MINISTRY OF INTERNAL AFFAIRS OF UKRAINE
NATIONAL ACADEMY OF INTERNAL AFFAIRS

LAW JOURNAL

OF THE NATIONAL ACADEMY OF INTERNAL AFFAIRS

Scientific Journal

Volume 13, No. 2
2023

Kyiv
2023

ISSN 2519-4216
E-ISSN 2519-4313
DOI: 10.56215/naia-chasopis/2.2023

Co-founders:
National Academy of Internal Affairs,
LLC "Scientific Journals"

Year of foundation: 2011

Recommended for printing and distribution
via the Internet by the Academic Council
of National Academy of Internal Affairs
(Minutes No. 13 of June 26, 2023)

Certificate of state registration
of the print media
Series KB No. 25016-14956 ПР of October 19, 2021

The journal is included in the list of professional publications of Ukraine
Category "B". Branch of sciences – legal, specialty – 081 "Law"
(order of the Ministry of Education and Science of Ukraine of December 28, 2019 No. 1643)

The journal is presented international scientometric databases, repositories and scientific systems: CrossRef, ISSN International Centre, ORCID, ERIH PLUS, Electronic repository NAIA, Research Bible, VNLU, Professional publications of Ukraine, Index Copernicus, Google Scholar

Law Journal of the National Academy of Internal Affairs / Ed. by S. Cherniavskyi (Editor-in-Chief) et al. Kyiv: National Academy of Internal Affairs, 2023. Vol. 13, No. 2. 97 p.

Editors office address:
National Academy of Internal Affairs
03035, 1 Solomianska Sq., Kyiv, Ukraine
Tel.: +38 (044) 520-08-47
E-mail: info@lawjournal.com.ua
www: https://lawjournal.com.ua/en

МІНІСТЕРСТВО ВНУТРІШНІХ СПРАВ УКРАЇНИ
НАЦІОНАЛЬНА АКАДЕМІЯ ВНУТРІШНІХ СПРАВ

ЮРИДИЧНИЙ ЧАСОПИС
НАЦІОНАЛЬНОЇ АКАДЕМІЇ ВНУТРІШНІХ СПРАВ

Науковий журнал

Том 13, № 2
2023

Київ
2023

ISSN 2519-4216
E-ISSN 2519-4313
DOI: 10.56215/naia-chasopis/2.2023

Співзасновники:
Національна академія внутрішніх справ,
ТОВ «Наукові журнали»

Рік заснування: 2011

Рекомендовано до друку та поширення
через мережу Інтернет Вченою радою
Національної академії внутрішніх справ
(протокол № 13 від 26 червня 2023 р.)

Свідоцтво про державну реєстрацію
друкованого засобу масової інформації
серії КВ 25016-14956 ПР від 19 жовтня 2021 р.

Журнал входить до переліку фахових видань України
Категорія «Б». Галузь наук – юридичні, спеціальність – 081 «Право»
(наказ Міністерства освіти і науки України від 28 грудня 2019 р. № 1643)

Журнал представлено в міжнародних наукометричних базах даних, репозитаріях та пошукових системах: CrossRef, ISSN International Centre, ORCID, ERIH PLUS, Електронний репозитарій НАВС, Research Bible, НБУ ім. В.І. Вернадського, Фахові видання України, Index Copernicus, Google Scholar

Юридичний часопис Національної академії внутрішніх справ : наук. журн. / [редкол.: С. Чернявський (голов. ред.) та ін.]. – Київ : Нац. акад. внутр. справ, 2023. – Т. 13, № 2. – 97 с.

Адреса редакції:
Національна академія внутрішніх справ
пл. Солом'янська, 1, м. Київ, Україна, 03035
Тел.: +38 (044) 520-08-47
E-mail: info@lawjournal.com.ua
www: https://lawjournal.com.ua/uk

LAW JOURNAL
OF THE NATIONAL ACADEMY OF INTERNAL AFFAIRS
Volume 13, No. 2

Editorial Board

ЮРИДИЧНИЙ ЧАСОПИС
НАЦІОНАЛЬНОЇ АКАДЕМІЇ ВНУТРІШНІХ СПРАВ
Том 13, № 2

Редакційна колегія

LAW JOURNAL
OF THE NATIONAL ACADEMY OF INTERNAL AFFAIRS
Volume 13, No. 2

CONTENTS

ЮРИДИЧНИЙ ЧАСОПИС
НАЦІОНАЛЬНОЇ АКАДЕМІЇ ВНУТРІШНІХ СПРАВ
Том 13, № 2

ЗМІСТ

UDC 343.13
DOI: 10.56215/naia-chasopis/2.2023.09

Some issues of judicial practice in proceedings on violations of the laws and customs of war

Olena Taran*
Doctor of Law, Professor
National Academy of Internal Affairs of Ukraine
03035, 1 Solomianska Sq., Kyiv, Ukraine
https://orcid.org/0000-0003-4752-9924

Oleksandr Tarasenko
PhD in Law
Ministry of Internal Affairs of Ukraine
01024, 10 Academician Bogomolets Str., Kyiv, Ukraine
https://orcid.org/0000-0003-0369-520X

Serhii Cherniavskyi
Doctor of Law, Professor
National Academy of Internal Affairs of Ukraine
03035, 1 Solomianska Sq., Kyiv, Ukraine
https://orcid.org/0000-0002-2711-3828

Abstract
In the second year of the full-scale armed aggression of the Russian Federation against Ukraine, the question of bringing the perpetrators to criminal responsibility for committing war crimes is urgent. At the same time, the criminal law qualification of actions within the scope of the provisions of Article 438 of the Criminal Code of Ukraine stays debatable. The purpose of this study was to investigate the content of some verdicts in proceedings on violations of the laws and customs of war, which were passed after February 24, 2022 in Ukraine, to identify the problems of law enforcement and the performance of procedural requirements regarding their content, since they acquired not only social significance and resonance, but also international ones, and the requirements for their quality can be defined as increased. The study used various methods of scientific research, the most effective and active among which were as follows: systemic-structural, comparative, analysis, and terminological. According to the results of processing the verdicts of the courts of first instance in the proceedings under Article 438 of the Criminal Code of Ukraine, some issues were identified regarding the procedural order of special court proceedings. A causal connection between the violation of the laws and customs of war and the particular situation of a military conflict was established. The circumstances subject to proof for the commission of the specified criminal offence were substantiated and investigated, and the need to specify particular circumstances was argued. Emphasis was placed on the need to consider the particular war situation, the difference and the nature of the connection between these violations and the crime of aggression when proving a violation of the laws and customs of war, with the assumption of the possibility

Article's History:
Received: 26.02.2023
Revised: 15.05.2023
Accepted: 26.06.2023

Suggest Citation:
Taran, O., Tarasenko, O., & Cherniavskyi, S. (2023). Some issues of judicial practice in proceedings on violations of the laws and customs of war. *Law Journal of the National Academy of Internal Affairs*, 13(2), 9-18. doi: 10.56215/naia-chasopis/2.2023.09.

*Corresponding author

of their influence on political, legal, and other processes, even after its end. The practical significance of this study lies in the need to reflect the results of the application of legal norms related to the implementation of *in absentia* proceedings in verdicts, primarily regarding the procedure for informing the suspect, the accused about criminal proceedings, ensuring the right to defence and the effectiveness of its implementation

Keywords:
proving; trial; armed conflict; sentence; *in absentia*; civilian; serviceperson

Introduction

The full-scale invasion of the Russian Federation (RF) into the territory of Ukraine presented the state with new tasks – ensuring the proper legal response to those social relations that arose during the Russian-Ukrainian war. For the second year, crimes are committed under martial law. In the spring of 2022, the problem of practical qualifications for violating the laws and customs of war arose.

Violation of the laws and customs of war in the context of the Criminal Code of Ukraine (the CCU) is, firstly, the cruel treatment of prisoners of war or the civilian population, the deportation of the civilian population for forced labour. Secondly, the looting of national values in the occupied territory. Thirdly, the use of means of warfare prohibited by international law, other violations of the laws and customs of war prescribed by international treaties, the binding consent of which was given by the Verkhovna Rada of Ukraine. Fourthly, issuing an order to commit such actions (Article 438)[1].

Thus, as of March 22, 2023, during the period of armed aggression of the Russian Federation, the Prosecutor General's Office documented 75,552 crimes of aggression and war crimes, while of this number, 73,249 crimes were registered under Article 438 of the CCU[2] as a violation of the laws and customs of war (More than 71,000..., 2023). According to statistical data, as of February 20, 2023, the courts received 75 criminal proceedings regarding charges under Article 438 of the CCU, 19 of them were sentenced (Adherence to the standards..., 2023).

The purpose of this study was to analyse the court verdicts under Article 438 of the CCU[3] (violation of the laws and customs of war) issued after February 24, 2022, in Ukraine, to identify the problems of law enforcement and performance of procedural requirements regarding the content of said verdicts.

Monitoring, analysis, and generalization of judicial practice is important for various spheres of law enforcement, scientific-theoretical, scientific-practical research. This allows investigating the trends in court decisions, interpretation of legislation by the court, features of the application of various legal norms.

In the situation of international armed conflict in Ukraine, court decisions, and above all verdicts in cases of violations of the laws and customs of war, are a separate, special component of judicial practice. Apart from the specificity of the content, they are also perceived by society as the result of the state's response to the commission of such crimes.

In the conditions of a military conflict, it is fair and expected to request a speedy trial and punishment of persons who have committed violations of the laws and customs of war. At the same time, it is crucial to balance between an adequate response to such a request and compliance with the law, specifically regarding requirements for court decisions.

The issue of generalization and formation of judicial practice was covered thanks to the monographs of Ukrainian scientists. O. Baranov (2016) investigated the general principles of solving issues of the application of the criminal law, considering judicial practice. I. Golovko (2019) and V. Sheludko (2017) investigated judicial practice in the criminal process of Ukraine in terms of its generalization to study its use in theoretical and legal frameworks.

V. Mykhailenko (2017) conducted a basic study on the application of transitional justice in Ukraine, considering international law on responsibility for war crimes. V. Pylypenko (2020) investigated problematic issues in the qualification of war crimes as one of the most serious, socially dangerous illegal acts that violate the fundamental norms of international law, as well as legal mechanisms for holding the individuals who committed war crimes responsible. I. Hloviuk & H. Teteriatnyk (2020) investigated the contextual circumstances in war crimes proceedings (the subject of sui generis proof) and their praxeological significance in the investigation. M. Bondarenko (2022) from the experience of judicial practice considered the issue of criminal-legal qualification of actions when applying the provisions of Article 438 of the CCU[4], namely the coverage of contextual and special elements in the composition of war crimes.

The authors note that the scientific originality of this study is that the synergy of national and international

[1]Criminal Code of Ukraine No. 2341-III. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14?find=1&text=438#w1_1.
[2]Ibidem, 2001.
[3]Ibidem, 2001.
[4]Ibidem, 2001.

law in the court verdicts of Ukraine is the main factor in the development of law, as well as the improvement of the mechanism of bringing criminals to justice for committing war crimes at various levels.

Literature Review

At the same time, there are many questions, specifically, related to the signs of objects violating the laws and customs of war, in the conditions of Russian aggression against Ukraine. A. Vozniuk & I. Zhuk (2022) consider the direct objects, subjects, and categories of victims of crimes for violating the laws and customs of war, namely using the general provisions "jus in bello". D. Potapova & A. Vasylenko (2022) tried to analyse the subjects of a war crime and the procedure for bringing them to criminal responsibility for committing a war crime. I. Kolotukha (2023) investigated the specifics of the criminal responsibility of commanders during the war. Analysing the judicial practice of bringing to criminal responsibility and sentencing General Yamashita for the crimes of his subordinates during the Second World War and the Muchic case during the war in Yugoslavia, Kolotukha draws his conclusions and proposals (which, in turn, the authors of the present paper support) regarding gaps in national legislation that must be corrected using international legal practices.

Fundamental scientific research on the problematic aspects of criminal responsibility for violations of the laws and customs of war was conducted by Ukrainian scientists, including V. Bazov (2008) and V. Myronova (2008). S. Kuchevska (2009) studied the problems of harmonizing the legislation of Ukraine on criminal responsibility and the Statute of the International Criminal Court in the part of provisions on war crimes. O. Batiuk & S. Dmytriv (2021) carried out a scientific investigation and proposed a single concept for the investigation of war crimes committed in the context of an armed conflict and the criminal prosecution of guilty persons. O. Atamanov (2021) investigated the stages of acquiring the status of a suspect by a person who lives and/or stays in the occupied territories of Ukraine or outside its borders, respectively, whose location has not been established.

M. Khavroniuk (2022) emphasizes that starting in 2014, at the legislative level, it was necessary to finally abandon the humiliating imitation of the Soviet and Russian legislative practices. This primarily concerned the rewriting of Articles 353, 354, 355-358 of the Criminal Code of the RF into current Articles 436, 437-442 of the CCU. O. Kuzmenko & V. Chorna (2022), considering the legislation of Ukraine regarding responsibility for crimes against humanity and war crimes, outline the legislation of other countries on this issue, specifically: Moldova, Denmark, Spain, USA, Croatia, France, Germany, Poland, Georgia, Austria.

A critical issue is still the introduction of amendments to some legislative acts of Ukraine regarding the implementation of norms of international criminal and humanitarian law, two draft laws dated 20.05.2021 and 15.04.2022 have been registered. These changes would help judicial practice in applying the law. Synergy of criminologists and internationalists is key when analysing and researching this issue.

Applying the rules traditional for the criminal law of Ukraine on overcoming the so-called competition of criminal law norms, such competition should not take place if the committed act is fully covered by Article 438 of the CCU[1]. This specifically refers to the rule of overcoming the competition of general and special norms (par. 3 Item 12)[2], according to which priority is given to a special norm (Khavroniuk, 2022).

According to M. Khavroniuk (2022), the norms on "general criminal" and war crimes should not take priority over the norms of Article 438 of the CCU[3] based on their "speciality", such as seizure of a car by the occupying power from a person belonging to the civilian population, if such seizure is a serious violation of international humanitarian law, cannot be qualified under Article 289 of the CCU[4] on the grounds that this provision more specifically characterizes the subject of the crime; rape etc. Therewith, the principle non bis in idem (Article 61 of the Constitution of Ukraine[5]) does not allow the same act to be classified under two articles of the CCU at once. Sanctions with qualification are irrelevant – their disproportionality can only be indicative of the legislators' negligence (Khavroniuk, 2022).

Materials and Methods

In this paper, the authors used various methods of scientific search, the most effective and active among which were system-structural method, comparative method, methods of analysis, terminological method.

The use of methods of analysis, discourse, and synthesis helped formulate several important conclusions. Other methods of scientific research were also used, which helped complete the study with orderly conclusions, among which the comparative method, methods of deduction and induction, etc. can be mentioned. The selective method was used by the authors for the search criteria in the Unified State Register of Court Decisions (USRCD).

[1]Criminal Code of Ukraine No. 2341-III. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14?find=1&text=438#w1_1.
[2]Resolution of the Plenum of the Supreme Court No. 7 "On the Practice of Courts Applying Criminal Legislation on Repetition, Aggregation and Relapse of Crimes and their Legal Consequences" (2010, June). Retrieved from https://zakon.rada.gov.ua/laws/show/v0007700-10#Text.
[3]Criminal Code of Ukraine No. 2341-III. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14?find=1&text=438#w1_1.
[4]Ibidem, 2001.
[5]Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80?lang=en#Text.

Investigating the empirics according to the issues of this paper, the problematic questions of the qualification of a war crime under Article 438 of the CCU[1], the authors used a synergistic approach. The statistical method was used to collect and process the material of the empirical knowledge base of the issues under study.

In the study, the subject of attention was verdicts in proceedings on violations of the laws and customs of war (Article 438 of the CCU[2]), issued by courts after February 24, 2022, and available in the USSR. 17 verdicts were analysed, all verdicts of conviction, issued by the court of first instance.

Using the methods of deduction and induction, the authors established the composition of the crime, for which responsibility is established in the national criminal law, in the mentioned Article 438[3], specifically, considering international criminal law regarding the features of this crime. At the same time, the method of generalization and the structural-logical method helped the researchers determine the architecture of this study, the logic and sequence of its individual parts, as well as to formulate conclusions.

Results

The investigation and prosecution of individuals who have committed violations of the laws and customs of war is not only a national issue, but also an example of impartial and objective activity for the entire world, which demonstrates attention to the events in Ukraine, condemns the armed aggression of the RF, the commission of war crimes, namely, violations of the laws and customs of war. Given the fact that most violations of the laws and customs of war are investigated, will be investigated and considered by the courts in Ukraine, Ukraine must demonstrate the ability to apply the mechanisms of criminal proceedings provided for by law in compliance with its principles, which are the embodiment of modern democratic principles and standards.

In absentia procedure

The *in absentia* procedure was used in 8 proceedings. Verdicts based on the results of a special court proceeding were additionally examined in terms of the performance of the requirements of the Criminal Procedural Code of Ukraine (CPCU) prior to this proceeding. Such attention is conditioned upon the prospect of increasing proceedings *in absentia*, since a significant number of persons who have committed criminal offences have not been detained, their location is unknown, their extradition is currently impossible, etc. However, the specified circumstances cannot be the reason for refusing to conduct a pre-trial investigation and trial.

The study of verdicts in proceedings on violations of laws and customs showed that not in every case the information regarding the *in absentia* procedure was properly reflected, namely:

1. The lack of detailing in the verdict of information on the implementation of all possible measures by the prosecution to respect the rights of suspects, the accused to legal protection and their access to justice (Part 5 of Article 374 of the CPCU)[4]. For example, it is not indicated how summonses were carried out, informing the accused about criminal proceedings (Verdict No. 760/4174/22)[5], (Verdict No. 729/592/22)[6]; there is no specification of the actions regarding informing the suspect, the accused, but only a general remark that "the court recognizes that the prosecution has taken all possible legal measures to respect the rights of PERSON_33 and PERSON_32 both as suspects and as accused individuals to defence and access to justice" (Verdict No. 369/9950/22)[7].

2. There is no instruction regarding the performance of the requirement of Part 2 of Article 349 of the CPCU[8] that in the course of special court proceedings all available evidence is examined (Verdict No. 760/4174/22)[9], (Verdict No. 729/592/22)[10], (Verdict No. 369/9950/22)[11], (Verdict No. 729/574/22)[12], (Verdict No. 748/1773/22)[13] (Verdict No. 748/1824/22)[14].

[1]Criminal Code of Ukraine No. 2341-III. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14?find=1&text=438#w1_1.
[2]Ibidem, 2001.
[3]Ibidem, 2001.
[4]Criminal Procedure Code of Ukraine No. 4651-VI. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17?lang=en#Text.
[5]Verdict of the Solomyansky District Court of Kyiv No. 760/4174/22, Proceedings No. 1-kp/760/1984/22. (2022, September). Retrieved from https://reyestr.court.gov.ua/Review/106808179.
[6]Verdict of the Bobrovytskyi District Court of the Chernihiv Region No. 729/592/22, Proceedings No. 1-kp/729/85/22. (2022, November). Retrieved from https://reyestr.court.gov.ua/Review/107503138.
[7]Verdict of the Kyiv-Svyatoshinsky District Court of the Kyiv Region Case No. 369/9950/22, Proceedings No. 1-kp/369/2032/22. (2022, November). Retrieved from https://reyestr.court.gov.ua/Review/107577110.
[8]Criminal Procedure Code of Ukraine No. 4651-VI. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17?lang=en#Text.
[9]Verdict of the Solomyansky District Court of Kyiv No. 760/4174/22, Proceedings No. 1-kp/760/1984/22. (2022, September). Retrieved from https://reyestr.court.gov.ua/Review/106808179.
[10]Verdict of the Bobrovytskyi District Court of the Chernihiv Region No. 729/592/22, Proceedings No. 1-kp/729/85/22. (2022, November). Retrieved from https://reyestr.court.gov.ua/Review/107503138.
[11]Verdict of the Kyiv-Svyatoshinsky District Court of the Kyiv Region Case No. 369/9950/22, Proceedings No. 1-kp/369/2032/22. (2022, November). Retrieved from https://reyestr.court.gov.ua/Review/107577110.
[12]Verdict of the Bobrovytskyi District Court of the Chernihiv Region No. 729/592/22, Proceedings No. 1-kp/729/85/22. (2022, November). Retrieved from https://reyestr.court.gov.ua/Review/107503138.
[13]Verdict of the Chernihiv District Court of Chernihiv Proceedings No. 1-kp/748/47/23, Cases No. 748/1773/22. (2023, January). Retrieved from https://reyestr.court.gov.ua/Review/108357178.
[14]Ibidem, 2023.

3. Lack of display of information about the position and activities of the defender in the amount that gives an idea of the content and effectiveness of the defence.

For instance, the verdict states that the defender is a participant in the proceedings (Verdict No. 760/4174/22)[1]; the content of the activity and the position of the defence have not been covered: "Defenders of the accused carried out militant actions aimed at protecting the accused: took part in the interrogation of the victims and the examination of evidence, spoke in debates (Verdict No. 748/1773/22)[2], "The defence counsel of the accused carried out militant actions to defend the accused: took part in the questioning of witnesses and the examination of evidence, drew the attention of the court to the role of the accused in the committed criminal offence, spoke in debates and denied the measure of punishment proposed by the prosecutor (Verdict No. 748/2272/22)[3], "The defence counsel of the accused carried out militant actions, aimed at the defence of the accused: took part in the interrogation of the victim, witnesses and examination of written evidence, spoke in debates" (Verdict No. 748/1824/22)[4], etc. (Verdict No. 369/9950/22)[5]; (Verdict No. 729/592/22)[6] (Verdict No. 729/574/22)[7].

4. Absence or formal indication of the legal positions of the ECHR (Verdict No. 369/9950/22)[8]; (Verdict No. 729/592/22)[9].

Sentencing analysis of the verdict. Apart from the above, the sentencing analysis of the verdicts was investigated, which relates to the description of the circumstances of the event, the qualification of the act and its connection with the situation of armed conflict.

In general, the description of the chronology of the international armed conflict since 2014 (Verdict No. 751/2961/22)[10], (Verdit No. 729/574/22)[11]. is common. For instance, "Sergeant PERSON_3, a serviceman of the armed forces of the Russian Federation, who served as a mortar commander of the 3rd mortar unit, was involved in military aggression, the conduct of hostilities on the territory of Ukraine and the commission of other related criminal acts by the leadership of the armed forces of the Russian Federation of the platoon of the mortar battery of the 2nd mechanized brigade of the military unit NUMBER_1 of the Russian Federation, which is located at the address: Russian Federation, the Republic of Tyva, the city of Kyzil". In addition, an instruction on the involvement of a serviceman of the armed forces of the Russian Federation in criminal activity as an accomplice to the crime, who is accused in this proceeding and agreed to follow the orders of the military leadership and take part in the armed conflict (Verdict No. 748/2272/22)[12]; (Verdict No. 748/1824/22)[13]; (Verdict No. 751/2961/22)[14].

Preferably, such formulations are followed by a description of the person's actions, which qualify as a violation of the laws and customs of war. For instance, "PERSON_6 from among the military command has been entrusted with the responsibilities of directly conducting hostilities, namely carrying out, using armoured vehicles and other weapons, fire damage to military targets and civilian infrastructure objects, which are known not to be for military purposes, on the territory of Ukraine. The latter, realizing the grave consequences of his actions, including the death and injury of civilians, agreed to carry them out. <...> on 28.03.2022 around 09:00 PERSON_6, acting deliberately, following a prior conspiracy by a group of persons with other servicemen of the Armed Forces of the Russian Federation, with the

[1]Verdict of the Solomyansky District Court of Kyiv No. 760/4174/22, Proceedings No. 1-kp/760/1984/22. (2022, September). Retrieved from: https://reyestr.court.gov.ua/Review/106808179.
[2]Verdict of the Chernihiv District Court of Chernihiv Proceedings No. 1-kp/748/47/23, Cases No. 748/1773/22. (2023, January). Retrieved from https://reyestr.court.gov.ua/Review/108357178.
[3]Verdict of the Chernihiv District Court of the Chernihiv Region Case No. 748/2272/22, Proceedings No. 1-kp/748/61/23. (2023, January). Retrieved from https://reyestr.court.gov.ua/Review/108302451.
[4]Verdict of the Chernihiv District Court of the Chernihiv Region Case No. 748/1824/22, Proceedings No. 1-kp/748/49/23. (2023, February). Retrieved from https://reyestr.court.gov.ua/Review/109074116.
[5]Verdict of the Kyiv-Svyatoshinsky District Court of the Kyiv Region Case No. 369/9950/22, Proceedings No. 1-kp/369/2032/22. (2022, November). Retrieved from https://reyestr.court.gov.ua/Review/107577110.
[6]Verdict of the Bobrovytskyi District Court of the Chernihiv Region Case No. 729/592/22, Proceedings No. 1-kp/729/85/22. (2022, November). Retrieved from https://reyestr.court.gov.ua/Review/107503138.
[7]Verdict of the Bobrovytskyi District Court of the Chernihiv Region Case No. 729/574/22, Proceedings No. 1-kp/729/81/22. (2022, November). Retrieved from https://reyestr.court.gov.ua/Review/107481395.
[8]Verdict of the Kyiv-Svyatoshinsky district court of the Kyiv region Case No. 369/9950/22, Proceedings No. 1-kp/369/2032/22. (2022, November). Retrieved from https://reyestr.court.gov.ua/Review/107577110.
[9]Verdict of the Bobrovytskyi District Court of the Chernihiv Region Case No. 729/592/22, Proceedings No. 1-kp/729/85/22. (2022, November). Retrieved from https://reyestr.court.gov.ua/Review/107503138.
[10]Verdict of the Novozavodsk District Court of the city of Chernihiv Case No. 751/2961/22, Proceedings No. 1-kp/751/196/22. (2022, August). Retrieved from https://reyestr.court.gov.ua/Review/105986768.
[11]Verdict of the Bobrovytskyi District Court of the Chernihiv Region Case No. 729/574/22, Proceedings No. 1-kp/729/81/22. (2022, November). Retrieved from https://reyestr.court.gov.ua/Review/107481395.
[12]Verdict of the Chernihiv District Court of the Chernihiv Region (2023, January). Case No. 748/2272/22, Proceedings No. 1-kp/748/61/23. Retrieved from https://reyestr.court.gov.ua/Review/108302451.
[13]Verdict of the Chernihiv District Court of the Chernihiv Region. Case No. 748/1824/22, Proceedings No. 1-kp/748/49/23. (2023, February). Retrieved from https://reyestr.court.gov.ua/Review/109074116.
[14]Verdict of the Novozavodsk District Court of the city of Chernihiv Case No. 751/2961/22, Proceedings No. 1-kp/751/196/22. (2022, August). Retrieved from https://reyestr.court.gov.ua/Review/105986768.

aim of robbing the civilian population, arrived at the private household of a civilian victim PERSON_4, located at ADDRESS_2, which is not a military object, and in which her husband – PERSON_7 and her neighbour – PERSON_8 were, pointing the machine gun at the latter, PERSON_6 ordered to go to the wall and kneel, and raise his hands behind his head. Threatening to shoot, PERSON_6, together with other servicemembers of the Russian Armed Forces, took from PERSON_4 two mobile phones, a system unit from a personal computer, UAH 100,000. and USD 3,000, causing material damage to the victim in the total amount of UAH 197,871.70" (Verdict No. 729/574/22)[1].

A comparable approach, which includes a general description of the chronology of the international armed conflict in Ukraine since 2014, a finding of involvement in criminal activity (essentially a crime of aggression) of a serviceman of the regular army of the Russian Federation, an indication of the content of his duties, which, among other things, include fire damage specifically of objects of civil infrastructure, the following description of the violation of the laws and customs of war, which lies in the robbery of the civilian population, is also applied in Verdict No. 751/2961/22[2].

Therewith, during the interrogation of the accused, the circumstances of the robbery, capture, and treatment of the perpetrator were clarified. The evidence confirming his duties to carry out fire damage to civilian infrastructure objects, the purpose of which is to attack the civilian population and attacks of an indiscriminate nature are not mentioned (Verdict No. 751/2961/22)[3].

As a generalization, it can be noted that the sentencing analysis of most of the verdicts under study contains the entire order of evidence, which makes it clear whether a person is guilty or innocent of violating the laws and customs of war. In addition, for the case, its purpose and the arguments of the parties must be indicated to perform the requirements of the CPCU, which are mandatory. Furthermore, there is a verbatim (in different verdicts) reproduction of the text about the chronology of the international armed conflict in Ukraine since 2014, its causes with a description of the crime of aggression prohibited by the UN Charter, a description of the circumstances regarding the preparation and planning, unleashing and waging of an aggressive war (Article 437 of the CCU, without such qualification). There is also a statement of the involvement of the leadership of the armed forces of the Russian Federation in military aggression, the conduct of hostilities, and the commission of other related crimes by servicepeople of the regular army of the Russian Federation on the territory of Ukraine, who are accused in the proceedings (apparently, to determine the connection between the actions of a person and the armed conflict). The verdict is also accompanied by a statement that the defendants intended to carry out attacks on the civilian population and infrastructure, specifically, during their stay on the territory of the RF before the attack (Verdict No. 751/2961/22)[4] (without justification and reference to evidence).

Discussion

Unequal perception of both the very concept of proceedings *in absentia* and the national model, which differs from similar ones in some foreign countries, where its application to minor offences prevails, still exists today.

The *in absentia* procedure has repeatedly been the subject of scientific research and has undergone legislative changes to develop its optimal mechanism that would meet the needs of society and the state (Kysil & Borysiuk, 2018; Shkliar *et al*., 2020). Among other researchers, D. Shishman (2018) proposed to improve the national legislation considering the practices of applying the *in absentia* procedure in the criminal procedure of such countries as the Netherlands, Italy, Azerbaijan, and Uzbekistan and considering the impossibility of control in the occupied territories. The issue of procedural actions in the absence of a suspect and the term of a special pre-trial investigation was decided by V. Drozd (2020), who proposed to regulate in the CPCU a separately created chapter "Special criminal proceedings". V. Yurchyshyn (2019) investigated the emergence of the institution of special pre-trial investigation for the perspective of its legal development, and O. Sachko (2019), respectively, the application of special procedures and regimes of criminal proceedings. Of interest to scientists is the study by A.O. Tymofeiev (2021) regarding the institution of a special pre-trial investigation after changes and amendments to the CPCU with a forecast of their possible impact on their further functioning and ways to eliminate them.

Based on the criminal procedural legislation of both Ukraine and foreign countries, international legal acts, the practice of the European Court of Human Rights (ECHR), the analysis of the current state of development of criminal procedural law, the legal regulation of the procedure *in absentia* – pre-trial investigation in the absence of the suspect is analysed (Mykhailenko, 2019; Vereshchak, 2021).

Up to the analysed period, judicial practice formed a relatively established approach to proving and researching the grounds and conditions under which

[1]Verdict of the Bobrovytskyi District Court of the Chernihiv Region Case No. 729/574/22, Proceedings No. 1-kp/729/81/22. (2022, November). Retrieved from https://reyestr.court.gov.ua/Review/107481395.
[2]Verdict of the Novozavodsk District Court of the City of Chernihiv Case No. 751/2961/22, Proceedings No. 1-kp/751/196/22. (2022, August). Retrieved from https://reyestr.court.gov.ua/Review/105986768.
[3]Ibidem, 2022.
[4]Ibidem, 2022.

proceedings *in absentia* can be applied, the procedure for its implementation. Special attention is paid to the legal positions of the ECHR, which, although it states that such a procedure does not contradict the European Convention on Human Rights (the Convention), however, defines increased requirements for proof during its application and pays special attention to the person's awareness of criminal proceedings against them and ensuring the right to defence.

In a generalized form, the main circumstances that are usually carefully investigated by investigating judges and courts when deciding on the application of the *in absentia* procedure are as follows: acquisition of the status of a suspect, awareness of the suspect, the accused about the criminal proceedings, the activity of the authorized subjects regarding the notification of the suspect, the accused about the criminal proceedings, establishing the location of an individual, ensuring the right to defence.

Pre-trial investigation and judicial review of proceedings on violations of the laws and customs of war is a complex, multi-faceted activity that requires an in-depth, systematic understanding of international and national law from the law enforcer, compliance with increased requirements for proof and quality of court decisions. Therefore, it is necessary to pay attention to some issues that arise in judicial practice, which were discussed above.

The description of the crime of aggression in the verdicts can be considered as a general context of the situation, a statement of the existence of an armed conflict, and the application of International Humanitarian Law (IHL). However, other circumstances are also required to prove a violation of the laws and customs of war.

The crime of aggression is prohibited by international law, in contrast to the rules of warfare (laws and customs of war), illegal aggression is not defined by virtue of its prohibition. The laws and customs of war apply to military actions, acts of using force as a method and consequence of aggression, and not to the fact of aggression as such. The crime of aggression is a means, a method of action of the attacker to achieve military and political goals, it is an illegal act, it has no legal basis. While certain actions during an armed conflict, if they follow IHL, have a legal basis, which is IHL.

These differences must be considered during the proving procedure, determining, among other things, the relationship of actions that have signs of violation of the laws and customs of war to the general context of war and its particular situation. Actions that violate the laws and customs of war refer to the act of war itself (or related to it), its conduct, and the interaction of the parties, while the crime of aggression refers to the very act of attacking another state.

The connection to the general context appears obvious, but this is not always sufficient to prove a violation of the laws and customs of war. Thus, if an individual takes part in a war on the side of the aggressor, then they support and enact the policy of the aggressor state, i.e., these actions will be illegal, but not necessarily a violation of the laws and customs of war. Likewise, a criminal offence committed by a representative of an aggressor country during an armed conflict is not necessarily a war crime, specifically a violation of the laws and customs of war.

To prove a violation of the laws and customs of war, it is important to compare a particular action with the prohibition of IHL and consider the particular circumstances in which the violation was committed. That is, here war is not only a situation, but also an inciting, facilitating and favourable circumstance for the commission of a crime.

Considering the fact that judicial practice in criminal proceedings on violations of the laws and customs of war is not yet widespread and is actively being formed, it is necessary to pay special attention to its quality and the quality of pre-trial investigation, to avoid errors and shortcomings, a simplified approach to the city of court decisions, to improve the quality evidence activity.

Demanding quality of evidence, performance of the tasks of criminal proceedings, compliance with its principles is a guarantee that the person who committed a violation of the laws and customs of war will bear the full burden of responsibility, and in the event of an appeal against the verdict, there will be no grounds for revising the measure of punishment or making decisions that will help avoid or mitigate a just punishment due to errors and shortcomings in the work of the investigation and the court.

Conclusions

Circumstances that were determined based on the results of processing the verdicts in proceedings on violations of the laws and customs of war, as affecting their quality, relate to the validity and logic of the verdicts (statements about the essential circumstances of the case without reference to evidence, the ambiguity of the connection between certain facts and circumstances); completeness and accuracy of the verdicts (lack of detailing of the content of the violation, definition of IHL norms, formal indication of the position of the parties (primarily defence); compliance with legislation (non-compliance with some requirements regarding proceedings *in absentia*, lack of references to the practice of the ECHR).

The effective practical application of criminal procedural legislation stays relevant and requires some clarifications and amendments to solve the issues of improving the pre-trial investigation of numerous violations of the laws and customs of war committed in the conditions of military occupation of the territory and ensuring a quick pre-trial investigation in compliance with the principles of criminal proceedings and international standards, respectively.

The verdicts must consistently and coherently reflect the entire order of evidence that proves the guilt or innocence of an individual in committing a violation of the laws and customs of war, the essence of the case and the arguments of the parties are indicated in detail, the performance of the requirements of the CPCU, which are mandatory, specifically this applies to proceedings *in absentia*.

The quality of evidentiary procedure, the application of suitable sanctions, ensuring the effectiveness of the procedure, the clarity and accessibility of the verdict in proceedings on violations of the laws and customs of war are evidence of the justice, impartiality, and neutrality of the court, which ensures trust in national justice both on the territory of Ukraine and beyond.

Since the investigated category of cases does not have a statute of limitations, the recording of crimes, its evidence base, the legality of the investigative actions, compliance with established standards in pre-trial investigation and trial of these cases are important. The above will help emphasize that Ukraine is a legal state with a European vector of development.

The mechanism for the implementation of criminal responsibility for representatives of the aggressor country who invaded Ukraine and commit aggression, genocide, violations of the laws and customs of war, and other crimes is still relevant. It is worth remembering that the mechanisms of implementation of criminal responsibility can be and will be not only national, but also international.

Issues related to the correlation of standards of proof in the criminal procedure of Ukraine and the International Criminal Court, features of the qualification of war crimes are considered promising for further scientific research.

Acknowledgements

None.

Conflict of Interest

None.

References

[1] Adherence to the standards of investigation of war crimes confirms that Ukraine is a legal state with a European future. (2023). Retrieved from https://supreme.court.gov.ua/supreme/pres-centr/news/1387412/.

[2] Atamanov, O. (2021). *Notification of suspicion to a person whose whereabouts has not been established or who is staying outside Ukraine*. Kyiv: National Academy of Internal Affairs.

[3] Baranov, O. (2016). *General principles of solving issues of application of the criminal law taking into account judicial practice*. Kyiv: Yurinkom Inter.

[4] Batiuk, O., & Dmytriv, S. (2021). Regarding the organization of the investigation of war crimes. *Social and Legal Studies*, 3(13), 77-87.

[5] Bazov, V. (2008). *Criminal liability for violation of the laws and customs of war (analysis of the composition of the crime)* (Doctoral dissertation, Yaroslav Mudryi National Law University, Kharkiv, Ukraine).

[6] Bondarenko, M. (2022). Contextual and special elements in war crimes. In *Actual Problems of Criminal Law: Materials of XII All-Ukrainian Science Theory Conferences Dedicated in Memory of Professor P.P. Mykhaylenko* (pp. 33-36). Kyiv: National Academy of Internal Affairs.

[7] Drozd, V. (2020). Special pre-trial investigation (*in absentia*) as a differentiated form of criminal proceedings. *Entrepreneurship, Economy and Law,* 7, 333-337. doi: 10.32849/2663-5313/2020.7.57.

[8] Golovko, I. (2019). *Problems of generalization of judicial practice in the criminal process of Ukraine*. Kyiv: Yurinkom Inter.

[9] Hloviuk, I., & Teteriatnyk, H. (2022). Contextual elements in war crimes proceedings: The subject of sui generis evidence. *Legal Scientific Electronic Journal*, 6, 394-398. doi: 10.32782/2524-0374/2022-6/87.

[10] Khavroniuk, M. (2022). *Criminal responsibility for violations of the laws and customs of war: Twenty questions and answers*. Retrieved from https://uplan.org.ua/news/kryminalna-vidpovidalnist-za-porushennia-zakoniv-ta-zvychaiv-viiny-ekspert-vidpoviv-na-20-zapytan/.

[11] Kolotukha, I. (2023). Peculiarities of the responsibility of commanders during the war. *Analytical and Comparative Jurisprudence,* 6, 328-332. doi: 10.24144/2788-6018.2022.06.59.

[12] Kuchevska, S. (2009). *Problems of harmonization of the legislation of Ukraine on criminal responsibility and the statute of the international criminal court* (Doctoral dissertation, Lviv State University of Internal Affairs Institutional Repository, Lviv, Ukraine).

[13] Kuzmenko, O., & Chorna, V. (2022). Comparative analysis of the international practice of legal liability of military personnel and conscripts. *State and Regions*, 1(75), 136-142. doi: 10.32840/1813-338X-2022.1.23.

[14] Kysil, L., & Borysiuk, S. (2018). *In absentia* proceedings in Ukraine: Problems of theory and practice. *Journal of Criminal Law and Criminology*, 2, 88-94.

[15] More than 71,000 war crimes have been registered in Ukraine since the beginning of the russian invasion. (2023). Retrieved from https://suspilne.media/413421-v-ukraini-zareestruvali-ponad-71-tisacu-voennih-zlociniv-z-pocatku-vtorgnenna-rf-ofis-genprokurora/.

[16] Mykhailenko, V. (2017). Data bases regarding criminals. In *Basic Research on the Application of Transitional Justice in Ukraine*. A.P. Bushchenko, M.M. Hnatovskyi (Eds.). Kyiv: RUMES.
[17] Mykhailenko, V. (2019). *Implementation of the principle of the rule of law in criminal proceedings* (Doctoral dissertation, National Academy of Internal Affairs, Kyiv, Ukraine).
[18] Myronova, V. (2008). *Criminal liability for violation of the laws and customs of war* (Doctoral dissertation, Dnipropetrovsk State University of Internal Affairs, Dnipropetrovsk, Ukraine).
[19] Potapova, D., & Vasylenko, A. (2022). War crime as a criminal-legal phenomenon. *Legal Scientific Electronic Journal*, 11, 587-591. doi: 10.32782/2524-0374/2022-11/142.
[20] Pylypenko, V. (2020). War crimes in the statutes of international criminal tribunals and the Rome statute of the international criminal court. *Criminal Law, Criminal Process and Criminology,* 2, 5-10. doi: 10.32782/law.2020.2.1.
[21] Sachko, O. (2019) *Ensuring the rule of law when applying special procedures and regimes of criminal proceedings* (Doctoral thesis, Oles Honchar Dnipro National University Irpin, Ukraine).
[22] Sheludko, V. (2017). *Theoretical and legal principles of the use of judicial practice in criminal proceedings*. Kyiv: Institute of State and the rights of V.M. Koretsky National Academy of Sciences of Ukraine.
[23] Shishman, D. (2018). Comparative and legal analysis of the grounds for conducting criminal proceedings *in absentia* in the legislation of Ukraine and foreign countries. *Scientific Bulletin of the Uzhhorod National University*. *Series: Law*, 52(2), 120-124.
[24] Shkliar, A., Oliinyk, Y., & Kryvda, A.E. (2020). Theoretical and legal aspects of *in absentia* criminal proceedings in Ukraine. *Bulletin of Taras Shevchenko National University of Kyiv*, 1, 65-70.
[25] Tymofeiev, A. (2021). Problems of practical implementation of the procedure of special pre-trial investigation (*in absentia*) in Ukraine. *Scientific Notes of National University of Kyiv Mohyla Academy*, 8, 60-68. doi: 10.18523/2617-2607.2021.8.60-68.
[26] Vereshchak, O. (2021). International practice of criminal proceedings in the form of *in absentia*. *Entrepreneurship, Economy and Law*, 7, 85-90. doi: 10.32849/2663-5313/2021.7.13.
[27] Vozniuk, A., & Zhuk, I. (2022). Violations of the laws and customs of war: Direct objects, objects and victims of the crime. General provisions of "jus in bello". *Bulletin of the Luhansk State University of Internal Affairs named after E.O. Didorenko*, 4(100), 57-74. doi: 10.33766/2524-0323.100.57-74.
[28] Yurchyshyn, V. (2019) Genesis and general provisions of the institute of special pre-trial investigation (*in absentia*). *Bulletin of the Chernivtsi Faculty of the National University "Odesa Law Academy": A Collection of Scientific Articles*, 3, 158-167.

