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МІНІСТЕРСТВО ВНУТРІШНІХ СПРАВ УКРАЇНИ
НАЦІОНАЛЬНА АКАДЕМІЯ ВНУТРІШНІХ СПРАВ

ЮРИДИЧНИЙ ЧАСОПИС
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International experience in mobilising mechanisms to combat organised crime

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Abstract
The purpose of this study was to develop a scientific approach to mobilising mechanisms for combating manifestations of organised crime, which should be strategic, programmatic, and based on international practices. According to the purpose and specifics of the subject under study, the study employed a set of social engineering methods in the organisation of the system of combating organised crime. The study outlined the content of the organisational foundations of the system of mobilisation of law enforcement agencies involved in the fight against organised crime. Such mechanisms were analysed in terms of determining the theoretical and managerial foundations of their formation at the stage of social transformations, the threat of criminalisation of society, and the intensification of violence in political and other spheres of public life. The content of security as an objective phenomenon was investigated in terms of system-forming properties and organisational factor of the social system. The study showed the strategic significance of improving the effectiveness of security in various spheres of society. It was proved that the existing state mechanism for regulating public security relations is rather conservative and does not fully meet the current conditions of existence of various nations in both the internal and external spheres of life. The system of law enforcement agencies has a branched, sophisticated organisational and functional structure, which complicates the organisation and implementation of the management process. State agencies, subject to political and legal conditions and the creation of a specialised management mechanism, can and should be involved in ensuring national security. For this, it is necessary to overcome departmental barriers, consolidate the efforts of state bodies and operational units to ensure the internal security of the state, i.e., to develop a model of management of the relevant entities based on the organisational and functional principle. The findings of this study form the scientific and practical basis for bringing the system of the relevant type into a state that allows for the immediate mobilisation and implementation of large-scale actions to eliminate the conditions and consequences of the impact of dangerous factors, which substantially affect the state of security of society. The application of the theoretical and managerial approach allows identifying and solving scientific problems in the study, obtaining scientific and practical results

Keywords:
system; fight against organised crime; security forces; national security

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Introduction

In modern world, the identification of ways to use global trends in law enforcement activities, the effectiveness of which directly affects the state of law enforcement, is one of the strategic scientific tasks. Work in this area requires coordination not only among the bodies in charge of managing the security forces, but also among all central executive authorities whose activities are related to financial control. Only if they combine their efforts and resources will it be possible to implement promising scenarios for the development and use of the achievements of science and technology in law enforcement.

Achieving positive outcomes in the fight against organised crime is possible if a system is established to respond to changes in the crime situation, including by mobilising its mechanisms (Roks *et al*., 2024). Each country has its unique definition and conceptualisation of organised crime, which changes over time, while organised criminal groups operate covertly under the radar of the authorities, which is facilitated by corruption, violence, intimidation, communication in certain codes, counter-surveillance, media manipulation, etc. Studies by H. Van de Bunt *et al*. (2019) and R.A. Roks *et al*. (2024) documented that organised crime 'does not exist in a social vacuum' and that social structures can act as a 'silent shell surrounding criminal networks' (Jaspers, 2020). M. Vieira & E. Farris (2021) argue that organised crime destroys the state, and the stronger it is, the more the state where organised crime operates is destroyed. In this regard, organised crime is complex due to its dynamics and the types of criminal markets that are emerging show a variety of threats, including economic disruption, violence, homicide, environmental degradation, increased corruption, and a crisis of democracy.

The need to develop and implement coordinated measures to combat transnational organised crime depends on governments, international and regional institutions, the private sector, and civil society working together to develop a common strategy to combat organised crime (Vieira, 2023). Considering the dependence of the success of the implementation of strategic objectives in combating crime, N. Breuer & F. Varese (2023) pointed out the necessity of improving the methodology of their phased implementation. This approach is reflected in the strategy that provides for rapid (operational) intervention in crisis situations.

N. Breuer & F. Breuer (2023) proposed a rational classification of organised crime groups based on their activities (production, trade, or "management") and their goals. Of interest is a new tool for assessing organised crime of the managerial type, defined as the 'Illegal Governance Index (i-Gov)'. This approach allowed establishing that organised crime is extremely destructive for the modern world (Rider, 2023). M. Bouchard (2020) emphasised that modern criminal organisations are seeking extensive ties with government agencies and financial elites both in their home country and abroad. Using a network approach, M. Bouchard (2020) argued that the effectiveness of the influence of criminal organisations depends on social relations, i.e., criminal groups and individuals use ethnicity in various ways when engaging in criminal activity. As social ties play a major role in organised crime, the social opportunity structure, defined as social ties that provide access to lucrative criminal opportunities, is crucial in explaining association with organised crime. Studies of the ideology underlying organised crime and the attitudes of the population, especially young people, towards it revealed a series of similarities, namely the presence of amoralism, familism, verticalism, and religious relativism, but also major differences in the form of anti-reductionism, anti-normalism, and anti-victimism (in relation to reductionism, normalism, and victimism) (Poppi & Ardila, 2023). There is a tendency that the ideology of organised crime is largely shared by members of organised crime and outsiders living in mafia-affected areas).

Therefore, the purpose of this study was to systemise the international practices of mobilising mechanisms for combating manifestations of organised crime, and to formulate the content of the operational management function in terms of its mechanism of action, changes which can be achieved in the organisational and functional (security forces), social and legal (operational environment) system of combating organised crime.

Materials and Methods

The study was conducted based on a systematic approach and the sociological theory of knowledge, which enabled a comprehensive assessment of the issues, considering all interdependencies. The study consistently employed general scientific methods and approaches, such as the historical approach, which helped to follow the evolution of legal norms and phenomena, the comparative legal method to identify common and distinctive features in the legal systems of various countries, and the systemic and structural method, which helped to establish functional relationships between the elements of the law enforcement system.

The study was based on modern conceptual provisions of legal science. Publications on the general theory of state and law were studied, which provided a broad theoretical framework for the study of social governance, which forms an integral part of public administration in the fight against crime. Furthermore, philosophical concepts of causality were considered, which revealed a deeper understanding of the motivational aspects of offenders' behaviour and the mechanisms of social conflict, as well as the psychological and behavioural aspects that determine the formation of criminal intentions.

The theoretical framework of the study included a socio-legal analysis of the law enforcement system and its management mechanisms. In this context, the

provisions of management theory were considered, as well as scientific expertise in philosophy, sociology, administrative law, ethics, psychology, and conflictology. These disciplines provided a solid methodological framework that ensured a comprehensive approach to the investigation of legal issues and helped to assess the role and functions of public administration in the fight against crime. This approach allowed for a more detailed coverage of the theoretical and practical aspects of building an effective law enforcement system that can adequately respond to the challenges of modern society and ensure stability and security at the national level. The study analysed Ukrainian legislation, specifically the Law of Ukraine No. 2469-VIII "On the National Security of Ukraine"[1], international legal acts and agreements on security[2]. Their use helped to outline the most general picture of determining the content and guarantees of the implementation of the principle under study. To obtain reliable and realistic findings, the aforementioned methods were used in conjunction with each other and in mutual dependence.

Results and Discussion

Strategic vision of regulating the fight against organised crime. Practical implementation of the provisions of the theory of the national security system and the models developed based on it is possible with a clearly defined, detailed organisational scheme of interaction of functional entities, i.e., all the elements that comprise the system. The key issue is the choice of forms of organisation of the system elements that best correspond to the objective laws of management processes and the conditions of the system's functioning. The complexity of systems and their multifunctionality is conditioned by the requirement to adapt its organisational structure to changes in the operational environment and to resist negative impact on it and on the processes of performing functions. The issue of organisation of the central management body is problematic, as it should be most suitable for the form and nature of the system and ensure the required level of its controllability.

Contemporary researchers, politicians, and social associations recognise that it is imperative to better understand organisational decision-making processes to choose the most effective and sustainable measures to combat organised crime. It is necessary to recognise the dynamic nature of criminal behaviour and networks and consider this when developing a strategy to combat this negative phenomenon. A relevant issue is that criminals do not operate in a social vacuum; there is an interaction between intergroup and intragroup factors in social networks (Roks *et al*., 2024).

The establishment of organisational links between all elements of the system is a prerequisite for its proper functioning. Fulfilling this condition requires a clear definition of the goals, objectives, functions, principles, and methods by which the system as a whole and its individual elements operate. In combination, these factors are referred to as organisational factors of the system. All these factors should be indirectly reflected in the triad of such systems as: scientific and practical – strategy, social and legal – policy, and legal – national security doctrine. However, the provisions that comprise their content need to be clarified, including from the perspective of their compliance with the organisational factors of the system's functioning. Organisational relations of system structuring constitute a separate group of managerial issues, the regulation of which will help to effectively solve problems related to the functioning of the system. The range of issues includes a series of provisions that relate to the organisational sphere of the relevant system. They can be divided into the following subgroups: a) compliance of the structure of the system under development with the goals and objectives set for it (ensuring reliable protection of national security, resolute suppression of any aggression); b) compliance with the requirement of rationality in the structural sphere, if necessary, to ensure a full range of types of national security system bodies necessary for its normal functioning; c) ensuring flexibility of organisational structures of the security forces to respond quickly to changes in the operational situation; d) openness of the system.

The choice of the type of structure that the system should acquire as a result of its modification is a challenging task for the subject of social engineering to maximise adaptation to the nature of the modern fight against violent organised crime. Particular attention should be paid to the fact that organised crime is secretive in nature, which is one of the major problems complicating the receipt of reliable information about its activities (Roks *et al*., 2024). The metaphor of the 'wall of silence' is a fruitful way to explore the protection of organised crime. Based on a theoretical and empirical study of the Dutch Organised Crime Monitor data validation conducted in the Netherlands, the findings of the fifth analysis of the Dutch Organised Crime Monitor data validation revealed how organised crime offenders in that country depend on the silence and secrecy of fellow criminals, victims, bystanders, and others with knowledge of their (criminal) activities (Kerstholt *et al.*, 2024). It is vital to consider the cover structure of organised crime to understand how criminals not only exploit the social environment to conceal their activities, but also how the social environment can (intentionally) act as a wall of silence and secrecy (Roks *et al*., 2024).

[1] Law of Ukraine No. 2469-VIII "On the National Security of Ukraine". (2018, June). Retrieved from https://zakon.rada.gov.ua/laws/show/2469-19#Text.
[2] Code of Conduct on Politico-Military Aspects of Security. (1994, December). Retrieved from https://zakon.rada.gov.ua/laws/show/994_116#Text.

The requirement of flexibility of the structure will be met to the greatest extent possible in such a type of its organisation that is adapted to the mechanism of interaction of various types of executive units. The potential possibility of manoeuvring in areas determined by the conditions of the system's functioning is envisaged. The resilience of the structure to diverse changes is characterised by the ability to restore lost and establish new connections in the relevant areas of the system's functioning. The paradoxical fact that negotiations with organised criminal groups are ongoing, but also occur more frequently than is realised, should be considered, even though there are complex ethical, practical, and policy issues (Freeman & Casij Peñ, 2023). Therefore, in the context of armed conflict or other situations of violence, it can be an effective technique.

Fear of crime, particularly its economic and social consequences, is a major challenge facing any society. The severity of the consequences caused by the fear of crime in any particular society depends on many aspects, including criminalisation in society, corruption, organised crime, nepotism, criminal damage, etc. (Muharremi & Ademi, 2023). The operational environment and changes in its dynamics are the key criteria for testing the system through an empirical approach, and to test its model from a theoretical standpoint, it is necessary to apply the methodology of social systems design. The unsatisfactory state of the system's response to changes in the operational environment can be remedied by reforming the structure towards its rationalisation, transferring the system to a different state of operation, cyclicality of actions, and its structure to a change in management relations.

Changes in the environment caused by the use of power mechanisms and mechanisms for combating manifestations of organised crime make the subject of social management pay close attention to these issues and constantly take care of the possibilities and consequences of using these mechanisms both on their part and on the part of potential and real enemies (Varese, 2011). Organised crime is spreading like a global virus as mobs take advantage of open borders to create local franchises at will. F. Varese (2011), having investigated mafia groups in Italy, the Russian Federation, the United States of America, and the People's Republic of China, concluded that mafia members often find themselves abroad against their will, rather than because of a strategic plan to colonise new territories. Once there, they do not always manage to gain a foothold, but F. Varese (2011) identified the conditions that led to their long-term success, namely a sudden market expansion that is neither exploited by local competitors nor blocked by the authorities. Ultimately, the inability of the state to manage economic transformation allows the mafia to gain a foothold.

In its essence, the struggle performs the social function of protecting individuals and society from aggression, which gives grounds to speak of it as a special mechanism for the achievement of goals by the subjects of social relations. The nature of this type of social activity determines the speed, urgency, timeliness, dynamism, and efficiency of management processes. It was already proved above that operational (combat) activity is a radical but acceptable method of regulating social relations in the practice of public life. This allows perceiving operational management as a mechanism for achieving a strategic goal through the functioning of security forces, i.e., as a kind of process of implementing the national security strategy, and leads to the conclusion about the direct connection between the relevant type of activity and the system of knowledge that constitutes the content of the theory of the national security system. Thus, the management of security forces in terms of conducting the most complex form of combating organised crime – operations – is an effective mechanism. In the same vein, the application of exponential random graph models (ERGM) to network data is rational (Breuer & Varese, 2023). The organisational structure of trafficking-type organised crime is markedly different from managerial organised crime, as well as from financially motivated and politically motivated groups. Trafficking-type organised crime and financially motivated groups demonstrate a strong level of centralisation and an even distribution of group values. Management-type organised crime and politically motivated groups have the opposite features. They argue that the core activity and purpose of the group are crucial for understanding the organisational structure (Breuer & Varese, 2023).

The system moves towards the organisation of activities that are classified as operational or equated to combat activities within the framework of the national security strategy. The principle of periodicity in social management provides grounds for work in this particular area. A system whose functioning mechanism does not include procedural issues of mobilisation of its resources in case of danger is exposed to the risk of instability both for it and for the systems to which it belongs. The system's affiliation with the processes of regulating public security relations can be defined as a mandatory feature of operational management, whether direct or indirect. This is crucial, considering that the study of national security issues focuses on the issues of combating transnational and cross-border crime (Luong, 2020).

Thus, bringing the system into the state necessary to perform operational tasks has a scientific and practical aspect and lies in the use of the full potential of social experience, which is concentrated in methodologies and technologies of social management. Operational management as a scientific and practical system can be presented as a technology for implementing the provisions of the strategy. However, such an approach entails a considerable narrowing of the content of social relations regulation. The implementation of the

relevant process should fully consider the potential of the system and the opportunities provided by the use of the provisions of the science of social management. First of all, this concerns the preservation of the completeness of the connections necessary for organising the management of a social process and the possibility of choosing options for influencing them.

When describing operational management as an element of the strategy for combating organised crime, the primary requirement is that this scientific and practical system should include a broad set of specific principles. These principles form the basis for the operational activities of entities involved in the national security sector. When organising the work of state bodies in this area, the emphasis is placed on their operational function, which is determined by the specifics and tasks of fighting organised crime to achieve the primary goal of ensuring security. The research, development, and refinement of the principles of combating organised crime is an objectively necessary process that requires constant work to improve them (Schwuchow, 2023). This is a feature of the link between inequality and corruption. Inequality can foster corruption by empowering organised crime, as collusion between local police and criminal organisations is more likely in societies characterised by high inequality or weak security forces. Law enforcement agencies and organised crime have strong incentives to collude because of the efficiency gains from specialisation. A criminal organisation's bribery efficiency is more influential when the relative power between law enforcement and organised crime is well-balanced. Accordingly, when violent conflict becomes less predictable, non-violent elements of relative power become more relevant (Muharremi & Ademi, 2023). The presence of police in dangerous neighbourhoods with criminal influence is a significant factor in reducing the fear of crime. Citizens continue to increase demands on the police to fight crime, and this task is mainly focused on community policing.

The functioning of the security forces should be viewed as a direct manifestation of the state mechanism for implementing the strategy of fighting organised crime, based on a precisely calculated procedure for the use of force. The ability of the security forces to respond quickly to changes in the situation is determined by the preparedness of personnel, resources, and means for special operations of a combat nature. This requires a special level of readiness of personnel, including combat duty under a special procedure, as well as the ability of units to quickly localise and neutralise security threats with the use of force to fulfil operational tasks. The organisation of the service is based on statutory requirements, with a strong level of discipline close to that of the military, constant maintenance of special equipment, reliable communications, and a warning system. All these factors are crucial and interconnected, and therefore cannot be divided into major and minor ones.

The strategy envisages a set of measures including: rapid (operational) intervention in critical situations; anti-crisis measures of the border guard service to neutralise threats; other regime and control measures to strengthen state border protection; standard preventive measures; and measures for the sustainable development of the border guard system. Implementation of the methodology in practice allows developing a strategic approach to the effective use of resources of state law enforcement agencies in combating cross-border crime (Farion *et al*., 2023).

Operational readiness is the state of the security forces that ensures their ability to move from a standby state to an operational (combat) state, in any situation and at a certain time to take active, decisive, and effective actions to eliminate the threat. Operational readiness is the effectiveness of channels of information on the internal and external environment of the system; assessment of the information received; the ability to predict the development of situations; and adequate response to changes in the system's operation. The following are essential: quick response to unforeseen situations of a reactive nature; ability to quickly transition from standby to high-intensity actions; resistance to interference from outside the system; ability to quickly reorient; ability to ensure long-term functioning of the system in the context of performing an operational function.

Different estimated degrees of readiness of the system for operational activities are as follows: combat status (full readiness); high, normal (average, or low) readiness; lack of readiness. In terms of planning and mobilisation, the following levels are acceptable: permanent combat readiness; high combat readiness; combat readiness used in case of martial law or a state of emergency; full combat readiness. This is also necessary because if the activities of organised criminal groups complement each other, the equilibrium level of sanctions imposed by state authorities without coordination is lower than the first highest level of sanctions with coordination, and if the activities of organised criminal groups change each other, the equivalent level of sanctions without coordination is higher than the first highest level of sanctions with coordination (Yahagi & Cato, 2023).

The prospect of performing operational tasks by security forces in the face of confrontation, the impact of hazards and real threats requires that security be considered at every stage of the management cycle. This includes the development and provision of effective means of individual and collective protection. The availability of predefined operational tasks and algorithmisation of management processes allow participants in operational actions not to retreat in case of threats, but to respond instantly, saving time. Legislative consolidation of the procedures for the use of force greatly facilitates the mobilisation of security units for operational tasks, as each threat requires a special,

regulated mechanism for counteraction. Operational management combines the active efforts of individual actors into a dynamic system that acquires the necessary features for effective interaction.

Successful implementation of the strategic tasks of combating crime necessitates the improvement of the methodology of their phased implementation. The key among them include the collection of data on cross-border organised crime; analysis of the impact of PEST factors of the border region on the number of cross-border crimes committed by organised criminal groups; generalisation and analysis of the parameters for assessing the capabilities of organised criminal groups; assessment of the level of capacity of organised criminal groups to commit cross-border crimes; certification of organised criminal groups specialising in cross-border crimes; modelling scenarios for the development of illegal activities (Farion *et al*., 2023).

Administrative measures in the performance of the operational function have a clearly defined command and control nature, in contrast to preventive activities, where processes become bureaucratic. However, the legal consolidation of the principles of the security forces does not automatically enable them to seize and retain the initiative. The actions of the relevant authorities in this regard depend on the level of operational skill, and the key role is played by combatants, who are the principal actors in this process. The ability of participants in management processes to correctly determine the operational goal and achieve it is invaluable, which characterises the level of their initiative within the framework of the operational function, i.e., operational (combat) actions carried out by the security forces. The significance of secrecy must be considered, which reinforces the tendency to rely only on strong, well-known social ties between co-conspirators and to isolate themselves from others. Meanwhile, criminals also need connections in the legitimate social sphere to conduct their criminal activities. For example, port workers are bribed to smuggle cocaine (Roks *et al*., 2024), while legitimate businesses are set up to launder money (Malm & Bichler, 2013). In relation to these legitimate networks, criminals create a 'wall of silence' using a number of strategies: keeping the parties in the dark, financially satisfied, or afraid (Roks *et al*., 2024).

An operation in its essence implies coherence of goals, tasks, place, and time of action of participants in combating manifestations of organised crime, and the performance of specific (operational) tasks that take place within a certain timeframe. Their regulation can be defined as a separate area in the scientific and practical system of operational management, as well as a separate subspecies of operational skills. At the same time, the correlation and establishment of sustainable links between interdependent elements are part of the organisation of the management process with all the regularities governing it (Effendi *et al*., 2023). Criminal groups with clear governance include drug trafficking organisations (DTOs) and paramilitary groups (PGs). While the former finances itself primarily through drug trafficking, the latter derives most of its profits from extortion and illegal trade in public services for citizens on its territory. This causes varying reactions to policies that reduce economic activity. In the territories controlled by the PGs, social distancing is less than in the government-controlled areas. On the other hand, DTO territories had the same social distancing as government-controlled areas (Effendi *et al*., 2023). Using the method of analogy in social processes, it can be noted that the drafting and development of operational plans can be equated to the procedure of coordination, determining the forms and procedure of interaction between various actors and means of conducting operations. Consideration of this issue in this context allows for structure and certainty in the relevant system of measures.

The process of combating organised crime naturally involves large external and internal resource costs. The dependence of the system's efficiency on the provision of resources will negatively affect its level in case of a critical reduction or complete loss of its potential – social, natural, labour, material, and financial resources required at each stage of the fight against organised crime, in any sector and region that falls under the scope of the security forces.

Organisational and structural approach to combating organised crime. The organisational and structural aspect in terms of choosing a polymeric type of system structure is expressed in managerial relations, which are both internally and externally determined by the purpose set for the national security system. The use of theoretical and managerial provisions by the social engineering actor in designing the structure of the national security system allows determining the form that is most suitable for the concrete conditions of fulfilling the purpose. The conditions that must be considered while designing the structure of the system at the national level can be grouped separately and designated as rules for designing security system structures.

The closed type of the national security system structure[1] is an absolute necessity dictated by the conditions of ensuring security in the face of overt and covert attempts by the enemy to violate the constitutional state of social relations. A system that combats manifestations of violence through special operations must have a special procedure, and this requires a special type of structure. The closed type of structure means that, apart from the conventional organisational and functional structural units, which are the minimum

[1] Law of Ukraine No. 2469-VIII "On the National Security of Ukraine". (2018, June). Retrieved from https://zakon.rada.gov.ua/laws/show/2469-19#Text.

necessary for the organisation of specific systems, there are units whose focus is determined by the task of ensuring the security of the system itself, and providing it with immunity from negative influences. Prioritising such units characterises a closed system.

The issues of increasing the readiness of forces and means to perform the tasks of combating manifestations of organised crime in the context of hybrid threats should be addressed within the framework of the implementation of the provisions of such an international act as the Code of Conduct on Politico-Military Aspects of Security[1], , which defines the need to expand security cooperation, particularly through further promotion of responsible and cooperative security behaviour.

The Code of Conduct contains statements on political control, democracy, and principles for the use of armed forces, military and internal security forces, as well as intelligence services and police. Issues that once belonged exclusively to national jurisdiction have been elevated to the highest level of international relations by the Code of Conduct. Independent, democratically created institutions, according to the document, should control the structures that exercise the state monopoly on the use of force within the state or abroad. All these structures (forces, services) form the system of ensuring national security and defence of the state. They are based on the principles of legality, democracy, neutrality, respect for human and civil rights, as well as compliance with international humanitarian law.

In addition, considering that under the Comprehensive Assistance Package (CAP) for Ukraine (NATO Allies continue to support Ukraine..., 2024), which aims to consolidate and expand NATO's aid to Ukraine, international projects are being implemented (including within the Multiannual Financial Framework) (Horizon Europe Programme is one of the components of the EU's long-term multi-annual financial programme – the EU's framework programme for research and innovation) (Horizon Europe Office in Ukraine, 2024), Science for Peace and Security Programme (2023), aimed at deepening dialogue and practical cooperation between NATO member states and partner countries through research, civilian technological innovation, and knowledge sharing to contribute to the achievement of key Alliance and partner objectives), Erasmus+ (Erasmus+ is the European Union's Education, Training, Youth and Sport Programme), Ukraine, in cooperation with partners, should take formal measures to introduce into the training system and practice of the Ukrainian military and law enforcement personnel the NATO Centres of Excellence – Security Force Assistance (SFA COE) (2023). The Charter is based on many years of experience in training the security forces of Allied countries, including the armed forces and police forces of Iraq and Afghanistan. Specifically, it explains the principles of interaction between the US Army brigade and partners in this area, as well as individual work with allies, considering cultural and other specifics.

As of 2024, the United States has concluded military cooperation agreements with more than 125 countries and, at the request of its allies, assists them in training their security forces. This work is often carried out under the supervision of US diplomatic missions by military and civilian specialists, as well as teams of professional instructors. The existence of the need and interests of social actors in security determines the existence of operational management as a subspecies of social management. Bringing the system into the mode of mobilising internal resources, as well as managerial support for the performance of the operational function by the security forces, constitute the content of operational management. The operational nature of the security forces' actions necessitates the existence of a single, universal statute, the "Combat Statute of the Security Forces", which sets out the system-wide principles of functioning of all types of security forces. The combat nature of the security forces' confrontation with the aggressor requires a special (military-police) form of organisation of the system, which determines the closed type of its organisational and functional structure, which must be adapted to the conditions of public life, meaning that there are no contradictions between the model of the real system and the constitutional system of the state and society overall. The adaptability level is assessed by scientific and analytical bodies of the system. The information provided by them is mainly classified as a state secret, as its content reveals both the weaknesses and strengths of the system. The status of an authorised body for the preservation of state secrets should ensure this requirement. The key advantage of a closed system lies in the possibility of mobilising the efforts of all subsystems in one area of work without any additional, more elaborate procedural measures typical for a public (open, secular) system. The need to ensure a closed type of system structure is also caused by a group of factors of an information and technical nature, their presence being typical for situations when the system becomes an object of intelligence activity. In this case, the role of technical means of protecting the system is greatly enhanced, and units for technical support of security measures should be in place. The closed type of structure implies a special mode of operation of the system; the purpose of ensuring security, relevant tasks and functions provided for the national security system determine the closed type of its organisational and functional structure.

The primary purpose of the combat statute of the security forces is to establish the tactical principles of

[1] Code of Conduct on Politico-Military Aspects of Security. (1994, December). Retrieved from https://zakon.rada.gov.ua/laws/show/994_116#Text.

the operational function of the national security system, to describe the content of the operational and tactical form of action of the security forces; the form of the statute is determined by the actions of the security forces units to counteract violence (ensuring general security), rescue people and provide aid in the aftermath of accidents, natural disasters and catastrophes.

The structure of the statute (draft): operational and tactical activities of services for the protection of public order and security in special, emergency, extraordinary situations (defensive "combat" activities); tactical and special (operational and tactical) activities of armed military organisations to protect public order in dangerous and emergency situations; operational and tactical activities of military organisations in dangerous and emergency situations to protect the rights of citizens from physical phenomena (arising both from criminal acts and for objective reasons) with the purpose of preventing and terminating any socially dangerous consequences, i.e., handling explosions, fires, and the aftermath of accidents, catastrophes, and natural disasters.

The degree of the highest efficiency and activity of the security forces is directly dependent on the development and evaluation of training and bringing the security forces into a state of readiness that is suitable for a particular operational task. The prospect of the security forces fulfilling their tasks is the steady desire of the governing entity to achieve the highest level of controllability of the system in operational conditions, to create a multifunctional operational system. The internal content of the mechanism for implementing the operational management function involves the implementation by the subject of operational management of a set of actions within the management process, which should be aimed at ensuring: a) operational readiness of the security forces; b) the ability of the system to solve operational tasks; c) effective use of special means; d) achievement of coherence of actions of all units involved in the operation, rational use of their potential; e) combat duty; f) ability to perform service tasks in the field. Each of the above areas involves the subject of the operational management function taking measures inherent in their activities, which generally ensures the successful completion of the operational task by the system.

Procedure for implementing the operational management function. This approach can be implemented through a three-stage system. The first stage involves mobilising resources to focus on critical areas at critical times to achieve key objectives. The second stage is to restore the resources used and prepare for the further fight against organised crime. The third stage is long-term planning, capacity building and strategic management of processes related to combating organised crime. The use of such a scheme is also conditioned by the fact that the relevant negative phenomenon, as noted above, has the property of dynamic change. For example, J. Windle (2023) presented a model of criminal migration, focusing on the fact that organised criminal groups and illegal enterprises are often characterised as "family gangs"; some violent conflicts are presented as family feuds; a wide range of paramilitary groups have a diverse impact on organised crime; many organised criminal groups and illegal enterprises are internationally mobile. Three types of mobility were identified: those who travel to other countries for one-off jobs; those who migrate for a longer term; and mobile illegal enterprises. This also leads to extensive expenditure of resources by law enforcement agencies to counteract this kind of negative phenomenon.

In the operations and procedures that take place in the system to preserve its integrity, improvement, and development, the mentioned approach involves the following principles: maintaining the constant readiness of forces to perform tasks; decisiveness and activity of efforts; constant striving to seize and retain the initiative; coordinated use of forces and means, their close interaction; decisive concentration of efforts at the crucial moment in the critical areas and to perform the key tasks; simultaneous impact on the object of action of security forces; timely increase of efforts to achieve success; courage in actions and use of means; creation, restoration, and skilful use of human, material, and technical reserves; consolidation of the achieved success; timely restoration of combat capability of the forces; full use of the potential of the security forces; consideration and skilful use of the moral and psychological factor; firm and continuous command of the forces.

Combining the efforts of organisationally and functionally independent elements is one of the tasks of governance actors in the relevant area of social activity. The possibility of adopting a function as a basis for creating a system gives grounds to implement the content of the relevant principle by modelling operational management systems. Shaping a management system into a set of actors in a particular area of social life enables the effect of concentration and mobilisation of efforts in a crucial area to achieve a particular operational task. For security forces to effectively destroy a target, their operations must be carefully coordinated. This requires synchronising time, space, and assets, as well as considering the patterns and models of various operations. Effective operations require a well-organised overall operational command and the establishment of the necessary bodies to implement this approach.

Operational management involves bringing the system into a state of combat readiness and using its capabilities as a mechanism for the use of force to counteract violence that may take the form of armed struggle against manifestations of organised crime. Achieving security goals by force requires a departure from conventional administrative approaches and a transition to fundamentally different methods of work.

The nature of operational activities, unlike administrative ones, is dynamic and involves a direct risk to the lives and health of the combatants, and requires the exertion of the forces of the opposing parties, including:

a) the content of measures covered by the above-mentioned area of activity of the subject of the operational management function is primarily characterised by the relevant principle of operational management – maintaining the constant readiness of forces to perform tasks. The role of the subject of the function is to implement the provisions of this principle in practice, to use all internal and external capabilities of the system, to use the provisions of the internal security strategy, macro-system theory, and the science of social management. Depending on its competence, a set of actions may be taken in the form of differentiation of functions and specialisation of administrative and staff units; creation of staff bodies to perform the operational management function; implementation of various organisational measures to strengthen interaction between elements of the system; organisation of the work of the operational management unit with staff functions; administrative consolidation of disparate types of security forces based on their functional homogeneity or interdependence; creation and maintenance of a well-developed organisational mechanism for coordination between central and lower-level units. The primary combat task of security forces in combating violence is to rescue people in case of a threat to their life, health, or property.

b) the ability of the system to solve operational tasks requires that the management entity conducts assessment actions based on a formally defined system of criteria. This system should generally reflect the purpose of the operation – the best work will be recognised as the work that contributes most to fulfilling the purpose and is acceptable for achievement. In this case, the role of operational technologies increases, as they provide the subject of operational management with the opportunity to use the scientific potential of specialists in various fields of knowledge to assess the system's ability to solve its tasks. The specificity of operational tasks determines the nature and form of the solution to their implementation; the success of the operation and its outcome, which is used by regulatory authorities to assess the success of the actions of individual units and the system as a whole, depends on its correctness. The head of the operation should act in such a way that their subordinates have maximum confidence in the system's ability to perform the task. For this, a special model is developed and implemented, which is referred to as moral, psychological, information, and propaganda support for the operation. In the relevant systems, there is a rule: an operation is considered successful when the subjects of criticism of the activity are sure of it, while the success itself depends on the confidence of the performers. The subject of the operational management function takes all necessary measures to ensure that information about the system's activities reaches the competent authorities and units that assess the system's functionality.

c) effectiveness of the use of special means. The specific nature of the means that comprise the material and resource side of the mechanism of use of force by the subjects of the operational function determines the complicated and formalised nature of the procedure for bringing it into action, with the simplified technology of its use. The high intensity of operational actions and the influence of negative factors increase the consumption of material resources, and the strength of people involved in the operation, which determines the principle of observing the condition of technological efficiency of expenditures and restoration of the system's strength. To implement this condition, the means involved in the operation are detailed, their content, quantitative and qualitative indicators are determined, which allows saving the system's resources to spend them in crucial areas. The scientific and practical determination of the conglomeration of funds involved in the operation and the formalisation of the processes of their expenditure are carried out both at the strategic level and at the level of lower-level operational management bodies. The final choice of funds and the procedure for their expenditure falls within the competence of the subject of the operational management function, the direct executor of the management decision. The relevant processes are the subject of special studies, which result in operational technologies that determine the procedure for the use of funds.

d) achievement of coherence of actions of subdivisions. In the organisational and functional aspect, the mechanism of interaction between the bodies involved in the operation can be presented as a set of functionally related management bodies, control points, communication systems, systems and means of automating the management of units, as well as special systems that collect, process, and communicate information. Considering the tasks and forms of implementation of the operational management mechanism, it is possible to identify the key organisational systems that should be responsible for performing the relevant function. On a functional basis, the main units of operational management in their inseparable unity include: 1) operational management bodies – headquarters; 2) operational and technological bodies of the headquarters, departments, branches, groups: operational and combat training; intelligence and counterintelligence activities; work with personnel; logistics; mobilisation work; administrative; internal security.

e) combat duty. The actions of the competent authorities to perform an operational function in the context of confrontation with violence and dangerous factors of the material world are defined as combat in the legal aspect. This type of activity involves several modes

of the system's state, depending on the tasks assigned to it and the mechanisms for their implementation. A comprehensive consideration of legal categories, such as combat mission; operational function; operational situation, makes it possible to characterise a derivative category – the mode of operation of security forces. It is the consideration of their content side in combination that allows reflecting the quality of the state in which the system is, reflecting its dependence on external conditions of functioning of the security forces. Focusing the actions of organisational units on maintaining the required mode of operation of the system is a qualifying feature of the dynamics of the cycles that comprise the performance of the operational function. The content side of the cycle – combat duty – is determined by both the state of the system overall and of a particular body. It is based on a form resulting from a combination of efforts of actors performing purposeful and formally defined actions. Identifying the single focus of the bodies' actions as operational activities, the classification of the mechanism for achieving them is based on differences in procedures and processes of performing tasks by the subjects of the operational function in the form of combat duty and combat operations. The content side of combat duty is a form of performing an operational function within the scope of the operational plan, which forms an integral part of operational (combat) activity, an internal and external side of the operation, part of the procedure established by the subject of the operational management function for maintaining the functionality of the system and bringing it into a mode that determines actions within the framework of the combat mission, the procedure of service, which in its content involves the performance of operational tasks.

f) the ability to perform a service task in emergency conditions. The key feature that characterises an activity as operational (combat) is the conditions that, by their nature, pose a danger to its subjects. In political and legal terms, such conditions are defined as martial law and a state of emergency. Each state has its substantive side, which reflects the dangerous factors that serve as the basis for putting in place a mechanism to prevent and counteract them. Manifestations of violence in the internal sphere of society, properties of objects of the material world that pose a danger, threatening the existence of society overall, are the object of action of security forces, factors that determine the nature of the mechanism for implementing operational tasks. The basis for the performance of functions by security forces is the presence or threat of danger, which by its nature impedes the fulfilment of security needs and interests. This is the basis for the creation and functioning of the relevant system.

