed to serve as judges. Although the law did not provide for a direct minimum age limit, reaching the age of 25 was considered necessary due to other requirements, such as education and experience in judicial practice.

2. Social conditions. Judges had to be subjects of their state and observe restrictions on the incompatibility of judicial office with other state or public services, participation in trade and industrial organizations, and credit institutions. In addition, almost all district court judges belonged to the Orthodox faith. Orthodoxy was only required for cases of crimes related to religion or the church, although this requirement was not universal.

3. Moral requirements. Candidates were required to have “moral integrity.” Persons

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who were under investigation or convicted of crimes (regardless of pardon or amnesty), had lost their rank or status due to moral dishonesty, or had been expelled from noble or corporate societies by decisions of the respective estates could not hold judicial office. Moral virtues were key both for appointment to office and for the performance of judicial activities. Judges were subject to dismissal for shameful actions outside of service that violated the dignity of their status and undermined confidence in them.

4. Intellectual requirements. Candidates had to have a legal education or appropriate practical training. Although this requirement was not always strictly enshrined in legal statutes, persons without formal education could hold the position of judge, provided that they had practical experience in the field of justice. This compromise was due to the concerns of the reformers about the insufficient number of professionals with a legal education to fill judicial vacancies.

Thus, each judge had to meet the stated physical, social, moral and intellectual requirements in order to ensure the proper administration of justice and maintain high standards of this profession.

The judicial statutes and the new judicial system attracted considerable attention and aroused interest among young people. Law faculties of universities at this time were crowded. In particular, in the late 60s and early 70s of the 19th centuries, the majority of university students were future lawyers. This allowed a significant increase in the number of young professionals with a legal education who began to work in the judicial system. As a result, the number of professional judges increased significantly in a relatively short period of time (Shandra, 2013). By the 1880s, the proportion of judges with a higher legal education was 83% in district courts and 97% in chambers. The court statutes introduced new rules for the appointment of judges to the general courts in order to ensure their independence and increase the professionalism of the judicial system. This led to a reduction in the practice of elections as a method of appointment to the position of judge, and instead the mechanism of direct appointment became widespread, and mandatory requirements for higher legal education were introduced for work in the crown courts.

Reforming the organizational and legal mechanism for selecting candidates for the judicial corps and determining the legal status of judges laid the foundation for the institutionalization of the judicial service as a special type of civil service. The statutes clearly divided responsibilities between different officials, which made it possible to more clearly define the professional requirements for each employee depending on his functions (Prokopenko, 2016). This created favorable conditions for the formation of a judicial community, increased the level of professionalism of judicial system employees, and improved their social status.

The legal position and independent status of judges provided them with a worthy place in society and brought moral satisfaction. The judge received a special incentive to perform his duties fairly and responsibly. It is worth noting that in the 1860s and 1870s, university graduates – young lawyers educated in the era of reforms and social uplift, when educational institutions were centers of progressive thought and freedom – entered the judicial service.

The main conditions that ensured judges' independence, impartiality, and objectivity, as well as meeting high standards of judicial service, were the principle of irremovability of judges and their proper financial support (Kravchuk, 2016). A judge could be transferred to another position only with his or her own consent, and he or she could be removed from office only by a court decision. Dismissal of judges without their decision was carried out only by the body that appointed them to the position, and exclusively on the basis of a court verdict in cases of crimes or offenses stipulated by law.

One of the key factors in the independence of judges was high wages. The court statutes provided for quite significant annual salaries for judicial employees of the district court: the chairman received 4,500 rubles, the deputy chairman - 3,500 rubles, and the judge - 2,200 rubles. per year. The Ministry of Justice paid considerable attention to the material support of judges and periodically initiated its increase. The competence of the ministry included all issues related to the financing of the judicial system, from the allocation of funds for the arrangement of premises to the payment of salaries to judges.

Specialized studies devoted to the impleme tation of judicial reform have covered in detail the processes of providing courts with premises, their repair and maintenance. Despite certain achievements, during the years 1864–1917 it was not possible to bring the material and technical support of the courts to the proper level. Although the courts were provided with buildings, their technical condition remained unsatisfactory. General problems included a critical lack of space, inconvenient layout of premises, and unsatisfactory sanitary conditions for the operation of institutions.

Judges were entrusted with numerous duties, among which the central place was occupied by the administration of justice in accordance with the requirements of the law and compliance with the established rules of judicial procedure. They were required to fully comply with the norms of behavior, which was to ensure the high authority of the judiciary both in official relations and in everyday life (Obrusna, 2011). Along with general duties, judges were also entrusted with specific obligations, which had the following aspects:

1. Oath as a mandatory element of their appointment.

2. Obligation to reside in the territory that fell within the jurisdiction of the relevant district court.

3. The right and at the same time the duty to verify the legality of the detention of persons in custody in institutions within their district. If violations are detected or there is no decision by the authorized bodies, the judge was to order the immediate release of such persons.

4. Reporting on financial transactions that went through the court.

5. Prohibition of holding other positions while performing judicial duties.

The proper performance of these tasks was monitored through a specially developed system of supervision, as well as the possibility of holding judges accountable for disciplinary, civil or criminal liability. At the same time, an important guarantor of their independence remained the provision according to which judges could not be dismissed or transferred to another position without their consent or personal request. Removal from office was allowed only within the framework of a judicial proceeding in cases of committing crimes or offenses provided for by current legislation. As for disciplinary measures, they were also implemented in a strictly regulated procedure. Judges could not be held accountable by a sole decision of the Minister of Justice. All issues of administrative violations were resolved at special disciplinary hearings, which were held at general meetings of all departments or divisions of the judicial body, under whose direct subordination the relevant judge was (Dragniewicz, 2021).

In the procedure of disciplinary liability, judges could initially be subject to only warnings, and since 1885, deductions from salaries could also be imposed, and they were imposed exclusively in court. Disciplinary proceedings against chairmen, their associates, and judges of district courts were conducted in the court chamber. Criminal liability arose for actions specified in the relevant provision on punishment. They could be both general, which were considered in the general procedure, and official, the proceedings in which were carried out in a special procedure. Civil liability arose for judges for unqualified actions. A judge was subject to civil liability only if his actions were malicious and motivated by selfish or personal motives, as well as if he misinterpreted a clearly stated law [Dragniewicz, 2021]. Characterizing these guarantees, some contemporaries considered them not just high, but even excessive, stemming from a misunderstanding (absolutization) of judicial

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independence, that is, they argued that the responsibility of judges was practically absent.

The law established the jurisdiction of cases to the district court on a residual principle. Thus, in civil cases, its competence was defined as follows: all claims that were not under the jurisdiction of other courts (the county court, the village assembly court, the consistory court, the peace court, commercial courts, the judicial chamber and the Senate) were within the competence of the district courts.

In fact, the following categories of civil cases were subject to the jurisdiction of the district courts:

1) real and mixed claims about real estate;

2) disputes about exclusive rights;

3) claims about personal rights arising from marital and family relations;

4) claims for the approval or invalidation of wills;

5) claims for the dissolution and invalidity of schismatic marriages;

6) all other claims exceeding the competence of the peace courts or courts replacing them and not assigned to the department of special courts or mixed commissions of district courts (Garyaga, 2024).

Civil cases were considered by the district court in a composition of three crown judges. The jurisdiction of the district court over criminal cases was also established. As a general rule, it was subject to cases exceeding the competence of the peace court, but not within the competence of the judicial chamber. Cases on crimes for which the criminal law did not provide for a punishment associated with the loss of rights were considered by the crown court in the number of three judges. As a result, cases in district courts without the participation of jurors were distributed according to the types of crimes: crimes against public order, crimes against administrative order, official crimes, crimes against the life, health, freedom and honor of private individuals, and violations of the statutes of state departments.

To consider criminal cases that entailed the deprivation of all or all special rights of the estate, jurors joined the crown court of the district court. They had to independently, separately from the crown court, render a verdict concerning the issues of fact and the guilt of the defendant. In the jury court, only two categories of cases (crimes against the property of citizens and their life, health, freedom and honor) accounted for the majority of the total number of cases they considered.

4. Conclusions

This research shows that the role of the Court has shifted from negative legislator to poTThe Judicial Statutes of 1864 became a key element of the judicial reform carried out within the Russian Empire. This reform was aimed at transforming the general imperial legislation in the field of judicial proceedings and is considered one of the most successful and consistent among the reforms carried out by the tsarist authorities in the 1860s and 1870s. Compared with the pre-reform judicial system, the new system had obvious advantages, because the introduced institutions, together with democratic innovations, created an effective basis for the judicial system and procedural law. The reform met the requirements of the time and social demands, because the old system was archaic and required fundamental changes.

In the period before the reform, the judicial system was characterized by the presence of numerous instances with unclear boundaries of jurisdiction. Magistrates, town halls, courthouses, estate courts followed different procedures, which significantly complicated the appeal to the court and undermined the protection of the rights and legitimate interests of citizens.

Thanks to the reform, an independent and permanent body of judges was created, and the institute of the bar was also founded with important tasks of protecting human rights. The introduction of the principle of transparency of judicial proceedings aroused considerable interest in court sessions among different segments of the population. The courtrooms were often filled with representatives of the nobility, merchants and peasants, which became a common practice. The institute of jurors received a particularly positive response in society. The verdicts announced with their participation were actively discussed in public circles and caused a significant public resonance.

The formation of the judicial corps during the reform of 1864 is an important and systematic process of providing the judiciary with competent personnel, which was based on legal mechanisms for the acquisition and termination of powers by judges. This process was characterized by a phased nature and was inextricably linked with the analysis of the state of formation of the judicial corps in the pre-reform period. It was accompanied by an awareness of the need for changes on the part of both state institutions and society as a whole, the development of projects and theoretical concepts, their further discussion, the development of regulatory acts enshrined in judicial statutes, as well as systematic monitoring of their implementation in practice. The scientific novelty of this study lies in the implementation of a thorough analysis of the features of the staffing of judicial institutions in the context of the judicial reform of 1864. Special emphasis is placed on innovations in personnel policy, the integration of new principles of judicial proceedings and their impact on the development of the legal system of that period. A detailed examination of this historical stage allows us to more deeply understand the basis for the formation of the modern judicial system, as well as to assess the significance of reform processes for establishing the principles of justice and law and order. A promising direction for further scientific research is seen as understanding the experience of judicial and legal transformations of the second half of the 19th century with the aim of adapting it to modernize the modern judicial system.

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COMMON AND CIVIL LAW APPROACHES TO DOCUMENTARY EVIDENCE IN INTERNATIONAL ARBITRATION

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Abstract
Submission of documentary evidence occupies a substantial part of international arbitration proceedings and efficiency of this procedure predetermines a success of arbitration. This matter gets quite complicated and challenging when arbitration brings together participants shaped by distinct legal systems. Consequently, arbitral proceedings could take a long time and cause discontent among its users. Therefore, the analysis of ways and methods of raising the efficiency of the document submission is important for the effective international dispute resolution. The work examines arbitration rules of several arbitral institutions, law and practice of UK and the USA as the common law jurisdictions, which have different scope of document discovery. Then civil law jurisdictions like Germany, Uzbekistan are considered which do not practice common law type of document discovery, with a very limited scope. The paper also considers some hypothetical situations connected with the document production and evaluate its efficiency in international arbitration proceedings. It also observes common/civil law approaches that have shaped practices in the field. The views on how efficiency of this procedure can be raised are also analyzed, the IBA and Prague Rules are considered. It is argued that a certain degree of convergence in the documentary evidence practices is taking place in international arbitration, concluding with the forward-looking remarks.

Keywords: international arbitration; documentary evidence; document production; common law; civil law.

1. Introduction

International arbitration has been often criticized for its rising costs and lengthy procedures, which make it appear similar to traditional court litigation. Such a trend undermines the very notion of arbitration as a flexible dispute resolution tool founded on party autonomy. Users generally look to international arbitration for an efficient and swift mechanism to settle disputes. The process of collecting and presenting evidence occupy a large part of international arbitration proceedings. Therefore, examination of problems in this field and its improvement are important from the point of raising the efficiency of international arbitration proceedings. The present work considers the issues of submitting written evidence, i.e. documentary evidence in international arbitration.

Arbitral tribunals are generally granted the authority to order the production of documents under the most frequently applied arbitration rules. For instance, Article 25(4) of the ICC Arbitration Rules states that the tribunal may, at any stage of the proceedings, call upon a party to provide additional evidence (International Chamber of Commerce, 2021). In the same vein, Article 27(3) of the UNCITRAL Arbitration Rules

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empowers tribunals to require parties to produce documents, exhibits, or other evidence within a period fixed by the tribunal (United Nations Commission on International Trade Law, 2021). Likewise, Article 22.1(v) of the LCIA Arbitration Rules provides that tribunals may order a party to supply documents in its possession, custody, or power which are considered relevant (London Court of International Arbitration, 2020). Under Article 28.2 of the DIS Arbitration Rules, this authority extends to both documents and electronically stored data (German Arbitration Institute, 2018). Comparable provisions are also found in Article 20.1 of the TIAC Arbitration Rules (Tashkent International Arbitration Center, 2021).

However, they do not contain provisions that govern the issue in detail, leaving this matter up to the parties or the arbitral tribunals. This is primarily due to the principles of party autonomy and procedural flexibility, which are regarded as core features of international arbitration. These qualities constitute one of the key advantages of arbitration when compared to proceedings before domestic courts: the tribunal can shape a tailor-made procedure which it, after consultation with the parties, considers best to deal with the particular requirements of the case at hand (Böckstiegel, 2010).

The existing practices on the submission of documentary evidence have evolved under an influence of different legal cultures, if grouped, they are common and civil law. If the parties come from the same legal system problems in terms of applicable rules on gathering and submitting the evidence may not emerge, but when they are coming from the different legal systems this may cause difficulties. As Derains (2006) observes, arbitrators and counsel frequently carry into arbitration the “bag and baggage” of their own legal traditions, together with procedural habits shaped by those systems. This can complicate the effort to reconcile practices that stem from different national frameworks. For instance, while cross-examination is a hallmark of common law procedure, it is far less common in civil law jurisdictions, and within international arbitration it tends to take on a somewhat adapted form (Cremades & Cairus, 2010).

Kimmelman and MacGrath (2006) contend that both the nationality and the professional background of participants can strongly influence the scope of document production in international arbitration. In particular, proceedings conducted in the United States often mirror the extensive document disclosure practices characteristic of U.S. litigation.

2. Discovery in common law and civil law jurisdictions

Another notable procedural feature in common law jurisdictions is the discovery process. In the United States, discovery refers to pretrial mechanisms that allow a party to obtain facts and information from the opposing party to support case preparation (Brower & Sharpe, 2008). As Smit (2006) explains, discovery in the U.S. legal system serves several purposes:

- to present documentary evidence held by a party that supports its position in the dispute (the “case presentation” objective);
- to provide each party with adequate notice of the documentary evidence the other party intends to use, thereby avoiding surprises at trial or hearing (the “surprise avoidance” objective);
- to grant parties access to relevant documents not in their possession (the “truth-finding” objective).

Discovery procedure is regulated by Federal Rules of Civil Procedure and case law (United States Congress, 2009). Besides the US courts showed their readiness to assist foreign and international tribunals in evidence gathering (U.S. Supreme Court, 2004), including the document production in accordance with the Section 1782 (U.S. Congress, 1964).

In terms of the limitations of discovery, Kimmelman and MacGrath (2006) highlight several significant concerns. The production of documents in U.S. litigation can be protracted, often spanning several months or even years. Discovery-related disputes, which are frequent, further exacerbate this timeline through additional motion practice, substantially increasing both the duration and cost of proceedings. As a result, pre-trial document discovery has emerged as a major driver of the overall expense of U.S. litigation. Moreover, the inherently broad scope of discovery frequently necessitates the collection and disclosure of voluminous documentation of marginal pertinence. This extensive process typically requires judicial supervision to resolve disputes and to prevent the mechanism from being exploited to impose unnecessary burdens and costs on the parties.

In England the scope of discovery was significantly curtailed by the Lord Wolf Reforms of 1996 (UK Ministry of Justice, 1996). It was criticized particularly in complex cases, where discovery had been regarded as disproportionate, time-consuming, costly, and largely ineffective a monumentally inefficient process, where by experience only a small subset of documents typically influences the outcome of the dispute (Raeschke-Kessler, 2010). In England discovery means the disclosure and production of contemporary documents for inspection by the other party. And English discovery has never, however, extended to that procedure which is peculiar to the United States (Brower & Sharpe, 2008).

In England, discovery is governed by the Civil Procedure Rules 1999 (UK Parliament, 1999). As Veeder V. (2006) argues that traditional English discovery, aided by modern photocopying technology, had evolved into an excessively burdensome, costly, and time-consuming aspect of commercial litigation. The introduction of the Woolf reforms, particularly the new Part 31 of the Civil Procedure Rules, represented a major innovation, significantly streamlining the process of document production.

As it can be observed, the scope of discovery differs across common law jurisdictions. What is evident is that common law traditions have had a substantial influence on international arbitration, shaping both the overall conduct of proceedings and the specific practices related to evidence submission .

In civil law jurisdictions the discovery typically takes place during court hearings and only with the judge's authorization. Historically, the civil law position was that no party is required to provide the other with information that could be used against them (Raeschke-Kessler, 2010).

However, the tendency is gradually changing. For instance, in Germany the amendments to the German Code of Civil Procedure (ZPO) in 2002 and 2006 expanded the courts' authority to order the production of documents at the request of a party. Under Article 142, the court may require a party or a third person to produce documents or other materials in their possession that are referenced by the opposing party. The court can also set deadlines for submission and ensure that the submitted documents remain with the court clerk for a specified period.

Raeschke-Kessler (2010) argues that Article 142 ZPO serves primarily as a tool to allow the requesting party to satisfy its burden of proof. It requires the relevant facts be fully alleged and substantiated in the prior written pleadings, and these facts be material to the outcome of the case. In addition, the requesting party must already have presented to the court all evidence within its possession. Any request under the Article 142 must be proportionate, and the court is obliged to consider the conflicting interests of the party from whom the documents are requested.

Derains (2006) points out the distinguishing features of civil and common law court proceedings by describing the role of a judge in each system. Regarding civil law system, the judge is primarily responsible for conducting the proceedings in order to resolve the legal issues presented by the parties. As a result, discussions are often conducted to points deemed to relevant to the resolution of the case, and the judge may order the production of documents even if neither party has requested them. On the contrary, in common law systems, the judge's authority is largely procedural, focused on

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ensuring fair proceedings and maintaining equality between the parties. Here, a party or third party may be required to disclose all documents relevant to the case, but such orders are typically issued in response to a party's request rather than on the judge's own initiative. The rationale is that access to all relevant facts enables the parties to present their claims and defenses with the necessary precision.

The role of arbitrators in international arbitration is somehow different, arbitrators must resist their natural inclinations to view procedural and substantive justice through the lens of their own legal heritage, and must continually strive to make the parties' will their lodestar (Brower & Sharpe, 2008). Other main differences of these legal systems in terms of conducting proceedings can be observed in Table 1.

Table 1. Comparison of legal systems

Common Law	**Civil Law**
Adversarial	Inquisitorial
Judge as a referee	Leading role of the judge
Preparation of witnesses	Mainly not practiced
Cross-examination of witnesses	Witness is questioned by the judge
Discovery	Limited and mainly on the initiative of the judge during the hearings

Source: developed by the author

In Austria, Germany, Netherlands, Sweden – counsel can interview prospective witness; in Belgium, France, Italy, Switzerland – counsel is not allowed to interview prospective witness (Houtte, 2003). The Table 1 clearly demonstrates the main differences of two legal traditions and their projection to the international arbitration proceedings.

Uzbekistan being a civil law jurisdiction naturally follows inherent practices. Under Article 68 of the Economic Procedure Code of Uzbekistan (hereinafter "EPC"), each participant in the case is responsible for proving the circumstances to which they base their claims and objections (Parliament of Uzbekistan, 2018). A request for evidence is possible pursuant to Article 69 of the EPC, a participant who is unable to independently obtain necessary evidence from another party, whether involved in the case or not, has the right to petition the court to request such evidence (Parliament of Uzbekistan, 2018).

The Law of Uzbekistan "On International Commercial Arbitration" enacted on 16 February 2021, largely follows the provisions of the UNCITRAL Model Law on International Commercial Arbitration (1985), as amended in 2006 (Snider et al., 2021). Established in 2018, Tashkent International Arbitration Center's (TIAC) Arbitration Rules have been influenced by common law practices, with one distinct feature that allows the appointment of a third-party advisor to deal with the document production process (Tashkent International Arbitration Center, 2021).

3. Document discovery in international arbitration

The differences among the legal systems outlined above have significantly influenced the conduct of arbitration proceedings, particularly regarding the submission of documentary evidence. Derains (2006) identifies a major challenge in international arbitration as the massive volume of documents submitted to arbitrators. In complex cases, parties may attach hundreds or even thousands of documents to their memorials, many of which cannot be fully reviewed or stored by the arbitrators. Ultimately, only a small fraction of these documents are actually utilized, and an even smaller subset serves as decisive evidence. This overwhelming influx of documents is highly inefficient and should be carefully managed. There is little justification for parties to produce documents beyond the core set that will ultimately be relied upon as evidence during hearings or in post-hearing submissions.

According to Hamilton (2006) discovery procedure that is being used in international arbitrations sometimes led to negative results. It can produce such situation when one of parties in the hope of getting favorable evidence requests indiscriminately from other party relevant and irrelevant materials. This is also called “fishing expeditions”.

The discovery can be used as a tool to protract arbitration proceedings and harass an opposing party to make any concessions. Thus, this procedure is time consuming and involves additional expenses, increases conflict situation between the parties.

The worst effect of the discovery is that it compromises impartiality of arbitrator(s). Let’s suppose the following hypothetical situation, in the discovery procedure party “A” requests party “B” to produce a specific document, which “A” assumes, in the possession of “B”. “B” rejects production of the requested document, stating that it constitutes a commercial secret and prompting “A” to requests the arbitral tribunal to order its production. This creates a delicate situation: if the tribunal compels production, “B” may perceive the arbitrators as favoring “A”; if the request is denied, “A” may feel disadvantaged. In either case, the perceived balance of interests among the participants is threatened, potentially undermining the fairness of the proceedings.

If a party fails to comply with a document production order issued by the arbitral tribunal, the tribunal itself lacks the enforcement powers of a state court. In such cases, either the tribunal or the party requesting the documents may refer the matter to a competent state court for enforcement.

Nevertheless, the arbitral tribunal has other means of influence. It may draw an adverse inference from a party’s noncompliance and consider this in the allocation of arbitration costs. When a party seeks an adverse inference that could result in an unfavorable award, certain conditions must be met. According to Brower and Sharp (2008), the requesting party must: (1) present all available evidence supporting the influence; (2) ensure the requested evidence is accessible to the opposing party; (3) demonstrate that the influence is reasonable, consistent with the record, and logically related to the likely nature of the withheld evidence; (4) produce prima facie evidence; and (5) ensure that the opposing party is aware, or has reason to be aware, of its obligation to provide evidence to rebut the adverse inference. These criteria provide a good framework for mitigating the adverse effects of document production in international arbitration.

To address the challenges associated with document production, international practice has developed various techniques and procedural tools. One such method is the Redfern Schedule, named after the eminent arbitrator Alan Redfern, which is designed to expedite the discovery process. It consists of four columns “Request”, “Reason for Request”, “Objection” and “Tribunal’s decision” that are completed by the parties. Blackaby et al. (2009) argue that the Redfern Schedule serves to clearly define the specific issues in dispute, allowing the arbitral tribunal to understand the positions the parties have adopted after their exchanges. This framework enables the tribunal to make a well-informed decision regarding whether a particular document, or category of documents, should be produced, without becoming entangled in the detailed communication between the parties’ counsel and typically without the need for separate hearing.

The timing for the document production is also an important issue. Establishing clear “rules of the game” at the outset helps to prevent either party from being taken unexpectedly. Hanotiau (2006) stresses that difficulties related to document production typically arise when the arbitral tribunal has not addressed the issue effectively at the start of the arbitration. In other words, such problems are often less a result of the parties’ expectations or the scope of production and more a consequence of insufficient case management by the tribunal.

Another important criterion in dealing with the document production is the “burden of proof”. Böckstiegel (2010) states that “an issue relevant irrespective of the

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civil or common law approach, but nevertheless often forgotten in shaping evidence procedure, is the burden of proof. In so far as a party has the burden of proof and has not complied with that burden for the legal consequences of its claims, the other party does not even have to submit evidence of its own." Derains (2006) observes, for document production to be efficient, it must enable the arbitral tribunal to obtain not merely any documents that are relevant or material, but specifically those without which a party would be unable to fulfill its burden of proof. When a request for document production is contested, the arbitrators should assess whether the requesting party genuinely requires the documents to meet this burden. If the documents are not essential for that purpose, the request should be denied. In evaluating such request, arbitrators must carefully verify that the burden of proof indeed rests with the party making the request.

Thus, the "burden of proof" can guide the tribunal in deciding whether the document production is needed or not. This principle can be found in the arbitration rules. Article 27(1) of the UNCITRAL Arbitration Rules provides that each party bears the responsibility of proving the facts on which it relies to support its claims or defenses (United Nations Commission on International Trade Law, 2021). As Lionnet (2005) states burden of proof is fundamental in arbitration, as arbitrators are generally understood to lack ex officio authority to conduct their own investigations.

The burden of proof principle is also applied when the arbitral tribunal draws the adverse inference, although arbitral tribunals routinely draw adverse inferences, they are typically reluctant to draw adverse inferences to allow a party to succeed on its claims in the absence of evidence otherwise necessary to meet its burden of proof (Brower & Sharpe, 2008). Regarding the role of the document production in international arbitration, Smit (2006) argues that document "discovery", in its constrained form within international arbitration, has become an established practice. The essential components of document production in this context include: (1) the case presentation and surprise-avoidance approach, whereby parties provide in advance all documents they intend to rely on, and (2) the truth-finding approach, which permits limited, targeted discovery of relevant and material documents held by the opposing party. These practices enable international arbitration to achieve greater efficiency and fairness compared with traditional North American civil procedure or domestic arbitration practices.

Arbitrators and other participants of international arbitration should try to transcend their cultural and legal backgrounds if they want to have an efficient dispute resolution. As King and Bosman (2001) stress, the routine work of adjudicating cases can become mired in broader philosophical debates over the common law/civil law "Great Divide," often compromising arbitral efficiency. In matters of document discovery, such debates are largely irrelevant and should be set aside. It allows parties and arbitrators to concentrate on practical, case-specific solutions for the disclosure of evidence.

4. Soft law instruments

To address the challenges arising from differences in legal systems regarding the collection and presentation of evidence in international arbitration, and to promote greater consistency in practice, International Bar Association (2020) (hereinafter - IBA) has developed and refined rules on the presentation of evidence. The scope of IBA Rules on Taking of Evidence in International Arbitration (2020) (hereinafter - IBA Rules) includes the following:

- complement the legal framework and any institutional, ad hoc or other rules governing the arbitration;
- be applied either in full or in part to guide proceedings, or serve as a flexible framework for parties and tribunals to develop their own procedures;
- ensure that the process of taking evidence is carried out on the principle that each party acts in good faith.

