МІНІСТЕРСТВО ВНУТРІШНІХ СПРАВ УКРАЇНИ
НАЦІОНАЛЬНА АКАДЕМІЯ ВНУТРІШНІХ СПРАВ

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# ЮРИДИЧНИЙ ЧАСОПИС
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# Areas of application of artificial intelligence in law enforcement: Trends, challenges and prospects

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**Abstract**
The escalation of security challenges in the context of digital transformation highlights the need for a systematic review of current practices, risks and the potential for implementing artificial intelligence in law enforcement activities. The aim of this study was to summarise scientific approaches to the application of artificial intelligence in law enforcement, focusing on the stages of its development, key areas of research and insufficiently studied aspects. The use of methods of analysis and synthesis of scientific sources, content analysis, comparative analysis, and classification of existing approaches made it possible to assess the current state of scientific research on trends, challenges, and prospects for the use of artificial intelligence. It has been established that scientific interest in the application of artificial intelligence in law enforcement has increased significantly over the last decade. The rapid development of artificial intelligence technologies has opened up new opportunities for the automation of analytical and operational functions, prompting scientists to study the possibilities and threats of artificial intelligence. Researchers focus primarily on areas such as video analytics, crime prediction, image recognition, and big data processing. At the same time, there is a lack of in-depth interdisciplinary research that takes into account the ethical, legal, and social implications of using such technologies. A disparity in approaches to risk classification and standardisation of implementation practices has been noted. The need for the formalisation of research has been demonstrated, which will contribute to the balanced development of artificial intelligence in law enforcement activities, taking into account security,

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legal, and humanitarian factors. The results obtained can be used by heads of law enforcement agencies, analytical units, and digital transformation specialists to determine priority development directions and consider potential risks

**Keywords:**
information; digital forensics; combating criminal offences; cybercrime; digitalisation

## Introduction

Modern technologies are rapidly changing all spheres of life, and law enforcement is no exception. One of the most promising tools for the digital transformation of law enforcement agencies is Artificial Intelligence (AI). The application of AI in law enforcement covers a wide range of areas – from automated video surveillance and big data analysis to predicting crime in general or its specific manifestations. At the same time, the use of such technologies gives rise to a number of ethical and legal challenges that have required and continue to require careful regulation (Hacker, 2023). In response to these challenges, the European Parliament and the Council of the EU are creating a legal instrument – the EU AI Act[1], which combines the development of innovations with the protection of fundamental rights and societal values. The document, adopted in June 2024, aims to ensure transparent rules for the use of AI technologies, promote innovation, and protect human rights in Europe.

Proper implementation of the adopted legislative acts requires law enforcement agencies to quickly master computational systems and AI models capable of analysing large datasets, learning from them, making necessary decisions, and performing assigned tasks. Europol, using research from its own Innovation Lab, analyses the potential of AI application in terms of technologies that can be effective (e.g., pattern recognition, crime prediction, data analysis); studies practical cases of pilot projects and initiatives for AI application in EU countries; identifies risks and challenges, particularly those related to privacy, ethics, algorithmic discrimination, etc.; formulates recommendations for EU member states on implementing AI without violating human rights and legality; and prepares analytical reports and forecasts (Europol, 2024). The ability to quickly analyse large amounts of information and find correct solutions in critical situations requires a much broader set of tools than traditional forensic data analytics. Therefore, identifying patterns, finding connections, and generating new knowledge from raw data, according to Europol (2024), is an obvious necessity in the era of digital technologies.

Researchers have repeatedly emphasised the broad prospects opened up by the application of AI. According to I. Raji & D. Sholademi (2024), future algorithms are expected to become even more complex, which will expand the possibilities of prediction and its societal perception. The further development of explainable AI will also be of great importance, as noted by A.B. Arrieta *et al*. (2020), helping law enforcement agencies better understand how AI predictions and recommendations are generated and contributing to addressing concerns about AI biases. Its implementation, as indicated by J. McDaniel & K. Peace (2021), significantly increases work efficiency, optimises information collection and analysis processes, prevents criminal offences, and enables more effective detection and investigation.

According to research by K. Huang *et al.* (2021), combining accumulated historical data with real-time data will allow law enforcement agencies to better adapt their strategies, responding to new threats and crime trends. Augmented natural language processing (NLP) plays an important role. As noted by N.C. Dang *et al*. (2020), using sentiment and context analysis with NLP technologies allows for the detection of new threats and the tracking of public sentiment. Indeed, the development of the internet has led to the emergence of blogs, forums, and social networks that provide users with the opportunity to discuss any topic, share their opinions on it, and thereby influence human activity and behaviour. Therefore, the increasing volume of information generated online requires automated computational systems for data analysis, whose algorithms do not always meet the expected accuracy of results.

Thus, the rapid development of AI-based technologies has led to a large number of studies dedicated to the opportunities and challenges of its application. The aim of the study was to systematise and critically review existing scientific literature on the possibilities of using artificial intelligence in law enforcement. The study was based on an analysis of modern scientific research, reports from international organisations, analytical publications, and cases of artificial intelligence implementation in the activities of law enforcement agencies. To achieve a holistic vision of the topic, the review is structured around three key thematic areas, formed in accordance with the stated research objectives. The first area covers the analysis of the possibilities of applying artificial intelligence in open-source intelligence (OSINT) and social media intelligence (SOCMINT). Within this thematic block, technological solutions were investigated that allow for automated

[1] Regulation of the European Parliament and the Council of the European Union No. 2024/1689 "Artificial Intelligence Act". (2024, June). Retrieved from https://eur-lex.europa.eu/eli/reg/2024/1689/oj/eng.

monitoring of the digital environment, threat recognition in open sources, and data collection from social media platforms. The second area is devoted to the role of natural language processing (NLP) in threat detection and supporting the activities of law enforcement and judicial bodies. The review considers the application of NLP for analysing textual data, detecting emotional colouring of messages, machine translation, and automated classification and extraction of key information from documents. The third area focuses on reviewing the current state of digital forensics using artificial intelligence technologies. The review included an analysis of practices for processing large datasets, detecting cyber threats, information recovery, analysing digital traces, and evaluating the effectiveness and limitations of these technologies in crime investigation, particularly in conditions of armed conflict. The methodological basis of the review was methods of critical literature analysis, comparison, and content analysis of official reports.

## Big datasets

A significant part of law enforcement work involves information, particularly the analysis of data related to committed criminal offences, individuals suspected of committing them, obtaining evidence, taking measures to prevent criminal activity, and so on. As Y. Lee *et al*. (2024) note, accumulated large sets of static and dynamic data serve as a source for AI. By processing such data, AI assists law enforcement agencies in predictive policing, OSINT or SOCMINT intelligence, NLP, and digital forensics. For crime prediction, AI can use automatic and semi-automatic models: automatic models are capable of independently processing input data, analysing them, and drawing conclusions without human intervention, while semi-automatic models involve humans to solve more complex and unpredictable tasks through interaction with algorithms.

However, given the latest advancements in AI, it is important to be cautious when delegating decision-making to systems whose operating principles are not always fully understood. The main challenge remains the creation of an AI oversight system that ensures algorithmic transparency and allows for human intervention when necessary. The UK Government classifies powerful general-purpose artificial intelligence models that can perform a wide range of tasks and equal or exceed the capabilities of the most advanced models today as Frontier AI. Such models will have improved accuracy, reasoning, planning, memory, and self-correction and will be necessary for creating truly autonomous agents capable of performing more than basic tasks without human supervision (UK Government Office for Science, 2023). As M. Javaid *et al*. (2022) indicate, finding correlations to avoid or predict AI errors is an urgent current need. Given the current significant uncertainty, there is insufficient evidence to rule out the possibility that future Frontier AI, if improperly configured, misused, or insufficiently controlled, could pose an existential threat.

The large and complex datasets operated by law enforcement agencies are difficult to process using traditional tools. Such data require specialised analysis that uses sophisticated mathematical algorithms, machine learning, and trained models (Hardyns, 2024). By processing large and complex datasets in this way, AI can analyse and comprehend this data, and also develop certain predictions. This allows for a high probability of answering key questions: who might commit a criminal offence, when and where, and who will be its victim. This determines the level of risk of committing a particular offence. Obtaining such information is a critically important component of crime prevention. A trained AI model can automatically establish the essence of textual, voice, and visual datasets. AI can identify information about phone numbers, IP addresses, names, etc., without necessarily reviewing the content of the message. AI performs this work significantly faster and more efficiently than a human, who would have to read text, watch video, or listen to audio recordings. This approach also increases the level of protection of personal data from unauthorised access and subsequent illegal use, eliminating the human factor (Europol, 2024).

The European Commission, within the framework of Horisont-ERC grants, started funding the BIGDATPOL project in 2023, which aims to improve crime prevention work on the European continent. The harmonisation of statistical, criminological, economic, legal, and ethical aspects of large datasets should lead to the creation of a new AI model that uses historical data to predict and prevent the growth of crime. By directing their resources to hot spots thanks to the generated predictions of the new trained AI model, the police will have more opportunities to keep crime at a certain level (European Research Council, 2023). The project, which will be implemented until September 2028, aims to: combine knowledge and expertise in the field of protecting large datasets, which are currently fragmented; conduct interdisciplinary research in the study of police work with big data; study, scientifically substantiate, and compare different models of police work with big data.

Identifying patterns in criminal activity, studying connections between different types of data, and forecasting resource needs based on accumulated historical data will require the use of appropriate technological infrastructure (Tarasenko, 2020). That is why, as I. Ben-Israel *et al*. (2020) note, since 2017, more than 30 countries have published national strategies or national plans in the field of AI, with investments in billions of dollars. As of April 2025, there are already more than 1000 AI initiatives from 69 countries, territories, and the EU (OECD.AI, 2021). The creation, operation, and maintenance of such infrastructure requires significant financial expenditure and specialised expertise from law enforcement officers, which can be a

significant limitation, especially for small law enforcement units. Solving this problem can be based on a systemic approach that combines organisational, legislative, financial, and educational measures. The state plays a key role, as public funding through targeted budget programmes for the creation and support of digital analytical infrastructure in law enforcement agencies will allow for the creation of, for example, a single state platform for data analysis (Data-as-a-Service), to which various units can connect – instead of duplicating infrastructure for each of these units separately. Interregional analytical centres can also be created as structural units of a single state platform. To implement such changes, legislation must be amended, namely a Law on the Use of AI in Law Enforcement must be adopted, defining safety and data protection standards; conditions for access to centralised platforms; mechanisms for external and internal control. Legislative regulation will also be needed for the institutionalisation of the role of an independent technological auditor who evaluates the expediency of AI solution procurement and their compliance with standards. Amendments to the Budget Code and local government laws will allow for the financing of AI solutions in the security sector from various sources. Professional training and advanced training for law enforcement officers, including the study of AI, criminal analytics, and cybersecurity topics in the curricula of specialised higher education institutions and advanced training courses, partnership with universities for staff internships in IT or analytics, and the use of online courses and self-education models (in cooperation with Coursera, edX, EUROPOL Academy, etc.) will allow staff to be prepared for the effective use of AI in law enforcement.

In the study of large and complex datasets operated by the Dutch police, four contexts are considered: big data policing directly from a law enforcement agency operating within the state; big data policing from ex-territorial law enforcement agencies (such as Europol, Interpol, and others); big data policing from civilians involved in information collection; big data policing from software applications developed by third-party commercial companies (Schuilenburg & Soudijn, 2023). In the Netherlands, many big data applications are developed and supported directly by police units. For example, the CAS system, developed by the Amsterdam Regional Police Unit in 2014, is used for predictive police surveillance. Police intelligence analysts use the Helios application from the Dutch Police, as well as automatic speech recognition (ASR) software and relevant tools for language analysis. The IT team of the Dutch Police is involved in the development of applications for patrol police. The integration of its own technological teams and developments into the structure of the Dutch Police enhances its operational capacity, ensures rapid adaptation to service needs, and creates synergy between IT and law enforcement practice, which, obviously, provides more control, better data protection, and greater flexibility in innovation implementation. The situation in the Netherlands differs significantly from that in the UK or the USA. In the USA, software products are developed by third-party contractors, such as Palantir. These differences can lead to varying results of big data policing in practice. This is especially relevant when feedback loops occur in algorithms, as new data processed by different algorithms generate different results, prompting police units to react differently. Furthermore, it is notable that the deployment of big data applications leads to significant changes in skills and positions within the police organisation. Research on the Dutch police shows that each police unit includes positions and teams of coders, programmers, data processors, cloud developers, testing specialists, and backend developers. Working with big data and algorithms requires different skills and knowledge than were needed for the risk and actuarial systems previously used by the police for crime analysis.

As M. Schuilenburg & M. Soudijn (2023) indicate, there is an "elite of coders" within the Dutch Police who make important decisions during the design and development of big data applications, particularly regarding which data sources to use, which variables to include in the analysis, and how to weigh these variables. These decisions are not neutral and have a significant impact on the final results. To avoid excessive discretion, the following tools should be introduced: approval of documentation for all choices in the development process, namely which data sources, variables, weights, etc., are used; clear limitation of the freedom of decision of technical teams in critical areas (e.g., in criminal intelligence) in internal instructions/regulations; all changes in the architecture or logic of algorithms must be approved by an authorised body; creation of a register of models/algorithms used in the police – with access for supervisory bodies. V.L. Glaser *et al*. (2021) argue that deep learning algorithms have a higher level of uncertainty in the results obtained due to their insufficient transparency (the so-called "black box") and ability to generate their own goals and rules. For example, deep learning algorithms can influence the development of police operations without proper human control. Therefore, fully autonomous solutions, i.e., without any human intervention, are not yet used in law enforcement activities. As of 2023, the use of big data by the Dutch police mainly involved relatively simple applications, such as investigation tools with mostly relatively simple algorithms for frontline police work, or combining large data files to improve access, which meant very limited AI involvement in managing law enforcement activities (Schuilenburg & Soudijn, 2023).

The use of large datasets by law enforcement agencies is not always lawful. The case of the Metropolitan Police of London (MOPAC – Met Police) and the Gang Violence Matrix (GVM), introduced in 2011 after the

London riots, demonstrates how sensitive accumulated data are for society and how erroneous or biased algorithms can affect citizens (Scott-Davis, 2023). MOPAC reports on the GVM, despite numerous mentions of analytics, data systematisation, standardised procedures, and automation, do not contain direct references to the use of Artificial Intelligence (AI) or deep learning algorithms. However, according to data from the Mayor's Office for Policing and Crime (2021), data on stops and arrests of individuals from the GVM are generated as part of an automated process. This means that algorithmic logic and digital automation are applied. The use of GVM in London has drawn criticism regarding transparency and discriminatory risks, as young people were labelled as gang members based on their friendships and connections, often leading to increased negative police attention and increasing the risk of being charged under the doctrine of joint enterprise, which allows several people to be convicted of a crime even if they did not commit the act themselves (Hattenstone, 2025). Despite the matrix being presented as a sophisticated intelligence database on "gangs" and those involved in gang-related violence, names were often entered randomly based on unreliable information (Hattenstone, 2025). Individuals whose personal data were entered into the matrix had no mechanism to challenge their inclusion. Following a legal challenge initiated by the human rights organisation Liberty (2022) on behalf of a young Black man, MOPAC agreed to radically change or completely dismantle the GVM. The lawsuit alleged that the GVM violated human rights, exhibited racial bias, and harmed individuals with no criminal history. According to experts interviewed by Liberty (2022), the system contributed to racial profiling: the vast majority of individuals in the matrix were young Black men, often without conviction or criminal record.

The predictive activity of law enforcement agencies is based on large and complex datasets. Modern mathematical data processing algorithms, combining tools for digital crime mapping, search engines, and pattern matching systems, aim to identify trends and patterns that can be used to predict the likelihood of new crimes being committed and to appropriately deploy law enforcement forces and resources to minimise these risks. Machine learning models that implement this approach are trained based on two main stages: data collection and modelling (prediction). As A. Raja (2023a; 2023b) notes, data collection and preparation is an iterative process and may require several rounds of cleaning, pre-processing, and feature selection to obtain a high-quality dataset. Data must represent the population under study and be properly labelled and documented to ensure reproducibility. Once the data are prepared, the next step is to perform exploratory data analysis (EDA), which is a preliminary, indicative study of the structure and patterns in the data. By analysing and visualising data, EDA can reveal patterns, correlations, and exceptions that provide insight into data relationships and characteristics. Using Python libraries such as Seaborn, Pandas, and Scikit-learn, the best understanding of the data can be achieved for use in a machine learning model. The next stage involves selecting the type of machine learning models, namely: supervised, unsupervised, or reinforcement learning. After choosing one of these types, one proceeds directly to selecting the machine learning model, for example, logistic regression, decision trees, random forests, support vector machines (SVMs), or neural networks. The choice of models and learning type are crucial for building accurate and effective machine learning models. Law enforcement agencies accumulate structured and unstructured data from various sources, such as historical crime data (time, place, type), socio-economic indicators, and can also supplement their datasets with information from other relevant sources, such as social or probation services.

Also important is the analysis of encrypted information sources, such as Dark Web platforms, which are a launchpad for criminals and criminally motivated individuals, as they provide a relatively untraceable and convenient way to carry out a wide range of illegal activities (Sangher *et al*., 2023). Therefore, gaining new opportunities to analyse the Dark Web using AI is an important step in combating crime. Research conducted on the Agora DarkNet Market Archives (2013-2015) dataset, which contained over 109,000 records with manual data division by activity type into cybercrime/non-cybercrime/cannot be determined, using four deep machine learning models, namely RNN (recurrent neural network), CNN (convolutional neural network), LSTM (long short-term memory network), and BERT (bidirectional encoder representations from transformers), showed the best results for BERT – a modern powerful model for natural language processing in classification, search, and translation tasks, which analyses the context of words in a sentence from both left and right. Researchers achieved 96% accuracy in classification by activity type (Sangher *et al.,* 2023).

The predictive activity of law enforcement agencies includes territorial and individual components. Algorithms focused on specific territories identify connections between events, geographical locations, and crime statistics, predicting the likelihood of crimes being committed at a certain time and in specific places. Predictive activity at the individual level uses algorithms aimed at identifying individuals prone to committing crimes (Europol, 2024). The key difference from previous data processing algorithms, for example, processing statistical data and AI-based predictions, is that statistics are a tool for testing hypotheses, while AI is for building prediction functions. AI operates with very complex, multidimensional relationships that cannot be described by simple formulas. Statistical models remain valuable for interpretable analytics, whereas modern AI allows

for processing large unstructured datasets, generating highly accurate predictions, and automating complex processes that were previously inaccessible to classical models. That is why predictive activity at the individual level has gained popularity in EU countries such as the Netherlands (ProKid, CAS), Germany (Precobs, Palantir Gotham), Austria, France, Estonia, and Romania, and other countries are exploring the possibilities of its implementation (Europol, 2024).

A research group from the University of Chicago (Illinois, USA) developed a model capable of predicting probable crime areas a week in advance. The tool has an accuracy of 90%, making it one of the most successful predictive policing systems operated by companies such as PredPol, Azavea, and KeyStats in major cities like Los Angeles and New York. However, even with such high accuracy, this does not mean that the model should be used for prescriptive guidance by law enforcement agencies (Rotaru *et al*., 2022). Instead, this model should be added to the set of tools for urban policy and police strategies to combat crime. A disadvantage of the model is that the prediction algorithm is unable to identify actual areas with the highest crime rates, as only reported cases are analysed by the police. For example, Black communities in the USA conceal crimes that occur in their communities, and this distorts the prediction result. At the same time, as J. Ludwig & S. Mullainathan (2021) note, African Americans constitute only 13% of the US population but account for 26% of those arrested and 33% of those incarcerated in state prisons. Determining how much of this inequality is due to discrimination by the criminal justice system is a complex task. However, there is no doubt that at least part of such inequality has a discriminatory basis. As already noted, such biases negatively affect the accuracy and fairness of statistical models. Several Scandinavian countries have a prediction model where it is possible to predict with a useful level of accuracy whether a newborn infant will be arrested for a crime by the time he or she turns 20 (Berk, 2021). The study describes the application of machine learning algorithms that implement supervised learning, including: random forests, stochastic gradient boosting, and neural networks, including deep learning. These algorithms are trained on historical data about: demographic characteristics, past offences, social conditions, and place of residence. After training, the models can be used to predict the risk of offences, including in the long term, and therefore can predict future potential offences. Potential risks remain constant, namely: bias in training data (e.g., arrests related to racial discrimination), algorithmic opaqueness ("black box"), the danger of over-reliance on model accuracy without contextual analysis.

Conclusions: AI is being increasingly implemented in law enforcement practices, particularly for crime prediction, big data analysis, and processing information from open sources. Modern machine learning models provide high analytical accuracy, but risks remain associated with algorithmic opaqueness, biased training data, and a lack of proper oversight. Practice shows that the effective use of AI requires legislative regulation, institutional supervision, and the training of appropriate personnel. At the same time, excessive automation without human intervention can lead to serious errors and human rights violations.

## Open-source intelligence

OSINT or SOCMINT analytics generates datasets from open information sources. For example, by combining information from fixed CCTV cameras and footage from swarming drones, AI can create a comprehensive picture of the current situation in abandoned areas, surveying buildings or other objects (Sholademi, 2024). New AI technologies can recognise people by how they look, walk, speak, write, or type (McDaniel & Pease, 2021).

The introduction of new communication and data transfer technologies, coupled with the impact of global societal problems such as the COVID-19 pandemic, has led to a rapid increase in online services and the expansion of the Internet. Along with the increase in web traffic, the number of cybercrimes has also grown. The use of trained AI models in OSINT (SOCMINT) not only helps detect unidentified threatening information sources or cyber threats, or reconstruct the digital traces of online criminals. AI can assist law enforcement agencies in actively countering crime on social media. For example, the AI bot dAIsy, developed by $O_2$, is designed to combat fraudsters who attempt to gain access to the personal information of elderly people in Britain. With the help of AI, the bot tries to keep the phone conversation with the fraudster going for as long as possible, during which the fraudster wastes their time and money but never obtains the data or computer access they expect. This way, fraudsters expend resources and are unlikely to target those protected by AI again. The use of AI to create an illusion of "credibility" for criminals, misleading them and preventing crimes from fraudulent call centres, can significantly reduce the workload of law enforcement agencies in certain areas of cybercrime (Hickey, 2025).

AI can reformat unstructured data, conduct targeted searches, perform open-source research, and provide real-time statistics. It is critically important that these processes occur at a speed that surpasses criminals' ability to erase their digital traces. That is why, in accordance with the Digital Services Act (DSA)[1], online

[1] Regulation of the European Parliament and of the Council No. 2022/2065 "On a Single Market For Digital Services and Amending Directive 2000/31/EC (Digital Services Act) (Text with EEA Relevance)". (2022, October). Retrieved from https://eur-lex.europa.eu/eli/reg/2022/2065/oj/eng.

service providers and internet providers are obliged to improve monitoring and engage AI to detect and combat terrorist propaganda, disinformation, hate speech, and the dissemination of illegal content. High-speed data analysis, detection of prohibited content, and timely notification of law enforcement agencies about monitoring results will ensure the swift and effective removal of harmful content before its widespread dissemination.

