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НАЦІОНАЛЬНА АКАДЕМІЯ ВНУТРІШНІХ СПРАВ

ЮРИДИЧНИЙ ЧАСОПИС
НАЦІОНАЛЬНОЇ АКАДЕМІЇ ВНУТРІШНІХ СПРАВ

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Chapter 36-1 of the CPC of Ukraine as a ground for closing criminal proceedings

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Abstract
The emergence of a new ground for closing criminal proceedings in the current Code of Criminal Procedure of Ukraine – in connection with the decriminalization of an act committed by a person – has caused ambiguous assessments by scholars. The application of the new procedure in judicial practice necessitates a thorough scientific study of the problem in order to prevent violations of the law. The purpose of the study was to determine the practical feasibility of the adopted amendments for pre-trial investigation and court proceedings. To achieve this goal, the following methods were used: dialectical, systemic and structural, comparative legal, formal and logical, and modelling. The study describes the actions of participants in criminal proceedings at the stage of pre-trial investigation and in court during consideration of the said procedure. The author compares the new procedure with other existing special investigative procedures and emphasizes their differences. The author calls into question whether the legislator has singled out this procedure as a type of special procedure. The author comes to the conclusion that the subject under study is an exclusively improved basis for closing criminal proceedings or further continuation of their consideration, depending on the right of the defence to close or continue the proceedings in court. The author analyses the court practice of application of this criminal procedural institute. Attention is focused on the need for investigators, prosecutors, and judges to take into account the requirements of the new grounds for closing criminal proceedings and to prevent violations of the law, since during its consideration the suspect and the accused are granted an additional alternative right to agree or disagree with the closure of proceedings, which is a guarantee of human rights and freedoms. The author's conclusion that it is inappropriate for the legislator to classify the procedure for closing proceedings as a separate type of special procedure is justified by haste and lack of appropriate scientific research. The study provides the basis for improving the methodology of procedural actions of the prosecution during the closure of criminal proceedings and may be used by the legislator for further regulation of the criminal proceedings' procedure

Keywords:
decriminalization; special procedure of investigation; prosecutor; court; prosecution; defence; criminal procedure form

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Introduction

On 29 December 2022, the Law of Ukraine No. 2810-IX dated 01.12.2022[1] came into force. In order to regulate the criminal procedural relations between the state in the form of bodies conducting criminal proceedings and the offender, the legislator supplemented the Criminal Procedure Code (CPC) with a new Chapter 36-1 "Criminal proceedings in respect of an act whose criminal unlawfulness was established by a law that has ceased to be in force". According to it, the grounds for closing criminal proceedings are when the law that established the unlawfulness of the accused person's act has expired. On this basis, it becomes impossible to close criminal proceedings if the suspect or accused objects to this. In this case, the criminal proceedings continue in accordance with the general procedure provided for by the CPC of Ukraine, taking into account the peculiarities of Chapter 36-1 of this Code. Thus, the legislator's amendments relate to two procedural aspects: first, the grounds for criminal proceedings in connection with the invalidation of a criminal law, and second, the procedural mechanism for implementing the closure on this ground.

The aforementioned amendments to the Criminal Procedure Code of Ukraine have stirred up the procedural community of Ukraine and prompted it to express different opinions on this issue. This topic was not entirely unambiguous in the perception of procedural scholars. Thus, in the course of their research, scholars E. Krapivin (2022), O.M. Drozdov & O.I. Marochkin (2023), O.O. Torbas *et al.* (2022) considered it as a ground for closing criminal proceedings, and I.V. Hloviuk (2023) paid attention to it not only as a ground for closing proceedings, but also as a type of differentiated form – a special procedure of criminal proceedings.

Some scholars have noticed in these changes a general trend of inequality of the procedural status of the suspect and the accused, which leads to an unfair final decision regarding the suspect and the accused. Thus, O.M. Drozdov & O.I. Marochkin (2023) note that both in relation to a suspect whose consent to the closure of criminal proceedings on the grounds provided for in para. 4-1, part 1, Article 284 of the CPC[2] is absent, and in relation to an accused whose consent to the closure of criminal proceedings on the grounds provided for in para. 4-1, part 1, Article 284 of the CPC of Ukraine[3], the court shall, based on the results of the trial, unless it establishes that such a suspect/accused committed an act whose criminal unlawfulness was established by a law that has lost its force, make a relevant court decision. However, in the case of a suspect, the court shall issue a ruling to close the criminal proceedings on the grounds provided for in clause 1 (absence of a criminal offence) or clause 2 (absence of a criminal offence) of part 1 of Article 284 of the CPC[4]. As for the accused, the court acquits the defendant.

In general, proceduralists A. Zakharko (2023) and O.P. Shaituro (2022) emphasize the shortcomings in the regulation of the grounds for criminal proceedings of the above amendments, but do not insist on their cancellation or exclusion. However, unlike theorists, practitioners in their works on the general grounds for closing criminal proceedings think more radically, and sometimes, based on negative prosecutorial and judicial practice, propose to repeal problematic amendments to the CPC (Pastusch, 2019). In addition, I.V. Hloviuk (2023) notes that the newly introduced special procedure for criminal proceedings in the current version of Chapter 36-1 of the CPC of Ukraine[5] regulates the peculiarities of the end of the pre-trial investigation and the peculiarities of the trial.

The above indicates that the provisions of this chapter do not cover the preliminary stage of investigation, investigative and procedural actions that are carried out at this stage. For example, the procedure for serving a notice of suspicion on subjects of a criminal offence, in respect of whom a special procedure for criminal proceedings is provided. Meanwhile, this is a key procedural act of prosecutorial and investigative activity in such procedures, which determines the further legal fate of the proceedings, and is also carried out with numerous features in relation to the subjects of the criminal offence (Bublyk, 2019). Therefore, Chapter 36-1[6] concerns only the form of completion of the pre-trial investigation, namely the closure of criminal proceedings. Given the positions of scholars, this ground is not entirely unambiguously perceived in practice by the prosecution and defence, as well as by the court itself.

Therefore, the purpose of the study was to establish the scientific, theoretical and practical features which characterize the introduced institute as a static (grounds for closure) and at the same time dynamic (special procedure for criminal proceedings) category of criminal procedure.

[1] Law of Ukraine No. 2810-IX "On Amendments to the Criminal Code and the Code of Criminal Procedure of Ukraine Regarding the Closure of Criminal Proceedings Due to the Invalidation of the Law Establishing the Criminal Unlawfulness of an Act". (2022, December). Retrieved from https://zakon.rada.gov.ua/laws/show/2810-20#Text.
[2] Criminal Procedure Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[3] Ibidem, 2012.
[4] Ibidem, 2012.
[5] Ibidem, 2012.
[6] Ibidem, 2012.

Materials and Methods

The methodological basis of the publication is made up of general scientific and special methods, namely: dialectical – allowed analysing the object of study as the grounds for closing the proceedings, such as a special procedure of criminal proceedings; systemic and structural – used to clarify the legal guarantees of the procedural rights of the suspect and the accused in the event of circumstances which allow them to use the consent to close the proceedings or vice versa, in connection with the decriminalization of an act; comparative The methods of analysis and synthesis, generalization, induction and deduction, forecasting, analogy, and justification were also used to clarify and summarize empirical data on the basis of logical rules from the specific to the general, from the known to the unknown, and to define the object and subject.

The empirical basis of the study is made up of: The Constitution of Ukraine[1], the Criminal Procedure Code of Ukraine[2] and other legal acts of Ukraine regulating legal relations in the field of criminal justice[3]. Along with this, case law materials, namely, decisions of Ukrainian courts of general jurisdiction of the first instance from different regions of Ukraine, which reflect a real and objective picture of the practice of applying the studied provision of the Criminal Procedure Law throughout the country. These are the rulings of: Chortkiv District Court of Ternopil Region[4], Shevchenkivskyi District Court of Kyiv[5], Kolomyia City District Court of Ivano-Frankivsk Region[6], Korosten City District Court of Zhytomyr Region[7], Zolotonosha City District Court of Cherkasy Region[8], all delivered within a short period of time since the law came into force. In addition to the above, in the context of the issues under consideration, the author examines the decisions of the Constitutional Court of Ukraine[9]. In addition, the author's investigative and prosecutorial experience in law enforcement agencies was used in the preparation of the scientific work.

Results and Discussion

Considering the process of emergence of this institution in the Criminal Procedure Code of Ukraine, it should be noted that the initiative for this belonged not to the state, which should guarantee the rights and freedoms of participants in the process, but rather to an individual who initiated its emergence in criminal procedural law. Thus, the Constitutional Court of Ukraine received a constitutional complaint from a citizen who raised the issue of compliance of paragraph 4 of part one of Article 284 of the Criminal Procedure Code of Ukraine (case on presumption of innocence) with the Constitution of Ukraine (constitutionality). The consideration of this complaint resulted in the decision of the Second Senate of the Constitutional Court of Ukraine in the case on the constitutional complaint on the compliance of paragraph 4 of part one of Article 284 of the Criminal Procedure Code of Ukraine (case on the presumption of innocence) No. 3-rp (II) 2022 dated 8 June 2022, which declared paragraph 4 of part 1 of Article 284 of the CPC to be inconsistent with the Constitution of Ukraine [10](unconstitutional). To legislatively consolidate the above conclusion, the Verkhovna Rada of Ukraine amended the procedural law by which it excluded clause 4, part 1, Article 284 of the CPC of Ukraine as unconstitutional and supplemented the said provision with a new clause 4-1[11]. The purpose of this law was to create a proper legal mechanism for closing criminal proceedings in connection with the decriminalization of an act. Scholars in different countries have paid sufficient attention to the application of decriminalization in procedural science, starting with its definition (Farmer, 2023) and ending with certain corpus delicti that, in the authors' opinion, require a simplified investigation procedure or exclusion from the criminal field as such D. Baranenko *et al.* (2023), O. Grudzur (2020), A.E. Arimoro (2022).

Thus, in accordance with the decision of the Constitutional Court of Ukraine on the right of a suspect (accused) to agree or disagree with the closure of criminal

[1] Criminal Procedure Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[2] Ibidem, 2012.
[3] Law of Ukraine No. 2810-IX "On Amendments to the Criminal Code and the Code of Criminal Procedure of Ukraine on Closing Criminal Proceedings in Connection with the Termination of the Law Establishing the Criminal Unlawfulness of an Act". (2022, December). Retrieved from https://zakon.rada.gov.ua/laws/show/2810-20#Text.
[4] Ruling of the Chortkiv District Court of Ternopil Region No. 608/179/23. (2023, February). Retrieved from https://reyestr.court.gov.ua/Review/109193136
[5] Ruling of the Shevchenkivskyi District Court of Kyiv No. 761/31287/20. (2023, March). Retrieved from https://reyestr.court.gov.ua/Review/109647758.
[6] Ruling of the Kolomyia City District Court of Ivano-Frankivsk Region No. 346/5362/20. (2023, April). Retrieved from https://reyestr.court.gov.ua/Review/110388274.
[7] Ruling of the Korosten City District Court of Zhytomyr Region No. 279/7081/14-k. (2023, June). Retrieved from https://reyestr.court.gov.ua/Review/112172826.
[8] Ruling of the Zolotonosha City District Court of Cherkasy Region No. 695/1594/21. (2023, April). Retrieved from https://reyestr.court.gov.ua/Review/110533644.
[9] Decision of the Second Senate of the Constitutional Court of Ukraine in the case on the constitutional complaint of Oleksandr Volodymyrovych Krotyuk regarding the compliance with the Constitution of Ukraine (constitutionality) of paragraph 4 of part one of Article 284 of the Criminal Procedure Code of Ukraine (case on the presumption of innocence) No. 3-p(II)/2022. (2022, June). Retrieved from https://zakon.rada.gov.ua/laws/show/v003p710-22?fbclid=IwAR0lKrL6dVxXxf2Ueqkjq8UUFC1_%208GVD_axwBh7zDSX0HvZbtu6_xysPX9k#Text.
[10] Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text.
[11] Criminal Procedure Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.

proceedings against him/her and the consequences of such closure, the legislator filled the gap in the procedural end of the decriminalized offence[1]. In this case, the Constitutional Court granted the accused the right to look at the decriminalization of the offence differently. This decision can be compared to the Report on Decriminalization issued by the Council of Europe in 1980, which was studied by M. Pinto (2023). His opinion was to take into account the provisions of the Report, which could be used by the European Court of Human Rights to take a different approach to the consideration of criminalization cases. The issues of alternative decriminalization were also addressed in the works of A. Stevens *et al.* (2022) and W.C. Heffernan (2019), although it did not concern a group of crimes, but only certain types.

The above-mentioned decision of the Constitutional Court was made in pursuance of the requirements of the constitutional principle of criminal procedure – the presumption of innocence contained in Article 62 of the Constitution of Ukraine[2]. In the case under study, it concerns the treatment of a person as guilty or innocent in case of decriminalization of an act for which he or she was prosecuted and his or her exclusive right to agree to the closure of criminal proceedings against him or her on rehabilitating or non-rehabilitating grounds.

The presumption of innocence is not only a Ukrainian heritage. Its content is also being studied in other countries. Thus, F. Yu (2022), in his work on the presumption of innocence, notes that this principle requires a prior commitment to the accused or defendant and presumes his or her innocence. At the same time, there is a certain difference in the understanding of the principle in the European and international contexts, as noted by J. Mulák (2018), F. Picinali (2021). To exercise the offender's right to the presumption of innocence, the legislator has provided for procedural behaviour options in two articles: 479-1 and 479-2 of the Criminal Procedure Code of Ukraine. Their content relates to two stages of criminal proceedings – pre-trial investigation and trial, which contain certain procedural features. Although, in our opinion, these are rather conditions than peculiarities, as the legislator calls them. Thus, if the suspect does not agree to close the proceedings on non-rehabilitating grounds at the end of the pre-trial investigation, the actions of the prosecutor-procedural supervisor will be as follows. The prosecutor shall file a motion with the court to close the criminal proceedings against the suspect under clause 4-1, part 1, Article 284 of the CPC of Ukraine[3], provided that

- if the suspect objects to the closure of the criminal proceedings under paragraph 4-1, part 1, Article 284 of the CPC of Ukraine[4];
- the prosecutor recognizes that the evidence of the decriminalized criminal offence is sufficient;
- notifying the suspect and his/her defence counsel of the completion of the pre-trial investigation;
- providing access to the pre-trial investigation materials;
- familiarizing the suspect and defence counsel with the pre-trial investigation materials.

It is worth emphasizing the exclusive role of the prosecutor during this procedure, since, unlike the investigator and the court, he or she participates in it at both stages of the process: pre-trial and trial. And an important point is that its effectiveness depends on the prosecutor's careful study of the criminal proceedings in order to provide a legal assessment of whether there are grounds for closing them (Pashchenko, 2020). I.I. Gafich (2019) also notes the special place of the prosecutor in the system of subjects of criminal proceedings' termination. At the same time, further development of procedural events takes place not only at the investigation stage, but also in the court instance. The Code stipulates that the court conducts court proceedings in relation to a decriminalized act in the general procedure, but with appropriate conditions. As a result of a scientific analysis of the new legislative provisions, five options for closing court proceedings were classified (Table 1).

Table 1. Classification of options for closing criminal proceedings in court

Court order	Conditions
1. Closure of criminal proceedings under clauses 1-2, part 2 of Article 284 of the CPC	Disagreement by the suspect to the closing of the proceedings under Clause 4-1, Part 1, Art. 284 of the CPC;
	The court confirmed the commission of a decriminalized criminal offence.
2. Closure of criminal proceedings under Clause 1 or 2, Part 1 of Article 284 of the Criminal Procedure Code	The court did not establish the fact of committing a decriminalized criminal offence.

[1] Decision of the Second Senate of the Constitutional Court of Ukraine in the case on the constitutional complaint of Oleksandr Volodymyrovych Krotyuk regarding the compliance with the Constitution of Ukraine (constitutionality) of paragraph 4 of part one of Article 284 of the Criminal Procedure Code of Ukraine (case on the presumption of innocence) No. 3-p(II)/2022. (2022, June). Retrieved from https://zakon.rada.gov.ua/laws/show/v003p710-22?fbclid=IwAR0lKrL6dVxXxf2Ueqkjq8UUFC1_%208GVD_axwBh7zDSX0HvZbtu6_xysPX9k#Text.
[2] Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text.
[3] Criminal Procedure Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[4] Ibidem, 2012.

Table 1, Continued

3. Closure of criminal proceedings under item 4-1, part 1 of Article 284 of the Code	During the consideration of the indictment in court, the criminal offence committed by the accused becomes invalid;
	The court stops the trial;
	The court asks for the consent of the accused to close the criminal proceedings. clause 4-1 part 1 of Art. 284 of the CPC;
	If the accused does not object to it.
4. Closure of criminal proceedings under clauses 1-2, part 2 of Article 284 of the CPC	Lack of consent of the accused;
	Establishment by the court of the fact that the accused committed an act, the criminal illegality of which was established by a law that has lost its validity.
5. Acquittal	The court did not establish that the accused committed an act, the criminal illegality of which was established by a law that has lost its validity

Source: developed by the author based on the CPC of Ukraine[1]

The above options for closing criminal proceedings are applied in practice. From the analysed judgments delivered in criminal proceedings concerning decriminalized acts, it is possible to draw certain conclusions about the formation of a very diverse judicial practice in this category of proceedings. There are court decisions that satisfy the motions of the parties to the proceedings and close the proceedings[2], while there is also negative practice after consideration of the relevant appeals[3]. Thus, in the part of criminal proceedings where the defence counsel and the accused apply to the court with a motion to close the criminal proceedings on the basis of clause 4-1, part 1, Article 284 of the CPC[4], the prosecutor refuses to support it[5]. Conversely, in cases where the prosecutor applies to the court with a motion to close the criminal proceedings against the suspect on the grounds provided for in paragraph 4-1 of part one of Article 284 of the CPC, the defence counsel and the suspect or accused object to the motion[6]. Also, the court itself, on legal grounds, denies the parties or a party to satisfy such a motion[7]. Thus, the procedural theatre of the trial of these cases, with the existing variety of scenarios for its development, is more like a general procedure than something special and differentiated.

To summarize the amendments to the current legislation under consideration, the following should be noted. Given the finalizing nature of Art. 284 of the CPC of Ukraine[8] for pre-trial investigation, the new amendments are quite logical within the content of this provision. Since the newest paragraph 4-1 (1)[9] is an ordinary ground for closing criminal proceedings, although improved by the decision of the Constitutional Court of Ukraine[10]. In other words, one ground, which was declared unconstitutional, was replaced by another, and it takes into account the right of the suspect and the accused to self-determination. Based on the process of improvement of the criminal procedure legislation, it is possible to summarize the increase in the number of grounds for closing the proceedings in the future. Moreover, there is a strong scientific basis for this, in particular, I.V. Hloviuk (2021) expresses the opinion that the model of classification of the grounds for closing criminal proceedings in court into rehabilitating and non-rehabilitating ones does not meet the challenges of today and the needs of the practice of application.

At the same time, as noted above, the legislator supplemented Chapter XX with Chapter 36-1[11], effectively introducing a new special, but in the author's opinion, incomplete procedure for criminal proceedings. Despite the fact that this procedure is carried out in certain parts of the pre-trial investigation and trial stages, it does not deserve the status of a special procedure, since it regulates a few criminal procedural relations. O.V. Sachko (2019), studying the issue of differentiation in criminal procedure, distinguished two forms of it: the first is simplified criminal proceedings, the second is complicated, special. He quite justifiably linked their content through the definition, but noted that the name does not always correspond to the content. Thus, in his opinion, the simplified proceedings include: proceedings on criminal offences, proceedings based on agreements, proceedings in the form of private

[1] Criminal Procedure Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[2] Ruling of the Chortkiv District Court of Ternopil Region No. 608/179/23. (2023, February). Retrieved from https://reyestr.court.gov.ua/Review/109193136.
[3] Ruling of the Shevchenkivskyi District Court of Kyiv No. 761/31287/20. (2023, March). Retrieved from https://reyestr.court.gov.ua/Review/109647758.
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[8] Criminal Procedure Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[9] Ibidem, 2012.
[10] Ibidem, 2012.
[11] Ibidem, 2012.

prosecution. These types of proceedings include a simplified procedure for investigation or trial. At the same time, other procedures include more complicated investigation procedures, such as the special regime of criminal proceedings under martial law, proceedings in respect of a certain category of persons, minors, the use of compulsory medical measures, as well as proceedings containing information constituting a state secret and other similar aspects.

If taking into account the above types of special criminal proceedings, they correspond to a certain group of criteria according to which they are classified as a differentiated form of criminal procedure. V.M. Trofimenko (2017) identified three rather broad groups of criteria for differentiation of the criminal procedure form: 1) material (criminal law) – which determines the further legal fate of criminal proceedings and depends on the gravity of the qualified crime, 2) procedural – provides for a difference from the general form of proceedings, 3) criminological – related to certain legal regimes characterizing the environment where the criminal offence was committed. To determine whether the procedure of proceedings differs from the general form of proceedings, the authors propose a number of criteria which are somewhat different from the above, namely:

- Special legal status of the subjects of a criminal offence;
- Procedural immunity of the subjects of a criminal offence;
- Criminal procedural guarantees for participants in the proceedings;
- Special procedure for bringing to justice and application of measures to ensure criminal proceedings against offenders;
- Peculiarities relating to a certain territory, group of criminal offences or certain institutions;
- Application at the pre-trial and trial stages of the process.

In view of the above, the new Chapter 36-1[1] is neither a simplified criminal proceeding nor a particularly complicated one, since the legal relations referred to in it are considered in accordance with the general rules of the Code. In addition, it does not meet the scientific criteria that characterize a differentiated form of criminal procedure. From this point of view, it seems problematic that the legislator has included such a small group of criminal procedural relations in a separate special procedure of criminal proceedings. In fact, this is a unified criminal procedure form, since it is conducted in accordance with the general rules of criminal proceedings. This statement is confirmed by scientific research, as well as by the judicial practice that is developing in the Ukrainian judiciary. In connection with the above, it is proposed to exclude Chapter 36-1 from Section VI "Special Procedures of Criminal Proceedings"[2]. And to supplement clause 4 of part 1 of Article 284 of the CPC of Ukraine[3] with two parts: the first one corresponds to Article 479-1[4], and the second one – to Article 479-2[5]. Applying the legal construction of paragraph 10 of part 2 of Article 284 of the Criminal Procedure Code of Ukraine[6].

Conclusions

The legislative norms that were the subject of this study and introduced to the Criminal Procedure Code of Ukraine arose as a result of one of the fundamental principles of criminal procedure – the presumption of innocence – and are a confirmation of the exercise of inalienable conventional and constitutional human rights aimed at protecting their fundamental freedoms and legitimate interests. The analysed amendments to the CPC are the result of the expression of will made by means of an initiative petition of a citizen to the Constitutional Court of Ukraine. This is a classic example of the right to a fair trial as defined by the European Convention on Human Rights. Despite their novelty and progressiveness, as well as their compliance with the "spirit of the law", these amendments were drafted and placed contrary to the legal technique of structuring legal acts.

The legislator prematurely and inappropriately introduced a new chapter entitled "Criminal proceedings in respect of an act whose criminal unlawfulness was established by a law that has ceased to be in force", which contains only two articles of little substance. The analysis has shown that in terms of form and content, the new chapter of the CPC is not a type of special procedure for criminal proceedings. Since it does not cover the entire process of proceedings from the beginning to the end, but only its final form of completion – closure. That is, a short, episode in the investigation during which the suspect or accused exercises his or her right to consent to the closure of the proceedings by the prosecutor at the pre-trial investigation stage, or vice versa – in case of his or her disagreement with the prosecutor's closure of the proceedings, by being sent to court for consideration in the general procedure. Thus, this chapter is only one of the numerous grounds for closing criminal proceedings provided for by the CPC of Ukraine with its inherent procedure. It is worth noting that cases of decriminalization are not so

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

common in legislative practice. At other times, criminal proceedings are investigated in a general manner and are not consistent in law enforcement practice.

Prospects for future research are to create further developments to improve the procedural actions for closing proceedings on the basis of decriminalization, in order to prevent violations of the rights of the suspect and the accused during the proceedings and to ensure their right to agree or disagree with such closure.

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Conflict of Interest

None.

