MINISTRY OF INTERNAL AFFAIRS OF UKRAINE
NATIONAL ACADEMY OF INTERNAL AFFAIRS

LAW JOURNAL

OF THE NATIONAL ACADEMY OF INTERNAL AFFAIRS

Scientific Journal

Volume 14, No. 1
2024

Kyiv
2024

ISSN 2519-4216
E-ISSN 2519-4313
DOI: 10.56215/naia-chasopis/1.2024

Founder:
National Academy of Internal Affairs

Year of foundation: 2011

Recommended for printing and distribution
via the Internet by the Academic Council
of National Academy of Internal Affairs
(Minutes No. 3 of February 27, 2024)

Media identifier in the Register of Media Entities R30-02448
Decision of the National Council of Ukraine on Television and Radio Broadcasting
of 11 January 2024 No. 26

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

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

Law Journal of the National Academy of Internal Affairs / Ed. by S. Cherniavskyi (Editor-in-Chief) et al. Kyiv: National Academy of Internal Affairs, 2024. Vol. 14, No. 1. 93 p.

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МІНІСТЕРСТВО ВНУТРІШНІХ СПРАВ УКРАЇНИ
НАЦІОНАЛЬНА АКАДЕМІЯ ВНУТРІШНІХ СПРАВ

ЮРИДИЧНИЙ ЧАСОПИС
НАЦІОНАЛЬНОЇ АКАДЕМІЇ ВНУТРІШНІХ СПРАВ

Науковий журнал

Том 14, № 1
2024

Київ
2024

ISSN 2519-4216
E-ISSN 2519-4313
DOI: 10.56215/naia-chasopis/1.2024

Засновник:
Національна академія внутрішніх справ

Рік заснування: 2011

Рекомендовано до друку та поширення
через мережу Інтернет Вченою радою
Національної академії внутрішніх справ
(протокол № 3 від 27 лютого 2024 р.)

Ідентифікатор медіа в Реєстрі суб'єктів у сфері медіа R30-02448
Рішення Національної ради України з питань телебачення і радіомовлення
від 11 січня 2024 року № 26

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

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

Юридичний часопис Національної академії внутрішніх справ : наук. журн. / [редкол.: С. Чернявський (голов. ред.) та ін.]. – Київ : Нац. акад. внутр. справ, 2024. – Т. 14, № 1. – 93 с.

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

LAW JOURNAL
OF THE NATIONAL ACADEMY OF INTERNAL AFFAIRS
Volume 14, No. 1

Editorial Board

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ЗМІСТ

UDC 343.9
DOI: 10.56215/naia-chasopis/1.2024.09

International and European forensic support standards for criminal proceedings

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Abstract
The research relevance is determined by the Ukrainian candidateship European Union membership, and therefore one of its priority tasks is to adapt all legal mechanisms for regulating public relations to European standards, including in the area of criminal proceedings. The study aims to define the concept and content of international and European standards of forensic support of criminal proceedings. Comparative legal, systemic structural, and dogmatic methods were used in the study. Based on the study results, it is established that international and European standards of criminalistics support criminal proceedings covering both criminal procedural and forensic aspects. The author argues that in the criminal procedural aspect, such standards are manifested in the fact that all actions in criminal proceedings are carried out exclusively in the manner prescribed by criminal procedural legislation. A generalised statement on the fact that in the field of criminal proceedings, it is permissible to use the category of international standards for the implementation of this type of state activity in the course of its forensic support, but the procedural rules of both investigative and judicial activities cannot be brought by the international community to a single standard for all countries, since they are specific to each state depending on the system of government, legal system, historical, political and other features. The provisions of international and European standards of forensic support of criminal proceedings are also analysed, concluding that in the forensic aspect, criminal proceedings are implemented with the use of appropriate technical, tactical, and forensic support, and the allocation of such positions is of practical importance to ensure effective achievement of the objectives of criminal proceedings by the best international and European standards. The study findings can be used for further scientific research on the issues of criminal proceedings, as well as for improving the efficiency of the relevant part of Ukrainian criminal procedure legislation and law enforcement activities

Keywords
investigation; criminal offence; human rights and freedoms; investigative (detective) actions; forensic means

Article's History:
Received: 21.10.2023
Revised: 04.02.2024
Accepted: 27.02.2024

Suggest Citation:
Chornous, Yu., & Dulskyi, O. (2024). International and European forensic support standards for criminal proceedings. *Law Journal of the National Academy of Internal Affairs*, 14(1), 9-18. doi: 10.56215/naia-chasopis/1.2024.09.

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Introduction

The research relevance is determined by several reasons. Firstly, Ukraine's course of integration into the European community involves adjustment of its legislation to the generally accepted standards of the European and international level in the field of regulation of all social relations, and forensic support of criminal proceedings in this process is no exception. Secondly, the armed aggression against Ukraine and war crimes committed against its citizens, as well as the need for their effective investigation, indicate the need to review the existing European and international standards of criminalistics support of criminal proceedings, both in Ukraine and worldwide, and their compliance with the requirements of the times in terms of the exercise of human and civil rights and freedoms.

The search for new criminal procedural procedures, which, following European and international legal standards, would be primarily focused on the restorative effect of justice, is highly relevant and has important theoretical and practical significance. The priority in law-making and law enforcement activities is the observance of human rights and freedoms, so this aspect should be addressed first and foremost when formulating international and European standards. The most optimal way to implement these standards in the criminal proceedings in Ukraine would be to create a criminal justice system that would function with maximum consideration of all its elements, which have their specific features, including forensic and criminological ones.

The issue of compliance with international and European standards was covered by V. Skryl (2023), who studies them in the forensic task-solving aspect in the field of detection and prevention of financial criminal offences. Thus, the researcher notes that internal factors and external threats to the financial security of business entities in general and financial institutions in particular under martial law require the development of a coherent strategy of Ukraine following European and international standards to neutralise these threats and increase the effectiveness of financial security.

Several studies also discuss the issues of international and European standards in solving other tasks in criminal proceedings. In particular, it is worth noting Y. Chornous *et al.* (2023), as they significantly contributed to the development of criminal procedure and forensic science in the context of the formation of international and European standards of lawmaking and law enforcement. The researchers investigated the issue of increasing the effectiveness of the investigation and prevention of crimes committed in the field of sports using the latest technologies and innovative approaches in forensics during the collection of evidence, considering the standards that have already been developed over time and are effective in criminal proceedings in European and other countries.

However, at the present stage in Ukraine, there is no unanimity of understanding among scholars regarding the very concept, content and, accordingly, the peculiarities of practical implementation of international and European standards of criminalistics support of criminal proceedings. According to T. Babchynska (2019), to avoid disputes on this issue, it is necessary to address the formation of a unified law enforcement practice in the implementation of international standards of the right to defence in the examination of testimony during court proceedings.

Another, more practical, aspect in the field of criminal proceedings is highlighted by D. Magherescu (2022), who notes that the use of forensic science in criminal proceedings is a real problem for the judicial system. According to the scholar, this situation should be integrated into the overall structure of criminal justice, based primarily on traditional principles, as well as on European principles, the most important of which are due process and the resolution of criminal cases within a reasonable time.

Based on the analysis of the provisions of the Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), C. Walz *et al.* (2023) emphasise that a significant problem for states that accede to international legal instruments may be the fulfilment of the obligations stipulated by them. The researcher notes that not all countries, for example, can provide medical and forensic examinations after sexual violence, as well as assistance and counselling in case of trauma. In addition, participating States are also obliged to maintain effective criminal justice standards and procedures for investigating and punishing acts of violence, and the implementation of these rules is currently very uneven in individual countries.

The study aims to examine the main international and European standards of criminalistics support of criminal proceedings and their compliance with the requirements in the area of implementation and protection of human and civil rights. Following the study goal, the existing international legal acts regulating these issues were analysed and practical recommendations for the implementation of European and international standards of criminalistics support of criminal proceedings into Ukrainian legislation to improve its efficiency were developed.

Materials and Methods

Both general scientific and special methods were used in the study to carry out a thorough study of the object of research. The analysis and synthesis methods were used to carry out a comprehensive analysis of the scientific works of researchers who directly or indirectly studied issues related to international and European standards of criminal justice and forensic support for

the investigation of criminal offences. Thus, the heuristic method was used to study various aspects of the interpretation of the concept of "standards", both in terms of observance of human rights and freedoms and ensuring due process of criminal investigation. The generalisation method was used to formulate the study results and to identify groups of international and European standards. Induction and deduction methods were used to study various aspects of the interpretation of the concept of "standards", both in terms of observance of human rights and freedoms and ensuring due process of criminal proceedings and their forensic support. The comparison, description and classification methods were used to systematise and summarise the views available in science regarding the forms of expression of standards in the course of criminal proceedings' forensic support.

The comparative legal method, the systemic and structural, and the dogmatic approaches were used as special methods. The comparative legal method was used to analyse the rules of substantive and procedural law, scientific categories, definitions, and approaches. The systemic and structural method was used to identify and systematise the subjects of criminalistics support in criminal proceedings and to determine the international and European requirements for their activities. The dogmatic method was used to formulate scientific concepts and categories, clarify the conceptual and categorical apparatus of forensic science and the science of criminal procedure, and define the concepts of "international standard" and "European standard".

The reference base of the study includes various regulatory acts and international documents related to the standards of criminalistics support of criminal proceedings. It covers both national legislations, in particular the laws of Ukraine on standardisation and amendments to the Constitution, and international standards, including ISO international standards. At the same time, international conventions and documents designed to protect human rights, prevent torture and ill-treatment, and ensure fair justice were analysed. The UN General Assembly resolutions, in particular on sustainable development, complement the normative framework as they are aimed at improving criminal justice and ensuring fairness in the international context. This variety of sources provides a wide range of information and covers various aspects of forensic support in criminal proceedings.

The Laws of Ukraine No. 1315-VII[1] and No. 1401-VIII[2] and international standards such as ISO 21043-1:2021[3] and ISO 21043-2:2021[4] were used in the study. Furthermore, international documents and conventions such as the Rome Statute of the International Criminal Court[5], the International Covenant on Civil and Political Rights[6], the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment Scope of the Body of Principles[7], and the European Convention on Human Rights[8] were used in the analysis. The resolutions of the UN General Assembly, in particular on the 2030 Agenda for Sustainable Development[9], aiming to improve criminal justice and ensure fairness, were also considered.

Results

The science of criminal procedure and the science of forensics increasingly emphasise the need to bring criminal procedure activities, as well as forensic tools, methods and techniques used in the investigation of criminal offences, into line with international and European standards. However, the concept of "standard" itself, its interpretation in the international and European context in the course of criminal investigation and the achievement of the objectives of criminal proceedings raises many questions. The actual content of the "international standards" concept concerning the forensic support of criminal proceedings is multi-dimensional. In particular, when it comes to criminal procedure, international standards of human rights and freedoms are of key importance, since the proper level of observance of human rights and freedoms is one of the criteria for the admissibility of evidence obtained in criminal proceedings. Accordingly, during the investigation of criminal offences, the parties to criminal proceedings are obliged to strictly comply with the criminal procedural form. Concerning forensic activities, the forensic support of criminal proceedings, namely its technical, tactical, and forensic components, must comply with the leading standards of forensic tools, methods, and techniques.

During criminal proceedings, while collecting evidence, identification, demand, seizure, preservation, and recording of sources of criminally relevant information

[1] Law of Ukraine No. 1315-VII "On Standartisation". (2014, June). Retrieved from https://zakon.rada.gov.ua/laws/show/1315-18#Text.
[2] Law of Ukraine No. 1401-VIII "On Amendments to the Constitution of Ukraine (Regarding Justice)". (2016, June). Retrieved from https://zakon.rada.gov.ua/laws/show/1401-19#n2.
[3] ISO 21043-1:2021. (2021, September). Retrieved from https://online.budstandart.com/ua/catalog/doc-page.html?id_doc=96757.
[4] ISO 21043-2:2021. (2021, December). Retrieved from https://online.budstandart.com/ua/catalog/doc-page.html?id_doc=96758.
[5] Rome Statute of the International Criminal Court. (1998, July). Retrieved from https://zakon.rada.gov.ua/laws/show/995_588#Text.
[6] International Covenant on Civil and Political Rights. (1966, December). Retrieved from https://zakon.rada.gov.ua/laws/show/995_043#Text.
[7] Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment Scope of the Body of Principles. (1988, December). Retrieved from https://ips.ligazakon.net/document/view/MU88315?an=11&ed=1988_12_09.
[8] European Convention on Human Rights. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004#Text.
[9] Resolution Adopted by the General Assembly on 25 September 2015 No. 70/1 "Transforming our World: The 2030 Agenda for Sustainable Development". (2015, September). Retrieved from https://www.undp.org/sites/g/files/zskgke326/files/migration/ua/Agenda2030-eng.pdf.

that may acquire the meaning of factual data, and further – sources of evidence in criminal proceedings, is carried out. Accordingly, the concept of "standard" should be used in the sense of "requirements" for both lawmaking and law enforcement activities based on the provisions of international and European legal sources and the best practices of European democratic states.

However, this does not encompass the entire meaning of the concept. Thus, the interpretation of the second meaning of the concept of "international standard" is based on the interpretation of clause 10 of Article 1 of the Law of Ukraine "On Standardisation" of 05 June 2014[1] as "a standard adopted by an international standardisation organisation and available to a wide range of users". Thus, international standards are formed by the International Organisation for Standardisation (ISO), an international standard-setting body consisting of representatives of various national standardisation organisations (International Organisation for Standardisation). In the field of forensic science, the European Network of Forensic Science Institutes (ENFSI) sets important European standards in forensic interpretation. These are standards for the exchange of information between countries in the field of forensic science, the organisation of international cooperation in this field, as well as in expertise, and the organisation and conduct of training and advanced training of forensic research specialists.

The national standardisation body, which is the State Enterprise "Ukrainian Research and Training Centre for Standardisation, Certification and Quality", is empowered to harmonise national standards and codes of practice with relevant international and regional standards and codes of practice. This means that they are responsible for ensuring that national regulations are in line with international standards, which contributes to the unification of approaches and improves the quality of products and services at the international level (Dulskyi, 2023). There are several international standards in place in Ukraine that are already being implemented in the forensic field. This is the international standard DSTU ISO 21043-1:2021 "Criminalistics. Part 1: Terms and Definitions"[2], DSTU ISO 21043-2:2021 "Detection, Recording, Seizure, Transportation and Storage of Objects"[3] and several others.

The concept of "standard" is also mentioned in part 2 of Article 567 of the Criminal Procedure Code of Ukraine "Interrogation at the request of a competent authority of a foreign state by means of a video or telephone conference"[4]. Interrogation by video or telephone conference is conducted following the requirements of the procedural legislation of the requesting party if it does not contradict the principles of the criminal procedural legislation of Ukraine and the generally recognised standards of human rights and fundamental freedoms.

Thus, the concepts of both international and European standards in criminal proceedings, despite the active use of these terms in scientific works, in the practical implementation of a range of practical tasks, are quite diverse in terms of their interpretation and practical expression, and to date, no unified scientific opinion has been formed on this issue. The study analysis results conclude that the interpretation of the term "standard" has found its expression in both international and European contexts. Importantly, such standards apply to all persons involved in criminal proceedings. This includes both the prosecution and the defence, as well as the court, which implements the function of justice.

International standards for the protection of human rights and fundamental freedoms are divided into universal (applicable worldwide) and regional (applicable in a particular region of the globe). These international standards of forensic support of criminal proceedings are implemented both during the pre-trial investigation and the trial. It is worth emphasising the importance of the International Criminal Court, a permanent international organisation that has jurisdiction over international crimes and, in some cases, crimes of an international nature. The Court operates under the Rome Statute of 1998[5].

Thus, the International Criminal Court may exercise its functions and powers, as provided for in the Statute, on the territory of any State Party and, by special agreement, on the territory of any other State; jurisdiction covers the most serious crimes of concern to the international community, including (a) crimes of genocide; (b) crimes against humanity; (c) war crimes; and (d) the crime of aggression, as defined in Articles 4 and 5 of the Statute of the International Criminal Court[6]. According to W. Arévalo-Ramírez & P. Martini (2022), who studied the interaction between international legal standards defined by the Rome Statute of the International Criminal Court (ICC) and national legislation in terms of the special peace jurisdiction, the adoption of international standards serves both to demonstrate the true nature of national options for the implementation of the transitional justice process and subsequent trial and to close the preliminary proceedings before the ICC.

It is worth noting that on 20 January 2000, Ukraine signed the Rome Statute of the International Criminal

[1] Law of Ukraine No. 1315-VII "On Standartisation". (2014, June). Retrieved from https://zakon.rada.gov.ua/laws/show/1315-18#Text.
[2] ISO 21043-1:2021. (2021, September). Retrieved from https://online.budstandart.com/ua/catalog/doc-page.html?id_doc=96757.
[3] ISO 21043-2:2021. (2021, December). Retrieved from https://online.budstandart.com/ua/catalog/doc-page.html?id_doc=96758.
[4] Criminal Procedure Code of Ukraine. (2012, May). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[5] Rome Statute of the International Criminal Court. (1998, July). Retrieved from https://zakon.rada.gov.ua/laws/show/995_588#Text.
[6] Ibidem, 1998

Court but did not ratify it. At the same time, Ukraine has recognised its jurisdiction (following the 02.06.2016[1] amendments to the Constitution of Ukraine[2]) *ad hoc* on investigating war crimes committed by Russia on its territory. There are several important issues in this regard. For example, in the current circumstances, it is important not only to ensure the proper procedural procedure for collecting evidence by the Office of the Prosecutor of the International Criminal Court but also the forensic aspect of collecting evidence by this entity. The development of the forensic methodology for the investigation and trial of international war crimes by the International Criminal Court is also an important task, which involves the development of the most effective methods and means of activity following the leading standards. This includes the full range of issues related to forensic technical, tactical, forensic, and methodological support to ensure the effective and fair investigation and trial of international war crimes.

The solution to the above-mentioned problematic issues in Ukraine is possible only with due regard to the international experience of investigating international crimes. For instance, post-conflict transitional justice increasingly relies on the use of specialised investigative bodies to gather facts for trials of alleged perpetrators (Kolaneci & Pejo, 2023). The United Nations Investigative Team to Support Accountability for Crimes Committed by the Islamic State of Iraq and the Levant conducted interviews in Iraq with victims of crimes committed by the ISIL (Reicherter *et al.*, 2022). This experience should be used in the work of Ukrainian investigators with victims of war crimes committed during the Russian-Ukrainian war.

International and European standards of forensic support of criminal proceedings should consider the provisions of multilateral and bilateral international treaties on cooperation in criminal investigations. There are more than fifty bilateral treaties between Ukraine and foreign partner states alone, and they regulate specific mechanisms of cooperation adapted to the law enforcement practice of the interacting states.

Thus, the "standards of criminalistics support of criminal proceedings" (in the context of theoretical interpretation and practical activity) are those rules which are a model for the implementation of law enforcement activities, which include, in particular, the development and implementation of forensic recommendations on the use of forensic methods, tools, techniques, to meet the needs of practical activity of competent subjects in the implementation of their cognitive activity. The latter is manifested when working with forensically relevant information to include both factual data and sources of evidence relevant to criminal proceedings based on the provisions of supranational international legal acts, as well as the law enforcement practice of supranational international courts whose jurisdiction is recognised by Ukraine. Furthermore, these standards should be integrated into the national legal system of Ukraine, and the regulations adopted by the competent standardisation body establishing the rules for working with forensically relevant information should meet the modern requirements of science and technology, as well as the best practices of law enforcement agencies in democratic countries.

International and European standards of forensic support of criminal proceedings cover criminal procedural and forensic aspects. These aspects are interrelated but have different forms of expression. The criminal procedural form provides for compliance with certain requirements enshrined in international treaties (the mandatory implementation of which has been confirmed by the Verkhovna Rada of Ukraine), which must be observed by all entities representing the parties to criminal proceedings in the collection, examination, evaluation, and use of evidence. Their violation or non-compliance results not only in non-compliance with the criminal procedural legislation of Ukraine but also, as a consequence, in the inadmissibility of the evidence and its sources. From a forensic perspective, compliance with such international and European standards is a key requirement in the development of means, methods, and techniques of forensic support (in the areas of technical, tactical, methodological, and forensic support). For example, in the development of new technical and forensic tools designed to work with forensically relevant information, as well as in the development of new tactics, provisions of forensic investigation methods, etc.

The study results suggest that the provisions of international legal acts and the results of law enforcement practice of international judicial institutions (in the European space, in particular, within the Council of Europe) enshrine provisions on the observance of fundamental human rights and freedoms, as well as forensic means, methods, techniques, and recommendations for their application based on their provisions. They contain requirements for handling forensically relevant information for the legitimate and effective investigation of criminal offences and achievement of the objectives of criminal proceedings.

The beginning of the formation of international standards of human rights and freedoms is associated with the activities of the United Nations, and the formation of the legal framework for the activities of the international organisation. First and foremost, these are the leading international treaties ratified by the

[1] Law of Ukraine No. 1401-VIII "On Amendments to the Constitution of Ukraine (Regarding Justice)". (2016, June). Retrieved from https://zakon.rada.gov.ua/laws/show/1401-19#n2.
[2] Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80/ed19960628#Text.

member states of the international organisation[1,2,3], but there are numerous documents of a recommendatory nature that define international standards for the protection of human rights and freedoms and are used as a guide in lawmaking and law enforcement activities.

International standards in the context of ensuring human rights and fundamental freedoms are divided into universal (applicable worldwide) and regional (applicable in a particular region of the globe) standards. In the case of Ukraine, the relevant regional standards are European standards. The content of European standards is shaped by international treaties adopted in the "European space", for example, within the framework of the Council of Europe. The key treaties here are the European Convention on Human Rights[4] and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment[5].

International legal documents set out requirements for the activities of bodies conducting criminal proceedings. In particular, they can be identified based on the results of studying multilateral and bilateral international treaties on cooperation between the competent authorities of states in the field of criminal justice, as well as the implementation of the tasks of the defence in these circumstances.

In this regard, it is worth noting the activities of international judicial institutions, the functioning of which generates international standards of criminal justice. First and foremost, this refers to an assessment of the results of the International Criminal Court, which is a permanent judicial institution of the United Nations and exercises universal international jurisdiction. A study of the Rome Statute of the International Criminal Court leads to the conclusion that the principles of proof established by this document are international standards for countries that have adopted and ratified this treaty. At the regional (European) level, this refers to the administration of justice and the formation of legal positions by the European Court of Human Rights (ECHR). Therefore, it is possible to note that the parties to criminal proceedings in the course of implementation of the tasks of criminal proceedings must comply with international standards in the context of human rights and freedoms. Particular attention in this regard is devoted to the activities of authorised persons, representatives of the prosecution and defence counsel as a key subject of the defence since at the legislative level they are obliged to provide evidence in criminal proceedings.

Discussion

It is important not only to study international and national standards of forensic support at the present stage but also to forecast development trends in this area for the future. The opinions of B. Holovkin (2020), noting that the international goals of global human development, which were set out in the UN Millennium Declaration[6] and the 2030 Agenda for Sustainable Development[7], will be the guidelines for further development in the field of criminalistics, is valid. Furthermore, the scholar's opinion that the scientific potential of criminal proceedings institutions will be aimed primarily at developing tools to reduce the impact on crime and social life of such negative social phenomena as poverty, social injustice and inequality, abuse of power by representatives of the authorities and society is also valid.

The importance of using international standards of forensic support of criminal proceedings in national systems is also noted by N. Abbasov (2022), V. Ladychenko *et al.* (2022) and V. Nehrebetskyi (2023). The last of these studies focuses on ensuring criminal proceedings when studying biometric systems during martial law. According to V. Nehrebetskyi (2023), international cooperation between criminalists and forensic experts in the system of mechanisms for investigating and combating war crimes, in particular in the context of the Russian invasion of Ukraine, is the most effective and appropriate for use in practice. This point of view coincides with the results of the study, which shows that the problem of improving international cooperation in the fight against crime is currently one of the most pressing in the activities of law enforcement agencies of democratic countries. In the era of digitalisation and innovative technologies, modern crime has acquired qualitatively new forms, its beneficial orientation has increased, the number of transnational offences has significantly increased, and the number of international criminal groups is growing.

Summing up the scientific discussion, Yu. Tsyhaniuk (2020) notes that the individual is the core aspect of the formation of international standards. In this aspect, the point of view of V. Shevchuk (2023) is that currently, in the context of martial law and modern European

[1] International Covenant on Civil and Political Rights. (1966, December). Retrieved from https://zakon.rada.gov.ua/laws/show/995_043#Text.
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integration processes, the criminalistics and criminal justice system of Ukraine are facing new challenges that will involve solving priority tasks in the context of war, is valid. This primarily concerns the formation of forensic knowledge following the current needs of the practice, the development of innovative forensic products, such means, techniques, and methods that will be aimed at combating crime related to the Russian invasion of Ukraine, as well as solving other important problems (Shevchuk, 2023). A similar point of view is supported by A. Schüller (2023), who notes that the precedent established in the context of the armed aggression against Ukraine can be used to strengthen international criminal justice, national justice, and international cooperation without depriving it of legitimacy through the creation of special courts. According to the scholar, there are still many conflicts that will bring great benefits if international criminal justice develops in an equal manner, adapted to all situations, considering the achievements of criminalistics and criminology.

The study results also coincide with the positions argued by H. Boreiko & V. Navrotska (2023) and B. Krzan (2021), who note that international criminal procedure combines elements of the accusatory and inquisitorial legal traditions, and thus forms a unique amalgam. However, according to the scholar, due to the wider scope and complexity of international crime dealt with by international criminal courts and tribunals, it might be noteworthy to consider the events and their previous experience through the prism of admissibility of evidence, which is not possible without regard to international standards of criminalistics in criminal proceedings.

A similar position is held by C. Seclì (2019), who studied the principle of "beyond reasonable doubt" and noted that it is necessary to confirm a criminal conviction due to the presumption of innocence. The author notes that although this rule is widely used in common law countries and even in some continental law countries, it is impossible to find a unanimous definition due to intense debates about its meaning in legal doctrines and international jurisprudence. In addition, the scholar concludes, that in the context of international criminal law, there are no rules on the best method of evaluating evidence to satisfy the "beyond reasonable doubt" standard.

As noted by C. Soler (2019), it is necessary to conduct criminal proceedings focused on the promotion and protection of human rights, as well as the overall provision of domestic, regional, and international criminal justice following universally recognised standards. The scholar suggests an idea of how the application of international criminal law can be consolidated and improved, both in terms of substantive international criminal law and procedural international criminal law, namely with the help of the tools offered by forensic science.

Thus, following the study results, it is possible to conclude what should be understood by the concept of "international and European standards of criminalistics support of criminal proceedings". First of all, these are international standards for the protection of human rights and freedoms, which today are universal in nature, are applied in all spheres of public life, and particular attention to their formation and observance applies to all actors operating in the field of criminal proceedings. The importance of international standards in the field of criminalistics support of criminal proceedings lies in the fact that they are the basis for the unification of international and national law, and therefore are a source of development and improvement of Ukrainian legal acts. Thus, it is possible to summarise that international criminalistic standards support criminal proceedings, firstly, including international standards of protection of human rights and freedoms. Within the framework of this study, given the presence of criminal procedural and forensic aspects in the subject matter, it should be noted that international standards of criminalistics support of criminal proceedings are aimed at two main goals: ensuring the observance of fundamental human rights and freedoms and preventing their violations.

Conclusions

It is possible to summarise that the concept of standards of criminalistics support of criminal proceedings can be classified as follows: depending on the binding nature of the source which enshrines the most important rights of participants to criminal proceedings – those contained in binding international acts and those contained in recommendatory international acts; depending on the scope of criminal justice standards – universal and regional; depending on the essence and significance of international standards of criminal justice.

Traditionally, the main focus has been on ensuring international and national standards of human rights and freedoms in criminal proceedings. This is explained by several arguments. Firstly, the vast majority of scientific works on international and European standards in criminal proceedings are devoted to the observance of human rights and freedoms, both in a broad and narrow sense. Secondly, the Constitution of Ukraine of 1996, the laws of Ukraine, and bylaws in the context of legal relations regulated by them contain the idea of legality, ensuring human rights and freedoms. Thirdly, international, and European standards for the use of forensic tools, methods and techniques, as noted above, are international standards developed by the International Organisation for Standardisation (ISO) and European standards developed by the European Network of Forensic Science Institutions (ENFSI), which define the process of working with forensically relevant information, regulate the algorithm of actions of competent entities. They aim to ensure that the proper

procedure for handling forensically relevant information contributes to the observance of human rights and freedoms in criminal proceedings.

The general standards of criminalistics support of criminal proceedings, which are in force at all stages and proceedings of criminal justice, provide for the protection of human and civil rights: the right to access to justice and fair trial, which include investigation and consideration of cases by special investigative and judicial bodies, promptness of proceedings, prevention of conviction in the case of investigation and consideration, provision of free qualified assistance to the participant in the process, awareness of the participants in the process of all procedural actions, their rights and obligations, provision of the opportunity to express their opinion, the right to freedom and personal inviolability.

Special standards of forensic support of criminal proceedings, which are applied depending on the procedural status of persons involved in criminal proceedings, should address several aspects. These include standards of the rights of participants in the process relating to criminal prosecution, such as the compliance of criminal procedural measures with the characteristics of the offender and the circumstances of the offence, the preference for non-judicial methods of resolving a legal conflict, and the obligations of states to prevent crime. The standards of the rights of victims and other participants in criminal proceedings are also considered, in particular, the right to defence in difficult situations during criminal proceedings and the observance of the interests of participants acting as victims and witnesses. In addition, it is advisable to consider fair restitution and compensation for the damage caused by the crime.

Further research in this area should focus on assessing the introduction of new technologies in the field of forensics that meet international and European standards, in particular in the areas of evidence collection, data analysis and human rights protection.

Acknowledgements

The author's team expresses its sincere gratitude to the Department of Preparation of Educational and Scientific Publications of the National Academy of Internal Affairs for providing technical assistance in the process of preparing the scientific article for publication.

Conflict of Interest

None.

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Міжнародні та європейські стандарти криміналістичного забезпечення кримінального провадження

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Анотація
Актуальність дослідження зумовлена тим, що Україна є кандидатом на членство в Європейський Союз, тому одне з пріоритетних її завдань полягає в адаптації всіх юридичних механізмів регулювання суспільних відносин до європейських стандартів, зокрема й у сфері кримінального провадження. Мета статті – визначити поняття і зміст міжнародних та європейських стандартів криміналістичного забезпечення кримінального провадження. Для досягнення мети застосовано порівняльно-правовий, системно-структурний і догматичний методи. За результатами здійсненого дослідження встановлено, що міжнародні та європейські стандарти криміналістичного забезпечення кримінального провадження охоплюють як кримінальний процесуальний, так і криміналістичний аспекти. Аргументовано положення, що в кримінальному процесуальному аспекті такі стандарти виявляються в тому, що всі дії в кримінальному провадженні здійснюють виключно в тому порядку, який визначений кримінальним процесуальним законодавством. Сформульовано узагальнене положення про те, що у сфері кримінального провадження під час його криміналістичного забезпечення допустимо використати категорію міжнародних стандартів здійснення цього виду державної діяльності, але процедурні правила як слідчої, так і судової діяльності не можуть бути приведені міжнародною спільнотою до єдиного для всіх країн стандарту, оскільки вони специфічні в кожній державі залежно від устрою, правової системи, історичних, політичних та інших особливостей. Також проаналізовано положення міжнародних і європейських стандартів криміналістичного забезпечення кримінального провадження, сформовано висновок про те, що в криміналістичному аспекті кримінальне провадження реалізують із застосуванням належного техніко-, тактико- й методико-криміналістичного забезпечення, а виокремлення таких позицій має практичне значення задля забезпечення ефективного досягнення завдань кримінального провадження за найкращими світовими та європейськими зразками. Практична цінність дослідження полягає в тому, що його результати може бути використано для подальших наукових розвідок з проблематики кримінального провадження, а також для підвищення ефективності відповідної частини українського кримінально-процесуального законодавства та правозастосовної діяльності

Ключові слова:
розслідування; кримінальне правопорушення; права та свободи людини; слідчі (розшукові) дії; криміналістичні засоби

UDC 343.982.9
DOI: 10.56215/naia-chasopis/1.2024.19

Forensic olfaction employment for solving crimes

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Abstract
The research on the use of forensic olfaction is relevant due to the need to highlight its content and rules of practical application in the analysis of odour traces of a criminal, which ensures improvement of crime solving and investigation. The study aims to analyse the olfaction information properties which individually identify a person about the odour traces left at the crime scene; to study the current possibilities of the methodology for conducting olfaction examinations; and to formulate proposals for improving the process of expert analysis of olfaction information in criminal proceedings. The study uses comparative legal, terminological, systemic, and structural, formal and logical methods, as well as the method of expert experiment. The author confirms the data on the individuality of each person's smell, in particular, based on cases from investigative practice, the author shows the possibility of establishing the individuality of odour traces and their belonging to a particular person, even in the case of a crime committed by two monozygotic twins. The author substantiates the possibility of collecting odour traces from various objects with which several persons had contact, and of isolating those odour particles, allowing detector dogs to identify their specific carrier. The study defines the general conditions and procedure for conducting an olfaction analysis of odour traces of a person being tested in connection with a criminal offence investigation. It is generalised that the work of detector dogs for the most effective odour analysis should be carried out in a special room without extraneous odours at a temperature of +20°C and relative humidity of 60-80%. The study systematises the general prohibitions that should be observed during an olfaction examination, which relate to the non-use of control and auxiliary odour samples of persons familiar to detector dogs; the work of an olfaction expert and a dog handler in a special room is separated to prevent the specialist from obtaining information about the specific location of the storage jar with the odour information that is being installed. The practical significance of the study is determined by the expansion of the ability of law enforcement agencies to identify persons involved in a crime by their odour traces left at the scene and to conduct forensic examinations using the method of forensic olfaction

Keywords:
scent trail; collection of human scent trails; forensic olfaction; dog handler; olfaction expert; specialised knowledge

Article's History:
Received: 06.11.2023
Revised: 01.02.2024
Accepted: 27.02.2024

Suggest Citation:
Yusupov, V., & Vaško, A. (2024). Forensic olfaction employment for solving crimes. *Law Journal of the National Academy of Internal Affairs*, 14(1), 19-30. doi: 10.56215/naia-chasopis/1.2024.19.