The resilience of the system to the impact of dangerous factors, its ability to achieve its goals despite obstacles that pose a danger to both its individual members and the system itself, determines the content of the criteria that assess the effectiveness of performance. It should also be borne in mind that organised crime uses violence in its attempts to take over legal business in certain areas. For example, L. Tiscornia (2023), while studying the issues of responding to stresses in the social environment and climate change, which entail socio-political consequences, including violent ones, concluded that organised crime does not stay on the sidelines. Climate scarcity creates conditions for organised criminal groups to capture markets for legal goods. Scarcity drives up prices, creating incentives for criminal groups to seize production and distribute these goods with disastrous consequences. L. Tiscornia (2023) proposed a new theory on the climate drivers of organised crime behaviour, combining the doctrines of climate, conflict, and criminal violence.

Individuals involved in operations against organised crime are exposed to a variety of risks, including physical harm and psychological stress. The intensity of these risks can vary depending on the particular task at hand. To effectively address these challenges, individuals must possess a combination of physical fitness, psychological resilience, and tactical skills. A critical aspect of a system's functionality is its ability to achieve its objectives, even when faced with severe challenges. This involves influencing the target environment and implementing pre-determined modifications, while staying adaptable to the unforeseen circumstances that arise during the course of organised crime operations. The nature of these operations requires all actors to expend considerable resources, which inevitably leads to a reduction in their overall capabilities. The system's need to restore and strengthen its influence on the situation is both a natural instinct and a public demand, which must be met to succeed. Within the framework of such work, it is necessary to consider the fact that under current conditions there are changes in the classification of entities classified as organised crime.

The intensity of the processes that take place when the security forces perform their operational function necessitates the improvement of methods of combating manifestations of organised crime, the use of best practices of scientific achievements and the full scope of the system's capabilities. Relying on a gradual increase in tension in the context of an operation may be erroneous, and therefore measures should be taken at the preparatory stage to include the entire system in the fight against organised crime and to use its full potential.

The work carried out in the system to maintain social ties is based on the principles of law, which is an opportunity to act, i.e., to do what is ethically permissible, which is good in itself and meets the obligations assumed by the subject of social relations. In this regard, it may be useful to consider new concepts. B. Rider (2023) considered offshore jurisdictions in terms of preventing or even facilitating organised and economic crime related to compliance with international standards

in the offshore context, while asking whether they are – as a means of stopping malicious activity – appropriate in their "one size fits all" structure.

One of the conditions for success in countering violence is to maintain the internal state of employees involved in organising and conducting operations at the level necessary for operational activities. To this end, mechanisms are created to ensure full and effective moral and psychological preparedness for active efforts to perform their duties in dangerous, challenging conditions. For this, methods should be developed that enable the practical implementation of managerial intentions with the use of force, which carries a moral and psychological factor, and the introduction of formalised schemes for mobilising social groups to perform an operational task.

The conditions of combating manifestations of organised crime and conducting operations are determined by the nature of the decision-making and implementation process and the final outcome that should naturally complete their implementation. Decision-making, ways of its full and strict implementation by all elements of the system is a formally defined process, but it also largely depends on the authority of the manager, their experience, ability to manage the system under their control, which in aggregate can be perceived as a criterion for the performance of the management function. The performance of this function requires the establishment and clear organisation of communications and the following of commands from the head of the operation, which necessitates the development and implementation of a special mechanism for passing orders from the subject of management to the object in the context of the operation. The concealment and security of the relevant links is one of the conditions for ensuring the stability of the management process and the efficiency of the system's functioning in conditions and environments that pose threats to the security of not only an individual entity but also the system overall (Table 1).

Table 1. System of principles of operational management of security forces

OPERATIONAL ENVIRONMENT	■ maintenance of constant readiness of the security forces to perform tasks. Readiness for operational actions. Operational readiness. Degrees of readiness of the system for operational activities;
	■ decisiveness and active efforts;
	■ constant striving to seize and retain the initiative;
	■ coordinated use of forces and means, their close interaction;
	■ decisive concentration of efforts at the crucial moment in the critical areas and to perform the key tasks;
	■ simultaneous impact on the object of action of security forces;
	■ timely increase of efforts to achieve success;
	■ courage in actions and use of means;
	■ creation, restoration, and skilful use of human, material, and technical reserves;
	■ consolidation of the achieved success;
	■ timely restoration of combat capability of the forces;
	■ full use of the potential of the security forces;
	■ consideration and skilful use of the moral and psychological factor;
	■ firm and continuous command of the forces.

Source: developed by the authors of this study

The development of a system of mechanisms for mobilising security forces involved in the fight against organised crime, the internal content of which fully reveals the patterns of a specific type of social activity – operational management, is an independent area of the theory of the national security system, a subsystem of the strategy for combating manifestations of organised crime. Each of the described principles is an element of a general system which can function in the presence of a single mechanism for their application, the national security strategy.

Conclusions

The study of scientific research and practical results of the work of the actors of the system of combating manifestations of organised crime and corruption during the martial law and the related aggravation of the operational situation suggests that increased attention is being paid to the problems of introducing advanced technologies and practices.

The application of the methodology of building military-scientific knowledge allows achieving the universality of the mechanism of management of law enforcement agencies, enables the organisation of operational-strategic and operational-tactical levels of their management, eliminates the negative impact of the factor of departmental limitations, facilitates the inclusion of bodies with different structures, functional organisation, subordination in a single system of operational management of national security processes, which increases their mobilisation readiness to perform operational tasks. In the development of the mechanism of mobilisation of security forces, a series of theoretical and managerial problems were solved regarding the methodology for determining the directions of activity of a complex system, ensuring the state of elements necessary for its functioning, organisation of internal and external system links, criteria for assessing the effectiveness of performing system-wide tasks, and general and special principles were developed for

organising a multifunctional complex system operating to ensure national security.

The characteristics and classification of measures to implement the operational management function help to clarify the functions of the management entity acting as an administrator, the content of which reflects the provisions of the classical administrative school, namely: division of labour; powers and responsibilities; discipline; unity of authority; unity of activities; subordination of personal interests to general ones; remuneration of personnel; centralisation; scalar chain (management hierarchy); order; fairness; stability of the personnel's workplace; initiative; corporate

The perception of operational management in the field of combating organised crime as a functional system can be argued to imply that the subjects of the operational function are recognised as a managing and managed system, whose activities are ensured by the management mechanism, which is the operational management system. As a result of its use, a new form is created – the operational management function, operational (combat) activity. The key criterion for classifying a body as an operational command and control system (operational body) is the performance of an operational (combat) task. A sign for classifying a body as a system of operational management entities is that it has an operational management function.

Promising areas for further research in this area may include the development of methods for integrating the latest technologies (e.g., artificial intelligence) into the operational management system to improve the efficiency of interagency coordination and the adaptability of management decisions in the dynamic national security environment.

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None.

Conflict of Interest

The authors of this study declare no conflict of interest.

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Міжнародний досвід мобілізації механізмів боротьби з організованою злочинністю

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Анотація
Метою дослідження було розроблення наукового підходу до мобілізації механізмів боротьби з виявами організованої злочинності, що має бути стратегічною, програмною, вибудованою на міжнародному досвіді. Відповідно до поставленої мети та специфіки предмета дослідження використано сукупність методів соціальної інженерії в організації системи боротьби з організованою злочинністю. Окреслено зміст організаційних основ системи мобілізації правоохоронних органів, задіяних до боротьби з організованою злочинністю. Такі механізми проаналізовано в аспекті визначення теоретико-управлінських засад їх формування на етапі соціальних перетворень, загрози криміналізації суспільства, активізації виявів насильства в політичній та інших сферах суспільного життя. Зміст безпеки як об'єктивного явища досліджено на предмет системоутворювальних властивостей, організаційного фактора соціальної системи. Засвідчено стратегічне значення процесу підвищення ефективності безпеки в різних сферах життя суспільства. Доведено, що наявний державний механізм регулювання суспільних відносин безпеки є доволі консервативним і не цілком відповідає сучасним умовам існування різних націй як у внутрішній, так і зовнішній сферах життєдіяльності. Система силових органів має розгалужену, складну організаційно-функціональну структуру, що ускладнює організацію та здійснення процесу управління. Державні органи, дотримуючись політико-правових умов і створивши спеціалізований механізм управління, можуть і повинні бути залучені до забезпечення національної безпеки. Для цього необхідно подолати відомчі бар'єри, консолідувати зусилля державних органів, оперативних підрозділів, щоб забезпечити внутрішню безпеку держави, тобто розробити модель управління відповідними суб'єктами за організаційно-функціональним принципом. Результати роботи формують науково-практичне підґрунтя для приведення системи відповідного типу у стан, що дає змогу невідкладно вирішувати питання мобілізації та проведення широкомасштабних дій щодо усунення умов і наслідків впливу небезпечних факторів, істотно впливаючи на стан безпеки суспільства. Застосування теоретико-управлінського підходу дає змогу визначити та розв'язати в дослідженні наукові проблеми, отримати науково-практичні результати

Ключові слова:
система; боротьба з організованою злочинністю; сили безпеки; національна безпека

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Essence and purpose of preventive and punitive functions of legal liability

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Abstract
The relevance of this general theoretical study is conditioned by the growing number of offences in the country, which indicates problems in society and the state, including the insufficient effectiveness of legal liability, and the need to improve its regulatory framework and proper performance of functions. The study analysed the preventive and punitive functions of legal liability as essential factors of prevention of unlawful behaviour. The purpose of this study was to initiate a scientific discussion on the mechanisms of legal liability's impact on unlawful behaviour, and to determine the possibilities of preventive and punitive functions in terms of preventing unlawful behaviour. The methodological framework of the study was based on formal-logical, systemic, and structural-functional methods employed within the framework of dialectical, phenomenological, and systemic approaches. The study resulted in the hypothesis that the normative model of legal liability (in the objective sense) can only serve as a general prevention of offences. The existence of a legal fact of an offence leads to legal liability in the subjective sense. At this stage, the punitive function is fully realised. Only the interaction of these functions will contribute to the implementation of the tasks of the institution of legal liability, primarily the prevention of offences. Thus, the functions of legal liability are its impact, practical implementation of the purpose which is expressed in establishing the legal limits of a person's conduct by means of its incentives, coercion, or punishment; the key functions are preventive and punitive; the preventive function is aimed at prevention and deterrence of offences, which is achieved by establishing sanctions for their commission; the punitive function covers both the purpose of punishment and education, and is implemented at the individual level by force in a certain procedural form. The practical significance of this study is that law enforcement agencies can use the findings to formulate effective strategies for developing modern political-legal instruments for preventing unlawful behaviour

Keywords:
unlawful behaviour; offence; crime; punishment; prevention

Introduction
The topic of legal liability is one of the most central in modern scientific research. This is caused by the combination of a series of factors that determine the theoretical and practical significance of legal liability for relevant scientific research and prevention of unlawful behaviour in 2024 and in the following years, and, accordingly, for the stability of public life. In Ukraine, the number of unlawful acts is steadily increasing, which is

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explained by the substantial complication of political, social, property, financial, and other relations related to fundamental transformations in all spheres of public life in Ukraine, especially corruption, which forces people to look for ways to survive, as well as the war waged by Russia against Ukraine, which has led to new problems for the civilian population. Specifically, a massive number of people from Ukraine are migrating to other countries, mostly European, in search of safety, where they encounter other cultures, languages, traditions, and mentalities. The degree of adaptation in a new place of residence largely determines the behaviour of a forced migrant: law-abiding or criminal. The growing number of offences also raises the issue of legal liability, which is not always enforced against every offender. Impunity gives rise to new crimes, undermines law and order, stability in society, and contributes to human rights violations. It is legal liability that guarantees against lawlessness and arbitrariness, is an effective factor in the system of checks and balances and helps to ensure the exercise of human and civil rights and freedoms. The principal purpose of legal liability is to streamline (regulate) social relations and prevent offences.

The grounds for bringing to legal liability and some of its functions have already been investigated by modern Ukrainian and foreign researchers. Specifically, F. Teichmann *et al*. (2023) considered the role of liability in society, recognising it as an effective means of preventing offences. It is not possible to present all their arguments in the present study, considering its scope and sections. M.E.N. Ninaquispe Soto *et al*. (2021) highlighted the ways of crime prevention and concluded that the use of modern technologies in crime prevention is becoming more frequent and that their wider application can contribute to reducing crime. G. Mahlangu & E. Zsvanai (2023) investigated the technologies of offender rehabilitation and substantiated the conclusion that e-learning should be included in offender rehabilitation programmes. A.M. Rubanenko (2022) examined the essence of legal liability as a structural element of the legal status of foreigners and stateless persons and considered three key approaches to the interpretation of the term "legal liability", namely: retrospective, positive, and dual-aspect. D. Brown (2019) analysed the role of public sanctions and supervision in punishing an offender, positively assessing them, and emphasising the need for their wider application. X. Guan & T.W. Lo (2021) studied the punishment as a means of deterring people from committing a crime, providing concrete data on the consequences of punishment for the offender and society. I. Polonka (2018) performed the theoretical legal analysis of the stages of development of the mechanism of misconduct. F. Rahmadia (2020) examined the effect of criminal liability on the law-making process, substantiating the opinion that the legislation should recognise corporations as the subject of criminal liability.

The above-mentioned researchers considered certain aspects of legal liability or its individual types. However, the range of issues related to the theory of legal liability, its objectives, and functions is understudied. Specifically, the preventive and punitive functions of legal liability and their impact on the further behaviour of an offender require special research, which is why this study addressed this issue. To this end, it was necessary to characterise the essence of legal liability, to analyse positive and negative legal liability, to investigate the specific features of the preventive and punitive functions of legal liability, and to determine their role in preventing unlawful behaviour, and, accordingly, their significance for society.

The purpose of this article was to initiate a scientific discussion on the mechanisms of legal liability's impact on unlawful behaviour, and to explore the possibilities of preventive and punitive functions in terms of preventing unlawful behaviour.

Materials and Methods

The methodology of this study was based on a dialectical approach which ensured a comprehensive and objective coverage of the phenomena and processes under study, establishment of their characteristic links, assessment of each phenomenon or process from the qualitative and quantitative perspectives, and explanation of the dependence of the form of a phenomenon or process on its essence. This approach helped to explore the essence of the terms "legal liability", "preventive function of legal liability", and "punitive function of legal liability", and to characterise the factors that determine these concepts and their relationship with a variety of social phenomena. The dialectical approach helped to explain the causes of the processes that entail legal liability. This approach assumes that it is impossible to obtain "knowledge of any fact in isolation; what is known must be included in a larger explanatory structure" (Meinwald, 2024).

The phenomenological approach helped to explore the theoretical legal foundations of the causes of offences through their perception by subjects, including those whose legal consciousness has undergone deforming changes, and to determine their subjective attitudes towards the factors that they perceive as unjust and violating their rights. It is phenomenology that allows understanding the purpose of the subject and the consequences of their behaviour for themselves, others, or society overall.

A synergistic approach was also useful, as it was applied to specify trends in the evolution of factors that lead to unlawful behaviour and legal liability. The study identified the principal threats from crime and analysed the effect of legal liability on individuals and society in general. The impact of certain traumatic factors associated with imprisonment on a person's legal consciousness and future life was also highlighted.

The study also adopted a sociological approach to legal phenomena, which involves recognition of the principle of social determinism. This principle requires proceeding from the fact that the entire set of causes, conditions, prerequisites, and grounds of law is located within the social world. Sociological methodology inherently contains the presumption of the priority of the whole over the part, of society over the individual, while law is perceived as a means of ensuring this presumption. In this study, this approach was manifested, for instance, in the analysis of the impact of imprisonment on the further fate of the offender (Tymoshenko, 2024).

The formal logical method was also employed in the analysis of a series of terms. It proved to be useful for clarifying the essence of legal liability, its preventive and punitive functions, etc. This helped to find logical contradictions in the structure of a range of judgements, and as a result, to avoid errors in the conclusions of this study. It was helpful to use the laws of formal logic, especially contradiction, identity, and sufficient grounds, which contributed to the certainty, consistency, and validity of the findings. As a result, new knowledge was gained on the prevention of unlawful behaviour.

When analysing the components of a series of phenomena and processes, the systemic method was applied, which helped to consider the object under study as a whole, rather than a set of its components, to determine the significance of these phenomena and processes for the system as a whole, to trace their functions in the system, and their interconnections. The phenomena and processes under study were considered in relation to the environment against which the system operates. Specifically, the study examined the relationship between crime and punishment, offence and legal liability, and the consequences of imprisonment for a person's future life. It is the connections between the elements of the system that are crucial for the integrity of this system. The systemic method allowed considering the object under study not only in a static form, but also observing the dynamics of its development. Previous studies served as the basis for theoretical constructs. To estimate the number of prisoners, the study used data from Yu. Hayduk (2024) and the Institute for Criminal Policy Research (ICPR), Birkbeck, University of London. Every year, the World Prison Brief publishes a special report ranking the countries of the world by the absolute number of prisoners (Countries with the largest number..., 2024). Empirical data on prisoners' education was taken from studies conducted by UNESCO (2021), F. Morken *et al*. (2021), S Hopkins (2022).

The structural-functional method was also employed, without which it is impossible to investigate the impact of legal liability on the choice of behavioural model by a subject of law. At the same time, this method enabled the study of the autonomous qualities of the object (in this case, the legal consciousness of the offender) in terms of its internal structure and the role of components in shaping the integral properties of the system. Specifically, this applies to the influence of possible consequences of an offence on the behaviour of a subject of law, the influence of the environment on the individual, and vice versa. This method helped to identify the genetic (diachronic) aspect, which allowed assessing the nature and laws of development of a particular phenomenon. In this way, the behaviour of a person was described depending on their personal characteristics, as well as the features inherent in the environment when certain conditions and circumstances change.

Results and Discussion

Legal liability can be considered as a type and measure of state coercion for a committed offence. At the same time, it is a legal relationship that arises between the competent state authorities and the offender, who is obliged to suffer certain adverse consequences prescribed by the sanction of a legal provision. The content of these legal relations is the state's right to impose and enforce the punishment set out in the sanction of the relevant legal provision, as well as the offender's obligation to suffer adverse consequences for the offence. This is legal responsibility in its negative, retrospective sense. It is this responsibility that is the focus of the present study. Legal liability implies that both parties to legal relations have respective rights and obligations and implements the task of protecting and safeguarding human rights, the existing socio-economic system, and the political regime.

Legal responsibility has a series of features. It is always a form of social responsibility stipulated by the current legislation. It is applied only by specially authorised bodies, is a form of state coercion, leads to adverse consequences for the offender, and is implemented in the form prescribed by the law. Finally, legal liability is a consequence of an offence and a tool for ensuring security.

Legal liability can be exercised not only compulsorily but also voluntarily. The content of the forms of implementation is determined by compliance with obligations or offences, encouragement, approval, punishment, condemnation, and suffering of adverse consequences. In other words, legal responsibility can be positive and negative. Positive legal liability is, arguably, a positive reaction of the state to lawful behaviour. Positive legal liability is based on a legal fact, namely, binding and prohibitive legal provisions that have entered into force. Negative legal liability is retrospective. It is exercised in protection legal relations, the content of which is the right and obligation of the state, represented by authorised bodies, to bring the offender to justice and make them bear the adverse consequences stipulated by the violated rule. Therewith, the deformation of the offender's legal consciousness should be corrected and guidelines for lawful behaviour should be formed.

The positive and negative aspects of legal liability are dialectically interrelated and directly aimed at preventing offences, i.e., it performs a preventive function. Firstly, the effect of negative liability measures is aimed at ensuring its positive manifestation. Secondly, positive manifestations of legal liability are aimed at shaping the future lawful behaviour of a person, where the effect of negative liability is unnecessary. The primary purpose of positive liability is to create an orderly state of social relations. The purpose of preventing offences is achieved through regulation by means of obligations, prohibitions, permissions, and incentives.

Legal liability performs certain functions, which are the key areas of its influence on the behaviour of legal entities, revealing the essence and social purpose of legal liability and ensuring the achievement of its goals. These are the following functions: regulatory, protective, preventive, punitive, educational, and law-restorative (compensatory). Since it is impossible to consider them all within the scope of the present study, let us focus on the preventive and punitive functions which the author of this study considers to be crucial.

The preventive function of legal liability is the area of legal influence of legal liability on the behaviour of subjects of social relations, which aims to prevent offences and to eliminate anti-social behaviour, as well as to narrow the factual and legal possibility of committing a new offence. The term "prevention" comes from the Late Latin *praeventio* – precede, warn; in English, prevention means warning, deterrence. For example, by implementing punishment, the state influences the consciousness of the offender. Moreover, the preventive effect is exerted not only on the offender themselves, but also on others.

The logical structure of the preventive function is as follows: objects, subjects; methods; purpose and outcome of influence. Depending on the subjects and methods of influence, the structure of the preventive function includes individual preventive influence and general preventive influence (general prevention). The ways of exercising the preventive function of legal liability are as follows: establishing obligations to follow the prescriptions of legal provisions; informational influence by the sanction of a legal provision (threat of legal liability); informational influence by the practice of applying legislation on legal liability; implementation of negative sanctions of legal provisions that guide the behaviour of the subject in the required manner or deprive them of the factual and/or legal possibility of committing a new offence. In the case of positive legal liability, the ways of its implementation are as follows: the establishment of legal norms, including incentives; informational influence as a result of lawful behaviour.

The mechanism of influence of the preventive function of legal liability involves two stages. The first stage is from the moment a legal act enters into force. The scheme of this stage is as follows: a legal provision establishing legal liability; informational influence stemming from the provision; comprehension of the requirements by the subjects of legal liability; lawful behaviour implemented in legal relations. The second stage is implemented in case of an offence committed by a subject. The scheme of its implementation is as follows: offence; obligation to undergo legal restrictions stipulated by the sanction of the violated provision; establishment of the fact of the offence; law enforcement act; and the offender's suffering of consequences. As a result, the offender should lose the desire to commit a new offence.

The primary area of combating unlawful behaviour is defined as the institution of prevention. These are direct and indirect measures taken to reduce, deter, and prevent unlawful behaviour. It can be argued that prevention is, firstly, a purposeful, systematic process that lasts for a certain time; secondly, the activity of all entities with state power and administrative authority that implement measures to influence the object within their jurisdiction. Crime prevention aims to improve the material and spiritual conditions of people's existence before, during, and after crimes are committed to prevent, control, eliminate, and reduce their number. Criminology considers crime from the standpoint of aetiology (identifying causes) and environmental influences. Aetiology is used to investigate the motivations for crime, which are often diverse and cannot be explained by a single theory. Analysing crime from an environmental standpoint involves considering crime as a trade-off between costs and benefits and recognising that people's understanding of the consequences determines their decision to commit or not to commit a crime. Before acting, people evaluate risks, the severity of penalties and rewards. If the rewards outweigh the risks, a person is likely to commit a crime (Hsu *et al*., 2022).

A generic category that encompasses the content of both prevention and warning could be "prevention". Etymologically, prevention includes a system of general measures for all citizens (i.e., precaution), as well as individual targeted work (warning) and can be considered as a synonym for them. It should be perceived as a generic concept, an independent category of law, characterised by such indicators as generality, universality, and abstraction. The preventive effect applies to all subjects of law, exists in all branches of law, and is implemented by law enforcement agencies within the scope of their duties.

Prevention in legal doctrine is mainly considered in the criminological context. Whereas prevention is used in relation to a wide range of people, warning focuses on the addressee of the warning as a person who is prone to committing crimes and administrative offences. The punitive function of legal liability is a separate area of homogeneous, positive, structurally-organised, and coercive influence of law on the consciousness, will, and behaviour of offenders based on laws and other

legal acts, which, within the framework of regulatory and protective legal relations, is aimed at restoring social justice in the form of retribution for the offence and application of concrete punishment measures to offenders by courts, law enforcement agencies, and other competent authorities, while pursuing the goals of prevention, restoration, and education. The essence of the punitive function lies in the legal restrictions it imposes on offenders.

The legal restrictions that are a punishment for the offender, for the other party usually mean a benefit, which lies in restoration of the violated social relations, compensation for damage, compensation for losses, etc. The logical structure of the punitive function is as follows: objects, subjects (offenders, victims, competent individuals, officials and bodies, witnesses, etc.), methods, purpose, and outcome of influence.

The punitive function of legal liability is characterized by the following features: it is one of the main areas of legal influence of legal liability; it expresses one of the active sides of law, its creative transformative role in the regulation and protection of social relations; it pursues the goal of punishment as the main purpose, and at the same time, additional goals of education, prevention, restoration; it implements state coercion in specific legal restrictions; it has specific methods of implementation; it has a historically variable nature and is conditioned by the patterns of social and economic development.

The punitive function manifests itself as a reaction of society, represented by the state, to the damage caused by the offender. Punishment is always the infliction of moral, personal, and material burdens on the offender, and it is also the self-defence of society. It is implemented both by changing the legal status of the offender by restricting their rights and freedoms and by imposing further obligations on them. In other words, the punitive function is implemented within the framework of regulatory and protective legal relations in a certain procedural form and is externally expressed and consolidated in spoken and documentary acts.

The purpose of punishment, which was promoted by the Enlightenment and established in the second half of the 19th century, is not to torture and suffer the offender, but to prevent the perpetrator from harming society, to deter others from committing crimes (crime prevention) (Beccaria, 1764). Therefore, such punishments and methods of their execution should be applied that, being proportionate to the offence committed, would have the most tangible and lasting impact on the offender and would not cause unnecessary severe physical suffering. Punishment should be understood as humane and necessary to achieve the goals of education, prevention, regulation, and restoration, not revenge. In reality, the purposes and functions of legal responsibility form a complex system comprising two subsystems – the subsystem of functions and the subsystem of purposes. These relatively separate subsystems are characterised by their internal interaction and interrelationships, which allow achieving the goals of legal liability not in isolation from each other, but only in a system.

The principal purpose of punishment – to prevent the commission of new crimes – can be achieved in various ways. This purpose is facilitated by increasing the length of imprisonment and expanding the possibility of imposing imprisonment for crimes of varying gravity. It is quite problematic to commit a new crime while in prison. However, isolating a person does not eliminate the threat of recidivism after release. Prolonged imprisonment leads to addiction and indifference to the conditions of isolation, and thus criminal punishment loses its educational and preventive value. A new crime is often committed immediately after being released from prison, only to return to the same place – to their familiar environment. It is clear that isolating an offender cannot fully address the issue of public safety.

There are also serious doubts regarding the educational role of prisons. Imprisonment is associated with a considerable number of adverse effects on a person's mental and physical health. The life course of people in prison is characterised by a low level of education. Thus, according to S. Hopkins (2022), an extremely high percentage of offenders in Australia have poor literacy skills, and this can be both a factor in their offending and an obstacle to rehabilitation. The low literacy levels of prisoners are also evidenced by UNESCO (2021) and a series of other empirical studies, as argued in the review article by F. Morken *et al*. (2021). Unemployment, lack of housing, poverty, and trauma – social determinants that negatively affect health – also affect behaviour (Marmot, 2018). Imprisonment is definitely associated with poor health, and after release from prison, a person faces a lot of problems, including health. Prison environments are known to be damaging to mental health, removing people from society and depriving them of meaning in life. The terrible conditions in prisons are often an aggravating factor that leads to post-prison syndrome, which is comparable to post-traumatic stress disorder. Accordingly, many former prisoners suffer from mental health consequences after serving their sentences (Quandt & Jones, 2021).

Imprisonment can be considered a primary stressor, as the experience of imprisonment is stressful in itself (Turney *et al*., 2012). Even prison staff are profoundly affected by the prison environment, contributing to at least three major problems: bureaucracy, defensive behaviour, and commitment to a punitive culture (Torrente, 2024). Stress process theory argues that imprisonment can potentially generate other stressors, such as poor physical or mental health. Stressors can be coped with in a variety of ways, including engaging in crime or escaping reality through drug use. All this contributes to recidivism (Wallace & Wang, 2020). People with poor health or chronic illnesses may feel that various aspects of daily life are too difficult, which

reduces their ability to engage in daily activities. As a result, they may turn to crime as a way of coping with their problems. Chronic tension contributes to negative emotions such as anger or frustration, which leads to a tendency to relieve tension in deviant ways. In fact, even pre-trial detention, especially on its current scale, is punitive, which is likely to undermine the systemic goals of justice and public safety. It entails the same consequences as punishment (Anderson *et al*., 2023). According to P. Zawadzki (2024), any "punishment involves the intentional infliction of harm and suffering. Both most famous families of justifications for punishment – retributivism and consequentialism – face several moral problems that are challenging to overcome. Furthermore, the effectiveness of modern methods of criminal punishment in ensuring the safety of society is seriously undermined by empirical research. For a modern and humane society, it is a moral imperative to find alternative means of administering justice".

The negative consequences of prolonged isolation from society can be observed in the case of people called hikikomori in Japan. Their behaviour is considered a personality disorder akin to autism (Mori, 2020). Hikikomori can be caused by psychological trauma, upbringing deficiencies, etc. Japanese psychiatrists have concluded that this behaviour is not just caused by laziness or fear of communication. In their opinion, hikikomori (people with this disorder) are paralysed by profound social fears, suffer from increased anxiety, and are insecure (Trajtenberg & Ezquerra, 2024).

A great number of people in the world are imprisoned. As of January 2024, El Salvador had the highest prison population in the world, with more than 1,000 people per 100,000 people. Cuba, Rwanda, Turkmenistan, and American Samoa rounded out the top five countries with the largest number of prisoners (Countries with the largest number..., 2024). Ukraine is among the top ten European countries with the largest number of people in prison. As of 1 March 2024, 44,621 people were held in penal institutions and pre-trial detention centres of the State Criminal Executive Service of Ukraine (Hayduk, 2024). After release, these individuals will face a myriad of issues that will impede their social adaptation and will not help to raise their level of legal awareness. This is why many penitentiary systems are increasing the use of non-custodial sentences and replacing the sentence specified in a court verdict with other measures of social restriction (Jouet, 2022).

Since the Enlightenment, a variety of societies, including European ones, have been characterised by liberalisation of penal policy. The implementation of the liberalisation policy in the form of changes to the current criminal and penal legislation, as well as changes to the principles and methods of operation of the penal system, should ultimately lead to minimisation of illegal behaviour in society. The experience of some Western European countries shows that in terms of the effectiveness of achieving the preventive goals of punishment, imprisonment is inferior to comprehensive social work with a convicted person without isolation from society.

A noteworthy opinion on punishment was expressed by Norwegian criminologist and writer N. Christie (2006). He argued that the overwhelming majority of citizens commit "crimes" in their lives, i.e., what the criminal law means by this term. However, only a few are held accountable for these acts. N. Christie (2006) considered this to be unfair, while at the same time considering the problems of punishment in the context of the global socio-economic crisis that humanity is experiencing. Acknowledging that punishment plays a deterrent role, that without it society is threatened with "chaos", Christie wrote that an attempt to link the severity of criminal punishment to the crime rate is unfounded, that there is no connection between the severity and number of crimes, on the one hand, and the severity of punishment, on the other hand.

Modern scientific knowledge about the essence of punishment is largely limited to the study of its restorative, compensatory and punitive, correctional, educational, and preventive functions. Criminal sanctions are particularly important for success in combating collective violence. Their role in protecting victims and society in general is constantly growing. As for victims, it is proposed to reorient victim-centred theories of punishment towards consequentialism and the adoption of a broader concept of justice. Consequentialism, the idea that the morality of an act is determined solely by its consequences, is another alternative to retribution. In terms of society, it is argued that in transitional settings, positive general prevention is the primary purpose. For both views, the conclusion is that the interests of victims need to be weighed against the interests of society and that a balanced approach to criminal punishment of offenders is required (Maculan & Gil, 2020).

Some researchers, such as X. Guan & T.W. Lo (2021) from the University of Hong Kong, argue that illegal behaviour can be reduced mainly by ensuring that police and courts treat all citizens fairly and respectfully, rather than by increasing the severity of punishments. It is hard to imagine this idea being implemented in practice. Moreover, the effectiveness of legal liability is manifested not in its cruelty or severity of punishment, but in its inevitability. The essence of the principle of inevitability of liability is that any person whose actions or inaction constitute an offence is subject to punishment or other measures of influence prescribed by law. Punishment is even considered a right of the victim, as well as a means of achieving peace and sustainable development. However, punishment should in no way be recognised as an end in itself, and the victim's right to justice should not replace the rationale of criminal law as a means of protecting legal values and interests through the preventive function of punishment.

It cannot be argued that the inevitability of punishment is properly implemented in law enforcement practice. The reason for this is the shortcomings of criminal procedure[1] and criminal executive legislation[2] and the corruption component of law enforcement and the administration of justice, as noted by P. Bogutskyi (2018). Corruption breeds impunity, while impunity always results in new crimes being committed.

Consideration of criminal punishment as mandatory – in line with the principle of fighting impunity – can obscure the fact that victims' needs vary, that criminal law does not always meet them, and that punishment is usually imposed without prior analysis of the objectives of punishment and what can actually be achieved in relation to the individual victim and society. Punishment can become a hindrance if prosecution and punishment, using a purely punitive and maximalist approach, provokes new acts of violence or fails to end ongoing violence, and distances perpetrators from truth and reparation initiatives. In certain cases, the state may hypothetically try to satisfy victims' claims through other mechanisms, such as material and moral reparation, weighing these mechanisms against other goals and needs in search of the best possible solution to achieve the ultimate goal of maintaining social order, i.e., the combination of legitimate interests of society and the individual to be protected.

Conclusions

Therefore, legal liability is a legal obligation of the subjects of legal relations to follow the current legislation, not to abuse subjective rights, and in case of an offence, to be subjected to legally defined measures of state coercion. The nature of liability is determined by the nature of the duty. The purpose of legal liability is to consolidate, regulate, protect, and restore violated social relations, namely: to make them orderly and regulated; to prevent unlawful behaviour; to create conditions for the proper exercise of rights and freedoms; to restore violated property rights and compensate the victim for material and moral damage caused by the offence; to punish offenders and restore justice; and to re-educate offenders. The functions of legal liability involve the practical implementation of its purpose, which is expressed in the establishment of special legal limits to a person's behaviour by means of incentives or coercion. The key functions of legal liability are preventive and punitive. The specificity of these functions is primarily conditioned by the specific nature of the tasks that are solved with their help.