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Глава 36-1 КПК України як підстава для закриття кримінального провадження

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Анотація
Поява в чинному Кримінальному процесуальному кодексі України нової підстави для закриття кримінального провадження – у зв'язку з декриміналізацією діяння, вчиненого особою, – викликала неоднозначні оцінки вчених. Застосування нового порядку провадження в судовій практиці зумовлює необхідність ґрунтовного наукового опрацювання проблеми з метою недопущення порушень закону. Метою дослідження було визначення практичної доцільності прийнятих змін для досудового розслідування та судового розгляду. Для досягнення поставленої мети було використано такі методи: діалектичний, системно-структурний, порівняльно-правовий, формально-логічний, моделювання. У дослідженні описано дії учасників кримінального судочинства на стадії досудового розслідування, а також у суді під час розгляду зазначеного порядку. Здійснено порівняння нового порядку провадження з іншими наявними особливими порядками розслідування, акцентовано на їх відмінності. Поставлено під сумнів виокремлення законодавцем цієї процедури як виду особливого порядку. Сформульовано висновок, що досліджуваний предмет є виключно вдосконаленою підставою для закриття кримінального провадження або ж подальшого продовження його розгляду залежно від права сторони захисту на закриття або ж продовження процесу провадження в суді. Проаналізовано судову практику застосування цього кримінального процесуального інституту. Увагу зосереджено на необхідності врахування слідчими, прокурорами та суддями вимог нової підстави закриття кримінального провадження та недопущення порушень закону, позаяк під час його розгляду підозрюваному й обвинуваченому надано додаткове альтернативне право на згоду або ж незгоду із закриттям провадження, що є гарантією прав і свобод людини. Авторський висновок щодо недоречності віднесення законодавцем процедури закриття провадження до окремого виду особливого порядку обґрунтовано поспішністю та відсутністю відповідного наукового опрацювання. Дослідження є підґрунтям для вдосконалення методики процесуальних дій сторони обвинувачення під час закриття кримінального провадження та може бути використано законодавцем для подальшого врегулювання порядку кримінального провадження

Ключові слова:
декриміналізація; особливий порядок розслідування; прокурор; суд; сторона обвинувачення; сторона захисту; кримінальна процесуальна форма

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Legal aspects of the use of medical cannabis in Poland compared to other countries: Comparative legal analysis

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Abstract
The importance of this issue is that there is an increasing demand for the use of medical marijuana in treatment where methods based on traditional medicine have failed. The aim of the article is the analysis and evaluation of the legal regulation of treatment with preparations containing medical marijuana in Poland against the background of trends in other countries. The study employs a dogmatic and black-letter methods of analyzing the provisions of the law in force in Poland and also a comparative method. Studies have shown that the systems of countries in Europe and the world vary in this regard. When it comes to the medical use of marijuana, three solutions are possible: a liberal model, where the patient can grow the plant himself, a moderate model, which relies on the possibility of obtaining a drug based on medical marijuana with a prescription. The third model is based on the impossibility of medical use of marijuana. The Polish legal model is moderate and consists of the possibility of obtaining a medical marijuana-based drug by prescription. Independent cultivation under this model is not possible. A business entity that intends to cultivate cannabis for medical purposes must have the appropriate permit from the competent state authority. This solution (present in many other countries) is characterized by a balance between legalization of medical marijuana and drug prevention. Under the Polish legal model, cannabis cultivation remains under state supervision. Medical marijuana is available to the patient, but access to it is strictly regulated. This is not a liberal legalization model, as availability depends largely on the doctor. Practical results show a progression in the availability of medical marijuana medicines compared to previous years. The legislature is open to change, but out of caution against the proliferation of drug offenses, it has not decided on greater liberalization

Keywords:
law; medical marijuana; legalization; treatment; the Polish legal system

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Introduction

The Polish legal provisions allow to use of medical cannabis-based drugs for treatment, which coincides with European- and worldwide trends. Cannabis, being one of the oldest medicines, has a long, millennia-long history (Nutt, 2019). Medications based on cannabis have been used for therapeutic purposes in many cultures. There is now clear evidence that cannabinoids are useful for the treatment of various medical conditions (Grotenhermen & Müller-Vahl, 2012). Over 30 countries internationally have legalised medical cannabis. Medical use can also be found in Argentina, Colombia, Mexico, Chile, Peru, Jamaica, and Uruguay. Commercial drugs based on cannabis are available in the European countries: Netherlands, Great Britain, Germany, Czech Republic etc. International law, mainly from the perspective of human rights obligations, also allows for the legalization of cannabis. Research suggests that given these positive human rights obligations states may be required to introduce controlled legalization of cultivation and trade of recreational cannabis if such a regulation contributes to the protection of human rights more effectively than absolute prohibition of narcotic substances, as provided for in UN drug conventions (Van Kempen & Fedorova, 2019).

Meanwhile, in federal countries, individual states have their regulations on the use of medical marijuana. The leader in legalizing medical marijuana is undoubtedly the United States. A study in the United States shows that medicinal cannabis in some form is legal in 47 states, the District of Columbia, Guam, the United States Virgin Islands, and Puerto Rico (Ryan *et al.,* 2021). A wide-ranging context can be found in the study by F. Baratta *et al.* (2022). The authors analyse legislation in countries that permit the use of medical marijuana concerning the impact that this legislation has had on clinical trials. The study points to a variety of guidelines for the use of medical marijuana in the treatment of various diseases, including varieties, forms of administration and treatment methodologies.

Since this article deals with Polish law, it is worth pointing out the state of research studies in Poland. First of all, it should be noted that the literature on Polish law on this subject is not extensive. M. Kuna (2019) made several terminological remarks. The article extensively discusses the institution of so-called "target import", which was the only method of procuring medical marijuana-based medicine in Poland before 2017. The current article broadens the perspective to the period from 2017 and includes legal comparative threads. A slightly earlier study A. Habib (2016) addressed the aforementioned terminological comments and noted the distinction between tetrahydrocannabinol (THC) and cannabidiol (CBD). The author's study devotes considerable devotion to non-legal issues regarding the legalization of medical marijuana in public opinion, including that of doctors and patients and the Helsinki Foundation for Human Rights. J.E. Król-Całkowska & J. Jaroszyński (2023) attempted to answer the question of whether the use of medical marijuana in terminally ill patients is akin to medical experimentation, or whether it represents the patient's right to health services based on the latest medical knowledge and pain management.

At this point, it is necessary to establish that, in the light of Polish law, medical cannabis is understood as "non-fibrous hemp herb and pharmaceutical extracts, tinctures, as well as all other non-fibrous hemp extracts and non-fibrous hemp resin...", referring to in Article 33a of the Act of 29 July 2005 on Counteracting Drug Addiction[1]. Thus, the issue of fibre hemp was not studied. Medical cannabis also includes cannabis in its subject scope (Cannabis indica Lam.) and wild hemp (Cannabis ruderalis Janisch). Generally, their cultivation in Poland is prohibited (Article 45(4) of the Counteracting Drug Addiction (CDA)[2]. However, it is clear from the wording of Article 33a(1) of the CDA that the legislator allows to use of cannabis herb other than fibre, as well as extracts, pharmaceutical tinctures and resin, as pharmaceutical raw material intended for the preparation of prescription drugs[3]. This is a giant step by the Polish legislators towards ensuring the possibility of treatment with medical marijuana-based drugs. Thus, it is a step which brings Poland closer to European and world trends in this respect.

The research aims to analyse and evaluate legal regulations regarding treatment with medical marijuana preparations in Poland against the background of solutions functioning in this regard in other countries. The research carried out in this article concerns Poland, a unitary state with uniform laws throughout the country. Dogmatic and black-letter methods, consisting of the analysis of the provisions of the law in force in Poland, including the Constitution of the Republic of Poland and laws, were used. An analysis of the current legal status of the use of medical marijuana in Poland was made with its help. The Constitution of the Republic of Poland was used as an information base, which was used to highlight the axiological justification of the issue under consideration. This has shown that the constitutional right to health can be realized by other than conventional methods of treatment. The article also uses a comparative method, which was used to show the Polish model in comparison with the models of other countries in Europe and the world. The use of the comparative method showed a broader perspective of the studied issue, seeing the advantages and disadvantages of the approaches adopted in Poland.

[1] Law of Poland No. 2005-VII "On Counteracting Drug Addiction". (2023, January). Retrieved from https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu20051791485.
[2] Ibidem, 2023.
[3] Ibidem, 2023.

The axiological and systemic conditions and the two stages in the development of the legal regulation in Poland

The Polish legal system, in which the possibility of treatment with medical cannabis drugs exists, is characterised by openness, recognising the patient's right to seek treatment methods other than those generally recognised by the state. At the same time, the introduction of this possibility goes beyond the traditional model of the provision of medical care by the state, which depends solely on the market for medicines. It requires a value judgement between the guarantee of the right to health protection and to obtain health services by current medical knowledge and the corresponding rights and duties of the physician, and the necessity to carry out activities in the field of supervision of medical safety and counteracting drug addiction. For decades, the world has collectively prohibited or controlled access to some drugs including marijuana. Those kinds of issues occur in other countries, e.g., in Canada (Hoffman & Habibi, 2016).

The new status of medical cannabis in Poland is justified by the right to health protection proclaimed in Article 68 of the Constitution of the Republic of Poland[1] of 2 April 1997. This right is not declaratory in nature and is a "bipolar" right, which means that certain duties, incumbent on public authorities, correspond to it. One of them is the obligation to provide systemic guarantees for the search for and implementation of such methods that the patient would like to use and that, at the same time, are justified by the paradigm of modern medicine. The literature emphasises that medical knowledge is co-shaped by the preferences of patients (Jahnz-Różyk, 2010). The jurisprudence of the Supreme Court also pointed out that "even the criteria of medical expediency do not prejudge the choice of a method of diagnosis or treatment. This choice is determined by the patient's convictions, his or her individual sensitivity (...) other personal characteristics, which he or she gives expression to by expressing his or her opinion" (Judgment of the..., 2003).

As such, the thesis is drawn that the protection of public health is the responsibility of the state authorities, which should create a status of protection for patients considering the highest medical standards, following the current level of knowledge, and considering treatment methods that extend beyond traditional academic knowledge. From an axiological point of view, the use of medical cannabis in Poland for medicinal purposes is supported by the interpretative directive according to which all possible doubts concerning the protection of human life should be resolved in favour of this protection (*in dubio pro vita humana*). According to the Judgment of the Supreme Administrative Court in Warsaw No. 2404282 (2017), the right to health protection is primarily the right to preserve life and protect it when it is endangered. The Supreme Administrative Court recommends the application of the in dubio pro vita humana directive concerning the reimbursement of medicines, in exceptional situations, including in cases where human life or health is at risk. The application of this directive can be extended to legal and factual situations involving the use of medical marijuana.

The legal regulation of the use of medical marijuana in the Polish legal order can be divided into two stages, which are separated on 1 November 2017. On this date, regulations allowing its use for medical purposes entered into force[2]. Initially, the benefits of the introduction of these provisions were illusory, as pointed out by the Ombudsman (RPO: medical marijuana..., 2018), but with them, a sense of security for patients interested in this method of treatment appeared. The undoubted advantage of the legislation allowing the use of medical marijuana is the ability to distinguish its legal possession for medical purposes from common drug offences. Overall, this was a revolutionary change, but if one were to analyse its key aspects in detail, it could hardly be called the 'legalisation of medical marijuana' in the sense that it occurs in other states.

Before 1 November 2017, Polish law did not have much to offer to patients wishing to use medical marijuana preparations. The only way to obtain these drugs was to use the target import procedure, which was provided for in Article 4 of the Act of 6 September 2001 - Pharmaceutical Law[3]. Worth noting that the institution of target import corresponds to Article 5 of Directive2001/83/EC of 6 November 2001[4] on the Community code relating to medicinal products for human use. According to the document, a Member State may, to meet special needs, exclude medicinal products supplied in response to a bona fide order from the provisions of the Directive. This is done compliant with the specifications of an authorised specialist doctor and under his or her direct personal responsibility.

According to the aforementioned provision, a medicine could be imported from abroad without the need for a marketing authorisation if the use of the medicine was necessary to save the life or health of the patient, provided that the medicine in question was authorised

[1] The Constitution of the Republic of Poland. (2009, October). Retrieved from https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu19970780483.
[2] Law of Poland No. 2017-VII "On Counteracting Drug Addiction and the Act on Reimbursement of Medicines, Foodstuffs for Special Nutritional Purposes and Medical Devices". (2017, June). Retrieved from https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu20170001458.
[3] Law of Poland No. 2001-IX "Pharmaceutical Law". (2022, November). Retrieved from https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu20011261381.
[4] Directive of the European Parliament and the Council No. 2001/83/EC "On the Community Code Relating to Medicinal Products for Human Use". (2001, November). Retrieved from https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32001L0083.

in the country from which it was imported and had a current marketing authorisation in that country. The condition for importing medicinal products necessary to save the patient's life or health from abroad was that the hospital or the treating physician outside the hospital submitted a requisition confirmed by a provincial consultant or a national consultant in the relevant field of medicine. The Minister of Health, according to Article 4(9) p.f. (Masełbas *et al.,* 2016), decided whether or not to grant permission to import a medicinal product from abroad. At that time, this was the only possibility to obtain a medical marijuana-based medicine in Poland. This was very uncomfortable for patients and often prevented them from obtaining the medicine in time, as the need for confirmation by a consultant significantly prolonged the acquisition of the medicine.

Medical cannabis – current legal aspects compared to models in other countries

A contribution to the change of legislation in Poland was the signalling decision of the Constitutional Tribunal (CT) of 17 March 2015[1]. Which indicated that: "in the light of current scientific research, cannabis can be used for medical purposes (...) from the point of view of a specific group of citizens using health care services, the authorisation of the medical use of cannabis needs to be considered given the therapeutic usefulness of cannabis in certain medical conditions (...)". The CT noted an inconsistency in the provisions and an unregulated relationship between the fight against addiction and the possibility of medical use of marijuana between "On Counteracting Drug Addiction" and "Pharmaceutical Law". Balancing these two objectives requires urgent legislative intervention, as CT assessed. In other countries, the medical use of cannabis also remains in an inappropriate proportion to negative phenomena, such as addiction among young people or an increase in the number of road accident victims, as indicated by a study conducted by M. Leyton (2019) on the example of Canada.

In the second and current stage of Polish legal development, the issue of medical use of cannabis remains under special state supervision. Medical cannabis may constitute, based on Article 33a(1) of the CDA, a pharmaceutical raw material intended for the preparation of prescription drugs. This is subject to a special administrative procedure and requires obtaining a permit from the President of the Office for Registration of Medicinal Products, Medical Devices and Biocidal Products issued for a period of 5 years for marketing authorisation. An application for permission to use hemp as a pharmaceutical raw material is submitted to this authority by an entrepreneur or an entity conducting business in a European Union Member State, the so-called responsible entity. A hemp-based medicine thus acquires the status of a "prescription medicine". Concerning the form or, more broadly, the technical side of "use", the manufacture of the pharmaceutical raw material from hemp may be in the form of extracts, or tinctures, but also includes the crushing of dried plant parts and the performance of any physico-chemical operations leading to the substance.

Although Polish statutory regulations in 2017[2] opened the way for the provision of medicines based on medical marijuana, it wasn't possible to acquire them until early 2019, when one company (Spectrum Cannabis) obtained permission to sell the prescription drug, initially in the form of dried cannabis, which came from Canada. The nearly two-year lack of availability of the drug was due to a lack of regulatory provisions. In addition, a weakness of the above-mentioned regulation was the dependence of the possibility of treatment on the price of medicines containing medicinal marijuana. The reimbursement of medicines containing medical marijuana has since faced administrative barriers, as a specialized state body, the Agency for Health Technology Assessment and Tariffication has concluded that in conditions related to chronic pain, reimbursement is not justified due to a lack of sufficient scientific evidence (Recommendation of the…, 2018).

In the Polish legal model, the patient is not allowed to personally cultivate the plant and produce medicine from the harvested raw material for therapy, as is the case, for example, in the Czech Republic, the Netherlands and Belgium. The model for the legalisation of medical cannabis adopted in Poland, as in most European countries e.g., France, Greece, Finland and, from 2018, Portugal, consists of the possibility to purchase the prescription drug. Since 2017, medical cannabis has been allowed in Germany for critically ill patients in whom other therapies have failed. The cost of treatment with this drug is reimbursed by the health insurance funds and the patient does not need to obtain any special authorisation. In Croatia, on the other hand, doctors can prescribe medicines, teas and ointments containing THC – the active ingredient of cannabis - to their patients (Witt *et al.,* 2023).

Lately, legislation reforming the laws regulating the supply of marijuana has already been implemented in some European countries (Hughes *et al.,* 2017). As such, there are states which present an open approach to the question, with the Netherlands, Czechia, Germany, or Italy in the lead. For instance, a more liberal policy including recreational use, prevails in the Netherlands, where cannabis for medical purposes is used by about half a million people, only some of whom have

[1] Judgment of the Constitutional Tribunal No. S 3/15. (2015, March). Retrieved from https://www.senat.gov.pl/gfx/senat/userfiles/_public/k8/komisje/2015/ku/wyroki_tk/s_03_15.pdf.
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medical indications (Nationale drug monitor, 2017). Second only to the Netherlands and one of the most liberal countries in this respect is Czechia, which, like the former, has opted for home cultivation of cannabis and marijuana. The Czech Republic's medical cannabis program is one of the oldest in Europe and was the second on the continent (following the Netherlands') to allow home cultivation of cannabis, even though medical marijuana has not been covered by health insurance there to date. Studies indicate that in the Czech Republic, medical marijuana is prescribed by doctors and available in pharmacies (Kilmer, 2017).

Another country offering a relatively liberal approach to legalizing marijuana is Germany, where the official legalization of medical marijuana was done in March 2017. Since then, the country has been the leading producer of medical marijuana in Europe. As was the case in Poland before 2017, medical marijuana used to be a niche in Germany, with only about 1,000 critically ill patients receiving special permission to use it (The European Cannabis..., 2019). German regulations have been shaped over many years following lawsuits against the state. The result is a strategy that provides universal access to marijuana for medical purposes. As is the case in Poland, cannabis-infused medicinal products in Germany are available by prescription, but a substantial difference is the possibility of reimbursement by national health or social insurance companies (Medical use of..., 2018).

The pioneer in prescribing medical marijuana in the EU, after Germany, is Italy. In this country, the proper genetic variety of the type and amount of marijuana is selected individually for each patient. Apart from that, medical marijuana is reimbursed (Da Cas *et al.,* 2019). A study in the United Kingdom, where medical marijuana is legal but still very difficult to obtain, shows that restrictions on treatment with medical marijuana preparations are much stricter. Although, as a result of public pressure, medical marijuana was legalized there in November 2018 and made available under a special license issued by the Medicines and Healthcare Products Regulatory Agency, it is still not available to most patients (Schlag, 2020).

It is worth noting at this point that there are significant differences between Europe and the United States when it comes to medical marijuana. What differentiates the American model from the European one is the possibility of promoting cannabis to doctors and patients, while in Europe direct advertising of these products to consumers is prohibited. The literature reports that in the United States, medical officials cannot legally prescribe cannabis due to federal prohibition but can recommend patients "dispensaries" that sell only cannabis products (Pacula *et al.*, 2002). Depending on the state, getting a recommendation can be very easy (D'Amico *et al.*, 2015). Recently, there has been a dynamic shift in many states' attitudes toward the use of medical marijuana. Studies report that some form of medical marijuana has now been legalized by thirty-nine states, the District of Columbia and Guam (Titus, 2016).

However, regarding both its clinical use in official medical institutions and the status in health care policy of the United States, medical marijuana (cannabis), obtained from the plant *Cannabis sativa*, has provoked constant controversy in the country for many years now (Marcoux *et al.,* 2013). On the other hand, Canada is the country which introduced a national program for legalizing the medical use of cannabis (Freckelton, 2015). The year 1999 saw the first permits for legal access to dried cannabis granted through special exemptions for medical, scientific, or public purposes, issued by the Minister of Health, while the full legalization of medical cannabis production took place in April 2014 (Market data under..., 2019). The country provides an example of how patient pressure and implementation of special access programs can gradually change an initial negative approach and result in court decisions in favour of access to medical cannabis (Medical use of..., 2018). Innovative policy decisions concerning the medical use of cannabis in the United States and Canada have served as an incentive for other countries, including some European ones such as Poland, to loosen the controls and allow patients to use cannabis for medical purposes. Some European Union countries allow patients access to cannabis preparations, both imported and domestically grown, according to the study. Other countries provide patients with access to cannabis for medicinal purposes in the form of magisterial preparations. In this situation, raw cannabis is transformed by the pharmacist into a final consumption format (Medical use of..., 2018).

It is worth noting at this point that over the last two years, interest in medical marijuana preparations has also increased in Ukraine. Russia's war against Ukraine has resulted in many patients needing medical cannabis to alleviate the suffering caused by post-traumatic stress syndrome and multiple injuries. This prompted the legislature in Ukraine to draft a law to regulate cannabis. Following the example of most countries, in Ukraine, medicines based on medical cannabis require state registration and medical cannabis can only exist as a registered medicinal product (Ocheretko, 2022). Undoubtedly, the prepared project is a response to the dire demand in this country that has emerged recently. Different countries have adopted various models based on their cultural, social, and political landscapes. The decision on which model to adopt is influenced by numerous factors including the country's stance on drugs, its existing medical infrastructure, public opinion, and experiences of other nations.

Conclusions

In Poland, until 2017, regulation of the medical use of marijuana in Poland faced administrative barriers. For a long time, this regulation was under the "umbrella"

of the pharmaceutical law regime, and after the official legalization of medical marijuana in 2017, there were problems with the actual supply of cannabis preparations. The reason for this was the state's fear of blurring the lines between recreational and drug use of marijuana and its use for medical purposes. Over time, as a result of the intervention of the Ombudsman and the jurisprudence of the Constitutional Court and the Supreme Administrative Court, public authorities opened up to this type of therapy.

The study reviewed individual jurisdictions and found a wide range of approaches to the use of medical marijuana. It is due to cultural differences and the readiness of state systems to accept unconventional methods of treatment. It is argued that the very emergence of the possibility of treatment with cannabis preparations in Poland is part of a trend observed in many countries of Europe and the world. It was concluded that the Polish legal model favours a moderate approach, i.e., the possibility of purchasing the drug by prescription, while the production of marijuana itself is subject to administrative regulation (permit). This guarantees that the purchasing of raw material and processed medicinal products based on medical marijuana is carried out under the state of world knowledge, to the extent required for the safety of patients and in a manner that allows availability.

This paper focuses on the doctrinal analysis of existing models of regulating the use of medical marijuana. Further research should be an empirical analysis of the effects of these rules on the practice of use of medical marijuana and a "fit-for-purpose" analysis. This particular research will however be more of a medical than legal nature.

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Conflict of Interest

None.

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Юридичні аспекти використання медичного канабісу в Польщі: порівняльно-правовий аналіз

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Анотація
Актуальність досліджуваного питання полягає в тому, що зростає попит на використання в лікуванні медичного канабісу в тих випадках, де методи традиційної медицини не дали результатів. Метою статті є аналіз та оцінювання правового регулювання лікування препаратами, що містять медичний канабіс, у Польщі на тлі тенденцій в інших країнах. У дослідженні застосовано догматичний та чорновий методи аналізу положень чинного в Польщі законодавства, а також порівняльний метод. З'ясовано, що правові підходи країн Європи та світу до вирішення цього питання різняться. Коли йдеться про медичне використання марихуани, можливі три моделі: ліберальна модель, коли пацієнт може самостійно вирощувати рослину; поміркована модель, яка передбачає можливість отримання препарату на основі медичного канабісу за рецептом; третя модель ґрунтується на неможливості медичного використання марихуани. Польська правова модель є поміркованою та полягає в можливості отримання медичного препарату на основі марихуани за рецептом. Самостійне вирощування рослини за цією моделлю неможливе. Суб'єкт господарювання, який має намір культивувати коноплі для медичних потреб, повинен мати відповідний дозвіл уповноваженого державного органу. Такий підхід (притаманний іншим країнам) пропонує баланс між легалізацією медичного канабісу та профілактикою наркоманії. За польською правовою моделлю вирощування коноплі залишається під державним наглядом. Медичний канабіс доступний пацієнту, але доступ до нього суворо регламентований. Це не ліберальна модель легалізації, оскільки доступність безпосередньо залежить від лікаря. Практичні результати засвідчують прогрес у доступності медичних ліків на основі марихуани, порівняно з попередніми роками. Законодавча влада відкрита для змін, проте з міркувань запобігання поширенню злочинів, пов'язаних із незаконним обігом наркотиків, рішення про лібералізацію не було прийнято

Ключові слова:
право; марихуана медична; легалізація; лікування; польська правова система

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Legal genesis of virtual asset circulation in Ukraine and Worldwide: Risks and concerns

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Abstract
The peculiarities of the creation and circulation of virtual assets in the context of their decentralised nature and limited legal regulation are of not only scientific but also practical interest to both states and other entities that have the ability and desire to use them in their daily lives. The formation of full-fledged global and national virtual asset markets is an extremely important step in the context of taking advantage of digitalisation, but the creation of such markets must be transparent, which cannot be ensured without proper legal regulation. The research aims to study the legal regulation and reveal the content of virtual assets as a phenomenon and an instrument from the standpoint of their functional characteristics and the risks that may arise in the course of their circulation, as well as the abuse in this area and the international experience of combating it. Comparative legal, analytical, formal logical and synthetic methods of scientific cognition were used in the study to analyse the legislation of the European Union and other countries and the practice of specialised regulatory authorities of the United Kingdom and the United States of America concerning their impact on the circulation of virtual assets. The author draws parallels with the attempts to conduct rule-making processes in Ukraine and synchronises them with the rule-making work at the international level to create a new conceptual and regulatory framework and attempt to regulate the status of virtual assets. Several proposals have been made, the implementation of which will create the preconditions for the development, approval, and implementation of proper legal regulation of the circulation of virtual assets in Ukraine. Their implementation will enable the interstate exchange of information to prevent abuses in the field of activity under study, in particular, money laundering. The results of the study can be used to formulate public policy and improve legislation in the field of virtual assets circulation

Keywords:
digitalisation; blockchain; cryptocurrency; token; decentralised finance; Markets in Crypto assets; Central bank digital currency

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Introduction

The economy needs clear legal instruments that should unambiguously and consistently regulate the processes in the systems that make up its components. Digital technologies are an integral part of any modern economy due to their high degree of productivity and technological capabilities. A distinctive feature of the Ukrainian economy is the introduction of digital technologies into everyday life, both to speed up management decision-making and to implement them to achieve the purpose of their adoption. Virtual assets built on blockchain technology can completely change financial systems, as these systems do not meet the requirements of the modern market or the elements that are part of it in their usual form. The issues of legal regulation of virtual assets as a phenomenon, solving the problem of their uncontrolled existence and peculiarities of circulation are not yet sufficiently covered by both foreign and Ukrainian scholars, which accordingly necessitates our scientific search and further research in this area.

The issue of legal regulation of virtual assets in the United States is addressed by M. Inshyn *et al.* (2018), exploring the possibilities of legal entities and individuals to use these assets as legal means of payment. However, insufficient attention was paid to the need to introduce such regulation at the federal level, as the authors focused only on the legislative initiatives of individual states. To increase the empirical potential of the study, the author will analyse the practice of the US Securities and Exchange Commission in dealing with cryptocurrency exchanges and the decisions it has made.

The content of the information that should record the fact of the relevant crypto transfer was analysed by I. Ilijevski *et al.* (2023), noting the need to include information about the parties to the transfer, although the ways of its implementation are not fully considered. The researcher focuses on disclosing the content of the activities of other bodies that may be involved in the process of controlling the circulation of such a virtual asset as cryptocurrency, and the activities of crypto exchanges, in particular, in Ukraine and other countries, and which would prevent abuse in this area. At the same time, money laundering, which is possible through the use of virtual assets, was not sufficiently addressed. This issue is raised by T.V. Pavlenko & M.M. Duchenko (2019). The authors focus on the high level of risk in the use of cryptocurrencies, revealing the content of the activities of the financial regulators of the European Union and the warnings they have made in this regard. It is worth noting that this issue requires more scientific understanding and the use of the existing practice of the specified regulators, which is only increasing every day due to the growing capacity of the virtual asset market. A. Wadsworth (2018), studying cryptocurrency, points out the possibility of its expression in various forms, but does not provide a list of them and does not disclose their content, focusing only on its relation to the technology of payment infrastructure and achievements of crypto technologies.