Деякі питання судової практики в провадженнях про порушення законів і звичаїв війни

Олена Таран
Доктор юридичних наук, професор
Національна академія внутрішніх справ
03035, пл. Солом'янська, 1, м. Київ, Україна
https://orcid.org/0000-0003-4752-9924

Олександр Тарасенко
Кандидат юридичних наук
Міністерство внутрішніх справ України
01024, вул. Академіка Богомольця, 10, м. Київ, Україна
https://orcid.org/0000-0003-0369-520X

Сергій Чернявський
Доктор юридичних наук, професор
Національна академія внутрішніх справ
03035, пл. Солом'янська, 1, м. Київ, Україна
https://orcid.org/0000-0002-2711-3828

Анотація
На другому році повномасштабної збройної агресії Російської Федерації проти України актуальним є питання щодо притягнення винних до кримінальної відповідальності за вчинення воєнних злочинів. Водночас дискусійним питанням залишається кримінально-правова кваліфікація дій у межах застосування положень ст. 438 Кримінального кодексу України. Метою статті є дослідження змісту деяких вироків у провадженнях про порушення законів і звичаїв війни, що були постановлені після 24 лютого 2022 року в Україні, виявлення проблем правозастосування та виконання процесуальних вимог щодо їх змісту, оскільки вони набули не лише суспільного значення та резонансу, а й міжнародного, а вимоги до їхньої якості можна визначити як підвищені. У статті застосовано різнорівневі методи наукового пошуку, найбільш результативними й активними серед яких стали: системно-структурний, порівняльний, аналізу та термінологічний. За результатами опрацювання вироків судів першої інстанції в провадженнях за ст. 438 Кримінального кодексу України було визначено низку проблем щодо процесуального порядку здійснення спеціального судового провадження. Встановлено причиновий зв'язок між порушенням законів і звичаїв війни з конкретною ситуацією воєнного конфлікту. Обґрунтовано та досліджено обставини, що підлягають доказуванню за вчинення зазначеного кримінального правопорушення, аргументовано потребу в конкретизації окремих обставин. Акцентовано на необхідності врахування конкретної воєнної ситуації, відмінності та характеру зв'язку між цими порушеннями й злочином агресії під час доведення порушення законів і звичаїв війни з припущенням щодо можливості їхнього впливу на політичні, юридичні та інші процеси, навіть після його закінчення. Практична значущість статті полягає в необхідності відображення у вироках результатів застосування правових норм, що стосуються здійснення провадження *in absentia*, передусім щодо порядку інформування підозрюваного, обвинуваченого про кримінальне провадження, забезпечення права на захист й ефективність його здійснення

Ключові слова:
доведення; судовий процес; збройний конфлікт; вирок; *in absentia*; цивільна особа; військовослужбовець

UDC 342.53:004
DOI: 10.56215/naia-chasopis/2.2023.19

Electronic parliament as a factor of sustainable development: History and prospects

Tamara Mazur*
Doctor of Law
National Academy of Internal Affairs
03035, 1 Solomyanska Sq., Kyiv, Ukraine
https://orcid.org/0000-0001-6220-5827

Spiros Flogaitis
Professor
National and Kapodistrian University of Athens
10672, 30 University Str., Athens, Greece
https://orcid.org/0000-0001-7510-0792

Abstract
The relevance and significance of the study of the history and prospects of electronic parliamentarism as a factor of sustainable development is conditioned upon the anthropocentric vision of the idea of digitalization of the parliament. For the purpose, the authors chose to consider the system of digital tools that make up the e-parliament in the context of its role in the implementation of the Sustainable Development Goals "Peace, Justice, and Strong Institutions". The main methods of scientific cognition, which were used when drafting the study, were the methods of content analysis, analogy, and comparison. The levels of the multi-level system of information and data security as a key element of the security of digitalization of the parliament were defined, challenges related to the legal, economic, social, and technological aspects of the process were outlined. Based on the analysis of legal acts and directly on the websites of the parliaments of countries with different democracy indices (Great Britain, Iceland, Sweden, Poland, the Czech Republic, the Baltic countries), global trends in the specified area were formulated. The author emphasized the inherent nature of certain features and the uncertainty of the consequences of digitalization of the parliament in states with various levels of democratic development and different economic indicators. It was established that the transition of parliamentarians in communication with voters from conventional communication in an offline format to an online format contributes to the implementation of openness, inclusiveness, cooperation, and participation in the political sphere. The results of the study were designed to update the issue of the need to introduce new electronic parliamentary tools for the implementation of digital democracy mechanisms in society

Keywords:
e-parliament; participation of citizens in decision-making; inclusiveness of the parliament; parliamentary digital tools; digitalization

Article's History:
Received: 17.02.2023
Revised: 22.05.2023
Accepted: 26.06.2023

Suggest Citation:
Mazur, T., & Flogaitis, S. (2023). Electronic parliament as a factor of sustainable development: History and prospects. *Law Journal of the National Academy of Internal Affairs*, 13(2), 19-29. doi: 10.56215/naia-chasopis/2.2023.19.

*Corresponding author

Introduction

The relevance of the anthropocentric vision of the digitalization of the parliament corresponds to the goals of sustainable development (16 SDGs) – Peace, justice, and strong institutions, – involves promoting the development of a peaceful and inclusive society for sustainable development, ensuring access to justice for all and creating effective, accountable and inclusive institutions for all levels (Transforming our world…, 2015). Therewith, the main value is the person, not the institution. A person must take part in the development, adoption, and monitoring of the implementation of management decisions that affect their life. The vision of the e-Parliament, the functioning of which is based not only on technology, but also on cooperation, inclusiveness, participation, and openness for people (World e-Parliament Report 2020, 2021) fully corresponds to the anthropocentric vision of sustainable development.

Another essential element that connects sustainable development and e-parliament is information technology. For instance, in the scientific literature, attention is drawn to the fact that in the conditions of the COVID-19 pandemic, the importance of information and communication technologies for the implementation of the SDGs and the ability of citizens to take part in public life was revealed. Therefore, it is of interest to propose the introduction of an added 18th SDG – Digital Connection, which can contribute to accelerating the implementation of other SDGs (Clark *et al*., 2022). Information and communication technologies, and especially new forms of social media, provide parliamentarians with the opportunity to communicate with citizens online and more effectively involve them in the legislative process (Anderson *et al*., 2022). Furthermore, as C. Leston-Bandeira (2022) points out, in recent years, the importance of public involvement in the decision-making process has been increasingly recognized to solve some of the problems of modern democracy.

The author's research interest is determined not only by the above but by the opinion in the scientific community about the insufficiency of e-government research at the pan-European level (Rodriguez-Hevía *et al*., 2020). Therewith, it is worth noting certain works that somewhat expand the scope of issues that should be studied. Of particular interest are articles that consider the practices of digitalization in states that do not have stable democratic traditions. According to the results of the study of the state of digitalization of the Parliament of Nepal, it was noted that it does not correspond to the digital technologies available in the modern world. It is recommended to develop a strategic plan for the implementation of IT technologies in the activities of the parliament (Sharma & Kautish, 2021).

Close to the author's interpretation of the digital modernization of the parliament is presented in the article "E-parliament and its role in the implementation of democracy". Improving direct communication is considered as an opportunity to actualize the positive role of direct democracy (Zargabad & Malakouti Hashtjin, 2021).

An unexpected and difficult group of countries for comparative research (Estonia, Finland, Nigeria, Ghana, Australia, and South Korea) was chosen by Azerbaijani scientists. The study focuses on the shared challenges of digitalization: limited resources, insufficient IT skills of parliamentarians and parliamentary service workers, lack of open information about the parliament, digitized archival materials, the problem of timeliness of posting information about the activities of the parliament and cyber security (Mustafa & Sharifov, 2018).

Predictions regarding the consequences of the development of artificial intelligence deserve special attention. The problems of responsibility, transparency, and ethics are considered fundamental to the study of the impact of artificial intelligence on communication in society and democratic institutions. There is also an urgent need for interdisciplinary research on the desired properties of artificial intelligence and the limits of its application (Huang & Peissl, 2023).

Fundamentally important in the context of the theory and practice of digitalization is the conclusion that emphasizes the limited nature of the digital transformation of public administration in general. Since mainly information systems are being transformed, organizational structure, management culture, and employee responsibilities undergo minimal changes (Tangi *et al*., 2021).

In the selected context of consideration of the e-parliament, as of today, the questions posed by scientists many years ago have not lost their relevance: does the digitalization of communication lead to institutional reform; whether citizens use new web tools to communicate with parliamentarians; whether the new format of communication contributed to the growth of citizens' interest in the activities of the parliament (Leston-Bandeira, 2007). It should also be noted the update of certain data of the Report on e-Parliament in the world for 2020 regarding the introduction of legislative regulation of remote plenary meetings in Great Britain (World e-Parliament Report 2020, 2021).

Thus, the purpose of this study was to determine the role of the e-parliament in the implementation of 16 SDGs. In contrast to the existing studies about digitalization of the legislative body, the author considered the e-parliament precisely in the context of its role in the implementation of 16 SDGs, which constitutes the scientific originality of this study.

Materials and Methods

The main stages of this study were the determination of the relevance and problematic issues of the research, the review of scientific publications on the topic of e-parliament, specifically, the main questions that became the subject under study were formulated, the theoretical and documentary basis of the study was determined, the

current world trends regarding the digitalization of parliaments were considered, the emphasis was placed on the priority of expansion access of citizens to take part in decision-making as one of the main goals of digitalization of the highest legislative body, certain challenges and prospects of digitalization of individual processes of the functioning of the parliament were considered, emphasis was placed on the nature of certain features of the digitalization of the parliament in states with different levels of development, as well as conclusions were formulated and promising areas of research.

During the study, the authors relied on the principal provisions of the theory of participatory democracy (Botwinick & Bachrach, 1983) and the theory of e-democracy (Lindner & Aichholzer, 2020). In addition, the study was based on the theory of legal culture (Friedman, 1969) and the concept of legality culture (Yarmysh & Tielkiniena, 2021). This approach is conditioned both by the author's anthropocentric vision of digitalization of the parliament and by the purpose of this study.

The main method used in the present study was the method of content analysis. Analogy and comparison methods were also used to investigate the documentary material, which contributed to its division into the following groups: firstly, statistical materials, namely the results of surveys of 116 parliamentarians in 91 countries, which are presented in the World e-Parliament Report 2020, prepared by the Inter-Parliamentary Union (World e-Parliament Report 2020, 2021); secondly, legal acts governing the functioning of the parliament of some Central and Eastern European states: Latvia[1], Lithuania[2], Poland[3,4], the Czech Republic[5], Estonia[6]; thirdly, the websites of the parliaments of Iceland and Sweden.

Thanks to the analysis of statistical materials, certain areas of digitalization of the parliament were determined, for instance: the spread of remote work practices, increasing the flexibility of the parliament, the introduction of new tools and practices. The development of regulations governing the activities of the parliaments of Latvia[7], Lithuania[8], Poland[9,10] the Czech Republic[11], and Estonia[12] , helped determine one of the promising areas of the digitalization of the functioning of the parliament – the introduction of changes to the current legislation that will ensure the smooth operation of the parliament not only offline, but also online. The study of the websites of the parliaments of Iceland and Sweden revealed certain differences in approaches to the digitization of the parliament in countries with fairly similar indicators of socio-economic development. Considering this, during the development of the concept of digitalization and its implementation, national political traditions and the current political situation should be carefully considered.

Results and Discussion

Based on the analysis of the Report on the e-Parliament in the world for 2020 (World e-Parliament Report 2020, 2021), it is possible to determine certain current global trends regarding the digitalization of parliaments.

Thus, the spread of remote work practices increased trust in cloud technologies and digital solutions have been observed, which led to certain changes in the organization of the work of the parliament. For instance, in 2020, among the parliamentarians surveyed, 65% took part in online or online-offline committee meetings, and 33% took part in online or online-offline plenary meetings. The following data are indicative: among the parliamentarians surveyed, 76% use social networks, 39% Þ instant messages, and 30% – mobile applications with access to parliamentary information (World e-Parliament Report 2020, 2021).

The acceleration of the pace of modernization of parliaments is based on innovative principles. For instance, 26% of parliaments have adopted innovation strategies, and in 35% at least one member of the parliamentary service handles introducing innovations into the activities of the parliament. According to experts, the key innovative tools are technologies based on artificial

[1]Rules of Order of Saeima (1994, July). Retrieved from https://likumi.lv/doc.php?id=57517.
[2]Seimas No. I-399 of the Republic of Lithuania Statute. (1994, February). Retrieved from https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/381cfeb2292011edb36fa1cf41a91fd9?jfwid=6plip4g6w.
[3]Resolution "On the Sejm of the Republic of Poland". (1992, July). Retrieved from https://oide.sejm.gov.pl/oide/index.php?option=com_content&view=article&id=14673%3Awersja-skonsolidowana-traktatu-o-unii-europejskiej&catid=7&Itemid=361/.
[4]Act "On the Rules of Procedure of the Chamber of Deputies". (1995, April). Retrieved from https://www.psp.cz/docs/laws/1995/90.html#117.
[5]Law No. 59/1996 "About the Seat of the Parliament of the Czech Republic". (1996, February). Retrieved from https://www.senat.cz/kancelar/zakony/zak59_1996.php?ke_dni=19.8.2020&O=12.
[6]Riigikogu Rules of Procedure and Work Act. (2007). Retrieved from https://www.riigiteataja.ee/akt/12850761.
[7]Rules of Order of Saeima (1994, July). Retrieved from https://likumi.lv/doc.php?id=57517.
[8]Seimas No. I-399 of the Republic of Lithuania Statute. (1994, February). Retrieved from https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/381cfeb2292011edb36fa1cf41a91fd9?jfwid=6plip4g6w.
[9]Resolution "On the Sejm of the Republic of Poland". (1992, July). Retrieved from https://oide.sejm.gov.pl/oide/index.php?option=com_content&view=article&id=14673%3Awersja-skonsolidowana-traktatu-o-unii-europejskiej&catid=7&Itemid=361/.
[10]Act "On the Rules of Procedure of the Chamber of Deputies". (1995, April). Retrieved from https://www.psp.cz/docs/laws/1995/90.html#117.
[11]Law No. 59/1996 "About the Seat of the Parliament of the Czech Republic". (1996, February). Retrieved from https://www.senat.cz/kancelar/zakony/zak59_1996.php?ke_dni=19.8.2020&O=12.
[12]Riigikogu Rules of Procedure and Work Act. (2007). Retrieved from https://www.riigiteataja.ee/akt/12850761.

intelligence and software for drafting laws, but as of 2020, the rates of their use by parliamentarians are low: 10% and 6% (World e-Parliament Report 2020, 2021). At the same time, even a few years ago, the reality of such a practice in the highest body of legislative power was quite difficult to even imagine. Therewith, the use of information tools common to a modern parliamentarian is substantially accelerated. Thus, from 2018 to 2020, the use of cloud programs and applications for data storage increased by 86% (World e-Parliament Report 2020, 2021).

Updating the parliamentary regulations to legalize the remote form of work contributes to the organizational flexibility of parliamentarians' work and strengthens the institutional stability of the parliament. Therewith, it is worth noting the lack of a stable practice/tendency to legislate the use of a remote voting system in parliaments. As an example, one can cite Great Britain – a country with stable traditions of parliamentarism. Thus, on April 22, 2020, the House of Commons temporarily allowed online voting by parliamentarians. The new voting system was tested for the first time on 12 May 2020 after a general debate on COVID-19. However, the new voting procedure expired on May 20, 2020 (Priddy, 2020). Instead, the offline voting of parliamentarians, who observed certain safety measures during the pandemic, was broadcast live. Furthermore, it is worth noting the unsuccessful attempts to introduce online voting in the British Parliament even before COVID-19. One of the factors of its non-acceptance by most parliamentarians is the establishment of the voting procedure with their physical presence and the possibility of personal direct communication and discussions before making decisions (Priddy, 2020).

The presence of a tendency to increase the flexibility of the parliament, the introduction of new tools and practices, as well as the prompt resolution of emerging problems, are confirmed by all the above-mentioned facts and statistical data.

On the one hand, the above creates a positive picture of the gradual and relentless informatization of the parliament in most states. On the other hand, it is worth addressing the fact that the pace of this process is determined by the COVID-19 pandemic.

It should be emphasized that digitalization has a massive potential to facilitate the access of most different groups of citizens - regardless of place of residence, etc. – to participation in decision-making at the highest level, which will contribute to increasing the efficiency, accountability, and inclusiveness of the parliament. The e-parliament is not an end in itself, and the digitalization of the conventional parliament should be anthropocentric, i.e., contribute to the development of a comprehensive society for sustainable development, ensuring everyone's access to the procedures for making administrative decisions at the highest level (Meeting times of..., n.d.). In this way, the widespread introduction and use of modern information and communication technologies in the highest body of the legislative power will contribute to the implementation of the 16th SDGs. Special attention to the anthropocentric vector of the functioning of the e-parliament is due, specifically, to the personal conviction of the author, which is fully consistent with the modern conceptual vision of this institution. Thus, experts of the international organization of national parliaments emphasize as follows: if the operational procedures of the e-parliament are based on technologies, knowledge, and standards, then its legislative activity is based on the values of cooperation, inclusiveness, participation, and openness for people (World e-Parliament Report 2020, 2021).

There is often a question about the reality or pretentiousness of the anthropocentric vector of the functioning of the e-parliament, the availability of factual data confirming the introduction of relevant digital innovations even today. As shown by the results of the analysis of the array of statistical data, the latter indicate that as of 2020, 63% of the parliamentarians who took part in the survey for the preparation of the named report use digital systems in their activities to reach and attract voters, and 81% report an increase in their use (World e-Parliament Report 2020, 2021).

The following web tools are most actively used for communication with citizens: e-mail (76% of parliamentarians) and social networks (World e-Parliament Report 2020, 2021). Notably, the steady spread of relevant practices and the first victories of web tools in competition with conventional means of communication between parliamentarians and voters have been observed only recently. For instance, social networks overtook radio and television in 2016. It is appropriate to note that apart from parliamentary radio, blogs and online discussion groups are also declining in popularity. At the same time, parliamentarians not so actively use certain interactive digital tools now: electronic petitions f 23%, special smartphone programs for communication with the public - 30%. Therewith, the prospects of these means as appropriate communication tools can be discussed, since 28% of the polled parliamentarians are planning or considering the use of electronic petitions shortly, while 34% of the surveyed parliamentarians are considering special programs for smartphones for communication with the public (World e-Parliament Report 2020, 2021).

The most popular digital tool for parliamentarians to communicate with citizens at the committee level, according to a survey conducted during the preparation of the World e-Parliament Report 2020, is the parliament's website, second only to e-mail and social networks (World e-Parliament Report 2020, 2021). Furthermore, statistical data suggest the inherent nature of communication both at the level of individual parliamentarians and at the level of parliamentary committees of the same trend – a constant increase in the use of digital tools.

Given the special interest in the issue of the impact of digitalization of the parliament on the involvement of citizens in decision-making procedures, it is worth addressing those areas of communication with citizens that are considered priority by parliamentarians because its effectiveness depends to a large extent on their attitude towards and readiness for close cooperation with civil society. It is possible to state the insignificant interest of parliamentarians in the involvement of citizens in the decision-making process – 27% compared to informing citizens about political issues and draft laws – 70%, increasing the involvement of citizens in political processes – 69%, explaining the activities of the parliament – 64% (World e-Parliament Report 2020, 2021). The statistical data presented above give grounds, according to the authors, to assert that the digitalization of means of communication between parliamentarians and citizens contributes to the implementation of such values as openness to people and inclusiveness and creates favourable conditions for the further implementation of the values of cooperation and participation. This sequence can be explained as follows. Cooperation and participation presuppose the parity of the subjects of these processes – parliamentarians and citizens – however, the latter in the absolute majority do not have the necessary knowledge and skills to take part in law-making. Therewith, thanks to the openness of the parliament, which is ensured, specifically, by posting on its website information about the procedure of this institution, the legislative procedure, etc., citizens get the opportunity to increase their level of awareness of the specified issues and increase their importance as subjects of cooperation and participation.

The functioning of the e-parliament is associated with several challenges and threats. That is why, when introducing e-tools into the law-making process, all levels of protection should be ensured as much as possible. The risks should not exceed the expected positive results. Considering the above, special attention should be paid to the level of information security. Thus, the multi-level system of information and data security as a key element of information security of the e-parliament includes the following levels: legal, economic, social, technological.

The concept of e-parliamentarism should be based on the norms of the Constitution and laws because the purpose of digitalization of the law-making process is the maximum exercise of the principles of democracy in society. However, legal support for the functioning of the e-parliament should be at the highest professional level since the legislative basis is decisive in the specified process. Among other things, issues of legal regulation of digital transformation are raised by K.A. Rozha *et al*. (2021). Particular attention should be paid to the financial and economic side of the functioning of the e-parliament. Usually, the use of e-tools requires added expenses from the budget, and at the first stage the project is expensive, but in the following years, only the technical support of the system and its security will become an expensive part. Society and individual citizens play a key role in the implementation of e-Parliament. To eliminate corruption and reputational risks, it is important to connect civil society institutions and independent experts to the process of developing e-tools. The technological level is considered the main one and is accompanied by many internal and external risks. Considering the determining role of the institution of law-making in state creation, the greatest attention should be paid to the technical support of the e-parliament and cyber security.

One of the priority areas of digitalization of the parliament is the development of a modern and comprehensive cyber security strategy, which should include the most modern software and hardware protection systems, which should be as isolated as possible from any cyber-attacks. This is especially relevant in the conditions of the challenges that exist in the world today. Parliament must work in case of emergencies or events, the introduction of martial law, or a state of emergency. To ensure the information security of the e-parliament, it is necessary to develop, implement, and ensure the functioning of a single localized digital protected system that would factor in external threats, such as military operations, natural disasters, anthropogenic disasters, cyber-attacks, and their consequences (damage to infrastructure, loss of connection to the Internet, light, communication), which Ukraine felt especially keenly in the conditions of a full-scale invasion of Russia in 2022.

When implementing the e-parliament, all levels of information protection and an elevated level of requirements for the identification and verification of parliamentarians should be ensured, which will ensure that voting in committees and at the session was carried out openly, and legitimately, according to the regulations. In this case, such results will be recognized by society and the international community. The security of the system can be achieved by modern certified means of protection, such as, e.g., FaceID, fingerprint, biometric data for the digital identification of a people's deputy, as well as the use of an electronic key of cryptographic protection by all participants in the law-making process.

The parliamentarians' view of the risks of digitalization of the parliament is also of scientific and practical interest. Based on the survey for the World e-Parliament Report for 2020, we have a corresponding list dominated by citizens' lack of awareness of the legislative process – 50% (World e-Parliament Report 2020, 2021). The risks identified by parliamentarians can be divided into the following groups: 1) lack of certain knowledge and skills of both parliamentarians and citizens, specifically, to resist the abuse of online tools for disinformation and manipulation of public opinion, as well as to determine the level of representativeness of citizen responses; 2) technological factors; 3) poor involvement of citizens; 4) the need for significant resources and

efforts, the need to process an unusually large amount of information.

According to the results of the analysis of specialized scientific literature and other materials, it is possible to determine certain promising areas of digitalization of individual processes of the functioning of the parliament:

- it is advisable to consider the digitalization of the parliament not as a process of mainly technological modernization, but primarily as a factor in the transformation of the institution of the parliament;
- the leadership of parliamentarians and the management of parliaments in directing the use of new web tools to ensure greater transparency, inclusiveness of parliament and citizen involvement;
- amendments to the current legislation, which will ensure smooth operation of the parliament not only in the offline mode, but also in the online mode. Conventionally, the regulations of parliaments usually directly or indirectly regulate the physical presence of parliamentarians in the meeting hall of the parliament without the alternative of online presence. Considering the interest in digitalization of the parliament in the countries of Central and Eastern Europe, which on the one hand have a rather ancient history of parliamentarism, and on the other hand, in the second half of the 20th century, passed the stage of state monopoly over all spheres of public life, legislation was developed to regulate the functioning of higher bodies of legislative power in Latvia, Lithuania, Poland, the Czech Republic, Estonia. Notably, the special law on the procedure of work of the Parliament of Estonia (paragraph 57)[1] makes provision for the possibility of appointing a place other than the meeting hall of the Toompea Castle in Tallinn and the place of the meeting of the Parliament;
- expanding the list of materials that will be posted on the parliament's websites: clear information about law enforcement, various video content, new opportunities for citizens to take part in the legislative process through blogs and forums;
- development of flexible working conditions for employees of parliamentary services and remote participation of parliamentarians in plenary and committee meetings;
- activation of inter-parliamentary cooperation for the exchange of experience, which will accelerate the spread of innovations and saving of resources.

Of practical interest are the specific features of digitalization of the parliament in states with various levels of development. Their separation will contribute to more effective borrowing and use of foreign practices by those countries whose parliaments are at the beginning of the path of digital modernization. It is worth noting the possibility of a negative effect of the incorporation of foreign practices without the consideration of the socio-economic and political specificities of both the recipient and donor countries. For instance, in countries with high indicators of gross domestic product in terms of purchasing power parity per capita and democracy index, the digitalization algorithm of the highest body of legislative power is quite realistic - quite fast pace and a fairly wide range of new digital tools, as well as a considerable number of citizens who use them - hardly has prospects for implementation in the parliaments of countries with correspondingly low indicators. However, the desire of the leadership of the parliaments in such countries to follow the best world practices can contribute to the benefit of pragmatism and consideration of objective factors: financial and organizational capacity of the parliaments, etc. In this case, good intentions, which will not have resource support, can lead to technologically and organizationally "poor" informatization, which discredits the very idea of e-parliament both among citizens and parliamentarians.

One of the countries that has quite high indicators indicated above, and where the level and pace of digitization of the public administration system is ahead of the average statistical indicators of the European Union, is Iceland (Digital government Factsheet - Iceland, 2019). As for the presence of e-parliament elements in this country, the following should be noted. The website of the Parliament of Iceland lists issues to be discussed in the upcoming committee meetings. Citizen participation is ensured not only through the involvement of stakeholders, whom the committee turns to for comments. Each citizen can, on their own initiative, send their written comment to the committee, which will have the same status as the comment of the stakeholder addressed by the committee (Want to post…, n.d.).

For the meaningfulness of comments and the effectiveness of cooperation between parliamentarians and citizens, a detailed and clear instruction for preparing feedback on an issue to be considered by the committee is posted on the website (Guideline for writing…, n.d.). In addition, video recordings of open meetings of parliamentary committees for the period from October 8, 2008 to April 25, 2023, the schedule of meetings of standing committees of the parliament, video recordings of parliamentary sessions from September 13, 2022 to April 25, 2023 are freely available, and viewing is provided complete recording, as well as the possibility of searching and viewing or listening to individual speeches (Recordings of open committee…, n.d.; Sessions and cases, n.d.; Sessions of the…, n.d.).

Therewith, the pace and scope of the informatization of the parliament is also determined by the country's political traditions. For instance, citizens of those countries where free public access to open meetings of the parliament has a long history, their broadcasting on the websites of the parliament is unlikely to be

[1] Riigikogu Rules of Procedure and Work Act. (2007). Retrieved from https://www.riigiteataja.ee/akt/12850761.

perceived as a manifestation of maximum transparency and inclusiveness of this institution. Furthermore, parliamentarians are used to long and complex political discussions and the adoption of compromise decisions. The efficiency of this process will only be hindered by publicity, especially in the online format, as the parliamentarians believe. Thus, the critical attitude of members of the British Parliament towards online voting was already mentioned in this paper. An analogous opinion is held in Sweden, where meetings of parliamentary committees take place behind closed doors (The parliamentary committees…, n.d.).

Among the challenges of digitalization of the parliament in countries with incomplete democracy or transitional regime, one can also count the presence of certain problems regarding the participation of citizens in the decision-making process in an offline format, namely, its imperfect legal regulation, which will complicate the introduction and effective use of new digital tools. One of the examples of such a situation is the long-term debate in Ukraine regarding the quality of draft laws, which were proposed to modernize the legal regulation of public consultations at the level of parliamentary committees (Yarmysh *et al*., 2021).

In this context, the questions raised when studying the use of information and communication technologies in Latin American parliaments deserve special attention: should parliaments promote e-participation in societies where there is a massive digital divide, or should participation be a top-down process initiated by governments and parliaments. As of today, we share the author's doubts about the uncertainty of the consequences of the digitalization of parliaments and the contradiction of the potential advantages of electronic participation of citizens. At the same time, similar considerations apply not only to the countries of the region studied by Y. Welp (2012) but to all those belonging to the group of countries with incomplete democracy or a transitional regime.

Since the end of the 1990s, the topic of e-parliament has increasingly attracted the attention of researchers, and during the last decade, an increasing number of relevant scientific literature has appeared. Among researchers, a comparative approach is common, which is used to consider certain aspects of digitalization of parliament in different countries of the world (Borg & Hassall, 2007; Sobac, 2012). At the same time, certain aspects of digitalization of the parliament in a certain country were also the subject of scientific research. Thus, two collective works of scientists from Great Britain, which investigated the impact of Internet development on citizen activity during parliamentary elections, are widely cited (Ward *et al*., 2003; Gibson *et al*., 2005). The studies note that the spread of the Internet increases the number of politically active people due to the involvement of those groups of society that are not active in conventional forms of political participation. The findings also emphasize the need for scholars to develop more sophisticated theoretical and empirical models of online participation. Therewith, the results of surveys that British scientists conducted later prove that expectations about the scale of the Internet's influence on the sphere of political relations were overestimated. Therefore, digitalization has, albeit limited, potential to attract new people to the political process, and can deepen and improve the experience of citizens' participation in elections and other forms of political activism.

In their study on the presence of parliament on the Internet as a tool designed to support several key parliamentary functions operating in a comprehensive democratic structure, L. Berntzen *et al*. (2006) compare how parliaments in several countries use information and communication technologies to increase transparency and promote citizen participation. S. Leston-Bandeira (2007) conducted a study of the impact of the Internet on parliaments from the perspective of legislative research.

The questions that were most often investigated in the studies of both types can be conditionally divided into several groups. First of all, consideration of digitalization as a tool for improving parliamentary democracy with an emphasis on finding an answer to the question of the presence or absence of the impact of the introduction of new web tools on the parliament as an institution (Leston-Bandeira, 2007; Williamson, 2009; Leston-Bandeira, 2022).

Attention is drawn to the findings of the Australian scientists P. Chen *et al*. (2006), formulated back in the mid-2000s using evidence from a study of democratic practices in Australia. However, it is probably appropriate to apply these theses at the general level, because they have a balanced nature. Among the factors of the impact of information and communication tools on democratic political culture named by the author, we will single out political culture in the broad sense, the logic of political life, and the creativity of individuals and organizations in using these tools. Furthermore, the authors focused on certain positive and negative manifestations of the corresponding influence.

The first category: new forms of direct communication between citizens and individual members of parliament; expanding the range of forms of cooperation between citizens and state authorities through the dissemination of information on the Internet, the use of online systems that allow citizens to comment on policy development processes, as well as electronic voting systems, etc. The second category: is the general practice of avoiding direct communication between state authorities and community members, especially in the process of policy development; lack of resources, which prevents wider use of new technologies by civil society to encourage public participation; spread of practices of using digital technologies to monitor the behaviour of citizens (online and offline); the general reluctance of

the wider Australian community to engage in political action through the variety of new information and communication tools available.

Furthermore, the problem of digitization was investigated in combination with the problem of raising awareness and participation of citizens. Digital technologies are arguably creating new spaces for civic engagement and participation (Global Parliamentary Report, 2022). The complexity and permanent relevance of research on e-parliament and the impact of new web tools on the cooperation of parliamentarians and citizens is evidenced by the correction of the research results, which were introduced even after a small period. For instance, in the study by S. Ward *et al*. (2003) regarding the impact of the Internet on political participation in the UK notes the prospect of relatively few changes in the attitudes or behaviour of most citizens. Instead, as early as 2005, it was suggested that the Internet increases the number of politically active people, especially in terms of reaching groups that are usually inactive or less active in conventional/offline forms of politics (Gibson *et al*., 2005). Notably, researchers of digitalization of the parliament emphasize the anthropocentric purpose of parliamentary digital tools (Papaloi & Gouscos, 2012). Specifically, the issues and possibilities of their introduction were considered, factoring in the needs of different population groups, and the dual nature of the orientation of these innovations: on the one hand, the e-parliament should become more attractive to citizens, and on the other hand, it should offer more effective feedback tools and promote more effective online public participation (Papaloi & Gouscos, 2012). Using the example of the European Control Conference answers to questions regarding the creation of useful tools for sharing experience and strengthening trust between citizens and MEPs are being sought. In addition, a priority question is the ability of public consultations to become a workable form of e-parliament tool used to strengthen political representation in Europe (Karlsson, 2012). We consider certain research results using the evidence from Latin American countries to be practically important for the effective implementation of the e-parliament concept in countries with low indicators of economic and democratic development. Foremost, in terms of the need to consider the socioeconomic and political features of different countries when applying foreign practices (Kanjo, 2012). A critical assessment of Latin American parliamentary digitization practices should also be considered (Perna & Braga, 2012).

The warning of scientists regarding the use of modern technologies by parliaments, which was expressed twenty years ago, has not lost its relevance. The authors agree with them: online counseling should not be used as a gimmick. Suggestions received from citizens must be integrated into the political process, otherwise, citizens will be less interested in participating in such communication in the future, and distrust of parliament in general will increase (Coleman & Gøtze, 2001).

The third group of issues, which have been the subject of special attention of scholars, include web-based tools introduced in parliaments (Borg & Hassall, 2007). Based on the results of the search and analysis of relevant publications, we can note that websites are most often the subject of research. The studies contain examples of communication on parliamentary websites that are both conceptually and practically interesting (Leston-Bandei, 2022). Specifically, targeting different audiences – citizens in general and lawyers - and developing different communication models on the website of the Senate in France. Citizens were offered information about the role of this institution, stages of the legislative process, etc., while lawyers - a thematic newsletter, free e-mail notifications, etc.

C. Leston-Bandeira (2022) produced extremely important recommendations based on parliamentary web-based tools of interest. For instance, a list of web design principles for official websites of parliaments. Firstly, focusing primarily on the needs of users of different groups: ensuring full accessibility of site materials for people with visual impairments, presenting information about the work of the parliament in a language that will be understandable for professionals and all citizens, having a universal search function, presenting information in a popular form. Secondly, digital longevity, and thirdly, digital transparency. C. Leston-Bandeira (2022) investigates such a digital parliamentary tool as e-mail. The author poses debatable and acute questions regarding the legal regulation of communication between parliamentarians and voters using e-mail.

The fourth group of issues relevant for scientists includes the problems of using digital tools in parliament. Notably, most of the studies on the topic of e-parliament cover this issue briefly or extensively.

Conclusions

The digitalization of the parliament is not a purely technical modernization of the legislative body because it is based on the worldview position of anthropocentrism. The results of the analysis of statistical data give reason to believe that the transition from conventional offline communication between parliamentarians and citizens to the online format contributes to the realization of such values as openness, inclusiveness, cooperation, and participation in the political sphere.

Current world trends regarding the relevance of digitalization in the parliament were analysed, and attention was focused on the main goal of this innovation – expanding citizens' access to decision-making. The problems, specific features, and prospects of digitalization of individual processes of the functioning of the parliament were defined, which also applies to countries with a low level of development.

The effectiveness of the functioning of the e-parliament is largely determined by considering both the

challenges and the prospects of digitalization of the offline parliament. Given this, it is worth paying attention to the multi-level information security of the e-parliament and the need to develop the digitalization of the parliament not as a process of mainly technological modernization, but primarily as a factor in the complex transformation of the institution of the parliament. It is advisable to consider the socio-economic and political specificities of the donor and recipient countries to more effectively borrow and use the best foreign practices by those countries whose parliaments are at the beginning of the path of digital modernization.

The role of the e-parliament in the implementation of the 16th SDG is that digitalization, thanks to which the conventional parliament is transformed into an e-parliament, has the potential to increase citizens' trust in this institution and involve them in the decision-making process at the highest level. At the same time, further theoretical and empirical studies of all possible aspects of this topic will contribute to the identification of achievements and gaps on the way to the realization of the idea of e-parliament as the most effective, accountable, and inclusive institution. The practices of the countries of Central and Eastern Europe, as well as the Baltic region in this area, specifically, the phased digitalization of the parliament, is particularly relevant for Ukrainian scientists to investigate. Therewith, one should consider the factors that correlate with the features of the digital modernization of the legislative body, namely, the population size, the level of the gross domestic product at purchasing power parity per capita, and the democracy index.

Acknowledgements

None.

Conflict of Interest

None.

References

[1] Berntzen, L., Healy, M., Hahamis, P., & Dunville, D. (2006). Parliamentary web presence: A comparative review. In *Proceedings of the 2nd International Conference on e-Government* (pp. 17-25). Pittsburgh: Academic Conferences International.

[2] Borg, M., & Hassall, G. (2007). Pacific Islands parliamentary websites: A preliminary survey. *Australasian Parliamentary Review*, 27(1), 213-237.

[3] Botwinick, A., & Bachrach, P. (1983). Democracy and scarcity: Toward a theory of participatory democracy. *International Political Science Review / Revue Internationale de Science Politique*, 4(3), 361-373.

[4] Chen, P., Gibson, R., & Geiselhart, K. (2006). *Electronic democracy? The impact of new communications technologies on Australian democracy, for the democratic audit of Australia*. Canberra: The Australian National University.

[5] Clark, S., MacLachlan, M., Marshall, K., Morahan, N., Carroll, C., Hand, K., Boyle, N., & O'Sullivan, K. (2022). Including digital connection in the United Nations sustainable development goals: A systems thinking approach for achieving the SDGs. *Sustainability,* 14(3), article number 1883. doi: 10.3390/su14031883.

[6] Coleman, S., & Gøtze, J. (2001). Bowling together: Online public engagement in policy deliberation. *Information Polity*, 7(4), 247-252. doi: 10.3233/IP-2002-0021.

[7] Digital government Factsheet - Iceland. (2019). Retrieved from https://joinup.ec.europa.eu/sites/default/files/inline-files/Digital_Government_Factsheets_Iceland_2019.pdf.

[8] Editorial: British political studies and the politics of global challenges. (2022). *The British Journal of Politics and International Relations*, 24(1), 3-10. doi: 10.1177/13691481211063400.

[9] Friedman, L.M. (1969). Legal culture and social development. *Law & Society Review*, 4(1), 29-44. doi: 10.2307/3052760.

[10] Gibson, R., Lusoli, W., & Ward, S. (2005). Online participation in the UK: Testing a "contextualised" model of internet effects. *The British Journal of Politics and International Relations*, 7(4), 561-583. doi: 10.1111/j.1467-856x.2005.00209.x.

[11] Global Parliamentary Report 2022 - Public engagement in the work of parliament. (2022). Retrieved from https://www.ipu.org/impact/democracy-and-strong-parliaments/global-parliamentary-report/global-parliamentary-report-2022-public-engagement-in-work-parliament.

[12] Guideline for writing reviews (n.d.). Retrieved from https://www.althingi.is/thingnefndir/viltu-senda-umsogn/leidbeiningar-um-umsagnir-um-thingmal/.

[13] Huang, L., & Peissl, W. (2023). Artificial intelligence – A new knowledge and decision-making paradigm? *Technology Assessment in a Globalized World*, 175-201.

[14] Kanjo, C. (2012). Promoting E-democracy and citizen participation through ICT initiatives in parliament: The Malawi case. In M. Sobaci (Ed.), *E-Parliament and ICT-Based Legislation: Concept, Experiences and Lessons* (pp. 312-325). Hershey: IGI Global, Information Science Reference. doi: 10.4018/978-1-61350-329-4.ch018.

[15] Karlsson, M. (2012). Connecting citizens to the European Parliament: E-consultations as a tool for political representation. In M. Sobaci (Ed.), *E-Parliament and ICT-Based Legislation: Concept, Experiences and Lessons* (pp. 80-102). Hershey: IGI Global, Information Science Reference. doi: 10.4018/978-1-61350-329-4.ch006.

[16] Leston-Bandeira, C. (2007). The impact of the internet on parliaments: A legislative studies framework. *Parliamentary Affairs,* 60(4), 655-674. doi: 10.1093/pa/gsm040.
[17] Leston-Bandeira, C. (2022). How public engagement has become a must for parliaments in today's democracies. *Australasian Parliamentary Review*, 37(2), 8-16.
[18] Lindner, R., & Aichholzer, G., (2020). E-Democracy: Conceptual Foundations and Recent Trends. In L. Hennen, I. Van Keulen, I. Korthagen, G. Aichholzer, R. Lindner, & R. Nielsen (Eds.), *European E-Democracy in Practice. Studies in Digital Politics and Governance* (pp. 11-45). Cham: Springer.
[19] Meeting times of standing committees. (n.d.). Retrieved from https://www.althingi.is/thingnefndir/nefndastorf/fundartimar-fastanefnda-og-herbergi/.
[20] Mustafa, A., & Sharifov, M. (2018). The challenges of e-parliament adoption and its mitigation. *International Journal of Computing and Technology*, 5(6), 78-87.
[21] Papaloi, A., & Gouscos, D. (2012). An overview of e-parliament services: Designing for citizen awareness and participation. In M. Sobaci (Ed.), *E-Parliament and ICT-Based Legislation: Concept, Experiences and Lessons* (pp. 13-31). Hershey: IGI Global, Information Science Reference. doi: 10.4018/978-1-61350-329-4.ch002.
[22] Perna, A., & Braga, S. (2012). The invisible side of political participation: E-participation mechanisms and information management in Latin American parliaments. In M. Sobaci (Eds.), *E-parliament and ICT-based legislation: Concept, experiences and lessons* (pp. 237-257). Hershey: IGI Global, Information Science Reference. doi: 10.4018/978-1-61350-329-4.ch014.
[23] Priddy, S. (2020). *Coronavirus timeline: How the Commons virtually went virtual*. Retrieved from https://commonslibrary.parliament.uk/coronavirus-timeline-how-the-commons-went-virtual/.
[24] Recordings of open committee meetings. (n.d.). Retrieved from https://www.althingi.is/thingnefndir/nefndastorf/upptokur-af-opnum-fundum-nefnda/.
[25] Rodriguez-Hevía, L.F., Navío-Marco, J., & Ruiz-Gómez, L.M. (2020). Citizens' involvement in e-government in the European Union: The rising importance of the digital skills. *Sustainability*, 12(17), article number 6807. doi: 10.3390/su12176807.
[26] Rozha, K.A., Khder, H., Lips, S., Nyman-Metcalf, K., Pappel, I., & Draheim, D. (2021). A legal framework for digital transformation. In *Electronic Government and the Information Systems Perspective* (pp. 115-128). doi: 10.2139/ssrn.4182028.
[27] Sessions and cases. (n.d.). Retrieved from https://www.althingi.is/thingstorf/.
[28] Sessions of the 153rd Legislature. (n.d.). Retrieved from https://www.althingi.is/thingstorf/thingfundir-og-raedur/fundargerdir-og-upptokur/.
[29] Sharma, A., & Kautish, S. (2021). Prospects and challenges in digitization: The case study of Federal Parliament of Nepal. *Research Journal of Science, Technology and Management,* 3(2), 29-43.
[30] Sobac, M.Z. (Ed.) (2012). Introduction: Strengthening Parliaments through ICTs. In M. Sobaci (Ed.), *E-Parliament and ICT-Based Legislation: Concept, Experiences and Lessons* (p. 12). Hershey: IGI Global, Information Science Reference doi: 10.4018/978-1-61350-329-4.ch001.
[31] Tangi, L., Janssen, M., Benedetti, M., & Noci, G. (2021). Digital government transformation: A structural equation modelling analysis of driving and impeding factors. *International Journal of Information Management*, 60, article number 102356. doi: 10.1016/j.ijinfomgt.2021.102356.
[32] The parliamentary committees at work. (n.d.). Retrieved from https://www.riksdagen.se/en/how-the-riksdag-works/committees/the-parliamentary-committees-at-work/.
[33] Transforming our world: The 2030 agenda for sustainable development. (2015). Retrieved from https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_70_1_E.pdf.
[34] Want to post a review? (n.d.). Retrieved from https://www.althingi.is/thingnefndir/viltu-senda-umsogn/.
[35] Ward, S., Gibson, R., & Lusoli, W. (2003). Online participation and mobilisation in Britain: Hype, hope and reality. *Parliamentary Affairs*, 56(4), 652-668. doi: 10.1093/pa/gsg108.
[36] Welp, Y. (2012). Bridging the political gap? The adoption of ICTs for the improvement of Latin American parliamentary democracy. In M. Sobaci (Eds.), *E-Parliament and ICT-Based Legislation: Concept, Experiences and Lessons* (pp. 217-236). Hershey: IGI Global, Information Science Reference. doi: 10.4018/978-1-61350-329-4.ch013.
[37] Williamson, A. (2009). The effect of digital media on MPs' communication with constituents. *Parliamentary Affairs*, 62(3), 514-527. doi: 10.1093/pa/gsp009.
[38] World e-Parliament Report 2020. (2021). https://www.ipu.org/resources/publications/reports/2021-07/world-e-parliament-report-2020.

[39] Yarmysh, O., Tielkiniena, T., & Kondratova, A. (2021). Methodological principles of using international experience to ensure the transparency of decision-making: Legislative regulation of public consultations in Ukraine. In *Proceedings of the International Conference on Social Science, Psychology and Legal Regulation (SPL 2021)* (pp. 232-237). Paris: Atlantis Press France. doi: 10.2991/assehr.k.211218.038.
[40] Yarmysh, O.N., & Tielkiniena T.E. (2021). *Culture of legality. Great Ukrainian criminological encyclopedia*. Kharkiv: «Fakt».
[41] Zargabad, S.A., & Malakouti Hashtjin, S.H. (2021). E-parliament and its role in the realization of democracy. *Journal of Legal Research*, 20(48), 159-162. doi: 10.48300/JLR.2022.146017.