OSINT assists investigators not only in preventive measures but also in the investigation of committed crimes. The fight against human trafficking, drug distribution, and cyber fraud becomes much more effective with the use of open-source intelligence tools. L. Daniel (2024), describing "pig butchering" – social engineering scams that combine elements of trust-building and fake investment opportunities – notes that, according to the FBI's Internet Crime Complaint Center in 2023, these scams caused losses of over $5.6 billion. Erin West, a Deputy District Attorney in Santa Clara County, California, emphasises the devastating impact on victims: "We are seeing losses we were never seen before. This is essentially a massive transfer of billions of dollars of wealth from the middle class not only in the US but in a number of countries". She stresses that anyone with money can become a target. Victims range from young professionals to retirees, lured by the promise of significant financial gain, accompanied by the manipulation of victims' emotions, weaknesses, or vulnerabilities. The fraud begins with a message on WhatsApp, Telegram, or an email with a seemingly innocent offer of crypto investments or even friendship. Cryptocurrencies such as Bitcoin, Ethereum, or Solana differ from traditional currencies like the US dollar, Euro, or Japanese Yen. Cryptocurrency can be moved instantly, without oversight (Vozniuk & Tytko, 2019). This means that fraudsters can covertly transfer currency across borders worldwide and hide their identity (Vozniuk *et al*., 2020). It is claimed that cryptocurrency is completely anonymous, but certain elements can be traced. Each investor's currency has an "address": a unique accumulation of letters and numbers that only one person can own. One person's wallet can contain several unique "addresses". The crypto ecosystem does not give names to these wallets. However, several details are freely available in a universal ledger known as the blockchain. Anyone can see which "addresses" a wallet contains, the amount of currency inside, and the financial transactions that occur between wallets. These facts are publicly available – and this means they can all be used in OSINT.

The use of OSINT technologies for further model training requires a careful and responsible approach, taking into account the copyrights on the input data. A notable example is Judge Stephanos Bibas's decision in the case of Thomson Reuters v. Ross Intelligence, one of the first US court cases concerning the use of copyrighted materials for training artificial intelligence[1]. In December 2020, Thomson Reuters, which owns the Westlaw platform, sued the startup Ross Intelligence. It accused Ross Intelligence of illegally using special legal annotations from Westlaw (known as headnotes) to create its own AI-powered legal research system that competes with Westlaw. Ross initially tried to obtain an official licence but was denied, and instead commissioned "memoranda" from LegalEase that contained the same annotations. These texts were then used to train the search tool. This was not a generative AI system – it merely searched for and extracted fragments from existing court decisions, which are not protected by copyright in themselves. The court considered four factors. The first factor was that the court's conclusions apply only to non-generative AI and cannot automatically be applied to cases involving generative AI, as this field is rapidly changing. Regarding the second factor of fair use – the nature of the work – the court decided that Westlaw's headnotes, while copyrighted, did not exhibit a high level of creativity. They were more technical than artistic works, so this factor favoured Ross. However, the court added that this criterion is rarely decisive. The third factor – the amount and substantiality of the use – also favoured Ross, as the end-users of its system did not see the Westlaw headnotes themselves. Crucially, the copies did not become publicly available. But the fourth, most important factor – market impact – decided the case in favour of Thomson Reuters. The court found that Ross's tool effectively created a substitute for the Westlaw product, threatening the company's market, particularly in the area of licensing data for AI training. Despite the public benefit of access to legal information, the court emphasised that this does not override copyright: those who create tools for the public good deserve to be paid. Considering this, the court ruled that Ross's use of Westlaw headnotes was not fair use, and decided in favour of Thomson Reuters (United States District Court for the District of Delaware, 2025). Therefore, the use of OSINT technologies without the owner's consent can have legal consequences, including copyright infringement, which can lead to lawsuits, blocking access to data, or imposing fines.

The application of AI in OSINT and SOCMINT significantly expands the capabilities of law enforcement agencies in threat detection, crime prevention, and the analysis of large streams of open data, including cybercrime. However, the effectiveness of such systems depends on their ability to act faster than criminals, while adhering to ethical and legal norms. Examples such as

[1] Memorandum Opinion of the United States District Court for the District of Delaware No. 1:20-cv-00613-SB "Thomson Reuters Enterprise Centre GmbH et al. v. Ross Intelligence Inc". (2025, February). Retrieved from https://www.ded.uscourts.gov/sites/ded/files/opinions/20-613_5.pdf.

the dAIsy bot demonstrate that AI can not only react but also proactively reduce risks. At the same time, the case of Thomson Reuters v. Ross Intelligence shows that using open data to train AI without proper authorisation can have serious legal consequences, particularly due to copyright infringement.

## NLP (natural language processing)

NLP is another area of AI whose use opens up additional opportunities in the fight against crime. The application of NLP allows machines to understand, analyse, interpret, and generate human language in oral or written form (Wickramasekara *et al*., 2025). Among the main tasks of NLP are syntactic and semantic text analysis; speech recognition (converting voice to text); text generation; sentiment analysis; machine translation between languages; and entity extraction from text. To perform these tasks, methods such as tokenisation, normalisation, stemming, lemmatisation, POS-tagging, statistical language modelling, N-gram analysis, regular expressions, etc., are used. These tools form the basis of modern large language models (LLMs), including BERT, RoBERTa, and XLNet, which can be adapted to specific NLP tasks.

At the same time, a paradox arises: the increasing accuracy of calculations and the quality of models like BERT, GPT, and T5 in translation, classification, and question answering are accompanied by an increase in model sizes (billions of parameters), the need for hundreds of gigabytes of text data for training, expensive equipment, and significant energy consumption. Therefore, increasing attention is being paid to the use of quantum computing for representing, processing, and analysing language and overcoming the numerical limitations of modern methodologies. This has formed a new promising field – Quantum Natural Language Processing (QNLP), which uses quantum computers.

In 2023, the National Center for State Courts in the USA conducted an analysis of the use of Natural Language Processing (NLP) technologies in civil case management processes in US courts. Three pilot projects (Proof of Concept) were implemented, which proved the effectiveness of NLP in extracting data from court documents, automatically determining the type of case, and improving the quality control of decisions. The greatest successes were achieved when working with structured documents – over 90% accuracy in data extraction (National Center for State Courts, 2023). NLP also helped identify errors and shortcomings in debt collection case documents, which could prevent hasty or erroneous decisions. Another area of application was sorting cases by complexity level for proper allocation of court resources (National Center for State Courts, 2023). The report highlights NLP's potential for transforming justice by reducing staff workload; implementing ChatBots; automatic document editing; and combining NLP with business intelligence, but notes the need for gradual implementation, quality digital data, and phased testing with quality control.

No less important an aspect of natural language processing application is video information analysis. For instance, the advent of police body cameras, which first appeared in the early 2000s and became an integral part of modern law enforcement practice, provided the opportunity to collect and accumulate large amounts of visual data. While traditional sources, particularly police reports, usually contain basic information about an event, body camera footage documents interactions between police and citizens in much greater detail. This is precisely why software for automated video data analysis using NLP is being developed. Specifically, the TRULEO system scans video recordings and labels statements with tags such as "high professionalism", "de-escalation attempts", and "high composure" (Farooq, 2024).

Another example is the development by Polis Solutions called TrustStat, which analyses police interactions "using the same patterns as human experts" (Polis Solutions, n.d.). These programmes are the first commercial attempts to process body camera footage using natural language processing technologies and are aimed at practical use in a wide range of police units. This indicates that NLP opens up new opportunities for law enforcement and judicial bodies in combating crime and increasing the efficiency of administrative processes. Thanks to NLP, AI systems are capable of recognising, analysing, and generating human language, allowing for automated translation, identification of key text features, and emotional analysis.

## Digital forensics

Digital forensics, specialising in the examination of electronic devices, media, and tools, is experiencing the greatest impact from AI. As of 2022, there is a shift of individual AI digital technologies from the implementation of pilot projects to widespread deployment in technological processes and the market launch of mass digital products (Matulienė *et al*., 2022). An example of this is Palantir Technologies, an American company that has progressed from a startup with experience in developing fraud detection software for PayPal to a leading provider of analytical software systems for the security and defence sectors internationally. Palantir collaborates with various police departments in the USA and other countries, creating applications ranging from database management to predictive policing (Palantir technologies…, 2024).

As of today, the profession of a Digital Investigator can be recognised – a specialist who employs digital technologies to investigate crimes. E.A. Vincze (2022) notes that the role of a digital investigator is to bring cybercriminals to justice. At the same time, digital forensics is not limited to cybercrimes, as a significant portion of modern offences are committed using

electronic devices, primarily smartphones. In light of the above, digital forensics is used both in the investigation of cybercrimes and any other criminal offences, the commission of which is associated with the use of telephones, computers, electronic storage media, and other electronic devices (e.g., illegal drug trafficking, fraud, theft) or during which these tools were used (they were present during the commission of a criminal act) or on which traces of a criminal offence are stored (audio, photos, videos, documents, etc.).

The Europol (2024) report highlights the following areas of AI use within digital forensics:

1. Analysis of large datasets. This automates certain processes that traditionally took a lot of time. For example, AI can quickly classify, filter, and extract necessary information, replacing the laborious process of manual file sorting (e.g., image classification or hash values).

2. Data recovery. Thanks to AI, several tools have been developed for data recovery and analysis. These tools can recover deleted files, access data from corrupted devices, and restore fragmented information in appropriate formats.

3. Detection of cybercrimes and other offences. It should be noted that one of the main problems of the digital space is the detection of cybercrimes and the proper conduct of investigative (search) actions that are important for investigating cases of this category and their correct resolution (Tarasenko, 2021). Malicious activity, such as hacking or phishing, often leaves barely noticeable traces or is disguised as normal web traffic. AI effectively detects patterns and anomalies in such data. By constantly analysing new data, AI models are able to distinguish between normal network traffic and potential threats, even if attackers use new tactics.

4. Data decryption. AI has also shown great potential in data decryption. Modern encryption methods can complicate the work of investigators, but AI is capable of predicting encryption patterns and accelerating the decryption process by narrowing down possible encryption keys through pattern recognition.

5. Analysis of digital traces across different devices and platforms. This has become critically important, especially with the development of the Internet of Things (IoT). Over the next 15 years, as D. Tosi *et al*. (2024) note, the integration of machine learning and deep learning technologies will enhance the analytical capabilities of big data processing systems, providing more accurate predictions and well-founded conclusions. Another important trend is the growing emphasis on edge and fog computing infrastructures, indicating a shift towards decentralised information processing. This is particularly relevant in the context of the development of the Internet of Things, where the speed of data processing and decision-making is critical, as a person can interact with several devices daily – from smartphones to smart home devices. AI can and will track these interactions, creating a comprehensive digital profile that helps researchers understand the subject's connections and identify additional aspects for further analysis.

In the context of armed conflicts, the collection and analysis of digital traces from electronic devices – smartphones, geopositioning systems, video surveillance, network services – acquires particular importance. Occupation and military actions significantly complicate law enforcement access to crime scenes, suspects, victims, witnesses, and also hinder the conduct of investigative actions (Klosterkamp & Jeffrey, 2024). In such conditions, digital forensics becomes a key tool in investigating war crimes, human rights violations, and crimes against humanity in occupied and de-occupied territories. For digital information to become admissible evidence in court – i.e., confirmation that a certain event occurred or did not occur – a series of procedures must be followed: from verifying the source to authenticating the content (Bohdanova, 2023).

During the Russian-Ukrainian war, both state and private initiatives emerged aimed at collecting and documenting digital evidence. In particular, the Mizhvukhamy Cultural Institute (2023) implemented the Wall Evidence project – an archive of inscriptions left by Russian military personnel during the occupation of Ukrainian territories since February 2022. These inscriptions are not only artefacts of Russian military culture but also potential evidence of war crimes. The WarCrimes project, coordinated by the Office of the Prosecutor General of Ukraine, also operates in Ukraine, allowing citizens to submit digital evidence of crimes committed by occupying forces (Office of the Prosecutor General of Ukraine, n.d.). The collected information can be used in national courts, the International Criminal Court in The Hague, and a future special tribunal. In addition, the Starlight media group, together with the civic network OPORA, implemented the Center for War Crimes Documentation initiative (2025), which allows citizens to submit photos, videos, written testimonies, or other evidence that may have procedural significance through an online form. Modern digital technologies allow for: identifying military personnel and commanders; detecting communication and orders within military structures; determining the location of participants in events; and reconstructing the sequence of criminal actions. The collected digital data (audio, video, geolocation data, metadata) can be analysed, verified, and used as evidence in criminal proceedings – both in Ukrainian courts and in international tribunals.

Digital forensics is actively transforming today under the influence of artificial intelligence technologies. It is no longer limited to combating cybercrime but covers a wide range of offences where digital technology is used or leaves traces. The development of companies such as Palantir Technologies demonstrates a shift from pilot projects to the widespread implementation of analytical solutions in the law enforcement sphere. The emergence of the new profession of digital

investigator testifies to a change in approaches to criminal investigations, where data analytics and the use of AI play a key role. According to the Europol (2024) report, artificial intelligence is already effectively used for analysing large datasets, recovering and decrypting information, detecting cyber threats, and analysing digital traces from various devices. This significantly increases the accuracy, speed, and depth of investigations. The collection of digital evidence becomes critically important in wartime conditions, where traditional investigative methods are limited or impossible. Digital forensics specifically allows for documenting crimes, identifying those involved, and building a basis for prosecution even in complex conditions of armed conflict. Thus, AI becomes not only a supporting tool but a strategic factor in ensuring digital justice.

## Conclusions

This article investigated modern technological and analytical approaches to the collection, processing, and use of digital traces in the fight against crime, including through the example of the Russian-Ukrainian war. Despite limitations related to the lack of complete official statistics and access to some court decisions, the authors managed to achieve the set goal – to highlight the transformation of criminal procedural tools under the influence of digitalisation, automation, and the implementation of artificial intelligence. During the research, key areas of application for natural language processing, machine learning, large language models, as well as OSINT and SOCMINT methods in the field of criminal prosecution were analysed. It was demonstrated that the increasing volume of available digital traces in Big Data – textual, visual, and geospatial – stimulates the development of analytical platforms capable of automatically detecting crimes, behavioural patterns, and linguistic markers of offences.

The analysis revealed a trend towards the institutionalisation of digital crime recording systems through national initiatives such as WarCrimes, Wall Evidence, and the Center for War Crimes Documentation. Generalising the results obtained, it can be stated that digital forensics and open-source analytics not only compensate for the complexity of investigations in frontline and de-occupied regions but also form a new evidentiary paradigm – fast, decentralised, and legitimate. Conceptually, all of the above indicates a shift in emphasis in criminal proceedings: from traditional sources of evidence to digital data streams processed using AI/NLP/OSINT mechanisms. This means that the role of the interpreter shifts from a human expert to a complex digital system capable of uncovering the truth even beyond physical access to the crime scene. Promising areas for further research include: adapting legal mechanisms to accept digital evidence from open sources, assessing the risks of data manipulation in social networks, and standardising the evidentiary value of Big Data in international criminal justice.

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## Conflict of Interest

None.

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# Напрями застосування штучного інтелекту в правоохоронній діяльності: тенденції, виклики та перспективи

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**Анотація**
Загострення безпекових викликів в умовах цифрової трансформації актуалізує необхідність систематизованого огляду сучасних практик, ризиків і потенціалу впровадження штучного інтелекту в діяльність правоохоронних органів. Метою роботи було узагальнення наукових підходів щодо застосування штучного інтелекту в правоохоронній сфері з фокусом на етапи його розвитку, ключові напрями досліджень і недостатньо вивчені аспекти. Використання методів аналізу й синтезу наукових джерел, контент-аналізу, порівняльного аналізу, класифікації наявних підходів надало можливість оцінити поточний стан наукових досліджень щодо тенденцій, викликів і перспектив залучення штучного інтелекту. Встановлено, що науковий інтерес до застосування штучного інтелекту в правоохоронній сфері суттєво посилився впродовж останнього десятиліття. Стрімкий розвиток технологій штучного інтелекту відкрив нові можливості для автоматизації аналітичних і оперативних функцій, що спонукало науковців до вивчення можливостей та загроз штучного інтелекту. Основну увагу дослідники зосереджують на таких напрямах, як відеоаналітика, прогнозування злочинності, розпізнавання образів й обробка великих даних. Водночас спостерігається брак ґрунтовних міждисциплінарних досліджень, що враховували б етичні, правові та соціальні наслідки використання таких технологій. Констатовано розрізненість у підходах до класифікації ризиків і стандартизації практик упровадження. Засвідчено потребу у формалізації досліджень, що сприятиме збалансованому розвитку штучного інтелекту в правоохоронній діяльності з огляду на безпекові, правові й гуманітарні чинники. Отримані результати можуть бути використані керівниками правоохоронних органів, аналітичними підрозділами та фахівцями із цифрової трансформації для визначення пріоритетних напрямів розвитку й урахування можливих ризиків

**Ключові слова:**
інформація; цифрова криміналістика; протидія кримінальним правопорушенням; кіберзлочини; цифровізація

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# Problematic aspects of using 3D scanners during the examination of war crime sites

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**Abstract**
The application of modern technologies during crime scene examination primarily allows for reducing risks to life and health, which is extremely relevant in the extreme conditions of documenting war crimes. The aim of the study was to initiate a scientific discussion on the necessity of using 3D scanners during the examination of war crime scenes, to review the types of such technical means, and to specify their importance for documenting crimes for further use during pre-trial investigation and court proceedings. Based on the results of the research into scientific publications, it was established that the use of 3D scanners in modern practice during the examination of shelling sites, missile strikes, and other unlawful acts provides an opportunity to document the circumstances of a criminal event with subsequent reproduction using software. It was found that laser 3D scanners enable effective detection and documentation of war crime traces and other objects that can be attached to criminal proceedings as material evidence. A comparison of the results of various studies demonstrated that such tools indeed increase the effectiveness of war crime investigations. The analysed array of scientific sources indicates that the use of such technologies allows for more detailed documentation of the crime scene and modelling (through reconstruction, reproduction) of the circumstances of unlawful acts, which will enable the formation of a version of the event mechanism and the establishment of other circumstances relevant to criminal proceedings. The conducted review of scientific literature suggests that such equipment can be used to perform high-precision measurements and visualise the crime scene for

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repeated review and study of all its details, for conducting investigative experiments, and for presenting a 3D model of the war crime scene in court. The research results substantiate the necessity of involving a forensic specialist to document the examination of war crime scenes using 3D technologies

**Keywords:**
investigation; forensic tools; investigative (search) actions; software; 3D model

## Introduction

In the context of armed aggression, the implementation of innovative technologies in the investigation of war crimes in Ukraine has seen rapid development. The use of modern technologies during crime scene examination allows for effectively eliminating the negative consequences of the event, documenting and subsequently reproducing a significant amount of the scene where unlawful acts were committed, quickly conducting necessary examinations, collecting material evidence, documenting the event without risk to life and health, and so on. One such technical tool is 3D scanners, which are actively used during the examination of war crime scenes. They allow not only for detailed documentation of the crime scene but also for subsequently manipulating the obtained information for its study, evaluation, and use in the investigation of such types of crimes. For example, M. Whelan *et al*. (2019), investigating explosion sites documented with 3D scanners, obtained results indicating the possibility of reproducing the mechanism of the event, modelling the dynamics and consequences of explosions, the trace pattern, and other data important for the investigation. There are also works by scientists N. Yalçın & P. Gençay (2024), who proved that documenting the examination using a laser scanner in combination with traditional documentation methods for three-dimensional crime scene reconstruction is effective. Alongside this, as R. Blahuta *et al*. (2024) note, the use of 3D scanning technologies is a unique way of recording information about a criminal offence, consisting of a virtual representation of the crime scene for subsequent access by all participants in the criminal process.

Ukrainian law enforcement agencies have experience working with such devices, but during the documentation of road traffic accidents and the investigation of some other types of criminal unlawfulness. However, in the current conditions of Ukraine, when sites of shelling, combat operations, terrorist acts, and other war crimes are to be investigated, such technical means perform extremely important tasks. Given the above, there is a need for scientific study of the types of 3D scanners, their implementation in the practice of war crime investigation, and the development of methodological recommendations for their application during investigative (search) actions, particularly crime scene examination.

The prospects and theoretical and applied aspects of using 3D scanners during the examination of criminal offence scenes attract the attention of a number of scholars. A. Kovalenko (2020a) considered the conceptual foundations of using a digital 3D model as a means of cognition and representation of signs of a criminal offence in criminal proceedings (in particular, the main methods of creating 3D models, directions of using 3D reconstruction (modelling). The researcher concluded that the use of 3D scanners during an examination makes it possible to create models of the scene for its repeated study and further planning of the investigation.

O. Romaniuk *et al*. (2022) noted that 3D scanning is effectively used in manufacturing, science, construction, design, business, and medicine. The scholar developed a classification of 3D scanners, paying special attention to stationary and portable devices, with different measurement sizes, panoramic, etc. He concluded that such technical means significantly facilitate the work of specialists in various fields of knowledge and are effective in investigating criminal offences. Continuing these studies, Polish scientists K. Kowalczewska & M. Nasiłowski (2025) also studied modern crime scene scanning technologies and argue that the use of 3D scanners negates manual measurements at the crime scene, especially in large areas, as such technologies create accurate orthophotoplans and maps to scale with high precision; the creation of layouts also becomes unnecessary, as scanners create 3D models of the crime scene.

N. Topchii (2024) conducted an analysis of 3D scanning technologies. Studying the types of such devices and methods of working with the obtained information, the scholar concluded that modern 3D scanners have the ability to digitise various objects – from microscopic details to large objects, which significantly expands the capabilities of various fields of knowledge, such as: medicine, jewellery, car manufacturing, forensics. Based on the results of the conducted research, the scholar states that contactless 3D scanners are effective for documenting various objects, as, unlike contact scanners, they do not alter the object of study. O. Dufeniuk (2024) considered 3D forensics in her works as an independent field of science, specifically raising questions about the essence of: 3D scanning, 3D reconstruction, 3D modelling, 3D mapping, 3D printing, and 3D animation. A similar understanding is demonstrated in the work of R. Carew *et al*. (2021). The scholars substantiated the creation of a field such as 3-D Secure (three-dimensional security) by the fact that it combines 3D methods and approaches borrowed from various sciences for crime scene reconstruction and visualisation (presentation) of evidence in court.

However, there are no fundamental works that would consider the wide accumulated experience in this field, including publications on individual aspects of 3D scanning. While theoretical literature focuses on conceptual problems, there is a need for an in-depth study of theoretical and applied aspects, which should be based on a systematic analysis of publications on the topic. It should be noted that as of 2025, the theoretical and methodological foundations and practical recommendations for the use of 3D scanners to ensure effective and high-quality crime scene examination require scientific development. Thus, the aim of the Article was to review the modern practice of using 3D scanners during the examination of war crime scenes.

The methodological basis of the study was the results of the analysis of scientific articles, monographs, and materials from international conferences concerning the use of 3D scanners in forensics, primarily published in the period since 2012. Sources were selected based on criteria of relevance, scientific value, authoritativeness of authors, and relevance to the topic. Particular attention was paid to publications concerning the documentation of war crime scenes, the analysis of types of 3D scanners, and the effectiveness of their use. Methods of analysis, comparison, classification, logical-semantic, and historiographical analysis were used. The structure of the presentation of the results corresponds to the directions of the scientific approach to the subject of research. The structural-functional method was also applied to reveal the role of 3D scanning in the pre-trial investigation process. The complex use of these methods allowed for the formation of a generalised approach to determining the significance of 3D technologies in forensics.

## The concept and essence of 3D scanning

Since the beginning of Russia's full-scale invasion of Ukraine, war crimes have become widespread. According to the statistical data from the Office of the Prosecutor General of Ukraine for 2024, 28,788 crimes were registered, for which responsibility is provided under Article 438 of the Criminal Code of Ukraine[1]. However, an even larger number of such crimes were committed in 2022 (49,483 crimes) and 2023 (53,463 crimes) (General Prosecutor Office, 2024). Guided aerial bombs, various types of missiles, explosives attached to unmanned aerial vehicles (UAVs), and other weapons, even those prohibited by international treaties, are dropped on civilian populations and critical infrastructure. In 2024, over 1,300 UAVs, over 200 cruise missiles, 24 ballistic missiles, 22 aeroballistic missiles, and 7 hypersonic missiles were launched at Kyiv (Over, 1300 drones and over 250 missiles..., 2024). Such unlawful acts require proper documentation to form evidence for subsequent presentation in court. The most important investigative (search) action in this matter is the examination of the crime scene, as it reflects the initial situation left as a result of such terror. War crime scenes are quite specific, characterised by their scale of spread, the number of victims, significant destruction of buildings, and a specific trace pattern.