To summarise, it is worth noting that foreign and Ukrainian researchers have not come up with an unambiguous answer to the question of what cryptocurrency is and how it differs from other types of virtual assets, both in terms of content and the specifics of their acquisition, accumulation, or circulation. At the same time, the issue of abuse in the handling of virtual assets has hardly been studied at all, and the existing abuses are not without subjective perception when assessing actions related to combating money laundering. This uncertainty poses significant current and potential threats, not only to the financial and monetary system of Ukraine but also to any other state, making it possible for third-party financial influence to be exerted on them beyond any administrative or criminal law control.

Therefore, the research aims to achieve terminological certainty and establish distinct features of virtual assets as a phenomenon that can harm society. Due to insufficient legal regulation, particular attention is devoted to describing the risks and threats arising from the use of various legal mechanisms in the course of committing the relevant abuses, so that these abuses become apparent and are prevented in the future.

Materials and Methods

A range of scientific methods were used in the research. The comparative legal method was used to analyse the legislation and analytical documents of the European Union, the United Kingdom, the United States of America, and Australia, comparing them with Ukrainian initiatives. The study used the provisions of the Markets in Crypto-assets Regulation[1], the UK National Money Laundering and Terrorist Financing Risk Assessment Report (HM Treasury, 2020), and the US Securities and Exchange Commission's practice of interaction with cryptocurrency exchanges (Charges Against Binance)[2]. The analysis of these documents and the experience gained formed the basis for the development of proposals for regulating the circulation of virtual assets in Ukraine. The development of the Regulation on the

[1] Position of the European Parliament EP-PE_TC1-COD(2020)0265 "Adopted at first reading on 20 April 2023 with a view to the adoption of Regulation (EU) 2023/... of the European Parliament and of the Council on markets in crypto-assets, and amending Regulations (EU) No. 1093/2010 and (EU) No. 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937". (2023, April). Retrieved from https://www.europarl.europa.eu/doceo/document/TC1-COD-2020-0265_EN.pdf.

[2] Civil Action No. 1:23-cv-01599 "SEC Complaint against Defendants Binance Holdings Limited". (2023, May). Retrieved from https://www.sec.gov/files/litigation/complaints/2023/comp-pr2023-101.pdf.

Regulation of Virtual Assets made it possible to propose the division of virtual assets into forms depending on their content and content, highlighting their general, common features and distinctive characteristics. The Report on the National Money Laundering and Terrorist Financing Risk Assessment in the United Kingdom made it possible to use the experience of specialised bodies in implementing a systematic analysis of the processes related to the need to take measures to control the shadow capital flow. The practice of the US Securities and Exchange Commission's interaction with cryptocurrency exchanges, a review of response tools and attempts to influence the activities of specific cryptocurrency exchanges have pointed to the need to unify international legal regulation of their activities.

The application of comparative legal and analytical methods was used to utilise the best practices of banking and financial regulators in the United States, such as the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC)[1], the work of the Financial Action Task Force on Money Laundering (FATF) (FATF, 2015) and to provide the author's recommendations on approaches to the tracing and seizure of virtual assets. These methods were used during the development of the European Parliament and Council[2] Directive on the Prevention of the Use of the Financial System for Money Laundering or the Financing of Terrorism to determine the limits of legal liability when establishing existing permits or restrictions on the exchange of real assets for virtual ones.

The use of formal logical method was used to describe the mechanisms of abuse of such existing tools for exchanging fiat currency for virtual tokens as 2P2 (from the English peer-to-peer, person-to-person - from person to person, from equal to equal) and unregulated crypto exchanges (operating based on regulated currency exchanges). New forms of virtual assets – NFTs and marketplaces as platforms for their purchase/sale - are also highlighted. This method was used to highlight the process of illegal use of virtual assets to transfer assets from the real economy to the virtual sphere and to further move significant amounts of financial resources without state control and supervision, with the corresponding risks for the state. The synthesis method was used to develop and propose the use of the concept of "virtual asset mixing" to describe the process of legalisation of financial resources from uncertain sources of origin and their uncontrolled transfer to another legal jurisdiction.

Results and Discussion

As a derivative of blockchain technology, virtual assets first began to spread in the information space only in 2008, when the study "Bitcoin A Peer-to-Peer Electronic Cash System" was published (Krishnan *et al.,* 2023). For the proper formation of the definition of term "cryptocurrency", the concept of "currency" and consider the world practice should be considered. Thus, in its standard terms and conditions, the European Bank for Reconstruction and Development defines "currency" as the legal tender of a country, which is a legal tender for the payment of public and private debts in that country[3] Although financial regulators in EU countries have warned citizens that cryptocurrencies are very risky assets due to their high volatility and speculative prices, the number of participants in this market is only growing every year (Pavlenko & Duchenko, 2019).

The legislation of most foreign countries in these matters is guided by their achievements and peculiarities of the perception of virtual assets. Relevant regulation of the issue under study, in one form or another, already exists in the United States, the United Kingdom, Australia, New Zealand, Germany, Austria and France. It is worth emphasising that this regulation is fragmented and will require the development of supranational rules in the future, as the circulation of virtual assets and the peculiarities of ensuring the technical component of this issue makes it possible to disregard the borders of the territories within which modern states exist. Virtual assets are usually decentralised and are not controlled by states or their financial or securities authorities. At the same time, attempts to introduce control or regulation tools for the circulation of virtual assets can be seen in the activities of the United States Securities and Exchange Commission (SEC), when, on its initiative, the activities of some crypto exchanges become the subject of court proceedings as part of relevant investigations, including Binance[4]. This investigation is being conducted in light of alleged violations of investor protection and the circulation of virtual assets treated as securities, as no other legal regulation has been adopted to which the SEC could appeal. Thus, specialised authorities are already beginning to use their control and supervisory functions in their interaction with the virtual asset market.

Evolution of the terminological uncertainty of the concept of "cryptocurrency". Given a certain inaccuracy in the content of the concepts of "cryptocurrency" and "virtual asset", the author suggests that when

[1] Report of Investigation according to Section 21(a) of the Securities Exchange Act of 1934: The DAO No. 81207. (2017, July). Retrieved from https://www.sec.gov/files/litigation/investreport/34-81207.pdf.
[2] Directive (EU) 2018/843 "Of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU". (2018, May). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32018L0843.
[3] Position No. 985_017 "Standard terms and conditions of the European Bank for Reconstruction and Development". (2006, May). Retrieved from https://zakon.rada.gov.ua/laws/show/985_017#Text.
[4] Civil Action No. 1:23-cv-01599 "SEC Complaint against Defendants Binance Holdings Limited". Retrieved from https://www.sec.gov/files/litigation/complaints/2023/comp-pr2023-101.pdf.

defining their content, the following aspects should be considered – cryptocurrency is not a currency in its broadest sense, it should be considered the most convenient type of virtual asset among those that already exist. Given the potential protection and support of centralised states, it is cryptocurrencies that can, based on the existing supply and demand, and above all, investor confidence, be a means of accumulating and transferring the relevant value. Ultimately, cryptocurrencies can become a type of currency only after they are introduced and recognised by a particular state as a CBDC (Central bank digital currency). In general terms, cryptocurrency is a type of virtual asset that is intangible and has other forms of manifestation besides cryptocurrency, but cryptocurrency, due to its universal nature, is the most convenient way to transfer value.

The current absence of regulatory definitions of what cryptocurrency is indicates the need for proper legal regulation of this issue. The establishment of such definitions and their regulatory consolidation should provide all interested parties with the opportunity to use such assets and do so in a way that does not threaten the traditional financial and monetary system of any state. Ignoring the above will make it impossible for any national economy, especially Ukraine's, to integrate into the global economy, where the share of virtual assets in turnover and capitalisation is growing rapidly. So far, virtual assets are not replacing traditional means of payment or accumulation of value, but in the near future, this will begin to happen. It is also worth mentioning other forms in which virtual assets and capital transfer instruments are reflected. These, in the author's opinion, include tokens of crypto projects (Ethereum, Tether), crypto exchanges (Cake), proprietary tokens of crypto networks (Aptos, Arbitrum, Optimism), etc., and non-fungible tokens (NFTs) or their collections, each of which has its capitalisation, supply and demand. NFTs are not a currency, as each of them is unique and inimitable, but similar to any other form of virtual asset (image, sound recording, etc.), they can be a means of accepting and accumulating a certain value, storing, and transferring it anywhere in the world, including through the purchase and sale, or even unilaterally destroying it. Each of the above forms of virtual assets is technically similar to each other, but they are completely different in their functional purpose as instruments of both capital consolidation and its movement between owners.

So far, despite the existing attempts to regulate only the issuance and circulation of crypto project tokens and cryptocurrencies[1], the circulation of NFTs remains outside the regulators' attention, although their capitalisation and circulation are becoming increasingly significant and are already used as a tool for capital movement. It is the problem of crypto project tokens and the possibility of their instrumental use that has led to the emergence of proposals for the introduction of CBDC. In particular, the XRP (Ripple) token is currently used by financial institutions for settlements, currency exchange, and cross-border money transfers (Chakraborty *et al.,* 2023). However, the implementation of CBDC requires a healthy balance, and for this purpose, Central Banks and special authorised bodies will have to create new and additional infrastructure, primarily technical, which should allow the system to be managed without violating confidentiality and ensuring the protection of access to relevant information (Hrytsai, 2022). This is confirmed by the practice of implementing CBDC in Nigeria in 2021 (Lukianchuk, 2022). At the same time, even without the adoption of relevant regulations that would regulate the status of a virtual asset as a cryptocurrency, the state of California allowed the use of cryptocurrencies in 2014, allowing corporations, associations, or individuals to use them along with legal tender (Inshyn *et al.,* 2018). The author believes that CBDC, in the case of its generalised perception, will not contain any signs of decentralisation at all, since the issue of its circulation is synchronised with ensuring the financial security of any state, which the respective states will both protect and support. However, this should be preceded by the development and implementation of appropriate legal regulation.

So far, different countries have different perceptions of virtual assets and there is no single view on their control. For example, in November 2017, New Zealand, represented by the Financial Conduct Authority, already equated transactions with digital currencies with transactions with securities, and Australia passed a law that began to regulate the activities of cryptocurrency exchanges and obliged them to register with the Australian Transaction Analysis and Reporting Centre. The legislative regulation of cryptocurrencies is a pressing issue that must be addressed both at the level of each state and at the international level. With the growing popularity of cryptocurrencies, countries around the world will be in a hurry to build regulatory frameworks (Lukianchuk, 2021). Some EU countries (Germany, Austria, France) already have a regulatory framework for the circulation of virtual assets, including cryptocurrencies, and the experience of these countries can serve as a guide for current and future legislative developments (Nekit, 2021).

The legal uncertainty of the status and lack of legal regulation of the circulation of virtual assets in the United States led to the adoption of an Investigative Report under Section 21(a) of the Securities Exchange Act of 1934 in July 2017: DAO. This Report [2] outlined

[1] Report of Investigation Under Section 21(a) of the Securities Exchange Act of 1934: The DAO No. 81207. (2017, July). Retrieved from https://www.sec.gov/files/litigation/investreport/34-81207.pdf.
[2] Ibidem, 2017.

the possibility and conditions for treating virtual assets as securities if offered to US residents, or vice versa, as commodities if such assets are used as underlying in derivative financial instruments. Given the above and based on the content of the Report, virtual assets may be subject to regulation and control measures by either the SEC or the CFTC.

Risks and concerns regarding the use of virtual asset circulation opportunities. The instrumental capacity of the virtual asset circulation system creates opportunities for tax evasion, non-declaration of assets, terrorist financing, money laundering, and circumvention of the sanctions regime of international settlements, which makes it very attractive to criminals and the shadow economy (Dupuis *et al.* 2021). The use of these instrumental capabilities in the process of circulation of virtual assets by criminals requires the latter to formulate a strategy for combining large amounts of cash with the possibility of converting it into a virtual asset and moving it to another territorial jurisdiction. This process is also associated with the need to ensure a high degree of financial confidentiality, which can be provided by the relevant payment technology and its inherent transaction processing methods. A centralised transaction mechanism is characterised by its accessibility to both counterparties and a financial intermediary (controlled by the state through rules and restrictions), which is responsible for its execution and results in its recording. In contrast, cash-decentralised payments involve the transfer of cash from hand to hand and the process is not subject to any record, except by the parties themselves (Hendrickson & Luther, 2019).

As law enforcement agencies gain more and more experience in the field of virtual assets, facts of their use in committing financial crimes are becoming more frequent. Among them, money laundering occupies a prominent place (Dyntu & Dykyi, 2018). The author believes that the only guideline for combating abuse is the practices established by the FATF, which creates the need for their implementation in national legislation. The irreversibility of transactions means that they cannot be cancelled or appealed, which makes it undoubtedly possible to establish a causal link between an action and its consequences. This is especially important in the context of linking the relevant action to a specific person, even though this area is very convenient for criminals (Grebenyuk & Chernyak, 2018).

The irreversibility of blockchain transactions is also a sign of the risk of asset loss or seizure in the event of both an error in the choice of the recipient and the impossibility of blocking such a transaction due to its rapid execution. The absence of procedures for legally restricting the circulation of virtual assets demonstrates the ineffectiveness of any attempts by any specialised authorities to block such transactions. The only thing they can do is to impose restrictions on the future circulation of a particular virtual asset, and only if it is determined by the rules agreed to by the relevant operators of such circulation (crypto exchanges, marketplaces, or other platforms) (Akartuna *et al.*, 2022).

The European Parliament and Council (EU) Directive on the Prevention of the Use of the Financial System for Money Laundering or the Financing of Terrorism[1] states that banking secrecy is important, as the unregulated circulation of virtual assets is used by criminals to move financial resources between different jurisdictions incognito. They do this by using various forms of these assets with the subsequent withdrawal of resources from virtual to real circulation.

The decentralised nature of such assets makes their circulation very convenient but uncontrolled and potentially dangerous. In practice, it is quite easy for any card account holder to commit such abuse. It is enough to register on a crypto exchange and use the aforementioned 2P2 tool. J. Wu *et al.* (2021) note that 2P2 is a method of peer-to-peer payment transfer without any centralised supervision, which makes it a tool for exchanging fiat currency (held on a card account) for virtual tokens without government control. The only restrictions on this process will be the limits set by banks on the movement of certain card accounts held by the parties involved in the exchange, or the rules of a particular exchange. But even here, there is a way out, when such accounts are conditionally leased, and although this contradicts the rules of banks, it cannot be controlled by them. This technology allows direct peer-to-peer transactions without intermediaries (Albrecht *et al.*, 2019). It is blockchain technology and 2P2 payments through their use by crypto exchanges/crypto exchanges that have made it possible to transfer cash into virtual assets and then transfer them anywhere uncontrollably. Significant volumes cannot be exchanged using 2P2, but in the case of an organised group with centralised process management, this is acceptable from an organisational point of view. Another tool for converting fiat currency into virtual assets is unregulated crypto exchanges (operating based on regulated currency exchanges), whose activities are still outside the scope of any legal regulation and require further study.

The above possibilities can be used to define a new legal and economic phenomenon – the "mixing of virtual assets", which can be seen as disguising money from the real sector of the economy as cryptocurrency tokens or NFTs. Mixing with other similar resources/assets is usually done for laundering and disguising them as a legal asset so that in the future it is impossible to

[1] Directive (EU) 2018/843 "Of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for money laundering or terrorist financing and amending Directives 2009/138/EC and 2013/36/EU". (2018, May). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32018L0843.

separate them from the total volume, and as a result, complicate the possible criminal legal qualification.

The analysis of these abuses necessitates compliance with the tools of the Financial Action Task Force on Money Laundering (FATF), which has developed the Guidance on the application of the risk-based approach (FATF, 2015). Virtual currencies, according to which decentralised virtual assets (so-called cryptocurrencies) are distributed, mathematically based, open-source assets that lack central administrators, control, or supervision.

Ways to counteract abuses in the circulation of virtual assets. To combat money laundering, states, through specialised authorities, should be able to monitor the use of such virtual assets, including through digital tracing. Such monitoring and "digital tracing" should ensure a balanced approach without hindering technological progress. At the same time, caution, and prudence in the implementation of prohibitions and restrictions on the circulation of virtual assets should ensure progressive movement towards the introduction of new business innovations. Excessive overregulation may become an obstacle that will force virtual assets to stay outside the scope of legal regulation and be used solely as a tool for shadow redistribution of financial resources. Consistent steps should be taken to develop and implement such legal regulation of the circulation of virtual assets, which is expected to create the preconditions for the establishment of a unified international legal framework that would enable the international community to interact with each other in these matters. This thesis is confirmed by a study of the impact of the degree of regulation of the circulation of virtual assets on the economy by M.M. Duchenko & T.V. Pavlenko (2018). Scientists believe that restrictions and overregulation alone will hamper market relations. An effective symbiosis of permits and restrictions is justified, which will protect both market participants and reduce the likelihood of criminal influence on it while creating the preconditions for effective taxation of the process of circulation of virtual assets and bringing them out of the shadows.

The first attempts to consider the risks associated with the circulation of virtual assets in Ukraine were made in 2016 at the level of the State Financial Monitoring Service of Ukraine. The Service's experts analysed and published the National Risk Assessment Report on Preventing and Combating Money Laundering and Terrorist Financing (HM Treasury, 2020). It was developed following international standards, the content of which influenced the subsequent adoption of the Law of Ukraine "On Prevention and Counteraction to Legalisation (Laundering) of Proceeds of Crime, Terrorist Financing and Financing of the Proliferation of Weapons of Mass Destruction"[1], which includes both electronic money and cryptocurrencies among the tools used by cybercriminals to launder money. These warnings were also reflected in the National Money Laundering and Terrorist Financing Risk Assessment (HM Treasury, 2020), which was sent to the British Parliament by the UK regulatory authorities. This was done because the scale and complexity of the UK financial services sector continue to make it attractive to criminals and corrupt elites seeking to launder criminal proceeds amongst the vast amounts of legitimate business.

The newly discovered opportunities for digital value transfers using blockchain technology have led to greater attention from the Ukrainian banking regulator, the National Bank of Ukraine, where in 2017 a meeting of the Supreme Expert Council of the NBU Council was held to raise the issue of insufficient attention paid to the circulation of virtual assets by government agencies that are supposed to control and regulate financial markets. The meeting resulted in the adoption of recommendations to prevent the formation of risks of reducing confidence in the hryvnia, which is the only legal tender in Ukraine, and creating preconditions for the use of virtual assets to support criminal transactions within the shadow economy, and thus reduce tax revenues (Novytsky & Fitsa, 2021).

The evolution of science and technology, the combination of their potential with the will of the professional environment in Ukraine and international experience have become the primary reasons for legislative regulation of the existence and circulation of virtual assets in Ukraine. The collaboration resulted in the adoption of the draft law "On Virtual Assets"[2] on 17.02.2022, which was expected to provide basic regulation of the said area of activity. The legislative initiatives of Ukrainian parliamentarians fully reflected the reaction to the emergence of a completely new sphere of social and economic relations, demonstrating an evolutionary search for legal answers to the question of the need for their regulation. However, it is not yet possible to speak of their successful nature and real implementation due to the delay in the entry into force of the already adopted Law. It provides for an important role for the National Securities and Stock Market Commission and the National Bank of Ukraine. This indicates an understanding of the peculiarities of the circulation of virtual assets and the involvement of these institutions in the issues under study. The adoption of the draft law indicates not only trends but also real steps towards the legitimisation of virtual assets in Ukraine (Kaznacheeva & Dorosh, 2020).

The updated draft law or any other new legislation in this area should be expected to create conditions for the legalisation of crypto exchanges, crypto exchanges,

[1] Law of Ukraine No. 361-IX "On the Prevention and Countermeasures against the Legalization (laundering) of Proceeds Obtained Through Crime, the Financing of Terrorism and the Financing of the Proliferation of Weapons of Mass Destruction. ". (2019, December). Retrieved from https://zakon.rada.gov.ua/laws/show/361-20#Text.

[2] Law of Ukraine No. 3637 "On Virtual Assets". (2022, February). Retrieved from https://zakon.rada.gov.ua/laws/show/2074-20.#Text.

and marketplaces, define the place and role of the banking system in this matter, and provide for state control and monitoring to a certain extent. In the author's opinion, the temporary suspension of the implementation of legal instruments that would make it possible to regulate the creation and circulation of virtual assets in Ukraine legally was due to the simultaneous steps taken by the EU, which in April 2023 approved the MiSA[1] regulation on virtual assets to systematise this issue in the Union. It was the need to harmonise Ukrainian legislation with EU legislation on this issue that led to the suspension of legislative steps in this direction in Ukraine and the adoption of a wait-and-see attitude towards the adoption of basic rules in the EU. So far, there is no MIA as a coherent legal framework that can be used, but it should be expected soon, which will open up the possibility for Ukrainian legislators to synchronise these rules with the norms of Ukrainian legislation.

The need for additional regulatory instruments and the use of existing developments on this issue in Ukraine was confirmed by the launch of cooperation with the world's leading crypto exchanges by the National Agency of Ukraine for Finding, Tracing and Management of Assets Derived from Corruption and Other Crimes (ARMA). In particular, to improve the efficiency of its activities, the Agency has declared in its priorities that it will develop in the direction of financial analysis, creation of its IT laboratory, international cooperation and cooperation with law enforcement agencies, collection of information from open sources, informatisation, automation and optimisation of its functions in this area (Educational and qualification potential..., n.d.).

Summarising different points of view on the perception of virtual assets, it is proposed to divide them into the following main forms:

1. can be tokenised as tokens of crypto projects or crypto networks;

2. can take the form of Non-fungible tokens (NFTs), i.e., they can contain visual, sound, or other value that is perceived by sound, sight, etc;

3. can be a cryptocurrency if it is recognised by the Central Bank of Digital Currency (CBDC) at the state level – a digital currency issued by the state and backed by it.

According to the author, the common feature of virtual assets is that the system of their circulation is ensured by technical decentralisation, i.e., the absence of a single point of management of the circulation process. Virtual assets are intangible and exist as a digital code based on mathematical algorithms. Transactions with them take place based on limited anonymity (tracking is possible with the help of specialised scanner algorithms if the wallet address of the sender/recipient of the asset is linked to a specific individual/legal entity through KYC (know your customer) verification, which is common in banking and stock exchange regulation). Transaction recording is unconditional and irrevocable and is carried out using blockchain technology. At the same time, due to limited state regulation, the asset or value is provided exclusively by venture capital instruments, supply and demand, the authority of the issuer/developer/implementer team, etc.

As of 2023, no unified international legal regulation of this area exists, except for some attempts and scattered documents at the EU or US level, but the further this issue is being addressed, the more attention is being paid to it. The decentralised nature of the virtual asset sector makes it difficult for states to supervise and control the new market and system, which is only growing in capitalisation and contains financial risks, without additional legal regulation.

The development of unified rules and international legal regulation of the circulation of virtual assets should be preceded by the definition of their concept, classification of forms, identification of common and general features, peculiarities of safe circulation, technical support of the process itself, generalisation of tools to combat abuse, money laundering, and the nature of taxation. After that, it is worth looking for answers to derivative issues, such as the activities of crypto exchanges, crypto exchanges from fiat currency to virtual assets and vice versa, the mechanism for implementing CBDC, and the procedure for tokenising assets. The introduction of a full-fledged circulation of virtual assets in Ukraine should first be preceded by clear international rules in this area since the nature of the movement of these assets is not limited by borders. These rules, among other things, should be the basis for creating clear and understandable legal and procedural instruments. Such instruments may include procedures, rules, guidelines, etc., the use of which will enable specially authorised bodies in this area to both counteract abuses and record, track and qualify relevant illegal acts.

The Ukrainian legal regulation of virtual assets must necessarily regulate the issue of determining the status of crypto secrecy analogous to banking secrecy, establishing its boundaries, subjects of use, restriction, or access to it. The combination of this secrecy with the restriction of anonymity, for the security of the use of virtual assets, namely the linking of crypto wallets to individuals or legal entities to establish the causal link between actions related to their use, will make it possible to introduce and enforce legal liability for violations in this area. The creation of software systems based on internationally recognised norms and rules that would enable the interstate exchange of information between

[1] Position of the European Parliament EP-PE_TC1-COD(2020)0265 "Adopted at first reading on 20 April 2023 with a view to the adoption of Regulation (EU) 2023/... of the European Parliament and of the Council on markets in crypto-assets, and amending Regulations (EU) No. 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937". (2023, April). Retrieved from https://www.europarl.europa.eu/doceo/document/TC1-COD-2020-0265_EN.pdf.

specialised bodies established for this purpose would make it possible to introduce technical monitoring and analysis of the circulation of virtual assets through the use of "digital tracking" of assets whose circulation is accompanied by risks. Systematising the ways of recording the facts of abuse in the use of virtual assets, blocking, or restricting their circulation, and introducing specialised registers of virtual assets and tools for their use would create the preconditions for training specialists who would ensure that the interests of the state are respected above all.

The absence of a clear legal definition of cryptocurrency at the international level leads to the search for such a definition by Ukrainian experts and scholars. S. Vasylchak *et al.* (2017) perceive cryptocurrency as a derivative of the English "cryptocurrency", i.e., a virtual currency protected by cryptography, revealing its meaning as a fast and reliable system of payments and money transfers based on the latest technologies that are not controlled by any government. V.H. Soslovskyy & I.O. Kosovskyy (2016) characterise cryptocurrency as an innovative product with the features of a tool for making payments in a virtual form, based only on software algorithms with the use of cryptographic methods of their protection and access. T. Zheliuk & O. Brechko (2016) propose the perception of cryptocurrency as a universal tool for making interstate payments without any restrictions, at the level of both legal entities and individuals. The authors describe it as an instrument with a significant market capitalisation, which should be considered as a form of international transfer of assets and capital. This statement is conditionally confirmed by A. Wadsworth (2018), who believes that digital currency can take different forms based either on the existing payment infrastructure technology or on new crypto technology. Given these definitions and characteristics, the author suggests that when defining a cryptocurrency, the fact that it is not a currency in the broad sense, but rather a type of virtual asset, a means of accumulating and transferring the corresponding value, should be considered. Cryptocurrencies should be considered as a currency only after they are introduced and recognised by a particular state as a CBDC.

The views expressed by the author are consistent with the proposals of V.I. Mykhailovskyi & O.V. Kostiuk (2019) regarding the development of uniform international legal documents in this area and the implementation of the principles of CBDC implementation at the level of individual states. An example would be the identification of universally recognised international organisations such as the FATF, which could provide interstate information exchange to prevent abuse in this area. At the same time, we should also agree with V.O. Mandryk & V.P. Moroz (2019), who point out that the circulation of virtual assets should not contradict the main legislative and bylaw regulations, and the most effective model of regulation should be their integration as a phenomenon, "embedding", into the current legislation of Ukraine.