Електронний парламент як чинник сталого розвитку: історія та перспективи

Тамара Мазур
Доктор юридичних наук
Національна академія внутрішніх справ
03055, пл. Солом'янська, 1, м. Київ, Україна
https://orcid.org/0000-0001-6220-5827

Спиридон Флогайтіс
Професор
Афінський національний університет імені Каподистрії
10672, вул. Університетська, 30, м. Афіни, Греція
https://orcid.org/0000-0001-7510-0792

Анотація
Актуальність і значущість дослідження історії та перспектив електронного парламентаризму як чинника сталого розвитку обумовлена людиноцентристським баченням ідеї цифровізації парламенту. За мету автори обрали розгляд системи цифрових інструментів, що утворюють е-парламент, у контексті його ролі в реалізації Цілі сталого розвитку «Мир, справедливість та сильні інститути». Основними методами наукового пізнання, які використано під час написання статті, є методи контент-аналізу, аналогії та порівняння. Визначено рівні багатоступеневої системи захищеності інформації та даних як ключового елементу безпеки цифровізації парламенту, окреслено виклики, пов'язані з правовим, економічним, суспільним, технологічним аспектами процесу. На підставі аналізу правових актів і безпосередньо вебсайтів парламентів держав різного індексу демократії (Велика Британія, Ісландія, Швеція, Польща, Чехія, країни Балтії) сформульовано світові тенденції означеного напряму. Автор акцентує на притаманності певних особливостей і невизначеності наслідків цифровізації парламенту в державах, які мають різний рівень розвитку демократії та різні економічні показники. Встановлено, що перехід парламентарів у спілкуванні з виборцями від традиційної комунікації в офлайн форматі до формату онлайн сприяє реалізації в політичній сфері відкритості, інклюзивності, співробітництва й участі. Результати дослідження покликані актуалізувати питання необхідності введення нових електронних парламентських інструментів для впровадження механізмів цифрової демократії в суспільстві

Ключові слова:
е-парламент; участь громадян в ухваленні рішень; інклюзивність парламенту; парламентські цифрові інструменти; цифровізація

UDC 342
DOI: 10.56215/naia-chasopis/2.2023.30

Foreign practices of representing a victim of a traffic accident in criminal proceedings

Mykhailo Hribov*
Doctor of Law, Professor
National Academy of Internal Affairs
03035, 1 Solomianska Sq., Kyiv, Ukraine
https://orcid.org/0000-0003-2437-5598

Vadym Chervinskyi
Postgraduate Student
National Academy of Internal Affairs
03035, 1 Solomianska Sq., Kyiv, Ukraine
https://orcid.org/0000-0002-4945-713

Abstract
A substantial increase in the quantitative indicators of traffic accident statistics in Ukraine in recent years, as well as a tendency to decrease the effectiveness of solving this type of crime due to a decrease in attention to the problem, leads to impunity for the guilty, as well as the inability of victims to protect their rights and interests. Despite the armed aggression of the Russian Federation, such basic institutions as the representation of the interests of the victims, especially in the field of crimes against traffic safety and operation of transport, must have clear legal regulation at the state level, which is precisely what determines the relevance of this study. The purpose of this study was to analyse the foreign practices of the victim representation institution both in the general context and in terms of crimes against traffic safety and transport operation, as well as standardization and improvement of the current legislation by borrowing foreign legal ideas. The basis of the methodological approach is dialectical and comparativist methods, which helped analyse the legislation of several European countries. The study analysed the legislation of the Netherlands, Germany, the USA, and Great Britain for comparative analysis and to find gaps in national legislation. The need to distinguish between the terms "representative of the victim" and "legal representative", as well as to separate the category "advocate-representative of the victim" from the general concept of "defender in criminal proceedings" was proved. Some provisions were also presented, according to which the legally mandatory participation of a lawyer representing the victim in road traffic accident cases and the presence of certain conditions should be established. The study focuses on the issue of compensation for damage caused to the victim as a result of the accident and possible aspects of its settlement at the state level, considering the practices of the Netherlands. The results obtained during this study are an important theoretical basis for improving the legal regulation of the activity of a lawyer representing a victim of a traffic accident

Keywords:
advocate-representative; right to legal protection; settlement agreement; investigative actions; legal activity of a lawyer; crimes against traffic safety and operation of transport

Article's History:
Received: 03.03.2023
Revised: 03.06.2023
Accepted: 26.06.2023

Suggest Citation:
Hribov, M., & Chervinskyi, V. (2023). Foreign practices of representing a victim of a traffic accident in criminal proceedings. *Law Journal of the National Academy of Internal Affairs*, 13(2), 30-40. doi: 10.56215/naia-chasopis/2.2023.30.

*Corresponding author

Introduction

The issue of crime in the field of vehicle operation and road traffic is one of the most urgent and significant social issues in the territory of Ukraine. Thus, according to statistical data, from 2020 to 2021 alone, over 2.4 million cases of traffic accidents were registered in Ukraine, among which more than 48 thousand resulted in the death of victims and 406 thousand caused injuries of various degrees of severity, as a result of which criminal proceedings were opened respectively (Holovkin, 2022). Considering such statistics, Ukraine is actively pursuing a national policy aimed at ensuring road safety, the purpose of which is to introduce a system of effective punishment and increase responsibility for the commission of these crimes[1]. However, based on the analysis of scientific sources and studies, there is a significant gap regarding the issue of regulating the activities of protecting victims from traffic accidents in criminal proceedings, especially in the aspect of victim representation (World road traffic…, 2023).

The issue is that, in general, there is a significant development in the field of criminal procedural legislation and law enforcement practice with the implementation of international standards, as well as legal institutions of foreign countries. However, it is necessary to specify and improve the issue of representing the interests of the victim in the field of traffic in criminal proceedings, as well as solving problems related to the representation of the victim at various stages of criminal proceedings. The purpose of the national policy in the field of ensuring road traffic safety and combating crime in this field should be not only to strengthen the punishment of those guilty of road accidents and to improve the mechanisms of prosecution but to improve the regulation of the right to protect victims to restore their interests. This determines the urgent need to reform national legislation considering international practices and bringing it up to global standards.

As of 2023, there is a significant decrease in the effectiveness of the investigation of criminal offences based on the facts of road accidents due to a significant increase in war crimes and the need for their documentation and investigation (World road traffic…, 2023). As a result, a significant violation of the rights and interests of the victims is intensified: cases are closed on formal grounds, and compensation for damage caused as a result of the accident is denied. Since the main method and means of protecting the victim, his rights, and legitimate interests in criminal proceedings is his representation by a lawyer (Doak, 2005), the development and improvement of this institution should be considered as one of the guarantees of ensuring criminal proceedings in this area. That is, the improvement of legal regulation and the methodology of the lawyer's activity in representing the victim in a road accident should become a new milestone in the development of national policy in the field of road safety. However, this should concern borrowing foreign practices and methods of national policy to standardize the legislation of Ukraine and bring it into line with the legislation of the European Union (EU).

The analysis of the latest publications suggests the rather low activity of scientific discussions on the issue of regulating the activity of a lawyer in the representation of a victim in a road accident, as well as the need to improve the legal regulation of the representation of the interests of the victim of a traffic accident (Chervinskii, 2022). Furthermore, the theoretical basis for conducting this study is the work of Ukrainian and European scientists on the issue of regulating the activity of a lawyer in representing the interests of the victim in a criminal trial. Thus, R. Emelianov (2023) indicates the need to create an effective system of protection of the victim in criminal proceedings, indicating the frequent presence of such violations as failure to ensure the mandatory participation of a representative in the proceedings, limitation of the right to freely choose a defence attorney. However, the main idea is to substantiate the provisions of the procedural status of the representative lawyer and to form the organization of the lawyer's activities from such representation.

A significant contribution to the development of the procedural status of the victim was made by I. Gloviuk (2013), O. Kuchynska (2009), and T. Varfolomeeva *et al*. (2011). The issue of the lawyer's role in representing the interests of the victim was investigated by N. Elbers *et al*. (2020), specifically, the aspect of the right to legal representation of the victim according to EU Directive 2012/29[2], namely investigating the need to involve lawyers for victims and their contribution to guaranteeing and exercising the rights of victims in criminal proceedings.

The purpose of this study was to investigate the issue of representing the interests of the victim in a road accident in criminal proceedings under national legislation. The task of this study was to analyse the practices of the EU and the USA, to borrow foreign practices and improve the criminal procedural law of Ukraine, as well as eliminating gaps in the system of national legislation.

The scientific originality of this study lies in the created model of mandatory involvement of the victim's representative lawyer and the development of a list of crimes in which it should be implemented, as well as in the presented methods of regulating the payment of

[1]Law of Ukraine No. 1231-IX "On the Introduction of Changes to Some Legislative Acts of Ukraine Regarding the Strengthening of Responsibility for Certain Offenses in the Field of Road Safety". (2021, June). Retrieved from https://zakon.rada.gov.ua/laws/show/1231-20#Text.
[2]Directive of the European Parliament and of the Council No. 2012/29/EU "On Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime, and Replacing Council Framework Decision 2001/220/JHA". (2012, October). Retrieved from https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:0073:EN:PDF.

compensation to victims of road accidents at the state level and ensuring their guarantees, which has not been considered so far at the national level.

Materials and Methods

To conduct this study, the following general and special methods of scientific cognition were used, among which the dialectical method and the comparative legal method play a special role. Furthermore, methods of synthesis and analysis, formal-legal method, and historical-legal method were used.

This study is an analysis of the institution of representation in several European countries, specifically the Netherlands, Great Britain, and Germany, in comparison with national legislation to improve the legal regulation of the activities of representatives of victims of traffic accidents. The dialectical method helped investigate the essence of the institution of representation of victims, the content of the activities of the representative lawyer, as well as to study the tasks and principles underlying them.

In the context of comparative analysis, a study was conducted of the current Criminal Procedure Code of Ukraine, the Criminal Code of Ukraine in comparison with the legislation of other states. Specifically, the institution of victims' representation in the Netherlands was investigated, the issue of appointment and payment of compensation, the issue of protection of the rights and interests of victims, the issue of the obligation to enter criminal proceedings by a representative of victims and some other aspects in this topic were studied. Furthermore, a comparative analysis of the issue of representation of the interests of road accident victims in Germany and Ukraine helped reveal a few other gaps in national legislation and outline ways to improve the legal regulation of the organization of a lawyer's activities[1].

In addition, a sociological method was used, using an experiment conducted in the USA regarding the effectiveness of involving a lawyer to protect the interests of road accident victims was studied and investigated.

The methods of synthesis and analysis helped analyse in detail the state of the procedural status of the representative of the victim in the current legislation, as well as analyse in detail the state of research and development of the institution of representation of the rights of victims in the European Union.

Using the statistical method, the aspect of the use of threats of violence and intimidation against the victim of a criminal offence was analysed, and arguments were given in favour of the involvement of a lawyer representing the victim of a traffic accident as a guarantee of the protection of the victim of a crime against illegal actions.

During the study, the work and theoretical achievements of Ukrainian and European scientists, as well as several regulations, were used. Thus, the Criminal Procedural Code of Ukraine was investigated and researched, as well as a few EU Directives on the protection of crime victims[2]. Furthermore, the study investigated the criminal procedural legislation of Germany, the Netherlands, Great Britain, and partially the United States.

Results

Restoring justice, punishing the guilty, and ensuring public safety are on the same level as protecting the rights and legitimate interests of the victim in any criminal proceeding, and therefore cases in the field of road traffic safety are no exception. They should be provided directly by the activities of pre-trial investigation bodies, the purpose of which is to establish the guilty persons and events of the crime. However, apart from this, the victim can influence the course of criminal proceedings by protecting their interests and rights through their representative, who is a lawyer. The institution of representation is one of the guarantees of the implementation of the specified task and a way of influencing the fair restoration of the rights and interests of the victim. However, the analysis of the formation and development of the institution of representation in criminal proceedings, regardless of the type of crime, indicates rapid changes and increased attention to the role of the victim. Thus, the only duty of the victim was to testify and inform the relevant authorities about the committed crime (The Right to…, 2022). Currently, there is a tendency to increase attention to the role of the victim, especially in European legislation. The institution of representation in criminal proceedings, specifically in crimes in the field of road safety, is a key factor in the effective and proper legal protection of the rights, freedoms, and interests of individuals in civil society (Ten Boom & Kuijpers, 2012). However, if the issue of the participation of a defence attorney in the process is actively developed and improved at all levels, the protection of a person against whom a criminal offence was committed requires active research, especially in Ukraine.

The first milestone towards change was the adoption of the United Nations Declaration on Basic Principles of Justice for Victims of Crime[3]. Thus, the main idea was the victims' access to justice, compensation for the damage caused, and fair treatment of the victim. Subsequently, in 2001, the Council of the EU adopted the Decision on the Status of Victims in Criminal Proceedings, binding on all member states, in which the right

[1]German Criminal Code. (2021). Retrieved from https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html.
[2]Directive of the European Parliament and of the Council No. 2012/29/EU "On Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime, and Replacing Council Framework Decision 2001/220/JHA". (2012, October). Retrieved from https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:0073:EN:PDF.
[3]Declaration № 40/34 "On Basic Principles of Justice for Victims of Crime and Abuse of Power". (1985, November). Retrieved from https://www.unodc.org/pdf/rddb/CCPCJ/1985/A-RES-40-34.pdf.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:0073:EN:PDF.

of victims to access to information, protection, recognition, and so-called mediation was consolidated[1]. In recent decades, the EU Directive 2012/29/EU[2], according to which all member states of the European Union are legally obliged to provide certain rights to crime victims, has become an indicator of changes, which more clearly defines the standards of rights and protection of crime victims, while paying the greatest attention to violent crimes directed against human life and health[3].

However, despite this, there is still no unified opinion and vision regarding the role of the victim and their support in the criminal process, especially regarding consideration of the cases of victims in traffic accidents. For instance, the Convention on Compensation for Victims of Violent Crimes[4], adopted in 1983, which makes provision for the establishment of a minimum level of financial compensation for all victims of crimes, was ratified by only 26 EU member states, which indicates that there are still gaps in the institution of the protection of the rights of the actual victims. The fact is that the main attention of the legislators of other states, namely the EU, falls on particularly serious and grave crimes, among which sexual crimes, human trafficking, and crimes based on racial or religious hatred prevail.

For instance, it was the increase in sexual crime in the Netherlands that prompted the introduction of an advance payment scheme for victims of such crimes, which was adopted in 2011 (Elbers *et al*., 2020). However, it was precisely this that stimulated the development of the institution of representation and the activity of lawyers in all criminal proceedings, forming its category of lawyers-representatives of victims (Parliament adopts new…, 2021). Since the Netherlands is based on EU legislation, the issue of representing the interests of victims in criminal proceedings in the field of crimes against traffic safety and transport operation should be investigated in detail, considering the rapid movement of Ukraine and its recognition as a candidate for EU membership and the need to bring the legislation to uniform standards and to improve the latter.

The issue of representation of the victim in Ukraine is regulated by the current Criminal Procedural Code, specifically, Article 58, which specifies that a representative can represent the interests of the victim in criminal proceedings, i.e., a person who has the right to act as a defence attorney in criminal proceedings. Logically, such an equalization of the rights of the representative and the defender of both sides of the proceedings, the national legislator makes for equal access of the parties to the defence. According to Article 45 of the Criminal Procedural Code, the defender is exclusively a lawyer whose information is entered in the Unified Register of Lawyers of Ukraine[5]. In fact, according to Article 1 of the Law of Ukraine "On the Bar and Practice of Law", an individual is recognized as a lawyer, who conducts legal activities according to the procedure prescribed by this Law[6].

On the other hand, advocacy is recognized as the professional activity of a lawyer, which lies in the implementation of protection, representation, and any other types of legal aid to the client. That is, based on the definitions of the terms provided by the national legislator, it is logical to state that the representation of the interests of victims of traffic accidents in criminal proceedings belongs to the category of the lawyer's activity. The purpose of such representation of the victim's interests fully coincides with the tasks of the Criminal Procedural Code of Ukraine (CPCU) outlined in Article 2 of the same code and lies in ensuring an impartial and complete investigation of the crime and bringing the guilty to criminal liability[7].

On the other hand, advocacy is recognized as the professional activity of a lawyer, which lies in the implementation of protection, representation, and any other types of legal aid to the client. That is, based on the definitions of the terms provided by the national legislator, it is logical to state that the representation of the interests of victims of traffic accidents in criminal proceedings belongs to the category of the lawyer's activity. The purpose of such representation of the victim's interests fully coincides with the tasks of the Criminal Procedural Code of Ukraine (CPCU) outlined in Article 2 of the same code and lies in ensuring an impartial and complete investigation of the crime and bringing the guilty to criminal liability.

Thus, the institution of representation plays a key role in the matter of observing the rights and freedoms of victims of a criminal offence and their equality in the right to protect their interests. Thus, for instance, a study was conducted in the USA, which investigated the impact of the institution of victim representation on the observance of their rights in the USA. As a result, over 125 victims of several types of crimes were interviewed about the state of observance of their rights and information about the state of the case. The results of

[1]Council Framework Decision No. 2001/220/JHA "On the Standing of Victims in Criminal Proceedings". (2001, March). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32001F0220.
[2]Directive of the European Parliament and of the Council No. 2012/29/EU "On Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime, and Replacing Council Framework Decision 2001/220/JHA". (2012, October). Retrieved from https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:0073:EN:PDF.
[3]Council Framework Decision No. 2001/220/JHA "On the Standing of Victims in Criminal Proceedings". (2001, March). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32001F0220.
[4]European Convention "On the Compensation of Victims of Violent Crimes". (1983, November). Retrieved from https://rm.coe.int/1680079751.
[5]Criminal Procedural Code of Ukraine. (2013, April). Retrieved from https://zakon.rada.gov.ua/laws/main/4651-17?lang=en#Text.
[6]Law of Ukraine No. 27 "On the Bar and Practice of Law". (2013). Retrieved from https://unba.org.ua/assets/uploads/legislations/pologennya/1-law-of-ukraine-on-the-bar-and-practice-of-law.pdf.
[7]Criminal Procedural Code of Ukraine. (2013, April). Retrieved from https://zakon.rada.gov.ua/laws/main/4651-17?lang=en#Text.

the study showed that crime victims, whose interests were represented by a lawyer, were more often informed about the trial of the case, about the change of preventive measures for the accused, about referral for examinations, or for consideration by special services. Proceeding from this, in cases where a representative of the victim is present in case review and investigation, this refers to increasing guarantees for the realization of their legal rights and interests by victims of crimes. Since the prosecutor's purpose is to "punish" the perpetrator of a criminal offence, the issue of compensation and restoration of the victim's interests is exclusively the area of competence of their representative (Kazis, 2016).

Turning to the legislation of the Netherlands, it can be concluded that the criminal law system is generally characterized as "moderately incriminating", which leads to the pre-trial investigation being preferred over the trial itself. As for the institution of representation, i.e., the participation of the victim's lawyer, as a rule, they enter from the moment of notice of the law enforcement authorities about the commission of a crime and before the closing of the criminal proceedings, i.e., the sentencing.

In contrast to Ukrainian practice, legal representation in the Netherlands has undergone significant changes and development thanks to the stimulation of the country's legislative bodies. Thus, to give victims access to legal representation, a law was passed in 2006 that allows them to receive payment from the state for the services of a lawyer in the amount of 1,155 euros, although this only applied to victims of grave and especially grave crimes (Boer, 2023). However, this provision and the program indicate the existence of the so-called Institute of lawyers for Victims of crime or lawyers representing victims. Furthermore, lawyers for victims of criminal crimes in the Netherlands must be members of a special organization and have a special course on representing victims in criminal proceedings, as their activity is recognized by the legislator as specific and unrelated to defence as a type of lawyer's activity.

In the national legislation, the legislator provides the following clarification regarding the term "representative of the victim". Thus, according to Article 58 of the CPCU, the representative of the victim is a person who has the right to be a defence attorney in criminal proceedings. Despite this, this legal norm, unlike Article 45 of the CPCU, does not use the term "lawyer who protects the rights and interests of the victim"[1]. However, the realities are such that the concept of protection and the concept of providing legal aid in criminal proceedings should be distinguished. Since, when a victim of a traffic accident reaches out to a lawyer for legal aid, the procedural interests and their function are different from the interests of the defence counsel of the accused.

A lawyer who provides legal aid to a victim represents them to protect the latter's interests and resolve the case in their favour, while pursuing the achievement of completely different goals, and therefore such activity is different from protection as a type of lawyer's activity. Thus, the general practice of the criminal procedure of the Netherlands should be considered and applied at the level of national legislation, distinguishing between the concepts of a defence attorney and a representative as different subjects of criminal proceedings, changing Article 58 of the CPCU by replacing the concept of a representative, who can only be a defender in criminal proceedings, with the concept the lawyer-representative of the injured party, which will have a direct impact on the consideration of road accident cases[2]. This adjustment will contribute to the development of the representative office in Ukraine both in general and in cases in the field of road traffic safety.

Furthermore, based on the practice of the Netherlands regarding the possibility of obtaining a subsidy for the services of a lawyer representing the victim, it would be logical to create such a program for victims of road accident cases that led to serious consequences (serious bodily injuries or death of the victim). The fact is that in such cases, the victim or their blood relatives can communicate directly through their representative, a qualified lawyer, directly with the perpetrator of the event, or their defender. Such a decision would encourage a reduction in the use of influence, violence, and threats against victims during pre-trial and judicial proceedings. According to the conducted survey on the use or threat of use of violence against the victims occurs in 50% of cases according to 10% of respondents in criminal proceedings as presented in Figure 1.

Furthermore, most often in cases of the death of the victim or the occurrence of serious bodily injuries as a result of a traffic accident, the perpetrator, taking advantage of the shocked state of the victim's relatives, tries to intimidate or "negotiate" the closure of the case and the refusal of accusations, which is completely contrary to the principles and goals of punishing the guilty in the commission of an offence. Therewith, conciliation is a completely legal solution even in criminal proceedings, but with the mandatory participation of a representative lawyer. Thus, for instance, the Procuratorate of Yuhua and Shijiazhuang Provinces in China applies the Regulation on the Application of Conciliation by Prosecutors during Trial Cases, which stipulates that conciliation is allowed only in minor criminal cases and in those cases where the offender is a minor, actually referring to such of cases – proceedings on traffic accidents (Gelman, 2015).

Analysing the criminal justice systems of European countries in general, they are conditionally divided into

[1]Criminal Procedural Code of Ukraine. (2013, April). Retrieved from https://zakon.rada.gov.ua/laws/main/4651-17?lang=en#Text.
[2]Ibidem, 2013.

two types according to the scope of the victim's procedural rights. Thus, in the former case, according to the Anglo-Saxon model of justice (which includes such countries as Great Britain, the USA, and Canada), the victim does not appear as a figure in the criminal proceedings, which leads to an almost complete lack of regulation of their position in the procedure, although giving preference to an efficient system social protection for crime victims (Baumgartner, 2008). The criminal procedural law of Great Britain is one of the oldest in the general procedural law system of the world and therefore requires a special analysis. The specific feature and the biggest difference from other legal systems is that the victim does not have any legal status in the criminal procedure. That is, the victim of a crime, directly and injured as a result of a traffic accident, is considered from the standpoint of an ordinary citizen who has a list of rights and responsibilities, directly and about assisting the investigation of the case by the police. As for their testimony, they are necessary only if the victim of the crime acts as a witness for the prosecution (Emelianov, 2020).

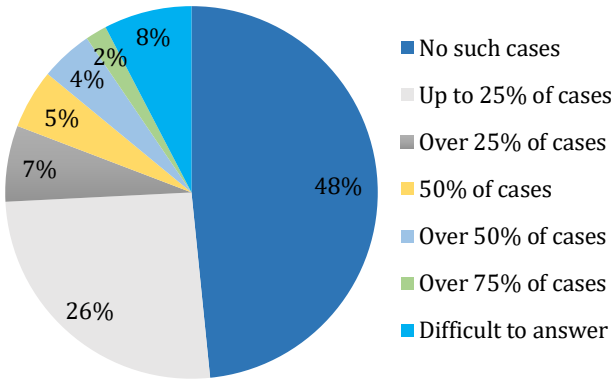

Figure 1. Survey of the frequency of violence against the victim in criminal proceedings
Source: compiled by the authors based on the study by A. Orlean *et al.* (2020)

As for the lawyer's activity to protect the victim from crimes, namely in the field of road accidents, it is divided into two so-called categories – "barristers" and "solicitors". "Barristers" are lawyers whose powers include representation of the client's interests in court. Furthermore, they are engaged in procedural activities and advisory issues (Emelianov, 2020). However, their duty is not to search for and disclose information, conduct an investigation, or communicate with witnesses, which indicates an unfavourable environment for the victims themselves and their protection. "Solicitors" are those who are engaged in the investigation and whose competence is the search and disclosure of information. They can receive instructions from the client, investigate strategies and protection options. Moreover, they can prepare a lawyer for the defence in the trial, advise on the line of defence and further actions, prepare the case for a hearing in court, conduct negotiations on the pre-trial settlement of the case, and conduct interviews with witnesses or experts in the case.

They can also act as advocates in court, but their right to speak publicly in court is limited (Cameron, 1981). However, despite the clear division of responsibilities of advocacy, in the UK legal system, the victim is still not given enough attention, and therefore it is defined as unfavourable for the protection of their rights (Johnston, 2019). Despite this, the idea of dividing lawyers is quite logical and can be applied in the field of national legislation.

Considering the institution of representation in the USA, it is necessary to note a sharp increase in attention to the issue of protecting the rights of victims of criminal crimes in the late 1950s due to the increase in crime. Currently, the US criminal procedure makes provision for the right of a lawyer to represent and protect the interests of the victim at all stages of the criminal procedure (Emelianov, 2020). However, of interest is the Victim and Witness Protection Act of 1982, which prescribes the right of victims to be protected from the offender, the right to be notified of court proceedings, the right to take part in all court proceedings, the right to consult with the accuser, the right to restitution, and for information about the sentence or release of the defendant[1]. The legislative consolidation of such fundamental rights of the victim is an effective mechanism for guaranteeing the victim's participation in the legal procedure, especially when it comes to road accident cases. That is, the victim has their legal right to communicate with the accuser, to have full access to information about the state of the process, and therefore, with a high probability, they also receive the restoration of their violated rights.

[1]Law of United States No. 92122 "On Victim and Witness Protection". (1983). Retrieved from https://www.ojp.gov/ncjrs/virtual-library/abstracts/victim-and-witness-protection-act-1982-aba-guidelines-fair.

Despite this conditional classification, there are considerable changes in US law regarding the approach to expanding the rights of crime victims and strengthening their guarantees. However, if the lawyer's right to represent the interests of the accused and defend them is established at all stages, despite the historical recognition of the right of the victims to representation, the procedural status of the representatives-lawyers of the victims is not regulated by the legislation, but the same is guaranteed to both the defender and the representative. In the field of traffic accidents in the USA, there are so-called "injury lawyers" who represent the interests of victims of car accidents. Therewith, their main goal is to win in a civil case, namely regarding the issue of compensation, since without the involvement of a representative, even with the clear guilt of the accused, the court may not issue a decision on compensation for damages (Butschky, 2023).

The second group includes countries with continental law and judicial systems that traditionally recognize the victim as a participant in criminal proceedings. Analysing the legislation of the Netherlands, it can be concluded that the role of the lawyer representing the victim of a traffic accident consists in substantiating the claim, finding the necessary facts or information, conducting examinations, as well as directly representing the interests of the victim in court. Given the presence of a special state fund for compensation for victims, upon filing a lawsuit and quality protection of their interests by a representative lawyer, the victim receives compensation regardless of the defendant's availability of funds. This refers to the state making an advance payment to the victims, after which the state itself demands it from the perpetrator. Thus, under this program, in the case of violent crimes, the amount is not limited, for all other types of crimes, the maximum amount of compensation is 5,000 euros. The guarantee of receiving compensation for the victim and defending their interests stimulates the appeal to the institution of representation among the victims, which can be borrowed into national practice.

As an example, one can take the practices of Germany regarding the application of the right of the victim in a traffic accident to representation during criminal proceedings. Thus, the Fifth Book of the German Criminal Code is fully devoted to the issue of the participation of the victim in the procedure, and Article 397 contains the norm according to which the victim in criminal proceedings is aided in inviting a lawyer, if the case is complex from a legal standpoint, and the victim cannot properly equal to protect their interests[1].

The procedure for involving a lawyer-representative, in this case, is as follows: the presiding judge in criminal proceedings invites a lawyer, and the victim can independently choose his representative during the specified period. However, the victim cannot appeal the court's decision on the need to engage a lawyer for legal aid. In addition, the injured person can involve his lawyer-representative if the first acts as a civil defendant in the proceedings in matters of compensation for damage caused by a traffic accident (moral and material), however, in case of refusal to involve a lawyer and in case of refusal to compensate for damage, appeal the victim has no right to a decision.

Such mandatory involvement of a representative lawyer can be effective for the legal regulation of a lawyer's activities in criminal proceedings in the field of road traffic safety in Ukraine. For example, the division of cases into those that require the mandatory involvement of the victim's lawyer representative may occur as follows: in cases of inflicting serious bodily injuries on the victim; a traffic accident with signs of alcohol intoxication, which led to serious consequences; the death of a victim in a road accident; causing material damage to the victim's property in particularly large amounts; if there are signs of intimidation of the victim, threats of use or use of violence against him; when the victim is a minor or a disabled or incapacitated person; when it comes to representing a civil defendant in criminal proceedings.

Such a classification determines the most serious risks and requires the intervention of a qualified specialist to protect the interests of the victim or his close relatives and should be mandatory in criminal proceedings. In cases where it is impossible to attract a representative to protect the victim at his own expense, one should talk about the mandatory appointment of a representative lawyer at the expense of the State Budget of Ukraine.

The legislation of Sweden and Switzerland, similar to the legislation of the Netherlands, provides for the victim to be provided with a free representative lawyer at the expense of the state (Emelianov, 2020).

Thus, considering the analysis of the legislation of some European states, the vector of national legislation should be aimed at distinguishing the category of the lawyer of the victim in road accident cases in national legislation and establishing clear cases of their mandatory involvement in road accident cases.

Discussion

The development and reformation of criminal and criminal procedural law in Ukraine has led to changes in the protection of the rights of participants in criminal proceedings. If earlier, it was possible to speak of various methods and defences only in the context of the suspect or the accused, today the issue of protecting the victim from the crime and their active involvement in criminal proceedings is increasingly being raised. As indicated by H. Olasolo and A. Kiss (2010),

[1]German Code of Criminal Procedure. (1987, April). Retrieved from https://www.gesetze-im-internet.de/englisch_stpo/englisch_stpo.html.

the involvement of a victim of a criminal offence in the proceedings can serve as a guarantee that their interests will be factored in, even if they differ from the interests of the prosecution. Given the complicated situation with the investigation of cases based on the facts of road accidents, today the issue of protecting victims of car accidents is on the agenda both in academic circles and at the legislative level (Road traffic injuries…, 2023).

However, legal regulation is reduced to general rules and does not have a clear mechanism, which often leads to the closing of proceedings on formal grounds, and reconciliation on unfavourable terms for the victim. Furthermore, the biggest issue is the absence of an obligation to pay compensation in the absence of a representative of the victim. Having considered the legislative aspects of this issue using evidence from some countries in Europe and the USA in comparison with Ukraine, it is also necessary to understand the very content of the representation of the interests of the victim of a traffic accident, justify the need to distinguish the lawyer representing the victim from the lawyer defending the accused, regulating their procedural status and distinguishing tasks essential for the performance of the victim's representative.

The institution for the representation of victims of crimes is a guarantee of the implementation of the task of protecting the rights, freedoms, and interests of victims of crime. Furthermore, this refers not only to the consideration of the institution of representation from this standpoint but also to the impact on compliance with the principle of adversarial justice in the criminal procedure. Thus, the Criminal Procedural Code of Ukraine specifies that the interests of the victim in criminal proceedings may be represented by a representative, i.e., a person entitled and authorized to act as a defence attorney in criminal proceedings[1].

The representative is granted the procedural rights of the victim, whose interests they directly represent, except for those exercised directly by the victim themselves. However, as O. Kostyuchenko (2016) points out, a big question arises regarding the distribution of these procedural rights between the representative and the victim. That is, according to the author, the list of rights that can be exercised by the victim's representative is not clearly defined by the national legislator and is exclusively an "evaluative concept". Thus, this refers to the possibility of limiting the scope of the rights of the representative at the sole discretion of the victim, investigator, or other representative of law enforcement agencies, proceeding from the idea that a particular right can be exercised only by the victim. Furthermore, O. Kostyuchenko (2016) believes that the injured person and their representative are given a fairly wide list of rights, but it should be supplemented with several rights, including the right to express a legal position in court debates regarding the scope and content of the accusation. However, when it comes to public prosecution, such a right cannot be transferred to the victim or their representative.

A separate issue that raises quite a few questions is the purpose of representing the victim in road accident cases. The victim, as well as the suspect in criminal proceedings, needs qualified legal aid to exercise their procedural rights and to obtain a specific result. And as a rule, proceeding from this, as R. Emelianov (2023) points out, an active form of behaviour in the investigation and consideration of the case is characteristic of the injured person, including the road accident, which does not involve voluntary removal from participation in the procedure, despite the admissibility of the person's refusal, which delegated its powers to a representative. Thus, the purpose of the actions of the victim's representative is to implement and ensure the rights and legitimate interests of the victim of a crime, i.e., it is a matter of directly performing actions aimed at defending the interests of the person they represent. As already mentioned above, the main task of the representative of the victim is to protect their rights and freedoms according to the objectives of the CPCU, which they implement through certain actions[2]. This refers to committing procedural and non-procedural activities (Chervinskii, 2022). However, according to R. Emelianov (2023), the implementation of the professional activity of the representative of the victim in the criminal procedure is not unambiguous due to regulation only in general terms. This refers to the real lack of specification of the criteria for the legality of the lawyer's actions.

The law makes provision for the right to collect evidence, read and understand the materials of the pre-trial investigation, take part in investigative actions during the investigation, and other procedural actions. However, the issue of the lawyer's activity, which holds an extra-procedural nature, i.e., actions that are not procedurally regulated, such as recording certain data, recording the situation at the scene of a traffic accident, receiving a video taken by random witnesses, detecting the fact of illegal influence on the victim or other participants in criminal proceedings – are still unenforced by law and need to be regulated (Chervinskii, 2022).

Given the wording in the national legislation regarding the definition "representative of the victim", in practice, there is no real problem with the protection of the rights of the victim and the participation of the lawyer representative in the proceedings. However, defence and representation, admittedly, are critically different categories in their essence, considering the purpose of defence, which lies in refuting suspicion and accusation, in this case, according to

[1]Criminal Procedural Code of Ukraine. (2013, April). Retrieved from https://zakon.rada.gov.ua/laws/main/4651-17?lang=en#Text.
[2]Ibidem, 2013.

Articles 286-288 of the Criminal Code of Ukraine, for establishing innocence, lesser culpability or exclusion of criminal charges responsibility, or – closure of criminal proceedings[1].

The problem is the lack of regulation of the mandatory participation of the victim's representative in the proceedings. The question of the mandatory participation of a representative has long been considered in national legal practice and was analysed above considering the practices of the Netherlands and Germany. But, in practice, there is no regulation, which causes an unequal position of the parties to the criminal proceedings in terms of their legitimate interests, rights, and positions. The idea to introduce an analogous practice into the criminal procedure of Ukraine has existed for quite some time and is directly supported by such scientists as O. Kuchynska (2009). The author pointed out the need to appoint a defence attorney to the victim as their representative only in certain cases (underage victim, mental or physical disabilities, etc.).

J. Butschky (2023) supports the opinion on the need to appoint a mandatory lawyer to the victim to preserve and respect the right to equality in the judicial procedure, which is logical and does not cause objections. However, apart from this, it is necessary to discuss the obligation to appoint a representative of the victim under the conditions that were given above. Therewith, including the possibility of appointing a lawyer for the victim at the expense of the State Budget.

The issue of research and delimitation of the terms "representative", which is defined by the national legislator as a person who is entitled to be a defence attorney in criminal proceedings, and "legal representative", who is involved in the case when the victim of a crime is a minor, deserves separate consideration. Such representation has a completely different nature. Thus, when it comes to representation, the powers must be confirmed by appropriate documents certifying the right to engage in legal activities, or by a warrant or a written contract with the victim on the provision of legal aid. And therefore, the victim independently delegates their rights to their representative, according to their own choice and decision.

As indicated by R. Emelianov (2023), the concept of the "representative" is based on the fact that the victim needs qualified legal aid to exercise their rights. Legal representation is carried out exclusively to prevent violations of the rights of minors or individuals with a limited or total disability and is regulated by Article 44 of the CPCU[2]. Their actions must not conflict with the interests of the person they represent, and they fully enjoy the rights of the person they represent, except those procedural rights that can be exercised by the victim themselves. However, despite this regulation, the legislator does not provide or explain any of the legal representative's duties. Still, legal representation is not an activity that lies in providing qualified legal aid.

Conclusions

The study results strongly suggest that the issue of representing the interests of victims of traffic accidents, as well as the institution of victim representation, has many gaps in Ukrainian law and needs serious improvement. Considering the difficult political and economic circumstances, the full-scale invasion, and the state of war on the territory of the state, there is a tendency to decrease attention to the issue of investigating crimes in the field of traffic safety and the operation of vehicles. Due to the busyness of law enforcement agencies, quite often the guilty go unpunished, and the rights and interests of the victims are not defended. Furthermore, the low legal awareness and ignorance of the victims about their rights deprives them of the opportunity to compensate for moral or material damage caused as a result of a traffic accident.

Orientation towards EU standards, the entry and recognition of Ukraine as a candidate for membership of the European Union, and the vector of development of Western European values necessitate the assimilation of national legislation with European legislation and bringing it to uniform standards. Furthermore, the borrowing of foreign practices, especially in the aspects of legal regulation of the institution of representation, the activities of the victim's lawyer, their methods of action, and mechanisms of protection, are crucial and critically necessary for the system of national law. That is why the analysis of the European practices, and the borrowing of legal ideas can be an effective solution to the issue at the national level. That is, this specifically refers to such changes as the introduction of amendments to Article 58 of the Criminal Code of Ukraine and the inclusion of the proper concept of "advocate-representative", as well as the issue of regulating the payment of compensation to victims of road accidents at the state level and ensuring their guarantees, the issue of the mandatory involvement of a representative of the victims of road accidents in cases of, namely, the death of the victim, infliction of serious bodily injuries, disability or limited capacity of the victim, if the victim is present before they reach the age of majority, etc. Despite the presence of analogous ideas on the part of Ukrainian scientists, there is still no similar practice at the legislative level. That is why, considering the legislation of the Netherlands and Germany, it would be suitable to establish the mandatory participation of the victim's lawyer in criminal proceedings in the presence of several circumstances.

[1]Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14?lang=en#Text.
[2]Criminal Procedural Code of Ukraine. (2013, April). Retrieved from https://zakon.rada.gov.ua/laws/main/4651-17?lang=en#Text.

However, apart from this, it is worth specifying the need for future research in this area, specifically, they should be an analysis of judicial practice and the impact of court decisions on the resolution of road accident cases, research into the issue of paying compensation to victims of road accidents as a mandatory element in criminal proceedings, regardless of the presence a claim from the victim, as well as the introduction of special training for representative lawyers based on the model of the Netherlands for real guarantees of the protection of their rights.

Acknowledgements

None.

Conflict of Interest

None.

References

[1] Baumgartner, E. (2008). Aspects of victim participation in the proceedings of the international criminal court. *International Review of the Red Cross*, 90(870), 409-440.
[2] Boer, W. (2023). *Legal aid in the Netherlands*. Retrieved from http://surl.li/iooxb.
[3] Butschky, J. (2023). *Mary land drunk driving accident victims: Don't let the tables get turned on you! Why you need an experienced injury lawyer*. Retrieved from https://www.marylandattorneys.us/maryland-drunk-driving-accident-victims-don-t-let-the-tables-get.html.
[4] Cameron, J.D. (1981). English barrister system and the American criminal law - A proposal for experimentation. *Arizona Law Review,* 23(3), 991-1002.
[5] Chervinskii, V. (2022). Representation of the interests of the victim in the form of road transport use in criminal prosecution. *Legal Science Electronic Journal*, 11, 704-707. doi: 10.32782/2524-0374/2022-11/169.
[6] Doak, J. (2005). Victims' rights in criminal trials: Prospects for participation. *Journal of Law and Society*, 32(2), 294-316.
[7] Elbers, N., Meijer, S., Becx, S., Schijns, A.J.J.G., & Akkermans, A. (2020). The role of victims' lawyers in criminal proceedings in the Netherlands. *European Journal of Criminology,* 19(4), 830-848. doi: 10.1177/1477370820931851.
[8] Emelianov, R. (2020). Foreign experience regulating the criminal procedural activities of the lawyer-representative of the victim. *Criminal Law, Criminal Process and Criminology*, 119-127. doi: 10.32782/LAW.2020.3.19.
[9] Emelianov, R. (2023). *Lawyer – representative of the victim in the criminal process* (Doctoral dissertation, Donetsk National University of Internal Affairs, Kropyvnytskyi, Ukraine).
[10] Gelman, U. (2015). *Alternative way store solve disputes in criminal prosecution*. Khmelnitsky: Khmelnitsky University of Management and Law.
[11] Gloviuk, I. (2013). Problems of determining the functional directivity of the victim's activity in the criminal prosecution of Ukraine. *Bulletin of Kharkiv National University named after V.N. Karazin. Series: Law*, 16, 233-236.
[12] Holovkin, B. (2022). Assessment of road traffic accidents and the severity of its consequences in Ukraine. *Problems of Legality*, 156, 52-75. doi: 10.21564/2414-990X.156.252879.
[13] Johnston, E. (2019). The adversarial defence lawyer: Myths, disclosure and efficiency - A contemporary analysis of the role in the era of the criminal procedure rules. *The International Journal of Evidence & Proof*, 24(1), 35-58. doi: 10.1177/1365712719867972.
[14] Kazis, N. (2016). Tort concepts in traffic crimes. *The Yale Law Journal*, 125(4), 796-1149.
[15] Kostyuchenko, O. (2016). Certain aspects of implementing the victim's right to professional legal assistance in criminal proceedings in Ukraine. *Herald of Criminal Justice*, 4, 40-46.
[16] Kuchynska, O.P. (2009). Problems of protecting the rights of the victim in the criminal process of Ukraine. *Lawyer*, 5, 9-12.
[17] Olasolo, H., & Kiss, A. (2010). The role of victims in criminal proceedings before the international criminal court. *Revue Internationale de Droit Penal*, 81(1-2), 125-163. doi: 10.3917/ridp.811.0125.
[18] Orlean, A., Palyukovets, T., Krapivin, Y., Latyuk, D., & Chovgan, V. (2020). *The rights of victims of violent mischief in Ukraine: International standards and national practices.* Kyiv: ARTEK.
[19] Parliament adopts new rules to improve protection of road accident victims. (2021). Retrieved from https://www.europarl.europa.eu/news/en/press-room/20211014IPR14929/parliament-adopts-new-rules-to-improve-protection-of-road-accident-victims.
[20] Road traffic injuries and deaths – A global problem. (2023). Retrieved from https://www.cdc.gov/injury/features/global-road-safety/index.html.
[21] Ten Boom, A., & Kuijpers, K.F. (2012). Victims' needs as basic human needs. *International Review of Victimology,* 18(2), 155-179. doi: 10.1177/0269758011432060.
[22] The right to effective representation in criminal proceeding sand the ex officio appointment system. (2022). Retrieved from https://www.osce.org/files/f/documents/8/0/523952.pdf.

[23] Varfolomeeva, T., Goncharenko, V., Boyarov, V., Goncharenko, S., & Popelyushko, V. (2011). *Forensics: Academic course*. Kyiv: Yurinkom.
[24] World road traffic accident report. (2023). Retrieved from https://www.worldlifeexpectancy.com/world-road-traffic-accidents-report.