Thus, the IBA Rules of Evidence are not mandatory in nature and are used voluntarily if the parties agree so. As the evidence production in international arbitration is conducted mainly in the written from, the IBA Rules pay a special attention to this issue. They offer a wide definition of "document," encompassing any writing, communication, image, drawing, program or data regardless of whether it is maintained on paper or stored through electronic, audio, visual or any other means.

If there is a request for the production of document, it should meet the requirements of Article 3(3) of the IBA Rules:

- provide a description of each requested document that is sufficiently detailed to allow its identification;
- explain how the requested documents are relevant to the case and material to its outcome;
- confirm that the documents are not already in the possession, custody or control of the requesting party, or explain why it would be unreasonably burdensome for the requesting party to produce them;
- State out the reasons for believing that the requested documents are in the possession, custody or control of another party.

In assessing weight and admissibility of evidence arbitrators consider the provisions of Article 9(2) of the IBA Rules, including:

- whether the evidence lacks sufficient relevance to the case or materiality to its outcome;
- any legal impediment or claim of privilege;
- whether producing the evidence would impose an unreasonable burden;
- loss or destruction of the document;
- commercial or technical confidentiality concerns;
- special political or institutional sensitivities;
- broader considerations of procedural efficiency, proportionality, fairness or equality between the parties.

In some cases, certain categories of relations or information can not be disclosed because of confidentiality reasons, or otherwise privileges. They may include the professional privileges (attorney-client, medical, journalist privileges), protections against self-incrimination, trade secrets, a sensitive governmental information.

The IBA Rules substantially reflect the international arbitration practice that has evolved over the years. Professor Stipanowich (2014), discussing such guidelines as a form of soft law, points out that the key measure of a soft law standard lies in how effectively it serves the changing needs of international dispute resolution, and soft law is increasingly playing a central role in shaping commercial arbitration globally.

Regarding the practical value, the IBA Rules are widely accepted across both regional boundaries and the civil and common law traditions (Neuhaus et al., 2023). As Kläsener et al. (2021) notes, since their introduction, document production has been routinely incorporated into the procedural timetable of arbitral proceedings, with little dispute over its necessity. Over time, the scope of document production has expanded and the process has become increasingly standardized. Nowadays, the central question is less whether document production should occur and more the extent to which it is required. However, there has been a move to curtail document production in international arbitration as the adoption of the Prague Rules demonstrates.

The Rules on the Efficient Conduct of Proceedings in International Arbitration ("Prague Rules") released in January 2018, are designed to provide guidance for arbitral tribunals and parties on enhancing the efficiency of arbitration by promoting a more proactive role for tribunals in case management (Prague Rules Working Group, 2018). As Argerich (2019) notes, the drafters of the Prague Rules critique the current IBA-style approach to document discovery as excessively time-consuming and costly. Reflecting civil law traditions, the Prague Rules place stricter limits on the scope of document production.

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Article 4 of Prague Rules deals with the documentary evidence. According to Article 4.2, "the arbitral tribunal and the parties are encouraged to avoid any form of document production, including e-discovery." Under Article 4.3, if a party anticipates the need to request certain documents from the opposing party, it must notify the arbitral tribunal during the case management conference and explain why such may be essential in the specific case. If the tribunal agrees that document production could be required, it determines the procedure and incorporates appropriate provisions into the procedural timetable.

Article 4.4 provides that a party may seek an order for document production at a later stage of the arbitration only under exceptional circumstances. Such a request will be granted solely if the tribunal is satisfied that it could not have been made during the case management conference. Article 4.5 outlines the criteria for requesting document production, specifying that a party may ask the tribunal to compel another party to produce a document that:

a. is relevant and material to the outcome of the case;
b. is not publicly available; and
c. is in the possession, power, or control of the other party.

Article 4.8 imposes a confidentiality regime, providing that any document submitted or produced in the arbitration, which is not already public, must be kept confidential by both the arbitral tribunal and the parties. Such documents may only be used for purposes of the arbitration, except to the extent that disclosure is required by applicable law.

Prague Rules promote the arbitration proceedings without conducting a hearing when feasible, aiming to enhance cost-efficiency. According to Article 8.1, the arbitral tribunal and the parties should, where appropriate, attempt to settle the dispute solely on the basis of documents.

As it can be observed from above, Prague Rules offer an alternative for the arbitration users aimed at minimizing document production and efficient conduct of international arbitration proceedings.

5. Conclusions

It can be observed that international arbitration employs a relatively limited form of document disclosure, a practice that presents both advantages and challenges for the parties involved. On the one hand, the constrained scope of document production helps prevent excessive costs and avoids the burdens associated with large-scale discovery, which are often criticized in common law jurisdictions, such as the United States and the United Kingdom. In these jurisdictions, the scope of discovery has been gradually narrowed through legislative reforms, which limit overly broad document disclosure and encourage a more proportionate and case-focused approach. At the same time, the traditional common law practices of producing extensive documentary evidence, including pretrial discovery, have influenced the procedures of international arbitration, particularly in cases involving parties from common law backgrounds.

Although civil law jurisdictions were historically limited the disclosure of evidence to that which is necessary and permitted by the court, a gradual shift toward greater acceptance of document production is observed. Amendments to civil procedure rules in Germany, for example, have expanded the courts' authority to order the production of documents upon request, reflecting an evolving recognition of the need to facilitate the evidentiary process while balancing proportionality and fairness. Such developments indicate a movement within civil law systems toward adopting practices that more closely resemble limited discovery, particularly in the context of international arbitration, where parties may come from both common and civil law backgrounds.

This convergence suggests that common law and civil law traditions are gradually moving toward the establishment of general principles for document disclosure in international arbitration. Party autonomy, a cornerstone of arbitration, ensures that the parties retain the freedom to select procedures that best suit their particular case. Within this framework, efforts to harmonize and unify document production procedures have emerged, most prominently through the International Bar Association (IBA) Rules on the Taking of Evidence in International Arbitration and the Prague Rules. These instruments provide detailed guidance on the scope and method of document production, defining what constitutes a "document" and outlining criteria for requests, relevance, materiality, and confidentiality.

The IBA Rules offer a structured and widely accepted framework that has been integrated into the procedural timetables of arbitral proceedings, helping to standardize practices across jurisdictions while remaining flexible enough to accommodate the parties' autonomy. Similarly, the Prague Rules promote efficiency by limiting document production, reflecting civil law sensibilities and encouraging tribunals and parties to resolve disputes, where appropriate, on a documents-only basis. Together, these frameworks function as platforms where diverse legal traditions converge, offering practical solutions that balance efficiency, fairness, and procedural economy in international arbitration.

Moreover, arbitration continues to preserve the principle of party autonomy, nut at the same time, consistent international standards are emerging for

In conclusion, although the limited approach to document disclosure in international arbitration carries both benefits and drawbacks, the ongoing interaction between common law and civil law practices is gradually fostering a more harmonized and standardized approach. Arbitration continues to preserve the principle of party autonomy, but at the same time, consistent international standards are emerging for evidence submission and document production. These developments aim to enhance procedural efficiency, reduce unnecessary costs, and ensure fairness, thereby contributing to a dispute resolution process that is both practical and reliable in international commercial contexts.

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THE RELATIONSHIP BETWEEN JUDICIAL INTERPRETATION AND THE SPECIFICATION OF LEGAL NORMS: THEORETICAL APPROACHES

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Abstract

This article examines the theoretical and practical relationship between judicial interpretation and the specification of legal norms as interrelated yet distinct instruments of law enforcement. On the basis of a systematic analysis of doctrinal approaches and contemporary judicial practice, the study identifies their functional purposes, common features, and criteria for differentiation. It is argued that judicial interpretation is primarily aimed at clarifying the meaning, scope, and limits of legal norms in order to ensure the unity of legal understanding and consistency of judicial practice, whereas specification serves to detail and adapt abstract normative provisions to the circumstances of particular legal relations. Special attention is paid to the principle of legal certainty and to the risks associated with excessive specification, which may result in the de facto transformation of judicial interpretation into judicial law-making. Drawing on recent decisions of the Supreme Court of Ukraine, the article demonstrates a shift from formalistic adjudication toward a reflexive and analytical model of justice, in which courts develop practical criteria for the application of evaluative concepts and for addressing legislative gaps. The study concludes that the development of unified methodological approaches and standards for judicial interpretation and specification is essential for improving the quality of law enforcement, safeguarding legal certainty, and maintaining a balance between regulatory flexibility and the limits of judicial discretion.

Keywords: judicial interpretation; specification of legal norms; law enforcement; legal certainty; judicial practice; Supreme Court.

1. Introduction

Property law is one of the oldest and simultaneously most complex institutions of priInterpretation and specification of legal norms are key legal categories directly connected to the process of law enforcement. In the practical activity of courts, these concepts served as a mechanism that gives a specific meaning to the abstract legal norms when resolving particular legal relations. The systematization of scholarly views and the analysis of modern judicial practice indicate the need to identify clear criteria that make it possible, through distinguishing interpretation from specification of legal norms, to establish their relationship. Therefore, studying these phenomena in their interconnection was extremely important for developing unified approaches to law enforcement by courts of different levels and specializations, especially in the context of European integration processes and the transformation of Ukraine's legal system. In legal theory and practice in Ukraine and other legal systems a number of cases can be observed, where normative acts contained general wording or gaps. This requires the courts not only to interpret but also to specify legal norms in law enforcement activity

(Vlasenko, 2024, pp. 89–102). It causes debates about the limits of interpretation, the legal consequences of established judicial practice and the role of the court in filling the regulatory space when legislation did not foresee all possible regulatory options (Sumy National Agrarian University, 2023). In addition, researchers note that the concept of legal certainty requires balancing the abstract nature of a legal norm with its ability to effectively regulate specific relations without excessive judicial interference in the legislative function (The Principle of Legal Certainty and Changes in Judicial Practice, 2024, pp. 45–59). For this reason, it is important to examine the relationships between the main tools of law enforcement: interpretation and specification of legal norms more deeply. The purpose of this study is to clarify the theoretical aspects of the relationship between judicial interpretation and the specification of legal norms, including the identification of common features and differences, as well as the determination of the limits within which specification acted as an independent or auxiliary element of legal understanding and law enforcement. To achieve this purpose, the following tasks were set: to examine definitions and classifications of judicial interpretation and specification in modern legal theory; to analyze the role of judicial practice in the process of specifying legal norms and its interaction with the principle of legal certainty; to determine criteria that made it possible to distinguish specification from judicial interpretation in a specific law enforcement case; to study the theoretical limits and potential risks associated with excessive or insufficient specification of legal norms. Prospects for further research related to empirical analysis of how criteria for specification were applied in specific branches of law (civil, administrative, criminal), as well as to the analysis of court decisions from international practice in order to identify approaches that could be adapted to the Ukrainian legal context. In addition, it seemed appropriate to consider the development of methodological guidelines or standards for analytical practice in judicial interpretation and specification that could help avoid excessive uncertainty or violations of rights.

2. Literature review

The issue of the relationship between judicial interpretation and the specification of legal norms was an important topic in legal scholarship. Ukrainian legal scholarship on judicial interpretation and the specification of legal norms is characterized by a plurality of methodological approaches, which may be provisionally grouped into several interconnected strands.

The first strand focuses on the theoretical and conceptual foundations of judicial interpretation. Within this approach, Andrushchakevych (2011), Antoshkina (2021) and Bilous (2020) conceptualize interpretation as an intellectual and volitional activity aimed at clarifying the meaning and scope of legal norms in order to ensure their uniform application. These scholars emphasize the normative boundaries of interpretation and underline its role in safeguarding legal certainty and the predictability of judicial decisions. In particular, their works explore the forms and methods of interpretation, the procedural nature of judicial interpretative activity, and its distinction from legislative norm-making.

A second group of scholars examines specification (concretization) as a functional mechanism of law enforcement. Volosheniuk (2018), analyze specification as a process through which abstract legal norms are adapted to individual factual circumstances. Their research highlights the role of legal technique, evaluative concepts, and factual qualification in reducing legal uncertainty. These authors argue that specification performs a mediating function between abstract normativity and concrete legal relations, particularly in branches of law characterized by a high degree of discretion, such as civil and administrative law.

A third strand addresses the interaction between judicial interpretation, judicial discretion, and judicial law-making. Scholars such as Momot (2024), A. A. Marchenko, N. M. Savchyn, examine the growing influence of courts in shaping legal meaning through

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interpretation and specification. Their works critically assess the risks of excessive judicial creativity, including the transformation of interpretation into de facto judicial norm-making. At the same time, they recognize the inevitability of an active judicial role in conditions of legislative gaps, vague formulations, and rapid social change.

Another important direction is represented by studies focusing on axiological and extra-legal dimensions of judicial interpretation. L. Leshchynskyi, T. Demianchuk, and S. Paleshnyk explore how value-based considerations inform judicial reasoning. These scholars demonstrate that interpretation and specification cannot be reduced to purely formal-logical operations, as they are embedded in broader social, ethical, and cultural contexts.

Finally, a number of authors, including Kozminskyi (2025), and A. Ye. Shevchenko, adopt a comparative and systemic perspective, analyzing the impact of European integration processes, international human rights standards, and foreign judicial practices on domestic approaches to interpretation and specification. Their research highlights both the convergence of Ukrainian judicial reasoning with European legal traditions and the persistence of doctrinal and methodological inconsistencies at the national level.

Despite the substantial contributions of these scholars, the existing literature predominantly addresses judicial interpretation and specification either as autonomous theoretical categories or within isolated doctrinal or comparative frameworks. As a result, the mechanisms of their practical interaction in ensuring the unity of judicial practice and the limits of judicial discretion remain insufficiently theorized. This observation substantiates the relevance of further research aimed at developing an integrated analytical model of the relationship between judicial interpretation and the specification of legal norms.

All of these studies made a significant contribution to the development of scholarly understanding of the problem of judicial interpretation and the specification of legal norms. The works of these researchers made it possible to outline key trends in modern legal thinking, in particular the influence of judicial law-making on the evolution of law, the interaction between national and international law, and the role of extra-legal factors in judicial interpretation. At the same time, existing research revealed a certain gap: most authors focused either on the theoretical-normative or on the comparative aspect of the problem, while issues related to a comprehensive analysis of the mechanisms of interaction between interpretation and specification in the context of ensuring the unity of judicial practice remained insufficiently explored.

In modern legal scholarship, there was no single definition of the concepts of "interpretation" and "specification" of legal norms. This is explained by differences in approaches depending on the branch of law, the method of applying norms, and the range of subjects involved in the law enforcement process. In legal doctrine, there are various conceptual models that justified the need to differentiate between them. According to the position of Bilous, interpretation of legal norms should be understood as the intellectual and volitional activity of the law-applying subject aimed at clarifying and explaining the content of a norm in order to ensure uniform and correct application of norms in practical activity. At the same time, the results of interpretation could take different forms: special interpretative acts, scholarly and practical commentaries, summaries of judicial practice, or doctrinal studies that reflected a systemic approach to the realization of law (Bilous, 2020, pp. 46–53).

The specification of legal norms, is considered a procedural and substantive activity aimed at eliminating legal uncertainty and clarifying the content of legal provisions in the process of lawmaking and law enforcement. It involves the establishment of an individual legal regulator through the legal qualification of a fact based on its attributive features. As noted by Volosheniuk, specification serves as a means of reducing legal uncertainty through the use of special tools of legal technique, which contributes to increasing the effectiveness and predictability of judicial decisions. This approach is particularly important in modern conditions, when legal norms require adaptation to rapid socio-economic changes and complex circumstances arising in the process of law enforcement (Volosheniuk, 2018, pp. 23–31).

An important aspect of the modern discussion is that interpretation and specification of legal norms are not only theoretical categories but also instruments for the practical implementation of the rule of law and legal certainty. This is especially relevant for Ukraine, where, under conditions of judicial system reform and harmonization of national legislation with European law, there is a need to develop clear methodological approaches to judicial interpretation and specification of legal norms. At the same time, international practice shows that these processes are closely connected with the concepts of legal predictability and the protection of human rights, as well as with the development of judicial precedent as a source of law.

The systematization of scholarly views and the analysis of modern judicial practice indicate the need to identify clear criteria that make it possible, through distinguishing interpretation from specification of legal norms, to establish their relationship. This not only contributes to improving the quality of law enforcement but also ensures the stability of judicial practice and protection against potential abuses by judges.

Thus, the analysis of modern theoretical models shows that judicial interpretation and specification of legal norms are complex and multidimensional processes that require an integrated approach. They serve as important instruments for implementing the principle of legal certainty, maintaining a balance between the abstract nature of legal norms and the needs of specific law enforcement, and adapting the national legal system to the requirements of European integration and democratic standards.

The position on the independence of these categories is particularly convincing, since interpretation ensures the unity of legal understanding, while specification is aimed at detailing and adapting legal norms to specific conditions of law enforcement. This approach makes it possible to avoid the risk of transforming interpretation into judicial law-making and to preserve a balance between legal certainty and the flexibility of regulation.

At the same time, practice shows that Ukraine currently lacks unified approaches and standards for the interpretation and specification of legal norms, which leads to inconsistency in judicial practice and creates certain legal risks. This highlights the need for further theoretical research on these processes and for the development of methodological recommendations that ensure clarity and predictability of judicial decisions. In this regard, the study of the relationship between judicial interpretation and the specification of legal norms is not only relevant but also a necessary stage in building an effective legal system in Ukraine that is capable of meeting modern European standards.

The theoretical aspects of the relationship between judicial interpretation and the specification of legal norms are important for understanding the mechanisms of law enforcement and the development of the legal system. These concepts, although closely connected, perform different functions and play different roles in the process of implementing law.

3. Results and Discussion

Judicial interpretation acts as a key instrument for the implementation of legal norms in the law enforcement process, ensuring clarification of their content and determination of the scope of their application in specific legal situations. The features of judicial interpretation are formed under the influence of the nature of the legal norm and the legal context of the case. Among its main characteristics is the fact that the subject of this process is the court or judge, and the result of interpretation is a judicial decision that contains a reasoning section with justification of the court's conclusions.

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At the same time, judicial interpretation differs from other types of interpretation in that it has clear procedural regulation and is directly connected with the administration of justice (Andrushchakevych, 2011, pp. 9–12).

Scholarly research identifies several features of judicial interpretation. First, it is an intellectual activity aimed at explaining and clarifying the content of legal norms, based on analysis of the text of a legal provision and its legal context. Second, judicial interpretation must be the result of lawful activity by an authorized subject who has the competence to carry out such activity within procedural law. Third, its result must meet the criterion of legal predictability, which forms the basis for ensuring the unity of law enforcement and trust in the judiciary (Antoshkina, 2021).

Depending on the nature of judicial interpretation, several types are distinguished. Normative interpretation, which is carried out by courts of the highest instance, has a generally binding character and applies to a wide range of cases. Casual interpretation, which prevails in the practice of deciding individual cases, is personalized and operates only in relation to the specific case in which it is applied. Both types of interpretation are important: the former contributes to the formation of a unified legal position and the stability of judicial practice, while the latter ensures flexibility and adaptation of legal norms to the specifics of legal relations.

Taking into account the specifics of different branches of law, it can be observed that the limits of judicial interpretation and its specification largely depend on the legal context. In civil law, the need for specification of norms prevails due to the individual characteristics of legal relations, whereas in constitutional law, formal and logical interpretation dominates, as it aims to ensure that regulation complies with fundamental constitutional principles (Pietrzyk, 2025, pp. 123–145).

The practical significance of judicial interpretation lies in the fact that it creates legal guidelines for law enforcement activity, reduces the level of legal uncertainty, and contributes to increasing trust in judicial institutions. Judicial interpretation involves the process of clarifying the content of legal norms, which may include determining their literal meaning, the intent of the legislator, or the purpose these norms are meant to achieve. This process is carried out by judges and other law enforcement bodies and is necessary for applying norms to specific cases. Judicial interpretation may be carried out using various methods, such as textual, historical, systemic, or teleological approaches, depending on the legal system and the particular case.

The specification of legal norms consists in detailing the general provisions of legal norms in order to apply them to specific circumstances. This process makes it possible to adapt general norms to specific situations, ensuring their effective and fair application. Specification may be carried out through judicial decisions, administrative acts, or other forms of law enforcement.

To adequately conceptualize the relationship between judicial interpretation and the specification of legal norms, it is necessary to consider these processes within the broader framework of law enforcement, as their practical function and legal boundaries are realized primarily at the stage of the application of law.

In legal scholarship, law enforcement is understood as a specialized form of authoritative activity carried out by competent state bodies or authorized officials, aimed at implementing legal norms in specific legal relations through the adoption of an individual legal decision. This process is based on the establishment of legally relevant facts, the interpretation of legal provisions, and the application of procedural rules prescribed by current legislation.

From a theoretical perspective, law enforcement is understood as a multi-component phenomenon that combines normative, procedural, and institutional elements, which makes it possible to ensure the implementation of the rule of law and the protection of citizens' rights and freedoms. Depending on regulation and the competence of the subject, law enforcement activity distinguishes three main types of specification: judicial, administrative, and managerial (Dong & Roy, 2021).

Thus, a law enforcement decision represents the expression of the specifying function of law in an individual case, based on a systemic correlation between legal facts and legal norms.

Within law enforcement activity, specification is implemented through the following main directions:

1. clarification of general legal norms, which involves detailing and interpreting their content in accordance with the specific circumstances of the case;
2. specification of evaluative concepts and terms, which requires a creative approach by the law-applier to determine the legal meaning of concepts that have an abstract character;
3. filling gaps in law, which involves the application of the principles of analogy of statute and analogy of law in the absence of direct regulation.

In general terms, the process of specification can be understood as transforming the abstract imperative of a legal norm into an individually defined legal rule oriented toward a specific case. This reduces the level of legal uncertainty and ensures the adaptability of legal regulation to the practical needs of society.

Legal scholarship offers different approaches to understanding specification. Some researchers consider it a component of the lawmaking process, since the final formation of a norm occurs precisely during law enforcement. Other authors, in particular I. Ya. Duryagin, point out that the function of law enforcement does not involve the creation or modification of a norm but only the implementation of provisions already established by the legislator: "After application, the norm retains its original content; the law enforcement body only resolves a specific case without introducing changes to the content of the norm" (Chih & Hou, 2025).

This position emphasizes the limits of the law applier's creative activity and the need for a clear distinction between law-making and specification of law.

A special place in the law enforcement system is held by the specification of evaluative concepts, which involves not only interpreting terms but also forming legal content appropriate to the factual circumstances of the case. Evaluative concepts that lack precise legislative definitions require judicial reflection. This demands that the law-applier use methods of legal interpretation that combine logical-legal and epistemological approaches.

In certain cases, law enforcement occurs in situations where direct regulation is absent, which is defined as a gap in the law. Gaps may result from imperfections in legislation or a conscious decision by the legislator to leave some space for independent assessment by the law applier.

Specification of legal norms acts as one of the key instruments for the practical implementation of law. It ensures a balance between the principle of legal certainty and the need to adapt regulation to specific real-life circumstances. Specification functions as a mechanism that reduces the abstractness of legal norms, translates them into practical application, and provides flexibility in law enforcement while preserving the limits of regulation.

The relationship between interpretation and specification lies in the fact that interpretation ensures understanding of the content of legal norms, while specification allows this understanding to be applied to concrete cases. Thus, these two processes are complementary and necessary for the effective functioning of the legal system.

In modern legal systems, particularly in European Union countries, there are different approaches to the interpretation and specification of legal norms. For example, in Germany, courts often use the principle of Verfassungstreue (loyalty to the Constitution), which involves interpreting legal norms in accordance with the fundamental principles of the Constitution. In the United Kingdom, courts apply the purposive approach, which interprets legal norms considering their purpose and context (Kondo et al., 2025).

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It is also worth to analyze the practice of the Supreme Court of Ukraine, which demonstrates a consistent development of reflective and analytical mechanisms of legal interpretation. Those are expressed through departures from established legal positions, the generalization of judicial decisions and the integration of substantive, and procedural law. There are five illustrative decisions that reflect a trend toward the formation of flexible and well-reasoned jurisprudence in the field of administrative justice.

The decision of the Supreme Court of 19 April 2022 in case No. 1.380.2019.005537 became a landmark ruling for administrative courts, as the Court demonstrated a departure from a purely formal approach to the assessment of evidence in disputes with public authorities. The panel of judges emphasized that judicial assessment must be based on the principle of proportionality between the purpose of an administrative act and the consequences of its application for the individual. Such interpretation corresponds to the doctrine of reflexive adjudication, in which justice is viewed as a process of understanding its own limits and social consequences (Decision of the Supreme Court No. 1.380.2019.005537..., 2022).

In addition, in the review of the case law of the Administrative Cassation Court of the Supreme Court (November 2021), there were identified new approaches to the interpretation of procedural time limits and the principle of legal certainty. In particular, the Court noted that "deficiencies of administrative proceedings cannot be imposed on the applicant" (p. 14). This position demonstrates the gradual humanization of administrative procedure and its alignment with the standards of the European Court of Human Rights concerning "effective access to justice" (Review of the case law of the Administrative Cassation Court of the Supreme Court for November 2021).

In the context of studying the relationship between judicial interpretation and the specification of legal norms, a particularly illustrative decision is that of the Administrative Cassation Court within the Supreme Court of 15 May 2025 in case No. 320/2039/23, which concerned the determination of tax consequences of foreign exchange differences.

The subject of the dispute was whether foreign exchange differences are subject to taxation as independent taxable events. The claimant appealed the decision of the tax authority, which treated changes in exchange rates as grounds for additional tax assessments

The key issue was the interpretation of the provisions of the Tax Code of Ukraine that define the composition of taxable income and expenses, as well as the concept of a "tax event." In particular, the case raised the question of the limits of tax law interference in economic processes that do not have a direct impact on the movement of assets or financial flows.

The Supreme Court applied teleological and economic-functional approaches, emphasizing the need to interpret the norm in light of its economic nature and the purpose of tax regulation. The Court stated that exchange rate fluctuations are financial rather than tax phenomena and do not always result in an actual tax event. In the reasoning section, the Court justified its conclusions based on the principles of fairness in taxation and the avoidance of double taxation.

The Court formulated a set of criteria that make it possible to distinguish cases in which an exchange rate difference constitutes a tax event from those in which such a difference is merely an accounting indicator. In particular, the Court identified the following standards:

1. the existence of actual movement of funds or assets;
2. the impact of the currency transaction on the financial result;
3. the connection between exchange rate fluctuations and the actual receipt of income.

Thus, the reasoning part of the decision serves as an example of judicial specification through the development of empirical criteria that transform an abstract interpretation of a norm into a practical standard for its application.

In its decision of 15 May 2025 in case No. 320/2039/23, the Administrative Cassation Court articulated an approach to resolving tax disputes in the context of exchange rate differences. The Court recognized that “a change in the exchange rate as an economic category is not a tax event,” which makes it possible to avoid double taxation. The Court distinguished criteria that allow foreign exchange differences to be classified as tax events, and, conversely, identified factors under which an exchange rate difference does not constitute a taxable object. The decision has a strong practical effect, as it reduces the risk of double taxation, and at the same time opens a discussion about the role of the court in the “economic interpretation” of tax norms, particularly regarding the limits of judicial law-making. This conclusion demonstrates the reflexive nature of judicial reasoning, where interpretation of norms is carried out not only grammatically but also through an economic-functional approach (Decision of the Administrative Cassation Court within the Supreme Court of 15 May 2025 in case No. 320/2039/23).