The study confirms the findings of I. Spilnyk & O. Yaroschuk (2020) that virtual assets, as an uncontrolled and non-personalised means of exchange, payment, and accumulation, are a challenge to any centralised banking system, specialised and law enforcement agencies in their attempts to have all the information about the asset and its movement. However, it is important to remember that this is a completely new and not fully explored factor that can radically change the monetary and financial and monetary policy of any country.

The potential problems of uncontrolled circulation of virtual assets, outlined by the author, complement the comments of several foreign researchers, in particular I. Adam & M. Fazekas (2021). They note that where legal regulation of any system is absent or imperfect, attempts to abuse it appear. The sphere of virtual assets circulation is no exception. Existing information and communication technologies already create opportunities for corruption or money laundering through the movement of virtual assets. The potential danger from the lack of regulation of the circulation of virtual assets, as noted by the author, is confirmed by the study of S. Wagman (2022), who examines virtual assets as a possible haven for criminals, terrorists and those who evade sanctions. It is important to emphasise that the romantic attitude to blockchain technology, anonymity, lack of borders and state control are nothing more than new opportunities for quick and cheap transfers of virtual values, including for illegal acts.

Conclusions

The introduction of various payment systems has created completely new and convenient opportunities for remote payments, simplifying both business operations and making it more convenient for consumers to receive services or purchase goods. The integration of blockchain technology into everyday life as the next stage of harnessing the potential of digitalisation will create additional opportunities for the use of digital technologies, primarily due to their inherent speed and information capacity.

The absence of effective legal regulation of this area, while creating additional and potential opportunities for the economy, finance, and banking sector, in its current form poses more threats than benefits. In the existing legal framework, virtual assets can be fully used as a tool for laundering the proceeds of crime, cross-border and uncontrolled transfer to another territorial jurisdiction and use for an uncertain purpose, both in Ukraine and abroad. It is emphasised that the few attempts to regulate the circulation of virtual assets that have been made in the USA, Austria and the European Union are still fragmentary, not adapted to each other and do not consider the differences in the

degree of their technological development concerning each other. The generalised and already recorded facts related to the risks of circulation of virtual assets indicate a significant criminal potential and the creation of preconditions for their use within the shadow economy and international terrorism in particular. It is emphasised that optimisation of existing and legal ways of using fiat currency, with their use in virtual financial circulation, is not without drawbacks and threats to the financial and monetary policy of any state.

Advantages and concerns of cryptocurrency are highlighted – cryptocurrency issued and provided by the relevant state may give it an unlimited opportunity to monitor its users (owners). If such control is exercised, it is possible to set restrictions on its spending or use (movement) by programming appropriate restrictions (for example, only for education or payment of housing and communal services, food, medicine, entertainment, etc.) Conversely, the possibility of total transaction tracking to prevent abuse in the shadow economy sector is an absolute positive, but only if appropriate legal safeguards are in place.

The author's recommendations can be used in lawmaking to create new institutions or improve existing ones. Further elaboration and resolution of these issues will make it possible to perceive and use virtual assets as a benefit and use only their positive aspects while preventing abuse associated with their circulation.

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Conflict of Interest

None.

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Правовий генезис обігу віртуальних активів в Україні та світі: ризики та застереження

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Анотація
Особливості створення та обігу віртуальних активів в умовах їх децентралізованого характеру, обмеженого правового регулювання зумовлюють не лише науковий, а й практичний інтерес з боку як держав, так й інших суб'єктів, які мають можливість і бажання їх використовувати у своєму повсякденному житті. Формування повноцінного світового та національних ринків віртуальних активів є надзвичайно важливим кроком у контексті використання переваг цифровізації, однак створення таких ринків має бути прозорим, що без належного правового регулювання забезпечити не вдасться. Мета статті полягає в дослідженні правового регулювання та розкритті змісту віртуальних активів як явища й інструменту з позицій їх функціональної характеристики та ризиків, що можуть виникати під час їх обігу, зловживань у цій сфері та світового досвіду боротьби з ними. У процесі дослідження використано такі методи наукового пізнання, як порівняльно-правовий, аналізу, формально-логічний та синтезу, що дали змогу проаналізувати законодавство Європейського Союзу й інших країн, практику діяльності спеціалізованих регуляторних органів Великої Британії та Сполучених Штатів Америки щодо їх впливу на обіг віртуальних активів. Проведено паралелі зі спробами ведення нормотворчих процесів в Україні та синхронізовано їх із нормотворчою роботою на міжнародному рівні щодо створення нового понятійного та регуляторно-правового апарату, намагань урегулювати статус віртуальних активів. Висловлено низку пропозицій, реалізація яких створить передумови для розроблення, затвердження та впровадження належного правового регулювання обігу віртуальних активів в Україні. Реалізація їх уможливить міждержавний обмін інформацією з метою недопущення зловживань у досліджуваній сфері діяльності, зокрема легалізації (відмивання) коштів. Результати дослідження може бути використано для формування державної політики й удосконалення законодавства у сфері обігу віртуальних активів

Ключові слова:
цифровізація; блокчейн; криптовалюта; токен; децентралізовані фінанси; Markets in Crypto-assets; Central bank digital currency

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Peculiarities of organizational and methodical work with patrol police personnel under martial law

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Abstract
The relevance of the research topic lies in the fact that the functioning of law enforcement agencies during martial law was marked by the expansion of the functions of the patrol police, which requires increased attention to police training. In particular, there is a need to analyse the current practice of law enforcement training and to create scientifically based recommendations for its improvement. That is why the purpose of the article is to clarify the specifics of the work of the patrol police during martial law and the peculiarities of the methodological work of the management team related to the training and support of the activities of subordinate personnel. To achieve the aim of the study, a set of theoretical and empirical methods was used, including the following: analysis, generalization and interpretation, expert evaluation, survey and graphical methods, which made it possible to interpret the results obtained and develop recommendations. It is established that the heads of patrol police units in their work with personnel were guided by organizational, moral and psychological, legal, administrative and economical methods of management. Thanks to these methods, the personnel were constantly aware of the operational situation, were able to develop supplementary action plans, and use reserve forces and means. Guided by legal and economical methods, managers were able not only to apply sanctions, but also to protect the rights of their subordinates from illegal encroachments and to reward them with a decent salary. In addition, an analogy was drawn between the existing professional combat and psychological traits of managers and their ability to work in a team. The personal example, combat, physical, and legal training of managers made it possible to quickly solve urgent problems, conflicts, and perform official tasks among their subordinates. The practical significance of the study is that the findings will serve as a basis for scientific research to study the features and improve professional training, which would include aspects of fire, functional, general and psychological training tactics

Keywords:
National police of Ukraine; public safety; management methods; professional training; trust of the population; professional duties

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Introduction

The open armed aggression against Ukraine contributed to the consolidation of the state's armed and law enforcement forces. The patrol police, in addition to preventive activities, began to carry out strategic activities. Police officers ensure public safety and order, assist in the evacuation of the population, serve at checkpoints, and ensure safety on transport routes in constant potential danger to their own lives and health. The diversity of these tasks indicates the importance of identifying the existing difficulties that make service impossible and the level of effectiveness of personnel management. While issues related to the performance of the patrol police began to be studied during the reform of the law enforcement system in general, new challenges, namely active hostilities in the country, have created an urgent need to analyse successful and negative experiences of management and organizational activities. This allows for further high-quality professional and psychological training; development of new tactics in atypical and extreme situations; and organization of work with the possibility of optimal use of forces and means serving in the unit.

The main reform idea of the modern law enforcement system remains the reformatting of the outdated organizational and administrative system into modern management. It should take into account information on the knowledge, skills, and abilities of personnel; on the moral and psychological state of the unit; on time management in the deployment of forces and means to perform assigned tasks. Due to all these aspects, the organizational and methodological work should be carried out by better-trained managers who are ready for new challenges of professional activity.

The current state of the organizational structure of the National Police of Ukraine (NPU) was studied by S. Gusarov (2022). He attempted to identify the main factors of building a renewed police structure and pointed out the need for decentralization, which would allow for independent planning of current activities, personnel changes and financial policy. A. Kubayenko (2020) in his scientific works expresses the opinion that the problem-oriented concept (POC) should be used in building a high-quality police management system. It allows for informed management and implementation of a smart initiative. V. Abroskin (2018) attempted to identify the areas of police management that are prioritized during the armed conflict in Ukraine. The author points out that the situation in which police officers work is systematically and occasionally complicated, so there is a need for highly qualified and competent personnel management and modern training for complicated actions in atypical situations.

As of 2023, military operations are taking place not only in Ukraine but also in some parts of the world. In this regard, foreign scholars are trying to determine the role of law enforcement officers in interacting with military units in the national struggle, the problems of their interaction, difficulties in performing official tasks in a more complex operational setting, and the dynamics of the war's impact on law enforcement agencies in the future. Based on the results of the study of all the above factors, recommendations for reforming the police in line with modern realities are being developed. Thus, S. Schrader (2021) tried to establish the role of US police units in World War II. A. Deglow & R. Sundberg (2021) determined the level of public perception of the police as an institution that is effective in fighting crime, procedurally fair and deserves to be trusted during a period of national struggle.

A number of researchers have conducted a scientific search in the area of organization of patrol police activities. G. Shpytalenko & A. Turbal (2022) described the legal regime followed by patrol police officers since the full-scale invasion of the terrorist country. They noted that there was no public control during the martial law period. In addition, the powers of the police in terms of cooperation with the European Police Office were significantly expanded. O. Korol (2023) analysed the legal status of the head of the National Police unit. He pointed out that the proper observance of the rule of law by personnel depends on the administrative and legal status of the body itself, the professionalism of the management and their personal qualities. E. Zelenskyi (2019) proved the importance of continuous improvement of knowledge in the field of application and use of firearms. It is noted that it is during professional training and support that a police officer must master a large amount of knowledge and a range of skills for coordinated actions in possible extreme situations. O. Baranetskyi (2020) substantiated the need for a systematic and planned approach to physical training in the process of service training. In addition, he developed recommendations for the training of older age groups. A programme of moral and psychological support was proposed by V. Biloshitskyi *et al.* (2020).

Given the above, the purpose of the article is to assess the positive experience and difficulties of managerial work in the patrol police units of Ukraine under martial law and to provide certain recommendations for its improvement.

Materials and Methods

Thanks to a wide range of theoretical, empirical and special methods, it became possible to carry out a scientific study of the peculiarities of organizational and methodological work with patrol police personnel under martial law. The method of analysis and synthesis allowed getting acquainted with the results of scientific research by Ukrainian and foreign scientists who develop programmes to improve the service activities of patrol police officers. It was possible to outline a wide range of police functions that were expanded during the period of martial law.

The comparison method allowed establishing the coefficient of growth of the level of trust in the police. The

graphical method was used for a percentage comparison of the managerial qualities of the leaders. The method of interpretation and generalization was used to formulate a conclusion and unresolved issues that require further research. The methods of structural and functional analysis were used to analyse typical and atypical professional tasks performed during martial law; study the legal documents regulating the activities of law enforcement units; summarize the results of the survey and provide recommendations for further research.

In order to achieve the goals set in the study, a survey was conducted using prepared questionnaires. The survey and expert evaluation methods were used to determine the methods and forms of organizational work of patrol police unit managers. The survey involved 70 people from the permanent staff of patrol police units in Kyiv, Kyiv, Zhytomyr, and Vinnytsia regions. The survey was conducted in several stages during the in-service training in April-May 2022. Respondents received printed questionnaires and could read and process them anonymously. The questionnaire contained a number of closed and open questions (Table 1). All survey participants were informed of their anonymity, the purpose of the survey, and the risks associated with the publication of their results. The research was conducted in accordance with the ethical standards and rules of the Declaration of Helsinki (1975).

The study analysed a number of normative and legal sources: the Law of Ukraine On the National Police[1] the Law of Ukraine On the Disciplinary Statute of the National Police of Ukraine[2] and its amendments in March 2022[3], and On the Legal Regime of Martial Law.[4] In addition, before the study there was a resolution of the Cabinet of Ministers of Ukraine No. 573[5], No. 1455[6], No. 181[7], and the Order of the Ministry of Internal Affairs "On approval of the Regulation on the organization of official training of employees of the National Police of Ukraine"[8].

Results and Discussion

The success of the work of the Patrol Police and the National Police as a whole can be judged by the level of public trust. During 2021-2022, statistics show that citizens began to support the current government, the volunteer movement, and law enforcement agencies more. At the end of 2022, the level of trust of the population of Ukraine in all regions (except for the Autonomous Republic of Crimea) in the National Police was 58%. Compared to 2019-2021, the increase in 2022 is almost 28%. In addition, the population of the southern and eastern regions is almost equally positive about the work of police officers (Fig. 1). This level of trust indicates that law enforcement officers continued to stand firm in defence of people's interests in a difficult time for Ukraine – the time of war. They were involved in various activities

Table 1. List of questions contained in the author's survey questionnaire

№	Question
1.	Which of the following extended powers do you most often have to perform?
2.	Are you satisfied with the process of managing the activities of your unit during martial law?
3.	Does your immediate supervisor participate in the discussion of problems that need immediate resolution?
4.	Which of the following types of training is given more attention in your unit?
5.	In your opinion, what management methods of the manager are successful in the unit where you serve?
6.	Which of the following personal qualities are characteristic of your manager?
7.	Which of the following qualities would allow a manager to successfully interact and organize the work of subordinates?
8.	How often does the head of your department apply sanctions to offenders ?
9.	Do you feel the support of the population when performing official duties?
10.	Are you satisfied with the salary level?

Source: developed by the author

[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.
[2] Law of Ukraine No. 2849-IX "On the Disciplinary Statute of the National Police of Ukraine". (2023, March). Retrieved from https://zakon.rada.gov.ua/laws/show/2337-19#Text.
[3] Law of Ukraine No. 2123-IX "On Amendments to the Laws of Ukraine "On the National Police" and "On the Disciplinary Statute of the National Police of Ukraine" in order to Optimize Police Activities, including during Martial Law" (2022, March). Retrieved from https://zakon.rada.gov.ua/laws/show/2123-20#Text.
[4] Law of Ukraine No. 389-VIII "On the Legal Regime of Martial Law". Retrieved from https://zakon.rada.gov.ua/laws/show/389-19#Text.
[5] Resolution of the Cabinet of Ministers of Ukraine No. 573 On "Introduction and Implementation of Certain Measures of the Martial Law Regime". (2020, July). Retrieved from https://zakon.rada.gov.ua/laws/show/573-2020-%D0%BF#Text.
[6] Resolution of the Cabinet of Ministers of Ukraine No. 1455 "On Approval of the Procedure for Establishing a Special Regime of Entry and Exit, Restricting the Freedom of Movement of Citizens, Foreigners and Stateless Persons, as well as the Movement of Vehicles in Ukraine or in Certain Areas of Ukraine where Martial Law has been Introduced". (2021, December). Retrieved from https://zakon.rada.gov.ua/laws/show/1455-2021-%D0%BF#Text.
[7] Resolution of the Cabinet of Ministers of Ukraine No. 181- p "On Approval of the Procedure for Compulsory Evacuation of Certain Categories of Population in the Event of the Introduction of Martial Law". (2018, November). Retrieved from https://zakon.rada.gov.ua/laws/show/181-2022-%D1%80#Text.
[8] Order of the Ministry of Internal Affairs No. 50 "On Approval of the Regulation on Organization of Service Training of the National Police of Ukraine". (2016, January). Retrieved from https://zakon.rada.gov.ua/laws/show/z0260-16#Text.

related not only to countering the aggressor, but also to preventing domestic violence, conducting legal education activities in educational institutions, conducting training on how to handle suspicious objects, etc. The patrol police were also involved in all these activities.

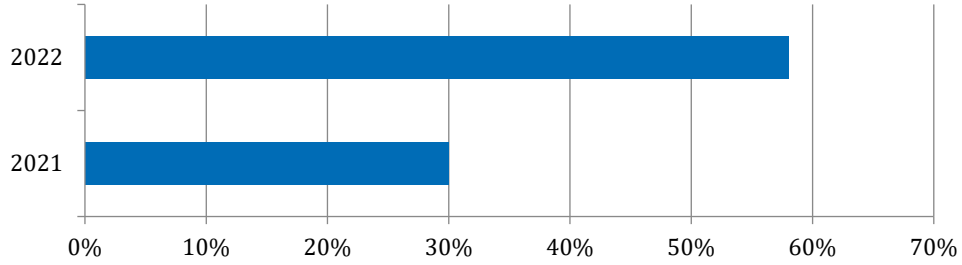

Figure 1. Comparative graph of the percentage level of trust of the population in the NPU in the period 2021-2022, %
Source: developed by the author, based on A. Grushetsky (2023)

The range of activities of the patrol police is so wide that it requires constant control and clear management. Thus, in March 2022, the Law of Ukraine "On the Police"[1] and the Disciplinary Statute[2] were amended to expand the powers of police officers during the period of martial law[3]. Patrol officers can receive information from government bodies free of charge; to be without identification marks, if a certain situation requires; use improvised means if there is a legitimate need; use technical devices (recording of offences, search for radiation threats, analytical work for setting car licence plates); keep persons in temporary detention centres, if there are cases provided for by law; provide technical and forensic examination in the presence of threats of explosive objects. Disciplinary sanctions may be applied to police officers if they have committed a misdemeanour related to a violation of discipline.

All these changes were adopted due to the fact that during the period of martial law, the patrols almost constantly interacted with the military forces and perform some of their powers. As an example, according to the Procedure for the introduction of curfew[4], police officers are part of patrols that check compliance with light masking and curfew. Police officers patrol on the routes determined by the commandants of a certain area and can completely restrict the movement of motor vehicles in accordance with the approved Order of the entry regime[5]. Also, in accordance with the Evacuation Procedure[6], they have the right to remove persons from temporary detention centres and move them to safe places.

In view of the above, there is an urgent need for certain levels of organizational and methodical work with personnel. After all, the excess of multifaceted tasks, double subordination, and almost constant psychological stress can affect their competence and cause them to make significant mistakes in their work. It is believed that organizational and methodical work should be carried out during official training of patrol officers. Of course, in accordance with the Regulation on official training[7], patrolmen undergo special professional and psychological training. So, personnel management during the period of active military operations requires constant monitoring of their actions, influence on their consciousness and timely preparation for work at any time and situation.

To establish the level of organizational work with personnel, as well as the level of satisfaction of subordinates with the management process, the author conducted an anonymous survey of managers and subordinates. The number of respondents from the subordinate

[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.
[2] Law of Ukraine No. 2849-IX "On the Disciplinary Statute of the National Police of Ukraine". (2023, March). Retrieved from https://zakon.rada.gov.ua/laws/show/2337-19#Text.
[3] Law of Ukraine No. 2123-IX "On Amendments to the Laws of Ukraine "On the National Police' and 'On the Disciplinary Statute of the National Police of Ukraine" in order to Optimize Police Activities, including during Martial Law" (2022, March). Retrieved from https://zakon.rada.gov.ua/laws/show/2123-20#Text.
[4] Resolution of the Cabinet of Ministers of Ukraine No. 573 On "Introduction and Implementation of Certain Measures of the Martial Law Regime". (2020, July). Retrieved from https://zakon.rada.gov.ua/laws/show/573-2020-%D0%BF#Text.
[5] Resolution of the Cabinet of Ministers of Ukraine No. 1455 "On Approval of the Procedure for Establishing a Special Regime of Entry and Exit, Restricting the Freedom of Movement of Citizens, Foreigners and Stateless Persons, as well as the Movement of Vehicles in Ukraine or in Certain Areas of Ukraine where Martial Law has been Introduced". (2021, December). Retrieved from https://zakon.rada.gov.ua/laws/show/1455-2021-%D0%BF#Text.
[6] Resolution of the Cabinet of Ministers of Ukraine No. 181-p "On Approval of the Procedure for Compulsory Evacuation of Certain Categories of Population in the Event of the Introduction of Martial Law". (2018, November). Retrieved from https://zakon.rada.gov.ua/laws/show/181-2022-%D1%80#Text.
[7] Order of the Ministry of Internal Affairs No. 50 "On Approval of the Regulation on Organization of Service Training of the National Police of Ukraine". (2016, January). Retrieved from https://zakon.rada.gov.ua/laws/show/z0260-16#Text.

staff was 70 people. It was established that during the period of martial law, tactical (33% – 23 interviewees) and fire (29% – 20 interviewees) training is organized as much as possible among other types of service training. Among others, the following are defined: functional (7% – 5 respondents), physical (10% – 7 respondents), psychological (14% – 10 respondents), general profile (7% – 5 respondents) training (Fig. 2). Such a tendency is quite understandable, because combat operations require the patrolman to correctly evaluate and implement tactical actions in various official circumstances. Detention of subversive intelligence groups, adjusters of missile attacks, criminals of other criminal crimes obliges the police officer to clearly know the conditions of use or use of weapons, as well as the technical characteristics of these weapons.

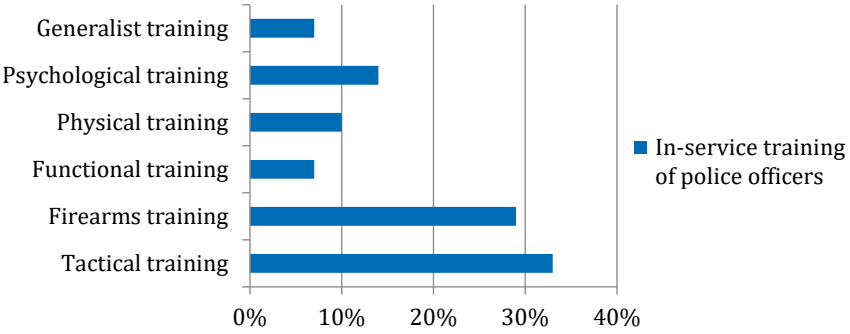

Figure 2. Comparative graph of the percentage level of professional training of police officers in patrol police units
Source: developed by the author

Thanks to the answers of the respondents, management methods of managers were established, which, in their opinion, are the most successful and can bring results in working with the team. Effective methods were: organizational (37% – 26 respondents), management (14% – 10 respondents), legal (16% – 11 respondents), economic (10% – 7 respondents), moral and psychological (19% – 13 respondents) (Fig. 3).

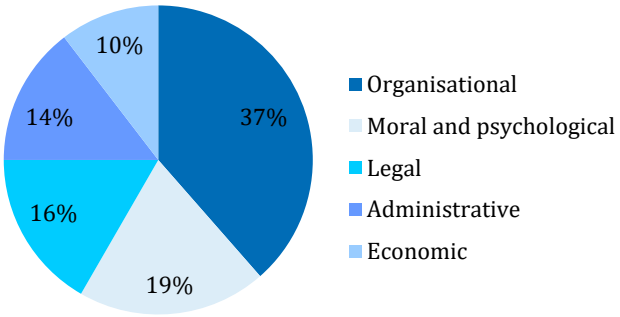

Figure 3. Comparative chart of management methods in patrol police units
Source: developed by the author

The organizational method allows planning the actions of personnel in advance, with the involvement of the necessary forces and means. Subordinates are informed and equipped in time. In the case of impossibility to implement a certain action plan, there is already a backup plan prepared in time, which the manager familiarizes with in advance. The administrative method is used in case of atypical situations. By their orders, leaders can change the deployment of forces and direct them to the necessary place in the shortest possible time. Also, this method involves managers taking responsibility for their own actions and the actions of their staff.

The legal method provides for the protection of the rights and freedoms of the staff of the police unit by referring to the legal acts that guarantee it. It also provides for the application of sanctions to violators of the norms (disciplinary action, administrative, criminal liability, etc.). The economical method consists in the correct allocation of resources. The method makes it possible to fairly distribute wages among subordinates in accordance with the work done and to stimulate its improvement. The moral-psychological method contributes to democratization and improvement of relations between subordinates, improvement of the social-psychological climate and stimulation to the performance of official duties.

In the course of the survey, respondents were asked to determine what qualities inherent in managers would allow them to successfully interact and organize

the work of their subordinates. Survey participants identified the main ones: physical qualities (26% – 18 respondents); professional combat qualities (28.5% – 20 interviewees), psychological qualities (27.0% – 19 interviewees), moral qualities (18.5% – 13 interviewees) (Fig. 4). The extreme conditions of the service prompted the disclosure of the entire spectrum of qualities of the management link. They became an informal test of resilience, the ability to take responsibility or work together in a team.

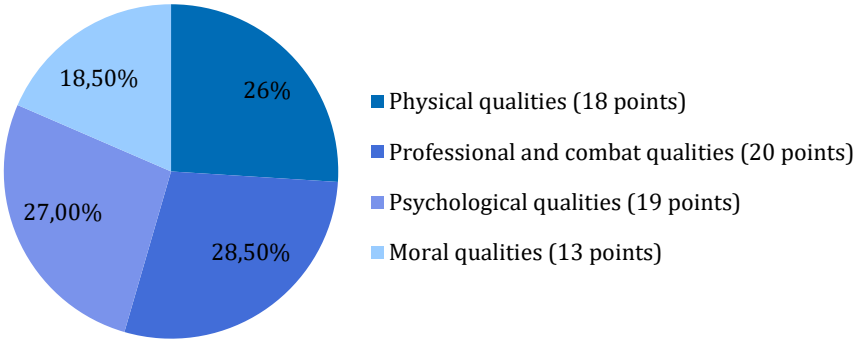

Figure 4. Comparative graph of personal qualities of the manager when performing official tasks
Source: developed by the author

Patrol police officers in their questionnaires noted that during the period of martial law, their superiors showed courage and tried to show by example how to perform their duties and solve problems that caused certain difficulties. The management team has been working as a team throughout this period. Most of them took care of the personnel and tried to provide them with everything they needed. At the same time, the authors' task was to establish what should be taken into account when training the leadership in the future.

Military events in the country have placed high demands on the command staff. Possessing professional and combat qualities, a leader is always fully prepared to work in any conditions. He must not only have knowledge and skills, but also be able to successfully apply them in practice. Psychological qualities are necessary to encourage subordinates to be resilient and show courage in difficult and life-threatening situations by their own example. Physical qualities are necessary to perform certain special tasks with dexterity and together as a team.