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Introduction

Criminals are increasingly attempting to conceal their identities by wearing gloves, caps, balaclavas and otherwise hiding their faces from recognition on CCTV cameras, physically destroying traces of their presence at the scene. Such measures to counteract the investigation of crimes are inherent in both traditional mercenary and violent crimes and those committed with the use of digital technologies. At the same time, in the vast majority of cases, the scent trail of the person who committed the crime remains at the scene. Odour traces are also left indoors on office chairs in the hacker's place of work and on peripherals of computer equipment used to commit cybercrime. If it is impossible to stop the release of odour traces into the environment and leave them on various objects, law enforcement agencies receive an important source of traces that allow them to accurately identify the person who touched certain objects or was in a certain place. Olfaction examination is responsible for resolving these issues. At the same time, in some cases, lawyers express doubts in court about the experts' conclusions, claiming that the evidence obtained from olfaction examinations is unreliable, claiming that special dogs used as "biological tools" are not scientific forensic tools and that the evidence obtained as a result of olfaction examinations is unreliable.

In forensic science and forensic examination, a methodology for conducting olfaction research has been developed, which is based on a scientifically developed method of forensic olfaction. Few scholars addressed the problems of forensic olfaction in solving crimes. Most studies address the issues of how special dogs detect scent traces at the scene of an incident, how to pursue a criminal, and how to detect various items prohibited for free circulation with the help of service dogs (Hochrein, 2019).

For instance, O.H. Voloshyn (2020) considered the rules for a dog handler with a sniffer dog to inspect the scene of an incident, provided some recommendations on typical places of detection of olfaction information and rules for the pursuit of a criminal who fled the scene. Scientists addressed the use of scent information by law enforcement dogs in performing various operational and service tasks, in particular during peacekeeping operations (Zarosylo *et al.*, 2020). A.V. Kobets & P.Ye. Antoniuk (2023) considered the procedural problems of using the olfaction research results in criminal proceedings, proposing a set of regulatory, legal, and methodological measures to make appropriate amendments to the legislation in the field of forensic science.

Several researchers addressed the use of olfaction information in law enforcement activities. Scientists classified human odour as a group of chemical compounds that unambiguously identify people. The mechanism of identification of scent traces by dogs was noted, which is not fully understood. The "multiplicity of human scents" was proved, by which dogs could detect the scent traces of a person (Doležal *et al.*, 2019). The issues of searching for missing persons, corpses, and explosives with the help of special dogs were also studied; the role of properly trained dogs in investigating pyromania and arson, searching for computer and electronic materials, locating fugitives, detecting currency, tobacco, and weapons, and combating poaching were highlighted. Recommendations on how special dogs, as special investigative tools, can be used in criminal proceedings were provided (Ricci *et al.*, 2021).

Only V.O. Yashchuk (2023) comprehensively considered the use of odour traces in solving crimes, focusing on the legal basis for the use of odour traces in crime investigation, the importance of odour traces when detected at the scene, the role of olfaction information in the subject of research in weapons science and explosives engineering and the general provisions for conducting olfaction research. The methods of detection, fixation, removal, preservation, and storage of odour traces were studied by V.V. Yusupov & A.O. Antoshchuk (2023).

At the same time, scientists did not address the tools of olfaction research, its central key and main technique – the method of forensic olfaction expertise, which combines the analysis of the physical properties of human odour and the physiological characteristics of the detector dog's identification of the corresponding trace, forensic recommendations on the proper conduct of an olfaction examination to determine whether the evidence obtained by an olfaction expert is reliable, admissible and appropriate in the criminal proceedings under investigation.

To substantiate and verify the effectiveness of the practical application of the forensic olfaction method, various options for conducting olfactory research in practical situations of criminal offences are to be studied. Therefore, the study aims to reveal the essence of the forensic olfaction method in conducting expert experiments to detect odour information on various objects and subsequently identify the persons who bear it with the help of detector dogs.

Materials and Methods

The study used the data obtained during the expert experiment by comparing different odour objects using a statistically valid group of detector dogs. The expert experiment was conducted based on the olfaction laboratory of the Vinnytsia Expert Centre of the Expert Service of the Ministry of Internal Affairs from 20.01.2024 to 25.01.2024. Dog handlers from the District Dog Training Department of the National Police of Ukraine and experts from the forensic olfaction laboratory of the Vinnytsia Expert Centre of the Ministry of Internal Affairs of Ukraine were involved in the olfaction experiment. The study involved 9 cocker spaniel detector dogs, all female, named Astra, Jeta, Dingo, Lutik, Melody, Nessie, Palma, Sarma and Chernysh. Three expert

experiments were conducted with different tasks: the first was to determine the presence of an odour trace on the object and its suitability for identification; the second was to establish the identity of the odour trace of a person removed from the crime weapon with the odour sample taken from the suspect using detector dogs; the third was to identify, the person whose odour trace was found on the crime weapon among three persons using detector dogs. The stages of the experiments depended on the type of task. The first experiment involved two stages; the second and third experiments involved three stages, due to the need to identify odour traces at the third stage. The experiments were conducted under pre-prepared conditions using the existing collections of odour traces from the Vinnytsia Expert Centre. The experiment involved one person (a statistician) who was not involved in the criminal justice system, one olfaction expert, and one dog handler. All of them are representatives of the Vinnytsia region. The experiment was conducted in compliance with ethical standards for all participants – humans and animals. All experimental studies were conducted by modern methodological approaches to the collection of forensically significant objects[1,2] and in compliance with relevant requirements and standards, including the requirements of ISO/IEC 17025:2005[3]. Animals were kept and handled according to the provisions of the Procedure for Experiments and Experiments on Animals[4] by Scientific Institutions and the European Convention for the Protection of Vertebrate Animals Used for Experimental and Other Scientific Purposes[5]. The study was carried out following the rules of the 1975[6] Helsinki Declaration. All participants were informed about how their anonymity was ensured, knew the goal of the experiments conducted, how samples of olfaction information would be used, and the risks involved.

To determine the effectiveness of the forensic olfaction method, three experiments were conducted to test the ability of detector dogs to distinguish between different scent traces and identify the persons who bear them. The experimental methodology was partially based on the developments of V.O. Yashchuk (2021; 2023). The general conditions of the experiment were as follows. Samples of scent traces of individuals known to the detector dogs in previous studies as auxiliary scent traces are not used as additional or control samples during olfaction sampling. Additional employments of the detector dog are carried out after changing the location of the inspected storage bank in the samplings. Before the detector dogs start their "job", the expert places the odour samples in a circle for comparison, performing a random arrangement of these objects. The examiner does not touch the cans with unprotected hands to avoid creating odour cues for the detector dog, and any manipulation of the odour samples is carried out exclusively with protective odourless gloves and alcoholised tweezers. In the course of an olfaction examination, an ethogram of the detector dog's signal response is made, and video is recorded using computer equipment.

The study was carried out in a specially equipped laboratory room, where external influences were excluded as much as possible and optimal conditions for detector dogs were created (temperature from +18 to +22°C, air humidity 65-80%). On the floor of the room, 12 special cones were placed at a distance of one metre from each other. These cones contained the fragrance samples prepared for analysis, as well as auxiliary objects for comparison. The sample storage jars were sterile and had labels explaining their purpose. The auxiliary objects consisted of neutral scent samples that were not detected by the dogs and were obtained from contact traces on the model objects left by persons unrelated to the experiment.

The olfaction sampling objects with odour were identical in appearance, namely: flannel napkins were the same in structure, size and colour and were uniformly packed in jars; cones for placing sampling objects were of the same shape, volume, and colour; sampling objects (storage jars) were installed in identical cones. Fresh (newly collected) samples (or traces) of individual odours of unauthorised persons were used as auxiliary odours, from which the comparison odour sample was taken in a specific sequence. In particular, if samples are taken from the hands before the test, the person must wash them with running water, without soap or any impurities, and dry them with a disposable towel. It is a mandatory rule that scent traces of persons known to the detector dogs in previous studies as auxiliary scent traces are not used. The handler who brings the detector dog into the sampling room should not know the location of the storage jars with the scent samples in the sampling chain. Detector dogs are used in a balanced state of their nervous processes.

Each time a trained dog was released for sampling, it would be given a sit command, which would test its

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capabilities. If the dog was not complying, it would be replaced by another dog, or the study would be rescheduled for another day or time. Before each dog starts, an expert (a person other than the dog handler working with the detector dog in the sampling room) re-arranges the objects of study in the sampling circle, ensuring that they are placed in a random order. Control over the course of olfaction identification is ensured by techniques based on elements of variation statistics, through multiple selection recognition of the wanted odour when changing the location of its source among a comparative number of objects, first with the help of one detector dog (Fig. 1), then with other dogs.

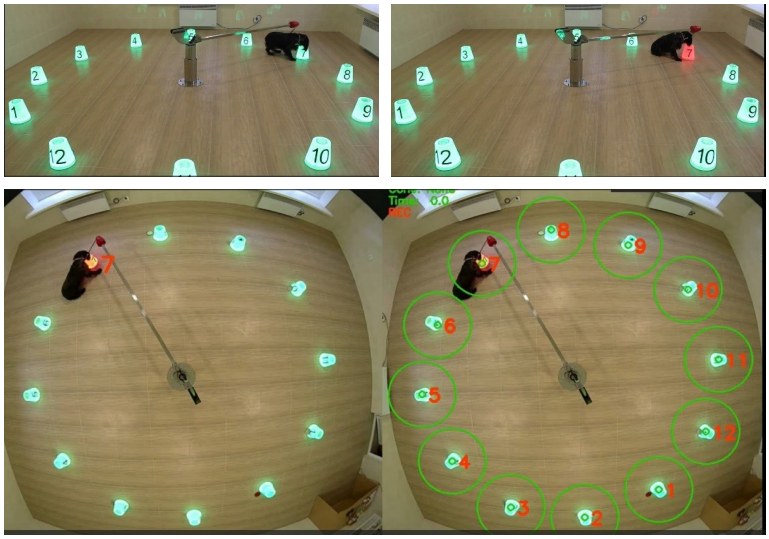

Figure 1. Forensic olfaction examination using a detector dog with the course of the examination recorded by computer equipment

Source: author's archive

A typical algorithm for using a detector dog consisted of the following techniques performed sequentially. At the start, for a minute, the dog was allowed to sniff a napkin in an open glass vessel with the initial odour sample to be searched for, after which it was run past the open vessels (comparison row) to sniff the odour samples contained in them in turn. If an odour sample is found among them that has a common source of origin with the sample given at the start, the dog assumes a signal pose developed by training and sits down near this object.

Results

The problem of olfaction examination in modern forensics. The issues of olfaction employment (the science of smells) in law enforcement practice are considered both in general by Forensic Science and its branches – forensic chemistry, forensic microbiology (Komarov *et al.*, 2015), forensic medicine (Titus *et al.*, 2022), and forensic olfaction. Human odour detection technologies gained attention due to their application in such areas as medicine, biometrics, criminal prosecution, criminal procedure, etc. The latest developments involve the identification of human scent in conjunction with the use of specially trained dogs to search for evidence. The results obtained from various studies have shown that odour can be considered important evidence for investigative purposes (Guleria *et al.*, 2022).

The theory of forensic olfaction is based on the provisions on the individuality of human odour and the possibility of its establishment using scientifically sound methods and means. In particular, technical means in forensic olfaction are its instrumental part. The principle of their operation is based on an analyser of a physical and chemical device that can distinguish between a range of odour molecules, register them in an olfactrogram, and determine individual mixtures of human odour with a high degree of coincidence (Ruvin, 2019). At the same time, at the present stage, there are no technical devices that perform an elementary analysis of the composition of an odour trace to solve a crime. Therefore, in the investigation of criminal offences, the forensic olfaction method is used, which is based on the action of the olfactory organ of detector dogs (Ruvin, 2019).

Odour is a "chemical signature" of a person. Determining the chemical composition of an odour can solve many problems of human identification, including in forensic practice (Titus *et al.*, 2022). Smell individualises a person and is highly stable and unchanging. That is, odour samples characterise the properties of the person who carries it (Basiuk, 2023). The substances responsible for the individuality of a person's smell are free fatty acids, the C_{12} – C_{26} fraction of which is positive when tested by detector dogs and are perceived by them as specific, unique characteristics of a person. The

smell impregnates objects worn by humans – shirts, suits, jackets, shoes, boots, etc. – and gets on various objects, including those that are in the hands or that the person has touched exposed parts of their body with. This leaves grease on the objects, which, when dispersed in the air, creates an odour, an odour trail (Yermolaeva *et al.*, 2009).

The simplicity of obtaining human odour samples, the short time required, and the relatively low cost of consumables are noted by R. Giese and K. Hackner (2020). The identification of odour traces by comparing samples collected from humans is carried out by olfaction sampling using special detector dogs that have previously completed a training course in olfaction research. Dogs of various breeds (German Shepherd, Malinois, Labrador, Rottweiler, Spaniel, etc.) and genders can be used in this area. A sniffer dog, in the course of a properly executed examination, determines the individual totality of a person's scent, ignoring several extraneous factors. The "multiplicity of human odours" is also mentioned by P. Doležal *et al.* (2019). The origin of the smell of a living being is volatile metabolites determined by the DNA code, which are continuously formed by humans and are found in the external traces of a person – in fat, traces of blood and other secretions. It is noted that special detector dogs are highly effective in identifying individuals based on samples of saliva and armpit sweat (Woidtke *et al.*, 2018).

A dog handler is employed at the scene to collect olfaction information. At the same time, a forensic olfaction expert or other veterinarian may be involved in the examination of the scene (Yatsenko, 2022). These persons carry out professional manipulations at the crime scene without the use of detector dogs. Such specialists understand the specifics of collecting scent traces and have the appropriate skills, including working with technical forensic equipment, such as special olfaction suitcases (Fig. 2). The combination of specialist work and technical resources for the collection of human odour traces has been documented in scientific research (van Dam *et al.*, 2019). Forensic experts are not authorised to use their detector dogs to collect scent traces. This is because these special dogs are used during olfaction research. This approach does not comply with the provisions of legal proceedings (in particular, the use of a single biological detector during the examination at the scene and in further investigative (search) actions, conducting an olfaction study, allows lawyers to claim bias of experts and examination tools – special dogs). In this regard, researchers also note the different interpretations of evidence obtained through the use of specially trained dogs by state legislation (Zarosylo *et al.*, 2020).

Figure 2. Selected samples of Ukrainian-made olfaction suitcases (a set)
Source: author's archive

Olfaction research concerns the legality of using detector dogs to search for various objects, such as weapons, drugs, etc., which are subsequently sent for this examination. In this regard, the case law of foreign countries regarding the admissibility of obtaining such objects is ambiguous. In particular, the highest court in the United States, the Supreme Court, found that the detection of drugs found in a man's suitcase at the airport, which took more than an hour, was an unacceptably long restriction on the right to freedom of movement. Determining the contents of a suitcase using a sniffer dog means inspecting it in a closed state, which can be considered biased. This procedure has significant differences from a police inspection of a person's belongings. Therefore, it is believed that sniffing suitcases, packages, etc. by a special dog is neither a procedural inspection nor a search[1]. Similarly, the court explained the cases of checking cars at checkpoints by authorised

[1] Judgment of the Supreme Court of the United States in Case No. 462 U.S. 696. (1983) "United States v. Place". (1983, June). Retrieved from https://supreme.justia.com/cases/federal/us/462/696/.

persons using special dogs, for example, to search for drugs[1]. In another court case (Illinois v. Caballes)[2], the court found that when a car is inspected with a dog specially trained to search for drugs, the authorised persons do not enter the car and do not conduct a procedural inspection. The rule that the car and the police officers are in a public place applies here, so in this case, it is not permissible to talk about the right to private property. In another case, police officers entered the porch of a private house and began searching for drugs using a sniffer dog. Such activity was recognised as entering a person's home or other property for a search, and this, accordingly, requires a court order or written consent of the homeowner[3].

In this regard, it is necessary to develop international standards for the training and expert certification of special detector dogs with a recommendation for optimal training for specific types of law enforcement activities (Fattah & Gharib, 2020; DeChant *et al*., 2020; Fattah *et al*., 2022). This would provide additional guarantees of recognition by the judicial system, including international courts, of evidence of a person's involvement in a committed offence based on olfaction sampling conducted by specially trained biological detector dogs (Brand, 2019).

Forensic olfaction research in Ukraine is an expert speciality within the framework of biological expertise[4]. The methodology for conducting olfaction research contains certain guaranteed principles of objectivity of the results of this expert study. The methodology was developed by experts from the State Scientific Research Forensic Centre of the Ministry of Internal Affairs of Ukraine and Vinnytsia Scientific Research Forensic Centre of the Ministry of Internal Affairs of Ukraine in 2021, and on 28 January 2022, the methodology was state registered (Registration Code 9.7.01)[5]. The content of the methodology is closed to the public due to the content of information for the official use of forensic olfaction experts. Thus, the method of forensic olfaction, which is the basis of the methodology for conducting the relevant research, has a set procedure and rules.

Experiment 1 – determining the presence of an odour trace on an object and its suitability for identification. Odour traces were extracted from the keys to the front door of the office and placed on a gauze napkin. The experiment aimed to determine whether the set of spare keys contained human odour traces and whether these odour traces were suitable for identification.

Two glass containers with olfaction information were obtained in preparation for the experiment. Each storage vessel was marked with explanatory labels and registration numbers: object 1 – a piece of gauze bandage with odour traces; object 2 – two sterile flannel napkins. To make duplicate odour traces, a piece of gauze bandage was placed in a glass container (jar), and flannel napkins were placed in the same jar. The jars were tightly closed with a threaded metal lid. After that, the storage jar was placed in a special temperature-controlled oven for a period of 5 hours and +20°C for the transfer and equilibration of olfaction information. Detector dogs named Melody, Astra and Nessie were used in the olfaction study. Detector dogs were used to detect human scent traces in scent samples collected from keys, and they were trained to respond to scent traces using a specially developed working behavioural stereotype. This stereotype allows the dog to detect human scent traces among other odours in a comparative range of objects.

The initial stage involved checking the availability and suitability of the olfaction information under investigation. To this end, the detector dogs Melody, Astra, and Nessie were given an auxiliary scent sample from another person to sniff in turn, in separate experiments. Then, in the comparison row, where the odour samples taken from the keys and the duplicate odour were placed, they were compared with the auxiliary samples obtained from the clothes of strangers. During the search for the duplicate odour sample, which was presented at the beginning, the presence or absence of a reaction of the detector dog to the odour samples, as well as the nature of this reaction, was determined. During the sampling to check for the presence of odour interference, the odour samples of Object 1 and Object 2 were sensed by the detector dogs Melody, Astra, and Nessie with a visible tentative reaction, indicating the presence of relevant olfaction information in the odour samples taken from the keys and their suitability for further olfaction research.

The next stage took place in the same room, which was ventilated for half an hour and the floor was cleaned without the use of detergents. An expert wearing sterile rubber gloves placed glassware into the cone "5" (Object 2). The detector dogs Melody, Astra, and Nessie were given the odour sample from the set of keys as a search scent at the start of the test. While sniffing glass jars placed in numbered cones, the dogs alternately

[1] Judgment of the Supreme Court of the United States in the Case No. 531 U.S. 32. (2000) "Indianapolis v. Edmond". (2000, November). Retrieved from https://supreme.justia.com/cases/federal/us/531/32/.
[2] Judgment of the Supreme Court of the United States in the Case No. 543 U.S. 405. (2005) "Illinois v. Caballes". (2005, January). Retrieved from https://supreme.justia.com/cases/federal/us/543/405/.
[3] Judgment of the Supreme Court of the United States in the Case No. 569 U.S. 1. (2013) "Florida v. Jardines". (2013, March). Retrieved from https://supreme.justia.com/cases/federal/us/569/1/.
[4] Order of the Ministry of Internal Affairs of Ukraine No. 675 "On Approval of the Regulation on the Expert Qualification Commission of the Ministry of Internal Affairs and the Procedure for Attestation of Forensic Experts of the Expert Service of the Ministry of Internal Affairs". (2020, September). Retrieved from https://zakononline.com.ua/documents/show/492560___753711.
[5] Methods of Conducting Odorological Studies No. 9.7.01. (2022, January). Retrieved from https://rmpse.minjust.gov.ua/search.

marked cones by crouching (positive signalling behaviour) 5, 1, and 8, where the search glass jar with the odour sample was alternately placed (Object 1). Melody, Astra, and Nessie did not demonstrate any other signalling reactions during the olfaction experiment. Thus, the olfaction trace information provided for examination was suitable for identification. Thus, as a result of the olfaction experiment 1, it was established that the odour sample extracted from the surface of the set of keys is suitable for identification of the person who carries it, using detector dogs.

Experiment 2 – identification of a human scent trail removed from a crime weapon with a scent sample taken from a suspect using detector dogs. The first object (Object 1) was a pistol, from the surface of the handle of which an odour trace was recovered (on a square-shaped flannel napkin). Object 2 is a sample of the odour trace taken from the suspect (on a square-shaped flannel napkin) (Fig. 3). The tasks that were consistently solved in the course of the experiment were to establish the presence of odour traces on the instrument of crime – the pistol grip; to establish the suitability of these odour traces for identifying their carrier – a person; to establish the affiliation of the odour trace found on the instrument of crime (pistol grip).

Figure 3. Procedure for sampling the smell of a suspect on a napkin
Source: author's archive

A piece of sterile gauze bandage was used to make duplicate odour samples from Object 1 and Object 2. Four glass jars were prepared: two contained odour traces from the objects submitted for examination (Jar 1 – the main odour from the pistol grip and Jar 2 – the main odour sample taken from the suspect) and the other two glass vessels – Jar 3 (duplicate of the odour extracted from the surface of the pistol grip) and Jar 4 (duplicate of the odour sample taken from the suspect). All four jars were tightly closed with a threaded metal lid. During the second olfaction experiment, detector dogs named Palma, Chernysh and Lyut were employed.

The initial stage is to check the availability and suitability of the olfaction information under investigation. For this purpose, the detector dogs Palma, Chernysh, and Lyutik sniffed an auxiliary odour sample collected from other persons in turn, in separate experiments. During this process, duplicate odour samples taken from the gun grip (Jar 2) and the suspect (Jar 4) were placed in a comparative row consisting of auxiliary odour samples collected from the clothing of unauthorised persons. In the process of sniffing the respective odour sample of an unauthorised person at the start, the dogs did not signal or react to the tested storage jars (Jar 2 and Jar 4) in any way.

The next (second) stage of the olfaction study involved a different test. All glass jars with samples from unauthorised persons were replaced with jars containing olfaction information taken as samples from the forensic record – the odour library of the Expert Centre. The duplicate odour was randomly moved to different cones. In particular, at the beginning of the investigation, it was placed in cone 3 (namely Jar 3) – a duplicate of the main odour sample taken from the surface of the pistol grip, in cone 12 – the storage bank (Jar 4). Palma, Chernysh, and Liutik were allowed to smell Jar 1 (the main odour sample from the pistol grip) and Jar 2 (the main odour sample of the suspect) in turn. During the olfaction experiment, the dogs were alternately marked by crouching (positive signalling behaviour) near cones 4, 2 and 9, where the search glass jar with the duplicate odour sample from the gun handle (namely, Jar 3) was alternately placed, as well as cones 3, 6 and 10, where the Jar 4 (with the duplicate odour sample of the suspect) was alternately moved. Thus, at this stage, the olfaction odour information (detected on the gun handle and obtained from the suspect) was suitable for identification by detector dogs based on the method of forensic olfaction.

The next stage (the third stage of the experiment) involves a test to identify the odour detected on the gun grip with a sample of the odour obtained from the suspect. To ensure proper conditions for this stage of the olfaction experiment, the room was ventilated for half an hour and wet cleaned without the use of detergents. Twelve glass jars with new olfaction information taken from the forensic record – the Expert Centre's olfaction library – were placed in the circle of storage jars. Cone

5 contained a duplicate of the suspect's odour sample (Jar 4). The expert took turns giving the dogs Palma, Chernysh and Liutik a sniff of the duplicate olfaction information taken from the gun grip (Jar 2). During the first lap, Palma, Chernysh and Lyutik alternately showed positive signalling behaviour to cones numbered 5, 10, and 12, in which the suspect's scent sample was alternately placed (Jar 4). This experiment confirmed the common olfaction source of the odour traces (i.e. the suspect's odour) found on the gun grip and obtained as comparative biological samples from the suspect.

Thus, during the olfaction experiment, it was established that the odour trace obtained from the gun grip was suitable for identification from human odour samples. The odour obtained as a sample from a suspect can be used (i.e. is suitable) for identification among odour traces. With the help of detector dogs and the use of forensic olfaction, it was established that the odour sample extracted from the gun handle belonged to the suspect based on an olfaction comparison of the suspect's odour information.

Experiment 3 – identification of a person whose odour trace is found on a crime weapon. The objective of the experiment was to find out to whose person the odour traces found on the instrument of the crime (stocking mask) belonged. For the experiment, several objects were prepared: object 1 – an odour trace from a stocking used as a mask by one of the attackers during a robbery of Citizen R.; object 2 – an odour trace from the victim, citizen R.; object 3 – odour trace from the suspect Mr. T.; object 4 – odour trace from the suspect Mr. Z.; object 5 – odour trace from the metal pipe of the antenna from the scene; object 6 – odour trace of a shoe print on the ground from the scene. Uniform pieces of sterile gauze bandage with duplicate odour information were made, taken out of glass jars in turn and placed in other jars, which were tightly closed with metal lids. A total of 6 storage jars with odour information samples were prepared. The olfaction experiment was conducted at an air temperature of +19°C and relative humidity of 70%. In the third experiment, detector dogs were named: Sarma, Jeta, and Dingo.

At the initial (first) stage, tests were conducted to assess the dogs' ability to compare scent samples. The olfaction information of third parties was placed in the sample circle with the odour samples. Cone 7 contains the storage jar (Object 1) – a duplicate of the odour after adsorption extracted from the stocking; cone 3 contains the storage jar (Object 2) – a duplicate of the odour after adsorption taken from the victim; cone 6 contains the storage jar (Object 3) – a duplicate of the main odour sample after adsorption from the odour of suspect T.; a vault bank (Object 4) was placed in cone 8 – a duplicate of the main odour sample after adsorption from the smell of suspect Z.; the storage jar (Object 5) was placed in cone 10 – a duplicate of the main odour sample after adsorption from the metal pipe of the antenna; the storage jar (Object 6) was placed in cone 12 – a duplicate of the main odour sample after adsorption of the odour trace from the shoe print on the ground. The dog handler participating in the experiment did not give the detector dogs anything to sniff, i.e., during the sampling circle, they randomly sniffed odour objects that could potentially interfere with the comparative olfaction sampling by the detector dogs. When the detector dogs sniffed the glass jars containing the odour samples, the sniffing was carried out without any outside reactions.

At the next (second) stage of the olfaction study, the presence of human odour information in odour samples from objects 1, 5 and 6 was determined. In the comparative circle, samples of non-biological origin were placed among the auxiliary objects as odour samples. Cone 4 contained a storage jar (Object 1), a duplicate of the smell from the stocking; cone 7 contained another storage jar (Object 5), a duplicate of the smell from the metal pipe of the antenna; and cone 10 contained a storage jar (Object 6), a duplicate of the main sample of the smell of the shoe print on the ground. Initially, the detector dogs were not given anything to sniff, i.e. they were free to search for objects. Sarma, Dingo, and Jetta took turns showing a positive signal reaction (sitting) near cones 4, 7, and 10. The investigated odour information was alternately moved to cones 5, 6 and 12. The detector dogs also pointed to cones 5, 6, and 12. Given that dogs are trained to search for human biological odour, the forensic olfaction experiment found that the samples taken from Object 1 (odour trace from a stocking mask), Object 5 (odour trace from a metal pipe) and Object 6 (odour trace from shoes on the ground) contained odour traces of one person as a biological species, after which this stage of the study was terminated.

At the next (third) stage of the olfaction study, the odour information sample taken from Object 1 was compared with odour samples taken from citizens T. (Object 3), Z. (Object 4), and R. (Object 2). The sampling circle included 12 glass jars containing odour samples of unauthorised persons not involved in the criminal offence, with cone 4 containing the storage jar (Object 4); cone 7 containing the storage jar (Object 2); and cone 9 containing the storage jar (Object 3). First, the dogs were given the odour sample taken from Object 1 to sniff in turn. During the sampling circle, the detector dog Sarma pointed to cone 9 (Object 3), in which the storage jar with Mr. T's odour information was placed, with signal behaviour. The studied odour information was alternately moved to cones 1 and 8. During the sampling circle, the detector dogs also pointed to the aforementioned cones 1 and 8.

Thus, using the forensic olfaction method, using detector dogs, established that the odour sample extracted from the mask-stocking (Object 1), which was seized during the examination of the scene of the robbery of citizen R., contained human odour traces. In addition,

this odour trace (Object 1) has a common source of origin with the odour sample in Object 3, taken from Citizen T. The results of olfaction identification were confirmed by three detector dogs. This indicates that the odour trace of Object 1 matches the odour sample taken from Citizen T. (Object 3). The provision of the necessary conditions for the experiment and the identical results demonstrated by the detector dogs can assert that the examination was successful.

Discussion

The successful results of the experiments confirm previous successful cases of using olfaction examination and create a scientific basis for the use of this practice. During the investigation of a staged robbery attack on a judge, a TT pistol was found, from which shots were fired at citizen H. The investigator decided to take odour samples from the suspect, and in the olfaction laboratory, the expert "extracted" the odour trace from the firearm's handle and magazine, as well as from two black socks found at the crime scene and a pair of boots seized from the suspect. According to the conclusions of the dog experts, which were carried out on 22, 23 and 29 October, the comparative odour samples taken from the two black socks and two black boots belonging to suspect H. matched the available odour samples collected from the TT pistol grip and magazine, as well as from two work gloves seized during the inspection of the crime scene and the forest plantation near the crime scene[1].

It is not uncommon for judges to rely on the findings of forensic odour examinations in their decisions on a case. For example, during an investigation into the infliction of severe bodily harm that caused a person's death, a scent trace of the suspect was obtained from a tree branch used as the weapon. The investigator ordered a forensic olfaction examination. Three trained detector dogs were involved in the olfaction examination. Each of the dogs was tested for their memory and response to odours using scent traces from a special collection that is part of the olfaction laboratory. The study found that the scent collected from the blood of citizen O, had a common origin with the odour sample taken from the surface of the branch, as stated in the forensic odour examination report. Among the main evidence of the prosecution was the conclusion of this examination, which, together with other incriminating evidence, formed the basis for the judge's decision on the guilt of Citizen O[2]. This practice of appointing and conducting olfaction examinations demonstrated positive results, which were ensured by the methodologically correct application of the requirements of the Methodology for conducting olfaction examinations[3]. The effectiveness of this methodology was confirmed in this article.

Olfaction research can also identify monozygotic twins by odour traces, which is not possible by DNA analysis. During the investigation of a series of robberies against female postmen in one of the district centres of Vinnytsia region, a hat was torn off the attacker was recovered. An olfaction examination of the seized hat revealed odour traces of one of the two twin brothers who were being checked for involvement in the crime. At the same time, the victim was unable to distinguish with certainty between the twin brother who attacked her during the line-up, and expert DNA testing did not allow to establish which of the two twins had caused the traces of fatty substance on the lining of the hat. The result of the olfaction examination was used to prove the person's guilt in committing the alleged crimes[4]. Given the successful conduct of the 3rd experiment, the use of olfaction examination in such and similar cases is warranted.

The use of detector dogs in law enforcement is based on an in-depth study of the physicochemical and biological phenomena that underlie them. Given that the most similar features, including olfaction characteristics, should be present in close relatives, a special test was conducted to determine the ability of canines to differentiate odour samples collected from the body, hair and blood of people in a family relationship. During experiments with a group of 12 specialised dogs conducted by a group of researchers in 2009 (Yermolaeva *et al.*, 2009), there were no difficulties in separating the odour traces of parents and children, grandparents and grandchildren, and siblings in different variants of their matching (the odour traces of 532 donors were compared). In another series of experiments, a comparative study was conducted with odour traces obtained from the hands, feet and hair of monozygotic twins. Four twin pairs – two female and two male – served as donors of the traces to be compared. In the course of the experiment, the individual odours of each of the four pairs of twins were differentiated. The results of the experiments confirmed that even the closest people, in addition to the well-known differences in papillary patterns, voice, etc., also have individual smells. The use of scientifically based methods of conducting expert experiments considered in this study confirms these conclusions.

However, it is worth noting that not all factors that can affect the course of examinations have been sufficiently studied. Researchers have studied the impact of the type of training, the time of weaning and maternal

[1] Judgement of the Court of Appeal of Zhytomyr Region in Case No. 1/0690/4/11. (2011, December). Retrieved from http://reyestr.court.gov.ua/Review/20386611.
[2] Judgement of the Uzhhorod City District Court of Zakarpattia Region in Case No. 308/14602/15-к. (2019, August). Retrieved from https://reyestr.court.gov.ua/Review/83964850.
[3] Methods of Conducting Odorological Studies No. 9.7.01. (2022, January). Retrieved from https://rmpse.minjust.gov.ua/search.
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bonding on the effectiveness of drug detection by police dogs. Experiments were conducted during different periods when puppies were taken away from female dogs that fed them milk, and the performance of different groups of dogs in terms of their drug detection skills was studied (Fattah *et al.*, 2022). The use of special dogs to detect people with infectious and non-infectious diseases was also proposed by P. Jendrny *et al.* (2021). However, these research areas are still at an early stage. At the same time, researchers note that the sense of smell of dogs can be influenced by various parameters, such as genetics, environmental conditions, age, hydration, nutrition, microbiome, conditioning, exercise, management skills, diseases, and pharmaceuticals. The need to consider these features when conducting examinations with detector dogs requires further research. During the experiments, as mentioned above, dogs of the same breed showed the same results.