In the review of the case law the Supreme Court (February 2024) systematized precedents on the application of the principle of good faith in public procurement The Supreme Court held that “the assessment of the parties’ behavior must be carried out not only according to formal characteristics but also taking into account their actual role in commercial legal relations.” This approach indicates the gradual institutionalization of a reflexive judicial culture in administrative law (Review of the case law of the Administrative Cassation Court of the Supreme Court, February 2024).

The review of the case law of the Civil Cassation Court of the Supreme Court (2023) reflects the development of practice regarding inheritance relations, particularly emphasizing the right to a fair trial. The Supreme Court explicitly stated that “a formal approach to evidence in cases with a high emotional component violates the balance between legal certainty and human dignity.” In this context, the Court’s decision embodies a humanistic and cognitive paradigm of justice.

A central issue was the balance between the formal certainty of legal norms and the need to account for humanistic factors, especially when legal relations involve personal and moral aspects among heirs.

The Civil Cassation Court applied a teleological approach, interpreting inheritance norms which ensure fairness and protect family ties. The court also used a comparative method, referring to the case law of the European Court of Human Rights, which recognizes the importance of ethical factors in private law (e.g., Pla and Puncernau v. Andorra, 2004). Additionally, the court relied on an axiological approach, emphasizing the role of value priorities (dignity, trust, care) in forming legal assessments.

In summarizing the practice, the court developed procedural criteria for assessing the moral and humanistic aspects of disputes:

1. determining the scope of evidence that may confirm the moral state or ethical motives of the parties (witness testimony, correspondence, psychological expertise);
2. recommendations for appointing expert evaluations to establish emotional dependence or moral influence;
3. clarification of criteria for when humanistic considerations may outweigh the formal priority of a will or inheritance sequence.

Thus, judicial practice transforms evaluative categories into concrete procedural standards, promoting the development of “soft specification” in civil proceedings.

A positive aspect of this trend is the increased protection of human dignity and the restoration of moral balance in legal relations. At the same time, scholars and practitioners note a certain risk of unpredictability, as the boundaries of humanistic criteria remain vague. To minimize this risk, the development of standardized procedures for proving moral characteristics has been proposed, combining ethical flexibility with legal certainty (Review of the case law of the Civil Cassation Court of the Supreme Court:

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inheritance relations. Supreme Court, 2023).

Analysis of the materials shows that judicial interpretation is the process of clarifying the meaning and content of a legal norm in specific legal relations, while specification involves detailing and adapting the general provisions of a normative act to the features of a particular case. Comparative analysis of case law in Ukraine and other legal systems, particularly the European Union and Poland, indicates that the practice of specifying legal norms is more developed in continental legal systems, where courts have broader powers to interpret and supplement legislative norms (Kozminskyi, 2025; Leschynskyi, 2020). Ukrainian judicial practice, in turn, demonstrates a strong emphasis on formal-legal interpretation of norms, which creates certain limitations in applying the concept of specification.

Judicial interpretation is characterized by a higher level of generalization, whereas specification has a concrete nature and is applied mainly in civil, administrative, and criminal law. At the same time, excessive specification creates a risk of violating the principle of legal certainty, as confirmed by recent studies (Lapka & Semko, 2024, pp. 313–320).

In light of this, it was established that the limits of applying specification depend on the legal context and the nature of legal norms. In civil law, specification is more widespread due to the need to adapt norms to the individual characteristics of legal relations, whereas in constitutional law, formal logical interpretation predominates. The research results show that specification becomes necessary when normative acts contain vague wording or gaps that require completion in the process of law enforcement. At the same time, excessive use of specification may lead to the transformation of judicial interpretation into de facto law-making, which creates risks of abuse and violations of the principle of legal certainty.

Judicial interpretation performs the function of ensuring the unity of legal understanding, while specification contributes to increasing the flexibility and effectiveness of regulation. The comparative analysis of judicial practice in Ukraine and the countries of the European Union indicates the existence of clear approaches to specification that are formed at the level of case law and normative acts. This experience may be taken into account and adapted within the Ukrainian legal framework to develop unified methodological recommendations and standards for judicial interpretation and specification, which would be an important step toward improving the quality of law enforcement and legal certainty (Pidhorodskyi, 2024).

Thus, the results of the study confirm that the relationship between judicial interpretation and the specification of legal norms is of key importance for the development of the legal system and for maintaining a balance between the unity of legal understanding and the flexibility of regulation. Further research in this area should focus on developing criteria for distinguishing judicial interpretation from specification in different branches of law, preparing methodological guidelines for judicial practice, and adapting foreign experience while taking into account the specifics of national regulation.

4. Conclusion

The conducted study emphasizes the interconnection between judicial interpretation and the specification of legal norms, which are distinct institutions of law enforcement by their legal nature. Judicial interpretation functions as an intellectual and volitional process of clarifying the meaning, scope, and limits of a legal norm, aimed at ensuring the unity of law enforcement and the correctness of judicial decisions. Specification involves detailing, clarifying, and adapting general normative provisions to the specifics of particular legal relations. Both processes are essential for ensuring legal certainty, protecting individual rights and freedoms, and improving the quality of justice.

These theoretical aspects have important practical significance. In particular, the analysis of recent decisions of the Supreme Court confirms a tendency to move from formalistic adjudication toward a reflexive and analytical model of justice. This process manifests itself in:

1. strengthening the role of the principle of proportionality;
2. humanization of administrative proceedings;
3. economic interpretation of legal norms;
4. increasing the role of good faith in public relations;
5. integration of moral considerations into civil law decisions.

As a result, contemporary Ukrainian judicial practice increasingly demonstrates features of a cognitive and reflexive approach to legal interpretation, which corresponds to the European tradition of reflexive justice.

The theoretical distinction between these concepts is necessary for the development of scholarly research on law enforcement and law-making, as it ensures a balance between the abstract nature of legal norms and the need for their practical application. Judicial interpretation and specification operate as complementary instruments that together form an effective mechanism for implementing law in specific legal situations.

Based on the results of this study, further improvement of the framework governing judicial interpretation and specification is recommended at both the theoretical and practical levels. In particular, it is advisable to introduce legislative amendments that clearly define the concepts, procedures, and limits of judicial interpretation and specification. This would reduce legal uncertainty and strengthen the unity of judicial practice. It is also necessary to develop methodological guidelines and standards for judges that include criteria for distinguishing interpretation from specification, as well as algorithms for their application in law enforcement activity. Such measures would enhance the transparency of judicial proceedings and ensure equality of the parties before the court.

It is also important to introduce training programs and continuing education courses for judges and legal professionals that reflect modern approaches to interpretation and specification of legal norms, including international experience. The implementation of these measures would increase the effectiveness of law enforcement, reduce legal uncertainty, and contribute to the development of a legal system that complies with the rule of law and the standards of the European legal community.

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AREAS AND FORMS OF PUBLIC CONTROL OVER THE ACTIVITIES OF EXECUTIVE BODIES

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Abstract

The effectiveness of public control over the activities of executive authorities in Ukraine is limited by fragmented legislation and the lack of a single, comprehensive statute. This complicates the organisation of public participation instruments and their practical implementation. At the same time, the expansion of public policy areas in which society expects accountability and transparency requires the clear classification of control instruments and the determination of their legal nature. The study aims to identify fundamental approaches to understanding and classifying the forms of public control over executive authorities, and to define their groups, classification criteria and relationship with applicable legislation. This study uses a normative-dogmatic analysis of constitutional and administrative legislation, a comparative analysis of democratic states' foreign experience, and systemic-structural and classification approaches. It also uses a functional analysis of the mechanisms for applying forms of public control in public administration. Using a comprehensive methodological approach allows us to examine forms of public control in their systemic unity, interconnection and practical operation, rather than in isolation. The study substantiates that the forms of public control differ in their legal nature and implementation mechanisms, and that they should be examined as an integrated system. A classification is proposed based on: (i) mode of implementation (institutional, participatory, information and communication); (ii) timing (preventive or retrospective); and (iii) content of measures (consultative, information-analytical, expert-evaluative, supervisory, complaint-based, rights-protective, judicial, communication-educational, initiative and advocacy, digital oversight and mediation/consensus-building). The integrative role of public expertise, public consultations, access to public information and the citizens' appeals mechanism is demonstrated.

Keywords: public control; regulation; accountability of executive authorities; access to public information; public expertise.

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1. Introduction

Contemporary state-building is difficult to conceive without effective mechanisms of accountability and public oversight of government authorities. In present-day Ukraine, which remains under martial law, endures daily shelling of enterprises and public and residential infrastructure, and simultaneously undergoes profound transformations in public administration, decentralisation, digitalisation, and European integration, public control over executive authorities is particularly important. The domestic political developments of autumn 2025, marked by high-profile corruption scandals and the resignation of senior officials, further heightened public expectations for transparency, openness, and integrity within the executive branch, while legal mechanisms for public participation in monitoring managerial decision-making remain fragmented and insufficiently systematised.

The relevance of this study is primarily conditioned by the absence in Ukraine of a specialised law that would regulate the institution of public control comprehensively. Instead, the relevant forms and instruments are dispersed across the provisions of the Constitution of Ukraine, administrative, information, and anti-corruption legislation, as well as subordinate acts of the Cabinet of Ministers of Ukraine. Such normative fragmentation complicates the practical application of public control mechanisms and their theoretical conceptualisation, classification, and assessment of effectiveness. In contemporary scholarly literature, a unified approach to defining the range of forms of public control, the criteria for their differentiation, and their interrelations is yet to be developed.

Public control is important in the sphere of executive authorities, which implement state policy, adopt managerial decisions, and exercise public powers in relation to individuals and legal entities. As contemporary studies rightly note, the executive branch is the most “contact-intensive” branch of government; accordingly, the risks of violations of human rights and freedoms, abuse of discretionary powers, and ineffective governance are especially pronounced in this sphere (Krastev & Holmes, 2019). In this context, public control emerges as an instrument for ensuring the rule of law and maintaining a balance between public and private interests.

Within domestic legal scholarship, the issue of public control over the activities of executive authorities was developed predominantly within the framework of administrative-law and constitutional-law studies, with an emphasis on forms of public participation and their normative regulation. In particular, attention is paid to the analysis of the spheres in which public control is exercised and its correlation with fundamental human rights, which makes it possible to distinguish political, social, administrative, and personal spheres of such control (Kosinov, 2020). Administrative law scholarship emphasises the limited nature of existing methods and forms of public control, which are largely determined by public authorities themselves, thereby reducing its independent and initiative-driven character (Kuleshov, 2021).

A separate line of research addresses the classification of forms of public control. Scholarly works distinguish between general (constitutional) and special forms, the latter encompassing citizens’ appeals, requests for public information, public events, the activities of civil society organisations, and institutionalised mechanisms such as public councils and public expertise (Nironka, 2021; Skvirskyi, 2020). Researchers also emphasise that the absence of a unified law on public control in Ukraine hinders the development of an exhaustive classification of its forms and results in fragmented legal regulation (Haponenko, 2022).

A substantial body of academic publications is devoted to individual forms of public control, primarily the institution of public expertise, which is regarded as one of the forms of interaction between civil society and the executive branch that is closest to the idea of participatory democracy. In this context, emphasis is placed on the obligation of executive authorities to consider expert proposals, take measures for their implementation, and report to the public, which distinguishes public expertise from other, more declarative forms of control (Panfilov, 2021).

At the same time, scholarly works analyse the legal nature of citizens' appeals and requests as forms of public control that possess a dual character. On the one hand, they serve as a means of protecting the rights and legitimate interests of individuals. On the other hand, they function as instruments of societal oversight over the activities of public authorities (Neuhodnikov, 2020). Some studies focus on the informational component of public control, in particular the importance of access to public information, the role of the mass media, and public monitoring as continuous forms of oversight over public administration (Kasianenko, 2022).

An analysis of foreign approaches conducted by Ukrainian scholars indicates that in states with a high level of democracy, public control is characterised by a wide range of forms from public hearings and the activities of advisory bodies to investigative journalism, ombudsman institutions, and digital participation tools. However, even in such states, citizen participation often has a reactive character, which renders the issue of developing preventive forms of public control relevant for the Ukrainian legal order as well (Nironka, 2021).

Moreover, there is a tendency towards the predominance of reactive rather than proactive forms of public control, manifested in societal protest responses to decisions that have already been adopted, rather than in preventive influence at the stage of their preparation. This circumstance is also relevant to the Ukrainian context, where the potential of ex ante forms of public control remains insufficiently realised, as evidenced by the protests in July 2025 in connection with events related to the limitation of the powers of the National Anti-Corruption Bureau of Ukraine (NABU) and the Specialised Anti-Corruption Prosecutor's Office (SAPO).

The purpose of this study is to identify fundamental approaches to understanding and classifying the forms of public control over the activities of executive authorities in Ukraine. To achieve this aim, the study sets out to address the following tasks: to analyse scholarly approaches to defining the essence of public control and its role within the system of public administration; to outline the principal spheres in which public control over the activities of executive authorities is exercised; to systematise and classify the forms of public control according to various criteria; to determine their legal nature and normative foundations; and to assess the possibilities for improving existing mechanisms of public control with due regard to foreign experience.

Thus, the findings may be used to improve legislation, develop a unified conceptual approach to the institutionalisation of public control, and enhance the effectiveness of interaction between civil society and the executive branch in Ukraine.

2. Materials and Methods

The methodological framework of the study is based on a combination of general scientific and special legal methods. Their application is defined by the multidimensional nature of public control and the need to analyse it as a legal, institutional, and functional phenomenon within the system of public administration. The research was conducted in several stages, which made it possible to move consistently from identifying the theoretical and legal foundations of public control to the systematisation of its forms and mechanisms of implementation.

At the first stage, the normative–dogmatic method was employed to analyse the provisions of the Constitution of Ukraine and acts of administrative legislation that define the legal foundations of public participation in the governance of state affairs. The use of this method made it possible to clarify the legal nature of public control, determine its place within the system of public authority, and identify the normative grounds for the existence of specific forms of control. In particular, the study examined constitutional guarantees of popular sovereignty, the right to participate in the administration of state

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affairs, and the right of petition, as well as special legislation regulating citizens' appeals, access to public information, the conduct of public expertise, and public consultations. This analysis revealed the fragmented nature of the normative regulation of public control and the absence of a unified legislative approach to its systematisation.

At the second stage, a comparative legal analysis of countries with a high democracy index was conducted. Using this method, approaches to the organisation of public control in Western Europe, North America, and the Scandinavian countries were examined. The comparative analysis allowed to identify common trends and differences in the practices of institutionalising public councils, organising public consultations, applying mechanisms of public expertise, and employing digital tools for citizen participation. The findings were used to assess the possibilities for adapting certain models to the Ukrainian legal order, taking into account national legal and socio-political conditions.

At the third stage of the research, systemic–structural and classificatory approaches were applied, which allowed forms of public control to be regarded not as isolated phenomena but as elements of an integrated mechanism of interaction between civil society and executive authorities. By means of these approaches, forms of public control were grouped according to various criteria: the mode of implementation (institutionalised participatory, participatory, and information-communication forms), temporal orientation (preventive and retrospective), and the substantive content of control activities (consultative, information-analytical, expert-evaluative, supervisory and oversight, complaint-based and rights-protective, judicial-legal, etc.). This classification helped systematise the diversity of forms of public control and to identify their interrelationships.

At the final stage, the functional method was used to analyse the practical operation of individual forms of public control in public administration. In particular, public expertise, public consultations, mechanisms for access to public information, and the institution of citizens' appeals were examined from the perspective of their capacity to ensure accountability, transparency, and efficiency in the activities of executive authorities. Functional analysis enabled an assessment of the actual impact of these instruments on decision-making processes and the identification of problems related to their practical implementation.

The application of a comprehensive methodological approach ensured a holistic understanding of public control as a dynamic legal and social institution and provided a basis for formulating generalised conclusions and proposals aimed at improving the normative and institutional mechanisms of its implementation.

3. Results and Discussion

The substance of public control is revealed through the forms of participation of citizens and their associations in supervisory (in the broad sense) activities concerning the adoption of managerial decisions and the implementation of public policy at both the state and local levels. At the same time, given the nature of the powers and functions of executive authorities, the majority of such public activity is aimed precisely at monitoring compliance with legality, as well as the observance of human and civil rights, freedoms, and lawful interests in the operation of these bodies. In this regard, as aptly noted by Kuleshov, the organisation of public control in Ukraine is limited to a relatively narrow range of methods (which are synonymous with forms) characteristic of organisational theory, that is, these methods are predominantly determined by public authorities. Consequently, it should be taken into account that the consolidation of forms of public control and the mechanisms for their implementation primarily takes place at the normative level. Since the current normative and regulation of public control in Ukraine requires an independent study, this section focuses only on identifying the fundamental approaches to the classification and understanding of these forms, while maintaining their inseparable connection with the provisions of the domestic legal system.

Thus, the spheres of public control are identified, for the most part, after and beyond their direct legal regulation, as they generally relate to areas and branches (sub-branches and specific key institutions) of state or municipal activity, including regulatory activity. Thus, public control emerges in such spheres as energy, environmental protection (environmental control), the targeted use of land plots, national security and defence, the observance of the rights of convicted persons, as well as in the areas of privatisation and public procurement—pursuant to Part 5 of Article 7 of the Law of Ukraine "On Public Procurement" (in particular, a special project, DoZorro, operates as a mechanism of public control over public procurement), compliance with and enforcement of anti-corruption legislation, oversight of police activity, and other law enforcement bodies.

In legal scholarship, there are notable attempts to classify the spheres of public control. On the basis of the main categories of human rights, Kosinov identifies the following spheres of public control: (1) the political sphere, encompassing such areas as the exercise of rule-making powers by state authorities and local self-government bodies; access to information on the activities of state authorities and local self-government bodies; the exercise of electoral rights, the right to participate in referenda and other forms of direct democracy; and the administrative sphere, including control over the implementation of the principles of good governance; (2) the sphere of personal human rights, in which the public, through control over the activities of public authorities, may respond to violations of personal data protection, unjustified restrictions on personal liberty, and similar infringements; and (3) the social sphere, including labour relations and employment, pension provision, and the granting of social benefits and assistance. These may also include the environmental sphere, in which the public exercises its right to an environment safe for life and health, and the sphere of personal security, which involves oversight and the prevention of arbitrariness by law enforcement bodies, among many other areas of public control. These spheres are not isolated but are closely interconnected, both in terms of the methods of public control employed and the pursuit of common and specific objectives.

An even greater diversity of approaches concerns the nature and systematisation of forms of public control, most of which are directly related to the activities of executive authorities. At the primary (constitutional) level of regulation, Nironka concludes that the Constitution of Ukraine currently provides for two basic forms of public control: (1) public events, including the possibility of holding peaceful assemblies, demonstrations, pickets, and the like; and (2) the practical implementation of citizens' right to establish public associations and organisations. Traditionally, constitutional provisions relating to public control include Article 5, according to Part 2 of which the bearer of sovereignty and the sole source of power in Ukraine is the people. Part 1 of Article 38 stipulates that citizens have the right to participate in the administration of state affairs, in nationwide and local referenda, and to freely elect and be elected to state authorities and local self-government bodies. In this connection, some scholars also include participation in elections and referenda among the general forms of public control.

Provisions that affect the exercise of public control indirectly also include the right to freedom of thought and speech and the free expression of views and beliefs (Article 34 of the Constitution of Ukraine), as well as the right to freedom of association in political parties and public organisations for the exercise and protection of rights and freedoms and the satisfaction of political, economic, social, cultural, and other interests (Article 36 of the Constitution). In addition, pursuant to Article 40 of the Constitution of Ukraine, everyone has the right to submit individual or collective written appeals or to address state authorities, local self-government bodies, and their officials in person, which are obliged to consider such appeals and provide a substantiated response within the time limits established by law. These forms cannot be considered exhaustive in the

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context of organising and exercising effective public control over executive authorities. However, based on constitutional provisions, some researchers classify them as general organisational forms of public control, identifying appeals, requests for access to public information, mass assemblies, and public discussions. These, in turn, constitute the basic prerequisites for further differentiation and supplementation by other, conditionally special, forms of public control, which appear sporadically at the level of specific legislation.

For example, Skvirskyi identifies special forms of public control on the basis of the need for certain preparatory work for their proper implementation and their connection with previous decisions or actions of public authorities (controlled entities), classifying as such forms the functioning of public councils, the institution of public observers, and the institution of public expertise of the activities of executive authorities. In this respect, due in particular to the absence of a Law of Ukraine "On Public Control," which could unify this area, it is impossible to speak of an exhaustive list of forms of public control, although the key ones are mentioned in various legislative acts or identified by scholars.

A broad list of the main forms of public control over the activities of executive authorities is provided by Haponenko, who includes access to information on the activities of the controlled entity; monitoring compliance by executive authorities with current legislation and state programmes of social development and state discipline in decision-making and the performance of actions; participation in the rule-making process; work in consultative and advisory bodies; submission of appeals and requests; conducting public expertise, anti-discrimination expertise of draft normative legal acts, public monitoring and evaluation; filing lawsuits in cases of violations of current legislation; reporting by representatives of state authorities to the public; e-governance and e-democracy. Among additional forms, the scholar lists the operation of public television (often, the activities of mass media in general and investigative journalism in particular are also classified as forms of public control), mandatory declaration and publication of income and expenditures of officials, sociological research, video recording of official interactions between controlled entities and representatives of civil society, and the exercise of citizens' right to familiarise themselves with documents of state authorities, among others.

Neuhodnikov identifies the following forms of public control over the activities of public administration entities in Ukraine: (1) the holding by executive authorities and local self-government bodies of public hearings with the public on draft normative legal acts during their development; (2) the establishment and functioning of public (expert) councils in the activities of public administration entities; (3) the conduct of public expertise of the activities of authorities and public anti-corruption expertise of the activities of public administration entities; (4) ensuring the possibility for citizens to submit electronic appeals to public administration entities and to file electronic petitions; and (5) ensuring the possibility for citizens to contact public administration entities by telephone through designated contact centres and "hotlines", as well as via the Internet and electronic communication tools. As can be seen, the forms of public control identified by the cited authors overlap and may therefore be regarded as core forms, requiring more detailed examination with reference to the foundations of their normative regulation. This makes it possible to determine the nature of their application and their place in the system of public control over the activities of executive authorities.

One of the most frequently mentioned forms of public control is the institution of public expertise, the organisation and conduct of which requires active cooperation on the part of the controlled entity and is currently carried out in accordance with the Procedure for Facilitating the Conduct of Public Expertise of the Activities of Executive Authorities, approved by Resolution of the Cabinet of Ministers of Ukraine No. 976 of 5 November 2008. This Procedure provides for public expertise to be conducted by two types of entities—general and special—namely, civil society institutions in general (including public associations, trade unions and their associations, creative unions, employers' organisations and their associations, charitable and religious organisations, bodies of self-organisation of the population, non-state media, and other non-profit associations and institutions legalised in accordance with the law) and, in particular, public councils. Accordingly, there is a direct connection with another form of public control—the activities of such public councils—which are carried out in accordance with the Standard Regulation on a Public Council under a Ministry, Other Central Executive Authority, the Council of Ministers of the Autonomous Republic of Crimea, Oblast, Kyiv and Sevastopol City, District, and District-in-City Kyiv and Sevastopol State Administrations, approved by Resolution of the Cabinet of Ministers of Ukraine "On Ensuring Public Participation in the Formation and Implementation of State Policy" No. 996 of 3 November 2010. The same Resolution also approved the Procedure for Conducting Public Consultations on the Formation and Implementation of State Policy, which constitutes a third form of public control mentioned in this context.

The Procedure for Facilitating the Conduct of Public Expertise of the Activities of Executive Authorities stipulates that a public council may conduct public expertise of the activities of the executive authority under which it is established. According to the official website of the Ministry of Justice of Ukraine, the public council under the Ministry has been operating since 2011 and is guided by the relevant Regulation approved at a meeting of the Public Council under the Ministry of Justice of Ukraine (Minutes No. 1 of 16 May 2011) and endorsed by the Minister of Justice of Ukraine. Pursuant to this Regulation, the public council also conducts public expertise and public anti-corruption expertise of draft normative legal acts, establishing working and expert groups within its structure for this purpose. The specific features and areas of activity of the public council under the Ministry of Justice will be examined in more detail in subsequent sections of this study.

At the same time, returning to the aforementioned Procedure, it contains, albeit in a rather descriptive form, a definition of public expertise of the activities of executive authorities as a component of the mechanism of democratic governance. This definition provides for the assessment by civil society institutions and public councils of the activities of executive authorities, the effectiveness of their decision-making and implementation, and the preparation of proposals for resolving socially significant problems to be taken into account in the work of executive authorities. Thus, public expertise as a form of public control is used to evaluate the previous activities of executive authorities and prepare proposals for their future activities. For example, a letter of the Ministry of Justice of Ukraine dated 16 October 2012 No. 12645-0-33-12/7.1, addressed to the Head of the public organisation "Public Chamber of Crimea," indicates that issues such as methods of publishing information on public consultations on the official website of the Ministry of Justice, improving the procedure for forming the annual indicative plan of public consultations, comments on conducting public discussions of the draft Administrative Procedure Code exclusively in the format of electronic consultations, publication for review of the draft Law of Ukraine "On Service in Local Self-Government Bodies," and a number of other matters were the subject of public expertise and the Ministry's responses thereto.

Certain legislative acts also provide for special types of public expertise. In particular, pursuant to Parts 5 and 7 of Article 55 of the Law of Ukraine "On Prevention of Corruption," public anti-corruption expertise of existing normative legal acts or their drafts may be conducted on the initiative of individuals, public associations, or legal entities, and the public council under the National Agency on Corruption Prevention may be involved in anti-corruption expertise. Overall, the importance of public expertise as a form of public control is difficult to overestimate. Panfilov argues that, because a public administration entity is obliged to consider expert proposals, develop, and approve measures for their implementation based on the review results, and subsequently provide the public

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association with a written response and publish relevant information on its website, public expertise is currently the only form of participation by public associations that fully corresponds to the nature of participatory democracy. These obligations of the controlled entity are also enshrined in the Procedure for Facilitating the Conduct of Public Expertise of the Activities of Executive Authorities, where paragraph 5 further stipulates that officials of executive authorities must not obstruct public expertise or interfere with the activities of civil society institutions or public councils involved in its conduct.

The Procedure for Conducting Public Consultations on the Formation and Implementation of State Policy provides that such consultations aim to involve citizens in the administration of state affairs, ensure their access to information on the activities of executive authorities, and guarantee publicity, openness, and transparency. According to the Procedure, public consultations facilitate systematic dialogue between executive authorities and the public, improve the quality of decision-making on important state and social issues by considering public opinion, and create conditions for citizen participation in the development of draft decisions. These objectives correspond to the general tasks of public control, albeit through the lens of a specific form.