In recent years, a number of scholars have attempted to study the peculiarities of the service of police officers of the National Police of Ukraine and provide certain recommendations for its improvement. Thus, O. Vakhnytska (2023) outlined the tasks and functions of the police under martial law. It was noted that, in addition to the typical tasks for such preventive police as patrol police, it became inherent in ensuring the protection of property left unattended; ensuring public order and safety in the event of industrial accidents or disasters, etc. Researcher V. Sokurenko (2022) believes that these and other expanded powers and tasks are of a preventive and prophylactic nature, which, along with operational ones, are aimed at ensuring public order and guaranteeing the rights of the population. V. Bondar & D. Kachmarik (2023) confirm that additional powers allow for round-the-clock and intensified policing of public order. I. Voznesenskyi (2023), in turn, proved the importance of building the readiness of police officers to use firearms in case of emergency. The study confirms the scientist's opinion, as firearms training is given considerable attention by law enforcement agencies.

Since the introduction of martial law throughout the country, law enforcement officers began to be guided in their activities not only by the Law of Ukraine "On the Police"[1], departmental and non-departmental normative legal acts, but also by the Law of Ukraine "On Martial Law"[2]. During this period, the activities of the police become not only law-enforcement, but also protective. Accordingly, the question of interaction between the patrol police and other units, which are designed to protect the citizens of the country from illegal invasion and their subordination in the event of such interaction, is gaining relevance. Issues of this aspect remain debatable. M. Pendyura & M. Brazaluk (2023) established that the interaction of the patrol police with the National Guard of Ukraine or with the State Emergency Service of Ukraine is coordinated and normatively regulated, and with the Security Service of Ukraine SSU or the Armed Forces of Ukraine – requires clear regulation. G. Mulyar (2023) speaks of the need to establish at the state level legal norms for the organization of police interaction with territorial communities

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

aimed at the prevention of offences related to ensuring security and order in the state. O. Bezpalova (2022) in her turn determined what is the protective function of patrol police officers who ensure public peace during martial law, and what their activities are aimed at. The following are highlighted: the recording of war crimes, the provision of primary medical and psychological assistance to victims, the protection of explosive objects, etc. Such activity requires careful, methodical training of personnel and clear organization of the performance of their official powers. The research carried out by the author confirms that, according to patrol policemen, modern training meets these requirements, because the greatest attention is focused on improving tactical and fire skills and, to a lesser extent, psychological stability.

Foreign scholars are also searching for methods to improve the work of patrol police during the period when they perform atypical tasks in extreme situations. S. Maslennikova (2023) identified the main directions of reforming the system of professional training of law enforcement officers during martial law and noted the importance of involving foreign specialists in such activities. P. Sittiboon & A. Gerdruang (2019) studied the state of problems and obstacles, as well as guidelines that help to achieve results in the management of patrol officers during special operations. Canadian researchers have studied the automated work system of patrol police officers and developed conclusions that contain recommendations for the management team on the organization of work and the formation of work shifts (Simpson & Bell, 2022). L. Kleygrewe *et al.* (2021) tried to implement the European experience of police training. They identified problems with the current organization and practice of training and performance of various police units, including patrol officers. They found that managers and instructors critically assess the level of training of subordinate staff and need innovative training methods, including practical training, even during the period of service. In turn, the study shows that the most demanded qualities of officers in the opinion of Ukrainian patrol police officers are their professional and combat skills and psychological qualities, and the most effective management methods are organizational, combined with democratization of relations and improvement of the social and psychological climate and motivation.

In 2020, the Kharkiv Institute for Social Research assessed the institutional capacity of the Patrol Police Department (Kobzin & Chernousov, 2020). The assessment found that the in-service training plan exceeds 200 hours. Most of them are devoted to functional training, self-defence, interaction with the public and firearms training. It was noted that the department has an active psychological service that works in cooperation with the heads of services. Managers and subordinates regularly undergo advanced training and training in community policing. Comparing the results of the study in the author's article, it can be noted that as of 2023, service training, due to military operations, is more focused on fire, tactical and psychological training.

Conclusions

The expansion of the powers of patrol officers since March 2022 has allowed police officers to perform important strategic tasks (patrolling the territory, checking compliance with curfews and camouflage, etc.) in even greater cohesion with the military. Such interaction requires coordination and supervision by leaders. Clear and coordinated actions allow not only to achieve success, but also to save lives and health in critical situations. The article reveals the peculiarities of patrol police activities in the event of atypical service situations.

During the survey, patrol officers indicated that a manager should encourage others to want to improve and show good results in their work by example. In their opinion, a manager should have a certain set of qualities that will allow them to be relied on. The main ones should include professional and combat, physical, psychological and moral qualities. In addition, methodical work in groups should be organized through the manager's use of a certain set of methods that protect the rights and freedoms of the team. The manager should protect his or her subordinates from unfair acts against them, take responsibility for the team's mistakes, work side by side in a team, etc. A promising way forward is to improve the forms and methods of patrol police management in order to establish clear and coordinated interaction between the staff of the institution in the future.

The current level of training of patrol police officers is aimed at their acquisition of specialized knowledge in tactical training and firearms. The police must be constantly on the defensive. Each unit should be informed and provided with all necessary means. At the same time, respondents noted that less attention is paid to general, functional and psychological training. That is why domestic researchers face the need to develop a modern system of service training for patrol police officers, taking into account the current realities of service (military operations, terrorist attacks, elimination of negative consequences of disasters, etc.) The study found that the training of subordinate personnel should in the future be aimed at developing stress resistance, a "sense of time", and critical observation.

The issue of regulatory support for police interaction with paramilitary structures of different levels during martial law requires further research.

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Conflict of Interest

None.

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Особливості організаційно-методичної роботи з особовим складом патрульної поліції в умовах воєнного стану

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Анотація
Актуальність теми дослідження полягає в тому, що функціонування правоохоронних органів у період воєнного стану означилося розширенням функцій патрульної поліції, що потребує посиленої уваги до підготовки поліцейських. Зокрема, постала необхідність аналізу сучасної практики підготовки правоохоронців і створення науково обґрунтованих рекомендацій щодо її покращення. Саме тому метою статті було з'ясування специфіки роботи патрульної поліції в період воєнного стану й особливостей методичної роботи керівної ланки, яка стосувалася підготовки та супроводження діяльності підпорядкованого складу. Для реалізації мети дослідження використано комплекс теоретичних й емпіричних методів, серед яких такі: аналізу, узагальнення та інтерпретації, експертної оцінки, опитування та графічний, що надали можливість інтерпретувати отримані результати й розробити рекомендації. Встановлено, що керівники підрозділів патрульної поліції в роботі з персоналом керувалися організаційними, морально-психологічними, правовими, розпорядчими й економічними методами управління. Завдяки зазначеним методам особовий склад постійно володів оперативною обстановкою, мав змогу розробляти доповнені плани дій, застосовувати резервні сили й засоби. Керуючись правовими та економічними методами, управлінці мали змогу не тільки застосовувати санкції, а й захищати права своїх підлеглих від незаконних посягань і достойно їх преміювати. Крім цього, аналогію проведено між наявними професійно-бойовими та психологічними рисами в управлінців та їх уміннями працювати в команді. Власний приклад, бойова, фізична, правова підготовка керівників давали змогу швидко вирішувати нагальні проблеми, конфлікти, виконувати службові завдання серед підпорядкованого складу. Практична значущість дослідження полягає в тому, що одержані висновки слугуватимуть підґрунтям для наукового пошуку з вивчення особливостей та вдосконалення професійної підготовки, яка містила б аспекти тактики вогневої, функціональної, загальнопрофільної та психологічної підготовки

Ключові слова:
Національна поліція України; публічна безпека; методи управління; професійна підготовка; довіра населення; професійні обов'язки

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Risk and subjective rationality as decision-making factors in the professional activity of Police Officers

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Abstract
The relevance of the study is conditioned by the lack of development of the problem of forming the decision-making ability at the stage of professional training and the need to improve the modern daily practice of future law enforcement officers to ensure the accuracy and timeliness of decisions made against the background of a constant increase in the volume and complexity of incoming information. The purpose of the study was to determine the conceptual basis for the influence of subjective rationality and risk readiness in the decision-making system in the professional activities of police officers. The paper uses the method of comparative and correlation analysis, and statistical analysis of primary data. According to the results of the study, significant correlations were established between rationality and risk factors in decision-making among police officers in groups with different levels of experience and professionalism. The current study focuses on intra-group variations in risk maximisation and the use of rational traits, particularly vigilance, procrastination, avoidance, and over-vigilance in decision-making. These psychological phenomena are explained by studying the main group of law enforcement officers (n=116), divided by the sample according to the criterion of experience in practice (n=59, n=57). A significant difference and psychological difference in the decision-making process component was found between groups with and without practical work experience in law enforcement. This provides an opportunity for further expansion and development in this area, defining the main approach to creating professional skills, forming the ability to make decisions in law enforcement officers without practical experience, and consolidating the basic skills of law enforcement officers with practical experience. The practical significance of the study lies in the prospect of developing psychocorrective programmes and trainings aimed at various employees of law enforcement agencies, depending on the practical experience gained and the area of activity. The research materials can be used in the process of optimising the educational process in professional institutions

Keywords:
risk theory; practical experience; vigilance; stress; procrastination

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Introduction

In the context of the armed conflict, which is accompanied by increased requirements for the professional qualities of the military and law enforcement officers, the problem of studying the factors of effective decision-making, in particular, risk-taking and rationality, is becoming more relevant. The variability of internal and external factors characteristic of Ukrainian society in recent years and the impact of the Ukrainian issue on the global socio-psychological situation greatly complicates the decision-making process by law enforcement entities: it increases risks, complicates strategic planning, and reduces the predictive assessment of possible changes in the near and long term. To achieve effective solutions to problems of any complexity, it is necessary to constantly improve the decision-making process. It is important to focus on maintaining high professionalism of all employees of the law enforcement system, as an important condition for a correct and rationally informed decision, in order to better understand the processes taking place within the system, avoid service losses and low initiative of employees in the process of preparing decisions. Rationalisation of the activities of law enforcement officers in modern conditions is of particular importance, which explains the increased attention to this problem. This is conditioned by the acceleration of scientific and technological progress, the creation of breakthrough innovations focused on the individual characteristics of each person.

Various aspects of the decision-making phenomenon have been studied by a number of Ukrainian and foreign researchers. G. Lecoq *et al.* (2021) comprehensively examined the expansion of governance mechanisms, namely uncertainty, risks, and policing strategies in decision-making. According to the researchers' conclusions, a number of factors that create uncertainty in professional situations have been identified. According to the researchers, uncertainty is the central object of police activity when making decisions that need to be managed. Separately, the authors investigated the problem of complexity of risk mobilisation, which manifests itself in risk assessment and leads to excessive caution. R. Berkley *et al*. (2019) considered the phenomenon of decision-making under the influence of emotions. Researchers tried to understand how the subjects of managerial decision-making interpret for themselves the importance of certain situations, being under the influence of emotions. Researchers have substantiated and identified a significant influence of strong emotions on the adoption of difficult decisions by police officers. The benefit of such research was to update the identification of the main determinants that lead to making wrong decisions.

G. Penney *et al.* (2022) assessed the threats faced by police, military, ambulance, and fire service personnel when making decisions in critical situations. N. Shortland *et al.* (2020) investigated the impact of trait maximisation on police decision-making and found that police officers who 'maximised' decisions had more difficulty. Gender and previous military experience also influenced the decision-making process, in particular, police officers with military experience needed more time to assess the situation, but they chose a course of action faster and followed it more clearly.

The transitivity (binary) of solutions was investigated by R. Wuthisatian *et al.* (2022). The researchers defined it as the consistency of preferences and the rational difference of choice theory. Based on the results of research, it was determined that personal preferences, as a rule, are not transitive. According to the maximisation postulate, the final condition for a rational decision is to choose an action that maximises the objective function of the problem solver or, less formally, the individual accepts the alternative that is best for him or her in the situation described.

V. Barko *et al.* (2020) analysed the professional and psychological potential of the head of the modern police. The researchers saw these characteristics as the basis for the development of an effective management system. The result of this study was the identification of the main components of the psychogram of the head of internal affairs agencies (IAA). T. Motl *et al.* (2017) investigated the impact and conditions of forming rational and intuitive decision-making strategies. Y. Guo *et al.* (2022) examined the role of decision-making subjects' understanding of "justice", and its significance for social behaviour in the system of social orientation at the level of individual differences, which allowed determining the fact of risky behaviour, which is more appreciated by society than cautious behaviour, which is usually associated with indecision.

The purpose of the study was to identify the main psychological factors that guide a law enforcement officer in decision-making and strategies for overcoming difficult situations by rationalising these decisions. In accordance with the goal, the research objectives are outlined: 1) to carry out a system-structural analysis to establish the content of the categories under consideration; 2) to investigate the factors of rationality and risk in the decision-making system; 3) to conduct a classification analysis in order to determine the main concepts related to decision-making, risks, and rationality.

Literature Review

Since the last quarter of the 20th century, the final institutionalisation of the general theory of risks has taken place, which is closely related to the theory of decision-making, which includes rationality as a fundamental property of the cognitive component of the individual, and is considered within the framework of a psychological and acmeological approach. In modern science, this approach has been used by a number of researchers, in particular, V.O. Ohneviuk *et al.* (2019) concretised the basic concepts of top and bottom stages of development within the framework of fundamental acmeology and studied the multilateral characteristics of

activity in order to identify important positions in decision-making and implementation. D. Zhu *et al.* (2022) examined the maximisation of decision-making style through three studies that focused on subject-specific variations of the maximised decision-making style within the concept of optimal decision-making, which corresponds to the maximum expected utility. M. Schulz & J.O. Zinn (2023) investigated the rationale for risk and uncertainty and their epistemological basis as a new phenomenology. Researchers argue that only by allowing subjects to engage in a dialogue with themselves can they find a solution to the irrational openness of their respective presence and their inherent uncertainty.

T. Kroker *et al.* (2022) studied how non-invasive stimulation of the ventromedial prefrontal cortex modulates human decision-making rationality. Researchers have reasoned that the same people make different decisions, depending on whether they act independently or in a group. O. Pol *et al.* (2022) also worked in this direction, investigating collective decision-making within the concept of "collective decision phenomena": groupthink; polarisation effect; social facilitation effect; "committed dissonance" phenomenon; volume and composition effects; "decision quality asymmetry" effect; idiosyncratic credit phenomenon; false consciousness phenomenon; virtual decision-maker phenomenon; conformism phenomenon. Investigating the causes of groupthink, the researchers identified its eight causes: illusion of invulnerability, false rationality, group morality, stereotypes, pressure, self-censorship, unanimity, gatekeeping or gatekeeper-defence.

R.E. Dalafave & W.K. Viscusi (2023) examined the locus of fear of mass shooting risks, in particular, the analysis of panic moods in groups that faced such a risk. Researchers note that the main manifestation of the fear of mass shootings is the belief in the risk of their occurrence. Irrational fears can significantly influence risk assessment, which makes it important to consider perceptual errors in research on this phenomenon. Cognitive scientist D. Cummins (2021) studied public confidence in the media and its impact on people's perceptions and actions in critical situations. In addition, this study also focused on techniques that promote effective actions in such situations. The researcher identified seven effective methods-techniques, namely: logic, moral judgment, similar reasoning, scientific reasoning, rational choice, game theory, and creative problem solving.

J. Overall & S. Gedeon (2023) empirically examined rational selfishness, ethical beliefs based on virtues, and subjective happiness. Researchers have found evidence that rational selfish beliefs are not the most important direct predictor of subjective happiness. B. Enke *et al.* (2021) examined the role of cognitive biases in decision-making and their role in the mistakes and shortcomings of deep personal choices. Individual psychological characteristics of law enforcement officers were also studied by Ukrainian researchers. Thus, I. Okhrimenko *et al.* (2022) considered them as the basis for effective psychological selection of personnel for modern police organisations. It was found that representatives of the criminal police and police units show higher emotional stability compared to other categories of employees in law enforcement agencies. On the other hand, patrol policemen and investigators have high levels of self-confidence, independence, and leadership. All police officers, regardless of their specialisation in law enforcement, are distinguished by a high level of self-control, responsibility, integrity, thoroughness, and discipline.

Materials and Methods

The methodological tools were compiled by the general theory of decision-making (Kushlyk-Dyvulska & Kushlyk, 2014), which is based on both differentiation and integration of existing knowledge in various fields. The theoretical basis of the study is the results of the latest developments in the field of studying rationality, maximising the expected utility and risk in the decision-making system of representatives of various sciences, in particular, economic, psychological, legal, etc. This study used primary statistical analysis and correlation analysis performed using the Spearman method, since many related features differ from the normal distribution, although presented on a metric scale.

Research base and sample. The study was conducted in November 2022-February 2023. The study was based on an offline survey using paper forms and was conducted directly by the author of the study as part of the preparation of a dissertation with a number of questions that related to decision-making by law enforcement officers, their understanding of risk and the use of rational judgments. The survey was conducted at the Academy of Internal Affairs of Ukraine in Kyiv. The empirical sample of the study consisted of 116 law enforcement officers (44 women and 72 men), of whom 57 were patrol police officers, investigators, associate professors of the Department of Criminal Law, and employees of the bar with practical experience (average age of the respondents: 31 years). Another 59 respondents are cadets-psychologists and cadets-forensic experts, without practical work experience, whose average age was 20 years. During the study, it was decided to divide the main sample into groups A and B (n = 59, n = 57), since statistical differences were obtained from the primary data analysis.

The study focused on the ethical standards of psychological experimentation: anonymity, awareness of survey participants about the goals and further use of survey data, and associated risks. The research was conducted in accordance with the rules of the Helsinki Declaration (1975).

Procedure. The research was conducted in several stages. At the first stage, comprehensive tools were selected aimed at investigating external and internal

decision-making factors, the impact of uncertainty on decision-making, and identifying typical decision-making determinants. At the second stage, decision-making factors were diagnosed based on psychodiagnostic tools. At the third stage of the study, a correlation analysis was performed (according to the Spearman method). Interpretation of the results was carried out approximately to the indicators of statistical significance, for the sample size n = 116: 187 at P ≤ 05; 245 at P ≤ 01; 31 at P ≤ 001.

Tools. Based on previous studies of the specifics of decision-making in the work of police officers, the following methodologies were used: 1) Melbourne Decision Making Questionnaire (MDMQ) (Mann *et al.,* 1997), which is comprehensively considers the decision-making procedure, namely at personal factors in decision-making, and is aimed at diagnosing individual decision-making style; 2) Wolfram Q-sorting (abbreviated according to Rorman), which is aimed at determining subjective rationality and risk (Wolfram, 1974).

Variables. The following parameters were identified as variables of correlation research: vigilance, over-vigilance, procrastination, and avoidance.

Statistical analysis. Both quantitative and qualitative methods of data analysis were used in the research process. Primary data processing methods, statistical analysis, correlation analysis, and presentation of results as tables were used to display the data. MS Office Excel 2016 software suite was used for the mathematical processing of the data obtained.

Results and Discussion

Interpretation of the results of the correlation study is based on the investigation of two main problems: the problem of orientation and the problem of the third variable. Regarding the problem of orientation, it is quite obvious that certain factors together determine the nature of decision-making in law enforcement activities. At the same time, the question arises of a third variable when analysing the correlation between two variables, which can simultaneously affect both one and the other variable in this correlation. This question remains open for further discussion, so when interpreting, the authors tend to use a probabilistic scheme of explanation. The study analysed how police officers make decisions about risk and subjective rationality.

The importance of determining the links between risk and rationality is to identify additional factors between these phenomena that can significantly influence the decision-making process of police officers at the training stage, considering the experience and resources in this process. Table 1 shows the correlations of personal decision-making among the respondents of the total sample (n = 116).

Table 1. Correlations between decision-making factors in respondents of the general sample (n = 116)

Stress management patterns	Personal factors of decision-making	r	α
Vigilance	Rationality	0.34***	0.999 (≤ 0.001)
Over-vigilance	Risk	-0.30**	0.99 (≤ 0.01)
Procrastination	Risk	-0.28**	0.99 (≤ 0.01)
Avoidance	Risk	-0.22*	0.95 (≤ 0.05)

Note: hereafter, p – significance (two-sided), *** – at p ≤ 0.001; ** – at p ≤ 0.01; * – at p ≤ 0.05
Source: author's research

Thus, the following results were obtained: a significant correlation between rationality and vigilance (r = 0.34; α ≥ 0.999), from which it can be assumed that the higher the level of rationalisation of actions, the higher the level of vigilance. This is a professionally important quality of the police officer's personality and indicates observation, the ability to understand the individual psychological characteristics of another person by their external and nonverbal manifestations. The notion of professional vigilance as the ability to notice the essential properties of objects and phenomena for the profession is based on the concept of psychological observation. The specifics of the work of law enforcement officers provide for careful monitoring of the environment, the ability to note signs that cause the risk of committing illegal actions.

In addition, inverse correlations with over-intensity and risk readiness were obtained (r = -0.30; α ≥ 0.99), which allows making an assumption: the higher the super-vigilance, the lower the risk readiness. That is, excessive vigilance is a reaction to anxiety stimuli that is common to everyone who is connected with law enforcement activities. It can be assumed that in this way, law enforcement officers who are in a state of excessive vigilance will be less at risk, due to rational decision-making.

Reverse correlation between procrastination and risk tolerance (r = -0.28; α ≥ 0.99) suggests that the higher the level of procrastination, the lower the risk readiness. Reverse correlation between avoidance and risk readiness (r = -0.22; α ≥ 0.95) shows that the higher the degree of decision-making avoidance, the less risk the policeman will take.

In the course of the study, the sample was divided into 2 groups, Group 1 (n = 59), which included cadets-psychologists and cadets-forensic experts (average age 20 years), who had no practical experience in official activities, and Group 2 (n = 57), which included police patrol officers (average age 31 years) with extensive

experience in practical work in the field and with experience in decision-making in various professional situations. This distribution gave more opportunities to investigate the latent variables that appear in the middle of both groups and can affect the overall result, which is presented in Table 2.

Table 2. Correlations between decision-making factors in cadets (n = 59)

Stress management patterns	Personal factors of decision-making	r	α
Vigilance	Rationality	0.34**	0.99 (≤ 0.01)
Over-vigilance	Risk	-0.42***	0.999 (≤ 0.001)
Procrastination	Risk	-0.39**	0.99 (≤ 0.01)
Avoidance	Risk	-0.54***	0.999 (≤ 0.001)

Source: author's research

Analysing data, it is established that a significant correlation between rationality and vigilance (r = 0.34; α ≥ 0.99) confirms the above assumptions about the officer's ability to rationalise the decision-making process and thereby increase vigilance. Defined, inverse correlation with over-vigilance (r = -0.42; α ≥ 0.999), procrastination (r = -0.39; α ≥ 0.99) and avoidance (r = -0.545; α ≥ 0.999), which confirms the previously made assumptions, namely the tendency of this group of respondents to solve problems that bring faster results, the tendency to shift responsibility to others, delaying decision-making, constantly delaying the choice on any issue. This also applies when all the conditions for making a decision are available, fear of the task, avoiding the manifestation of activity and initiative. It is known that it is the lack of experience and age of respondents that can significantly influence decision-making, especially avoidance or postponement, which encourages further search for the causes of these manifestations. For comparison, it is worth analysing similar indicators in Group 2, which is presented in Table 3.

Table 3. Correlations between decision-making factors in law enforcement officers with work experience (n = 57)

Stress management patterns	Personal factors of decision-making	r	α
Vigilance	Rationality	0.34**	0.99 (≤ 0.01)
Avoidance	Rationality	-0.26*	0.95 (≤ 0.05)

Source: author's research

Comparison of the results provided a deeper understanding of the psychological component of the decision-making process for police officers with work experience. The significant correlation between rationality and vigilance (r = 0.34; α ≥ 0.99), which was obtained from the previous analysis, was confirmed with minor changes. However, it allows making an assumption when comparing the two groups (with and without practical experience) that it is rationality and vigilance that complement each other and are a property of representatives of law enforcement activities at any stage of professional training. When examining Group B, no relationship with risk was found, unlike Group 1, which indicates a significant difference between police officers. who have experience and those who are at the stage of professional training.

The inverse correlation between avoidance and rationality (r = -0.26; α ≥ 0.95) may indicate that the longer the avoidance of decision-making lasts, the less rational these decisions are. This means that by following the protocol that law enforcement officials must follow, they can shift responsibility for their decisions and actions to legislation and orders from senior management, which can affect the overall decision-making process. Thus, the results revealed differences between law enforcement officers depending on their experience, which showed a greater tendency to maximise risk in the younger generation of police officers.

In the course of the study, a number of differences were found between groups with and without practical experience regarding the main criteria for making decisions, such as vigilance, procrastination and avoidance. A number of researchers who have investigated age-related issues and levels of work experience argue that the more experienced decision makers are and the more identified they are in previous decisions, the more likely they are to be biased (Alicke & Sedikides, 2009). This pattern is particularly evident when subjects face poor performance in their work (Gaba *et al.,* 2022). For this reason, decision makers are expected to become less sensitive to lower-than-expected performance as their work experience increases. Having a deeper reserve of experience means having a variety of successful experiences in the past (Gaba *et al.,* 2022), which reduces the urgency of responding to recent performance degradation and facilitates inactivity.

The scale of vigilance in the conducted study correlates in both groups and is the main distinguishing

feature that is inherent in all representatives of law enforcement activities, because this quality is important when performing official tasks and attention to detail can be a scale of foresight in various professional situations. There is no need to reinvent the concept of vigilance, it is necessary to clearly distinguish vigilance from other concepts, such as attention or arousal (van Schie *et al.,* 2021).

Procrastination manifested itself in law enforcement officers without experience and had an inverse relationship, which showed the practical application of this psychological defence mechanism in the younger generation of police officers, who thus avoid risk. Procrastination is associated with negative effects on productivity, as well as physical and psychological well-being. However, while this procrastination behaviour has never been particularly beneficial, the association with performance is not as strong as it seems at first glance, as confirmed by A. Rozental *et al.* (2022).

Avoidance, as a property, manifested itself in an inverse relationship with risk in Group A and with rationality in Group B, which may indicate that when risk or rationality decreases, avoidance also decreases. Based on traditional economic psychology, rational individuals tend to avoid making decisions if marginal benefits exceed marginal costs. In addition, as stated by A.A. Ngelo *et al.* (2022), avoidance practices allow the individual to retain more psychological resources. Manifestations of avoidance and procrastination, as psychological defences, allow maintaining resources when making difficult decisions, through postponing the latter. The parameters of rationality in choice theories are individualistic character, limitations and subjectivity, and among the prerequisites are individualism, optimality and self-care, which is also confirmed by the main results of the study.