Experiments on the ability of special dogs to detect the smell of drugs and explosives from a set of odour traces (multiple odours) were conducted by E. Lauryn & K. Peranich (2021). Using an improved methodology for training detector dogs, the researchers succeeded in increasing the detection rate of relevant objects from 63% to 72% for pseudo-cocaine mixtures and from 19% to 100% for explosive mixtures. At the same time, the results of the experiments described in this article are aimed at testing the effectiveness of olfaction identification by detector dogs of any odour, and the efficiency was 100%. This applies to both the process of detecting odour traces and the process of establishing a single source of origin of the relevant olfaction information.

Conclusions

Thus, if forensic recommendations for collecting scent traces at the scene of an incident, their proper packaging, transportation and storage are followed, and the conditions and established procedure for conducting olfaction research are met, proper, reliable and admissible evidence is obtained in criminal proceedings. Detector dogs can identify a specific subject among several persons suspected of committing the same crime, who left their scent trail on the instrument of crime, the object of the criminal offence, and obstacles that were overcome during the penetration of the scene.

Expert experiments on the detection of an odour trace on an object and its identification with the help of detector dogs confirmed the effectiveness and efficiency of the identification of the person carrying the odour trace by three detector dogs. The experiments were conducted several times, using different detector dogs, with the odour objects being moved to different storage cones, with the impossibility of extraneous odours entering the sample circle, and with the absence of any possibility of a specialist dog "pointing" to a particular object for a signal response, which confirms the objectivity, reliability of the result obtained, and the sufficiency of its justification.

The effectiveness of the main method of the Methodology for conducting olfaction research – the method of olfaction – was tested and established during the experiments. In particular, its effectiveness in detecting human odour traces on various objects and the possibility of identifying a person by his or her comparative odour samples and odour traces removed from an object at a crime scene has been confirmed. The possibility of establishing the suitability of the odour sample provided for olfaction examination (both the sample from the crime scene and the comparative odour sample of the person taken during the pre-trial investigation) has been proved. The effectiveness of the use of detector dogs in determining the common source of origin of various odour traces (odour traces from different objects; odour traces obtained from several persons) with a specific odour sample has been repeatedly confirmed.

In this direction, it is promising to create technical devices for instrumental diagnostics of detected odour information with the prospect of developing software for identification and diagnostic studies using computer programmes for olfaction research. It should be noted that there is a need to develop and experimentally test new designs of containers for preserving odour traces that would take up less space and allow for safer transportation.

Acknowledgements

We would like to express our gratitude to the Department of Dog Training of the National Police of Ukraine and the Forensic Olfaction Laboratory of the Vinnytsia Expert Centre of the Expert Service of the Ministry of Internal Affairs of Ukraine for the materials provided for this article and for their continued cooperation in improving the use of human odour traces to solve crimes.

Conflict of Interest

None.

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Використання методу криміналістичної одорології під час розкриття злочинів

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Анотація
Актуальність дослідження питань використання методу криміналістичної одорології зумовлена необхідністю висвітлення його змісту та правил практичного застосування під час аналізу запахових слідів злочинця, що забезпечує вдосконалення діяльності з розкриття та розслідування кримінальних правопорушень. Метою дослідження є аналіз властивостей одорологічної інформації, що індивідуалізує особу, щодо залишених нею слідів запаху на місці події; дослідження сучасних можливостей методики проведення одорологічних експертиз; формування пропозицій з удосконалення процесу експертного аналізу одорологічної інформації в кримінальному провадженні. У статті використано порівняльно-правовий, термінологічний, системно-структурний і формально-логічний методи, а також метод експертного експерименту. Підтверджено дані про індивідуальність запаху кожної людини, зокрема на підставі випадків зі слідчої практики відображено можливість встановлення індивідуальності запахових слідів та їх належність конкретній особі, навіть у випадку вчинення злочину двома монозиготними близнюками. Обґрунтовано можливість збирання запахових слідів з різних предметів, з якими мали контакт декілька осіб, виокремлення тих запахових частинок, які дають змогу собакам-детекторам провести ідентифікацію конкретного їх носія. Визначено загальні умови й порядок проведення одорологічного аналізу слідів запаху особи, які перевіряють у зв'язку з розслідуванням кримінального правопорушення. Узагальнено, що роботу собак-детекторів для проведення найрезультативнішого одорологічного дослідження необхідно здійснювати в спеціальному приміщенні без сторонніх запахів за підтримання температури +20 °С та відносної вологості повітря 60-80 %. Систематизовано загальні заборони, яких слід дотримуватися під час проведення одорологічної експертизи, що стосуються невикористання контрольних і допоміжних запахових проб осіб, знайомих собакам-детекторам; відокремлено роботу експерта-одоролога та кінолога в спеціальному приміщенні з метою унеможливлення отримання інформації спеціалістом про конкретне місце розташування банки-сховища із запаховою інформацією, яку встановлюють. Практичне значення полягає в розширенні можливостей правоохоронних органів виявляти осіб, причетних до злочину, за їхніми запаховими слідами, залишених на місці події, та проведення судової експертизи за допомогою методу криміналістичної одорології

Ключові слова:
запаховий слід; збирання запахових слідів людини; криміналістична одорологія; інспектор-кінолог; експерт-одоролог; спеціальні знання

UDC 342.56
DOI: 10.56215/naia-chasopis/1.2024.31

Impact of European integration processes on judicial reform in Ukraine

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Abstract
The research relevance is determined by the European integration and identification of gaps and shortcomings arising in the process of harmonisation of Ukrainian legislation with the legal standards of the European Union, providing improvement areas. The study aims to characterise the reform of Ukraine's judicial system in the context of European integration. The following research methods were used in the study: systemic and structural, comparative legal, formal legal, and systematisation methods, as well as methods of synthesis, analysis, and generalisation. The study established that the judicial reform launched in 2016 is linked to Ukraine's plans to become a full-fledged member State of the European Union. It is determined that under the legal regime of martial law, some processes of reforming the judicial system to the standards of the European community may be slowed down. It is noted that the Copenhagen criteria, especially chapters 23 and 24, are among the key definitions for the implementation of justice and the judiciary in a country which is a member of the European Union. The analysis added that to accelerate the European integration processes in Ukraine, composition renewal of the Constitutional Court of Ukraine should be undertaken. The need to establish transparent qualification requirements for judges and modernise the selection process for the judiciary was outlined. The study concludes that it is necessary to fully launch the High Qualification Commission of Judges of Ukraine, which is one of the key bodies of judicial self-government. The effective operation of this body is essential for maintaining the judiciary at a high professional level and ensuring compliance with the standards of justice. Furthermore, the study stressed the importance of continuing to effectively combat any manifestations of corruption in the activities of the judiciary and the judicial system as a whole. The study materials can be used to improve the functioning of the judicial system in Ukraine

Keywords:
judiciary; justice; Copenhagen requirements; integration; association; judicial system

Article's History:
Received: 11.11.2023
Revised: 25.01.2024
Accepted: 27.02.2024

Suggest Citation:
Yara, O. (2024). Impact of European integration processes on judicial reform in Ukraine. *Law Journal of the National Academy of Internal Affairs*, 14(1), 31-39. doi: 10.56215/naia-chasopis/1.2024.31.

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Introduction

The fact that Ukraine declared itself an independent state necessitated integration processes. Another vector of Ukraine's development was the Association Agreement with the European Union in 2014[1] and the status of a candidate for membership in the European Union in 2022. The main indicators of the rule of law are always the impartiality and independence of the judiciary. After all, no matter how perfect the country's current legislation is, without a mechanism for enforcing the rights and obligations it provides, the legal provisions of such legislation eventually become merely declarative. The issue of judicial reform in Ukraine is particularly important, as everyone has the right to a fair hearing in court.

Ukraine's candidacy for membership in the European Union sets new goals and objectives for the state and requires qualitative changes. This includes renewing the composition of some judicial governance bodies and, in particular, the Constitutional Court of Ukraine. The introduction of an electronic court, improvement of access to justice, and overall strengthening of trust in the judiciary are also relevant. According to certain foreign investors in Ukraine, one of the biggest obstacles to foreign investment in the Ukrainian economy is the high level of corruption and distrust in the judiciary. That is why the European Commission's requirements regarding the protection of national minorities, the rule of human and civil rights, and the provision of democratic guarantees can be considered objectively fair. It is in the process of updating and improving the judicial system that the European orientation of the state can be confirmed.

An analysis of recent research and publications confirms the relevance of the chosen topic, as evident from the scholars' studies. In particular, M. Stefanchuk *et al.* (2021) highlighted the main findings of international and Ukrainian sociological research and observations on the current state of the judicial system of Ukraine. They identified key achievements and shortcomings regarding the main stages of judicial reform in Ukraine, including the need to comply with the recommendations and standards for the functioning and organisation of the judicial system as a whole. They emphasised the conclusions of the European Court of Human Rights. In their opinion, these opinions identify key important positions on issues that are essential for the effective administration of justice: the inadmissibility of using guarantees of judicial independence to avoid legal liability; the need to improve the jury trial; and balanced and strategic planning of further reforms in the justice sector.

S. Prylutskyi & O. Streltsova (2020) determined that the remnants of the post-Soviet legal doctrine, which preserve the defining categories of judicial law, such as "court", "judiciary", "justice", in a stagnant form, have become a significant challenge to the formation of a new state and its legal system. This significantly limits the ability to ensure effective legal regulation of relations related to the administration of justice in the state. A review of the theoretical and regulatory framework underpinning the Ukrainian judiciary and justice system reveals obvious gaps and inconsistencies. It is undeniable that the modernisation of Ukraine's legal system, in particular in the area of judicial organisation, requires an updated scientific vision based on the doctrine of judicial law and should attempt to combine Ukrainian traditions with Western European ones.

Yu. Razmetaeva (2022) noted that a significant reduction in the rule of law can be triggered by innovative technologies and the impact of such technologies on basic values and rights. The independence of the judiciary and judges has been somewhat negatively affected by the involvement of judges in digital transformation. The scholar believes that this is how the independent and fair judiciary has been interfered with. Innovative technologies, in her opinion, belong to the private sector, although they are perceived as infallible or neutral. This, in turn, may affect judicial decisions. D. Kogut (2020) emphasized corruption in the judiciary and suggested ways to minimise corruption in such a system. Among such suggestions, as noted by the author, is the need to amend the current legislation to create a reliable mechanism for bringing judges to justice for unjust decisions and corruption offences. N. Savytska (2023) emphasised an important principle in force in most EU countries – the principle of internal independence of a judge, i.e. the ability and capacity of judges to exercise their powers without direct or indirect influence from both the court apparatus and other stakeholders. A. Fagan & A. Dimitrova (2019) emphasise the need to consider the constant threats of undermining the new formal rules when reforming the judiciary, which, according to the authors, is happening in Serbia and Bosnia and Herzegovina.

O.V. Martyniuk (2023) focuses on the impact of political elites, acts of Russian armed aggression against Ukraine, and the COVID-19 pandemic on the overall state of judicial reforms in Ukraine. The researcher pays special attention to the problem of increasing public confidence in the judiciary, which can be ensured by broad public participation in the selection of judges, establishing a more rational management of the representation of the activities of courts and judicial governance bodies, and studying public opinion. In this context, it is necessary to address the theoretical

[1] Law of Ukraine No. 1678-VII "On Ratification of the Association Agreement Between Ukraine, On the One Hand, and the European Union, the European Atomic Energy Community and their Member States, On the Other Hand". (2014, September). Retrieved from https://zakon.rada.gov.ua/laws/show/1678-18#n2.

issues of interaction between the public and state authorities, as conducted in the study by V. Bondarenko & S. Yesimov (2019). O.V. Zubrytsky (2023) analysed the general level of permissible influence on the judiciary through the prism of the experience of the European Union member states, proposing the establishment of a specialised court to hear commercial disputes with foreign entities, which, according to the author, can help increase the efficiency of the judicial system.

Despite the significant contribution of the above-mentioned researchers, the question of how far the judicial system of Ukraine complies with the EU legislation after obtaining candidate status remains unresolved. The study aims to determine the impact of the judicial reform in Ukraine on the compliance of the judicial system with the requirements of the EU member states. To achieve this goal, it was necessary to identify the specifics of the judicial reform launched in 2016, describe the criteria that Ukraine needs to meet to become a full-fledged member of the European Union, and identify the problems in the judiciary and propose ways to solve them.

Materials and Methods

The methods used were chosen according to the specifics of this study, namely the interconnection between the ongoing judicial reform and Ukraine's candidacy for membership in the European Union. A range of general scientific and specialised legal methods were used in the course of the study, contributing to the accomplishment of the objectives. Among the general scientific methods, the following may be distinguished: methods of analysis and synthesis, and generalisation. The basis of the study is a set of special methods common to scientific research in the field of law. These methods were applied in conjunction, which contributed to the completeness, comprehensiveness and objectivity of the scientific research, the validity and consistency of the conclusions drawn, and the reliability of the results obtained.

The analysis, synthesis and generalisation methods were used to study the text and identify the main points, information and conclusions related to the European Community's requirements for the judiciary in Ukraine. They were also used to analyse complex concepts, ideas, or information to understand their structure, interrelationships and important aspects. These methods were used to analyse the state of Ukraine's judicial system, identify problems, synthesise necessary measures, and summarise requirements for approximation to European standards. The methods of analysis, synthesis and generalisation were used to identify key issues and proposals for improving the judicial system in the context of European integration processes from various sources and studies.

The systemic and structural method was used to examine the peculiarities of reforming the judicial system in the period from 2016 to 2023, considering the martial law and military aggression of 2022. The comparative legal method was used to compare the experience of certain EU member states (Finland and Slovakia) and their measures to eliminate similar problems in the administration of justice to the situation in Ukraine. This method was also used to determine the impact of European integration processes on the reform of judicial self-government and governance bodies (the Constitutional Court of Ukraine, the High Qualification Commission of Judges of Ukraine). The formal legal method was used to describe the existing legal acts that had a significant impact on the judicial reform in Ukraine. The systematisation method was used to conclude that the Copenhagen criteria, which should be followed by the EU member states, are included in the report.

Several legal acts in the field of judicial proceedings and justice were used in the process of revealing the topic and objectives of the study: The Constitution of Ukraine[1], the Law of Ukraine "On the Judiciary and the Status of Judges"[2], the Law of Ukraine "On the Constitutional Court of Ukraine"[3], the Decree of the President of Ukraine "On the Strategy for the Development of the Justice System and Constitutional Proceedings for 2021-2023"[4], the "Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the Other Hand"[5].

Results and Discussion

Judicial reform: the basis of democracy in Ukraine. The creation of a democratic and rule-of-law state is impossible without the administration of justice. Thus, Article 3 of the Constitution of Ukraine[6] stipulates that the establishment and protection of human rights and freedoms is the main duty of the state and determines the content and focus of its activities. The justice

[1] Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254к/96-вр#Text.
[2] Law of Ukraine No. 1402-VIII "On the Judicial System and the Status of Judges". (2016, June). Retrieved from https://zakon.rada.gov.ua/laws/show/1402-19.
[3] Law of Ukraine No. 2136-VIII "About the Constitutional Court of Ukraine". (2017, July). Retrieved from https://zakon.rada.gov.ua/laws/show/2136-19#Text.
[4] Decree of the President of Ukraine No. 231/2021 "On the Strategy for the Development of the Justice System and Constitutional Judiciary for 2021-2023". (2021, June). Retrieved from https://www.president.gov.ua/documents/2312021-39137.
[5] Law of Ukraine No. 1678-VII "On Ratification of the Association Agreement between Ukraine, on the One Hand, and the European Union, the European Atomic Energy Community and their Member States, on the Other Hand". (2014, September). Retrieved from https://zakon.rada.gov.ua/laws/show/1678-18#n2.
[6] Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254к/96-вр#Text.

system is currently in a state of permanent reform. This is primarily due to the crisis of legitimacy of the system. Given that the justice system is an important criterion of the national mechanism of legal protection, the level of legitimacy of such a system will be responsible for the overall effectiveness of the entire judiciary in Ukraine. Parliamentarians always consider it necessary to introduce the latest reforms that can help overcome such a crisis, as argued by M. Stefanchuk *et al.* (2021). The independence of the judiciary contributes to the rule of law in Ukraine, as it helps to prevent abuse of power and maintain the separation of powers. At the same time, the statement of Yu. Razmetaeva (2022), notes that impartial and independent judges are the embodiment of equality and justice, acting as guarantors to curb the interests of certain legal entities and individuals, is valid. Judges, among other things, should support the general authority of law in the public space.

O. Boryslavska (2021) noted that the right to a fair trial is an important component of the rule of law, which is a fundamental value of any democratic state. Given that the legislation provides for a fair and impartial public trial, there is also a corresponding system of organisational, material, and institutional guarantees that ensure such an institution. This requirement, in particular, is related to the principle of separation of powers into three branches, which is a basic principle of constitutionalism. Any changes in the judicial system of modern democracies, especially judicial reforms, must comply with the basic principles and be aimed at ensuring the right to a fair trial.

Since the Revolution of Dignity in 2014, Ukraine has been reviewing and bringing its judicial and legal system legislation in line with international standards. On 2 June 2016, a new law was adopted that met the requirements of the judicial system of the world's leading countries - the Law of Ukraine "On the Judiciary and the Status of Judges"[1]. A year later, a new Law of Ukraine "On the Constitutional Court of Ukraine"[2] was also adopted. In mid-December 2017, the new composition of the Supreme Court was formed following the amendments to the procedural codes of Ukraine. However, one of the key problems of the judiciary in Ukraine was the problem of independence and impartiality of the judicial system in general and the lack of independence of judges in particular. All the changes that took place in Ukraine as part of the wide-ranging judicial reform were progressive and yielded positive results. However, when assessing the main results of the reform, it is necessary to note that the legal component of the reform is only one of the constituent elements of the entire reform. Successful implementation of all statements on reforming the status of the judiciary is possible only due to the complex nature of such processes, and political, social, economic, historical, and other factors are taken into account. In particular, political factors have caused the regression of judicial reform in Turkey (Muftuler-Bac, 2019). M. Popova & D.J. Beers (2020), discussing the stagnation of judicial reform in Ukraine, note that this is caused by the weak commitment of political elites to independent courts and the lack of a strong reformist electorate in the Ukrainian judiciary. The latter complicates the situation since, following T. Pavone & R.D. Kelemen (2019), historically, judges have been the initiators of pro-European judicial reforms to combat the shortcomings of national judicial systems and the executive branch.

In June 2021, the Strategy for the Development of the Justice System and Constitutional Court Procedure for 2021-2023 (hereinafter referred to as the Strategy)[3] was approved. The Preamble to this document states that the main focus is on European integration, and the expected results are the gradual adoption of international standards and best practices of the European Union and the Council of Europe. Among the tasks set out in the Strategy is to ensure a balanced and coordinated improvement process, considering the further harmonisation of the current legislation with the EU legislation. Furthermore, given these requirements, the goal is to introduce standards for the content and scope of disclosure of information obtained in the course of the qualification assessment. It should be noted that as of mid-2023 Ukraine is still in the process of reforming its judicial system, which is due, in particular, to Ukraine's new status in the European community.

Requirements of the European Community to the judicial system in Ukraine. The process of European integration has been the most successful in the history of the continent. It faced and is facing numerous challenges and a series of crises, which prompted a variety of responses, generally referred to as reforms. Thus, two of the most frequently used words in the history of European construction are crisis and reform. The official recognition of Ukraine's independence in a letter from the Dutch Minister of Foreign Affairs in December 1991, when the Netherlands held the EU presidency, can be considered the start of relations between Ukraine and the European Union. However, these relations only gained legal momentum in 2014, when the Law of Ukraine ratified the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community, and

[1] Law of Ukraine No. 1402-VIII "On the Judicial System and the Status of Judges". (2016, June). Retrieved from https://zakon.rada.gov.ua/laws/show/1402-19.
[2] Law of Ukraine No. 2136-VIII "About the Constitutional Court of Ukraine". (2017, July). Retrieved from https://zakon.rada.gov.ua/laws/show/2136-19#Text.
[3] Decree of the President of Ukraine No. 231/2021 "On the Strategy for the Development of the Justice System and Constitutional Judiciary for 2021-2023". (2021, June). Retrieved from https://www.president.gov.ua/documents/2312021-39137.

their Member States, on the other hand (hereinafter referred to as the Agreement)[1].

The agreement is a substantial and thorough regulatory document, which stipulates the following: Ukraine is making every effort to become a member of the European Union. The agreement is quite voluminous and detailed when compared, for example, with the agreement of our neighbouring country, the Poland Republic[2], especially concerning prosecution and judicial proceedings. Among the advantages that the Republic of Poland benefits from as a member state of the European Union are the following: the possibility of unifying its legislation to facilitate interaction in the area of judicial proceedings through EU directives, regulations and other documents; the possibility of participating in negotiations between EU bodies and national governments; and making important decisions by sending representatives to EU institutional bodies; the opportunity to function in joint bodies, such as the European Network of Judicial Councils, the European Judicial Training Network, etc. (Judicial reform in Ukraine..., 2015).

The events in Ukraine that significantly affected the whole world in 2022 became proof for the European community of Ukraine's struggle for democracy and independence. In this regard, on 23 June 2022, at a summit in Brussels, the 27 EU member states decided to grant Ukraine candidate status to the European Union. Candidate status underlines Ukraine's aspirations to become a full member of the European Union. However, to obtain this status, several requirements for reforming many areas of public life must be met.

As A. Sybiha notes, Ukraine's obtaining the status of an EU candidate state fundamentally changes approaches to the formation of Ukraine's foreign and domestic policy, i.e. all changes will be seen through the prism of European integration (Sybiha – on EU membership criteria..., 2022). On the other hand, the achievement of institutional requirements is the main criterion in the preparatory process for EU accession, as it requires not only the incorporation of the *acquis communautaire* into national legislation but also the support of effective implementation using certain judicial and administrative structures.

To become a full-fledged member, Ukraine needs to invest substantial efforts to meet European standards. Among them is a full-fledged modernisation of the judicial system through the prism of increasing the trust of the Ukrainian population and international organisations in the judiciary, reducing corruption and corrupt practices, and ensuring the full independence of judges. In line with European judicial standards, it is necessary to reform the Constitutional Court of Ukraine, complete the implementation of anti-corruption reform instruments, adopt anti-oligarchic legislation, make the necessary changes to regulations on the protection of the rights and interests of national minorities, etc.

In this context, it is worth noting that the state authorities are already developing a relevant roadmap for the implementation of European requirements. In the process of achieving and fulfilling the requirements, Ukraine should successfully apply them in practice. Comparing the timeframe for implementing the requirements for reforming institutions similar to Ukraine, Finland and Slovakia were able to fulfil such requirements within three years, as noted by D. Kolomiets (2022). The judicial system in Ukraine does not meet the criteria of the European Union member states. Such criteria are the Copenhagen criteria, which define the factors of the judicial system and justice, introduce a requirement for the stability of institutions that guarantee democracy, protection and respect for national minorities, the rule of law and human rights in general[3]. The chapters directly related to the judicial system and justice are the twenty-fourth and twenty-third chapters of the Copenhagen criteria (Chapters of the acquis, n.d.).

Analysing chapter 24, it is necessary to address the establishment of communication between the judiciary and law enforcement agencies of the EU member states. Chapter 23 defines the general capacity of the judicial system and the protection of rights and interests in courts. It is determined that full accession to the EU requires considering the requirements of the space of freedom, justice, and security. The key task in this process is to achieve efficiency and independence of the judiciary in general and to approve a court decision as a document of quality, impartiality, and efficiency. The second part of the section identifies ways to achieve these goals, including: providing the judiciary and the system with sufficient and appropriate funding; effective mechanisms to combat corruption and its manifestations; sufficient political will to eliminate any influence on courts and judges in the exercise of their powers; introduction of a capable system of judicial education; and availability of legal guarantees of a fair trial.

Achievement of such criteria is not only a condition dictated by and conditioned on future EU membership, but such implementation also contributes to the achievement of national interests (Chapters of the acquis, n.d.). Even before applying for EU membership, Ukraine had successfully fulfilled several requirements

[1] Law of Ukraine No. 1678-VII "On Ratification of the Association Agreement Between Ukraine, On the One Hand, and the European Union, the European Atomic Energy Community and their Member States, On the Other Hand". (2014, September). Retrieved from https://zakon.rada.gov.ua/laws/show/1678-18#n2.

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of the European community. One of the main reasons for this success is the fundamental and irreplaceable role played by law, legal norms, rules, and regulations throughout this complex political, economic, and institutional development, as J. Martonyi (2021) noted. Fulfilment of the Copenhagen criteria by Ukraine will bring the country closer to full membership in the European Union.

European integration and the judicial system: challenges and their overcoming. S. Prylutskyi & O. Strieltsova (2020) noted that modern judiciary reforms face many negative aspects of a legal and non-legal nature that prevent the full implementation of sufficient reform. The main aspects include inconsistencies between the main constitutional act and other legal acts; conceptual uncertainty of the reform process; the global coronavirus pandemic, external military aggression and the imposed martial law regime. It is these negative aspects that provoke instability in the entire judiciary, including the effectiveness of the performance and exercise of its functions.

The position of researchers who note that the main challenges and problems that candidate states may face in the active process of European integration are the implementation of European standards in the field of justice and judicial proceedings are valid. It is necessary to ensure that the changes adopted and implemented in the legislative field are acceptable to the Ukrainian community. That is why it is necessary to study each legal act thoroughly and sufficiently from the very first years of implementing European practice. According to V.L. Kachuriner & A. Pahlavanzade (2022), it is important to try to apply the temporary legal provisions regime, create appropriate institutions that will implement such norms, and examine their suitability for sustainable application. It is also worth noting that the practice of temporary application of a certain group of social relations has been actively used by the EU candidate states and proves the effectiveness of such application. It is important to ensure that trials are held within a reasonable time, as noted in the Concept of Improving the Judiciary to Establish a Fair Trial in Ukraine following European Standards of 10 May 2006[1]. In the twenty-first century, the development of e-courts (Uliutina & Artemenko 2022), the introduction of peace institutions (Synenkyi, 2022), and the promotion of mediation are useful for eliminating judicial "red tape".

M.V. Bazarnyk (2022) noted that European integration processes are always conditioned by four aspects, namely legal, international, domestic, and social. The domestic aspect has become the main driver of such processes. Although each individual has no direct influence on the formation and implementation of Ukraine's foreign policy, due to the principle of democracy, every citizen of Ukraine can have an indirect impact. Under the legal regime of martial law and the constant military aggression of the Russian Federation, several problems have emerged that may hinder the reform of the judicial system and, therefore, slow down the process of Ukraine's European integration. The percentage of settlements where justice cannot be fully administered remains high. This applies to those settlements where active hostilities are taking place, occupied territories, or destroyed and not yet restored court buildings. This problem has been resolved to some extent by changing the territorial jurisdiction. Despite the war, the judicial system is functioning and is located in those settlements where no hostilities are taking place. The Unified State Register of Court Decisions has resumed its full-fledged operation, allowing court case files to be stored digitally. Backups of such materials have also been created on a secure server. The court proceedings are successfully functioning remotely.

On the positive side, despite the consequences of a full-scale war on the territory of Ukraine, the judiciary receives its full funding. Although, as noted by the Deputy Head of the Presidential Office A. Smirnov, 50% of judges' salaries are transferred to the Armed Forces of Ukraine (Rzheutska, 2022). At the same time, the state lacks financial resources for capital construction, repairs, or restorations. There are problems related to the evacuation of judges and their families from the temporarily occupied territories of Ukraine. There are isolated cases of collaboration and cooperation with the occupiers, particularly among members of the judiciary. Judges, like other citizens of Ukraine, are subject to mobilisation. According to the Deputy Head of the Office of the President, as of April 2023, more than 400 judges and judicial officers had been mobilised into the Armed Forces of Ukraine. Among other problems, the author mentions the problem of excessive workload on judges, which leads to rather lengthy consideration of cases. Another problem is the long duration of tender procedures.

Given this situation, the SBI (State Bureau of Investigation) website contains a section on the court's wartime operations. In addition, Ukraine and the European Union's Law and Justice project have launched a joint special project, Courts in Wartime (2022). It will present information about the occupied courts, memoirs of judges and court staff, information about assistance, volunteering, resistance, losses, and achievements (The Work of Courts in Conditions of war..., 2022). S. Prylutskyi & O. Strieltsova (2020) noted that the rule of law is one of the fundamental values of the European Union. However, certain negative steps by the state authorities can cause the constitutional order to erode and fade away, demoralise, and eliminate it. This leads to the loss of independence of the judiciary,

[1] Decree of the President of Ukraine No. 361/2006 "On the Concept of Improvement of the Judiciary for the Establishment of Fair Trials in Ukraine in Accordance with European Standards". (2006, April). Retrieved from http://zakon4.rada.gov.ua/laws/show/361/2006.

which is a universal and absolute value. The opinion of O. Harmata (2022), states that guarantees of the right to adequate legal protection and the absence of corruption will serve Ukraine's credibility in the eyes of European countries.

One of the key problems remains the unresolved issue of a full-fledged restart of the Constitutional Court of Ukraine, including the introduction of a transparent and clear competitive selection of judges. There is also a need to review the system of judicial self-government and governance, namely the audit of such bodies to avoid duplication of similar functions, which will contribute to the efficient use of financial resources of the state budget of Ukraine. The next problem is the unresolved issues of optimising the court network (following the new administrative-territorial structure) and digitalising the justice system, namely expanding the functionality of the Unified Judicial Information and Telecommunication System and the e-court in terms of creating case management that is compatible with the prosecutor's office and law enforcement agencies.

Conclusions

In 2022, a historic decision was made – Ukraine was granted the status of a candidate for membership in the European Union. This is the realisation of the aspirations of the Ukrainian community, which values democratic principles, including the rule of law. Joining the European Union is a paradigm shift. After all, immediately after joining the European Union, its legislation becomes part of the legal framework of a member state.

The study determines that the main criteria in the field of judicial proceedings and justice, which are used by the EU candidate states, are sections 23 and 24 of the Copenhagen criteria. It is established that most of their provisions are already actively applied in the Ukrainian judicial system. In particular, this applies to the availability of legal guarantees for a fair trial and a sufficient level of financial support for judicial reform.

The judicial reform is one of the seven necessary steps that demonstrate Ukraine's readiness to become a part of the European Union. The article determines that the judicial reform launched in 2016 and ongoing to this day is generally in line with the legislation of the European Community. However, the candidate status imposes new requirements on the Ukrainian judicial system. In particular, this concerns the restart of the Constitutional Court of Ukraine with updated requirements for the selection of judges and qualification requirements for potential candidates, and the full launch of the High Qualification Commission of Judges of Ukraine, as such a body was not functioning for two years until 2023. This includes increasing the proper level of funding for the judiciary, consideration of the experience and specifics of their duties, and lastly, an effective fight against corruption, in particular among the judiciary, and minimising the influence of the oligarchic community on the latter.

Further areas for research could include an analysis of the first year of the High Qualification Commission of Judges of Ukraine, as this body is receiving close attention from the European community. Also, given the military operations on the territory of Ukraine, an analysis of the activities of judges and courts in areas close to the sites of active hostilities may be necessary. After all, the achievement of all the necessary criteria for accession to the European Union in terms of justice will relate to the capacity of all Ukrainian courts without exception.

Acknowledgements

None.

Conflict of Interest

None.

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Вплив євроінтеграційних процесів на судову реформу в Україні

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Анотація
Актуальність обраної тематики полягає в тому, що в умовах євроінтеграції важливо визначити прогалини й недоліки, які виникають у процесі узгодження українського законодавства з правовими стандартами Європейського Союзу, та окреслити напрями його вдосконалення. Метою дослідження є характеристика реформування судової системи України в умовах європейської інтеграції. У роботі використано такі методи дослідження: системно-структурний, порівняльно-правовий, формально-юридичний, метод систематизації, а також методи синтезу, аналізу й узагальнення. Встановлено, що судова реформа, розпочата 2016 року, пов'язана з планами України стати повноцінною державою – членом Європейського Союзу. Визначено, що в умовах дії правового режиму воєнного стану деякі процеси реформування судової системи до стандартів європейської спільноти можуть гальмуватися. Зазначено, що Копенгагенські критерії, передусім 23-й та 24-й розділи, належать до ключових визначень для реалізації правосуддя та судової влади в країні, що є членом Європейського Союзу. У процесі аналізу додано, що для активізації євроінтеграційних процесів в Україні необхідно вжити заходів з оновлення складу Конституційного Суду України. Окреслено необхідність встановлення прозорих кваліфікаційних вимог до суддів і модернізації процесу відбору для суддівського корпусу. Сформульовано висновки про необхідність повного запуску Вищої кваліфікаційної комісії суддів України, що є одним із ключових органів суддівського самоврядування. Засвідчено, що ефективна робота цього органу важлива для підтримки суддівського корпусу на високому професійному рівні та забезпечення додержання стандартів правосуддя. Додатково акцентовано на важливості продовження ефективної боротьби з будь-якими виявами корупції в діяльності суддівського корпусу та в судовій системі загалом. Матеріали цієї роботи може бути використано для покращення функціонування судової системи в Україні

Ключові слова:
судочинство; правосуддя; копенгагенські вимоги; інтеграція; асоціація; судоустрій

UDC 342.565:347.99
DOI: 10.56215/naia-chasopis/1.2024.40

Modernisation of the constitutional and legal status of judges in Ukraine

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Abstract
The research relevance is determined by the need to reform public authorities, in particular, the judiciary, in the context of martial law and European integration processes. The study aims to analyse the legal framework in the context of determining the constitutional and legal status of judges in Ukraine. The following methods were used: logical analysis, formal legal analysis, dogmatic analysis, legal hermeneutics, deduction, induction, and synthesis, which were used to identify the main principles of regulation of the constitutional and legal status of judges in Ukraine. The study states that the current constitutional and legal status of judges is determined by the updated version of the Constitution, the Law of Ukraine "On the Judiciary and the Status of Judges" and other legislative acts. It is noted that one of the main problems of the judicial system of Ukraine is the understaffing of courts. Following the reforms which have been implemented since 2 June 2016 and have amended several provisions, the author makes a comparative legal analysis of the status of judges before and after the innovations. The study determined that judges used to have absolute immunity, and now they have functional immunity, which protects them from prosecution for their actions. These reforms were implemented to ensure the independence of judges and protect them from political pressure. The author examines the experience of such countries as Italy, Germany, Japan, and the USA in the context of ensuring the principle of judicial independence. It is argued that this principle can be implemented in various forms. The importance of rebranding of state institutions is also substantiated

Keywords:
judge; legal status; unchangeability of judges; immunity of judges; independence of judges; judiciary; jurisdiction

Article's History:
Received: 09.11.2023
Revised: 28.01.2024
Accepted: 27.02.2024

Suggest Citation:
Amelin, O. (2024). Modernisation of the constitutional and legal status of judges in Ukraine. *Law Journal of the National Academy of Internal Affairs*, 14(1), 40-49. doi: 10.56215/naia-chasopis/1.2024.40.