The measure of legal liability stipulated in the sanctions of legal provisions, without the fact of an offence, has an informational, ideological, and educational impact on subjects, expressed in the message about the punishability of certain types of acts. This manifests the normative model of legal liability (in the objective sense), which can only perform the function of general prevention of offences. In this case, the purpose of preventing offences is achieved in the regulation process by means of obligations, prohibitions, permissions, and incentives. Thus, the preventive function covers the prevention and deterrence of offences. In the case of a real legal fact of an offence, legal liability is implemented at the individual level of legal regulation (legal liability in the subjective sense).

The point of the punitive function is to restrict the offender's behaviour, to shape their lawful behaviour both during the period of unfavourable legal restrictions and in the future. The punitive function of legal liability pursues both the purpose of punishment and the purpose of education. It is implemented within the framework of regulatory and protective legal relations, in a certain procedural form, and is externally expressed and consolidated in spoken and documentary acts.

Thus, the scientific originality of this study lies in the substantiation of the direct connection and interdependence of the results of the implementation of the preventive and punitive functions of legal liability and prevention of unlawful behaviour.

Modern scientific research should focus on the following issues: implementation of European standards in the application of legal liability; improvement of the practice of implementing the functions of legal liability; finding new ways to prevent unlawful behaviour. To prevent unlawful behaviour, to make the offender suffer adverse consequences for their actions and realise their harmfulness, and to influence their legal consciousness, all punishments should have not only a punitive but also a deterrent and educational effect.

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Conflict of Interest

The author of this study declares no conflict of interest.

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Сутність і призначення превентивної та каральної функцій юридичної відповідальності

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Анотація
Актуальність цього загальнотеоретичного дослідження зумовлена збільшенням кількості правопорушень у країні, що засвідчує проблеми в суспільстві й державі, зокрема недостатню ефективність юридичної відповідальності, необхідність удосконалення її нормативної основи та належного виконання функцій. Проаналізовано превентивну та каральну функції юридичної відповідальності як істотні фактори попередження протиправної поведінки. Метою дослідження було започаткувати наукову дискусію стосовно механізмів впливу юридичної відповідальності на протиправну поведінку, визначення можливостей превентивної та каральної функцій щодо попередження протиправної поведінки. Методологічну основу дослідження становили формально-логічний, системний та структурно-функціональний методи, використані в межах діалектичного, феноменологічного, системного підходів. За результатами дослідження було висунуто гіпотезу щодо того, що нормативна модель юридичної відповідальності (в об'єктивному сенсі) може лише виконувати функцію загальної превенції правопорушень. Наявність юридичного факту правопорушення призводить до юридичної відповідальності в суб'єктивному сенсі. На цьому етапі повністю реалізується каральна функція. Лише взаємодія цих функцій сприятиме реалізації завдань інституту юридичної відповідальності, насамперед попередженню правопорушень. Функції юридичної відповідальності – це її вплив, практична реалізація мети, що втілюється у встановленні правових меж поведінки особи шляхом її стимулювання, примусу або покарання; найважливішими є превентивна та каральна функції; превентивна функція спрямована на профілактику й попередження правопорушень, чого досягають шляхом встановлення санкцій за їх вчинення; каральна функція охоплює як мету покарання, так і виховання, реалізується на індивідуальному рівні примусово в певній процедурно-процесуальній формі. Практична значущість дослідження полягає в можливості правоохоронних органів використовувати отримані результати для формування ефективних стратегій розроблення сучасних політико-правових інструментів попередження протиправної поведінки

Ключові слова:
протиправна поведінка; правопорушення; злочин; покарання; попередження

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The types of formality in legal transactions

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Abstract
The purpose of this study was to identify and distinguish the types of formality in legal transaction and to determine the legal consequences of each category's absence from such transaction. For this reason, this study relied on both the analytical descriptive technique, which involved reviewing jurisprudence and legal provisions, and the comparative method, which involved conducting horizontal comparisons of legal texts. This study concluded that the sorts of formality were not limited neither by law nor jurisprudence. This fact has led to inconsistent judicial rulings in addition to conflicting legal ramifications. Furthermore, due to the nature of the procedures it represents, the study discovered that a new category of legal formalities is reflected in the electronic format, which is defined by some specific features. It was concluded that a series of legislative acts is moving towards formal transactions for protectionist and financial goals and objectives. Therefore, a clear distinction should be established between the types of formality, their limitation, and the effects of each type, so as to make it easier for the judiciary to set up suitable effects when some legal transactions lack the required formality. Electronic formality should also be considered by legally regulating it due to its features

Keywords:
consent; freedom; conclusion; proof; invalidity; agreement

Introduction

The consent forms the general rule in transactions within modern legal systems, while formality has become the exception. The latter is considered a set of procedures mandated by the legislator to produce the legal effects of the transaction. Overall, formality imposes a limitation on individuals' will, as they are do not at liberty to determine its parameters. The completion of a legal transaction is contingent upon its adherence to the established norms of formality. However, it may happen that individuals agree to express their will in a specific form not imposed by the legislator, but rather dictated by the force of the agreement between the parties.

The general norm guiding transactions in contemporary legal systems is consent. However, some transactions require specific formalities to be followed for the former to be valid. In this respect, formality can be defined as a set of procedures imposed by the legislator to produce its legal effects. Since they restrict people's freedom of choice and prevent legal transactions from being valid, these procedures collectively represent a limitation on people's free will. It is possible for people to agree to express their will in a special form that is not mandated by law but rather by the force of their mutual agreement. This fact causes researchers to disagree on the exact definition of formality, which may be broadly or narrowly defined.

On the other hand, the overwhelming and quickening pace of technological advancement in modern world, particularly in the field of electronic commerce and the resulting electronic contracting, forces to discuss a new kind of formality in legal transactions known as electronic formality. The classification of formality

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is consequently of utmost importance considering the differing legal effects of each category, which influence both the misclassification of decision-making and the relevant legal and judicial judgment.

In this context, there is a set of previous studies handling this issue. T. Wilkinson-Ryan (2015) discussed the formalities of written execution in contracts and their effect on the conclusion of the contract or lack thereof. The researcher concluded that contracts are executed in writing either for their conclusion or for proof thereof. M. Al-Ajarmeh & M. Musa (2018) discussed the contractual formality in agreements, where the parties to the legal act agree to make the agreement formal. The researchers concluded that the contractual formality is binding on the parties to the contract after their agreement. R. Mahery (2022) discussed the formality in electronic contracts, where contracts concluded electronically require a special formality called electronic formality. The researcher concluded that electronic formality is a new type added to the other forms of formality in contracts. H. Jacquemin (2022) discussed the types of formality in legal actions and focused on contractual formality and how a contract transforms from a consensual contract to a formal contract. The researcher concluded that formality is not always imposed by law, but it can be imposed by the will of the parties. F. Silvana (2020) discussed the role of formality in protecting the weaker party in legal transactions and concluded that formality in all its types protects the parties involved from exploitation.

The purpose of this study was to define the types of formalities in legal transactions, clearly distinguishing between them, and determining the position of the judiciary on formalities in transactions.

Materials and Methods

The methodological framework was based on a double definition of the concept under study. The term "formality" in transactions is considered a manifestation of legal obligation that focuses on restricting the will in the creation or proof of certain actions. This obligation is the strongest manifestation of legal obligation, the formality in transactions is characterised by its specificity, which manifests in its focus on restricting will in legal transactions. It refers to a set of procedures imposed by the legislator to limit the expression of will in the creation or proof of transactions. These procedures can also be imposed by the parties themselves through mutual agreement. Notably, the term "formality" in this context can refer to the restriction of will when creating or proving transactions, which is called substantive formality, or to a set of restrictions concerning form and external appearance, such as the formal aspects in litigation procedures and others, which is called procedural formality. This study focused more on the substantive formality related to legal transactions, which is a restriction on the expression of will when creating or proving a legal transaction. To identify the different types of formality and distinguish them in terms of the legal effects of their absence, research on the topic of formality in legal transactions necessitates keeping track of the key legal texts, statements, and rulings on the topic, which is why this study employed several significant approaches.

The comparative method was applied to compare legal texts[1,2], jurisprudential and judicial opinions[3,4,5], which offered a better understanding of the points of agreement and disagreement between jurisprudential and legal approaches. One of the crucial advantages of the comparative method is that it contributed to providing a comprehensive picture of the study subject in all its aspects: jurisprudential, theoretical, and practical. It helped to reveal various trends and positions, and ultimately enables balancing them in a way that allows finding the best solution to the issue. For this reason, the study examined the legislative acts of Morocco and France. At each stage of the study, legal opinions, legal texts, and court decisions were reviewed and described, and then rigorously analysed to identify their strengths and weaknesses. The descriptive-analytical method was employed not to merely present what exists, but to first examine each detail of the study in a descriptive manner, and then analyse, discuss, and synthesise it from a scientific standpoint.

Results and Discussion

Formality items in terms of source. There are two categories of formality in legal transaction: legal formality and agreement formality. Due to the significance of particular legal acts, the protection of people's property, and the protection of their rights, the legislature has made it obligatory to declare the will in a manner

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[3] Decision of the Cassation Court of France No. 04-13.925. (2007, March). Retrieved from https://www.legifrance.gouv.fr/search/all?tab_selection=all&searchField=ALL&query=04-13.+925.+&page=1&init=true.
[4] Decision of the Cassation Court of Morocco in Commercial Case No. 1921. (2005, January) Retrieved from https://www.cspj.ma/uploads/files/jurisprudence/%D9%85%D8%AC%D9%84%D8%A9%20%D9%85%D9%84%D9%81%D8%A7%D8%AA%20%D8%B9%D9%82%D8%A7%D8%B1%D9%8A%D8%A9/%D9%85%D8%AC%D9%84%D8%A9%20%D9%85%D9%84%D9%81%D8%A7%D8%AA%20%D8%B9%D9%82%D8%A7%D8%B1%D9%8A%D8%A9%20%D8%B9%D8%AF%D8%AF%205.pdf.
[5] Decision of the Cassation Court of France No. 22-16.115. (2024, January). Retrieved from https://www.legifrance.gouv.fr/juri/id/JURITEXT000049053079? init=true&page=1&query=FORMALISME&searchField=ALL&tab_selection=all.

specified by law in legal formality transactions. These transactions lose their meaning if they are executed improperly. A legal formality is thus defined as a legal obligation set forth in a legislative statute, whereby the legal text simultaneously serves as the source of formality and the obligation itself.

Legal formality refers to the requirements, processes, and documents set forth by the law for correct legal transactions (Rabiah, 2024). This formality is an exception to the rule of consent, which underlies the commission of acts. In legal formality, consent is not only required, but it also must follow a certain form that was specified by law since a transaction can only be considered valid if it follows that form. Based the above, the legal formality arguably limits the freedom of the parties to select the method that is most suitable for them to reflect their actions. It establishes a form that must be adhered to for the transaction to have legal effects. Overall, the meaning of legal formality can be summarised as a legally binding text that serves as the basis of the law. In this context, the French Court of Cassation upheld the decision of the Court of Appeal[1], which ruled that the adoption contract, which lacked the formality of its written execution, was invalid according to Article 348-3 of the French Civil Code[2].

In this respect, the legislator frequently imposes legal formality by demanding a written execution, whether formal or customary, and sometimes by requiring registration or extradition. The parties may indicate their intention to enter into a legally binding contract through any form of expression, provided that the principle of consent is observed. As a result, they can express their will to establish legal acts by agreeing on a certain form that is not imposed by the legal text; this procedure is known as a contractual formality.

According to the principle that agreements must be honoured and the authority of will principle, the parties to a legal disposition are obliged to adhere to the form that they have mutually agreed upon as soon as both parties accept it. Consequently, the parties are bound by the agreed format once it is accepted by all parties, in a manner analogous to that of a legal mandate. Although the parties may subsequently agree to reverse or change this agreement, doing so unilaterally will have consequences that are similar to those of a lack of legal form. Unilateral reversal will not create new legal obligations.

Nevertheless, this formality may present certain challenges, particularly when the parties formalise their initial satisfactory legal transactions, thereby rendering formality obligatory and imposed. Two principal perspectives emerged among the researchers regarding this matter. The first opinion posits that the format of an agreement is regarded as self-contained and possesses the same legal weight as the prescribed format when it is stipulated as a prerequisite for a transaction. This opinion also asserts that an agreement on a specific format for a legal act effectively transforms the transaction from one of consent to one of formality (Hilani, 2020). The second opinion posits that the agreement form differs from the legal form and is therefore unable to convert a legal transaction into a formal one. It also states that the nature of the obligation is not fulfilled in the agreement form and that the parties may expressly reverse it through a subsequent agreement or even implicitly after the transaction was carried out without taking the agreed form into consideration (Al-Sanhuri, 2022).

The consensual appearance of agreement can transform a transaction from one of consent to one of formality. It is regarded as a distinct form in legal dispositions because the parties' intention to impose it gives rise to their authority to establish an obligation according to the *pacta sunt servanda* rule and the principle of the authority of will. The following distinctions between agreement formality and legal formality in legal transaction can be deduced: (1) legal formality is derived from the legal text, but the agreement formality is generated from the agreement and the parties' will; (2) legal formality is still stronger than the agreement formality, despite the latter's reputation as having its own strength in legal binding; (3) the parties may agree to terminate the agreement formality at a later date, but they may not terminate the legal formality because it is regarded as a public order.

Types of formality as required for conclusion or proof. Every method or requirement imposed on the parties' legal disposition while expressing their desire is referred to as formality in its broadest sense. But since this limitation is either enforced by demanding or demonstrating a particular type of legal action, formality can be categorised solely in terms of its obligation to conclude the agreement and provide proof, or it can also be classified in terms of its obligation to require or prove other formalities (Mahery, 2022).

In certain legal acts, the legislator does not merely require consent for the establishment of a transaction; rather, they mandate that the parties adhere to a specific form. Should they fail to do so, the transaction is rendered null and void. This is referred to as a form of conclusion. The formality of the conclusion is considered as the pivotal factor in the validity of legal acts, which are deemed invalid by the law unless the requisite form is observed. As a foundational element for formal legal transactions, formality must be added in addition to eligibility, consent, convenience, and justification. The formality of conclusion places restrictions on the

[1] Decision of the Cassation Court of France No. 04-13.925. (2007, March). Retrieved from https://www.legifrance.gouv.fr/search/all?tab_selection=all&searchField=ALL&query=04-13.+925.+&page=1&init=true.
[2] Civil Code of France. (2004, February). Retrieved from https://www.fd.ulisboa.pt/wp-content/uploads/2014/12/ Codigo-Civil-Frances-French-Civil-Code-english-version.pdf.

parties' ability to express their will freely and establish legal action because failing to follow the required formalities renders the transaction invalid. According to N. Andrews (2021), this form, which is essential for establishing legal acts, is frequently written. Similarly, the Court of Morocco Cassation Court ruled that the sale of real estate is not considered complete unless it is conducted in writing[1].

The formality of conclusion is a fundamental aspect of the legal disposition of its conclusion and establishment. It is regarded as a cornerstone of the process and is contingent upon accessibility. In the absence of formality, the transaction is considered invalid, and the process is deemed to have ceased (Mohale, 2022). The judgement of the Marrakesh City Court of First Instance in Morocco indicates that the contract is void and without legal effect due to the absence of any reference to the delivery in the donation contract[2]. Notably, the format of convening may be mandated by a legislator's statutory provision or by agreement of the parties to the legal disposition, where the parties may agree that their transaction is valid only by adhering to a particular form, and the act between the parties is authorised formally, even if it was initially satisfactory.

In certain instances, a single form of evidence may be sufficient for the legislator to establish the owner's rights in specific legal acts. The lack of evidence pertaining to the aforementioned stipulations renders the asserted rights inconclusive in a legal context. Consequently, the absence of the documentation mandated by legislation or mutually agreed upon by the parties to substantiate their claims renders the action unsubstantiated from the perspective of the owner. This restriction of proof according to the means prescribed by law or agreement is the so-called form of proof. The French Court of Cassation confirmed that the formality of the signature is a formality of proof and not a formality of conclusion[3].

The procedures that restrict the parties' capacity to engage in legal action to select a means of proof are referred to as the form of proof. This implies that the parties must rely on the legally specified or agreed-upon means or measures before the establishment of the transaction.

Legal transactions that need a specific form of proof are still lawful even if they are not completed in that manner; however, according to H. Jacquemin (2022), in case of a disagreement, they must be proven through legally prescribed means or agreement. The absence of this formality renders it more challenging for the parties to ascertain the existence of the legal transaction and their entitlement to assert its consequences. However, this has no direct bearing on the manner in which the law is administered. The question thus arises as to whether the absence of a legally defined means or agreement to demonstrate legal conduct provides the basis for relying on an alternative method.

In this context, A. Görmez & S.G. Beyoğlu (2022) believe that the lack of legally defined means of proof or agreement makes the evidentiary process challenging but possible since evidence or an oath may be relied upon in addition to confirmation. Furthermore, the non-contractors may prove the contract by all available means of proof. Another trend indicates that there is no possibility of deviating from the measures that are required to prove the act. A debtor could only exercise a legal right if it could demonstrate it through certain methods; otherwise, it had no such legal right. In the absence of evidence, no legal activity could be considered valid according to the prevailing legal framework. (Demoulinet & Montero, 2002).

T. Wilkinson-Ryan (2015) posits a compelling argument regarding the implications of evidentiary standards and procedural methods employed by legislators and the parties involved in transactions. Wilkinson-Ryan asserts that when evidentiary requirements are imposed by the legislature or mutually agreed upon, and if one party fails to prove their right according to the stipulated methods, it renders the transaction legally non-existent. This is because it opens a broad scope for the introduction of evidence that could potentially alter the legal standing of the transaction. In instances where legislation mandates a specific method but does not prohibit another, adherence to the former would contravene the rule of law. This principle extends to agreements between the parties involved. Pursuing the aforementioned approach would restrict the parties' capacity to act by focusing on a singular method of determining their transaction. Consequently, the formality of proof acquires the authority to compel, as without it, the transaction cannot be substantiated in accordance with legal or contractual requirements, thereby rendering it unenforceable.

The distinction between the forms of proof and conclusion refers to how each differs from the other. Formality of conclusion is a declaration of intent, whereas formality of proof is evidence that the rights were established for their owners and that the transaction actually took place. In contrast to the form of conclusion,

[1] Decision of the Cassation Court of Morocco in Commercial Case No. 1921. (2005, January) Retrieved from https://www.cspj.ma/uploads/files/jurisprudence/%D9%85%D8%AC%D9%84%D8%A9%20%D9%85%D9%84%D9%81%D8%A7%D8%AA%20%D8%B9%D9%82%D8%A7%D8%B1%D9%8A%D8%A9/%D9%85%D8%AC%D9%84%D8%A9%20%D9%85%D9%84%D9%81%D8%A7%D8%AA%20%D8%B9%D9%82%D8%A7%D8%B1%D9%8A%D8%A9%20%D8%B9%D8%AF%D8%AF%205.pdf.

[2] Decision of the Cassation Court of Morocco in Civil Case No. 4831. (1999, June). Retrieved from https://mahkamaty.com/blog/2014/06/04/%d8%a7%d9%84%d9%87%d8%a8%d8%a9-%d8%b4%d8%b1%d8%b7-%d8%a7%d9%84%d8%ad%d9%8a%d8%a7%d8%b2%d8%a9-.

[3] Decision of the Cassation Court of France in Case No. 09-41.634. (2011, November). Retrieved from https://www.legifrance.gouv.fr/juri/id/JURITEXT000024920390.

which is viewed by the law as the foundation of the act and is unenforceable without it, the second category therefore has nothing to do with the construction of a legal transaction but rather with the establishment of its existence. The lack of formality in a legal transaction consequently does not automatically render the act invalid since its absence does not imply the absence of other elements of the transaction, which means that it is still valid and present but requires proof (Demouline & Montero, 2002).

To establish the legal validity of a document, it may be necessary to include a written form as a primary source of evidence. This process, however, is not without the formalities of its own. To establish a transaction in the context of a dispute, it is possible to employ the same methods. However, to substantiate the transaction, it is essential to have the form of proof, rather than merely a conclusion. Consequently, in the second case, the absence of a written execution does not invalidate the transaction; nevertheless, this transaction must be substantiated according to the legal framework, as the legislator will only accept written evidence or stronger forms of proof. As a consequence, according to I. Hilani (2020), it is necessary to distinguish between the existence of the transaction itself and the means of proof in a dispute, so long as such transaction is sufficient to demonstrate the contractors' permission and the written form is needed merely to support that claim. In this regard, the French Court of Cassation, in one of its decisions, upheld the decision of the Court of Appeal that invalidated the sponsorship contract because it did not include mandatory data[1].

In conclusion, the aforementioned formalities allow for a clear distinction to be made between the existence of legal conduct and its very existence, as well as the necessity for evidence in this regard. The absence of formality results in the absence of conduct. The lack of form of proof is unrelated to the existence and conduct of legal activity. However, it does lead to the absence of evidence to prove. There is a clear distinction between a legal action, its actual existence, and the need to prove it. This distinction is based on the formalities mentioned above. The lack of formality results in the lack of an action altogether. The absence of evidence to substantiate it is irrelevant in terms of the question of whether a legal activity exists or is being carried out.

Types of formality in terms of the nature of the transaction. Considering the diminished input required for electronic commerce in comparison to conventional commerce, the outcomes of e-commerce have become comparable to, and on occasion superior to, those of conventional trade since its inception. The development of electronic legal transactions was contingent upon the advent of electronic commerce, considering the pivotal role that legal acts play in commercial transactions (Ichim, 2022). This is also the case regarding the electronic legal transactions based on a purely technical and electronic foundation, as opposed to conventional acts. Considering the fundamental tenets upon which they are based, the formalities associated with legal activities may be classified into two principal categories: conventional and electronic. This enables an examination of the conventional formality of legal transactions, and whether it is a fundamental tenet of such proceedings. This type of act is founded upon written documentation and is designated as a conventional formality when a legislative body mandates a specific formality or proof. It is often the case that conventional formality is confined to a written format. Furthermore, some of the conventional procedures that are required by the legislator to act have been established by the legislator's issuers and are subject to conditions that are only valid for the legislator (Mthembu, 2005).

According to C. Singh (2024), the practice of requiring handwritten signatures on legal documents is sometimes employed as a means of maintaining traditional forms of formalisation. Other examples include following certain procedures mandated by the legislator, appearing before specific actors, and signing paper-based transactions. All the actions mentioned above are characteristics of conventional formal transactions, which frequently relies on the physical presence of the parties and the paper-based element at the same time and place as electronic legal acts.

Electronic contracts are agreements created using a variety of recent technology, the most significant of which is the computer. It can be argued that such contracts are agreements created using these methods and some of the pillars that utilise modern technology. However, the term is now specifically used to refer to contracts made through the Internet as a result of the invention of the computer and the proliferation of messaging and contracting over it. This category no longer includes contracts made via the radio, phone, or any other form of communication. Electronic contracts, as defined by S. Berkchi (2021), are also known as online contracts. Electronic commerce, in turn, is the collective term used to describe all e-transactions, particularly those conducted via the internet, email, and other electronic channels.

In the context of online contracts, the temporal and spatial parameters of the contract are of particular importance. In the absence of a lengthy interval, the contract is essentially between time and place, and is made between parties who are present in time but absent in space. The precise definition of this contract can be found in the relevant legislation pertaining to contracts and electronic transactions. The Law of Jordan No. 15

[1] Decision of the Cassation Court of France in Case No. 14-24.287. (2015, July). Retrieved from https://www.legifrance.gouv.fr/juri/id/JURITEXT000030871577?init=true&page=1&query=14-24.+287&searchField=ALL&tab_selection=all.

"On Electronic Transactions"[1] defined it as an agreement concluded entirely or in part using electronic means. According to G. Klass (2024), the general definition of an electronic contract is an agreement where affirmative action meets acceptance on a global network that ensures distant communication via audio-visual means as a result of a beneficial and workable interaction.

Although the Moroccan legislation did not provide a clear definition of electronic contracting, the Act No. 53.05[2] did use the term "Legal data" in the context of discussing electronic data exchange, and is understood to refer to all editions that can have legal consequences of a civil, commercial, or administrative nature. Therefore, it is correct to argue that the scope of application of this law is rather broad. Although the legislation has expressly excluded from the field of application all documents relating to the Family Code[3] and documents relating to personal, civil, or commercial guarantees, except for those made by a person for their professional purposes, this clause applies to all legal and administrative decisions reached between private individuals, contractors, and departments (Younsi, 2020).

Although the Moroccan legislation also underlined the similarity between conventional and electronic editions, it only specified the requirements for issuing them and their formal procedures rather than defining them or outlining their concepts. However, written form was a requirement for the security of electronic transactions, a strategy that Moroccan legislator had adopted through Law 53.05[4], unifying the requirements for physical and electronic transactions. All legislation establishing a law governing electronic transactions was passed unanimously. The Egyptian legislator's approach differs from that of the Moroccan legislator in terms of comparative laws regarding the legality of an electronic signature. The Egyptian legislator[5] certifies that an electronic signature has the sole power to prove, in connection with only business, legal, and administrative transactions. In other words, the reach of this signature is restricted to prevent any jurisprudence from emerging (Crfpa, 2020).

Based on the above, electronic formality is a set of conditions and procedures necessary for legal act that is concluded in an electronic form. Legal transaction may occasionally be rendered invalid if it does not adhere to these conditions and procedures, or it may fail to be established due to the absence of legal requirements specified in the electronic document. It is commonly assumed that conventional formality is a fundamental aspect of a contract, serving to substantiate its existence. However, it is often observed that such formality is, in fact, a standard practice among contractors, with the resulting documentation being submitted to an official chamber for recordation. After a set of laws have acknowledged that an electronic signature is the most important requirement of writing due to its trustworthiness and validity to use against those who deny it, and after a set of laws have equated the authenticity of traditional and electronic editions, electronic formality can replace conventional formality in legal conduct. According to C. Visser *et al*. (2004), this can happen before an official record or before a competent official.

As previously stated, electronic commerce has reached a point of development whereby it now can compete with conventional commerce in all areas, thus enabling a variety of legal transactions to be concluded digitally. In certain of them, the law may call for an electronic version of formality that differs from conventional formality in several ways, including the following:

- conventional formality is often executed in writing and is paper-based in conventional transactions, whereas electronic acts are executed digitally (Silvana, 2020);
- ented by technical and technological constraints like an electronic signature, conventional formality is frequently executed in writing or some other conventional technique (Cherkaoui, 2022);
- in the case of electronic formality, the legislator imposes a set of requirements that are absent from the conventional formality.

These are the key distinctions between the conventional formality and electronic formality, a more modern type of formality that has developed alongside the electronic commerce and the legal transaction that occurs when conducting electronic acts. The primary distinction between the two types continues to be the nature of the foundation upon which both conventional and electronic formalities are carried out.

Based on the findings of this study, the following recommendations are proposed. It is imperative to define the precise legal and jurisprudence concept of formality, particularly considering the growing trend towards formal conduct for protective and financial purposes and objectives, as evidenced by an evolving body of legislation. To facilitate the process of establishing appropriate consequences when formalities fall

[1] Law of Jordan No. 15 "On Electronic Transactions". (2015, April). Retrieved from https://natlex.ilo.org/dyn/natlex2/r/natlex/fe/details?p3_isn=103025&cs=1bObGo7hxZUNZMYKUwXsqGwEIMovjwQx3WAcNLci0lLEsC0oTDQRGyFHEJY9HENDQ1zUC0kcfdFJ4xt2Ti7RiCw.
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[5] Civile Code of Arabian Republic Egypt. (1948, July), Retrieved from https://faolex.fao.org/docs/pdf/egy212999.pdf.

behind the pace of legal proceedings, it is essential to implement a clear differentiation between the various types of formalities. This should be accompanied by a comprehensive inventory of each type, delineating its specific effects. Due to the special nature of electronic formality, it must be considered and governed by law. It is proposed to amend the provisions of Article 443 of the Moroccan Civil Code[1], which stipulates the necessity of proving a transaction exceeding 10,000 dirhams in writing. This article requires a formality of proof rather than a formality of conclusion of contract, which raises a significant issue in the case of an unwritten dispute. It would be prudent for the legislator to stipulate this condition at the conclusion of the contract, rather than merely after the dispute has arisen. The provisions of Article 273 of the Real Rights Code[2], which require a gift contract to be written in an official document under penalty of invalidation, should be amended. In practice, the contract may be drafted informally in certain instances where official documentation is not accessible to the relevant authorities. With regard to this matter, the Court of Cassation[3] ruled that the mortgage contract must include the formalities set forth in Article 4 of the Moroccan Rights Code[4].

Conclusions

The purpose of this study was to identify the types of formalities in legal transactions, clearly distinguish between these types, and determine the judiciary's stance on formalities in transactions. The formality has been divided into several categories due to the doctrinal differences regarding its legal concept and its relationship with the historical development. Some types impose a restriction on the freedom of will expression during contracting and are called the formalities of conclusion, while others relate to limiting the parties freedom in choosing means of proof and are called the formalities of proof. Additionally, there is another division based on the source of formality: if imposed by law, it is called legal formality, and if imposed by the parties' agreement, it is called contractual formality. The rapid and significant technological advancement in the realm of modern technology, especially in the field of e-commerce and the electronic contracts resulting from it, has necessitated the discussion of a new category of formality in legal transactions, namely the electronic formality. Notably, the diversity of formalities required for each legal transactions aims to achieve a set of objectives. In ancient legislation, the purposes of formality were ends in themselves, serving purely psychological and religious rituals. However, in Islamic jurisprudence and contemporary laws, the purposes of formality are protective. This is evident in the protection of the weaker party in reciprocal transactions and in gratuitous contracts, where the donor is informed through the competent documentation or registration authorities that they will give the financial values without compensation.

Having conducted extensive research on the concept of formality and its various categories in the context of legal transactions, as well as examining a range of legal precedents and texts, the study reached the following fundamental conclusions and recommendations. There is no comprehensive intellectual or legal inventory that can be considered entirely uniform. The discrepancy in legal implications and the dependency on judicial determinations stem from the distinction and lack of constraints on the types of formation. Furthermore, due to the nature of the processes they represent, electronic formality represents a new category of legal formalities and has distinct advantages.

Considering the rapid development of e-commerce and the emergence of electronic contracts, it is advisable to investigate the specific features and legal implications of electronic formalities. Particular attention should be paid to ensuring the protection of the parties to electronic contracts, as well as to identifying legal instruments that promote the security and legitimacy of such transactions.

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Conflict of Interest

The author of this study declares no conflict of interest.

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Види формальностей в юридичних угодах

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Анотація
Метою дослідження було виявлення та розмежування видів формальностей у юридичному правочині, визначення правових наслідків відсутності кожної з них у такому правочині. Саме тому дослідження ґрунтувалося як на аналітично-описовому методі, що передбачав аналіз судової практики та законодавчих положень, так і на порівняльному методі, за допомогою якого було проведено горизонтальні порівняння правових текстів. Дослідження засвідчило, що види формальностей не обмежуються ні законодавством, ні судовою практикою. Цей факт, крім суперечливих правових наслідків, призводить ще й до непослідовних судових рішень. З'ясовано, що, з огляду на характер процедур, які він представляє, в електронному форматі відображається нова категорія юридичних формальностей, що вирізняється певними специфічними особливостями. Було сформульовано висновок, що низка законодавчих актів характеризується тенденцією до формальних транзакцій з протекціоністськими та фінансовими завданнями. Тому слід чітко розмежувати види формальностей, їх обмеження та наслідки кожного виду, щоб полегшити судовій владі встановлення відповідних наслідків у випадках, коли деякі юридичні транзакції не мають необхідної формальності. Електронну формальність також слід ураховувати під час правового регулювання, з огляду на її особливості

Ключові слова:
згода; свобода; укладення; доказ; недійсність; договір

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Role and place of the National Bank of Ukraine in Ukraine's accession to the EU and the Eurozone: Experience of central banks of EU countries

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Abstract
In this study, the role and place of the National Bank of Ukraine in the context of the country's integration into the European Union and possible entry into the Eurozone are investigated. The experience of the central banks of European Union countries that have adapted to the requirements of the European System of Central Banks and the European Central Bank was analysed. The purpose of the research was to study the issues of harmonisation of legislation, monetary policy, financial stability, institutional independence and macroeconomic convergence. The study outlined the main stages that the central banks of the European Union member states went through before and after joining the Eurozone, as well as the challenges they faced during this process. Particular attention was paid to the role of the National Bank of Ukraine in preparing for the implementation of the Copenhagen criteria and integration. The study identified key areas for reforming the legal regulation of the Ukrainian banking system to ensure effective implementation of European monetary policy requirements: strategic priorities that the National Bank of Ukraine should take into account to maintain macroeconomic stability and convergence with the Eurozone. The paper emphasised the importance of the National Bank of Ukraine's institutional independence, coordination with fiscal authorities, and transparency in decision-making. It was argued that the experience of Central and Eastern European countries is an important benchmark for Ukraine, as it allows avoiding mistakes and implementing effective reforms. The study provided recommendations on the role of the National Bank of Ukraine in ensuring economic stability, creating conditions for sustainable growth, and approximation to European Union standards

Keywords:
financial law; monetary policy; stabilisation policy; monetary harmonisation; economic convergence

Introduction
Ukraine's integration into the EU in the context of 2024 is an extremely topical issue. In terms of theoretical and practical aspects, this process forms the basis for economic stability and social development of the country. At this stage of integration, it is important to recognise that European standards require not only economic but also legal changes that directly affect the functioning of key institutions, including the National Bank of Ukraine (NBU). Integration into the EU implies the performance of certain criteria aimed at ensuring the stability of the

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national economy and adaptation to European norms and standards.

The NBU, as the main body responsible for monetary policy, plays a key role in implementing this strategy. Integration into the EU requires harmonisation of national legislation with EU law, which is a crucial factor for ensuring macrofinancial stability. The relevance of this issue is underscored by the need for structural reforms in the banking sector, adaptation of financial market regulation mechanisms, and ensuring the NBU's institutional independence. This will not only strengthen confidence in Ukraine's financial system, but also increase its competitiveness in the international arena.

Furthermore, integration into the EU enables Ukraine to achieve its strategic development goals, which include modernisation of infrastructure, introduction of innovative technologies, and improvement of the quality of life. In the context of European integration processes, it is important to ensure the protection of consumer and investor rights, which requires the creation of an effective legal regulation system. Thus, successful integration into the EU depends on Ukraine's ability to adapt its institutions, including the NBU, to European standards, which will positively affect economic development and social stability in the country.

Various aspects of Ukraine's integration into the EU, including the role of the NBU in this process, are actively studied in the academic literature. For example, S. Aiyar *et al*. (2023) analysed the role of central banks in preparing for the euro area, emphasising the significance of meeting the Convergence criteria (Maastricht Treaty) (2021), which are fundamental to economic convergence. They noted that the institutional capacity of central banks determines the success in achieving macroeconomic stability.

R. Baldwin (2023) examined the adaptation of Ukraine's banking system to European standards, focusing on financial mechanisms that can ensure the stability of the national economy. The researcher emphasised the significance of studying the experience of Central and Eastern European countries that have successfully implemented reforms in their banking systems. This allows Ukraine to avoid potential mistakes and find suitable solutions for integration. B. Eichengreen (2021) addressed the cooperation between EU national banks and international financial institutions, such as the European Central Bank (ECB) and the International Monetary Fund. The researcher noted that coordination between national banks and international institutions is critical for successful economic integration, which confirms the need to strengthen cooperation between the NBU and the ECB.