The guide Online Public Consultations: Step by Step, developed during the COVID-19 pandemic for civil servants and public organisations by OpenNorth for the National Democratic Institute under the programme "Engaging Citizens in Decision-Making through Public Consultations," supported by the United Kingdom's Good Governance Fund, offers a broader perspective on public consultations. It describes them as a cyclical process—comprising problem identification, policy development, policy adoption, and policy implementation—that incorporates feedback from a wide range of stakeholders. These include citizens, professional representatives, civil society institutions, professional associations, groups directly affected by the issue, and other interested members of the public. Consultations may be conducted through online surveys or as a series of public discussions held nationwide on a selected topic. At the same time, the digital transformation of these processes should not limit the possibility of organising public consultations in the format of in-person meetings, with the involvement of media representatives for subsequent coverage. In other words, public consultations should be conducted on a systematic and continuous basis, integrated into the overall process of policy development and implementation, rather than only in exceptional cases or after public concerns arise that a particular draft normative act may violate constitutional rights or freedoms.

In this regard, it is appropriate to speak of different levels of public consultations depending on their degree of institutionalisation or their conduct on a public or professional basis (the latter referring to lobbying activities, attempts to legislate which continue, although such activities already fall outside the scope of the objectives and purposes of public control). Another form of public control—the submission and consideration of citizens' appeals and requests—is regulated by special legislation, specifically the Law of Ukraine "On Citizens' Appeals." This law enshrines the right, and establishes the procedure, for individuals to apply to state authorities, local self-government bodies, citizen associations, enterprises, institutions, organisations regardless of ownership, media, and officials. Applications may include comments, complaints, or proposals related to their statutory activities, as well as petitions concerning the exercise of socio-economic, political, and personal rights and lawful interests, including complaints about their violation (Part 1, Article 1).

In legal scholarship, citizens' appeals are understood in two dimensions, reflecting their dual legal nature: as an institution of administrative law—a means of protecting citizens' rights and interests—and as a form of public control. As a form of public control, citizens' appeals allow individuals to express views, proposals, or dissatisfaction with specific actions or decisions of public authorities, while requiring mandatory consideration and a response. Accordingly, citizens' appeals can be seen as an individual form of public control that often signals systemic problems in a particular area of public governance or legal regulation, regardless of the number of submissions, although the quantity of appeals may also inform executive authorities and officials responsible for responding to them.

Legislative provisions governing access to information are closely linked to the submission and consideration of public requests and proposals, as they establish the framework for transparency and the public's right to receive timely and accurate information from authorities. Thus, the obligation of public authorities to inform the public and the media about their activities and adopted decisions, along with state and public control over compliance with information legislation, is established among the guarantees of the right to information enshrined in Part 1 of Article 6 of the Law of Ukraine "On Information." Part 2 of Article 29 of this Law defines information of public interest as information that indicates threats to state sovereignty or territorial integrity; ensures the exercise of constitutional rights, freedoms, and duties; evidences potential violations of human rights, misleading of the public, harmful environmental or other negative consequences of activities (or inactivity) of individuals or legal entities, and so forth. Pursuant to Part 2 of Article 17 of the Law of Ukraine "On Access to Public Information," public control over ensuring access to public information by information managers is exercised by local council deputies, public organisations, public councils, and citizens personally, through public hearings, public expertise, and similar measures. Public control is also defined as one of the guarantees of the right of access to public information (paragraph 5 of Part 1 of Article 3 of the Law).

Some information of public interest is relatively specific, such as data on threats to state sovereignty, while information related to the exercise of constitutional rights, freedoms, and duties is far broader, encompassing not only constitutional provisions but also numerous legislative and subordinate normative acts that implement, guarantee, or restrict these rights. In this context, forms of public control that ensure continuous civil society oversight, such as public monitoring, the activities of mass media, and the work of trade unions and public associations for which public control is a primary statutory purpose, are particularly important, often carrying greater systemic significance than the processing of individual appeals and requests.

Experience from other countries shows that, alongside traditional forms, new forms of public control are being developed and implemented, indicating that public control cannot be understood solely through the methods discussed above. At the same time, the dynamic nature of this phenomenon should also be taken into account in Ukraine when developing a special law in this area. Based on the analysis of public control practices in the United States, Belgium, France, Canada, and Spain, Nironka summarises that the main manifestations of the concept in these states include public control as such, public monitoring, the organisation of public hearings, the activities of public councils, institutions of public expertise and public inspection, the activities of ombudsmen, a wide range of investigative activities (from community-based to professional journalistic investigations), mechanisms for submitting requests to state and local authorities, and hearings of reports on the results and impact of their activities. Among innovative forms, the scholar identifies the registration of errors committed by officials, documentation of violations of normative requirements and their consequences, mechanisms for encouraging positive actions by officials, and administrative appeals against unlawful decisions, actions, or omissions.

In the context of differentiating mechanisms of state and public control over the activities of local self-government bodies, Kasianenko notes that civil society institutions are active subjects of such control in states with a high democracy index, including the Scandinavian countries (Norway, Sweden, Denmark), as well as New Zealand, Canada, Ireland, Switzerland, Finland, and Austria. In such states, the effectiveness of public

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control is directly linked to traditions of direct democracy, which today, through the use of modern technologies, are transforming into institutions of open government. At the same time, even in developed democracies, studies based on Norway show that citizen participation in municipal affairs is predominantly protest-oriented as a reactive form of public control rather than initiative-based. This reflects one of the functions of public control: enabling society, or its active groups, to respond to decisions or policies of state or local authorities that are perceived as unacceptable.

Contemporary forms of public control over the activities of executive authorities are diverse both in terms of their legal nature and their mechanisms of implementation and, accordingly, normative regulation. On the basis of the mode of implementation, these forms may be grouped as follows: (1) institutionalised participatory forms, implemented through permanent or ad hoc civil society institutions, regardless of whether they are established under controlled bodies (thus including both the functioning of public (expert) councils and other consultative-advisory bodies under public authorities, as well as the activities of public associations exercising public control in accordance with their founding documents, public activists, initiative groups, etc.); (2) participatory forms, which involve engagement with or influence on the activities of executive authorities not on an institutional-organisational basis but on an object-based basis (public expertise, public hearings, public consultations, submission and consideration of appeals and requests, public monitoring, and others); and (3) information and communication forms, encompassing the activities of mass media (including public television and radio, web resources), journalistic and public investigations, publication by public authorities of reports on their activities and their compliance with constitutional and legal principles, disclosure of asset and income declarations by authorised persons and their subsequent analysis by any interested member of the public, and the like.

According to the timing of implementation, it is appropriate to distinguish: (1) public control exercised ex ante (Latin for “in advance”), which in the context of public control refers to a preventive form carried out prior to the adoption of decisions or the implementation of policies, with the aim of preventing errors, violations, or ineffective decisions at the stage of their preparation; and (2) public control exercised ex post (Latin for “after the event”), a subsequent (retrospective) form carried out after the adoption or implementation of decisions by public authorities, aimed at assessing their effectiveness, legality, justification, and compliance with public interests.

In addition, taking into account the substantive content of control measures, they may be classified into the following groups: (1) consultative (public consultations; public hearings; round tables/working meetings; targeted consultations with stakeholders; expert/public councils and commissions; collection of written proposals on draft acts); (2) information-analytical (requests for public information; audits of open data and registers; independent monitoring of policies and administrative services; surveys and questionnaires; content analysis of decisions and practices; “shadow” reports on the implementation of international obligations); (3) expert-evaluative (both ex ante and ex post) (public expertise of draft normative legal acts; anti-corruption expertise; impact assessment of alternatives and regulation; peer review of methodologies and standards; ex post evaluations of the implementation of decisions and policies); (4) supervisory and oversight (audit-type) forms (public monitoring of the quality of administrative services based on approved methodologies; observation of open procedures, such as electronic bankruptcy auctions; verification of the implementation of recommendations; public reports on identified violations); (5) complaint-based and rights-protective (remedial) forms (submission of complaints regarding actions or omissions of officials; disciplinary complaints concerning notaries, registrars, or enforcement officers; reporting corruption to authorised bodies; collective appeals or petitions within the scope of competence); (6) judicial-legal forms (administrative claims seeking recognition of acts, actions, or omissions as unlawful; disputes concerning access to information; challenges to violations of consultation or disclosure procedures; judicial oversight of registration, notarial, and enforcement procedures); (7) communication and educational forms (information campaigns; legal education activities; publication of explanations and digests; hotlines and public reception offices; infographics and dashboards for the public); (8) initiative and advocacy forms (position papers and policy papers; advocacy campaigns for changes in policies or acts; agenda-setting for consultations, including the initiation of topics; professional charters and memoranda on integrity); (9) digital oversight forms (crowdsourcing of errors in registry data; use of APIs and open datasets for public analysis; public online performance panels; logging of access and auditing of change trails as objects of external oversight); and (10) mediation and consensus-building forms (where applicable), including facilitated sessions to reconcile positions between the Ministry of Justice and stakeholders, mediation in public-law policy conflicts, and conciliatory recommendations with implementation roadmaps.

However, these forms should not be used in isolation; their classification into the specified categories is primarily theoretical and analytical rather than practical, although it helps clarify their legal nature. In practice, they are applied in a comprehensive manner: public councils resort to public expertise and other forms of public control in their activities, while mass media regularly submit requests for public information or comments from authorised officials to executive authorities. Their systemic unity forms public control over executive authorities can function as an effective and coherent instrument of civil society influence, ensuring public awareness and the ability to adjust the activities of public administration, take public interests and demands into account, including in the drafting of normative legal acts, and subsequently hold culpable officials accountable through disciplinary, administrative, and even criminal liability.

Furthermore, based on an analysis of foreign experience, it appears appropriate to adopt approaches aimed at introducing innovative forms and methods of public control, particularly those involving public participation in public investigations, expertise, and monitoring activities, expanding participation in meetings of elected collegial bodies of state and local authorities and the hearing of their reports, and further implementing systems and instruments of electronic democracy. At the same time, priority should be given to the coordinated functioning of all these mechanisms and their systemic unity, rather than the chaotic accumulation of disordered methods of public control regulated by disparate normative legal acts.

4. Conclusions

The research concludes that public control over the activities of executive authorities in Ukraine constitutes a complex and multidimensional phenomenon that cannot be reduced to individual instruments of public participation or isolated forms of response to violations. Its current state is characterised by a significant diversity of forms and mechanisms of implementation, while at the same time being marked by fragmented normative regulation and the absence of a unified system-forming approach at the legislative level. This circumstance complicates both the practical application of public control and its doctrinal comprehension.

It is substantiated that the forms of public control should be considered to be elements of an integral mechanism of interaction between civil society and public authorities. Such an approach permitted to identify their functional purpose, interconnections, and complementary nature. The proposed grouping of forms of public control according to the mode of implementation, temporal orientation, and the content of control measures reflects the actual practice of their application and has analytical value for the further improvement of normative regulation in this sphere.

The research shows that institutionalised participatory, reactive, and information-and-communication forms of public control interact continuously and are applied synergistically in practice. The institution of public expertise combines elements of both

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prior and subsequent control and facilitates a structured dialogue between executive authorities and the public. A similar integrative role is played by public consultations, mechanisms for access to public information, and citizens' appeals, which together constitute the core infrastructure of public control in public administration.

A comparative analysis of foreign experience in democratic states confirms that the effectiveness of public control is directly linked to the level of its institutionalisation, the development of traditions of citizen participation, and the implementation of open government instruments. At the same time, even in developed democracies, there is a discernible tendency for reactive forms of public control to prevail over preventive ones, which underscores the need to strengthen the role of ex ante mechanisms of public participation at the stage of preparing managerial decisions.

The further development of public control in Ukraine should be guided not by the haphazard expansion of individual forms of participation, but by ensuring their coordinated and systemic functioning. This requires the unification of approaches to normative regulation, the establishment of clear procedures for interaction between executive authorities and the public, and the integration of traditional and digital control instruments without diminishing offline forms of participation. Only under such conditions can public control fulfil its primary function: ensuring the accountability, transparency, and effectiveness of executive authorities' activities in the interests of individuals and civil society.

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THE MECHANISM FOR ENSURING HUMAN RIGHTS UNDER CONTEMPORARY STATE-BUILDING CONDITIONS

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Abstract

This article is devoted to a comprehensive analysis of the mechanism for ensuring human rights in the context of contemporary state-building processes. The main theoretical and legal approaches to understanding the content and purpose of this mechanism are examined, and the key challenges faced by the state in the course of establishing democratic principles and developing effective legal institutions are identified. It is substantiated that the mechanism for ensuring human and civil rights and freedoms constitutes a multicomponent system that integrates legal, organizational, economic, and institutional means aimed at the effective realization, protection, and restoration of violated rights. The article argues that the right to protection is implemented through a system of diverse mechanisms that ensure not only the formal enshrinement of rights but also their practical realization, safeguarding, and defense. Within the structure of this mechanism, a distinction is proposed between a static component, which encompasses normative legal guarantees, the range of subjects involved, and forms of legal liability, and a dynamic component, which reflects the procedural aspect of the realization, safeguarding, and protection of rights through the activities of authorized institutions. Special attention is paid to the impact of transformational processes within the state on the effectiveness of the human rights protection mechanism, and the necessity of its modernization in line with international and European standards is substantiated. The specific features of the realization of rights and freedoms under martial law, demographic changes, economic instability, and global social challenges are analyzed. It is emphasized that the protection of human rights under such conditions requires an integrated approach combining legal, administrative, and socio-economic instruments. The multidimensional nature of the state-building process is highlighted, encompassing legal, political, economic, ideological, security, financial, and cultural-value factors. The research findings have practical significance and may be used to further improve the mechanism for ensuring human rights in the context of contemporary state-building.

Keywords: human rights; state-building; mechanism for ensuring rights; rule of law; martial law; civil society.

1. Introduction

In a modern rule-of-law state, the human being is the central element of the entire system of public authority, while their rights and freedoms serve as the primary benchmark of state policy. Ukraine's constitutional model is based on a human-centered approach, according to which the state is called upon to serve the interests of the individual, create conditions for their free development, and ensure effective protection of their rights. Article 3 of the Constitution of Ukraine enshrines the principle that the human being, their life and health, honor and dignity, inviolability, and security are recognized as the highest social value, while the establishment and protection of human rights and freedoms constitute the main duty of the state. This provision reflects a fundamental idea of modern constitutionalism - the priority of human rights over the interests of the state and public authorities.

The implementation of these constitutional principles is complex and goes beyond purely legal dimensions. It directly affects socio-political stability, the legitimacy of state institutions, citizens' trust in authority, as well as the quality and effectiveness of state-building processes. Therefore, the level of protection of human rights and freedoms is considered one of the key indicators of the state's effectiveness and its compliance with democratic standards and the rule of law.

At the same time, the current stage of Ukraine's development is characterized by extraordinary challenges that significantly complicate the practical realization and guarantee of human and civil rights. Armed aggression against Ukraine, the introduction of a legal regime of martial law, mass population displacement, the destruction of civilian infrastructure, and deepening socio-economic instability have created a situation in which traditional mechanisms for ensuring human rights are seriously tested. Armed conflict leads to systemic violations of fundamental rights, including the right to life, personal security, freedom of movement, access to justice, education, and healthcare.

In wartime conditions, the state is forced to impose temporary restrictions on certain rights and freedoms, which is permitted under both national legislation and international law. At the same time, such restrictions must comply with the principles of legality, necessity, proportionality, and non-discrimination. This necessitates the search for a balance between national security needs and the state's obligation to ensure an adequate level of human rights protection even in emergency situations. Under such circumstances, the effectiveness of the human rights protection mechanism and its ability to adapt to crisis conditions becomes particularly relevant.

In contemporary legal doctrine, the mechanism for ensuring human rights is viewed as a complex, multi-level system encompassing a set of legal norms, institutional structures, procedures, and instruments aimed at the realization, protection, and safeguarding of rights and freedoms. Its effectiveness is determined not only by the presence of an extensive normative-legal framework but also by the ability of state institutions to ensure the practical implementation of legal provisions, respond to rights violations, and restore the legal status of affected individuals. In this context, the human rights protection mechanism becomes a key instrument of state-building, as it embodies the state's constitutional responsibility toward individuals.

The level of human rights protection in the process of contemporary state-building also serves as an indicator of public administration quality and the coherence of state institutions' activities. Despite the enshrinement of a wide range of rights and freedoms in the Constitution of Ukraine and international treaties, practice often demonstrates systemic problems. These include the declarative nature of certain legal guarantees, insufficient effectiveness of law enforcement, fragmented institutional support, and limited resources for realizing social and economic rights. Under martial law, these problems are exacerbated, as state institutions operate under increased pressure, and standard procedures for implementing human rights require adaptation to new realities.

Another factor highlighting the relevance of studying the human rights protection mechanism is the profound transformational processes taking place in Ukraine due to political, socio-economic, and security changes. The reform of public administration, judicial system reforms, decentralization, the development of civil society institutions, and the country's European integration path necessitate the harmonization of national legislation with international and European human rights standards. In this context, the human rights protection mechanism requires not only theoretical reconsideration but also practical modernization to meet contemporary challenges.

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The issue of human rights occupies a leading place in the research of both Ukrainian and foreign scholars. Domestic studies have addressed various aspects of state policy in the human rights sphere, including the humanitarian foundations of state activity (Tan'ko, 2023), the relationship between human rights and national security (Chyzhov, 2023), and the role of state-building processes in forming effective legal mechanisms (Hryshko, 2025). Nevertheless, despite extensive scholarly work, the mechanism for ensuring human rights as an integrated legal phenomenon under contemporary state-building and martial law remains insufficiently systematized within state and legal theory.

This necessitates further comprehensive research into the human rights protection mechanism to clarify its conceptual and categorical content, identify its structural and functional elements, and determine the peculiarities of its functioning amid the transformation of state and legal institutions. Particular attention should be paid to analyzing how martial law affects the correlation between legal guarantees and the actual capacity for their implementation, as well as to identifying institutional and legal tools that can enhance the effectiveness of human rights protection under crisis conditions.

The purpose of this article is to conduct a comprehensive analysis of the mechanism for ensuring human rights in the context of contemporary state-building, to define its content, structure, and significance for the establishment of human rights and freedoms as a fundamental value of a rule-of-law state. To achieve this goal, the study seeks to: examine the main theoretical and legal approaches to understanding the mechanism for ensuring human rights; highlight its key structural and functional elements; analyze the impact of martial law and transformational processes on its effectiveness; and formulate scientifically grounded recommendations for improving the human rights protection mechanism in contemporary state-building conditions.

Thus, the research aims to substantiate the role of the human rights protection mechanism as an integral component of state-building processes and one of the main instruments for forming a legal, democratic, and socially oriented state capable of effectively responding to modern internal and external challenges.

2. Materials and Methods

This study adopted a normative juridical method, complemented by a political-legalThe methodological foundation of this study consists of a set of scientific methods and techniques that ensure a systematic and comprehensive examination of the mechanism for ensuring human rights in the context of contemporary state-building and martial law. The primary method within this system is the worldview-based dialectical method, which allows for the consideration of issues in the unity of their social content and legal form, enables a systematic analysis of the role of public authorities in ensuring human and civil rights and freedoms, and facilitates an assessment of the effectiveness of the rights protection mechanism in a democratic society.

The structural-logical method was employed to determine the role and position of state authorities as subjects responsible for protecting human and civil rights, acting as guarantors of the realization of these rights amid the socio-political and economic transformation of Ukrainian society. This method made it possible to systematize the tasks and functions of the relevant authorities, outline priorities in ensuring human rights and freedoms, and identify directions for improving mechanisms for their protection.

A comprehensive approach combining the dialectical and structural-logical methods allowed for an in-depth analysis of the role of state authorities in ensuring human and civil rights. This approach enabled an assessment of the effectiveness of existing rights protection mechanisms, taking into account contemporary political, socio-economic, and security challenges, particularly those arising during martial law. The use of such an approach facilitated the formulation of scientifically grounded proposals for improving the human rights protection mechanism in Ukraine and enhancing its adaptability to crisis conditions. The theoretical basis of the article includes normative legal acts and the works of domestic scholars.

3. Result and Discussion

In contemporary democratic states, human rights are understood not merely as a set of legally guaranteed individual entitlements but as a fundamental value that shapes state policy, the nature of public authority, and the quality of social relations. For Ukraine, which is undergoing a complex process of state-building complicated by full-scale armed aggression and a prolonged legal regime of martial law, ensuring and protecting human rights and freedoms is of particular importance. It is precisely under crises and extraordinary circumstances that the state's ability to uphold its declared constitutional values and fulfill its primary duty to the individual is tested.

The Constitution of Ukraine (1996) establishes the fundamental principle according to which the human being, their life and health, honor and dignity, inviolability, and security are recognized as the highest social value (Verkhovna Rada of Ukraine, 1996). This provision is not merely declarative but normative-guiding, as it determines the orientation of the entire system of state power and public administration. The enshrinement of the priority of human rights in Article 3 of the Constitution aligns with international standards articulated in the Universal Declaration of Human Rights (1948), the European Convention on Human Rights and Fundamental Freedoms (1950), as well as numerous universal and regional human rights treaties.

Analysis of international legal instruments indicates that the modern understanding of the mechanism for ensuring human rights is shaped by the integration of national and international legal standards. Key documents include the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights (1966), the Convention on the Rights of the Child, the UN Convention on the Elimination of All Forms of Discrimination against Women, the European Social Charter, and "soft law" instruments of the Council of Europe and the UN relating to human rights protection in emergencies and armed conflicts. Their incorporation into Ukrainian national legislation provides a legal foundation for comprehensive state policy in the field of human rights even under martial law.

The study found that strategic documents play a key role in shaping state policy in the field of human rights, defining long-term priorities and institutional guidelines for public authorities. One such document is the National Human Rights Strategy (President of Ukraine, 2021). The Strategy establishes the priority of human rights as a defining principle of state policy and aims to address systemic issues identified in the practice of the European Court of Human Rights. It envisions the improvement of legal, institutional, and organizational mechanisms for protecting human rights, enhancing access to justice, and strengthening the role of civil society institutions.

However, analysis of the practical implementation of the Strategy indicates that, under conditions of full-scale war, its provisions face significant objective constraints. A substantial portion of the state's financial, human, and administrative resources is allocated to ensuring defense capabilities, which inevitably affects the implementation of social programs and human rights initiatives. Additionally, martial law necessitates temporary restrictions on certain rights and freedoms, requiring constant adherence to the principles of proportionality and non-abuse by public authorities.

Similar challenges are observed in the implementation of Ukraine's Demographic Development Strategy until 2040 (Cabinet of Ministers of Ukraine, 2024). Armed conflict has caused significant demographic losses, mass internal and external migration, and reduced access to medical and social services. Under such circumstances, the human rights mechanism must address the needs of internally displaced persons, families with children, persons with disabilities, war veterans, and other vulnerable groups,

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necessitating adjustments to state policy in line with actual socio-economic and security conditions.

Special attention is given to the analysis of Ukraine's Sustainable Development Goals until 2030 (President of Ukraine, 2019). Despite covering a broad spectrum of social, economic, and environmental objectives, their implementation is complicated by war-related destruction of infrastructure, limited resources, and ongoing security threats. Nonetheless, achieving the Sustainable Development Goals remains an important tool for ensuring human rights, particularly the right to an adequate standard of living, health care, education, and a safe environment. In contemporary conditions, alternative implementation mechanisms, including international cooperation, digitalization of public services, and active civil society engagement, are of particular relevance.

Despite the adoption of strategic documents, their effectiveness largely depends on practical implementation and the ability of state institutions to adapt to extraordinary conditions, including martial law. Analysis of the National Human Rights Strategy indicates that the document contains clear provisions on legal, institutional, and social mechanisms for protecting citizens' rights. However, under armed aggression, implementation is constrained by limited resources, as a significant portion of state finances and administrative capacity is directed toward defense, potentially reducing funding for social protection and human rights programs.

The Demographic Development Strategy until 2040 also requires adjustment due to the war. It is critically important to ensure support for internally displaced persons, restore social and medical services in affected regions, and create conditions for the return of families and workers to rehabilitated territories. Regarding the Sustainable Development Goals until 2030, security challenges compel the state to seek alternative mechanisms, such as ensuring food security through international cooperation, using digital platforms for education and health services, and actively engaging civil society and international organizations.

Thus, the effectiveness of state policy in the field of human rights under martial law depends not only on the presence of a normative framework and strategies but also on the capacity of state institutions for adaptation, flexible crisis response, and balancing citizens' rights with national security needs. The principle of humanism and the priority of human rights remain a fundamental guiding standard even under extraordinary conditions.

Contemporary Ukrainian state-building involves processes of European integration, decentralization of public authority, restoration of territorial integrity, and addressing the consequences of aggression. In this context, state human rights policy must simultaneously ensure national security and protect fundamental rights and freedoms. The principle of proportionality in limiting rights and freedoms under martial law is of particular importance.

Human rights policy is a complex and multidimensional phenomenon, encompassing a system of legal, institutional, and organizational measures aimed at guaranteeing, realizing, and protecting human rights and freedoms. It is an integral part of overall state policy and is based on the principles of the rule of law, legality, the priority of human rights and freedoms, and international human rights standards.

Harmonization of national legislation with Ukraine's international legal obligations, including UN and Council of Europe instruments, is an important tool for ensuring human rights. This involves not only normative codification of rights but also the creation of effective institutional and procedural mechanisms for their implementation, protection, and restoration.

The study substantiates that the human rights protection mechanism has a complex internal structure, within which it is appropriate to distinguish static and dynamic components. The static component encompasses the system of national and international legal norms defining the list of rights and freedoms, guarantees for their realization, subjects responsible for enforcement, and forms of legal liability for violations. The dynamic component reflects the practical functioning of the mechanism, associated with the activities of authorized bodies and officials in the implementation, protection, and enforcement of human rights.

The dynamic component can be viewed as a combination of institutional and functional systems. The institutional system includes state authorities, local self-government bodies, courts, law enforcement agencies, the Verkhovna Rada Commissioner for Human Rights (Ombudsman), civil society institutions, and international organizations. The functional system comprises procedures, tools, and forms of activity aimed at preventing human rights violations, restoring violated rights, and holding offenders legally accountable (Chorna, 2020).

Public authorities play a key role in implementing state policy, ensuring equal access to justice, effective legal protection, and restoration of violated rights. The effectiveness of this policy largely depends on the interaction of legislative, executive, and judicial branches, as well as the level of legal culture and public legal awareness.

The Verkhovna Rada of Ukraine, as the sole legislative body (Art. 75, Constitution), plays a special role in ensuring human rights. Through legislative, constitutive, and oversight functions, Parliament establishes the legal foundation for human rights realization and supervises executive bodies, particularly during martial law. During wartime, parliamentary oversight gains increased significance, enabling prompt response to rights violations, assessment of state measures, and balancing national security with citizens' rights. Laws adapting legal regulation to wartime conditions must comply with constitutional principles and international human rights standards.

Coordinated execution of these functions ensures human rights protection even under challenging conditions, facilitates the implementation of international standards, and strengthens democratic institutions in Ukraine.

Equally important is the role of the Verkhovna Rada Commissioner for Human Rights, a key institution in the legal system for protecting human rights and freedoms. By virtue of its special powers, the Ombudsman significantly strengthens guarantees for human rights protection, providing individuals with the ability to safeguard their violated rights (Tkachuk, 2019). During martial law, the Ombudsman's role becomes critical, ensuring rapid response to violations, coordination with international human rights organizations, and informing the public about the state of human rights.