The study shows the existence of specifics of risk readiness depending on experience in law enforcement. It is revealed that the experience and age of law enforcement officers significantly influence rationality, bias, and reasons for procrastination and avoidance when making decisions in their activities. In order to draw more accurate conclusions when studying problems in a particular area, it is necessary to pay more attention to the area of interest when developing scales.

Conclusions

Increasing the requirements for the professional activity of law enforcement officers under martial law in Ukraine requires the development of scientific principles of decision-making as the main component of any organisational function, first of all, the study of determinants that affect this process. The use of a comprehensive methodology determined the most significant internal and external factors of decision-making. The study focuses on the investigation of intra-individual variations in decision-making styles, special attention was paid to such qualities as rationality and risk tolerance, which also applies to maximising these qualities in law enforcement officers with and without practical experience. The results confirmed the assumptions about the difference between the groups and the existence of certain specifics in decision-making. Law enforcement officers may show a tendency to maximise risk or rationality in various qualities depending on experience. Group A was more prone to risk-taking than rationalisation, in contrast to Group B, which had no significant correlation with risk-taking, which may indicate excessive caution on the part of experienced law enforcement officers who tend to calculate all possible consequences and then act on the basis of preliminary analysis of the input data and a thorough assessment of the situation. The study shows the existence of specifics of risk readiness depending on experience in law enforcement.

In the course of a comparative study, it was found that a group of respondents with no practical experience of professional activity had more correlations with risk than with rationality, and a group of police officers with professional practical experience were more determined to act, are not prone to procrastination and avoidance, and also rationalised their decisions to a greater extent.

Predicting solutions in complex dynamical systems is another modern challenge for science, as the complexity of the systems with which modern personality interacts is becoming more complex every day. Most decisions often defy logical explanation and are made intuitively, but considering the phenomenon of intuition, it can be assumed that there is a certain rational structure that guides intuitive thinking by creating certain heuristics that the individual is not aware of.

For future research, it is planned to investigate the professional activity of police officers by analysing the system of operations that support it, methods of execution and results obtained. The scientific originality of the study is the systematisation and generalisation of psychological knowledge about the phenomena of readiness for risk and rationality in the decision-making system of law enforcement officers, and the substantiation of subjective rationality and readiness for risk among representatives of law enforcement activities at various stages of professional activity in the decision-making process, based on empirical data obtained as a result of research in the framework of the dissertation work.

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Conflict of Interest

None.

Limitations of the study

The authors used a sample of law enforcement officers from one region and only a few variables. The uniformity of the study sample was relatively high, since it included law enforcement officers from different departments. Further studies may further confirm these results in a more representative sample and a wider range of variables. Even in the field of professional activity, only certain aspects, such as experience, were considered, but other aspects, such as combat experience, should be taken into account in future research. Secondly, it is not convincing enough to draw causal conclusions from cross-sectional data. The conclusion about a causal relationship follows mainly from the theoretical conclusion of the study. In future research, it will be possible to use several methods to further test the causality of basic relationships in decision-making and trends in risk readiness, such as manipulating subjective values. The high correlation with vigilance suggests that future research should include more choice-related questions in the scale of professional expansion.

There are several problems regarding the specifics of risk phenomena and rationality in decision-making that require further study. For example, in addition to subjective forms of decision-making, there are many other cognitive variables that need to be considered and evaluated, in particular, self-efficacy can also influence the tendency to risk or rationality. In addition, previous studies have shown that the specifics of the subject area of risk styles are influenced by personality traits. People with a higher neuroticism score are likely to have completely different risk preferences in different areas. It is important to find out whether such traits affect the specifics of maximising decision-making styles.

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Ризик і суб'єктивна раціональність як чинники прийняття рішень у професійній діяльності поліцейських

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Анотація
Актуальність дослідження зумовлена недостатньою розробленістю проблеми формування здатності до прийняття рішень на етапі професійної підготовки та потребою в удосконаленні сучасної повсякденної практики майбутніх правоохоронців для забезпечення точності та своєчасності прийнятих рішень на тлі постійного зростання обсягу й складності інформації, що надходить. Мета дослідження полягала у визначенні концептуальних засад впливу суб'єктивної раціональності та готовності до ризику в системі прийняття рішень у професійній діяльності поліцейських. У статті використано метод порівняльного та кореляційного аналізу, статистичного аналізу первинних даних. За результатами дослідження встановлено значущі взаємозв'язки між факторами раціональності та ризику під час прийняття рішень у поліцейських у групах з різним рівнем досвіду та професіоналізму. Поточне дослідження зосереджено на внутрішньогрупових варіаціях максимізації ризику та використання раціональних рис, зокрема пильності, прокрастинації, уникнення та надпильності під час прийняття рішень. Надано пояснення цих психологічних феноменів за допомогою дослідження основної групи правоохоронців (n = 116), розділеної вибірки за критерієм досвідченості на практиці (n = 59, n = 57). Між групами з досвідом і без досвіду практичної роботи в правоохоронній діяльності виявлено значущу різницю та психологічну різність складової процесу прийняття рішень. Це надає можливість для подальшого розширення та напрацювання в цій сфері, визначення основного підходу до створення професійних навичок формування здатності до прийняття рішень у правоохоронців без практичного досвіду та закріплення основних навичок правоохоронців із практичним досвідом. Практична значущість статті полягає в перспективі розроблення психокорекційних програм і тренінгів, орієнтованих на різних працівників силових структур залежно від отриманого практичного досвіду й напряму діяльності. Матеріали дослідження може бути використано в процесі оптимізації освітнього процесу в професійних закладах

Ключові слова:
теорія ризиків; практичний досвід; пильність; стрес; прокрастинація

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Citizens' access to justice during the introduction and implementation of the legal regime of martial law in Ukraine

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Abstract
During times of martial law, access to justice may become limited. However, there exist generally accepted principles of international humanitarian law and European standards that mandate a state embroiled in conflict to safeguard human rights and access to judicial procedures. Hence, the issue of exercising the right to access justice is relevant. The purpose of this study was to investigate the functioning of the judicial system of Ukraine under martial law and its accessibility to citizens. The methodological framework of this study included the content analysis method, analytical, systemic and structural, dialectical, formal legal, and logical methods. The study examined the issues of access to justice under martial law in Ukraine, and the observance of all human and civil rights and freedoms guaranteed by the Constitution of Ukraine and other international instruments. The study focused on various decisions made by the authorities regarding the functioning of the judicial system of Ukraine: changes in the work of courts, restrictions on procedural guarantees and the conduct of certain categories of cases, redistribution of cases to courts that are closer to the territorial location and are likely to be safe, relocation of courts from the occupied territories or combat zones. Attention was focused on electronic document management and the work of the Electronic Court subsystem, etc. The study concluded that the judicial system of Ukraine did not cease to function; although access to justice during martial law may be restricted, it depends on a particular situation, the location of courts, legislation, and international obligations. The study focused on remote justice, which will ensure the proper safety of litigants and the quality of justice. The demand for remote court proceedings will grow over time, resulting in the modernisation of access to court. The practical significance of this study lies in outlining ways to improve the effectiveness of access to court in wartime conditions

Keywords:
constitutional rights; judicial system; judicial reform; digitalisation of justice; electronic document management; online conference

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Introduction

On 24 February 2022, the Russian Federation unjustifiably and criminally invaded the sovereign and integral territory of Ukraine, and the President of Ukraine declared martial law (Decree of the President of Ukraine No. 64/2022 dated 24.02.2022 "On the Introduction of Martial Law in Ukraine"[1], Law of Ukraine "On Approval of the Decree of the President of Ukraine "On the Introduction of Martial Law in Ukraine"[2]). According to Article 1 of the Law of Ukraine "On the Legal Regime of Martial Law"[3], martial law is a special legal regime introduced in Ukraine or in some of its regions as a result of armed aggression or threat of attack and provides state authorities, military bodies, and local self-government bodies with the powers necessary to avert the threat, repel armed aggression, and ensure national security. This paper states that it is possible to temporarily restrict constitutional rights and freedoms of a person and citizen and the rights and legitimate interests of legal entities, but the duration of these restrictions must be determined.

Therewith, the Constitution of Ukraine clearly defines the right of citizens to protect their legitimate rights, freedoms and interests by going to court, namely, parts 1, 2 of Article 55 guarantee the right of everyone to judicial protection, to appeal against decisions, actions or inaction of state authorities, local self-government bodies, officials, and employees in court[4]. That is why access to justice is a crucial factor in the exercise of this right. M. Smokovich (2022) emphasises that Ukraine's immediate obligation is to ensure these rights under any legal regime in the state (whether peaceful or martial law), and judicial protection of constitutional rights and freedoms under martial law is absolute. According to the Venice Commission's report, fair trial and access to it must be ensured by the state in all legal regimes, and the judicial system must not be compromised in any way (Alivisatos *et al*., 2020). However, at the same time, any interference by the authorities cannot violate the basic content of the right to judicial protection, and the circumstances of martial law should make laws and judicial practice flexible according to the new requirements (Savchyn, 2018).

The guarantors of access to justice are the Constitution of Ukraine (Articles 55, 124, 129)[5], the International Covenant on Civil and Political Rights (Article 14)[6], the Convention for the Protection of Human Rights and Fundamental Freedoms (Article 6)[7], the European Court of Human Rights (ECHR), and other international instruments ratified by Ukraine. N. Shelever (2022) notes that the right of access to court is not absolute and can be limited, but at the same time it has distinctive features in terms of the requirement to comply with certain rules.

A. Gerych (2022) focused on the problem of access to administrative justice under martial law. In this paper, the author considered the financial costs of the ECHR as an obstacle to access to justice and emphasised that courts should take all measures to ensure that the violated right to access to justice is restored. The issue of postponement and suspension of the proceedings is also an acute one. As pointed out by D. Moiseyenko (2022), the procedural codes of Ukraine do not contain particular information with special rules that would regulate these procedural relations under martial law. Therefore, the Ukrainian judicial system is forced to adapt to the current legislation. For instance, as described by A. Zavydniak (2022), to ensure the visibility and audibility of the parties to the proceedings during the court session, the Ukrainian government introduced videoconferencing during the administration of justice.

Thus, the main task during martial law is to ensure the maximum functioning of all its structures, compliance with the regulated norms and ensuring the exercise of all rights guaranteed by the Constitution of Ukraine. Therefore, investigating the issue of access to justice during martial law is extremely relevant. The purpose of this study was to analyse the effectiveness of the judicial system under martial law through the lens of accessibility for citizens and to identify some recommendations for improving its functioning under these conditions.

The objectives of this study were to systematise the opinions of experts on the effectiveness of the judicial system under the legal regime of martial law, to analyse the facts of the effectiveness and gaps in the judicial system as of 2023, and to outline the main areas for improving access to justice during martial law in Ukraine.

The methodological framework was chosen as follows. The study used the content analysis method to investigate the scientific works of scholars who have examined the issue of citizens' access to justice during the introduction and implementation of the martial law regime in Ukraine. The analytical method helped analyse

[1] Decree of the President of Ukraine No. 64/2022 "On the Introduction of Martial Law in Ukraine". (2022, February). Retrieved from https://www.president.gov.ua/documents/642022-41397.
[2] Law of Ukraine No. 2102-IX "On Approval of the Decree of the President of Ukraine "On the Introduction of Martial Law in Ukraine". (2022, February). Retrieved from https://zakon.rada.gov.ua/laws/show/2102-20#Text.
[3] Law of Ukraine No. 389-VIII "On the Legal Regime of Martial Law". (2015, May). Retrieved from https://zakon.rada.gov.ua/laws/show/389-19#Text.
[4] Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96%D0%B2%D1%80#Text.
[5] Ibidem, 1996.
[6] International Covenant No. 995_043 "On Civil and Political Rights". (1973, October). Retrieved from https://zakon.rada.gov.ua/laws/show/995_043#Text.
[7] Convention No. 995_004 "On the Protection of Human Rights and Fundamental Freedoms". (1997, July). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004#Text.

the problems of citizens' access to justice in Ukraine and scholars' proposals for solving these problems. The systemic and structural method was used to formulate a general approach to highlighting the problems of citizens' access to justice and to analyse the structural components of access to justice. The dialectical method was employed to examine the issue of access to justice through the lens of analysing the interconnection between absolute and relative legal relations. The formal legal method was used to analyse regulations. The author uses the logical method to determine the content and focus of the legislative provisions which regulate relations arising in the area of access to justice during martial law.

Systems for filing and storing electronic documents

Challenges to Ukrainian justice began long before 24 February 2022: the inability of courts to function in the occupied territories since 2014, quarantine restrictions since 2020. This accelerated the digitalisation of the judicial system, which was supposed to simplify the work of judges and facilitate access to justice for citizens. This is how the Unified Judicial Information and Telecommunication System (n.d.) (UJITS), the UJITS subsystem "Electronic Court", the Unified State Register of Court Decisions (n.d.), etc. came into operation. This made it possible to use secure servers to submit and store electronic documents, access the required case and decisions on it, take part in court hearings online, etc. The SJITS also automatically assigned court cases to judges. The main thing that citizens needed to register claims and supporting documents was to have a qualifying electronic signature (QES), the formation of which is regulated by the Law of Ukraine "On Electronic Trust Services"[1]. Some courts took part in the Model Courts and Convenient Court pilot projects, which aimed to simplify citizens' access to justice and strengthen their trust in Ukrainian justice. Even then, the focus was on access to justice. It guarantees the right of people to go to court to claim their rights, regardless of their economic, social, political, migration, racial, or ethnic status, or their religion, gender identity, or sexual orientation. Access to justice focuses on the ability of people to seek and receive remedies through formal or informal justice institutions and according to human rights standards. The requirements for effective access to justice include a legal framework, legal protection, legal awareness, knowledge, assistance and representation, access to justice, fair procedure and judgments, and enforceable decisions (Gutterman, 2022). I. Izarova (2022) also focused on the restoration of the judicial system in Ukraine, its modernisation and optimisation through the maximum prevention of duplication of powers between bodies and institutions and the efficient use of resources.

A. Zavydniak (2022) also tried to define the legal mechanism of access to justice under martial law. The scientist analysed the problems associated with limited access to justice that arose due to the imposition of martial law. The researcher identified problematic issues related to the use of electronic means to ensure access to administrative justice and highlighted the role of administrative justice in ensuring the rights and freedoms of individuals during martial law.

The beginning of 2022 still caused a collapse in the judicial system for many different reasons. O. Kaplina *et al*. (2022) described in their study that the beginning of the armed aggression of the Russian Federation against Ukraine completely paralysed the work of many courts due to the lack of a clear algorithm of actions for judges in war. The authors conclude that the existence of a military justice system and military courts as its subsystem is necessary for the judicial system to function without interruption under any legal regime of the state. The researchers took a thorough approach to the possible determination of the most optimal model of military justice for Ukraine by systematising existing models of military justice in the world and analysing the case law of the European Court of Human Rights in the administration of justice by military courts.

For instance, before the start of active hostilities, the High Qualification Commission of Judges of Ukraine (HQCJU) had not been functioning for more than three years, and the High Council of Justice of Ukraine (HCJU) resigned two days before the invasion. All key decisions and responsibility for them rested with the Council of Judges and the Chairperson of the Verkhovna Rada. Notably, the new HCJU was elected only in January 2023 (Digest of events..., 2023; The 19th extraordinary..., 2023; The Supreme Council..., 2023). It should be borne in mind that the Constitution of Ukraine[2] also stipulates that there are public authorities whose powers cannot be delegated to others. These are the head of state (Article 106(2)), as well as other institutions of state power, including the courts (Article 124(1) and (2)). At the same time, part 6 of Article 124 of the Constitution of Ukraine[3], part 4 of Article 26 of the Law of Ukraine "On the Legal Regime of Martial Law"[4] prohibits the establishment of emergency and special courts (including

[1] Law of Ukraine No. 2155-VIII "On Electronic Trust Services". (2017, October). Retrieved from https://zakon.rada.gov.ua/laws/show/2155-19#Text.
[2] Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96%D0%B2%D1%80#Text.
[3] Ibidem, 1996.
[4] Law of Ukraine No. 389-VIII "On the Legal Regime of Martial Law". (2015, May). Retrieved from https://zakon.rada.gov.ua/laws/show/389-19#Text.

military courts). Article 10 of the Law prohibits the termination of the functioning of any state body, including courts, while Article 2(2)[1] prohibits the reduction or acceleration of any form of legal proceedings. However, part 3 of Article 26[2] clearly defines the right to reallocate cases to existing courts or to relocate courts to safer locations. After all, it is the martial law justice system that allows citizens to achieve justice in a legal way (Gorbalinsky & Zadalya, 2022). O. Uhrynovska & A. Vitskar (2022) conducted a detailed analysis of the recommendations of the Council of Judges of Ukraine and the Chairman of the Verkhovna Rada regarding the specific features of the functioning of courts and the work of judges under martial law and focused on the features of civil proceedings with an emphasis on a particular procedural institution.

Despite the continuity of the judicial proceedings, the security standards for judges set out in paragraphs a, b, f, g of Article 5 of Law No. 3781-XII[3] on ensuring personal protection, security of housing and property, acquisition of weapons and other means of protection, moving to safer places, ensuring confidentiality of information about protected objects must first be implemented. In such a situation, the constitutional state institutions (the President of Ukraine, state bodies of the military and defence structure, executive, legislative, judicial authorities, etc.) must be as flexible, focused, purposeful, rational, and continuously effective as possible in making relevant management decisions and taking actions. A review of the websites of various courts found in the combat zone made it possible to conclude that the work was suspended mainly due to the evacuation of judges and their families to safer regions, voluntary mobilisation, removal of key documents, etc. In general, courts began to resume their work in late April.

Reports of the Chief Justice and the Council of Judges assure citizens of the continuous operation of court proceedings in Ukraine and access to justice through the UJITS. The following steps were taken to achieve this.

Since the High Council of Justice was not functioning, Law No. 2128-IX[4] was adopted, according to which the Chief Justice was given additional powers to appoint (without competition) and dismiss the Head of the State Judicial Administration, second judges to another court of the same level and speciality and terminate them early, as well as other decisions related to pressure on judges, the functioning of the Armed Forces of Ukraine (AFU), the publication of necessary public information, etc. This law should be extended for another 30 days after the end of martial law (Halka, 2022). Within the framework of the above, the Supreme Court relocated 122 courts (47 courts from the occupied territories and 75 from the combat zones).

The state of justice during the war

By Decree No. 64/2022 (para. 3)[5], the President of Ukraine determines that due to the need to introduce and implement measures of the martial law regime, some constitutional rights and freedoms of a person and citizen protected by Articles 30-34, 38, 39, 41-44, 53 of the Constitution of Ukraine, as well as some rights and legitimate interests of legal entities, may be restricted. Paragraph 7 refers to the notification of the UN Secretary-General and foreign officials of possible temporary restrictions on certain civil and political rights of individuals and citizens guaranteed by the obligations of the International Covenant on Civil and Political Rights.

Access to justice was changed pursuant to the requirements of martial law. Much attention is focused on war crimes, genocide, crimes against humanity and peace, and their recording for the purpose of compensation. It is recommended that administrative proceedings be used to document problems that threaten the continuous operation of critical infrastructure, cases that can be postponed without violating the rights of citizens, and that they be postponed, but this does not include criminal proceedings. Criminal justice is a priority even during martial law. Access to the Unified State Register of Court Decisions has been suspended.

To facilitate citizens' access to justice, it was allowed to submit and file case files electronically without the need for hard copies[6]. Participation in court hearings via videoconferencing by authenticating a person with an electronic signature (through the Unified State Demographic Register or per Articles 9 and 10 of the Law of Ukraine "On the Unified State Demographic Register and Documents Confirming Citizenship of Ukraine"[7]). At the same time, it should be remembered that the work of the court depends on the situation in the region where the court is located. Therefore, citizens should follow the updates published on court websites (Mysnyk, 2022).

[1] Law of Ukraine No. 389-VIII "On the Legal Regime of Martial Law". (2015, May). Retrieved from https://zakon.rada.gov.ua/laws/show/389-19#Text.
[2] Ibidem, 2015.
[3] Law of Ukraine No. 3781-XII "On State Protection of Court Employees and Law Enforcement Bodies". (1993, December). Retrieved from https://zakon.rada.gov.ua/laws/show/3781-12#Text.
[4] Law of Ukraine No. 2128-IX "On Amendments to Chapter XII "Final and Transitional Provisions" of the Law of Ukraine "On the Judiciary and the Status of Judges" on Ensuring the Stable Functioning of the Judiciary during the Absence of the High Council of Justice". (2022, March). Retrieved from https://zakon.rada.gov.ua/laws/show/2128-20#Text.
[5] Decree of the President of Ukraine No. 64/2022 "On the Introduction of Martial Law in Ukraine". (2022, February). Retrieved from https://www.president.gov.ua/documents/642022-41397.
[6] Administrative Judicial Code of Ukraine No. 2747-IV. (2005, July). Retrieved from https://zakon.rada.gov.ua/laws/show/2747-15#Text.
[7] Law of Ukraine No. 5492-VI "On the Unified State Demographic Register and Documents Confirming Ukrainian Citizenship". (2012, November). Retrieved from https://zakon.rada.gov.ua/laws/show/5492-17#Text.

For instance, the Venice Commission, in its 2020 opinion on the observance of the principles of democracy, human rights and the rule of law in states of emergency (i.e., in the given case, war), defines the fundamental principles of the rule of law (e.g., how the existence of a state of emergency is based on the dichotomy between the norm (the normal state) and the exception) (Alivisatos *et al*., 2020). In this regard, the Venice Commission stated that "the notion of a state of emergency is based precisely on the assumption that in particular political, military, or economic emergencies, the system of constitutional limitations on government must give way to an increase in executive powers". However, even in a state of emergency, the fundamental principle of the rule of law should prevail. The Commission's compilation of works in this area serves as a guide to the Commission's particular findings (Alivisatos *et al*., 2020).

As of 2023, 587 courts administer justice in Ukraine, while 171 courts do not administer justice (87 due to active hostilities or location on the temporarily occupied territory, 84 since 2014) (Monich, 2023a). In terms of property, 13 buildings were completely destroyed, 86 have varying degrees of destruction, and servers and documents from courts under enemy occupation were also lost. Kherson region is currently an unresolved issue. The Head of the Council of Judges of Ukraine B. Monich (2023b) also announced the methods used to solve the problem of having the required number of judges (as more than 500 of them went abroad, many of them serve in the Armed Forces, so the issue of staff shortage arose): a statistical analysis of cases considered by particular courts was made, which revealed an uneven workload for some courts. Therefore, based on these statistics, the Council of Judges of Ukraine launched the so-called court optimisation process, which involved determining the maximum number of judges in courts according to the number of cases coming for consideration.

It is worth recalling here that the main position of the ECHR is access to justice as an integral element of the right to a fair trial. In this regard, P.D. Guivan (2019) notes that the Convention is not a guarantor of theoretical or illusory rights, but of rights that are practically realised. That is, access to justice and fair trial should be free of additional aggravating elements. When analysing the ECHR reporting information and comparing it with the reporting of the Ukrainian judiciary, a dissonance arises, as fully implemented access to justice cannot lead to such many recorded claims of human rights violations. Even considering the lack of electricity and the Internet, difficulties in using the E-Court subsystem, and the lack of public awareness of the digitalisation of justice, the reported cases still go beyond the above difficulties.

In 2022, the ECHR recorded about 10,400 registered applications against Ukraine, of which 144 were accepted (Lubinets, 2022). The most common violations noted in the decisions are violations of the right to a fair trial, as well as procedural rights in pre-trial investigations; restrictions on the right to obtain proper enforcement of court decisions, as well as access to them; violations of the time limit for court hearings, and delays in them (The rule of law..., 2022). There have also been cases of abuse of power by the Chief Justice (lack of transparency in appointments, transfers, recall of judges, their certification, etc.). The judicial system in 2022 was negatively affected by the absence of the HCJU, as well as, according to O. Drozdov (2020), the HQCJU, which was ill-consideredly disbanded by the judicial reform. The head of the Committee on Free Legal Aid of the Ukrainian National Bar Association argues that the judicial reform has steered Ukrainian justice away from European standards of judicial independence, which is clearly unacceptable.

Although the High Council of Justice resumed its work in 2023, it will not be able to consider citizens' complaints for another 6 months, and as of the end of March 2023, according to H. Usyk, there were about 9,000 of them (Mikhailov, 2023). The ECHR also draws attention to the consideration of cases of minors in temporary detention facilities who are still awaiting a court decision. There are also complaints about violations of the official duties of individual judges. The head of the High Council of Justice (HCJ), H. Usyk, also claims that the level of trust in the court and the HCJ has significantly decreased among the population, and the head believes that the main reason for this is understaffing and insufficient financial support, and non-enforcement of court decisions (Gamskyi, 2023).

As of 30.03.2023, the HCJ dismissed 105 judges on general grounds (96 judges resigned, 9 judges resigned of their own free will) (Mikhailov, 2023). These and other existing problems state the fact that the judicial system is operating and attempting to function and implement accessibility through digitalisation. Nevertheless, violations are still recorded, which are primarily related to the human factor, possibly incompetence of judicial officers, abuse of power, and gaps in Ukrainian legislation. This problem really needs to be addressed immediately.

Analysing the above information, it is worth paying special attention to the transparency of the judicial system of Ukraine to restore public confidence in it, especially considering the events currently unfolding in the Supreme Court of Ukraine. In addition, to facilitate access to justice for Ukrainian citizens, wherever they are currently located. All this can be achieved through the adoption of the necessary draft laws that would make the judicial system more flexible under martial law and comply with international standards of justice.

It is also worth paying attention to public education on the use of the UJITS platform, as well as the development of applications or bots to obtain information on the territorial location of a particular court. The

existing problems can be fully resolved by being on the side of the law within the framework of martial law. The abstract level of trust of Ukrainian society in the judiciary is somewhat lower than the assessments based on the experience of interaction. In other words, 62% of citizens and 68% of internally displaced persons (IDPs) had a positive experience with the courts, but only 58% of the population and 60% of IDPs have confidence in the courts themselves. Other sources indicate that 12% are convinced that they will receive a fair decision, and 46% rather believe in it. The level of trust in courts among IDPs is similar to that of the general population, but less critical (15% believe in a fair decision, 46% rather believe in it). Distrust is observed among a third of citizens (10% do not believe in the possibility of reaching a fair decision at all, 24% rather do not believe in it) (Availability of legal..., 2023).