Another aspect is the study of financial risk management mechanisms in the context of EU integration. L. Dionysopoulos *et al*. (2024) investigated the role of macroprudential supervision in ensuring financial stability, emphasising the necessity of introducing tools for monitoring financial risks, which is critical in the integration process. The researchers discussed the impact of European integration processes on the financial system of Ukraine, focusing on the need to adapt the regulatory framework to ensure stability. They emphasised that integration processes require the modernisation of financial institutions, including the NBU, to achieve successful integration into the European economic area. O. Chornobai (2021) examined the role of the NBU in the context of financial reforms, stressing the significance of the stability of the national currency and the credit system in the context of European integration. The researcher highlighted that Ukraine's direct dependence on European financial standards requires a profound transformation within the national banking system, which is critical for EU integration.

The purpose of this study was to examine the role of the NBU in Ukraine's integration into the EU, analyse the regulatory aspects of this integration, and assess the challenges that the NBU will face on the way to Ukraine's accession to the euro area. The study also included an analysis of the adaptation of the NBU's legal framework to the requirements of European legislation, a review of changes in the NBU's powers in case of Ukraine's accession to the Eurozone, and a study of legal instruments to ensure macrofinancial stability. The study objectives included:

- analysis of the adaptation of the NBU's legal framework to the requirements of European legislation, specifically the Treaty on the Functioning of the European Union (Consolidated versions of..., 2010);
- study of changes in the NBU's powers in case of Ukraine's accession to the Eurozone and legal aspects of cooperation between the NBU and the ECB;
- analysis of legal instruments for ensuring macrofinancial stability, such as stress testing mechanisms, risk management and capital market regulation, which should be adapted to EU standards.

Materials and Methods

The study was conducted based on a comprehensive approach that includes a conceptual framework defined based on theories of economic integration, such as the theory of optimal currency areas and economic convergence. These theories envisage achieving macroeconomic stability and meeting the criteria for integration into the Eurozone, which is a key benchmark for analysing the compliance of the NBU's policy with European standards.

To fulfil the purpose of this study, the following methods of scientific cognition were employed. The method of comparative analysis was used to assess the practices of EU central banks in the context of meeting the Convergence criteria (2021). The comparison helped identify best practices in monetary policy and financial stability management that can be adapted

to the Ukrainian economy. This analysis was based on the reports of the National Bank of Poland (2023) and the National Bank of the Czech Republic (2021; 2023). To assess the compliance of Ukrainian legislation with the EU requirements, the study analysed documents such as the "Association Agreement between the European Union and Its Member States, of the One Part, and Ukraine, of the Other Part[1], which defines the legal framework for harmonising Ukrainian legislation with European standards, and Resolution of the Cabinet of Ministers of Ukraine "On Approval of the National Action Plan for Implementation of the Second Phase of the Action Plan on Visa Liberalisation for Ukraine"[2], which stimulated the reform of financial legislation. Furthermore, EU legislation was reviewed, including the Single Market Act[3], which sets the standards for financial regulation. The legal analysis included the review of Ukrainian regulations, such as Law of Ukraine "On the National Bank of Ukraine"[4], the Law of Ukraine "On Currency and Currency Transactions"[5], as well as administrative documents, such as the Decision of the Council of the National Bank of Ukraine "On the Activities of the Board of the National Bank of Ukraine in Implementing the Monetary Policy Guidelines in 2017"[6]. Additionally, the study analysed court decisions related to the regulation of the NBU's activities and macroeconomic policy. The legal analysis helped to identify gaps in Ukrainian legislation that must be reformed to meet European standards. Analysis of statistical data.

The research sequence included the following stages: defining the conceptual framework of the study, selecting methods, analysing comparative data, conducting a legal analysis of Ukrainian legislation, analysing statistical data, and formulating a forecast regarding the implementation of European integration requirements. At the final stage, the findings were summarised and recommendations for improving the regulatory framework were developed.

Results

Legislative regulation of national banks in the context of achieving macroeconomic stability. One of the key functions of the NBU is to maintain macroeconomic stability in the country and to ensure control over monetary policy. Specifically, the Decision of the Council of the National Bank of Ukraine No. 8-рд[7] plays a vital role in this regard, introducing clear inflation targets to ensure economic stability. In the context of European integration, the role of the NBU is growing significantly, as one of the central bank's principal tasks is to achieve compliance with the economic and financial criteria set by the EU for joining the Eurozone. The Convergence criteria (2021) stipulate those strict requirements must be met in terms of inflation, budget deficit, national currency stability, and public debt. The NBU is analysing the possibility of adapting its policy to European standards. In the context of European integration, the NBU's role is growing, as the central bank must adapt its approaches to meet EU criteria. A major step towards liberalisation of the foreign exchange market was the adoption of the Law of Ukraine No. 2473-VIII[8], which eases currency controls and facilitates the integration of Ukraine's financial system with the European one.

Economic integration in Europe is a multidimensional process that covers a series of key areas, such as banking reform, macroeconomic policy, financial stability, and crisis response. The EU's Single Market Act[9] is the foundation for the regulation of European markets, and within the framework of Ukraine's adaptation to European norms, great attention is paid to the implementation of legal reforms. A significant step in this regard was the Association Agreement[10], which defined the legal and economic framework for cooperation, including the harmonisation of financial legislation. Furthermore, the implementation of the Resolution of the Cabinet of Ministers of Ukraine No. 805-p[11] stimulated further financial integration. Legal reforms, such as the

[1] Association Agreement between the European Union and Its Member States, of the One Part, and Ukraine, of the Other Part. (2014, June). Retrieved from https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A22014A0529%2801%29.
[2] Resolution of the Cabinet of Ministers of Ukraine No. 805-p "On Approval of the National Action Plan for Implementation of the Second Phase of the Action Plan on Visa Liberalisation for Ukraine". (2014, August). Retrieved from https://zakon.rada.gov.ua/laws/show/805-2014-%D1%80#Text.
[3] Single Market Act. (2011, April). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52011DC0206.
[4] Law of Ukraine No. 679-XIV "On the National Bank of Ukraine". (1999, May). Retrieved from https://zakon.rada.gov.ua/laws/show/679-14#Text.
[5] Law of Ukraine No. 2473-VIII "On Currency and Currency Transactions". (2018, June). Retrieved from https://zakon.rada.gov.ua/laws/show/2473-19#Text.
[6] Decision of the Council of the National Bank of Ukraine No. 8-рд "On the Activities of the Board of the National Bank of Ukraine in Implementing the Monetary Policy Guidelines in 2017". (2018, February). Retrieved from https://zakon.rada.gov.ua/laws/show/vr008500-18#Text.
[7] Decision of the Council of the National Bank of Ukraine No. 8-рд "On the Activities of the Board of the National Bank of Ukraine in Implementing the Monetary Policy Guidelines in 2017". (2018, February). Retrieved from https://zakon.rada.gov.ua/laws/show/vr008500-18#Text.
[8] Law of Ukraine No. 2473-VIII "On Currency and Currency Transactions". (2018, June). Retrieved from https://zakon.rada.gov.ua/laws/show/2473-19#Text.
[9] Single Market Act. (2011, April). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52011DC0206.
[10] Association Agreement between the European Union and Its Member States, of the One Part, and Ukraine, of the Other Part. (2014, June). Retrieved from https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A22014A0529%2801%29.
[11] Resolution of the Cabinet of Ministers of Ukraine No. 805-p "On Approval of the National Action Plan for Implementation of the Second Phase of the Action Plan on Visa Liberalisation for Ukraine". (2014, August). Retrieved from https://zakon.rada.gov.ua/laws/show/805-2014-%D1%80#Text.

Law of Ukraine No. 679-XIV[1], created a foundation for the independence of the central bank and its role in maintaining macroeconomic stability.

The legal component of economic integration and financial stability is one of the key topics in the integration of countries into the Eurozone. Following the global financial crisis of 2008, legal reforms have become a fundamental aspect of introducing effective banking regulations. S. Aiyar *et al*. (2023) and C. Arkolakis *et al*. (2020) emphasise that the updated banking regulation at the EU level was aimed at strengthening legal mechanisms to minimise the risks of financial crises. This includes the establishment of the Single Supervisory Mechanism and the Single Resolution Mechanism, which are regulated by the relevant EU regulations and aim to ensure control over banking institutions in the Eurozone.

A valuable contribution to the development of legal approaches to the regulation of financial markets was made by M. Cihak *et al*. (2012), who pointed out the necessity of legal coordination between national and supranational authorities to protect financial stability. O. Blanchard & D.R. Johnson (2020) also noted that macroeconomic policy governed by European legal provisions needs to be adapted in the context of European integration. Conventional monetary policy instruments in the Eurozone are limited by the legal framework established by the ECB, which requires greater coordination of economic and financial policies at the EU level.

S. Casagrande (2021) highlighted the significance of legal coordination between EU member states to minimise asymmetries in development. This is crucial for the countries of Central and Eastern Europe, which face legal challenges as a result of integration processes. The legal aspects of financial market regulation, as noted by P. Albrech & E. Kočenda (2024), are becoming increasingly important for ensuring the stability of currency markets in Central Europe. Furthermore, L. Dionysopoulos *et al*. (2024) emphasised the role of central bank digital currencies and their legal regulation as an integral element of economic integration. This applies, specifically, to new regulations on digital financial instruments that will promote financial inclusion and consumer protection. In the context of climate change and its impact on the EU economy, R. Baldwin (2023) and C. Arkolakis *et al*. (2020) addressed the need for legal coordination of environmental and economic policies to ensure sustainable development. This requires updating the legal framework in the field of environmental regulation and adapting legislation to the new challenges facing the European economy.

Thus, the legal aspects of financial system regulation, macroeconomic policy, and economic integration are an essential component of the successful development of the Eurozone, and their improvement is a key factor in ensuring financial stability and sustainable development. In the context of legal regulation of the integration of countries into the euro area, special attention should be paid to the legal requirements related to the implementation of the Convergence criteria (2021). They set out the legal framework for EU member states seeking to join the Eurozone, particularly in terms of price stability, public finance sustainability, exchange rate stability, and long-term interest rates. According to J.E. Anderson & E. van Wincoop (2021), compliance with these legal requirements is critical for a successful transition to the single currency, as non-compliance could lead to a disruption of financial stability throughout the monetary union.

The legal regulation of the ECB as the principal institution responsible for monetary policy in the Eurozone also plays a significant role. The ECB not only performs monetary functions, but also regulates legal issues related to banking supervision and foreign exchange operations. According to W. Schelkle (2017) and O. Blanchard & D.R. Johnson (2020), the effective functioning of the Eurozone is possible only with proper legal coordination between the ECB and national regulators. S. Claessens & M.A. Kose (2013) indicated the need to improve legal mechanisms to prevent sovereign debt crises, which is particularly relevant for countries planning to join the Eurozone. The sovereign debt crisis in Greece revealed gaps in the legal regulation of budgetary policy at the EU level, which led to large-scale reforms of the legal architecture of economic governance in the Eurozone.

Thus, the legal component of the Eurozone integration process includes both national reforms and coordination with supranational legal authorities, including the ECB, which is key to ensuring economic and financial stability within the EU. Ultimately, Europe's economic integration is not only a process of economic change, but also a complex political and economic phenomenon that requires extensive coordination between member states. M. Waibel (2020) emphasised that within the framework of European integration, it is necessary to reinforce international economic institutions to ensure their resilience in the face of emerging global challenges. Collective efforts to reform political and economic systems are crucial for the continued success of European integration, which must consider both internal and external factors to ensure sustainable development on the continent. Thus, Europe's economic integration is a complex process that requires not only economic reforms, but also comprehensive political coordination to overcome challenges in the global context.

Challenges for legal reform in the context of financial stability. From a legal standpoint, ensuring the stability of the national currency in Ukraine requires compliance with a range of laws and regulations

[1] Law of Ukraine No. 679-XIV "On the National Bank of Ukraine". (1999, May). Retrieved from https://zakon.rada.gov.ua/laws/show/679-14#Text.

governing the financial system and the NBU's activities. The key document that defines the NBU's powers is the Law of Ukraine "On the National Bank of Ukraine"[1], which establishes the NBU's independence from political influence and its primary goal of ensuring the stability of the national currency. One of the key aspects affecting the stability of the hryvnia is the legislative regulation of currency control and mechanisms for conducting currency transactions. Specifically, legislation on currency transactions should not only ensure control over currency flows, but also facilitate the development of the financial market. According to the National Bank of Ukraine (2023b), the reform of currency legislation has helped to reduce administrative barriers to business, but issues of investor protection and guaranteeing the stability of financial institutions are still unresolved. The Convergence criteria (2021), which regulate the requirements for candidate countries to join the Eurozone, are also of great legal significance. They stipulate that such economic indicators as inflation, budget deficit, and public debt must meet the criteria set by the EU to ensure the stability of the euro. If these criteria are met, Ukraine may become a member of the Eurozone, which will require the adaptation of national legislation to European standards.

Considering the current state of Ukraine's financial system, World Bank analysts emphasise the need for further legal reforms to ensure economic stability and compliance with European standards. Specifically, it is crucial to reform the legislation governing the NBU to strengthen its independence from political influence. For a more detailed analysis, it is worth highlighting each of the Convergence criteria (2021) and assessing the extent to which Ukraine has achieved the required indicators. According to the Maastricht Treaty, the average annual inflation rate of a candidate country should be no more than 1.5% higher than the three most successful EU countries in terms of inflation. Table 1 shows Ukraine's inflation performance compared to the EU average and the top three EU member states over the past 5 years. Despite efforts to reduce the inflation rate, Ukraine's performance still exceeds the permissible limits set by the Maastricht Treaty. This indicates the necessity of further improvement of the NBU's monetary policy and more intensive efforts to stabilise the economic situation to achieve compliance with European standards.

Table 1. Comparison of Ukraine's inflation rates with the EU average and the top three EU member states for 2017-2023

Year	Ukraine, %	Average EU indicator, %	Best EU countries, %
2017	13.7	1.5	0.5
2018	9.8	1.8	1
2019	7.9	1.6	0.8
2020	5	0.7	0.4
2021	9.4	2.2	1.3
2022	22.6	8.1	5.7
2023	26.5	6.5.	4

Source: National Bank of Ukraine (2023a)

The exchange rate stability criterion requires that a country's national currency stay stable within ±15% for two years prior to joining the Eurozone, without major interventions by the European Central Bank and the International Monetary Fund (Table 2). The study analysed the NBU's Exchange Rate Reports for 2017-2023, which showed fluctuations in the hryvnia exchange rate in recent years. These fluctuations suggest that the hryvnia exchange rate does not yet meet the EU exchange rate stability standards, which requires further measures to stabilise the national currency before possible accession to the Eurozone.

Table 2. Fluctuations of the hryvnia exchange rate against the euro in 2017-2023

Year	Average UAH/euro exchange rate	Fluctuation, %
2017	30.03	12.4
2018	32.07	10.7
2019	28.92	9.3
2020	31.71	14.8
2021	33.72	11.5
2022	37.5	15
2023	39	10.1

Source: National Bank of Ukraine (2023a)

[1] Law of Ukraine No. 679-XIV "On the National Bank of Ukraine". (1999, May). Retrieved from https://zakon.rada.gov.ua/laws/show/679-14#Text.

The Convergence criteria (2021) stipulate that a country's public debt should not exceed 60% of gross domestic product (GDP) and the budget deficit should not exceed 3% of GDP. Table 3 shows the level of public debt and budget deficit in Ukraine in recent years. These data show that Ukraine has considerably improved its public debt performance, reducing it from 72.3% in 2017 to 60.8% in 2021. This decline reflects positive changes in debt management and the government's efforts to stabilise the economy. However, despite these positive developments, the budget deficit in 2022-2023 is expected to exceed the permissible level, indicating that there are still problems in the structure of public expenditures and revenues. This indicates the need to tighten fiscal policy to ensure the country's financial stability.

Table 3. Public debt and budget deficit of Ukraine for 2017-2023

Year	Public debt, % GDP	Budget deficit, % GDP
2017	72.3	2.7
2018	63.8	2.1
2019	50.4	2
2020	61	5.5
2021	60.8	3.5
2022	70	7
2023	75	5

Source: Ministry of Finance of Ukraine (2023a; 2024)

Considering the above, the NBU's policy should continue the inflation targeting policy already stipulated in the Law of Ukraine No. 679-XIV[1]. To reduce inflationary risks, it is essential to strengthen the NBU's independence by removing any external political influence on its decisions. This may include revising Article 12 of the above law to clearly define the procedures for dismissal and appointment of the NBU management, thus ensuring stability and predictability. To reduce the fiscal deficit, the Ukrainian government should implement fiscal reforms aimed at optimising public spending and improving the efficiency of the tax system. It is recommended to amend the Tax Code of Ukraine[2], specifically the articles regulating the system of subsidies (Article 2), and to improve the mechanisms for monitoring the performance of tax obligations (Article 35). Reduction of subsidy expenditures and improvement of tax discipline can be supported by the introduction of electronic tax administration, as exemplified by the case of Estonia, which reduced the tax burden on business by 30% in 5 years. To stabilise the hryvnia exchange rate, macroeconomic stability must be ensured. This can be achieved by strengthening mechanisms for attracting foreign investment, such as state guarantees for investments, which must be clarified in the Law of Ukraine No. 1560-XII[3] (Article 3) and the Law of Ukraine No. 537/96-BP[4] (Article 2).

The case of Poland, which managed to attract foreign investment at the level of 5% of GDP thanks to such reforms, can serve as an example for Ukraine. It is useful to consider the key legislative acts regulating foreign investment in Poland. Law of Poland "On Foreign Investment"[5] establishes the legal framework for foreign investment in Poland, defining the conditions and procedures required for investors, as well as the mechanisms for protecting their rights. Law of Poland "On Special Economic Zones"[6] regulates the operation of special economic zones, which offer favourable conditions for foreign investors, including reduced taxes and other benefits.

Joining the Eurozone means that Ukraine will have to relinquish control over its monetary policy. This aspect is particularly critical for countries with fragile economies, such as Ukraine, where flexibility in monetary policy is essential to adapt to rapidly changing economic conditions. The loss of instruments such as interest rates and the exchange rate can lead to severe economic difficulties. According to the Treaty on the Functioning of the European Union[7], members are obliged to transfer some of their monetary powers to

[1] Law of Ukraine No. 679-XIV "On the National Bank of Ukraine". (1999, May). Retrieved from https://zakon.rada.gov.ua/laws/show/679-14#Text.
[2] Tax Code of Ukraine. (2010, December). Retrieved from https://zakon.rada.gov.ua/laws/show/2755-17#Text.
[3] Law of Ukraine No. 1560-XII "On Investment Activity". (1991, September). Retrieved from https://zakon.rada.gov.ua/laws/show/1560-12#Text.
[4] Law of Ukraine No. 537/96-BP "On State Guarantees for the Recovery of Savings of Ukrainian Citizens". (1996, November). Retrieved from https://zakon.rada.gov.ua/laws/show/537/96-%D0%B2%D1%80#Text.
[5] Law of Poland No. 1272 "On Foreign Investment". (2015, July). Retrieved from https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20150001272/U/D20151272Lj.pdf.
[6] Law of Poland No. 123 "On Special Economic Zones". (1994, October). Retrieved from https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19941230600/U/D19940600Lj.pdf.
[7] Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union. (2010, March). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12016ME%2FTXT.

the ECB. This can complicate the control of inflation and the national currency, especially in times of economic crises.

As of 2024, Ukraine faces major challenges in controlling inflation. Joining the Eurozone may complicate the NBU's efforts to manage inflation as prices and wages will begin to align with European levels. This could lead to an increase in the cost of living and a decline in the purchasing power of the population, which could trigger social protests. EU history shows that countries with high inflation rates, such as Spain in the early 2000s, also faced difficulties in adapting to the new monetary environment. Losing control over price policy can have serious social consequences. The Maastricht Treaty (2021) convergence criteria impose strict limits on budget deficits and public debt levels. Ukraine, which is facing economic instability, may struggle to meet these requirements, which could result in restrictions on funding for social programmes and infrastructure development.

Overall, to achieve the necessary macroeconomic indicators, Ukraine must systematically analyse and adapt its legislative initiatives, building on scientific findings and international practices, to ensure that the recommendations have a sound legal basis and are practically implementable. Economic instability, as mentioned earlier, stability of the hryvnia and low inflation are key conditions for joining the Eurozone. However, political instability, military conflict on the east of the country, and external risks can exacerbate the achievement of this stability.

Experience of Central and Eastern European countries. Estonia, Latvia, and Lithuania are examples of successful integration into the Eurozone. All three countries have implemented large-scale economic reforms, including tight monetary policies that include inflation control and exchange rate stability. These reforms have helped stabilise their currencies, which is critical for meeting the Convergence criteria (2021). A valuable lesson for Ukraine is that rapid accession to the Eurozone is possible only if a strong level of macroeconomic convergence is achieved and all the Maastricht Treaty are met. The Baltic states also stressed the significance of political will to implement reforms (Bank of Estonia, 2021; Lithuanian Bank, 2021; Bank of Latvia, 2023). Table 4 shows a comparison of Ukraine's key economic indicators with those of the Baltic states at the time of their accession to the Eurozone. Comparison with the Baltic states shows that Ukraine needs to improve the inflation rate, reduce the budget deficit, and continue to reduce public debt to achieve macroeconomic stability. The reforms implemented by the Baltic states included tight monetary policy, increased economic productivity, and enhanced cooperation with the EU.

Table 4. Comparison of Ukraine's key economic indicators with those of the Baltic States at the time of their accession to the Eurozone

Indicator	Ukraine (2021)	Lithuania (2015)	Latvia (2014)	Estonia (2011)
Inflation, %	9.4	0.9	0	2.1
Public debt, % GDP	60.08	42.5	40	6.7
Budget deficit, % GDP	3.5	1.2	1.4	0.2
Unemployment rate, %	9.6	9.8	11.3	13.5

Source: systematised by the authors of this study based on the following reports: Bank of Estonia (2021), Bank of Latvia (2023), Lithuanian Bank (2021) and the National Bank of Ukraine (2021)

While not a Eurozone member, Poland has made great strides in stabilising its economy and financial system since joining the EU in 2004. The National Bank of Poland (2023) has been actively implementing an inflation targeting policy, which has helped to reduce inflation and ensure the stability of the national currency. Poland's experience demonstrates that to achieve economic stability, it is necessary to implement comprehensive reforms aimed at ensuring financial discipline and strengthening the independence of the central bank.

The National Bank of the Czech Republic (2021; 2023) also plays a key role in ensuring the country's macroeconomic stability. The Czech Republic, like Poland, has not yet joined the Eurozone, but is actively preparing for this process. The Czech Republic's major achievements have been to reduce inflation and ensure the stability of the national currency. The Czech case shows the significance of coordinating monetary and fiscal policies and the need to ensure a strong level of transparency in the central bank's operations.

Hungary is also an interesting example for Ukraine, as it actively cooperates with the EU but refrains from joining the Eurozone for political and economic reasons. The Hungarian government seeks to maintain control over the national economy and avoid strong influence of European institutions on internal monetary policy. Thus, an analysis of the experience of Eastern European countries shows that successful economic integration is not always accompanied by immediate accession to the Eurozone. This allows Ukraine to focus on achieving the necessary economic standards without rushing to adapt to the Euro. Joining the Eurozone will require a review of the NBU's powers. Monetary policy will come under the control of the ECB, which will require Ukraine to adapt its institutions to European standards. According to the ECB regulations, the NBU will have to meet new requirements for managing inflation and the

exchange rate. This will require changes in legislation and the creation of new control mechanisms. An important aspect of integration will be to define the legal basis for cooperation between the NBU and the ECB. The compliance of Ukrainian legislation with EU and ECB requirements means harmonising Ukrainian legal norms with European standards. This includes the adaptation of financial and economic policy to the provisions of the Convergence criteria (2021). According to the Treaty on the Functioning of the European Union[1], the central banks of the Member States must ensure price stability, effective inflation control, and compliance with exchange rate requirements. Accordingly, the NBU will have to adapt its monetary policy and inflation control mechanisms to the standards set by the ECB.

One of the key aspects is to bring the legislation in line with the Directive of the European Parliament and of the Council No. 2013/36/EU[2] and Regulation of the European Parliament and of the Council No. 575/2013[3], which relate to banking management, financial supervision, and risk control. This will require amendments to the Law of Ukraine No. 679-XIV[4], specifically regarding its powers to supervise the banking system, ensure financial stability, and control inflation. The ECB also requires central banks to ensure transparency in the management of the money supply and exchange rate, which implies the development of new regulations in the field of currency regulation that will follow the Directive of the European Parliament and of the Council No. 98/26/EC[5] on settlement systems and payment instruments.

Harmonisation involves not only amending existing legislation, but also developing new control and regulatory mechanisms. For instance, the inflation targeting system currently implemented by the NBU needs to be improved to ensure compliance with the instruments used in the Eurozone. This includes adapting the provisions of Council Regulation No. 1024/2013[6] on the supervision of credit institutions to the Ukrainian reality, as well as strengthening the NBU's independence. All this will help prepare Ukraine for potential accession to the Eurozone and facilitate the integration of the Ukrainian banking system into the EU's financial services single market.

For Ukraine's successful integration into the Eurozone, it is necessary to ensure that national legislation is in line with EU and ECB requirements. The key aspects of harmonisation include the introduction of rules governing macroeconomic stability, monetary policy, financial transparency, and consumer protection. Specifically, Ukraine must adapt its financial regulation laws to EU directives, such as Directive of the European Parliament and of the Council No. 2013/36/EU[7] and Regulation of the European Parliament and of the Council No. 575/2013[8].

Changes in Ukrainian legislation should also address the areas of taxation, consumer protection, and anti-corruption. For example, to implement EU standards in the financial services sector, it is necessary to amend the Law of Ukraine No. 2664-III[9]. This will ensure the implementation of European standards for the protection of financial services consumers, including transparency and accountability of financial institutions. It is also important to adapt anti-money laundering legislation in line with Directive of the European Parliament and of the Council No. 2015/849[10], which establishes mechanisms to prevent the financing of terrorism and criminal activity.

One of the key benefits of integration into the Eurozone is the ability to attract foreign investment. Countries that are members of the monetary union are considered more stable and less risky for investors. According to the studies, integration into the Eurozone increases the country's attractiveness to international investors. For example, a study conducted by the European

[1] Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union. (2010, March). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12016ME%2FTXT.
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Commission (2020) showed that foreign investment in countries that joined the Eurozone increased by 20%. Joining the Eurozone can provide a greater level of macroeconomic stability. Member countries are subject to the control of the ECB, which allows them to access financial support mechanisms in case of a crisis. According to E. Jones *et al.* (2021), participation in the monetary union allows countries to achieve greater economic stability through the coordination of economic and financial policies. Integration into the Eurozone also increases a country's competitiveness in the international market. Globalisation combined with European integration creates better conditions for exports. According to R. Baldwin (2023), reducing currency risks and facilitating trade can greatly improve the trade balance and stimulate economic growth. Thus, integration into the Eurozone will provide Ukrainian enterprises with access to the European market with a population of over 500 million consumers. Joining the Eurozone could also have positive social and cultural effects. Strengthening ties between Ukraine and EU countries will improve cultural exchange, which will contribute to the development of social consciousness and support for democratic values.

Ukraine's successful integration into the Eurozone requires a comprehensive approach that includes economic, social, legal, and institutional aspects. The Ukrainian government should develop a clear action plan that addresses all the challenges and opportunities arising from the integration process. Structural reforms in the economy, financial sector, and public administration are crucial. This will enable Ukraine to achieve compliance with European standards and reduce the risks associated with integration. Specifically, it is essential to improve anti-corruption legislation, strengthen institutions regulating the financial sector, and improve the investment climate. Support programmes for the population should be developed to mitigate the negative social consequences of integration. This could include measures to protect vulnerable groups, ensure access to social services, and raise awareness of the benefits of European integration. It is critical to involve civil society in the integration process. Involving the public in discussions on European integration will help to create a positive image of the process and reduce social tensions.

Discussion

The study conducted confirmed the significance of a gradual process of Ukraine's integration into the Eurozone. Considering the current economic situation in Ukraine, one of the key factors affecting its ability to join the Eurozone is the stabilisation of macroeconomic indicators, particularly inflation and the budget deficit. The analysis by A. Fabry (2019) showed that economic integration can have both positive and negative consequences, including the loss of monetary independence. This confirms the findings of this study, where the researchers also noted the risks associated with this approach. However, when compared to F. Mitsakis (2014), who extensively studied monetary risks for fragile economies, the researchers can say that they support author's argument on the value of monetary independence, as it is consistent with the findings that Ukraine must retain some control over its economic policy. D. Adamski *et al*. (2023) highlighted that joining the Eurozone positively affects the reduction of currency fluctuation risks, which is one of the benefits of integration for countries with highly volatile economies such as Ukraine. However, the above analysis painted a different picture, as the authors of the present study believe that these risks can be reduced not only through integration, but also through internal reforms and economic stabilisation.

A prominent aspect of this study was the analysis of the economic adaptation of Eastern European countries, such as Poland and the Czech Republic, to European standards. In this context, the findings of R. Beetsma *et al*. (2024), who showed that countries that have successfully adapted to European economic requirements have benefited from increased investment attractiveness and reduced currency risks, confirm the position of the authors of the present study. However, the authors disagree with the conclusion of W. Schelkle (2017), who emphasised the significance of maintaining an independent monetary policy for countries with high macroeconomic volatility. The reason for the different interpretations may be that it is important for Ukraine not only to maintain independence but also to ensure stability through integration.

G. Kolodko & W. Grzegorz (2021), in their analysis of the Polish experience of economic integration, showed that countries that adapted to EU requirements without immediately joining the Eurozone managed to maintain macroeconomic stability by preserving their monetary policy. This is in line with the conclusions of the present study, as the authors also believe that Ukraine should be cautious about joining the Eurozone, especially in the context of political instability, as also noted by V.A. Schmidt (2022).

One of the key challenges for Ukraine is the institutional weakness and lack of independence of the NBU, which is confirmed by the findings of V.A. Schmidt (2022). He emphasised that central bank independence is a prerequisite for a successful monetary policy in the Eurozone context. These findings were supported by the work of S. Casagrande (2021), who showed that countries with insufficient institutional independence of central banks experience economic difficulties after joining the Eurozone. This is not consistent with the findings of the above analysis, as the present study pointed to the possibility of Ukraine's integration, provided that extensive reforms are introduced.

Studies by, R. Asif & M. Frömmel (2022), L. Dionysopoulos *et al*. (2024), as well as the study by B. Eichengreen (2021) confirmed the significance of considering institutional aspects for Ukraine's successful integration into the Eurozone. The claims of these researchers appear debatable, as their studies do not always factor in the specific context of Ukraine, which affects their findings. M. Wolf (2023) emphasised that joining the Eurozone means a loss of monetary policy flexibility, which can be problematic for economies that have not yet fully stabilised. This issue is of particular relevance for Ukraine, as the stability of its economy depends on the NBU's ability to manage inflation and control the exchange rate. This is in line with the conclusions of the authors of the present study on the need to maintain monetary flexibility. According to V.A. Schmidt (2022), the countries that joined the Eurozone have gained considerable benefits in terms of greater economic stability and access to financial support mechanisms such as the European Stability Mechanism. However, these benefits may not be available to Ukraine without proper structural reforms.

The findings of this study suggest that Ukraine's integration into the Eurozone is possible but requires serious efforts on the part of the government, particularly in the areas of macroeconomic stabilisation and institutional reforms. One important aspect that requires further discussion is the challenges that Ukraine's financial sector may face in the Eurozone integration process. According to M. Wolf (2023), the transition to the euro requires substantial reforms in the banking sector, as the euro requires the unification of banking standards and an effective system of financial risk control. This process may be difficult for Ukraine, considering the underdevelopment of financial institutions, corruption, and low efficiency of the legal system, as noted by S. Casagrande (2021).

Notably, the low level of capitalisation of Ukrainian banks and the high share of non-performing loans could be a major barrier to integration into the European financial system. The reason for the different interpretations may lie in the fact that while some researchers consider this problem to be solvable, the present study revealed that without comprehensive reforms in the financial sector, it may be an obstacle to integration. Thus, the study confirmed the significance of a comprehensive approach to Ukraine's integration into the Eurozone, which includes both macroeconomic stabilisation and major financial sector reforms. To successfully complete this process, Ukraine will need to make numerous structural and institutional changes that will require efforts from both the state and the private sector.

Conclusions

The study analysed Ukraine's integration into the Eurozone, focusing on the legal aspects of the NBU's activities and the problem of harmonising Ukrainian legislation with European standards. It was found that to meet the requirements of the ECB and the EU, the NBU needs to adapt its legal framework, particularly in terms of inflation targeting, currency regulation, and banking supervision. This implies amending national legislation, specifically the regulations governing financial institutions. The study showed that a series of reforms have already been implemented, but further adaptation to European standards is still required.

The analysis of the study findings showed that Ukraine has made certain progress in harmonising its legislation on the path towards European integration. Legislative reforms aimed at ensuring transparency and stability of financial markets positively affect the country's macroeconomic stability. At the same time, there is a necessity of introducing further legal mechanisms to fully meet the European requirements in the sphere of banking and monetary policy. This suggests that legal harmonisation is a crucial area for increasing confidence in Ukraine's financial system. The study also found that the harmonisation of Ukrainian legislation with European standards is a complex and multilevel task. Particular attention should be paid to changes in the legislation governing banking supervision and financial stability, as these are key requirements for integration with the Eurozone. The NBU must not only introduce new regulatory mechanisms, but also increase transparency in its monetary policy. It also needs to establish mechanisms for effective cooperation with the ECB and other EU financial institutions to ensure the stability of the national economy in the context of integration processes. A major step towards the Eurozone lies not only in meeting the Convergence criteria, but also in improving the legal framework that will ensure the stability of financial institutions. This will allow Ukraine not only to meet EU requirements, but also to become an active participant in the European financial space, ensuring stable development of the national economy and increasing confidence in it. Further research could focus on a more thorough analysis of the NBU's role in ensuring legislative harmonisation with European financial standards, as well as on the legal mechanisms for cooperation with other EU institutions.

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Conflict of Interest

None.