The executive branch implements state human rights policy through the Cabinet of Ministers, central executive bodies, and local self-government authorities. During wartime, the executive is particularly responsible for ensuring basic socio-economic rights, organizing humanitarian assistance, protecting the rights of internally displaced persons, and restoring critical infrastructure.

The judiciary remains a key guarantor of human rights protection and the restoration of violated rights. Judicial protection is the highest form of safeguarding rights, providing maximum procedural guarantees. Thus, the right to judicial protection ensures the lawful opportunity to seek justice and defend one's rights, freedoms, and legitimate interests (Chorna, 2020). Independent and impartial adjudication guarantees access to a fair trial even under martial law, ensuring legality of rights restrictions and balancing national security with individual rights.

The study demonstrates that the effectiveness of the human rights protection mechanism under contemporary state-building depends not only on normative frameworks and strategic documents but also on the adaptability, coordination, and adherence to the principle of prioritizing human rights by state institutions, even in extraordinary conditions. The real "human dimension" of the state is manifested in its ability to guarantee dignity, security, and freedom for every individual, which is a decisive factor in developing a lawful and democratic Ukraine.

Contemporary state-building challenges, including socio-economic

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transformations, decentralization processes, and rising security threats, necessitate a rethinking of approaches to human rights policy formation and implementation. It is crucial to ensure a balance between state interests and individual rights, avoid narrowing the scope of constitutional rights, and implement effective parliamentary, judicial, and public oversight mechanisms.

The real “human dimension” of the state is determined by the level of protection of human rights and freedoms. As V. S. Smorodynskyi notes, a contemporary understanding of the state is impossible without perceiving state-building goals through the lens of the individual, who should be the objective rather than the means of state activity (2012).

Analysis of scholarly sources shows that ensuring human rights is generally considered in the context of the rule-of-law state concept and a set of fundamental requirements essential for its functioning. These include democratic governance, overcoming alienation of the individual from society, moral justification of state policy based on equality and justice, limiting arbitrary state intervention, legal recognition of socio-economic and cultural rights, and prioritization of human rights over state interests (Tanko, 2023).

The issue of citizen security is particularly relevant, encompassing crime prevention, public order protection, and defining the overall trajectory of state-building in light of contemporary problems and threats (Chyzhov, 2023).

Key challenges in the development of a state-organized society relate to finding an effective global security balance, preventing wars and internal conflicts, ensuring economic and environmental security, and advancing international cooperation in human rights protection. Special attention is given to climate change, infectious disease spread, and migration processes (Hryshko, 2025).

Thus, state-building processes have both internal and external dimensions. As a subject of international relations, the state cannot ignore global challenges, while each country faces specific domestic issues, primarily related to ensuring and protecting human rights and freedoms.

4. Conclusions

Thus, contemporary state-building in Ukraine objectively requires a systematic and comprehensive approach to ensuring human rights and freedoms, based on constitutional principles, the rule of law, and universally recognized international human rights standards. Analysis of legal and regulatory acts, national strategic documents - including the National Human Rights Strategy, Ukraine’s Sustainable Development Goals until 2030, and the Demographic Development Strategy until 2040 - as well as international legal instruments such as the UN Universal Declaration of Human Rights, the European Convention on Human Rights and Fundamental Freedoms, and other relevant documents, demonstrates the presence of a clear normative and legal framework aimed at guaranteeing and protecting citizens’ rights. At the same time, the effectiveness of this framework largely depends on the actual mechanisms of its implementation and practical application.

The mechanism for ensuring human rights in the context of modern state-building encompasses a set of legal, institutional, organizational, and procedural elements aimed at the realization, protection, and safeguarding of individual rights and freedoms. Its effectiveness is determined by the coherence of actions among state authorities, local self-government bodies, the judiciary, law enforcement agencies, as well as civil society institutions. Special importance in this mechanism is assigned to parliamentary oversight, independent justice, the activities of the Verkhovna Rada Commissioner for Human Rights, and constitutional control mechanisms.

At the same time, the challenges of martial law, deep socio-economic transformations, and increasing global security threats significantly complicate the practical realization of declared rights and freedoms. In conditions of armed aggression, the state is compelled to impose temporary restrictions on certain rights; however, such restrictions must comply with the principles of legality, necessity, proportionality, and non-discrimination. Accordingly, preserving the balance between national security interests and the state's obligation to ensure fundamental human rights even under extraordinary circumstances becomes particularly relevant.

Under these conditions, the state must demonstrate heightened flexibility and adaptability, ensuring coordinated interaction among the legislative, executive, and judicial branches of power, as well as involving civil society in monitoring and assessing the state of human rights observance. An important factor in the effectiveness of the human rights protection mechanism is also active international cooperation, particularly with Council of Europe institutions, the UN, and other international human rights organizations, which facilitates the implementation of European standards and best practices into the national legal system.

In this context, a key priority of state policy must remain its humanization, affirming the individual, their life, dignity, and security as the highest social value. Ensuring the real primacy of human rights and freedoms over narrowly institutional state interests is a necessary precondition for the formation of a democratic, lawful, and socially oriented society. Such an approach not only enables effective response to contemporary internal and external challenges but also lays the foundation for sustainable development, post-war recovery of Ukraine, and its further integration into the European legal space based on respect for human dignity and the rule of law.

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THEORETICAL APPROACHES TO DETERMINING THE FUNCTIONAL PURPOSE OF THE NATIONAL POLICE IN THE CONTEXT OF HUMAN RIGHTS

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Abstract

The article provides a comprehensive theoretical and legal study of approaches to defining the functional purpose of the National Police of Ukraine in the context of ensuring human rights and freedoms, which necessitates a rethinking of the place and role of police bodies in the modern public legal system. It is argued that the current regulatory approaches to defining the functions of the police remain fragmented and insufficiently aligned with European human rights standards, leading to blurred boundaries of state intervention, uneven application of preventive and responsive measures, and systemic conflicts in the practice of ensuring human rights and freedoms. It is argued that one of the key factors behind these problems is the lack of a comprehensive doctrine of police activity that would integrate the legal, administrative, social and ethical components of law enforcement agencies' activities. Particular attention is paid to revealing theoretical approaches to defining the functional purpose of the police, in particular the concept of a human-centred model of police service, which focuses on the rule of law, the primacy of human rights and the responsibility of the state to the individual. The article analyses regulatory gaps that affect the implementation of the state's positive obligations to protect the life, liberty and dignity of citizens, and considers the issue of police interaction with the public, the media and other public authorities. The article emphasises that the insufficient structuring of the functional powers of the police negatively affects the effectiveness of management decisions, reduces the transparency and accountability of police activities, and causes public distrust of the institution. The results of the study justify the need to develop and legislate a coordinated concept of the functional purpose of the National Police, which would define clear limits of its powers, transparent accountability mechanisms, and adequate instruments for ensuring human rights and freedoms in accordance with ECHR standards. A set of scientifically based measures is proposed, aimed at improving the regulatory and legal framework, forming a new paradigm for the police service, and ensuring the sustainable development of approaches to police activities in a democratic state governed by the rule of law.

Keywords: constitution; police; civil society; state building; human rights protection; restrictions on rights.

1. Introduction

In the conditions of modern state-building, ensuring the rights and freedoms of man and citizen is a key task of police activity, which determines its effectiveness in society and the level of citizens' trust in the law enforcement system. This necessitates a thorough review of the role and functional purpose of the National Police of Ukraine, as well as the development of a clear concept of its activities in the context of compliance

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with international human rights standards. An analysis of scientific research on the functional purpose of the National Police of Ukraine shows that there is currently no comprehensive and conceptually coherent model that would meet the standards of a democratic state governed by the rule of law and ensure the priority of human rights and freedoms. Existing regulatory provisions on the powers of the police are often implemented in a fragmented manner, with unclear boundaries of interference in the private sphere and an ambiguous balance between preventive and reactive functions. Despite the regulatory establishment of a wide range of police powers, their practical implementation is often characterised by fragmentation, a lack of clear boundaries for intervention in the private sphere, and ambiguous interpretations regarding the relationship between preventive and responsive functions.

This creates systemic contradictions between the declared human-oriented model of police functioning and the practice of its implementation (Vityk, 2021). Such a model assumes that the police not only perform punitive functions, but also protect the rights and freedoms of citizens, actively interact with civil society institutions, local governments, and other state structures, contributing to the formation of trust and transparency in society. At the same time, it establishes clear limits on police powers, mechanisms for monitoring compliance, and standards for personnel selection and training. These contradictions are exacerbated by the insufficient compliance of the national legal framework with international standards, which calls into question the effectiveness of the state's implementation of its positive obligations to protect the life, safety and dignity of individuals.

Ukraine's international obligations, especially within the framework of European integration, require the national police to adapt to the standards of the Council of Europe and the practice of the European Court of Human Rights (ECHR). Meeting these requirements involves not only reforming the organisational structure of the police, but also rethinking its key functions with a priority on ensuring human rights and freedoms. The problem is complicated by the fact that Ukraine has not yet developed a comprehensive theoretical paradigm of the functional purpose of the police that would combine the legal, social, ethical and managerial aspects of law enforcement activities. The insufficient level of conceptualisation of police functions has a negative impact on the definition of the limits of discretionary powers, accountability mechanisms, and the system of interaction between the police and the public and other public authorities.

The police are no longer associated solely with the coercive mechanism of maintaining public order. Today, they are seen as an institution responsible for protecting human rights, strengthening public trust and maintaining a balance between state intervention and civil liberties (Kuchynska et al., 2013).

In modern society, the police are expected not only to respond quickly and effectively to offences, but also to engage in active preventive work, establish communication with civil society, and adhere to the principles of transparency and accountability (Negodchenko, 2002). Scientific research shows that low public trust, lack of systematic cooperation with civil society organisations, and insufficient clarity in defining police powers have a negative impact on the performance of law enforcement agencies, which in turn undermines the legitimacy of state institutions. An important component of police work is cooperation with civil society institutions. Such interaction helps to strengthen trust in the police, ensures transparency in its activities and supports the legitimacy of decisions made. Cooperation with civil society institutions helps to reduce social tensions, enhance the effectiveness of preventive measures and instil a deeper respect for human rights in everyday law enforcement practice.

In conditions of martial law, the issue of relations between citizens and the police takes on particular significance. Military action, external aggression and threats to national security pose new challenges for law enforcement agencies. To effectively protect the rights and freedoms of citizens during this period, modern conceptual approaches to reforming police activities are needed. The basis for such approaches should be the creation of a partnership between the police and society, based on the principles of respect for human rights (Kovbasa et al., 2022).

As O.P. Lytvyn rightly points out, an analysis of the regulatory framework governing the activities of the National Police in the context of the introduction of martial law reveals the need for its systematic updating and draws attention to the need to ensure the effective work of the police in conditions that are extremely difficult for the country. The purpose of updating the legislation is not only to adjust the forms and methods of police work, but also to optimise its powers in order to ensure an adequate level of protection of citizens' rights and freedoms during this period (Lytvyn, 2023). The research by A.O. Polischuk focused on the problems of ensuring human rights during the application of administrative coercive measures by the police, in which the thesis is substantiated that during wartime, interaction between citizens and the police should be based on a balance between the protection and observance of rights. The police play a protective role, ensuring law and order during wartime, facilitating mobilisation measures and maintaining public peace. At the same time, it is important that respect for human rights and freedoms remains a priority in the performance of official duties (Polishchuk, 2017).

In modern domestic legal science, there are different approaches to defining the functional purpose of the National Police of Ukraine. This shows how complex and multifaceted this issue is. The lack of a unified approach to understanding this category creates certain difficulties in the practical application of the law, which negatively affects the effectiveness of the entire law enforcement system. As a result, there is an imbalance between public expectations of service-oriented, transparent and professional police activity and the actual functioning of the institution, which often inherits elements of the command-and-control models of the past. Thus, there is an objective need for scientific justification, clarification and systematisation of theoretical approaches to defining the functional purpose of the National Police of Ukraine, which should become the basis for further modernisation and harmonisation of its activities in accordance with international human rights standards.

The results of the study substantiate the need to develop and legislatively enshrine a coordinated concept of the functional purpose of the National Police of Ukraine, which would define clear boundaries of its powers, transparent accountability mechanisms and appropriate tools for ensuring human rights and freedoms in accordance with the standards of the ECHR. The implementation of such a concept will eliminate regulatory gaps, increase the effectiveness of management decisions, form a new paradigm of the police service and ensure sustainable development of the law enforcement system in a democratic state governed by the rule of law. The purpose of this study is to conduct a comprehensive analysis of the theoretical and legal aspects of determining the functional purpose of the National Police of Ukraine and justify the need to develop a unified concept of its activities. Achieving this goal will contribute to the formation of scientifically sound recommendations for reforming the police, increasing the effectiveness of its cooperation with civil society, ensuring transparency, accountability and protection of human rights and freedoms, which, in turn, will strengthen democratic institutions in the state.

Ultimately, the study aims to form a scientifically sound basis for the normative consolidation of a comprehensive concept of the functional purpose of the National Police of Ukraine, which will allow for a clear definition of its powers, ensure effective mechanisms for the protection of human rights, increase the transparency and accountability of the police, and contribute to the strengthening of democratic institutions in the state.

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2. Materials and Methods

The methodological framework of this study is based on a comprehensive combination of general scientific and specialized research methods, carefully selected to align with the objectives and purpose of the research as well as the specific characteristics of the subject. The problem of determining the functional purpose of the National Police of Ukraine within the context of protecting human rights and freedoms is complex and multifaceted, which necessitated an integrative approach combining theoretical, legal, comparative, and interdisciplinary methods. This combination ensures that the study is not only analytically rigorous but also practically relevant in addressing contemporary challenges in the organization and functioning of law enforcement agencies.

To explore the theoretical and legal aspects of the National Police's functional purpose, the study employed general scientific methods such as analysis, synthesis, induction, and deduction. The method of analysis allowed for a systematic examination of existing scientific literature, normative acts, and regulatory frameworks concerning police activity and human rights protection. By applying synthesis, the research integrated fragmented findings from different legal and social science sources into a coherent conceptual framework, highlighting key trends and principles that define the functional role of law enforcement agencies in a democratic state governed by the rule of law. Induction was used to generalize specific observations from legal texts and case law into broader theoretical propositions, while deduction enabled the derivation of logical conclusions from established legal norms and recognized principles of human rights. The method of generalization was crucial in formulating theoretical insights, as it helped to identify overarching patterns and to construct a conceptual model of the National Police's functional purpose in the contemporary public legal system.

The formal-legal method constituted a central component of the research, allowing for a detailed examination of the Constitution of Ukraine, the Law of Ukraine on the National Police, other relevant legislative acts, and subordinate regulatory instruments. This method facilitated a precise identification of the scope and limits of police powers in the protection of human rights and freedoms. It also made it possible to evaluate how existing legislation defines the responsibilities of law enforcement authorities and whether these provisions align with the principles of legality, proportionality, and accountability. In addition, this method enabled the identification of legislative gaps, ambiguities, and inconsistencies that hinder the effective and rights-compliant functioning of the police.

The comparative-legal method was employed to juxtapose Ukrainian legislation with international standards, particularly those derived from the European Convention on Human Rights (ECHR), the jurisprudence of the European Court of Human Rights (ECtHR), and recommendations of Council of Europe bodies. By applying this method, the study assessed the degree of conformity of the National Police's legal framework and practical activities with European human rights norms. The comparative perspective also helped to highlight best practices in law enforcement governance, accountability mechanisms, and public engagement strategies from other democratic states, providing a foundation for recommendations aimed at improving compliance with international standards.

The systemic-structural method was used to conceptualize the National Police as an integral element of the public law system. This approach enabled an understanding of the police not as an isolated institution but as part of a broader network of state authorities, local self-government bodies, and civil society institutions. By analyzing the National Police systemically, the study examined how its functional purpose interacts with the duties of other public authorities, the mechanisms of public oversight, and the broader socio-legal environment. This perspective emphasizes the interdependence of police functions and societal expectations, particularly regarding the protection of human rights and the prevention of abuse of power.

In addition, the socio-legal method was applied to assess the role of public trust, civic oversight, and communication with the population in enhancing the effectiveness and legitimacy of police activities. This method allowed for an exploration of how societal attitudes, expectations, and perceptions of law enforcement influence the practical implementation of legal norms and the observance of human rights. The analysis of these socio-legal factors provided insights into the broader impact of police practices on public confidence, social cohesion, and the rule of law.

The use of this combination of methods ensured comprehensiveness, objectivity, and scientific validity in the research process. By integrating theoretical, legal, comparative, systemic, and socio-legal approaches, the study achieved a holistic understanding of the functional purpose of the National Police of Ukraine. This methodological approach enabled the formulation of evidence-based conclusions and practical recommendations aimed at improving the organization, regulation, and accountability of law enforcement activities. In particular, it provided a basis for proposing a coherent doctrine of police activity that integrates legal, administrative, social, and ethical components, aligns with European human rights standards, and promotes transparency, accountability, and public trust.

Overall, the methodological design of this study allowed for a rigorous examination of both theoretical and practical aspects of police functions, ensuring that the findings are scientifically robust, legally grounded, and applicable in the context of policy and law enforcement reforms in Ukraine. The combination of methods not only facilitated a detailed analysis of the current legal and institutional framework but also provided a platform for proposing a new paradigm of police service that is human-centered, rights-oriented, and fully integrated into the democratic legal order.

3. Result and Discussion

The theoretical understanding of the functional purpose of the National Police of Ukraine is increasingly viewed through the prism of the priority of human rights and freedoms as the basic guidelines for the activities of modern law enforcement institutions. The doctrine of administrative and police law is dominated by the approach that the police are not only an instrument for ensuring public safety, but also a key actor in the state's fulfilment of its positive obligations in the field of human rights protection. This concept necessitates a thorough theoretical rethinking of the essence of police functions, tasks and strategic directions for their practical implementation.

Scientific literature has developed an approach according to which the functional purpose of the police should be linked not only to the protection of public order, but above all to ensuring a safe environment in which individuals can exercise their constitutional rights without unjustified restrictions. The Law of Ukraine "On the National Police" contains principles that determine the activities of the police. Among the basic principles is the principle of respect for human rights and freedoms, according to which the police contribute to the implementation of constitutional rights and freedoms.In this context, Marushchuk N.V. notes that it is necessary to consider the issue of amending the current legislation regarding such concepts as “police-community interaction based on partnership” and “assessment of the level of trust.” This, in turn, will strengthen the implementation of the aforementioned principle (Marushchuk, 2024).

Among the main principles is the principle of respect for human rights and freedoms, according to which the police contribute to the implementation of constitutional rights and freedoms. This interpretation is consistent with European standards of police activity, which are based on the principles of proportionality, legality, necessity and minimal interference in the private lives of citizens. Thus, the functions of the police take the form of a preventive service aimed at protecting human dignity and

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safety.

The scientific work of Kuchynska O.P., Fuley T.I. and Barannik R.V. (2013) substantiates the thesis that ensuring human rights and freedoms is not only a legal obligation but also a fundamental function of the police as a public institution of a democratic state. In particular, it is emphasised that police activity should be viewed through the prism of ensuring human rights and freedoms, which implies prioritising respect for the dignity of each person, minimising coercion and focusing on the prevention of human rights violations. It is emphasised that the function of ensuring human rights is not limited to the traditional security or punitive aspect, but includes a broader set of preventive, service and human rights mechanisms aimed at maintaining public safety in conditions of the rule of law. The emphasis is on the fact that police activity should be based on international standards that define the limits of permissible state interference in the sphere of human rights, since the modern understanding of the functions of the police should envisage its transformation into a service and human rights protection institution, designed not only to respond to offences, but also to actively create conditions for the realisation and protection of inalienable human rights and freedoms.

An important theoretical component is the understanding of the police as a public service institution that performs powers delegated by the state while remaining accountable to society. This approach, which is characteristic of the concept of a "democratic police force," implies that any police measures should be aimed at maintaining a balance between security and freedom, rather than the dominance of force or repressive instruments. Thus, the functional purpose of the police is transformed into a system of comprehensive human rights protection in the context of maintaining public order.

According to Krugly V.V. (2015), the fundamental prerequisite for building relations between citizens and internal affairs bodies in the process of operational-investigative activities is unconditional respect for the rights and freedoms of citizens, since it is precisely the enforcement of legality, respect for personal dignity and legal protection of participants in the interaction that creates the necessary conditions for trust, effective cooperation and legitimacy of police measures, as well as minimises the risks of abuse, human rights violations and conflict situations in the process of carrying out operational and investigative tasks.

Scientists also emphasize that the effectiveness of tasks aimed at ensuring human rights and freedoms directly depends on the proper legislative framework, professional training of personnel and the level of trust of citizens. To improve the activities of the National Police, a comprehensive approach is needed, which should include both legislative initiatives and structural and organizational reforms. These measures should be aimed at increasing the efficiency, transparency and accountability of police agencies to society (Prykhodkov, 2025).

The provisions of the European Convention on Human Rights, as well as the extensive practice of the European Court of Human Rights, have had a significant impact on the understanding of the functional essence of the police. The ECHR has repeatedly emphasised that the state is obliged to create conditions under which the work of the police complies with standards of respect for human dignity. In this context, the functional purpose of the police encompasses not only the obligation to refrain from violating rights, but also actively ensuring their implementation, which is part of the positive obligations of the state.

According to Skomorovsky V.B. (2024), democratic procedures, which must be strictly adhered to, limit the possibilities of applying practically arbitrary command and administrative methods. Attempts to build a civilised democratic society using such methods prove ineffective and incompatible with the principles of democracy. The realisation of the constitutional aspiration to form an open civil society in Ukraine and to develop and strengthen a democratic, social and legal state is impossible without taking into account and establishing in the minds of both officials and ordinary citizens the fundamental observance of clearly defined rules of social and political life. A key aspect of this process is the protection of the inalienable and imprescriptible natural rights and freedoms of the individual, which is a fundamental prerequisite for the stability of democratic institutions and the legitimacy of state power in contemporary Ukrainian society.

Scientific approaches emphasise that police activity should focus on individuals, their needs and their right to safety. This anthropocentric approach contrasts with the traditional "state-oriented" view of the police, where the main emphasis is on maintaining public order. Contemporary theoretical concepts argue that an effective police force must ensure a state of social trust, which can only be achieved if citizens feel protected and confident that their rights are being upheld.

One of the important areas of theoretical rethinking of the functional purpose of the police is determining the optimal balance between preventive and reactive activities. Traditionally, the police have been associated with responding to offences, but modern European paradigms emphasise the preventive dimension of their activities, aimed at preventing violations of human rights and minimising risks to public safety. This shift in emphasis reflects a gradual transition to a model of community policing, i.e. police working in close cooperation with the community.

Scientists also pay considerable attention to the humanisation of police activities, which involves the introduction of approaches aimed at taking into account the individual needs and characteristics of citizens. It is particularly important to ensure the rights of vulnerable groups, i.e. children, women, persons with disabilities, and representatives of national minorities. This function goes beyond purely security tasks and requires a high level of professional and ethical competence from the police.

Minchenko S.I. (2012) believes that measures taken by state bodies to bring national legislation into line with international standards and ensure the rights of citizens in various areas of law enforcement can only yield real results if an effective mechanism and appropriate conditions for their practical implementation are created. The paper emphasises that in order to ensure the proper functioning of operational-investigative activities, high-quality regulatory and legal regulation is necessary, which takes into account the specifics of legal relations arising in the course of law enforcement activities, as well as compliance with the constitutional principle of the rule of law. In addition, the author notes the increasing use of operational-investigative measures that temporarily restrict the rights and freedoms of citizens, while emphasising that the practice of such measures is often accompanied by violations of individual rights and freedoms.

Another theoretical aspect is the institutional support for the functional purpose of the police. This includes the existence of a system of regulatory control that defines the limits and procedures for interference with the rights and freedoms of citizens. Legal certainty, predictability of police actions and accessibility of information to citizens are key conditions for the functional effectiveness of the police in the context of human rights protection. Uncertainty or inconsistency in legal norms can lead to risks of abuse of power.

In this context, institutional control over police activities is of particular importance. Theoretical approaches emphasise the need for both internal and external accountability mechanisms, including independent monitoring bodies. Ensuring transparency and a clear system of control is a fundamental condition for the preservation of human rights in the performance of police functions.

Stepanenko O.V. and Metoshop O.V. (2025) emphasise that it is particularly important to involve international organisations in monitoring human rights compliance and establishing communication with partners regarding Ukraine's reporting on the implementation of relevant measures under martial law. In this context, the protection of human rights should be based on a systematic approach that integrates legislative,

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administrative, human rights and information tools. The implementation of such initiatives requires coordinated efforts on the part of the state, civil society institutions and international partners, which is the basis for effectively overcoming challenges and ensuring the reliable protection of the rights and freedoms of every citizen.

The functional purpose of the modern police also involves the development of a communicative function, which consists in creating models of effective dialogue between the police and society. According to theoretical concepts, the police should not only ensure law and order, but also be an active participant in social interaction, which contributes to the formation of trust and shared responsibility for security. The communicative function is becoming increasingly important in democratic societies.

According to O.V. Negodchenko, ensuring human rights and freedoms in the sphere of law enforcement by internal affairs bodies requires the introduction of conceptually new approaches that entail fundamental changes in the organisational and legal foundations of their functioning. This, in particular, involves humanising the activities of the police, enhancing its authority, forming relations between law enforcement agencies and the public on the basis of partnership, as well as improving the forms, methods and means of realising human rights and freedoms. A significant increase in the effectiveness of internal affairs bodies in this area is impossible without a thorough and consistent scientific analysis of their organisational and legal foundations, which allows for the identification of optimal mechanisms for the protection of human rights and increases the legitimacy of police activities (Negodchenko, 2002).

An important component of the theoretical understanding of the functional purpose of the police is the issue of professional development of personnel. Contemporary approaches emphasise that effective protection of human rights is only possible if police officers possess the appropriate level of competence, particularly in legal, psychological and communication skills. Accordingly, the functional purpose of the police also includes an educational function, such as the formation of high standards of professional ethics and culture.

A separate place in theoretical discussions is occupied by the issue of police interaction with other public authorities. The functional nature of the police means that it cannot act in isolation. Ensuring human rights requires inter-agency coordination with social protection, health, education, justice and local government bodies. This approach reflects the concept of "systemic security", which goes beyond purely criminal law responses.

Theoretical approaches to the functional role of the police are particularly important in crisis or emergency situations, including martial law. In such conditions, the police play an enhanced role in ensuring the functioning of society, while remaining committed to human rights standards. This requires a rethinking of the functional content of police powers and their flexible but legally justified application.

As noted by S.S. Chernyavsky, raising the scientific level and practical focus of research carried out by departmental higher education and research institutionsresearch institutions, as well as the creation of favourable conditions for optimising the training system of the National Police, are priority measures capable of transforming departmental science into an effective factor directly influencing the quality, innovation and creativity of law enforcement activities. The implementation of these measures creates the necessary preconditions for further work on the development and implementation of an innovative mechanism for the development of the system of the Ministry of Internal Affairs of Ukraine, which will contribute to increasing the effectiveness and adaptability of police structures in modern conditions with the aim of ensuring human rights and freedoms in particular (Chernyavsky, 2016).