As of 2023, Ukraine's situation calls for unusual solutions and ideas to ensure access to court for participants. All structural elements of the judicial system should resolutely and promptly address all challenges faced by the judicial system on the way to implementing e-justice. In such circumstances, excessive formalism damages the credibility of the judiciary, which should protect the interests of citizens regardless of the circumstances (Tatulich, 2022). All necessary and comfortable conditions should be created for the parties to the litigation to ensure a high-quality and efficient dispute resolution and judicial proceedings. The martial law introduced in Ukraine, despite its limitations and negative consequences, has become an impetus for the digitalisation of justice and the introduction of completely new procedures for Ukrainian society aimed specifically at protecting the rights, freedoms and security of participants in court proceedings.

Access to justice during martial law in Ukraine

Many scholars have begun investigating the access to justice during martial law in Ukraine. V. Gorbalinsky and D. Zadalya (2022) argue that the introduction of martial law in Ukraine should not have suspended the work of courts, as recent events (occupied territories since 2014, quarantine restrictions) should have already prepared them for remote work. The authors analysed the legal regulation of access to justice during martial law in Ukraine and investigated organisational problems in this area.

To identify and eliminate possible regulatory and procedural obstacles (gaps) in the justice sector, Smokovich (2022) analysed the current procedural legislation, the "draft regulatory package" on the activities of courts and judges during martial law. The participant of the Justice in the Context of Sustainable Development project also focused on the restoration of the judicial system in Ukraine, its modernisation and optimisation through the maximum prevention of duplication of powers between bodies and institutions and the efficient use of resources (Izarova, 2022).

Yu. Prytyka *et al*. (2022) investigated the consequences of Russia's armed attack on Ukraine, the need to introduce a suitable legal regime in such areas as the exercise of property rights, administration of justice, enforcement of court decisions, and labour relations. Particular attention was paid to the legal regulation of enforcement proceedings in the occupied Ukrainian territories during 2014-2022 by researchers O. Uhrynovska & N. Slyvar (2022). D. Moiseyenko (2022), studying access to civil proceedings under martial law in Ukraine, concluded that, in general, the judicial system of Ukraine managed to maintain its functionality and administration of justice, but the researcher considers this not a successful procedural law, but a lucky break.

N. Shelever (2022) investigated access to court in the context of martial law and the COVID-19 pandemic as a constitutional right and its observance in such emergency conditions. The researcher argues that the concept "fair trial" cannot exist without ensuring equal access to it. Access to justice means both access to the court and its decisions. The restrictions imposed by the legislation on access to court during martial law are only a deterrent mechanism to protect the courts from unscrupulous plaintiffs.

O. Pryvidentsev (2022) also studied the issue of conducting civil proceedings under martial law, paying attention to theoretical, legal, organisational, and procedural features. A. Gerych (2022) focused on the problem of access to administrative justice under martial law. In this paper, the author discussed the financial costs of the ECHR as a potential impediment to access to justice and stressed the importance for courts to take all necessary steps to guarantee the restoration of the right to access to justice.

The authors are confident that in practice, the legislation will be successfully and judiciously applied, the technical support of the courts will improve, and, ultimately, the provisions of the legislation will be effectively implemented to consolidate the peculiarities of the judicial process even under martial law.

The results presented in this paper reflect the opinions of most researchers that there is an insufficient legal foundation for regulating access to justice during martial law. Therewith, scholars state that the judicial system of Ukraine has not stopped functioning.

The state, as the guarantor of the rights and freedoms of citizens, must implement the main substantive aspect of the concept of access to justice. Every person is entitled to a court hearing, which provides for the following algorithm: the right to seek protection in court, the right to hear the case, and the right to receive a decision. This right should be exercised without restrictions, obstacles, or complications (Bernaziuk, 2018). Access to justice is defined as a cross-cutting right that should be understood and interpreted according to

other principles, such as equality before the law, and that secures and enhances other rights. Therefore, this situation in Ukraine requires a proper investigation of the realities and trends in the implementation of judicial proceedings, its accessibility to citizens, as this will allow for the urgent restoration or recognition of violated or unrecognised rights (Moiseyenko, 2022).

New legislative initiatives should simplify the procedural elements of legal proceedings and adapt the legal framework to any requirements and conditions (Pryvidentsev, 2022). Given the considerable opportunities of the 21st century (scientific, information and technological), access to justice and the administration of justice cannot be limited. Apart from the existing laws and amendments to them, procedural codes also need to be updated. Many researchers emphasise the need to improve procedural legislation. D. Moiseyenko (2022) proposes to supplement the procedural code with a special section that would regulate the procedure for legal proceedings in special conditions, which include both the state of emergency and martial law. When conducting civil proceedings under martial law/emergency, the author suggests considering several aspects that require attention: access to open registers is not an urgent need, i.e., the principle of openness may be somewhat limited; introduction of additional notification mechanisms for case participants and simplification of mechanisms for reopening cases.

M. Smokovich (2022) specifies design and legislative proposals for procedural codes. It is necessary to regulate the organisation and holding of meetings of judges under martial law or a state of emergency, including through remote participation. A streamlined procedure for the distribution of court cases is needed when it is objectively impossible to apply automated determination of the court composition for a particular case. It is important to develop an organisational and procedural form of participation of litigants in videoconferencing outside court premises using personal technical means and to enable judges to participate remotely in court hearings via videoconference using personal technical means.

Therewith, Qualified Electronic Signature (QES) and Electronic Digital Signature (EDS) may confirm such participation of judges, according to the Law of Ukraine "On Electronic Trust Services"[1]; ensuring the possibility of considering any court cases in simplified action proceedings at the written request of all parties to the trial, etc. These legislative proposals have been thoroughly discussed by members of parliament, judges, court staff, academics, lawyers, and other stakeholders, but have so far been rejected by parliament. M. Smokovich (2022) emphasises that such a decision could cause irreparable damage to the judicial system of Ukraine.

It is also worth remembering about postponed cases or those that have missed their deadlines. In such a demanding situation, the judicial system should be on the side of the plaintiff. A. Gerych (2022) proposes to renew administrative cases automatically, without having to draw up all the documents anew. N. Shelever (2022) recommends that court fees should be waived for those plaintiffs who suffered from war. Otherwise, due to lack of funds, such applicants will be deprived of the right of access to justice, which is unacceptable.

Furthermore, the researchers' emphasis on the issue of digitalisation of judicial proceedings is important. A. Zavydniak (2022) argues that to realise the right of citizens to access justice during martial law, it is necessary to introduce elements of e-governance into the judicial system. This will help not to postpone cases until the end of martial law, but to resolve them remotely, as administrative jurisdiction must also function.

Given the above, it can be argued that access to justice in Ukraine is associated with numerous issues that need to be addressed to prevent violations of human rights. It was found that access to justice can be improved by digitalising court proceedings, regulating the organisation and holding of meetings of judges under martial law or a state of emergency, and supplementing the procedural codes with a special section that would regulate the procedure for court proceedings in special conditions, including both martial law and martial law.

Thus, all the researchers whose opinions are analysed in this paper argue that Ukraine's legal and regulatory framework needs to be amended. These changes could have fully taken place even during the state of emergency caused by the COVID-19 pandemic, and that martial law should finally transform the judicial system.

Conclusions

Summarising this study, the purpose set at the beginning of the study has been fulfilled at this stage. Having systematised the opinions of scholars, it was confirmed that the judicial system of Ukraine did not cease to function under the legal regime of martial law, and judges performed their duties to the best of their ability. The primary task of the state was to preserve life, as this right is natural and indisputable. Therefore, the focus was on the safety of judges and other participants in court proceedings. Thanks to the UJITS, the E-Court subsystem, and the fact that it was not necessary to attach paper copies to the case, individuals and legal entities were able to file electronic documents and take part in online hearings, if technical capabilities and martial law conditions allowed. At the same time, the right to justice was somewhat limited due to the martial law regime. This is evidenced by numerous claims filed by Ukrainian citizens with the ECHR. The postponement of the consideration of cases

[1] Law of Ukraine No. 2155-VIII "On Electronic Trust Services". (2017, October). Retrieved from https://zakon.rada.gov.ua/laws/show/2155-19#Text.

until the end of martial law is unfavourable for the plaintiffs unless these cases are on the list of urgent cases. Some violations by members of the judiciary and lack of awareness on the part of citizens were also revealed. It was stated that, on the one hand, the judicial system of Ukraine needs to be reformed to acquire soft skills, flexibility, and accessibility for all citizens of Ukraine. On the other hand, justice operates within the framework of the current legislation of the state, and therefore the latter needs to be immediately reviewed and amended.

In the future, it is important to develop particular areas of improving access to justice that will yield results when applied in practice. This study should be continued with an overview of changes in access to justice as of 2023, and a comparative analysis with 2022. In addition, an indicator of a positive or negative variable should be derived, according to which new recommendations can be given on the observance of the right of access to justice regardless of any state of the country.

This study is the first to systematise all studies and generalisations of a large body of information and scholarly opinions on the accessibility of justice during martial law in Ukraine and to identify the main areas for its improvement.

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Conflict of interest

The authors of this study declare no conflict of interest.

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Доступ громадян до правосуддя під час запровадження та здійснення правового режиму воєнного стану в Україні

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Анотація
Під час воєнного стану доступ до правосуддя може бути обмежений, однак є загальноприйняті принципи міжнародного гуманітарного права, європейські стандарти, які покладають обов'язок на державу, що знаходиться в конфлікті, забезпечувати захист прав людини й доступ до судових процедур, тому актуальним є питання реалізації права на доступ до судочинства. Метою роботи є дослідження питання функціонування судової системи України в умовах воєнного стану, її доступності для громадян. Методологічне підґрунтя статті становлять метод контент-аналізу, аналітичний, системно-структурний, діалектичний, формально-юридичний та логічний методи. У статті розглянуто питання доступності до правосуддя в умовах воєнного стану в Україні, дотримання всіх прав і свобод людини та громадянина, гарантованих Конституцією України й іншими міжнародними актами. У дослідженні акцентовано на прийнятті владою різних рішень щодо функціонування судової системи України: зміна в роботі судів, обмеження в процесуальних гарантіях і провадженні деяких категорій справ, перерозподіл справ у ближні територіально суди, що знаходяться у ймовірній безпеці, перенесення судів з окупованих територій або зон бойових дій; увагу зосереджено на електронному документообігу та роботі підсистеми «Електронний суд» тощо. Сформульовано висновки, що судова система України не припиняла функціонувати; попри те, що доступ до правосуддя під час воєнного стану може бути обмежений, однак усе залежить від конкретної ситуації, місця розташування судів, законодавства й міжнародних зобов'язань. У дослідженні акцентовано на дистанційному правосудді, яке забезпечить належну безпеку учасників судового процесу та якість ведення правосуддя. Попит на дистанційне судочинство буде зростати з плином часу, унаслідок чого відбудеться модернізація доступу до суду. Практична значущість цього дослідження полягає в окресленні шляхів підвищення ефективності доступу до суду в умовах війни

Ключові слова:
конституційні права; судова система; судова реформа; цифровізація судочинства; електронний документообіг; онлайн-конференція

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Offences in the sphere of virtual assets turnover and analysis of their qualification

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Abstract
With the advent of new forms of interaction, virtual goods and services, a new field for committing offences in the field of virtual assets turnover is emerging. This encourages scientists and law enforcement agencies to actively research this area and develop effective mechanisms to respond to emerging challenges that have not yet been properly reflected in legislation. The purpose of this study was to explore the issue in depth by analysing specific offences related to virtual assets, including but not limited to theft, fraud, corruption, and tax evasion. The methods of scientific cognition employed for the study include analysis of legal regulation, modelling methods, analogies, systemic and structural, comparative legal, as well as methods of scientific abstraction and generalisation. Based on the results of the study, the study identified the main types of offences in the field of virtual assets and unifies them. The study identified the shortcomings in the current legal regulation that contribute to these problems. Proposals were formulated for amendments to the Criminal Code of Ukraine regarding the qualification of new types of offences committed in the field of virtual assets turnover based on research of current trends, international practices, and analysis of the current state of Ukrainian legislation. The study also showed that the available legal instruments often fail to ensure adequate detection and prosecution of new forms of offences, which makes it necessary to reform legislation to adapt to the current dynamic environment. The practical significance of this study was to identify the current problems of legal regulation of the circulation of virtual assets, and to develop recommendations for improving the qualification of offences in this area

Keywords:
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Introduction

The problem of offences in the field of virtual assets is truly relevant in the modern world. The growing popularity of cryptocurrencies, blockchain technologies, and other decentralised networks leads to an increase in the number of offences committed in this area, where virtual assets can be both the means and the subject of such offences. The study of such offences is important for both practical applications and scientific research. Given that virtual assets are a new dimension in the life of Ukraine, which is not yet fully understood and developed, this leads to the fact that the methods of detecting and investigating offences in the field of circulation of such assets are still evolving and are not yet as effective as conventional methods of detecting offences. The absence of an effective system for detecting, investigating, and preventing such offences may lead to a lack of trust in virtual assets as tools for preserving and transferring value. The solution to this problem is only now becoming the subject of scientific research in various fields, including law, information security, economics, etc.

When reviewing global practice and trends in combating offences arising in the field of virtual assets, some international scholars or research teams have focused their efforts on investigating this topic. However, although they considered specific categories of offences, there is no comprehensive analysis and systematisation of the main groups of such offences, accompanied by proposals for modifying the current criminal legislation. This issue was discussed in the context of money laundering through virtual assets in B. Sanz-Bas *et al*. (2021), which identifies the close interaction between money laundering and cryptocurrencies, focusing on the use of these mechanisms by criminal organisations to legalise illicit funds. In another paper, A. Thommandru & B. Chakka (2022) discuss the problem of money laundering through virtual assets, but from the perspective of over-regulation. The authors note that a crypto asset market in need of regulation may suffer from excessive legal interference, which may encourage investors to seek more lenient jurisdictions, such as Asian markets. Another work is devoted exclusively to the financing of terrorism.

The authors D.-S. Cynthia *et al*. (2019) point out that the transition to innovative "fintech" solutions from traditional financial systems can significantly change counterterrorism financing strategies, despite current exaggerations about the role of cryptocurrencies in supporting terrorist organisations. In addition, the authors A. Trozze *et al*. (2022) emphasise that research into future challenges and potential scenarios arising from cryptocurrency fraud is still in its infancy, despite the rapid development in this area, both in terms of volume and scale. H.S. Zaytoun (2019) points out that the anonymity of crypto asset hijackers poses a major challenge for law enforcement agencies, which must spend significant resources to track down the attackers, especially considering new blockchain technologies that enhance this anonymity. V.V. Kovtun (2021) investigated the legal aspects of the circulation of virtual assets and contributed to the development of this topic in Ukraine.

Thus, as the above analysis suggests, researchers are focused on studying very particular areas such as money laundering through virtual assets, terrorist financing through such assets, etc. However, there has been no comprehensive investigation of diverse types of offences in the field of virtual assets turnover, so this paper is devoted to this area. The purpose of this study was to analyse various offences in the field of virtual asset trafficking to develop effective strategies to counteract them, improve their qualifications for legal regulation and protection from crime, and promote understanding of the technical aspects of decentralised networks for non-technical specialists.

During the study, both general scientific and special legal research methods were used. The modelling method was used to understand complex objects, processes, and relations connected to the turnover of virtual assets using other similar methods, which helped find the necessary ideas and options for solving the tasks. The method of analogy to establish similarity, equivalence of objects, processes, relations to establish other ones under study; the method of forecasting to improve counteraction and prevention of offences related to the turnover of virtual assets. The systemic-structural method was used to enable consideration of the criminal law characteristics of virtual assets as a whole and each element separately, as well as the interrelationships between them, their patterns, which helped identify problem areas and the means and methods of overcoming them. The author also used the formal legal method to clarify the essence, nature, and significance of objects, processes, and relations concerning the turnover of virtual assets in their connection with other processes.

Analysis of the issues and global trends in offences in the field of virtual assets turnover

Analysing the global practice and global trends in combating offences related to the turnover of virtual assets, several general trends in illegal activities can be identified related to the turnover of virtual assets. The main violations are fraud, theft, extortion, money laundering, tax evasion, smuggling, bribery, use of cryptocurrency in the shadow economy for the circulation of illegal products: weapons, drugs, human trafficking, etc. (in this case, cryptocurrency will be a means rather than an object); other offences, including various attacks in decentralised networks.

According to senior forensic experts K.S. Dmitrieva & O.V. Ivanova (2021), in criminal proceedings, offences committed with cryptocurrency include, first of all,

theft, fraud, corruption offences, as well as offences in the field of computer information. A survey conducted by Hartford Steam Boiler (HSB), a leading cyber insurance provider and part of the large German reinsurer Munich Re, found that 36% of small and medium-sized businesses in the United States accept bitcoin. Furthermore, there are large international corporations that also accept cryptocurrencies as payment, including technology corporations, retailers, restaurant chains, airlines, etc. (36% of SMEs accept..., 2020; Cryptocurrency financial crime..., 2022).

At the same time, the growing popularity of the benefits offered by cryptocurrencies has not gone unnoticed by criminals and entire criminal organisations. Criminals use cryptocurrencies such as bitcoin for a variety of purposes, including money laundering, extortion of funds from victims, defrauding investors, monetising ransomware, or purchasing illegal goods. For many years, intelligence reports have provided information that well-known terrorist organisations such as ISIS or al-Qaeda have used cryptocurrencies to obtain funding. In fact, the sale of illegal drugs and other types of lawbreaking on the so-called dark markets and payment for them with cryptocurrencies have increased dramatically since 2017 over the past few years (Risks of terrorism..., 2017).

According to the organisation, which tracks every bitcoin transaction and advises several government agencies, the amount of cryptocurrency spent on these dark markets increased by 60% to reach a new high of $601 million in the last quarter of 2019 (Cryptocurrency financial crime..., 2022). Even in the absence or insufficiency of regulation of the circulation of virtual assets, and until the Law of Ukraine "On Virtual Assets"[1] comes into force, these assets must meet all the features of someone else's property as the subject of property crimes. Thus, since virtual assets, according to the said law, are considered to be an intangible good that is an object of civil rights and has a value, they can be considered as the subject of property crimes, as they have the characteristics of property, which includes the right to own, use, and dispose of it. These signs can be proved, for example, through the existence of a corresponding account on a crypto exchange where cryptocurrency assets are stored or through the existence of a corresponding crypto wallet as an electronic or physical medium. Thus, in case of an offence involving virtual assets, all legal requirements relating to property offences should be followed in order to prove ownership and establish damages.

According to the provisions of Part 1 of Article 1 of the Criminal Code of Ukraine, the Criminal Code of Ukraine[2] is aimed at ensuring the protection of human and civil rights and freedoms, property, public order and public safety, the environment, the constitutional order of Ukraine from criminal offences, ensuring peace and security of mankind, as well as preventing criminal offences. To fulfil this task, part 2 of Article 1 of the Criminal Code of Ukraine defines which socially dangerous acts are criminal offences and what penalties are applied to the perpetrators[3].

As M.I. Panov (2019) points out, an adequate definition of the type of offence and its differentiation from others has a significant practical effect, which is manifested not only in the effective protection of public relations, but in the protection of the rights of persons who have committed the relevant violations. Decisive decisions on this extremely important practical issue are based on the general concept of a criminal offence, which includes not only the general features inherent in any violation, but special features that distinguish this offence from others. Among these features, one should consider criminal legality and social danger, which are innate characteristics of this offence and distinguish it from others. Therefore, it is necessary to determine what types of offences exist in the field of virtual assets.

Theft of virtual assets as a criminal offence

Unlike conventional money, virtual assets are not subject to centralised regulation. This brings some advantages for some holders of such assets, such as free, unregulated circulation, but also comes with certain disadvantages. Virtual assets can be stolen both in the blockchain itself, e.g., in decentralised networks, through diverse types of attacks or fraud, and from crypto wallets or crypto exchange accounts. For example, if virtual assets are stolen in the blockchain itself, it is impossible to cancel the transaction and return them.

Another way to steal virtual assets is to steal them from victims' wallets. If it is an electronic wallet, this is done, for example, by setting a PIN to the account or stealing the personal keys of such persons, including by downloading malware to computers or through social engineering. In the latter case, it can already be qualified as fraud. If it is a physical wallet, then such virtual assets are stolen along with the media. In society, it is not uncommon for such thefts to take place by law enforcement agencies during searches. For example, in 2017, the founder of a specialised cryptocurrency publication, A. Kaplan, had his cryptocurrency stolen during searches conducted by security forces. During the investigation, the Security Service of Ukraine (SSU) seized devices with cryptocurrency stored on them, a laptop and personal belongings at Kaplan's home in Odesa. According to the founder, during the search, one

[1] Law of Ukraine No. 2074-IX "On Virtual Assets". (2022, February). Retrieved from https://zakon.rada.gov.ua/laws/show/2074-20#Text.
[2] Criminal Code of Ukraine No. 2341-III. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[3] Ibidem, 2001.

of the special service officers tried to transfer Kaplan's cryptocurrency to his wallet, but the lawyer stopped this attempt by threatening to go to the police. However, the next day, all the Ethereum coins were transferred from the entrepreneur's cryptocurrency wallet to an unknown address, which, according to the founder, belonged to an SSU employee (Zavalniuk, 2023).

Thus, in the case of theft of virtual assets, the very object of theft is such virtual assets. However, with regard to the qualification of such offences, while in the case of theft of fiat money, law enforcement officers have no difficulty in their legal assessment, in the case of theft of virtual assets, the question arises as to the correct qualification of such offences, due to the lack of a legislative definition of their status, the absence of relevant articles in the criminal law, and the increasing number of criminal acts in this area.

In the current Criminal Code, liability for crimes against property is prescribed in Section VI "Crimes against Property" of its Special Part (Articles 185-191)[1]. The legal provision established in one of the sections of the Special Part of the Criminal Code guarantees all owners the same level of protection of their property rights against any encroachment, regardless of the form of this property, according to the requirements of the Constitution of Ukraine and national legislation. When qualifying crimes against property, the object plays a significant role. It may be someone else's property with a certain material value that is alien to the person guilty of the crime (e.g., movable and immovable property, cash, precious metals, securities, etc.), as well as the right to property and actions related to property, including the supply of electricity and heat (subpara. 1, para. 2 of the Resolution of the Plenum of the Supreme Court of Ukraine "On judicial practice in cases of crimes against property" of 6 November 2009, No. 10)[2].

Virtual assets that can be recognised as property by their characteristics may be subject to theft and fall under the relevant qualification of the article of the Criminal Code of Ukraine (Classification of crimes..., 2016). Given the above, as well as the fact that virtual assets can be defined as property by physical, legal, and economic characteristics, the theft of virtual assets can be qualified under Article 185 of the Criminal Code of Ukraine (Secret appropriation of another's property (theft))[3]. Another prominent issue is establishing the loss, as virtual assets, specifically cryptocurrencies, are highly volatile. The number of cryptocurrencies as of the beginning of March 2023 is about 23,000 distinct types (All cryptocurrencies, 2023). Each has its own exchange rate against the others, as well as the fiat currency. In general, the price of a cryptocurrency unit is determined by a social contract, i.e., people have agreed that a certain type of cryptocurrency has a certain value, there is a demand and a certain supply, and it exists as long as people will pay with it. If the cryptocurrency has been stolen, the law enforcement practice should be based on the principle of establishing damages.

Use of virtual assets for fraud and the purchase and sale of illicit goods

Marketplaces located in the darknet, using a separate set of Internet protocols, function as black markets where both illegal goods and legal products are sold. The darknet is used both through Internet browsers and through various software and mobile applications. For instance, DarkWallet is an app that prioritises anonymity. It uses various methods to protect user IDs and combines data from several synchronous transactions when making a payment, making it impossible to track account activity. Paying with cryptocurrency, one can buy more than just goods on the darknet. Darknet enables various operations, such as access to databases or confidential information, personal information about people, banking secrecy, forged documents, as well as cyberattack and terrorist services, hiring assassins (agreement on the physical elimination of a person), trafficking in human organs, narcotic and psychotropic substances, weapons, child pornography, counterfeit goods, information about social media accounts (including logins and passwords) (Hrebenkova, 2021).

The qualification of these offences depends on the particular features of a particular offence and their compliance with the provisions of the Criminal Code of Ukraine (CCU), which prescribe liability for such offences. For instance, Art. 199 of the CCU (Production, storage, acquisition, transportation, shipment, importation into Ukraine for use in the sale of goods, sale of counterfeit money, government securities existing in paper form, state lottery tickets, excise tax stamps or holographic security elements)[4] and Art. 204 of the CCU (Illegal production, storage, sale or transportation for sale of excisable goods)[5].

Y.P. Kalaida (2021) notes that there is another type of crime committed using cryptocurrency, and these are crimes against property, where the cryptocurrency itself becomes the object of the encroachment. Criminals who steal cryptocurrencies use fake e-wallets. Victims, when making purchases of goods or services on popular platforms, transfer funds to phishing wallets using viruses that have different addresses from the original ones. The creation of phishing sites of popular online

[1] Criminal Code of Ukraine No. 2341-III. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[2] Decision of the Plenum 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] Criminal Code of Ukraine No. 2341-III. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[4] Ibidem, 2001.
[5] Ibidem, 2001.

resources can also be used. The use of cryptocurrencies in fraudulent schemes is also evident in crowdfunding projects. The development of a new model of collective investment has led to the emergence of fraudsters who collect money in cryptocurrencies from victims without intending to engage in business activities.

A common form of fraud is the pump and dump scheme in the context of cryptocurrencies (Nghiem *et al*., 2021). Pump-and-dump is a type of fraud where fraudsters act to lure unsuspecting traders into buying cryptocurrency at an artificially high price (pump) and then quickly selling their previous assets for a profit (dump). The anatomy of a pump-and-dump scheme typically involves abnormally high price and volume peaks in a particular cryptocurrency or coin, followed by sharp drops over very short periods of time, usually within minutes. The organisers of these schemes use social media platforms to engage their followers and communicate with them about the timing of upcoming pumps, as well as the performance of past pumps.

Phishing

Phishing is a form of cyberattack where attackers masquerade as well-known organisations or companies to steal personal data, such as credit card information, usernames, passwords, etc. Using psychological techniques and relying on human error rather than technical vulnerabilities, phishing is a social engineering technique. The level of user awareness of modern threats is quite low, and fraudsters take advantage of this – the ignorance of many users towards basic network security rules. According to IT experts, the weakest link in the security of any organisation is the average user, their lack of awareness, inattention, and, sometimes, simple curiosity (Demidov & Kolmyk, 2020).