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Роль і місце Національного банку України в контексті входження країни в ЄС та Єврозону: досвід центральних банків країн ЄС

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Анотація
У роботі досліджено роль і місце Національного банку України в контексті інтеграції країни до ЄС та можливого входження до єврозони. Проаналізовано досвід центральних банків країн ЄС, які пройшли шлях адаптації до вимог Європейської системи центральних банків і Європейського центрального банку. Мета дослідження полягала у вивченні питань гармонізації законодавства, монетарної політики, забезпечення фінансової стабільності, інституційної незалежності та макроекономічної конвергенції. Окреслено основні етапи, які проходили центральні банки країн – членів ЄС перед і після приєднання до єврозони, а також виклики, що поставали перед ними під час цього процесу. Посилену увагу зосереджено на ролі Національного банку в підготовці до виконання Копенгагенських критеріїв та інтеграції. У дослідженні визначено ключові напрями реформування правового регулювання української банківської системи для забезпечення ефективного виконання вимог європейської монетарної політики: стратегічні пріоритети, які мають бути враховані Національним банком для підтримання макроекономічної стабільності та конвергенції до єврозони. У роботі акцентовано на значенні інституційної незалежності Національного банку України, координації з фіскальними органами та забезпечення прозорості в прийнятті рішень. Констатовано, що досвід країн Центральної та Східної Європи є важливим орієнтиром для України, оскільки дає змогу уникнути помилок і впроваджувати ефективні реформи. Дослідження містить рекомендації щодо ролі Національного банку в забезпеченні економічної стабільності, створенні умов для сталого зростання та наближення до стандартів ЄС

Ключові слова:
фінансове право; монетарна політика; стабілізаційна політика; монетарна гармонізація; економічна конвергенція

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The problem of ensuring the sovereignty of EU members states in modern legal and public discourse

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Abstract

This study presents a theoretical analysis of the concept of sovereignty and explores some of the peculiarities of its implementation in the policies of European states in the context of regional integration, which is relevant in view of the UK's withdrawal from the European Union and critical assessments of EU policies by Eastern European countries. The purpose of this study was to examine changes in the concept of state sovereignty under the influence of integration processes. The research methodology was based on a critical analysis and systematic review of publications by leading researchers in the field of European politics, law and sovereignty theory, as well as concepts of European sovereignty. This helped to consider different perspectives on the change of sovereignty in the context of the development of supranational and intergovernmental institutions of the EU. In particular, how the concept of "European sovereignty" is used in the legitimation strategies of political actors supporting integration and supranational governance. The results of the study indicate changes in the definition of sovereignty in contemporary European politics. On the other hand, EU member states are facing less control over many national functions through supranational institutions such as the European Commission and the Court of Justice of the European Union, which will lead to partial restrictions on control over certain areas of domestic and foreign policy. Thus, this study has proved that supranational governance is developing as a process that not only expands the EU's sphere of power, but also transforms the traditional concept of sovereignty, making it more dynamic and more adapted to modern political realities. The conclusions drawn can serve to form a new model of integration policy that reflects political and social needs within the framework of European integration and is able to ensure a balanced interaction between nation states and supranational structures

Keywords:
sovereignty; European integration; supranational mechanisms; European politics; legal system; intergovernmental relations; EU member states

Introduction

In the current context of European integration, the concept of state sovereignty has undergone a significant transformation and has sparked much debate in academic and political circles. The EU, as a complex supranational organisation uniting sovereign states, raises a major question for researchers as to how member states can preserve their independence and autonomy by voluntarily transferring some of their sovereign rights to the supranational level. As criticism of the EU from Poland, Hungary, and Slovakia has intensified, the issue of possible restrictions on the sovereignty of these countries has become the subject of serious

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legal and political debate. The question arises whether these actions are legitimate and whether there are legal grounds for such claims.

R. Bellanova *et al.* (2022) analysed the impact of digital sovereignty on European security integration. The researchers emphasised that digital sovereignty, including both control over digital infrastructure and the use of digital tools for security management, is becoming a central topic in the EU's political discourse. They have conducted a detailed study of digital sovereignty, both in terms of European policy and the rearticulation of sovereign power and digital technologies. N. Jabko & M. Luhman (2020) explored how the Eurozone crisis and the migration crisis have changed the understanding of sovereignty in the EU. The researchers argued that the politicisation of the crisis has led to a revision of the practice of sovereignty, particularly through the search for integration measures. According to the experts, the politicisation of these crises marginalises sovereignty claims without threatening European integration. N. Brack *et al.* (2019) examined the conflicts of sovereignty in the EU, which have been exacerbated by the refugee crisis, the Eurozone crisis, and Brexit. The researchers noted that these conflicts have taken on new manifestations, notably in the form of disputes over parliamentary and national sovereignty, which are part of the democratic tradition. N. Brack *et al.* (2021) also pointed out that the traditional conflict between state and supranational sovereignty is being supplemented by new types of sovereignty, such as parliamentary and national sovereignty, in various contemporary crises, including migration and economic policies.

C. Volk (2022) explored the issue of sovereignty in the context of globalisation. The researcher criticised the conventional concept of sovereignty based on a rigid division between internal and external, national, and global. C. Volk (2022) noted that such a conceptual framework no longer corresponds to the current situation of global relations and transnational changes in power structures, and that the very understanding of sovereignty must be revised to bring it in line with the current reality. B. De Carvalho (2021) explored the historical aspects of sovereignty in international relations. The researcher emphasised the significance of historicising the concept of sovereignty and criticised previous studies for being too Eurocentric and not addressing the broader global context. The researcher also stressed the need to rethink the role of sovereignty in international relations and called for a more critical analysis of current approaches. T. Kuhn (2019) explored the role of identity politics in the European integration. Initially, the integration was elite-driven and less politicised, with identity issues having little influence. With the recent crises such as Brexit and the general politicisation of European integration, collective identity has begun to play a more important role. The researchers analysed how people's self-identification as Europeans or as exclusively national citizens can influence the pace and focus of integration.

The purpose of this study was to theorise the impact of political, social, economic, and technological factors on the shaping and development of the idea of sovereignty within the EU.

Literature Review

I.V. Yakoviyk *et al.* (2018) considered the issue of the EU's influence on the sovereignty of candidate countries and neighbouring countries. The researchers analysed how supranational governance organisations can influence national sovereignty through direct sanctions, considering the national interests of each country, regardless of the EU's political aspirations. M. Avbelj (2014) investigated the relationship between the concept of sovereignty and European integration. The researcher concluded that the most successful concept of European integration is based on pluralistic sovereignty. N. Walker (2020) analysed the concept of 'sovereignty surplus' as a mechanism by which states adapt their sovereignty to new subnational and supranational contexts. This study emphasised that sovereignty can be changed and redistributed, and it is a flexible approach to maintaining political power. K. Huhta (2021) analysed the EU's energy powers, focusing on the provisions that enable each country to determine its energy resources. It was found that such an interpretation limits the EU's capabilities in energy policy.

L. Monsees & D. Lambach (2022) focused on the concept of digital sovereignty and analysed its impact on the reproduction of European identity through initiatives such as 5G and Gaia-X. They pointed out that Europe's digital sovereignty is weak and is a security issue for the EU. F.M. Ferrara & H. Kriesi (2022) investigated crisis phenomena and their effects on the European integration process. The researchers proposed an original theoretical approach to the analysis of various crises, such as Brexit and COVID-19. M. Riddervold *et al.* (2021) stressed that the EU has demonstrated the ability to adapt to crises while maintaining key institutions. This means that crises can act as catalysts for change rather than prevent it.

J. Edler *et al.* (2023) analysed the issue of technological sovereignty in the context of innovation policy, particularly the role of technological sovereignty in ensuring national competitiveness. J. Carver (2024) analysed the impact of digital sovereignty on EU foreign policy through initiatives such as the cyber diplomacy toolkit, external capacity building initiatives, and the 5G toolkit, showing the varying degrees of success of these programmes. H. Roberts *et al.* (2021) emphasised the significance of policy-making in this area for preserving the EU's identity and autonomy, pointing out that digitalisation requires innovative approaches to governance. The researchers identified tensions between rights, free markets, and geopolitics. They point

to three trends: the use of internal market policies to gain geopolitical influence, foreign policy imperatives for internal markets, and a new hybrid digital policy that combines internal and geopolitical issues.

T. Kostakopoulou (2024a) examined the issues of European political integration, specifically EU citizenship and migration policy. The researcher analysed the community-building process in the EU through the lens of the politics of inclusion and exclusion, using normative political theory to study socio-political membership, European identity, and immigration issues. C. Eckes (2020) explored the concept of autonomy of the EU legal system, arguing that despite the lack of sovereignty under international law, the EU acts as a sovereign entity due to the autonomy of its legal order, which is protected by the Court of Justice of the EU. M.R. Madsen *et al.* (2022) examined the negative reactions to the CJEU judgments and found that sovereignty concerns often outweigh the judgments themselves. This suggests that the concrete outcome of a judicial review is more important than the role of judicial review in the EU legal system. D. Leuffen *et al.* (2022) analysed European integration and differentiation in multiple policy areas in their book, explaining why some countries opt out of certain EU policies while other policy areas are deeply integrated. T. Christiansen & A. Verdun (2020) investigated the impact of past institutional decisions on current processes in the EU, using the concepts of path dependence and tipping point to explain the sustainability or change in European integration.

S.K. Schmidt (2021) examined British parliamentary sovereignty and its conflict with EU constitutional provisions, which was one of the major reasons for Brexit. C. Bickerton (2021) explored the transformation of the UK's sovereignty during EU membership, emphasising legal changes and the lack of public scrutiny. After the 2016 referendum, the UK faced a new constitutional structure that exacerbated conflicts over sovereignty. J. Agnew (2020) explored how Brexit affected the perception of the UK's territorial sovereignty. The researcher argued that the referendum highlighted the contingency of sovereignty and the complexity of controlling territory.

F. Negri *et al.* (2021) investigated the relationship between euro adoption and European identity. This study found that the use of the euro reduces the proportion of people who identify exclusively with their country, thereby contributing to the development of a European identity. C. Shore & A. Black (2021) focused on the impact of the European Commission's activities on the sense of community among Europeans and on the development of new leaders for the development of European identity. They argue that the active role of institutions in the political process is key to strengthening a common identity. Overall, these studies highlighted the necessity of adapting the EU to modern challenges, particularly in the areas of digitalisation and migration management, to preserve its values and institutional integrity.

Materials and Methods

The research methodology included an analysis of scientific literature that helps to better understand the legal mechanisms for protecting and implementing the principles of sovereignty at the European level. The analysis of the EU integration process included a study of the 1951 Treaty[1] and attempts to create a Military Community Treaty and a Political Community Treaty. The content analysis confirmed the trend of supranational governance in the EU, particularly in terms of interaction between member states. The study covered the key stages of the development of the concept of sovereignty, starting with the signing of the first EU international treaties and ending with current challenges and transformations, especially after Brexit and the 2008 financial crisis. Various theoretical approaches have been used to analyse the issue of sovereignty and political integration in the EU. A variety of theoretical frameworks were used, including the contributions of leading researchers in the field of European politics, law, and concepts of sovereignty. This helped to summarise and structure various approaches to sovereignty studies in the EU context. Furthermore, historiographical analysis was employed to trace the development of the concept of sovereignty in the context of European integration. This helped to demonstrate the evolution of the EU's political and legal structure and the changing approach to sovereign power. The methodology also included an analysis of the scientific literature, which helped to clarify the political and gain a deeper understanding of the legal mechanisms for protecting and implementing the principles of sovereignty at the European level. In any case, the content analysis confirmed the trend of supranational governance in the EU, especially in certain aspects of relations between member states.

The methodology was also based on a sequential analysis of the development of the concept of sovereignty in the EU from the time of the Treaty of Rome[2] to the current events, which allowed tracing how the integration stages affect the perception of sovereignty by the Member States. The study started with an analysis of the Treaty of Rome[3], signed by the founding countries (Belgium, Italy, Luxembourg, the Netherlands, Germany, and France), which sought to create a single

[1] Treaty establishing the European Coal and Steel Community (Paris Agreement). (1951, April). Retrieved from https://www.cvce.eu/en/obj/treaty_establishing_the_european_coal_and_steel_community_paris_18_april_1951-en-11a21305-941e-49d7-a171-ed5be548cd58.html.
[2] Treaty of Rome. (1957, March). Retrieved from https://www.europarl.europa.eu/about-parliament/en/in-the-past/the-parliament-and-the-treaties/treaty-of-rome.
[3] Ibidem, 1957.

European space. The study also explored the impact of the Maastricht Treaty[1], which transformed the European Economic Community into a political union, establishing the foundations of the Economic and Monetary Union, European citizenship, and a common foreign policy, which severely limited national sovereignty due to the requirement to adapt national legal systems to EU norms and expand the powers of the European Parliament. The analysis also included a consideration of the Treaty of Lisbon[2], which created the posts of President of the European Council and High Representative for Foreign Affairs and Security Policy and established the European External Action Service. This approach helped to examine how successive stages of integration complicated the structure of relations between member states, prompting them to gradually transfer sovereignty to the EU. All these research methods enabled a theoretical analysis of sovereignty issues in the EU, conducted through a definitive study of the available data without the use of empirical research. This helped not only to systematise the key theoretical approaches to sovereignty, but also to take a fresh approach to understanding political processes in the EU.

Results and Discussion

The concept of 'European sovereignty' is one of the central political guidelines of modern European integration. Various approaches to this subject in the scientific literature are useful for analysis, as they highlight both internal (national) and external (supranational) factors of influence. In his book, P. Buhler (2023) emphasised the role of European sovereignty in safeguarding the values and interests of the EU. The author used the works of Thomas Hobbes and Jean-Jacques Rousseau to analyse the conceptual roots of sovereignty and emphasised the indivisibility of sovereignty as a fundamental principle of state power. P. Buhler's (2023) study provided a detailed picture of the emergence of European sovereignty as a mechanism capable of protecting European interests in the context of globalisation. According to the researcher, only the EU can be a guarantor of its existence and unite countries to confront global challenges.

T. Kostakopoulou (2024b) examined the impact of identity politics on the emergence of the Jewish project. The researcher viewed European identity not as a static given, but as a dynamic process emerging from institutional practices of cooperation and integration. This study showed that European identity is the result of political design, where public participation in the political process is a key element. J. Grzybowski & H. Černy (2023) proposed a psychoanalytic approach to understanding nationalism and sovereignty. The researchers examined the changing perceptions of the state and sovereignty, specifically, how they affect the state-building process. The focus was on conceptual changes in "sovereignty", especially through the lens of international politics and the right of peoples to self-determination. The study showed that modern sovereignty is becoming a performative phenomenon based on the interaction of national and supranational actors.

It was found that right-wing populists use the concept of sovereignty as a means of promoting a monocultural and ethnically homogeneous model of the state. In their study, S.I. Bora & L. Schramm (2023) emphasised the growing influence of France in the EU. The researchers argued that France's political strategy from 2017 to 2022 was aimed at strengthening the country's position in the European arena. France's political system and bilateral relations with Germany have become significant factors in the fulfilment of France's interests. The researchers' conclusions emphasised the role of crisis moments for changes in EU policy and France's involvement in these processes. S.I. Bora (2023) analysed the discursive strategy of French President Emmanuel Macron to actively promote the idea of European sovereignty. S.I. Bora (2023) actively argued that this discourse is a tool for legitimising France's economic interests. The researcher examined the mechanisms of implementation of this idea in European politics through the analysis of 72 interviews with political experts and public speeches.

Thus, studies by various researchers show that the concept of sovereignty in Europe continues to be a dynamic and complex phenomenon. The political strategies of EU countries, especially France, right-wing populist movements, and the EU demonstrate diverse ways of interpreting and using this concept in the context of current geopolitical challenges.

From the founding of the European Coal and Steel Community in 1951 to the creation of the EU in 1992[3], the idea of sovereignty has undergone major changes. This period was fundamental to the integration process in Europe and influenced the understanding of national sovereignty and interaction with new supranational institutions, such as the European Court of Human Rights, established in 1959.

On 18 April, France, Germany, Italy, Belgium, Luxembourg, and the Netherlands signed the Treaty establishing the European Coal and Steel Community (Paris Agreement)[4] establishing the European Coal and Steel

[1] Maastricht Treaty. (1992, February). Retrieved from https://www.europarl.europa.eu/about-parliament/en/in-the-past/the-parliament-and-the-treaties/maastricht-treaty.
[2] Treaty of Lisbon. (2007, December). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12007L%2FTXT.
[3] Maastricht Treaty. (1992, February). Retrieved from https://www.europarl.europa.eu/about-parliament/en/in-the-past/the-parliament-and-the-treaties/maastricht-treaty.
[4] Treaty establishing the European Coal and Steel Community (Paris Agreement). (1951, April). Retrieved from https://www.cvce.eu/en/obj/treaty_establishing_the_european_coal_and_steel_community_paris_18_april_1951-en-11a21305-941e-49d7-a171-ed5be548cd58.html.

Community. The 50-year agreement came into force in July 1952 and was the first step towards European integration. The purpose was not only to restore the economy after the Second World War, but also to strengthen peace by combining the extraction and processing of strategic coal and steel resources. This community became the basis for further integration processes and marked the beginning of the creation of a common supranational structure. Thus, one of the key reasons for the creation of the European Coal and Steel Community was the desire to prevent the recurrence of military conflicts like the two World Wars. The relinquishment of sovereignty in the sphere of control over critical industries was viewed as a crucial step towards ensuring peace and stability in Europe.

On 25 March 1957, two important Treaties of Rome[1] were signed: The Treaty establishing the European Economic Community and the Treaty establishing the European Atomic Energy Community (Dir, 2024). These agreements formed the basis for further European integration. According to the Treaty on European Economic Community, the six founding member states sought to create a common market, providing for the abolition of tariff barriers, the introduction of common tariffs, a common trade policy towards third countries and the expansion of cooperation in this area. Particular attention was paid to agriculture and transport. The Second Treaty of Rome established the European Atomic Energy Community to promote the peaceful use of nuclear energy. The purpose of the European Atomic Energy Community was to support research and industrial development in this area, and it was also a vital step in European cooperation.

During this period, the debate on sovereignty centred on the extent to which national governments were willing to transfer their powers to the new European institutions. This issue has become particularly relevant in the context of economic policy, where countries are expected to work together to achieve their common goals. The famous French politician Jean Monnet advocated the unification of European countries based on economic and political cooperation to ensure stability and peace on the continent (Jean Monnet and..., 2024). Monnet viewed European integration as a way to avoid conflict and build a new international order after the devastating consequences of World War II. Monnet's core idea was to transfer control of major industries (such as coal and steel production) to a commonwealth open to other European countries, consolidating their interests and strengthening economic ties. It also supported the creation of a common market, a single currency system, and other attempts to create a political and economic union among European countries. Through the United States of Europe Action Committee, which he founded, Monnet worked to promote the idea of a Council of Europe, the formulation of common policies, and the eventual general election to the European Parliament, as represented in the Schuman project. In the project, Monnet initially supported the idea of a European federation, which is clearly reflected in the 1950 Schuman Declaration, which he helped to draft. In this document, integration was defined as a means of gradually uniting European countries into a federation to ensure lasting peace and economic development. However, as the integration programme evolved, Monnet changed his perspective on the idea of sectoral integration, focusing on the gradual integration of common sectors such as coal and steel. Monnet believed that this approach was more effective in creating interdependence between countries and gradually paving the way for political integration.

The European Court of Human Rights (2023) was established in 1959 to ensure respect for the rights and freedoms of citizens enshrined in the European Convention on Human Rights. Although the Court was not a part of the EU, it played a significant role in shaping the legal sphere of Europe. The European Court of Human Rights was one of the first instruments to influence national legal systems and force Council of Europe member states to adhere to common human rights standards.

Current EU studies focus on various aspects of economic, political, and social integration, as well as on the regulation and impact of EU decisions on global processes. D. Fiott (2023) examined the EU's response to the war in Ukraine and its impact on European defence integration. The researcher analyses how the priorities of EU member states have changed under the influence of the war and emphasises the strengthening of intergovernmental and supranational defence cooperation mechanisms. This study showed that crises such as wars can be a catalyst for deepening European integration in certain areas, such as defence. Comparing this study with the one by F. Stoeckel *et al.* (2024), it is worth pointing out that the former researcher analysed macro-political processes at the level of defence integration, while F. Stoeckel *et al.* (2024) considered the micro level and explored how citizens use EU policies. The study found that respondents with more nationalistic outlooks were more likely to have a distorted view of the EU's powers and believe that Brussels has too much power over national governments. In contrast, citizens who consider themselves Europeans have become better informed about the true scope of the EU's powers.

An analysis of integration support in the current social and educational context revealed many challenges and opportunities for the successful integration of different population groups. Supporting integration includes not only legal and administrative measures,

[1] Treaty of Rome. (1957, March). Retrieved from https://www.europarl.europa.eu/about-parliament/en/in-the-past/the-parliament-and-the-treaties/treaty-of-rome.

but also changing cultural and social attitudes that may limit the participation of minorities in public processes. Raising public awareness and capacity on the significance of tolerance and mutual support is also an essential factor.

In Germany, support for European integration reached 67.5%, making it one of the countries with the highest support for European initiatives. This result can be explained by many factors. Germany is one of the most economically developed countries in Europe, and it benefits greatly from the European single market and the absence of trade barriers. Furthermore, as noted above, Germany's political stability and leadership in important EU decisions contribute to increased public confidence in the integration process. An example of Germany's leadership role is its activities during the Eurozone crisis (2010-2012), when the country played a major role in providing financial support to Greece and other countries facing economic difficulties. Thanks to their efforts and cooperation with other EU member states, steps were taken to stabilise the economy and overcome the crisis, reinforcing public confidence in European integration (Leleka & Shylina, 2022). These factors encouraged Germans to perceive the EU not only as an economic project, but also as a platform for ensuring political stability and security in the region. Furthermore, German citizens' support for European integration is driven by a shared sense of responsibility for the European project, especially considering Germany's leading role in addressing the EU's financial and migration crises (Gurkov & Sydorzhevsky, 2016).

In France, support for European integration is slightly lower than in Germany at 62.3%, but rejection is also noticeable at 25.5%. As one of the key founding members of the EU, France stays committed to the European project, but internal socio-economic problems such as rising unemployment, immigration issues, and growing nationalist sentiment are putting a lot of pressure on public opinion. The growing popularity of right-wing nationalist parties in France, such as the National Alliance, is also affecting public perceptions of integration. Many French people have expressed concern that their national identity and sovereignty will be lost in the European project. At the same time, a considerable part of the population, especially young people and urban residents, views the EU as an opportunity for economic growth and stability (Avramenko, 2011).

Italy has one of the lowest rates of support for European integration among the major EU countries – 54.8%. Over 31.3% of respondents oppose integration, indicating a growing scepticism towards the EU among Italians. The consequences of the 2008 economic crisis and the 2015 migration crisis, which led to a deterioration in attitudes towards European institutions and resulted in major cuts in public spending, lower employment, and higher poverty rates. A smaller proportion of the population (30%) believes that the EU did not support Italy enough during the crisis, leading to a rise in Euroscepticism. However, over half of the population still supports the idea of European integration and recognises its significance for the country's economic stability (Proboev, 2017).

Poland is one of the countries with an extremely high level of support for European integration – 74.9%. This can be explained by several factors. First, Poland benefits greatly from EU membership, particularly through financial support in the form of structural funds. Secondly, the EU plays a role in ensuring internal democratic norms and the rule of law, which is critical considering the internal political conflicts between the government and the opposition. Despite some differences between Warsaw and Brussels on political issues, the overall support for European integration among Polish citizens is still remarkably strong. Poland's integration into the EU has been successful due to systemic reforms, consistent measures, and the involvement of all state bodies. The training of advanced specialists and support of civil society institutions for European integration played an integral role. These measures contributed to solid economic growth and political stability in Poland and served as an example of effective coordination of European integration policy for the candidate country (Merkotun, 2023).

Spain has an optimistic attitude towards the EU The level of support for European integration in Spain also continues to be high, at 68%. After overcoming the economic crisis and reducing unemployment problems, most of the population considers the EU to be an indispensable tool for the country's economic and political development. The Spaniards, according to A.O. Khmel (2021), consider the EU an effective mechanism for cooperation in security, economic and social development. Thanks to stable economic growth and declining unemployment, public opinion. Spain continues to support European integration. Spain has also viewed its security through the lens of its relations with the EU and NATO and adapted its national strategy to the new threats of the 21st century.

According to N. Tsounis (2018), the Greek economy suffered from unemployment, declining incomes, and social tensions, which led to a negative attitude towards the EU. The Greeks believe that the EU not only failed to help overcome the economic crisis, but, on the contrary, further complicated the situation by imposing strict conditions for receiving financial aid. However, a part of the population is still convinced that EU membership is necessary to ensure political stability and access to financial resources. Greece's experience after joining the EU showed that it had a positive impact on the economy and trade. It was also found that 86% of gross trade turnover is internal trade, while 84% of total trade diversification is foreign trade diversification, results that are consistent with the customs union theory. However, the dynamic impact was limited. Positive changes

occurred in only two-thirds of the economy's sectors, while the overall integration effect was minimal.

In the UK, approximately 38% of the population oppose European integration, while 50.5% support it. This reflects the consequences of the 2016 referendum, when most Britons voted to leave the EU. Many respondents believe that leaving the EU will give them more autonomy, particularly in matters of immigration and trade. This sentiment is reinforced by prevailing narratives that emphasise national identity and sovereignty. Brexit has had many consequences for the UK, which can be divided into positive and negative aspects. The UK gained the opportunity to formulate an independent trade policy by concluding agreements with countries outside the EU, opening new markets for exporters. The countries can adapt their laws and regulations without adapting to European standards, potentially promoting innovation. According to I. Martusenko (2023), leaving the EU has also saved money previously spent on contributions to the European budget, enabling central governments to spend these funds on internal needs. However, Brexit also brought major challenges. The economic costs were self-evident: investment and economic growth declined as many companies moved their operations to the EU to avoid tariffs and regulatory hurdles. Trade barriers created by the exit made trade with the EU more difficult, leading to delivery delays and higher prices. The services sector, particularly financial services, also faced barriers to accessing European markets, limiting opportunities for UK banks. The socio-political impact of Brexit has increased political polarisation in the country, fuelled the rise of nationalism, and renewed calls for a referendum on Scottish independence. Finally, changes in immigration policy have made it more difficult for EU citizens to obtain visas, which has caused concern in industries that rely on labour mobility. Brexit has created both opportunities and challenges for the UK, but the outcome will depend on the country's future political and economic strategy.

In Hungary, European integration is supported by 53%, but there is also a clear opposition – 34.8%. This indicates a split in Hungarian society in terms of support for the EU. The policies of Viktor Orban's government, particularly his criticism of Brussels, have led to a rise in nationalist sentiment and distrust of European institutions. Many Hungarians believe that the EU does not provide sufficient support on issues such as immigration and internal security, and opposition sentiment is growing. However, a sizeable part of the population also recognises the value of EU membership for economic development and stability. As O. Volianiuk (2024) noted, in the context of the EU, Hungary is characterised by a particular political system that poses challenges to European identity and international security. The current political situation in Hungary is characterised by growing authoritarian tendencies that lead to the emergence of elected dictatorships and hybrid regimes, and the gradual establishment of a "privatised" state. One of the greatest challenges Hungary has faced before joining the EU is the violation of the principle of academic freedom, which adversely affects the level of education in the country. In recent years, Hungary has undergone extensive changes in education and science, which resulted in a decline in academic freedom, which is considered the lowest in the EU. To overcome these challenges, political and patriotic education has been strengthened, which may contribute to a return to European values. The isolation of the Hungarian information space increases the relevance of propaganda-free educational products and systematic educational approaches. Thus, Hungary is recognised in the EU as a country that needs extensive reforms to ensure compliance with European values, especially in the context of democracy and academic freedom.

The Czech Republic demonstrates moderate support for European integration – 61.4%. This suggests that most of the population considers EU membership to be a positive factor. However, 26.7% of respondents expressed opposition to integration, which indicates a certain level of distrust of European institutions. The Czechs believe that EU membership will contribute to economic development, but they are also concerned about the growth of bureaucracy and restrictions on national sovereignty. Many Czechs want to preserve their national identity and autonomy, but at the same time believe that it is important to stay a part of the European community.

In Ukraine, support for European integration stands at 59.3%, which is quite remarkable considering the context of political and economic changes in the country. Ukrainians increasingly perceive European values and standards as essential elements of their development. Many Ukrainians believe that integration with the EU can help the country overcome internal challenges, improve the economic situation, and ensure stability. Despite this strong level of support, there is also a certain proportion of the population that expresses scepticism regarding the possibility of real integration with the EU due to political and economic challenges. Nevertheless, the overall attitude towards European integration in Ukraine is still positive, reflecting the hope for change and positive progress in the country's development.

Thus, the data collected during the survey underlines the diversity of attitudes towards European integration in different countries, highlighting both the strengths and weaknesses of the integration process. This suggests that successful implementation of integration policies must address the diverse socio-economic contexts and cultural characteristics of each country. European integration, as a process of comprehensive economic, political, and cultural integration of European countries, has created new conditions for the functioning of the sovereignty of EU member states. Since the beginning of this process, the sovereignty of

national states has been seriously redefined, as each member state had to transfer part of its sovereignty to the level of supranational EU institutions. This process has fundamentally changed not only the structure of power, but also the public perception of the role of national governments and their ability to solve important problems. Conventional notions of sovereignty as the absolute control of national governments over territory, economy, and security have changed and are becoming increasingly conditional in the current environment. European integration is one of the processes that directly contributes to this rethinking, as cooperation within the EU requires a strong level of trust and willingness to compromise.

The Jean Monnet project also conducted a survey on the European integration process in Ukraine. The survey involved 387 respondents from the local communities of Shostka, Konotop, and Sumy. Age composition of the survey participants: 44.4% were young people aged 15-25, 29.2% were aged 25-45, 24.4% were middle-aged citizens (46-65), and 5% were older. This suggests that there is a considerable proportion of young people among the respondents, which significantly influenced the findings. Regarding foreign policy choices, 60.5% of participants supported the idea of Ukraine joining the EU. This indicates that most respondents believe that European integration is the best path for the country. However, the data also showed that a considerable part of the population has differing views on foreign policy, which may be conditioned both by historical factors and the influence of the current political situation in Ukraine.

In recent years, researchers have been actively exploring issues related to the concepts of European sovereignty, digital sovereignty, industrial policy, and citizenship in the EU. The reviewed studies address not only theoretical aspects but also practical implications for the political, economic, and social spheres. J. Roch & A. Oleart (2024) investigated how pro-European factions in France, Spain, Germany, and at the EU level use the concept of "European sovereignty" to justify their political strategies. Their analysis showed that the role of "European sovereignty" in the rearticulation of EU policy is changing, especially under the influence of Emmanuel Macron. The researchers argued that this sovereignty is influencing geopolitical studies and shifting the focus of European political debate. Compared to the present study, the focus of J. Roch & A. Oleart (2024) was on the transformation of notions of sovereignty and political legitimacy. S. Heidebrecht (2024) analysed the EU's transition from market liberalism to more active state intervention in the context of digital sovereignty.

The digital single market reflects a desire to control the digital sphere more, particularly through demonstration services and data protection regulation. The researcher's findings showed that interests and authority are more deeply involved in a governance process that focuses on the educational and social aspects of developing language skills in children with special needs. This is somewhat different from the present study.

V. Jaeschke (2024) analysed how the principle of subsidiarity became a means of removing resistance to European integration in the late 1980s. The researcher examined archival data showing that countries around the world have different understandings of this principle. The European Commission views complementarity with the Federation as the basis, Germany views it as part of the European concept of "regional Europe", the UK uses the renationalisation of the European Community, while France views it as the basis for a strong Federation. This study explored how different policy actors can interpret the same concept in different ways.

T. Kostakopoulou (2024a) analysed citizenship and migration policies in the EU and proposed a new theory of European citizenship and ideas for institutional reform. The research included issues of European identity and citizenship theory, as well as the politics of "belonging" and "exclusion". T. Kostakopoulou (2024a) addressed the historicity of the concepts used to define citizens' rights and responsibilities and how these concepts can be redefined. Although both studies focused on issues of belonging and identity, their contexts and subjects of analysis were different, and therefore the cited study served as a context for the present one. J. Rendl (2024) examined the autonomous treaties as well as the EU legal order and analysed them in terms of the concept of "territory of intervention". He compared the ideas of Jürgen Habermas and Joseph Weiler and emphasised the transformative nature of European treaties. J. Rendl (2024) seeks to apply a type of international treaty that explains the uniqueness of the EU legal order as autonomous and not subject to international or national law.

The analysed studies demonstrate the complexity and comprehensiveness of modern concepts of sovereignty, digital development, industrial policy, and citizenship in the EU. They emphasised the value of integrating new approaches to sovereignty into European policy, which can increase Europe's resilience to modern challenges. A deeper understanding of these aspects will form the basis for further research and practical steps to ensure the stability and development of the EU. Overall, all the studies point to the need for an integrated approach to understanding sovereignty, politics, and citizenship in the EU. Each of the studies reviewed shows how these aspects are interconnected and thus paint a complex picture of European development. The significance of economic sovereignty is emphasised in the context of globalisation, which poses new challenges to nation states. Countries must adapt their policies to stay competitive in the international arena.

Conclusions

This study analysed the impact of European integration on the reconfiguration of national sovereignty concepts

in EU member states and outlined public concerns about this process. The study aimed to investigate how the EU integration process is changing conventional notions of sovereignty. The focus of the study was on analysing the concepts of researchers and the reactions of citizens to such changes. The study showed that although European integration involves the delegation of some national powers to supranational institutions, the overall sovereignty of each country is not compromised. Sovereignty is changing and becoming a multi-level sovereignty, where national and supranational levels interact to achieve common goals. However, public perception of European integration varies depending on the economic and political situation in each country. In some countries, Eurosceptic sentiments prevail, combined with a sense of losing control over their own politics and identity.

Support for European integration is growing in regions with more stable economic conditions and where cooperation with the EU brings tangible benefits, while Euroscepticism is on the rise in countries with economic difficulties and low trust in political institutions. The key findings of this study also included the fact that citizens of member states often express concerns regarding the loss of national identity of the EU in the context of European integration and regarding the lack of transparency and relevance of European institutions. This is necessary to better inform the public about the benefits and value of the European project and to increase the transparency of decisions at the EU level. Furthermore, European integration is challenged by the issue of balance between national interests and common European goals, which requires constant search for compromises and support for the principle of subsidiarity.

In the future, more detailed empirical studies and concrete cases should be considered to analyse the effects of European integration on the sovereignty of various EU countries.

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Conflict of Interest

None.