Summarising various theoretical approaches, it can be argued that the functional purpose of the National Police of Ukraine is multidimensional and includes regulatory, social, ethical, security and service components. All these components are interrelated and form a comprehensive system for ensuring human rights. The central element of this system is the human dimension of police activity, which is becoming a defining trend in modern concepts of public administration.

Thus, the theoretical foundations for defining the functional purpose of the National Police in the context of human rights reflect pan-European trends in the transformation of law enforcement agencies into service-oriented structures whose activities are based on the principles of democratic accountability and the primacy of human rights. The development of these approaches is fundamental to the modernisation of the Ukrainian police and increasing its legitimacy in the eyes of society.

The results of the study confirm the need to develop and legislate a coordinated concept of the functional purpose of the National Police of Ukraine. Such a concept should define clear boundaries of the powers of police bodies, transparent mechanisms of accountability to society, as well as appropriate tools for the effective protection of human rights and freedoms in accordance with the standards of the European Convention on Human Rights. An important aspect of the development of this concept is the integration of legal, administrative, social and ethical components of police activities, which will eliminate the existing fragmentation of regulation and ensure a unified logic of the functioning of police bodies in a democratic society. Legislative consolidation of such approaches creates the prerequisites for increasing the efficiency of management decisions, strengthening the transparency and accountability of the police, as well as the formation of sustainable trust of citizens in law enforcement institutions.

In addition, the study proposes a set of scientifically based measures aimed at improving the regulatory framework, forming a new paradigm of the police service, which is focused on human rights, and ensuring sustainable development of approaches to police activities in a democratic state governed by the rule of law. The proposed measures include systemic optimization of the organizational structure, increasing the professional competence of personnel, developing the communicative functions of the police and strengthening interdepartmental interaction, which will contribute to the implementation of the positive obligations of the state to protect the life, freedom and dignity of citizens.

The inclusion of these provisions in the theoretical and practical discourse allows us to formulate a holistic view of the functional purpose of the National Police, which combines its law enforcement, social, ethical and service functions, and serves as a scientific basis for the modernization of police activities and increasing its legitimacy in the eyes of society.

Conclusions

TConsidering the functional purpose of the National Police of Ukraine as a legal category is of fundamental importance for the formation of an effective model of law enforcement that meets today's challenges. In the current conditions, taking into account the state of war, threats to national security and the vector of European integration, there is a need to review and update approaches to the functional purpose of the police.

A comprehensive approach makes it possible to identify new guidelines for the development of the police institution based on the principles of legality, openness, orientation towards the needs of society and compliance with international standards. An analysis of the functional purpose of the National Police of Ukraine indicates its key role in ensuring human rights and freedoms, as well as protecting the interests of society and the state, which is the basis of its activities.

Systematisation and generalisation of the above gives grounds to assert that overcoming the identified conceptual and practical contradictions in defining the functional purpose of the National Police of Ukraine requires updating the theoretical and legal foundations of its activities and forming a comprehensive human-centred

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model of the police function.

The optimal way to solve this problem is to develop and legislate a coordinated doctrine of police activity based on international standards, the principles of the rule of law and modern approaches to public administration. Such a concept should include a clear distinction between preventive and reactive powers, the establishment of transparent control and accountability mechanisms, the definition of the limits of state intervention in the sphere of individual rights, and the introduction of effective procedures for police interaction with the public. Its implementation will contribute to the establishment of a qualitatively new model of police service capable of ensuring real, rather than declarative, priority for human rights in the activities of law enforcement agencies.

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CHILD RIGHTS IN THE FAMILY: LEGAL MECHANISMS FOR PREVENTING VIOLENCE AND DISCRIMINATION

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Abstract

The article examines the problem of violence and discrimination against children in the family as a widespread yet often hidden violation of human rights. It analyzes international legal instruments, including the UN Convention on the Rights of the Child and the Lanzarote Convention, alongside Ukrainian legislation, such as the Family Code, the Law "On the Protection of Childhood," and the Law "On the Prevention of Domestic Violence." The study emphasizes the need for systematic and effective protection of children from physical, psychological, sexual, and economic violence. It outlines the position of the UN Committee on the Rights of the Child regarding the inadmissibility of corporal and degrading punishments and provides a classification of main types of violence and their impact on psychophysical development, socialization, interpersonal relationships, and mental health. Particular attention is given to intergenerational transmission of aggressive behavioral patterns resulting from traumatic experiences. The article stresses that international standards require not only legislative implementation but also effective mechanisms for enforcement, monitoring, and accountability. The practice of the European Court of Human Rights, including the case of D.P. & J.C. v. the United Kingdom, illustrates state responsibility for failing to respond adequately to violence against children. Contemporary statistical data show the high prevalence of domestic violence and its socio-psychological consequences, such as depressive conditions, difficulties in social adaptation, and the risk of reproducing violent behavior in adulthood. The study concludes that prevention requires strengthening interagency cooperation, creating safe reporting channels, and fostering zero tolerance for child abuse. An interdisciplinary approach integrating legal, psychological, and social measures is essential for effective prevention and ensuring the full development and well-being of children..

Keywords: child rights; violence; abuse; discrimination; family; legal protection; corporal punishment; psychological violence; human rights.

1. Introduction

The right of the child to protection from all forms of violence, abuse, and discrimination is fundamental and inalienable, enshrined in numerous international and national legal instruments, including the UN Convention on the Rights of the Child, the European Convention on Human Rights, and relevant legislation of Ukraine. The protection of children is not only a legal obligation but also a social and moral imperative, as the family and immediate environment should provide a safe space for the child's physical, psychological, and emotional development. Despite the existence of legal guarantees, violence and discrimination against children within the family remain a pressing issue in contemporary Ukrainian society, necessitating comprehensive research and the development of effective protective mechanisms.

The term "child abuse" encompasses a wide range of actions extending far beyond overt crimes. It includes well-known and widely publicized forms, such as sexual abuse, child trafficking, and physical violence within the family, as well as less visible but equally harmful practices, including psychological abuse, bullying in educational institutions, child labor exploitation, and other forms of dignity violations. Contemporary studies indicate that any form of violence adversely affects a child's development, emotional well-being, behavior, and future social and professional prospects. Particular attention should be given to socially ingrained stereotypes regarding the "acceptability" of certain disciplinary methods. In many European and post-Soviet societies, there persists a mistaken belief that physical or psychological coercion, including corporal punishment, humiliation, or strict disciplinary measures, can be considered a legitimate method of upbringing. However, international standards unequivocally establish that no circumstances (whether religious, economic, pedagogical, or cultural) can justify violence against a child.

Despite legal guarantees and international obligations, violence within the family often remains hidden in practice. Fedoseeva (2020) notes that this is largely due to the child's dependency on parents, fear of punishment, lack of support, and reluctance to lose familial ties (Fedosieieva, 2018). Such conditions result in high levels of latent violence and limit the effectiveness of state policies on child protection. Effective prevention requires timely risk identification, proactive interagency cooperation, and secure channels for reporting abuse. The problem of child protection, particularly in the context of violence, has been widely examined in Ukrainian legal, psychological, and sociological scholarship. Psychological aspects of domestic violence are thoroughly analysed by Fedosieieva (2018), who emphasizes the role of family dynamics, learned behavioral patterns, and trauma in the persistence of violence against children. From a legal perspective, Kostrytsia (2017) explores the system of legal guarantees for child protection in Ukraine, highlighting the fragmentation of regulatory mechanisms and the insufficient alignment between national legislation and international standards. Zavorotchenko (2021) focuses on legal mechanisms for responding to domestic violence, stressing the importance of preventive measures, timely intervention by state authorities, and effective liability frameworks for perpetrators.

Empirical insights into the prevalence of violence against children are provided by the Kyiv International Institute of Sociology (2015), whose survey results reveal a significant level of latent violence that often remains outside the scope of official statistics. At the international level, the Convention on the Rights of the Child (United Nations, 1989) establishes a comprehensive framework for the protection of children from all forms of violence, while the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2007) introduces specific obligations for states regarding prevention, victim support, and interagency cooperation. Despite the breadth of existing research and normative regulation, the literature consistently indicates unresolved problems related to the detection of hidden forms of violence, coordination among responsible institutions, and effective monitoring of compliance

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with child protection obligations.

UNICEF studies and reports by international organizations indicate that systemic problems in child protection include incomplete compliance with legal norms, the absence of coordinated response protocols for cases of violence, low awareness among parents and the public regarding protective mechanisms, and insufficient attention to the psychological and social consequences of abuse. These factors create conditions for repeated trauma and violations of children's rights.

Despite considerable academic and practical interest, several important issues remain underexplored. These include the latent nature of violence, as official statistics often fail to reflect the true scale due to children's fear of reporting abuse, social stigma, and distrust of state institutions; the absence of coordinated protocols among various agencies, which results in delayed responses and repeated trauma; family practices that, while not constituting direct violence, violate children's rights and perpetuate social inequalities; and fragmented mechanisms for accountability for inadequate fulfillment of official duties, as evidenced by the European Court of Human Rights' practice.

These gaps underscore the relevance of this research, as they directly affect the effectiveness of state policy, the creation of a safe family environment, and the realization of children's rights. The aim of this study is a comprehensive examination of legal mechanisms for preventing violence and discrimination against children in the family, as well as an analysis of their practical implementation in Ukraine. Particular attention is given to the compliance of national legal frameworks with international standards, including the UN Convention on the Rights of the Child, and to the effectiveness of interagency cooperation. The study objectives include identifying patterns and causes of family violence, analyzing gaps in the activities of agencies responsible for child protection, evaluating the practical implementation of legal norms and their impact on child safety and well-being, examining the socio-psychological consequences of violence for child development, and substantiating the need to improve state policy on violence prevention.

The research hypothesis posits that effective realization of children's rights within the family depends on the comprehensive integration of legislative norms, interagency coordination, socio-psychological support, and timely risk detection, and that existing gaps in these areas directly affect the level of child protection.

This research is highly relevant, as it identifies pathways for improving the effectiveness of state policy in preventing violence, creating safe family environments, and ensuring the realization of children's rights. Its practical significance lies in providing recommendations for enhancing interagency cooperation, developing effective early-response protocols, raising public awareness, and implementing systematic control measures for safeguarding children's rights. Accordingly, this article offers a comprehensive scientific analysis of violence and discrimination against children in the family, evaluates the effectiveness of legal and practical protection mechanisms, and identifies directions for improving state policy in Ukraine, making it valuable for scholars and practitioners in law, social work, and psychology.

2. Materials and Methods

To achieve the aim of the study and fulfill its objectives, a comprehensive methodological approach was employed, integrating legal, sociological, and psychological analysis. This approach allows for a holistic evaluation of the effectiveness of legal mechanisms for protecting children from violence and discrimination within the family, identification of gaps in their practical implementation, and formulation of recommendations for improving state policy. The study is multifaceted and includes theoretical analysis, focusing on national and international legislation, scholarly works, reports of international organizations, and judicial practice, which enables the identification of legal foundations for child protection and existing implementation gaps.

The empirical component of the research is concentrated on assessing the practical application of legislative norms within the family environment and the performance of state authorities responsible for safeguarding children's rights. In addition, a comparative analysis was applied to juxtapose Ukrainian legal provisions and their practical application with international standards for the protection of children's rights.

The study is based on both primary and secondary sources. Primary sources include statistical data from social protection authorities, child services, the police, and local government bodies regarding cases of violence and discrimination, as well as survey results, interviews, and questionnaires with specialists directly working with families at risk. Secondary sources comprise scholarly publications, monographs, international and national legal acts, reports from international organizations, judicial practice, and official statistics. Data collection and analysis methods included document analysis, content analysis, sociological surveys, interviews, and comparative analysis of legislative norms and their implementation.

The study's core methodology is the formal-legal method, applied to analyze international and national legislation, including the UN Convention on the Rights of the Child, the Lanzarote Convention, the Family Code of Ukraine, and relevant Ukrainian laws. This method allowed the identification of the content of children's rights to protection from violence and the scope of responsibilities of the state and parents. The comparative-legal method was employed to contrast international standards with national legal practice and identify challenges in implementing child protection norms. Legal-practice analysis, particularly of European Court of Human Rights decisions (e.g., D.P. & J.C. v. the United Kingdom), was applied to outline standards of state responsibility for inadequate child protection. The systemic-structural method was used to classify forms of violence and analyze their impact on children's psychophysical and social development. Statistical methods, based on sociological research data, confirmed the prevalence and latent nature of domestic violence against children. The logical-dogmatic method facilitated the formulation of generalized conclusions and recommendations for improving preventive and legal-protection mechanisms.

A combination of qualitative and quantitative methods was employed for data processing and analysis. Qualitative analysis identified patterns, causes, and consequences of family violence, evaluated the effectiveness of interagency cooperation, and assessed socio-psychological support mechanisms for children. Quantitative analysis, based on statistical data and survey results, allowed estimation of the scale of violence and assessment of the effectiveness of practical child protection measures. The systemic approach facilitated evaluation of interrelationships among various agencies responsible for child protection, while the synthetic method integrated theoretical and empirical findings to develop practical recommendations.

The scientific novelty of the approach lies in the integration of legal analysis, sociological research on the real-world interaction of services with families, evaluation of the socio-psychological consequences of violence, and the synthesis of these data to formulate recommendations for improving the child protection system in Ukraine. The study accounts for limitations related to incomplete or latent statistics on violence, restricted access to primary data due to confidentiality, and subjectivity in assessments by service professionals and educators, mitigated through the use of standardized questionnaires and comparative analysis.

The applied methodological framework enables a comprehensive study of violence and discrimination against children in the family, identification of legislative and practical gaps, evaluation of interagency cooperation and socio-psychological support measures, and formulation of practical recommendations for enhancing state policy in Ukraine. Thus, the methodology provides a robust foundation for the systematic analysis of the problem and the development of well-substantiated scientific and practical conclusions.

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3. Results and Discussion

The conducted study has shown that the issue of violence against children within families in Ukraine is not only widespread but also highly latent, complicating both detection and effective response. Analysis of official statistical data indicates a significant increase in reports of domestic violence involving children. In 2023 alone, the National Police of Ukraine registered over 291,428 reports related to domestic violence, of which 9,194 were submitted directly by children, and 12,259 cases involved confirmed violence against children – substantially exceeding the figures for 2021–2022. This represents an approximately 19.2% increase in identified cases of domestic violence involving children compared to the previous year. In 2023, over 106,029 individuals were under preventive supervision for committing domestic violence, including 219 minors, further indicating children's involvement in family-related offenses. Overall statistics on domestic violence confirm that the issue of children as victims or witnesses remains systemic and requires sustained attention from state institutions (Ombudsman of Ukraine, 2023).

According to the National Social Service of Ukraine, in 2024, the number of reports on domestic violence reached 181,904, including 8,646 submitted by children. Regarding types of violence, physical abuse was recorded in 657 cases, sexual abuse in 158, psychological abuse in 10,958, and economic abuse in 31 cases, indicating that psychological violence is the most prevalent form, often overlooked in official reports, yet significantly affecting children's mental development and social adaptation (National Social Service of Ukraine, 2024).

These findings corroborate sociological research showing that only a small portion of violence cases is officially reported, while the real scale is considerably larger, as many children and families do not seek help due to fear, dependence on family members, or social stigma. International experience demonstrates that similar trends are observed in many countries, necessitating comprehensive approaches. European regional child protection programs, in particular, recommend developing national strategies for integrated child protection systems, combining legal, social, educational, and medical measures to combat violence (European Commission, 2024).

Comparative analysis of international standards and Ukrainian legislation shows that, at the normative level, Ukraine formally complies with key requirements for child protection, including prohibitions on all forms of physical and degrading treatment, liability for perpetrators, and the role of state authorities in prevention and response. However, implementation remains below expectations, evidenced by delays in responding to violence, insufficient coordination among agencies, and limited cooperation between law enforcement, social services, and educational institutions. Fragmented interaction protocols and the absence of clear procedures hinder timely detection and adequate support for child victims.

Judicial practice analysis, including European Court of Human Rights rulings, confirms that inadequate performance by state authorities in protecting children can constitute human rights violations. This applies to both direct non-intervention in cases of evident violence and the failure to provide safe channels for victims to report abuse. ECHR practice highlights the need for clear accountability mechanisms and the proper implementation of child protection standards, which should be the focus of systemic national reforms.

The study also emphasizes the classification of violence types and their impact on child development. Systemic-structural analysis revealed that family violence is multidimensional, encompassing physical, psychological, sexual, and economic aspects. Psychological abuse, including humiliation, verbal insults, and neglect of emotional needs, profoundly affects psychophysical development and often remains unnoticed by adults and professionals. Childhood psychological trauma can result in anxiety disorders, depression, behavioral problems, and difficulties in social adaptation, as confirmed by contemporary child psychology research.

Violence against children extends beyond the family to schools and community settings. According to UNESCO reports, approximately one billion children worldwide experience some form of physical, sexual, or psychological abuse or neglect annually, highlighting the global scope of the problem and the need for comprehensive responses (Educational Ombudsman of Ukraine, 2025). The findings also underscore the influence of external threats, including armed conflict, which exacerbate child vulnerability. UNICEF reports that 2024 was among the worst years for children in conflict zones, with widespread exposure to violence and long-term negative effects on physical and mental health (UNICEF, 2024).

Analysis of Ukrainian legislation demonstrates formal compliance with international standards, including prohibitions on physical and degrading punishments and defined responsibilities for state agencies. Key laws, such as the Family Code of Ukraine and the laws “On the Protection of Childhood” and “On the Prevention of Domestic Violence,” contain provisions explicitly forbidding violence against children and providing mechanisms for response. However, practical implementation is often ineffective due to poor interagency coordination, fragmented action protocols, low public awareness, and limited access to socio-psychological support. Consequently, many cases remain undetected or inadequately addressed.

Despite formal compliance, a gap exists between legal norms and practical implementation, manifesting in low efficiency of early detection measures, unclear interagency protocols, and insufficient monitoring of officials’ duties. Judicial analysis confirms that ineffective government action, rather than legislative gaps, often underlies violations of children’s rights, consistent with international expert assessments. Psychological abuse, though less visible, produces deeper and longer-lasting effects on emotional and cognitive development, while discriminatory family practices foster feelings of inadequacy, social isolation, and heightened risk of future antisocial behavior. Family violence also includes economic and social control, forced labor, and restricted access to education and information, creating complex developmental risks. Major barriers to reporting include children’s fear, dependence on parents, distrust of authorities, and stigma. This underscores the need for improved early response channels and safe reporting conditions.

Effective child protection requires integrated legal, socio-psychological, and preventive mechanisms. Based on identified challenges and analyzed data, recommendations for improving Ukraine’s child protection system include: the implementation of standardized national interagency protocols, clear action algorithms for child services, law enforcement, healthcare, and educational institutions, including information-sharing and rapid response mechanisms; strengthening prevention and early intervention via regular monitoring of high-risk families, training of social workers and educators to identify and respond to signs of abuse, and development of parent support programs promoting non-violent child-rearing; and expansion of specialized child support centers, including child-friendly spaces (Barnahus model), providing psychological, legal, and medical assistance within a safe, integrated environment. These centers should operate via cross-sectoral collaboration and be accessible nationwide. Raising public awareness of children’s rights and protection mechanisms through national campaigns, media engagement, educational programs, and outreach initiatives is essential to counter stereotypes that condone violence and promote a culture of respect for children’s rights. Mechanisms for monitoring officials’ performance and ensuring accountability for inadequate responses should be strengthened through evaluation systems for child services and law enforcement, as well as independent oversight of children’s rights compliance.

Implementation of these recommendations will strengthen Ukraine’s child protection system, reduce violence latency, and enhance the effectiveness of preventive

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and legal-protection measures, aligning with international standards and guidance from leading global child protection organizations.

In conclusion, the study confirms the hypothesis that effective protection of children within families depends not only on the existence of legal norms but also on a comprehensive combination of preventive measures, interagency cooperation, timely detection of violence, and socio-psychological support. Identified issues of latent violence, fragmented law enforcement, and insufficient professional preparedness define key directions for further improvement of state policy in Ukraine, rendering the results relevant for scholars, human rights advocates, educators, and government agencies.

4. Discussion

The results of the study confirm that violence against children within families remains a systemic problem in Ukraine, with its actual prevalence significantly exceeding official statistics due to high levels of underreporting. According to sociological surveys, approximately 65% of children aged 12 to 17 have experienced at least one form of violence – physical, psychological, sexual, or economic (Kyiv International Institute of Sociology, 2015). The majority of violent acts occur within the family, highlighting a paradox: the environment that should provide protection and support often becomes a source of risk to children's physical and mental health. This finding aligns with international research and UNICEF reports, which emphasize the high level of hidden violence in family contexts, even in countries with advanced social protection systems.

International child rights standards, including the UN Convention on the Rights of the Child and the Council of Europe Lanzarote Convention, establish an absolute prohibition of violence and discrimination against children and obligate states to ensure effective protective mechanisms (United Nations, 1989; Council of Europe, 2007). Ukraine has ratified these documents and formally incorporated their provisions into national legislation. For example, Article 150 of the Family Code of Ukraine prohibits physical punishment of children by parents, as well as other forms of punishment that degrade the child's dignity. Such actions may entail administrative, criminal, or family-law liability under current legislation (Verkhovna Rada of Ukraine, 2002).

The UN Committee on the Rights of the Child defines "corporal" or "physical" punishment as any use of physical force intended to cause pain or discomfort, regardless of intensity. Common forms include hitting with a hand or object (stick, belt, etc.), slapping, shaking, throwing, scratching, pinching, biting, hair-pulling, or coercive actions such as forcing a child to remain in uncomfortable positions, burning, scalding, or ingestion of substances (e.g., soap or spicy foods). The Committee notes that corporal punishment is inherently degrading. Some non-physical punishments are also cruel and humiliating and are classified as psychological abuse, including humiliation, verbal insults, mockery, threats, intimidation, or public shaming (Committee on the Rights of the Child, n.d.).

Article 10 of the Law of Ukraine "On the Protection of Childhood" guarantees not only the child's right to protection from all forms of violence but also measures to prevent parental violence, implemented by the state (Verkhovna Rada of Ukraine, 2001). On 15 November 2001, Ukraine adopted the Law "On the Prevention of Domestic Violence," later complemented by the Cabinet of Ministers' Resolution of 26 April 2003 establishing procedures for reviewing complaints and reports of domestic violence or imminent threats. The law sets out the legal and organizational framework for preventing family violence and defines the authorities responsible for implementing protective measures. Any form of punishment within the family, whether physical or degrading, is prohibited, and family members who commit violence are subject to criminal, administrative, or civil liability (Verkhovna Rada of Ukraine, 2002).

Article 151 of the Family Code establishes that parents have a primary right to personally raise their children and may involve others in child-rearing, provided that chosen methods comply with the law and societal moral standards. However, when parents or other family members are sources of psychological, sexual, or physical violence, the family environment becomes a factor causing significant harm to the child's development and well-being. Even children who are witnesses rather than direct victims of violence experience severe negative effects on their mental and social development.

In the case of D.P. & J.C. v. the United Kingdom, a sister and brother aged 8 and 10 were sexually abused by their stepfather. Although they reported the abuse to local social services, authorities failed to protect them. The girl attempted suicide following the assault, developing a mental disorder, while the boy later suffered from epilepsy. Both experienced prolonged depression and psychological trauma. The Court found that social services had failed to protect the children, constituting a violation of Article 13 (right to an effective remedy). Under Article 41 of the Convention, each applicant was awarded €5,000 for non-pecuniary damage, and €12,500 jointly for legal costs (European Court of Human Rights, 2002).

The family environment significantly influences child development, acting as either a resource or a risk factor. Even indirect witnesses of family violence suffer negative outcomes, including disrupted emotional bonds, low self-esteem, social isolation, and difficulties in learning and adaptation. These findings align with international research highlighting the intergenerational transmission of violence: children exposed to abuse are more likely to exhibit aggressive behavior and perpetuate violence in adulthood.

In Ukraine, a gap persists between formal compliance with international standards and the effective implementation of protective measures. Despite the existence of laws and regulations, the lack of coordinated protocols between state agencies, social services, and educational institutions creates gaps in the protection system. This is corroborated by official statistics and sociological research, which show that most cases of violence remain unreported, and appeals for assistance are often inadequately addressed. Hence, the mere existence of legal norms does not guarantee actual protection for children.

Effective prevention and response to family violence require a comprehensive approach that integrates legislative, socio-psychological, and preventive mechanisms. The implementation of standardized interagency protocols is recommended to ensure clear coordination among social services, law enforcement, and healthcare and educational institutions. Preventive measures should be strengthened through systematic monitoring of high-risk families, enhanced training for social and psychological professionals, and development of programs promoting non-violent parenting.

Particular attention should be paid to the establishment of specialized child support centers, where victims of violence can access psychological, medical, and legal assistance in a single safe environment. International models, such as the Barnahus system in Sweden and Norway, have proven effective in reducing trauma and facilitating rapid response. Public awareness campaigns are also essential to promote zero tolerance for violence, challenge stereotypes regarding physical and psychological punishment, and increase knowledge of available protective mechanisms.

Ensuring effective child protection in the family environment is only possible through a systemic approach that combines legal guarantees, interagency coordination, socio-psychological support, and preventive programs. Neglecting these aspects increases the risk of retraumatization and perpetuates cycles of violence, underscoring the need to reform national child protection policies in accordance with international standards and best global practices.

5. Conclusions

The conducted study confirms that violence and discrimination against children within the family represent a multidimensional, systemic, and socially significant problem. It encompasses legal, psychological, social, and cultural aspects and cannot be

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reduced to isolated cases of abuse. Family violence reflects deep structural issues within society, including limited public awareness of children's rights, the ineffectiveness of existing preventive mechanisms, inadequate performance of authorities responsible for child protection, and a low level of non-violent parenting culture.

An analysis of international and national legal frameworks shows that Ukraine possesses a relatively well-developed legislative base for child protection. The UN Convention on the Rights of the Child, the Lanzarote Convention, and other international instruments explicitly prohibit all forms of violence and place an obligation on the state to ensure conditions for the comprehensive development of the child. National legislation, including the Family Code of Ukraine, the Law "On the Protection of Childhood," and the Law "On the Prevention of Domestic Violence," formally aligns with these international standards, enshrining children's rights to protection from physical, psychological, sexual, and economic violence.

However, an analysis of law enforcement practice indicates uneven implementation of these norms. Lack of interagency coordination, delays in responding to incidents of violence, and limited access to effective protective mechanisms contribute to the underreporting of cases and restrict protection for affected children. This issue is especially acute when the family itself is the source of violence, and the child cannot independently report abuse due to fear, dependency on parents, or distrust of state institutions. The European Court of Human Rights, notably the case of D.P. & J.C. v. the United Kingdom, demonstrates that the state bears responsibility not only for direct violations of children's rights but also for failing to protect them from abuse when such risks were foreseeable or evident. This underscores that governmental inaction may constitute a breach of international obligations and highlights the need to enhance preventive and protective mechanisms. Psychological and social analyses reveal that family violence has serious long-term consequences for child development. Affected children are more likely to experience anxiety disorders, depression, behavioral problems, adaptation difficulties, and challenges in forming healthy interpersonal relationships. The intergenerational transmission of violence is particularly concerning, as traumatic childhood experiences can increase the propensity for aggressive behavior in adulthood, perpetuating the cycle of domestic violence. Based on these findings, addressing family violence against children should be a strategic priority of state policy. Only a comprehensive approach that combines legal instruments, targeted social work, professional training for specialists, and the promotion of societal zero tolerance for all forms of abuse can ensure a safe environment for the holistic development of children.