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Introduction

The improvement of the judicial system and Ukraine's progressive movement towards European integration require the state to focus on solving the problem of ensuring fair working conditions for judges in Ukraine. This is becoming important as judges are the key to the democratic regime in the country, being responsible for the accessibility of dialogue between citizens and the authorities and unimpeded access to defence provided to applicants without prejudice. Despite the prominent role of judges, to date, the state has not resolved many of the pressing issues related to the performance of the special labour function by judges. This situation challenges the legislator's ability to fulfil the tasks of Ukraine's European integration and respond to the country's European ambitions. This is possible only in the case of building a true state based on the rule of law with an independent judiciary. Improving the legal regulation of judges is one of the key tasks of judicial reform. This process should be based on an appropriate analysis that will identify existing problems and suggest ways to solve them.

According to S.V. Vinnikov (2021), independent and objective judges help implement and protect the rule of law in the country, rendering them an important element in the construction of a rule-of-law democratic state and an effective component of the functioning of all state bodies aimed at protecting human rights as the highest value. I. Lisna & T.Ye. Mykhailiv (2019), in turn, note that the peculiarity of the work of judges is that the right to access justice and judicial protection is possible only through their professional activities. Thus, judges perform special socially useful and necessary functions in ensuring the primacy of law, democracy, and the rule of law.

Following H. Huk (2020), the basis for the functioning of a democratic, social, and legal state is the effective protection of human rights. This is explicitly provided for by the Constitution of Ukraine[1], Article 3, which proclaims that a person, life and health, honour and dignity, inviolability and security are the highest social value, and the establishment and enforcement of human rights and freedoms is the main duty of the state. The activities of the Constitutional Court of Ukraine (CCU) play an important role in this regard. The CCU is the only body that provides legal protection of the Basic Law and ensures its supremacy in the territory of the state. By exercising its powers, this institution promotes the realisation and protection of those rights of individuals that are enshrined in the relevant provisions, as highlighted by S. Bezugliy (2020).

The amendments to the Constitution of Ukraine on justice introduced by the Law of Ukraine "On Amendments to the Constitution of Ukraine (Regarding Justice)"[2] established a new constitutional framework for the judiciary in Ukraine. They envisage reform in line with international standards, with the leading role assigned to courts and their judges, who are legal experts. According to O.S. Perederiy (2022), the level of protection of the enshrined rights of individuals depends on their activities and their quality.

O.Yu. Amelin (2021) addresses the topical issue of implementing international standards of conduct for prosecutors on Ukraine's path to European integration. As Ukraine seeks to adapt its laws and institutions to European norms, improving the effectiveness of the prosecution service and bringing it in line with European principles is crucial. The researcher therefore assesses Ukraine's progress in meeting international standards related to prosecutorial supervision, the effectiveness of punishment and crime reduction in comparison to selected European countries such as France, Germany, and Spain.

Thus, the study aims to analyse the current legal status of judges in Ukraine. The study goal sets several tasks, namely, to identify the legislative provisions in this area, and to determine the main problems and ways to overcome them.

Materials and Methods

This study was carried out using various types of analysis methods. The method of functional analysis was used to characterise the concept of the "judicial system", and to identify its inherent features, functions, and role in ensuring the rights of citizens. The method of logical analysis was used to assess the effectiveness of the current mechanism of the constitutional and legal status of judges and also to identify ways to modernise and improve its efficiency. The State Security Service of Ukraine (2023) data was used to study the current state of efficiency of the judicial system.

The formal legal method was used to determine the essential characteristics of the rules regulated in the current legal framework on the status of judges. For instance, the Law of Ukraine's "On the Judiciary and the Status of Judges"[3], Law of Ukraine "On State Protection of Court Employees and Law Enforcement Bodies"[4], Law of Ukraine "On the Supreme Council of

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[3] Law of Ukraine No. 1402-VIII "On the Judiciary and the Status of Judges". (2016, June). Retrieved from https://zakon.rada.gov.ua/laws/show/1402-19#Text.
[4] Law of Ukraine No. 3781-XII "On State Protection of Court Employees and Law Enforcement Bodies". (1993, December). Retrieved from https://zakon.rada.gov.ua/laws/show/3781-12#Text.

Justice"[1] and Law of Ukraine "On the Higher Anti-Corruption Court"[2] were used. This method employs the systematic study of their text, determination of the structure, terminology, sequence of presentation, internal connections, and other aspects, which helped to identify how specific provisions regulate a particular area of activity, including the constitutional and legal status of judges in Ukraine. The dogmatic method was also used to understand and interpret the legislation, which consisted of studying the text of the law, analysing its content to determine the rules and principles of law contained therein, and identifying its structure and logic. This method was used to analyse the status of judges and to determine it within the framework of the established provisions. The method of legal hermeneutics was used to identify and understand legal texts and norms, to study the logical structure of the text and the links between its various parts, the context and interrelationship with other norms and rules, and to establish the legislator's goals. The method of comparative legal analysis was used to identify the specifics of approaches to regulating the status of judges in the context of the 2016 reform in Ukrainian legal acts. This method was used to identify common features and differences in legal regulation and to compare it with the status of judges before the 2016 reform and after its implementation. In this context, the analogy method was also used to identify the peculiarities of the functioning of the status of judges before and after the 2016 reform. The abstraction method was used to address judicial immunity and to determine its peculiarities in the context of the status of judges in the context of legislative reforms. This method was also used to focus on the rebranding of state institutions. This revealed the concept and essence of "rebranding", and identified the inherent features, principles of implementation and the role of this phenomenon in the context of increasing public trust and the efficiency of judicial institutions.

The deduction method was used to describe the constitutional and legal status of judges based on their characteristic features, principles, and specifics of implementation. In addition, the induction method was used to determine the characteristics of the status of judges based on the analysis of the current legislation of Ukraine. The synthesis method was applied to combine the results obtained to develop specific recommendations.

Results

In June 2016, amendments to the Basic Law[3] were introduced to the Constitution, which established new constitutional principles for the exercise of judicial power[4]. In this context, the main aspects are to restore and further increase public confidence in the judiciary, as well as to carry out reforms in line with international standards. Since the level of protection of the rights and freedoms of subjects depends on the quality of exercise of the powers granted to judges, it is worth considering the statistical data on the number of judges in 2022 in the context of the full-scale aggression of the Russian Federation on the territory of Ukraine (Table 1).

Table 1. The impact of emotional intelligence on professionalism Number of judges of local and appellate courts in 2022

Judge type	As per the orders of the State Judicial Administration	With powers as of 31.12.2022	Staff shortage, units	Staff shortage, %
Local overall	3751	2690	1061	28.29
Appellate court	843	487	356	42.23
District administrative courts	616	491	125	20.29
Appellate administrative courts	257	173	84	32.68
Commercial courts	593	451	142	23.95
Appellate commercial courts	218	142	76	34.86

Source: The State Security Service of Ukraine (2023)

This data shows that, on average, the number of judges of local and appellate courts has a staffing deficit of 30.4%. It is also worth considering the statistics on the dynamics of general indicators of the administration of justice in the period 2021-2022. (Table 2). Based on these figures, in 2022, local and appellate courts handled most of the cases they received despite the difficult conditions. According to court statistics, in 2022, these courts received 2.8 million cases and materials and considered 2.9 million, which is 103.8% of the total.

[1] Law of Ukraine No. 1798-VIII "On the Supreme Council of Justice". (2016, December). Retrieved from https://zakon.rada.gov.ua/laws/show/1798-19#Text.
[2] Law of Ukraine No. 2447-VIII "On the Higher Anti-Corruption Court". (2018, June). Retrieved from https://zakon.rada.gov.ua/laws/show/2447-19#Text.
[3] Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/main/254%D0%BA/96-%D0%B2%D1%80#Text.
[4] Law of Ukraine No. 1401-VIII "On Amendments to the Constitution of Ukraine (Regarding Justice)". (2016, June). Retrieved from https://zakon.rada.gov.ua/laws/show/1401-19#Text.

Table 2. Dynamics of general indicators of the administration of justice by local and appellate courts in 2021-2022 (excluding data from 169 courts whose jurisdiction has been changed)

	Cases and materials under consideration	Cases and materials filed	Cases and materials considered	Remainder of unprocessed cases and materials
2021	4952979	4250562	4079617	873362
Year 2022	3582668	2791764	2898032	684636
Dynamics of 2021/2022	-27.67%	-34.82%	-28.96%	-21.61%

Source: The State Security Service of Ukraine (2023)

Other indices of the dynamics of case consideration in 2021-2022 are worth considering (Table 3). These indices conclude that despite numerous challenges associated with the full-scale invasion, judges and staff of local and appellate courts ensured that they fulfilled their functions and obligations to ensure the right to justice.

Table 3. Dynamics of consideration of cases and materials by local and appellate courts in 2021-2022

	Local overall	Appellate court	District administrative courts	Appellate administrative courts	Commercial courts	Appellate commercial courts
Filed	2018303	215046	361838	100437	78959	17181
Consideration	2071925	213717	416544	99653	78681	17512
Dynamics	102.66%	99.38%	115.12%	99.22%	99.65%	101.93%

Source: The State Security Service of Ukraine (2023)

The current status of judges of constitutional and legal nature of courts of general jurisdiction is determined by the updated version of the Basic Law, the updated versions of Law of Ukraine "On the Judiciary and the Status of Judges"[1], Law of Ukraine No. 3781-XII "On State Protection of Court Employees and Law Enforcement Bodies"[2] and other laws. Constitutional amendments clarify and strengthen guarantees of judicial independence and immunity. In particular, it is prohibited to influence a judge in any way, to hold a judge liable for a court decision with certain exceptions, etc. (Constitution of Ukraine, 1996).

It is worth noting that Law of Ukraine No. 1402-VIII "On the Judiciary and the Status of Judges"[3] further develops the above provisions. In administering justice, the authorised person is independent of any influence, pressure, or unlawful interference. In case of interference in the activities of a judge, there is an obligation to report to the High Council of Justice and the Prosecutor General. The amendments to the Constitution of Ukraine and other laws on the judiciary are an important step towards ensuring the independence and impartiality of judges and restoring public confidence in the judiciary. Specific amendments include: the independence of judges has been strengthened by prohibiting any influence on their activities and the impossibility of holding judges liable for their judgements; judges must be guided by the rule of law and administer justice based on the legal framework.

In addition, in 2016, changes were made to judicial immunity. Previously, judges had absolute immunity, which meant that they could not be held liable for any actions. After the amendments, they have functional immunity, which means they are protected from prosecution for their actions only if they are committed within the scope of their duties. Thus, absolute immunity was narrowed to functional immunity, limited to the performance of professional duties. Changing the absolute immunity of judges to functional immunity in Ukraine is an important step towards reforming the judicial system, as absolute immunity was often used as a tool to put pressure on judges and allowed them to enjoy impunity in case of offences. By granting judges immunity only when administering justice, functional immunity significantly strengthens their independence from political influence. At the same time, the possibility of holding judges accountable for abuses or corruption offences ensures greater transparency and accountability of the judiciary and helps to restore public trust in the courts. While functional immunity does not guarantee the complete eradication of corruption in the courts, it does make it more difficult for abuses to go unpunished and creates the preconditions for further reform and efficiency of Ukraine's judicial system. Thus, changing the

[1] Law of Ukraine No. 1402-VIII "On the Judiciary and the Status of Judges". (2016, June). Retrieved from https://zakon.rada.gov.ua/laws/show/1402-19#Text.
[2] Law of Ukraine No. 3781-XII "On State Protection of Court Employees and Law Enforcement Bodies". (1993, December). Retrieved from https://zakon.rada.gov.ua/laws/show/3781-12#Text.
[3] Ibidem, 2016.

rules of judicial immunity is a solution that ensures the independence and fairness of the courts.

It should be noted that one of the key changes is the increased role of the High Council of Justice, which is now the responsible body for the formation of the judiciary[1]. It is comprised of representatives of various branches of government and civil society responsible for the appointment, dismissal, disciplinary action, and other issues related to judges. Another important change is the introduction of a competition for the position of a judge, which should ensure the selection of the most qualified and honest candidates for this position[2]. As part of the fight against corruption, the High Anti-Corruption Court was also established in Ukraine[3]. The judges of this court have additional security guarantees, such as round-the-clock security, and are provided with official housing if necessary. These changes are an important step towards reforming the judiciary in Ukraine.

The Law of Ukraine "On the Judiciary and the Status of Judges" strengthens public control over judges, as they are now required to submit declarations of family ties and integrity, which must be publicly available, and judges may be disciplined for late submission. In addition, Article 87 of the Law establishes the Public Integrity Council, which is to assist the High Qualification Commission of Judges of Ukraine in conducting qualification assessments of judges[4].

The main goal of these changes is to ensure transparent judgment and fight corruption. However, some of the innovations may not be effective in practice. Firstly, judges have been submitting asset and income declarations, including those of their family members, for a long time, which are publicly available and subject to verification by the competent authorities. Secondly, the High Qualification Commission of Judges of Ukraine is already an independent body responsible for the appointment, transfer, dismissal of judges and consideration of disciplinary cases. It is composed of civil society representatives, and its work is transparent and public. Therefore, the need to create a separate public body to control judges is questionable. The changes made are a positive step towards increasing the transparency and efficiency of the judiciary. However, to achieve greater results, these innovations must be properly implemented.

One of the most important steps in reforming the judiciary is the removal of judges' full immunity. Judges can now be disciplined, dismissed, or even detained by the High Council of Justice. In addition, judges are required to submit three declarations: on income and property, on family ties, and integrity. The latter declaration must contain a denial of any corruption allegations and confirmation of the faithful fulfilment of the oath. All judges would also have to undergo a qualification assessment to verify their competence, professional ethics, and integrity; those who fail or refuse to pass the assessment would be dismissed. Thus, the reform of the judicial system aims to increase its efficiency and transparency, as well as to ensure the right to judicial protection and access to justice for all citizens.

Ukraine has introduced a three-tier judicial system, which is common in most countries. The new Supreme Court consists of cassation courts: administrative, commercial, civil, and criminal. The Grand Chamber of the Supreme Court was also created, which is responsible for ensuring the unity of judicial practice. This means that the Supreme Court's decisions are a guideline for lower courts, ensuring unity and predictability of legal positions in all jurisdictions. Among the innovations is the fact that not only judges but also lawyers without prior experience in the judicial system, such as attorneys and academics with ten years of experience, can be appointed to the highest court. As for local courts, they are being merged into district courts, which makes it possible to increase the efficiency of courts and optimise budget expenses[5]. For district courts to operate effectively, it is important to set requirements for the personal characteristics of court staff. They must be honest, decent, fair, have a high sense of duty, critical and self-critical, principled, and incorruptible. Equally important is the issue of the selection of court staff. Their moral qualities should be considered during the selection process. It is also necessary to introduce control over their activities and behaviour and to impose severe penalties for violations of public morality (e.g. warnings, reprimands, demotion, dismissal). It is also important to introduce procedures for integrity checks and lifestyle monitoring of court staff to identify and prevent corruption risks. They should be regularly trained and educated on ethical behaviour and conflict of interest prevention. If facts of unethical or unlawful behaviour are revealed, such persons should be subject to disciplinary or administrative liability. Only a comprehensive approach to the formation of a highly professional and integrity-based court staff will contribute to the proper functioning and authority of district courts. In addition, the work on court staffing should

[1] Law of Ukraine No. 1798-VIII "On the Supreme Council of Justice". (2016, December). Retrieved from https://zakon.rada.gov.ua/laws/show/1798-19#Text.
[2] Law of Ukraine No. 1402-VIII "On the Judiciary and the Status of Judges". (2016, June). Retrieved from https://zakon.rada.gov.ua/laws/show/1402-19#Text.
[3] Law of Ukraine No. 2447-VIII "On the Higher Anti-Corruption Court". (2018, June). Retrieved from https://zakon.rada.gov.ua/laws/show/2447-19#Text.
[4] Ibidem, 2016.
[5] Ibidem, 2016.

include the use of individual abilities of the staff, as well as training and mastering of the latest technologies.

The principle of judicial unchangeability means that judges are appointed for a fixed term or indefinitely and cannot be dismissed or removed from office without good reason. This principle is enshrined in the constitutions of many countries, including Italy, Ukraine, Germany, and Japan (Spano, 2021). In some countries, such as Germany, judges can be transferred to another court or dismissed in case of changes in the judicial system in the district (Krajewski & Ziółkowski, 2020). In Ukraine, the grounds for dismissal of a judge are defined by the Constitution and the law. They include cases such as mental or physical disabilities that make a judge incapable of performing their duties, as well as when a judge reaches the age of 65. In addition, Ukraine has an institution of judicial resignation, which allows judges to voluntarily leave office for various reasons, including health, job dissatisfaction or financial considerations. The resignation of judges guarantees the preservation of their judicial independence even after the termination of their powers.

The principle of judicial independence is one of the most important elements of the constitutional status of judges in democratic states. It is enshrined in the constitutions of many countries, including Italy, Germany, Japan, and Ukraine (Chandranegara, 2019). This principle means that judges are subject only to the law and are not subject to political or other pressure, which ensures fair trial and protection of human rights. In the legislation of other countries, the principle of judicial independence is implemented through such guarantees as immunity and immunity of judges, which protect judges from political or other pressure; special procedure for bringing judges to justice, which complicates political interference in the work of courts; prohibition of interference in the administration of justice, which ensures that judges can make decisions without outside influence; liability for contempt of court or judge; financial independence of judges, which ensures that judges are not dependent on other branches of government. In addition, the principle of judicial independence is also guaranteed by international treaties, in particular the Beijing Theses on the Principles of Judicial Independence (Navrotska, 2020). It is worth noting that the principle of judicial independence is one of the key elements of a democratic society. It ensures fair trial and protection of human rights and promotes the rule of law. For example, in Germany, judges are appointed for life, which ensures their independence from political pressure; in Japan, judges can be prosecuted only for serious crimes, which also contributes to their independence; however, in the United States, judges have the right to resign at will, which is an important guarantee of their financial independence (Iqbal *et al*., 2019). These examples demonstrate that the principle of judicial independence can be implemented in different forms, but its importance for a democratic society remains unchanged.

Thus, the guarantees of the constitutional status of judges are essential for ensuring fair justice and the rule of law. They are designed to protect judges from political pressure and other external influences so that they can make decisions impartially and independently. All these safeguards are interrelated and mutually reinforcing. They are essential components of an effective judicial system, which is the key to fair justice and the rule of law.

Discussion

The judiciary is the foundation of civil society. It ensures personal freedom and the possibility of exercising rights, and therefore has always had an important place in the system of state power. According to the Constitution of Ukraine, the judiciary is a system of independent courts that administer justice; it is exclusively a court of law, and no delegation of court functions is allowed.

The judiciary has an important role in society - conflict and dispute resolution. This is a vital function as it helps people resolve their problems and restore justice. According to J.A. Roth (2021), the court is a "non-historical phenomenon" as it has existed in every society, even before the advent of the state. It is worth agreeing with this, as there are always conflicts in society that need to be resolved. Scientists G. Appleby & H. Roberts (2023) also note that the judiciary is "the power of wisdom, prudence, and justice". Based on this position, it is a counterweight to the "power of force" and helps people to coexist in harmony. According to E.R. Collins (2020), the court ensures the right of everyone to fair justice and respect for other rights and freedoms. In other words, the author notes that the court should resolve conflicts and disputes impartially and based on the law.

In a state governed by the rule of law, the court plays an important role in protecting the rights of employees, including civil servants (McIntyre, 2019). This is determined by the court being an independent body that must act by the law. In the field of labour, the court can consider disputes between employees and employers, as well as between employees and the state, as highlighted by B.M. Barry (2020). However, it should be noted concerning the author's position that in the case of civil servants, the court may consider disputes regarding working conditions, labour relations, as well as discriminatory working conditions. In turn, D.M. Smith (2023) believes that the role of the court in protecting the rights of civil servants will increase in the future. The statement is valid as the legislation regulating civil servant labour is constantly expanding.

The essence of justice is a complex and controversial issue. Legal researcher provide different definitions of this term, but the most common is that justice is a function of the judiciary, which consists of hearing and deciding cases based on the law to protect the rights and

interests of citizens, as noted by T.M. Stewart (2021). It is worth adding to the author's position that the social essence of the court is that it is a judicial authority that administers justice. Following J. Waldron (2021), the judiciary is an independent and autonomous body that is subject only to the law. Based on this position, it functions based on powers granted on behalf of society. The main features of the judiciary are independence and autonomy (the court cannot depend on other branches of government), compliance with the law (it acts based on regulated norms), structural design (the system must ensure its independence and autonomy), functioning on behalf of society and forms of implementation (it must exercise its powers in forms that correspond to its essence) (Prendergast, 2019).

Thus, the judiciary is one of the key characteristics of a state based on the rule of law, provided that it functions as an independent and objective mediator between the state and society, guided by the rule of law. The main task of the court is to determine the limits of individual freedom and restrictions on public power, which is crucial in a rule-of-law democratic state.

The essence and importance of justice for society are reflected in the legal status of judges. According to the Law of Ukraine "On the Judiciary and the Status of Judges", the judiciary is represented by judges, and in certain cases by juries, through the administration of justice in the framework of the relevant court procedures. Appeals and cassation proceedings are conducted only by professional judges, who are the holders of judicial power in Ukraine. This is particularly important as the judiciary is formed on a professional basis, not a political one, unlike other branches of government in Ukraine and many other countries. It is also worth noting the opinion of N. Varsava (2021) that the judiciary is a social authority with an apolitical character, different from political authorities. Based on this statement, represents the power of all generations of society that contributed to the formation of the rules of coexistence and national law. The main idea of the judiciary is the primacy of law and its influence on the social organism. This objective circumstance means that judges are independent and impartial mediators between civil society and the state. This determines the significance and role of judges in the state in the social aspect and outlines the boundaries of their social and professional status, as outlined by C. Mak *et al.* (2020). It is worth noting that for a full understanding of the status of a judge and allocated duties, it is necessary to consider them also in the context of labour law. This is determined by judges being special subjects who are in an employment relationship with the "employer" (the state). Thus, it is also advisable to consider the status of judges in the context of all branches of law that regulate their activities.

R. Ippoliti & G. Tria (2020) note that judges are employees in the sense of labour law. It should be added to the author's position that their labour activity has the following peculiarities: they are appointed or elected to the position following the established procedure determined by the current legislation and meet the requirements for the legal personality of the labour nature of this category of employees. It is worth noting that representatives of the judiciary as subjects of labour relations have both general and specific rights and obligations regulated by a specialised legislative doctrine. Thus, judges are in an employment relationship, have general and special duties, and are responsible to the state, society, and the individual at a higher level. This leads to the conclusion that the status of judges is a rather complex and multifaceted system, the key aspects of which are influenced by various branches of law. In this context, it is worth mentioning the interdisciplinary mode of operation of the court. Given the specifics of the legal status of a judge, it is possible to argue that the activities of this category of entities are responsible, special, and comprehensive. It should be noted that in a broader sense, overcoming social problems through justice, which is possible only in a state based on the rule of law, determines the importance and role of judges' activities in the social and legal aspects.

It should be noted that the issue of rebranding the judiciary and law enforcement agencies deserves particular consideration, which is due not only to the reformers' desire to change the image of these structures but also to their preventive function. Thus, O.Yu. Amelin (2022a) highlights that a properly formed image of law enforcement and justice agencies can influence the resolve of potential offenders. According to the author, if citizens perceive these institutions as effective and fair, they will be less likely to commit crimes. The author also concludes that a rational rebranding of the prosecutor's office and other justice system bodies and institutions can help to increase their effectiveness and ensure effective prevention of criminal offences.

Thus, the perception of a prosecutor is a complex concept that includes two aspects: professional and personal. The professional image of a prosecutor is perceived as a specialist capable of performing allocated duties effectively. The personal image is how a person is perceived as an individual who has certain physiological and psychological characteristics, emotional manifestations, cultural level, and moral values. The image of the prosecutor's office is a general perception of it that is formed both by its employees and the public based on information about the activities of the prosecutor's office, its functions, mission, values, etc. O.Yu. Amelin (2022a) notes that the proper image of the prosecutor and the prosecutor's office is an important factor in their successful operation. Thus, in the modern information society, the image of organisations and institutions plays an increasingly important role. This is because people receive information about these organisations and institutions through various channels, including social media, mass media and personal

contacts. For state institutions such as the judiciary and prosecutors, developing a positive image is particularly important, as they are among the key institutions responsible for protecting the rights of citizens. Creating a positive image requires awareness of this need and the development of an effective image strategy. The necessary components in this case are ensuring transparency and openness of these institutions, effective communication with the public, and compliance with the principles of the rule of law and justice. This is an important part of their reform, which will help to increase public confidence and the effective performance of their functions.

Furthermore, O.Yu. Amelin (2022b) notes that one of the main problems of the judicial system of Ukraine is the understaffing of courts, which is caused by the protracted judicial reform and the reform of the bodies responsible for the selection of judges. Ineffective selection of judges and chronic lack of the required number of courts, especially first-instance courts, leads to paralysis of the judicial system and inability to protect violated rights of citizens. The author notes that another significant problem is the low level of public trust in judges, which is caused by widespread corruption in the judiciary, political bias of individual judges and their lack of professionalism. Unlike in European countries, where the judiciary enjoys the highest level of public trust, in Ukraine, citizens are more inclined to trust other state authorities. O. Amelin notes that the solution to these problems is seen in the speedy reform and professionalisation of the judicial system, and elimination of its dependence on political and other external influences, as only an independent and professional court can make fair and objective decisions, which is the key to the authority of the judiciary and public trust in it.

Based on the abovementioned, judicial conduct reflects its legal status. This means that judges are governed by the current legislation and have certain peculiarities arising from their role in the state. It is aimed at administering justice, namely, at resolving disputes between parties based on law. In addition, the functioning of a judge aims to achieve indirect objectives, such as the protection of human rights and freedoms, and the rule of law and legality. This definition is consistent with the aforementioned definition of judges' labour activity. Based on this, the work of judges is a type of behaviour of authorised persons related to the exercise of functions and powers vested in them. This activity has clear limits established by law, as a result of which judges perform special socially useful and necessary functions to ensure the rule of law and legality.

Conclusions

This study was conducted to determine the constitutional and legal status of judges in Ukraine and ways to modernise it. The study determined that the amendments to the Constitution of Ukraine on justice adopted on 2 June 2016 were an important step in reforming the judiciary in Ukraine. Courts and judges play a key role in implementing these innovations. A statistical analysis of data on the number of judges of local and appellate courts in the context of full-scale aggression was conducted, which revealed an average staffing deficit of 30.4%.

An important aspect of the study was the analysis of the status of judges before and after the aforementioned 2016 reform. This was used to highlight several key aspects: judges currently enjoy functional immunity, which helps ensure the immunity and independence of authorised persons and protect them from potential political pressure. The study determined that the current version of the Law of Ukraine "On the Judiciary and the Status of Judges" strengthens public control over judges. This is reflected in the obligation imposed on judges to submit declarations that will be publicly available, and their late submission will result in disciplinary action. One of the innovations is the establishment of the Public Integrity Council. Its functions include assisting the High Qualification Commission of Judges of Ukraine in conducting judicial evaluations. The rebranding of state institutions was also considered, which provides an opportunity to increase the level of public trust.

The study highlighted that these innovations aim to ensure the transparency of judges and fight corruption, but some of them may be ineffective. In this regard, some recommendations were offered to help improve lawmaking and implementation in practice. Further research will be aimed at conducting a detailed analysis of the issue of rebranding state institutions in Ukraine.

Acknowledgements

None.

Conflict of Interest

None.

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Модернізація конституційно-правового статусу суддів в Україні

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Анотація
Актуальність дослідження обумовлена тим, що в умовах воєнного стану та процесів євроінтеграції важливим стає питання реформування органів державної влади, зокрема органів й установ системи правосуддя. Метою роботи є здійснення аналізу законодавчої бази в контексті визначення конституційно-правового статусу суддів в Україні. Для цього було використано такі методи: логічний аналіз, формально-юридичний, догматичний, юридичної герменевтики, дедукції, індукції, синтезу, що надали можливість виокремити основні засади регламентації конституційно-правового статусу суддів в Україні. У межах дослідження констатовано, що сучасний конституційно-правовий статус суддів визначається оновленою редакцією Конституції, Законом України «Про судоустрій і статус суддів» та іншими законодавчими актами. Зазначено, що однією з головних проблем судової системи України залишається кадрова неукомплектованість судів. Відповідно до реформ, які проведені з 2 червня 2016 року та внесли зміни в низку норм, здійснено порівняльно-правовий аналіз статусу суддів до та після нововведень. Виявлено, що раніше судді мали абсолютну недоторканність, нині – функціональний імунітет, який захищає від переслідування за їхні дії. Ці реформи реалізовано для того, щоб забезпечити незалежність суддів і захистити їх від політичного тиску. Досліджено досвід таких країн, як Італія, Німеччина, Японія, США, у контексті забезпечення принципу незалежності суддів. Аргументовано, що цей принцип можна реалізувати в різних формах. Також обґрунтовано важливість питання ребрендингу державних установ

Ключові слова:
суддя; правовий статус; незмінюваність суддів; імунітет суддів; незалежність суддів; судова влада; юрисдикція

UDC 343.7.004.65
DOI: 10.56215/naia-chasopis/1.2024.50

Databases in the investigation of household armed robberies: Challenges and ways of improvement

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Abstract
Amidst the full-scale war in Ukraine, an increase in the number of crimes against property involving weapons, characterised by suddenness, brutality, and aggressiveness, has occurred. Such crimes violate not only the inviolability of housing and property rights but also harm the health and lives of victims. In this regard, the study aims to examine the possibilities of using automated information retrieval systems of the Ministry of Internal Affairs and the National Police of Ukraine in the investigation of robberies involving the use of weapons. The following methods were used in the course of the study: comparative legal, analytical, systemic, and structural, generalisation, induction, deduction, and synthesis. These methods were used to analyse the world experience of databases of automated information retrieval systems to improve the investigation of robberies involving the use of weapons against citizens' homes. Based on this, the most progressive and effective methods of investigating this category of criminal offences are identified, proposals for improving national practice are formulated, and an indicative set of parameters for typical actions during such robberies is developed. The author proposes to improve information and analytical systems by filling in new databases of serious crimes committed with the use of weapons, which will facilitate ease of use and efficiency of their investigation. The development of such a database provides for the possibility of updating and collecting information based on specified requests. The content parameters are determined by the ability to collect information on criminals, the forensic traces that identify them, behavioural traces (use of a type or types of weapons, home invasion tools, nature of bodily harm, features of disguise, etc. The practical value of the study lies in the possibility of considering theoretical recommendations when creating databases that will ensure the completeness, efficiency and convenience of obtaining the necessary information for the effective investigation of robberies involving the use of weapons

Keywords:
robbery; automated information retrieval system; organised group; criminal; property

Article's History:
Received: 26.11.2023
Revised: 14.02.2024
Accepted: 27.02.2024

Suggest Citation:
Bryskovska, O., & Matulienė, S. (2024). Databases in the investigation of household armed robberies: Challenges and ways of improvement. *Law Journal of the National Academy of Internal Affairs*, 14(1), 50-59. doi: 10.56215/naia-chasopis/1.2024.50.

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Introduction

The present-day burglary involves the use of weapons, violating not only property rights, but also the right to inviolability of the home, also possibly causing harm to people's health and lives. As a result of the war in Ukraine, the public danger of armed robberies against citizens' homes is increasing, and the likelihood of criminals having firearms is significantly higher. In turn, the boldness and openness of such criminal offences and the low level of their investigation cause a significant public outcry (Bryskovska & Dyakin, 2023b).

Despite significant research on the investigation of robberies, the problem of investigating robberies of citizens' homes with the use of weapons requires constant improvement and study, as under martial law, weapons and their types become more diverse, as well as the means of committing such crimes. Therefore, significant attention should be devoted to the use of forensic expertise and information databases, the subject of which is various types of weapons and explosives, as well as other means of committing such attacks (Bryskovska & Dyakin, 2023a).

Using discrete spatial choice models, S. Curtis-Ham *et al.* (2023) identified the relationship between proximity to activity and crime using police database data, such as offenders' homes, family members' homes, schools, previous crimes, and other locations of interest to police. Criminals tend to be more likely to commit crimes closer to their activities than further away and closer to those they visit more often, for example (a house next to family homes, new crimes near previous crimes). The researchers propose to extend the theory of crime patterns to different locations and types of crime when studying the spatial pattern of criminal behaviour. The results have positive implications for geographic profiling in police investigations.