Зарубіжний досвід представництва потерпілого від дорожньо-транспортної пригоди в кримінальному провадженні

Михайло Грібов
Доктор юридичних наук, професор
Національна академія внутрішніх справ
03035, пл. Солом'янська, 1, м. Київ, Україна
https://orcid.org/0000-0003-2437-5598

Вадим Червінський
Аспірант
Національна академія внутрішніх справ
03035, пл. Солом'янська, 1, м. Київ, Україна
https://orcid.org/0000-0002-4945-7138

Анотація
Суттєве зростання кількісних показників статистики дорожньо-транспортних пригод в Україні за останні роки, а також тенденція до зниження результативності розкриття цього виду злочинів унаслідок зменшення уваги до проблеми призводить до безкарності винних, а також неможливості захисту потерпілими своїх прав та інтересів. Попри збройну агресію російської федерації, такі базові інститути, як представництво інтересів потерпілих, особливо у сфері злочинів проти безпеки руху й експлуатації транспорту, повинні мати чітке правове регулювання на державному рівні, чим власне й зумовлена актуальність цього дослідження. Метою роботи був аналіз зарубіжного досвіду інституту представництва потерпілих як у загальному контексті, так і в розрізі злочинів проти безпеки руху та експлуатації транспорту, а також стандартизація та вдосконалення чинного законодавства шляхом запозичення іноземних правових ідей. Основу методологічного підходу становлять діалектичний та компаративістський методи, завдяки яким було проаналізовано законодавство низки країн Європи. У дослідженні проаналізовано законодавство Нідерландів, Німеччини, США та Великої Британії з метою компаративістського аналізу та пошуку прогалин у національному законодавстві. Доведено потребу в розмежуванні понять «представник потерпілого» та «законний представник», а також відмежуванні категорії «адвокат-представник потерпілого» від загального поняття «захисник у кримінальному провадженні». Також було наведено низку положень, за якими має бути закріплено законодавчо обов'язкову участь адвоката – представника потерпілого в справах про дорожньо-транспортну пригоду та наявності певних умов. У дослідженні приділено увагу питанню компенсації шкоди, завданої потерпілому внаслідок аварії, та можливі аспекти її врегулювання на державному рівні, ураховуючи досвід Нідерландів. Результати, отримані під час проведення цього дослідження, є важливою теоретичною базою для вдосконалення правового регулювання питання діяльності адвоката-представника потерпілого від дорожньо-транспортних пригод

Ключові слова:
адвокат-представник; право на судовий захист; угода про примирення; слідчі дії; організаційно-правова діяльність адвоката; злочини проти безпеки руху та експлуатації транспорту

UDC 341.322.5:343.34
DOI: 10.56215/naia-chasopis/2.2023.41

Criteria for distinguishing looting from other crimes: A comparative analysis

Ihor Kopotun
Doctor of Law, Professor
HUSPOL Academy
68604, 699 Osvobozeny Str., Kunovice, Czech Republic
https://orcid.org/0000-0002-2947-8599

Yevheniia Murzo*
Adjunct
National Academy of Internal Affairs
03035, 1 Solomyanska Sq., Kyiv, Ukraine
https://orcid.org/0009-0000-4409-0560

Abstract
With the beginning of the Russian-Ukrainian war, increasingly often crimes of a general criminal nature are instead qualified by Article 432 of the Criminal Code of Ukraine, where the composition of crimes is entirely different. The purpose of this study was a comprehensive analysis of the structure of the criminal offence of looting by comparing it with other crimes, as well as formulating a unified practice of understanding and qualification in the aspect of the subject of the study. According to the set purpose of the study, a complex of scientific methods was used, namely, general scientific and special ones: the method of statistical research – to analyse and compare the dynamics of committing criminal offences related to looting; dialectical – within the framework of investigating the theory and practice of contradictions related to the incorrect qualification of looting; comparative legal – in the context of analysing the positions of other scientists regarding the understanding of the essence of looting; formal logical – when defining the legal category "looting". It was established that the need for the correct application of the specified provision is conditioned upon such circumstances as the increase in the number of cases of looting that become known from open sources of information, which are not properly registered and not investigated by law enforcement officers, which is due to the lack of experience in working with criminal offences of such specificity and complexity of their registering in the occupied territories; the need to distinguish such crime as "looting" under Ukrainian legislation from cases of robbing civilians, their living quarters, vehicles, shops, and other infrastructure for profit and satisfying one's personal needs. The practical significance of this study lies in the fact that the main statements and conclusions can be used in methodological recommendations for the development of an algorithm for the investigation of criminal offences related to criminally illegal actions, prescribed by Article 432 of the Criminal Code of Ukraine, and are also valuable for the subjects of criminal justice in their activities to eliminate misunderstandings and different interpretations of the current legislation revealed by practice; considered when improving the legislation aimed at the prevention and fight against this type of crime, by making corresponding amendments

Keywords:
martial law; qualification; battlefield; military; war

Article's History:
Received: 08.03.2023
Revised: 19.05.2023
Accepted: 26.06.2023

Suggest Citation:
Kopotun, I., & Murzo, Ye. (2023). Criteria for distinguishing looting from other crimes: A comparative analysis. *Law Journal of the National Academy of Internal Affairs*, 13(2), 41-49. doi: 10.56215/naia-chasopis/2.2023.41.

*Corresponding author

Introduction

Since 2014, the topic of looting has gained special importance in the territory of Ukraine (International humanitarian law, 2022). The social danger of these actions began to increase substantially after the introduction of martial law. Since then, there has been an armed conflict, hostilities, and de facto war, and therefore law enforcement agencies encountered war crimes of this scale for the first time: in terms of number, mass, intensity, and characteristics. In this regard, the investigators have no experience working in conditions of war or state of emergency and with criminal offences of such specificity: there is a lack of advanced training, skills, and abilities to analyse and evaluate a considerable amount of various information.

War, war crimes, and the problem of understanding looting specifically became the subject of study by many researchers, among whom the following can be singled out.

O. Kaluzhna & K. Shunevych (2022) outlined the scope of war crimes, which are a type of international crimes, along with crimes against humanity and genocide, which Russia commits in Ukraine. In conclusion, the authors note the lack of systematization due to Ukraine's non-ratification of the Rome Statute, which significantly complicates the qualification of crimes for practicing lawyers. S. Hretsa *et al*. (2022) point to the problems of international humanitarian law caused by the loss of effectiveness of international legal regulation. The analysis of the organizational and administrative problems of the regulation of the law of war carried out in the work of the latter, proved that institutional guarantees in a military conflict also need revision.

The authors of the study investigating Russia's hybrid war in Ukraine, M. Baker *et al*. (2023), believe that looting is committed by the Russian military on the territory of Ukraine, reflecting Russian military policy, leadership, and command. O. Maltsev & I. Lopatiuk (2022), providing cases of looting, define as the subject of a criminal offence a soldier who steals something under certain circumstances.

Valuable for the subject of the study are interdisciplinary approaches to defining looting, which help clarify the essential meaning and moral dimension of looting, primarily by servicemembers of the Russian army, which they resort to en masse in temporarily occupied territories (Fil & Khoinatska 2022). The historical context of the specified issue is also important (Stiazhkina, 2022). Thus, researcher D. Hopkin (2002) mentions the emergence of looting as such in France, noting that while foreign soldiers were condemned for such actions, French soldiers were praised for their looting talent. Looting was depicted as part of a military re-education program wherein rural recruits were taught to despise their peasant origins and rob their compatriots. S. Orlyk (2022) describes the cases of looting, robbery, and banditry against the civilian population of Eastern Galicia and Northern Bukovina, which were committed during the Great War by Russian troops and the Russian civilian occupation authorities established in the interior areas, drawing attention to their massiveness, which caused the impoverishment and famine among the local population. Researcher A. Zborowska (2021) extensively describes the cases of looting that took place after the Second World War. The author claims that the looter's internal resistance is weaker than against ordinary theft. A noteworthy study by C. Gaherity & P. Birch (2021) examines looting in the context of two examples of natural disasters, namely a tsunami and a forest fire. These scholars determine that such cases promote and create opportunities for looting and consider preventive measures that may lead to a reduction in these crimes in the future.

A. Vozniuk (2022), stating the absence of court decisions under Article 432 of the Criminal Code of Ukraine (the CCU), explains this by such a circumstance as the active civil position of the citizens of Ukraine, who demonstratively detained persons who committed thefts, calling them "marauders". Ya.H. Lyzohub (2022) provides a comparative analysis of the signs of looting under Article 432 of the CCU with some criminal offences committed against property. The researcher singles out the features of the legal structure common to all socially dangerous acts of this type, as well as specific, inherent purely to looting, which proves the relevance of the subject under study in the current conditions. Moreover, considering all factual data of a person's actions is important for the qualification of specified illegal acts such as looting. In addition, numerous attempts by scientists to analyse the controversial aspects of the legislative regulation of the qualification of looting from the experience gained during the martial law in Ukraine are known in practice (Malysheva, 2022; Movchan, 2022; Koval & Samoilenko, 2023).

In general, the correct qualification of a criminal offence serves as a precondition for the implementation of the constitutional principle of legality, and therefore the punishment for the actions of the guilty person depends on it. Given the lack of judicial practice, namely the uniform understanding and application of the correct qualification of such facts by the courts, and the insufficient number of relevant scientific studies, the importance of looting in the legal field stays relevant. The purpose of this study was to conduct a general analysis of the structure of the criminal offence under Article 432 of the CCU, by comparing it with other related crimes, as well as establishing unity regarding the understanding and qualification of this offence.

The following methods of scientific cognition were used in this paper: the method of statistical research – to analyse the number of acts of criminal offences related to looting. The dialectical method was used to investigate the practice of contradictions related to the misqualification of looting. The comparative legal method was used to analyse the works of other researchers

regarding the interpretation of the cause and purpose of looting. The formal logical method determined the legal category of the term "looting".

Interpretation of looting in Ukraine and foreign countries

Looting in the Oxford Dictionary is defined as the theft of things from shops or buildings after a riot, fire, etc. (Oxford Advanced…, n.d.). According to Article 48 of the Australian Defence Force Discipline Act (1982) as amended in 2007 ("Looting")[1], a person who is a member of the armed forces or a civilian is guilty of an offence if while acting against the enemy or in the course of operations carried out by the Defence Forces to maintain law and order or otherwise in aid of public authorities, it: (a) takes away any property which has been left exposed or unprotected; or (b) takes any property from the body of a person who has been killed or who has been wounded or taken prisoner; or (c) seizes any vehicles, equipment or supplies captured or abandoned by the enemy. In Article 463 (chapter 2) of the California Penal Code[2], looting is defined as the use of an emergency to commit burglary, grand larceny or petit larceny.

Thanks to this, a significant public resonance is reflected in the media and official sources of state authorities, which highlight articles with headlines about the facts of the so-called "looting": by civilians, Russian soldiers who are on the territory of Ukraine, representatives of illegal armed formations that conduct hostilities on the side of the so-called "DPR" and "LPR", PMC (private military company) "Wagner", namely by stealing/seizing goods from shops, or personal property from private premises. From the above information, one can conclude that for the Russian military, war serves as a means of enrichment. Thus, they considered the so-called "special operation" to clear houses as a priority task during military operations.

The given information is confirmed by a considerable number of court decisions already passed by judges of Ukraine. The analysis of the mentioned court decisions helps single out the decision of the Pecherskyi District Court of Kyiv dated September 26, 2022 (case No. 757/26018/22-k, proceedings 1-кс-24420/22), wherein it was established that the servicemen of the Russian Federation violated the provisions of international treaties, the laws and customs of war and committed a criminal offence prescribed in Part 1 of Article 438 of the Criminal Code of Ukraine, acting for personal enrichment and realizing that there is an ongoing international armed conflict between the Russian Federation and Ukraine, independently, arbitrarily, and unhindered entered the territory of private home ownership, after which illegally took possession of someone else's personal property. Considering the above, the latter was aware that the specified items could not be used for military purposes, their seizure was not justified by military necessity, and their possession took place exclusively for lucrative purposes[3].

However, as of December 2022, according to the Unified report on criminal offences across the State of the Prosecutor General's Office, only one crime under Article 432 of the CCU has been registered[4] . The legal term in Ukrainian legislation refers to the crime specified under Article 432 of the CCU to Chapter XIX[5], which automatically assumes that the suspect/accused has military status. In the mentioned Article, the term "looting" is defined as "theft on the battlefield of things that are with the killed or wounded"[6].

At the same time, the analysis of the content of the mentioned concept allows asserting that the interpretation prescribed in Ukrainian legislation is narrower than that presented in international treaties, such as the Rome Statute and the Geneva Convention. Specifically, the Rome Statute defines looting as taking any property without the owner's consent for personal use. In Article 82 of this legal act[7], it is noted that "war crimes" are, among other things, large-scale destruction, and appropriation of property, not justified by military necessity, which is carried out illegally and without grounds. The Convention on the Laws and Customs of Land War[8] notes that private property is not subject to confiscation. This phenomenon in a city or area, even if it was carried by assault, is officially prohibited.

Investigating the composition of the criminal offence of looting under the CCU, the criteria for qualifying the criminal offence as looting were identified as follows: the time, circumstances of taking possession of someone else's property, and the clear localization of the crime scene; the subject of criminal encroachment; the person who committed this offence – a serviceperson (Murzo, 2022). In general, there are three guidelines for the correct qualification of this criminal offence:

[1]Law of Australia No. 152. "On Defence Force Discipline". (1982, December). Retrieved from https://www.legislation.gov.au/Details/C2016C00811.
[2]Penal Code of US "Chapter 2. Burglary". (1984). Retrieved from https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=463.&lawCode=PEN.
[3]Decision of the Pechersk District Court of Kyiv No. 757/26018/22-к. (2022, September). Retrieved from https://reyestr.court.gov.ua/Review/106536576.
[4]Order of General Prosecutor's Office of Ukraine No. 100 "On Registered Criminal Offenses and the Results of their Pre-Trial Investigation". (n.d.). Retrieved from https://data.gov.ua/dataset/5e034040-3b4a-4c11-86f4-2cf346a95423.
[5]Criminal Code of Ukraine No. 2341-III. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[6]Ibidem, 2001.
[7]Rome Statute of the International Criminal Court. (1998, November). Retrieved from https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf.
[8]IV Convention of the Verkhovna Rada of Ukraine No. 995_222 "On the Laws and Customs of War on Land and its Annex: Provisions on the Laws and Customs of War on Land". (1907, October). Retrieved from https://zakon.rada.gov.ua/laws/show/995_222#Text.

1) the main immediate object of looting is the combat glory of the Armed Forces of Ukraine and the honour of a serviceman, as well as the order of observing the customs and rules of war; an additional mandatory object is property (object of a criminal offence, quantity, value, belonging to the killed or injured person). An analogous position is highlighted in the studies of some scientists (Diachuk, 2005; Melnyk & Havroniuk, 2019);

2) the objective side, which consists of actions, namely, the theft of things that are with the killed or wounded; a mandatory sign of the composition is the time, the circumstances of taking possession of someone else's property, and the clear localization of the place of the crime;

3) a person who has committed a criminal offence is a military serviceperson. These criteria are listed in Table 1 below.

Table 1. Basic qualification issues and criteria for distinguishing looting from related criminal offences (in the Criminal Code of Ukraine)

		Article 185	Article 189	Article 191	Article 432
The structure of the criminal offence	**Object**	The main immediate object is ownership; *optional feature*: the subject of the criminal offence, the types and sizes of this thing – money, securities, precious stones, etc., the value of which exceeds 0.2 of the tax-free minimum income of citizens. The amount of theft of someone else's property is specified in the Note to the specified Article of the CCU. For instance, a criminal offence prescribed by Article 188-1 of the CCU ("Theft of water, electricity, or thermal energy through its arbitrary use"), since the subject of the crime must contain a physical (material) feature.	The main direct object is the right of ownership, and its additional mandatory objects are relations in the sphere of life safety, honour, dignity, mental and physical integrity of the person, personal freedom, health of the victim; *optional feature*: the subject of extortion as part of a criminal offence may not be related to things that are someone else's property, but to the right to property and the commission of property-related actions.	The generic object of the crime is social property relations. *optional feature*: the object is the property that was in the legal possession of the guilty party.	The immediate object of the crime is the military glory of the Armed Forces of Ukraine and the honour of a serviceperson, as well as the observance of the customs and rules of war. At the same time, property is an additional mandatory object of theft on the battlefield of things found with the killed and wounded; *optional feature*: the object (the minimum size of the theft of someone else's property is prescribed by Article 51 of the Code of Ukraine on Administrative Offences[1], and therefore, for the size of the object in Article 432 of the CCU, the size of the stolen item must exceed 0.2 of the non-taxable minimum income of citizens) and possessions that are stolen when killed or wounded[2].
	Objective side	Acts designated as "theft"[3] and positive material damage; *optional feature*: crime scene – the territory where a person lives or engages in a certain activity (building or structure, other premises, storage). Contrary to Article 432 of the CCU, seizure of someone else's property must be secret, while during looting the victim may be injured, i.e., still alive and aware, witness the fact of theft of their belongings.	An act designated as a "requirement to transfer" property, rights to property, and the performance of property-related actions. Mandatory sign is the method of extortion – threatening the victim (gesturing, verbally, displaying arms). And unlike Article 432 of the CCU, where the property is alienated immediately, under Article 189 of the CCU, the subject of the crime requires the transfer of property or the right to property or the performance of property-related actions in the future (in a day, a month, etc.).	An act referred to as "appropriation". Law-enforcing guideline: "appropriation of someone else's property… lies in the illegal transfer of someone else's property to one's own benefit or to the benefit of other persons…" (Item 23 of the Resolution dated November 6, 2009, No. 10[4]). The said Resolution does not specify the methods of such appropriation and possible forms that are not related to the illegal conversion of someone else's property	Acts related to the theft of things from a killed or injured person; optional feature: place, situation of theft of someone else's property – "on the battlefield". Demarcating the terms "theft" and "appropriation", one has two approaches: 1) narrow – theft in Article 432 of the CCU provides only the meaning inherent in this concept, which is also established in other norms of the CCU. That is, a narrowly normative illegal appropriation is not theft (an act that is designated only as "theft" in the CCU, and not by other terms); 2) broad, which provides that theft can also manifest itself in the appropriation of someone else's property, since appropriation is a concept the scope of which is greater than the scope of theft and assumes the presence of its illegal nature (violation of the norms of a certain act of legislation, committing in violation of the established order) and particular methods of its commission. That is, illegal appropriation can manifest itself in theft (theft has a more particular meaning).

[1]Code of Ukraine No. 8073-X "On Administrative Offenses". (1984, December). Retrieved from https://zakon.rada.gov.ua/laws/show/80732-10#Text.
[2]Resolution of the Supreme Court of Ukraine No. 10 "On Judicial Practice in Cases of Crimes Against Property". (2009, November). Retrieved from https://zakon.rada.gov.ua/laws/show/v0010700-09#Text.
[3]Code of Ukraine No. 8073-X "On Administrative Offenses". (1984, December). Retrieved from https://zakon.rada.gov.ua/laws/show/80732-10#Text.
[4]Resolution of the Supreme Court of Ukraine No. 10 "On Judicial Practice in Cases of Crimes Against Property". (2009, November). Retrieved from https://zakon.rada.gov.ua/laws/show/v0010700-09#Text.

Table 1, Continued

The structure of the criminal offence		**Article 185**	**Article 189**	**Article 191**	**Article 432**
	Subject	A legally capable individual who reached 14 years of age before the crime was committed	A legally capable individual who has reached the age of criminal responsibility (reduced age – 14 years).	A legally capable individual who has reached the age of criminal responsibility (general age – 16). Therewith, the subject of embezzlement can be both a private person and an official person, while the subject of appropriation of someone else's property by abuse of official position is only an official person	A legally capable individual who has reached the general age of criminal responsibility – 16 years; *optional feature*: special subject (official position – military serviceperson, listed in Article 401 of the CCU). A comparison of the signs of looting (Article 432 of the CCU) and "other violations" (Article 438 of the CCU) suggests that the legal content of the acts differs in that Article 438 of the CCO does not prescribe liability for violations of the laws and customs of armed conflicts of a non-international nature.
	Subjective side	The form of guilt is direct intent only; *optional feature*: lucrative motive and lucrative purpose (even though the legislators do not specify this in the disposition of the articles).	The form of guilt is direct intent; *optional feature*: lucrative motive and lucrative purpose.	The form of guilt is direct intent; *optional feature*: lucrative motive and lucrative purpose.	The form of guilt is direct intent (a person realizes that they are trespassing on someone else's property, secretly seizes property, foresees causing material damage in a certain amount and wants to cause such consequences and damage); *optional feature*: implies both a lucrative motive and its absence.

Notes: 1. Article 432 of the CCU does not specify the maximum size of the object, as, e.g., Item 4 of the Notes to Article 185 of the CCU (especially a large amount – of 600 or tax-free minimum incomes of citizens). Notably, the upper limit of the sanction in Article 432 of the CCU – 10 years of imprisonment, and in lucrative criminal offences against property – over 10 years. It is not possible to substantiate the totality of these criminal offences merely by the difference in sanctions – constructive differences in composition are needed. Such distinguishing features are the method of larceny, which in Article 432 of the CCU is not specified: secret theft of belongings during looting in particularly large quantities or by means of violence dangerous to life or health, during robbery (Article 187 of the CCU). Therefore, there are two options for qualification: exclusively per Article 432 of the CCU and for the totality of the crimes committed. Reasons: a different upper limit of sanctions, a particular method of committing larceny, which is not mentioned in Article 432 of the CCU, but is a sign of another, more grave criminal offence
Source: developed by the author of this study based on the provisions of the Criminal Code of Ukraine and scientific papers by A. Vozniuk (2016), V. Tatsii *et al*. (2013)

The debatable position is an optional feature of the subjective side of looting – the motive. A differentiated approach is proposed regarding the interpretation of the subjective side of looting, which must always have selfish motives (i.e., the purpose is to take possession of valuable things) and a direct intent (Siabrenko & Tatarinova, 2022), but Ya. Lyzohub (2022) believes that looting can be characterized not only by a lucrative motive. Such illegal acts may be connected, e.g., with the desire to replenish the collection of "trophies" obtained after defeating the enemy as evidence of victims killed by their own hands, or certain paraphernalia or objects of the victim (elements of their uniform, chevrons, badges, awards, etc.). Moreover, the purpose may lie in the desire to prove to oneself or third parties, e.g., one's physical presence on the battlefield, in replenishing the existing collection of the relevant type of objects, which eliminates the lucrative nature and the related intention of criminal actions.

Analysing theft in this context, it takes place in special conditions, i.e., on the battlefield. This refers to a certain spatial area wherein combat actions take place (it can be a wider area than the actual conduct of the battle) and in which, accordingly, a certain item is located. Thus, in case of theft of personal belongings of a pilot whose plane was shot down, the place of its crash will be considered a battlefield within the meaning of Article 432 of the CCU, even though no hostilities were conducted there.

Scientists V. Tatsii *et al*. (2013), citing the example of the theft of things from a medical train, draw attention to the fact that the theft of items outside the boundaries of the battlefield creates a component of a general criminal offence – theft, robbery, etc. Thus, the phrase "when killed or wounded" denotes a place, object, or space near which something is placed; the person near whom the object is located; or a subject that contains a certain component. The subject of looting is certain things,

i.e., objects of the material world, regarding which civil rights and obligations[1] may arise and which are related to the provision of the sphere of a person's personal life (legal features) at the time of the person's stay on the battlefield (factual feature).

Thus, according to Article 6 of the CCU, all individuals, regardless of citizenship, who have committed crimes on the territory of Ukraine, shall be subject to the responsibility prescribed by the current CCU (according to the principle of territoriality), since looting is considered a crime not only at the level of national legislation, but is also recognized by international law as a military crime of an international nature. In the case of committing actions defined by the content of the norm as looting, the civilian population, the Russian military, representatives of private military companies or illegal armed formations supported by them must bear responsibility under Article 438 of the CCU. After all, relying on Article 401 of the CCU, the specified individuals are not subjects of the crime prescribed by Article 432 of the CCU.

Considering the implementation of martial law in Ukraine, the current legislation required some changes and amendments, and therefore the legislator amended the sanction of Article 432 of the CCU, increasing the punishment in the form of imprisonment for a term of 5 to 10 years[2]. While there is no punishment for looting in the Criminal Code of the Russian Federation, depending on the circumstances, it is treated as other crimes against property. In Australia, the maximum penalty for committing looting is 5 years of imprisonment[3], while in the state of California, looting can be both a misdemeanour and a felony and is punishable by up to 3 years of imprisonment[4].

Special subject of looting

Researcher A.V. Gavrylenko (2022) states that problems of looting are common in that the subject of this criminal offence is special. Given that it is a war crime, it can be committed by individuals taking part in hostilities. In general, a special subject (per Article 401 of the CCU) is primarily as follows:

- servicepeople of the relevant military formations. Ukrainian legislation stipulates that a military formation is "a created set of military associations, large and small units, and their management bodies, which are staffed by military personnel and are intended for the defence of Ukraine, the protection of its sovereignty, state independence and national interests, territorial integrity and inviolability in the event of armed aggression, armed conflict, or threat of attack by direct military (combat) actions"[5]. Therefore, if when defining the legal regime of a formation, its military nature is indicated, then it is military. For instance, when defining in Item 2 Part 1 of Article 1 of the Law of Ukraine "On the Fundamentals of National Resistance"[6] dated July 16, 2021, the concept of the voluntary formation of a territorial community is "a paramilitary unit formed on a voluntary basis from citizens of Ukraine living within the territory of the relevant territorial community, which is intended to take part in the preparation and implementation of tasks of territorial defence". However, when defining the territorial defence in Item 16 Part 1 of Article 1, its military nature is not mandatory;
- servicepeople in special services that are not military formations: servicepeople of the State Special Service of Transport, the State Service of Special Communication and Information Protection of Ukraine, the Security Service, the Foreign Intelligence Service, the State Border Service, the State Security Office, the National Guard;
- other individuals defined by law (i.e., subjects who are not military personnel, but are endowed with certain duties related to the performance of military service by the grounds defined by law). In other words, these are persons who, by the law, have a military duty associated with military service. Note that military duty and military service are associated with military servicepeople and people subject to conscription: military servicepeople are individuals undergoing military service, while people subject to conscription are those who are in the reserve for manning the Armed Forces of Ukraine and other military formations on a special period, as well as for the implementation of works to ensure the defence of the state[7].

Ultimately, there are specific features of the qualification of crimes that have signs of looting, committed by employees of the National Police of Ukraine (such as the unit "United Assault Brigade of the National Police of Ukraine "Liut", which was created based on Resolution No. 30 on the formation as a legal entity of public law interregional territorial body of the National Police for the execution of the mandate of the President of

[1]Civil Code of Ukraine No. 435-IV. (2003, January). Retrieved from https://zakon.rada.gov.ua/laws/show/435-15#Text.
[2]Law of Ukraine No. 2117-IX "On Amendments to the Criminal Code of Ukraine Regarding Increased Liability for Looting". (2022, March). Retrieved from https://zakon.rada.gov.ua/laws/show/2117-20#Text.
[3]Order of General Prosecutor's Office of Ukraine No. 100 "On Registered Criminal Offenses and the Results of their Pre-Trial Investigation". (n.d.). Retrieved from https://data.gov.ua/dataset/5e034040-3b4a-4c11-86f4-2cf346a95423.
[4]Criminal Code of Ukraine No. 2341-III. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[5]Law of Ukraine No. 1932-XII "On the Defense of Ukraine". (1991, December). Retrieved from https://zakon.rada.gov.ua/laws/show/1932-12#Text.
[6]Law of Ukraine No. 1702-IX "On the Foundations of National Resistance". (2021, July). Retrieved from https://zakon.rada.gov.ua/laws/show/1702-20#Text.
[7]Law of Ukraine No. 2232-XII "On Military Duty and Military Service". (1992, March). Retrieved from https://zakon.rada.gov.ua/laws/show/2232-12#Text.

Ukraine, January 13, 2023 by the Cabinet of Ministers of Ukraine), which are directly involved in the performance of urgent tasks during military (combat) operations. The National Police of Ukraine (NPU) performs the same functions as military personnel (implementation of counter-sabotage measures, destruction of military equipment and enemy manpower, mortar calculations, conducting shock-assault and shock-search activities, conducting aerial reconnaissance and fire damage to the enemy on the territory of occupied settlements, etc.), but are not conscripted under Item 6 of Article 59 of the Law of Ukraine "On the National Police"[1], which makes provision for the removal from military registration of conscripted police officers.

Furthermore, people subject to conscription may be assigned military duty and perform military service on the relevant grounds specified in the Law of Ukraine "On Military Duty and Military Service", namely: for the duration of assemblies (educational and special, i.e., undergo appropriate training). Therefore, they are subjects of looting only when these assemblies are held. That is, they can, due to certain reasons, be on the battlefield next to the killed and wounded.

Part 6 of Article 1 of this Law enshrines the provision according to which foreigners and stateless persons cannot be conscripted. At the same time, the specified Law states that in cases prescribed by law, foreigners and stateless persons who are legally present on the territory of Ukraine may voluntarily (under contract) undergo military service in the Armed Forces of Ukraine. Furthermore, Part 9 of Article 1 of this Law notes as follows: foreigners and stateless persons who, according to the law, undergo military service in the Armed Forces of Ukraine (AFU) are equated to the category of military personnel.

Thus, military personnel can be foreigners and stateless persons, since their status is equated to military personnel when they undergo military service in the AFU, and therefore can be the subject of looting, prescribed by Article 432 of the CCU. For instance, this refers to the Sheikh Mansur Chechen Peacekeeping Battalion, the Georgian National Legion, and the Legion "Freedom of Russia".

Conclusions

According to the results of this study, the definitions of looting in Ukraine and other foreign countries were given, and the main theoretical, legal, and practical aspects of this criminal offence were described and analysed. Looting has both common and distinctive features with criminal offences against property. However, they retain their separate criminal law meaning, which requires a careful approach to all factual data so that those who committed a criminal offence are held accountable to the extent of their guilt.

In general, analysing the structure of the composition of the criminal offence under Article 432 of the Criminal Code of Ukraine by comparing it with other crimes, it can be stated that looting differs from related criminal offences by the object, the objective part, and the subject. It was emphasized that the special subjects of looting are not any military servicepeople and individuals equal to them, as well as other individuals defined by law, but only those of them who are endowed with certain duties related to the performance of military service by the grounds specified in the law, and these duties are directly related to the presence of these individuals on the battlefield and next to the wounded and killed persons. For individuals specified in Part 2 of Article 410 of the Criminal Code of Ukraine, which commit looting – Article 432 of the Criminal Code of Ukraine, and for other individuals not named in Part 2 of Article 410 of the Criminal Code of Ukraine – Article 438 of the Criminal Code of Ukraine.

To overcome the identified issues of formulating a unified practice of interpretation and qualification of looting under the Criminal Code of Ukraine, it is necessary to increase public awareness and correct criminal assessment of this phenomenon, both in society and among lawyers.

The significance of the research results for modern law enforcement practice lies in the fact that the prospects for further research on the chosen topic are the development of innovative methods for the detection and investigation of looting based on the study of the profile of criminals, the psychology of behaviour and socio-economic conditions that contribute to this type of crime, as well as the analysis of the experience of countries with a prominent level of human rights protection and using these practices to improve the law and practice of criminal prosecutions regarding looting.

Acknowledgements

None.

Conflict of Interest

None.

References

[1] Baker, M., Baker, J., Burkle, F., & Frederick, M. (2023). Russia's hybrid warfare in Ukraine threatens both healthcare & health protections provided by international law. *Annals of Global Health*, 89(1), 1-6. doi: 10.5334/aogh.4022.

[2] Diachuk, S.I. (2005). Crimes against the established order of military service (military crimes). In V.H. Honcharenko & P.P. Andrushko (Eds.), *Scientific and practical commentary to the Criminal Code of Ukraine* (p. 542). Kyiv: FORUM.

[1]Law of Ukraine No. 580-VIII "On the National Police". (2015, July). Retrieved from https://zakon.rada.gov.ua/laws/show/580-19#Text.

[3] Fil, O., & Khoinatska, L. (2022). Looting as a way of waging war by the russian federation against Ukraine and a motivational factor of russian servicemen. *Ukrainian Historical Journal,* 4, 129-138. doi: 10.15407/uhj2022.04.129.
[4] Gaherity, C., & Birch, P. (2021). A criminologically informed examination of looting behaviour during natural disaster incidents. *Safer Communities*, 21(1), 19-30. doi: 10.1108/SC-05-2021-0017.
[5] Gavrylenko, A.V. (2022). Current problems of conduct of pre-trial investigation under the conditions of martial state. In *Problems of qualification and criminal investigations offenses under the conditions of the state of martial: Materials scientific and theoretical conference* (pp. 305-308). Kyiv: NAIA.
[6] Hopkin, D.M. (2002). Military marauders in nineteenth-century french popular culture. *War in History*, 9(3), 251-278. doi: 10.1191/0968344502wh254oa.
[7] Hretsa, S., Tykhomyrov, D., Olashyn, M., Rudanetska, O., & Bogoniuk, H. (2022). Transformation of the legal system in a time of war: International, administrative, and criminal aspects. *Cuestiones Politicas*, 40(75), 879-900. doi: 10.46398/cuestpol.4075.53.
[8] International humanitarian law. (2022). Retrieved from https://sprotyvg7.com.ua/lesson/mizhnarodne-gumanitarne-pravo.
[9] Kaluzhna, O., & Shunevych, K. (2022). Liability mechanisms for war crimes committed as a result of russia's invasion of Ukraine in february 2022: Types, chronicle of the first steps, and problems. *Access to Justice in Eastern Europe*, 3, 178-193. doi: 10.33327/AJEE-18-5.2-n000324.
[10] Koval, A.A., & Samoilenko, M.S. (2023). Amendments to the Criminal Code in the conditions of martial law: Debatable issues. *Kyiv Journal of Law*, 4, 138-143. doi: 10.32782/klj/2022.4.21.
[11] Lyzohub, Ya. (2022). Looting: Questions of qualification and differentiation against the background of some criminal offenses against property. *Bulletin of Kharkiv National University of Internal Affairs,* 3, 160-168. doi: 10.32631/v.2022.3.15.
[12] Maltsev, O., & Lopatiuk, I. (2022). War crimes: Their nature and parameters. *American Behavioral Scientist*, 67(3), 358-370. doi: 10.1177/00027642221145029.
[13] Malysheva, M.V. (2022). Legal analysis of certain military criminal offenses committed during martial law in Ukraine. In *The European choice of Ukraine, the development of science and national security in the realities of large-scale military aggression and global challenges of the 21st century: Materials of the International scientific-practical conference* (pp. 331-333). Odesa: Helvetica.
[14] Melnyk, M.I., & Havroniuk, M.I. (2019). *Scientific and practical commentary on the Criminal Code of Ukraine*. Kyiv: Dakor.
[15] Movchan, R.O. (2022). Analysis of the legislative decision on increasing criminal liability for looting. *Analytical and Comparative Jurisprudence*, 1, 281-285. doi: 10.24144/2788-6018.2022.01.52.
[16] Murzo, E.O. (2022). Looting: Concepts and features in the conditions of martial law. Criminal justice: Human rights during the state of emergency or war. In *Materials of the international scientific and practical conference*. (pp. 218-220). Kyiv: NAIA.
[17] Orlyk, S. (2022). Marauding, plundering and brigandage of russian occupation forces in Eastern Halychyna and Northern Bukovyna during the World War I. *Ukrainian Historical Journal*, 2, 4-16. doi: 10.15407/uhj2022.02.004.
[18] Oxford advanced learner's dictionary. (n.d.). Retrieved from https://www.oxfordlearnersdictionaries.com/definition/english/looting?q=looting.
[19] Siabrenko, V.V., & Tatarinova, A.V. (2022). Looting. Key aspects of the legal nature of the concept and qualification as a criminal offense. *Legal Scientific Electronic Journal*, 10, 590-592. doi: 10.32782/2524-0374/2022-10/148.
[20] Stiazhkina, O. (2022). "Red thieves" of the Second World War: Origins, practices and consequences of looting by soviet servicemen. *Ukrainian Historical Journals*, 3, 14-29. doi: 10.15407/10.15407/uhj2022.03.014.
[21] Tatsii, V.Ya., Pshonka, V.P., Borysov, V.I., & Tiutiuhin, V.I. (2013). *Criminal Code of Ukraine: Scientific and practical commentary* (5nd ed.). Kharkiv: Pravo.
[22] Vozniuk, A.A. (2016). *Criminal law of Ukraine. General part: Lecture notes*. Kyiv: NAIA; Education of Ukraine.
[23] Vozniuk, A.A. (2022). Military and state of emergency as circumstances affecting the qualification of a criminal offense or the imposition of punishment. *Legal Scientific Electronic Journal*, 6, 308-316. doi: 10.32782/2524-0374/2022-6/69.
[24] Zborowska, A. (2021). "Abandoned" things: Looting german property in post-war poland. *History and Anthropology.* doi: 10.1080/02757206.2021.1958805.

Критерії відмежування мародерства від інших злочинів: порівняльний аналіз

Ігор Копотун
Доктор юридичних наук, професор
Академія ГУСПОЛ
68604, вул. Освобозені, 699, м. Куновице, Чеська Республіка
https://orcid.org/0000-0002-2947-8599

Євгенія Мурзо
Ад'юнкт
Національна академія внутрішніх справ
03035, пл. Солом'янська, 1, м. Київ, Україна
https://orcid.org/0009-0000-4409-0560

Анотація
З початком російсько-української війни дедалі частіше злочини загальнокримінальної спрямованості підміняють ст. 432 Кримінального кодексу України, де склади злочинів зовсім різні. Метою дослідження є комплексний аналіз структури складу кримінального правопорушення – мародерства шляхом зіставлення його з іншими злочинами, а також формулювання єдиної практики розуміння та кваліфікації в аспекті предмета дослідження. Відповідно до мети використано комплекс наукових методів, зокрема загальнонаукові й спеціальні: метод статистичних досліджень – для аналізу та порівняння динаміки вчинення кримінальних правопорушень, пов'язаних з мародерством; діалектичний – у межах вивчення теорії та практики суперечностей, що пов'язані з неправильною кваліфікацією мародерства; порівняльно-правовий – у контексті аналізу позицій інших науковців стосовно розуміння сутності мародерства; формально-логічний – під час визначення правової категорії «мародерство». Встановлено, що необхідність правильного застосування вказаного положення обумовлена такими обставинами, як збільшення кількості випадків мародерства, що стають відомі з відкритих джерел інформації, які належним чином не реєструються та не розслідуються працівниками правоохоронних органів, що обумовлено відсутністю досвіду роботи з кримінальними правопорушеннями такої специфіки та складністю їх фіксації на окупованих територіях; потреба у відмежуванні злочину «мародерство» за українським законодавством від випадків обкрадання цивільного населення, їх житлових приміщень, транспортних засобів, магазинів та іншої інфраструктури з метою наживи й задоволення своїх потреб. Практична значущість полягає в тому, що основні твердження та висновки можуть бути використані в методичних рекомендаціях з розроблення алгоритму розслідування кримінальних правопорушень, пов'язаних з кримінально протиправними діями, передбаченими ст. 432 Кримінального кодексу України, а також є цінними для суб'єктів кримінальної юстиції у своїй діяльності задля усунення виявлених практикою непорозумінь і різночитання чинного законодавства; враховані під час удосконалення законодавства, спрямованого на превенцію та боротьбу з цим видом злочину, шляхом внесення змін

Ключові слова:
воєнний стан; кваліфікація; поле бою; військовослужбовці; війна

UDC 343.98
DOI: 10.56215/naia-chasopis/2.2023.50

Organization of forensic examinations in criminal proceedings as a condition for the effectiveness of the investigation of criminal offences

Yuliia Chornous*
Doctor of Law, Professor
National Academy of Internal Affairs
03035, 1 Solomianska Sq., Kyiv, Ukraine
https://orcid.org/0000-0001-9710-4858

Tetiana Leliuk
Doctor of Philosophy in Law
National Academy of Internal Affairs
03035, 1 Solomianska Sq., Kyiv, Ukraine
https://orcid.org/0000-0002-6085-1638

Abstract
In the science of criminology and the activity of investigating criminal offences, organizational activity is of immense importance. One of the forms of its implementation is forensic examinations, and its improvement directly affects the achievement of the objectives of criminal proceedings. The purpose of this study was to highlight organizational activities related to conducting forensic examinations as a means of ensuring effective pre-trial investigation and trial in every criminal proceeding. To fulfil the set purpose, general scientific and special methods were used to investigate the object and subject of research: analysis, synthesis, deduction, induction, analogy; special-legal methods: comparative-legal, historical-legal, system-structural, method of system analysis. Based on the analysis of the provisions of regulations and scientific, educational, and methodological material, it was established that the organization of forensic examination in criminal proceedings encompasses the system of organizational and administrative actions of authorized subjects and lies in ensuring the proper, timely, and objective appointment and conduct of forensic examinations, as well as obtaining an expert opinion, which is required to achieve the objectives of criminal proceedings. The main stages of the organization of forensic examinations in criminal proceedings were identified and characterized. The subjects of the activity under study were classified, specifically according to the nature of the implementation of organizational actions. It was found that a prominent place among the subjects of the considered activity belongs to the investigator as the subject of initiation of forensic examinations. It is the investigator who collects and analyses materials when conducting a pre-trial investigation, decides which circumstances of the criminal proceedings need to be verified by conducting an expert examination, and evaluates the expert's opinion. The provisions given in this paper can be used in the practical activities of individual forensic experts and forensic divisions and institutions; entities authorized to carry out pretrial investigation of criminal offences

Keywords:
forensic expert; investigator; prosecutor; expert research; evidence; legislation; expert opinion; international cooperation; martial law

Article's History:
Received: 13.03.2023
Revised: 05.06.2023
Accepted: 26.06.2023

Suggest Citation:
Chornous, Yu., & Leliuk, T. (2023). Organization of forensic examinations in criminal proceedings as a condition for the effectiveness of the investigation of criminal offences. *Law Journal of the National Academy of Internal Affairs*, 13(2), 50-62. doi: 10.56215/naia-chasopis/2.2023.50.

*Corresponding author

Introduction

The investigation of criminal offences under modern conditions, with the rapid development of science and technology, requires the use of special knowledge in various forms, the main of which is the conduct of forensic examinations. An important condition for the effective investigation of criminal offences is its forensic support, one of the components of which is expert forensic support.

Increasing the effectiveness of forensic expert activity depends on the state of its organization, compliance with the modern needs of the practice of fighting crime and scientific and technical achievements designed to meet these needs. The system of such an organization in its concrete expression is governed by legislation and departmental regulations. It is important that under the current conditions of countering the armed aggression of the Russian Federation, the commission of war crimes by the occupiers against the citizens of Ukraine, law enforcement agencies have faced questions related to the need to investigate such criminal actions, an integral component of which is the mandatory expert research.

The assigned tasks should be solved because the investigation of criminal offences should take place factoring in the new achievements of science and the best practices of law enforcement both in Ukraine and in democratic countries of the world. One of the factors that determines the need to research ways to improve the effectiveness of the investigation of criminal offences is related to the search for optimal forms of investigation organization, ways and means of solving its forensic tasks. Considering this, an indispensable condition for the effectiveness of the investigation of criminal offences is the implementation of forensic expert activities, and specifically relates to the organization of forensic examinations in criminal proceedings.

As noted by V.Yu. Shepitko & M.V. Shepitko (2021), the application of forensic science and examination is a necessary prerequisite for the investigation of crimes at the local and national levels. In the context of the investigation of certain types of criminal offences, A.S. Bali *et al*. (2020) and V.Y. Tatsiy *et al*. (2019) investigated the organization of trials.

H.S. Bidniak (2019) studied the organizational and preparatory measures of conducting an examination during the investigation of certain criminal offences. L.M. Holovchenko (2013) offers well-elaborated scientific opinions related to the assessment of the forensic expert's opinion. The scientific papers of N. Klymenko (2019) highlight the issues related to determining the place of the general theory of forensic examination in forensic science and form the theoretical framework of the study. Scientific articles of O.M. Kliuiev (2018) refer to the organization of international cooperation during forensic examinations.

The specified studies contain conceptual principles related to the organization of forensic expert activity and are definitely the basis for further scientific research on the specified issues. Therewith, the organization of forensic examination in criminal proceedings should be considered as a component of the investigation of criminal offences, the essence of which is the system of organizational and administrative actions of authorized subjects, to ensure the achievement of the objectives of criminal proceedings. Considering the constant changes taking place in science and technology, the development of innovative technologies, it is important to update the theoretical and practical basis of the science of forensics. Specifically, this applies to the search for new ways to improve the organizational activity of the investigator, as a subject authorized to appoint expert research in criminal proceedings, its evaluation, and use when proving the circumstances of a criminal offence.

The relevance of the study of the outlined issues is also substantiated by the current state of the fight against crime, which in the light of today's events has reached a new international level. To effectively investigate new types and forms of criminal offences, a powerful basis is necessary, which will include basic recommendations regarding the organization of the activities of the relevant subjects, which also concerns the organization of forensic examinations in criminal proceedings.

The purpose of this paper was to highlight the organization of forensic examinations in criminal proceedings as a condition for ensuring the effectiveness of the investigation of criminal offences. The scientific originality lies in the formation of practical recommendations for increasing the effectiveness of organizational activities when appointing and conducting forensic examinations, as a means of ensuring an effective pretrial investigation and trial in every criminal proceeding.

Literature Review

From the standpoint of the scientist N. Klymenko (2019), the science of forensics is based on scientifically sound and proven means, techniques, and methods of crime detection, investigation and trial of criminal cases, which serve as a tool for the work of investigators, detectives, experts, judges, etc.

When investigating the organizational foundations of conducting forensic examinations in criminal proceedings, it is necessary to analyse the scientific concepts related to the definition of the essence and significance of forensic examination in the activity of investigating criminal offences. An integral component of the investigation of criminal offences is the use of special knowledge to solve issues that require the use of scientific, technical, or other special knowledge that transcends the professional activity of the investigator. Therewith, the coverage of the subject of research is impossible without the investigation of scientific literature, which relates to the study of the organizational foundations of forensic expert activity, as a prerequisite for ensuring

the investigation of criminal offences and achieving the objectives of criminal proceedings.

Thus, L.M. Holovchenko (2013) explored the concept of forensic expert activity in Ukraine, as well as promising areas for its improvement. The scientist connects forensic expert activity with activities in the field of public administration and scientific and methodological support in the field of forensic examination, which includes the organization and conduct of forensic examinations, carried out for proper administration of justice through independent, objective expert research by qualified experts.

However, in the context of the study, the institution of "forensic expert activity" is quite broad in content, and covers the organizational, legal, methodological, technical principles of forensic expert justice, which provides all forms of judicial proceedings in Ukraine. However, the subject of this study is narrower, and the authors consider it expedient to analyse the organizational aspects of forensic examination in criminal proceedings.