Future research should focus on evaluating the effectiveness of practical protective measures, improving early intervention mechanisms, and developing integrated programs for long-term psychological and social support for child victims of violence and their families. Such efforts will not only minimize the risk of repeated abuse but also foster a systemic approach to child protection in line with international standards and contemporary best practices in child rights.

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COMPULSORY EXPROPRIATION AND PROPERTY COMPENSATION UNDER MARTIAL LAW IN TRANSITIONAL JUSTICE

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Abstract

The article examines the specifics of legal regulation of compulsory property expropriation under martial law and the mechanisms for ensuring fair compensation in the context of developing a transitional justice system in Ukraine. The analysis is based on the provisions of the Constitution of Ukraine, legislation on martial law, mobilization, and national defense, as well as the practices of the Supreme Court of Ukraine and standards established by the European Court of Human Rights. This approach allows for outlining the key principles, conditions, and procedural limits of permissible state interference with private property rights during wartime. It is demonstrated that, from the perspective of international law and the rule of law principle, compulsory property expropriation can be considered lawful only in the presence of genuine public necessity, provided that a clearly defined procedure is followed and mandatory compensation is ensured—either before or after the cessation of martial law. Particular attention is paid to challenges in documenting acts of expropriation, determining property value, judicial protection of owners' rights, and the application of Article 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms. The article argues that effective and predictable compensation mechanisms are a necessary component of transitional justice, as they ensure the actual restoration of violated rights, foster trust in state institutions, and allow for balancing public interests with private rights during wartime and post-conflict reconstruction. In this regard, the study substantiates the feasibility of implementing digital tools for recording expropriations, creating a unified registry of relevant acts, standardizing approaches to property valuation, and developing stable budgetary mechanisms for compensation. It is concluded that the further development of legal regulation of compulsory property expropriation should be based on a combination of constitutional guarantees of property rights, international human rights protection standards, and the institutional needs of post-war reconstruction and long-term state resilience in conditions of armed conflict and post-conflict transition.

Keywords: transitional justice; compulsory expropriation; martial law; right to judicial protection; democratic state.

1. Introduction

The full-scale invasion of the Russian Federation into the territory of Ukraine has led to the introduction of a special legal regime of martial law, under which the state was compelled to mobilize a wide range of available resources to ensure defense and maintain national security. In this context, a particularly important role is played by the mechanism of compulsory expropriation or seizure of property belonging to natural and legal persons to meet defense needs. By its nature, such a mechanism constitutes an extraordinary legal measure, involving direct interference in the sphere of private property – one of the fundamental rights recognized and guaranteed at both the constitutional and international law levels.

The Constitution of Ukraine enshrines the principle of inviolability of private property rights, while simultaneously allowing for their restriction in exceptional cases. In particular, pursuant to Article 41, compulsory expropriation of property is permissible only in the presence of public necessity, provided that the procedure established by law is followed and mandatory prior and full compensation for the value of such property is ensured. Similar approaches can be observed in the provisions of Article 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, which requires the state to ensure a reasonable and fair balance between the interests of society and the rights of the owner. Therefore, even under martial law, the state retains the obligation to act within the limits of legality, to adhere to the principle of proportionality, and to prevent arbitrary restrictions of property rights.

At the same time, an analysis of the practice of applying norms regulating compulsory property expropriation during martial law reveals a number of systemic problems. These include, in particular, the lack of clarity in the concept of "public necessity," the heterogeneity and fragmentation of normative regulation, the absence of centralized electronic accounting of expropriation decisions, difficulties in confirming ownership rights over destroyed or damaged objects, as well as the untimeliness of compensation payments and the reduction of their real value due to inflation. The combination of these factors significantly complicates the effective implementation of constitutional guarantees and, at the same time, creates preconditions for deviations from international standards of human rights protection.

These problems acquire particular significance in light of the formation and development of the concept of transitional justice, which is designed not only to respond to the consequences of armed conflict but also to ensure the restoration of violated rights, hold perpetrators accountable, and rebuild public trust in government in the post-war period. In this regard, the institution of compulsory property expropriation should be considered not solely as an instrument for operational defense needs, but as a component of restorative justice, which implies real, timely, and adequate mechanisms for compensating inflicted damage.

The protection of property rights in conditions of armed conflict and exceptional legal regimes has already become the subject of active scholarly discussion. For example, in the study by M. Hryhorchuk and co-authors, Protection of Property Rights during the Russian-Ukrainian War: Theoretical and Legal Analysis (2023), national and international standards of permissible interference in the property sphere are analyzed in detail, with an emphasis on the absence of a comprehensive compensation model during wartime as a factor undermining the rule of law.

Specific attention to compensation issues is given by J. Unruh in Socio-legal Instabilities in Ukraine’s Wartime Compensation Law (2024), where it is emphasized that the instability of current legal regulation is caused by the fragmentation of procedures and the absence of unified approaches to the assessment of incurred damages. Similar conclusions are found in the works of K. Skrynnikova (2024), dedicated to the analysis of property rights restrictions during martial law, as well as A. Khrebtova (2022), who draws attention to the risks of excessive expansion of state discretionary powers in the absence of clearly defined procedural guarantees.

At the same time, despite a significant number of scholarly publications, the issue of a comprehensive correlation between compulsory property expropriation, compensation mechanisms, and instruments of transitional justice, as well as the problem of digitizing relevant procedures and creating a unified register of expropriation

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decisions, remains insufficiently studied. This necessitates further scholarly and legal analysis, taking into account both the provisions of national legislation and the practice of the European Court of Human Rights.

The purpose of this article is a comprehensive study of the legal regulation of compulsory property expropriation under martial law, an assessment of the effectiveness of existing compensation mechanisms and their compliance with constitutional and international standards of property rights protection, as well as the development of proposals for improving relevant procedures within the framework of establishing a transitional justice system in Ukraine.

To achieve this purpose, the following tasks are set:

– to analyze the constitutional and international legal foundations of compulsory property expropriation;

– to characterize the specifics of normative regulation of expropriation and compensation procedures under martial law;

– to identify key gaps and conflicts in current legislation and law enforcement practice;

– to assess the compliance of national compensation mechanisms with the standards of the European Court of Human Rights;

– to substantiate directions for improving the legal regulation of compulsory property expropriation as an integral component of transitional justice.

2. Literature Review

The issue of protecting property rights in conditions of armed conflict and the application of extraordinary legal regimes has in recent years occupied a prominent place in both domestic and foreign legal scholarship, particularly in connection with the full-scale armed aggression of the Russian Federation against Ukraine. In contemporary legal doctrine, primary attention is focused on questions regarding the permissibility of state interference in the sphere of private property, the scope of compensation guarantees, and the compliance of such interference with international human rights standards.

A significant contribution to the development of a theoretical and legal understanding of the protection of property rights during wartime has been made by M. Hryhorchuk and co-authors in their work Protection of Property Rights during the Russian-Ukrainian War: Theoretical and Legal Analysis (2023). The authors thoroughly examine national and international standards governing interference with private property rights and substantiate the thesis that the absence of a unified compensation mechanism in conditions of armed conflict poses serious threats to the principle of the rule of law and legal certainty. The work also emphasizes structural shortcomings in existing damage compensation procedures and the need for their systemic reform.

Further development of this issue is reflected in J. Unruh's study Socio-legal Instabilities in Ukraine's Wartime Compensation Law for Damaged and Destroyed Residential Property (2024), which analyzes the socio-legal instability of Ukraine's compensation legislation in wartime conditions. The author convincingly demonstrates that the fragmentation of procedures, the absence of unified approaches to property valuation, and the lack of standardized methodologies for determining damages significantly restrict owners' access to effective means of legal protection. These problems are considered not only from a formal-legal perspective but also from a broader social standpoint.

Ukrainian scholars also devote substantial attention to the issue of restrictions on property rights during martial law. For instance, K. Skrynnikova (2024), in analyzing the constitutional and legal nature of these restrictions, emphasizes the key role of the principles of legal certainty and proportionality as safeguards against excessive state interference in the property sphere. Similarly, A. Khrebtova (2022) investigates the transformation of the legal regime of property under extraordinary circumstances and warns against the risks of weakening procedural guarantees in cases where the discretionary powers of public authorities are expanded.

An important element of the scholarly discussion is also judicial practice. Decisions of the Supreme Court of Ukraine issued in 2024 indicate the gradual formation of an approach to the direct application of Article 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, particularly in cases related to delays in compensation payments or insufficient amounts of compensation. At the international level, fundamental guidelines for assessing the legality and proportionality of interference with property rights have been established in the case law of the European Court of Human Rights, notably in Sporrong and Lönnroth v. Sweden and James and Others v. the United Kingdom.

Despite the significant increase in scholarly publications, comprehensive studies that integrate analyses of mechanisms of compulsory property expropriation, compensation procedures, digitalization of administrative processes, and transitional justice instruments remain scarce. The existence of this scholarly gap underscores the relevance and scientific novelty of the present research.

3. Materials and Methods

The methodological foundation of this study is based on a doctrinal approach to the analysis of legal phenomena, combined with elements of comparative law and interdisciplinary analysis. The choice of this methodology is determined by the complex legal nature of the institution of compulsory property expropriation under martial law, which lies at the intersection of constitutional, administrative, and international human rights law, as well as contemporary concepts of transitional justice. The research primarily focuses on the analysis of normative regulation, judicial practice, and doctrinal approaches, without employing empirical data collection methods.

To achieve the stated objectives, the study employs a comprehensive set of general scientific and specialized legal methods of inquiry. At the initial stage of the research, systemic and structural methods were applied, which allowed for the identification and organization of the elements of the legal mechanism of compulsory property expropriation, including the provisions of the Constitution of Ukraine, legislative acts, and subordinate normative documents. The application of these methods enabled the tracing of interconnections between different levels of legal regulation and the identification of the fragmentation of existing compensation mechanisms.

A central position in the methodological toolkit was occupied by the formal-legal method, through which the content, structure, and legal terminology of the Constitution of Ukraine, laws regulating the legal regime of martial law and compulsory property expropriation, as well as acts of the Cabinet of Ministers of Ukraine, were analyzed. Particular attention was paid to clarifying the legal content of such categories as “public necessity,” “compulsory expropriation,” and “compensation,” as well as to the examination of procedural guarantees for the protection of property owners’ rights.

A separate line of the research involved the analysis of judicial practice, aimed at assessing the application of relevant legal norms in court activities. Within this analysis, relevant decisions of the Supreme Court of Ukraine, as well as key precedents of the European Court of Human Rights concerning interference with the right to peaceful enjoyment of property, were examined. This allowed for an assessment of the degree of compliance of national law enforcement practice with international human rights protection standards.

Furthermore, the study employed a comparative law method to analyze international standards established within the framework of the Convention for the Protection of Human Rights and Fundamental Freedoms, in particular the provisions of Article 1 of Protocol No. 1. The use of this method facilitated the identification of general

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principles relevant to assessing the permissibility of interference with property rights in conditions of extraordinary circumstances.

The research was carried out in stages and included the systematization of normative sources, analysis of judicial practice, review of scholarly publications, and formulation of proposals aimed at improving legal regulation. The chosen methodology ensured the logical consistency of the study, the substantiation of the conclusions reached, and their scientific relevance.

4. Results and Discussion

The right to private property belongs to the category of fundamental human rights, without which the full functioning of a democratic state and a market economy would be impossible. Its protection ensures the autonomy of the individual, the stability of civil turnover, and the predictability of economic relations. At the same time, in crisis situations, particularly during wartime, the state may be compelled to intervene in the sphere of property rights to ensure defense and national security. For this reason, the legal system must contain effective safeguards against arbitrariness and guarantees of compensatory nature with respect to such interventions.

In the constitutional model of Ukraine, the right to private property is considered one of the basic guarantees of an individual's legal status, the restriction of which is permitted only in the presence of clearly defined grounds and in accordance with established procedures. Pursuant to Article 41 of the Constitution of Ukraine, deprivation of property rights cannot be arbitrary, and compulsory expropriation of property is allowed exclusively in exceptional cases related to public necessity, provided that the procedure is regulated by law and full compensation for the value of the expropriated property is ensured (Verkhovna Rada of Ukraine, 1996). The content of this constitutional provision reflects the legislator's attempt to reconcile the public interests of the state with the need to adequately protect the rights of property owners. The granting of the state's right to intervene in the property sphere does not have independent significance but is conditioned by the existence of procedural and substantive safeguards aimed at preventing arbitrariness. Thus, even under the legal regime of martial law, the right to private property does not lose its constitutional essence and may be limited only within the framework of the law and with compensatory intervention.

The interpretation of Article 41 of the Constitution of Ukraine should be carried out in systemic connection with the principle of the rule of law and the requirements of proportionality. The idea of proportionality presupposes that the state must apply the least burdensome measures necessary to achieve a legitimate objective and avoid imposing an excessive burden on a particular owner. Legal doctrine emphasizes that "public necessity" as a basis for compulsory expropriation must not be merely declarative, but real and objectively substantiated; it should arise from specific defense needs rather than from abstract considerations of expediency (Skrynnikova, 2024). Importantly, the category of "public necessity" itself cannot serve as a universal justification for any intervention, as this creates a risk of diluting constitutional guarantees.

The Constitutional Court of Ukraine, in its practice, proceeds from the principle that restrictions on property rights are permissible only when there is a legitimate aim, legality, and the preservation of the essence of the right itself (Constitutional Court of Ukraine, 2005). This principle has practical significance in martial law situations: even if the state operates under heightened threats, interventions cannot transform into unpredictable or discretionary practices without a proper legal basis. Instead, both the decision-making authorities and the procedure, forms of documentation, methods of valuation, and rules of compensation must be clearly defined.

The approaches enshrined in national constitutional law generally correspond to the standards developed in the practice of international human rights bodies. In its jurisprudence, the European Court of Human Rights consistently holds that state interference in the sphere of property rights cannot be arbitrary and must be assessed according to a set of interrelated criteria. Such interference must be based on an appropriate legal foundation, justified by general interest needs, and must not disrupt the proper balance between public objectives and the rights of the individual owner (European Court of Human Rights, 1982; European Court of Human Rights, 1986).

Central to this context is the concept of proportionality of interference, which in the Court's practice is realized through the requirement to maintain a balance of interests. This involves not only formal legality of state measures but also their actual impact on the individual's situation. If the interference imposes an excessive or unjustified burden on the owner, it cannot be considered compatible with the guarantees of the Convention. Therefore, compensation mechanisms must be not merely declarative but designed to ensure the real, effective, and predictable restoration of violated property rights.

It should be noted that the standards of the European Court of Human Rights concern not only the "existence of a law" but also the quality of that law, namely its accessibility, predictability, and capacity to prevent arbitrariness. In the context of martial law, this manifests in the necessity of clear procedures and transparent rules for compensation. If the law formally permits expropriation but does not provide an effective mechanism for valuation and payments, the risk of violations of Article 1 of Protocol No. 1 increases significantly (European Court of Human Rights, 1982; European Court of Human Rights, 1986).

In Ukrainian judicial practice, the provisions of Article 1 of Protocol No. 1 are increasingly used as a direct legal basis for restoring violated property rights in cases of non-payment, delayed payment, or disputes regarding compensation. The Supreme Court, in a number of decisions, emphasizes the necessity of ensuring the effectiveness of the compensation mechanism and the inadmissibility of imposing a disproportionate burden on the owner due to deficiencies in state administration or budgetary limitations (Supreme Court of Ukraine, 2024a; Supreme Court of Ukraine, 2024b). This approach is important because it demonstrates that even under extraordinary circumstances, the state cannot evade fulfilling its compensation obligations solely due to the complexity of the situation. Thus, the constitutional foundations of compulsory expropriation of property perform two interrelated functions. First, they allow the state to meet defense needs. Second, they form a system of guarantees for private property, which must not be nullified even in wartime (Verkhovna Rada of Ukraine, 1996; Constitutional Court of Ukraine, 2005). It is precisely at this intersection that defense interests and human rights converge: the greater the powers of the state, the stronger the procedural safeguards and compensation mechanisms must be.

Compulsory expropriation or seizure of property during martial law has a complex nature and relies on a system of interrelated normative acts. The basic legal framework in this sphere is provided by the Law of Ukraine "On the Legal Regime of Martial Law," which defines the general mechanisms of state functioning under a special regime, allowing temporary restrictions on certain rights and freedoms for the purposes of defense and national security (Verkhovna Rada of Ukraine, 2015). The provisions of this Law set the framework within which special property-related procedures are applied.

According to Article 15 of the aforementioned Law, during martial law, compulsory expropriation or seizure of property of private individuals and legal entities may be carried out for state defense needs with simultaneous or subsequent compensation of its value (Verkhovna Rada of Ukraine, 2015). Several aspects are important in this formulation. First, expropriation must be functionally linked to "defense needs," that is, not any state needs, but specifically those of a defense nature. Second, the law allows for both simultaneous and subsequent compensation, which corresponds to wartime realities but simultaneously creates risks of delayed payments, devaluation of compensation, and accumulation of post-war state obligations to citizens.

Decision-making authority regarding compulsory expropriation is assigned

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to the military command in coordination with military administrations or local self-government bodies, depending on territorial jurisdiction. This mechanism is intended to ensure operational efficiency and the rapid mobilization of resources necessary for defense, while preserving elements of civil oversight and interaction with local authorities (Supreme Court of Ukraine, 2024a). However, in practice, the multiplicity of coordinating subjects can generate problems: unclear demarcation of competence, varying administrative practices across regions, formalistic document handling, and difficulty for the owner in identifying the responsible entity in case of a dispute.

The detailed procedure for implementing compulsory expropriation or seizure of property is established by Resolution No. 998 of the Cabinet of Ministers of Ukraine, which sets out the procedure for documenting decisions, preparing acts, describing the object, determining its condition and value, and rules for transferring property (Cabinet of Ministers of Ukraine, 2012). From the perspective of property owners' rights guarantees, the expropriation act has fundamental importance: it is the primary document confirming the fact of seizure, recording the characteristics of the property, and serving as the basis for compensation. The mandatory participation of a representative of local authorities and the owner (or their representative) is intended to ensure adversarial involvement and prevent unilateral description of the property. However, in wartime, the physical participation of the owner is often complicated (evacuation, occupation, lack of access), which increases the risks of formalization of procedures and potential disputes regarding the content of the act, completeness of the description, or accuracy of the valuation.

The normative framework also includes the Law of Ukraine "On the Transfer, Compulsory Expropriation or Seizure of Property under Martial or Emergency Legal Regimes" No. 4765-VI, which details the legal grounds, procedure, and compensation guarantees in the event of the application of such measures during martial or emergency regimes (Verkhovna Rada of Ukraine, 2012). Interpreted systemically with the Constitution, this legislation aims to ensure that any expropriation maintains a compensatory nature and does not amount to de facto confiscation.

Compensation for expropriated property is a key guarantee of compliance with the constitutional standard. Resolution No. 998 provides for two primary modes of compensation — prior (before actual expropriation) and subsequent (after expropriation, when immediate payment is impossible) (Cabinet of Ministers of Ukraine, 2012). Prior compensation most closely corresponds to the literal content of Article 41 of the Constitution, as it minimizes the burden on the owner and reduces the risk of violating the "fair balance." Subsequent compensation is a wartime necessity but requires the strongest safeguards to prevent delay from turning into de facto refusal of compensation.

If property is expropriated without prior compensation, the owner may apply to the competent authority after the end of martial law for compensation from the state budget (Verkhovna Rada of Ukraine, 2012). This mechanism appears logical, but it concentrates a number of practical problems. First, there is the issue of proof: the owner must have documents confirming ownership and expropriation, as well as valuation documents. Second, after martial law ends, a significant number of claims may accumulate, objectively delaying consideration and payments. Third, inflationary processes and market value changes may result in compensation, determined based on preliminary valuation, failing to correspond to the actual value at the time of payment.

Property valuation is a central element of the compensation mechanism. In theory, it should ensure the most accurate reflection of the object's value, considering its technical condition, degree of wear, functional purpose, and other characteristics (Cabinet of Ministers of Ukraine, 2012). In practice, however, valuation often becomes a source of disputes due to combat restrictions, limited access to market comparables, document scarcity, and differing approaches among evaluators. Therefore, scholarly works emphasize the need for standardization of approaches; otherwise, the compensation mechanism remains fragmented and socially unstable (Unruh, 2024).

An additional problem is that even with an expropriation act and valuation, the owner may face payment delays or require judicial protection. Courts in such cases examine not only the formal legality of the procedure but also the reality of compensation guarantees and adherence to the requirement of fair balance (Supreme Court of Ukraine, 2024a; Supreme Court of Ukraine, 2024b). This is particularly significant when the state cites limited budgetary capacity: even in such cases, the burden of war cannot be disproportionately shifted to individual owners.

Compensation may be provided not only in monetary form but also in kind through the transfer of equivalent property (Cabinet of Ministers of Ukraine, 2012). In theory, in-kind compensation allows for faster restoration of the individual's property status, especially for production means or critical assets. However, in wartime conditions, this mechanism is applied restrictively due to resource scarcity and difficulty in selecting an "equivalent" object. Moreover, in-kind compensation can generate additional disputes regarding equivalence, quality, location, and legal regime of the transferred property.

Jurisdictional issues in disputes related to compulsory expropriation depend on the authority and subject matter of the dispute. Generally, appeals against decisions, actions, or inaction of public authorities (military administrations, local governments, or other bodies) are handled through administrative courts, whereas disputes between private entities or claims for damages may, in certain circumstances, be considered in civil or commercial courts (Supreme Court of Ukraine, 2024b). Regardless of procedural form, the standard of protection must comply with constitutional and Convention requirements. A separate set of problems concerns the digitalization and recording of expropriation acts. Currently, expropriations are often recorded primarily in paper form, creating risks of document loss, complicating oversight, and reducing transparency for both the owner and the state (Supreme Court of Ukraine, 2024b). In the context of modern approaches to digital public administration, it is important for the state to establish a unified electronic mechanism for recording, tracking, and monitoring expropriation decisions, integrated with state registers and open data (European Commission, 2023). This will not only reduce the risk of abuse but also significantly simplify proof for owners in disputes.

In light of the above, proposals are advisable regarding: (1) the creation of a unified electronic register of expropriation acts integrated into the State Register of Property Rights and the open data portal; (2) the introduction of an electronic tracking system for the document's path — from act preparation to actual compensation payment, with transparent control; (3) the unification of property valuation approaches, taking into account inflation, degree of damage, and restoration possibilities (Verkhovna Rada of Ukraine, 2012; European Commission, 2023). All these measures logically stem from the requirement of legal certainty and the need to ensure a fair balance of interests.

Particular attention should be paid to the criteria of "public necessity." Their vagueness creates scope for divergent administrative practices and potential inequality among owners: in similar situations, decisions may be made differently, and reasoning may be formalistic. Studies on property rights restrictions in Ukraine during martial law emphasize that the normative certainty of procedures and grounds is a key condition for preventing excessive state interference (Skrynnikova, 2024; Khrebtova, 2022). Therefore, legislative clarification of the criteria of public necessity and standardization of decision justification is an important direction for modernizing the mechanism.

In the broader framework of transitional justice, the institution of compulsory expropriation of property acquires additional significance. Transitional justice is aimed not only at the legal response of the state to wartime challenges but also at restoring trust in institutions, compensating harm, and establishing justice in post-war society. If expropriation occurs non-transparently, compensation is delayed or devalued, and the owner must defend their rights in court for years, this undermines the sense of

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justice and exacerbates social tension. Research emphasizes that the absence of a unified and predictable compensation mechanism during wartime poses a risk to the implementation of the rule of law and to the general standard of property protection (Hryhorchuk et al., 2023; Unruh, 2024).

Furthermore, in the context of transitional justice, it is important not only that compensation occurs but also that its quality (timeliness, completeness, and fairness) meets the standard. These criteria allow for the real restoration of violated rights rather than mere formal declaration of guarantees. The practice of the European Court of Human Rights explicitly highlights the inadmissibility of imposing an "excessive individual burden" on a person; thus, the state must design the compensation mechanism so that it functions in reality, not only on paper (European Court of Human Rights, 1982; European Court of Human Rights, 1986).

In conclusion, compulsory expropriation of property during martial law is an exceptional state instrument applied to ensure national defense and security. Its application, however, must be based exclusively on law, justified by real needs, comply with the principle of proportionality, and be accompanied by effective compensation that restores a fair balance between public interest and the rights of the owner (Verkhovna Rada of Ukraine, 1996; Constitutional Court of Ukraine, 2005). Identified issues in law enforcement — unclear criteria for public necessity, fragmented valuation approaches, absence of electronic record-keeping, and delayed payments — indicate the need for systematic modernization of the current mechanism. The introduction of digital recording and control tools, unified valuation, and increased procedural transparency should form part of a comprehensive model capable of simultaneously meeting defense needs and ensuring the restoration of violated rights in the logic of transitional justice (European Commission, 2023; Verkhovna Rada of Ukraine, 2012).

5. Conclusion

The conducted research has made it possible to carry out a comprehensive analysis of the legal nature of compulsory expropriation of property under conditions of martial law and to identify the existence of a number of significant conflicts and gaps in the current regulatory framework governing this sphere. First and foremost, this concerns the absence of clearly defined and unified criteria of "public necessity" as the key ground for interference with the right to private property, which creates risks of excessive discretion on the part of public authorities and inconsistent application of legislation in practice. Under such circumstances, there is a danger that decisions on compulsory expropriation of property may be formally justified without a proper assessment of their proportionality and actual necessity.

Another substantial problem lies in the lack of a unified mechanism for the digital documentation of acts of compulsory expropriation. The predominantly paper-based nature of recording decisions, describing property, and assessing its value complicates oversight of the legality of actions taken by authorized bodies, increases the risks of loss or damage to documents, and significantly hinders the effective exercise of the owner's right to judicial protection and compensation. Combined with the fragmented approaches to property valuation, this situation leads to legal uncertainty, whereby owners find themselves in unequal positions depending on the region, the administrative practice of a particular authority, or the availability of evidentiary materials.

Particular attention should be paid to the inability of existing compensation procedures to fully take into account inflationary processes, wartime risks, the degree of damage to property, and the objective impossibility of inspecting property in certain cases. Delays in payments, depreciation of compensation, and the complexity of proving the actual value of expropriated property effectively impose a disproportionate individual burden on owners, which contradicts both constitutional guarantees and international standards for the protection of property rights. Taken together, these factors hinder timely and fair compensation and undermine public trust in state institutions during periods of wartime hardship.