As M.P.J. Ashby (2019) noted in his research paper, the study of spatial and temporal patterns of crime is relevant both for academic understanding of the processes that generate crime and for policies aimed at reducing crime. He described the Crime Open Database, an open database of the United States of America. The data in this database has been processed to match geographic coordinates, dates and times, crime categories and location types, and to add census and other geographic identifiers. The resulting database provides a broader examination of the spatial and temporal patterns of crime in many US cities, allowing for a better understanding of the variations in the relationship between crime and place in different environments. In particular, graphical databases, as pointed out by A. Bhardwaj and K. Kaushik (2022), expose criminals by identifying the complex actors involved and their relationships to identify suspicious connections to graph patterns. This allows investigators to process information more efficiently and quickly.

P.S. da Conceição Moreira *et al.* (2018) emphasised the need for database-based research to identify the most dangerous groups of criminals in certain types of crimes. Simultaneously, J. Kim *et al.* (2020) proposed using SNS profiling, which was previously used to store the personal information of users and as a marketing tool to recommend products by analysing customer interests in any field, for criminal investigations. For this purpose, it is proposed to create a database to store information collected from SNSs and a model for profiling criminal offence events is proposed. Therefore, it is possible to conclude that to promptly obtain reliable data in a systematic, processed, and user-friendly form for assessing the situation and making optimally informed decisions regarding the investigation of robberies of citizens' homes with the use of weapons, it is advisable to use information and analytical resources adapted to such crimes and necessary for their successful investigation. This necessitates the creation of a separate information bank of data on robberies involving the use of weapons. It should provide the opportunity to collect the necessary information on the characteristics of such crimes, data on the perpetrators of such attacks, suspects, crimes of previous years, both investigated and not investigated, means and instruments used in the commission of such crimes and other parameters.

The study aims to analyse the problematic aspects of the use of automated information retrieval systems for effective investigation of criminal offences, and the practice of using the main information systems of the Ministry of Internal Affairs (MIA) and the National Police of Ukraine (NPU). In this regard, the study formulated indicative questions regarding the set of typical actions committed by criminals during a robbery attack on a citizen's home using weapons; and developed an algorithm for comparing, evaluating, and analysing information that can be obtained from the information systems of the MIA and the NPU.

Materials and Methods

A range of scientific cognition methods was used in the study, such as comparison in considering the subsystems of the unified information database and integrated information retrieval systems used by the National Police of Ukraine and the Ministry of Internal Affairs of Ukraine. The comparative legal method was used to study studies on this issue by both domestic and foreign scholars. The analysis method was used to describe the general features of armed robberies against the homes of citizens. The systematic-structural method was used to propose a scheme for finding the necessary criminally relevant information based on generalised knowledge about these types of crimes, as well as for identifying similar actions, situations, tools, means, time, and place of commission in previously committed, both investigated and non-investigated robberies of previous years. The deduction method was used to identify

each typical action that is characteristic of members of organised groups committing a series of such attacks using the general patterns of armed robberies against citizens' homes. The induction method is used to form a set of typical actions of members of organised groups in committing a series of robberies against citizens' homes with the use of weapons. Synthesis was used as a method of scientific cognition to systematise criminal proceedings to establish the seriality of robberies and to formulate guiding questions to obtain information on the individualisation of the perpetrator.

The regulatory framework of the study included: the Constitution of Ukraine, Law of Ukraine "On the National Police" of 02.07.2015 No. 580-VIII[1]; Regulation on the National Police, approved by the Cabinet of Ministers of Ukraine on 28.10.2015 No. 877[2], Order of the Ministry of Internal Affairs of Ukraine "On Approval of the Regulation on the Information and Telecommunication System "Information Portal of the National Police of Ukraine" of 03.08.2017 No. 676[3], Order of the Ministry of Internal Affairs of Ukraine "On Approval of the Regulation on the Unified Digital Departmental Telecommunication Network of the Ministry of Internal Affairs" of 24.12.2019 No. 596[4]. Additionally, the study examined the Protection of Freedoms Act[5] and the Housing and Planning Act[6], which can provide context and expand the legal perspective on the challenges and ways to improve the use of databases in the investigation of residential gun crime. This legal framework defines the scope and powers of the police in conducting investigations, including the use of databases, and can serve as a basis for analysis and suggestions for improving this process.

Results

The application of innovative methods of analysing information on criminal offences should be based on a thorough study of the positive experience of law enforcement agencies and police units in other countries in investigating crimes. Widely used information retrieval systems do not have the information and analytical resources that law enforcement agencies in Ukraine need to successfully investigate crimes. In the context of modern society's informatisation, it is advisable to adopt the best practices of foreign countries when investigating criminal offences employing constant analytical search and analytical activities through optimisation and restructuring of information flows with the introduction of a new generation of relevant software.

Ukrainian scientists O.E. Korystin *et al*. (2019) and I.A. Fedchak (2021) distinguish between three types of criminal analysis: operational or operational, tactical, and strategic. Operational or operational criminal analysis, according to them, is an information and analytical activity in certain criminal proceedings regarding information of interest to the police: identification of signs and information characterising the peculiarities of committing such crimes, objects, persons of criminal groups and organisations, identification of places of concentration of robberies against citizens' homes with the use of weapons, and identification of the profile of the victim and suspect. Tactical criminal analysis, in turn, is the analysis of crimes and crime in a certain area for a short period, for a particular type of criminal offence, to develop tactical measures to identify and capture criminals, identify risks, and prevent certain criminal offences. Strategic criminal analysis aims to identify and assess threats to individuals, society, and the state. The main goal is to identify vulnerabilities in the law enforcement system or environment and to make management decisions to prevent criminal offences and combat crime. This analysis reveals trends and patterns and forecasts the development of identified threats over a long period. The main purpose of this process is to prepare strategic management decisions and assess the risks associated with the development of the crime situation (Fedchak, 2021).

The effective investigation of armed robberies against citizens' homes, as well as the investigation of other crimes, requires reliable information available in the required amount about the subjects of the investigation, which can be obtained from various sources of forensically relevant information. Such sources of information include information systems (databases) created by the MIA of Ukraine and the National Police of Ukraine (NPU). Such forensic records are maintained by the Department of Information and Analytical Support of the National Police of Ukraine and the Expert Service of the Ministry of Internal Affairs of Ukraine. As of 2024, the trend of maintaining and creating forensic records as databases and databanks included in the unified information system of the Ministry of Internal Affairs of

[1] Law of Ukraine No. 580-VIII "On the National Police". (2015, July). Retrieved from https://zakon.rada.gov.ua/laws/show/580-19#Text.
[2] Resolution of the Cabinet of Ministers of Ukraine No. 877 "Regulations on the National Police". (2015, October). Retrieved from https://zakon.rada.gov.ua/laws/show/877-2015-%D0%BF#Text.
[3] Order of the Ministry of Internal Affairs of Ukraine No. 676. "On Approval of the Regulation on the Information and Telecommunication System "Information Portal of the National Police of Ukraine". (2017, August). Retrieved from https://zakon.rada.gov.ua/laws/show/z1059-17#Text.
[4] Order of the Ministry of Internal Affairs of Ukraine No. 596 "On Approval of the Regulation on the Unified Digital Departmental Telecommunications Network of the Ministry of Internal Affairs". (2019, December). Retrieved from https://zakon.rada.gov.ua/laws/show/z1055-16#Text.
[5] Protection of Freedoms Act. (2012, May). Retrieved from https://www.legislation.gov.uk/ukpga/2012/9/contents.
[6] Housing and Planning Act. (2016, May). Retrieved from https://www.legislation.gov.uk/ukpga/2016/22/pdfs/ukpga_20160022_en.pdf.

Ukraine[1] is still evident. The Ministry of Internal Affairs operates the Unified Digital Departmental Telecommunication Network (UDDTN) of the MIA. This network is a multi-service, logically coherent, multi-level network that interacts with the National Telecommunications Network, the National Confidential Communications System, and the public telecommunications network. The UDDTN includes a variety of technical means for both telecommunications and transport telecommunications networks, ensuring the transmission of information belonging to state information resources. The network is designed to meet the needs of consumers for the services of the UDDTN both in normal and special conditions, as well as in emergencies or the introduction of a state of emergency. The National Police of Ukraine updates and facilitates the maintenance of the databases included in the unified information system of the Ministry of Internal Affairs of Ukraine[2,3].

The Integrated Information and Search System of the National Police of Ukraine was created to ensure the effectiveness of police officers in investigating criminal offences. It includes separate subsystems: "Crime", "Person", "Item", "Criminal weapon", "Antiques", "Car Theft", "Registered weapon", "Delivered", "Search", "Identification", "House arrest", "Migrant", "Criminal statistics", "Administrative offences", "Unified record", "Stolen (lost) documents", "ODC", "Corruption", "Dacto", "Investigation: order" (Prykhodko, 2018). The Forensic Service of the Ministry of Internal Affairs of Ukraine also has other forensic records, such as automated ballistic information systems (with traces of bullets, bullet cases of various weapons, which automatically provide high-quality images of all side surfaces of cartridge cases or bullets and fully display the bottom of the cartridge case), records of counterfeit money, forged documents, handprints recovered from crime scenes, shoe prints, traces of burglary tools, vehicle traces recovered from unsolved crimes, DNA profiles of persons, micro-objects, subjective portraits of persons suspected of committing crimes.

Thus, all subsystems are integrated into a single information database, where, due to the interconnection of subsystems, it is possible to obtain detailed data on individuals or events. It is worth noting that after the introduction of the information and telecommunication system (IPNPU) "Information Portal of the National Police of Ukraine" the integrated information and search system (IISS) of the internal affairs agency "Armor" is used only for information and reference purposes, and its records are not updated. As of 2023, the main automated system used by the National Police of Ukraine is the IPNPU system (Ivanov, 2020). The organisational and informational response of the National Police units to primary information at the scene is also ensured by the information technology and system complex "Tsunami" (an electronic card with improved quality of response to robberies, which simplifies the collection and recording of primary information about the incident, which in turn reduces the time for dispatching police units, provides visualisation on the map, and provides for the calculation of reports, statistical reports and archives). The IPNPU is already bringing many benefits but still needs to be further developed and improved. In particular, there is such a problematic issue in the operation of the IPNPU system as "freezing". The same problem exists in the Tsunami information system. This blocks dispatching service and operator activity ("102" call service), who are then forced to work over the phone, receiving messages and sending police units to the scene. As a result, response times to reports of criminal offences are increasing, requiring improvements to the quality and optimisation of signal transmission of the networks that integrate into the UIDP system. As a result, police officers spend significant time summarising and processing the necessary information (Krasnobrizhiy, 2018). The use of the IPNPU system is, among other things, provided for in part 1 of Article 27 of the Law of Ukraine "On the National Police", according to which the police has direct operational (including automated) access to information and information resources of other public authorities with mandatory compliance with the Law of Ukraine "on Personal Data Protection".

A centralised repository for investigative data as a search database exists in the United States (Integrated Automated Fingerprint Identification System, n.d.). This repository contains information related to investigative and intelligence data used to support both law enforcement and the Federal Bureau of Investigation's (FBI) counterterrorism and counterintelligence missions. This investigative data repository was created in 2004 to centralise various state and federal databases, as well as criminal history records from various law enforcement agencies. The repository also includes data from the U.S. Treasury Department's Financial Crimes Enforcement Network (FinCEN) and other databases containing information on public records (Treasury Strategic Plan…, 2021).

[1] Order of the Ministry of Internal Affairs No. 580 "On the Approval of the Instructions for the Organization of the Functioning of Forensic Records of the Main Expert Forensic Center of the State Border Service of Ukraine". (2017, July). Retrieved from https://zakon.rada.gov.ua/laws/show/z0957-17#Text.

[2] Resolution of the Cabinet of Ministers of Ukraine No. 1024 "On the Approval of the Regulation on the Unified Information System of the Ministry of Internal Affairs and the List of Priority Electronic Information Resources of its Subjects". (2018, November). Retrieved from https://zakon.rada.gov.ua/laws/show/1024-2018-%D0%BF#Text.

[3] Order of the Ministry of Internal Affairs No. 1066 "On the Approval of the Procedure for the Use of Telecommunication Networks and the Table of Affiliation of Departmental, Special and Connecting Lines in the National Police of Ukraine". (2016, October). Retrieved from https://zakon.rada.gov.ua/laws/show/z1415-16#Text.

The Integrated Automated Fingerprint Identification System (IAFIS) is a national system operated by the FBI for the automated search and identification of individuals based on their fingerprints. The system supports case management and provides automated fingerprint searching, electronic fingerprint image exchange, and storage capabilities. IAFIS is the largest biometric database in the world, including the fingerprints and criminal history of criminals, as well as a large number of fingerprints of citizens and known or suspected terrorists. This information is processed not only by national but also by international law enforcement agencies. The FBI receives fingerprints from both federal state and local law enforcement agencies, whether voluntarily or through criminal arrests and the US-VISIT program for background checks. The FBI has expressed its intention to replace the IAFIS system with a new next-generation identification system.

The Combined DNA Index System (CODIS) is a system that integrates national, state, and local databases for DNA identification. Its multi-tiered architecture allows forensic laboratories to control their data. Each laboratory decides independently which DNA profiles it will share with other areas of the country. The state government regulates which crimes can be included in CODIS. The CODIS database defines a DNA profile as a DNA profile that includes the sample identifier and the identifier of the laboratory responsible for that profile. It is worth noting that CODIS does not contain information regarding the personal identification of specific individuals, such as social security numbers, date of birth, or names. This DNA index system contains information about the Convicted Offender Index – profiles of individuals who have been convicted of crimes, as well as the Arrested and Reference Index and the Missing Persons Index and other databases (The FBI's Combined DNA Index System..., n.d.). This example of a democratic country's use of databases in the investigation of crimes once again emphasises the effectiveness of their functioning. We believe that Ukraine can follow the example of other countries to fully realise the potential of databases.

France, in turn, has a system for processing observed offences (STIC), which is a computerised police file of the French Ministry of the Interior that combines information on criminals arrested by the national police. It also contains data on the victims of these crimes, as well as the identification of stolen or misappropriated objects. Responsibility for the STIC lies with the Director General of the National Police (DGPN). It is managed by the Technical and Scientific Police Unit. Its main purpose is to facilitate the detection of criminal offences, the collection of evidence of these offences, and the search for the perpetrators. The system is also used to produce statistics. The National Gendarmerie has a file called JUDEX (Judicial Documentation and Exploitation System). In 2011, the STIC and Judex files were merged into the Criminal Record Processing (TAJ) file. It contains data on the defendants in criminal proceedings, whether they were co-perpetrators or main participants in the crime, criminal specialisation, first names, surnames, nicknames, date of birth, marital status, places of work, residence, etc. There is a separate database on persons who have committed sexual offences (Automated Criminal File on Persons Who Have Committed Sexual Offences). In other words, separate databases have already been implemented in European countries and have been successful enough to continue their existence, despite the funds regularly invested in them, which emphasises their effectiveness (The Recorded Offences Processing System, n.d.).

The United Kingdom has several information systems in place, including the National Fingerprint Database, the National DNA Database, and public transport data (Oyster card payments can track the movements of individuals, and the Central London transport fee provides computer images for tracking vehicle licence plates), vehicle tracking (precise tracking of all vehicle movements on the road through the use of a nationwide network of roadside cameras connected to automatic number plate recognition systems. This tracking system captures and stores details of all trips made on major roads and through urban centres, keeping the data for five years[1]), Law Enforcement Data Service (LEDS), Fraudulent Landlord and Property Agent Database)[2]. Thus, at the moment, various countries actively develop and expand individual databases, as they understand their effectiveness in facilitating the fastest and most efficient investigation of criminal offences.

Furthermore, considering the information databases of the above-mentioned countries, the resources of which are used by law enforcement agencies to investigate crimes, it is possible to conclude that not every country has databases on serious crimes committed with the use of weapons. A similar database of a specific serious crime was introduced in France, the Automated Criminal File on Sex Offenders. The database contains the registered name, pseudonym, nationality, gender, place and date of birth, address, nature of the offence, date and place and nature of the offence, and the decision and sentence imposed.

As a socially dangerous crime, an armed robbery of a household infringes not only on the right to respect for a person's home, property, and health but also on life, which is the highest value in a civilised society. To investigate such a crime, it is necessary to develop a separate software product to conduct a tactical analysis of individual crimes, as well as to conduct a comparative analysis of previously committed robberies (both solved and unsolved), comparing them with the

[1] Protection of Freedoms Act. (2012, May). Retrieved from https://www.legislation.gov.uk/ukpga/2012/9/contents.
[2] Housing and Planning Act. (2016, May). Retrieved from https://www.legislation.gov.uk/ukpga/2016/22/pdfs/ukpga_20160022_en.pdf.

aforementioned individual crime (Fig. 1). This will ensure the possibility of forming additional investigative versions and planning appropriate further public investigative (detective) actions and covert investigative (detective) actions. In turn, using the temporal analysis of the chronology of events in the time division in the relevant territory to establish hidden spatial and temporal, objectively existing, connections between events, conducting a general analysis, comparative analysis and analysis of profile features makes it possible to conduct geographical profiling, i.e. analysis of crime scenes that are in some way interconnected. This provides insight into the spatial and temporal behaviour of the offender and also makes it possible to establish the degree of familiarity of the offender with the location of the attack, which will help to focus the investigation of the attack on a smaller area. Such a software product should perform a variety of functions, including the function of ensuring the collection of information on the nature of the robbery attack on the homes of citizens with the use of weapons, on the perpetrators of such attacks, including those who have been convicted and sentenced, as well as on persons who were suspected of committing such crimes; and the functions of transferring, selecting, processing, storing, issuing and providing information upon request.

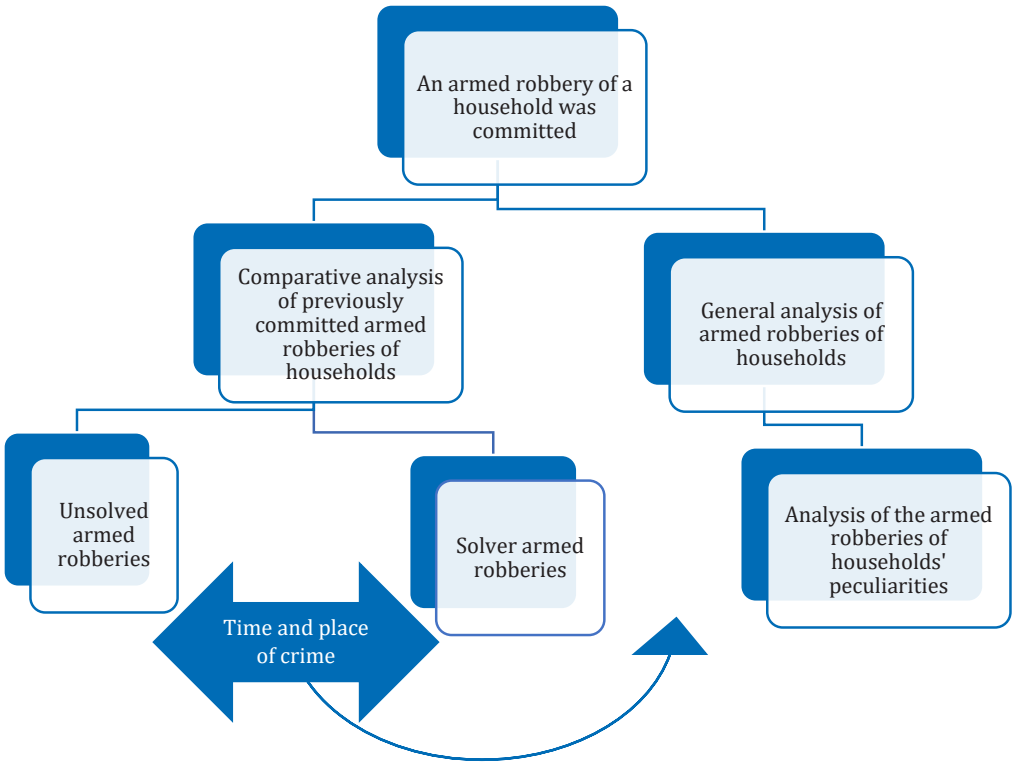

Figure 1. Correlation of the analysis of the peculiarities of an armed robbery of a household with the analysis of previously committed similar attacks

Source: compiled by the author

To establish the territorial and temporal scope of a serial armed robberies of households, it is necessary to determine: the boundaries of the territory within which a serial armed robberies of households were detected; the location of houses and apartments; the distance from transport routes, railway and bus stations, land transport stops, subway; the facts of the location of the robberies near places of sale of illegally seized property (markets, taxi stands, pawnshops); the attackers' routes to the places of robberies and their escape routes; the time (hours, days of the week, dates) of all established acts of serial robberies, the number of thereof, intensity in the relevant time period (season of commission, day of the week, dark or light time of the day); determine the method and sequence of actions of the attackers in the preparation, commission and concealment of serial robberies; the use of the same weapons and tools for committing the crime in a number of such robberies; and the amount of stolen property as a result of each robbery.

Thus, when investigating an armed robbery of a household, it is advisable to study the methods of committing such a crime and to establish the existence of a series of such robberies to clarify whether they were committed by a group. With a new, separate database of armed robberies, access to such information would be much faster and easier. At the same time, it is necessary to study, compare, evaluate, and analyse the conclusions of expert examinations to identify identical traces in different robberies, other circumstances that

confirm the relation of some episodes to the investigated series of robberies and the involvement of persons other than the identified ones, which can be done using databases, in particular, the database of armed robberies of households. Examination should determine: the presence of tangible and ideal traces of the crimes, according to the conclusions of relevant examinations and those contained in the testimony of victims' witnesses, indicating the commission of a series of group robberies, verification of the versions of the group nature of all or part of the robberies that constitute the serial; the fact that the same suspects were present at the scene of two or more robberies; the fact that they used weapons, vehicles, tools to commit the crime and to suppress the resistance of the victims in several robberies; the characteristic habits and skills of the attackers, which were manifested in the way they committed such criminal offences; the boundaries of the space where a series of such robberies were detected, the location of citizens' homes; the characteristics of the objects of illegal appropriation and the characteristics of the victims (name, specificity, number); the existence of a possible common acquaintances and communication between members of the criminal group and two or more victims.

It is also necessary to analyse information about persons who have previously been convicted of violent crimes. This information can be obtained through the use of automated databases, including fingerprinting systems (to record fingerprints recovered from unsolved crimes), other operational and search records on persons who have committed a crime but have been released from criminal punishment; antiques and cultural property; lost and found firearms. In this context, it is necessary to study forensic registers that operate at different levels – national and local. At the national level, there are central (ABDC) and local (ABDO) forensic registers. These banks keep records of persons who have committed serious crimes and are on the international wanted list, as well as information on unsolved serious crimes, stolen items, firearms, vehicles, antiques, etc.

The Central Criminal Records Centre (ABDC) keeps records of the same data, but in a larger volume, covering less dangerous crimes and certain categories of persons with a tendency to commit crimes. *Modus operandi* is a system of registering crimes based on stable, visible features that characterise the mechanism of criminal acts and the person who committed them. This data is collected during investigative actions (inspection of the scene, reconstruction of the circumstances of the event) and forensic examinations. Criminalistics records have two files: one for how crimes are committed by known persons, primarily repeat offenders, and the other for how crimes are committed by unknown persons (criminals who have not yet been identified). Both databases are in a state of constant mutual verification in the operational mode.

The next important steps are to identify, gather and systematise information about the attackers' identities and compare it with the information in the database of robberies involving the use of weapons. It is necessary to compile a subjective portrait of each attacker and highlight the features necessary for the search (special features of the attackers, level of criminal qualification, availability of data on convictions for robberies, the propensity to use alcohol and drugs, discernment and interest in specific objects of criminal assault (interests, hobbies or profession, or the presence of an order for a criminal assault or the relevant specialisation of the offenders, which gives grounds for a criminal assault), and enter them in the database responses. It is advisable to establish and analyse the identified evidence base, compare it with the one available in the database of robberies against citizens' homes with the use of weapons, and build a territorial and temporal model of the offender's actions to determine the possible place and time of the next series of robberies, as well as his place of residence or base, which will be easier to implement with access to the database of robberies against citizens' homes with the use of weapons. All of the above will provide necessary conclusions and plan further investigative search operations and/or covert investigative search operations.

Many scholars addressed information databases in the context of their use in the investigation of crimes, including violent ones, and also studied robbery and its social danger. Their opinions will be discussed in the article below. In particular, L. Lisnychenko (2019) emphasises that robbery is one of the most dangerous violent and mercenary crimes. She notes that the issue of combating crime, including combating robbery, will never lose its relevance, especially given the economic downturn and growing social tensions in society. Her position on robberies and their level of danger is consistent with the viewpoint expressed in this article, as the article suggests that separate databases should be used to investigate robberies precisely because they are particularly dangerous. D. Adnan (2018) also emphasises the particular danger of robberies, which encroach on the sense of security of both the individual and society, whereas D.V. Churilov (2020) addresses the involvement of criminal groups in such crimes.

Given the aforementioned the information of L. Locarno *et al*. (2019) on the benefits and challenges faced by Argentina in the creation of a criminal genetic database is noteworthy. They emphasised that despite the lack of decisions, interest and resources among responsible persons and bodies at the institutional level, the creation of such a database in 2016 confirms the potential of databases and gives hope to victims of crime. Considering that the resources in Ukraine that could be used to create a new database are rather limited as a result of the Russian invasion, we consider the experience of countries with similar funding problems to be

particularly valuable. Despite this, the study once again emphasises that facilitating the investigation of socially dangerous crimes through databases leads to a significant positive result that justifies the resources spent.

Given the importance of criminal databases, M. Łoś *et al.* (2021) aimed to improve the performance of graphical operations to improve the performance of databases in the field of criminal intelligence. The results show that in some cases, they have achieved performance improvements in criminal databases. The results of such studies should be implemented to improve Ukrainian databases, which still have performance problems, as mentioned earlier in this study.

In turn, in Israel, the Israeli DNA database has recently started conducting so-called "family searches", for which a new system based on kinship analysis has been adopted. That is, this system assumes that a criminal or victim with an unidentified identity will be identified by kinship with their possible relatives included in the database, using additional pedigree analysis. This strategy was analysed by T. Ram *et al.* (2023). They emphasise that genetic databases, among other things, help to identify unidentified human remains, which can be the basis for further investigation of a murder. The detention of the offender, in this case, prevents the subsequent commission of similar crimes. It is worth noting that information databases, as shown in their scientific work, are used to investigate criminal offences and are being improved in different countries of the world, which underlines their effectiveness in this area.

Notably, E. Plemel (2019) concludes in her research that an increase in the amount of information in genetic databases is necessary for the most effective investigation of criminal proceedings. Moreover, she emphasises that a global genetic database would be more effective than separate small databases. In turn, the development and improvement of databases increases the effectiveness of the investigation of crimes, including such socially dangerous crimes as robbery, as emphasised in this study.

Particular attention should be devoted to the study by G.M. Campedelli (2020), who considers the possibility of using the Scopus database by artificial intelligence, which could thus generate new ways of investigating criminal offences. The idea deserves attention, as databases, including criminal databases, have great potential to be used to solve crimes, which will make our society safer for civilians. For Ukraine, the possibility of cooperation between specialised criminal databases and artificial intelligence cannot be ruled out, which can significantly speed up the work of law enforcement agencies. And in the investigation of robberies, as in any other crime, time is of the essence.

Considering the opinions and research of the above scholars, criminal databases and other types of databases used to investigate crimes are used and considered useful in a wide variety of countries. It is worth supporting the position of researchers who believe that the development of databases leads to a much more effective investigation of criminal offences by law enforcement agencies. The use of a separate database for the investigation of a particular type of serious crime will increase the effectiveness of the investigation of criminal proceedings relating to robberies with weapons committed with the penetration of victims' homes.

Conclusions

Therefore, given the particular social danger of such a crime as armed robbery and breaking, as well as the tendency for such crimes to be repeated by one person or group of persons, and the increase in the number of lethal weapons in Ukraine during the war, we consider the creation and use of a separate database for this type of crime to be particularly necessary and useful. It will speed up the investigation of robberies with weapons and home invasions, and thus prevent the recurrence of such crimes by the same individuals or groups. This study will be useful for the formation of a future database on robberies with weapons and home invasions, as well as for its use at various stages of pre-trial investigation.

It may be noted that databases are used in various countries where they have already proved to be effective for the investigation of criminal offences by law enforcement agencies. At the same time, databases, especially those that are particularly important for the state, require appropriate maintenance and continuous improvement. This, in turn, requires cooperation with foreign partners, domestic efforts and material support.

Police officers who can receive the necessary, reliable, comprehensive information promptly can sufficiently analyse the situation, build versions, develop an action plan for conducting priority investigative (detective) actions and covert investigative (detective) actions, make the necessary correct decision to perform the task, which will significantly increase the efficiency of their activities and lead to positive results in the investigation. It is necessary to carry out modern, state-of-the-art modernisation measures to form a unified information and analytical environment for supporting the activities of the National Police of Ukraine by improving the information systems for such support. The study suggests specific ways of effective use of databases, proposes the creation of an additional separate type of database – a database of robberies of citizens' homes with the use of weapons and encourages scientific discussion on the creation of databases for serious crimes involving weapons.

The theoretical recommendations outlined in this study can also be used to create databases that will ensure the completeness, efficiency, and convenience of obtaining the necessary information for the effective investigation of robberies involving the use of weapons. At the same time, the architecture of such databases

and the practical, legal and ethical issues of their use require further research.

Acknowledgements

We express our immediate gratitude to the staff of the National Academy of Internal Affairs for their assistance in using the available materials of previous research and for their suggestions and wishes during the writing of this article.

Conflict of Interest

None.

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Використання баз даних у розслідуванні розбійних нападів на житло громадян із застосуванням зброї: проблемні аспекти та шляхи вдосконалення

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Анотація
В умовах повномасштабної війни на території України відбулося збільшення кількості злочинів проти власності із застосуванням зброї, що вирізняються раптовістю, жорстокістю та агресивністю. Такі злочини порушують не тільки межі недоторканості житла, права власності, а й завдають шкоди здоров'ю і життю жертв. У зв'язку із цим, метою дослідження було вивчення можливостей використання автоматизованих інформаційно-пошукових систем Міністерства внутрішніх справ і Національної поліції України під час розслідування розбійних нападів на житло громадян із застосуванням зброї. Під час дослідження використано такі методи: порівняльно-правовий, аналізу, системно-структурний, узагальнення, індукції, дедукції, синтезу. Використання цих методів надало можливість проаналізувати світовий досвід баз даних автоматизованих інформаційно-пошукових систем для покращення розслідування розбійних нападів на житло громадян із застосуванням зброї. На цій підставі виокремлено найбільш прогресивні й ефективні методики розслідування цієї категорії кримінальних правопорушень, сформовано пропозиції з удосконалення національної практики, розроблено орієнтовний комплекс параметрів щодо типових дій під час вчинення таких розбійних нападів. Запропоновано вдосконалити інформаційно-аналітичні системи шляхом заповнення новими базами даних тяжких видів злочинів, вчинених із застосуванням зброї, що сприятиме зручності в користуванні й оперативності їх розслідування. Розроблення такої бази даних забезпечує можливості поповнення та збору інформації за заданими запитами. Параметри наповнення обумовлені можливостями збору інформації щодо: злочинців, їх криміналістичних слідів, які їх ідентифікують, поведінкових слідів (користування видом або видами зброї, знаряддям проникнення до житла, характером завдання тілесних ушкоджень, особливостями маскування зовнішності тощо); підозрюваних, які фігурували в провадженнях про розслідувані та нерозслідувані злочини минулих років. Практична цінність дослідження полягає в можливості врахування теоретичних рекомендацій під час створення баз даних, які забезпечать повноту, оперативність і зручність отримання необхідної інформації для ефективного розслідування розбійних нападів на помешкання громадян із застосуванням зброї

Ключові слова:
розбійний напад; автоматизована інформаційно-пошукова система; організована група; злочинець; власність

UDC 340.12
DOI: 10.56215/naia-chasopis/1.2024.60

The worldview influence on the internal beliefs of law enforcement agents in the context of exercising their discretionary powers

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Abstract
Despite many years of attempts by scholars and practitioners to determine the reason for the extremely low level of public trust in the judiciary and law enforcement agencies in Ukraine and ways to strengthen it, this level is still critical, and therefore there is a need to identify new ways to overcome such a crisis. Seeing such public distrust in the legal right of procedural decision-makers to make decisions based on their internal conviction, the study aims to review and analyse the scientific developments in the field of procedural decision-making by law enforcement agencies based on their internal conviction and to identify the factors which influence such conviction. Analysis, synthesis, and generalisation methods were used in the study of the outlined issues, which were used to process the bibliography of the issues, whereas deductive logical analysis, inductive generalisation and analogy were used to substantiate the results and formulate the conclusions of the study. Based on the study results, it is established that scholars have studied the concepts of worldview and internal conviction of procedural decision-makers separately. It is proved that any internal conviction is based primarily on a person's values and worldview orientations which are formed throughout life, primarily in childhood and adolescence. Regardless of the position held by a person, when faced with a problem in professional activity on which the law enforcement entity has already formed an opinion, the latter may make a procedural decision contrary to the actual circumstances of the case and the evidence available in it. The practical significance of this study is that the results obtained may become the basis for changes in the current legislation on the assessment of candidates for positions with discretionary powers, which involves focusing on their value beliefs and worldview

Keywords:
subject; procedural decision; discretion; discretionary powers; philosophy of law

Article's History:
Received: 22.10.2023
Revised: 26.01.2024
Accepted: 27.02.2024

Suggest Citation:
Vandzhurak, R. (2024). The worldview influence on the internal beliefs of law enforcement agents in the context of exercising their discretionary powers. *Law Journal of the National Academy of Internal Affairs*, 14(1), 60-68. doi: 10.56215/naia-chasopis/1.2024.60.

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Introduction

The modern government is facing an acute issue of finding out the reasons for the low level of public trust in law enforcement and judicial authorities and creating a way to strengthen it in the countries of Eastern and Central and Eastern Europe. The study of worldview and value orientations through the prism of their influence on the internal conviction of law enforcement agents can be a start towards finding the causes of such distrust and ways to eliminate it. Although the issue of understanding and characterising various aspects of worldview (including legal worldview) and the issue of internal conviction can be traced in the works of many scholars, the impact of worldview on the internal conviction of law enforcement officials is studied indirectly. In this regard, the coverage in the scientific literature of certain aspects related to the discretionary powers of law enforcement officials is relevant and will contribute to the establishment of further empirical research.