Fraud involving cryptocurrencies, such as counterfeiting during sales, exchanges for fiat currency and other financial transactions, is a generic form of criminal activity. The recognition of cryptocurrencies as the object of criminal offences is a major step towards ensuring proper legal protection of ownership of these digital assets. In this regard, it is proposed to include cryptocurrency in the scope of criminal liability, as well as to consider the possibility of recognising it as the subject of certain criminal offences, depending on the specific criminal acts. Implementation of these measures requires proper legislative regulation of cryptocurrency relations and consideration of the specifics of the digital sphere, which will allow for effective combating of criminal activities related to cryptocurrency. In this regard, the position of V.V. Kovtun (2021) can be supported that before introducing cryptocurrency into civil circulation, it is necessary to recognise it as "property" in the context of the civil legislation of Ukraine, which will serve as the basis for further criminalisation of illegal actions with cryptocurrency. Prior to the entry into force of the Law of Ukraine "On Virtual Assets"[1], virtual assets may be treated in law enforcement and judicial practice as other property, and their theft should be qualified as theft of another's property. These offences can be classified under Article 190 of the Criminal Code[2]. If actions such as cryptocurrency phishing are prescribed, Article 362 of the Criminal Code[3] is also the correct qualification. It is also subject to Article 363-1 of the Criminal Code[4].

Corruption offences and tax evasion

Although virtual assets are not yet regulated by the Law on Virtual Assets[5] in the context of property rights and obligations, such assets, if accepted by an official as a reward for official actions or inaction, may be equated to the concept of "unlawful benefit" in the criminal law sense. The use of such assets may result in the acquisition of certain property rights that may be converted into cash in the future. In this regard, the transfer of virtual assets as a bribe may be qualified as an element of the objective side of criminal offences related to the provision or receipt of unlawful benefit. Even if the property is not included in civil circulation, it may be the subject of an unlawful benefit. The acceptance of an unlawful benefit in the form of virtual assets by an official performing an action (or inaction) in office is considered to be unlawful from the moment such assets are received. This applies even if the official did not later cash in or use the virtual assets for payment. The mere existence of a corresponding electronic record in the distributed register is enough to constitute the offence. The ownership of virtual assets as a subject of unlawful benefit must be expressed in terms of value, so the official must receive a pecuniary benefit.

In Ukrainian society, some public officials practice declaring virtual assets that do not actually exist. Some experts believe that virtual assets can only serve as a hiding place for bribes. In 2020, 46,351 bitcoins were accrued in the declarations of civil servants. As of 5 April 2021, this is almost UAH 75 billion. Declarations were submitted by 791,872 officials, and 652 officials registered cryptocurrencies (Bitcoin in declarations..., 2022).

As for the qualification of offences related to obtaining unlawful benefit in the form of virtual assets, Articles 368-370 of the Criminal Code of Ukraine can be applied here[6]. In this part, one can agree with

[1] Law of Ukraine No. 2074-IX "On Virtual Assets". (2022, February). Retrieved from https://zakon.rada.gov.ua/laws/show/2074-20#Text.
[2] Criminal Code of Ukraine No. 2341-III. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[3] Ibidem, 2001.
[4] Ibidem, 2001.
[5] Law of Ukraine No. 2074-IX "On Virtual Assets". (2022, February). Retrieved from https://zakon.rada.gov.ua/laws/show/2074-20#Text.
[6] Criminal Code of Ukraine No. 2341-III. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.

F.F. Fedchyshina (2022), A. Rosen & D. Ramirez (2022) that corruption with the use of cryptocurrencies poses a challenge due to its novelty and insufficient research in the field of criminal activity. One of the challenges is the difficulty of tracking cryptocurrency movements. Furthermore, the ease and re-conversion of cryptocurrencies into other types and their significant price fluctuations over a brief period of time make them attractive to criminals. This feature of cryptocurrencies facilitates money laundering, as transactions are executed quickly and are not recorded by a centralised authority, as no such authority exists. Therefore, countries, including Ukraine, should consider adopting suitable legislation to overcome these challenges and obstacles.

N.K. Siddiki & R.O. Movchan (2018) point out that according to the National Bank of Ukraine (NBU), the Security Service of Ukraine (SSU) and the National Police of Ukraine (NPU), the lack of control over the circulation of cryptocurrencies and the anonymity of payments creates potential prerequisites for their use for money laundering, payment for goods prohibited for free circulation (drugs, weapons), and enables the financing of terrorism, especially in the occupied territories of Ukraine. However, due to the existence of a terrorist threat in Ukraine, the introduction of cryptocurrencies has its own specific features. According to a report by the International Financial Action Task Force on Money Laundering (FATF), an intergovernmental organisation that develops global standards for combating money laundering and terrorist financing, the lack of legal regulations on bitcoin allows it to be used for criminal purposes, including the purchase of weapons. Experts from the Centre for Social and Economic Research "CASE Ukraine" confirmed that cryptocurrency can be seen as a way of concealing income and tax evasion. For instance, it is possible to justify some excessive costs in the future by a successful "investment" in cryptocurrency several years ago (Romaniuk, 2018).

In this area, the offence can be divided into tax evasion with the use of virtual assets and tax evasion for activities in the field of virtual asset turnover. The second category can be considered after the Law of Ukraine "On Virtual Assets"[1] enters into force and the relevant amendments to the Tax Code of Ukraine[2] are adopted, so it is worth focusing on the first category. Thus, since March 2023, cryptocurrency exchanges have stopped withdrawing money through Ukrainian cards (Cryptocurrency goes underground..., 2023). Following strict recommendations from the NBU, banks stopped processing high-risk transactions, including those related to gambling and cryptocurrencies. Investigators from the SSU and the Bureau of Economic Security (BES) suspect betting and gambling companies of tax evasion using cryptocurrencies (Tartachnyi, 2023). The funds were withdrawn through a miscoding scheme. Through various schemes, gambling companies created "quasi-cash" through card2account and account2card transactions, which are now effectively banned. The actual scheme of miscoding was that a player deposited money into the account of an operator (bank) that marked payments with a payment code of another industry. This helps disguise payments from gambling. The hryvnia is then exchanged for cryptocurrencies and transferred to foreign accounts of the gambling company. In gambling, the industry code 7995 is usually replaced by 7994. The bank receives a payment from a gambling customer, and if the player wins, the institution sends the winnings to the player without taxing them as a regular card-to-card transfer. These offences may be classified under Articles 212 and 209 of the Criminal Code of Ukraine (tax evasion on a particularly large scale and legalisation of the proceeds of crime)[3].

Mining and offences related to crypto exchanges

Cryptocurrency exchanges can also be used to commit cryptocurrency-related crimes, as there are many cryptocurrency varieties that are highly volatile. One of the most common cases is a "pump-and-dump" scheme, which involves a conspiracy between traders to convince third-party investors to purchase certain cryptocurrency coins using social media.

When a coin reaches a certain price, the participants in the manipulation sell their purchases and stop spreading information, which leads to a price drop. Persons who have purchased cryptocurrency under the influence of such manipulation will suffer financial losses. Such actions with cryptocurrencies can be qualified as a crime, which is the case with conventional currencies. Such manipulations should be recognised as criminal and classified under Article 222-1 (Manipulation of organised markets)[4], as well as under Article 192 (Causing property damage by deception or breach of trust)[5]. Many regulated cryptocurrency exchanges comply with laws requiring customer identification, but there are some that serve criminal customers without proper verification, and criminals can use both legal exchanges bypassing identification processes with fake documents and illegal ones where there is no identification.

The operation of creating (generating) cryptocurrency is called mining. In practice, mining is the formation of new blocks in the blockchain of each cryptocurrency. Furthermore, mining can also be described as the process of recording all cryptocurrency transactions

[1] Law of Ukraine No. 2074-IX "On Virtual Assets". (2022, February). Retrieved from https://zakon.rada.gov.ua/laws/show/2074-20#Text.
[2] Tax Code of Ukraine No. 2755-VI. (2010, December). Retrieved from https://zakon.rada.gov.ua/laws/show/2755-17#Text.
[3] Criminal Code of Ukraine No. 2341-III. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text
[4] Ibidem, 2001.
[5] Ibidem, 2001.

in their blockchain, an open database of transactions. Mining is needed to support the operation of all existing cryptocurrencies, to ensure transparency of transactions and to create the blockchain structure (Kaznacheeva & Dorosh, 2020). It is important to understand its criminal law aspect. Offences related to mining are primarily cryptocurrency mining itself, provided that such activity is prohibited, or if unmetered electricity is used during mining, non-payment for such a network, or overloading of such a network.

Given that mining is not prohibited in Ukraine, it is worth considering the second type of offence. As of 2023, there are already many criminal proceedings related to mining. This is due to the availability of cheap electricity, often illegal. Illegal mining farms were discovered at the South Ukrainian NPP (Cryptocurrency was mined..., 2019) and at Vinnytsiaoblenergo (In Vinnytsia, a..., 2021). There have also been criminal proceedings in connection with mining at the Paton Institute (At the Paton..., 2017) and Ukrzaliznytsia (Employees of..., 2022). Such actions can be classified under Article 188-1 of the Criminal Code (Theft of water, electricity, or heat by unauthorised use)[1].

Although Ukrainian legislation does not prohibit cryptocurrency mining, such activities have all the hallmarks of a business activity that requires payment of taxes. If cryptocurrency mining is not prohibited by law and is performed based on the entrepreneur's free choice of business activity, it can be considered legal from the taxation standpoint. Thus, if this type of activity is not prohibited, it may be subject to taxation.

The conditions of liability for a person evading taxes from cryptocurrency transactions and property are regulated by the Resolution of the Plenum of the Supreme Court of Ukraine No. 15 of 08.10.2004 "On Certain Issues of Application of Legislation on Liability for Evasion of Taxes, Duties, and Other Mandatory Payments"[2]. According to the Resolution No. 15, liability under Article 212 of the Criminal Code may be applied only if the following conditions are met: 1) non-payment of taxes, duties, and other mandatory payments; 2) existence of an object of taxation; 3) identification of the payer; 4) establishment of a mechanism for payment of taxes and duties. Refusal to pay taxes for cryptocurrency mining may have consequences under Articles 209[3], 212[4] of the Criminal Code of Ukraine.

Hidden mining methods are also used. As of 2023, any user can do hidden mining. For this, one just needs to download the ready-made application, write their e-wallet number, and that is it. The program is modified in such a way that it is indistinguishable from a Trojan virus: it can spread on the network, copy itself to an external drive, hide its processes in the task manager and use the computer when no one is using it. As long as the user has a page with a malicious script open in the browser, the processor will perform mining unnoticed (Lyzunov & Vereshaka, 2018). These offences can be qualified under Article 362 of the Criminal Code[5] and Article 363-1 of the Criminal Code[6].

Financial offences in Initial Coin Offerings (ICOs)

Among the types of fraud in the sphere of virtual assets turnover, a special place is occupied by illegal Initial Coin Offerings (ICOs). Within the framework of an ICO, companies offer investors the sale of a fixed number of new units of virtual assets (tokens) that grant these investors certain rights, such as to cryptocurrency or certain goods/services. ICO fraud is often manifested through the creation of illegal ICOs that are difficult to recognise at the beginning of an investment. Investing in ICO projects on the Internet has no clear legal regulation. Consequently, investors who invest in such projects are left without adequate criminal law protection.

Blockchain technology allows private investors from all over the world to take part in ICOs for speculative purposes, but its cross-border and anonymous nature facilitates the expansion of pyramid schemes and the manipulation of token prices, which are traded on unregulated platforms with high volatility. As in other cases of virtual asset fraud, dumping, known as pump-and-dump, is a popular technique. The anonymity and untraceability of cryptocurrency transactions, specifically through ICOs, creates the risk of their use for money laundering, which can lead to serious conflicts with legislation on the prevention of terrorist financing (Zavalniuk, 2023).

In addition, one of the most common types of such offences is the so-called "Rug pulls" scheme, which is a "get-out scam" in which developers make promises and then quickly "leave" with investors' funds. "Rug pulls is a cryptocurrency fraud in which a developer attracts investors but withdraws before the project is completed, leaving buyers with a worthless asset. "Rug pulls" are commonplace for decentralised finance, or DeFi, projects that aim to displace conventional financial services such as banking and insurance, or non-fungible tokens (NFT) that grant digital ownership of art and other content. According to research firm Chainalysis, "Rug pulls" were worth more than $2.8 billion to investors in 2021 (Rosen & Ramirez, 2022).

[1] Criminal Code of Ukraine No. 2341-III. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[2] Resolution of the Plenum of the Supreme Court of Ukraine No. 15 "On Some Issues of Application of Legislation on Liability for Evasion of Taxes, Fees, Other Mandatory Payments". (2004, October). Retrieved from https://zakon.rada.gov.ua/laws/show/v0015700-04#Text.
[3] Criminal Code of Ukraine No. 2341-III. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[4] Ibidem, 2001.
[5] Ibidem, 2001.
[6] Ibidem, 2001.

Usually, fraudsters create a new cryptocurrency token, place it on a decentralised exchange, link it to a well-known platform, such as Ethereum, and then launch an active advertising campaign via social media. When the value of a token reaches its maximum due to the hype created, developers quickly give up their share of tokens, taking away investors' funds. In contrast to dumping, which is considered a mild "Rug pulling" scheme, as it can be a deliberate fraud or a side effect of an unstable crypto space, a more severe "Rug pulling" scheme is liquidity theft, which occurs when developers withdraw large amounts from the project's liquidity fund and intended to commit fraud from the very beginning. Typically, liquidity is first contributed by token creators and then by traders. Traders can contribute liquidity to decentralised exchanges, i.e., lend it tokens that it will use to execute other people's trades, and lenders are rewarded by reducing trading fees. It is envisaged that a sufficient liquidity pool will be available to ensure the programme's operation in case investors decide to withdraw their funds or execute large transactions. If the developer depletes this liquidity, the application may stop working, and investors will have a tough time recovering their investment. Despite the security measures in place in many crypto projects, there is a risk that unscrupulous developers can introduce vulnerabilities into the code (Mackenzie, 2022). After processing the data, it was discovered that an incredibly high number of liquidity pools were actually "Rug pulls". On the Binance Smart Chain (BSC) blockchain, 272,349 of the 332,265 (81.2%) liquidity pools under consideration have a Rug pulls pattern, including 21,742 of the 25,180 (86.3%) in Ethereum. This result shows that attackers use most coins as disposables to execute "Rug pulls". These transactions are organised by 116,516 different addresses in BSC and 16,539 different addresses in Ethereum (Cernera *et al*., 2022).

To establish the riskiness of ICO projects, it is necessary to understand who is behind the company conducting the ICO, where this company is located, how the funds will be used, what rights investors will receive, how and where they can be exercised, whether the investment can be returned or redeemed, whether the financial statements of the said company are provided for, etc. The qualification of these offences raises some difficulties. Given that the coin itself may have no value, its transfer may not constitute property damage from the legal standpoint, especially in the absence of legal regulation of such assets, which may indicate the absence of a crime. Therefore, in essence, the failure to comply with the terms of the ICO is a failure to comply with the terms of the contract by the person(s) who intended not to perform the obligations under it and to appropriate the property from the victims, and in this case, these actions can be qualified under Article 190 of the Criminal Code[1], namely, the seizure of another's property or the acquisition of the right to property by deception or breach of trust (fraud).

Apart from ICOs, there are other types of coin (token) offerings. For example, IDO (Initial DEX Offering) is a token launch during fundraising on a decentralised exchange; IGO (Initial Gaming Offering) is the placement of tokens in a game; SHO (Strong Holder Offering) is a fundraising campaign by the holders of a certain cryptocurrency; IEO (Initial Exchange Offering); LBP (Liquidity Bootstrapping Pool) is the sale of tokens in the form of an auction, when the offer price gradually decreases in the absence of demand and increases when buying. IFO (Initial Farm Offering) is the first offer of farming (growing) a new cryptocurrency – raising capital through the farming function of the proposed decentralised exchange. These types of coin (token) offerings can also be fraudulent schemes (Yatsyk, 2020).

Financing terrorism through virtual assets

Terrorist groups and their core (auxiliary) networks are exploring new financial technologies (FinTech) to further their efforts. Experts have identified cryptocurrency-based terrorist financing as a real risk that requires serious attention, and government agencies and organisations that monitor terrorist financing have begun to express alarm at the growing number of Islamist terrorist organisations experimenting with bitcoin and other digital coins (Zavalniuk, 2023). The use of cryptocurrencies for criminal activities, including terrorism, should be regulated, regardless of the lack of a clear legal status of cryptocurrencies. Experts recognise that virtual assets create new and sophisticated financing methods used by terrorist groups, and this real risk requires serious attention from law enforcement and regulatory organisations (Cynthia *et al.,* 2019). Afghanistan, facing financial difficulties after the Taliban seized power, has seen a rapid increase in the use of Bitcoin as a protection for financial assets (Wolf, 2021). Alongside the revival of the cryptocurrency sector, the country could become the epicentre of digital misconduct, including cyberattacks and online radicalisation campaigns instigated by the Taliban and affiliated terrorist groups.

Y.P. Kalaida (2021) notes that currently, a popular and new way to legalise criminal proceeds is to launder them through the use of online casinos. These services play a significant role in the laundering of more than a third of dirty virtual money. Criminals are increasingly using game currency to store valuables in cryptocurrencies. For this, they will purchase currency in popular virtual games, which is then converted on money platforms. The use of cryptocurrencies by the owners of terrorist organisations carries great risks, especially in the context of financing terrorist acts. As cryptocurrencies become more widespread and transactional

[1] Criminal Code of Ukraine No. 2341-III. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.

infrastructure develops, virtual currency may become an increasingly common tool for financing terrorist activities in the future. These offences can be qualified under Article 209-1[1], Article 258-3[2], Article 258-4[3], Article 258-5[4].

Problems of offences in the sphere of virtual assets turnover: Ukrainian and foreign aspects

As for the studies on this issue, in the Ukrainian legal literature, there has been virtually no systematic research on offences in the field of virtual assets, especially in the context of criminal law. There are some studies and articles that analyse the legal aspects of virtual asset circulation, including the analysis of their impact on criminal law. Studies in this area were conducted by M.O. Dumchikov & D.A. Repin (2020).

The study by N.K. Siddiki & R.O. Movchan (2018) examines the problems of controlling the circulation of cryptocurrencies in Ukraine, focusing on the potential use of these currencies for money laundering, payment for prohibited goods and terrorist financing. The author discusses the criminogenic properties of cryptocurrencies, such as anonymity, speed, and lack of legal regulation, which allow criminals to effectively use them for illegal activities. The paper analyses several high-profile detentions and crimes related to the use of cryptocurrencies, which have led to changes in legislation around the world and tightened control over the circulation of cryptocurrencies. Specifically, it covers attacks on computer systems for cryptocurrency mining, the use of cryptocurrencies for ransom, and various methods of fraud and money laundering using cryptocurrencies.

M.O. Dumchikov & D.A. Repin (2020) examined the spread of cryptocurrency use for illegal activities, including tax evasion, money laundering, and terrorist financing. The authors emphasise the prominent level of anonymity provided by cryptocurrencies, which makes it difficult to detect and track illegal transactions. They call for the need to study cryptocurrencies and their implications to determine the risks and threats they pose in the global economic space. The authors also warn that with the spread of cryptocurrencies and the development of transaction infrastructure, virtual currency will increasingly be used to finance terrorism.

Y.P. Kalaida (2021) carried out a study on criminal activity involving cryptocurrencies and found that these currencies are becoming more frequently used on the DarkNet for the acquisition of banned substances and drugs. The study investigated the specific types of cryptocurrencies used in this criminal scheme, the participants involved, and presented examples of how cryptocurrencies are laundered through criminal proceeds. Additionally, the study provided an overview of methods for investigating and countering such offences. V.V. Fedchyshina (2022) considers the problems and risks associated with the use of cryptocurrencies for corrupt practices, emphasising that the anonymity and difficulty of tracing such transactions make it difficult to combat this type of crime. The author discusses the lack of adequate legislation in the field of cryptocurrencies and the corresponding problems for users and governments. The study also outlines the European Union's ongoing efforts to create effective cryptocurrency legislation, including the adoption of the Markets in Crypto Assets Regulation (MiCA), which regulates cryptoasset-related activities in the EU.

As for foreign authors, D.-S. Cynthia *et al*. (2019) point out that while cryptocurrencies can provide new, more flexible transaction mechanisms, they can also open up new avenues for abuse, including use by terrorist groups, although many of them may not be technically proficient enough to use these systems effectively. While Bitcoin theft may not seem like a major issue, it is becoming increasingly prominent in the context of growing cybercrime, and the wider use of blockchain-based technologies can only increase the number of such cases. With this in mind, law enforcement should allow an appropriate amount of time to develop an appropriate approach to dealing with blockchain-related crimes (Zaytoun, 2019).

B. Sanz-Bas *et al*. (2021) notes that modern criminal groups are resorting to cryptocurrencies and specialised money laundering groups in an attempt to circumvent new methods of money laundering prevention. At the same time, the authors emphasise the need to create an international system of prevention and counteraction, which includes strict legislation on cryptocurrencies and active international cooperation to ensure effective information exchange and counteraction to money laundering. A. Thommandru & B. Chakka (2022) point out that the constant expansion and change of the legal framework, namely through the introduction of initiatives such as the MiCA regulation, can hinder technological advance. New companies may face increased costs and complications caused by these changes, prompting them to relocate their operations to regions with more favourable cryptocurrency laws. A. Trozze *et al*. (2022) note that many of the frauds identified in the study may be related to cyber networks, although new ways of committing them with the help of cryptocurrencies require further research. This paper also notes that there are no generally accepted or even existing definitions of different types of fraud described in the academic literature, so one of its main contributions is to define all types of fraud identified to date in

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

the academic and non-academic literature. Further harmonisation of these definitions could facilitate the development of common standards in the cryptocurrency sector, which would help prevent fraud in the future.

Thus, all of the articles reviewed focus on an overview of particular offences arising in the course of virtual asset circulation, or they provide a general overview of the topic, but only at a superficial level. They do not provide an in-depth analysis or a detailed description of the mechanism of each specific offence, nor do they contain particular proposals for modifying the Criminal Code of Ukraine to address these challenges. This paper, however, aims to address these shortcomings by offering a reasoned description of each virtual asset-related offence and recommendations on the necessary changes to the Criminal Code of Ukraine.

Conclusions

Thus, considering the above, it can be concluded that virtual assets can be used in various offences or can facilitate the commission of such offences. The anonymity of virtual asset transactions makes them an attractive form of illegal payment. There has been a considerable increase in the number of offences related to the theft of virtual assets. Given the lack of regulation, virtual assets may be classified as "other property" due to their economic value and the possibility of conversion into cash or use as a means of payment for goods and services.

Virtual assets exhibit the economic and legal features of the subject matter of these offences, but determining the physical feature is a more difficult task. In today's information society, property may be intangible. A more progressive interpretation of the object of theft involves considering financial interests and economic value. The growing popularity of virtual assets requires the state to ensure the protection of citizens' rights, including criminal law. Changes in the concept of property include intangible goods, which also require criminal law protection.

Considering virtual assets as an equivalent of property, it can be argued that criminal law should include virtual assets as a new object of criminal law protection, as they are already recognised by judicial practice and society, but not yet consolidated legislatively. As a result of the restrictions imposed by the current criminal law rules, there is a tendency that the range of objects of criminal law protection is not determined by civil law concepts, but rather the growing number of crimes related to virtual assets requires expanding the number of objects of civil rights and amending existing legislation.

Given the scope of this issue, a separate article will continue to consider offences in the field of virtual assets, especially such a broad topic as money laundering through virtual assets, and will also cover the topic of such specific offences arising in the field of ICOs, CBDCs, smart contracts, NFTs, DAOs, and meta-universes.

Research in the field of virtual asset trafficking offences can help to address various issues related to the development of effective methods for detecting, investigating, and preventing these offences. This problem is also an important incentive for the development of innovative technologies that will reduce the possibility of such offences.

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Conflict of Interest

The authors of this study declare no conflict of interest.

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Правопорушення у сфері обігу віртуальних активів та аналіз їх кваліфікації

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Анотація
З появою нових форм інтерактивної взаємодії, віртуальних товарів і сервісів виникає нове поле для здійснення правопорушень у сфері обігу віртуальних активів. Це стимулює вчених і правоохоронні органи до активного дослідження цієї галузі та розроблення ефективних механізмів відповіді на виклики, що виникають, які ще не отримали належного відображення в законодавстві. Мета статті – ґрунтовно дослідити проблему, аналізуючи специфічні правопорушення, пов'язані з віртуальними активами, включаючи, але не обмежуючись крадіжкою, шахрайством, корупцією та ухиленням від податків. Використані для дослідження методи наукового пізнання охоплюють аналіз правового регулювання, методи моделювання, аналогії, системно-структурний, порівняльно-правовий, а також методи наукової абстракції та узагальнення. За результатами проведеного дослідження визначено основні види правопорушень у сфері віртуальних активів і здійснено їх уніфікацію. Встановлено недоліки в сучасному правовому регулюванні, що сприяють виникненню цих проблем. Сформовано пропозиції щодо внесення змін до Кримінального кодексу України в частині кваліфікації нових видів правопорушень, що відбуваються у сфері обігу віртуальних активів, на підставі досліджень сучасних тенденцій, міжнародного досвіду й аналізу поточного стану законодавства України. Також дослідження засвідчує, що наявні правові інструменти часто не забезпечують адекватного виявлення та притягнення до відповідальності за нові форми правопорушень, що актуалізує необхідність реформування законодавства для адаптації до сучасних динамічних умов. Практична значущість дослідження полягає у визначенні актуальних проблем правового регулювання обігу віртуальних активів, а також розробленні рекомендацій з удосконалення кваліфікації правопорушень у цій сфері

Ключові слова:
кібербезпека; кіберзлочинність; кримінальне право; кримінальний кодекс; криптовалюта

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Retraction: Human right breach investigation commitment in the context of the armed conflict: Jurisprudence of the European Court of human rights

The editorial board of Law Journal of the National Academy of Internal Affairs, announces the formal Retraction of the following article:

- 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.

This decision was made based on the fact that:

- The author of the article does not agree with the technical corrections in the translation of the article. In turn, the editors consider it impossible to leave the version of the translation of the article provided by the author. The manuscript will be retracted from the publisher's database, but copyright remains with the author of the article.

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Ретракція: Обов'язок розслідувати порушення прав людини, вчинені у контексті збройного конфлікту: практика Європейського суду з прав людини

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- 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.

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