Conducting a qualified examination of war crime scenes requires not only highly professional competence but also the use of scientific and technical means for documenting and extracting forensically significant information. Since the scale of crime scenes resulting from shelling and other terrorist acts is sufficiently large, the technical means must be capable of encompassing and documenting the entire scene of the crime. 3D scanners are an effective tool, as they allow not only to document the crime scene but also to subsequently create a 3D model for visualising the committed act in court. This is confirmed by the research conducted by V. Giovanna *et al*. (2020), who concluded that 3D visual images significantly surpass the quality of crime scene photography and are much more effective for further study or investigation to establish forensic information. Also, V. Kornienko & T. Savchuk (2023), in revealing the tactical features of crime scene examination in combat conditions, concluded that only 3D modelling tools (3D scanners) allow for visualising the crime scene, detailing its individual components, and transmitting them in space and time. This is because 3D models are highly informative during mass shelling of civilian infrastructure, as they record details of object destruction in their most inaccessible places and reproduce them on a monitor screen in real sizes.

First and foremost, it should be noted that similar concepts of such devices exist in scientific literature. In particular, V.V. Baranchuk (2020) defines a 3D scanner as a technical device that allows, by collecting precise data, to create a three-dimensional digital model of an object, which can then be viewed and studied using software, and, if necessary, printed on a 3D printer. A. Haleem *et al*. (2022) define a 3D scanner as a non-contact, non-destructive digital device that uses a light line/laser to accurately transfer the shape of a physical object into computer-aided design (CAD) data. Such definitions not only outline the concept of the device itself but also encompass the entire process and purpose of its application. When it comes to its forensic application, the definition of a 3D scanner can be formulated as follows: it is a forensic-technical tool that allows for highly accurate documentation of crime scenes and the subsequent creation of their three-dimensional digital model for further study and analysis during pre-trial investigation and court proceedings.

The essence of 3D scanning lies in forming a high-resolution point cloud (each with three-dimensional coordinates) of scanned forensically significant

[1] Criminal Code of Ukraine. (2005, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.

objects, which, after processing, allows for opening a digital application using special software to create a 3D model. Such models allow not only to visualise the entire crime scene but also to thoroughly inspect various objects from different distances and angles, determine their size, shape, distance between objects, create digital copies of objects, and also reconstruct a damaged object, perform reverse modelling of objects for comparative examination, establish cause-and-effect relationships in a specific situation (situational modelling), and print specific prototypes of tools or other objects that carry forensic information. Using 3D scanning, one can create not only a model of the crime scene but also a 2D scheme, which is drawn up as an appendix to the inspection protocol. In combination with UAV scanning, it is possible to map large crime scenes (missile attacks, destruction of buildings and structures, etc.) (Urbanová *et al*., 2017; Dufeniuk *et al*., 2024). Furthermore, the use of such forensic-technical means for documenting war crime scenes allows for recording hard-to-reach places, large areas, and doing so quickly, mobiliy, with high accuracy, and from various angles to detail the crime scene.

## Types and classification of 3D scanners

A considerable number of types and models of such devices have appeared on the Ukrainian market; they are all used in various fields for different purposes and with respect to different objects, and they also have different technical characteristics. Specifically, such devices can be divided into the following types: 1) optical (stationary with a tripod and mobile or handheld); 2) laser; 3) photogrammetric; 4) computed tomography (What are the types..., 2024). All of them can be used for forensic purposes. However, not all of them are used during pre-trial investigation, as they require significant financial support. It should be noted that some types, as of 2025, have been introduced into the activities of the Ukrainian police thanks to international partners.

Stationary optical 3D scanning involves placing an object on a special platform, which, when rotated around its axis, allows a conventional camera to take a series of photographs from one point at different angles. These images are subsequently "stitched" into a model. Such 3D scanning is ideal for clear visualisation of an object and its detailed examination on a computer. For example, British scientists W. Baier *et al*. (2018) proved the effectiveness of using stationary 3D scanning during a murder investigation. Specifically, by scanning the victim's skull using a micro-CT scanner, they visualised skull injuries and provided their dimensions to the pathologist for analysis of the fracture pattern, which made it possible to identify two assailants with different instruments used to inflict bodily harm. Using a similar method, these same scientists demonstrated the effectiveness of 3D visualisation during an investigation, but already of a road traffic accident scene (Baier *et al*. 2020). However, such scanners are not suitable for documenting war crime scenes due to their lack of mobility. They are more suitable for laboratory expert examination of certain processes and phenomena. For example, when modelling the structure of a missile or other ammunition, when modelling traces of trace evidence, or reconstructing a face from a skull, etc. A disadvantage of optical 3D scanners is the inability to decompose an electronic image into points and print it on a 3D printer due to the lack of precise coordinates for each point of the object.

Alongside this, the use of handheld optical 3D scanners is effective during crime scene examination. For example, Mantis Vision F6 SMART, F6 SR, and other similar devices from Mantis Vision. Such devices allow capturing high-resolution details and creating high-quality digital models, point clouds, and mesh models with photo-realistic textures. That is, this scanner allows converting scanned images from the scene into editable, accurate, and professional standard CAD files for use in Solidworks or other CAD software (F6 SMART™ Echo…, 2018).

For documenting war crime scenes, laser 3D scanners are preferred because they consist of a laser and an optical sensor, which allow projecting a laser beam and capturing the modified reflection of each line on the object being scanned (Ries, 2022). That is, such devices are effective at the scene not only for documenting the circumstances of the war crime but also for subsequently obtaining precise coordinates of each point of the object for further reproduction of the mechanism, for example, of a missile attack, where missile fragments scattered throughout the scene need to be assembled into a whole to understand exactly which missile was used, its technical characteristics, flight direction, and other circumstances important for the investigation.

Laser 3D scanners come in the following types: pulse-based laser and phase-shift-based laser. For example, the Trimble TX6 scanner is capable of measuring a million points per second, maintaining highly accurate data throughout its entire scanning range (Trimble TX6 laser scanner…, n.d.). Another example is the portable terrestrial laser 3D scanner Leica RTC360 with a built-in inertial system and automatic point cloud stitching function; it can scan both the general scene and the internal structure of individual objects, making it effective for documenting such investigative (search) actions (Leica RTC360 laser scanner…, 2022). Confirmation of the effectiveness of using such scanners comes from successful studies conducted by G. Baldino *et al*. (2023) on simulated indoor and outdoor crime scenes using virtual reconstruction of the examination with a Leica BLK360 laser scanner, controlled by Leica Cyclone software. As of 2025, these devices are available on the Ukrainian market and have excellent technical characteristics for documenting war crime scenes, however, they are quite expensive and law enforcement agencies are not sufficiently equipped with them.

T. Gandza & I. Petracov (2022) studied the possibilities of using laser 3D scanning in criminal proceedings, particularly during: ballistic, biological, trace evidence, dactyloscopic, anthroposcopic, and other examinations. The scholars stated that alongside the advantages of such scanners, there are also disadvantages in their operation, including the high cost of the devices themselves and their software, the need for special training to work with such devices, the absence of relevant trainers in Ukraine, etc. However, such disadvantages can be remedied and do not significantly affect the results of using such technical means during investigative (search) actions.

The next type of 3D scanners is photogrammetric. They are inexpensive and easy to use, consisting of a camera and photogrammetry software. As Ch. Villa & Ch. Jacobsen (2020) and V. Bilous & S. Bondar (2021) note, photogrammetry is a science that originated during World War I for precise measurements from photographs; modern photogrammetry is aimed at remotely determining quantitative and qualitative characteristics of objects (shape, size, position in space, etc.) based on measurements of photographic images of objects. This is confirmed by a comparative study by A. Sazaly *et al*. (2023), using the example of scanning an indoor crime scene with micro-unmanned aerial vehicles and traditional photography. From the obtained results, the scholars demonstrated that forensic photogrammetry and subsequent 3D model creation are much more effective than forensic photography. Also, scientists investigated the effectiveness of applying photogrammetry for forensic medical 3D documentation of crime scenes, evidence, and people.

As A. Kovalenko (2020b) and A. Mezhenin *et al.* (2021) assert, polyphotogrammetric photography appears to be the most promising today, capturing a large number of images of objects from the crime scene from different angles for subsequent computer analysis and obtaining their three-dimensional 3D model. In essence, polyphotogrammetry is one of the methods of contactless passive 3D scanning, where a point cloud of an object is created, but using a series of photographs (at least 20 images of one object with prior and subsequent frame overlap of 60%) and placing a forensic ruler next to the scanned object.

Compared to the use of forensic photography, photogrammetric scanning significantly facilitates the work of a forensic specialist in documenting war crime scenes. However, as of 2025, thanks to international partners, with the emergence of laser 3D scanners in the arsenal of law enforcement agencies, photogrammetric 3D scanning using digital cameras is losing its relevance. There are also comparative studies by M. Mehta (2020) on 3D laser scanning and photogrammetry methods, where the latter significantly loses in effectiveness. In contrast, scientists M. Esposito *et al*. (2023), after conducting a series of studies, concluded that photogrammetry focuses better on small details of objects at the crime scene, while laser scanning provides a more complete understanding of the geometry of the entire crime scene. The scientists proposed using both methods to cover large-scale crime scenes. Along with this, F.M. Sheshtar *et al*. (2025) argue that, compared to classical photogrammetry, modern mapping technology based on mobile phones equipped with the LIDAR (Light Detection and Ranging) program is effective. The results obtained by the scientists indicate that mapping using iPhone LIDAR is a very fast and effective tool for documenting unlawful acts, as for 5 seconds of operation, the error is only 0.1084 m. It should be noted that such an approach is quite controversial, as questions arise regarding providing law enforcement agencies with appropriate gadgets and programs. Another type of 3D scanner is computed tomography, which uses X-rays that pass through the scanned object and are subsequently registered by a sensor. This allows for documenting the internal geometry of the object. In combination with 3D printing, an object can be reproduced in a matter of hours. However, such devices are unsuitable for work in the field conditions of documenting war crimes.

Along with this, other divisions of 3D scanners are available in the scientific literature. In particular, A. Chan & O.N. Romaniuk (2020) proposed a general classification of laser 3D scanners: aerial, mobile, and terrestrial. Aerial scanners capture terrain from an aircraft. For example, if the crime scene is extensive and cannot be approached due to danger to life and health. Although these scanners can document a large area of the crime scene, they do not provide high accuracy due to the long distance from which the shooting is carried out. That is, this method of documenting the war crime scene can be used as an overview and orienting survey, but the subsequent 3D model produced will be inaccurate, without reproducing small details. Mobile scanners can collect data in dynamic mode using inertial and satellite navigation systems. The operation of scanners on the ground surface yields results similar to data obtained from terrestrial scanners. Scientists propose dividing terrestrial scanners according to several criteria (Table 1). I. Romanyshyn *et al.* (2012) adhere to the same approach, having developed a classification of 3D scanners much earlier, and it appears that it formed the basis for subsequent more modern scientific developments. As can be seen from the above, this is quite a comprehensive classification, and this is due to the fact that such devices are used in various fields of knowledge and have different tasks and capabilities.

In turn, the scholar V. Baranchuk (2020) in his work only presents a classification of 3D scanners by their method of information collection: contact (which mechanically touch the object being studied) and non-contact (which create a model remotely by directing a laser beam, light, or wave onto the object). The

scholar very aptly distinguishes the following methods of scanning objects: a) aerial with UAV mounting (e.g., "YellowScan Surveyor"); b) terrestrial: tripod-mounted 3D scanner stations ("Faro Focus S Plus 350"), or portable handheld ("Artec Eva", "Scanner 3D-Forensics"), or stationary scanner ("Atos Scan box", "Solutionix D500"); c) mobile, mounted on a vehicle ("Leica Scan & Go LLR + LP16R"). This position of the scholar is quite accurate, as this division reflects the possibility of using such devices during the examination of war crime scenes.

**Table 1.** Classification of 3D scanners

| Class | Classification criterion | Type |
|---|---|---|
| Terrestrial scanners | By installation method | Stationary: machine tools and coordinate measuring machines (horizontal, vertical, bridge and portal |
| | | Portable |
| | By installation method of the object under study | Fully enclosed, where the object to be scanned is placed directly inside |
| | | Partially enclosed, where the object to be scanned is placed on the scanner itself (such scanning will be effective for laboratory examination of forensically significant objects, rather than at the scene of the incident) |
| | By information collection method | Contact |
| | | Non-contact or remote: active; passive (determine the spatial coordinates of points based on existing radiation): stereoscopic, photogrammetric and silhouette description scanners |
| Active 3D scanners | By physical signal type | Magnetic, ultrasonic, X-ray |
| | | Holographic |
| | | Projection (visible and invisible spectrum) |
| | | Laser |

**Source:** created by the authors based on A. Chan & O.N. Romaniuk (2020)

Scholars S. Verykokou & Ch. Ioannidis (2023) classified such devices into: contact and non-contact. However, they provide a rather detailed breakdown of laser scanners, specifically: triangulation (sending two laser beams that intersect at the object of interest), time-of-flight scanners (relatively slow as they measure the time required for a laser beam to travel the distance between the emitter and the target and return to the emitter), phase-shift scanners (using a continuous laser beam instead of discrete pulses), and structured light scanners (projecting a pattern onto the object using laser beams and studying the deformations caused by the object's shape with a camera). The latter are the most effective for documenting crime scene examinations because they are fast and capable of calculating the 3D position in space of many points simultaneously, not just one point.

Among the types of 3D scanners listed above, it should be noted that not all are suitable for forensic purposes, particularly for examining war crime scenes. For example, stationary scanners are generally unsuitable for on-site examination as they cannot be moved; handheld scanners cannot cover a significant area; and computed tomography scanners are quite expensive. Portable laser 3D scanners are best suited for the task of documenting war crime scenes, as they use a laser emitter and detector to calculate the distance and position of the scanned point, thus reproducing the scanned object as a whole. They are capable of accurately reproducing the entire crime scene, as well as its individual small objects. Also, as an option, for documenting individual traces at the scene (e.g., UAVs, missile parts, tyre tracks, footwear, the skull of a charred corpse, etc.), it is advisable to use handheld scanners.

## The use of 3D technologies in criminal investigations

Until 2022, law enforcement agencies used 3D scanners during the examination of road traffic accident scenes. However, with the commission of various types of war crimes, the need increased to equip law enforcement agencies with appropriate technical means for documenting such unlawful acts. Thanks to volunteer assistance from Luxembourg, in 2022, employees of the National Police received thirty laser 3D scanners, which are used daily to document (scan) war crime scenes, particularly large areas. Thanks to these technical means, in the liberated territories, it is possible to scan the scene and objects in a few minutes, and the corresponding software allows processing the obtained information on a computer (Ries, 2022).

Furthermore, as stated in the publication Police to use 3D scanners to record consequences of Russian war crimes (2025), in November 2023, forensic specialists of the National Police from various regions of Ukraine underwent training and received "Z+F Imager 5016" laser 3D scanners from Polish authorities for examining war crime scenes. As of 2025, with the help of these devices, 3D models of the consequences of missile strikes on residential buildings and critical infrastructure, artillery shelling, bombings, and other Russian war crimes are created promptly, with minimal expenditure of effort and resources. The use of such technical means of documentation prevents the loss of material evidence during repeated shelling in the same areas (National Police forensic experts have mastered…, 2023). Considering the events outlined above, it can be confidently stated that police officers are equipped with such devices and competently use them during examinations.

The use of 3D scanners at the crime scene requires further processing of the obtained information. That is, software is used for processing, accumulating, copying, and transmitting the obtained forensically significant information. For example, the Mantis Vision Advanced Echo™ software suite is a set of tools for scanning and editing 3D models; specifically, after scanning, actions such as noise removal, editing, registration correction, mesh creation, file format conversion, and export can be performed. With Echo Software, the user can define geometric parameters, such as planes, lines, and points, and use this data for measurements with the highest level of accuracy, etc. (Echo Software 3D Scan…, 2020). In addition to this type of software package, there are others that perform approximately the same functions.

The use of 3D technologies in the investigation of criminal offences is a subject of discussion among many forensic scientists. The capabilities of such technologies prompt scholars to discuss the implementation of innovations in forensics. T. Wieczorek *et al*. (2019) conducted research on the use of 3D scanners for documenting crime scene examinations, as a result of which they established that the effectiveness of such scanning is influenced by factors such as: the characteristics of the crime scene surface, the distance from the scanner to the object, the actual accuracy of point measurement is affected by scanning density and operator competence, etc. In contrast, the research by R.M. Carew & D. Errickson (2020) showed that 3D-printed crime scene models are accurate (their copy is less than 1 mm (or 3%) deviation from the actual object), reliable, and reproducible models that can illustrate complex information as a physical demonstration in the courtroom. The accuracy of a 3D-printed image depends on factors such as image resolution, modelling parameters, and printer resolution.

R.M. Carew *et al*. (2021) and other scholars have long considered three-dimensional forensics ("3DFS") as a separate field. In recent years, Ukrainian scholars have also brought this issue up for discussion. Thus, O. Dufeniuk (2024) in her work proposed to distinguish a new branch of forensic science and practice – 3D forensics. The scholar justifies this by the active use of 3D evidence in the investigation of criminal offences, obtained with the help of 3D scanning and the use of UAVs. The scholar highlights the areas of application of 3D technologies, specifically: during crime scene examination, examination of trace evidence, ballistic traces, bodily injuries, blood traces, facial reconstruction, and traffic accident circumstances. The scholar's position seems somewhat debatable, as the directions during pre-trial investigation should be distinguished as follows: the application of 3D technologies during procedural (investigative) actions and during forensic examinations commissioned during the investigation of criminal offences. Therefore, the proposal to divide 3D scanners used during pre-trial investigation according to the following criteria seems correct: 1) during procedural actions: investigative (search) actions; conducting forensic examinations; 2) during investigative (search) actions: crime scene examination, investigative experiment; 3) during forensic examinations: trace evidence examinations, examination of weapons and ammunition, facial reconstruction, etc. The issue of using the appropriate type of scanner should be decided individually in each case by a specialist, taking into account the purpose of its application. For example, at a war crime scene, it is advisable to use a portable laser 3D scanner, and when examining objects in laboratory conditions – a stationary optical one, and so on.

The opinion of scholars V. Berezowski *et al*. (2020) and M. Daneshmand *et al*. (2018), who propose using geomatic methods such as total station, photogrammetry, aerial photogrammetry, laser scanners, and structured light scanners in combination for documenting large crime scenes, has the right to exist. They are capable of reproducing the details of the crime scene with maximum accuracy. In contrast, G. Galanakis *et al*. (2021) propose combining different 3D scanners for documenting crime scene examinations. For example, for high-quality documentation of an indoor crime scene, it is advisable to combine FARO Focus 3D X 330 and the handheld 3D scanner FARO Freestyle, and for documenting large outdoor crime scenes – aerial photogrammetry using several unmanned aerial vehicles and terrestrial laser scanning (FARO Focus S70). Researchers J.S. Cerreta *et al*. (2020) hold the same opinion; they conducted a comparative analysis of the quality of the transmitted image when documenting an examination using a UAV and a terrestrial FARO laser scanner, where the latter had an advantage. But the scholars do not deny the possibility of combining them for high-quality documentation of the examination.

Scholars R. Azmil *et al*. (2024) propose combining terrestrial laser scanning (TLS) and close-range photogrammetry (CRP), which will allow obtaining highly accurate 3D data during crime scene reconstruction by eliminating limitations such as device position, shadows, distance to the object, and laser beam angles that prevent the creation of a complete crime scene model. The same approach regarding the combination of several methods of crime scene documentation was followed by scholars M. Albeedan *et al*. (2024), whose work presents a new design of a mixed reality system using Microsoft HoloLens 2.0, adapted for work on a spatial 3D-scanned and reconstructed crime scene using a FARO X130 point cloud 3D scanner in combination with photogrammetry methods. The scholars A. Zappalà *et al*. (2024) should be positively noted for presenting a pre-trained Faster-RCNN model as the best method for studying objects at a virtual crime scene, their automatic recognition, classification, etc.

Continuing the discussion on the use of 3D technologies in the investigation of criminal offences, it should

be noted that G. Teteratnik (2019), emphasising the importance of involving specialists who can quickly and efficiently document war crime scenes using 3D scanning, highlights the disadvantages of using 3D scanners such as: lack of funding, specialists knowledgeable in working with such devices, etc. However, it can be confidently stated that these disadvantages do not significantly affect the work of forensic specialists during examinations as of 2025. This is due to the arguments presented earlier in the Article and the provision of such devices to law enforcement agencies, and in turn, the conducted training of relevant specialists on how to work with them. And as of 2025, there should be no problems regarding the procedural formalisation of the use of such devices (technical means of documenting procedural actions), as Article 107 of the Criminal Procedure Code of Ukraine[1] does not contain a clear list of them but grants the right to the person conducting the examination to use them. Along with this, the issue of amending Article 105 "Appendices to protocols" of the Criminal Procedure Code regarding the addition of 3D models to the list of such appendices remains debatable, as proposed by G. Teteratnik (2019) and O. Dufeniuk (2024). The fact is that Part 2 of this Article states that appendices to the protocol may also include "other materials that explain the content of the protocol". That is, a 3D model falls precisely into this category of appendix. In contrast, O. Dufeniuk's (2024) proposal to amend Part 7 of Article 237 of the Criminal Procedure Code of Ukraine, by including 3D scanners as methods of documenting an examination, seems appropriate.

The conclusions drawn by scholars S. Pashchenko *et al*. (2023) regarding the necessity of creating a database of 3D models are fully justified and necessary for the investigation of war crimes. This is because it allows not only to improve the information systems of the National Police of Ukraine but also to conduct analytical work in the future, including identifying a common mechanism for committing such types of crimes, distinguishing types of instruments, etc. At the same time, it is possible to adopt the experience of European Union countries regarding the creation and use of the RISEN project (a consortium of research institutions, law enforcement agencies, and private companies, to develop real-time non-contact sensors to optimise the detection, visualisation, identification, and interpretation of traces at the crime scene). Scholars S. Villa *et al*. (2023) wrote about such a project in their works and proved that the training organised by RISEN allows law enforcement agencies to test their systems at simulated crime scenes, including scenarios such as murders, clandestine laboratories, and terrorist attacks.

Overall, the analysis of scientific sources indicates a high level of researcher interest in the implementation of 3D technologies in forensics and the gradual formation of approaches to their systematisation. Despite the diversity of technical solutions, most authors lean towards the expediency of combining different documentation methods to achieve maximum accuracy. A common feature is the recognition of the importance of 3D modelling as a means of visualising evidentiary information, which has the potential to be used both during investigative actions and in court proceedings. The emphasis is placed on institutional and regulatory challenges associated with the procedural formalisation of 3D materials. The issue of distinguishing 3D forensics as a separate direction within forensic science remains debatable, but relevant.