In a verdict process, according to A. Barak (2022), a judge must act objectively, even though no choice but to resolve the case based on personal experience and worldview are available, while O. Minchenko (2018) focused on the distinction between legal and juridical worldviews and insisted on the formation of a personality with self-determination through true legal values, and O. Kuznetsov (2019) explained worldview as a system of views and perceptions of a person about the world, albeit from a psychological point of view. Furthermore, studying the problem of internal persuasion, R. Dvorkin (2021) believed that each legal problem has one correct solution, leaving no room for judicial discretion, V. Kostytskyy (2019) noted that the idea of justice should not be supplanted by judicial arbitrariness, and S. Hopta (2017), in the context of studying the issue of discretion, focused on the problem of professional deformation of a judge and suggested ways to solve it.

S. Shulgin (2019) revealed the role and significance of doubt in the internal conviction of the investigator, and prosecutor when assessing evidence in criminal proceedings at the pre-trial investigation stage, while D. Shcherbanyuk (2018) studied the issue of forming an internal conviction in a forensic expert in the context of exercising the right to expert initiative. In addition, O. Chuchman (2022) covered the discretion of the investigating judge in proving the exercise of judicial control, and Z. Dilna (2018) studied the psychology of a juror's internal conviction when making a judgement.

After all, the issues of worldview, internal conviction, discretion, discretionary powers, etc. were dealt with at different times by many scholars, which indicates the exceptional relevance of this topic. However, the subject of this study and its scope do not allow for a detailed analysis of all developments on this topic, without in any way diminishing their importance.

Given that not only the moral qualities of a law enforcement officer and a high culture of thinking are important for an official with discretionary powers, the study aims to highlight how the scientific discourse treats the issue of the influence of such officers' worldview, and in this regard, there is always a risk that a procedural decision may be made contrary to the actual circumstances of the case (evidence) and the rule of law. To achieve the goal set by this study, several tasks were formulated, in particular, to consider the definition of the concept and nature of the formation of the worldview and internal conviction of law enforcement agencies when making procedural decisions; to study the coverage in the scientific literature of certain aspects of the impact of the worldview on the internal conviction of law enforcement agencies when making procedural decisions in general and in the context of possible negative consequences in particular.

The analysis, synthesis and generalisation methods were used in the course of the research to process scientific publications, research of scientists and primary sources containing significant theoretical information on the subject of the study. To properly substantiate the results obtained and formulate conclusions, the methods of deductive and logical analysis, as well as inductive generalisation and the use of analogies were used. This provided for a deeper understanding and systematisation of the available scientific information and allowed for the drawing of reasonable conclusions based on logic and analytical methods.

Interaction of judicial conviction, worldview, and discretionary powers in legal decision-making

Investigating the psychological properties of judicial discretion, I. Serkevych & Yu. Lisitsina (2022) concluded that a judge's internal conviction is a subjective-objective category, where the subjective side, according to scientists, is a purely individual result of the cognitive activity of a particular person. At the same time, N. Savchyn & V. Bobryk (2017), when discussing the problem of a miscarriage of justice, did not consider the internal conviction, and even more, so the one dictated by the value and worldview orientations, among the possible causes of such a miscarriage of justice, while I. Tutulych (2019) considers legal awareness to be a component of the judge's internal conviction.

It is worth noting that foreign and domestic scholars have conducted research that, although not relevant to the subject matter of this study, is at the same time close to it. These include, among others, L. Fuller (2021), who spoke about the concept of law based on morality as the most effective determinant of worldview culture; P. Rabinovich & T. Bachinsky (2014) studied the analysis of the phenomenon of legal worldview and insisted on avoiding the identification of legal and legal worldviews; I. Gioane (2018) emphasised the worldview basis of the spiritual determinant in making

political choices, and O. Zayats (2021) analysed the worldview features of professional advocacy. It is worth mentioning the study by N. Shaptala (2019), which thoroughly reveals the concept of internal conviction in the assessment of evidence in constitutional litigation, whereas O. Torbas (2021) analysed in detail the concept of judicial discretion in criminal proceedings.

Several domestic scholars have also separately studied the issue of discretionary powers of public authorities, among which the study of M. Onishchuk (2021) is noteworthy, in which the scholar addressed the problematic issues of judicial control over the discretionary powers of public authorities, the dissertation of A. Gryn (2019) on the discretionary powers of executive authorities and their implementation and O. Bilostockiy (2023) on the problems of the theory and practice of judge's discretionary powers, research by O. Kharenko (2018) on administrative discretion in the activities of public administration entities and O. Gubska (2020) on the peculiarities of exercising discretionary powers by public authorities and the choice of remedies by courts in administrative proceedings. It is worth highlighting the study by V. Rudyuk (2019), in which the scholar raised the issue of the regularity of the formation of the worldview of judges and the domestic judicial system, works by S. Glubochenko (2015) and L. Grindey (2018) on the formation of worldview as a guarantee of legal thinking of a judge, research by V. Gevko (2018), who in the course of his scientific research found out the importance of moral qualities of a candidate for a position with discretionary powers, and the views of Yu. Melikhova (2018), who in her research proved the influence of the culture of thinking on the internal conviction of the judge. At the same time, the above-mentioned developments were mostly limited to disclosing, to a greater or lesser extent, the concepts of worldview (primarily legal) and internal conviction (to a greater extent, judicial), as well as discretion (usually judicial) and discretionary powers (in particular, of subjects of power), while no studies have been conducted on their interrelation, let alone the influence of the former on the latter, when making procedural decisions by law enforcement agencies (not only judges).

Internal beliefs of law enforcement agents and their worldview: concept and interaction in the procedural decision-making context

The legal right of procedural decision-makers to decide upon internal convictions requires not only deep knowledge and understanding of the law (legal consciousness) but also competence, psychological stability, high moral qualities, etc. However, it is unlikely that a person can develop these qualities in the absence of clear worldview beliefs, within the orbit of which the individual is formed, lives, feels, and cognises. Procedural decisions made by law enforcement officials are dictated not only by the requirements of the law and the actual circumstances of the case (evidence) but also by their inner convictions, i.e. the worldview and value guidelines by which these people live. Existing in the paradigm of their views and beliefs shaped by upbringing, education, and life experience, belonging to a particular cultural, national or religious identity, and guided by their inner convictions, law enforcement agents may consciously or unconsciously allow bias (impartiality) in the application of discretion due to their worldview.

Despite the constant innovation of law to meet the current globalisation processes (openness, accessibility) (Vandzhurak, 2022), there remains an element of conservatism, even obsolescence, in law, including procedural law, which makes the institution of procedural law enforcement, as it has been throughout its existence, unpredictable and sometimes arbitrary (Kostytskyy, 2019). This unpredictability of procedural law is cultivated by the legitimate ability of procedural decision-makers to decide based on their inner conviction, i.e. to use discretion without clear criteria for such use[1].

The procedural codes of virtually all modern states provide for the right of law enforcement agencies to resolve legal issues based on their internal conviction. For example, in the Criminal Procedure Code of Ukraine[1] (Article 94), the court is empowered to evaluate documents, things, witness statements, etc. based on its internal conviction in terms of their admissibility, reliability and sufficiency, giving them the status of evidence, and then, based on the same evidence, make a final decision upon internal conviction (Vandzhurak, 2023). As such, the court makes a decision only if the evidence is sufficient, while the latter is considered sufficient if it allows the court to decide the case (Gvozdik & Koshchynets, 2016). At the same time, the court itself is empowered to qualify the evidence as sufficient or insufficient at its discretion (in the absence of clearly defined criteria for such an assessment) (Hryshchuk, 2007).

By the requirements of the aforementioned Article 94 of the Criminal Procedure Code of Ukraine, investigators (inquirers, detectives) and prosecutors are also authorised to evaluate evidence and make procedural decisions based on internal conviction[2]. Thus, the currently proposed form of determining the conditions for the sufficiency of evidence implies an almost unlimited range of subjective freedom in making procedural decisions, and this is ensured by law enforcement officials using their internal convictions when making such decisions (Vandzhurak, 2023). Since the essence

[1] Criminal Procedure Code of Ukraine. (2012, May). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[2] Judgment of the US Supreme Court in the Case No. 60 U.S. 393 "Dred Scott v. Sandford". (1857, March). Retrieved from https://supreme.justia.com/cases/federal/us/60/393/.

of discretionary powers is reduced to the impossibility of the law to cover all possible variations of the issues faced by the law enforcement agency and law enforcement agencies are guided by evidence, law and internal conviction when making their decisions, independently determining the sufficiency of such evidence and applying internal conviction mostly when the law is not able to fully regulate the situation, it turns out that any decision is made based on the law enforcement agency's internal conviction only. This raises the question of what the basis of such an internal conviction is.

An internal conviction, as a result of the evaluation of evidence and the state of confidence in the correctness of one's conclusions about the relevance, admissibility, reliability and sufficiency of evidence, as well as the correctness of the conclusion made based on evidence about the presence or absence of certain factual circumstances (Articles 246, 281 of the CPC of Ukraine[1]), is, among other things, a worldview formed by upbringing, education, life experience, cultural identity, religious affiliation and even political preferences.

Exploring the issue of worldview, the definition from the Great Ukrainian Encyclopedia was used to define this concept, as it is the most appropriate to the topic of this study, according to which it is a complex system of views and ideas about the world, a person's self-awareness of their place, environment, and basic connections in the universe, which is reflected in assessments, principles, knowledge, behavioural stereotypes, etc. However, there is no single definition of this concept, and different sources interpret it in their way.

A worldview is based on answers to general questions about a person's relationship with the world, and depending on these answers, a person can interact with it. Structurally, the worldview is divided into several levels, systems, and types. E. Durkheim (2002), for instance, emphasises the mass worldview and S. Pogrebnyak (2005) singles out the legal worldview, the framework of which, according to the scientist, is "justice, equality, freedom, good faith and other principles" (Pogrebnyak, 2005).

Therefore, if a law enforcement officer has discretionary powers, it ensures certain personal freedom to resolve issues that do not have unambiguous answers in the law, but there is no guarantee that in such cases a destructive worldview will not prevail over legal consciousness. Therefore, the ability of the procedural decision-maker to separate personal problems, moods, or beliefs from the objective application of the law and the resolution of cases based on evidence and the rule of law is necessary.

History is full of instances when judges made decisions based on their inner convictions, which were dictated by their worldview. The most famous of these is the 1857 decision of the US Supreme Court in Dred Scott v. Sandford[1], in which the court ruled that African Americans were not US citizens and that Congress had no right to regulate slavery in certain territories. Subsequently, this decision was criticised by civil society and recognised as the most illegal in US history. This case is an example of how judges, making decisions based on their inner convictions, can go beyond the Constitution simply because they are of a different race[2]. Some judges in Germany during the Nazi regime, according to L. Trepak (2019), also deliberately applied racist and anti-Semitic laws, making anti-human and politicised decisions. According to V. Hryniuk (2012), Soviet-era judges also disregarded the rule of law, sending people to hard labour or execution, guided by socialist legal consciousness.

According to the statistics of the European Court of Human Rights (Violations by Article and by State, 2022), despite the consistent legal position of this Court on the inadmissibility of excessive detention of a person without a court decision on guilt, in 2022 alone, the European Court of Human Rights adopted 141 decisions on violations of the right to liberty and security of person by Ukraine, i.e. courts, despite this, continue to make decisions to this day, giving consent to the detention of persons without a court verdict of guilt, which often reaches five years or more (Statement of the Council of Judges of Ukraine..., 2023). It seems that in the above examples, the judges did not act under the pretext of fear, a desire to please the authorities, or because of their incompetence. Such decisions were made based on internal conviction, most likely shaped by their worldview.

Therefore, worldview and inner conviction are constantly interconnected, as a worldview is a general system of ideas, values, beliefs, and views of a person about the world and place in it, while inner conviction is determined based on worldview, personal experience, upbringing, cultural environment, and other factors. Thus, it is extremely important to assess the situation and make objective decisions based on a constructive legal outlook, especially if one's professional duty is to ensure that human rights and freedoms are respected. However, such decisions are primarily influenced by the worldview of an ordinary person (not limited by professional duties) as a member of the community and a participant in social processes.

The influence of worldview on internal persuasion in the context of exercising discretionary powers

The former Chief Justice of the Supreme Court of Israel A. Barak (2022) argues in his "Judicial Discretion" book that although judges must act objectively when making

[1] Judgment of the US Supreme Court in the Case No. 60 U.S. 393 "Dred Scott v. Sandford". (1857, March). Retrieved from https://supreme.justia.com/cases/federal/us/60/393/.
[2] Judgment of the US Supreme Court in the Case No. 576 U.S. 644 "Obergefell v. Hodges". (2015, June). Retrieved from https://supreme.justia.com/cases/federal/us/576/644/.

judgements, they are forced to base their decisions on their personal experience and worldview. The judge knows what is happening in the home-country, knows the problems of that country, reads its literature, listens to its songs, etc. All of this is assimilated by the judge and embodied in the judge's discretion. All these factors, according to the judge, "in a certain way affect the expression in the judge's discretion ..." (Barak, 2022). A similar opinion was expressed by Yu. Groshevoy (2005), notes that the professional legal consciousness of a judge includes both a system of legal ideas that express the interests of society in the field of justice and the judge's system of legal views and beliefs, such as an assessment of fairness or unfairness of legal norms, the effectiveness of legal regulation and the compliance of legal norms with the nature of the social relations they regulate.

O. Minchenko (2018) also argued that the legal worldview determines how a person understands and realises personal behaviour through the prism of emotions, feelings, views, and beliefs, based on personal capabilities. However, along with this, it is important not only to understand the legal worldview but also to work on the formation of a personality and citizen for whom self-determination takes place through true legal values – justice, equality, freedom, assessment, and readiness of a citizen to be active in the field of knowledge, application, and implementation of the law. At the same time, O. Kuznetsov (2019) argues from a psychological point of view that the formation of a worldview begins in childhood and is associated with the process of consciousness formation, which lasts throughout a person's life, but the main period of such formation is childhood, especially adolescence. Therefore, it is obvious that a person's worldview is a certain guideline in life, which is formed in childhood and adolescence and through which this person personally lives, understands the world, feels justice, understands equality and is aware of the law, regardless of what position this person holds in adulthood.

From the psychological point of view, the issue of internal conviction was also covered by I. Serkevych & Yu. Lisitsina (2022), concludes that a judge's internal conviction is a subjective-objective category and, according to scientists, the subjective aspect is a purely personal result of the cognitive activity of a particular person. This process involves all personal characteristics that give the conviction an emotional colouring, such as a person's spirit, interests and views, way of thinking, moral ideals, volitional qualities, character traits and temperament.

In the context of the scientific debate on the expediency of discretionary powers as an instrument of law enforcement agencies, exploring the concept of possible miscarriages of justice, V. Savchyn & V.I. Bobryk (2017) believe that it is necessary to separate the causes of a miscarriage of justice from the conditions which led to such a miscarriage. Since a legal cause is something that gives rise to a legal phenomenon, and a condition is a circumstance that stimulates its occurrence and existence but does not give rise to it. In their opinion, the causes of judicial errors are inconsistency and unclear legislation, numerous legal contradictions and gaps, heavy workload, insufficient material, and technical support of courts, as well as obstruction of judges' activities by persons interested in resolving cases.

While agreeing with the authors that the above reasons and conditions may lead to a miscarriage of justice, the authors perhaps missed that one of such reasons may be the virtually unlimited range of judicial discretion, which is expressed in making a court decision based on the judge's internal conviction, which, as noted above, is formed, among other things, under the influence of the value and ideological beliefs of the subject of law enforcement. M. Kharchenko (2022; 2023), compiling a list of problems that may occur in the process of exercising the judge's discretion, noting the action or inaction, poor quality of the law, etc., also missed the reason for such an error in the use of discretion based on the judge's internal conviction formed based on personal worldview.

Most researchers did not mention such a component of internal conviction as a worldview in their conclusions. However, I. Tutulych (2019) believes that legal consciousness is one of the main criteria that forms a judge's internal convictions and influences law enforcement decision-making. L. Melech (2015) noted that a judge's internal conviction is based on legal consciousness and worldview, which is a set of legal principles, ideas, theories, doctrines, and provisions based on the study of the laws of emergence, formation, functioning and development, which are the result of theoretical and rational analysis and reflection of legal reality.

This position is shared by Yu. Melikhova (2018), believes that the ability of the justice system to develop in a humanistic direction and focus on more progressive values, and therefore the internal convictions of a judge are changing and will continue to change. According to the author, "internal conviction in the context of pluralism of ideologies reflects the features of certain social worldview positions and the level of moral and professional development of judges" (Melikhova, 2018). The researcher concluded that a judge's internal conviction should be viewed not as a state of affairs, but as the quality of moral and legal consciousness, which determines the application of certain ideological, political, and moral principles, ideals, and guidelines in professional activities. The subjectivity of a judge's opinion is reflected by the formulation of it by a particular judge based on a personal level of moral and professional culture, including consciousness and worldview. Therefore, the culture of thinking, which depends on the level of analytical and synthetic abilities and a high level of knowledge, has a great influence on judicial conviction (and not only on judicial conviction). According to the

scientist, this "defines the importance of the cognitive abilities of a human judge, not a legal professional – natural human logic, common sense, that is, a culture of thinking based on life experience about the world around us..." (Melikhova, 2018). Choosing a narrower aspect of the impact on judges' internal beliefs in the form of a culture of thinking, the researcher also showed that worldview as a factor of a high culture of thinking also has a significant impact on a judge's internal beliefs.

S. Glubochenko, in his dissertation "Formation of Worldview as a Guarantee of Legal Thinking of Judges: A Theoretical and Legal Study" (2015), argues, by the mere title of his work, that the worldview plays a significant role in the law enforcement activities of a judge and proves that the legal thinking of judges should be considered as a continuation of the judge's worldview. Thus, the conclusions drawn by the scholar leave virtually no chance to question the fact that worldview influences internal conviction, since – if a worldview is the key to a judge's thinking, then it is also the key to personal internal conviction since few would dare to deny that internal conviction is a process of thinking.

Apart from the above-mentioned authors, V. Gevko (2018) argues that by summarising all the components and factors that influence the formation of judges' internal convictions, it is possible to state with certainty that it is impossible to develop legal safeguards that would completely prevent the influence on judges. Therefore, in the author's opinion, the only reliable guarantee that does not affect the formation of a judge's internal convictions is high moral qualities. Therefore, the researcher concludes that a judge can be independent and impartial only if he or she has high moral qualities and unquestionable authority. However, he fears that the current system of selection, appointment, evaluation, and responsibility of judges in our country does not give grounds for such expectations. In the end, the scholar believes that improvement of the current legislation and regulations governing the system of selection of candidates for the position of judge and disciplinary liability of judges is necessary and natural to achieve a judicial procedure following European standards. However, the current legislation has not yet created sufficient legal mechanisms and conditions to ensure the elimination of all possible factors that negatively affect the internal conviction of a judge. The author believes that in this regard, the system of selection of judges, their disciplinary responsibility, etc. and, as one of the most important factors, the moral qualities of a judge are important. In the researcher's opinion, the current legal acts do not pay enough attention to this factor. Therefore, both at the stage of selecting candidates for the position of judge and in the process of administering justice, the legislation should ensure that judges are persons with high moral qualities and a significant level of public trust.

It is difficult to disagree with this statement of the researcher. Even though the above-mentioned views of the scholar are mainly about moral qualities, it seems that this study is relevant to ours, since no one will question the fact that a person's moral qualities are formed simultaneously or based on moral and value beliefs and guidelines. The author's proposal to address the situation of low trust in law enforcement and judicial authorities in our country by improving the procedure for selecting candidates for positions with discretionary powers, paying more attention to the moral qualities of candidates, not only judges but also other subjects of procedural decision-making, seems extremely valuable.

The measures proposed by V. Gevko (2018) for assessing the moral qualities of candidates for positions with discretionary powers are extremely necessary, as after analysing the legal framework for discretion, it is possible to conclude that in almost any case, based on their internal conviction, procedural decision-makers can make several opposite decisions in the same case based on the same evidence. It is obvious that with such procedural tools, at some points, the procedural decision-maker will be inclined to choose the option (within the limits of discretion) that best appeals to personal moral qualities values and worldview.

Law enforcement, as a phenomenon of social reality based on the relevant ideological principles, which ensure human rights and freedoms, honour and dignity, justice, and equality, includes respect for laws, traditions, and customs, as well as intolerance to any violations of law and order. However, with a destructive legal outlook on the subject of law enforcement, constitutional guarantees of human rights and freedoms, the rule of law, etc. may be threatened.

Given that each case is the fate of a particular person, modern law cannot tolerate subjective decision-making (not exclusively erroneous, even if rarely) based on the internal conviction of the law enforcement officer, contrary to the evidence available in the case. Otherwise, trust in the judicial and law enforcement systems will remain at the same level as it is now. Therefore, scholars should not only identify, understand, and study this problem, but also find a tool that could prevent the influence of a destructive worldview on the adoption of decisions that are negative in terms of human rights protection and the rule of law. This, perhaps, can be achieved through a detailed study of the worldview and value orientations of candidates when selecting them for the positions of judges or other subjects of procedural decision-making, by introducing certain tests or tasks into the selection procedure for such positions with discretionary powers that would allow for a thorough assessment of candidates in terms of their worldview and value beliefs and orientations.

Conclusions

The concepts of worldview and internal conviction of procedural decision-makers have been sufficiently covered in the scientific literature, however, neither

domestic nor foreign authors have identified any works on the influence of worldview on the internal conviction of law enforcement officers, although both indirectly indicated the existence of such an influence. Scholars have sufficiently proved the importance of worldview for law enforcement in general and a particular law enforcement officer in particular, the importance and role of internal conviction in making procedural decisions, and even the relationship between worldview and internal conviction, while no research has been conducted on the influence of the former on the latter (including negative). The issue of attempts to increase public trust in law enforcement and judicial agencies by studying the value beliefs and worldviews of candidates for positions with discretionary powers at the stage of their selection has not been raised before.

The study has shown, among other things, that in contrast to legal innovations to meet modern challenges, law, in particular procedural law, retains an element of an almost unlimited range of subjective possibilities, which is expressed in the ability of a subject with discretionary powers to make decisions based on inner conviction, contrary to the case file (evidence) and the law. Since any internal conviction is primarily based on the values and worldview of a person, which are formed throughout life, especially in childhood and adolescence, regardless of the position held, when faced with a problem in their professional activities on which law enforcement officer has already formed an opinion, the latter may be biased in making a procedural decision and make a decision contrary to the actual circumstances of the case and the evidence available in it.

Given that scholars and practitioners face an urgent need to determine the reasons for low public trust in law enforcement and judicial authorities and identify ways to strengthen this trust, the study subject is relevant and requires further in-depth research and implementation of a thorough assessment of their value beliefs and worldview during the selection of candidates for positions with discretionary powers.

Acknowledgements

None.

Conflict of Interest

None.

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Вплив світогляду на внутрішнє переконання суб'єктів правозастосування в контексті реалізації їх дискреційних повноважень

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Анотація
Попри багаторічні намагання науковців і практиків з'ясувати причину вкрай низького рівня довіри громадян до судових та правоохоронних органів в Україні й віднайти шляхи її зміцнення, цей рівень досі на межі критичного, а тому постала необхідність виявити нові способи подолання такої кризи. Убачаючи таку недовіру суспільства в узаконеному праві суб'єктів прийняття процесуальних рішень ухвалювати їх на основі свого внутрішнього переконання, визначено метою роботи огляд й аналіз наукових напрацювань у галузі ухвалення процесуальних рішень суб'єктами правозастосування на основі їхнього внутрішнього переконання та встановлення факторів, які мають вплив на таке переконання. У межах дослідження окресленої проблематики використано методи аналізу, синтезу й узагальнення, за допомогою яких опрацьовано бібліографію проблематики, а для обґрунтування результатів і формулювання висновків проведеного дослідження застосовано методи дедуктивно-логічного аналізу й індуктивного узагальнення та аналогії. За результатами здійсненого дослідження встановлено, що поняття світогляду та внутрішнього переконання суб'єктів прийняття процесуальних рішень науковці вивчали окремо. Доведено, що будь-яке внутрішнє переконання ґрунтується передусім на ціннісно-світоглядних орієнтирах людини, що формуються протягом життя, насамперед – у дитинстві та юнацькому віці. Незалежно від посади, яку обіймає людина, поставши у своїй професійній діяльності перед проблемою, щодо якої в суб'єкта правозастосування вже сформовано погляд, останній під час ухвалення процесуального рішення може ухвалити його всупереч фактичним обставинам справи й наявним у ній доказам. Практичне значення цього дослідження полягає в тому, що здобуті результати можуть стати основою для змін у чинному законодавстві щодо проведення оцінювання кандидатів на посади з дискреційними повноваженнями, що передбачає зосередження уваги на їх ціннісних переконаннях і світоглядних орієнтирах

Ключові слова:
суб'єкт; процесуальне рішення; розсуд; дискреційні повноваження; філософія права

UDC 343.9
DOI: 10.56215/naia-chasopis/1.2024.69

Criminal community as a manifestation of organised crime: A comparative legal analysis

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Abstract
The issue of combating organised crime is gaining increased attention in the context of developing comprehensive strategies for combating and preventing organised crime after the establishment of the Department of Strategic Investigations in Ukraine and its powers to bring criminal authorities to justice. The study aims to conduct a comparative study of the criminal community, in particular, to highlight the content and essence of the phenomenon, and to identify the shortcomings of the current legislation which does not provide for this form of complicity. The following methods were used in the study: systemic method – for characterising a criminal association as a type of organised crime; formal and dogmatic method – for analysing legal structures; comparative legal method – for comparing the features of a criminal association as a type of national organised crime in Ukraine and other states. The main reasons for the formation of criminal communities, their strategies, and tactics, as well as their impact on social and economic processes in society were investigated. The methods of counteracting this phenomenon at various levels, including legal, police and social, were analysed. The importance of developing an effective system of counteracting criminal communities to ensure public safety and maintain law and order was emphasised. The structure and composition of criminal communities were characterised. The strategy and tactics used by criminal communities to achieve their goals, including the organisational structure, communication channels and division of responsibilities, were studied. The interaction of criminal communities with other components of organised crime, such as transnational criminal networks, corruption, etc. was investigated. Strategies and measures to counteract and stop the activities of criminal communities were considered. The conclusions of the study can serve as a basis for developing strategies and policies in the field of combating organised crime and improving the level of security in society

Keywords:
complicity; criminal organisation; organised group; criminal influence; criminal liability; criminal offence

Article's History:
Received: 08.11.2023
Revised: 27.01.2024
Accepted: 27.02.2024

Suggest Citation:
Symonenko, N. (2024). Criminal community as a manifestation of organised crime: A comparative legal analysis. *Law Journal of the National Academy of Internal Affairs*, 14(1), 69-77. doi: 10.56215/naia-chasopis/1.2024.69.

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Introduction

The risk of disruption of law and order through the actions of organised crime, which poses a serious threat to the stability of the entire society, increases in a full-scale invasion situation. Particular attention should be devoted to the phenomenon of a "criminal community" as a manifestation of a high level of organisation and coordination in the criminal environment. A criminal community may include various criminal elements working together to achieve their interests and goals, which threatens the fundamental principles and norms of the social order. Finding and implementing measures to uncover the links between criminal elements, as well as taking preventive measures to reduce their impact on society, are key aspects of managing this complex problem.

One of the tools for combating organised crime that has been systematically studied by Ukrainian scholars for a long time. B. Golovkin & K. Marysyuk (2019) and V.S. Batyrgareieva *et al.* (2019) note that foreign experience in combating organised crime in the financial system includes the creation of special law enforcement agencies, the adoption of strategic priorities and the use of innovative methods, and the use of artificial intelligence technologies to analyse large amounts of data is important. Y. Zabyelina & N. Kalczynski (2020) identified measures that can help reduce illegal amber mining and trade. The researchers recommend using modern technologies such as drones and satellite monitoring systems to identify mining sites, as well as establishing an amber labelling system that would allow tracking its origin and legality. L.G. Androsovich (2021) notes that to counter organised crime in the financial sector, it is important to develop effective legal mechanisms, improve monitoring and control systems, strengthen international cooperation, and ensure a high level of transparency and accountability in the financial sector. It is also necessary to improve cybersecurity and protection against fraud and cybercrime.

Researchers note that countering organised criminal communities that use cybercrime to achieve their goals requires a comprehensive approach that combines cyber defence and law enforcement (Logen *et al.*, 2024). Members of criminal networks use modern technologies to commit criminal offences, and this poses a serious threat to society and law enforcement. For example, fraud, the use of cryptocurrencies (Hegadi*et al.*, 2024), drug trafficking (Vozniuk, 2021), etc. However, some members of criminal communities continue to promote criminal traditions and customs that have been developed over the years since the Soviet era. S. Romashkin *et al.* (2020) point out that modern representatives of transnational crime, including those in the status of "thief in law", are trying to succeed in politics and governance. In the course of the struggle for the right to control profitable sectors of the economy and territory, the criminal environment is organised, and the state apparatus is involved in its activities.

Between 2018 and 2023, the position of representatives of criminal communities in Ukraine has significantly strengthened due to the high level of corruption in the country (Vasylevych *et al.*, 2021). Scholars studying this topic express different points of view and opinions aimed at understanding and solving problems related to criminal communities. For instance, A.A. Vozniuk (2021) identifies positive features of the criminal community as a new form of complicity and points out legal aspects and criminal liability. The scientist notes that it is important to define the norms relating to criminal associations and improve legislation to address their challenges. V.G. Sevruk (2022) emphasises the importance of international cooperation and information exchange to counter transnational criminal networks. In particular, he focuses on the development of standards and mechanisms for cooperation between countries. S.O. Pavlenko (2022) emphasises the importance of developing social programmes and preventive measures to prevent young people from joining criminal networks.

Importantly, a comparative legal analysis of criminal communities is of great importance in the current context of globalisation and growing transnational crime, and it is essential for the development of effective strategies and international agreements in this area. The study aims to reveal the content and essence of the phenomenon of criminal associations, to identify their shortcomings, and to identify proposals for improving our legislation.

Materials and Methods

The materials and methods used for the study of "Criminal community as a manifestation of organised crime" include a wide range of tools and approaches to ensure the objectivity and scientific validity of the study. To achieve the research objectives, the following scientific methods were used: systematic – in the course of a comprehensive study of the criminal law characteristics of a criminal community as a type of organised crime. Application of a systemic approach to study the interrelationships and impact of criminal communities on various aspects of society; formal and dogmatic approach to analyse the legal constructions of criminal offences under Articles 255, 255-1, 255-2, 255-3, 256, 257 of the Criminal Code of Ukraine[1]; comparative legal – to compare the characteristics of a criminal community as a type of national organised crime in Ukraine and in other countries; statistical – to use statistical methods to process and analyse numerical data on crime and the activities of criminal communities; analysis of court

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

decisions – to study court decisions related to criminal communities to determine the practical application of legislation and the need for its improvement.

The following materials were used in writing this study: legal acts – the texts of existing legislative acts and regulatory documents of different countries regulating the issue of criminal communities were analysed; statistical data – statistical reports and data on crime, including information on criminal communities in different countries, including the Statistical Data of the Prosecutor General's Office of Ukraine "On the Results of Combating Organised Groups and Criminal Organisations" were analysed; international agreements – international agreements and conventions aimed at combating organised crime were reviewed to determine the degree of cooperation between countries; human rights reports and assessments – materials from human rights organisations containing information on human rights violations and activities of criminal communities were used; expert opinions – expert opinions from specialists in the field of law, forensics and operational and investigative activities were reviewed to obtain personal opinions; media resources – information posted on information websites about criminal communities and their interaction with law enforcement agencies was studied. These materials and methods were used comprehensively to produce a sound study that has the potential to contribute to the understanding and improvement of the fight against organised crime.

Results and Discussion

Organised crime is defined as the activities of organised groups or structures that specialise in the coordinated commission of serious crime for profit or influence (Sevruk, 2022). This can include various types of crime, such as drug trafficking, smuggling, fraud, murder, kidnapping, and others (Golovkin, 2020; Budik, 2022; Rawashdeh *et al.*, 2024). Organised crime poses a serious challenge to law enforcement and society and necessitates cooperation between countries and agencies to combat this phenomenon (Lutsenko, 2020). The establishment of political and economic stability in Ukraine necessitates significant changes in law enforcement policy to combat organised crime, as it has become a significant threat to the rights and interests of human and civil society, the development of society and national security (Crime rate in Ukraine has decreased..., 2023).

The UN actively combats organised crime, adopting several international legal acts, namely The Naples Political Declaration and the Global Plan of Action against Organized Transnational Crime (approved by the UN General Assembly on 23.12.1994)[1], the recommendations of the Regional Ministerial Seminar on the follow-up to the Naples Political Declaration and the Global Plan of Action against Organized Transnational Crime, the UN Framework Convention against Organized Crime (approved by the UN General Assembly on 21. 07.1997)[2], the UN Convention against Transnational Organised Crime (approved by the UN General Assembly on 15.11.2000 and ratified by the Law of Ukraine of 04.02.2004 No. 1433-IV)[3], etc. The UN is implementing various multinational initiatives and programmes to combat transnational organised crime, in particular in the areas of smuggling, human trafficking and drugs.

The European Union is actively cooperating in the fight against organised crime through various initiatives, including joint activities and the work of specialised bodies such as Europol. The EU focuses on strengthening cooperation between law enforcement agencies, sharing information, establishing joint services, and adopting standards. Therefore, fighting organised crime is a complex task that requires joint efforts from law enforcement agencies, government agencies, civil society and international organisations. Therefore, countering organised crime requires a comprehensive approach, as well as continuous improvement and adaptation of strategies in line with new challenges and trends in the world of crime (Madhavan & Kalabaskar, 2024).