In this regard, attention should be paid to select papers by N.M. Tkachenko (2016), wherein she investigated the term "expert support for criminal proceedings". Tkachenko notes that the following types of support are used in relation to criminal proceedings: organizational, personnel, logistical, financial, informational, forensic, expert, etc. The authors of this paper can agree with Tkachenko's opinion regarding the statement that expert support of criminal proceedings is a component of expert delivery of justice, as it is widely used in all forms of judicial proceedings in Ukraine, including criminal ones. Based on the results of research conducted by N.M. Tkachenko (2016), it is worth emphasizing the organizational component of forensic examinations, as a component of the investigation of criminal offences.

Forensic examination itself can be considered as a procedural, investigative activity, which aims to conduct an expert study of objects or processes to establish the circumstances of criminal proceedings, on behalf of competent subjects, the results of which are reflected in a procedural document that constitutes a source of evidence – an expert's opinion. The activity of preparation for expert research materials is important, which includes a system of procedural actions, organizational measures, technical actions, tactical techniques, aimed at collecting, verifying, evaluating, processing, and providing the appropriate subject with materials for expert research.

Some authors, among the types of forensic support of criminal proceedings, single out technical forensic and expert forensic support. Therewith, they share a common purpose, which is to ensure the activity of investigating criminal offences at the stages of pre-trial investigation and trial, and should be carried out using scientifically sound means, methods, and techniques, as well as forensic recommendations for their practical application (Chornous, 2014).

However, analysing the specified opinion, it should be noted that the organization of forensic examinations in criminal proceedings encompasses a much wider spectrum, which includes both the management component of the specified activity and its tactical principles. Despite the scientific interest and numerous scientific studies on forensic expert activity, the problems of the organization of forensic examinations in criminal proceedings as a condition for ensuring the effectiveness of the investigation of criminal offences are not exhausted and have not been adequately reflected in modern scientific papers.

Materials and Methods

During the preparation of the present paper, a comprehensive analysis of the scientific studies of foreign and Ukrainian authors, who directly or indirectly investigated issues related to the organization of forensic examinations in criminal proceedings, was conducted. In this study, both general scientific and special methods, which are means of scientific research, were used to thoroughly examine the organizational activity of the forensic investigator. Thus, the dialectical method helped research the significance of the organization of forensic examinations in criminal proceedings as a component of the investigation of criminal offences.

Methods of synthesis and analysis were used to formulate the conclusions of this scientific paper. Using methods of comparison, description, and classification, the opinions expressed in science regarding the identification of the main stages of the organization of forensic examinations were systematized.

Among the special methods, the comparative legal method, historical-legal method, system analysis method, system-structural method, dogmatic method, axiomatic method, and forecasting method were used to cover the subject under study comprehensively. The comparative legal method was used to analyse the norms of material and procedural law, scientific categories, definitions, and approaches. Using the historical-legal method, the meaning of the terms "forensic examination", "expert support", "organization of forensic examinations" was revealed, and the development of scientific opinions on certain issues of the subject under study were highlighted.

Using the system analysis method, as well as the system-structural method, the subjects of organizational activity for conducting forensic examinations in criminal proceedings were identified and systematized. To form scientific concepts and categories, namely, clarify the terminology of forensic science in relation to the definition of the term "organization of forensic examinations in criminal proceedings", the dogmatic method of scientific research was used. The axiomatic method was used to construct the typical features of each stage of the organization of forensic examinations, according to the general rules of logic. To formulate proposals for

improving the activities of the investigator in the organization of forensic examinations in criminal proceedings, the forecasting method was used.

Results and Discussion

Both pre-trial investigation bodies and other authorized entities, which are not directly subordinated to each other, take part in the investigation of criminal offences, but their activities must be coordinated and effective. Therewith, an important condition for the detection, investigation, and solving of criminal offences is the proper organization of the interaction of these bodies (Oderii & Shulha, 2011).

The complex organizational system, represented by such entities as the investigator (inquiry officer, detective), the prosecutor, also includes the entities that perform the task of expert forensic support for the investigation of criminal offences, and directly – the conduct of a forensic examination. Therefore, the organization of forensic examination during the investigation of criminal offences can be interpreted as a system of organizational and administrative actions of authorized subjects, which lies in ensuring the proper, timely, and objective appointment and conduct of forensic examinations, as well as obtaining an expert opinion, which is sought to achieve the objectives of criminal proceedings.

The legal basis for the organization of forensic examination in criminal proceedings is as follows: the Constitution of Ukraine[1], the Criminal Procedural Code of Ukraine (hereinafter – the CPCU)[2], the Law of Ukraine "On Forensic Examination"[3], the Instruction on the Appointment and Conduct of Forensic Examinations and Expert Research (hereinafter – the Instruction) and Scientific and Methodological Recommendations on the Preparation and Appointment of Forensic Examinations and Expert Research, approved by the Order of the Ministry of Justice of Ukraine No. 53/5 dated October 8, 1998[4].

Activities related to the organization of forensic examinations are entrusted to the prosecutor, investigator, inquirer, detective, and to the heads of relevant expert institutions, as well as to individual experts. In the context of the study, namely from the standpoint of the analysis of the organizational foundations of conducting forensic examinations, as a component of the activity of investigating criminal offences.

According to the analysis of the norms of the CPCU[5], the Law of Ukraine "On Forensic Expertise"[6], as well as the reference literature, the subjects of the organization of forensic examination in investigating criminal offences should be distinguished, namely by the nature of organizational actions:

- entities entitled to initiate forensic examinations, to involve individual experts: an investigating judge or court, a prosecutor, an investigator, an inquiry officer, a defence attorney, and other parties to criminal proceedings;
- entities that, pursuant to the Law of Ukraine "On Forensic Expertise", are authorized to conduct forensic expert investigations: state specialized institutions, their territorial branches, expert institutions of a communal form of ownership, as well as forensic experts who are not employees of the specified institutions, and other specialists (experts) from relevant fields of knowledge according to the procedure and under the conditions determined by legislation;
- entities entrusted with scientific-methodical and organizational-management support of forensic expert activities: the Cabinet of Ministers of Ukraine, the Ministry of Justice of Ukraine, the Department of Expert Justice Support, the Coordinating Council for Forensic Expertise Issues, etc.

Let us consider the organizational principles of forensic expert activity using evidence from the Expert Service of the Ministry of Internal Affairs (hereinafter – the MIA) of Ukraine. Based on the analysis of legal acts that determine the principal areas of development of forensic expert activity in Ukraine, namely the Strategy for the Development of the Expert Service of the Ministry of Internal Affairs of Ukraine for the period until 2020, approved by the Order of the Ministry of Internal Affairs of Ukraine No. 229 dated 15.03.2017[7] (hereinafter – the Strategy), it is necessary to single out issues related to the improvement of the organization of forensic examinations in criminal proceedings. Specifically, the need to establish cooperation between bodies and organizations in the field of forensic expert activity; training of highly qualified specialists in the latest areas of forensic examination and expert research; increasing the level of training of persons who appoint forensic examinations and evaluate conclusions based on the results of forensic examination, namely the prosecution;

[1]Constitution of Ukraine No. 254к/96-VR. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80/conv#Text.
[2]Criminal Procedural Code of Ukraine No. 4651-VI. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[3]Law of Ukraine No. 4038-XII "On Forensic Examination". (1994, February). Retrieved from https://zakon.rada.gov.ua/laws/show/4038-12/conv#n38.
[4]Order of the Ministry of Justice of Ukraine No. 53/5 "On the Approval of the Instructions on the Appointment and Conduct of Forensic Examinations and Expert Studies and Scientific and Methodological Recommendations on the Preparation and Appointment of Forensic Examinations and Expert Studies". (1998, October). Retrieved from https://zakononline.com.ua/documents/show/192273___192338.
[5]Criminal Procedural Code of Ukraine No. 4651-VI. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[6]Law of Ukraine No. 4038-XII "On Forensic Examination". (1994, February). Retrieved from https://zakon.rada.gov.ua/laws/show/4038-12/conv#n38.
[7]Order of the Ministry of Internal Affairs of Ukraine dated No. 229 "On the Approval of the Development Strategy of the Expert Service of the Ministry of Internal Affairs of Ukraine for the Period Until 2020 and the Plan of Measures for Its Implementation". (2017, March). Retrieved from https://zakon.rada.gov.ua/laws/show/z0022-21#Text.

ensuring compliance with the deadlines for conducting forensic examinations; the need to expand international cooperation.

The tasks defined in the Strategy are still partially unresolved, namely, the mechanism of interaction between the entities that initiate forensic examinations and the entities that directly conduct them is not fully established. This also includes issues related to the excessive workload of expert institutions and individual experts, which, in turn, leads to missing the deadlines for conducting examinations, unintentionally prolonging the pre-trial investigation of criminal proceedings, and obtaining low-quality expert opinions. This requires improvement of the organizational aspects of forensic examinations in criminal proceedings.

Furthermore, the entire investigation of criminal offences is characterized by phasing. For instance, in criminology, during the formation of recommendations within the framework of individual methods of investigation, a situational approach is most often used, considering the division of the investigation procedure into certain stages (staged investigation) (Korniev, 2021).

Therewith, legal science has developed two positions related to the division of the activity of investigating criminal offences into separate stages. According to the opinions of the first group of authors, the investigation of criminal offences should be divided into two stages: initial and subsequent (Shevchuk, 2013; Prokopenko, 2023). Instead, other opinions substantiate the selection of three stages of the investigation: initial; the next (subsequent) stage; final stage (Kohutych, 2013).

Within the framework of the investigation of certain types of criminal offences, as an example, the following stages of forensic examinations are defined, which are carried out when protecting human rights in the field of healthcare, namely: preparatory; organizational; basic; final (Shevchuk, 2013; Shevchuk *et al*., 2022). In the context of the present study, to follow the sequence of the presentation of the main aspects of the organization of forensic examinations in criminal proceedings, three stages were distinguished, each of which has its own specific features: preparatory stage – characterized by the decision-making on the need to appoint and conduct a forensic examination; working – preliminary analysis of materials submitted for expert research and direct examination; final – delivery of the expert's opinion, evaluation of the results of the conducted examination by the investigator.

The preparatory stage is important, because it is at this stage that the investigators decide on the necessity of appointing a forensic examination in criminal proceedings. The prerequisite for the appointment of an expert during the investigation of a criminal offence is the need to refer to special knowledge to confirm or refute certain facts obtained during the pre-trial investigation.

The principal tasks of using the conclusions of expert research in criminal proceedings should be highlighted as follows: verification of existing evidence and obtaining new evidence in the course of it; proposing and verifying versions of the commission of a criminal offence, overcoming opposition to the investigation; establishment of circumstances that contributed to the commission of criminal offences; substantiation of decisions taken by the investigator in the investigated criminal proceedings (Ortinski, 2021). Thus, the activity of the investigator using the expert's conclusions can be characterized both from a procedural and an organizational and tactical standpoint.

Among the grounds that serve as a precondition for the examination, it is possible to define a resolution on the appointment of an examination, which is drafted by pre-trial investigation bodies pursuant to the procedure established by law, or a contract with an expert or an expert institution, concluded at the written request of the defence party or other persons (Kushpit *et al*., 2019). This procedure is preceded by familiarization of the investigator with the procedural requirements and methodical recommendations for each particular type of expert investigation, determination of the expert institution or individual expert to conduct the expert investigation, selection of materials and samples for the expert investigation, determination of the main tasks that need to be solved as a result of the expert investigation, posing questions of the expert investigation.

It is important for the investigator to correctly choose the time for the appointment of an expert examination, which will depend on several factors, namely: the amount of information collected in the criminal proceedings, the state and nature of the evidentiary material, etc. Attention should be paid to the importance of preliminary consultation of the investigator with the expert, regarding individual issues, at the stage of appointing an expert investigation. Scientists G.O. Spitsyna & G.S. Bidniak (2018) believe that this form of interaction is quite common. It should also be emphasized that the investigator can consult with an expert who conducts an examination on various issues related to the subject of the examination, clarify individual points or expand them.

Therewith, it is important to establish cooperation between the investigator and the expert institution or an individual expert to obtain proper consultation on certain issues related to the definition of the subject of expert research, the formulation of the tasks of the examination, the selection of materials, etc. The specified problem can be highlighted in the context of the organization of the investigation of certain types of criminal offences. Thus, in the current conditions, investigative practice is faced with the spread of new types and methods of committing criminal offences, specifically cyber terrorism. In turn, to ensure the investigation of this category of criminal offences, the organization of forensic examinations in criminal proceedings needs improvement. Investigators in criminal proceedings on the facts of the commission of acts related to the implementation

of criminal actions using computer and other software often appoint an examination of malicious software.

Difficulties with organizing the examination of malicious software are manifested in the fact that it consists of a complex study and requires the involvement of a wide range of experts. Specifically, pursuant to the Scientific and methodological recommendations on the preparation and appointment of forensic examinations and expert studies, approved by the Order of the Ministry of Justice of Ukraine dated October 8, 1998 No. 53/5[1] expert studies of malicious software can be carried out within the framework of the examination of computer equipment and software products, examination of telecommunication systems and facilities.

Therewith, considering the specific nature of the issues to be resolved during the examination of malicious software, as well as a significant array of information that must be processed by the expert, the authors of the present study consider it appropriate to provide within the relevant regulations separate norms dedicated to the procedure for conducting the examination of malicious software. Since the investigator of the pre-trial investigation body may not in all cases be aware of the issues to be resolved in the event of the need to conduct an examination of malicious software, and may formulate questions incorrectly or inaccurately, etc., the regulatory and organizational settlement of the specified issue is important. As for statutory regulation, it is necessary to introduce appropriate legislative amendments, which should relate to the definition of the object and the main tasks of the examination of malicious software and contain an approximate list of issues to be resolved. From an organizational standpoint, in turn, the issue related to the need to establish information interaction regarding the appointment and conduct of forensic examinations between pre-trial investigation bodies, the court, other authorized subjects, experts of various departments, as well as non-state experts needs to be resolved.

It should be emphasized that with the beginning of the full-scale invasion of the Russian Federation on the territory of the Ukrainian state and the introduction of martial law, the criminal procedural legislation underwent significant changes, both in terms of the organization of the investigation of war crimes and criminal offences of a general criminal nature. An innovation was the introduction of a new section of the CPCU, which regulates procedural and organizational aspects of interaction with the International Criminal Court, based on the Law of Ukraine No. 2236-IX "On Amendments to the Criminal Procedural Code of Ukraine and other legislative acts of Ukraine regarding cooperation with the International Criminal Court" dated May 3, 2022[2].

In addition, pursuant to Law of Ukraine No. 2201-IX "On Amendments to the Criminal Procedural Code of Ukraine on Improving the Procedure for Conducting Criminal Proceedings under Martial Law" dated May 1, 2022[3], the legislator regulated the procedure of pre-trial investigation under martial law. Specifically, changes made to the CPCU in connection with its adoption relate to the special content and form of criminal proceedings under martial law, a significant expansion of the powers of the prosecutor by delegating to them the separate powers of an investigating judge to resolve certain issues, etc.[4].

In the context of the study, the specified amendments also affected the procedure for the organization of the forensic examination. Thus, according to Item 2, Part 1, Article 615 of the CPCU[5], if there is no objective possibility for the investigating judge to exercise powers related to the need to obtain samples for examination, such powers shall be exercised by the head of the relevant prosecutor's office at the request of the prosecutor or at the request of the investigator agreed with the prosecutor.

An equally important issue at the preparatory stage of the organization of forensic examinations is the verification by the investigator of the validity period of the certificate of qualification of a forensic expert, since in practice there are cases when the defence side questioned the expert's opinion and it was not considered by the court due to the examination by an inappropriate subject. Analysing such facts and considering the events that are taking place in Ukraine today, it should be noted that during the legal regime of martial law in Ukraine, certain legal changes were made in the organizational and management support of judicial expert activity. Thus, the Order of the Ministry of Justice of Ukraine No. 1138/5 "On Some Issues of Ensuring Forensic Expert Activity Under Martial Law" dated March 14, 2022[6] came into force.

Having analysed the specified sub-legislative regulation, it should be noted about major changes related

[1]Order of the Ministry of Justice of Ukraine No. 53/5 "On the Approval of the Instructions on the Appointment and Conduct of Forensic Examinations and Expert Studies and Scientific and Methodological Recommendations on the Preparation and Appointment of Forensic Examinations and Expert Studies". (1998, October). Retrieved from https://zakononline.com.ua/documents/show/192273___192338.
[2]Law of Ukraine No. 2236-IX "On Making Changes to the Criminal Procedural Code of Ukraine and Other Legislative Acts of Ukraine Regarding Cooperation with the International Criminal Court". (2022, May). Retrieved from https://zakon.rada.gov.ua/laws/show/2236-20#n13.
[3]Law of Ukraine No. 2201-IX "On the Introduction of Amendments to the Criminal Procedural Code of Ukraine Regarding the Improvement of the Procedure for Carrying out Criminal Proceedings Under Martial Law". (2022, May). Retrieved from https://zakon.rada.gov.ua/laws/show/2201-20#Text.
[4]Criminal Procedural Code of Ukraine No. 4651-VI. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[5]Ibidem, 2012.
[6]Order of the Ministry of Justice of Ukraine No. 1138/5 "On Some Issues of Providing Forensic Expert Activity in the Conditions of Martial Law". (2022, March). Retrieved from https://ips.ligazakon.net/document/RE37662?an=16.

to the organization of forensic examination in criminal proceedings. Specifically, the period of consideration of applications and documents for the qualification of a forensic expert was stopped; the term of validity of the certificates on the assignment of the qualification of a forensic expert to specialists who submitted applications and documents for attestation before the introduction of martial law in Ukraine, as well as the certificates on the assignment of the qualification of a forensic expert, the term of which expires during the period of martial law, or within one month after the termination or cancellation of the martial law, has been extended[1].

Thus, as a general rule, to avoid problematic issues with the recognition of an expert's opinion, in the event of an appeal to experts, the investigator must verify the powers of the forensic expert in the Register of Forensic Experts of the Ministry of Justice of Ukraine. However, during the period of martial law and within one month after its termination or cancellation, this rule does not apply. The preparatory stage ends with the sending of the document on the appointment of the examination, the materials of the criminal proceedings, as well as the objects of the examination to the expert institution or a particular expert who will conduct the study.

The working stage of the organization of forensic examinations is directly related to the implementation of expert studies by a designated expert or a group of experts, or by experts from several expert institutions in the event of the appointment of a commission or complex examination. According to the Instructions, after receiving the appointment document and its registration at the State Scientific Research Expert Forensic Centre, the Research and Development Expert Forensic Centre, the relevant manager must review all the received materials, and in the absence of errors or other reasons for their return, hand them over to the head of the corresponding laboratory (department, sector) for further organization of the forensic examination or independently appoint a forensic expert who, according to the qualifications, is authorized to conduct a particular expert examination[2].

When choosing an expert or a group of experts, the head of an expert institution, apart from the specialization and type of expert research, must consider several important aspects: workload of a particular expert; the terms of the examination, the scope of the expert study. Before sending all materials for research to a particular expert, the head of the expert institution checks them for compliance with all the requirements established by law regarding the form, and in case of detection of violations, they must notify the investigator who appointed the examination with an indication of the reasons for the return.

Therewith, one of the aspects of the organization of forensic examinations in criminal proceedings is important, such as the establishment of effective interaction between the heads of expert institutions and the investigator who is the initiator of the expert investigation. Furthermore, when conducting an expert investigation, the investigator constantly interacts with the expert who conducts it.

Investigating the opinions of S.P. Lapta (2006) and L.S. Belik (2020) regarding the selection of tactical recommendations concerning the organization of interaction between the investigator and the expert, the most important of them should be highlighted. Thus, before the start of the expert investigation, the investigative body of the pre-trial investigation is tasked with presenting the expert with the subject of the examination and all the necessary materials that the expert is entitled to familiarize themselves with during the examination, as well as, at the request of the expert, other information of the criminal proceedings. In addition, the investigator is entitled to be present during the examination, which in turn contributes to their prompt receipt of information related to the examination and the circumstances to be investigated. Furthermore, among the non-procedural forms of interaction between the investigator and the expert, scientists highlight the clarification of the time of the examination, the terms of the examination, and the method of returning the objects.

Considering the above, the activity of the investigator in the organization of forensic examinations does not end at the initial stage and is of great importance at the stage of direct expert research. Therewith, at the specified stage, the investigator has a managerial role, since they are the subject of the appointment of the forensic examination, assess the expert's opinion, and, if necessary, can interrogate the expert on issues that require clarification. In addition, the organizational role of the investigator is manifested in the fact that they decide which circumstances of the criminal proceedings require analysis and verification by conducting an expert study, and which will be important for the pre-trial investigation in the future.

At the final stage of the organization of forensic examinations, the expert drafts an opinion based on the results of the examination and hands it over to the investigator who appointed the expert examination. Among the organizational aspects of the specified stage, the investigator's assessment of the expert's opinion is of great importance. According to Article 94 of the CPCU, the investigator, prosecutor, investigating judge, court based on their internal conviction, which is based on a comprehensive, complete, and impartial investigation

[1]Order of the Ministry of Justice of Ukraine No. 1138/5 "On Some Issues of Providing Forensic Expert Activity in the Conditions of Martial Law". (2022, March). Retrieved from https://ips.ligazakon.net/document/RE37662?an=16.
[2]Order of the Ministry of Justice of Ukraine No. 53/5 "On the Approval of the Instructions on the Appointment and Conduct of Forensic Examinations and Expert Studies and Scientific and Methodological Recommendations on the Preparation and Appointment of Forensic Examinations and Expert Studies". (1998, October). Retrieved from https://zakononline.com.ua/documents/show/192273___192338.

of all the circumstances of the criminal proceedings, guided by the law, evaluate each piece of evidence from the standpoint of propriety, admissibility, credibility, and the totality of the collected evidence – from the perspective of sufficiency and interrelationship for making an relevant procedural decision[1].

Thus, the investigator assesses the expert's opinion for compliance with its four criteria: propriety, admissibility, reliability, sufficiency, and the relationship between the obtained data and other information available in the criminal proceedings. Therewith, the norms of the Criminal Procedural Code of Ukraine do not directly indicate that the investigator must evaluate the expert's opinion for compliance with the specified criteria.

From the standpoint of some scientists, one of the key conditions for the admissibility of an expert's opinion is compliance with the procedural form of conducting an examination and drafting an opinion. Therewith, among the requirements that the investigator should address in the first place is the verification of compliance with the procedural requirements regarding the form and content of the expert research and the expert's opinion, the objectivity and reliability of the conducted research and the opinion, etc. (Davydova & Volobuieva, 2015).

From an organizational perspective, when the investigator evaluates the expert's opinion, it is important to focus on the fact that it is carried out according to substantive requirements, namely, its procedural form, literacy, and logical presentation. As well as checking directly the activities that accompanied its implementation, i.e., compliance with the requirements of criminal procedural legislation, the rights and freedoms of the persons in respect of whom the examination was conducted, the authority of the expert who conducted the examination, the type and nature of the methods that were used during the expert research. Therewith, the question arises of the investigator's ability to verify the methods and methodology of the examination.

No less important in the conditions of martial law are issues related to the preservation of expert documentation, as well as the restoration of lost documents. In this regard, the regulatory consolidation of the entire array of methods and techniques used during expert research will lead to the presence of many secondary legal acts, which will considerably complicate the work of the investigator.

It should be emphasized that a Register of Methods of Conducting Forensic Examinations operates, which contains current methods of conducting forensic examinations, certified and recommended for implementation in expert practice pursuant to the Procedure for attestation and state registration of methods of conducting forensic examinations, approved by Resolution No. 595 of the Cabinet of Ministers of Ukraine dated July 2, 2008[2]. Thus, during the evaluation of the expert's opinion, the investigator can review the information available in the register about a certain method, namely: the type of examination, the name of the method, the name of the developer of the method, the date of its state registration, and the date of the decision to stop using the method.

Pursuant to Item 3, Part 5 of Article 69 of the CPCU[3], the expert is obliged to ensure the preservation of the subject of the examination. Part 2 of Article 100 of the CPCU[4] also establishes that the duty to preserve material evidence in a condition suitable for use in criminal proceedings is assigned to the party to the criminal proceedings to whom the material evidence or document is provided. Furthermore, as noted above, the CPCU[5] prescribes a special regime of pre-trial investigation, trial under martial law, which specifically stipulates that the copies of materials of criminal proceedings, in which pre-trial investigation is carried out under martial law, must be stored in electronic form by the inquirer, investigator, or prosecutor.

In light of the recent events taking place in Ukraine, the overcoming of Russia's armed aggression, the urgency of preserving and restoring the materials of the pre-trial investigation, material evidence, expert opinions and other procedural documents during the investigation of criminal offences becomes extremely important. For this purpose, on May 30, 2022, the Council of the European Union amended Regulation 2018/1727[6] on the collection, preservation, and analysis of evidence related to war crimes, certain changes in which relate to the procedure for preserving evidence in Eurojust. Evidence related to genocide, crimes against humanity, and war crimes cannot be safely stored in a combat zone, and therefore it is suitable to establish a central repository in a secure location. Since the need to preserve such evidence is urgent, it must be stored in an automated data storage facility. The preservation, analysis, and storage of such evidence, as well as the access to this evidence when required by national authorities and international judicial authorities, must comply with the highest standards of cyber security and data protection. Furthermore, the new rules allow the collection and preservation of evidence related to war crimes, including satellite

[1]Criminal Procedural Code of Ukraine No. 4651-VI. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[2]Resolution of the Cabinet of Ministers of Ukraine No. 595 "On the Procedure for Attestation and State Registration of Forensic Examination Methods". (2008, July). Retrieved from https://zakon.rada.gov.ua/laws/show/595-2008-%D0%BF#Text.
[3]Criminal Procedural Code of Ukraine No. 4651-VI. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[4]Ibidem, 2012.
[5]Ibidem, 2012.
[6]Regulation of the European Parliament and of the Council Amending Regulation (EU) No. 2018/1727 "As Regards the Preservation, Analysis and Storage at Eurojust of Evidence Relating to Genocide, Crimes Against Humanity, War Crimes and Related Criminal Offences". (2022, May). Retrieved from https://data.consilium.europa.eu/doc/document/PE-18-2022-INIT/en/pdf.

images, photographs, videos, audio recordings, DNA profiles and fingerprints, the processing and analysis of such evidence in close cooperation with Europol, and the exchange of information with relevant national and international judicial authorities, including the International Criminal Court.

In addition, according to the amendments to the Regulation[1], the European Parliament calls on the Ukrainian authorities to harmonize the national legislation and procedures of Ukraine with international law and in this way to strengthen the internal legal mechanisms of combating impunity for crimes, the harmonization of national legislation, as well as the adoption of clear and practical frameworks for cooperation with the International Criminal Court and other bodies investigating war crimes committed in Ukraine.

Considering the above, it should be considered expedient to bring national legislation into line with international standards relating to the order and procedure of preservation of pre-trial investigation materials, including expert opinion, as well as objects of examination. It is also important to determine the limits of the expert's responsibility for the preservation of documents, considering the circumstances beyond their control, as well as the normative establishment of the rules for the transmission of the expert's conclusions from the territories of military (combat) actions by means of electronic communication and to settle issues related to the storage of documentation in temporarily occupied territories.

Furthermore, in conditions of active development of information technologies, Ukraine is gradually moving towards the implementation of electronic justice, and electronic document management is actively spreading. To this end, to ensure the preservation of the materials of the pre-trial investigation, specifically the expert's opinion, to prevent their loss or destruction as a result of active hostilities on the territory of Ukraine, occupation and de-occupation of territories, it is necessary to consider the possibility of its presentation and storage in electronic form.

In support of this statement, it should also be noted that the Law of Ukraine No. 1498-IX "On Amendments to the Criminal Procedural Code of Ukraine Regarding the Introduction of the Information and Telecommunication System of Pretrial Investigation" dated June 1, 2021[2] defined the legal and procedural bases for the use of the information and telecommunication system of pre-trial investigation in the activities of participants in criminal proceedings. Specifically, pursuant to Part 2 of Article 106-1 of the CPCU[3], the investigator, inquiring officer, prosecutor, investigating judge, court, as well as the defence attorney (with their consent) use, and other participants in criminal proceedings can use, the information and telecommunications system of the pre-trial investigation in the exercise of their powers, rights, and interests[4].

Therefore, during the study, it was proposed to amend Part 7 of Article 101 of the CPCU, and word it as follows: "The expert's opinion shall be provided in written and/or electronic form, but each party is entitled to apply to the court to summon the expert for questioning during the trial to clarify or supplement their opinion".

Furthermore, considering the enormous number of war crimes committed by the Russian Federation against Ukraine, the number of which continues to grow, the issue of organizing the involvement of foreign experts to conduct forensic examinations is becoming increasingly widespread. The Law of Ukraine "On Forensic Expertise" contains the entire Chapter IV "International Cooperation in the Field of Forensic Expertise", which covers specific issues related to the conduct of forensic examination on behalf of a body or official of a foreign state, as well as the involvement of foreign experts by Ukraine[5]. Therewith, the analysis of the norms of the Law, which regulate international cooperation in the field of forensic examination, shows that they have not been systematically updated since 2004, contrary to the requirements of the time.

According to Article 22 of the Law establishes the priority of the national legislation of Ukraine, during the conduct of a forensic examination on behalf of the relevant body or person of another state with which Ukraine has an agreement on mutual legal aid and cooperation, unless otherwise prescribed in the said agreement. Furthermore, the norms of the law make provision for a separate procedure to involve foreign experts for joint forensic examinations[6].

Notably, the existing regulations rather narrowly and vaguely regulate relations in the field under study, and do not touch upon such important organizational

[1]Regulation of the European Parliament and of the Council Amending Regulation (EU) No. 2018/1727 "As Regards the Preservation, Analysis and Storage at Eurojust of Evidence Relating to Genocide, Crimes Against Humanity, War Crimes and Related Criminal Offences". (2022, May). Retrieved from https://data.consilium.europa.eu/doc/document/PE-18-2022-INIT/en/pdf.
[2]Law of Ukraine No. 1498-IX "On Making Changes to the Criminal Procedural Code of Ukraine Regarding the Introduction of the Information and Telecommunications System of Pre-Trial Investigation". (2021, June). Retrieved from https://ips.ligazakon.net/document/view/T211498?an=1.
[3]Criminal Procedural Code of Ukraine No. 4651-VI. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[4]Law of Ukraine No. 1498-IX "On Making Changes to the Criminal Procedural Code of Ukraine Regarding the Introduction of the Information and Telecommunications System of Pre-Trial Investigation". (2021, June). Retrieved from https://ips.ligazakon.net/document/view/T211498?an=1.
[5]Law of Ukraine No. 4038-XII "On Forensic Examination". (1994, February). Retrieved from https://zakon.rada.gov.ua/laws/show/4038-12/conv#n38.
[6]Ibidem, 1994.

issues as the procedure for involving international expert institutions, or individual experts for joint forensic examination in Ukraine; procedure for sending samples for examination abroad; areas of international cooperation in the field of forensic expert activity, conditions for recognition of the opinion on an expert examination that was conducted abroad and the procedure for conducting an interrogation of a foreign expert.

The need for expanding international cooperation in forensic expert activity is also evidenced by the research of individual scientists. For instance, N.I. Klymenko & O.A. Kuprievych (2015) note that thanks to the establishment of close cooperation with foreign expert bodies and institutions, Ukraine will have a high-quality and rapid implementation of international standards for conducting expert research. In addition, the specified activity will improve the theoretical foundations of the examination, its practical component, development of uniform methodological recommendations for various types of examinations, etc.

Another group of scientists also emphasizes the importance of establishing international cooperation during examinations with the participation of foreign experts, including within the framework of joint groups (Motoryhina *et al*., 2019). Thus, at the legislative level, it is necessary to develop a unified mechanism to involve international expert institutions, or individual experts for joint forensic examination in Ukraine; to establish the procedure for sending samples for examination abroad; to determine the conditions for recognition of the conclusion of an expert examination that was conducted outside Ukraine and the procedure for conducting an interrogation of a foreign expert; to identify the priority areas of international cooperation in the field of forensic expert activity and to provide a mechanism for their implementation. The development of the specified provisions will form the organizational principles of forensic examination in criminal proceedings under the condition of international cooperation.

Therewith, analysing the norms of the Law of Ukraine "On Forensic Examination"[1], the legislator does not define the terms "interaction", "international cooperation". Currently, there are no unified approaches to the interpretation of the essence of the concept of "interaction", the classification and content of its forms and methods. For a correct interpretation of the essence of the specified concept, the authors of the present study consider it expedient to regulate these concepts legislatively.

Thus, the activity of investigating criminal offences in each particular case depends on the organization of its main elements, which are designed to ensure a swift, objective, and high-quality pre-trial investigation of criminal proceedings, one of which is the conduct of forensic examinations. The importance of proper organization of forensic examinations is explained by the fact that today it is still one of the leading and effective means of proof. The appointment and conduct of forensic examinations is factually the main part of the pre-trial investigation. The information obtained during the forensic examination helps make the process of proof as objective as possible in the future, and the results of the forensic examination are one of the main sources of evidence in the investigation of criminal offences.

Therewith, the organization of forensic examination during the investigation of criminal offences is a set of organizational and administrative actions of authorized subjects, which lies in ensuring the proper, timely, and objective appointment and conducting of forensic examinations, as well as obtaining an expert opinion, which is sought to complete the tasks of criminal proceedings.

Conclusions

Analysing the circle of subjects engaged in the organization of expert examination in criminal proceedings, it was found that in the context of the study of the activity of investigating criminal offences, the leading role belongs to the investigator, who is the subject of initiating the conduct of expert examination in a specific criminal proceeding.

It is the investigator (inquiring officer, detective), the prosecutor, as a subject of authority, who is authorized to make procedural decisions within a specific criminal proceeding. The activity of the investigator in the organization of forensic examinations is carried out at all its stages, and consists in the implementation of the following: at the preparatory stage – in relation to the object of examination: search, check, selection, and preparation of all materials and objects for expert examination; in relation to the subject that will conduct the examination – selection of an expert body or a particular expert, verification of their eligibility and establishment of cooperation; at the working stage – organization of constant interaction with the head of the expert institution and an individual expert during the examination, direct presence during the expert study; to provide additional materials for examination, to receive consultations from an expert on issues related to expert research; at the final stage – evaluation of the results of the conducted examination to establish compliance with its requirements determined by the criminal procedural law.

Notably, the legislation in the field of the organization of forensic examinations needs to bring the national legislation into line with international standards, namely: the procedure for preserving the materials of the pre-trial investigation, including the opinion of the expert, as well as the objects of the examination, the definition of the limits of the responsibility of the

[1]Law of Ukraine No. 4038-XII "On Forensic Examination". (1994, February). Retrieved from https://zakon.rada.gov.ua/laws/show/4038-12/conv#n38.

expert for the preservation of documents, considering the circumstances that do not depend on them, as well as the regulatory consolidation of the rules for the transmission of the expert's conclusions from the territories of military (combat) operations by means of electronic communication and the settlement of issues related to with storage of documentation in the temporarily occupied territories.

Furthermore, to ensure the preservation of the expert's opinion, to prevent its loss or destruction, it is necessary to amend Part 7 of Article 101 of the Criminal Procedural Code of Ukraine, and word it as follows: "The expert's opinion shall be provided in written and/or electronic form, but each party is entitled to apply to the court to summon the expert for questioning during the trial to clarify or supplement their opinion."

In addition, since the beginning of the large-scale armed invasion of the Russian Federation on the territory of Ukraine, considering the rapid increase in the number of war crimes against citizens on the territory of Ukraine and beyond, it is important to develop a unified and effective algorithm for the interaction of the investigator with international expert institutions or individual experts during the organization of the involvement of foreign judicial experts in conducting examinations in Ukraine.

Acknowledgements

The team of authors would like to express their sincere gratitude to the editorial board of the Scientific Bulletin of the National Academy of Internal Affairs for the opportunity to publish a scientific study in an authoritative scientific publication, as well as to the department of preparation of educational and scientific publications of the National Academy of Internal Affairs for providing technical support in preparing a scientific article for publication.

Conflict of Interest

None.

References

[1] Bali, A.S., Edmond, G., Ballantyne, K.N., Kemp, R.I., & Martire, K.A. (2020). Communicating forensic science opinion: An examination of expert reporting practices. *Science and Justice,* 60(3), 216-224. doi: 10.1016/j.scijus.2019.12.005.

[2] Belik, L.S. (2020). To the issue of tactical principles of interaction of the investigator, investigating judge with an expert in criminal proceedings. *Scientific Works of the National Academy of Sciences of Ukraine,* 27, 22-29. doi: 10.32837/npnuola.v27i0.677.

[3] Bidniak, H.S. (2019). *Theory and practice of using special knowledge in the investigation of fraud.* Dnipro: DDUVS.

[4] Chornous, Yu.M. (2014). Forensic support of criminal proceedings. *Forensic Bulletin,* 1, 32-37.

[5] Davydova, D.V., & Volobuieva, O.O. (2015). The opinion of an expert as a procedural source of evidence: Separate aspects of theory and practice. *South Ukrainian Legal Journal,* 2, 151-154.

[6] Holovchenko, L.M. (2013). On the need to improve legislation on forensic expert activity in Ukraine. *Forensics and Forensic Examination,* 58(1), 5-12.

[7] Kliuiev, O.M. (2018). On the issue of international cooperation in the field of forensic examination. *Theory and Practice of Forensic Examination and Criminology,* 18, 154-162.

[8] Klymenko, N.I. (2019). Concepts and tasks of the general theory of forensic examination in the system of legal sciences. *Forensics and Forensic Examination,* 64, 48-57. doi: 10.33994/kndise.2019.64.02.

[9] Klymenko, N.I., & Kuprievych, O.A. (2015). International cooperation of judicial expert institutions. *Herald of Criminal Justice,* 4, 130-134.

[10] Kohutych, I.I. (2013). Typical situations of the initial stage of the investigation of murders and the algorithms of the investigator's actions determined by them. *Bulletin of the Chernivtsi Faculty of the National University "Odesa Law Academy",* 1, 233-247.

[11] Korniev, O.V. (2021). Peculiarities of the pre-trial investigation of violation of the inviolability of housing in typical investigative situations. *Legal Scientific Electronic Journal,* 3, 309-312. doi: 10.32782/2524-0374/2021-3/78.

[12] Kushpit, V.P., Paliukh, A.I., & Smuk, M.I. (2020). Procedure for obtaining samples for examination in the framework of criminal proceedings. *Scientific Notes of Lviv University of Business and Law*, 26, 141-146. doi: 10.5281/zenodo.4433061.

[13] Lapta, S.P. (2006). *Legal and scientific basis of the use of forensic examinations in the investigation of crimes* (Doctoral dissertation, National University of Internal Affairs, Kharkiv, Ukraine).

[14] Motoryhina, M.G., Bespalko, I.L., & Zuiev, V.V. (2019). Legal regulation of cooperation in the field of forensic medical examination in criminal proceedings between Ukraine and the Republic of Poland. *Wiadomosci Lekarskie,* 72(12 cz 2), 2615-2619.

[15] Oderii, A.V., & Shulha, A.O. (2011). *The basics of the methodology of the investigation of contract killings and murders committed during the implementation of religious rituals.* Donetsk: Donetsk Law Institute.
[16] Ortinski, V. (2021). The essence and purposes of the use of forensic examinations during the pre-trial investigation of criminal proceedings. *Bulletin of the Lviv Polytechnic National University*, 8(1), 1-9. doi: 10.23939/law2021.29.001.
[17] Prokopenko, O.Yu. (2023). Peculiarities of the initiation of criminal proceedings and the stages of the investigation of taking a representative of the authorities or an employee of a law enforcement agency as a hostage. *Bulletin Luhansk State University of Internal Affairs named after E. Didorenko,* 1(101), 299-309. doi: 10.33766/2524-0323.101.299-309.
[18] Shepitko, V.Yu., & Shepitko, M.V. (2021). The role of forensic science and forensic examination in international cooperation in the investigation of crimes. *Journal of the National Academy of Legal Sciences of Ukraine,* 28(1), 179-186. doi: 10.37635/jnalsu.28(1).2021.179-186.
[19] Shevchuk, O., Matyukhina, N., Davydenko, S., Babaieva, O., & Lysodyed, O. (2022). Forensic examination in cases on the protection of human rights in the sphere of healthcare in Ukraine: Legal issues. *Juridical Tribune,* 12(4), 552-565. doi: 10.24818/tbj/2022/12/4.08.
[20] Shevchuk, V.M. (2013). Current problems of the formation of criminal theory of tactical operations. ΛΟΓΟΣ, 2, 66-72. doi: 10.36074/logos-05.02.2021.v2.21.
[21] Spitsyna, G.O., & Bidniak, G.S. (2018). Forms of using special knowledge. *Theory and Practice of Forensic Examination and Criminology,* 18, 240-248. doi: 10.32353/khrife.2018.26.
[22] Tatsiy, V.Y., Zhuravel, V.A., & Avdeeva, G.K. (2019). Independent forensic medical examination as a mean of proving the facts of a torture usage. *Wiadomosci Lekarskie,* 72(12 cz 2), 2596-2601.
[23] Tkachenko, N.M. (2016). The essence of expert provision of criminal proceedings. *Theory and Practice of Forensic Examination and Criminology,* 16, 165-172.

Організація проведення судових експертиз у кримінальному провадженні як умова ефективності розслідування кримінальних правопорушень

Юлія Чорноус
Доктор юридичних наук, професор
Національна академія внутрішніх справ
03035, пл. Солом'янська, 1, м. Київ, Україна
https://orcid.org/0000-0001-9710-4858

Тетяна Лелюк
Доктор філософії в галузі права
Національна академія внутрішніх справ
03035, пл. Солом'янська, 1, м. Київ, Україна
https://orcid.org/0009-0005-2780-1099

Анотація
У науці криміналістики та діяльності з розслідування кримінальних правопорушень важливе значення має організаційна діяльність. Однією з форм її реалізації є проведення судових експертиз, а її вдосконалення безпосередньо впливає на досягнення завдань кримінального провадження. Мета статті полягала у висвітленні організаційної діяльності щодо проведення судових експертиз як засобу забезпечення ефективного досудового розслідування та судового розгляду в кожному кримінальному провадженні. Для досягнення поставленої мети використано загальнонаукові та спеціальні методи з метою вивчення об'єкта й предмета дослідження: аналіз, синтез, дедукція, індукція, аналогія; спеціально-правові методи: порівняльно-правовий, історико-правовий, системно-структурний, метод системного аналізу. На основі аналізу положень нормативно-правових актів і наукового, навчально-методичного матеріалу встановлено, що організація проведення судової експертизи в кримінальному провадженні охоплює систему організаційно-розпорядчих дій уповноважених суб'єктів та полягає в забезпеченні належного, своєчасного й об'єктивного призначення та проведення судових експертиз, а також отримання висновку експерта, яка здійснюється з метою досягнення завдань кримінального провадження. Виокремлено та схарактеризовано основні етапи організації проведення судових експертиз у кримінальному провадженні. Здійснено класифікацію суб'єктів розглядуваної діяльності, зокрема за характером реалізації організаційних дій. Констатовано, що чільне місце серед суб'єктного складу розглядуваної діяльності належить слідчому як суб'єкту ініціювання проведення судових експертиз. Саме він у процесі проведення досудового розслідування здійснює збір та аналіз матеріалів, вирішує, які саме обставини кримінального провадження потребують перевірки шляхом проведення експертизи, оцінює висновок експерта. Наведені в статті положення можуть бути використані в практичній діяльності окремих судових експертів і судово-експертних підрозділів та установ; суб'єктів, уповноважених на здійснення досудового розслідування кримінальних правопорушень

Ключові слова:
судовий експерт; слідчий; прокурор; експертне дослідження; доказ; законодавство; висновок експерта; міжнародне співробітництво; воєнний стан

UDC 343.344(477)
DOI: 10.56215/naia-chasopis/2.2023.63

Munitions and explosives as objects of criminal offences during the commission of criminal offences

Volodymyr Yusupov*
Doctor of Law, Professor
National Academy of Internal Affairs
03035, 1 Solomianska Sq., Kyiv, Ukraine
https://orcid.org/0000-0001-5216-4144

Yurii Filipov
Postgraduate Student
National Academy of Internal Affairs
03035, 1 Solomianska Sq., Kyiv, Ukraine
https://orcid.org/0000-0003-1344-8042

Abstract
Without a principal law in Ukraine on weapons and munitions for them, certain difficulties arise in law enforcement activities with the qualification of the actions of offenders in the field of illegal circulation of weapons, manufacture of munitions, and the use of explosives. The purpose of this study was to investigate such weapons as ammunition and explosives, which become the subject of offences by criminals in connection with the illegal circulation of weapons, their components, their manufacture, and use. The study employed historical-legal, comparative-legal, systemic-structural, statistical, and sociological methods. Military supplies and explosives were classified to establish a particular object as an object of criminal encroachment; their forensically significant features and properties were determined. The role of ballistics specialists, explosives specialists, and other experts during the inspection of the scene, the investigation of illegal arms trafficking, the manufacture of ammunition and the use of explosives was covered. It was proved that ammunition and explosives have a close relationship with the persona of the criminal, the method of committing the criminal offence, and the trace pattern. The theoretical provisions regarding the properties and signs of ammunition and explosives were improved. Forensic recommendations on the actions of law enforcement officers with ammunition and explosives in criminal proceedings were developed. Recommendations regarding the removal and packaging of munitions and explosives as physical evidence have gained further development. The practical significance lies in clarifying the properties and signs of ammunition and explosives, which allows for the identification of these items at the initial stage of the investigation; correct actions for their detection, fixation, extraction, packaging; appropriate criminal-legal qualification of the offence committed

Keywords:
weapon; ammunition; dangerous substances; illegal arms trafficking; illegal manufacture of ammunition

Article's History:
Received: 28.02.2023
Revised: 28.05.2023
Accepted: 26.06.2023

Suggest Citation:
Yusupov, V., & Filipov, Yu. (2023). Munitions and explosives as objects of criminal offences during the commission of criminal offences. *Law Journal of the National Academy of Internal Affairs*, 13(2), 63-73. doi: 10.56215/naia-chasopis/2.2023.63.