## Conclusions

As of 2025, the Ukrainian market offers a wide range of three-dimensional scanners, differing in functional capabilities and scope of application. Within the existing interdisciplinary classification approaches, proposed classification of 3D scanners used with a forensic aims, according to the nature of their application, specifically during procedural actions, investigative (search) actions, and in the process of forensic expert activity. The study established the significance of using such devices for high-quality documentation of the situation at war crime scenes. In particular, the use of three-dimensional scanning technology during the documentation of the consequences of artillery shelling, missile strikes, and other unlawful acts allows for detailed and objective documentation of the situation at the crime scene with the possibility of its subsequent reconstruction using appropriate software, which is especially important in cases of significant territorial dispersion of the scene or the presence of factors of increased danger, such as mining, the risk of repeated shelling, or chemical contamination. Furthermore, the technology contributes to the detection and documentation of traces of criminal offences, as well as other material objects that can be recognised as material evidence in criminal proceedings, establishing the mechanism of the criminal event, formulating investigative versions, including individual circumstances, such as the direction of shelling or the number of hits, creating three-dimensional models (layouts) of the scene for further study, reconstruction of the situation and its visualisation in court proceedings, as well as establishing other circumstances relevant to a comprehensive, full, and impartial investigation of the criminal offence.

The available scientific literature on the topic of the Article is quite limited, as although this issue has interested forensic scientists in recent years, such devices have been in the minority in practice. Currently, 3D scanners themselves and their instructions have appeared, which allows for further scientific development in this direction, writing scientific articles,

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

methodological recommendations, manuals, etc. The classifications of such devices are developed by engineering scientists, not forensic scientists. There are ongoing scientific discussions regarding the necessity of using such technical means during the examination of war crime scenes and crime scenes of general criminal orientation. However, there are a number of both procedural and forensic issues related to the use of 3D scanners, so the scientific discourse on this topic will continue.

Promising areas for further research on this topic may include works dedicated to the capabilities of 3D scanning of crime scenes, the algorithm of actions for a specialist working with such devices at the scene, and issues of developing a classification of 3D scanners with a forensic aims. Also, some aspects of the algorithm of actions for an investigator regarding the procedure for using such a method of documenting war crime scenes during pre-trial investigation and court proceedings require special attention from scientists.

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## Conflict of Interest

None.

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# Проблемні аспекти використання 3D сканерів під час огляду місць воєнних злочинів

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**Анотація**
Застосування сучасних технологій під час огляду місця події дає змогу насамперед знизити ризики для життя та здоров'я, що надзвичайно актуально в екстремальних умовах фіксації воєнних злочинів. Метою дослідження було розгорнути наукову дискусію щодо необхідності використання 3D сканерів під час огляду місць вчинення воєнних злочинів, розглянути види таких технічних засобів і конкретизувати значення їх для фіксації злочинів з метою подальшого використання під час досудового розслідування та судового розгляду. За результатами дослідження наукових публікацій було встановлено, що застосування 3D сканерів у сучасній практиці під час огляду місць обстрілів, ракетних ударів та інших протиправних дій надає можливість зафіксувати обстановку кримінальної події з подальшим відтворенням за допомогою програмного забезпечення. З'ясовано, що за допомогою лазерних 3D сканерів здійснюють ефективне виявлення та фіксацію слідів воєнних злочинів та інших об'єктів, що можуть бути долучені до матеріалів кримінального провадження як речові докази. Порівняння результатів різних досліджень дало змогу встановити, що такі засоби справді підвищують ефективність розслідування воєнних злочинів. Проаналізований масив наукових джерел засвідчує, що використання таких технологій надає можливість детальніше зафіксувати обстановку місця події та змоделювати (шляхом реконструкції, відтворення) обстановку протиправних дій, що уможливить формування версії про механізм події, встановлення інших обставин, що мають значення для кримінального провадження. Здійснений огляд наукової літератури дає підстави стверджувати, що за допомогою такого обладнання можна провести вимірювання високої точності й візуалізувати місце події для повторного перегляду та вивчення всіх його деталей, для проведення слідчого експерименту, а також для представлення 3D моделі місця вчинення воєнного злочину в суді. Результати дослідження обґрунтовують необхідність залучення спеціаліста-криміналіста для фіксації огляду місць подій воєнних злочинів за допомогою 3D технологій

**Ключові слова:**
розслідування; техніко-криміналістичні засоби; слідчі (розшукові) дії; програмне забезпечення; 3D-модель

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# Conflict between EU law and national sovereignty: Analysis of decisions by the Constitutional Court of Poland in the light of the rule of law in the European Union

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**Abstract**
The relevance of the study is conditioned by the growing tension between the principle of the rule of law of the European Union and the trends of national legal sovereignty in the member states, which threatens the integrity of the common legal space of the European Union. The purpose of the study was to analyse the legal consequences of the decisions of the Constitutional Court of Poland on the interaction between national sovereignty and the rule of law in the European Union, and to assess their impact on legal integration within the European Union. The study used methods of legal analysis, comparative analysis, and methods of interpretation of court decisions, which allow assessing the legal consequences of decisions of the Constitutional Court of Poland and their impact on the interaction of national and European law. In the course of the study, it was revealed that the decision of the Constitutional Court of Poland regarding the superiority of the national constitution over the law of the European Union led to a legal conflict that makes it impossible for the rule of Law of the European Union to fully function. It was found that this position created legal difficulties for national courts in the application of decisions of the Court of Justice of the European Union and the implementation of the Union's law. It was found that the response of the institutions of the European Union, in particular, the Court of Justice and the European Commission, was

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based on mechanisms for monitoring compliance with the rule of law, but was limited in the context of national resistance. It was proved that the case of Poland showed the process of politicisation of constitutional control, which calls into question the independence of national judicial bodies in the member states. The lack of a unified mechanism for resolving the conflict between national sovereignty and legal integration creates systemic risks for the stability of the common legal space of the European Union. The analysis showed the need for normative rationing of the correlation of national constitutional control with the legal obligations of member states within a single legal space. Practical significance lies in the development of the basis for improving the mechanisms of legal responsibility of member states in the event of a deviation from the principle of the rule of law in the Union

**Keywords:**
institution; jurisdiction; pluralism; normative inconsistency; sovereignty

## Introduction

The escalation of conflicts between national constitutional courts and the EU Court of Justice regarding the interpretation of the rule of law of the European Union calls into question the integrity of the European legal order. The decisions of the Constitutional Court of Poland, which explicitly deny the priority of EU law, indicate a deeper crisis of interaction between supranational institutions and state sovereignty. This actualises the need for a legal rethinking of the limits of competence of national courts and the EU Court of Justice, and the search for legal mechanisms that can preserve the unity and effectiveness of the EU legal system without undermining the constitutional identity of member states.

As emphasised by M. Serovanets (2022), the legal clash between national constitutionalism and EU law goes beyond purely technical issues of competence and concerns the fundamental principles of European integration. In their opinion, Poland's position indicates the emergence of an alternative paradigm of legal pluralism, within which the supremacy of the constitution is considered as an inviolable source of national sovereignty. P.V. Makushev & A.V. Khridochkin (2023) highlighted the threat of fragmentation of the EU legal space due to disregard for the principle of priority of European law. The researchers argued that such actions of national courts undermine the uniform application of EU law and pose risks to the stability of the institutional order within the Union. They noted that the further spread of such practices may lead to a blurring of the general standards of the rule of law, which form the core of European identity. In addition, such opposition contributes to the growth of distrust between member states, making it difficult for political and legal coordination.

M. Voronov & I. Voronova (2022) considered the conflict between the national constitutional courts and the EU Court of Justice as the result of the incomplete process of constitutionalisation of Europe. The researchers pointed out that the lack of a clearly defined hierarchy between national and European law leaves room for contradictions that only deepen in the context of political polarisation. L.M. Deshko & V.S. Boiko (2024) analysed the decisions of the Constitutional Court of Poland through the prism of the erosion of the principle of mutual trust between member states. They emphasised that the gap between the legal systems of the member states and the legal order of the EU allowed for the full functioning of European integration mechanisms.

According to O.M. Yukhymiuk (2022), the decision of the Constitutional Court of Poland is a challenge not only for EU jurisprudence, but also for the very concept of a legal community. The researcher emphasised that the denial of the jurisdiction of the EU Court of Justice in the context of treaty interpretation casts doubt on the contractual nature of the EU as a legal entity. I.V. Yakoviuk *et al.* (2022) pointed to the depth of the crisis generated by the Polish judicial authorities' refusal to recognise the binding nature of EU Court decisions, stressing that such conduct is incompatible with the principles of membership in the European Union and destroys the foundations of integration solidarity. The researchers note that such precedents set a dangerous example for other member states that are prone to nationalist and populist approaches. From a legal standpoint, such actions undermine the doctrine of the primacy of EU law, which is the cornerstone of the Union's unified legal order.

L. Pech *et al.* (2021) focused on the link between the legal nationalism of the Constitutional Court of Poland and the general policy of the Polish government in the field of judicial reform, pointing out that the conflict with EU law serves to legitimise internal authoritarian tendencies. According to the researchers, the restriction of the independence of the judiciary is accompanied by discrediting European institutions. V.S. Mulyavka (2024) argues that the problem of legal conflict extends beyond Poland and requires a review of mechanisms for monitoring compliance with the rule of law in member states, since conventional sanctions tools are ineffective. Modern mechanisms do not consider the political consolidation of governments, which systematically undermine the independence of the courts. The researcher emphasised that the passivity of the European Council in resolving such conflicts only deepens the crisis of confidence in European norms.

Scientific discourse was dominated by publications that viewed events in Poland as part of the broader problem of the erosion of the rule of law in Central Europe, without paying sufficient attention to the

doctrinal reasoning of the Constitutional Court of Poland. This study filled in these gaps by providing a legal assessment of the Polish court's decisions through the lens of key precedents of the EU Court of Justice and demonstrating how the conflict between national constitutionalism and EU law affected the structural unity of the Union's legal order.

An analysis of the relationship between the national courts of the member states and the Court of Justice of the European Union revealed deep structural contradictions within the framework of EU legal integration. They are manifested primarily in conflicts between the principle of the rule of law of the EU and the concept of constitutional sovereignty. The purpose of the study was to clarify the legal nature of the conflict between EU law and national sovereignty using the example of decisions of the Constitutional Court of Poland, and to analyse its consequences for the European legal order. Within the framework of this goal, the following tasks were formulated: to investigate the jurisprudence of the EU Court of Justice on the rule of law in relation to the decisions of the Constitutional Court of Poland; to analyse the legal arguments of both institutions regarding the limits of EU competence; to assess the impact of these decisions on the stability of legal integration mechanisms within the European Union.

## Materials and Methods

The study used an interdisciplinary approach aimed at investigating the legal consequences of decisions of the Constitutional Court of Poland for the rule of law of the EU. Methods of legal and dogmatic analysis, comparative legal analysis, and case-study were used. The method of legal and dogmatic analysis was used to systematise and interpret regulatory sources that are of key importance for assessing the relationship between national sovereignty and the rule of Law of the European Union. In particular, the international treaties on which the EU legal system is based, including the Treaty on the European Union (TEU)[1], were analysed and the Treaty on the Functioning of the European Union[2], and the practice of their application by the EU Court of Justice. The comparative legal method was used to analyse similar conflicts between national and European law to identify common features of legal approaches to interpreting the boundaries of the jurisdiction of the EU Court of Justice. Within the framework of this approach, the opinions of the Federal Constitutional Court of Germany[3], decision of the Constitutional Court of France[4], and the Constitutional Court of Italy[5] were analysed. The use of the comparative legal method allowed comparing the arguments used to substantiate national sovereignty. It was a comparison of Polish practice that revealed a systemic problem: the lack of an effective mechanism for resolving conflicts between National Constitutional Courts and the EU Court of Justice within the EU legal space. The case-study method was used for an in-depth analysis of the Polish case. Cases Nos. K 18/04[6] and K 3/21[7], allowed us to trace the development of the legal positions of the Constitutional Court of Poland, the political context of their adoption and reactions from EU institutions. These cases were chosen because of their key role in shaping the doctrine of constitutional supremacy in the Polish legal order and in defining the limits of EU law at the national level. The first case concerned the constitutionality of Poland's EU accession treaty, and the second case analysed certain provisions of the European Union Treaty in terms of their constitutionality in the context of the growing conflict between the Polish and European legal systems.

The source base of the study also covered a wide range of regulations and court decisions selected according to the criterion of their key significance for the legal assessment of the conflict between the law of the European Union and the National Legal order of Poland. The analysed sources included fundamental decisions of the EU Court of Justice, which laid the foundation for the doctrine of priority and autonomy of EU law, in particular, in the cases of NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v. Netherlands Inland Revenue Administration[8], Costa v. E.N.E.L[9], Internationale Handelsgesellschaft mbH v. Einfuhr- und

[1] Treaty on European Union. (1992, July). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A11992M%2FTXT.
[2] Treaty on the Functioning of the European Union. (2016, June). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12016ME%2FTXT.
[3] Headnotes to the Judgment of the Second Senate of the Federal Constitutional Court of Germany. (2020, May). Retrieved from https://www.bverfg.de/e/rs20200505_2bvr085915en.
[4] Decision of the Constitutional Court of France No. 2004-505. (2004, November). Retrieved from https://www.conseil-constitutionnel.fr/en/decision/2004/2004505DC.htm.
[5] Judgment of the Constitutional Court of the Republic of Italy No. 115. (2018, May). Retrieved from https://www.cortecostituzionale.it/documenti/download/doc/recent_judgments/S_2018_115_EN.pdf.
[6] Judgment of the Constitutional Court of Poland in Case No. K 18/047. (2005, May). Retrieved from https://sip.lex.pl/akty-prawne/dzu-dziennik-ustaw/wyrok-trybunalu-konstytucyjnego-sygn-akt-k-18-04-17187437.
[7] Judgment of the Constitutional Tribunal of Poland No. K 3/21 "Assessment of the conformity to the Polish Constitution of selected provisions of the Treaty on European Union". (2021, October). Retrieved from https://images.dirittounioneeuropea.eu/f/sentenze/documento_Mgyim_DUE.pdf.
[8] Judgment of the Court of Justice in Case No. 26-62 "NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v. Netherlands Inland Revenue Administration". (1963, February). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61962CJ0026&qid=1746626815221.
[9] Judgment of the European Court in Case No. 6/64 "Flaminio Costa v. E.N.E.L". (1964, July). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61964CJ0006.

Vorratsstelle für Getreide und Futtermittel[1] and Simmenthal[2]. Contemporary precedents concerning the interaction between national legal systems and the European legal order have also been examined, in particular, the case Trade Union Association of Portuguese Judges v. Court of Auditors (No. C-64/16)[3], Komstroy (No. C-741/19)[4], RT v. Specialised Prosecutor's Office (No. C-432/22)[5]. The paper analysed the decisions of the EU Court of Justice in cases that directly related to judicial reform in Poland (for example, European Commission v Republic of Poland No. C-204/21[6]). The Constitution of the Republic of Poland[7], the EU Treaty as amended by the Lisbon Treaty[8], and the draft Constitution for Europe[9] were used as the regulatory framework.

The analysis of this source base helped not only to recreate the dynamics of the escalation of the conflict between Polish Constitutional Court proceedings and EU law, but also to assess potential legal risks to the integrity of the legal order of the European Union. The results provided a deeper understanding of the mechanisms of legal conflict between the Polish and European levels, which contributed to the achievement of the main goal of the study – identification of the legal consequences of the Polish case for the future development of EU integration law.

## Results and Discussion

The principle of the rule of law in the European Union is a key element of the EU legal order and ensures its effective functioning. For the first time, it was clearly formulated by the Court of Justice of the European Communities in the decision on Costa v. ENEL[10] of 1964, in which the court concluded that the rules of law of the European Communities could not be overruled by national legal norms without undermining the very foundation of the Union. This decision laid down a fundamental postulate: member states, by joining the EU, limit their sovereign power in certain areas, and therefore, cannot continue to refuse to comply with the provisions of Union law, considering their own national legislation. This principle was further developed in the 1970 judgment in the case of Internationale Handelsgesellschaft[11], where the EU Court of Justice confirmed that the principle of supremacy covers even the norms of the constitutional level of national law. The court stressed that the validity of Union acts cannot depend on their compliance with national legal acts of any level, including constitutional provisions. The principle of supremacy is not only a formal requirement of priority, but also a mechanism for maintaining the unity and effectiveness of the EU legal system. This approach makes it impossible for a single member state to unilaterally restrict EU law by referring to its own constitution. In the case of Simmenthal[12] of 1978, the EU Court of Justice reiterated that the courts of the Member States are obliged to apply EU law without waiting for the amendment or repeal of conflicting national rules, regardless of their hierarchy in the country's legal system. Not only the doctrine of the rule of law was formulated, but also the direct action of EU law in the Polish legal order. The court pointed out that any public authority, including national courts, is obliged to ensure the full effectiveness of EU norms and refrain from applying any national provisions that contradict them. This became the basis for understanding EU law as an autonomous and self-sufficient order that can directly affect national legal systems.

The legal nature of the principle of supremacy was formulated not in the texts of the constituent treaties, but in the practice of the Court of Justice of the EU. This demonstrates the key role of judicial interpretation in shaping the constitutional foundations of the EU legal order. Subsequently, during the ratification of the

[1] Judgment of the Court of Justice in Case No. 11-70 "Internationale Handelsgesellschaft mbH v. Einfuhr- und Vorratsstelle für Getreide und Futtermittel". (1970, December). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61970CJ0011.
[2] Judgment of the Court of Justice in Case No. 106/77 "Amministrazione delle Finanze dello Stato v. Simmenthal SpA. Reference for a Preliminary Ruling: Pretura di Susa – Italy". (1978, March). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61977CJ0106.
[3] Opinion of Advocate General Saugmandsgaard in Case No. C-64/16 "Trade Union Association of Portuguese Judges v. Court of Auditors Case". (2017, May). Retrieved from https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62016CC0064#t-ECR_62016CC0064_EN_01-E0001.
[4] Judgment of the Court (Grand Chamber) in Case No. C-741/19 "Republic of Moldova v. Komstroy LLC". (2021, September). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62019CA0741&qid=1746626089797.
[5] Opinion of Advocate General Pikamäe in Case No. C-432/22 "RT v. Specialised Prosecutor's Office". (2022, December). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62022CC0432#t-ECR_62022CC0432_EN_01-E0001.
[6] Opinion of Advocate General Collins in Case No. C-204/21 "European Commission v. Republic of Poland". (2022, December). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62021CC0204&qid=1746628032991.
[7] Constitution of the Republic of Poland. (1997, April). Retrieved from https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm
[8] Lisbon Treaty. (2007, December). Retrieved from https://www.europarl.europa.eu/ftu/pdf/en/FTU_1.1.5.pdf.
[9] Treaty on a Constitution for Europe. (2003, July). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52003XX0718(01).
[10] Judgment of the European Court in Case No. 6/64 "Flaminio Costa v. E.N.E.L". (1964, July). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61964CJ0006.
[11] Judgment of the Court of Justice in Case No. 11-70 "Internationale Handelsgesellschaft mbH v. Einfuhr- und Vorratsstelle für Getreide und Futtermittel". (1970, December). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61970CJ0011.
[12] Judgment of the Court of Justice in Case No. 106/77 "Amministrazione delle Finanze dello Stato v. Simmenthal SpA. Reference for a Preliminary Ruling: Pretura di Susa – Italy". (1978, March). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61977CJ0106.

Treaty on the Constitution for Europe[1], and later – the Lisbon Treaty[2], the principle of supremacy has been indirectly legitimised through relevant declarations and practices. Although the EU Treaty[3] does not contain an explicit article stipulating primacy, Declaration No. 17[4], annexed to the Lisbon Treaty, confirms the postulate of primacy of EU law as interpreted by the Court of Justice of the European Union.

From the standpoint of a systematic approach to law, the principle of supremacy performs a key function – ensuring legal unity within the European Union. In the context of multiple legal systems and traditions of member states, it is the primacy that guarantees that EU law is applied equally in all countries. This, in turn, is a necessary condition for the functioning of the common market, the customs union, and the freedom of movement of persons, goods, services, and capital. Without the rule of law, EU law would lose its integrity and binding force, which would actually negate the very idea of an integrated legal space.

The evolution of the principle of supremacy in judicial practice also reflects the EU Court's attempt to adapt it to the challenges of the time, especially in the context of the expansion of the Union and the growing number of constitutional conflicts between EU law and national systems. In particular, recent decades (2010-2025) have witnessed growing tensions between the EU Court of Justice and national Constitutional Courts, which are increasingly refusing to unconditionally recognise the rule of European law. The EU Court of Justice continues to insist that EU law takes precedence in the event of any contradiction. This principle has been confirmed in such modern solutions as Associação Sindical dos Juízes Portugeses[5], Komstroy[6] and RT v. Spetsializirana prokuratura[7], which emphasised the need to ensure the independence of the judiciary as an element of the rule of law and fulfil obligations under EU law.

Despite the fundamental importance of the rule of law for the European Union, its legal nature remains debatable. On the one hand, this principle has no direct contractual fixation in the constituent acts of the EU, since none of the norms of the Treaty on the European Union[6] does not contain a direct article formulating primacy. On the other hand, it has been implicitly enshrined in the constant practice of the EU Court of Justice, starting with the decisions of Costa v. ENEL[8] and Internationale Handelsgesellschaft[9]. In this context, primacy takes on the features of a customary norm that has a precedent origin and a quasi-constitutional character.

It should also be pointed out that the principle of supremacy is closely linked to the principle of direct action formulated in the Van Gend en Loos case[10], which argues that EU law can directly give rise to rights and obligations for individuals and legal entities in member states. This direct action – supremacy link creates the basis for the autonomy of EU law, while simultaneously giving it a binding character, regardless of recognition by national authorities. The legal force of the principle of supremacy is derived not from the normative text, but from the system logic of the integration rule of law.

The principle of supremacy is not only a legal doctrine, but also an instrument of constitutional balance within the European Union. Its judicial development shows that the unity of EU law is based not on the formal supremacy of the constituent acts, but on the daily practice of their unconditional application by all national courts. The deviation from this principle is a challenge to the very existence of the EU as a legal community, and that is why the analysis of conflicts like the Polish case is crucial for understanding the boundaries of sovereignty in a supranational legal order.

K.L. Scheppele (2023) and A. Sołtys (2023) argued that the legal conflicts between the Constitutional Court of Poland and the EU Court of Justice are the result of the incomplete process of constitutionalisation of the European Union, which lacks a well-established mechanism for coordinating jurisdictions. This study partially confirmed this thesis, recognising systemic shortcomings in the EU legal primacy vertical. However, the above analysis shows a different and more detailed picture: the decisions of the Constitutional Court of Poland had not only a legal, but also a political dimension,

[1] Treaty on a Constitution for Europe. (2003, July). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52003XX0718(01).
[2] Lisbon Treaty. (2007, December). Retrieved from https://www.europarl.europa.eu/ftu/pdf/en/FTU_1.1.5.pdf.
[3] Treaty on European Union. (1992, July). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A11992M%2FTXT.
[4] Lisbon Treaty. (2007, December). Retrieved from https://www.europarl.europa.eu/ftu/pdf/en/FTU_1.1.5.pdf.
[5] Opinion of Advocate General Saugmandsgaard in Case No. C-64/16 "Trade Union Association of Portuguese Judges v. Court of Auditors Case". (2017, May). Retrieved from https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62016CC0064#t-ECR_62016CC0064_EN_01-E0001.
[6] Judgment of the Court (Grand Chamber) in Case No. C-741/19 "Republic of Moldova v. Komstroy LLC". (2021, September). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62019CA0741&qid=1746626089797.
[7] Opinion of Advocate General Pikamäe in Case No. C-432/22 "RT v. Specialised Prosecutor's Office". (2022, December). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62022CC0432#t-ECR_62022CC0432_EN_01-E0001.
[8] Judgment of the European Court in Case No. 6/64 "Flaminio Costa v. E.N.E.L". (1964, July). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61964CJ0006.
[9] Judgment of the Court of Justice in Case No. 11-70 "Internationale Handelsgesellschaft mbH v. Einfuhr- und Vorratsstelle für Getreide und Futtermittel". (1970, December). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61970CJ0011.
[10] Judgment of the Court of Justice in Case No. 26-62 "NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v. Netherlands Inland Revenue Administration". (1963, February). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61962CJ0026&qid=1746626815221.

because they served as a tool for legitimising the actions of the executive branch in the confrontation with European institutions. Instead of limiting itself to legal arguments, the Constitutional Court of Poland actively appealed to the categories of national sovereignty used in political discourse as a means of mobilising support for the ruling party. This is not consistent with the normative interpretation of the conflict as "technical uncertainty" and allows considering the court's actions as part of a broader political strategy.