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Забезпечення суверенітету держав – членів ЄС у сучасному юридичному та публічному дискурсах

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Анотація
У дослідженні представлено теоретичний аналіз концепції суверенітету, розглянуто особливості її реалізації в політиці європейських держав в умовах регіональної інтеграції, що є актуальним з огляду на вихід Великої Британії з Європейського Союзу та критичні оцінки політики ЄС з боку східноєвропейських країн. Метою цього дослідження було вивчення змін у концепції державного суверенітету під впливом інтеграційних процесів. Методологія дослідження ґрунтувалася на критичному аналізі й систематичному огляді публікацій провідних дослідників у галузі європейської політики, права й теорії суверенітету, а також концепцій європейського суверенітету. Це дало змогу зіставити різні позиції щодо зміни суверенітету в контексті розвитку наднаціональних і міжурядових інституцій ЄС. Зокрема, концепцію європейського суверенітету використовують у стратегіях легітимації політичні актори, що підтримують інтеграцію та наднаціональне управління. Результати дослідження засвідчують зміни у визначенні суверенітету в сучасній європейській політиці. Водночас держави – члени ЄС постали перед проблемою обмеження контролю за різними національними функціями через наднаціональні інституції, такі як Європейська комісія та Суд Європейського Союзу, що призводить до часткового обмеження контролю за певними сферами внутрішньої та зовнішньої політики. У дослідженні доведено, що наднаціональне управління розвивається як процес, який не лише розширює сферу влади ЄС, а й трансформує традиційну концепцію суверенітету, надає їй динамічності та можливості пристосовуватися до сучасних політичних реалій. Отримані висновки можуть слугувати формуванню нової моделі інтеграційної політики, яка відображає політичні й соціальні потреби в межах європейської інтеграції, здатна забезпечити збалансовану взаємодію між національними державами та наднаціональними структурами

Ключові слова:
суверенітет; європейська інтеграція; наднаціональні механізми; європейська політика; правова система; міждержавні відносини; держави – члени ЄС

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Forensic classification of military criminal offences and the place of abuse of power or authority by a military official

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Abstract

The relevance of the study lies in the need to develop a forensic classification of military criminal offences, in particular, those related to abuse of power or authority by senior military personnel. This study aimed not only to improve the effectiveness of investigations, but also to provide legal protection for participants in military legal relations, which gives it significance in theoretical and practical contexts. The methodological approaches included comparative analysis, classification methods, and typology, which were used to divide military criminal offences into appropriate categories, types, and subtypes, considering their legal and forensic characteristics. As a result of the conducted research, several key conclusions were substantiated. Given the specifics of public relations in the military sphere, it was proposed to consider criminal offences against the established procedure for military service as a separate type of forensic classification. This type covers a wide sector of socially dangerous acts united by common generic features. Within the specified type, groups and forms of offences were identified, characterised by specific features depending on the object of illegal encroachment. When classifying the types of such offences, the emphasis was placed on a detailed structured form that reflects the specific features or conditions of committing a particular type of action. Highlighting the subtypes of criminal offences related to abuse of power or official authority by military personnel, attention was focused on the methods of their commission and socially dangerous consequences. This approach enabled a systematic study of the legal mechanism for committing military offences and their impact on the observance of discipline and the rule of law in the military environment. The results obtained contribute to improving the forensic classification of military criminal offences, which is important for their effective investigation and prevention

Keywords:
criminal offences; military service; investigation methodology; forensic characteristics; official crime; martial law; combat situation

Introduction

The relevance of this study is conditioned by the need to improve theoretical and practical approaches to the investigation of military criminal offences, the analysis of which becomes particularly important in the context of armed conflict and the reform of the security and defence sector. One of the most difficult aspects of this process is the definition of the forensic classification of the studied offences, which contributes to the development of clear elements of their forensic characteristics. In this context, forensic methodology consists of elements that provide a systematic approach to the investigation process, where forensic characterisation, as noted by G. Chogpui (2020), acts as an information model that contains important features inherent in certain groups,

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types, or specific cases of criminal offences. To provide a reasonable forensic description of military criminal offences, it is primarily necessary to carry out their forensic classification. Of particular scientific interest in this area is the determination of the place in the system of this classification for abuse of power or authority by a military official. This is explained by the fact that illegal actions committed by senior military personnel directly affect the legal stability of the military sphere. Therefore, this study contributes not only to the development of new approaches to the prevention and effective investigation of military criminal offences, but also ensures the observance of discipline and legality among the personnel of military units, which as a result affects their combat capability.

According to E. Orzhynska (2021), the process of systematisation and differentiation in forensic classification is based on general and characteristic features that allow distinguishing criminal offences into appropriate categories, groups, types and subtypes based on characteristic criteria. In this context, as stated by V. Guseva (2019a), each category of forensic classification has unique and common features that change depending on its position in the system. This helps to better understand the differences and similarities between different categories of criminal acts and helps to explain their complex relationships within a single system. Therefore, according to O. Pchelina & V. Pchelin (2022), forensic classification should be understood, on the one hand, as a process, but simultaneously, as a result of using a typological approach. This approach allows dividing objects into subclasses according to certain criteria. Such classification is the result of ordering processes and phenomena, or individual facts into a system based on features that simultaneously characterise their similarities and differences.

As noted by S. Tatarenko (2023), forensic classification, although borrowing some aspects of criminal law, focuses on a more specialised methodology. If the criminal law classification focuses on the legal aspects and elements of the composition of a criminal offence, then the forensic classification focuses on the practical aspects of disclosure, investigation, and prevention of illegal activities. This contributes to its better adaptation to the operational needs of law enforcement, since its main goal is to differentiate criminal offences according to criteria that facilitate their identification and investigation. Therefore, according to G. Bershov (2020), this contributes to the development of a theoretical and applied approach to the fight against criminal offences, allows applying the criteria of forensic analysis.

That is, forensic classification focuses on patterns that are significant from a forensic standpoint. The investigative methodology is used to study the links and interactions between certain types of offences regulated in different sections of the Special Part of the Criminal Code of Ukraine[1] (CCU). This approach is aimed at integrating criminal offences into a single classification system, which allows optimising the process of developing complex forensic characteristics and methods for investigating certain categories of criminal offences. Such classification units include scientifically based concepts of forensic classification of offences in the field of official activity, crimes that encroach on environmental safety, and economic security (Paleshko *et al*., 2020), mercenary and violent crimes, crimes related to sexual freedom and sexual integrity of minors (Nikitina-Dudkova, 2021), criminal offences related to domestic violence (Komarinska, 2022), criminal offences against property (Volikov, 2024), crimes in the military sphere, etc.

The analysis of this scientific literature shows that criminologists are still discussing the definition of criteria for classifying criminal offences. Additional interest in the subject of this research is caused by the lack of a sufficient number of scientific developments devoted to the forensic classification of military criminal offences. Most existing studies focus on individual elements of their forensic characteristics, which limits the development of a holistic methodology for their investigation (Karpenko *et al*., 2022), or relate to certain aspects of criminal law analysis and qualification problems of their individual types (Piano & Rouanet, 2020).

Therefore, the purpose of this study was to develop forensic approaches to the classification of military criminal offences and, on this basis, determine the place for abuse of power or authority by a military official in its system. This helped to identify the key elements of the forensic characteristic of this type of criminal offence and will provide the basis for their comprehensive forensic analysis.

Materials and Methods

The methodological principles or approaches used in the study should include the interpretation of legal norms and the legal functional method that were applied to investigate the essence of military criminal offences and structure their components for classification purposes. The comparative legal method was used to analyse laws and regulations governing military legal relations and to investigate theoretical concepts related to the subject of research. The system and structural methods were used to build a classification system of military criminal offences and determine in this system the place for abuse of power or official authority by a military official. The method of classification and typology was used to differentiate military criminal offences into the corresponding categories, types, and subtypes, considering their legal and forensic aspects. The modelling method was used in the context of providing conclusions and formulating further research directions.

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

The theoretical basis of this study was the scientific research by Ukrainian legal scholars on the problematic aspects of forensic classification and forensic characterisation of criminal offences. Among them, special attention should be paid to the work of those researchers whose publications laid the methodological foundations for further study of the specifics of military criminal offences and the specifics of their investigations. These researchers include G. Chogpui (2020), who investigated the theoretical problems of forensic characterisation of crimes, E. Orzhynska (2021), who considered the theoretical and applied foundations of forensic characterisation of criminal offences, and V. Guseva (2019b), who studied the scientific and practical aspects of forensic classification of crimes. Separately, it is worth noting the scientific developments of G. Bershov (2020), who carried out a scientific analysis of military criminal offences in the context of their forensic characterisation, O. Pchelina & V. Pchelin (2022), who considered problematic issues of the scientific and practical nature of the forensic classification of war crimes and criminal offences committed in the field of official activity, and O. Obodovsky (2021) and N. Stefaniv (2023), who investigated general aspects of the characterisation of military criminal offences and the like.

The theoretical conclusions of the researchers served as the basis for constructing the methodological basis for this study. In the process of development, certain provisions set out by these researchers were expanded and clarified, which allowed them to be adapted to the specific context of military criminal offences. In turn, this contributed to the appearance of new scientific approaches and provisions that develop and deepen the general concept of forensic classification of military criminal offences.

The legislative basis of the legal analysis conducted in this study was the relevant provisions of the Constitution of Ukraine[1], Criminal Code of Ukraine[2], Laws of Ukraine "On the Disciplinary Statute of the Armed Forces of Ukraine"[3], "On the Statute of the Internal Service of the Armed Forces of Ukraine"[4] "On the Legal Regime of Property in the Armed Forces of Ukraine"[5]. The legislative norms of the above-mentioned acts were used in the context of legal regulation of various aspects of military legal relations, covering the specifics of relations between the state and military personnel, between military personnel of different ranks and positions, and between military personnel and the civilian population. The analysis of these aspects contributed to the systematisation of military criminal offences into a single classification system and its differentiation within the framework of forensic analysis, which helps to determine in more detail the specifics of military offences and approaches to their investigation.

Thus, the methodological principles laid down in this study served as the basis for building classification systems for military criminal offences. They provided both theoretical and practical aspects in the creation of organised structures aimed at streamlining, systematising, and analysing information about illegal activities of military personnel. This helped to further develop a clear forensic description of military criminal offences for the methodology of their investigation, which will contribute to strengthening preventive measures to reduce the risks of committing criminal acts by senior military personnel.

Results and Discussion

Importance of forensic classification in the investigation of military criminal offences. A general analysis of the forensic literature distinguishes three main approaches to the classification of criminal offences. The first approach is based on the classification of criminal offences exclusively on criminal law grounds. However, from the standpoint of criminalistics, this model is ineffective, since its structure depends entirely on changes and additions to the norms of substantive law. It is assumed that the reform of the law on criminal liability, or the decriminalisation of individual acts, eliminates forensic developments regarding the methods of their investigation. Such dependence of forensic science on changes in substantive law is unjustified, since it limits the possibilities of applying universal methods and reduces the effectiveness of investigations and prevention of criminal offences. Therefore, by agreeing with Yu. Vengerova (2019), classification of criminal offences solely on criminal grounds does not always meet the needs of practice, since it does not consider the importance of forensic analysis.

The second approach involves classification solely on forensic grounds. Proponents of this model argue that the criteria for differentiating criminal offences should be considered signs that are determined by forensic science. V. Guseva (2019b) and O.A. Bilichak & A.I. Makarov (2020) refer elements of forensic characteristics to these traits, which in their opinion are the main areas of research, providing an opportunity to get as close as possible to the practical conditions of

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[3] Law of Ukraine No. 551-XIV "On the Disciplinary Statute of the Armed Forces of Ukraine". (1999, March). Retrieved from https://zakon.rada.gov.ua/laws/show/551-14#Text.
[4] Law of Ukraine No. 548-XIV "On the Statute of the Internal Service of the Armed Forces of Ukraine". (1999, March). Retrieved from https://zakon.rada.gov.ua/laws/show/548-14#Text.
[5] Law of Ukraine No. 1075-XIV "On the Legal Regime of Property in the Armed Forces of Ukraine". (1999, September). Retrieved from https://zakon.rada.gov.ua/laws/show/1075-14#Text.

investigative activity, having developed effective forensic methods for investigating certain types of criminal offences. According to V. Guseva (2019b), it is the forensic characteristic, together with investigative activities in the field of criminal proceedings that should form the forensic classification of criminal offences. According to this model, forensic classification is based on elements of forensic characteristics. It is carried out at all stages of investigative work during pre-trial proceedings and contributes to forensic optimisation in methodological, tactical, and technical aspects.

This statement must be partially agreed upon. Admittedly, the forensic classification of criminal offences is important not only for the theory of criminalistics, but also for the applied foundations of its activities in the investigation of criminal offences. However, as noted by V. Tishchenko (2007), with the help of forensic analysis, forensic classification contributes to the specification and detail of forensic characteristics, not only identifying the corresponding categories of criminal offences in general, but also their varieties (subcategories) in particular. However, considering the relevant features in the mechanism of identified socially dangerous acts, forensic characteristics provide an opportunity to develop practical recommendations for the prevention, detection, suppression, disclosure, and investigation of relevant classification groups of criminal offences.

Another approach is a combination of criminal law and forensic aspects of the classification of criminal offences. Support for this concept is appropriate because, according to O. Pchelina (2014), it allows considering all the mechanisms of criminal activity. In this regard, V. Synchuk (2003) notes that a purely forensic classification of criminal offences cannot exist in an isolated form, since it objectively integrates elements and objects of criminal law and criminological classifications. Features that are important from the standpoint of criminal law and criminology serve as the basis for the development of a forensic classification, which indicates a combination of provisions of various sciences of criminal law profile.

The criminal law classification can serve as a reference point for forensic analysis of criminal offences. Moreover, forensic classification should also be based on criminalistically significant features, considering the patterns of development and functioning of research objects. This opinion is shared by other researchers. O. Oderiy (2015) notes that the criminal law classification serves as the basis for forming the object of forensic classification, which is the corresponding criminal offence or groups thereof. Considering the needs of practice, forensic science carries out a comprehensive analysis of illegal activities and, on its basis, develops its own classification systems for criminal offences. However, this classification is based on the identification and study of patterns caused by common features of certain types of socially dangerous acts. That is, most of the criminal offences related to various sections of the special part of the CCU[1], from the standpoint of the investigation methodology, have forensic similarities. As noted by V. Shepitko (2006), this is conditioned by the need to conduct a comprehensive study of such offences to classify them criminally, provide forensic characteristics and, on this basis, develop integrated methods for their investigation.

Thus, when developing methods for investigating criminal offences, criminal-legal, criminological, and criminalistic aspects and patterns related to the detection, disclosure, and investigation of specific types of criminal offences are considered. In this context, as noted by A. Pastukh (2023), forensic classification allows conducting a comprehensive analysis of criminal offences, identify their general categories, synthesise their criminalistically significant properties and provide them with appropriate forensic characteristics to develop effective recommendations for their investigation and prevention.

Forensic classification serves as the basis for analysing criminal offences, defining the category to which a particular criminal act belongs. This makes it easier to understand the forensic characteristic and the specific features on which it is based. Forensic characteristics, in turn, are based on this classification, including a detailed analysis of the properties and features of criminal offences within a certain category. The implementation of this classification enables a thorough investigation of each criminal offence, its type, group, or category, which contributes to the development of appropriate methodological recommendations for their investigation and prevention.

According to O. Pchelina (2014), the definition of forensic criteria for the classification of criminal offences is impossible without a preliminary analysis of their criminal law and criminological classifications. In the criminal law classification, structured elements of the composition of a criminal offence are taken as a basis, where an obvious advantage is given to the object of illegal encroachment. This model is also used by the legislator when structuring a special part of the criminal legislation of Ukraine, where crimes and criminal offences are distributed depending on the generic object.

However, the forensic classification is based not only on the criteria of criminal law, but also uses the criminological classification of criminal offences. This is conditioned by the fact that the latter provides an understanding of criminal offences not only from a legal but also from a practical standpoint. In this relationship, as noted by M. Kolodyazhnyi (2013), criminological classification complements criminalistic including in its structure the analysis of information about the socially

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

dangerous act itself, its quantitative and qualitative indicators, dynamics and structure, geography of commission, price of consequences, and information about the subject of the offence. Thus, forensic classification is a synthesis of criminal law and criminological knowledge aimed at a comprehensive analysis of criminal activity.

Forensic classification of military criminal offences. Agreeing with O. Obodovsky (2021), the generic object of military criminal offences is the social relations that arise between the state and citizens undergoing military service, that is, they are military personnel or reservists during the performance of military service duties. From the above, specific features inherent in military criminal offences can be distinguished. Firstly, the object of encroachments of military criminal offences is the procedure established by law for performing or performing military service. Secondly, the subject of these offences is military personnel or those liable for military service or reservists who undergo organised training activities to practice various military skills and tactics (military exercises, military manoeuvres). And, thirdly, the criminal illegality of military criminal offences is determined only if they are directly provided for in Section 19 of the Special Part of the Criminal Code of Ukraine[1].

In the military sphere, public relations cover the relationship between its participants in the process of performing official duties and exercising relevant rights. This can be a relationship, firstly, between military personnel and the state, including prohibitions, obligations, rights and duties, social guarantees, and other aspects of legal regulation, and support. Secondly, between military personnel of different ranks and positions, in particular, issues related to subordination, discipline, chain of command, interaction within the military hierarchy and the execution of orders. Thirdly, between military personnel and the civilian population, which may relate to law enforcement, civil protection, control, and interaction in emergency situations. Fourthly, relations on the management and disposal of military property, including issues of ownership of military property, the preservation and use of resources, and liability for violations of the rule of law in this area of legal relations. Fifthly, relations during military operations or as a result of the introduction of a special legal regime of martial law, which may include interaction with allied forces, confrontation with the enemy, compliance with international humanitarian law, customs of war, etc.

These relations are regulated by special provisions defined both by national legislation and international regulations that form the legal basis for activities in the military sphere. This ensures a clear legal regulation of the actions of participants in military relations, contributing to compliance with the norms of law both in a special or special period, and in peacetime. This approach is important for ensuring the rule of law and order, and for protecting the rights and freedoms not only of military personnel, but also of society as a whole. It is this model that should be used as the basis for the forensic classification of military criminal offences, since it contributes to the systematisation of approaches to their investigation, ensuring that legal actions are in line with international standards for compliance with international humanitarian law and the requirements of national legislation.

There are several other concepts in the scientific literature regarding the forensic qualification of war crimes. In particular, G. Bershov (2020) proposes to classify the studied acts, firstly, depending on the characteristics of the criminal's personality, into those committed by military personnel of the Armed Forces of Ukraine, security agencies, the State Border Service, the National Guard, and other military formations established in accordance with the laws of Ukraine. In addition to military personnel, persons liable for military service and reservists during training are also considered. Secondly, depending on the focus of the criminal's actions on those that have violent or mercenary motives, those that are related to damage, destruction or loss of military property, illegal acts in the field of military service, and those that are related to evasion from military service or violation of the rules of its performance. Thirdly, depending on the circumstances of the commission of a criminal offence against those committed in a special period, martial law, and combat situation. Fourthly, depending on the method of committing the criminal offence, there are those committed by failing to comply with or violating orders of a superior, those that cause harm to life or health of a person, those aimed at stealing or damaging military property, violating the established rules of military service, and those aimed at disclosing military information (military secrets), including information constituting a state secret.

However, the main point of this differentiation is that it does not allow military criminal offences to be grouped according to criteria that make it possible for them to be grouped into common groups of similar content. This makes it difficult to form a forensic characteristic of these offences and develop appropriate methodological approaches to their investigation based on it. Therefore, there is a need to analyse various approaches to determining the criteria for forensic classification of criminal offences and, based on them, develop a classification that best meets the specifics of military criminal offences.

In this context, analysing crimes in cyberspace, O. Samoilenko (2018) classifies them according to criteria based on the motives and areas of public relations that they relate to. Considering criminal offences related to the seizure of land plots and objects of corporate

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

property, V. Bereznyak (2020) classifies them depending on the specifics of economic activity and ways to implement illegal intentions. In turn, A. Pastukh (2023), carrying out a forensic classification of crimes related to violation of environmental safety rules, bases its division on the methods of their commission and the consequences caused. A similar classification of criminal offences against the environment is observed by S. Tatarenko (2023), offering their division into those that caused the death of people, mass diseases, pollution of territories, danger to people and the environment, mass death of flora and fauna, negative impact on the health of people, animals and plants, the amount of material damage, etc.

This concept is used in the classification of criminal offences by A. Repchonok (2020). When analysing criminal offences in the field of economics, the researcher recommends dividing them by generic object. When classifying crimes in the field of tourism activities, a similar model is used by Yu. Vengerova (2019), additionally highlighting such criteria as the construction of the crime, the place of commission or end of the crime, the division into main, additional, or supine crimes, the sector of functioning of the tourism sector where the crime was committed and the identity of the perpetrator.

According to the authors of the study, this classification is too complex, which complicates its perception and practical application in investigative practice, which requires clarity, accuracy, efficiency, and effectiveness of making procedural and tactical decisions. It should not be understated that all investigative activities are ultimately aimed at the judicial process, and therefore, the forensic classification of criminal offences, as an integral part of the investigation methodology, should be based on criteria that allow, taking into consideration forensic aspects, to characterise the relevant classification groups of offences to better understand them when proving and maintaining charges in court.

In view of the above, attention should be paid to the forensic classification proposed by O. Pchelina (2014). Investigating the problematic aspects of the criminalistic classification of criminal offences in the sphere of official activity, the researcher divides them according to: specific features of the objects of the offence into those that depend on the type of public relations that the offence encroaches on; the branch of public activity in which the offence is committed; the sphere of official activity where offences are committed; the subject of legal relations whose interests are encroached on by the offence and the subject of illegal encroachment; the objective side of the offence is those that depend on: the method of implementation and the scale of illegal activities; the subject of the offence is those that depend on: the nature of the criminal's personality and the main goals of criminal activity; the subjective side on those that depend on: the subjective attitude (form of guilt) of the perpetrator to the committed offence.

The above classification uses a mixed approach, which allows combining criminal-legal, criminological, and criminalistic aspects of criminal offences, providing a unified division for a comprehensive analysis of similar illegal acts. This makes it possible to consider both legal and practical aspects of the proof process and, on this basis, develop a classification system that increases the effectiveness of solving the problems of criminal proceedings.

Thus, for example, according to this classification, criminal offences of an official nature committed in the military sphere (articles 423-426)[1], were classified as those that depend on the specific field of official activity. This approach is not accidental because illegal encroachments in the sphere of official or professional activity are associated with the performance of state functions by officials and their violation of the established procedure for the exercise of official powers (rights and obligations). These acts harm the rights, freedoms, and legitimate interests of citizens, and state and public interests, undermining the authority of the government.

In turn, military service is a state service of a special nature, which provides for the professional activity of citizens who are able to fulfil the military or constitutional duty to defend the state, protect its independence and territorial integrity. In this regard, the period of military service, for citizens of Ukraine, is counted in the length of public service, and therefore, offences subject to which is a military official can be attributed to the forensic classification of criminal offences of an official nature.

Thus, the criminal offences provided for in certain articles of sections 17 and 19 of CCU[2], are combined by O. Pchelina (2014) into a single classification system of socially dangerous acts that encroach on the established order of public relations in the sphere of official and professional activities related to the performance of state functions. In this context, comparing the criminal offences provided for in articles 365 (Abuse of power or authority by a law enforcement officer) and 426-1 (abuse of power or authority by a military official), it can be concluded that the main difference between them lies in the special status of the subject. This status is regulated by special regulations that define the specifics of the official activities of the relevant persons and affect the place, time, and conditions of committing offences, their motives and purpose, and the ways of implementing criminal intentions. These regulations also define the scope of rights and obligations of officials, the characteristics of the victim's personality, the socially dangerous consequences of the offence and its

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

degree of danger, and possible alternatives to legal liability in the absence of signs of a criminal offence.

The differentiation of these criminal offences by the legislator is not accidental. Each of these illegal acts covers specific aspects of official activity that require separate legal regulation and assessment. Firstly, law enforcement and military service operate in different legal contexts and perform different tasks. Secondly, differences in the legal status of officials in the law enforcement and military spheres require an individual approach to qualifying the actions of the subject as criminal or legal. Thirdly, the purpose and consequences of these actions can vary significantly, which means that the process of proving guilt and responsibility considers various aspects of legal regulation that ensure an accurate legal assessment of each criminal case and the fairness of the punishments imposed.

Thus, the legislator sought to ensure adequate punishment in each of these areas of legal relations, based on their unique characteristics and needs. Given the special nature of public relations in the military sphere, it is worth considering criminal offences against the established procedure for military service within a separate type (kind) of forensic classification, covering a wide range of socially dangerous acts united by common generic characteristics. Within this type, it is advisable to distinguish its separate groups, types and subtypes of criminal offences that have characteristic features based on the object of illegal encroachment.

Groups and types of military criminal offences. The first group covers criminal offences against the order of subordination and military dignity, and includes such types as: disobedience; failure to comply with an order; resistance to a superior or forcing him/her to violate official duties; threat or violence against the superior; violation of the statutory rules of relations between military personnel in the absence of a relationship of subordination.

Scientific literature contains variations of this classification group. In particular, G. Anisimov *et al*. (2011) identify this group of offences as crimes against the order of subordination and military dignity. The authors of this interpretation obviously use the term "dignity', avoiding possible misunderstandings regarding the word "honour". However, in this context, it is more appropriate to use the category of "honour", since it is associated with a public assessment of the behaviour of military personnel as representatives of a particular social group and performers of a specific social role. Honour reflects social standards and assessments that relate to the observance of moral and ethical standards in military service. Dignity, on the other hand, refers to a person's internal self-esteem and self-respect, which does not depend on external evaluation. Therefore, when it comes to threats or violence against a military commander, it is primarily a violation of moral and ethical norms that undermine the authority of the military command and relate specifically to "military honour" in the context of serious violations of the moral and ethical standards of military service.

In other words, "military honour" does not mean ethical and moral values of a person in a broad sense, but rather those related to a particular social group and its importance in society. In this context, "honour" is considered as an ethical category that is associated with public assessment, determination of moral merits and virtues of a person as a representative of a particular social group, part of a collective or professional community. Instead, dignity refers to a person's inner sense of self-esteem and self-respect. This is an internal aspect that determines how a person perceives themselves and their value, regardless of external assessment. Actually, this narrative can be traced in the provisions of the Disciplinary Charter of the Armed Forces of Ukraine[1] and the Internal Service Charter[2], which states that a serviceman must be a model of high culture, modesty and endurance, protect military honour, protect their own and respect the dignity of other people (paragraph 49).

Military discipline, in turn, requires each serviceman to observe the rules of relations between the military and contribute to the strengthening of the military team. Military personnel should behave with dignity and honour, prevent negative actions, both on the part of themselves and others. In addition, it is necessary to show respect for senior military ranks, respect the honour and dignity of colleagues, and observe the norms of military politeness, behaviour, and military greeting, etc. (paragraph 3)[3].

The second group covers criminal offences against military service, and includes such types as: unauthorised leaving of a military unit or place of service; desertion; evasion from military service by self-mutilation or other means. The third group should include criminal offences against the order of use, storage, and exploitation of military property (military property), namely: theft, misappropriation, extortion by a serviceman of weapons, military supplies, explosives or other military substances, vehicles, military and special equipment or other military property, as well as their possession by fraud; intentional destruction or damage to military property; careless destruction or damage to military property; loss of military property; violation of the rules for handling weapons, as well as substances and

[1] Law of Ukraine No. 551-XIV "On the Disciplinary Statute of the Armed Forces of Ukraine". (1999, March). Retrieved from https://zakon.rada.gov.ua/laws/show/551-14#Text.
[2] Law of Ukraine No. 548-XIV "On the Statute of the Internal Service of the Armed Forces of Ukraine". (1999, March). Retrieved from https://zakon.rada.gov.ua/laws/show/548-14#Text.
[3] Ibidem, 1999.

objects that pose an increased danger to the environment; violation of the rules for driving or operating vehicles; violation of flight rules or preparation for them; violation of navigation rules.

G. Anisimov *et al*. (2011) divide this classification category into two separate groups against the procedure for storing and using military property and against the procedure for operating military equipment. However, considering the legislation that defines the legal regime of military property and the powers of military administration bodies and officials to manage this property, it is advisable to combine these offences into one classification group. This position is that according to Article 1 of the Law of Ukraine "On the legal regime of property in the Armed Forces of Ukraine"[1] the concept of "military property" has a broad meaning, which covers all material values, both movable and non-movable, that are on the balance sheet of military units, institutions, and organisations of the Armed Forces. Thus, military property includes all material values used by the military forces to perform the tasks assigned to them, including ships, aircraft, vehicles, weapons, ammunition, equipment, uniforms, and other equipment and infrastructure that is owned or used by military units and is used for the needs of their activities, including the defence of the country.

The fourth group covers criminal offences against the order of combat duty and other special services, and includes such types as: violation of the statutory rules of guard service or patrol; violation of the rules of border service; violation of the rules of combat duty; violation of the statutory rules of internal service. The fifth group of criminal offences should include those related to violation of the protection of state secrets, namely: disclosure of military information constituting a state secret, or loss of documents or materials containing such information. In legal sources, there are different approaches to the name of this classification group. In particular, N. Stefaniv (2023), providing a general description of military criminal offences, classifies offences in the field of state secret protection committed by military personnel as socially dangerous acts against the established procedure for storing military secrets.

According to the authors of this study, the use of the category "military secrecy" in this context is erroneous. Military secrecy is a type of professional secrecy of military personnel and may include information that does not fall under the definition of state secrets but access to which is restricted. In fact, this is information with restricted access for military use, which does not necessarily have to contain classified information, the legal regime of which is determined by a separate legislative act. In explanatory dictionaries, this term is interpreted as information related to the armed forces and military formations of the state (about the organisation, number, deployment, combat capability, military inventions, etc.) and should be kept secret (Shemsuchenko *et al*., 1998). In other words, the word "military" in this context certifies only the professional affiliation of the information. It includes information and/or data of an official, economic, technical, tactical, strategic, personnel or other nature that is important for the defence of the country and other state interests, and which is specially protected by the state from unauthorised access or illegal disclosure.

The sixth group covers criminal offences related to the violation of the order of performance of official duties in the military sphere, and includes such types as: theft, misappropriation, extortion by a serviceman of weapons, military supplies, explosives or other military substances, vehicles, military and special equipment or other military property, or taking them by fraud committed by a military official with abuse of office; negligent attitude of a military official to service; inaction of the military authorities; abuse of power or authority by a military official.

Providing a general description of military criminal offences N. Stefaniv (2023), erroneously classifies these socially dangerous acts as official criminal offences. In the context of military service, especially when it comes to military personnel who hold senior positions or perform duties at the command or commanding levels, it is more appropriate to use the term "official criminal offences". This is conditioned by the fact that it emphasises the specifics of offences related to the performance of official duties in the framework of military service. According to the legal doctrine and criminal legislation of Ukraine (Section 17)[2], official offences cover acts committed by persons in the performance of their official duties within the limits of the powers granted.

Unlike the term "officials", which is usually used in the context of referring to offences committed by officials of state authorities, local governments, enterprises, institutions or organisations, regardless of the form of ownership, the category "service" includes a wide range of acts characteristic of military service. It includes, but is not limited to, violations of military discipline, failure to perform or improper performance of official duties, abuse of power or position, etc. Thus, the use of the term "official criminal offences" is more accurate in the context of military personnel who hold commanding positions or perform duties at the commanding level, as this reflects their specific duties and responsibilities within the framework of military service.

[1] Law of Ukraine No. 1075-XIV "On the Legal Regime of Property in the Armed Forces of Ukraine". (1999, September). Retrieved from https://zakon.rada.gov.ua/laws/show/1075-14#Text.
[2] Criminal Code of Ukraine. (2001, May). Retrieved from https://zakon.rada.gov.ua/laws/show/2001-05#Text.

The seventh group covers criminal offences against the order of military service on the battlefield and in the area of the introduction of hostilities, and includes such types as: surrender or abandonment of means of warfare to the enemy; abandonment of a dying warship; unauthorised abandonment of the battlefield or refusal to act with weapons; voluntary surrender; criminal actions of a serviceman in captivity; looting. The eighth group of criminal offences should include those related to violation of the order of compliance with the laws and customs of war, namely: violence against the population in the area of military operations; ill-treatment of prisoners of war; illegal use of symbols of the Red Cross, Red Crescent, Red Crystal and abuse of it.

Subtypes of abuse of power or official authority by a serviceman. In the process of classifying subtypes of criminal offences, it should be noted that they are characterised by a more detailed form, which focuses on the specifics and conditions under which a particular offence is committed. This study does not aim to analyse in detail each of the identified types or groups of military criminal offences, as this is beyond the scope of the subject matter. However, when identifying subtypes of criminal offences related to abuse of power or official authority by military officials, it is necessary to focus on the methods of committing such excesses and their consequences. This approach helps to identify the main components (elements) of the forensic characteristics of the studied types of criminal offences and further determine their specific features.

Subtypes of abuse of power or official authority by a military official should include, firstly, abuse of power or official authority, accompanied by the use of violence or the threat of its use. This subtype covers actions committed by military officials who exceed their authority over subordinates by using violence or threatening to use it to achieve personal interests. This may include obvious intimidation, forcing the victim to meet certain requirements, or subjugating them through the use of a psychoemotional state as a result of psychological or physical pressure. Secondly, abuse of power or official authority using official position for personal needs. This subtype covers cases when a military official, using their official position, commits actions that contradict the interests of the service and violate the established legal norms governing the rules of official activity of military personnel to obtain undue benefits for themselves or others. Thirdly, abuse of power or official authority, which leads to serious consequences. This subtype covers cases when, as a result of abuse of authority by a military official, significant damage is caused to state or public interests, or to individuals, including damage to life, health, property, or the environment. Fourthly, abuse of power or official authority committed during a special period, in particular, martial law or in a combat situation. This subtype covers cases of violation of power or official authority that occurred during a special period, considering the specific conditions of military frequency or situations of a military nature. Fifthly, abuse of power or official authority, resulting in gross violations of human and civil rights and freedoms. This subtype covers cases when, as a result of abuse of official authority by a military official, there is a significant violation of human rights and freedoms guaranteed by the Constitution and laws of Ukraine.

Conclusions

Criminal offences against the order of military service in their legal nature have much in common with other types of illegal encroachments, in particular, those related to property or official activities. However, considering the specifics of military legal relations and the key role of the military sphere in ensuring the security and defence capability of the country, these socially dangerous acts were included in a separate category of illegal encroachments as military criminal offences. This category focuses on their specifics and professional affiliation to military service, which reflects the specifics of the legal regulation of the activities of military personnel and establishes increased requirements for their compliance with discipline and legality, especially in conditions when ensuring the country's defence capability is a priority.

In the military sphere, public relations cover the relationship between its participants in the process of performing official duties and exercising relevant rights, in particular, it can be the relationship between military personnel and the state, military personnel of various ranks and positions, military personnel and the civilian population, relations on the management and disposal of military property, and relations that arise during military operations or in connection with the introduction of a special legal regime of martial law. These relations are regulated by special provisions defined both by national legislation and international normative legal acts regulating the activities of participants in military relations, contributing to the observance of legal norms both in conditions of a special legal regime and in peacetime. This approach is important for ensuring the rule of law and order, and for protecting the rights and freedoms not only of military personnel, but also of society as a whole. The authors suggest that this model should be the basis for the forensic classification of military criminal offences, since it contributes to the systematisation of approaches to their investigation, ensuring compliance of legal actions with international standards and requirements of national legislation.

Given the special nature of public relations in the military sphere, it is worth considering criminal offences against the established procedure for military service within a separate type of forensic classification, which covers a wide sector of socially dangerous acts united by common generic characteristics. Within the

framework of this type of criminal offences, separate groups and types of them are distinguished, which have characteristic features depending on the object of illegal encroachment. When classifying subtypes of such offences, a more detailed form is used, reflecting the specific features or conditions of committing a particular type. Highlighting subtypes of criminal offences related to abuse of power or official authority by military personnel, it is worth focusing on the methods of commission and their socially dangerous consequences. In the future, this allows determining the key elements of the forensic characteristics of the type of criminal offences under study and highlighting their features.

Considering the above provisions in the further study, it is necessary to analyse the forensic characteristics of abuse of power or official authority by a military official, identify its elements, and provide them with a comprehensive detailed analysis.

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Conflict of Interest

None.