*Corresponding author

Introduction

A rather complex criminogenic situation has developed in Ukraine. Crime is adapting to new crisis situations related to the war on the territory of Ukraine. With the beginning of the full-scale military invasion of the Russian Federation (hereinafter – RF) on the territory of Ukraine, various levels of military confrontation arose: from air force battles with the use of missiles and aerial bombs to artillery shelling and the use of infantry weapons. The continuation of the war accentuates the need of the Armed Forces of Ukraine for various weapons, including combat supplies for light small arms. The defence forces receive military aid, units of which are armed with NATO multinational forces, NATO army arms groups (Yavuz, 2020).

At the same time, the wide distribution of small arms and military supplies of "NATO standards" on the territory of the country activated criminality, whose criminal elements began to process domestic weapons and existing military supplies under slightly different technical parameters. According to the reports of the Prosecutor General on registered criminal offences and the results of their pre-trial investigation for 2021-2023, in 2022 and the first quarter of 2023, the number of criminal offences related to the illegal circulation of weapons, their processing and repair increased in Ukraine, and as well as the illegal manufacture of ammunition and the use of explosives. Specifically, in 2021, 4,067 cases of illegal handling of weapons, munitions, or explosives were recorded (Article 263 of the Criminal Code of Ukraine)[1] (hereinafter – the CCU), 2,582 relevant criminal proceedings with an indictment were sent to court (Unified report..., 2021); in 2022, 4,735 (+16.4%) were published under this Article of the CCU, 2,919 (+13.0%) criminal proceedings were sent to court (Unified report..., 2022). In the first quarter of 2023 alone, 1,891 cases of illegal handling of weapons, ammunition, or explosives were registered in Ukraine, of which 643 criminal facts were filed in court (Unified report..., 2023).

There is a need for further development of a multidisciplinary approach to the investigation of crimes against humanity, war crimes and genocide. Among which the focus should be on the investigation of mass murders, genocide, crimes against humanity. A positive role can be played by the role of scientists from different countries who took part in the work of the International Criminal Tribunal regarding the crimes of genocide committed in Yugoslavia (Cox, 2003). Specifically, such crimes were committed with the use of weapons, ammunition, and explosives.

The most common munitions during hostilities and the corresponding increase in crime activity are 7.62 mm ammunition for Kalashnikov assault rifles (AK). (Nishshanka *et al*., 2021; Nishshanka *et al*., 2022). For instance, during the crimes in North Macedonia, these munitions were investigated, as well as the dispersion of gunpowder residues after the use of automatic weapons by the Serbs in the military conflict. Serbian ammunition for the Pietro Beretta model 70, 7.65 mm (Ristova *et al*., 2023).

The forensic aspect of the problem of researching weapons and military supplies used during armed combat clashes is important for identifying persons who, using weapons, committed crimes against humanity, genocide, killing the civilian population or prisoners of war. Therewith, it is worth taking advantage of the opportunity to identify, investigate, and establish the identity of the criminal based on the results of using the technology of recovery of hidden fingerprints on unused ammunition and spent cartridges (Exall *et al*., 2022).

As for the spread and illegal use of explosives, the challenges and dangers of active military operations cause many adverse consequences for the country's population, infrastructure facilities, communication links, and the natural environment. The danger comes primarily from military weapons, explosives, and devices that pose a potential danger in terms of the possible development of fire, explosive, as well as radiation, chemical, and other hazards (Smyrnov & Tolkunov, 2020). Environmental monitoring of explosive residues in soil, detection of explosive devices in vacated combat areas, evidence serious problems (Sandeep *et al*., 2022). After fighting and causing the death of soldiers, soil contamination occurs due to the rotting and decomposition of corpses, namely the release of lipids into the environment (Queirós *et al*., 2023). Problems of environmental pollution, damage to flora and fauna, destruction of animals as a result of war crimes attract the attention of scientists around the world (White, 2020). They focus on aspects of the investigation, methods of forensic examination regarding the determination of air, water, and land pollution, including due to the activities of non-governmental organizations. Therewith, the issue of sampling remnants of explosives using a gelatine base stays relevant (Amaral *et al*., 2020).

Therefore, the issue of analysing the subject of criminal encroachment in the illegal circulation of weapons, the manufacture of military supplies and the use of explosives today, in the conditions of a full-scale military invasion of the Russian Federation in Ukraine, acquires special importance and requires detailed consideration.

The purpose of this study was to investigate the properties and signs of ammunition and explosives, which appear as physical evidence during the investigation of illegal acts with these items, their illegal manufacture, processing, or changing the appropriate marking, including the development of recommendations for

[1]Order of the Ministry of Justice of Ukraine No. 1138/5 "On Some Issues of Providing Forensic Expert Activity in the Conditions of Martial Law". (2022, March). Retrieved from https://ips.ligazakon.net/document/RE37662?an=16.

the actions of law enforcement officers with such items when they are detected. The scientific originality of this study lies in the comparative analysis of international regulations in the field of arms, ammunition, and explosives circulation, as a result of which the conformity of national legislation on criminal liability for illegal actions with these items to the prohibitions defined in international documents was established.

Literature Review

Ukrainian and foreign scientists were engaged in the study of various issues in the field of weapons circulation, the manufacture of weapons using explosives, countermeasures against socially dangerous acts committed in relation to them.

Specifically, A. Stavrianakis (2019) investigated the issue of statutory regulation of arms circulation at the level of the international UN Arms Trade Treaty. He claimed that the effect of this Treaty causes the strengthening of modern militarism in the world, which causes a reinterpretation of the problems of control over the circulation of arms. Another researcher, A. Pytlak (2020), addresses to periodic conferences at which meetings of working groups take place according to the UN Arms Trade Treaty, where topical issues of the circulation of weapons and military supplies are discussed according to thematic areas. S. Grassi (2021) paid attention to the "Protocol against the illegal manufacture and trafficking of firearms, their component parts and components, as well as their ammunition", which complements the UN Convention against Transnational Organized Crime dated 31.05.2001[1]. He analysed the state of illegal manufacture and circulation of firearms, their constituent elements and components, and ammunition for weapons.

The conclusions of these authors found their further research in the study by J. Christensen (2019), who highlighted the issue of providing weapons to states and the possible consequences of this. The scientist considered it necessary when equipping certain countries with weapons to investigate whether they belonged to a repressive or aggressive state and to foresee the possibility of the governments of these countries taking part in illegal oppression and aggression.

In this regard, O. Samoilenko *et al*. (2022) considered the issue of countering the threats of illegal trafficking of weapons, munitions, and explosives at the border points of Ukraine with the countries of the European Union (hereinafter – the EU) under martial law conditions. The authors proposed effective recommendations regarding the activities of the State Border Guard Service of Ukraine to counter the threats of illegal trafficking of weapons, ammunition, and explosives at checkpoints with EU countries.

The superiority of security factors over economic factors in the issue of weapons supply was also explored in the scientific works of P.W. Thurner *et al*. (2019). The authors noted that few countries can produce all their own military equipment, and therefore the military systems of most countries rely on the import of weapons, ammunition, and explosives. At the same time, consideration should be given to licensed gun dealers and extensive background checks should be conducted on private individuals who wish to purchase firearms, including inherited firearms (Kleck, 2021). L. Kahane (2020) studied the issue of illegal trafficking of criminal weapons between states in America, namely: the disguised ways of non-compliance with the laws of individual American states, which relate to inspections of dealers with a federal license and necessary permits.

The issue of recognizing firearms for forensic purposes by the sound signals of their mechanisms, the study of hybrid self-made assault rifles, submachine guns with an open shutter and cartridges for them became the subject of research by P. Giverts *et al*. (2020). Aspects of the classification of firearms according to various criteria were developed by T. Shumeiko *et al*. (2021). The scientists connected their research with a detailed analysis of the draft Laws of Ukraine in the field of arms and ammunition circulation.

The possible relationship between the suicide rate, the number of terrorist attacks with the use of firearms, considering the indicators of the circulation of weapons in the state, was investigated by other scientists (Carson *et al*., 2022). At the same time, a comprehensive analysis of the problems of the illegal manufacture of military supplies, the use of explosives, and their illegal circulation are still an understudied issue in scientific publications.

Materials and Methods

During the preparation of this paper, methods of scientific research were used, which ensured the reliability of its results. Specifically, the historical-legal method helped analyse the development of statutory regulation of arms circulation in Ukraine; the comparative legal method was used during the study of national and international legislation on countering the illegal circulation of weapons, the manufacture of military supplies, and the use of explosives; systemic-structural - for the investigation of actions that constitute criminal offences in the sphere of arms and related means circulation; statistical and sociological methods helped identify trends in the increase in the number of criminal offences in the field of trafficking in weapons, ammunition, and explosives, to find out the opinion of practical workers regarding the issues under study and to support the author's assertions with relevant data.

[1]Protocol of the Verkhovna Rada of Ukraine No. 995_792 "On Against the Illicit Manufacturing and Trafficking in Firearms, their Parts and Components, as Well as their Ammunition Supplementing the United Nations Convention Against Transnational Organized". (2001, May). Retrieved from https://zakon.rada.gov.ua/laws/show/995_792#Text.

The article uses: 1) reports of the Office of the Prosecutor General for 2021-2022 and the first quarter of 2023; 2) surveys of 140 investigative bodies of the pre-trial investigation of the National Police, conducted in 2022 in the investigative departments of Dnipropetrovsk, Zaporizhzhia, Kyiv, Ternopil, Kharkiv regions and the city of Kyiv, according to a specially developed questionnaire that covered particular questions (Table 1). The questionnaire was sent by mail, filled out by the respondents and sent back to the addressee by mail; 3) the results of the study by S.S. Vitvitskyi *et al*. (2021) of the materials of 125 criminal proceedings and 2,073 court verdicts related to the illegal handling of handguns and ammunition for them, as well as the results of a survey of 312 employees of the National Police of Ukraine.

Table 1. Anonymous survey of 140 respondents interviewed in the 2022 National Police pre-trial investigation regarding the investigation into the illegal manufacture of munitions and the use of explosives

1.	**Your total investigative experience:**	**Percentage of responses**
	up to 3 years	26.7
	3 to 5 years	25.0
	5 to 10 years	16.7
	over 10 years	15.0
2.	**How do you rate the organization of a departure to the scene of an incident related to the illegal production of military supplies or the use of explosives:***	
	as timely and properly organized	14.8
	departure is often late	26.7
	there are significant shortcomings of a logistical nature (transport, equipment, consumables)	70.2
	a long search for ballistic specialists, explosives specialists, and other experts to involve in the inspection	7.1
3.	**How do you assess the effectiveness of the use of expert research in the investigation of the illegal manufacture of munitions or the use of explosives:**	
	quite sufficient	36.6
	insufficient	43.1
	extremely unsatisfactory	20.3
4.	**If unsatisfactory, for what reasons:**	
	organizational difficulties	26.3
	material and financial reasons	87.5
	insufficient awareness of investigators about the possibilities of expert research	22.7
	duration of certain types of examinations	77.2
5.	**Did you involve specialists of the relevant profile to conduct preliminary investigations at the scene of the incident:**	
	in all necessary cases	37.1
	less often than was necessary and possible	42.3
	rarely	18.2
	did not involve	2.4
6.	**For what purpose were preliminary investigations of ammunition or explosives carried out at the scene of the incident:**	
	detection and recording of traces and objects that contain information about the identity of the criminal	31.2
	detection of other evidence	36.9
	detection of indicative investigative information	38.2
7.	**The main shortcomings in the appointment of examinations for the study of munitions or explosives are:**	
	incompleteness of setting tasks for the expert	14.1
	incorrect wording of questions	34.1
	provision of objects unsuitable for research	15.3
	Provision of unsuitable samples	28.9
	failure to provide necessary materials	24.1

Notes: According to the conditions of the questionnaire, it is possible to choose several answers to questions of the questionnaire No. 2, No. 4, No. 6, No. 7
Source: generalized data from the survey conducted by the author of this study

Results

In Ukraine, there is a legal breakdown in the sphere of circulation of weapons and military supplies. During the period of independence, over 15 draft laws on weapons were registered in the Verkhovna Rada, but none of them were approved in their entirety (Kofanov *et al*., 2021a). Scientists and the public have repeatedly called for the adoption of the law "On weapons and ammunition" (Voloboiev, 2019; Voluiko *et al*., 2020), which would include the fundamental concepts of hand firearms, their main parts and ammunition for them. The adoption of the relevant law would contribute to the legal regulation of the circulation of weapons on the territory of Ukraine, the establishment of appropriate control, would make it impossible to freely interpret and inconsistency in the terminology and classification of weapons objects, would create conditions for the regulation of social relations in the sphere of circulation of weapons and military supplies (Vitvitskyi *et al*., 2021).

Notably, on February 23, 2022, the Verkhovna Rada of Ukraine adopted as a basis (in the first reading) the Draft Law of Ukraine "On the Right to Civilian Firearms" (Reg. No. 5708)[1]. At the same time, it has not yet been approved in general. In 2013, Ukraine ratified the international document "Protocol against the illegal manufacture and trafficking of firearms, their parts and components, as well as their ammunition, which supplements the UN Convention against Transnational Organized Crime"[2]. As stated in the document, during the cooperation of the countries, information is provided regarding the movement of weapons, their components, military supplies of criminal origin. To exchange information, the member states prepare requests and receive answers to them without delay[3].

This international document plays a significant role in combating illegal arms trafficking, primarily of a transnational nature and committed by organized criminal groups. Scholars emphasize its importance in countering the illegal arms trade in the EU, especially after the terrorist attacks that have occurred in recent years (Nieto, 2023). The protocol is interrelated with other international documents in this area, covers response measures when relevant dangers are identified (Grassi, 2021).

Implementation of the provisions of this Protocol is prescribed in the Order of the Cabinet of Ministers of Ukraine dated February 13, 2013 "On approval of the plan of priority measures for the integration of Ukraine into the European Union for 2013"[4]. The existing normative instability of the circulation of weapons and military supplies in Ukraine forms a positive basis for the availability of weapons as a result of the full-scale military invasion of the Russian Federation on February 24, 2022, which expands the scope of committing grave and especially grave crimes, such as robbery, banditry, the creation of illegal paramilitary or armed formations, contract murder, etc. When qualifying these socially dangerous acts, it is important to clearly define the tools and means of committing criminal offences, the objects of criminal offences.

It is known that the subject of criminal offences is essential for the correct qualification of the act. Due to the establishment of the subject of the criminal offence, criminal-legal separation of crimes of one classification group from each other takes place. Notably, the subject may be a mandatory feature of certain criminal offences defined in the CCU (Bereza *et al*., 2020). The analysis of the CCU testified that such items of criminal offences as military supplies and explosives are specified in the articles: Art. 201, 262, 263, 263-1, 410. At the same time, military supplies as objects of criminal offences are prescribed in Articles 264, 267, 269, 411, 412, 413, 414, and explosive substances - in Articles 267, 269, 414[5]. These socially dangerous acts are often a separate link in a chain of well-planned criminal activities related to the illegal trafficking of weapons, ammunition, explosives, or explosive devices (Peretiatko, 2021).

This list of criminal offences is properly correlated with the relevant provisions of the "Protocol against the illegal manufacture and circulation of firearms, their constituent parts and components, as well as their munitions"[6]. Specifically, Article 5 of the Protocol defines intentionally committed actions as criminal offences: illegal manufacture of firearms, their components and munitions; illegal circulation of firearms, their components and munitions; forgery, illegal destruction or alteration of markings on weapons and munitions[7].

Therefore, when committing the acts analysed above, specified in the CCU, the subject of criminal offences

[1]Law of Ukraine No. 5708 "On the Right to Civilian Firearms". (2021, June). Retrieved from http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=72360.
[2]Protocol of the Verkhovna Rada of Ukraine No. 995_792 "On Against the Illicit Manufacturing and Trafficking in Firearms, their Parts and Components, as Well as their Ammunition Supplementing the United Nations Convention Against Transnational Organized". (2001, May). Retrieved from https://zakon.rada.gov.ua/laws/show/995_792#Text.
[3]Ibidem, 2001.
[4]Order of the Cabinet of Ministers of Ukraine No. 73-p "On the Approval of the Plan of Priority Measures for the Integration of Ukraine into the European Union for 2013". (2013, January). Retrieved from https://www.rnbo.gov.ua/ua/RKMU/320.html.
[5]Law of Ukraine No. 2341-III "Criminal Code of Ukraine". (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[6]Protocol of the Verkhovna Rada of Ukraine No. 995_792 "On Against the Illicit Manufacturing and Trafficking in Firearms, their Parts and Components, as Well as their Ammunition Supplementing the United Nations Convention Against Transnational Organized". (2001, May). Retrieved from https://zakon.rada.gov.ua/laws/show/995_792#Text.
[7]Ibidem, 2001.

includes military supplies and explosives. At the current stage, methods of illegal circulation of weapons and military supplies for them are being improved. For this, new high-tech means are used, individual structural elements of weapons are purchased in various places, including ordering delivery from abroad, various means of weapons are used for their transportation (Peretiatko, 2022).

Criminals can, by analogy, use the possibilities of certain technological processes of industrial production of weapons. For instance, in scientific sources, a step-by-step technological process of discharging 23 mm or 30 mm artillery shells is described, which ensures effective extraction of the tracer compound from their cases. In this case, a special installation for burning the tracer compound is used (Neklonsky & Smyrnov, 2022). As for the use of reference information and special literature in the field of weapons science, this issue does not cause any difficulties for criminals. Both special literature and normative documents exist in open access on the Internet (Tolkunov *et al*., 2022).

It should be factored in that pursuant to the international "Protocol against the illegal manufacture and trafficking of firearms", the signatory countries inform each other about the discovered methods of concealing the illegal manufacture of weapons and munitions. Therefore, it is necessary to analyse munitions and explosives as objects of criminal offences[1].

The authors of the commentary of the CCU, M.I. Melnyk & M.I. Havroniuk (2019), define munitions as cartridges for firearms, grenades, explosive parts of rockets, shells, bombs, mines, and other means equipped with an explosive substance, intended to be fired or to cause an explosion. In a broad sense, munitions are considered explosive devices that have industrial production in special organizations, where there is a technological process strictly established by technical documentation. The purpose of such munitions is to cause various degrees of damage to the enemy's manpower, to various objects due to the impressive factors of the explosion.

Based on the conducted empirical research, S.S. Vitvitskyi *et al*. (2021) established that, in practice, law enforcement officers detect cartridges for rifled firearms of various calibres, artillery shells, grenades, and rounds for grenade launchers (62.0%). 6.35 mm calibre cartridges (0.6 %) for shooting from "Browning" pistols, hunting cartridges of 12, 16, 20, 24 mm calibre (1.5 %) are rarely found. In most cases, the subject of criminal offences is ammunition for hand firearms, namely unitary or special cartridges in an assembled and suitable condition for one-time use for their intended purpose (for mechanical damage to targets or signalling). "Special cartridges" should be understood as other types of cartridges (not unitary, without casing) and projectiles with bursting, pyrotechnic or impact charges or their mixture (Vitvitskyi *et al*., 2021). The most popular classification of munitions of criminal origin is their types depending on the type of ammunition and the method of their manufacture (Table 2).

Thus, these are the main types of ammunition for hand firearms, which are the subject of criminal offences during the commission of criminal offences related to the illegal circulation of weapons, the manufacture of ammunition and the use of explosive substances in their composition. It is worth analysing the concepts, types, and properties of explosives, which are the subject of criminal offences when committing criminal offences. As stated in the Departmental Instruction of the Ministry of Internal Affairs of Ukraine[2] explosive substances include chemical compounds that, due to external influence, can self-propagate with a significant rate of decomposition of chemical compounds, form gaseous compounds, and release thermal energy. This refers to "ammonites, ammonals, TNT"[3], as well as "gunpowder, dynamite, nitroglycerin, other chemical compounds that can explode without access to oxygen"[4].

The mass of the explosive substance, the volume where it is placed, determines the power of the warhead or explosive device (Kyrychenko, 2013). Therefore, explosive substances are chemical compounds or their mixtures that can explode under the influence of an external impulse. They are characterized by the speed of the explosive transformation, the heat of the explosion, the composition and volume of gaseous products, their maximum temperature, sensitivity to mechanical and thermal impact and other features, as well as explosiveness. By composition, they are divided into explosive chemical compounds and explosive mixtures; and by appointment – for initiating (primary) and explosive (secondary). During the commission of terrorist crimes, there are cases of the use of plastic explosives (mixtures of blasting agents with plasticized additives) (The International Mine..., 2018).

[1]Protocol of the Verkhovna Rada of Ukraine No. 995_792 "On Against the Illicit Manufacturing and Trafficking in Firearms, their Parts and Components, as Well as their Ammunition Supplementing the United Nations Convention Against Transnational Organized". (2001, May). Retrieved from https://zakon.rada.gov.ua/laws/show/995_792#Text.

[2]Order of the Ministry of Internal Affairs of Ukraine No. 622 "On the Approval of the Instructions on the Procedure for the Manufacture, Acquisition, Storage, Accounting, Transportation and Use of Firearms, Pneumatic, Cold and Cooled Weapons, Devices of Domestic Production for Firing Cartridges, Equipped with Rubber or Metal Projectiles Similar in their Properties of Non-Lethal Action and Cartridges for them, as well as Ammunition for Weapons, Main Parts of Weapons and Explosive Materials". (1998, August). Retrieved from https://zakon.rada.gov.ua/laws/show/z0637-98.

[3]Ibidem, 1998.

[4]Resolution of the Plenum of the Supreme Court of Ukraine No. 3 "On Judicial Practice in Cases of Kidnapping and Other Illegal Handling of Weapons, Ammunition, Explosives, Explosive Devices or Radioactive Materials". (2002, April). Retrieved from https://zakon.rada.gov.ua/rada/show/v0003700-02.

Table 2. Classification of cartridges for small-arms firearms discovered during the investigation of criminal law violations related to the illegal manufacture of munitions or the use of explosives

Standard munitions of industrial production		**Non-standard (atypical) home-made munitions**	
cartridges of domestic production (combat, sports, and hunting cartridges) (48.37%)	cartridges of foreign production (1.8%)	home-made recycled cartridges (0.09%)	home-made cartridges (0.28%)
Most often found in criminals:			
cartridges of calibre 5.6 mm for rifled sporting and hunting weapons. Designed for shooting from rifles of the Kochetov series "TOZ", designs of Sleptsov, Yelyseev, Denisov of the "MC" series, designs of Dragunov, Samoilov of the "Arrow", "Taiga" series, from combined hunting rifles IZH 65-1, IZH 56-2, IZH 56-3, MC 5-35, MC 30-20, MC 29-03, TOZ-34, Margolin pistols, R-4, MC-M, MC 55-1, MC 2-3, MC 102-1, TOZ-35, TOZ-60, IZH 35, IZH-XP-30, etc. Cartridges of this calibre are also used in recycled firearms	Winchester cartridges of .243 calibre (6.2×52) of factory production in Finland; rifle-machine gun cartridges of "308 WIN" calibre (7.62×51), .308 Winchester, manufactured for use by member states; Mauser cartridges of 8 mm calibre (7.62×54 R), produced in Poland and Germany; 22 LR (long rifle) calibre ring ignition cartridges made in Germany; hunting cartridges "Remington" .221 calibre R "Meteor" (5.6 mm); cartridges of .22 calibre WMR (.22 Winchester Magnum Rimfire), as well as cartridges of .45 calibre (.45 ACP (11.43×23 mm) (Automatic Colt Pistol, .45 calibre – automatic Colt pistol of .45 calibre), produced in the USA	factory-manufactured cartridges rearranged in a home-made way by increasing the powder charge (weighing 0.02-0.04 grams) in the sleeve. These are usually rearranged 4 mm "Flobert" cartridges	cartridges of 9 mm calibre made from capsule shells of noise cartridges of 9 mm calibre R.A. Khall by placing bullet-shaped projectiles made of metal/lead with a diameter of up to 8.1 mm, weighing about 1.5 grams, and a charge of gunpowder weighing 0.12-0.16 grams in the casings; atypical cartridges, made in a home-made way from a factory-made "Zhevelo" type capsule by attaching to it a metal projectile – a lead shot with a diameter of 4.9 mm, weighing 0.472 grams

Source: compiled by the authors based on P. Giverts (2018) and S.S. Vitvitskyi *et al*. (2021)

To commit explosions, criminals use the most common types of explosives: industrially manufactured ones; self-made ones (Kofanov *et al*., 2021a; 2021b). There are certain restrictions on the handling of explosives, specifically, in the event of a mechanical impact or friction, the initiating substances can "trigger". While the other type – blasting explosive substances – do not have great sensitivity to external stimuli (Pashchenko *et al*., 2010).

There are the following types of explosives:

a) ammonium-nitrate – explosive mixtures based on ammonium nitrate. They are mainly used in industrial blasting. Apart from the main component, they may contain nitro compounds (nitroglycerin, TNT, hexane, TEN), combustible materials (aluminum, petroleum oils, etc.), as well as inert fillers. These explosives include amatols, ammonals, ammonites, dynamons, granulites, etc.;

b) blasting explosives – a type of explosives that have a high detonation speed (8.5 km/s). These include hexogen, octogen, tetral, ticranic acid, etc. They are used in the manufacture of various cartridges and explosive devices;

c) priming explosives – a type of explosive substances that are highly sensitive to simple initial impulses (shock, friction, electric spark, pricking, etc.). They are used to initiate explosive transformations in charges of other explosive substances. These include mercury, lead azide, tetrazene, etc. (The International Mine…, 2018).

Therefore, a common feature of explosives is the occurrence of chemical explosion energy, the one-time use of the explosive. The author considered the main types of explosive substances that are the subject of criminal offences during the commission of criminal offences related to the illegal circulation of weapons, the manufacture of military supplies and the use of explosives.

The main feature of the investigation of criminal offences in which ammunition or explosives were the subject of criminal offences is the mandatory participation of weapons experts in the procedural actions (37.1% of the surveyed investigators noted the involvement of such specialists in all cases of investigation; 42.3% emphasized their involvement is rarer than there actually was a corresponding need and further expert research of the objects they seized (31.2% of the surveyed respondents emphasized the importance of such objects for identifying and recording traces of a crime; 36.9% – for identifying other evidence; 38.2% – for identifying operational investigative information) (Table 1).

As S. Peretiatko (2022) points out, it is possible to establish the pertinence of the relevant items to munitions or explosives only by appointing appropriate forensic examinations: ballistic, trace, explosive, etc. At the same time, shortcomings were found in the appointment of these examinations during the investigation of criminal offences related to the illegal manufacture of ammunition or the use of

explosives – 34.1% of the interviewed investigators named the incorrect wording of the questions as the reason for the low-quality examination; 28.9% – provision of unsuitable samples; 24.1% – failure to provide necessary materials; 15.3% – provision of items unsuitable for research; 14.1% – incomplete assignment of tasks to the expert (Table 1).

At the same time, knowledgeable individuals in the field of ballistics and explosives necessarily take part in procedural actions, specifically, inspection of the scene of the incident, regarding the illegal manufacture of military supplies and the use of explosives. This rule is related to ensuring the safety of participants in investigative actions, the need for a professional description of seized objects, their placement in special packaging and transportation for forensic examinations. In criminal proceedings regarding the illegal manufacture of ammunition or the use of explosives, a ballistics examination is prescribed. This is an examination of weapons and the traces and circumstances of their use (namely, its subspecies: examination of ammunition for firearms), examination of materials, substances and products, or forensic explosives examination, since only these examinations establish the subject of a criminal offence during the investigation of relevant criminal offences.

Discussion

The study conducted a scientific analysis and comparison of the definition of illegal actions related to the circulation of weapons, the manufacture of military supplies and the use of explosives, which are contained in international documents[1], ratified by many countries of the world, and those concepts contained in the CCU[2] and departmental sub-legislative acts[3] and departmental sub-legislative acts.

Based on the study of the modern practice of investigating the illegal manufacture of military supplies and the use of explosives, the shortcomings of the organization of the work of investigative bodies at the scene of the incident and the difficulties in conducting forensic examinations of the discovered objects were identified. The most common shortcoming of organizing a visit to the scene of an incident related to the illegal manufacture of military supplies or the use of explosives was cited by most of surveyed respondents as logistical shortcomings related to the availability of special transport, modern equipment, and consumables. Furthermore, visits to the crime scene are often delayed. In part, this situation can be explained by the frequency of artillery shelling and bombing of specific objects, the repetition of fire damage to the area where the investigative-operational group is already working. The study of the forensic practice of conducting research on munitions and explosives confirms the data of S. Peretiatko (2022) about the presence of certain shortcomings in the relevant examinations: material and financial reasons, the duration of the research, etc.

On the example of the description of munitions and explosives, such a forensic regularity was revealed as the connection between separate elements of the forensic characteristics of illegal arms trafficking, manufacture of munitions, use of explosives (Pashchenko *et al*., 2010; Vitvitskyi *et al*., 2021; Peretiatko, 2022). The objects of the criminal offence are closely related to the person of the criminal, the method of committing the criminal offence and the "trace picture" of the crime. The authors proved the importance for criminal proceedings of establishing these objects of criminal trespass to investigate the illegal manufacture of military supplies and the use of explosives. Determining and considering the signs and properties of munitions and explosives affects the correct criminal-legal qualification of a committed socially dangerous act. To appoint a forensic examination of seized items of weapons, it is necessary to establish their classification group, including receiving appropriate consultations from specialists in explosives or ballistics. Specialists in the field of weapons science and forensic explosives must be involved in every inspection of the scene related to the illegal manufacture of munitions or the use of explosives, who will ensure the professional and safe handling of the relevant dangerous objects and substances.

Conclusions

This study examined the objects of criminal offences – munitions and explosives, which become the subject of encroachments by offenders in connection with the illegal circulation of weapons, the manufacture and use of their components. When handled illegally, these objects cause damage and destruction of surrounding objects, cause bodily harm to a person or cause their death, and introduce harmful residues into the ecological environment.

Implementing the provisions of international treaties in the field of illegal arms and ammunition trafficking, the Criminal Code of Ukraine makes provision for criminal liability for collective and individual illegal

[1]Protocol of the Verkhovna Rada of Ukraine No. 995_792 "On Against the Illicit Manufacturing and Trafficking in Firearms, their Parts and Components, as Well as their Ammunition Supplementing the United Nations Convention Against Transnational Organized". (2001, May). Retrieved from https://zakon.rada.gov.ua/laws/show/995_792#Text.
[2]Law of Ukraine No. 2341-III "Criminal Code of Ukraine". (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[3]Order of the Ministry of Internal Affairs of Ukraine No. 622 "On the Approval of the Instructions on the Procedure for the Manufacture, Acquisition, Storage, Accounting, Transportation and Use of Firearms, Pneumatic, Cold and Cooled Weapons, Devices of Domestic Production for Firing Cartridges, Equipped with Rubber or Metal Projectiles Similar in their Properties of Non-Lethal Action and Cartridges for them, as well as Ammunition for Weapons, Main Parts of Weapons and Explosive Materials". (1998, August). Retrieved from https://zakon.rada.gov.ua/laws/show/z0637-98.

actions involving ammunition and explosives. The most common is prosecution for the smuggling of military supplies and explosives, as well as their theft, appropriation, illegal manufacture or possession of them by fraudulent means or by abuse of official position. As for war supplies as the subject of criminal trespass – their careless storage, destruction or damage or loss is committed. Criminals violate the rules of handling explosive substances, their illegal transportation. Presently, to investigate the illegal manufacture of munitions or the use of explosives, it is important to classify them, highlighting the properties and signs of the relevant objects and substances.

Combat supplies for hand firearms in the sphere of illegal circulation are divided into the following types: 1) cartridges of industrial production (domestic or foreign production); 2) home-made military supplies (remanufactured and home-made cartridges). At the current stage, during the commission of war crimes, large-calibre cartridges of 14.5 mm calibre and larger, which are converted into armour-piercing, incendiary, or tracer bullets, fall into the scope of criminal proceedings. During the illegal handling of weapons, ammunition, explosives, criminals use explosives, which are classified into: industrial and home-made; ammonium-nitrate, initiating, and blasting explosives.

The definitions and classification of munitions and explosives provided in the article allow for differentially establishing a particular object as the subject of a criminal offence, clarifying its characteristics with the mandatory use of the special knowledge of the experts involved, and establishing other circumstances of the subject of evidence in criminal proceedings. The conclusion regarding the pertinence of an object (or substance) to a munition, an explosive substance is formed based on the results of forensic ballistic examination of munitions to weapons, research of materials, substances and products, forensic explosives examination.

Acknowledgements

None.

Conflict of Interest

None.

References

[1] Amaral, M.A., Yasin, S., Gibson, A.P., & Morgan, R.M. (2020). Sampling of explosive residues: The use of a gelatine-based medium for the recovery of ammonium nitrate. *Science & Justice,* 60(6), 531-537. doi: 10.1016/j.scijus.2020.07.007.

[2] Bereza, Yu.M., *et al.* (2020). *Criminal liability for illegal arms trafficking.* In S.A. Shalhunova (Eds.). Dnipro: Dnipropetrovsk State University of Internal Affairs.

[3] Carson, J.V., Dierenfeldt, R., & Fisher, D. (2022). Country-level firearm availability and terrorism: A new approach to examining the gun-crime relationship. *Journal of Research in Crime and Delinquency,* 59(4), 449-486. doi: 10.1177/00224278211046255.

[4] Christensen, J. (2019). Arming the outlaws: On the moral limits of the arms trade. *Political Studies,* 67(1), 116-131. doi: 10.1177/0032321718754516.

[5] Cox, M. (2003). A multidisciplinary approach to the investigation of crimes against humanity, war crimes and genocide: The inforce foundation. *Science & Justice,* 43(4), 225-227. doi: 10.1016/S1355-0306(03)71781-X.

[6] Exall, A., Goddard, I., & Bandey, H. (2022). Preliminary investigations using recover latent fingerprint technology on unfired ammunition and fired cartridge cases. *Science & Justice,* 62(5), 556-568. doi: 10.1016/j.scijus.2022.08.001.

[7] Giverts, P., Sofer, S., Solewicz, Y., & Varer, B. (2020). Firearms identification by the acoustic signals of their mechanisms. *Forensic Science International,* 306, article number 110099. doi: 10.1016/j.forsciint.2019.110099.

[8] Giverts, P.V. (2018). Forensic investigation of AirSoft rifles, modernized for shooting with 5.56x45mm cartridges. *Theory and Practice of Forensic Examination and Criminology,* 18, 301-308. doi: 10.32353/khrife.2018.34.

[9] Grassi, S. (2021). Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition. *Brill Research Perspectives in Transnational Crime*, 3(4), 58-77. doi: 10.1163/24680931-12340023.

[10] Kahane, L.H. (2020). State gun laws and the movement of crime guns between states. *International Review of Law and Economics,* 61, article number 105871. doi: 10.1016/j.irle.2019.105871.

[11] Kleck, G. (2021). Compliance with universal background check gun laws. *Journal of Crime & Justice,* 44(4), 414-418. doi: 10.1080/0735648X.2020.1815555.

[12] Kofanov, A.V., *et al.* (2021a). *Automated information and reference system "Inspector-criminalist".* Kyiv: National Academy of Internal Affairs.

[13] Kofanov, A.V., Yusupov, V.V., & Mykhalchuk, T.V. (2021б). *Legal regulation of weapons circulation: History, current state and development prospects.* Kharkiv: Publishing house "Pravo".

[14] Kyrychenko, O.A. (2013). *Basic signs, concepts and classification of criminal weapons.* Mykolaiv.

[15] Melnyk, M.I., & Havroniuk, M.I. (Eds.). (2019). *Scientific and practical commentary on the Criminal Code of Ukraine*. Kyiv.
[16] Neklonskyi, I.M., & Smyrnov, O.M. (2022). Optimization of the technology of firing tracers from small-caliber artillery shells. *Problems of Emergency Situations,* 2(36), 349-362. doi: 10.52363/2524-0226-2022-36-25.
[17] Nieto, C.C. (2023). Illegal arms trading in Europe after the new directive on the control of the acquisition and possession of arms. *Revista Juridica De Castilla Y Leon,* 59, 7-32.
[18] Nishshanka, B., Shepherd, Ch., Koene, L., Punyasena, M.A., & Ariyarathna, R. (2022). An empirical study on the close-range post-ricochet orientation of AK bullets (7.62 mm × 39 mm). *Science & Justice,* 62(5), 569-581. doi: 10.1016/j.scijus.2022.08.004.
[19] Nishshanka, Lt. C.B., Shepherd, Ch., Ariyarathna, M.R., Weerakkody, L., & Palihena, Ja. (2021). An android-based field investigation tool to estimate the potential trajectories of perforated AK bullets in 1 mm sheet metal surfaces. *Forensic Science International: Digital Investigation,* 38, article number 301267. doi: 10.1016/j.fsidi.2021.301267.
[20] Pashchenko, V.I. (2010). *Means and methods of countering terrorist acts committed with the use of explosive devices.* Kyiv.
[21] Peretiatko, S. (2021). Method commission of illegal manufacture, processing or repair of firearms or fraud unlawful removal or changes its labelling or illicit manufacture of ammunition, explosives or explosive devices. *Scientific Journal of the National Academy of Internal Affairs,* 26(4), 22-30. doi: 10.33270/01211214.22.
[22] Peretiatko, S.A. (2022). Problems of appointing and conducting an examination during the investigation of criminal offenses provided for by Art. 263-1 of the Criminal Code of Ukraine. *Forensics and Forensic Examination,* 67, 114-123. doi: 10.33994/kndise.2022.67.13.
[23] Pytlak, A. (2020). Are arms trade treaty meetings being used to their full potential? *Global Responsibility to Protect,* 12(2), 156-177. doi: 10.1163/1875984X-01202003.
[24] Queirós, S.S., Lühe, B., Silva-Bessa, A., Brito-da-Costa, A.M., Caldas, I.M., Dawson, L., & Madureira-Carvalho, Áu. (2023). Lipidic compounds found in soils surrounding human decomposing bodies and its use in forensic investigations - A narrative review. *Science & Justice,* 63(3), 303-312. doi: 10.1016/j.scijus.2023.02.001.
[25] Ristova, M., Skenderovska, M., Skulic, Z., & Brożek-Mucha, Z. (2023). A study of dispersion of gunshot residue from a frequently used Serbian ammunition cal. 7.65 mm to support selected aspects of casework in North Macedonia. *Science & Justice,* 63(3), 396-405. doi: 10.1016/j.scijus.2023.04.004.
[26] Samoilenko, O., Bereziuk, V., Zabolotna, O., Chornyi, A., & Adamchuk, O. (2022). SWOT analysis to assess the threat of illegal arms trafficking on the Ukrainian border with the European Union countries in the context of the war. *Cuestiones Politicas,* 40(75), 694-716. doi: 10.46398/cuestpol.4075.42.
[27] Sandeep, K.V., Bhawara, H.S., & Rajesh, M. (2022). Overview of nano enabled sensor for analysis of explosive substances. *International Journal of Science and Research Archive*, 07(02), 487-500. doi: 10.30574/ijsra.2022.7.2.0299.
[28] Shumeiko, T., Kurkova, K., Yarova, R., Nemesh, P., & Zubko, O. (2021). Legislative prerequisites for the classification of arm. *Amazonia Investiga,* 10(43), 168-174. doi: 10.34069/AI/2021.43.07.17.
[29] Smyrnov, O.M., & Tolkunov, O.M. (2020). Increasing the efficiency of disposal of OZM-72 anti-personnel fragmentation mines*. Problems of Emergency Situations,* 2(32), 199-214. doi: 10.5281/zenodo.4400198.
[30] Stavrianakis, A. (2019). Controlling weapons circulation in a postcolonial militarised world. *Review of International Studies,* 45(1), 57-76. doi: 10.1017/S0260210518000190.
[31] The International Mine Action Standards (IMAS) are the standards in force for all mine action operations. (2018). Retrieved from https://www.mineactionstandards.org/.
[32] Thurner, P.W., Schmidt, C.S., Cranmer, S.J., & Kauermann, G. (2019). Network interdependencies and the evolution of the international arms trade. *Journal of Conflict Resolution,* 63(7), 1736-1764. doi: 10.1177/0022002718801965.
[33] Tolkunov, I.O., Ivanets, H.V., Popov, I.I., & Smyrnov, O.M. (2022). Improvement of the method of calculating charges of explosives for the destruction of emergency buildings. *Problems of Emergency Situations,* 1(35), 76-95. doi: 10.52363/2524-0226-2022-35-6.
[34] Unified report of the Prosecutor General's Office on criminal offenses for January-December 2021. (2021). Retrieved from https://www.gp.gov.ua/ua/posts/pro-zareyestrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2.
[35] Unified report of the Prosecutor General's Office on criminal offenses for January-December 2022. (2022). Retrieved from https://www.gp.gov.ua/ua/posts/pro-zareyestrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2.
[36] Unified report of the Prosecutor General's Office on criminal offenses for January-December 2023. (2023). Retrieved from https://www.gp.gov.ua/ua/posts/pro-zareyestrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2.

[37] Vitvitskyi, S.S., Volobuieva, O.O., & Voloboiev, A.O. (2021). *Methods of investigation of illegal handling of weapons and ammunition.* Kyiv: Dakor Publishing House LLC.
[38] Voloboiev, A.O. (2019). Illegal handling of weapons and ammunition: Theoretical and legal aspect. In *Problems and prospects of the development of modern science in the countries of Europe and Asia: Proceedings of the XIII International Scienctific and Practical Internet conferences* (pp. 121-123). Pereiaslav-Khmelnytskyi.
[39] Voluiko, O.M., Romashko, O.M., & Lehenkyi, V.V. (2020). Peculiarities of the criminal law counteraction to the illegal circulation of weapons, ammunition and explosives in the activities of law enforcement agencies of Ukraine. *Legal Bulletin,* 16, 233-240. doi: 10.32850/lb2414-4207.2020.16.31.
[40] White, R. (2020). Mission of forensic science international: Animals and environments. *Forensic Science International: Animals and Environments*, 1, article number 100001. doi: 10.1016/j.fsiae.2020.100001.
[41] Yavuz, H. (2020). Certification authenticity and design requirements in small arms munitions production and advances in composite munitions. *International Journal of Engineering Research and Development*, 12(1), 98-105. doi: 10.29137/umagd.500569.