The question of applying the principle of supremacy is increasingly linked to the concept of "constitutional identity" of member states, in particular, after the decision of the German Federal Constitutional Court in the case of Lisbon Urteil[1], where for the first time the limits of EU law were clearly outlined, considering the fundamental constitutional norms at the national level. This rule, as consolidated in Article 4 (2) of the EU Treaty[2], obliges the European Union to respect the national identity of states, which finds expression, in particular, in fundamental political and legal structures, including the organisation of state power, the judicial system, and fundamental constitutional principles. In this context, member states are increasingly appealing to their right to preserve their own constitutional traditions as a limit to the rule of law. This approach has led to the emergence of a new form of resistance – the concept of "constitutional pluralism", according to which the rule of law of the EU is not absolute, but should co-exist with national constitutions on the basis of dialogue, not subordination. In this regard, there is a real legal tension: on the one hand, the EU Court of Justice continues to insist on the absolute priority of EU law[3,4] on the other hand, the Constitutional Courts of member states are increasingly declaring the right to have the last word in matters concerning their "constitutional foundations". As a result, an unstable balance is formed between the integration logic of EU law and the legitimate desire of states to preserve their fundamental constitutional identities.

The conceptual juxtaposition of the EU rule of law and national constitutional identity creates the basis for a doctrinal conflict that is becoming increasingly relevant in practice. The ideas of "constitutional pluralism" are gradually being transformed from an academic discussion into a real tool for protecting domestic jurisdiction, as demonstrated by a number of decisions of the constitutional courts of member states, in particular Poland. This contributes to a rethinking of the very nature of legal integration into the EU, in which the binding nature of the Union's norms faces a claim to preserve its own sovereign constitutional space. In this regard, the interaction between the EU Court of Justice and national courts is increasingly losing the features of dialogue and becoming confrontational. This situation is clearly illustrated in the Polish case, where the legal confrontation went beyond theoretical doctrines and turned into a real legal conflict between two autonomous legal orders.

The conflict between the Polish national rule of law and EU rule of law is not exclusively empirical, but has a complex theoretical basis. At the centre of the discussion are two opposing doctrines: the monistic concept of EU law, according to which Union norms have direct effect and primacy over all national norms, including constitutional ones; and the concept of constitutional pluralism, which recognises the existence of multiple centres of legal autonomy with mutual respect for the boundaries of jurisdiction. The EU Court of Justice consistently adheres to a monistic position, considering the rule of law of the EU absolute, even in cases of contradiction with national constitutional norms. However, the Constitutional Court of Poland in its decision[5] relies on ideas close to the pluralistic model, arguing that the Constitution of the Republic of Poland[6] is the "highest right of the Republic" and takes precedence over international obligations if they contradict its fundamental provisions. Such arguments contradict the established practice of the EU Court of Justice. This discrepancy highlights a fundamental difference in the vision of the legal nature of the Union: as a single autonomous legal system – or a set of legal orders, where each state reserves the last word in matters of constitutional identity.

The most revealing in this context were the decision in cases K 18/04[7] and decision K 3/21[8] of October 7, 2021, which caused a significant response at the level of both European institutions and the national legal

[1] Headnotes to the Judgment of the Second Senate of the Federal Constitutional Court of Germany. (2009, June). Retrieved from https://www.bverfg.de/e/es20090630_2bve000208en.
[2] Treaty on European Union. (1992, July). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A11992M%2FTXT.
[3] Judgment of the Court of Justice in Case No. 11-70 "Internationale Handelsgesellschaft mbH v. Einfuhr- und Vorratsstelle für Getreide und Futtermittel". (1970, December). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61970CJ0011.
[4] Judgment of the European Court in Case No. 6/64 "Flaminio Costa v. E.N.E.L". (1964, July). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61964CJ0006.
[5] Judgment of the Constitutional Tribunal of Poland No. K 3/21 "Assessment of the Conformity to the Polish Constitution of selected provisions of the Treaty on European Union". (2021, October). Retrieved from https://images.dirittounioneeuropea.eu/f/sentenze/documento_Mgyim_DUE.pdf.
[6] Constitution of the Republic of Poland. (1997, April). Retrieved from https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm.
[7] Judgment of the Constitutional Court of Poland in Case No. K 18/047. (2005, May). Retrieved from https://sip.lex.pl/akty-prawne/dzu-dziennik-ustaw/wyrok-trybunalu-konstytucyjnego-sygn-akt-k-18-04-17187437.
[8] Judgment of the Constitutional Tribunal of Poland No. K 3/21 "Assessment of the Conformity to the Polish Constitution of selected provisions of the Treaty on European Union". (2021, October). Retrieved from https://images.dirittounioneeuropea.eu/f/sentenze/documento_Mgyim_DUE.pdf.

systems of other member states. In case K 18/04[1], the Constitutional Tribunal of Poland, considering the correlation between the norms of the Constitution of the Republic of Poland and the norms of the law of the European Union, unequivocally recognised that the Polish Constitution has the highest legal force in the national legal system. In its decision, issued shortly after Poland's accession to the European Union, the Tribunal noted that no rule of EU law can take precedence over the provisions of the Constitution. If there is a conflict between the constitutional norm and EU law, such a contradiction cannot be resolved by assuming the priority of supranational law – on the contrary, it is the Constitution that remains the highest measure of legal force. This opinion was confirmed and developed in case K 3/21[2], in which the judge-rapporteur of the Constitutional Tribunal directly referred to the legal conclusions of case K 18/047[3] regarding the approach to the protection of constitutional sovereignty. The Polish Constitutional Tribunal not only never recognised the rule of law of the EU over the National Constitution, but also systematically defended the thesis that it is the Polish Constitution that should remain the final criterion in determining the permissibility of applying any legal norm on the territory of the state. This doctrinal line of the Polish court testifies to the deep legal autonomy of the national legal order, which directly contradicts the integration principles proclaimed by the EU Court of Justice.

N. Daminova (2021) and A. Nowak-Far (2021) raised the question that the European rule of law system is dependent on the political will of member states, which significantly limits its ability to ensure uniformity of standards. The study supports this claim, as it has been found that the formal primacy of EU law can be called into question when national institutions consider it politically advantageous. The analysis of the situation in Poland shows that the legal disobedience of this country is not an exception, but an example of a general trend, where the principle of the rule of law comes into conflict with national doctrines of constitutional identity, which are increasingly used to justify the legal autonomy of national courts. This expands the researcher' opinions, emphasising that the current legal conflict between the EU and its member states is caused not only by political will, but also by the intersection of national and supranational interests. In addition, the analysis indicates the importance of considering the dynamics of political changes in the member states themselves, which can contribute to strengthening nationalist sentiments and abandoning European standards. It also demonstrates the need to improve the mechanisms for protecting EU principles so that they can effectively counteract attempts to weaken integration processes. In particular, this requires the creation of new tools that would more clearly define the boundaries of jurisdiction of national and European courts.

In case No. K 3/21[4], the Constitutional Court of Poland considered the compliance of the provisions of the Treaty on the European Union[5] (in particular Articles 1, 2, 4(3) and article 19 with the Polish Constitution[6]. The central element of the court's reasoning was the claim that the interpretation of these articles of the treaty given by the EU Court of Justice leads to an unjustified expansion of the competence of the Union institutions beyond the powers transferred to them. In its ruling, the Constitutional Court concluded that certain provisions of the Treaty, in the light of the interpretation of the EU Court of Justice, do not comply with the Polish Constitution and therefore cannot prevail in Polish legal order. This position is a direct negation of the fundamental principle of the rule of law of the EU and represents a qualitatively new stage in the development of legal pluralism within the European Union. The Constitutional Court formulated the legal basis for this approach through the consistent application of the provisions of the Polish Constitution[7] defined by the Constitution itself. The court concluded that granting the EU Court of Justice the power to assess the functioning of the Polish judicial system and recognise it as inconsistent with the standards of the rule of law contradicts the basic principles of state sovereignty and the principle of democratic control over authorities. The judgment paid special attention to Article 2 of the Polish Constitution[8], which establishes the principle of the rule of law, which, according to the court, is violated if the national jurisdiction system is subject to the interpretation of the EU Court of Justice without the procedural consent of the parliament. In Judgment No. K 3/21[9],

[1] Judgment of the Constitutional Court of Poland in Case No. K 18/047. (2005, May). Retrieved from https://sip.lex.pl/akty-prawne/dzu-dziennik-ustaw/wyrok-trybunalu-konstytucyjnego-sygn-akt-k-18-04-17187437.
[2] Judgment of the Constitutional Tribunal of Poland No. K 3/21 "Assessment of the conformity to the Polish Constitution of selected provisions of the Treaty on European Union". (2021, October). Retrieved from https://images.dirittounioneeuropea.eu/f/sentenze/documento_Mgyim_DUE.pdf.
[3] Judgment of the Constitutional Court of Poland in Case No. K 18/047. (2005, May). Retrieved from https://sip.lex.pl/akty-prawne/dzu-dziennik-ustaw/wyrok-trybunalu-konstytucyjnego-sygn-akt-k-18-04-17187437.
[4] Judgment of the Constitutional Tribunal of Poland No. K 3/21 "Assessment of the conformity to the Polish Constitution of selected provisions of the Treaty on European Union". (2021, October). Retrieved from https://images.dirittounioneeuropea.eu/f/sentenze/documento_Mgyim_DUE.pdf.
[5] Treaty on European Union. (1992, July). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A11992M%2FTXT.
[6] Constitution of the Republic of Poland. (1997, April). Retrieved from https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm.
[7] Ibidem, 1997.
[8] Ibidem, 1997.
[9] Judgment of the Constitutional Tribunal of Poland No. K 3/21 "Assessment of the conformity to the Polish Constitution of selected provisions of the Treaty on European Union". (2021, October). Retrieved from https://images.dirittounioneeuropea.eu/f/sentenze/documento_Mgyim_DUE.pdf.

the Constitutional Court also referred to the concept of national sovereignty, referring to the provisions of the preamble and articles of the Constitution guaranteeing the supremacy of the Polish people as a source of power. In particular, it was emphasised that expanding the jurisdiction of a supranational court without direct legitimation through national mechanisms contradicts the principle of democratic legitimacy enshrined in the Constitution. This approach demonstrates the attempt of the National Constitutional body not only to protect jurisdictional autonomy, but also to defend the model of state structure, in which control over the division of power is carried out exclusively within the national constitutional field.

P. Popelier *et al.* (2021) and K.A. Poulou (2024) highlighted the erosion of the principle of mutual trust, arguing that Poland's actions have undermined not only jurisprudence, but also the political foundations of solidarity within the EU. The above study partially confirmed this thesis, demonstrating a decrease in the level of confidence in Poland on the part of other member states within the EU Council, which is especially noticeable in the issues of voting for the distribution of funds and support for pan-European initiatives. However, the analysis revealed a more complex picture, as the European Commission continued to avoid political escalation of the conflict by resorting to tools of financial influence, in particular, the mechanism of conditional access to funds. This indicates a more flexible and adaptive response from European institutions, which strive to preserve the integrity of the EU even in situations of serious legal and political differences. The reason for different assessments of the effect of the Polish crisis may lie in underestimating the EU's pragmatic approach, which balances the need for a legal response and the political stability of the Union. A. Kustra (2022) and T.T. Koncewicz (2022) interpreted the actions of the Constitutional Court of Poland as undermining the contractual nature of the European Union, emphasising that such decisions call into question the very existence of the EU as a legal entity. The current study allowed critically reconsidering this thesis, since even in the context of a deep legal confrontation, the EU's institutional structure has remained stable, and its ability to coordinate politically has been preserved. The analysis showed that the decision-making mechanisms, the functioning of the European Commission, and the application of EU law continue to operate, despite the existing legal contradictions with individual member states. This indicates a higher degree of stability of the EU legal order to institutional challenges than critical discourse suggests. The reason for differences in the interpretation of the consequences of the decisions of the Constitutional Court of Poland may lie in underestimating the flexibility of the EU legal system, which is not reduced to an absolute consensus on the jurisdiction of the EU Court of Justice, but instead functions through adaptive institutional mechanisms that allow responding to crisis situations without destroying the overall legal unity.

The decision of the Constitutional Court of Poland regarding the superiority of the National Constitution over the law of the European Union entailed significant legal consequences both at the domestic and supranational levels. One of the primary consequences was a change in the legal approach of Polish courts to the application of EU law. Judgment No. K 3/21[1] by which the Constitutional Court of Poland[2] recognised certain provisions of the EU treaty as incompatible with the Constitution of the Republic of Poland, Polish judges faced a legal dilemma: either to adhere to the decisions of the EU Court of Justice and European norms, or to obey the position of the national Constitutional Court. This bifurcation has led to an increase in legal uncertainty and a dispersion of the unity of jurisprudence, in particular, in cases where the application of EU law is mandatory. The administrative institutions of Poland, in particular, those responsible for the implementation of legal acts that have a source in EU law, found themselves in a situation of double subordination. The implementation of European directives and regulations requires consistency with the norms of the Constitution of Poland, but the opinion of the Constitutional Court called into question such consistency in many areas, especially in the field of the judicial system, disciplinary responsibility of judges, and access to justice. This has complicated law enforcement practices and reduced the predictability of legal decisions, which directly contradicts the principle of legal certainty as one of the fundamental principles of the EU. The European Commission has initiated a breach of obligations procedure under Article 258 of the Treaty on the Functioning of the European Union[3], considering that Poland violated the principle of the rule of law of the EU and the requirements for effective judicial protection. The EU Court of Justice, within the framework of this procedure, found that the legal structure established by the Polish legislator regarding the disciplinary responsibility of judges was contrary to the requirements for the independence of the judiciary under Article 19(1) of the TEU. Based on this decision, the EU Court of Justice applied interim measures, in particular, the requirement to terminate the activities of the Disciplinary Chamber of the Supreme Court of Poland. Despite this, the Polish authorities did not fully

[1] Judgment of the Constitutional Tribunal of Poland No. K 3/21 "Assessment of the conformity to the Polish Constitution of selected provisions of the Treaty on European Union". (2021, October). Retrieved from https://images.dirittounioneeuropea.eu/f/sentenze/documento_Mgyim_DUE.pdf.
[2] Ibidem, 2021.
[3] Treaty on the Functioning of the European Union. (2016, June). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12016ME%2FTXT.

implement these measures, which led to the imposition of financial sanctions in the form of a daily fine. In 2021, the EU Court of Justice decided to recover EUR 1 million daily from Poland for failure to comply with the previous decision in the Case No. C-204/21 R[1]. This was an unprecedented measure in the court's practice, confirming the seriousness of the legal consequences of a breach of obligations by a member state. In this context, a comparative analysis of the decisions of the Constitutional Court of Poland in Cases Nos. K 18/04 and K 3/21 is of particular importance (Table 1), which have become key in articulating the position on the limits of the application of EU law at the national level. Both decisions, although adopted at intervals of more than 15 years, demonstrate the consistent doctrine of the Polish constitutional body regarding the priority of the Constitution of the Republic of Poland over the norms of primary law of the European Union.

**Table 1.** Main provisions of the decisions of the Polish Constitutional Tribunal in Cases Nos. K 18/04 and K 3/21

| Parameter | Case No. K 18/04 (2005) | Case No. K 3/21 (2021) |
|---|---|---|
| Context | The decision was made after Poland joined the EU; assessment of compliance with the Constitution of the Republic of Poland with the provisions of the EU treaty | The decision was made during the conflict with the EU on judicial reform; verification of compliance with the Constitution with certain provisions of the TEU |
| Constitutional Court of Poland (Tribunal) | The Constitution of the Republic of Poland has the highest legal force; EU law cannot take priority in the event of a conflict | The supremacy of the Constitution of Poland is confirmed; the provisions of the TEU are recognised as incompatible with the Constitution |
| Substantiation | Any conflict should be resolved in favour of the Constitution; amendments to the Constitution are possible only through national mechanisms | Interpretation of EU law by the EU Court of Justice exceeds the limits of delegated competence; this violates the principle of the supremacy of the Constitution |
| Assessment of the EU rule of law | The rule of law of the EU is recognised only within the limits that do not contradict the Constitution | Supremacy is completely rejected in cases where it affects the organisation of the judiciary |
| EU response | There was no public criticism; the decision was interpreted as a formal clarification of the boundaries of jurisdiction | Sharp criticism from the European Commission; initiation of proceedings under Article 258 of the Treaty on the Functioning of the European Union, blocking of funding, political escalation |
| Political overtones | The discussion was mainly of a technical and legal nature | The decision was made in the context of the actual politicisation of the Constitutional Tribunal |

**Source:** developed by the authors based on the materials of the Constitutional Tribunal of Poland[2,3]

Summarising the key aspects of the decisions of the Polish Constitutional Tribunal in Cases Nos. K 18/04 and K 3/21 allows clearly outlining the evolution and the consistency of the approach of Polish constitutional justice to the problem of the correlation between national and supranational law and order. Both decisions are based on the concept of preserving sovereignty within the limits provided for by the Constitution, and emphasise that the delegation of powers to the supranational level is not unconditional. The focus of both cases is the idea of limited integration, which is allowed only insofar as it does not contradict the internal constitutional order. This approach, despite its formal compatibility with the principle of constitutional identity, has put the Polish legal order in conflict with the fundamental principle of EU law – its supremacy and unified application throughout the Union. The result of such a doctrinal line was the weakening of the effectiveness of the European legal order in Poland, the growing legal uncertainty, the risk of fragmentation of the EU legal system and the creation of a precedent for other member states that can appeal to their own constitutional identity in order to restrict the operation of EU law.

R.D. Kelemen (2024) and D. Saracino (2024) interpreted the conflict between Poland and the European Union as a point of no return, arguing that this makes it impossible for the principle of solidarity to continue functioning within the Union. However, the analysis shows a different picture, because, despite the political tension, EU institutions continue to use alternative mechanisms of influence, in particular, the conditions for access to structural and recovery funds. The study revealed that financial instruments are increasingly being used as a means of political and legal pressure, which indicates the evolution of approaches to ensuring compliance with general norms. The reason for the differences in the interpretation of the situation may be to ignore the flexible nature of the EU legal regime, which can adapt to political challenges without completely dismantling key principles. The findings of this study complement the existing assessments, showing that this is not the collapse of the solidarity system, but the transformation of its tools in a new institutional context.

The legal implications for the implementation of European law in Poland are also critical. There are significant difficulties in transposing EU directives,

[1] Opinion of Advocate General Collins in Case No. C-204/21 "European Commission v. Republic of Poland". (2022, December). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62021CC0204&qid=1746628032991.
[2] Judgment of the Constitutional Tribunal of Poland No. K 3/21 "Assessment of the conformity to the Polish Constitution of selected provisions of the Treaty on European Union". (2021, October). Retrieved from https://images.dirittounioneeuropea.eu/f/sentenze/documento_Mgyim_DUE.pdf.
[3] Ibidem, 2021.

particularly in areas related to justice, migration policy, personal data protection, and environmental regulation. Due to systemic changes in the functioning of the Polish judicial system, in particular, the interference of the executive in the appointment processes of judges and the reform of disciplinary responsibility, the guarantees of independent proceedings were called into question, which led to a significant legal reaction from other member states. One of the significant consequences was the practice of individual domestic courts refusing to execute a European Arrest Warrant issued by Poland, given the risk of violating a person's right to a fair trial. For example, Case No. C-216/18 PPU[1], in which the Court of Justice of the European Union allowed the possibility of blocking the execution of the warrant based on the existence of systemic deficiencies in the domestic judicial system that create a real risk of violation of fundamental rights. The judicial practice of Ireland, Germany, the Netherlands, and Belgium further consolidated the approach to individual assessment of threats related to the lack of guarantees of judicial independence in Poland. This trend shows a deep crisis of mutual trust between the courts of member states, which is a fundamental element of the principle of mutual recognition within the European Union's space of freedom, security, and justice.

M. Kaiafa-Gbandi (2020) and J. Odermatt (2022) pointed to the lack of clear institutional boundaries for resolving conflicts of jurisdiction between national courts and the EU Court of Justice, considering this a threat to the stability of law enforcement in the European Union. The results of this study confirmed these comments, showing that there is legal uncertainty, in particular in the interpretation of fundamental constitutional norms. The analysis carried out also revealed that this uncertainty was often used by domestic courts to legitimise political decisions, which extends the problem beyond the purely legal sphere and includes political and social aspects. This suggests a significant politicisation of law enforcement, which undermines confidence in the independence of the judiciary and in the legal order as a whole. It was found that such use of legal uncertainty is a strategy that allows national authorities to achieve political goals through legal means. This process leads to increased risks to legal stability and is potentially dangerous for the long-term development of the rule of law state. Therefore, it is important to find ways to create clearer institutional mechanisms that would ensure proper resolution of conflicts of jurisdiction without risking the rule of law in the EU.

The Polish constitutional and legal precedent related to the refusal to recognise the binding nature of the judgments of the Court of Justice of the European Union calls into question the stability of the implementation of the EU rule of law principle in the national legal orders of the member states. The EU member state, in an official form, by a decision of its body of constitutional jurisdiction, declared certain provisions of the constituent treaties incompatible with its own constitution, which called into question the very idea of legal integration within the Union. The decision of the Constitutional Court of Poland showed an attempt by the national body to review the legitimacy of the principle of primacy of European law, which is consolidated in the established body of judicial practice of the Court of Justice of the EU. This position revealed deep tension between the concept of national sovereignty in the constitutional and legal doctrine of individual states and the obligation to adhere to the unified legal system of the EU, which follows from the EU treaties. The Polish case can be considered as a serious challenge to the principle of legal integration, because it calls into question the mechanism of effective law enforcement on the territory of member states. This case is indicative of the analysis of the limits of permissible interpretation of national sovereignty in the context of the implementation of European norms. In contrast to previous separate decisions of national constitutional courts, for example, the Federal Constitutional Court of Germany in the PSPP Case[2] in 2020, which raised the question of the limits of delegated powers, the Polish position departs from the idea of constructive dialogue and actually denies the very possibility of supranational coercion. This is a qualitative difference that takes the Polish case beyond the established paradigm of correlation between the national and supranational legal order within the EU. Against this background, a comparative analysis of the approaches of other national constitutional courts to the principle of the rule of law of the EU is appropriate (Table 2), which helps to more clearly outline the exclusivity of the Polish case.

**Table 2.** Comparison of approaches of national constitutional courts to the rule of law of the EU (Poland, Germany, France, Italy)

| Country | Judicial instance | Key case | Position on the rule of law of the EU | Defined limits/conditions for applying EU law |
|---|---|---|---|---|
| Poland | Constitutional Court | K 3/21 (2021) | Recognises the priority of the Polish Constitution over EU law | EU supremacy cannot contradict the principles of national sovereignty and democracy |

[1] Judgment of the Court of Justice in Case No. C-216/18 PPU. (2018, July). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62018CA0216&qid=1746628167400.
[2] Headnotes to the Judgment of the Second Senate of the Federal Constitutional Court of Germany. (2020, May). Retrieved from https://www.bverfg.de/e/rs20200505_2bvr085915en.