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Криміналістична класифікація військових кримінальних правопорушень і місце в ній перевищення влади чи службових повноважень військовою службовою особою

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Анотація
Актуальність дослідження полягає в необхідності розроблення криміналістичної класифікації військових кримінальних правопорушень, зокрема тих, що стосуються перевищення влади чи службових повноважень військовослужбовцями керівної ланки. Це дослідження мало на меті не лише підвищити ефективність розслідувань, а й забезпечити правовий захист учасників військових правовідносин, що надає йому значущості в теоретичному та практичному контекстах. Методологічний інструментарій дослідження становили порівняльний аналіз, методи класифікації та типології, які застосовано для поділу військових кримінальних правопорушень на відповідні типи, види й підвиди, з огляду на їх юридичні та криміналістичні характеристики. Унаслідок проведеного дослідження обґрунтовано кілька ключових висновків. Ураховуючи специфіку суспільних відносин у військовій сфері, запропоновано розглядати кримінальні правопорушення проти встановленого порядку несення військової служби як окремий тип криміналістичної класифікації. Цей тип охоплює широкий сектор суспільно небезпечних діянь, що об'єднані спільними родовими ознаками. У межах зазначеного типу виокремлено групи й види правопорушень, які характеризуються специфічними ознаками залежно від об'єкта протиправного посягання. Під час класифікації видів таких правопорушень акцентовано на детально структурованій формі, що відображає специфічні особливості або умови вчинення конкретного виду дій. Виокремлюючи підвиди кримінальних правопорушень, пов'язаних із перевищенням влади чи службових повноважень військовослужбовцями, зосереджено увагу на способах їх вчинення та суспільно небезпечних наслідках. Цей підхід дав змогу системно дослідити правовий механізм вчинення військових правопорушень та їх вплив на дотримання дисципліни й законності у військовому середовищі. Отримані результати сприяють удосконаленню криміналістичної класифікації військових кримінальних правопорушень, що має важливе значення для їх ефективного розслідування та попередження

Ключові слова:
кримінальні правопорушення; військова служба; методика розслідувань; криміналістична характеристика; службовий злочин; воєнний стан; бойова обстановка

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Legal regime for Antarctic governance: Challenges and opportunities

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Abstract
The Antarctic Treaty System, a cornerstone of international cooperation, faces increasing challenges as the 21st century unfolds. This study examined the effectiveness of Antarctic Treaty System in addressing contemporary issues such as marine environmental protection, bioprospecting, and climate change. It analysed the strengths and weaknesses of the treaty, identified gaps in its coverage, and assessed its adaptability to future challenges. This study employed an interdisciplinary approach combining legal analysis, policy analysis, comparative analysis, and critical analysis, and delved into the treaty's provisions, limitations, and potential for reform. The findings of the study showed that although the Antarctic Treaty System plays a vital role in preserving the Antarctic as a global common, its ability to withstand new threats is limited. The study emphasised the need for a comprehensive system of marine protected areas, stricter regulations on bioprospecting, and stronger enforcement mechanisms. Key conclusions included the need for mandatory environmental impact assessments, the expansion of marine protected areas, sustainable tourism management, and effective climate change mitigation strategies. In addition, the article recommended strengthening the inspection regime, promoting international cooperation, recognising the rights of indigenous peoples, and intensifying scientific research. By addressing these issues and implementing the proposed reforms, the Antarctic Treaty System can continue to protect Antarctica's unique environment and ensure its long-term sustainability

Keywords:
Antarctic Treaty System; marine conservation; climate change; bio prospecting; indigenous peoples' rights; international cooperation

Introduction

Antarctic Treaty System (ATS) established in 1959, it has been instrumental in preserving Antarctica as a natural reserve devoted to peace and science to this day. However, the increasing human activities in the region, driven by scientific research, tourism, fishing, and potential mineral resources, pose significant challenges to the existing legal framework in its effectiveness. Special advanced icebreaking technology and satellite navigation have opened areas previously inaccessible to human activity. This has led to increased pressure for resource extraction, tourism, and scientific research, often at the expense of environmental protection. These factors necessitate the examination of the Antarctic Treaty System in addressing this issue, and therefore this study aimed to assess whether this treaty can address these issues.

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Technology has transformed access to previously unreachable areas of Antarctica. Advanced icebreaking technology and satellite navigation systems have facilitated human activities in remote regions, intensifying pressures for resource extraction and tourism. According to S. Kakareka & S. Salivonchyk (2022), while scientific research stays a primary focus, it often comes at the expense of environmental protection. M. Haward (2023) stated that, with more researchers venturing into these fragile ecosystems, the potential for ecological disruption grows. Moreover, remote sensing and resource exploration technologies have emerged as double-edged swords. On one hand, they provide essential tools for monitoring environmental changes, enabling scientists to gather critical data on climate impacts and ecosystem health. On the other hand, these technologies have also ignited interest in exploiting untapped mineral and fossil fuel deposits. The allure of economic gain poses a severe threat to Antarctica's pristine environment, challenging the very principles upon which the ATS was founded.

The fishing industry has also evolved dramatically with the advent of modern technology. Fishing vessels equipped with advanced sonar and GPS capabilities have intensified fishing activities in Antarctic waters (Hughes *et al*., 2022). This escalation has led to overfishing of key species like krill, which is crucial for maintaining the marine ecosystem. The decline of krill populations disrupts the food chain, negatively affecting predator species such as seals and penguins (Wauchope *et al*., 2019). The consequences of overfishing extend beyond immediate ecological concerns; they threaten the long-term sustainability of marine life in the Southern Ocean. Additionally, some technologies associated with fossil fuel extraction and transportation contribute to greenhouse gas emissions. According to A. Purich & E.W. Doddridge (2023), these emissions accelerate climate change, leading to more rapid ice melting, rising sea levels, and ocean acidification in the Antarctic region.

The interconnectedness of these issues underscores the urgent need for a comprehensive assessment of the ATS's effectiveness in addressing contemporary challenges and its adaptability to future threats. Considering these mounting pressures, it is crucial to evaluate the capacity of the Antarctic Treaty to mitigate these changes. The ATS was designed to promote international cooperation and peaceful scientific inquiry while protecting the unique environment of Antarctica. However, its provisions require updates to stay relevant considering modern advancements and emerging threats. One area that necessitates revaluation is the management of scientific research activities. While scientific inquiry is essential, it must be balanced with environmental protection measures. Generally, all these contemporary changes necessitate a comprehensive assessment of the Antarctic legal regime in terms of its effectiveness in addressing the contemporary issues and its adaptability to future challenges. This study aimed to assess the capacity of the treaty to prevent such changes and to recommend areas of the treaty that need to be changed to address these advancements appropriately.

Materials and Methods

Considering the specific purpose and objective of this study, various methods of cognition were employed, which helped to contribute the most significant and meaningful scientific findings. This study primarily applied normative research methodologies, focusing on four methods, such as legal and policy analysis, literature review, critical analysis, and comparative analysis. The legal analysis method was employed to review the Antarctic Treaty[1] and its protocols[2], examining their provisions, limitations, strengths, and potential for adaptation. In addition, arguments and interpretations that were not explicitly stated are supported by references to relevant case law and legal opinion.

On other hand, the study employed policy analysis method to analyse various policies and regulations related to Antarctic governance, identifying their strengths, weaknesses, and implications for environmental protection and scientific research. In addition, the study employed a comparative analysis method, which was particularly useful for comparing the ATS with other international regimes, such as those governing the Arctic or the high seas. This helped to identify the best practices and lessons learned. The study applied the literature review methods to examine the existing academic literature on Antarctic governance. This allowed for the consideration of pivotal debates and nascent trends within the field, as well as consulting sources such as reports (British Antarctic Survey, 2017) to gain a more comprehensive understanding of the topic. Finally, the critical analysis method was employed to highlight the limitations of the current legal framework, identifying gaps in its coverage of emerging issues such as climate change, marine conservation, and bioprospecting, as well as to assess the effectiveness of the ATS in achieving its objectives, particularly considering the changing circumstances and arising challenges. Based on the analysis, potential solutions and reforms were proposed to strengthen the ATS and ensure the long-term protection of Antarctica.

This study covered a range of international regulations concerning the investigated subject, including the Antarctic Treaty System[3] and Madrid Protocol to the

[1] The Antarctic Treaty. (1959, December). Retrieved from https://documents.ats.aq/keydocs/vol_1/vol1_2_AT_Antarctic_Treaty_e.pdf.
[2] Madrid Protocol to the Antarctic Treaty. (1991, October). Retrieved from https://www.antarctica.gov.au/about-antarctica/law-and-treaty/the-madrid-protocol/.
[3] The Antarctic Treaty. (1959, December). Retrieved from https://documents.ats.aq/keydocs/vol_1/vol1_2_AT_Antarctic_Treaty_e.pdf.

Antarctic Treaty[1], United Nations Convention on the Law of the Sea (UNCLOS)[2], Convention on Biological Diversity[3] (CBD), United Nations Fish Stocks Agreement[4] (UNFSA), FAO International Guidelines (FAO, 2008). The study was informed by a range of secondary sources, including legal and scientific literature, journal articles, reports, and government publications. Furthermore, it presented a comprehensive analysis of the rate of Antarctic devastation and conducted a thorough review of the existing literature on the subject.

Results and Discussion

Analysis of the Antarctic Treaty System. The Antarctic Treaty[5], a cornerstone of international cooperation, has established Antarctica as a global common dedicated to peace and scientific exploration (Alexander *et al*., 2019). Article I of the treaty explicitly designates the continent as a "zone of peace", prohibiting any military activity. This ground-breaking provision transformed Antarctica from a potential arena of geopolitical conflict into a sanctuary for international collaboration[6]. Central to the treaty's ethos is the freedom of scientific investigation. Article II enshrines this principle, encouraging open exchange of scientific data and personnel. By fostering international cooperation in research, the treaty has facilitated ground-breaking discoveries in fields ranging from climate science to astrophysics. Article III outlines the procedures for the exchange of information regarding scientific programmes and has proved to be a pivotal instrument in the coordination of research activities and the avoidance of replication within the region.

To ensure unimpeded scientific inquiry, Article IV guarantees free access to Antarctica for all nations. This provision has been essential for maintaining the continent as a global laboratory, open to scientists from around the world. Recognising the complexities of territorial claims, Article V[7] effectively set aside these disputes for the duration of the treaty, creating a stable environment for cooperation. Preserving Antarctica's pristine environment has been a paramount concern. Article VI explicitly prohibits nuclear explosions and the disposal of radioactive waste, safeguarding the continent from the devastating effects of nuclear contamination. To uphold the treaty's principles, Article VII establishes a robust inspection regime, allowing parties to verify compliance and deter potential violations. Beyond its impact on Antarctica, the treaty has broader implications for international relations. Article VIII encourages cooperation between Antarctic Treaty Parties and other states on matters related to the continent. This provision has fostered a spirit of global partnership in addressing challenges such as climate change and marine conservation.

The Antarctic Treaty Consultative Meetings (ATCMs), established under Article IX[8], serve as the primary forum for decision-making and cooperation within the treaty system. These meetings have been instrumental in developing measures to protect the Antarctic environment and manage human activities on the continent. To ensure the treaty's adaptability, Article X outlines the amendment process, requiring unanimous agreement among the parties. Article XI provides for the establishment of a Secretariat to support the work of the ATCMs. This administrative body plays a crucial role in facilitating information exchange and coordinating activities. Article XII outlines the entry into force of the treaty, while Article XIII allows any state to accede to its provisions, expanding the treaty's global reach. The Antarctic Treaty is a testament to the power of international cooperation. By establishing a framework for peaceful coexistence, scientific collaboration, and environmental protection, the treaty has ensured that Antarctica stays a pristine wilderness for generations to come.

The need for environmental protection in Antarctica (in-depth investigation). Antarctica, the southernmost continent, spans approximately 14 million km^2, with a mere 0.18% of its landmass being ice-free. This remote and largely uninhabited region is surrounded by the Southern Ocean, which boasts a rich and diverse array of marine species (Rodger, 2014). The continent itself serves as a crucial breeding ground for various bird and marine mammal species, contributing to significant biodiversity distributed across 16 recognised ice-free bioregions. As one of the Earth's least visited and least understood continents, Antarctica holds immense intrinsic value. Its pristine environments are not only vital for the species that inhabit them, but also represent a unique opportunity for scientific exploration and understanding. (British Antarctica Survey, 2017)

The scientific significance of Antarctica cannot be overstated. Each year, researchers produce a wealth of information on various aspects of life, earth, and

[1] Madrid Protocol to the Antarctic Treaty. (1991, October). Retrieved from https://www.antarctica.gov.au/about-antarctica/law-and-treaty/the-madrid-protocol/.
[2] United Nations Convention on the Law of the Sea. (1982, December). Retrieved from https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf.
[3] Convention on Biological Diversity. (1992, June). Retrieved from https://www.cbd.int/doc/legal/cbd-en.pdf.
[4] Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks. (1995, September). Retrieved from https://www.un.org/oceancapacity/sites/www.un.org.oceancapacity/files/files/Projects/UNFSA/docs/unfsa_text-eng.pdf.
[5] The Antarctic Treaty. (1959, December). Retrieved from https://documents.ats.aq/keydocs/vol_1/vol1_2_AT_Antarctic_Treaty_e.pdf.
[6] Ibidem, 1959.
[7] Ibidem, 1959.
[8] Ibidem, 1959.

physical sciences related to this unique environment. The continent offers unparalleled opportunities for monitoring and researching processes that are significant both globally and regionally. This tradition of scientific inquiry dates back to the International Geophysical Year, which marked a turning point in collaborative scientific efforts focused on Antarctica (Makanse, 2024). Since its discovery around 1820, Antarctica has undergone a series of transformations, particularly driven by human activities such as sealing, whaling, and fishing. These commercial exploitations have continued into the present day, particularly with the ongoing fishing activities in the Southern Ocean (Wauchope *et al*., 2019). The early years of exploration were often characterised by a dual focus on exploitation and scientific discovery. Following World War II, there was a marked increase in scientific interest in the continent, culminating in significant collaborative efforts during the International Geophysical Year (IGY) from 1957 to 1958. This period coincided with heightened geopolitical tensions during the Cold War, leading to an increased perception of Antarctica as a "continent for science" (Alexander *et al*., 2019)

As of 2022, over 100 research facilities operate in Antarctica, including 40 year-round stations and numerous seasonal stations. These facilities support research conducted by approximately 30 countries engaged in various scientific endeavours. However, alongside the growth of scientific research, tourism has also seen exponential growth over the past two decades. Currently, around 40,000 tourists visit Antarctica annually, primarily landing at a limited number of sites concentrated mainly on the Antarctic Peninsula and nearby offshore islands during the austral summer months from November to March (Kakareka & Salivonchyk, 2022). The duration of the summer tourism season is gradually expanding, resulting in prolonged pressure on already vulnerable environments. The development of infrastructure to support both scientific and tourism activities is becoming increasingly prevalent. This includes the construction and expansion of airstrips, research stations, and wharfs, often situated on scarce ice-free land. While these developments facilitate valuable research and economic activity, they also pose significant risks to the fragile Antarctic ecosystems (Guzeva, 2024). These human activities have had profound impacts on Antarctic environments – terrestrial, freshwater, marine, and ice systems have all been affected. Disturbances or displacements of wildlife are common consequences of increased human presence. Habitat destruction is another critical issue, as infrastructure development encroaches upon natural habitats essential for various species' survival. Furthermore, environmental pollution from human activities poses a serious threat to these pristine ecosystems (Samari, 2015).

The introduction of non-native species is another pressing concern. As human activity increases in the region, so does the risk of invasive species establishing themselves in Antarctic ecosystems, potentially outcompeting native species and disrupting existing ecological balances. Additionally, over-exploitation of marine resources continues to be a significant threat. Illegal, unreported, and unregulated (IUU) fishing contributes substantially to the global catch of certain fish species, such as toothfish. This illegal activity not only depletes fish stocks but also leads to incidental mortality among seabirds and other marine life. The cumulative effects of these human activities underscore the urgent need for effective environmental protection policies in Antarctica. Considering that human activity is likely to continue intensifying and diversifying in the region alongside the rising pressures from external activities, Antarctica faces mounting conservation challenges (van den Hoff, 2024). These challenges necessitate prompt development and implementation of robust environmental policies aimed at safeguarding this unique environment.

In conclusion, the need for environmental protection in Antarctica is more pressing than ever. As human activities continue to encroach upon this pristine environment through scientific research, tourism, and resource exploitation, the potential for irreversible damage increases. To safeguard Antarctica's unique ecosystems and ensure their resilience against future challenges, as later discussed in this article, comprehensive environmental policy must be developed and implemented through international cooperation. Protecting this vital region is not only an ethical responsibility but also essential for maintaining global ecological balance.

The Antarctic: International legal frameworks for environmental protection. The Antarctic, a region of immense ecological significance, is primarily governed by the Antarctic Treaty and its associated agreements. However, several other international legal frameworks, while not explicitly addressing the Antarctic, have indirect implications for the preservation of its ice and marine ecosystems (Madani, 2023). The United Nations Convention on the Law of the Sea[1] establishes a legal framework for the oceans, including the Southern Ocean surrounding Antarctica. While not mentioning Antarctica directly, the UNCLOS provisions on marine pollution, marine scientific research, and the conservation of marine resources have relevance to the Antarctic region. For instance, Article 92 of UNCLOS prohibits the discharge of pollutants into the sea, which could harm Antarctic marine life and ice. Additionally, the Convention's provisions on marine scientific research

[1] United Nations Convention on the Law of the Sea. (1982, December). Retrieved from https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf.

could contribute to understanding the impacts of climate change on the Antarctic ice (Article 103).

The UNFSA[1] focuses on conserving fish stocks in the high seas, including those potentially found in Antarctic waters. While the Agreement does not specifically address Antarctic fisheries, its principles of sustainable fishing and conservation measures could be applied to any fisheries operating in the region. The FAO Code of Conduct for Responsible Fishing also provides guidance on sustainable fishing practices, which could help protect Antarctic marine ecosystems and the ice they depend on (Section 5). Another significant international instrument is FAO (2008) International guidelines for the management of deep-sea fisheries in the high seas, which offer specific guidance for managing deep-sea fisheries, which are increasingly important in the Southern Ocean. These Guidelines emphasise the need for precautionary measures and ecosystem-based management, which are crucial for protecting Antarctic marine ecosystems and the ice they sustain. The FAO (2008) International Action Plan to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU) addresses the problem of illegal fishing, which can have devastating consequences for marine ecosystems, including those in the Antarctic.

The Convention on Biological Diversity[2] aims to conserve biological diversity and ensure its sustainable use. While it does not explicitly mention Antarctica, the CBD's principles of sustainable development and biodiversity conservation are relevant to the region. The Convention's focus on ecosystem-based management and the protection of threatened species could help protect Antarctic marine ecosystems and the ice they depend on. The Convention on Migratory Species addresses the conservation of migratory species, which are often found in Antarctic waters. The CMS could contribute to the protection of Antarctic marine ecosystems by addressing the conservation needs of migratory species, such as seabirds and marine mammals[3]. The Madrid Protocol[4] to the Antarctic Treaty[5], while focused on environmental protection in Antarctica, also has implications for the preservation of ice. The Protocol in Article 7 prohibits any activities that could harm the Antarctic environment, including those that could contribute to climate change and ice loss. Additionally, the Protocol establishes a system for environmental impact assessment, which can help identify and mitigate potential threats to Antarctic ice. In conclusion, while these international legal frameworks may not explicitly address the Antarctic ice, they have indirect implications for its preservation. By promoting sustainable fishing practices, protecting marine ecosystems, and addressing issues like pollution and climate change, these frameworks can contribute to the conservation of Antarctic ice and the unique ecosystems it supports.

Gaps and shortcomings of the current legal framework. The Antarctic Treaty System (ATS), a landmark achievement in international cooperation, faces increasing challenges as the 21st century unfolds. While the treaty effectively prohibits military activities and nuclear threats, as discussed above, its capacity to address emerging issues is becoming increasingly strained. One of the most pressing concerns is the lack of a comprehensive framework for Marine Protected Areas (MPAs). Although the Convention on the Conservation of Antarctic Marine Living Resources[6] has made great strides, a more integrated approach within the ATS is necessary to safeguard marine ecosystems. This requires addressing issues such as sustainable fishing practices, marine pollution, and the impact of climate change on Antarctic waters.

The potential for bio prospecting, the exploration of Antarctic organisms for commercial purposes, poses another significant challenge. As scientific understanding advances, the economic value of Antarctic biodiversity grows, necessitating clear regulations to prevent overexploitation and ensure equitable sharing of benefits (Giménez *et al*., 2024). The effectiveness of the ATS is also hindered by the lack of participation by some key states. While the treaty has garnered widespread support, there are still countries that have not joined the agreement. This limits the treaty's global reach and influence, potentially undermining its ability to address transnational challenges. It is imperative that a more robust environmental impact assessment (EIA) process be implemented to mitigate the environmental impact of human activities in Antarctica. While some consultative processes exist, a standardised EIA requirement would ensure that potential risks are systematically identified, assessed, and addressed before projects commence. This is crucial for large-scale infrastructure projects, such as research stations and tourist facilities (Tiwari, 2017).

The rapid growth of tourism in Antarctica poses major threats to the fragile ecosystem (Fan *et al*., 2021). While the Protocol on Environmental Protection has

[1] Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks. (1995, September). Retrieved from https://www.un.org/oceancapacity/sites/www.un.org.oceancapacity/files/files/Projects/UNFSA/docs/unfsa_text-eng.pdf.
[2] Convention on Biological Diversity. (1992, June). Retrieved from https://www.cbd.int/doc/legal/cbd-en.pdf.
[3] Convention on Migratory Species. (1979, November). Retrieved from https://www.cms.int/en/convention-text.
[4] Madrid Protocol to the Antarctic Treaty. (1991, October). Retrieved from https://www.antarctica.gov.au/about-antarctica/law-and-treaty/the-madrid-protocol/.
[5] The Antarctic Treaty. (1959, December). Retrieved from https://documents.ats.aq/keydocs/vol_1/vol1_2_AT_Antarctic_Treaty_e.pdf.
[6] Convention on the Conservation of Antarctic Marine Living Resources. (1982, April). Retrieved from https://documents.ats.aq/keydocs/vol_1/vol1_12_CCAMLR_CCAMLR_e.pdf.

established guidelines, more stringent regulations are needed to manage visitor numbers, control their impact, and protect sensitive areas. Implementing a licensing system for tour operators, establishing visitor quotas, and designating specific tourist zones could help minimise disturbance to wildlife and habitats. Climate change is rapidly transforming the Antarctic environment, affecting ice shelves, sea levels, and marine ecosystems. While the ATS has recognised climate change as a threat, the treaty itself lacks concrete mechanisms to address its impacts. Strengthening the ATS's capacity to coordinate international efforts to mitigate and adapt to climate change is crucial. This could involve developing joint research programmes, sharing data, and implementing cooperative measures to reduce greenhouse gas emissions. The ATS primarily focuses on environmental protection and scientific research, with limited consideration for the rights and interests of Indigenous peoples who have historical and cultural connections to the region. While not explicitly recognised in the treaty, the rights of Indigenous Peoples should be acknowledged and respected. This could involve consulting with Indigenous communities on Antarctic-related matters, incorporating traditional knowledge into research and conservation efforts, and ensuring that their cultural heritage is protected. To address these challenges, the ATS must evolve to meet the demands of the 21st century. This requires strengthening international cooperation, adopting a more proactive approach to environmental protection, and ensuring that the treaty stays relevant in the face of rapid global change. By addressing these issues, the ATS can continue to safeguard Antarctica for future generations.

Potential reforms and opportunities. To address the gaps in the Antarctic Treaty System, a multifaceted approach is essential. First and foremost, implementing mandatory Environmental Impact Assessments (EIAs) for all human activities in Antarctica is crucial. These assessments will ensure that potential environmental impacts are thoroughly evaluated, fostering transparency and accountability through public consultation. Additionally, expanding Marine Protected Areas (MPAs) and establishing no-take zones in critical habitats will serve to safeguard biodiversity, while robust monitoring and enforcement mechanisms will deter illegal activities. Moreover, developing a sustainable tourism management plan is vital. This plan should include visitor quotas and strict regulations for tour operators, minimising ecological impacts while promoting environmental education among visitors. In conjunction with this, it is imperative to integrate climate change considerations into all Antarctic activities. Supporting research on the impacts of climate change and facilitating international collaboration to reduce greenhouse gas emissions will be essential in preserving the integrity of this fragile environment.

Strengthening the inspection regime is another key recommendation. Leveraging advanced technologies such as satellite imagery and drones can enhance compliance with treaty obligations, while establishing a dedicated enforcement unit will bolster monitoring efforts. Furthermore, acknowledging Indigenous Peoples' rights and enhancing their participation in decision-making processes will enrich governance frameworks and ensure that diverse perspectives are considered. In addition, prioritising capacity building for developing countries is vital to ensure equitable participation in Antarctic governance and research. This will help create a more inclusive environment where all nations can contribute to the stewardship of Antarctica. Research efforts should also focus on critical issues such as climate change and biodiversity, promoting open data sharing and facilitating technology transfer to foster international collaboration. Furthermore, developing comprehensive regulations for bio prospecting is necessary to address emerging interests, along with establishing a moratorium on mineral resource extraction to protect the environment from potential exploitation. Finally, assessing the impacts of latest technologies will ensure their responsible use in Antarctica.

The aforementioned analyses exhibit both similarities and differences when compared to previously conducted research on the subject of Antarctica. S.L. Chown *et al*. (2022) and E. Cabrera (2015) found that even though the Antarctic Treaty System (ATS) recognises ice melting in the region as a threat to the global community, there is no mechanism set up under the ATS to prevent such occurrences. The study also found that there is no recommended mechanism to prevent ice melting, even though the treaty considers it a threat. Additionally, the researchers' findings urge for immediate global collaboration among governments, civil society, NGOs, and all stakeholders to take part in saving Antarctica; the present study also supports this viewpoint.

Although previous research, such as that conducted by Y. Yermakova (2021) and S. Prior (2022), has touched upon the impact of emerging technologies, this article provides a more detailed examination of the specific challenges posed by advancements in areas such as remote sensing, artificial intelligence, and biotechnology. This difference in findings may be related to the fact that the previous studies were written before the emergence of these technologies and thus could not address them, which accounts for the difference in conclusions. Furthermore, the theory of global commons states that global commons have been conventionally defined as those parts of the planet that fall outside the scope of national jurisdictions and to which all nations have access. Four global commons are identified, namely, the High Seas, the Atmosphere, Antarctica, and Outer Space, which belong to all nations without being owned by any one nation or group (Bosio & Torres, 2019).

While many previous studies, such as those by G. Lowe & H. Lewis-Jones (2014) as well P. Uribe (2015), focused on the environmental and scientific aspects of Antarctica, the present study delved deeper into the geopolitical implications of the region. It discussed the potential for strategic competition and the role of emerging powers in Antarctic affairs, examining how this competition could affect the region and transform it into a zone of conflict and competition that affects wildlife and bioprospecting in the area. Previous studies did not analyse these issues from such a profound perspective. To address this, the researchers highlighted the role of science diplomacy in fostering international cooperation and addressing global challenges. They discussed how scientific collaboration can help bridge political divides and promote peaceful coexistence rather than competition in the region. Additionally, while previous studies by G. Lowe & H. Lewis-Jones (2014) did not observe the possible effects of tourism in a different light, the present study offered a more detailed analysis of the environmental impacts of tourism in Antarctica. It discussed the need for stricter regulations and sustainable tourism practices to minimise disturbances to wildlife and habitats.

In general, while this study is comparable to previous research in that it highlighted the lack of a mechanism within the Antarctic Treaty System to prevent ice melting, it also differs from previous studies in that it urges global collaboration. Furthermore, this study explored the changes posed by emerging technology, geopolitical implications, and the need for science diplomacy in greater detail than previous studies. Additionally, it emphasised the necessity of stricter regulations on tourism to mitigate the adverse environmental impact, offering a more compressive analysis than earlier studies.

Conclusions

This paper examined the efficiency of the Antarctic Treaty System (ATS) in addressing the contemporary challenges facing Antarctica. The primary objective was to assess the Treaty's capacity to protect the continent's unique environment and ensure its long-term sustainability. The study found that while the ATS has been instrumental in preserving Antarctica as a global common dedicated to peace and science, it faces significant challenges in addressing emerging issues such as marine protection, bioprospecting, and climate change. The study highlighted the need for a comprehensive framework for Marine Protected Areas, stricter regulations on bioprospecting, and enhanced enforcement mechanisms. It also emphasised the significance of addressing climate change impacts, strengthening the inspection regime, and acknowledging Indigenous Peoples' rights.

Key findings include the need for mandatory Environmental Impact Assessments, expanded Marine Protected Areas, sustainable tourism management, and robust climate change mitigation strategies. Additionally, the study recommended strengthening the inspection regime, fostering international cooperation, acknowledging Indigenous Peoples' rights, and enhancing scientific research. The findings of this study have significant implications for international law, environmental governance, and scientific research. They provide valuable insights for policymakers, scientists, and stakeholders involved in Antarctic affairs, guiding efforts to protect this vital region for future generations. This study contributes to the ongoing discourse on Antarctic governance by offering a comprehensive analysis of the ATS's strengths, weaknesses, and potential for reform. The study highlighted the urgent need to adapt the Treaty to the evolving challenges of the 21st century. By addressing these challenges, the international community can ensure that Antarctica stays a pristine wilderness and a beacon of international cooperation.

Areas for further research include a more in-depth analysis of the economic impacts of tourism and scientific research on Antarctic communities, a comparative study of the ATS with other international environmental regimes, and an exploration of the role of emerging technologies in Antarctic governance. Additionally, further research is needed to assess the effectiveness of proposed reforms and to develop innovative solutions to address the complex challenges facing Antarctica.

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Conflict of Interest

The authors of this study declare no conflict of interest.

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Правовий режим управління Антарктикою: виклики й можливості

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Анотація
Система Договору про Антарктику як наріжний камінь міжнародного співробітництва постає перед новими викликами XXI століття. У цьому дослідженні було розглянуто ефективність системи Договору про Антарктику для розв'язання сучасних проблем, таких як захист морського середовища, біорозвідка та зміна клімату. Проаналізовано переваги й недоліки Договору, виявлено прогалини в його охопленні, оцінено його адаптивність до майбутніх викликів. У дослідженні використано міждисциплінарний підхід, що поєднував правовий, політичний, порівняльний та критичний аналіз, а також поглиблений аналіз положень договору, його обмежень і потенціалу для реформування. Результати засвідчили, що хоча Система Договору про Антарктику відіграє життєво важливу роль у збереженні Антарктики як глобального надбання, її здатність протистояти новим загрозам є обмеженою. Дослідження дозволило стверджувати про необхідність створення всеосяжної системи морських природоохоронних територій, суворіших правил щодо біорозвідки й механізмів правозастосування. Серед основних висновків – необхідність обов'язкового оцінювання впливу на довкілля, розширення морських природоохоронних територій, сталого управління туризмом й ефективних стратегій пом'якшення наслідків зміни клімату. У статті рекомендовано посилити режим інспекцій, сприяти міжнародному співробітництву, визнати права корінних народів й активізувати наукові дослідження. Вирішення цих питань і впровадження запропонованих реформ дасть змогу Системі Договору про Антарктику продовжувати захищати унікальне довкілля Антарктики, забезпечувати його довгострокову стійкість

Ключові слова:
Система Договору про Антарктику; збереження морського середовища; зміна клімату; біорозвідка; права корінних народів; міжнародне співробітництво

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The meaning of the term "timely" in the performance of management obligations concerning electronic money float funds

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Abstract
Digital transformation has brought significant changes to the financial industry, particularly in adopting electronic money systems in Indonesia, which have become a crucial payment instrument in the digital era. The purpose of this study was to analyse the vagueness of the term "timely" in Article 49, Paragraph (2), Letter c of Bank Indonesia Regulation No. 20/06/PBI/2018 "On Electronic Money", which governs the obligations of electronic money issuers in managing float funds. By employing a normative legal research method, this study examined the grammatical and historical interpretation of the term "timely" to evaluate its impact on legal certainty. The interpretation method included an analysis of policy changes introduced into regulations by Bank Indonesia from the 2009 to 2018, highlighting the evolution of requirements and rules concerning the management of float funds. The findings indicated that the vagueness of the term "timely" has led to varying interpretations that affect electronic money issuers, users, and supervisory authorities, thereby creating legal uncertainty. These differing interpretations not only result in legal ambiguities but also can undermine user confidence in digital payment systems. Further analysis underscored the critical role of this term in ensuring the integrity and stability of the electronic money ecosystem. The lack of clarity regarding the timing of obligation performance highlights the necessity of establishing concrete time limits to minimise potential conflicts and uncertainties. This study recommended that regulators develop clearer guidelines for managing

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float funds in electronic money to enhance legal certainty and protect consumer interest. Establishing a concrete time standard for float fund management would support issuers in consistently performing their obligations and streamline the supervision process for regulatory authorities

Keywords:
ambiguity; digital finance; interpretation; legal uncertainty; regulation

Introduction

Digital transformation has significantly reshaped the payment system, which is essential for economic transactions, shifting from traditional banknotes to more efficient non-cash methods. Consequently, electronic money has emerged in Indonesia, enabling electronic financial transactions across various platforms and devices. Nearly all banking institutions now provide electronic money products, while startups have also entered the market with similar offerings, enriching the dynamic landscape of digital payments (Amalia & Santoso, 2022)

Electronic money refers to cash that has been converted into digital data and stored on mediums such as chip cards or servers owned by electronic money holders (Department of Communication, 2020). Its regulation began with Bank Indonesia Regulation No. 11/12/PBI/2009[1] on Electronic Money, later updated by Bank Indonesia Regulation No. 20/06/PBI/2018[2]. These regulations govern the components of the electronic money payment system, including instruments, institutions, mechanisms, and infrastructure, while emphasising principles of expediency and consumer protection. Enhanced regulation and oversight are crucial for the effective operation of electronic money systems, particularly in managing float funds to uphold trust, stability, and security in the electronic money ecosystem. The Bank Indonesia Regulation on Electronic Money (PBI)[3] defines float funds as the value of electronic money held by the issuer, which is derived from the issuance and/or replenishment of funds and stays an obligation of the issuer to users and providers of goods and/or services. According to R.K. Sari (2021), the regulation governing float funds aims to ensure their safety from liquidity, credit, legal, and operational risks while promoting secure and structured management practices for these funds.

According to Article 49, the regulation of issuers' obligations regarding the use of float funds stipulates that these funds may only be used to perform the issuer's obligations to users and suppliers of goods and/or services and cannot be used for other purposes. To ensure this, the issuer must have a system for recording float funds, monitor their availability, guarantee timely performance of obligations, record these funds separately from other obligations, and place them in an account that is separate from the issuer's operational account. This Article states that the use of float funds by electronic money issuers is solely intended to perform obligations to users and providers of goods and/or services. The use of float funds for other purposes, such as guarantees to third parties or for the issuer's operational interests, is strictly prohibited. This prohibition is based on the explanation provided in Article 49, paragraph (1) of PBI 2018 concerning Electronic Money[4].