Бойові припаси та вибухові речовини як предмети злочинних посягань під час учинення кримінальних правопорушень

Володимир Юсупов

Доктор юридичних наук, професор
Національна академія внутрішніх справ
03035, пл. Солом'янська, 1, м. Київ, Україна
https://orcid.org/0000-0001-5216-4144

Юрій Філіпов

Аспірант
Національна академія внутрішніх справ
03035, пл. Солом'янська, 1, м. Київ, Україна
https://orcid.org/0000-0003-1344-8042

Анотація

За відсутності в Україні базового закону про зброю та бойові припаси до неї в правозастосовній діяльності виникають певні труднощі з кваліфікацією діянь правопорушників у сфері незаконних обігу зброї, виготовлення бойових припасів і використання вибухових речовин. Метою статті є дослідження таких предметів озброєння, як бойові припаси та вибухові речовини, які стають предметом посягань правопорушників у зв'язку з незаконними обігом зброї, її складових, їх виготовленням та використанням. У статті використано історико-правовий, порівняльно-правовий, системно-структурний, статистичний і соціологічний методи. Класифіковано бойові припаси і вибухові речовини з метою встановлення конкретного об'єкта як предмета злочинного посягання; визначено їх криміналістично значущі ознаки та властивості. Розкрито роль спеціалістів-балістів, спеціалістів-вибухотехніків та інших фахівців під час огляду місця події, розслідування незаконного обігу зброї, виготовлення бойових припасів і використання вибухових речовин. Доведено, що бойові припаси та вибухові речовини мають тісний взаємозв'язок з особою злочинця, способом учинення кримінального правопорушення, слідовою картиною. Удосконалено теоретичні положення щодо властивостей та ознак бойових припасів і вибухових речовин. Розроблено криміналістичні рекомендації щодо дій правоохоронців з бойовими припасами та вибуховими речовинами в кримінальному провадженні. Набули подальшого розвитку рекомендації щодо вилучення та упакування бойових припасів і вибухових речовин як речових доказів. Практичне значення полягає в з'ясуванні властивостей та ознак бойових припасів і вибухових речовин, що дозволяє на початковому етапі розслідування встановити ці предмети; правильно проводити дії з їх виявлення, фіксації, вилучення, упакування; здійснювати належну кримінально-правову кваліфікацію вчиненого правопорушення

Ключові слова:

зброя; боєприпаси; небезпечні речовини; незаконний обіг зброї; незаконне виготовлення бойових припасів

UDC 340:007
DOI: 10.56215/naia-chasopis/2.2023.74

Protection of critical infrastructure as a component of Ukraine's national security

Ihor Yefimenko*
PhD in Law
National Academy of Internal Affairs
03035, 1 Solomianska Sq., Kyiv, Ukraine
https://orcid.org/0000-0002-6684-7760

Andrii Sakovskyi
Doctor of Law, Professor
National Academy of Internal Affairs
03035, 1 Solomianska Sq., Kyiv, Ukraine
https://orcid.org/0000-0003-0762-859X

Yevhen Bilozorov
PhD in Law, Associate Professor
National Academy of Internal Affairs
03035, 1 Solomianska Sq., Kyiv, Ukraine
https://orcid.org/0000-0002-7824-6786

Abstract
The relevance of the subject under study is conditioned upon the scientific originality and practical significance of the problematic aspects of the protection of critical infrastructure as a component of the national security of Ukraine, specifically, regarding the creation and functioning of the national system of its protection. Given the fact that the term "critical infrastructure" is relatively new for Ukrainian legislation, a comprehensive list of objects included in its system has not yet been formed, and the optimal algorithms for ensuring their security have not been determined. The purpose of this study was a comprehensive investigation of Ukrainian legislation in the field of national security, which determines the legal and organizational foundations of the creation and functioning of the national critical infrastructure protection system, as well as obtaining scientific results in the form of conclusions aimed at optimizing the implementation of critical infrastructure protection. The methodological tools of the study included the hermeneutic method of learning social and legal phenomena, analytical, dogmatic, and generalization method. Considering the European integration processes of Ukraine, scientifically sound proposals were provided to improve the national legislation in the field of critical infrastructure protection according to international legal acts that govern issues of safety and protection of critical infrastructure objects. The term "critical infrastructure" was studied, the state of scientific developments regarding its protection was analysed, the algorithm of actions to ensure its security was analysed and determined, factoring in the Ukrainian political and military situation in the state

Keywords:
life support of the state and society; vital functions and/or services; national protection system; subjects and objects of protection; functions of the state; negative consequences; emergencies

Article's History:
Received: 30.03.2023
Revised: 01.06.2023
Accepted: 26.06.2023

Suggest Citation:
Yefimenko, I., Sakovskyi, A., & Bilozorov, Ye. (2023). Protection of critical infrastructure as a component of Ukraine's national security. *Law Journal of the National Academy of Internal Affairs*, 13(2), 74-85. doi: 10.56215/naia-chasopis/2.2023.74.

*Corresponding author

Introduction

At the national level, the issue of the protection of critical infrastructure (hereinafter referred to as the PCI) received special public resonance with the beginning of large-scale Russian military aggression. Thus, according to the statistics of the Ministry of Defence of Ukraine (97% of Russian targets…, 2022), in just nine months of the war, Russia, a state in violation of international law, launched over 16,000 missile strikes on various Ukrainian infrastructure objects, which caused losses in the amount exceeding a trillion US dollars. Based on these facts, the National Police alone opened more than 34,000 criminal proceedings, including those prescribed by Article 438 of the Criminal Code of Ukraine (Violation of laws and customs of war)[1].

At the scientific level, certain aspects of the PCI were reflected in the studies of many scientists and practitioners. For the most part, these studies relate to the concept of critical infrastructure (CI), statutory regulation of its activity, organization of its security and protection, as well as assessment of the main threats affecting the proper functioning of its objects. Analysing the concept of CI, O. Yermenchuk (2017) and M.N. David (2018) attributes to its content "a complex of extremely important objects of the national infrastructure, their systems and assets, whether physical or virtual, which ensure its sustainable functioning…", which corresponds to the normative definition specified in the Detective No. 114 adopted by the European Council of 2008[2].

Comparable in content, but a more specific definition is provided by O. Vergolyas (2018), who understands this term as "enterprises and institutions (regardless of the forms of ownership) … that are strategically important for the functioning of the economy and the security of the state and its population…". Considering CI as an object of state administration, O. Yaremechuk and Y. Stakhnitskyi (2022) emphasize that this category is characterized by its pertinence to the national infrastructure, which ensures the national security and defence of the country. Analogous opinions are held by S. Chumachenko and V. Trotsko (2017), stressing that a violation of the operating regime of one of its components of these elements leads to an emergency.

Investigating the category of criticality of infrastructure objects, V. Franchuk *et al*. (2021) rightly suggest considering the level of their influence on the production of goods and/or services vital for the functioning of the state and its population, which ensure the functioning of national security and defence of the state. Highlighting the main criteria according to which critical areas should be considered, D. Biryukov, S. Kondratov (2012) and S. Ducaru (2017) proposed to attribute to them a set of objectives, technologies, state and scientific structures, the violation of the regulations of which activities affects economic, socio-political, military, and environmental security. This approach is followed in the content of the Green Book on the issues of PCI prepared by the National Institute of Strategic Studies with the involvement of Ukrainian and foreign experts with the support of the NATO Liaison Office in Ukraine.

The purpose of this study was a detailed coverage of the features of the PCI as a component of the national security of Ukraine, considering the norms and provisions of the new legislation in this area of legal relations and modern realities, which determined the purpose of this study. Accordingly, the authors formulated the following tasks: to analyse the CI as a legal category and determine its place in the national security protection system of Ukraine; to identify and substantiate the main problems of the PCI, threats that affect the proper functioning of its facilities, as well as further areas for the development of its security mechanisms; to substantiate the conclusions and proposals regarding the improvement of the national PCI system and formulate priority areas for further research on the given topic.

Materials and Methods

The regulatory basis of this study included laws and sub-legislative regulations, the norms and provisions of which govern certain issues regarding the national policy in providing the PCI. Specifically, the laws of Ukraine "On the Fundamental Principles of Ensuring Cyber Security of Ukraine"[3], "On National Security of Ukraine"[4], "On Critical Infrastructure"[5], Decrees of the President of Ukraine "On Sustainable Development Goals of Ukraine for the period until 2030"[6], "On Improving Measures to Ensure the Protection of Critical Infrastructure Objects"[7], "On Urgent Measures to Neutralize Threats to the Energy Security of Ukraine and Strengthening the

[1]Criminal Code of Ukraine No. 2341-III. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text 2341-III.
[2]Council Directive of No. 2008/114/EC "On the Identification and Designation of European Critical Infrastructures and the Assessment of the Need to Improve their Protection". (2008, December). Retrieved from https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:345:0075:0082:EN:PDF.
[3]Law of Ukraine No. 2163-VIII "On the Fundamental Principles of Ensuring Cyber Security of Ukraine". (2017, October). Retrieved from https://zakon.rada.gov.ua/laws/show/2163-19#Text.
[4]Law of Ukraine No. 2469-VIII "On National Security of Ukraine". (2018, June). Retrieved from https://zakon.rada.gov.ua/laws/show/2469-19#Text.
[5]Law of Ukraine No. 1882-IX "On Critical Infrastructure". (2021, November). Retrieved from https://zakon.rada.gov.ua/laws/show/1882-20#Text.
[6]Decree of the President of Ukraine No. 722/2019 "On Sustainable Development Goals of Ukraine for the period until 2030". (2019, September). Retrieved from https://zakon.rada.gov.ua/laws/show/722/2019?find=1&text=%D1%96%D0%BD%D1%84%D1%80%D0%B0%D1%81%20%D1%82%D1%80%D1%83%D0%BA#Text.
[7]Decree of the President of Ukraine No. n0014525-16 "On Improving Measures to Ensure the Protection of Critical Infrastructure Objects". (2016, December). Retrieved from https://zakon.rada.gov.ua/laws/show/n0014525-16#Text.

Protection of Critical Infrastructure"[1], Resolution of the Cabinet of Ministers of Ukraine "On approval of the Procedure for forming the list of information and telecommunication systems of critical infrastructure objects of the state"[2], "On some issues of objects of critical infrastructure"[3], etc.

The theoretical framework of this study included the scientific works of theoreticians and practitioners who investigated individual issues related to the subject under study. The study was based on the hermeneutic method of learning social and legal phenomena and concepts in their development and interdependence. This method helped investigated and analyse the regulations, analytical materials, concepts, and opinions of the authors on separate issues related to the subject under study. Using a descriptive-analytical, dogmatic method, an analysis of interpretations of legal categories, formulation of definitions, refinements of the terminology, proposals on the subject under study were formulated. The analysis method was used to analyse regulations that govern separate legal and organizational principles concerning the creation and functioning of the national policy on the PCI. Conclusions and suggestions were formulated using the generalization method.

Results and Discussion

Characteristics of the national critical infrastructure protection system

One of the problems of the national PCI system is that in Ukraine, a complete and final list of critical infrastructure objects (CIOs) has not yet been formed. The reason for this is, firstly, the factual lack of full-fledged functioning of the State Service for the Protection of Critical Infrastructure and Ensuring the National Stability System of Ukraine, and secondly, this process is endowed with permanent and corrective properties. That is, the CIOs are identified constantly and may change depending on the internal political and military situation in the state.

In a general sense, infrastructure, as a term, refers to general scientific concepts used in almost all spheres of human professional activity (Dubnytskyi *et al*., 2017; Melnyk & Leschuh, 2019). When interpreting this concept, the key phrase is considered, which is "a set or complex of industries, types of activities, institutions, systems, elements, etc.". That is, this refers not to any particular object, but to their structured association for solving certain tasks in a certain field of knowledge, skills, and abilities.

Considering this, the definition of term "infrastructure" depends on its particular type of activity where it is used as a certain category (Telenyk, 2020; Hankevich *et al*., 2021). Considering the multi-vector nature of this concept, the functional approach is factored in when determining the classification features of infrastructure. That is, the main areas and types of its activity, where its essence and social purpose are manifested.

Measures to ensure their safety and stability, i.e., the ability to quickly recover, are important during the operation of infrastructure facilities. This issue becomes especially relevant when it comes to critical areas of state activity, the violation of which can adversely affect the functioning of vital state institutions, and therefore harm the country's national interests. That is why, starting from the mid-1990s, in the field of protection of US national security, such a term as "critical infrastructure" appeared (President's Commission on..., 1997).

At the national, regulatory level, the issues of the PCI were first given attention in the provisions of the National Security Strategy of Ukraine "Ukraine in a Changing World" of 2007[4], where strategic goals and main tasks of national policy in the field of national security included national security in fuel and energy complex and ensuring information security at CIOs. However, this topic became especially relevant after the Russian annexation of the Crimean Peninsula. Thus, in 2015, the National Security and Defence Council of Ukraine (NSDCU) adopted a new edition of the National Security Strategy of Ukraine[5], where the principal areas of the national policy in the field of national security and defence protection included security at the CIOs.

The next step was the holding of a series of expert meetings at the National Institute for Strategic Studies and NATO member countries, based on the results of which the "Green Book on the issues of PCI in Ukraine" was drafted (Biryukov & Kondratov, 2012). In this document, for the first time, the term "critical infrastructure of Ukraine" was defined as "systems and resources, physical or virtual, that provide functions and services, the violation of which will lead to the gravest adverse consequences for the life of society, the socio-economic development of the country, and the national security". In turn, the "protection of critical

[1]The decision of the National Security and Defence Council of Ukraine No. n0001525-17 "On Urgent Measures to Neutralize Threats to the Energy Security of Ukraine and Strengthening the Protection of Critical Infrastructure". (2017, January). Retrieved from https://zakon.rada.gov.ua/laws/show/n0001525-17#Text.

[2]Resolution of the Cabinet of Ministers of Ukraine No. 563-2016-п "On Approval of the Procedure for Forming the List of Information and Telecommunication Systems of Critical Infrastructure Objects of the State". (2016, August). Retrieved from https://zakon.rada.gov.ua/laws/show/563-2016-%D0%BF#Text.

[3]Resolution of the Cabinet of Ministers of Ukraine No. 1109-2020-п "On Some Issues of Objects of Critical Infrastructure". (2020, October). Retrieved from https://zakon.rada.gov.ua/laws/show/1109-2020-%D0%BF#Text.

[4]Decree of the President of Ukraine No. 105/2007 "National Security Strategy of Ukraine. Ukraine in a Changing World". (2007, January). Retrieved from https://zakon.rada.gov.ua/laws/show/105/2007?find=1&text=%D0%BA%D1%80%D0%20%B8%D1%82%D0%B8%D1%87#Text.

[5]Decree of the President of Ukraine No. 287/2015 "National Security Strategy of Ukraine. The Decision of the National Security and Defense Council of Ukraine". (2015, June). Retrieved from https://www.president.gov.ua/documents/2872015-19070.

infrastructure of Ukraine" was defined as "a set of measures implemented in regulatory, organizational, and technological instruments aimed at ensuring the safety and stability of critical infrastructure".

In 2016, the Government adopted the Resolution "On Approval of the Procedure for Forming the List of Information and Telecommunication Systems of the State's CIOs"[1], the provisions of which defined the concept of the State Infrastructure as "a set of state infrastructure objects that are key for the economy and industry, the functioning of society and security population, the disabling and destruction of which may have an impact on national security and defence, the natural environment, or lead to significant financial losses and human casualties". "Enterprises and institutions (regardless of the form of ownership) of such industries as energy, chemical industry, transport, banks and finance, information technology and telecommunications (electronic communications), food, healthcare, communal economy, which are strategically important for the functioning of the economy and the security of the state, society, and population".

On February 16, 2017, the National Security Service of Ukraine adopted the Decision "On urgent measures to neutralize threats to the energy security of Ukraine and strengthen the protection of CI"[2], in the operative part of which, the Ministry of Internal Affairs of Ukraine and the Security Service of Ukraine were entrusted with the responsibilities of taking urgent measures to ensure the security and protection of CI. In this context, on October 5, 2017, the Law of Ukraine "On the Fundamental Principles of Ensuring Cyber Security of Ukraine"[3], was adopted, the rules of which defined the fundamental principles of coordinating the activities of relevant entities to ensure the protection of critical information infrastructure objects.

With the adoption of the Law of Ukraine "On the National Security of Ukraine", ensuring the security of the CI was included in the main vectors of national policy in the field of national security and defence of the country, where the SBU was entrusted with the main powers to ensure the security of the CI. The content of this provision is also followed in the new edition of the National Security Strategy of Ukraine "Human security – country security", which was adopted in 2020[4], which also emphasizes the need to create an effective system of security and stability of the CI, based on a clear distribution of the subjects of its protection, as well as the limits of the implementation of their powers.

The adoption of Resolution of the Cabinet of Ministers of Ukraine No. 1109 dated 2020[5] was a major step towards the formation of the national PCI system. The provisions of this regulation approved the identification procedure (attribution of the infrastructure object to the CIOs) and the categorization of the CIOs according to four categories of criticality. These categories, depending on the set of criteria, determine the vulnerability of these objects to external and/or internal threats, the scale of the adverse consequences caused at the national, regional, municipal, or local (object) levels, the duration of restoration works and the number of forces and means involved in eliminating the consequences of an emergency.

The culminating moment in the creation and functioning of the national PCI system was the adoption of the Law of Ukraine "On Critical Infrastructure"[6] (hereinafter – the Law). This regulation defined the legal and organizational principles for the creation and functioning of the national system of the PCI, which lies in "a set of CIOs that are important for the economy, national security and defence, the malfunctioning of which can harm vital national interests." At the same time, the definition of the CI was given as simply as "the totality of CIOs", and under CIOs the legislators defined "systems, their parts and their totality, which are important for the economy, national security and defence, the malfunctioning of which can harm vital national interests". Considering the above, it is possible to reach an intermediate conclusion that CI consists of a collection and/or complexes of interconnected elements (objects), the functioning of which is vital for the state and its society, and therefore a violation of their mode of operation can have irreparable consequences for the national security and defence of the country. A distinctive feature of all these elements is that they are interconnected and interdependent. In other words, this means that the smooth operation of the banking system, the city's life support systems, the agricultural and industrial complex, as well as other important spheres of the life of the state and its institutions depends on the proper functioning of, e.g.,

[1]Resolution of the Cabinet of Ministers of Ukraine No. 563 "On the Approval of the Procedure for the Formation of the List of Information and Telecommunication Systems of Objects of Critical Infrastructure of the State". (2016, August). Retrieved from https://zakon.rada.gov.ua/laws/show/563-2016-%D0%BF#Text.

[2]Decree of the President of Ukraine No. n0001525-17 "On Urgent Measures to Neutralize Threats to the Energy Security of Ukraine and Strengthen the Protection of Critical Infrastructure. The decision of the National Security and Defense Council of Ukraine". (2017, January). Retrieved from https://zakon.rada.gov.ua/laws/show/n0001525-17#Text.

[3]Law of Ukraine No. 2163-VIII "About the Main Principles of Ensuring Cyber Security of Ukraine". (2017, October). Retrieved from https://zakon.rada.gov.ua/laws/show/2163-19#Text.

[4]Decree of the President of Ukraine No. 392/2020 "On the Decision of the National Security and Defense Council of Ukraine "On the National Security Strategy of Ukraine". (2020, September). Retrieved from https://zakon.rada.gov.ua/laws/show/392/2020#Text.

[5]Resolution of the Cabinet of Ministers of Ukraine No. 1109-2020-п "On Some Issues of Objects of Critical Infrastructure". (2020, October). Retrieved from https://zakon.rada.gov.ua/laws/show/1109-2020-%D0%BF#Text.

[6]Law of Ukraine No. 1882-IX "On Critical Infrastructure". (2021, November). Retrieved from https://zakon.rada.gov.ua/laws/show/1882-20#Text.

energy enterprises, the uninterrupted operation of the banking system, the city's life support systems, agrarian and industrial complex, as well as other important spheres of life activity of the state and its institutions.

According to the Law, the national system of PCI is divided into four levels, which are managed by authorized entities that form and implement the national policy on the PCI. A prominent place in the system of PCI subjects is occupied by the authorized body in the field of PCI, which, according to the Resolution of the Cabinet of Ministers of Ukraine dated November 12, 2022 No. 787[1], is the State Service for the Protection of Critical Infrastructure and Ensuring the National Stability System of Ukraine (the SPCI). According to its legal status, the SPCI is the central body of the executive power and the main body that forms and implements national policy in the field of the PCI and ensures the national system of stability of Ukraine.

To coordinate the actions of the subjects of the national system of PCI, the SPCI was entrusted with the authority to form and keep the CIO Register, which consists of an automated sectoral list of CIOs. After the registration of the CIO (attribution of the CIO to the relevant register), the sectoral bodies in the field of the PCI inform the operator of the CIO about this for the preparation of the appropriate safety passport, which contains information on the identification of this object, a list of measures necessary for its protection and safety, and as well as a circle of individuals responsible for communication with other subjects of the national PCI system.

The protection and stability of CI by the subjects of the national system of its protection is ensured pursuant to the modes of operation of the national PCI system defined by the Law. To the latter, the Law refers the following: regular mode (assessment of possible threats and information about them); standby mode (checking and transferring the protection system to the readiness to protect the CIO in the event of a threat); response mode (crisis response measures); recovery mode (measures taken to return the operation of the CIO to normal mode).

On November 4, 2022, the President of Ukraine signed the amendments to the Laws of Ukraine "On Critical Infrastructure" and "On the State Service of Special Communications and Information Protection of Ukraine"[2], approved by the Verkhovna Rada. According to these amendments, during the special period and for twelve months after its end, the State Service for Special Communications and Information Protection of Ukraine carries out the powers of the authorized body in matters of PCI. In a general sense, this document is a natural continuation of the national policy in the field of PCI, which helps better ensure the protection and stability of its objects in the conditions of martial law.

Objects of the national PCI system

The legal requirement for the object to be classified as a CI is to provide it with vital functions and/or obedience for the state and its society, the violation of which may lead to dangerous consequences for the national security and defence of the country. In fact, the Law refers to such functions and/or services:

Management and provision of the critical (administrative) services. The provision of administrative services is related to the exercise of authority by authorized subjects of state power (mostly executive), local self-government bodies, as well as other subjects authorized to carry out state registration, provide administrative services, etc.[3]. Energy supply (specifically, the supply of thermal energy). This refers to a set of enterprises (institutions, organizations) to produce (extraction, processing) material objects where concentrated energy is suitable for practical use by humans (Leschuk, 2017).

Water supply and drainage. This category includes a set of enterprises (institutions, organizations) servicing water circulation systems, including the production of drinking and technical water, its water supply and drainage.

Food security. That is, a set of enterprises (institutions, organizations) for the cultivation, processing, manufacturing, packaging, storage and distribution (supply) of products of plant, animal, mineral, synthetic (biotechnological) origin, used for the production of food products.

Healthcare. This sector consists of a set of healthcare facilities, including hospitals, military medical facilities, family medicine centres, health centres, dispensaries, boarding houses, sanitary-epidemiological services, donor institutions, medical laboratories, morgues, etc.

Pharmaceutical industry. This industry includes the production of medicines and medical products, their wholesale and retail trade, specialized storage, distribution.

Production of vaccines, sustainable functioning of biolaboratories. The production of vaccines is the result of a complex and lengthy production process, in specialized laboratories, which involves suitable control at all its stages. The stages of vaccine production include the research stage (vaccine development); preclinical studies of a candidate vaccine; clinical trials of

[1]Resolution of the Cabinet of Ministers of Ukraine No. 787 "On the Establishment of the State Service for the Protection of Critical Infrastructure and Ensuring the National Stability System of Ukraine". (2022, November). Retrieved from https://zakon.rada.gov.ua/laws/show/787-2022-%D0%BF#Text.

[2]Law of Ukraine No. 3475-IV "On the State Service of Special Communications and Information Protection of Ukraine". (2006, January). Retrieved from https://zakon.rada.gov.ua/laws/show/3475-15#Text.

[3]Law of Ukraine No. 5203-VI "On Administrative Services". (2012, September). Retrieved from https://zakon.rada.gov.ua/laws/show/5203-17?find=1&text=%D1%83%D1%80%D1%8F%D0%B4%D1%83% D0%B2%D0%B0#Text.

a candidate vaccine; registration and approval of normative documents in the relevant regulatory body; vaccine production; quality control during mass production and use (Sakhanyuk, 2020).

Information services. This sector is aimed at the proper functioning of enterprises (institutions, organizations) that carry out information activities in the form defined by law to meet the information needs of the population.

Electronic communications. That is, a set of enterprises (institutions, organizations) that ensure the functioning of information transmission and reception systems in the form of electromagnetic signals, including technological means of electronic communication and lines of electronic communication networks[1].

Financial services. This category includes a set of enterprises (institutions, organizations) that secure the operations with financial assets in cases prescribed by law[2].

Transport support. This sector includes a set of enterprises (institutions, organizations) that ensure the functioning of the transport system, which is covered by all means of transportation (aviation, sea routes, highways, railways, main pipelines) (Lordan-Perret *et al*., 2019; Zhu *et al*., 2021).

Defence, national security. This category includes two related sectors, which are critical for the functioning and life of any state. According to the national legislation, the country's defence consists of relevant systems aimed at protecting the state from external military aggression[3]. In turn, national security lies in protecting the state from potential threats of a non-military nature[4]. The objects of ensuring the national security and defence of the country are state sovereignty, constitutional order, territorial integrity, defence, economic and technological potential, cyber security, information security, state secrets, official information and, as a result, CIOs[5].

Law and order, administration of justice, detention. According to Article 19 of the Constitution of Ukraine, the legal order in Ukraine[6] is based on the principles, according to which no one shall be forced to do what is not prescribed by the law, and state authorities, local self-government bodies (their officials) shall be obliged to act only on the basis, within the limits, and in according to the procedures prescribed by law. The content of this norm reflects the equal level of all subjects of legal relations before the law without exception, which includes state authorities, local self-government bodies and their officials, enterprises (organizations, institutions) regardless of the forms of ownership, citizens, foreigners, stateless persons, including their association. In case of violation of this axiom, anyone shall be entitled to seek protection from the court, law enforcement agencies, state authorities, local self-government bodies and their officials (Perinić & Mikac, 2021; Tertyshnyk, 2022), which is also confirmed by the Decision of the Constitutional Court of Ukraine from January 30, 2003 No. 3-рп/2003[7].

Civil protection of the population and territories, rescue services. This sector includes a set of enterprises (institutions, organizations) that ensure the functioning of systems for the protection of the population, territories, the environment, material, and cultural values both in peacetime and in a special period, including the prevention of emergency situations, liquidation of its consequences, aid to victims, etc.[8]. Subjects of civil protection, depending on the territorial jurisdiction, functional purpose and assigned powers, include relevant central and local bodies of state executive power, local self-government bodies, economic entities and public organizations[9].

Space activities, space technologies and services. That is, a set of enterprises (institutions, organizations) that ensure the functioning of space activities, the purpose of which is the research and use of outer space using space technologies[10].

[1]Law of Ukraine No. 1089-IX "About Electronic Communications". (2020, December). Retrieved from https://zakon.rada.gov.ua/laws/show/1089-20?find=1&text=%D1%81%D0%B8%D1%81%D1%82%D0%B5% D0%BC#w1_1.
[2]Law of Ukraine No. 2664-III "About Financial Services and State Regulation of Financial Services Markets". (2001, July). Retrieved from https://zakon.rada.gov.ua/laws/show/2664-14#Text.
[3]Law of Ukraine No. 1932-XII "About the Defense of Ukraine". (1991, December). Retrieved from https://zakon.rada.gov.ua/laws/show/1932-12#Text.
[4]Law of Ukraine No. 2469-VIII "About the National Security of Ukraine". (2018, June). Retrieved from https://zakon.rada.gov.ua/laws/show/2469-19#Text.
[5]Decree of the President of Ukraine No. 56/2022 "On the Decision of the National Security and Defense Council of Ukraine. Strategy for Ensuring State Security. "On the Strategy for Ensuring State Security". (2022, June). Retrieved from https://zakon.rada.gov.ua/laws/show/56/2022#Text.
[6]Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text.
[7]Decision of the Constitutional Court of Ukraine No. 1-12/2003 "In the case on the constitutional submission of the Supreme Court of Ukraine regarding the conformity of the Constitution of Ukraine (constitutionality) with the provisions of the third part of Article 120, the sixth part of Article 234, the third part of Article 236 of the Criminal Procedure Code of Ukraine (the case of court consideration of individual resolutions of the investigator and prosecutor). Decision of the Constitutional Court of Ukraine on behalf of Ukraine". (2003, June). Retrieved from https://zakon.rada.gov.ua/laws/show/v003p710-03#Text.
[8]Code of Civil Protection of Ukraine. (2012, October). Retrieved from https://zakon.rada.gov.ua/laws/show/5403-17?find=1&text=%D0%B0%D0%B2%D0%B0%D1%80%D1%96% D0%B9%D0%BD%D0%BE#Text.
[9]Law of Ukraine No. 2469-VIII "About the National Security of Ukraine". (2018, June). Retrieved from https://zakon.rada.gov.ua/laws/show/2469-19#Text.
[10]Ibidem, 2018.

Chemical industry. This sector includes a set of enterprises (institutions, organizations) that ensure the functioning of the industry for the manufacture of products from hydrocarbon, mineral, and other raw materials through their chemical processing.

Research activity. This sector is the basis of the development of the modern information and creative society. It includes such concepts as "state research infrastructure", "research production", "research infrastructure", "European research area", etc.[1]. CIOs related to this category are scientific institutions and institutions of higher education, their structural subdivisions, a set of means, resources, and related services, which are used by scientific and pedagogical staff to conduct scientific research, development, etc.

Therefore, critical infrastructure comprises not only a set of particular physical objects, such as roads, bridges, dams, power plants and their networks, manufacturing enterprises and institutional institutions, etc., but vital services for the functioning of the state, which are covered by a single political, legal, military, economic, cultural, humanitarian space. In this context, CI acts as a determinant of state functions, factually ensuring their practical implementation (Bilozyorov *et al*., 2017). In other words, this means that CI ensures the vital functions of the state in the field of national security and defence of the country.

The national nature of the implementation of its functions acquires particular importance in the life of the state (Bilozyorov, 2010). Thus, for instance, the inherent features of a modern democratic state are as follows: 1) creation of the necessary conditions for maximum preservation and development of the nation's best assets and political consolidation of society around the national idea; 2) promoting the development of spirituality, language, culture of traditions inherited from previous generations; 3) implementation of the national idea in the state-building process in the context of ensuring national security and defence.

In a general sense, national values include material and spiritual values that the nation inherited from its ancestors (Tkalya, 2022). In other words, these are any objects that are national, state property or the property of individual legal entities or individuals, and for which a special protection regime has been established, including monuments of architecture, art, culture, history, etc.

In an attempt to deprive Ukrainians of their national identity and self-awareness, over three thousand educational and cultural objects, including museums, theatres, monuments of culture and national heritage, were destroyed or damaged only during the investigated period of the full-scale war in Ukraine by the state-violator of international law etc. This is confirmed by the fact that in just one day of rocket attacks by the Russian occupying forces on the historical centre of Kyiv, which took place on October 10, 2022, the Taras Shevchenko Kyiv National University, the Bohdan and Varvara Khanenko National Museum of Art, the National Museum "Kyiv Art Gallery", National Philharmonic of Ukraine, Taras Shevchenko National Museum, National Science and Nature Museum of the National Academy of Sciences of Ukraine (Rocket attack on Kyiv…, 2022).

That is why it is proposed to supplement the Part 4 of Article 9 of the Law of Ukraine "On Critical Infrastructure" with the "eighteenth" paragraph, in which vital functions and/or services, the violation of which leads to negative consequences for the national security of Ukraine, should include the sphere of relations regarding the protection of the cultural and national heritage of Ukraine. This addition will further provide additional guarantees for the protection of cultural heritage sites of Ukraine, which are proof of the centuries-old existence of the Ukrainian nation, its history and culture.

Investigating the main problems of the PCI, we will try to substantiate the classification given by D. Biryukov & S. Kondratov (2012) referring to the scientific developments of the American researcher T. Lewis (2020), namely:

1) the importance of each of the CI sectors in general and in particular. It means that CIOs depend on each other according to the principle of action of the "domino effect", and therefore unauthorized interference in the work of one of the sectors can cause a chain reaction and cause a "cascade effect". That is, some destruction can be the cause of other related to them by the same system of CI elements.

2) security management takes place under conditions of interdependence of activities of government bodies, state and private structures, as well as regulatory and economic factors. The safety of the CIO is a complex category that depends on a range of factors of internal or external origin that affect the life activity of the CIO. That is, military aggression, natural disasters, economic crises, pandemics, activity of investment engagements, etc.

3) ineffective communication between the subjects of the protection system. This category refers to the proper organization of the interaction of the subjects of the national PCI system. The problem is that the system of CI elements is branched and dispersed throughout the country, with a considerable number of state and private structures, which, in turn, adversely affects the timeliness of the necessary data exchange between them. To correct this situation, in Ukraine, processes are taking place regarding the digitalization of society, which will further facilitate the effective exchange of information between competent subjects of the national system of information and communication technology.

4) interdependence of CI elements and sectors. Given that most CI systems have a network architecture,

[1]Law of Ukraine No. 848-VIII "About Scientific and Scientific and Technical Activity". (2015, November). Retrieved from https://zakon.rada.gov.ua/laws/show/848-19#Text.

it is necessary to protect, first of all, the main "nodes" of these systems, following the "80/20" rule, where 80% are resources that should be spent on 20% of the country's territory (Lewis, 2020). It is also suitable to use the "network theory" for organizational and physical structures. That is, when the main CI nodes are distant from each other, and the system of objects itself is divided into small parts (Alcaraz & Sherali, 2015; Denisiuk *et al*., 2016).

5) inefficient distribution of powers from PCI between central and local state authorities. The solution to this problem depends on the imperative expression in the national legislation of the provisions that determine the specific functions of each of the subjects, depending on the level of management of the national PCI system.

6) lack of a common methodical basis for determining the risks and properties of objects. Solving this problem requires conducting analytical and methodical measures for the clear formation of the registry of CIOs, identification of existing or potential risks and threats that affect their regular functioning, including ways to ensure their protection at each of the levels of functioning of the national system of CIOs.

7) insufficiently active involvement of CI operators (owners) in ensuring its protection. It is the operators who handle the identification of CIOs. This stage is the initial stage in the protection of the CIOs and allows for its necessary registration, categorization, and passporting to be carried out in the future. Therefore, the identification of CI is the main stage that affects the general mechanism of protection of critically important spheres of state activity and helps systematize the totality of CI elements and determine its main sectors to ensure their protection.

During the identification of CIOs, the following is considered: the extent of the damage caused (territorial distribution of the consequences of possible damage); the relationship between CI elements (the spread of the damage to other CI objects or sectors); the duration and nature of the impact of the damage caused (exactly how and for what time the damage caused will be manifested in connection with the violation of the regular mode of operation of the CIO); vulnerability of CIOs to the emergence of extraordinary situations of anthropogenic, natural, social, or military nature.

This category also includes the degree of severity, including damage caused and adverse consequences that may be caused in such areas as: economic security (the impact of damages on GDP, the size of direct and indirect economic losses, the share of products on the market, the number of employed workers is calculated, the amount of tax revenues); the safety of life and the health of the population (the number of people who may be injured, the number of the population that needs evacuation and the number of involved emergency and rescue services are calculated).

At the global level, there is a need for internal political and national security (considering the nature of the loss of military and political power, the authority of state institutions, violation of sovereignty and territorial integrity, etc.); security and defence of the country (considering the reduction of the defence capability and fighting capacity of the armed forces, security agencies, other law enforcement agencies and services, the possibility of disclosing information with limited access, etc.); environmental safety (the impact on ecology and the environment is calculated).

As for the main threats that affect the functioning of CIOs, at the research-to-practice level, this issue is reflected in the studies of many theoreticians and practitioners, who rightly include pandemics, industrial accidents, criminal activity, natural disasters, as well as other predictable and unpredictable factors against which the state must provide adequate protection (Chowdhury & Gkioulos, 2021; Lazari & Mikac, 2022). Considering this, the main threats to the functioning of the CIOs can be conditionally divided into five categories, namely:

1) anthropogenic. Considering the threats of this category, D. Biryukov & S. Kondratov (2012) address the fact that in Ukraine, due to the prominent level of wear and tear of the main CI nodes, there is a danger of emergencies occurring at dangerous enterprises. As an example, scientists cite some statistical data of the State Emergency Service, according to which there are over a thousand high-risk enterprises in Ukraine, accidents at which can cause unpredictable catastrophic consequences. These facilities include enterprises of the chemical and metallurgical industry, mining enterprises, enterprises of the grain processing industry, nuclear power plants, etc.[1].

2) natural. Among natural threats, scientists distinguish the following types: meteorological (snowfalls, ice, blizzards, showers, hailstorms, frosts, droughts); hydrological (floods, mudslides, floods, inundation); geological (dangerous exogenous geological processes – landslides, subsidence, and karst); heliophysical (fires) (Yermenchuk, 2018).

For instance, it is possible to cite the largest flood since independence, which occurred in 2020 in the west of Ukraine. As a result of this natural disaster, the water in the rivers rose by more than three meters, which led to the flooding of approximately three hundred settlements (Ukraine's climate is changing…, 2020).

3) social. Given the limits of the study, the authors propose to consider this and the next category of threats in greater detail in the next paper. Along with this, the main threats of a social nature that directly

[1]Cabinet of Ministers of Ukraine No. 1214-2020-п "On Approval of the Procedure for Selecting Projects to be Implemented under the Big Construction Programme". Retrieved from https://zakon.rada.gov.ua/laws/show/1214-2020-%D0%BF#Text.

affect the functioning of the CIOs are illegal activities aimed at disrupting the operation of the CIOs (its capture, sabotage, terrorist acts, theft or damage to property on which its normal functioning depends, cyber-attacks against its systems management, etc.) (Iksarova, 2010; Dreis, 2017).

4) military. According to preliminary calculations by the Kyiv School of Economics (The Security Service of..., 2023), in just ten months of the war, Ukrainian infrastructure suffered losses exceeding 138 billion US dollars. And this is without considering the illegal annexation of Crimea, the period of the anti-terrorist operation (operation of the joint forces), as well as environmental and other damages caused by Russian military aggression.

5) combined. Combined threats are threats that were caused by the action of the cascade effect when the destruction of one of the CIOs caused the destruction of other life support systems. An example is the accident at the Fukushima 1 nuclear power plant in the eponymous prefecture in Japan (In one week..., 2022). As a result of this event, due to interruptions in the power supply, there was a stoppage of railway transport, which essentially paralysed the logistics of a separate region (Hasegawa *et al*., 2016). In addition, as a result of the radioactive release of radioactive isotopes into the ocean waters, damage was caused to the ecology and the surrounding environment, which caused the evacuation of 200,000 people to a safe zone.

Conclusions

Despite the relative fragmentation of the term "critical infrastructure" in the Law, it can be defined as a set and/or complex of infrastructure objects that are vital for the economy, national security and defence of the country, and which, pursuant to the law, have undergone the identification procedure, categorization, registration, and passporting. In turn, the national system of the PCI consists of a set of relevant entities that handle the formation and/or implementation of national policy on the PCI. An inherent feature of this system is an individually complex approach to the definition of objects and subjects of the PCI, which means that each country, within its state borders and considering national interests, separately forms its own system of the PCI. Certain objects are attributed to CI according to a set of criteria, which include: performance and/or provision of important functions and/or services by these facilities; the vulnerability of these objects to external and internal threats, which can lead to grave adverse consequences, as a result of which significant (substantial) damage will be caused to the health of the population, the social sphere, state sovereignty, the economy, as well as natural resources of the national, regional, municipal, and object value; the scale and duration of the adverse consequences caused by unauthorized interference in the work of these facilities, affecting the activities of strategically important spheres of the state; the duration of measures to eliminate adverse consequences caused by unauthorized interference in the work of these objects, their impact on the functioning of other (adjacent) sectors of the CI, as well as the number of resources involved in their elimination.

Violation of the operation mode of the CIO includes those potential threats (virtual or physical), the root causes of which are both human (intentional or careless) and natural (meteorological, hydrological, geological, heliophysical) factors that lead to the emergence of a crisis situation at the CIO, which, firstly, poses a threat to the life and health of the staff of this object and/or the local population in the area where it is located, secondly, threatens the safety of citizens and/or their material situation, and thirdly, disrupts the functioning of one of elements of the life support system of the population or the country as a whole.

Issues related to the prevention, detection, termination, investigation, and solving of criminal offences, the objects of which are CIs, require special attention. Equally important are studies on the forms of ownership of CIOs, especially when it comes to the privatization of CIOs, which directly affects the defence capability and national security of the country.

Acknowledgements

None.

Conflict of Interest

None.

References

[1] 97% of Russian targets are civilians: Reznikov published the statistics of russian missile strikes. Ukrinform. (2022). Retrieved from https://www.ukrinform.ua/rubric-ato/3623683-reznikov-rf-zavdala-po-ukraini-vze-ponad-16-000-raketnih-udariv-97-cilej-civilni.html.

[2] Alcaraz, C., & Sherali, Z. (2015). Critical infrastructure protection: Requirements and challenges for the 21st century. *International Journal of Critical Infrastructure Protection,* 8, 53-66. doi: 10.1016/j.ijcip.2014.12.002.

[3] Bilozyorov, E., Vlasenko, V.P., Horova, O.B., Zavalnyi, A.M., Zayats N.V., & Kharchenko, N.P. (2017). *Theory of the state and law*. In S.D. Husarev & O.D. Tikhomirov (Eds.). Kyiv: Education of Ukraine.

[4] Bilozyorov, E. (2010). The Ukrainian national state: Reality or illusion. *Scientific Journal of the NPU Named After M.P. Drahomanova 18: Economics and Law,* 8, 135-142.

[5] Biryukov, D., & Kondratov, S. (2012). *Protection of critical infrastructure: Problems and prospects of implementation in Ukraine*. Kyiv: National Institute of Strategic Investigations.

[6] Chowdhury, N., & Gkioulos, V. (2021). Key competencies for critical infrastructure cyber-security: A systematic literature review. *Information and Computer Security*, 29(5), 697-723. doi: 10.1108/ICS-07-2020-0121.
[7] Chumachenko, S., & Trotsko, V. (2017). Assessment of threats to critical infrastructure facilities. *Scientific Bulletin: Civil Protection and Fire Safety*, 1, 41-47.
[8] David, M.N. (2018). *Cyber risk of coordinated attacks in critical infrastructures*. Retrieved from https://experts.illinois.edu/en/publications/cyber-risk-of-coordinated-attacks-in-critical-infrastructures.
[9] Denisiuk, S., & Kotsar, O. (Eds.). (2016). *Energy efficiency of Ukraine. Best project ideas*. *Project "Professionalization and Stabilization of Energy Management in Ukraine"*. Kyiv: KPI named after Igor Sikorskyi.
[10] Dreis, Y. (2017). Analysis of basic terminology and negative consequences of cyberattacks on information and telecommunication systems of critical infrastructure of the state. *Protection of Information*, 19(3), 214-222. doi: 10.18372/2410-7840.19.11900.
[11] Dubnytskyi, V., Fedulova, O., & Vasyliuk, V. (2017). Regional infrastructure: Modernization, priorities and development prospects. *Economic Problems: Regional Economy*, 2, 167-168.
[12] Ducaru, S. (2017). The security of critical energy infrastructure in the age of multiple attack vectors: NATO's multi-faceted approach. *Europolity-Continuity and Change in European Governance,* 11(1), 5-20. doi: 10.25019/europolity.2017.11.1.01.
[13] Franchuk, V., Pryhunov, P., & Melnyk, S. (2021). Security of critical infrastructure facilities in Ukraine: Organizational and regulatory problems and approaches. *Social and Legal Studies*, 3(13), 142-148. doi: 10.32518/2617-4162-2021-3-142-148.
[14] Hankevich, K. Levchuk V.D., & Korolev, S.S. (2021). Peculiarities of the formation of the legal basis for the existence of critical infrastructure objects of Ukraine in the system of the Ministry of Defense of Ukraine. *Legal Scientific Electronic Journal,* 11, 79-82. doi: 10.32782/2524-0374/2021-11/15.
[15] Hasegawa, A., Ohira, T., Maeda, M., Yasumura, S., & Tanigawa, K. (2016). Emergency responses and health consequences after the Fukushima accident: Evacuation and Relocation. *Clinical Oncology*, 28(4), 237-244. doi: 10.1016/j.clon.2016.01.002.
[16] Iksarova, N. (2010). Transport infrastructure as a component of economic security of Ukraine. *Economic Space*, 36, 55-61.
[17] In one week, the damage caused to Ukraine's infrastructure during the war increased by at least $8.3 billion. (2022). Retrieved from https://kse.ua/ua/about-the-school/news/za-tizhden-zbitki-naneseni-v-hodi-viyni-infrastrukturi-ukrayini-zrosli-shhonaymenshe-na-8-3-mlrd/.
[18] Lazari, A., & Mikac, R. (2022). *The external dimension of the European Union's critical infrastructure protection programme.* Boca Raton: CRC Press. doi: 10.4324/9781003273769.
[19] Leschuk, G. (2017). Conceptual determinants of investment infrastructure of the region. *Scientific Bulletin of the International Humanitarian University. Series: Economics and Management*, 24(2), 20-24.
[20] Lewis, T.G. (2020). *Critical infrastructure protection in homeland security: Defending a Networked Nation.* Hoboken: John Wiley & Sons.
[21] Lordan-Perret, R., Wright, A.L., Burgherr, P., Spada, M., & Rosner, R. (2019). Attacks on energy infrastructure targeting democratic institutions. *Energy Policy,* 132, 915-927. doi: 10.1016/j.enpol.2019.06.025.
[22] Melnyk, M., & Leschuh, I. (2019). Development of the institutional infrastructure of business support in the region: Trends and prospects. *Efficient Economy*, 10. doi: 10.32702/2307-2105-2019.10.14.
[23] Perinić, J., & Mikac R. (2021). Protection of the critical infrastructure from terrorism: Case study of the Republic of Croatia. *IOS Press. Series: NATO Science for Peace and Security: Information and Communication Security,* 39, 235-250. doi: 10.3233/978-1-61499-478-7-235.
[24] President's commission on critical infrastructure protection. (1992). Retrieved from https://www.hsdl.org/?abstract&did=487492.
[25] Rocket attack on Kyiv: 45 buildings, cultural and educational institutions were damaged. (2022). Retrieved from https://www.ukrinform.ua/rubric-kyiv/3590339-raketnij-udar-po-kievu-poskodzeni-45-budinkiv-zakladi-kulturi-j-osviti.html.
[26] Sakhanyuk, O. (2020). *Types of vaccines and their development. Vaccination as the most effective method of protecting the population from infectious diseases*. Retrieved from https://www.dec.gov.ua/wp-content/uploads/Conference/2020/6/section/9/s9f3.pdf;
[27] Telenyk, S. (2020). The concept and content of the state critical infrastructure protection system. *Carpathian Legal Gazette*, 2(31), 112-120. doi: 10.32837/pyuv.v0i2(31).577.
[28] Tertyshnyk, V. (2022). *Constitution of Ukraine. Scientific and practical commentary.* Kyiv: Alerta.
[29] The Security Service of Ukraine prevented attempts to hack the state electronic system in the construction industry. (2023). Retrieved from https://ssu.gov.ua/novyny/sbu-zapobihla-sprobam-zlamu-derzhavnoi-elektronnoi-systemy-u-haluzi-budivnytstva-video.