*Table 2, Continued*

| Country | Judicial instance | Key case | Position on the rule of law of the EU | Defined limits/conditions for applying EU law |
|---|---|---|---|---|
| Germany | Federal Constitutional Court | PSPP (2020) | Recognises, but under the condition of protecting fundamental rights | Intervention is possible if EU institutions go beyond their competence (ultra vires) |
| France | Constitutional Council | Décision 2004-505 DC | Recognises priority, but cannot restrict "constitutional identity" | The basic principles of the constitutional system are not subject to change due to EU law |
| Italy | Constitutional Court | Taricco (2018) | Recognises supremacy with the condition of compatibility with the basic principles of the Constitution | It is possible to block EU norms if they violate basic national principles |

**Source:** created by the author based on Decision of the Constitutional Court of France No. 2004-505[1], Judgment of the Constitutional Court of the Republic of Italy No. 115[2], Headnotes to the Judgment of the Second Senate of the Federal Constitutional Court of Germany[3], Judgment of the Constitutional Tribunal of Poland No. K 3/21[4]

The above table shows that, despite general reservations about the limits of EU law, most Constitutional Courts of member states recognise its priority, provided that the fundamental principles of the national constitutional order are preserved. In the cases of Germany, France, and Italy, national courts declared their right to a final interpretation of the Constitution, but did not deny the very binding nature of EU Court decisions or declare the norms of EU constituent treaties invalid. The Polish approach, on the other hand, is qualitatively distinguished by the categorical denial of the jurisdiction of the EU Court of Justice and the refusal to recognise the universality of its decisions in the national legal order.

According to S. Baer *et al.* (2023), the consequence of decisions of the Constitutional Court of Poland that call into question the primacy of EU law is the growing fragmentation of the legal space of the Union and the risk of its gradual disintegration. The conclusions made by the researcher are partly relevant, since the investigation of the reactions of EU institutions and member states to the decision of the Constitutional Court of Poland conducted within the framework of this study showed that this process is not unambiguous or automatic. EU institutions are showing moderate restraint in trying to avoid an escalation of the conflict, while individual member states (Ireland) have taken a more critical position, directly condemning the actions of the Polish authorities. This indicates that the risk of legal disintegration largely depends not only on the jurisprudence of national courts, but also on political interaction between key EU actors. The findings complement previous research, highlighting that the adaptive capacity of EU institutions can slow down the destructive effects of judicial separatism through political balancing.

The legal and political implications of the Polish precedent go far beyond the domestic legal system and affect the stability and integrity of the entire legal space of the European Union. In addition to direct violations of legal obligations, the actions of the Constitutional Court of Poland have created risks of imbalance between the legal order of the member states and the EU, calling into question the effectiveness of the rule of law as a fundamental principle of the Union. The situation has created a number of specific consequences – from the strengthening of monitoring mechanisms and legal responsibility to the political reaction of EU institutions and complications in interstate legal cooperation. The analysis of the legal and political consequences of the Polish precedent shows the development of new challenges for the stability of the legal space of the European Union. First of all, there is a steady trend towards the erosion of mutual trust between member states, which is a fundamental prerequisite for the functioning of joint legal mechanisms, in particular, in the field of mutual recognition of judicial decisions. The Polish precedent sets a dangerous example for other member states, which also records cases of political pressure on the judiciary or discussions around "constitutional identity" as grounds for restricting EU law. In this context, there is a real risk of a domino effect, in which individual countries can use the Polish model as an argument for politicising constitutional control, which, in turn, will call into question not only the implementation of EU law, but also the very idea of legal integration. The key trends identified based on the analysis of the consequences of the Polish case indicate a profound transformation of the relationship between the national legal order and the EU legal system. There is a need for a clear rethinking of the mechanisms for ensuring the rule of law within the European Union, in particular, through normalising the boundaries of interaction between national courts and the EU Court of Justice,

[1] Decision of the Constitutional Court of France No. 2004-505. (2004, November). Retrieved from https://www.conseil-constitutionnel.fr/en/decision/2004/2004505DC.htm.
[2] Judgment of the Constitutional Court of the Republic of Italy No. 115. (2018, May). Retrieved from https://www.cortecostituzionale.it/documenti/download/doc/recent_judgments/S_2018_115_EN.pdf.
[3] Headnotes to the Judgment of the Second Senate of the Federal Constitutional Court of Germany. (2020, May). Retrieved from https://www.bverfg.de/e/rs20200505_2bvr085915en.
[4] Judgment of the Constitutional Tribunal of Poland No. K 3/21 "Assessment of the conformity to the Polish Constitution of selected provisions of the Treaty on European Union". (2021, October). Retrieved from https://images.dirittounioneeuropea.eu/f/sentenze/documento_Mgyim_DUE.pdf.

formalising standards for the independence of the judiciary, and strengthening the institutional responsibility of member states for compliance with the fundamental principles of the legal community.

P. Bárd (2021) and L.D. Spieker (2024) noted that the conflict between the Constitutional Court of Poland and the EU Court of Justice reflects deeper transformations in Polish constitutionalism, in particular, the subordination of the judicial branch to the executive branch. This study confirmed the researchers' general thesis about the weakening of the principle of separation of powers in Poland, but the above analysis shows a different and more detailed picture: a key role in changing the balance of power is played by party control over the process of selecting judges, which allows the ruling coalition to actually level judicial control. This is not consistent with the interpretation of the conflict as an exclusively legal problem, since it takes on a distinct political dimension and is used as a means of strengthening internal legitimacy. The conducted research allowed expanding the existing approaches, showing how legal conflict is transformed into a communicative strategy that legitimises the concentration of power in executive structures.

However, despite the obvious conflict, the Polish precedent actualises the need to rethink and update approaches to legal dialogue between national courts and the EU Court of Justice. Formally, the system of preliminary inquiry in accordance with Article 267 Treaty on the Functioning of the European Union[1]. The Polish case showed that in the event of politicisation of constitutional control and erosion of the independence of the judiciary in a member state, this mechanism loses its ability to ensure the unity of law enforcement. This means that in the long run, there is a need to formalise the principles that would ensure the binding nature of EU Court decisions, regardless of the national constitutional context. Legally, this may mean the need to amend the Constituent treaties that would clearly define the limits of constitutional supervision in the context of European integration. At the level of legal doctrine, the Polish case emphasises the relevance of normalising the relationship between the sovereignty of a member state and its obligations within a single legal space. The constitutional identity of states, which is recognised and respected at the EU level, cannot be used as a legal basis for denying the fundamental principles of the functioning of the Union. The EU Court of Justice has repeatedly stressed[2,3,4], that the primacy of EU law is a necessary condition for its effectiveness, and giving national courts the power to independently determine the limits of EU norms would lead to fragmentation of the legal space, which contradicts the very idea of integration. Consequently, the legal normalisation of relations between the national and European legal order requires not only declarative wording, but also effective procedural guarantees.

M. Bobek *et al*. (2023) and C.I. Nagy (2023) interpreted the conflict between the Constitutional Court of Poland and the EU Court of Justice through the prism of legal pluralism, recognising the possibility of the existence of several centres of constitutional authority in Europe. The above analysis showed a different picture, because in practice in the case of Poland, legal pluralism does not function as an instrument of balance or constructive dialogue between jurisdictions, but rather as a means of unilateral separation from the EU legal order. The study established that the appeal to pluralism is used by political actors to legitimise decisions of the Constitutional Court aimed at limiting the jurisdiction of European institutions. The reason for different interpretations may lie in the authorities' underestimation of the concept of legal pluralism of its potential for abuse in the context of politicised constitutional control. Thus, the statement about the equality of national and supranational constitutional authority seems debatable, since in the Polish context this approach does not promote legal interaction, but instead strengthens the institutional separation. C.Y. Matthes (2021) and E. Stark (2023) calls for reform of the mechanisms for protecting the rule of law in the European Union, pointing out the ineffectiveness of existing legal instruments in the context of the conflict with Poland. The study confirmed the researchers' general thesis, in particular, regarding the limited effectiveness of Article 7 of the EU Treaty[5], which in practice is blocked due to the requirement of political consensus between member states. However, this analysis also showed that in addition to legal measures, financial conditions for access to EU funds and pressure from public opinion are becoming increasingly important. This expands the available knowledge, demonstrating that the effectiveness of protecting the rule of law requires an integrated approach that includes both legal instruments and political and economic mechanisms that can influence the behaviour of national governments in the multi-level European governance space.

[1] Treaty on the Functioning of the European Union. (2016, June). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12016ME%2FTXT.
[2] Judgment of the European Court in Case No. 6/64 "Flaminio Costa v. E.N.E.L". (1964, July). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61964CJ0006.
[3] Judgment of the Court of Justice in Case No. 11-70 "Internationale Handelsgesellschaft mbH v. Einfuhr- und Vorratsstelle für Getreide und Futtermittel". (1970, December). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61970CJ0011.
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[5] Treaty on European Union. (1992, July). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A11992M%2FTXT.

In a broader context, the Polish case serves as an indicative indicator of the politicisation of constitutional control in the member states. The functioning of the Constitutional Court of Poland in 2020-2025 has been criticised by European institutions, and non-governmental organisations due to the loss of institutional independence and control by the executive branch. The legal analysis of the Polish case shows that the conflict with EU law is not only the result of doctrinal differences, but also the result of deeper institutional deformations that pose a threat to the stability of the legal system in the member state. The Polish case sets a legal precedent that forces us to review both the mechanisms for monitoring compliance with the rule of law and the ways to ensure the independence of national judicial bodies within the EU. This case actualises the need to form a common legal standard that would guarantee the coordinated application of EU law in all member states, regardless of the political context. The decision of the Constitutional Court of Poland regarding the priority of the National Constitution over EU law in specific areas has led to a serious aggravation of relations with European institutions, in particular the European Commission. The EU responded by launching a mechanism to protect the rule of law, and by suspending payments from recovery funds, which increased economic pressure on the government in Warsaw. However, the Polish government continues to insist on its own interpretation of the principle of sovereignty, supporting it with a political mandate obtained through elections. This points to differences in understanding the nature of European integration: between the federal logic of the EU common legal space and the intergovernmental logic of maintaining national control. In addition, the Polish precedent has already affected the positions of other countries, in particular, Hungary and Romania, which could potentially create a dangerous domino effect.

The European Court of Justice insists on the absolute primacy of EU law, but the lack of effective sanctions against states that systematically violate this principle reduces the effectiveness of this approach. This calls into question the EU's ability to ensure the same legal standards in the face of internal political fragmentation. In this context, the importance of proposals for reforming the EU's institutional mechanism is growing – in particular, the introduction of procedures that would allow a quick response to violations of the rule of law. The Polish case demonstrates that current instruments, in particular Article 7 of the EU Treaty[1], are politically limited and ineffective due to the requirement of unanimity among member states. In addition, the conflict between the Polish court and the EU Court of Justice revealed a deeper crisis of confidence in supranational institutions, which complicates the normal functioning of the single legal space.

Summarising, the Polish case reveals not only a lack of legal coherence between national and European courts, but also the weakness of existing mechanisms to guarantee the rule of law. This situation points to the need for an integrated approach that combines legal, institutional, and political tools to preserve the integrity of the EU legal order. To ensure stability and trust within the Union, it is necessary not only to respond to individual violations, but also to rethink the model of interaction between national sovereignty and supranational obligations. In the long run, the conflict between Poland and the EU may become an impetus for deeper institutional integration or, conversely, for fragmentation of the European legal space. Thus, the Polish case is not only a challenge for the EU, but also a critical test of its ability to adapt, consolidate and preserve fundamental values in a changing political environment.

## Conclusions

In this study, a systematic legal analysis of the conflict between the principle of the rule of law of the European Union and the sovereignty of Member States was carried out on the example of decisions of the Constitutional Court of Poland. The Polish case was considered as a legal and political precedent that sharpened the institutional discussion about the limits of jurisdiction of the EU Court of Justice and the role of national constitutional bodies in ensuring the legal unity of the Union. The study confirmed that Polish practice calls into question the sustainability and continuity of the EU rule of law, undermines the integrity of the *acquis communautaire* and sets a dangerous precedent for selective interpretation and application of Union law by member states.

An analysis of judicial practice has shown that the EU Court of Justice invariably defends the enforcement of European law, including its unconditional application in national jurisdictions, regardless of internal constitutional provisions. But the Constitutional Court of Poland, relying on the doctrine of "constitutional identity" and national sovereignty, has repeatedly questioned the binding nature of EU Court decisions. As a result, a situation of legal dualism arose, in which the Polish courts found themselves in a conflict between European obligations and national requirements. This state of affairs demonstrates a violation of the principle of mutual loyalty and legal integration enshrined in Articles 4 and 19 of the Treaty on European Union. It was revealed that the institutional response from the EU authorities was aimed at activating the supervisory and sanctions mechanisms provided for in Article 7 of the TEU, including restricting access to EU funds, introducing conditional funding and initiating procedures for violation of obligations by a member state. These actions contributed to strengthening the EU's rule of

[1] Treaty on European Union. (1992, July). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A11992M%2FTXT.

law regulatory and procedural framework and revealed existing limitations on the Union's legal arsenal in the context of sovereign constitutional jurisdictions. Especially important is the trend towards the development of new standards of judicial independence and procedural control over the implementation of EU Court decisions in national legal systems.

The results obtained allowed conceptualising the Polish precedent as a manifestation of a deeper transformation of the EU legal architectonics, within which the relationship between supranational obligations and constitutional independence is being rethought. The Polish case is a critical marker of the crisis tension between regulatory integration and political decentralisation. The legal response of EU institutions to it has become a catalyst for revising the mechanisms of sanctions influence, strengthening monitoring procedures and enhancing the importance of the principle of loyal cooperation.

The problems of unification of doctrinal approaches to the correlation between EU law and national constitutionalism, formalisation of preventive mechanisms for avoiding jurisdictional conflicts, and improving the dialogue between national courts and the EU Court of Justice within the framework of constitutional pluralism remain promising areas of further research. Special attention should be paid to the study of how such conflicts affect the democratic legitimacy of the EU legal order as a whole.

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None.

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# Конфлікт між правом ЄС і національним суверенітетом: аналіз рішень Конституційного Суду Польщі в контексті верховенства права в Європейському Союзі

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**Анотація**
Актуальність дослідження зумовлена загостренням суперечностей між принципом верховенства права Європейського Союзу й тенденціями розвитку національного правового суверенітету в державах-членах, що загрожує цілісності спільного правового простору Європейського Союзу. Метою дослідження було вивчення правових наслідків рішень Конституційного Суду Польщі щодо взаємодії національного суверенітету й верховенства права в Європейському Союзі, а також оцінка їх впливу на правову інтеграцію в межах Європейського Союзу. У дослідженні використано методи правового аналізу, порівняльного аналізу, а також методи тлумачення судових рішень, які дають змогу оцінити правові наслідки рішень Конституційного Суду Польщі та їх вплив на взаємодію національного та європейського права. У межах дослідження з'ясовано, що рішення Конституційного Суду Польщі щодо верховенства національної конституції над правом Європейського Союзу призвело до правової колізії, яка унеможливлює повноцінне функціонування верховенства права Європейського Союзу. З'ясовано, що така позиція створювала правові складнощі для національних судів у застосуванні рішень Суду ЄС й імплементації права Союзу. З'ясовано, що реакція інституцій Європейського Союзу, зокрема Суду ЄС і Європейської комісії, ґрунтувалася на механізмах контролю за дотриманням верховенства права, однак була обмеженою в умовах національного спротиву. Доведено, що приклад Польщі продемонстрував процес політизації конституційного контролю, який ставить під сумнів незалежність національних судових органів у державах – членах ЄС. Брак єдиного механізму вирішення конфлікту між національним суверенітетом і правовою інтеграцією спричиняє системні ризики для стабільності спільного правового простору Європейського Союзу. Здійснений аналіз засвідчив необхідність нормативного унормування співвідношення національного конституційного контролю з правовими зобов'язаннями держав-членів у межах єдиного правового простору. Практичне значення полягає в розробленні засад для вдосконалення механізмів юридичної відповідальності держав-членів у разі відхилення від принципу верховенства права в Союзі

**Ключові слова:**
інститут; юрисдикція; плюралізм; нормативна неузгодженість; суверенітет

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# Legal inconsistencies in the field of intelligence-gathering and their impact on the investigation of economic crime

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**Abstract**
The purpose of the study was to examine the influence of horizontal, vertical, and temporal legal inconsistencies on intelligence-gathering activity during the investigation of economic crime. The study employed content analysis to interpret doctrinal definitions of economic crime and the associated liability. A case study method was applied to assess the specific features of intelligence-gathering practices in Ukraine, Germany, and Italy. The comparative analysis demonstrated that Italy shows the highest effectiveness in investigating economic crimes, including transnational cases. The lower effectiveness observed in Germany and Ukraine is linked to the presence of legal inconsistencies, the most commonly documented being: insufficient harmonisation of legal frameworks concerning corporate liability for economic crimes; lack of standardised approaches to the criminal liability of legal entities; underdeveloped principles for interdisciplinary cooperation in economic crime investigations; and non-compliance of certain aspects of national legislation with universal standards. In response to these identified issues, the following strategic groups for addressing legal inconsistencies in the investigation of economic crime were proposed: the introduction of a unified model for investigating economic crime; the establishment of universal requirements for anti-corruption compliance; the creation of a central coordinating body to promote interdisciplinary cooperation among investigative authorities; the legislative consolidation of investigative procedures with a focus on human rights; and the harmonisation of Ukrainian legislation with European standards in the field of economic crime investigation. The findings may be utilised to improve the rate of successful investigations of economic crime in Ukraine and foster equitable and favourable conditions for conducting business activities

**Keywords:**
continental justice system; money laundering; cyber offences; implementation of best practices; integration

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## Introduction

Given their impact on public morality, economic crimes undermine state development and restrict the prospects for sustainable growth. The rise in financial crime can be attributed to ineffective investigation processes, often hindered by horizontal, vertical, and temporal legal inconsistencies, which compromise intelligence-gathering. Considering the connection between economic crime and a nation's strategic development, it is appropriate to examine and compare the factors influencing intelligence-led investigations across different countries within the continental legal system, and explore how their experiences may be adapted to the Ukrainian context.

A systematic literature review conducted by J.S. Dote-Pardo & P. Severino-Gonzalez (2025) concluded that economic crimes, including money laundering, exert a considerable negative impact on the development of various countries worldwide. According to the cited study, such crimes are particularly prevalent in developing nations, where core institutions tend to exhibit greater instability. O. Vasylchyshyn *et al.* (2024) emphasised that economic crimes impede national development by fostering the shadow economy, encouraging capital flight, and diminishing the confidence of both current and prospective investors.

Another literature review, presented by K.A. Kinglsey *et al.* (2024), highlighted that economic crimes, particularly cybercrime, digital currency fraud, and falsification of financial reporting, expose systemic challenges at the national level, such as social inequality, unemployment, and a lack of economic stability. A similar view is reflected in the work of D.A. Kulmie *et al.* (2023), who conducted a survey among 200 respondents from the Ministry of Justice and Constitutional Affairs, the Ministry of Finance, the Ministry of Planning and Economic Development, and the Central Bank of the Republic of Somalia. Their findings showed a strong correlation between economic crime and corruption, which in turn erodes public trust, weakens the delivery of essential public services, reduces employment levels, lowers GDP, and adversely affects citizens' quality of life. Based on these findings, it may be inferred that intelligence-led investigative efforts and the prosecution of economic crimes are particularly vital in unstable regions.

Using the economy of China as a case study, F.D. Narulita *et al.* (2024) concluded that manipulations in accounting records, misinformation, and misapplication of accounting principles may hinder the investigation of economic crimes. These disruptions manifest as delays in proceedings, wrongful accusations, and a lack of accountability. Similar conclusions were reached by M.A. Bello *et al.* (2024), who examined the causal links between financial crimes and financial accessibility. According to their study, institutional factors shape the relationship between financial crime and financial inclusion. Financial regulators are therefore advised to continue strengthening anti-money laundering and anti-corruption strategies through enhanced compliance with existing legal frameworks and engagement with international cooperation practices.

The nature and legal framework surrounding the investigation of economic crimes were examined by O.S. Tuz *et al.* (2025), who assert that intelligence-gathering operations underwent several stages of development. These experts also emphasise that the adaptation of intelligence-gathering practices to the needs of an independent Ukraine remains ongoing. Recent changes within this domain have been driven by the full-scale military aggression against the country and the challenges arising as a result. Such challenges include the need to strengthen coordination among law enforcement agencies and the integration of innovative investigative methods. R.Ch. Sayypov (2024) underlined the increase in economic crimes across specific sectors, particularly the defence industry, under conditions of military uncertainty. The researcher advocated for a strengthened legal framework to support intelligence-gathering operations. He highlighted the tendency of certain economic sectors to conceal criminal activity by exploiting non-state business entities or engaging in corrupt networks. Further proposals for enhancing the effectiveness of intelligence-led investigations of economic crimes were put forward by D.O. Nykyforchuk & I.V. Yermolaev (2024), who conducted a comparative analysis of the regulatory frameworks of countries such as the United Kingdom, the United States, France, and others. Their findings suggest that the principal obstacles to conducting intelligence-gathering operations in the context of economic crime investigations in Ukraine include a lack of clarity in defining such activities and the absence of a commonly accepted concept concerning the nature and structure of intelligence measures.

Based on the cited research, the investigation of economic crimes appears well-represented in the academic literature. Most of the referenced sources focus on institutional and socio-cultural factors that contribute to economic crimes, while legal inconsistencies in intelligence-gathering remain insufficiently explored. This observation underscores the relevance of the present study, which aimed to examine the principle of legal uncertainty in the context of intelligence-led activity concerning economic crimes. The objectives of the study included: to analyse economic legislation; to evaluate the experience of Ukraine in investigating financial crimes; to compare it with the experience of other countries within the continental legal system; and to formulate recommendations for resolving the legal contradictions that hinder the investigation and prosecution of economic crimes.

## Materials and Methods

Fifteen articles of the Criminal Code of Ukraine[1] (CCU) were employed as the principal legal sources: Articles 369, 204, 358, 366, 368, 191, 209, 364, 367, 200, 361, 365, 362, and 212. These articles identify the main types of economic crimes and outline the legal responsibility for their commission. The following regulations were also examined: the Law of Ukraine "On Intelligence-Gathering Activity"[2], the Criminal Procedure Code of Ukraine[3]. The study further based on the statistical data provided by the National Agency of Corruption Prevention (2024). Among international sources, the study analysed the 2024 report of the Federal Office for Information Security (2024) and regulations governing intelligence-gathering procedures in criminal cases in Germany and Italy.

The methodology included content analysis and case study methods. Content analysis was applied to the selected CCU articles to enable doctrinal interpretation of economic crimes and the associated legal responsibilities. The aim was to explore notable violations of the CCU and their consequences. A key case study involved the criminal proceedings against M. Zlochevskyi[4], who was exposed for attempting to have bribery charges of 6 million UAH dropped. The case was examined in terms of the factors that influenced the investigation and the criminal prosecution process. Further case studies included the investigation and prosecution of financial misconduct by the leadership of Wirecard in Germany[5], and legal proceedings in Italy involving executives from Eni and Saipem, accused of corruption in the context of an oil contract[6]. A comparative analysis was conducted to examine the investigative practices of countries with a continental legal system. Germany and Italy were selected due to their established legal traditions and extensive experience in investigating economic crimes. The primary goal of this comparison was to identify effective investigative strategies and assess the feasibility of their adaptation within the Ukrainian legal context.