The PBI Electronic Money regulation[5] requires issuers to perform their obligations in a timely manner. However, the provisions in Article 49, paragraph (2), letter c lack specific explanation and are vague regarding the term "timely", resulting in potential ambiguity and legal uncertainty due to the absence of a clearly outlined time limit. For instance, this may refer to performance at the maturity date agreed upon by the stakeholders based on the type of obligation, or there may be special provisions in other regulations. This vagueness can lead to varying interpretations by electronic money issuers and supervisory authorities. Therefore, clearer regulations are needed to define "timely" and establish criteria or indicators for assessing the performance of obligations by electronic money issuers, ensuring greater legal certainty and consistency.

Normatively, legal certainty is achieved when regulation are clear and logical, avoiding doubt, multiple interpretations, contradictions, and ambiguities within the broader legal system (Sinaga, 2022). Uncertainty can lead to differing interpretations among law enforcers (Winarno *et al*., 2021). Certainty can be interpreted as something that is clear, unambiguous, easy to understand, and consistent, without leading to multiple interpretations. The law must be based on existing facts, and these facts should be formulated clearly to avoid misinterpretation and facilitate effective implementation. Therefore, the law should not give rise to numerous interpretations or unclear norms. According to D. Vidiasari (2024), definitive laws, especially regulations, should not be easily changed without considering the interests of society. The uncertainty surrounding the

[1] Regulation of the Bank of Indonesia No. 11/12/PBI/2009 "On Electronic Money". (2009, April). Retrieved from https://www.bi.go.id/id/publikasi/peraturan/Pages/pbi_111209.aspx.
[2] Regulation of the Bank of Indonesia No. 20/06/PBI/2018 "On Electronic Money". (2018, May). Retrieved from https://www.bi.go.id/id/publikasi/peraturan/Pages/PBI-200618.aspx.
[3] Ibidem, 2018.
[4] Ibidem, 2018.
[5] Ibidem, 2018.

term "timely" in Article 49, paragraph (2), letter c of PBI Electronic Money[1] leads to varying interpretations among electronic money issuers, users, goods and services providers, and supervisory authorities. In the absence of clear and definitive definitions or guidelines, electronic money issuers adopt differing standards for performance of their obligations, risking user confidence by destabilising the digital finance industry.

According to I. Cahayati (2021), timeliness in e-money transactions is critical, as it directly affects the "actual use", or frequency and duration of technology used by consumers. When an e-money system can ensure that transactions are completed timely, user trust and satisfaction increase, encouraging more frequent use of the service. Timeliness thus serves as an indicator of system performance, which is vital from both legal and technological perspectives to protect consumers and promote widespread adoption of the technology.

The originality of the present study lies in the vagueness of the term "timely" concerning the performance of obligations. The purpose of this study was to analyse and interpret the meaning of the term "timely" as it relates to the performance of obligations in the management of float funds, specifically in Article 49, paragraph (2), letter c of Bank Indonesia Regulation No. 20/06/PBI/2018[2]. Based on this background, the problem formulation for this study was to determine the meaning of the term "timely" concerning the performance of obligations in the management of float funds as outlined in the aforementioned regulation.

Materials and Methods

This study employed the method of normative legal research. It focused on the scope of legal concepts, principles, and rules without considering the application of law to human behaviour or institutions. The norm system was the research object (Muhaimin, 2020). This study aimed to examine the interpretation of the term "timely" within the phrase "ensure timely performance of obligations" as stipulated in Article 49, paragraph (2), letter c of Bank Indonesia Regulation[3].

The approach used in this research was a statute approach, which examined the norms in the legislation that apply in Indonesia, especially those relating to performance of obligations concerning the management of float funds by electronic money issuers. According to P.M. Marzuki (2005), the regulatory approach involves studying all regulations related to the legal topic under study. The present study applied a regulatory approach by examining Bank Indonesia Regulation No. 20/06/PBI/2018[4]. The study also employed a conceptual approach to assess the validity of legal norms or rules, specifically regarding the interpretation of the term "timely" in performance of the obligation of electronic money issuers to manage float funds, and its relevance to legal norms and regulations governing electronic money.

Legal materials were analysed using grammatical and systematic methods of interpretation, which provided an in-depth and structured understanding of legal norms. Grammatical interpretation involved a careful analysis of texts, focusing on the meaning of words and phrases used in legislative acts. This method helped to identify the precise meaning of terms and avoid ambiguities, which was particularly important when examining legal documents that required clarity and certainty. Systematic interpretation was aimed at identifying the meaning of legal norms, considering their relationship with other legal provisions and general principles of law. This method helped to consider a legal norm not in isolation, but in the context of the entire legal system, identifying its place and role in the overall structure of the legislation. Thus, the use of these methods helped to achieve a comprehensive understanding of legal provisions and guaranteed a more accurate application of norms in law enforcement practice.

This study adopted G. Radbruch's (1961) theory of legal certainty as an analytical framework to address legal issues related to the vagueness of the term "timely" in Article 49, paragraph (2), letter c of the PBI on Electronic Money[5]. This ambiguity has resulted in varying interpretations among electronic money issuers, users, and financial authorities, highlighting the need for a clear understanding of the term to ensure consistency in legal standards. Using G. Radbruch's (1961) theoretical framework the present study aimed to assess the extent to which the provisions in the regulation align with the principles of legal certainty, which emphasise clarity, consistency, and predictability of legal norms.

Results and Discussion

Grammatical and historical interpretation of the term "timely" in performance of the obligations of electronic money issuers. Electronic money issuers are entities responsible for issuing, managing, and providing electronic money services. These issuers can be either banking institutions or non-bank institutions were authorised by Bank Indonesia (Hanifah, 2021). As part of the electronic money ecosystem, issuers play a key role in managing electronic money float funds, ensuring that these funds are properly handled by regulatory requirements.

Electronic money refers to cash that was converted into digital data and is stored on mediums such as chip cards or servers owned by electronic money holders

[1] Regulation of the Bank of Indonesia No. 20/06/PBI/2018 "On Electronic Money". (2018, May). Retrieved from https://www.bi.go.id/id/publikasi/peraturan/Pages/PBI-200618.aspx.
[2] Ibidem, 2018.
[3] Ibidem, 2018.
[4] Ibidem, 2018.
[5] Ibidem, 2018.

(Nazar *et al*., 2023) .The value of money received by electronic money issuers, either through the issuance of electronic money or through recharges, is known as float funds. These float funds are the responsibility of electronic money issuers, as they must ensure the availability of these funds to cover transactions made by electronic money holders and merchants when merchants verify payments with the issuers (Wicaksono & Huda, 2023).

Grammatical interpretation is a method of legal interpretation that emphasises the understanding of the literal meaning of words and sentence structures in legislative texts. This method involves uncovering the legal meaning embedded in the text by analysing its sentence structure, choice of words, and grammar (Annata Nurhan *et al*., 2024). The term "grammatical" refers to changes in word forms that align with the context of use, including situational factors such as place, time, and appropriate language usage. According to the Big Indonesian Dictionary (1991) "tepat" means "right" or "accurate", referring to something that is correct in terms of direction, timing, choice, or promise. Meanwhile, "waktu" refers to a specific period or moment, indicating the duration set for completing something. In simple terms, being "timely" means doing something according to the predetermined, set, or agreed-upon schedule.

From a grammatical standpoint, "timely" serves as a measure of appropriateness concerning time, which must be adhered to. The two components complement each other to indicate the performance of obligations within a predetermined time frame. The term "timely" functions as an adjective that explains the term "performance of obligations", highlighting the nature or criteria for meeting those obligations as being carried out by the specified time (Webster, n.d.).

"Timely" can be interpreted as the execution of an obligation or the performance of an action according to a previously determined or agreed-upon deadline. "Timely" has several aspects (Rizkyarrachman, 2022), including:

a. A means of cultivating discipline and shaping a person's character into a trustworthy individual.

b. Reflection of a person's dedication to their obligations, and therefore timely actions demonstrate commitment to fulfilling responsibilities.

c. "Timely" also hones the ability to set targets and strive to meet them within a predetermined timeframe.

d. Time is a valuable resource that cannot be rewound.

e. "Timely" is believed to lead individuals to better achievements.

In the financial industry, timeliness is a crucial factor in presenting relevant information. Information holds value only when it is delivered promptly to those who need it to support the decision-making process. The faster the information is presented, the more relevant it becomes to users (Selvia & Asiam, 2022). According to the Big Indonesian dictionary (1991), "performance" refers to a process, method, or act of fulfilling, while "obligation" is defined as something that must be performed or fulfilled by an individual. Then, the term "performance" can be interpreted as a process, method, or act of fulfilling. Meanwhile, "obligation" is defined as everything that must be performed or fulfilled by someone. In this context, obligation refers to everything that must be performed by the issuer of electronic money to users and providers of good and/or service.

Thus, the term "timely" can be interpreted as the fulfilment of responsibilities within a predetermined period, whether in the form of laws, Bank Indonesia regulations, agreements, or contracts among the parties involved in electronic money activities. This phrase emphasises discipline and efficiency in meeting obligations, which is crucial for ensuring user trust and satisfaction. The designated period sets the deadline for completing transactions, processing payments, issuing refunds, or managing float funds. However, it is essential to provide further clarification regarding the concrete timeframe to avoid legal uncertainty.

Building on the previous discussion and the grammatical interpretation of the term "timely", a historical interpretation was also conducted to strengthen the findings. This involved examining the Bank Indonesia Regulation on Electronic Money to gain a deeper understanding of the context surrounding the establishment of the "timely" provision. The focus was on the background, actual intent, and social conditions at the time this provision was implemented, particularly concerning the obligations of electronic money issuers in managing electronic money float funds (Table 1).

Table 1. History of the term "timely" in Electronic Money Regulations in Indonesia

PBI No. 11/12/PBI/2009 about Electronic Money	PBI No. 20/06/PBI/2018 about Electronic Money
Article 1	Article 49
(1) In the context of implementing financial risk management, as referred to in the preceding paragraph (2) The issuer shall: a. Place float funds in the form of safe and liquid assets; b. Use the float funds mentioned in letter a solely to fulfil obligations to holders and merchants; c. Perform obligations to holders and merchants in a "timely" manner.	(2) To perform obligations to users and providers of goods and/or services as referred to in paragraph (1), the issuer must: a. Have a system and mechanism for recording float funds; b. Have a system and mechanism for monitoring the availability of float funds; c. Ensure the "timely" performance of obligations;

Table 1, Continued

PBI No. 11/12/PBI/2009 about Electronic Money	PBI No. 20/06/PBI/2018 about Electronic Money
	d. Record float funds separately from other obligations of the issuer; e. Place float funds in an account that is distinct from the issuer's operational account.

Source: developed by the author of this study based on PBI No. 11/12/PBI/2009[1] and PBI No. 20/06/PBI/2018[2]

The Table 1 illustrates that the provisions related to float funds originated from Bank Indonesia Regulation No. 11/12/PBI/2009[3] on Electronic Money and evolved into Bank Indonesia Regulation No. 20/6/PBI/2018[4]. The 2009 regulation emphasised that issuers must perform their obligations to holders and merchants promptly. In contrast, the 2018 regulation provides more detailed guidelines for managing float funds, including the requirement to separate the recording of float funds from other operational obligations, thereby enhancing transparency and accountability.

The regulation of float funds began with PBI 2009[5], which mandates that electronic money issuers in the form of non-bank institutions must obtain a license from Bank Indonesia if they manage float funds that reach a certain threshold. Additionally, the regulation outlines the obligations of electronic money issuers regarding the management of float funds within the framework of financial risk management. This serves as a strategic measure to ensure that float funds are managed carefully and securely. Issuers are required to place float funds in safe and liquid assets, use these funds solely to perform obligations to holders and merchants, and ensure that such obligations are met promptly.

Subsequently, further regulations concerning float funds were established through Bank Indonesia Circular Letter No. 11/11/DASP[6] dated April 13, 2009, regarding Electronic Money. This circular letter stipulates that float funds held by electronic money issuers that are not banking institutions must be placed in deposit accounts at commercial banks, with 100% of the total float funds deposited. These funds can only be utilised to perform obligations to holders and merchants, which must be carried out in a timely manner[7].

This provision aims to maintain the security of float funds and ensure that obligations to users and merchants are performed promptly. For electronic money issuers that are banking institutions, float funds must be managed in the form of safe and liquid investments. This requirement emphasises that the management of float funds by issuers must be conducted with care to ensure the security and availability of these funds, thereby performing the issuer's obligations to users and merchants involved in the electronic money system. It implicitly demands the timely performance of these obligations.

However, although the provision regarding "timely" performance has been in place since PBI 2009[8], there is no concrete explanation of the term "timely". This ambiguity creates challenges in implementation, as there is no clear timeframe or specific guidelines outlined in the regulation. It is still unclear whether timelines should be predetermined, left to the discretion of the parties involved, or be constrained by other regulations. Similarly, in PBI 2018[9], the affirmation of "timely" performance reappears without any further clarification on what duration is considered appropriate for performing obligations to both users and providers of goods and/or services.

Meaning of the term "timely" in Article 49 Paragraph (2) letter 2 of Bank Indonesia Regulation No. 20/06/PBI/2018 concerning Electronic Money related of performance of obligations in float funds management. Article 49 of Bank Indonesia Regulation

[1] Regulation of the Bank of Indonesia No. 11/12/PBI/2009 "On Electronic Money". (2009, April). Retrieved from https://www.bi.go.id/id/publikasi/peraturan/Pages/pbi_111209.aspx.
[2] Regulation of the Bank of Indonesia No. 20/06/PBI/2018 "On Electronic Money". (2018, May). Retrieved from https://www.bi.go.id/id/publikasi/peraturan/Pages/PBI-200618.aspx.
[3] Regulation of the Bank of Indonesia No. 11/12/PBI/2009 "On Electronic Money". (2009, April). Retrieved from https://www.bi.go.id/id/publikasi/peraturan/Pages/pbi_111209.aspx.
[4] Regulation of the Bank of Indonesia No. 20/06/PBI/2018 "On Electronic Money". (2018, May). Retrieved from https://www.bi.go.id/id/publikasi/peraturan/Pages/PBI-200618.aspx.
[5] Regulation of the Bank of Indonesia No. 11/12/PBI/2009 "On Electronic Money". (2009, April). Retrieved from https://www.bi.go.id/id/publikasi/peraturan/Pages/pbi_111209.aspx
[6] Bank Indonesia Circular Letter No. 11/11/DASP "On Electronic Money". (2009, April). Retrieved from https://www.bi.go.id/id/publikasi/peraturan/Pages/se_111109.aspx.
[7] Regulation of the Bank of Indonesia No. 20/06/PBI/2018 "On Electronic Money". (2018, May). Retrieved from https://www.bi.go.id/id/publikasi/peraturan/Pages/PBI-200618.aspx.
[8] Regulation of the Bank of Indonesia No. 11/12/PBI/2009 "On Electronic Money". (2009, April). Retrieved from https://www.bi.go.id/id/publikasi/peraturan/Pages/pbi_111209.aspx.
[9] Regulation of the Bank of Indonesia No. 20/06/PBI/2018 "On Electronic Money". (2018, May). Retrieved from https://www.bi.go.id/id/publikasi/peraturan/Pages/PBI-200618.aspx.

No. 20/06/PBI/2018[1] on Electronic Money is part of the rules governing the management of float funds, particularly regarding their use by electronic money issuers for users and providers of goods and/or services. The provisions in this Article aim to ensure the responsible, transparent, and secure use of float funds, thereby supporting stability and trust in the electronic money system. However, Article 49, paragraph (2), letter c, states that electronic money issuers must ensure the timely performance of obligations. The term "timely" stays ambiguous and can lead to multiple interpretations, necessitating further clarification. In the context of regulations that require legal certainty, the use of unclear phrases has the potential to create legal uncertainty and may lead to disputes in the future.

Before further discussions on the meaning of the term "timely", which is considered vague in Article 49 of Bank Indonesia Regulation No. 20/06/PBI/2018[2] concerning Electronic Money, it is necessary to first understand the wording of the article: "Article 49: (1) Float funds may only be used to perform the issuer's obligations to users and providers of goods and/or services and are prohibited from being utilised for any other purposes. (2) To perform obligations to users and providers of goods and/or services as referred to in paragraph (1), the issuer must: (a) have a system and mechanism for recording float funds; (b) have a system and mechanism for monitoring the availability of float funds; (c) ensure the timely performance of obligations; (d) record float funds separately from other obligations of the issuer; (e) place float funds in an account that is distinct from the issuer's operational account".

Article 49, paragraph (1), emphasises that float funds may only be used to perform the issuer's obligations to users and providers of goods and/or services. The explanation of Article 49, paragraph (1) of the PBI on Electronic Money states that the use of float funds for purposes other than third-party guarantees or the operational interests of the issuer is prohibited. This restriction aligns with the fundamental principle that issuers must ensure that these funds are not used for any purposes outside the interests of users and providers of goods and/or services. Article 49, paragraph (2), outlines the steps that issuers must take to ensure that float funds are used by the rules outlined in paragraph (1). These steps include the requirement for issuers to maintain a robust recording and monitoring system, ensure that obligations to users are performed promptly, and keep float funds recorded and placed separately from operational funds and other obligations. While the overall provisions of Article 49, paragraph (2) are considered quite clear in each of its points, the item (e), which states that float funds must be kept in an account separate from the issuer's operational account to perform short-term obligations to users and providers of goods and/or services, requires further clarification[3].

In the context of Sharia electronic money, the obligation to manage float funds is also regulated by stricter principles related to time. Based on Sharia principles, when there is an exchange between cash and the value stored in Sharia e-money (top-up), the transaction must be performed in cash and immediately, meaning that the exchange must occur at the same time (cash) without any delay on either party. If there is a delay, either from the delay in the return of cash in the refund, then the transaction is classified as "riba al-nasiah" (an illegal increase in money or certain goods, stipulated when lending money or concluding a transaction), which is prohibited in Islamic law (Arifin, 2023).

This is crucial to ensure that the float funds managed by issuers are genuinely utilised to perform obligations to users and providers of goods and/or services, thereby ensuring the security and smooth operation of the active payment system. However, the term "timely" in this Article lacks a clear definition, which may lead to potential legal ambiguity regarding the performance of obligations by issuers. Thus, the interpretation of the term "timely" was examined from both grammatical and historical perspectives. Next, the meaning of the term "timely" was analysed in the context of its application within the article.

In terms of the management of float funds and the issuer's obligations in satisfying user rights, it is important to define what float funds are. Float funds refer to the total value of electronic money received by the issuer, which represents an obligation to both the users and the issuer itself. The issuer's obligation to the users of electronic money is to refund the entire remaining balance stored in the media when the holder decides to stop using the electronic money. Meanwhile, the issuer's obligation to merchants (who accept electronic money) is to ensure the settlement of transactions, exercising the right to receive the value of the electronic money used in transactions (Munawir & Mahbub, 2021). The issuer's obligation represents the implementation of the redeemability principle, which aims to ensure certainty for the owners of electronic money value, including both users and providers of goods and/or services. This principle guarantees that electronic money owners can redeem its value into cash or transfer it to a relevant account at any time (Prasetiyo & Wahyudiono, 2023).

An example of electronic money issued by institutions other than banks, as defined by Bank Indonesia

[1] Regulation of the Bank of Indonesia No. 20/06/PBI/2018 "On Electronic Money". (2018, May). Retrieved from https://www.bi.go.id/id/publikasi/peraturan/Pages/PBI-200618.aspx.
[2] Ibidem, 2018.
[3] Ibidem, 2018.

Regulation[1], is Go-Pay. According to the instructions for the use of Go-Pay electronic money, issuers are permitted to use the electronic money balance they receive solely to perform obligations to electronic money holders and merchants. Consequently, Go-Pay issuers are prohibited from utilising the electronic money balance for any purposes outside the specified obligations (Martono & Yudawirawan, 2021). According to the applicable regulations, PBI Electronic Money requires an adequate legal framework as one of the eligibility criteria for operating electronic money. This requirement is outlined in Article 13, paragraph (2), which states that: "(a) the requirements for institutional and legal aspects, as referred to in paragraph (1), letter a, must include at least: the legality and profile of the company; (b) the readiness of the legal framework for the implementation of electronic money.

The explanation of Article 13, paragraph (2), letter b of the PBI on Electronic Money[2] clarifies that the readiness of the legal framework for electronic money organisers can be demonstrated through a written agreement or a principal written agreement between the organiser and other parties. This provision aims to ensure that companies intending to organise electronic money have a solid legal foundation, adhere to good governance practices, and are legally prepared to operate the service. However, the PBI on Electronic Money does not provide further clarification regarding the period for performing the issuer's obligations related to the management of float funds for users and providers of goods and services. Therefore, this period is regulated through a written agreement or principal written agreement between the parties. This interpretation aligns with the principle established in Book III of the Civil Code[3], which adheres to an open system that grants parties the freedom to enter into agreements with anyone and to determine the terms of implementation and the form of the agreement, whether oral or written (Evi *et al*., 2023). Consequently, the parties involved in the management of float funds have the authority to mutually agree on the period for performing these obligations.

Furthermore, regarding the issuer's obligations regarding requirements with providers of goods and/or services for administering electronic money, Article 54 of Bank Indonesia Regulation No. 20/06/PBI/2018[4] outlines the following: administering all documents related to providers of goods and/or services by properly selecting and recording their identities, including cooperation contracts, transaction reports, and other relevant documents; conducting education and training for providers of goods and/or services to ensure they understand the transaction process and can execute it smoothly by applicable regulations; terminating collaboration with providers of goods and/or services that engage in detrimental actions, such as partnering with criminals, charging additional fees for shopping transactions, or mishandling user data/information.

Proceeding from this, the written agreement between the issuer and the provider of goods and/or services serves as a cooperation agreement that details the rights and obligations of both parties in carrying out electronic money transaction activities. This agreement encompasses not only technical aspects related to operations but also legal and security considerations that must be adhered to. A written agreement between the electronic money issuer and the user or provider of goods and/or services can serve as a practical solution to avoid multiple interpretations of the term "timely". This agreement can explicitly state the time limits agreed upon by both parties, providing clarity and certainty regarding when obligations will be performed.

However, the absence of firm standards in regulations allows issuers and users to interpret the term "timely" in varying ways, meaning that agreements do not always guarantee legal certainty or consistently protect consumer rights. This issue arises from the principle of freedom of contract, which asserts that parties can determine the contents of their agreement, as long as it does not conflict with the law (Putri Nabila & Djayaputra, 2023). Therefore, clearer regulations and stricter standards are crucial, so that reliance on agreements is complemented by well-defined boundaries.

H. Salsabila & P. Rahmadhani (2023) addressed the legal vacuum regarding the regulation of float funds in non-bank institutions within the bankruptcy system. The researchers concluded that stricter and clearer regulations on revolving funds are required to provide certainty for financial technology users in Indonesia. The similarity with the present study lies in the focus on the management of float funds as regulated in the PBI on Electronic Money. However, the difference is in the research focus: this study examined the lack of clarity in the term "timely" regarding the performance of obligations related to float funds, emphasising the significance of regulatory clarity in ensuring the issuer's obligations to users and providers of goods and/or services are properly met to avoid differing interpretations. Meanwhile, the other research focuses more on the issue of consumer protection regarding float funds in the event of the issuing institution's bankruptcy.

[1] Regulation of the Bank of Indonesia No. 20/06/PBI/2018 "On Electronic Money". (2018, May). Retrieved from https://www.bi.go.id/id/publikasi/peraturan/Pages/PBI-200618.aspx.
[2] Ibidem, 2018, May.
[3] Civil Code of Indonesia. (1847, April). Retrieved from https://www.refworld.org/legal/legislation/natlegbod/1847/en/77869.
[4] Bank Indonesia Regulation No. 20/06/PBI/2018 "On Electronic Money". (2018, May). Retrieved from https://www.bi.go.id/id/publikasi/peraturan/Pages/PBI-200618.aspx.

The present study provided a comprehensive analysis, including identifying the legal gaps in the regulation of float funds in Indonesia, particularly in the fintech sector, as well as examining the impact of bankruptcy risks on float funds. Additionally, it offers examples of float fund regulations from other countries that have successfully implemented more effective frameworks, which can serve as valuable references for improving regulations in Indonesia. However, there are several aspects to consider, such as a slight discrepancy between the study findings and the conclusions presented, which may require further clarification or support with more precise evidence. Moreover, it is essential to address the practical implications of the proposed solutions to ensure they are truly effective in solving the existing issues.

M.S. Agil *et al*. (2023) study the urgency of float funds guarantee arrangements by the deposit insurance corporation in case of bankruptcy risk in electronic money issuers, highlighting the legal vacuum surrounding float funds guarantees in the context of bankruptcy risk. The similarity between the present study and the cited one lies in the focus on float funds and their management within electronic money systems, both highlighting the lack of legal certainty. The difference, however, lies in the more in-depth analysis of the vague term "timely" regarding the performance of the obligation to manage float funds in electronic money. Additionally, the present study adopted a statutory and conceptual approach, without incorporating a comparative analysis.

Overall, this study offered an in-depth analysis and presenting relevant conclusions. It emphasised the need for Indonesia to promptly establish provisions for float fund guarantees through the Deposit Insurance Corporation to ensure legal certainty and fair protection for float fund owners. Additionally, the study recommended adopting a ring-fenced concept through a trusteeship scheme as an effective solution for protecting float funds. However, further investigation and analysis are needed regarding the application of this concept, considering the differences between the Indonesian legal system and those of countries that have adopted an analogous approach.

Additionally, J.A. Lukita *et al*. (2021) conducted a study addressing the obscurities related to errors or omissions made by consumers when using electronic money. The similarity with the present study lies in the focus on the vagueness of a phrase in the Bank Indonesia Regulation[1], which leads to various interpretations. The difference, however, lies in the objects of study. The cited study centred on the responsibilities and limits of consumer protection related to consumer negligence and its legal implications, particularly emphasising the legal consequences for consumers who lose their right to compensation due to their negligence. In contrast, the present study highlighted the obligation of electronic money issuers to ensure that their obligations are performed in a timely manner, proposing clearer time guidelines to enhance legal certainty in the performance of these obligations.

The conclusions of this study highlight the legal vacuum in Indonesian regulations regarding errors or omissions by electronic money users. The present study accurately identified the lack of clarity in the definition of what constitutes error or negligence in Article 43, Paragraph (2), Point c of the PBI on Electronic Money[2]. However, a review is necessary to assess whether the definitions of error and negligence are sufficiently specific to electronic money cases and whether the application of liability for error is always fair and realistic in each instance. Furthermore, clearer definitions are needed, along with a comprehensive plan for the practical implementation of these provisions.

Discussion

The analysis of the term "timely" in the context of performing the obligations of electronic money issuers revealed multiple dimensions, encompassing both legal and practical aspects. Grammatically, the phrase emphasises the significance of adhering to a predetermined timeframe. However, this significance goes beyond mere technical compliance; it serves as a tool to build user trust, maintain financial stability, and foster the development of a responsible digital payment ecosystem. The urgency of timeliness is not only rooted in the obligation to follow applicable regulations, but also acts as a guideline for transparent, accountable, and committed financial behaviour, thereby supporting the creation of a safe and reliable environment for electronic money transactions.

In practice, timeliness in performing the obligations of electronic money issuers is not only a means to ensure compliance with regulations but also reflects the social responsibility of these issuers. This is crucial in maintaining a safe digital financial ecosystem and ensuring high resilience to the risks that may arise in managing electronic money float funds. Interpreting the term "timely" in the context of the performance of the obligation to manage float funds requires a comprehensive study of relevant regulations and their impact on both stability and public confidence in the electronic money system. As shown in the Table 1 above, regulatory developments from PBI 2009 to PBI 2018 on Electronic Money[3] provided more detailed guidelines for managing float funds, including the obligation to separate float funds from the issuer's operating account. While these regulations offer clarity in terms of fund management, they have yet to establish a clear

[1] Bank Indonesia Regulation No. 20/06/PBI/2018 "On Electronic Money". (2018, May). Retrieved from https://www.bi.go.id/id/publikasi/peraturan/Pages/PBI-200618.aspx.
[2] Ibidem, 2018.
[3] Ibidem, 2018.

time limit as a reference for the timely performance of obligations.

Setting clear time limits will enhance legal certainty for all parties involved, particularly regarding potential delays in performing obligations. For instance, specifying maximum time limits in days or hours can reduce the risk of disputes and protect the rights of users and providers of goods and/or services from losses caused by uncertainty about when obligations will be performed. Based on this analysis, it is necessary to revisit the provisions of the term "timely" in the management of float funds by electronic money issuers to prevent legal uncertainty, which could undermine public confidence in the electronic money system. This is especially significant considering the changes and developments in financial technology since the enactment of electronic money regulations in 2018.

In his theory of legal certainty, G. Radbruch (1961) identified four key aspects the law must be established as a regulation stipulated in legislation: (1) the law should be grounded in factual circumstances rather than being based on subjective explanations or formulations related to judicial assessments; (2) facts must be articulated through a clear and consistent mechanism to avoid misinterpretation and facilitate ease of application; (3) positive law should not be subject to frequent changes.

G. Radbruch (1961) emphasised that facts must be formulated clearly to avoid confusion in interpretation. The timely application of the phrase requires clarity on when an obligation is considered to have been fulfilled within the prescribed timeframe. This theory underscores that ambiguity in interpreting the term "timely" can lead to confusion and potentially cause conflicts between the parties involved, particularly issuers, users, and providers of goods and/or services.

Legal ambiguity arising from articles that are open to multiple interpretations can be considered a form of legal uncertainty in the enforcement of regulations in Indonesia, especially within the financial sector concerning electronic money. This uncertainty can complicate the interpretation, application, and supervision of existing regulations, thereby hindering consumer protection efforts and undermining certainty in the performance of the issuer's obligations. While agreements can provide a level of certainty because their substance is mutually agreed upon by the parties, they stay binding only on those involved. The certainty derived from an agreement tends to be flexible and contingent upon the concrete arrangements made by the parties, resulting in varied standards among different electronic money issuers.

This situation contrasts with general and binding regulations, as individual agreements do not always yield uniform standards. For instance, one issuer may establish a deadline for the performance of obligations within one day, while another issuer may allow three days. This flexibility can create uncertainty for users, who may be unclear about the general standards that should apply.

To address this uncertainty, more definitive regulations are needed that stipulate the definition and time limits related to the performance of float fund management obligations. With these stricter provisions, all electronic money issuers will follow the same standards, preventing divergent interpretations and providing better legal certainty for all parties involved, particularly users and providers of goods and/or services. This will also assist issuers in consistently performing their obligations, reduce the risk of disputes, and facilitate supervision by the relevant authorities.

In terms of the vagueness of the term "timely", further clarity is needed on the concrete timeframe that should be considered "timely". A clear definition of this timeframe will provide guidelines for users and providers of goods and/or services concerning the performance of obligations to manage float funds by electronic money issuers, ensuring legal certainty for all parties involved. Setting firm and definite time limits will minimise the potential for varying interpretations, which are often a source of disputes between the parties. For example, a provision that explicitly states "within 24 hours" or "on the next business day" can prevent ambiguity that arises from more general phrases like "timely". To achieve this, the term "timely" should be reviewed in the article, either by establishing general regulatory provisions or through a written agreement between the parties. A regulatory approach that specifies concrete time limits in Article 49, paragraph (2), could be incorporated into a written agreement with users or providers of goods and/or services, thereby binding the parties to a time commitment that aligns with the needs of managing float funds in electronic money.

Conclusions

This study fulfilled its purpose by identifying the legal uncertainty arising from the vagueness of the phrase, as well as its impact on legal certainty for issuers, users, and supervisory authorities. The present study examined the term "timely" through grammatical analysis to explore its literal meaning, as well as historical analysis to trace the development of the concept within the relevant legal framework. Additionally, normative analysis is conducted by reviewing the evolution of regulations related to electronic money from 2009 to 2018. The findings of this study revealed regulatory developments; however, ambiguity persists regarding the timeframe for the performance of obligations by electronic money issuers. The key conclusion of this study is that the ambiguity of the phrase creates legal uncertainty in the implementation of obligations by electronic money issuers, which undermines users' trust in digital payment systems. Furthermore, this study identified the need for a concrete timeframe as a clearer legal guideline. Such clarity would help reduce interpretational differences, improve the effectiveness of supervision

by relevant authorities, and encourage more consistent compliance by e-money issuers.

The significance of this study lies in the value of legal clarity in the regulation of electronic money, particularly for the protection of consumer interests and the maintenance of the integrity of the digital financial system. More specific timelines can help reduce potential disputes and uncertainty among relevant parties, including issuers, users, and providers of goods and/or services. In the context of an evolving digital financial sector, certainty in the timing of obligations is a vital element in maintaining public confidence and industry stability, which supports technological innovation.

Further research could be directed towards comparative studies with analogous regulatory frameworks in other countries to explore how clearer timing may affect the level of compliance by issuers and consumer protection. Limitations of this study included its reliance on existing regulatory texts without cross-jurisdictional comparative analysis, which may limit insights into effective regulatory practices in other countries. Further research using this comparative approach will provide a broader understanding of effective regulatory solutions for overcoming normative ambiguity regarding the timely performance of obligations concerning the management of float funds.

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Conflict of Interest

The authors of this study declare no conflict of interest.

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Значення терміна «своєчасно» у виконанні зобов'язань з управління фондами обігу електронних грошей

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Анотація
Цифрові технології суттєво трансформували фінансову індустрію, зокрема в упровадженні систем електронних грошей в Індонезії, які стали ключовим платіжним інструментом у цифрову епоху. Метою цього дослідження було проаналізувати доцільність використання поняття «своєчасний» на прикладі статті 49, пункті (2), літера «с» Положення Банку Індонезії № 20/06/PBI/2018 «Про електронні гроші», що регулює зобов'язання емітентів електронних грошей в управлінні розміщеними коштами. За допомогою нормативно-правового методу розглянуто граматичне й історичне тлумачення терміна «своєчасний», з огляду на його вплив на правову визначеність. Метод тлумачення передбачав аналіз змін у політиці Банку Індонезії, внесених до нормативних актів у період з 2009-го до 2018 року, з метою висвітлення еволюції вимог і правил щодо управління фондами, які знаходяться в обігу. Результати засвідчили, що нечіткість терміна «своєчасний» призвела до різних тлумачень, які впливають на емітентів електронних грошей, користувачів і наглядові органи, створюючи правову невизначеність. Розбіжності в тлумаченні не лише призводять до юридичної невизначеності, а й можуть підірвати довіру користувачів до цифрових платіжних систем. Подальший аналіз дав підстави констатувати критичну роль цього терміна в забезпеченні цілісності й стабільності екосистеми електронних грошей. Нечіткість термінів виконання зобов'язань актуалізує необхідність встановлення конкретних часових меж для мінімізації потенційних конфліктів і невизначеностей. У дослідженні рекомендовано регуляторам розробити чіткіші інструкції з управління обіговими коштами в електронних грошах, щоб підвищити рівень правової визначеності й захистити інтереси споживачів. Встановлення конкретного часового стандарту для управління фондами, що знаходяться в обігу, допоможе емітентам послідовно виконувати свої зобов'язання та спростить процес нагляду для регуляторних органів

Ключові слова:
цифрові фінанси; тлумачення; неоднозначність; правова невизначеність; регулювання

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