[30] Tkalya, O. (2022). National interests and values as the basis for the existence and development of the national state. *Legal Scientific Electronic Journal,* 4, 58-61. doi: 32782/2524-0374/2022-4/12.
[31] Ukraine's climate is changing rapidly, and no one is ready for it. (2020). Retrieved from https://www.unian.ua/ecology/povin-v-karpatah-ukrajina-viyavilasya-negotovoyu-do-zmini-klimatu-11060969.html.
[32] Vergolyas, O. (2018). *Reforming the protection system and increasing the stability of Ukraine's critical infrastructure in terms of current threats*. Retrieved from https://coolyanews.info/reformuvannyasistemi-zahistu-ta-piidvischennya-stiijkostii-kritichnoyi-iinfrastrukturi-ukrayinii-v-rozriiziiaktual.html.
[33] Yaremechuk, O., & Stakhnitskyi, Y. (2022). Theoretical approaches to defining the definition of critical infrastructure as an object of public administration. *Public Administration and Customs Administration*, 1(32), 76-82. doi: 10.32836/2310-9653-2022-1.13.
[34] Yermenchuk, O. (2017). Normative and legal regulation of activity in the sphere of protection of national critical infrastructure: Analysis and generalization of the US rule-making practice. *Scientific Bulletin of the Dnipropetrovsk State University of Internal Affairs*, 3, 135-140.
[35] Yermenchuk, O. (2018). *Basic approaches to the organization of critical infrastructure protection in European countries: Experience for Ukraine.* Dnipro: Dnipropetrovsk State University of Internal Affairs affairs.
[36] Zhu, H., Zhang, C., Ramirez-Marquez, J.E., Wu, S., & Monroy, R. (2021). The integration of protection, restoration, and adaptive flow redistribution in building resilient networked critical infrastructures against intentional attacks. *IEEE Systems Journal*, 15(2), 2959-2970. doi: 10.1109/JSYST.2020.3039466.

Захист критичної інфраструктури як складова національної безпеки України

Ігор Єфіменко
Кандидат юридичних наук
Національна академія внутрішніх справ
03035, пл. Солом'янська, 1, м. Київ, Україна
https://orcid.org/0000-0002-6684-7760

Андрій Саковський
Доктор юридичних наук, професор
Національна академія внутрішніх справ
03035, пл. Солом'янська, 1, м. Київ, Україна
https://orcid.org/0000-0003-0762-859X

Євген Білозьоров
Кандидат юридичних наук, доцент
Національна академія внутрішніх справ
03035, пл. Солом'янська, 1, м. Київ, Україна
https://orcid.org/0000-0002-7824-6786

Анотація
Актуальність теми дослідження обумовлена науковою новизною та практичною значущістю проблемних аспектів захисту критичної інфраструктури як складової національної безпеки України, зокрема щодо створення та функціонування національної системи її захисту. З огляду на те, що термін «критична інфраструктура» для українського законодавства є порівняно новим, вичерпного переліку об'єктів, які входять до її системи, ще не сформовано, а оптимальних алгоритмів забезпечення їх безпеки не визначено. Метою статті є комплексне дослідження українського законодавства у сфері національної безпеки, що визначає правові й організаційні засади створення та функціонування національної системи захисту критичної інфраструктури, а також отримання наукових результатів у вигляді висновків, спрямованих на оптимізацію реалізації захисту критичної інфраструктури. Методологічним інструментарієм дослідження є герменевтичний метод пізнання соціальних і правових явищ, аналітичний, догматичний, а також метод узагальнення. Зважаючи на євроінтеграційні процеси України, надано науково обґрунтовані пропозиції щодо вдосконалення національного законодавства у сфері захисту критичної інфраструктури відповідно до міжнародно-правових актів, які регулюють питання безпеки та захисту об'єктів критичної інфраструктури. Досліджено поняття «критична інфраструктура», здійснено аналіз стану наукових розробок щодо її захисту, проаналізовано та визначено алгоритм дій із забезпечення її безпеки з урахуванням внутрішньополітичної та воєнної ситуації в державі

Ключові слова:
життєзабезпечення держави та суспільства; життєво важливі функції та/або послуги; національна система захисту; суб'єкти й об'єкти захисту; функції держави; негативні наслідки; надзвичайні ситуації

UDC 343[illegible]341.3
DOI: 10.56215/naia-chasopis/2.2023.86

[RETRACTED ARTICLE] Human right breach investigation commitment in the context of the armed conflict: Jurisprudence of the European Court of human rights

Oleksandra Steshenko*
Doctor of Philosophy in Law
“WE ARE FROM UKRAINE” NGO
02100, 7 Krakivska Str., Kyiv, Ukraine
https://orcid.org/0000-0002-3886-175X

Abstract
The study examines the specifics of the obligations of states that are parties to the European Convention on Human Rights (hereinafter referred to as the “Convention”) regarding investigations into violations of the Convention in the context of an armed conflict. The research relevance is predetermined by the rapid development of the practice of the European Court of Human Rights in recent years, as well as the significant burden on Ukrainian law enforcement agencies due to the urgent need to investigate massive violations of human rights committed in the context of Russian military aggression. The research aims to generalize the current practice of the European Court of Human Rights regarding the procedural obligations of the state in the context of armed conflict. The basis of the research was the analytical method, the method of specific sociological research. The issue of the jurisdictional connection between the duty to investigate and the state party to the Convention, the spectrum of violations to be investigated, the prerequisites for the duty to investigate violations, and the content of procedural obligations in the context of an armed conflict are considered. Jurisdiction of the Convention on Human Rights for Art. 1 Convention, in particular regarding procedural obligations, are primarily territorial; however, there are some exceptions to this general principle. The spectrum of violations for which the state party to the Convention has procedural obligations covers all serious violations of the Convention. The prerequisites for the obligation to investigate a violation may be a) a crime report; and/or b) the presence of signs indicating the commission of a violation, even in the absence of a report of a crime. To investigations of violations committed in the context of an armed conflict, the European Court of Human Rights applies the same criteria for the effectiveness of the investigation as under normal conditions (independence, adequacy (thoroughness), public control, and involvement of the victim), given the objective difficulties, caused by hostilities. The practical studies in outlining the specific obligations of Ukraine under the Convention regarding the investigation of mass violations of human rights during the war

Keywords:
investigation efficiency; European Convention on Human Rights; martial law; armed aggression of the Russian Federation; jurisdictional connection

Article’s History:
Received: 28.03.2023
Revised: 21.05.2023
Accepted: 26.06.2023

Suggest Citation:
Steshenko, O. (2023). Human right breach investigation commitment in the context of the armed conflict: Jurisprudence of the European Court of human rights. *Law Journal of the National Academy of Internal Affairs*, 13(2), 86-95. doi: 10.56215/naia-chasopis/2.2023.86.

*Corresponding author

Introduction

The jurisprudence of the European Court of Human Rights (hereinafter also "ECHR" or "the Court") regarding the obligations of States Parties to the European Convention on Human Rights (hereinafter also "the Convention") to investigate breaches of human rights guaranteed by the Convention is constantly developing and thus routinely scrutinized by scientists. The scientific and methodological recommendations "Principles of Effective Investigation Under the Jurisprudence of the European Court of Human Rights" by K. Buhaichuk *et al*. (2017) considered a wide range of issues related to the effectiveness of the investigation. The question of the criteria for the effectiveness of the investigation under the Convention was also covered in studies published in periodicals, both by Ukrainian authors, in particular O. Fedoriv (2021), S. Chernobai (2020), etc., and by foreign authors, such as K. Kamber (2020) and others.

When it comes to procedural obligations in the context of an armed conflict, the ECHR's case law is much less abundant. Consequently, there is less space for research and analysis of the jurisprudence. S. Wallace (2019) considered the issues of jurisdiction over extra-territorial military operations and related procedural obligations. F. Amaru (2021) analysed the ECHR judgment in the case of Hanan v. Germany in general, however, with an emphasis on domestic German issues. There are other pieces of research touching upon adjacent issues that provide a broader understanding of the subject. For example, J. Morgan (2018) considered the issue of correlation between tort and the ECHR's case law, whereas V. Stoyanova (2018) scrutinized causation between state omission and harm within the framework of positive obligations under the Convention. The book edited by L. Lavrysen & N. Mavronicola (2020) presents an interesting selection of articles on criminal law and its compliance with the practice of the ECHR, as well as some aspects of responsibility for gross human rights violations. G.M. Frisso (2018) considered procedural obligations to investigate violations of the right to life committed during armed conflicts, in the jurisprudence of the Inter-American Court of Human Rights. It is worth noting that, although the Inter-American Court of Human Rights refers to another regional human rights system and its jurisprudence has no binding power for Ukraine, the ECHR nevertheless often considers it when rendering its judgments.

The fact that Russia launched a full-scale military invasion in the territory of Ukraine with its numerous human rights breaches and ceased to be the High Contracting Party to the Convention caused a wave of scientific discussions and publications regarding the possible legal consequences of these events. As N. Wieb & A. Zimmermann (2022) rightly pointed out, international human law remains applicable during armed conflicts, and issues of compensation for victims of its violations are gaining unprecedented relevance. The European Court of Human Rights singles out the obligation of States Parties to the Convention to investigate violations of human rights guaranteed by the Convention as an independent obligation under the Convention (Klocker, 2022). This obligation may arise even when the State party to the Convention is not responsible for the material aspect of the violation. Under the martial law that continues to apply in Ukraine, law enforcement agencies are entrusted with the responsibility of investigating numerous violations committed in the context of the armed Russian aggression against Ukraine. Under these circumstances, such issues as the jurisdictional link between the duty to investigate and the State party to the Convention, the spectrum of violations that must be investigated, the moment when the duty to investigate a violation emerges, and the content of procedural obligations in the context of an armed conflict are gaining unprecedented relevance.

The investigation of tens of thousands of crimes related to the Russian armed aggression against Ukraine must meet the requirements of the European Convention on Human Rights, of which Ukraine, unlike Russia, continues to be a part. This means that the ineffectiveness of the investigation may lead to systematic violations of human rights on the part of Ukraine, even in cases where Ukraine is not responsible for the material aspect of a violation.

The research aims to theorize the practice of the ECHR as of now in terms of the state's procedural obligations regarding human rights violations committed in the context of an armed conflict. This allows to specify exactly what the Court's requirements are for investigations of human rights violations committed during wartime and will help to avoid systematic violations of the Convention by Ukraine.

Achieving the defined goal involves solving several tasks. Firstly, it is necessary to analyse the jurisprudence of the Court regarding the jurisdictional link within the meaning of Article 1 of the Convention between the State Party and the violation of procedural rights guaranteed by the Convention. Secondly, it is necessary to determine the spectrum of possible material violations of the Convention in respect of which State Parties may have procedural obligations. Thirdly, the jurisprudence of the Court should be scrutinized regarding the triggering standard for the obligation of the State Party to investigate an alleged violation. Fourth, it is necessary to determine the content of procedural obligations in the context of an armed conflict.

The dynamic development of the Court's jurisprudence on the above-mentioned issues, especially in recent years, and the unprecedented challenges currently facing Ukrainian law enforcement agencies together put the issue of procedural obligations under the Convention in a new light. The attempt to find answers to these questions determines the scientific

...nce, ... the procedural obligations of the participa... in the context of armed conflicts, although the... have rece... been the subject of active discussions in the lega... imm... ity, have not been researched by scientific ...udie...

Jurisdic...onal lin...

The Court repeated... ...phasized that the jurisdiction of the States P... ...es to the Convention under Article 1 is primarily territorial[1]. C... ...quently, the obligation of Ukraine to investigate ...man r...hts violations arises primarily concerning t... ...se v...olati...s that were committed within its territory, rega... ...the subject of the violation. The exception, ho... ...ver, is cases when, as a result of legal or illegal military ac... ...party to the Convention loses effective control ...er ...art of its territory. In the cases of Ilaşku and Othe... Moldova and Russia[2], Catan and Others v. Moldo... and R...sia[3], as well as in Moser v. the Republic of Mold... and R...sia[4], the European Court of Human Rights c...sistently held that in the part of the territory tempora...ly not con...olled by the State Party, the latter neverthe...s continu... to exercise jurisdiction, which, however, is limit... ...e obligation "to take the diplomatic, econom... judicial or other measures that were both in its power to take and i... accordance with international law". However, it is ...n noting that in these cases the issue of Moldova's proc...dural obligations was not raised, therefore the Co... did not have the opportunity to clarify in more deta... the scope and nature of the procedural obligations of th... State party to the Convention if a violation was commit...ted within the territory temporarily out of its control.

The jurisdictional link between the violation and the State party to the Convention for Article 1 of the Convention in exceptional cases may also arise when the violation is committed outside the territory of the State party to the Convention. For this study, it is pertinent to single out the case of the use of force by State agents acting outside its territory, which may place a person under the control of the authorities of such a State, thereby creating a jurisdictional link in the meaning of the Article 1 of the Convention. In the case of Güzelyurtlu and Others v. Cyprus and Turkey, which concerned a violation of Article 2 of the Convention, the Court noted: "If the investigative or judicial authorities of a Contracting State institute their criminal investigation or proceedings concerning a death which has occurred outside the jurisdiction of that State, under their domestic law (e.g. under provisions on universal jurisdiction or the basis of the active or passive personality principle), the institution of that investigation or those proceedings is sufficient to establish a jurisdictional link for Article 1 between that State and the victim's relatives who later bring proceedings before the Court"[5].

It is worth noting, however, that in the subsequent case of Hanan v. Germany, the Court clarified that the institution of a domestic criminal investigation as a self-standing ground for establishing a jurisdictional link between a death occurring outside the territory of a State and the obligation of that State to investigate such a violation must be applied only if there are "special features" in the case[6]. In the case of Güzelyurtlu and Others v. Cyprus and Turkey, there were two such "special features": (a) the northern part of Cyprus was under the de facto effective control of Turkey for the Convention, which justified a departure from the general approach, and thus entailed a procedural obligation on the part of Turkey under Article 2; and (b) the presence of the murder suspects in Turkish-controlled territory was known to the authorities of Turkey and the "Turkish Republic of Northern Cyprus" and prevented Cyprus from fulfilling ...s obligations under the Convention[7]. In Hanan v. Germany, the Court also established the presence of "special features", which were: (a) Germany's obligation to ...gate the air strike under customary international humani...arian law; (b) the immunity of the military officials i...olved in the operation regarding the investigation ...possible criminal or disciplinary violations during their mission in Afghanistan, which rendered prosecution by the Afghan authorities impossible; (c) Germany's obligation und... its domestic criminal law to investigate ...sible ...r crime. Thus, in both cases, the Court establishe... ...isdictional link between the State's Parties to the C...vention and the corresponding extraterritorial vio...tions ...s of procedural obligations[8].

The spectru... ...f hu...an rights violations for ...ich the States Parties have procedur... obligations

Not all breaches of hu... rig...s guaranteed by the Convention are crime... or even administrative offences. Accordingly, not all human ri... violations can even

[1]Case of Al-Skeini and Others v. the United Kingdom No. 55721/07. (2011, July). Retrieved from https... ...udoc... ...int/fre#{%22itemid%22:[%22001-105606%22]}.
[2]Case of Ilaşku and Others v. Moldova and Russia No. 48787/99. (2004, July). Retrieved from https://hud... ...echr.coe.in... ...eng#{%22itemid%22:[%22001-61886%22]}.
[3]Case of Catan and Others v. Moldova and Russia Nos. 43370/04, 18454/06, and 8252/05. (2012, October). R... ...ieved from ht...s://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-114082%22]}.
[4]Case of Mozer v. the Republic of Moldova and Russia No. 11138/10. (2016, February). Retrieved from https://hudoc.ec... ...int/eng#{%22itemid%22:[%22001-161055%22]}.
[5]Güzelyurtlu and Others v. Cyprus and Turkey No. 36925/07. (2019, January). Retrieved from https://hudoc.echr.c... ...int/eng#{%22...em id%22:[%22001-189781%22]}.
[6]Hanan v. Germany No. 4871/16. (2021, February). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-2... ...%22...
[7]Ibidem, 2021.
[8]Ibidem, 2021.

…etical… be investigated. Therefore, the question arise… exactly are violations of the European Conven…on on H…an Rights that the State party to the European …nve…ion on Human Rights is obliged to investi…e?

The …ost develo…d and clearly articulated in this context is …e Court's …risprudence under Articles 2 ("Right to life"), 3 ("…tion of torture"), and 4 ("Prohibition of slav… and forced labour") of the Convention. At the very least, the duty t… vestigate arises in respect of such violations as …der… life-threatening situations[2], enforced dis…ppe…ranc…, torture[4], rape[5], other types of inhuman and de… treatment[6], human trafficking[7], slavery, and fo…ed labour[8].

However, procedural ob… do not only arise under Articles 2-4 of the Conv…tio… In the case of S.M. v. Croatia[9], considered by the G… Chamber, Ksenija Turkovic, a Croatian judge ther… oldi… position of Vice-President of the Court, wrote a …curri… opinion, where she noted that the criteria fo… e effect…ness of the investigation should be the sam… or all the A…icles (not only Articles 2, 3, and 4) of the Co…vention. E…borating on this, she, however, emphasized that it… e… "serious" violations and noted that the Cou… reviously established a violation of the obligation to conduct a effective investigation under Articles 5, 8, 9, 10, 1…4, and Article 1 of Protocol 1 to the Convention[10].

When it comes to the grounds for duty to inve…gate a violation, the obligation to conduct an effective in…estigation arises not only when law enforcement age…cies receive a criminal complaint can be noted. Such an obligation also arises when there is prima facie evidence of the commission of a crime. By contrast, when law enforcement agencies receive a criminal complaint without supporting evidence, the procedural obligation to conduct an effective investigation is still present.

Indeed, in the above-mentioned concurring opinion of Judge Turkovych in the case of S.M. v. Croatia, Ksenia Turković emphasized that the triggering standard for the obligation to investigate a violation can be not only an express complaint from the victim of a violation, but also prima facie evidence, or, as the Court often puts it, "sufficiently clear indications" that there might have been a violation[11]. If we extrapolate these considerations to the current situation in Ukraine in the context of the subject of this study, then in all cases of serious human rights violations, even when the Ukrainian state is not responsible for their material aspect, Ukrainian law enforcement agencies are obliged to institute criminal proceedings even in the absence of an express criminal complaint if there are "sufficiently clear indications" of a violation. Such "sufficiently clear indications" can be, by way of illustration, reports in the media of a projectile hitting a civilian object or private property, which could constitute a violation of Article 1 of Protocol 1 to the Convention.

Contents of procedural obligations against the background of an armed conflict

The duty of a State to investigate a violation is "an obligation not of result but of means"[12]. Thus, the failure of the investigation to achieve the result desired by the applicant will not be relevant to the Court's evaluation …f the effectiveness of the investigation. The Guide on A…ticle 2 of the Convention outlines that the standards of t…e investigation include independence, adequacy, …mptness, public scrutiny, and the participation of the ne… of-kin[13]. Although these criteria are interrelated and ea… of them is not an end in itself, the Court, before …on…ding on the effectiveness of the investigation as a whole, evaluates the compliance of the investigation with each of them separately. Judge Turkovych noted in the above-men…ned concurring opinion that the criteria fo… effec…eness of the investigation "should be the same a…r… all the Articles of the Convention"[14]. It should be n…ed, how…er, that for serious violations, in

[1]Case of Al-Skeini and Others v. the United Kingdom No. 55721/07. (2011, July). Retri… m htt…/hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-105606%22]}.
[2]Case of Abuyeva and Others v. Russia No. 27065/05. (2010, December). Retrieved fr… https://…doc.echr.coe.int/eng#{%22itemid%22:[%22001-101936%22]}.
[3]Varnava and Others v. Turkey Nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 1… 16072/90, and 16073/90. (2009, September). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-941…2]}.
[4]Ochigava v. Georgia No. 14142/15. (2023, February). Retrieved from https://hudoc.ech…e.int/eng#{%…2itemid%22:[%22001-223023%22]}.
[5]Case of S.M. v. Russia No. 75863/11. (2015, October). Retrieved from https://hudoc.echr.coe.int/eng#{%22ite…22:[%22001-157965%22]}.
[6]Ochigava v. Georgia No. 14142/15. (2023, February). Retrieved from https://hudoc.echr.coe.i…eng#{%…id%22:[%22001-223023%22]}.
[7]S.M. v. Croatia No. 60561/14. (2020, June). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[…22001-203…3%22]}.
[8]Case of Zoletic and Others v. Azerbaijan No. 20116/12. (2021, October). Retrieved from https://hud…echr.coe.int/…ng#{%22itemid%22:[%22001-212040%22]}.
[9]S.M. v. Croatia No. 60561/14. (2020, June). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%2…01-203…%22]}.
[10]Ibidem, 2020.
[11]Ibidem, 2020.
[12]Guide on Article 3 of the European Convention on Human Rights. (2022, August). Retrieved from https://www.ech…e.int/Docum…ts/Guide_Art_3_ENG.pdf.
[13]Guide on Article 2 of the European Convention on Human Rights. (2022, August). Retrieved from https://www.echr.coe.int…men…Guide_Art_2_ENG.pdf.
[14]S.M. v. Croatia No. 60561/14. (2020, June). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-2035…%22]}.

particular under Articles 2, 3, and 4 of the Convention, the verification of compliance of the investigation with each of the listed criteria is particularly thorough.

In the above-mentioned case of Hanan v. Germany, the governments of France, Norway, and the United Kingdom, which intervened in the case as third parties, asserted that international humanitarian law should be applied as lex specialis not only to the triggering standard of the obligation to investigate violations but also to the content of this obligation. The government of the United Kingdom emphasised that Article 6 of the Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), "was essentially limited to prosecutorial discretion and independence and did not contain a broader reference to transparency requirements or the involvement of next of kin"[1].

However, the European Court of Human Rights, in assessing the effectiveness of the investigation carried out by the German government in this case, did not limit itself to the criterion of independence but instead applied all its criteria for the effectiveness of the investigation. The Court noted that in this particular situation, there was no significant normative conflict between the requirements of international humanitarian law regarding the effectiveness of the investigation and such requirements under the Convention[2]. A departure from this established legal position in future cases is unlikely.

The specific content of the State's procedural obligations under each of the criteria will depend on the circumstances of the case and, in particular, may depend on the nature of the violation at issue. To generalize, the requirement for the independence of the investigation provides the obligation for the persons responsible for conducting the investigation and involved in it to be independent of the persons involved in the events. This means not only the absence of hierarchical and institutional ties but also practical independence[3]. However, it is worth noting that in a situation of hostilities, the Court realistically assesses the possibility and degree of fulfilment of this and other criteria at various stages of the investigation.

For example, in the above-mentioned case of Hanan v. Germany, the on-site reconnaissance was carried out by subordinates of the person involved in the events – the colonel who ordered the bombing. However, this shortcoming was not considered essential by the Court given the background against which the investigation was conducted, namely the ongoing hostilities in the area of the explosion. First, at the time of the on-site reconnaissance, the investigation team from the German military police, whose deployment was ordered that morning, had not yet arrived. Further waiting would lead to a slight delay in the on-site reconnaissance[4]. Second, the responsibility for the criminal investigation was assigned to the civil prosecution authorities, in particular to the Federal Prosecutor General, who could be guided by a considerable amount of investigation materials prepared by various actors and who took further investigative actions. The decision of the Federal Prosecutor General that there was no corpus delicti was based mainly on the findings of the lack of intent on the part of the colonel when ordering the air strike, which was supported by evidence that could not have been tampered with, such as audio recordings of the radio communication between the command centre and the pilots of the USAF F 15 aircraft and thermal images from the infrared cameras of the latter, which were immediately secured[5].

Adequacy of the investigation, according to Guides on Article 2 (2022)[6], Article 3 (2022)[7], and Article 4 of the Convention (2022)[8], denotes the necessity of leading the identification of those responsible and - if appropriate - their punishment. In those cases that involve the use of force by State agents or private persons, the investigation should be capable "of leading to a determination of whether the force used was or was not justified in the circumstances"[9]. In the event of a victim's death, the authorities must take all possible and reasonable steps necessary to secure the evidence, including, in particular, "eyewitness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of the clinical findings, including the cause of death. Any deficiency in the investigation which undermines its ability to establish the cause of death or the person responsible will risk falling foul of this standard"[10]. The Court also held that "the investigation's conclusions must be

[1]Hanan v. Germany No. 4871/16. (2021, February). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-208279%22]}.
[2]Ibidem, 2021.
[3]Case of Al-Skeini and Others v. the United Kingdom No. 55721/07. (2011, July). Retrieved from https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-105606%22]}.
[4]Hanan v. Germany No. 4871/16. (2021, February). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-208279%22]}.
[5]Ibidem, 2021.
[6]Guide on Article 2 of the European Convention on Human Rights. (2022, August). Retrieved from https://www.echr.coe.int/Documents/Guide_Art_2_ENG.pdf.
[7]Guide on Article 3 of the European Convention on Human Rights. (2022, August). Retrieved from https://www.echr.coe.int/Documents/Guide_Art_3_ENG.pdf.
[8]Guide on Article 4 of the European Convention on Human Rights. (2022, August). Retrieved from https://www.echr.coe.int/Documents/Guide_Art_4_ENG.pdf.
[9]Guide on Article 2 of the European Convention on Human Rights. (2022, August). Retrieved from https://www.echr.coe.int/Documents/Guide_Art_2_ENG.pdf.
[10]Hanan v. Germany No. 4871/16. (2021, February). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-208279%22]}.

...ased on thorough, objective, and impartial analysis of all relevant elements. Failing to follow an obvious line of inquiry undermines to a decisive extent the investigation's ability to establish the circumstances of the case and, where appropriate, the identity of those responsible"[1]. However, when a death being investigated under Article 2 occurs in the context of an armed conflict, the investigation may be hampered, and specific limitations may lead to the use of less effective investigative measures or delay the investigation. Nevertheless, the obligation under Article 2 to protect life requires that, even in difficult security conditions, all reasonable steps should be taken to ensure that there is an effective independent investigation into alleged violations of the right to life[2].

Given the diversity of situations that might arise, it is hardly possible to reduce the investigative actions to a simple checklist[3]. In the case of Hanan v. Germany, for instance, the bombing caused the deaths of the applicant's two minor children, as well as many other people. From the very outset, the cause of their deaths and the person responsible for taking the relevant decision was already known to the investigation authorities. In this case, forensic medical examinations were not carried out as a) at the time of the investigation, the bodies of the deceased had already been removed by the local population; b) exhuming the bodies would contradict the religious customs of the victims and their families; and, most importantly, c) the cause of death was already known to the investigation authorities, and the number of dead and injured persons was not decisive for the conclusions reached by the investigation. Given that the investigation concerned an alleged war crime, it focused on the men's rea, as it was established that the colonel at the time of ordering the airstrike was convinced that no civilians were present at the scene. This element was decisive for the conclusion that there was no corpus delicti[4].

The investigation must be prompt and should proceed with a reasonable expedition[5]. However, the Court accepts that there might be issues and obstacles that impede the progress of the investigation in a particular situation. The Court nevertheless held that "a prompt response by the authorities in investigating a use of lethal force may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts"[6].

Finally, an investigation must afford sufficient public scrutiny and the involvement of the victim(s) or next-of-kin, although the degree of such involvement may vary depending on the situation. For example, the Court has held that the investigative materials may involve sensitive issues, and their disclosure cannot be regarded as an immediate requirement[7]. Nevertheless, "the investigation must be accessible to the victim's family to the extent necessary to safeguard their legitimate interests" and the "outcome of the investigation must be duly brought to the attention of the next of kin"[8]. In the case of Hanan v. Germany, the applicant complained that on 12 April 2010, he has reported a crime concerning the infliction of deaths of two minor children and requested access to the investigation materials. However, the criminal proceedings were terminated in 4 days without hearing the applicant and before legal counsel was granted access to the investigation materials. The applicant thought that this constituted a serious flaw in the investigation, as relevant information could be provided, in particular regarding the victims present at the place of the explosion. However, the European Court of Human Rights established that in this particular case the failure to question the applicant before termination of the criminal proceedings did not constitute an essential flaw as the fact that two children of the applicant were killed was already beyond doubt. The applicant would not be able to provide additional information relevant to the decision on the issue of men's rea, on which the Federal Prosecutor General relied[9]. Thus, the degree and importance of the victim's involvement will depend on the specific circumstances of the case.

Description of topical issues of human rights protection in Ukraine against the background of the military aggression of the Russian Federation in the scientific literature

The Russian full-scale military aggression against Ukraine highlighted the topicality of international law's response to acts of aggression (Popescu, 2022). However, the search for adequate answers has only just begun, and little attention has been paid to the protection of victims of human rights violations in Ukraine and

[1]Mustafa Tunç and Fecire Tunç v. Turkey No. 24014/05. (2015, April). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-154007%22]}.
[2]Case of Al-Skeini and Others v. the United Kingdom No. 55721/07. (2011, July). Retrieved from https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-105606%22]}.
[3]Velikova v. Bulgaria No. 41488/98. (2000, May). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-58781%22]}.
[4]Hanan v. Germany No. 4871/16. (2021, February). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-208279%22]}.
[5]Guide on Article 3 of the European Convention on Human Rights. (2022, August). Retrieved from https://www.echr.coe.int/Documents/Guide_Art_3_ENG.pdf.
[6]Case of Al-Skeini and Others v. the United Kingdom No. 55721/07. (2011, July). Retrieved from https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-105606%22]}.
[7]Hanan v. Germany No. 4871/16. (2021, February). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-208279%22]}.
[8]Ibidem, 2021.
[9]Ibidem, 2021.

the obligations of Ukrainian authorities in these unprecedented conditions. Studies devoted to the issue of extraterritorial investigation under the Convention do not pay attention to the jurisdictional link in terms of the state's duty to investigate violations (Grignon & Roos, 2020; Mallory, 2020), likely since these studies were conducted before the Court's decision in the case of Hanan v. Germany. M. Milanovic and T. Papić (2018) investigated the applicability of the Convention in the occupied territories but did not elaborate the obligations of the High Contracting Parties to investigate human rights violations committed in the occupied territories. J. Rooney (2019) explored the issue of the legitimacy of extraterritorial jurisdiction in general and concluded that it improves the inclusiveness and representation of extraterritorial applicants.

Ukrainian researchers mainly focused on procedural obligations under Articles 2 and 3 (Shelchuk & Hlynska, 2020; Fedoriv, 2021). A. Zakharkin (2021) also mentioned Articles 5 and 13 of the Convention as the ones under which applicants complained in the context of the procedural obligations of the Ukrainian state regarding human rights violations committed as a result of Russian aggression in Donetsk and Luhansk regions. By limiting the research object to one or several articles of the Convention, researchers leave the possibility of extrapolating their conclusions to the procedural obligations of the High Contracting Parties of the Convention under other articles beyond examination and generally disregard the very existence of such obligations. However, F. Tan (2022) rightly concluded that procedural obligations relate primarily to violations of Articles 2, 3, and 4 of the Convention, although they can and do relate to other violations as well, although the practice regarding them is still developing. It is worth noting that the consideration of individual complaints of persons who suffered from Russian aggression may lead to a rapid and quite unexpected development of the Court's jurisprudence on this issue. In the dissertation by F. Tan (2022), devoted to the procedural obligations of states in situations of armed conflict, the author concluded that the obligation to investigate arises as soon as the state receives information about a possible violation, regardless of the source of the information.

Remarkably there are certain differences in the understanding of the criteria for the effectiveness of the investigation in the practice of the ECHR, articulated by the researchers. K. Buhaichuk *et al.* (2017) singled out the criteria for the effectiveness of the investigation separately for Articles 2 and 3 of the Convention: the investigation of material violations of Article 2 must be independent, effective and evidence must be ensured, while the investigation of violations of Article 3 must be thorough, independent, and impartial, evidence must be gathered promptly. S. Chernobayev (2020) singled out the following criteria for the effectiveness of the investigation: promptness and reasonable expedition; publicity (initiative of the pre-trial investigation body); legality; comprehensiveness and completeness of the application of measures aimed at the crime detection; independence and impartiality; transparency of pre-trial investigation. O. Fedoriv (2021) singled out the following criteria: independence, proper character, nature and degree of control, nature and degree of thoroughness, reasonable speed, public oversight, and involvement of relatives. T.S. Shelchuk & O.V. Hlynska (2020) agreed with previous research, according to which the criteria for the effectiveness of investigations into violations of Article 2 of the Convention include independence, impartiality, adequacy, promptness, and transparency.

F. Tan (2022) analysed the jurisprudence of the ECHR and the UN Human Rights Committee and the Inter-American Court of Human Rights altogether and concluded that the criteria for the effectiveness of the investigation are the same for all these institutions. The researcher singled out 8 such criteria: 1) the investigation must be initiated on the state's initiative; 2) the investigation must be initiated promptly and conducted with reasonable speed; 3) independence; 4) impartiality; 5) seriousness and efficiency, thoroughness, adequacy; 6) sufficient involvement of victims and their close relatives; 7) transparency; 8) persons responsible for a criminal offence must be prosecuted according to law and must be punished.

The above-listed criteria were articulated by the researchers based on the case law examined. It is worth mentioning, however, that the Court's jurisprudence is huge. Therefore, a comprehensive analysis of the case law is hardly possible for an external observer. For this reason, the Directorate of the Jurisconsult consistently generalizes the Court's jurisprudence. The research results are published online in the guides devoted to particular Articles of the Convention and other transversal themes. Such guides provide the Court's view of, in particular, criteria for the effectiveness of the investigation and which meaning is put into each of these criteria. In addition, there might be inaccuracies related to the unofficial translation in languages that are not official languages of the Council of Europe. Thus, the interpretation of the jurisprudence of the ECtHR may differ depending on the language of the study, the time of its conduct, and the source base.

Conclusions

According to the Court's jurisprudence, the jurisdiction of the High Contracting Parties to the European Convention on Human Rights for Article 1 of the Convention is primarily territorial. However, the European Court of Human Rights has established several exceptions to this general principle. In particular, in the case of the occupation of part of the territories by another state, the State retains jurisdiction over the temporarily occupied territories, but only in a limited scope. In the case of a violation committed outside the territory of the State Party,

jurisdiction in terms of procedural obligations can be established from the very fact of the institution of criminal proceedings, but only when there are "special features" that cannot be exhaustively listed. In the presence of "special features", a jurisdictional link can be established even if criminal proceedings were not instituted.

Law enforcement agencies responding to challenges caused by massive violations of human rights during Russia's military aggression against Ukraine should be aware of the fact that the spectrum of violations for which the State Party to the Convention has procedural obligations is not limited to Articles 2, 3 and 4 of the Convention. Such obligations also arise concerning other serious violations, in particular under Articles 5, 8, 9, 10, 11, 14, and Article 1 of Protocol No. 1 to the Convention, which the Ukrainian state is also obliged to investigate.

The duty to investigate a violation arises not only in the presence of an express criminal complaint but also when there are clear indications that a violation might have taken place, even in the absence of an express complaint from a victim. This means that the Ukrainian state is obliged to investigate all cases of which it is aware, even in the absence of a criminal complaint.

The Court applies the same criteria for the effectiveness of the investigation of violations committed in the context of an armed conflict under normal conditions (independence, adequacy, expedience, public control, and involvement of the victim). However, when assessing the compliance of the investigation with these criteria, the Court considers the circumstances of the case and objective hardships caused by hostilities or other difficulties.

Considering the significant number of applications lodged with the Court in connection with Russia's military aggression against Ukraine, the jurisprudence of the Court regarding armed conflicts will continue to develop in the coming years. Given this, there is a need for further theorizing the voluminous jurisprudence of the ECHR on this issue, in particular regarding the requirements for the investigation of less serious violations compared to violations of Articles 2-4 of the Convention, the peculiarities of conducting investigations in conditions of overloaded law enforcement agencies in wartime conditions, etc.

Acknowledgements

None.

Conflict of Interest

None.

References

[1] Amaru, F.L. (2021). Criminal procedural law interaction with international criminal law and human rights in the context of military operations abroad: The European court of human rights' judgment in the case of Hanan v. Germany. *German Yearbook of International Law*, 64(1), 433-441. doi: 10.3790/gyil.64.1.433.

[2] Buhaichuk, K.L., Hladkova, Ye.O., Malynovska, T.V., Sviatotskyi, I.O., & Fedosova, O.V. (2017). *Principles of effective investigation according to the practice of the European court of human rights*. Kharkiv: Kharkiv National University of Internal Affairs.

[3] Chernobaiev, S. (2020). International standards for effective investigation. *National Law Journal: Theory and Practice*, 1(41), 147-150.

[4] Fedoriv, O.M. (2021). Criminal procedural ensuring of procedural obligations of the state under article 2 of convention for the protection of human rights and fundamental freedoms. *Juridical Scientific and Electronic Journal*, 6, 183-187. doi: 10.32782/2524-0374/2021-6/49.

[5] Frisso, G.M. (2018). The duty to investigate violations of the right to life in armed conflicts in the jurisprudence of the inter-American court of human rights. *Israel Law Review*, 51(2), 169-191. doi: 10.1017/S0021223718000055.

[6] Grignon, J., & Roos, T. (2020). The extraterritorial jurisdiction of states parties to the European convention on human rights in the context of armed conflict: Analysis of the case law of the European court of human rights. *Quebec Journal of International Law,* 33(2), 1-17. doi: 10.7202/1086439ar.

[7] Kamber, K. (2020). Substantive and procedural criminal Law protection of human rights in the law of the European convention on human rights. *Human Rights Law Review*, 20(1), 75-100. doi: 10.1093/hrlr/ngaa005.

[8] Klocker, C. (2022). Compensating victims of armed conflict: Evidence from the European court of human rights. In N. Wieb & A. Zimmermann (Eds.), *Human rights and international humanitarian law: Challenges ahead* (pp. 175-197). Northampton: Edward Elgar.

[9] Lavrysen, L., & Mavronicola, N. (Eds.). (2020). *Coercive human rights: Positive duties to mobilise the criminal law under the ECHR*. New York: Hart Publishing.

[10] Mallory, C. (2020). *Human rights imperialists: The extraterritorial application of the European convention on human rights*. London: Bloomsbury Publishing Plc.

[11] Milanović, M., & Papić, T. (2018). The applicability of the ECHR in contested territories. *International & Comparative Law Quarterly*, 67(4), 779-800. doi: 10.1017/S0020589318000234.

[12] Morgan, J. (2018). Parallel lines that never meet: Tort and the ECHR again. *The Cambridge Law Journal*, 77(2), 244-248. doi: 10.1017/S0008197318000478.

[13] Popescu, C.L. (2022). International and European law before the armed conflict in Ukraine - The first 10 days. - *Legal Forum*, 1(1), 1-10.
[14] Roone (2019). The democratic function of extraterritorial human rights adjudication. *European Human Rights Law Review*, 6, 626-642.
[15] Shelch T.S., & Hlynska, O.V. (2020). The effectiveness of the investigation in the context of Art. 2 ECHR. *Electronic Scientific Professional Magazine "Comparative and Analytical Law"*, 1, 682-684. doi: 10.32782/2524-0390/2020.1.1
[16] Stoyanova (2020). Causation between state omission and harm within the framework of positive obligations under the European convention on human rights. *Human Rights Law Review*, 18(2), 309-346. doi: 10.1093/hrlr/
[17] Tan, F. (2022). *The duty to investigate in situations of armed conflict: An examination under international humanitarian law, international human rights law, and their interplay* (Doctoral dissertation, Leiden University Scholarly Publications, Leiden, Netherlands).
[18] Wallace, S. (2013). *The application of the European convention on human rights to military operations*. Cambridge: Cambridge University Press.
[19] Wieb, N., & Zimmermann, A. (2022). Remarks on the relationship between international human rights law and international humanitarian law. In N. Wieb & A. Zimmermann (Eds.), *Human rights and international humanitarian law: Challenges Ahead* (pp. 1-10). Northampton: Edward Elgar. doi: 10.4337/9781839108273.00006.
[20] Zakharkina, A.Yu. (2021). Adherence to the standards of investigation in the jurisprudence of the European court of human rights in the conditions of an armed conflict (war). In *Round table, dedicated to the 72nd anniversary of adoption of the Universal Declaration of Human Rights* (pp. 30-32). Kyiv: State Research Institute of the Ministry of Internal Affairs of Ukraine.

[ВИДАЛЕНА СТАТТЯ] Обов'язок розслідувати порушення прав людини, вчинені у контексті збройного конфлікту: практика Європейського суду з прав людини

Олександра Стешенко
Доктор філософії з права, юрист
ГО «ВІ АР ФРЕНДС ЮКРЕЙН»
02100, вул. Краківська, 7, м. Київ, Україна
https://orcid.org/0000-0002-3886-175X

Анотація
У статті розглянуто особливості зобов'язань держав – учасниць Європейської конвенції з прав людини (надалі «Конвенція») щодо проведення розслідувань порушень Конвенції в контексті збройного конфлікту. Актуальність дослідження зумовлена стрімким розвитком практики Європейського суду з прав людини протягом останніх років, а також значним навантаженням на українські правоохоронні органи у зв'язку з нагальною потребою розслідувати масові порушення прав людини, учинені в контексті російської воєнної агресії. Метою дослідження є узагальнення поточної практики Європейського суду з прав людини щодо процесуальних зобов'язань держави в контексті збройного конфлікту. Основою дослідження слугував аналітичний метод, методи конкретно-соціологічних досліджень. Розглянуто питання юрисдикційного зв'язку між обов'язком розслідувати та державою – учасницею Конвенції, спектру порушень, що мають бути розслідувані, передумов виникнення обов'язку розслідувати порушення, а також змісту процесуальних зобов'язань в контексті збройного конфлікту. Юрисдикція Конвенції з прав людини для цілей ст. 1 Конвенції – це тема щодо процесуальних зобов'язань, є передусім територіальною; однак існує низка винятків з цього загального принципу. Спектр порушень, за якими у держави – учасниці Конвенції є процесуальні зобов'язання, охоплює всі серйозні порушення Конвенції. Передумовами виникнення обов'язку розслідувати порушення може бути: а) отримання повідомлення про злочин; та/або б) наявність ознак, які вказують на вчинення порушення, навіть за відсутності повідомлення про злочин. До розслідувань порушень, учинених у контексті збройного конфлікту, Європейський суд з прав людини застосовує такі самі критерії ефективності розслідування, як і за звичайних умов (незалежність, адекватність (ретельність), громадський контроль і залучення потерпілого), з огляду на об'єктивні труднощі, спричинені бойовими діями. Практична цінність полягає в окресленні конкретних зобов'язань України за Конвенцією щодо розслідування масових порушень прав людини під час війни

Ключові слова:
ефективність розслідування; Європейська конвенція з прав людини; воєнний стан; збройна агресія російської федерації; юрисдикційний зв'язок

ЮРИДИЧНИЙ ЧАСОПИС
НАЦІОНАЛЬНОЇ АКАДЕМІЇ ВНУТРІШНІХ СПРАВ

Науковий журнал

Том 13, № 2, 2023

Заснований 2011 року. Виходить чотири рази на рік

Оригінал-макет видання виготовлено у відділі підготовки навчально-наукових видань
Національної академії внутрішніх справ

Відповідальний редактор:
К. Вернер

Редагування англомовних текстів:
К. Касьянов, Є. Заворотько

Комп'ютерна верстка:
О. Глінченко

Підписано до друку 26 червня 2023 р. Формат 60*84/8
Умов. друк. арк. 11,3
Наклад 50 прим.

Адреса видавництва:
Національна академія внутрішніх справ
пл. Солом'янська, 1, м. Київ, Україна, 03035
Тел.: +38 (044) 520-08-47
E-mail: info@lawjournal.com.ua
www: https://lawjournal.com.ua/uk

LAW JOURNAL
OF THE NATIONAL ACADEMY OF INTERNAL AFFAIRS

Scientific Journal

Volume 13, No. 2, 2023

Founded in 2011. Published four times per year

The original layout of the publication is made in the Department of Preparation of Educational and Scientific Publications of National Academy of Internal Affairs

Managing Editor:
K. Verner

Editing English-language texts:
K. Kasianov, Ye. Zavorotko

Desktop publishing:
O. Glinchenko

Signed for print of June 26, 2023. Format 60*84/8
Conventional printed pages 11.3
Circulation 50 copies

Editors office address:
National Academy of Internal Affairs
03035, 1 Solomianska Sq., Kyiv, Ukraine
Tel.: +38 (044) 520-08-47
E-mail: info@lawjournal.com.ua
www: https://lawjournal.com.ua/en