## Results

**Intelligence-gathering activities in the investigation of economic crimes in Ukraine.** This study analysed the work of E.A. Akartuna *et al.* (2024), which defined economic crime as a type of criminal behaviour associated with money, financial services, or markets. According to the National Police of Ukraine (2024) report, 10,400 official crimes were recorded in 2023, 3,000 of which were related to obtaining illicit profits. The National Police of Ukraine, in collaboration with other institutions and law enforcement agencies, including the National Bank of Ukraine and the State Service for Special Communications and Information Protection of Ukraine, conducted measures to combat fraud and recover the damages incurred. The National Police of Ukraine's report indicates that, during the reported period, 44,800 phishing links were blocked, which had been created to obtain citizens' personal and banking information for criminal purposes. During the analysed period, 286.8 million UAH in damages caused by cybercrimes were also recovered, which is 6.4 times more than in 2022. According to the Economic Security Bureau of Ukraine (2024), 4,406 reports and statements about economic offences were registered in 2024, 22 intelligence and investigative cases were opened, and 11 criminal proceedings were initiated. Based on the cited data, it is evident that significantly more economic crimes of certain types were detected in 2023-2024, and, accordingly, a greater amount of damages was recovered. However, the reports show that not all registered economic offences were investigated, and suspects were not always provided with formal charges.

No more than 10% of detected economic offences result in the issuance of an indictment. This statement can be illustrated by the results of investigating corruption-related criminal offences. According to the National Agency on Corruption Prevention (2024), 25,791 corruption-related criminal offences were investigated in 2024, of which only 1.5% concluded with a guilty verdict resulting in actual imprisonment. In conjunction with the data from Transparency International (2024), it can be inferred that the low score of Ukraine (35 out of 100) in the organisation's assessment is a consequence of the low level of disclosure and accountability for corruption-related crimes. In comparison, Corruption Perception Index of Italy stands at 46/100, while Germany's is 75/100. The relatively low score of Ukraine in the international ranking points to ineffective investigations into economic crimes, diminishing the country's investment appeal and posing a serious barrier to sustainable national development.

At the national level, a noticeable trend can be observed towards a decline in the number of prosecutions and actual punishments of executives prone to crimes such as corruption, financial fraud, and counterfeiting. Investigations into such offences are often resolved

[1] Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[2] Law of Ukraine No. 4651-VI "On Intelligence-Gathering Activity". (1992, February). Retrieved from https://zakon.rada.gov.ua/laws/show/2135-12#Text.
[3] Criminal Procedure Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[4] Judgment of the Higher Anti-Corruption Court of Ukraine No. 991/1297/22. Retrieved from https://hacc-decided.ti-ukraine.org/en/documents/112569718.
[5] Judgment of the Munich Regional Court No. 5HK O 15710/20. (2021, December). Retrieved from https://www.wirecard.com/wp-content/uploads/2023/08/Judgment-of-the-Munich-Regional-Court-I-dated-05.05.2022-5-HK-O-15710_20.pdf.
[6] Judgment of the Milan Court No. 3055. (2021, March). Retrieved from https://www.eni.com/assets/documents/documents-en/opl-245-full-decision.pdf.

through the approval of a "plea agreement" established under Article 35 of the CCU[1], which typically results in the imposition of a fine as the principal form of punishment (Nykyforchuk & Yermolaev, 2024). An illustration of the consequences of implementing such an agreement is criminal proceedings initiated against a Ukrainian businessman, the owner of the gas production company Burisma and founder of the International Energy Security Forum. In the summer of 2020, NABU detectives documented the businessman offering a bribe of six million US dollars to NABU leadership and the head of the Specialised Anti-Corruption Prosecutor's Office. All four individuals implicated in the case admitted their guilt in the economic crime and agreed to cooperate with the investigation. As a result, three intermediaries received suspended sentences, while the principal figure was fined 68,000 hryvnias. This case highlights the disproportionality between the punishment and the scale of the economic crimes committed, suggesting deficiencies in intelligence-gathering.

Law enforcement agencies also rely on specific provisions of the CCU, particularly Chapter 35, which stipulates that an accused individual who admits guilt and agrees to cooperate with the investigation may receive a reduced sentence, frequently a suspended term or a fine. This procedural inconsistency is further demonstrated by the fact that approximately 60% of individuals accused of offering bribes agree to cooperate, resulting in fines of 17,000 hryvnias, often disproportionate to the potential financial damage caused (Nepomnyashchyy & Vorobyov, 2024). Horizontal inconsistencies also arise in the interpretation of Article 204 of the CCU, under which the production of certain illicit goods warrants imprisonment, whereas their sale does not. The majority of cases are classified as sale rather than production, and only 0.5% of defendants receive custodial sentences (Kuznetsov, 2024). The possibility of concluding a cooperation agreement is frequently exploited by individuals accused of accepting bribes, who see it as an opportunity to avoid imprisonment or the payment of substantial fines.

Thus, the cooperation agreement constitutes an ambiguous instrument that influences the effectiveness of intelligence-gathering during the investigation of economic offences. On the one hand, the signing of a guilty plea agreement expedites the intelligence process and increases the statistical rate of crime detection. However, the implementation of such agreements also results in the majority of accused individuals avoiding severe punishment and potentially committing new economic offences in the future. The risk of ineffective investigations and recidivism is somewhat mitigated by the existence of the anti-corruption vertical structure, wherein key institutions exercise mutual oversight, thereby enhancing the transparency of intelligence-gathering activities and accountability.

The conduct of intelligence-gathering during the investigation of official misconduct in Ukraine is hindered by horizontal, vertical, and temporal legislative conflicts. Horizontal conflicts emerge as contradictions between laws or subordinate acts of the same legal authority. An example is the conflict between the Law of Ukraine No. 2135-XII[2] and the Law of Ukraine No. 1280-IV[3]. The conflict arises because Article 8 of Intelligence Law permits the covert collection of information, including the interception of communication channels. In contrast, Article 40 "On Telecommunications" prohibits operators from transmitting information to third parties without a court order. As a result of this conflict, evidence collection is either impeded or conducted with procedural violations. Evidence obtained under such circumstances is questionable and may be excluded during judicial proceedings.

Vertical conflicts manifest as contradictions between subordinate acts or ministerial orders and regulations, such as laws or the Constitution of Ukraine. A pertinent example of a vertical conflict impeding intelligence-gathering during the investigation of official misconduct is the inconsistency between Order No. 761 of the Ministry of Internal Affairs[4] and Article 32 of the Constitution of Ukraine[5] and Article 8 of the European Convention on Human Rights[6]. The Ministry Order permits the use of informant networks without proper documentation and direct judicial authorisation. Nevertheless, the aforementioned constitutional and convention provisions guarantee the right to privacy and stipulate that any interference must be lawful, proportionate, and sanctioned by a court. Consequently, materials collected through informant networks may be classified as unlawful intrusions into private life and deemed inadmissible by the court.

Temporal conflicts arise from the simultaneous operation of old and new legal provisions when corresponding amendments to related laws have not been introduced. An example of a temporal conflict affecting intelligence-gathering during the investigation of

[1] Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[2] Law of Ukraine No. 2135-XII "On Operational and Investigative Activities". (1992, February). Retrieved from https://zakon.rada.gov.ua/laws/show/2135-12#Text.
[3] Law of Ukraine No. 1280-IV "On Telecommunications". (2003, November). Retrieved from https://zakon.rada.gov.ua/laws/show/1280-15#Text.
[4] Order of the Ministry of Internal Affairs of Ukraine No. 761 "On Amendments to the Instruction on Organisation of Operational and Investigative Activities and Covert Work by Operational Units of the National Police of Ukraine". (2020, October). Retrieved from https://zakon.rada.gov.ua/laws/show/z1114-20#Text.
[5] Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/en/254%D0%BA/96-%D0%B2%D1%80.
[6] European Convention on Human Rights. (1950, November). Retrieved from https://www.echr.coe.int/documents/d/echr/convention_ENG.

official misconduct is the inconsistency between the Criminal Procedure Code of Ukraine[1] and the Law of Ukraine No. 2135-XII[2,3]. Certain provisions of the more recent Criminal Procedure Code, including those governing covert investigative actions, conflict with "On Intelligence-Gathering Activitiy" law[4], which was adopted over three decades ago and contains generalised and ambiguous regulations. Parallel application of the provisions of the Criminal Procedure Code and the "On Intelligence-Gathering Activities" law increases the risk of unconstitutional practices, court decisions declaring certain evidence inadmissible, and state liability for violations of human rights, including those guaranteed by the European Convention on Human Rights[5].

The effectiveness of intelligence-gathering during the investigation of economic crimes depends upon the timely identification and elimination of legislative conflicts. The complexity of this task lies in the existence of conflicts at different levels: horizontal, vertical, and temporal. Legislative conflicts may be addressed, among other means, through the analysis and adaptation of intelligence-gathering practices from countries operating under the continental system of justice.

**International experience of intelligence-gathering in the investigation of economic crimes.** Countries with continental legal systems and well-established practices in investigating economic crimes were selected as the basis for comparative analysis. Certain elements of this international experience may be adapted to improve intelligence-gathering activities in Ukraine. As of 2023-2024, Germany witnessed a surge in economic crime, partly attributable to the emergence of advanced technological tools facilitating cybercrime (Achim & Clement, 2023). This trend is illustrated by the Federal Office for Information Security (2024) report, which recorded that the number of new malicious programmes capable of enabling economic offences reached 350,000 in 2024. These data support the assertion that effective intelligence-gathering is critical for the timely detection and prosecution of economic offences. Intelligence-gathering activities in Germany are conducted in accordance with the laws and regulations analysed below.

Particular attention in the conduct of intelligence-gathering activities in Germany is devoted to cooperation, including at the international level. Cross-border cooperation is regulated by international legal instruments, facilitating the timely collection of data, minimising the risk of data loss, and enhancing transparency in intelligence operations across various levels.

The existence of an extensive legal framework, focused on interdisciplinary and international cooperation, does not, however, guarantee the avoidance of vertical and temporal legal conflicts, as illustrated by the Wirecard case[6]. In 2020, it was discovered that €1.9 billion, allegedly held in Philippine accounts by the German fintech company, in fact did not exist (Jo *et al*., 2021). Intelligence-gathering activities were conducted under the Criminal Code of the Federal Republic of Germany (§263, §266, §129)[7], the Code of Criminal Procedure of the Federal Republic of Germany[8] (authorising searches, telecommunications surveillance, asset freezes, the use of undercover agents, and technical surveillance tools), and the GwG (the Anti-Money Laundering Act)[9]. These activities uncovered fictitious transactions through shell companies in Asia, falsified reporting, and money laundering. Following large-scale intelligence-gathering efforts, which involved special units of the German police and customs service alongside international structures in the Philippines, Dubai, and Singapore, Wirecard's CEO Markus Braun was arrested. Wirecard's Chief Operating Officer, Jan Marsalek, remains internationally wanted, indicating shortcomings in the effectiveness of the intelligence-gathering response. Key criticism centres on the fact that the intelligence-gathering activities were initiated belatedly, allowing the company to deceive regulators and auditors over an extended period. The case nonetheless served as a catalyst for financial regulatory reform and for strengthening economic liability for criminal acts. The aftermath also saw the expansion of the powers of the Federal Financial Supervisory Authority (BaFin).

According to S. Mocetti & L. Rizzica (2023), the relatively high level of economic offences in Italy, compared with the European average, is partly attributable to socio-cultural factors such as the entrenched presence of mafia organisations at various levels of governance. The existence of the mafia may, however, also be regarded as a factor prompting the development of effective strategies for investigating and prosecuting economic crimes.

[1] Criminal Procedure Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[2] Law of Ukraine No. 2135-XII "On Operational and Investigative Activities". (1992, February). Retrieved from https://zakon.rada.gov.ua/laws/show/2135-12#Text.
[3] Law of Ukraine No. 1280-IV "On Telecommunications". (2003, November). Retrieved from https://zakon.rada.gov.ua/laws/show/1280-15#Text.
[4] Law of Ukraine No. 4651-VI "On Intelligence-Gathering Activity". (1992, February). Retrieved from https://zakon.rada.gov.ua/laws/show/2135-12#Text.
[5] European Convention on Human Rights. (1950, November). Retrieved from https://www.echr.coe.int/documents/d/echr/convention_ENG.
[6] Judgment of the Munich Regional Court No. 5HK O 15710/20. (2021, December). Retrieved from https://www.wirecard.com/wp-content/uploads/2023/08/Judgment-of-the-Munich-Regional-Court-I-dated-05.05.2022-5-HK-O-15710_20.pdf.
[7] Criminal Code of the Federal Republic of Germany. (1871, May). Retrieved from https://www.gesetze-im-internet.de/stgb/.
[8] Code of Criminal Procedure of the Federal Republic of Germany. (1950, September). Retrieved from https://www.gesetze-im-internet.de/stpo/.
[9] Act of the Federal Republic of Germany "On the Tracing of Profits from Serious Crime". (2017, June). Retrieved from https://www.gesetze-im-internet.de/gwg_2017/BJNR182210017.html.

One of the most high-profile corruption scandals in Italy is the case involving Eni and Saipem[1]. The core of the case revolves around allegations that Eni and Saipem paid multi-million-dollar bribes to officials in Nigeria, Algeria, and other countries to secure advantageous contracts in the oil and gas sector between 2007 and 2010 (Hock, 2020). The intelligence-gathering activities were conducted with the involvement of agencies such as the Milan Public Prosecutor's Office, Finance Guard, National Anti-Corruption Authority, Financial Intelligence Unit (Italy), and international agencies from the United States and the United Kingdom. The large-scale intelligence-gathering effort encompassed multiple areas, including a financial investigation aimed at uncovering suspicious transactions through offshore entities. Other efforts involved wiretapping phones and emails to gather evidence of internal coordination of illicit activities and international cooperation with the United States, France, Algeria, and Nigeria for evidence sharing. In addition to these measures, the investigation involved the use of undercover agents to confirm the bribery channels and financial monitoring to investigate money laundering through front companies. As a result of the ongoing investigation, some officials from Saipem were convicted in Algeria. In 2021, an Italian court acquitted top managers from Saipem and Eni, but both companies suffered reputational damage and were forced to reform their policies to mitigate the losses. Eni, for instance, restructured its internal control system to ensure compliance with responsible business practices.

The examined case highlighted the effectiveness of intelligence-gathering tools in combating transnational corruption. The use of legislative mechanisms such as Legislative Decree 231/2001[2] – a piece of Italian legislation that introduced criminal liability for legal entities for certain offences committed in their interest or for their benefit – helped avoid horizontal conflicts in determining responsibility for both individuals and legal entities. The Saipem-ENI case also demonstrated the potential for resolving vertical legal conflicts in managing international knowledge exchange during the investigation of economic crimes.

**Recommendations for improving economic crime investigations.** The experiences of Germany and Italy in investigating high-profile economic cases provide insights into strategies for avoiding legal conflicts in the field of intelligence-gathering activities. One recommended strategy involves harmonising the legal frameworks for corporate responsibility in cases of economic crimes. This strategy is based on the recognition that, until 2023, Germany lacked a specific law on the criminal liability of legal entities (although the new Law "On Strengthen Integrity in the Economy"[3] had already been drafted), while Italy had Legislative Decree No. 231/2001[4] in effect since 2001, which allows for the prosecution of companies. Drawing on the experience of various European countries**,** it is recommended to introduce a unified model of corporate responsibility based on the principles of Legislative Decree No. 231/2001[5], with clear standards for due diligence, management accountability, and compliance systems. In Ukraine, such a model could be established based on the Criminal Procedure Code or the Law of Ukraine No. 2135-XII[6] It is also recommended that the provisions of the Law[7] be aligned with the Criminal Procedure Code of Ukraine[8]. The existence of a temporal legislative conflict is due to the emergence of new technologies and methods of pre-trial investigation, the use of which requires clear legal regulation. Establishing a unified model would help avoid horizontal legislative conflicts and ensure impartial investigations and fair accountability for both individuals and legal entities.

The analysis also demonstrates the lack of unified approaches to corporate criminal liability, which creates conditions conducive to high-profile economic scandals. In Ukraine, the absence of a unified mechanism for responsibility is manifested in the limited range of sanctions under Article 96-3 of the CCU[9] for economic crimes. The creation of a unified approach to corporate criminal liability involves adapting European experience, particularly the adoption of a law on corporate criminal liability, akin to Italy's Legislative Decree No. 231/2001[10]. It would also be beneficial to implement requirements for anti-corruption compliance as grounds for mitigating or exempting liability for committed crimes.

[1] Judgment of the Milan Court No. 3055. (2021, March). Retrieved from https://www.eni.com/assets/documents/documents-en/opl-245-full-decision.pdf.
[2] Legislative Decree of the Republic of Italy No. 231. (2001, June) Retrieved from https://www.fbmhudson.com/wp/wp-content/uploads/2021/03/231.ENG_.pdf.
[3] Law of the Federal Republic of Germany "On Strengthen Integrity in the Economy". (2020, August). Retrieved from https://dip.bundestag.de/vorgang/gesetz-zur-st%C3%A4rkung-der-integrit%C3%A4t-in-der-wirtschaft/265689.
[4] Legislative Decree of the Republic of Italy No. 231. (2001, June) Retrieved from https://www.fbmhudson.com/wp/wp-content/uploads/2021/03/231.ENG_.pdf.
[5] Ibidem, 2001.
[6] Law of Ukraine No. 2135-XII "On Operational and Investigative Activities". (1992, February). Retrieved from https://zakon.rada.gov.ua/laws/show/2135-12#Text.
[7] Ibidem, 1992.
[8] Criminal Procedure Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[9] Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[10] Legislative Decree of the Republic of Italy No. 231. (2001, June) Retrieved from https://www.fbmhudson.com/wp/wp-content/uploads/2021/03/231.ENG_.pdf.

The Wirecard case[1] further highlighted that although interdisciplinary cooperation is a key factor in effective intelligence-gathering activities, the absence of clear functional distinctions between investigative bodies creates confusion, increases the risk of information loss, and prolongs the investigation process. In the Wirecard case, for instance, there was confusion over the responsibilities between the financial regulator BaFin, the prosecutor's office, and the financial monitoring service. In contrast to their German counterparts, Italian law enforcement agencies demonstrated coordinated interaction between national and international intelligence-gathering agents, leading to the effective investigation of the high-profile transatlantic scandal. At the national level, this interaction took place between the Milan Public Prosecutor's Office – the primary body leading the investigation on behalf of the nation and initiating criminal proceedings against the top management of ENI and Shell – and the Italian Financial Police (Guardia di Finanza), which conducted searches at ENI offices, seizing documents and electronic correspondence[2]. At the international level, interdisciplinary cooperation was documented between Guardia di Finanza and law enforcement agencies in Nigeria, notably the Economic and Financial Crime Commission, and the United Kingdom, including the Serious Fraud Office. Access to witnesses and data exchange was also facilitated through cooperation with the International Criminal Police Organization (INTERPOL). Based on the analysis of the Italian experience, it is recommended to establish a unified coordinating structure that clearly defines the roles of control, supervision, pre-trial investigation, and intelligence-gathering. This approach was successfully implemented in Italy through the collaboration between the Guardia di Finanza and the prosecution. In Ukraine, this interaction should be ensured between the National Police[3], the Security Service of Ukraine (SBU)[4], the NABU[5], and the Bureau of Economic Security.

It is also recommended that the procedures for intelligence-gathering activities be legislatively enshrined while safeguarding human rights. This recommendation is based on the understanding that the use of certain intelligence-gathering procedures, such as phone tapping, surveillance, or access to banking data, increases the risk of abuse by law enforcement. In cases of human rights violations, specifically those guaranteed by the Constitution[6] and the ECHR[7], authorities conducting intelligence-gathering activities would gain access to evidence that could not be deemed inadmissible in court. In Ukraine, the collection of evidence within the framework of intelligence-gathering activities is primarily regulated by the Law "On Intelligence-Gathering Activities"[8] which is morally outdated and does not consider the realities of the digital age, such as the emergence of cloud storage or messaging applications. In the Ukrainian context, the legislative enshrinement of intelligence-gathering procedures would require updating the laws governing such activities in line with European standards, clearly defining permissible search methods, establishing mechanisms for law enforcement accountability, ensuring basic human rights, and aligning with the practice of the European Court of Human Rights. The proposed changes are influenced by the analysis of the German experience, where intelligence-gathering activities are regulated by §§ 100a-100g of the Criminal Code of the Federal Republic of Germany[9], focusing on proportionality and judicial control. The experience of Italy was also considered, where the Code of Criminal Procedure of Italy[10] clearly defines the admissibility of covert measures under the supervision of the prosecutor. Given legislative realities of Ukraine, the adoption of a single, specialised law on intelligence-gathering activities, harmonised with the Criminal Procedure Code and the conventional standards of the ECHR[11], is recommended. Establishing an independent control mechanism for wiretapping using European standards is also advised. Avoiding both horizontal and vertical legislative conflicts could be achieved by developing a wiretapping control mechanism based on the German model.

In addition to the recommendations already discussed, it would also be prudent to harmonise the powers of financial intelligence and investigation to prevent

[1] Judgment of the Munich Regional Court No. 5HK O 15710/20. (2021, December). Retrieved from https://www.wirecard.com/wp-content/uploads/2023/08/Judgment-of-the-Munich-Regional-Court-I-dated-05.05.2022-5-HK-O-15710_20.pdf.
[2] Judgment of the Milan Court No. 3055. (2021, March). Retrieved from https://www.eni.com/assets/documents/documents-en/opl-245-full-decision.pdf.
[3] Law of Ukraine No. 580-VIII "On the National Police". (2015, July). Retrieved from https://zakon.rada.gov.ua/laws/show/580-19#Text.
[4] Law of Ukraine No. 2229-XII "On the Security Service of Ukraine". (1992, March). Retrieved from https://zakon.rada.gov.ua/laws/show/2229-12#Text.
[5] Law of Ukraine No. 1698-VII "On the National Anti-Corruption Bureau of Ukraine". (2014, October). Retrieved from https://zakon.rada.gov.ua/laws/show/1698-18#Text.
[6] Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/en/254%D0%BA/96-%D0%B2%D1%80.
[7] European Convention on Human Rights. (1950, November). Retrieved from https://www.echr.coe.int/documents/d/echr/convention_ENG.
[8] Law of Ukraine No. 2135-XII "On Operational and Investigative Activities". (1992, February). Retrieved from https://zakon.rada.gov.ua/laws/show/2135-12#Text.
[9] Criminal Code of the Federal Republic of Germany. (1871, May). Retrieved from https://www.gesetze-im-internet.de/stgb/.
[10] Code of Criminal Procedure of Italy. (1988, September). Retrieved from https://www.gazzettaufficiale.it/sommario/codici/codiceProceduraPenale.
[11] European Convention on Human Rights. (1950, November). Retrieved from https://www.echr.coe.int/documents/d/echr/convention_ENG.

vertical conflicts. The analysis of the M. Zlochevskyi[1] case indicated a low level of practical interaction between financial monitoring services and law enforcement agencies. Improved interaction can be achieved by granting procedural status to analytical units, similar to the UIF in Italy or the FIU in Germany. It is also recommended that a mechanism for rapid response to suspicious transactions identified within the framework of financial monitoring be developed.

Avoiding vertical conflicts can also be achieved through strengthening international agreements and harmonisation with European Union law, particularly in cases involving international crimes. The implementation of provisions of EU Directive No. 2014/42/EU[2] on the confiscation of assets related to economic crimes is recommended. Freezing and confiscating instruments and proceeds from crime before a judicial verdict will enhance the effectiveness of investigations into offshore schemes, fraudulent contracts, or the non-appearance of suspects. It is also proposed to use mechanisms for mutual recognition of decisions and evidence within EU cooperation and INTERPOL, the effectiveness of which was proven in the Saipem-ENI case.

Thus, the existence of horizontal, vertical, and temporal conflicts reduces effectiveness and prolongs the investigation of economic crimes in Ukraine. The cases under study indicate the need to revise the regulatory and legal framework governing intelligence-gathering activities in the investigation of economic crimes. The analysis of experiences in certain European countries, including Germany and Italy, provides insights into the necessary changes in Ukrainian legislation and its further harmonisation with European standards.