In view of the identified problems, the article substantiates the need for a comprehensive improvement of the mechanism for compensating compulsorily expropriated property as one of the key elements of guaranteeing the right to property and shaping an effective model of transitional justice. In particular, the following measures are proposed:

– the introduction of a unified electronic register of acts of compulsory expropriation, integrated with state registers of property rights and other information systems, which would ensure procedural transparency, prevent the loss of documents, and simplify the process of proof for property owners;

– the development and legislative consolidation of a unified methodology for property valuation that would take into account the degree of damage to the object, the impossibility of inspection in areas of active hostilities, inflationary fluctuations, and wartime risks, thereby minimizing the number of disputes concerning the amount of compensation;

– a clear normative definition of the criteria of "public necessity," which would limit the possibility of arbitrary state interference with the right to private property and ensure that decisions comply with the principle of proportionality;

– the establishment of a budgetary guarantee fund for post-war compensation, which would ensure the reality and enforceability of the state's obligations toward property owners even under conditions of limited financial resources;

– the improvement of judicial protection procedures, in particular through the introduction of priority and expedited consideration of cases related to compensation for compulsorily expropriated property, which would contribute to the effective restoration of violated rights;

– the implementation of digital tools for recording and monitoring at all stages of expropriation, starting from the adoption of the decision and the drafting of the act and ending with the actual payment of compensation, in line with contemporary standards of public administration.

The implementation of the proposed measures would contribute to the formation of a transparent, predictable, and fair system of compulsory expropriation of property, capable of ensuring an effective balance between the defense needs of the state and guarantees of the right to private property. Such an approach would be consistent with both constitutional principles and international human rights standards as articulated in the case law of the European Court of Human Rights. In a broader perspective, improving the mechanisms of compulsory expropriation and property compensation is of fundamental importance for the development of an effective model of transitional justice in Ukraine. It is precisely through fair, timely, and full compensation that the state can demonstrate its responsibility toward citizens, restore violated rights, and strengthen public trust. In the post-war period, this will constitute an important prerequisite not only for legal but also for socio-economic recovery and the long-term resilience of the Ukrainian state.

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CURRENT STATE AND PROSPECTS FOR THE DEVELOPMENT OF THE SYSTEM OF CRIMINAL LAW PROTECTION OF SEXUAL FREEDOM AND SEXUAL INTEGRITY OF THE INDIVIDUAL IN UKRAINE

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Abstract

The article examines issues of punishment and other means of criminal law protection of sexual freedom and sexual integrity of individuals in Ukraine, in particular with regard to ordinary offences. The author focuses on the general concept of criminal law response to sexual offenses, analyzing not only the formal definition of crimes, but also the effectiveness of sanctions in real practice. Attention is drawn to systemic shortcomings in the criminalization of such acts in the Criminal Code of Ukraine, revealing inconsistencies in sanctions between different articles and violations of the principles of proportionality and logic of criminal law policy. The author emphasizes that current legislative decisions do not always correlate with the level of public danger of such offenses and do not form an effective preventive mechanism. Particular attention is paid to a critical analysis of the composition of such acts as solicitation of a child for sexual purposes (Article 156-1 of the Criminal Code), coercion into sexual intercourse (Article 154 of the Criminal Code), and distribution of child pornography (Article 301-1 of the Criminal Code), since, in the author's opinion, these articles contain the most problems in terms of both classification and justification of sanctions. The need to review penalties in order to ensure their adequacy, consistency, and ability to prevent recidivism is justified. The importance of restoring the balance between the punitive component and the application of alternative measures of a criminal law nature is emphasized. A separate section of the study is devoted to the legal nature of probation, which the author proposes to consider not as a punishment, but as an independent measure of a criminal law nature. The article also reveals other means of criminal law protection, in particular

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measures against legal entities, restrictive and coercive measures of a medical nature, and special confiscation. The article provides scientific justification for the proposal to introduce compulsory chemical castration as a medical measure for persons diagnosed with pedophilia, but not as a form of punishment, taking into account international experience and the principle of respect for human rights. The work contains specific and reasoned proposals for improving the current legislation in the field of combating sexual crimes.

Keywords: criminal law protection; sexual freedom; sexual integrity; punishment; criminalization.

Introduction

Sexual crimes occupy a special place in the system of crimes against persons, as they violate not only sexual freedom and sexual integrity, but also fundamental rights and human dignity. The relevance of researching the classification of such criminal offenses is due to the scale of the challenges facing law enforcement agencies, the growth of latent sexual crime, the emergence of new forms of sexual exploitation, digital methods of committing sexual offenses, as well as changes in social perceptions of consent, voluntariness, and violence. At the same time, in practice, there are numerous difficulties associated with the interpretation of the elements of sexual crimes, the demarcation of related criminal law norms, the establishment of the stages of a crime, the criteria for voluntary sexual behavior, and the determination of the age of the perpetrator and the victim.

Contemporary Ukrainian criminal law has established a group of crimes against sexual freedom and sexual integrity, but the system of relevant criminal law provisions continues to evolve. Legal definitions are introduced in a fragmented manner, do not always correspond to doctrine and judicial practice, and the content of certain concepts remains debatable. Therefore, the primary task is to analyze the problems of interpreting the elements of criminal offenses in this category, as well as to develop unified approaches to their classification.

The most controversial aspect is the problem of establishing voluntariness and consent to sexual acts. Despite the legislative consolidation of the concept of "voluntary consent," in practice it remains difficult to determine actual consent in conditions of psychological dependence, fear, threat of physical violence, and situations associated with the helplessness of the victim. Law enforcement agencies often limit themselves to formal criteria of the absence of active resistance or reports of coercion, which is unacceptable, since consent in modern criminal law should be considered not as a passive absence of protest, but as an active and conscious expression of will. Proper classification requires consideration of the psychological context, previous relationships, state of dependence, fear for one's life or the lives of loved ones. An obstacle is that most cases of sexual violence do not take the form of overt violence, but occur in conditions of psychological pressure, manipulation, blackmail, social control, economic or professional dependence.

The problems of classification are exacerbated by the need to clearly distinguish rape from sexual assault and coercion to engage in sexual intercourse. In practice, there are cases where pre-trial investigation bodies and courts confuse the concepts of physical violence, psychological coercion, and exploitation of the helpless state of the victim. The lack of clear and uniform criteria creates the risk of reclassifying serious crimes as less dangerous offences, which reduces the criminal law protection of victims. A particular difficulty arises in cases where the victim was under the influence of alcohol or drugs, which in itself does not preclude voluntariness, but requires a comprehensive assessment of the ability to understand the nature of the actions and control them. In judicial practice, questions repeatedly arise regarding the application of the criteria of helplessness to minors, persons with disabilities, or persons under the influence of drugs (Verkhovna Rada of Ukraine, 2001).

One of the most problematic areas is the establishment of the stages of committing sexual crimes: from preparation and attempt to completed criminal offense. In many cases, the composition of sexual crimes is material, which implies certain consequences. However, with regard to acts related to the violation of the sexual freedom of minors, it is possible to recognize the crime as completed from the moment the sexual behavior begins, even in the absence of a completed act. This leads to discussions about determining the moment of transition from attempt to completed crime. Resolving such issues requires a comprehensive approach and comparative analysis with the practice of other legal systems, where the criteria for distinguishing between the stages of sexual crimes are defined in much greater detail (Verkhovna Rada of Ukraine, 1996).

The age of the perpetrator is a matter of debate, in particular the lowering of the age of consent for certain types of sexual crimes. The legislator assumes that a person of a certain age is capable of understanding the socially dangerous nature of their actions in the sphere of sexual relations. However, in practice, determining the psychological maturity of adolescents and their ability to adequately perceive sexual contact is difficult and often based on evaluative judgments. The contradictions between the categories of biological age, social maturity, and individual development cause ambiguity in determining the degree of guilt of minors who commit sexual offenses. It should be noted that the development of digital technologies and internet culture leads to the early sexualisation of adolescents, which does not mean that they are able to understand the legal consequences of their behavior (Verkhovna Rada of Ukraine, 2017).

In recent years, the issue of classifying digital forms of sexual violence has become particularly relevant. The spread of online sexual coercion, extortion of intimate photos, involuntary distribution of sexual content, and the use of social networks to recruit victims requires a new approach to criminal law classification. In Ukraine, digital sexual violence is not specifically identified as a separate crime, which makes it necessary to apply other articles that do not always adequately reflect the nature of the public danger of such acts. It is necessary to strengthen the criminal law protection of minors in the digital environment by defining specific norms regarding online sexual exploitation, since the current latency of sexual crimes is largely associated with the virtual sphere.

Improving law enforcement practices requires the unification of evidentiary standards in cases of this category. The main problem is establishing the fact of violence and lack of consent. Traditional approaches to evidence, based on medical conclusions about the presence of bodily harm, are outdated, as most cases of sexual violence are not accompanied by physical injuries. The psychological disorders of the victim, post-traumatic reactions, testimony from close relatives, correspondence on social networks, and digital evidence should be taken into account. A more flexible understanding of evidence is needed, one that would meet the standards of the European Court of Human Rights and modern ideas about sexual consent (Verkhovna Rada of Ukraine, 2017).

Against this background, the present study aims to provide a systematic analysis of the current state of criminal law protection of sexual freedom and sexual integrity in Ukraine. The article identifies gaps and inconsistencies in the legal framework, examines the effectiveness of sanctions and alternative measures, and considers both classical and emerging forms of sexual crimes, including those committed in digital environments. By combining doctrinal analysis, comparative law insights, and practical examples from judicial and law enforcement practice, the study proposes concrete recommendations to enhance legal protection, ensure proportionality of punishment, and develop preventive mechanisms that correspond to contemporary social realities and international standards.

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Literature Review

The issue of environmental security and the legal protection of the environment durinThe scientific literature actively discusses the problem of distinguishing between crimes such as rape, sexual violence, coercion to engage in sexual intercourse, and sexual intercourse with a person who has not reached sexual maturity. Difficulties in classification arise in cases where the perpetrator uses indirect coercion, economic leverage, professional dependence, or psychological manipulation. No less complex are situations involving sexual contact within the family, between employees, students and teachers, military personnel and commanders, where not only formal but also social mechanisms of subjugation are at work (Ponomarenko, 2022). Building on the issues outlined above, contemporary scholarship further emphasizes the importance of distinguishing subtle forms of coercion from overt violence. Researchers note that in addition to direct physical force, perpetrators often rely on psychological manipulation, economic pressure, professional authority, and social hierarchies to compel sexual acts (Munro, 2021; Hörnle, 2024). For example, in educational or military settings, coercion may occur through threats to career advancement or academic evaluation, which formal legal definitions of sexual crimes frequently fail to capture.

Comparative legal research illustrates this evolving trend across Europe. In countries like Sweden, Spain, Belgium, and the Netherlands, modern penal codes emphasize the absence of voluntary consent as the defining characteristic of rape and related offences, rather than the application of force or threat. These reforms align with international norms such as the Istanbul Convention on preventing and combating violence against women and domestic violence, which obliges states to adopt consent-based definitions in their criminal legislation (Balobanova, 2012). Recent legislative developments (such as reforms in France to explicitly require “freely given and informed” consent for rape offences) highlight this shift in both legal doctrine and prosecutorial practice in Europe. Under these reforms, the absence of physical resistance is no longer determinative, and courts must assess consent within the context of the overall circumstances, including power imbalance, intoxication, or fear of violence

Particular attention should be paid to ensuring procedural guarantees for victims in sexual offense cases. The standard of pre-trial investigation must be commensurate with the sensitivity of this category of criminal offenses. The interrogation of victims requires special training for investigators and prosecutors, as well as psychological support to prevent re-traumatization. It is important to ensure the proper conduct of forensic medical and psychological examinations, as well as to standardize procedures for collecting digital evidence in cases of sexual violence (Tuliakov & Makarenko, 2013). Studies demonstrate that standard investigative techniques often exacerbate trauma and may result in incomplete or inaccurate evidence collection (Lubenets, 2022). Best practices include specialized training for investigators and prosecutors, standardized forensic and psychological assessments, and clear procedures for digital evidence collection, particularly in cases of online sexual exploitation.

The literature also highlights the challenges of age and maturity in sexual consent, noting that biological age alone is insufficient for assessing legal capacity to consent (Cahill & Devaney, 2020). The proliferation of digital technologies has increased the need for nuanced legal definitions to address exploitation, grooming, and involuntary sharing of sexual material among minors. Furthermore, international criminal law perspectives underscore the necessity of aligning domestic laws with global human rights standards, ensuring that the concepts of consent, coercion, and victim protection reflect contemporary understanding of autonomy, psychological pressure, and digital realities (Hörnle, 2024; Munro, 2021). A harmonized approach can facilitate more effective prosecution, prevent under-classification of crimes, and provide victims with comprehensive legal protection.

In summary, it can be argued that resolving the problematic issues of the classification of sexual criminal offenses requires a comprehensive transformation of criminal law and criminal procedure. First of all, it is necessary to improve the legislative definitions of key concepts: voluntary consent, psychological coercion, helplessness, and digital sexual violence. It is important to develop unified criteria for distinguishing between related crimes and determining the stages of committing sexual offenses. The standard of proof in cases of this category should be improved, moving away from a formal approach to assessing the consequences of violence and focusing on a comprehensive analysis of the victim's behavior and the circumstances of the crime. A necessary condition is the harmonization of Ukrainian legislation with international standards for the protection of the rights of victims of sexual violence, as well as the recommendations of the UN, the Council of Europe, and the European Court of Human Rights (Orlov, 2023).

In conclusion, the literature demonstrates that reforming the classification of sexual offences requires clarity in definitions of consent, coercion, and helplessness, standardized procedural safeguards, and alignment with international norms, particularly in digital contexts. This body of scholarship provides a strong theoretical and empirical foundation for evaluating Ukrainian criminal law and proposing legislative improvements that protect sexual freedom and integrity while reflecting modern social realities.

Materials and Methods

The materials of the study comprise the provisions of the Constitution of Ukraine, legislative and subordinate regulatory acts governing the compulsory alienation, seizure, and compensation of property under martial law, as well as acts defining the legal regime of martial law and guarantees of the protection of the right to property. The source base also includes decisions of the Constitutional Court of Ukraine, the case law of the Supreme Court of Ukraine, and relevant precedents of the European Court of Human Rights concerning interference with the right to peaceful enjoyment of possessions. An important component of the materials consists of scholarly publications by Ukrainian and foreign researchers addressing the protection of property rights in armed conflicts, emergency legal regimes, and the formation of transitional justice systems.

The methodological framework of the article is grounded in a doctrinal approach to the analysis of legal phenomena, which made it possible to elucidate the legal nature of compulsory alienation of property, its place within the system of public-law instruments of the state, and its relationship with constitutional guarantees of the right to private property. The application of this approach enabled the synthesis of existing scholarly positions, the identification of key conceptual approaches, and their critical assessment in light of contemporary challenges arising from martial law.

The study employs a set of general scientific and special legal methods of cognition. Systemic and structural-functional methods were used to analyze the mechanism of compulsory alienation of property as an integrated legal institution encompassing substantive grounds for interference, decision-making procedures, documentation mechanisms, and compensation arrangements. This made it possible to identify internal linkages between different levels of legal regulation and to reveal the fragmentation and lack of coordination among individual elements of the compensation system.

A central role in the research was played by the formal legal method, through which the content and structure of the provisions of the Constitution of Ukraine, special laws, and subordinate acts regulating compulsory alienation of property under martial law were analyzed. Particular attention was paid to the interpretation of such legal categories as “public necessity,” “compulsory alienation,” “seizure of property,” and “compensation,” as

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well as to the assessment of procedural guarantees for the protection of owners' rights.

The analysis of judicial practice was conducted using methods of legal analysis and generalization, which allowed for an evaluation of the actual state of law enforcement and the degree of compliance of national practice with the standards of the European Court of Human Rights, particularly the requirements of legality, proportionality, and the fair balance of interests. The comparative legal method was employed to compare national approaches with international standards for the protection of property rights as formulated in the case law of the European Court of Human Rights and in international human rights instruments.

Logical-legal and analytical methods were applied to formulate generalized conclusions and scientifically grounded proposals aimed at improving the legal regulation of compulsory alienation of property and compensation mechanisms within the framework of transitional justice. The research has a normative and doctrinal character and does not involve the use of empirical data collection methods, which corresponds to its objectives and subject matter.

The application of these materials and methods ensured the systemic character, logical consistency, and scientific validity of the findings, and made it possible to develop practice-oriented recommendations relevant to the further development of legislation and law enforcement practice in Ukraine.

Results and Discussion

The implementation of a comprehensive approach will ensure the creation of an effective system of criminal law protection of sexual freedom and sexual integrity, contribute to improving the quality of law enforcement, ensuring justice, and restoring victims' trust in the law enforcement system. Problematic issues of the classification of sexual criminal offenses should be resolved taking into account an interdisciplinary approach, involving lawyers, psychologists, criminologists, and digital security specialists, in line with current trends in the development of criminal law and human rights protection (Yevdokimova, 2023).

Current scientific literature emphasizes that effective solutions to the classification of sexual crimes require close collaboration between lawyers, psychologists, criminologists, and digital technology experts. This approach allows for the development of both legal and psychological aspects of violence, as well as factors of social dependence and digital exploitation. Studies by Munro (2021) and Lubenets (2022) demonstrate that the integration of medical, psychological, and sociological tools into criminal proceedings can increase the effectiveness of victim protection and prevent reoffending.

Thus, the system of criminal law protection of sexual freedom and sexual integrity of individuals in Ukraine is characterized by the following main features and problems:

1. The existing model of criminalization and penalization of sexual offences reveals substantial systemic and structural inconsistencies. These shortcomings are primarily manifested in the lack of coherence between the punishability of certain acts and the general logic of the institution of unfinished criminal activity. A particularly illustrative example is the criminalization of solicitation of a child for sexual purposes (Article 156-1 of the Criminal Code of Ukraine). While the legislator has rightly criminalized such conduct at an early preparatory stage in order to enhance preventive protection, the sanctions policy lacks internal consistency. As a result, an imbalance arises between the severity of punishment for preparatory acts and for completed offences that pose a higher degree of public danger. This undermines the principle of proportionality and weakens the internal logic of the system of penalties.

Fragmentation is also evident in the inconsistent regulation of additional punishments, particularly deprivation of the right to hold certain positions or engage in specific activities. In the context of sexual offences, such restrictions are of exceptional preventive importance, as they directly limit offenders' access to vulnerable groups. The absence of a unified and systematic approach to imposing such additional penalties reduces their preventive potential. Furthermore, coercion to sexual intercourse (Article 154 of the Criminal Code of Ukraine), when correctly classified as an attempt to commit a more serious offence, requires a reconsideration of sanctions, taking into account coercive conduct that may involve psychological pressure, threats, or abuse of dependency rather than physical violence, but nevertheless constitutes a serious violation of sexual autonomy.

2. The legal nature of probation supervision requires fundamental rethinking. Its inclusion in the list of criminal punishments remains debatable, as the substantive content of probation supervision is predominantly oriented toward control, social support, psychocorrectional programs, mediation, and resocialization rather than repressive influence. This indicates the expediency of conceptually reforming probation supervision into an independent criminal law measure. Such a reform would allow for the creation of a separate category of criminal law responses aimed not at punishment in the classical sense, but at behavioral correction, social reintegration, and protection of society. This approach corresponds to contemporary European probation standards and reflects the principle of individualization of criminal law measures.

3. The existence of other criminal law measures forms an additional, specialized level of protection of sexual freedom and sexual integrity. These measures include criminal law responses applicable to legal entities, restrictive measures, compulsory medical measures, special confiscation, restraining orders, and other non-fiscal instruments. Their primary function is protective rather than punitive. This multi-layered system reflects a comprehensive model of countering sexual crime, as it allows influencing not only the offender but also the criminogenic environment and factors contributing to revictimization. Such measures enhance the preventive function of criminal law by employing targeted and situation-specific mechanisms that go beyond traditional punishment.

4. The optimization and and further development of the system of criminal law protection require the integration of modern medical and criminological tools. In particular, the study substantiates the necessity of introducing compulsory medical measures in the form of chemical castration for individuals diagnosed with pedophilia who have committed serious or especially serious crimes against the sexual freedom and sexual integrity of children. This measure should not be perceived as punitive retribution, but rather as a special preventive mechanism aimed at reducing the risk of recidivism, protecting potential victims, and safeguarding public safety. Comparative analysis of international practice in Poland, Germany, the Czech Republic, and certain states of the United States demonstrates that the use of such measures, when combined with long-term psychological treatment and strict judicial oversight, significantly reduces repeat sexual offences against children. At the same time, strict adherence to medical indications, procedural safeguards, and human rights standards is essential to prevent this measure from becoming disproportionate or abusive.

International experience further confirms that effective criminal law responses to sexual crimes must combine punitive and preventive strategies. In several European Union states, including Sweden, Spain, Belgium, and the Netherlands, the decisive criterion for defining sexual offences is the absence of voluntary consent, rather than the presence of physical resistance by the victim (Grudecki et al., 2022; European Parliament, 2021). This consent-based model enables the law to adequately address situations involving psychological pressure, fear, dependency, or incapacity, which often prevent victims from expressing their will freely. Incorporating this approach into Ukrainian legislation would significantly strengthen the protection of sexual autonomy and align national

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criminal law with modern European standards.

Improving the legislative design of punishments, bringing them into line with the principles of consistency and proportionality, and expanding the arsenal of specialized non-fiscal measures are necessary conditions for the formation in Ukraine of an effective, balanced, and modern system of criminal law protection of sexual freedom and sexual integrity of the individual (World Health Organization, 1992).

Thus, the system of criminal law protection of sexual freedom and sexual integrity of individuals in Ukraine is characterized by a number of fundamental features that reflect both positive trends and significant problems that require legislative rethinking and doctrinal reflection.

1. The existing model of penalization for ordinary offenses contains significant systemic and structural violations. The problematic nature of criminal law regulation in this area is manifested primarily in the inconsistency of the punishability of certain acts with the principles of the logical structure of the institution of unfinished criminal activity. A striking example is the solicitation of a child for sexual purposes (Article 156-1 of the Criminal Code of Ukraine), where the legislator has criminalized such behavior at the early preparatory stages, but at the same time has failed to ensure the logical integrity of the sanctions policy. This leads to an imbalance between the punishability of different forms of offences, including those that pose a significantly higher degree of public danger. In addition, fragmentation is also evident in the inconsistent regulation of additional punishment in the form of deprivation of the right to hold certain positions or engage in certain activities, which in the context of sexual crimes is particularly important as a preventive tool. Coercion to sexual intercourse (Article 154 of the Criminal Code of Ukraine), when correctly classified as an attempt to commit a more serious offense, requires a review of the wording of sanctions and consideration of the specifics of coercive actions without the use of physical violence but with significant interference in a person's sexual autonomy.

The legal nature of probation supervision requires rethinking. Its inclusion in the list of types of punishment is debatable, since most of the content of this measure is related to control, social support, psychocorrectional programs, mediation, and resocialization rather than punitive influence. It is advisable to conceptually reformat probation into an independent criminal law measure.

2. The legal nature of probation supervision needs to be rethought and conceptually reformatted. Its inclusion in the list of types of punishment is debatable, since most of the content of this measure is related to elements of control, social support, psychocorrectional programs, mediation, and resocialization, rather than repressive influence. This indicates the advisability of forming, within the Criminal Code of Ukraine, a separate group of criminal law measures that are not intended to inflict criminal punishment but are intended to ensure supervision, behavioral correction, and protection of society. Such an approach would be in line with current European standards of probation and the principles of individualization of criminal law measures.

3. The existence of other criminal law measures creates an additional, specialized level of protection. These include criminal law measures against legal entities, restrictive measures and compulsory medical measures, special confiscation, restraining orders, and other non-fiscal instruments aimed primarily at the protective function of criminal law. This comprehensive approach is in line with the trend towards multidisciplinarity in combating sexual crimes, as it allows influencing not only the offender, but also the environment in which the offences are committed and the risks of revictimization. It is also important that such measures are designed to increase the effectiveness of criminal law prevention through the use of targeted and specific mechanisms.

4. The optimization and development of the criminal law protection system require the integration of modern medical and criminological tools. In particular, it

seems necessary to introduce the compulsory application of medical measures in the form of chemical castration for persons with a medical diagnosis of pedophilia who have committed serious or particularly serious crimes against the sexual freedom and sexual integrity of children. This is not about punishment as a form of retribution, but about special prevention measures aimed at preventing recidivism, preserving the health and safety of potential victims, and minimizing the risk of repeat offences. International experience (the practice in Poland, Germany, the Czech Republic, and some US states) shows that the use of such measures in combination with psychological programs reduces the likelihood of repeated sexual assaults on children. At the same time, an important condition is the availability of medical indications, judicial control, and compliance with human rights standards, which prevents this tool from becoming an excessively punitive measure.

Improving the legislative design of punishments, systematic differentiation of sanctions depending on the degree of public danger of the act, bringing them into line with the principles of proportionality, preventive effectiveness, and consistency with the general principles of criminal law are key conditions for building a balanced and modern system of countering sexual offenses in Ukraine. Proper integration of criminal law, medical-psychological, and social-rehabilitation measures will contribute to the real protection of society, and above all, the most vulnerable categories of victims, in particular children. It is a comprehensive, scientifically based approach that will ensure an optimal balance between human rights, the needs of justice, and the interests of the state in the sphere of guaranteeing sexual freedom and sexual integrity of the individual.

Conclusion

The article provides a comprehensive scientific and legal analysis of the mechanism of forced alienation of property under martial law through the prism of constitutional guarantees of property rights, international standards for the protection of human rights and modern approaches to transitional justice. The study made it possible to establish that the current regulatory and legal regulation of this area, despite its formal compliance with the requirements of wartime, is characterized by fragmentation, the presence of conflicts and the absence of a systematic approach to ensuring a fair balance between the public interests of the state and the private interests of property owners.

It is substantiated that the key problems of law enforcement are the vagueness of the criteria of "public necessity" as a basis for interference with property rights, the imperfection and non-synchronization of compensation mechanisms, as well as the lack of effective digital tools for documenting and controlling forced alienation procedures. Taken together, these factors create risks of excessive discretion of public authorities, legal uncertainty and imposition of a disproportionate individual burden on owners, which does not meet the requirements of Article 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms and the established case-law of the European Court of Human Rights.

Based on the analysis of national case law and decisions of the European Court of Human Rights, it has been proven that the effectiveness of property rights protection in conditions of emergency legal regimes directly depends on the availability of clear substantive and procedural guarantees, in particular timely, full and fair compensation. In this context, the forced alienation of property should be considered not only as a tool to ensure the defense needs of the state, but also as an element of a broader system of restoring violated rights and trust between the state and society.

The directions for improving legal regulation proposed in the article — the introduction of a single electronic register of acts of compulsory alienation, the unification of the methodology for property valuation, the regulatory specification of the criteria of public necessity, the creation of a budgetary guarantee fund for compensation and

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the improvement of judicial protection procedures — are of a systemic nature and are aimed at forming a transparent, predictable and fair model of legal regulation.

It is concluded that the modernization of the mechanisms of compulsory alienation and compensation of property is of fundamental importance not only for compliance with constitutional and international standards for the protection of property rights, but also for building an effective model of transitional justice in Ukraine. In the post-war period, it is fair and effective compensation for the damage caused that can become an important prerequisite for restoring violated rights, strengthening public trust in state institutions and ensuring the long-term legal and socio-economic stability of the state.

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