Although pan-European and international cooperation, information exchange and technology development play an important role in modern strategies to combat organised crime[4,5,6] it is necessary to address the specific characteristics of each country and region when determining effective measures that will lead to better results. For instance, in Georgia, in 2005, amendments to the criminal law were adopted to criminalise a special subject – "a thief in law, belonging (membership) to the criminal world"[7]. M. Galeotti (2021) points to the criminalisation of this subject of criminal influence, which would help reduce the pressure of

[1] The Naples Political Declaration and the Global Plan of Action Against Organised Transnational Crime. (1994, December). Retrieved from https://zakon.rada.gov.ua/laws/show/995_787#Text.
[2] United Nations Framework Convention Against Organised Crime. (1997, July). Retrieved from https://zakon.rada.gov.ua/laws/show/995_786#Text.
[3] United Nations Convention against Transnational Organised Crime. (2000, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_789#Text.
[4] Order of the Cabinet of Ministers of Ukraine No. 850-p "On Approval of the Action Plan for the Implementation of the Strategy for Combating Organised Crime". (2022, September). Retrieved from https://zakon.rada.gov.ua/laws/show/850-2022-%D1%80#Text.
[5] Decree of the President of Ukraine No. 392 "National Security Strategy of Ukraine". (2020, September). Retrieved from https://www.president.gov.ua/documents/–3922020-35037.11.
[6] Order of the Cabinet of Ministers of Ukraine No. 1126-p. "Strategy for Combating Organised Crime". (2020, September). Retrieved from https://zakon.rada.gov.ua/laws/show/1126-2020-%D1%80#Text.
[7] Criminal Code of Georgia. (1999, August). Retrieved from https://matsne.gov.ge/ru/document/view/16426?publication=236.

"criminal elites" on economic and diplomatic processes and, ultimately, the resettlement of "thieves in law" from Georgia to other states that have not yet criminalised these acts. Ukraine became one of these countries.

It is necessary to analyse criminal liability and the fight against this phenomenon in Italy. At the end of the 20th century, Italy faced major problems due to the activities of mafia groups, in particular the Sicilian Mafia (Cosa Nostra). In the fight against the mafia, the authorities took various measures, including prosecutions, confiscation of property and rewards for conscientious employees. Indeed, the Italian Criminal Code (Article 416) criminalises associations (unions) for committing crimes, and Article 416b criminalises mafia-type associations (unions). The latter article criminalised a new norm of mafia-type associations, which was intended to counteract associations that were created based on common family ties, promoting a criminal lifestyle, as well as profiting from criminal activities (drug trafficking, money laundering, banditry, etc.). An aggravating circumstance under Article 416b of the Italian Criminal Code is the impact on economic and diplomatic processes in the country[1].

It is also advisable to consider the criminal law policy on this issue in the People's Republic of China (PRC), whose criminal code criminalises leadership and participation in mafia-like associations (Article 294)[2]. In the PRC, the fight against organised crime is also an important component of state policy. Some of the key aspects of China's criminal law policy aimed at combating organised crime may include harsh penalties and the use of technology to detect and combat corruption. These measures demonstrate China's comprehensive approach to combating organised crime, which combines criminal law, police, administrative and technological aspects.

Japan has a similar approach to criminal liability to Ukrainian legislation, as the Japanese Criminal Code establishes serious liability for leaders of the "underworld" (Article 4)[3]. Japan has its unique strategies to combat organised crime. They focus on preventive measures, including effective judicial proceedings and control over the economic sources of criminals. In the United States, organised crime is countered through a variety of approaches, such as the organisation of special agencies (e.g. the Federal Bureau of Investigation – FBI), defence witness programmes, information sharing between law enforcement agencies, and the use of technology to track criminals (Kamensky, 2020).

In Ukraine, on 4 June 2020, major changes were also made to criminal legislation to increase the criminal liability of organised crime actors and criminalise "thieves in law". A "thief in law" is a term used to describe an investigator in Ukrainian folklore and the criminal underworld. The term can also refer to a certain traditional subculture in the criminal environment, especially among criminals who are marked by their code of honour and norms. The history of the term indicates that "thieves in law" originated in the USSR and were kept within a close circle of a subcultural environment (Pavlenko, 2022).

It is noted that this "elite" of criminals had their codes and rules, which they considered important for maintaining their status hierarchy. The main features of "thieves in law" include a code of honour. They are considered superior to criminals and follow their own rules and regulations. Such a code may include the obligation to help each other, non-interference in the affairs of other thieves, quarantine from the legal authorities; and secrecy of identity. A "thief in law" may hide their true identity and use pseudonyms or marks to identify themselves in the subculture, status, and PR. They may strive for a certain status in the community and use PR techniques to strengthen their position among other criminals. It is important to note that this concept is not legally recognised and has no clear legal framework. There is no such term as "thief in law" in official law. It is more of a cultural and social phenomenon that has emerged in certain criminal environments (Sevruk, 2022).

According to part 4 of Article 255 of the Criminal Code of Ukraine, a criminal association is an association of two or more criminal organisations[4], i.e. an association of persons who jointly carry out criminal activities or engage in criminal acts. Such a community can be organised or unorganised, and it includes persons who cooperate to commit crimes, often guided by common interests or goals. Having analysed the criminal law provisions of this type of organised crime, it is appropriate to highlight the problematic issues that significantly affect the effectiveness of pre-trial investigation. First of all, it is necessary to determine the place of a criminal association among the forms of complicity in a criminal offence and whether a criminal association is a form of organised crime at all. Article 28 of the Criminal Code of Ukraine[5] does not mention this form of complicity. In this regard, the opinion of O.O. Kvasha *et al.* (2019), who points out the need to specify a fifth form of complicity in Article 28 of the CC of Ukraine, is valid. A criminal association can be considered a form of complicity only if criminal organisations unite to commit a criminal offence (Okolit, 2021). A criminal association is also defined as a new form of complicity by P. Fries & I. Fries (2020). M. Kramarenko *et al.* (2022) rightly emphasise

[1] Criminal Code of Italy. (1930, October). Retrieved from https://www.altalex.com/documents/codici-altalex/2014/10/30/codice-penale.
[2] Criminal Code of the PRC. (1997, March). Retrieved from http://www.npc.gov.cn/zgrdw/npc/lfzt/rlys/2008-08/21/content_1882895.htm.
[3] Criminal Code of Japan. (1907, April). Retrieved from http://www.npc.gov.cn/zgrdw/npc/lfzt/rlys/2008-08/21/content_1882895.htm.
[4] Criminal Code of Ukraine. (2001, May). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[5] Ibidem, 2001.

that given that some of the concepts denoting forms of complicity (criminal association, gang, terrorist group or organisation, illegal paramilitary, or armed formation) are not included in Article 28 of the CC of Ukraine[1], the General Part of the CC of Ukraine needs to be restructured with a clear definition and interpretation of the main concepts denoting forms of complicity. That is, based on the legislative construction of the disposition of part 4 of Article 255 of the CC of Ukraine, a new form of complicity has appeared in content, but it was not specified in Article 28 of the CC of Ukraine[2].

The term "organised groups" denotes a variety of structures and organisations, including business corporations, political parties, social movements, criminal gangs, and other forms of association. The main subject of the criminal community is the "thief in law", subordinated to "polozhentsi" (gangsters) and "smotryachi" (watchers). There is no definition of the term "thief in law" in criminal law, but it is actively discussed in academic circles (Bakhurynska, 2020; Toma, 2020). It would be more appropriate to note that the main subject of a criminal community is a person with criminal authority. This term may indicate that a person has a high status in the criminal hierarchy, and the ability to commit and control criminal acts within a particular group or association. The term may be used in different contexts and countries and may differ from one region to another. Such individuals can often become central figures in organised criminal groups. Some common examples of historically famous figures who had criminal authority are appropriate: Al Capone, an American criminal and gangster who was the leader of the Chicago mafia group during the period of prohibition in the United States; Pablo Escobar, a Colombian drug lord and leader of the Medellín drug cartel; Giovanni Falcone, an Italian judge and prosecutor who actively fought the Sicilian Mafia (Cosa Nostra).

One of the main features of a criminal community is the coordination of criminal activities. Control over ordinary crime is a specific feature of the mafia, not other forms of organised crime (Aziani *et al.*, 2020). A mandatory feature is an economic basis, i.e. a criminal cash box or "obshchak". The "obshchak" (criminal "common fund") should be understood as the material base – funds (including non-cash) and other material values (as a rule, in places of detention, these can be food, clothing, drugs, alcohol, etc.) The "thief in law" is responsible for keeping records and storing the mutual fund. It is a mutual aid fund in the underworld. The "mutual fund" is replenished, in particular, by profits from professional illegal activities, "taxes" from persons who violate the traditions of the underworld, funds received by "thieves in law" or other criminal authorities as payment for resolving property disputes, and contributions from gambling. Funds from the "stash" can be used, for example, to pay for lawyers, help relatives of a "thief in law" or other criminal authority in a penal institution, bribe staff of these institutions, investigators, or judges, or organise criminal gatherings (Dudorov & Chernyavskyi, 2021).

There are certain customs and traditions in the criminal world that are undergoing significant changes but remain important to criminals. Many representatives of "thieves in law" have successfully adapted to the new business-oriented environment, but for a significant part of them the traditional criminal code and concepts remain unchanged (Siegel, 2012). The last feature of a criminal community can be defined as a collegial governing body, and the most important issues related to the criminal activity of organised crime are resolved at the so-called "criminal meeting" (Pavlenko, 2022).

For better regulation of the fight against organised crime and criminal networks, the following measures should be taken: strengthening criminal sanctions, as increased penalties for organised crime can help prevent and suppress the activities of criminal groups; international cooperation, as strengthening cooperation with other countries in the fight against cross-border organised crime allows for more efficient use of resources and information sharing; financial monitoring, as increased control over financial transactions can prevent money laundering and reduce financial support for criminal groups, and preventive measures, which consist of developing programmes and measures to prevent youth from becoming involved in criminal activities, can help reduce the number of organised criminal groups in the future.

The criminal law characteristics of a criminal association include first, that it involves two or more criminal organisations; and second, that these criminal organisations have merged into a new form of organised crime (Vozniuk, 2015). The involvement of two or more criminal organisations may include the joint activities of two or more organisations to achieve common goals, such as control of a particular region or type of crime. Coalescence into a new form of organised crime defines a new level of organisation and interaction between criminal organisations. This may include the creation of joint organisations, a common leadership structure, or joint strategies to achieve common goals. Such criminal law definitions help to define organised crime as a complex social phenomenon involving communities that interact to achieve their goals (Dudorov & Movchan, 2022). Given these characteristics, law enforcement agencies and legislators can more effectively respond to such criminal groups and develop strategies to combat organised crime. In this regard, it should be noted that the legislator's wording that a criminal association is

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

an association of two or more criminal organisations is a matter of debate among scholars from different countries. O.O. Dudorov & S.S. Chernyavskyi (2021) point out that the fact that a criminal association may also include organised groups is not addressed.

Analysing the foreign experience of organised crime in countries such as the United States, Italy, Japan, Colombia, and others, it can be noted that criminal communities include not only criminal organisations but also organised criminal groups. Organised criminal groups can be less structured associations where members may be less organised and have a less pronounced hierarchy. They may combine their efforts for specific criminal activities but do not necessarily have a rigid organisational structure. Some foreign countries have a hybrid nature of criminal communities, where criminal organisations and organised criminal groups can coexist, combining elements of both forms. It is important to note that both forms can use technology, and in today's reality, cybercrime can become an important component of both types of criminal groups. Addressing these differences and similarities allows for a better understanding of the nature of organised crime in different contexts and the development of effective strategies to combat it.

The proposal to amend the Criminal Code of Ukraine[1], namely, to add part 5 to Article 28 with the definition of a criminal association, was put forward by P. Fries & I. Fries (2020). This position is supported by O.O. Bakhurynska (2020), who interprets a criminal community as a union of organisers and leaders of a criminal circle created to coordinate and streamline criminal activities, etc. At the same time, organisers and leaders of the criminal environment should be considered to be entities that manage not only a criminal organisation but also an organised group and a group of persons by prior conspiracy. Given this, the legal definition of a criminal association should be supplemented by other criminal associations. The conclusions of the analysis, based on the proposals of the above-mentioned researchers, demonstrate the practical and scientific significance of introducing new approaches to defining and combating organised crime in Ukraine. This creates an opportunity for more effective detection, response, and prevention of criminal communities. These areas of research include further study of the implementation of the proposed changes in law enforcement practices, analysis of their impact on crime statistics and development of effective strategies for interaction with criminal communities. It is also necessary to consider international experience and adapt it to the specifics of Ukrainian realities, developing a comprehensive approach to fighting crime and maintaining law and order. To a large extent, further research in this area will contribute to the improvement of the legal and organisational mechanism of crime management, contributing to the creation of a safe and stable society.

The feasibility of criminalising criminal associations needs to be clarified, as the reaction to legislative changes in Ukraine regarding organised crime among law enforcement officials and academics has been mixed. Therefore, it is necessary to establish the advantages and disadvantages of establishing the fifth form of complicity. For instance, P. Fries & I. Fries (2020) are positive about the introduction of the fifth form of complicity – an important step, as it is in line with criminal law. The introduction of a new term for the Criminal Code that more fully and accurately describes this form of organised crime and the establishment of a stricter sanction for the creation and management of a criminal association are also positive. At the same time, several scholars oppose this statement and point out the inappropriateness of these legislative changes. For instance, O.O Kvasha (2021) disagrees with the current criminal law terminology, in her opinion, it contradicts the systemic construction, and the provisions of criminal law, which will only complicate the work of the criminal justice system in the future. This terminology creates additional work for pre-trial investigation bodies since in this case, it is necessary to establish the fact of the creation of each criminal organisation and, in addition, the fact of their association. Investigations must consider the networked nature of criminal activity, where different organisations can cooperate or interact to achieve common goals, and, of course, determining the hierarchy and chain of command in criminal organisations is an important task for pre-trial investigations. This allows for an accurate determination of the structure and interactions between members of the organisation. Therefore, understanding, and effective consideration of the above aspects is key to a successful pre-trial investigation of organised crime. The use of modern methods and the cooperation of international organisations can bring about positive changes in the fight against this serious problem.

Conclusions

The analysis of foreign experience of organised crime in the United States, Italy, Japan, Colombia, and other countries shows that criminal networks encompass various forms of organised crime, including both criminal organisations and organised criminal groups. These organisations can operate in various fields, such as drug trafficking, human trafficking, financial crime, etc. An additional feature is the increase in transnational crime, where criminal communities operate across national borders, using global networks and resources to commit crimes. Various organisational models are highlighted, including hierarchical structures, networked relationships, and hybrid forms of organisations that

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

adapt to specific conditions and challenges. There is an increase in the use of technology, in particular in cybercrime, which is becoming one of the key areas of activity in criminal communities. Among other things, criminal groups try to avoid detection and detention by interacting with the law, corruption and other methods, criminals show specialisation and diversification in their activities, looking for new ways to make a profit and avoid offences. It is also worth noting that international cooperation and information exchange are recognised as effective means of combating transnational crime. Given these findings, it is important to develop comprehensive strategies to combat organised crime, including the involvement of cyber defence, law enforcement agencies, and international structures to effectively counter this phenomenon.

The author also analyses various features of a criminal community that indicate its organisation and focus on committing crimes. A criminal community may have a clear structure with a hierarchy, distribution of responsibilities and roles, a chain of command and a system of subordination. The community has an effective communication system, which may include meetings, encrypted messages, telephone conversations, or other means of communication. Some criminal networks may use violence or intimidation to achieve their goals, control territory, or resolve conflicts. Members may have close relationships or even family ties that facilitate their association and interaction. Criminals may use legitimate businesses as a cover for their criminal activities and the withdrawal of the proceeds of crime; eighth, criminal networks may control territories, defining their geography for criminal activities. Members can share resources and information to ensure joint success in criminal activities. All these features give grounds to distinguish a criminal association as a separate form of complicity.

Further research in this area is promising in terms of studying the European experience of combating criminal communities.

Acknowledgements

None.

Conflict of Interest

None.

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Злочинна спільнота як вияв організованої злочинності: порівняльно-правовий аналіз

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Анотація
Питання протидії організованій злочинності привертає посилену увагу в контексті розроблення комплексних стратегій протидії та запобігання організованій злочинності після створення в Україні Департаменту стратегічних розслідувань і надання йому повноважень щодо притягнення кримінальних авторитетів до відповідальності. Метою статті є компаративістичне дослідження злочинної спільноти, зокрема висвітлення змісту й сутності явища, а також виявлення недоліків чинного законодавства, у якому не передбачено таку форму співучасті. Для досягнення поставлених завдань у дослідженні використано такі наукові методи: системний – під час характеристики злочинної спільноти як виду організованої злочинності; формально-догматичний – для аналізу юридичних конструкцій; порівняльно-правовий – для зіставлення ознак злочинної спільноти як виду національної організованої злочинності в Україні й інших державах. Досліджено основні причини формування злочинних спільнот, їх стратегії і тактики, а також вплив на соціальні й економічні процеси в суспільстві. Проаналізовано методи протидії цьому явищу на різних рівнях, зокрема правові, поліцейські та соціальні. Акцентовано на важливості розвитку ефективної системи протидії злочинним спільнотам для забезпечення безпеки суспільства та збереження правопорядку. Схарактеризовано структуру та склад злочинних спільнот. Вивчено стратегію і тактику, якими користуються злочинні спільноти для досягнення своєї мети, зокрема організаційну структуру, комунікаційні канали та розподіл обов'язків. Досліджено взаємодію злочинних спільнот з іншими складовими організованої злочинності, такими як транснаціональні злочинні мережі, корупція тощо. Розглянуто стратегії та заходи протидії та припинення діяльності злочинних спільнот. Висновки дослідження можуть слугувати основою для розроблення стратегій та політик у сфері боротьби з організованою злочинністю та підвищення рівня безпеки в суспільстві

Ключові слова:
співучасть; злочинна організація; організована група; злочинний вплив; кримінальна відповідальність; кримінальне правопорушення

UDC 342.6
DOI: 10.56215/naia-chasopis/1.2024.78

Problems in interim presidency: A comparative constitutional perspective

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Abstract
The research relevance is determined by the diverse constitutional approaches adopted by countries worldwide to address the critical issue of succession in the event of concurrent vacancies in the positions of President and Vice President. The study aims to correctly determine the appropriate acting presidency during extraordinary situations to ensure the continual rule of government. A doctrinal research method alongside a comparative constitutional approach to explore the constitutions of various countries. The study determined that there are legitimized and bureaucratic actors who compete with each other to become acting presidents when the positions of President and Vice President are vacant in various parts of the world. Countries that use legitimacy actors generally use the Speaker of the House of Representatives/Senate (legislative) as the acting president, while countries that use bureaucratic actors generally use ministers (executive) as the acting

Article's History:
Received: 19.10.2023
Revised: 29.01.2024
Accepted: 27.02.2024

Suggest Citation:
Ramadhan, F., Widagdo, S., Widiarto, A.E., & Susmayanti, R. (2024). Problems in interim presidency: A comparative constitutional perspective. *Law Journal of the National Academy of Internal Affairs*, 14(1), 78-91. doi: 10.56215/naia-chasopis/1.2024.78.

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president. Legitimate actors are the officials to become acting presidents due to their capabilities to ensure stability based on democratic legitimacy stability, backed by votes. The practical value of this article is that it can be a source of knowledge for constitutional drafters when amending/changing the constitution because it has aggregated the arrangements for presidential duty executors from world constitutions and contributes knowledge from Indonesian experience that can be considered as material for discussion of constitutional amendments/changes

Keywords:
president**;** acting president; government; constitutional comparison; presidentialism

Introduction

In the event of concurrent vacancies in the positions of President and Vice President, the concern regarding the succession to the vacant office arises. In this regard, it is necessary to explore the various options used by the constitutions worldwide. This analysis is necessary as the constitutions of different countries are of different models. Some set a legitimized actor (Speaker of the House of Representatives/Senate Chair) as the acting president, and some set a bureaucratic actor (minister/Prime Minister) as the acting president who temporarily replaces the President. This difference is to be explained in this study, which of the two is more ideal for serving as acting president.

The idea of the modern constitution as the basic framework of government is well established and inspires almost all constitutions in the world, as indicated by M. Loughlin (2010). M. Tushnet (2021) notes that the separation of powers was also accepted with modifications and became an important institutional element in maintaining constitutional democracy. S.B. Tillman (2022) studied the ongoing discourse surrounding this issue. He posits a compelling argument, suggesting that the Legitimacy Actor holds a distinct advantage over the acting presidency. According to Tillman, the election of Legitimacy Actor by the populace imbues the position of President with a unique legitimacy, as it reflects the will of the people. This stands in stark contrast to scenarios where the presidency is temporarily assumed by a minister, who lacks a direct mandate from the electorate. By exploring these dynamics, Tillman demonstrates the nuanced implications of different mechanisms for filling the presidential vacancy, ultimately contributing to the broader conversation on democratic governance and legitimacy. In contrast, A. Ghoffar (2020), in a dissertation, denotes ministers as proper acting presidents due to the preservation of the logic of government continuity and the firmness of the separation of powers to support bureaucratic actors as acting presidents. T. Raunio & T. Sedelius (2020) conducted a comprehensive analysis of power distribution between the president and the government within semi-presidential regimes. Their study, which focused on Finland, Lithuania, and Romania, highlighted the intricate dynamics shaping governance in these countries. The authors assert that the absence of formalized coordination mechanisms proves advantageous for presidents, enabling them to proactively foster collaboration between the dual executive branches. This flexibility grants presidents the latitude to leverage unconventional influence and intervention in matters traditionally beyond their purview. By delving into these nuances, T. Raunio & T. Sedeliu (2020) s underscore the aspects of the interplay between institutional structures and executive behaviour within semi-presidential systems.

The study aims to explore the constitutions of various countries to determine the reason for these disputes in determining the acting presidency by analysing the clash between the supporters of bureaucratic actors and legitimacy actors. The study results can be used as a basic framework for evaluating state constitutions, especially in determining the acting presidency that replaces the President temporarily, shifting the focus from "who becomes the acting figure" to the overall contribution of the government stability. The core purpose of presidential duty is to run the administration of government in a stable and certain manner. Laws and constitutions aim to create a stable and certain government order towards the formation of a new government, which in the practical experience of many world countries is filled with uncertainty and certain surprising conditions.

Literature Review

While significantly contributing to the organization of power in constitutions, governmental studies insufficiently analysed the issue of vacancy in the permanent dual office of President and Vice president for "constitutional reasons". J. Linz (1990) defines this as the interregnum period: a time when the government organization is leaderless. The interregnum period in the system of government is classified as terra incognita, which is still not widely studied and developed. In parliamentarism, the interregnum period is relatively not a crisis of government as it is resolved through political mechanisms in parliament directly. In contrast, under presidentialism – despite its advantage of the stability of government – the possibility of a vacant presidency/interregnum remains and flexibility in dealing with such situations is not a hallmark of presidentialism, so the constitution is forced to provide for automatic

succession of the President. The institutional implication of a vacancy in the office of the President is the ascension of an interim President (Henry, 1968). The interim President is responsible for the government until a new President is elected to form the government.

In the above-mentioned study, A. Ghoffar (2020) borrows heavily from criticisms of the 1947 Presidential Succession Act of the United States to defend ministers as acting presidents. Furthermore, A.R. Amar & V.D. Amar (1995), and S.G. Calabresi (1995) reject legitimate actors as interim presidents due to the "modern originalism" approach (Tillman, 2010). They argue that congressional involvement in the line of succession to the dual vacancy is unconstitutional because the Speaker of the House of Representatives does not fall within the category of "officers" referred to in the US Constitution. J. Fortier & N.J. Ornstein (2004) support the Stanford Trilogy on different grounds, emphasizing the political nuance that the Speaker of the House is likely to find it difficult to adapt to the executive party – which may be different – and fail to continue the continuity of government. Authors openly expressed their support for the foreign minister as the ideal figure in the first line of succession.

Methods and Materials

This study adopts a doctrinal research methodology, drawing from the framework outlined by P. Ishwara (2020), which involves an examination of written legal regulations governing specific categories. By scrutinizing these regulations, the research identifies emerging issues and establishes new legal precedents. To ensure comprehensiveness, a variety of techniques were employed to gather legal materials, encompassing both electronic and traditional library resources. The analysis undertaken in this study is predominantly descriptive, employing a multifaceted approach that incorporates historical, conceptual, statutory, and constitutional comparison methods, as noted by P.M. Marzuki (2012). By applying a wide array of analytical tools, the study aims to establish a comprehensive understanding of the legal landscape surrounding the subject matter. In its exploration of constitutional frameworks across the globe, this study relies on constitutional materials sourced from various countries through internet repositories. By leveraging these international resources, the study seeks to provide a comparative perspective that enriches the discourse on constitutional law and governance practices worldwide.

The core objective of this study is to scrutinize the statutory regulations that form legal governance. Utilizing an expansive collection of constitutional materials sourced from a multitude of nations, this investigation embarks on a thorough exploration of the complexities surrounding transitional presidencies, employing a comparative constitutional approach. Through an examination of the constitutional frameworks present in diverse countries including Indonesia, the Philippines, Korea, Algeria, France, Poland, Romania, Mexico, Argentina, Brazil, Chile, Angola, Nigeria, South Africa, and Egypt, among others, this study describes the regulatory mechanisms that govern transitional presidencies. By traversing the constitutional landscapes of these nations, this study aims to cultivate a comprehensive understanding of how transitional presidencies are structured, regulated, and managed across different geopolitical contexts. Exploring the complex dimensions of these constitutions unveils a spectrum of approaches to addressing pivotal issues inherent in transitional presidencies, including the protocols for interim presidential succession, the delineation of executive powers and constraints amidst transitional periods, and the mechanisms for crisis resolution. Through comparative analysis, this study aims to illuminate both commonalities and divergences in constitutional strategies for managing transitional governance, thereby offering insights into effective governance practices and avenues for constitutional refinement within the context of transitional presidencies.

Results and Discussion

The President's role as head of state and government is that of a "unified actor" whose duty it is to monitor and coordinate the acts of other actors so that they are following the President's direction as the highest command in a country (Burkhardt, 2021). The President must be a good listener, showing empathy for local and societal problems as well as for global trends that will affect the nation (Dyzenhaus, 2012). The constitution creates a "framework for the government" with these duties (Saunders, 2021). The President's powers are thus regulated to prevent abuse.

The Constitution forbids vacancy of the Presidency as the central and critical function of the state would be unfulfilled (Stevent, 1994). The government will be paralyzed, and the pattern of cooperation among state actors will be harmed; the Government's commitment to society will fail if irresponsible actors do not immediately seize the momentum. As a result, many constitutions include a provision for an "Interim President"[1] if the positions of President and/or Vice President become vacant. The interim president is mandated by the constitution to lead the government, ensure the government's stability (as far as feasible), and supervise the establishment of a new administration. Arrangements in times of crisis are designed to ensure stable and functioning rules (de Groof, 2020).

South Korea, Argentina, and Indonesia had a history of vacancies in the roles of President and/or Vice President, which were later filled by interim Presidents.

[1] Constitutions of the Republic of Indonesia. (1945, August). Retrieved from https://www.wipo.int/wipolex/en/legislation/details/7987.

South Korea had a vacancy in the post of President which was filled by a Prime Minister. South Korea did not have a Vice President due to impeachment in 2016 owing to claims of "chaebol" conglomerate abuse of influence (Kim, 2018). Argentina was similarly in a state of chaos from 2000 to 2003. Fernando de la Rua retired from the presidency in 2001, a year before his Deputy, Calros Alvarez. Since the positions of President and Vice President became vacant at the same moment, Senate Chairman Ramon Puerta was appointed as interim President (Corrales, 2002). Indonesia experienced a Presidency vacancy twice, namely when the Dutch military aggression II – President Sukarno and Vice President Hatta were detained – then "Sjafrudin Prawiranegara" formed the Emergency Government of the Republic of Indonesia. The transition from President Sukarno to President Soeharto began in 1966, with Soeharto becoming Acting President, followed by the withdrawal of State Government Power from President Sukarno and the election of Soeharto as Indonesia's Second President in 1968.

These three cases were used as an inspiration for the analysis of preventive constitutionalism in different countries, whereby the constitution is supposed to provide methods for anticipating all possible problems in the future functioning of the government: Indonesia[1], Philippines[2], Korea Republic[3], Algeria[4], Azerbaijan[5], France[6], Poland[7], Romania[8], Bulgaria[9], Mexico[10], Argentina[11], Brazil[12], Chile[13], Angloa[14], Nigeria[15], South Africa[16], Egypt[17]. Preventive constitutionalism demands constitutions to cover all possible future problems, including a vacancy in the positions of President and/or Vice President. The President and/or Vice President may be concurrently vacant, and the constitutions of several nations handled this situation and provided guidance on who would fill those positions, how long the interim President will hold office, and the procedures for choosing a new President. Even though every constitution in the world has a provision governing the simultaneous vacancy of the offices of President and/or Vice President, a prominent fact was highlighted: the regulatory model is not uniformly structured, one of which is regarding who becomes interim President. The bureaucrat actor and the legitimacy actor are the two actors who serve as interim presidents in global state constitutions. This difference determines that each country's constitution has an autonomous level of regulation and is not easily affected by different constitutional transfers in regulating politics (Gould & Pozen, 2022).

Since the bureaucrat actor previously served as a member of the executive power, in a familiar workplace and powers assigned, it is typical for bureaucratic actors to designate the Prime Minister or Minister as the interim President. This is done to project the image of the bureaucrat actor as a professional leader of an interim government. A country with a bureaucrat actor model does not care about legitimacy – whether the official has the people vote or not – in leading the interim government. Countries such as South Korea, Mexico, Azerbaijan, South Africa, and Chile use bureaucrat actors as interim presidents. The next interim president is filled by a legitimate actor, where the Chairman of the legislative power – by law – becomes the interim President and moves to the Presidential office. The use of legitimate actors prioritizes those elected by the people – as a manifestation of democracy, and the main characteristic of a presidential system – to lead the interim government until a new government is formed. Countries such as the Philippines, France, Poland, Romania, Bulgaria, Angola, Nigeria, Algeria, Egypt, Argentina, and Brazil have made legitimate actors as interim presidents.

The problem is to determine what influences/underlies the country's choice of a bureaucratic actor or a

[1] Constitutions of the Republic of Indonesia. (1945, August). Retrieved from https://www.wipo.int/wipolex/en/legislation/details/7987.
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legitimate actor as interim president, to determine what this choice is based on. Each nation has its criteria for choosing who serves as interim president, ranging from colonialism, the history of regimes and governmental conflicts, the influence of other constitutions, and the continuation of political stability, to competing political considerations and professional considerations.

Reflecting on Poland, France, and South Korea which are semi-presidential, the three countries have different patterns in filling interim presidents, Poland and France use legitimate actors while South Korea uses bureaucrat actors. It is also different in nations having presidential systems, such as Indonesia, the Philippines, Mexico, Argentina, and Brazil. Indonesia and Mexico have presidential systems that appoint bureaucrats as interim Presidents, whereas the Philippines, Mexico, and Brazil appoint legitimate actors as interim Presidents.

In case the interim President is also absent, some nations worldwide are developing hierarchical replacement options to avoid a power vacuum. For instance, if the positions of President and/or Vice President are unfilled, the Chairman of Congress would normally serve as the interim President. However, if the Chairman of Congress are to be missing as well, the Chairman of the Senate will then take over as interim President. Some only supply one, meaning that the Constitution can no longer specify who will be the interim President if the President-elect is also not present. These articles, present in the constitutions of the countries of the world, regulate the position of interim president, as the position held by a single person, as is the case with the president. Indonesia is the only country where the interim President is filled with multiple positions, namely Minister of Foreign Affairs, Minister of Home Affairs, and Minister of Defence (Article 8, section 3)[1].

Indonesia has extensively used both the presidential and parliamentary systems of administration over its history. The current goal of Indonesia is to enhance the presidential system by direct popular election of the President and Vice President. H. Küpper (2021) believes that the Indonesian presidential system is "pure presidentialism" – similar to the United States – which places the President as head of state and government in the same position as the President Indonesia no longer uses a Prime Minister so that the President becomes head of state and head of government, as is the pattern of the current moderate presidential system. Suppose the President and Vice President are vacant. In that case, the position of interim President is transferred to the Minister of Foreign Affairs, Minister of Home Affairs, and Minister of Defence together, who are referred to by the 1945 Constitution of the Republic of Indonesia as "interim President", synonymous with bureaucratic actors. Uniquely, Indonesia uses multiple positions in the composition of the interim President, a classic model – a contribution from the New Order regime – which was stated in MPR Decree VII/1973[2] and later adopted into the Constitution of the Republic of Indonesia[3].

The question is whether the adoption is relevant to the current government system which is more characterized by a presidential system with the position of President receiving the people's vote. In the history of the Indonesian government, the legitimate actor, the Speaker of the House of Representatives, was once made interim President as regulated in Law Number 7 of 1949[4] and Law Number 29 of 1957[5]. Over time, this legislation was replaced with a new model, and now, with the assistance of bureaucratic actors, an interim President is in place. In this section, discuss how the position of interim President is defined in the constitutions of several nations throughout the world. This article will begin by outlining the main aspects of the interim President arrangement, starting with the preconditions, and continuing to the term and post-term. This article shows an "overall picture" of what material content is in global constitutions relevant to the interim President based on research of 17 world constitutions. First, the Constitution determines the pre-conditions that can cause the positions of President and/or Vice President to become vacant, starting from death, resignation, and termination. This provision is in the constitutions of 17 countries in the world, although the pre-conditions for each country are different. Second, the Constitution regulates "which" public official becomes interim President, whether using bureaucratic actors or legitimate actors. In the 17 world state constitutions – which are generally divided into bureaucrat actors and legitimacy actors – each position is filled by a different public official, for example, a bureaucrat actor: some are filled by the Prime Minister, and some are filled by ministers, while for the legitimation actor, some are filled by the chairman of the Congress or the chairman of the House of Representatives.

Third, if the interim President is also absent, the constitution calls for tier-based solutions. Not all nations have clauses like this; of the 17 constitutions

[1] Constitutions of the Republic of Indonesia. (1945, August). Retrieved from https://www.wipo.int/wipolex/en/legislation/details/7987.
[2] Resolution of the People's Consultative Assembly No. VII/MPR/1973 "On the Absence from Duty by the President and/or Vice President". (1973, March). Retrieved from https://www.hukumonline.com/pusatdata/detail/lt50877ad385ba0/ketetapan-majelis-permusyawaratan-rakyat-nomor-vii-mpr-1973-tahun-1973.
[3] Ibidem, 1945.
[4] Law of Republic of Indonesia No. 7 "On the Appointment of Temporary Holders of the Office of the President of the Republic of Indonesia". (1949, December). Retrieved from https://peraturan.go.id/files/uu7-1949.pdf.
[5] Law of Republic of Indonesia No. 29 "Officials Who Carry Out the Work of the Office of the President, If the President Departs, Quits or is Incapacitated, While the Vice President is Absent or Incapacitated". (1957, October). Retrieved from https://peraturan.bpk.go.id/Details/52475/uu-no-29-tahun-1957.

studied, nine (the Philippines, South Korea, Algeria, Azerbaijan, Poland, Romania, Argentina, Brazil, Chile, and South Africa) offer substitute arrangements if the interim President (in the first place) is absent. The rest of 8 other countries only provide a single option for an interim President, which means, if the interim President is also absent, there is no replacement as stipulated by the constitution. The 7 countries are France, Bulgaria, Mexico, Angola, Nigeria, Egypt, and Indonesia. Indonesia had a good precedent in the past, which unfortunately was set aside in the 1945 Constitution of the Republic of Indonesia[1], namely when Hatta, ahead of the Emergency Government of the Republic of Indonesia in 1948, issued a multi-layered mandate to form an Emergency Government of the Republic of Indonesia. At that time, Hatta considered the probability of the instructions to Sjafroedin Prawiranegara being rejected or the Emergency Government of the Republic of Indonesia failing. Hatta provided an alternative by issuing the next mandate, via radiogram to Dr. Soedarsono, Palar, and Maramis who were then in New Delhi to form an exile government in India. Even though it was initiated and became a convention, the 1945 Constitution of the Republic of Indonesia did not include this regulatory model in expectation of an interim President who was also absent.

Fourth, the process of taking the oath of office for the interim President before entering office is governed by the Constitution. This procedure is required to establish when the term of the President and/or Vice President ends and the term of the interim President begins. This procession also serves as a moral accountability mechanism for the interim President, utilizing the concept of an oath to remain faithful to the Constitution. Fifth, The Constitution regulates the mechanism for selecting a new President and/or Vice President. In general, this election mechanism is divided into two forms, namely, elections that are directly elected by the people through a "special election" scheme and those that use an election mechanism through the legislature. There are countries such as Chile (Article 286)[2] and Brazil (Article 81)[3], where the election mechanism is determined based on "when" the President's position becomes vacant. If this occurs during the first two years of the term, elections will be held and if it occurs during the final two years of office, a Congress vote will be held.

Sixth, the Constitution specifies how long it takes for a new President to be elected. This structure has two legal ramifications. First, the legislation governing when a new President must be chosen limits the power of the President, especially the duration of office of the interim President in power and stipulates responsibility for the entity in charge of holding the Presidential election to hold it within the time frame specified by the constitution. Seventh, the interim President's powers are limited by the constitution, which often prohibits the interim President from performing specific activities during the interim administration. Not all constitutions restrict powers; some countries equate interim presidents with presidents. Only five of the 17 nations have legislation restricting the authority of the interim President, notably Algeria, France, Mexico, Argentina, and Egypt.

The interim President's seven governing clauses can serve as a foundation for "integrity testing of other nations" constitutions as well as that of Indonesia. Only two topics will be covered in this section: the interim President's role and how the constitution defines it, including if a single model is employed or if a backup plan is in place in the event of the interim president's absence. The countries that use bureaucrat actors as interim presidents include South Korea, Mexico, Azerbaijan, South Africa, Chile, and Indonesia. Of the six countries, only South Africa is a country whose President is elected through the National Assembly. South Africa, which has a strong parliamentary system, has no longer used a prime minister since 1984. South Korea, Mexico, Azerbaijan, Chile, and Indonesia have implemented direct presidential elections. In the mainstream approach to presidential thinking – with the President directly elected by the people – these countries are classified as presidential systems, but if we address the development of the presidential system, some of these countries combine it with parliamentary elements through the presence of prime ministers such as South Korea and Azerbaijan. Mexico and Chile are commonly referred to by scholars as semi-presidential. Indonesia has a purer presidential system that does not use a prime minister and makes the President the head of state and head of government. These countries have various bureaucratic actors to serve as interim Presidents (Table 1).

Table 1. Bureaucrat actor who rises to become interim president

Country	President Election	An alternative way is if the interim President is handicapped	Bureaucrat Actor Who Becomes Interim President
South Korea	Directly by the citizen	Exist	1. Prime Minister 2. State Council (Article 71)[4]

[1] Constitutions of the Republic of Indonesia. (1945, August). Retrieved from https://www.wipo.int/wipolex/en/legislation/details/7987.
[2] Constitutions of the Republic of Chile. (2005, September). Retrieved from https://www.wipo.int/wipolex/en/legislation/details/21145.
[3] Constitutions of the Federative Republic of Brazil. (1994, July). Retrieved from https://www.globalhealthrights.org/wp-content/uploads/2013/09/Brazil-constitution-English.pdf.
[4] Constitutions of the Republic of Korea. (1987, October). Retrieved from https://www.refworld.org/legal/legislation/natlegbod/1948/en/19949.

Table 1, Continued

Country	President Election	An alternative way is if the interim President is handicapped	Bureaucrat Actor Who Becomes Interim President
Azerbaijan	Directly by the citizen	Exist	1. Prime Minister 2. Chairman of Milli Majlis (Article 101-105)[1]
South Africa	National Assembly	Exist	1. Minister 2. Chairman of National Assembly (Article 90)[2]
Chile	Directly by the citizen	Exist	Minister (If absent, then the replacement is by the order of the minister) (Article 285)[3]
Indonesia	Directly by the citizen	Nothing	Minister of Foreign Affairs, Minister of Home Affairs, and Minister of Defence (Article l8 ayat (3)[4]
Mexico	Directly by the citizen	Nothing	Minister of Home Affairs (Article 7, section 8)[5]

Source: systematized by the authors

Following that, nations that employ legitimate actors as interim presidents tend to dominate more than bureaucratic actors, like the Philippines, Poland, Romania, Algeria, Argentina, Brazil, France, Bulgaria, Angola, Nigeria, and Egypt. These countries have a presidential system as their primary feature. – that is, the President is directly elected by the people – and in semi-presidential nations where the Prime Minister serves as the head of government. Poland, Romania, France, Bulgaria, and Egypt are among the nations that distinguish between the President as head of state and the Prime Minister as head of government; even if these countries have a prime minister, the interim President is nominated as a valid actor who comes from legislative power (Table 2).

Table 2. Bureaucrat actor who rises to become interim president

Country	President Election	An alternative way is if the interim President is handicapped	Legitimate Actor Who Becomes Interim President
Philippines	Directly by the citizen	Exist	1. Chairman of the Senate 2. Chairman of the House of Representatives (Article 7, section 8)[6]
Poland	Directly by the citizen	Exist	1. Marshal of the Sejm (Legislative) 2. Marshal of the Senat (Legislative) (Article 128-131)[7]
Rumania	Directly by the citizen	Exist	1. Chairman of the Senate (Legislative) 2. Chairman of the Deputy (Legislative) (Article 98)[8]
Algeria	Directly by the citizen	Exist	1. President of the Council of the Nation. 2. Chief Justice of Constitutional Court (Article 98)[9]
Argentina	Directly by the citizen	Exist	1. Presidente Provisorio del Senado / Chairman of the Senate 2. Presidente de la Cámara / Chairman of the House of Representatives 3. Presidente de la Corte Suprema de Justicia / Chief Justice of the Supreme Court (Article 88)[10]

[1] Constitutions of the Republic of Azerbaijan. (1995, Nivember). Retrieved from https://president.az/en/pages/view/azerbaijan/constitution.
[2] Constitutions of the Republic of South Africa. (1997, February). Retrieved from https://www.gov.za/sites/default/files/images/a108-96.pdf.
[3] Constitutions of the Republic of Chile. (2005, September). Retrieved from https://www.wipo.int/wipolex/en/legislation/details/21145.
[4] Constitutions of the Republic of Indonesia. (1945, August). Retrieved from https://www.wipo.int/wipolex/en/legislation/details/7987.
[5] Constitutions of the Republic of the United Mexican States. (1917, February). Retrieved from https://www.oas.org/ext/Portals/33/Files/Member-States/Mex_intro_txtfun_eng.pdf.
[6] Constitutions of the Philippines. (1987, February). Retrieved from http://www.officialgazette.gov.ph/constitutions/1987-constitution/.
[7] Constitutions of the Republic of Poland. (1997, April). Retrieved from https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm.
[8] Constitutions of the Republic of Romania. (1991, November). Retrieved from https://www.wipo.int/wipolex/en/text/129513.
[9] Constitution of the People's Democratic Republic of Algeria. (2016, February). Retrieved from https://adsdatabase.ohchr.org/IssueLibrary/ALGERIA_Constitution.pdf.
[10] Constitutions of the Republic of Argentina. (1995, January). Retrieved from https://www.wipo.int/wipolex/en/legislation/details/7070.

Table 2, Continued

Country	President Election	An alternative way is if the interim President is handicapped	Legitimate Actor Who Becomes Interim President
Brazil	Directly by the citizen	Exist	1. Chairman of Deputy 2. Chairman of the Senate 3. Chief Justice of the Supreme Court (Article 80)[1]
France	Directly by the citizen	Nothing	Chairman of the Senate (Article 7)[2]
Bulgaria	Directly by the citizen	Nothing	Chairperson of the National Assembly (Article 97)[3]
Angola	Directly by the citizen	Nothing	Chairman of the National Assembly[4]
Nigeria	Directly by the citizen	Nothing	Chairman of the Senate (Article 136)[5]
Egypt	Directly by the citizen	Nothing	Chairman of the House of Representatives (Article 160)[6]

Source: systematized by the authors

According to the preceding definition, the actor who becomes interim President and the country's governing structure are linked. The type of governance used by a specific country has a significant impact on who becomes interim President. This is evident in the number of nations that employ mainstream presidential and semi-presidential thinking – with the principal character of the President being directly chosen by the people – which is controlled by a legitimate actor as interim President. South Korea, Azerbaijan, and South Africa have all set records. Even though South Korea has a Prime Minister, who is a reinstation of the Vice President, who was removed in the fourth constitutional amendment in 1960. Although the Prime Minister is a member of the executive, their election nevertheless requires mandatory approval by the National Assembly (Article 63:1)[7]. Consequently, as he was chosen through a democratic process to serve in the National Assembly, he embodies the will of the people and has the capital of political support – not really a pure bureaucrat – who was appointed without elections.

Similarly, Azerbaijan, even though the Prime Minister serves as temporary President, utilizes an alternate legitimating actor, the Milli Majlis, when the Prime Minister is away. South Africa, like Azerbaijan, returns it to the National Assembly if the minister who serves as interim President is absent. All actors who serve as interim presidents are inextricably linked to their connection with legislative power, either directly or indirectly; only Indonesia, Chile, and Mexico have interim presidents who are not linked to legislative power ties.

Interim President in the Trajectory of the Regime in Indonesia. Article 8A paragraph (3) of the 1945 Constitution of the Republic of Indonesia[8] stipulates that if the President and Vice President are permanently absent at the same time – then the Minister of Foreign Affairs, Minister of Home Affairs and Minister of Defense "jointly" act as interim President in running the government until a new government is formed. Alongside the interim President in running the government, the People's Consultative Assembly holds a session to elect the President and Vice President from two pairs of candidates for President and Vice President proposed by the political party or combination of political parties whose candidate pair for President and Vice President received the first and second most votes in the previous general election, until the end of their term of office. In the candidacy process at the People's Consultative Assembly, candidates promoted by political parties before the People's Consultative Assembly convey their vision and mission to campaign before the People's Consultative Assembly.

[1] Constitutions of the Federative Republic of Brazil. (1994, July). Retrieved from https://www.globalhealthrights.org/wp-content/uploads/2013/09/Brazil-constitution-English.pdf.
[2] Constitutions of the Republic of France. (1958, October). Retrieved from https://www.conseil-constitutionnel.fr/sites/default/files/as/root/bank_mm/anglais/constiution_anglais_oct2009.pdf.
[3] Constitutions of the Republic of Bulgaria. (1991, July). Retrieved from https://www.ilo.org/dyn/travail/docs/2499/Constitution%20of%20the%20Republic%20of%20Bulgaria.pdf.
[4] Constitutions of the Republic of Angloa. (1975, November). Retrieved from https://www.constituteproject.org/constitution/Angola_2010.
[5] Constitutions of the Republic of Nigeria. (1999, May). Retrieved from https://www.wipo.int/wipolex/en/legislation/details/5412.
[6] Constitutions of the Arab Republic of Egypt. (2014, January). Retrieved from https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session20/EG/A.HRC.WG.6.20.EGY_1_Egypt_Annex_4_Constitution_E.pdf.
[7] Constitutions of the Republic of Korea. (1987, October). Retrieved from https://www.refworld.org/legal/legislation/natlegbod/1948/en/19949.
[8] Constitutions of the Republic of Indonesia. (1945, August). Retrieved from https://www.wipo.int/wipolex/en/legislation/details/7987.

The process is described in Article 8 paragraph (3) of the 1945 Constitution of the Republic of Indonesia[1].

There is no provision in this article for how long the interim President will function as a government. The 1945 NRI Constitution does not explicitly state how long the government will exist; rather, it regulates the maximum limit of "when" the People's Consultative Assembly must begin meeting to elect the President and Vice President, namely a maximum of 30 days calculated after the previous President and Vice President are both simultaneously vacant. The 1945 Constitution of the Republic of Indonesia only regulates when the session will "begin" – it does not regulate how many days the new President and Vice President will be elected, so it is open to the possibility that the interim President will lead the government for quite a long time (up to months or even years like Suharto).

In retrospect, the trajectory of the interim President regulation has undergone a series of model changes, followed by changes in the dynamics of the government system chosen. The composition of the interim President and the government system implemented at that time have a tight connection when considering history. In Law Number 7 of 1949[2] interim president is filled by the Chairman of the House of Representatives with the title "Pemangku Jabatan Presiden". Next, in Law Number 29 of 1957[3] Concerning officials Who Carry Out the Work of the President, If the President Dies, Resigns or is Absent, while the Vice President is Absent or Unavailable, interim president, The President is filled by the Chairman of the House of Representatives with the title "Pekerjaan Jabatan Sehari-hari".

In Government Regulations In Lieu of Law Number 10 of 1960[4] concerning officials who carry out presidential duties, if the president dies, resigns or is absent, while the vice president is absent or unavailable, the interim president is filled by the First Minister with the title "Pekerjaan Jabatan Presiden". In the Decree of the Provisional People's Consultative Assembly of the Republic of Indonesia No. XV/MPRS/1966[5] concerning Election/Appointment of the Vice President and Procedures for Appointing Acting Presidents, the interim president is filled by a person appointed by Sukarno through Supersemar-Suharto with the title "Pemegang Jabatan Presiden". Lastly, in the Decree of the People's Consultative Assembly Number VII/MPR/1973 of 1973[6] concerning the Condition of the President and/or Vice President of the Republic of Indonesia being absent, the interim president is filled by the Minister of Home Affairs, Minister of Foreign Affairs and Minister of Defence simultaneously – and for the first time using the model of replacing 3 (three) positions simultaneously (Minister of Foreign Affairs, Minister of Home Affairs and Minister of Defense) with the title "Acting President".

Historical Contribution, Problems and Future Proposals. The historical contribution that is maintained – even though there have been significant changes in the constitutional structure – is the composition of the interim President, namely the Minister of Foreign Affairs, Minister of Home Affairs and Minister of Defence who serve together. This was originally regulated in the Decree of the People's Consultative Assembly Number VII/MPR/1973[7] of 1973 concerning the Condition of the President and/or Vice President of the Republic of Indonesia being Unavailable, which at that time mandated the Minister of Home Affairs, Minister of Foreign Affairs and Minister of Defence to act as a substitute for the President in absence from office (MPR). M. Sri Soemantri claimed that the Decree of the People's Consultative Assembly Number VII/MPR/1973[8] judgment transferred the content of that provision to Article 8 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (Sri Soemantri, 2015). It is worth noting that, at the time, the President carried the People's Consultative Assembly authority as the highest state institution – a feature of the parliamentary system. This system is still used in the 1945 Constitutional Amendments, which require popular sovereignty by having the people directly elect the President (presidentialism) but delegate the interim President to someone who is not directly elected by the people. In the official minutes of its preparation, Djalil Abdullah stated to

[1] Constitutions of the Republic of Indonesia. (1945, August). Retrieved from https://www.wipo.int/wipolex/en/legislation/details/7987.
[2] Law of the Republic of Indonesia No. 7 "On the Appointment of Temporary Holders of the Office of the President of the Republic of Indonesia". (1949, December). Retrieved from https://peraturan.go.id/files/uu7-1949.pdf.
[3] Law of the Republic of Indonesia No. 29 "Officials Who Carry Out the Work of the Office of the President, If the President Departs, Quits or is Incapacitated, While the Vice President is Absent or Incapacitated". (1957, October). Retrieved from https://peraturan.bpk.go.id/Details/52475/uu-no-29-tahun-1957.
[4] Substitute Government Regulations Act No. 10 "On the Official Running the President's Job Office, if the President is Mandat, Quit, or Impeded, Being Vice-president is no or Hindrous". (1960, March). Retrieved from https://www.global-regulation.com/translation/indonesia/2972949/substitute-government-regulations-act-no.-10-of-1960.html.
[5] Decree of the Provisional People's Consultative Assembly of the Republic of Indonesia No. XV/MPRS/1966 "On the Election/Appointment of the Vice President and Procedures for the Appointment of the Office of the President By the Grace of God Almighty". (July 1966). Retrieved from https://www.regulasip.id/book/11571/read.
[6] Resolution of the People's Consultative Assembly No. VII/MPR/1973 "On the Absence from Duty by the President and/or Vice President". (1973, March). Retrieved from https://www.hukumonline.com/pusatdata/detail/lt50877ad385ba0/ketetapan-majelis-permusyawaratan-rakyat-nomor-vii-mpr-1973-tahun-1973.
[7] Ibidem, 1973.
[8] Ibidem, 1973.

Stemmotivering Fraction of Persatuan Pembangunan People's Consultative Assembly Republic of Indonesia General Session in March 1973, that "Thus, it requires regulations that have legal certainty, to overcome the vacuum in the state leadership, so that our Assembly has produced a Rantap (Rancangan Ketatapan) that regulates this matter, which we fully agree with. The sequence of officials who must appear if the President or Vice President is absent, whether permanent or temporary, starting from the Vice President up to the triumvirate of Ministers of Home Affairs, Foreign Affairs and Defence, is intended to prevent the absence of the country's highest leadership, something that must not happen for continuity of development"[1]. According to Djalil Abdullah's opinion, at the People's Consultative Assembly Republic of Indonesia General Session in March 1973, the members were presented with mature material in the written Rantap, in the event of the President and Vice President's permanent absence. There was no in-depth discussion recorded in the minutes of the trial and Djalil Abdullah stated that Stemmotivering merely justified what was presented in the Rantap[2].

There are no other official state documents that can be traced, that can explain why the Minister of Home Affairs, Minister of Foreign Affairs and Minister of Defence replaced the President during his permanent absence, having regard to the entire series of results of the March 1973 MPR General Assembly and the composition of the Second Development Cabinet[3], the only faction that discussed the point about the vacancy of the positions of President and Vice President was the Fraction of Persatuan Pembangunan. Due to this, to determine why the Minister of Home Affairs, Minister of Foreign Affairs and Minister of Defense act as substitutes for the President when if former is permanently unable to do so, requires an in-depth investigation through historical research for political context behind these regulations.

M. Sri Soemantri (2015) determined why the three ministries are to carry out interim President responsibilities, namely why three ministers are supposed to know secrets of government affairs – same for why bureaucrat actors can act as interim Presidents. Next, The Minister of Foreign Affairs is in charge of all foreign interactions and, more significantly, of maintaining the country's sovereignty in the international arena. The Minister of Home Affairs is seen as the controller of domestic government including regional government, and the Minister of Defence as the political controller of defence. M. Sri Soemantri noted a functional approach that omitted the political background of the rules. Almost identical to the People's Consultative Assembly Decree, the regulatory paradigm that establishes the Minister of Foreign Affairs, Minister of Home Affairs, and Minister of Defense as authorities to take exceptional action in "emergencies" is found in Article 75 of the Constitution of Indonesia[4].

Through all of the political background that remains hidden beneath these regulations, the Minister of Foreign Affairs, Minister of Home Affairs and Minister of Defence who serve together, are still retained as interim President with an increase in level which was originally in the People's Consultative Assembly Decree to become the 1945 Constitution of the Republic of Indonesia. The problem is whether such a model is still relevant in contemporary constitutional structures. The 1945 Constitution of the Republic of Indonesia as a result of the 1999-2002 constitutional reform was the product of an agreement that was motivated to strengthen Presidentialism by conducting direct elections for the President as a form of popular sovereignty. The use of the Minister of Home Affairs, Minister of Foreign Affairs and Minister of Defence as interim President shows that the features of parliamentarism still exist in the Presidentialism of the 1945 Constitution of the Republic of Indonesia because it uses the element of "minister" as interim President as in the new order which, if the President and Vice President are vacant, is simultaneously filled by the Minister of the Interior. Home Affairs, Minister of Foreign Affairs and Minister of Defence together.

According to the historical trajectory of governance, Indonesia is in an ambiguous position to install a parliamentary or presidential form of government. Before the reform, numerous experts, such as M. Sri Soemantri (2015), noted that Indonesia used a hybrid system as the President was chosen by the People's Consultative Assembly, but the 1945 Constitution did not restrict the cabinet's accountability to parliament. After the reform, according to S. Sulardi (2012) and S. Isra (2018), even while there is a pledge to improve the presidential system through direct election of the President, parliamentary subtleties remain, such as not granting the President veto power over legislative initiatives submitted by parliament. The author believes that, although modern reforms have not yet fully embraced pure presidentialism, they are in the phase of "moving forward" towards presidential, or in Fitrah Asri's language, dominant towards presidential rather than parliamentary.

Interim President with the composition of the Minister of Home Affairs, Minister of Foreign Affairs and Minister of Defense who replaces the President runs

[1] Session of the People's Consultative Assembly on 24 March 1973 to Appoint Sri Sultan Hamengkubuono IX as the 2nd Vice President of Indonesia based on the Decree of the People's Consultative Assembly no. X/MPR/1973. (1973, March). Retrieved from https://onesearch.id/Record/IOS1.INLIS000000000054780.
[2] Ibidem, 1973.
[3] Ibidem, 1973.
[4] Constitutions of the Republic of Indonesia. (1945, August). Retrieved from https://www.wipo.int/wipolex/en/legislation/details/7987.

the government, with a parliamentary nuance since the Minister of Home Affairs, Minister of Foreign Affairs and Minister of Defence are not directly elected by the people which is the main characteristic of the presidency – the President is directly elected by the people. Tracing the Comprehensive Draft Amendment to the 1945 Constitution of the Republic of Indonesia, we cannot determine a set reason why the Minister of Foreign Affairs, Minister of Home Affairs and Minister of Defence appear as interim President (Constitutional Court of Republic of Indonesia, 2010). The execution of the interim President duties by the ministers of foreign affairs, home affairs, and defence is not contested; throughout the formulation process, all participants justify one another and concur. The authors of the modification did not consider the 1945 Constitution of the Republic of Indonesia's new constitutional framework; instead, they simply copied and pasted the People's Consultative Assembly Decree Number VII/1973's[1] provisions into Article 8 paragraph 3 of the 1945 Constitution of the Republic of Indonesia[2].

Interim President will have to deal with several possible issues when using ministerial personnel who are not directly elected by the populace. F. Burkhardt (2020) described the main problems of the former government leader, among others, "the inability to direct and control agents" (Burkhardt, 2020), ministers' loyalty to the president as a protectionist appointment in exchange for support or the creation of an electoral coalition (Hollibaugh *et al*., 2014). It is necessary to understand whether this loyalty is maintained after the replacement of the president and vice president. Within the bounds of rational reasoning, a "President" is unable to supervise and regulate the activities of its ministers, resulting in internal executive disputes, particularly when the President runs the government.

Ministers in government have the power to implement strategic initiatives in the short-term interests of the sector. The Cabinet of Ministers is uncontrollable, and many people can come to power in a short time. From a management perspective, it is important to assess whether the interim president has sufficient legitimacy and popular support to take strategic action and control the government. Legitimacy is crucial, (Dyzenhaus, 2012) and noted as a manifestation of the power of the constituent voters who support government action. When constituents are under a regime they did not choose, following Colón-Ríos (2012), it is constitutional illegitimacy (Colón-Ríos, 2012). Thus, political, and legal legitimacy are two inseparable aspects. The threat of lack of political legitimacy in carrying out presidential duties is very high even though legally the 1945 Constitution of the Republic of Indonesia requires ministers to carry out interim President. Adam Smith and Penelope Sue's potential for "government paralysis" may occur at a later date.

Apart from the legal framework for implementing the interim President which does not have the legitimacy of the people, this problem is further exacerbated by the 1945 Constitution of the Republic of Indonesia[3] is not accommodative enough to deal with certain situations which result in paralysis of the government. It can happen, when the President and Vice President give an oath on October 20th, but the ministerial cabinet has not yet been formed. For example, shortly after the inauguration, it was discovered that the President and Vice President were affected concurrently, rendering them permanently inactive (death, terrorist attack, etc.). It is necessary to clarify the person who performs the role of interim president when the cabinet is not yet formed/inaugurated. The Minister of Home Affairs, Minister of Foreign Affairs and Minister of Defence cannot serve because they have not been legally appointed/sworn in (the cabinet has not yet been formed), while the previous ministries are also unable to carry out their duties because their term of office has expired at the same time as the term of office of the previous President.

This is a problem because, in the inauguration of the previous President and Vice President, there was always a "time lag" between the inauguration of the President and Vice President and the appointment of the cabinet. During President Susilo Bambang Yudhoyono's first period, he was inaugurated on October 20, 2004, at 10.00 WIB and the appointment of the ministerial cabinet was carried out in the afternoon. At the inauguration of Susilo Bambang Yudhoyono period II, the inauguration was held on October 20, 2009, then the cabinet appointment was carried out the following day October 21, 2009. In the era of President Joko Widodo period I, the President was inaugurated on October 20, 2014, and the appointment of the cabinet was carried out 1 week after the inauguration, namely on October 27. In the era of President Joko Widodo's period II, he was inaugurated on October 20, 2019, and then the cabinet appointment was carried out on October 23, 2019.

The rational choice to overcome these two problems, following the author's suggestion, is to make the Chairman of the People's Consultative Assembly the interim President. This one solution can directly address the weaknesses in the 1945 Constitution of the Republic of Indonesia. Firstly, politically, the Chairman of the People's Consultative Assembly is appropriate to serve as the interim President because they receive the people's votes directly and are elected through

[1] Resolution of the People's Consultative Assembly No. VII/MPR/1973 "On the Absence from Duty by the President and/or Vice President". (1973, March). Retrieved from https://www.hukumonline.com/pusatdata/detail/lt50877ad385ba0/ketetapan-majelis-permusyawaratan-rakyat-nomor-vii-mpr-1973-tahun-1973.
[2] Constitutions of the Republic of Indonesia. (1945, August). Retrieved from https://www.wipo.int/wipolex/en/legislation/details/7987.
[3] Ibidem, 1945.

general elections. In terms of legitimacy, the People's Consultative Assembly is strong and has political support – because, in general, based on Indonesian political history – the Chairman of the People's Consultative Assembly is a legitimate actor who comes from the parliamentary majority party thus when it changes office as interim President, they can ward off external political interference throughout the relatively short duration of their office. Even though they come from a legitimate actor, the Chairman of the People's Consultative Assembly is also experienced politically, which matters in leadership as they previously served and led the People's Consultative Assembly institution. Under robust political support from legislative political parties and the population at large, they successfully maintained control of the interim government and consolidated the People's Consultative Assembly, an additional state institution entrusted with the task of overseeing the inauguration of the new president. Second**,** when there is a vacancy for the President and Vice President right after their inauguration on October 20 – at the same time, a cabinet has not yet been formed so that the Minister of Foreign Affairs, Minister of Home Affairs and Minister of Defence have not yet been formed – the Chairman of the People's Consultative Assembly can replace as interim President. Long before the inauguration of the President and Vice-President on 20 October, the House of Representatives, the Regional Representative Council, and the People's Consultative Assembly were elected and inaugurated on 1 October, and the elected Chairman of the People's Consultative Assembly was inaugurated on 4 October. Therefore, when the President and Vice President are inaugurated, and a tragedy occurs that leaves the positions of President and Vice President vacant, the Chairman of the People's Consultative Assembly can take over the interim President. Thus, the constitution can guarantee the continuation of the government by giving this to the interim president thus, it can guarantee the stability of the government until a new government is formed.

Conclusions

The primary goal for a country facing a presidential and/or vice-presidential vacancy is to maintain governance. Continuing the government entails more than simply ensuring that an interim President occupies the interim government. Even more, it also should guarantee the stability of administration and community interests. In international constitutions, there are two approaches for filling an interim president: bureaucratic actors and legitimate actors. This study argues, that, despite the existence of two actor models, the majority of countries show parliamentary involvement in filling the position of interim President, either directly through the legitimization of the actor from parliament who becomes interim President, or indirectly through the appointment and accountability of bureaucratic actors by the (previous) President through political mechanisms in parliament. Only Indonesia, Chile, and Mexico have interim presidents who are not in contact with the legislature.

Indonesia has a peculiarity, differing from other countries, namely the simultaneous interim Presidency of multiple positions (Minister of Foreign Affairs, Minister of Home Affairs and Minister of Defence). This is a contribution from the past, which was adopted from the Decree of the People's Consultative Assembly Number VII/1973 without a process of decontextualization and alignment with the current constitutional structure. As a result, the changes to the presidential system in the process of amending the 1945 Constitution of the Republic of Indonesia were difficult to make as the interim President faced a crisis of legitimacy and political support. The 1945 Constitution of the Republic of Indonesia also does not yet guarantee complete continuity of government, because the 1945 Constitution of the Republic of Indonesia does not provide a way out if the positions of President and Vice President become vacant, while the ministerial cabinet has not yet been formed. Future improvements can be made in one step, namely giving the position of acting President to the Chairman of the People's Consultative Assembly. Further research in this area could include a more in-depth study of the legal regulation of transition periods in other countries.

Acknowledgements

None.

Conflict of Interest

None.

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Проблеми інституту тимчасового президентства: порівняльна конституційна перспектива

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Анотація
Актуальність цього дослідження полягає в з'ясуванні різноманітних конституційних підходів, прийнятих країнами для вирішення критично важливого питання правонаступництва у випадку одночасного відкриття вакансій на посади президента й віцепрезидента. Ця стаття має на меті з'ясувати, хто повинен виконувати обов'язки президента в таких випадках, щоб уряд продовжував працювати. Для цього в статті використано доктринальний метод дослідження, доповнений порівняльним конституційним підходом до вивчення конституцій країн. Встановлено, що є легітимізовані та бюрократичні актори, які конкурують один з одним, щоб виконувати обов'язки президента, коли посади президента й віцепрезидента стають вакантними, у різних державах. Країни, які використовують легітимних акторів, зазвичай призначають спікера Палати представників / Сенату (законодавча влада) виконувачем обов'язків президента, натомість країни, які використовують бюрократичних акторів, здебільшого призначають міністрів (виконавча влада) виконувачами обов'язків президента. Легітимні актори – це саме ті посадові особи, які можуть стати виконувачами обов'язків президента, оскільки вони спроможні забезпечити стабільність функціонування уряду на підставі демократичної легітимності, що ґрунтується на голосах виборців. Практична цінність цієї статті полягає в тому, що вона може бути джерелом знань для розробників конституцій під час внесення поправок / змін до конституції, оскільки в ній узагальнено механізми виконання обов'язків президента за основним законом різних країн, а також доповнено досвідом Індонезії, який можна розглядати як матеріал для обговорення поправок / змін до конституції

Ключові слова:
президент; виконувач обов'язків президента; уряд; конституційне порівняння; президенціалізм

ЮРИДИЧНИЙ ЧАСОПИС
НАЦІОНАЛЬНОЇ АКАДЕМІЇ ВНУТРІШНІХ СПРАВ

Науковий журнал

Том 14, № 1, 2024

Заснований 2011 року. Виходить чотири рази на рік

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

Відповідальний редактор:
О. Короткий

Редагування англомовних текстів:
К. Касьянов, Є. Заворотько

Комп'ютерна верстка:
М. Кришталь

Підписано до друку 4 березня 2024 р. Формат 60*84/8
Умов. друк. арк. 10,9
Наклад 50 прим.

Адреса видавництва:
Національна академія внутрішніх справ
03035, пл. Солом'янська, 1, м. Київ, Україна
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E-mail: info@lawjournal.com.ua
https://lawjournal.com.ua/uk

LAW JOURNAL
OF THE NATIONAL ACADEMY OF INTERNAL AFFAIRS

Scientific Journal

Volume 14, No. 1, 2024

Founded in 2011. Published four times per year

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

Managing Editor:
O. Korotkyi

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

Desktop publishing:
M. Kryshtal

Signed for print of March 4, 2024. Format 60*84/8
Conventional printed pages 10.9
Circulation 50 copies

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