## Discussion

The relevance of this study lies in the fact that resolving legislative conflicts will improve the financial crime investigations and contribute to the economic development of the country. The relevance of the study is confirmed by P. Maweu *et al.* (2024), who conducted a statistical analysis of the impact of anti-money laundering policies on economic crime statistics in a sample of 39 commercial banks in Kenya. According to the researchers, the implementation of various investigation strategies reduced the number of economic crimes in the country's banking sector by 33.1%. The relevance of the study is also confirmed by P. Gerbrands *et al.* (2022), who emphasised that the use of modern investigative methods is effective in combating systemic economic issues, such as money laundering. The alignment between this study and previous research indicates that economic crime investigations can prevent recidivism in the sector if certain conditions are met. According to S. Shah (2024), these conditions include the factors involved in the investigation, particularly the tools used and the level of awareness of investigators regarding the application of these tools. A certain correspondence exists between S. Shah's (2024) ideas and the perspective proposed in this study, which argues that the current system of intelligence-gathering activities in Ukraine for investigating economic crimes is insufficiently effective and requires further enhancement.

The study also noted the importance of resolving conflicts and strengthening cooperation among various bodies conducting intelligence-gathering activities, a point confirmed by previous research. The importance of such cooperation was highlighted by O. Uliutina (2021), who concluded that international collaboration is an effective tool in the fight against transnational organised crime, including in the economic sphere. J. Socher (2022) analysed the German experience and concluded that, despite certain national differences, efforts to create an international legal framework are effective for investigating economic crimes and providing equal access to justice. S. Ohinok & M. Kopylchak (2024) examined the Ukrainian experience and concluded that cooperation with international initiatives and organisations, such as MONEYVAL, FATF, and the European Banking Authority, contributes to the effective investigation and combating of financial crimes, such as money laundering. A. Golonka (2024) argued that such cooperation is of particular importance in developing countries, as, without a clear legal framework, they can easily become hubs for economic crime. The ideas presented in previous studies underscore the importance of recommendations for resolving institutional conflicts at the national and international levels.

Apart from the factors already mentioned, this study examined the notion that certain horizontal conflicts, particularly the abuse of "plea agreements" affect subsequent intelligence-gathering efforts, increasing the risk of recidivism. Based on the M. Zlochevskyi case, the conclusion was made that the absence of irreversible punishment encourages further violations. C. Yarana (2023) presented a similar perspective, analysing data from 317 companies listed on the Thai stock exchange between 2015 and 2020. According to the findings, which were based on a sample of 1,855 observations, four main groups of factors influenced economic crime investigations: pressure, opportunity, rationalisation, and capability. In the context of this study, the imperfection of Ukrainian economic legislation can be viewed as an opportunity, as the motivation to commit economic crimes increases when the severity of potential punishment is lower. S. Patel *et al.* (2023) highlighted the need for legislative changes and the

[1] Judgment of the Higher Anti-Corruption Court of Ukraine No. 991/1297/22. Retrieved from https://hacc-decided.ti-ukraine.org/en/documents/112569718.

[2] Directive of the European Parliament and of the Council No. 2014/42/EU "On the Freezing and Confiscation of Criminally Derived Funds and Proceeds in the European Union". (2014, April). Retrieved from https://zakon.rada.gov.ua/laws/show/en/984_049-14?lang=en#Text.

introduction of new initiatives aimed at reducing the risk of economic offences, including money laundering. A correlation was noted between the quoted recommendation and the idea presented in this study regarding changes in legislation and judicial processes, alongside an increased focus on accountability for committed crimes. K. Alblowi (2023) emphasised that changes at the regional level, aimed at the effective investigation of economic crimes, could stimulate greater competitiveness and sustainable development both nationally and internationally. This idea is particularly relevant for Ukraine, which is striving to integrate into the international legal framework.

The study also proposed the need to harmonise Ukrainian legal frameworks regarding the investigation of economic crimes with European standards. The relevance of this recommendation was confirmed in previous studies, particularly by T.R. van Roomen & B. De Jonge (2024). According to the cited researchers, the existence of unified investigation models facilitates cross-border access to and exchange of data between law enforcement agencies, which is crucial for mapping and preventing economic crimes, punishing suspects, and confiscating criminally obtained assets. The importance of harmonising national legal frameworks with European standards was also emphasised by M. Šalčius (2024), who argued that European comprehensive strategies, including asset confiscation and the return of illegally obtained profits, are a powerful tool in reducing the number of financial crimes at national and transnational levels. Further comparison with previously conducted studies demonstrates some limitations of this study, including an insufficient analysis of the moral and ethical aspects of the proposed legal harmonisation. An overview of the moral and ethical foundations of intelligence-gathering activities in the investigation of economic crimes is of paramount importance, as the right to dignified and fair treatment of the individuals involved in a case is emphasised in many previously cited documents. The strategy proposed in this study for harmonising investigative actions with the requirements of the ECHR[1] lacks practical recommendations, which constitutes a considerable limitation. In contrast to this study, practical strategies for harmonisation had been thoroughly examined, notably by D. Casaburo & I. Marsh (2024). According to the cited experts, harmonisation involves shifting the focus from punishing those guilty of committing financial crimes to supporting the victims. This shift means that greater attention should be paid to preventive strategies aimed at eliminating the root causes of specific economic crimes.

Thus, numerous correspondences were found between the ideas presented in this study and those put forward earlier. These correspondences confirm the relevance and feasibility of the strategies suggested in this paper to improve the effectiveness of intelligence-gathering activities in the investigation of economic crimes. Previous research also provides an understanding of the factors that determine the implementation of these strategies within the Ukrainian context. However, the analysis conducted also indicated some discrepancies between the current paper and earlier studies. The key discrepancy is the absence of a detailed analysis of the moral and ethical aspects of harmonising the legal framework for investigating economic crimes with European standards. The lack of understanding of the moral and ethical aspects led to an absence of practical recommendations for harmonising the legal framework of Ukraine for investigating economic crimes with the broader European framework.

## Conclusions

The study found that legislative conflicts of a horizontal, vertical and temporal nature significantly complicate the process of investigating economic crimes in Ukraine. Such conflicts not only slow down the collection of evidence, but also create preconditions for the inadmissibility of evidence in court, which, in turn, allows offenders to avoid liability. An important factor is the lack of consistency in legislation on the liability of legal entities, the weak standardisation of mechanisms for bringing them to criminal liability, and the lack of clearly defined approaches to interdisciplinary cooperation in the investigation of economic crimes. A separate problem is the gap between Ukrainian norms and European standards, which complicates international cooperation and reduces the effectiveness of combating transnational crimes.

A comparative analysis of the experience of Germany, Italy and Ukraine shows that Italy demonstrated the highest efficiency in the field of intelligence and investigation of economic crimes. This is explained not only by a more harmonised legal framework, but also by a clear division of powers between competent authorities, a coordinated structure focused on international cooperation, and the effective application of special laws, such as Legislative Decree No. 231/2001, which provides for criminal liability of companies. Ukrainian practice, despite the existence of institutions to combat economic crimes, such as NABU, NAPC, SBU and BES, continues to demonstrate a low level of effectiveness. This is evidenced by the low conviction rate, the large number of plea bargains that often result in fines, and the low corruption perception index. As a result, there is a risk of recurrence of crimes, reduced trust in the law enforcement system, and undermined investment attractiveness of the state. In this context, the

[1] European Convention on Human Rights. (1950, November). Retrieved from https://www.echr.coe.int/documents/d/echr/convention_ENG.

adaptation of foreign experience aimed at eliminating regulatory contradictions, improving interagency coordination, legislating procedures for collecting intelligence in a human rights-compliant manner, and updating Ukrainian legislation to meet the requirements of the digital age is of particular relevance. Implementation of such changes will help to increase the effectiveness of investigations, strengthen the rule of law and create a favourable environment for doing business.

Future research should concentrate of socio-cultural factors affecting financial crime and the introduction of innovative technologies in the fight against economic crimes are also promising areas.

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## Conflict of Interest

None.

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# Законодавчі колізії в галузі оперативно-розшукової діяльності та їх вплив на практику під час розкриття економічних злочинів

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**Анотація**
Представлене дослідження мало на меті проаналізувати вплив горизонтальних, вертикальних і темпоральних колізій на проведення оперативно-розшукової діяльності під час розслідування економічних злочинів. Для цього було використано метод контент-аналізу для доктринального тлумачення економічних злочинів і відповідальності за їх учинення, а також метод кейс-стаді для вивчення особливостей проведення оперативно-розшукової діяльності в Україні, Німеччині та Італії. На підставі результатів порівняльного аналізу сформульовано висновок, що в Італії забезпечено найвищу ефективність розслідування економічних злочинів, зокрема транснаціональних. Нижча ефективність у Німеччині й Україні обумовлена наявністю законодавчих колізій, з яких найчастіше документованими були: недостатня гармонізація правових меж щодо корпоративної відповідальності за вчинені економічні злочини, відсутність уніфікованих підходів до кримінальної відповідальності юридичних осіб, неопрацьованість засад міждисциплінарної взаємодії в розслідуванні економічних злочинів і невідповідність аспектів національної нормативно-правової бази універсальним стандартам. З огляду на виокремлені проблеми, запропоновано такі складові стратегії уникнення законодавчих колізій у розслідуванні економічних злочинів: упровадження уніфікованої моделі розслідування економічних злочинів; формулювання універсальних вимог до антикорупційного комплаєнсу; створення єдиної координаційної структури на заохочення міждисциплінарної взаємодії між органами розслідування; законодавче закріплення процедур розслідування з акцентом на права людини; гармонізація українського законодавства з європейським у розслідуванні економічних правопорушень. Отримані результати може бути використано для покращення статистики розслідування економічних злочинів в Україні та створення рівних і сприятливих умов для ведення господарської діяльності

**Ключові слова:**
континентальна система правосуддя; відмивання грошей; кіберпорушення; імплементація досвіду; інтеграція

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# Impact of national legislation of EU member states on the powers of the European Central Bank: Analysis of conflicts and overlaps

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**Abstract**
The purpose of the study was to analyse the impact of the national legislation of EU member states on the powers of the European Central Bank and identify legal conflicts and overlaps of competencies between it and national financial regulators. To achieve this goal, special legal methods were used, in particular, comparative legal analysis, formal legal method, system approach method, and legal modelling method. The study showed that there are significant legal conflicts between national legislation and regulatory mechanisms of the European Union regarding the supervisory powers of the European Central Bank. Overlaps in the functions of national financial regulators and the European Central Bank were revealed, which can lead to legal contradictions and inefficient functioning of supervisory institutions. The analysis of coordination mechanisms between national regulators and the European Central Bank has shown that the lack of a unified approach to the implementation of European norms in national legislation creates legal difficulties in the harmonisation of financial law. It was also revealed that the existing mechanisms of interaction between the European Central Bank and national regulators need to be improved, in particular, in the field of supervision of systemically important banks. The analysis helped to formulate recommendations for strengthening coordination of supervisory functions of the European Central Bank and national regulators, and to suggest ways to eliminate legal conflicts and overlaps of powers. The proposals developed included improving information exchange mechanisms, expanding the role of the European Central Bank in overseeing the banking sector, and creating effective legal mechanisms to resolve contradictions between European and national financial supervisors

**Keywords:**
banking supervision; harmonisation; coordination; supervisory mechanism; financial stability

## Introduction

The relevance of the study is conditioned by the need to ensure consistency between the national legislation of the member states of the European Union (EU) and the legal norms governing the activities of the European Central Bank (ECB). The conditions for the functioning of the ECB directly depend on the legal framework established both at the EU level and within individual states. Despite the harmonisation of financial regulation, there are still cases of regulatory disagreements that may affect the implementation of monetary

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policy, banking supervision, and ensuring financial stability. The presence of such contradictions complicates decision-making, creates legal uncertainty and potential risks to the stability of the EU financial system. In particular, the differences may relate to the scope of banking regulation, the procedure for supervision of financial institutions, macroprudential control procedures, and mechanisms for sharing responsibility between the ECB and national regulators. This can lead to fragmentation of the regulatory environment, reduced effectiveness of monetary policy, and difficulties in responding to crisis situations.

The harmonisation of legal norms within the EU is a prerequisite not only for ensuring the stability of the eurozone, but also for enhancing financial integration and strengthening the single market. Identifying and analysing such legal differences helps to assess their impact on the ECB's activities and consider possible ways to improve regulation in this area. The scientific discourse actively considers various aspects of the interaction of national and supranational regulatory mechanisms, but there are still a number of unresolved issues regarding potential legal conflicts and overlaps of functions.

The role of market discipline and macroprudential policy in ensuring the stability of banks is the subject of research by F.A. Matos *et al.* (2024). They concluded that the effectiveness of financial regulation largely depends on a combination of national and supranational control mechanisms, which confirms the need for a detailed analysis of the interaction of national legal norms with the ECB's regulatory policy. P.-L. Tseng & W.-C. Guo (2022) investigated the impact of the presence of state-owned banks in the financial system on the level of risky operations of private banks. The researchers found that in conditions of mixed markets, state-owned banks can act as a stabilising factor, but at the same time create potential challenges for a single financial policy, since their activities are regulated mainly at the national level.

Macroprudential regulation under conditions of uncertainty requires an adaptive approach, which was confirmed by the findings of Z. Venter (2022). The researcher emphasised that different legal models can both enhance the stability of the banking system and lead to legal conflicts between the ECB and national regulators. M.Á. López & M.D.L.L. Matea (2020) analysed the mortgage valuation system in Spain and its international counterparts, conducting a comparative review of practices in different jurisdictions. They emphasised the role of regulation in ensuring financial stability and stressed the importance of clear criteria for evaluating collateral to reduce systemic risks. The study also examined the mechanisms of regulatory control over mortgage lending that have an impact on the overall macroprudential policy and sustainability of the banking system.

In times of systemic crises, the effectiveness of macroprudential policies becomes particularly important. T.F.A. Matos *et al.* (2023) analysed their impact on bank sustainability during the COVID-19 pandemic. The researchers evaluated the effectiveness of buffer capital regulation and mechanisms for limiting credit risk, noting that the level of integration of banks into the global financial system affects the effectiveness of such measures. C. Wang & Y. Lin (2021) investigated the impact of bank income diversification on risk levels in the Asia-Pacific region. The researchers found that different approaches to banking regulation can lead to an uneven distribution of risks in the financial system, which is relevant for studying legal conflicts between the ECB and national regulators.

Ukrainian researchers also addressed issues of macroprudential regulation. O. Antnonyuk (2020) analysed macroprudential policy tools, focusing on their use in Ukraine, which allowed drawing parallels with the ECB mechanisms. L. Zherdetska & M. Kambur (2021) conducted a macroprudential analysis of the banking sector of Ukraine, identifying factors that can affect the stability of the financial system. Research by V.V. Kovalenko & N.V. Radova (2019) on monitoring the financial stability of the banking system of Ukraine was also valuable for understanding the problems of regulatory interaction. The EU's experience in implementing macroprudential measures is valuable for further financial reforms. O.M. Oliynyk (2019) examined the main regulatory tools, in particular, counter-cyclical capital buffers and measures to control financial risks. The researcher reviewed the effectiveness of macroprudential measures introduced by the European Central Bank and assessed their adaptability in the national economies of EU member states. Special attention was paid to the prospects for implementing these approaches in the financial system of Ukraine. A. Tsvyetkov (2024) showed that the EU banking sector still faces challenges, including low profitability and problems in cooperation between banks and government agencies

The analysis of scientific sources showed that considerable attention was paid to the issues of macroprudential regulation, financial stability, and interaction between public and private banks. However, aspects of legal conflicts between national legislative norms and ECB regulatory policies have not been sufficiently investigated. This creates the need for a systematic analysis of the impact of the national legislation of EU member states on the competence of the ECB, which will identify problematic aspects and potential ways to resolve them.

The purpose of the study was to analyse possible conflicts and overlaps between national legal norms and the ECB's regulatory policy. The objectives of the study were: to review the national legislation of the EU member states concerning the activities of central banks and financial regulation; to carry out a systematic analysis of national and supranational legal norms to

identify possible conflicts and overlaps between them; to classify identified conflicts and overlaps by areas of activity and the nature of their impact on the functioning of the ECB.

## Materials and Methods

The study of the impact of the national legislation of the EU member states on the powers of the ECB was carried out based on the use of special legal methods, which allowed for a comprehensive approach to the analysis of legal conflicts and overlap of powers between the ECB and national regulators. The mechanisms of coordination of supervisory powers between the ECB and national financial control bodies were analysed using the example of Germany, France, and Poland. The choice of these countries was explained by their impact on the EU financial system, differences in legal regulation and the role of their central banks in banking supervision processes. Germany was chosen as a country with one of the largest banking systems in Europe and a powerful regulatory body, the Federal Financial Supervisory Authority (BaFin), which oversees financial institutions together with the Bundesbank. France was considered because of its active participation in shaping European financial policy, and the activities of the French Prudential Supervision and Resolution Authority (ACPR), which coordinates supervision with the ECB. Poland was chosen as an example of a state in Central and Eastern Europe that is not part of the eurozone, but actively implements EU regulations through the activities of the Financial Supervision Commission (KNF) and the National Bank of Poland.

The main method of research was comparative legal analysis, which was used to assess the compliance of the national banking legislation of individual EU member states with EU regulations governing the activities of the ECB. Within the framework of this method, the provisions of legislative acts of Germany, France, and Poland were compared with the main international and European regulatory documents. The formal legal method was used for a detailed analysis of the structure and content of key regulatory legal acts regulating the activities of financial institutions and banking supervision in Germany, France, and Poland. The main documents for the analysis were: Law on the Federal Financial Supervisory Authority (Financial Services Supervision Act – FinDAG)[1], Monetary and Financial Code[2], Law No. 2010-1249 "On Banking and Financial Regulation"[3], Act on the National Bank of Poland[4], Act on Financial Market Supervision[5], Basic Law for the Federal Republic of Germany[6], Banking Act (Kreditwesengesetz – KWG)[7], Constitution of the Republic of Poland[8], Directive No. 2013/36/EU of the European Parliament and of the Council "On Access to the Activity of Credit Institutions and the Prudential Supervision of Credit Institutions"[9], Act on the Restructuring of Cooperative Banks and the Bank Gospodarki Żywnościowej and on Amending Certain Acts[10], Protocol (No. 4) on the Statute of the European System of Central Banks and of the European Central Bank[11], Agreement Between the European Central Bank and the National Central Banks of the Member States Outside the Euro Area Laying Down the Operating Procedures for an Exchange Rate Mechanism in Stage Three of Economic and Monetary Union[12], Opinion of the European Central Bank "On a Draft Law Abolishing the State Guarantee Provided in Connection with Emergency Liquidity Assistance (CON/2016/55)"[13]. The study included an analysis of the rules defining the boundaries and mechanisms of interaction between the ECB and national financial regulators, and legal provisions that create possible conflicts and overlaps of powers in this area.

The study used the analysis of court decisions to assess the interaction of national legal systems with

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[7] Banking Act of the Federal Republic of Germany. (1961, July). Retrieved from https://www.gesetze-im-internet.de/kredwg/BJNR008810961.html.
[8] Constitution of the Republic of Poland. (1997, April). Retrieved from https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm.
[9] Directive of the European Parliament and of the Council No. 2013/36/EU "On Access to the Activity of Credit Institutions and the Prudential Supervision of Credit Institutions". (2013, June). Retrieved from https://eur-lex.europa.eu/eli/dir/2013/36/oj/eng.
[10] Act on the Restructuring of Cooperative Banks and the Bank Gospodarki Żywnościowej and on Amending Certain Acts. (1994, June). Retrieved from https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19940800369/U/D19940369Lj.pdf.
[11] Protocol (No. 4) on the Statute of the European System of Central Banks and of the European Central Bank. (2016, June). Retrieved from https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:12016M/PRO/04.
[12] Agreement Between the European Central Bank and the National Central Banks of the Member States Outside the Euro Area Laying Down the Operating Procedures for an Exchange Rate Mechanism in Stage Three of Economic and Monetary Union. (2006, March). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32006X0325(01)&from=cs.
[13] Opinion of the European Central Bank "On a Draft Law Abolishing the State Guarantee Provided in Connection with Emergency Liquidity Assistance (CON/2016/55)". (2016, November). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52016AB0055.

supranational EU norms. In particular, an important case for understanding the limits of central bank independence and the impact of national legislation was the Judgment of the Court (Grand Chamber) Proceedings Brought by Heinrich Weiss and Others[1], examined by the German Federal Constitutional Court (BVerfG). The use of the case study method allowed tracing real legal conflicts and their impact on national financial regulators.

In addition, the legal modelling method was applied, which helped to assess possible scenarios for the development of the EU regulatory policy in the field of banking supervision and interaction of the ECB with national regulators in the context of further integration of the EU financial market. In particular, the study examined the prospects for improving the mechanisms for coordinating powers between the ECB and national regulators, eliminating conflicts in law enforcement, and improving the effectiveness of implementing financial supervision policies.

## Results

**Legal status of the ECB in the context of the European Union.** The establishment of the European System of Central Banks (ESCB) was a key legal step in the development of the European Union, which led to the creation of new institutional mechanisms for managing monetary policy and transforming the legal status of national central banks of the eurozone member states. As a result, national banks lost some of their autonomy, becoming part of the EU's unified financial structure, which guarantees their independence from national governments and regulators.

The legal status and powers of the ESCB are determined by a number of key treaties of the European Union, in particular, the Treaty on European Union[2], Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts[3], Treaty of Nice Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts[4], the Treaty of Lisbon Amending the Treaty on European Union, and the Treaty Establishing the European Community[5]. The central regulatory act governing the operation of this system is Protocol (No. 4)[6], which is annexed to the Treaty on European Union as an integral part of it. According to Article 127 of the Treaty on European Union, the primary goal of the ESCB is to ensure price stability in the eurozone, which is the main prerequisite for sustainable economic development and integration of the financial markets of the member states. The ESCB's activities are based on the principles of an open market economy, competition, and efficient allocation of financial resources, which is stipulated in Article 119(3) of the Treaty on European Union.

The key tasks of the ESCB include the definition and implementation of the EU common monetary policy, the implementation of operations in the foreign exchange market, the management of official foreign exchange reserves of member states, ensuring the effective functioning of payment systems, and promoting the stability of the financial system and the effective implementation of banking supervision (Protocol (No. 4) on the Statute[7]). According to Article 127 of the Treaty on European Union[8], the ESCB plays an important role in ensuring the proper functioning of financial institutions by establishing common regulatory norms and providing recommendations on prudential supervision.

The European Central Bank is the central body in the ESCB system that manages monetary policy and coordinates the actions of national central banks. It has the authority to provide instructions to the central banks of its member countries, ensuring the implementation of a single policy in the field of financial regulation. Despite the fact that the ECB is a separate legal entity, it operates within the limits of the powers defined by the Treaty on European Union[9], and is subject to the common goals and principles of the European Union. National central banks, in turn, are required to perform their functions in accordance with ECB directives and decisions, which is stipulated in the ESCB's statutory documents (Pham *et al*., 2021).

Of particular importance are the EU secondary law acts that regulate the activities of the ECB and the ESCB. Such acts include regulations, directives, decisions, recommendations, and conclusions adopted by the European Central Bank within its competence. They are binding on the member states of the eurozone and define the legal framework for the activities of national central banks. An important mechanism of legal regulation is also intrasystem agreements, which are adopted

[1] Judgment of the Court (Grand Chamber) in Case No. C-493/17 "Heinrich Weiss and Others". (2018, December). Retrieved from https://curia.europa.eu/juris/liste.jsf?language=en&num=C-493/17.
[2] Treaty on European Union. (1992, July). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOC_1992_191_R_0001_01.
[3] Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts. (1997, November). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:11997D/TXT.
[4] Treaty of Nice Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts. (2001, March). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12001C/TXT.
[5] Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community. (2007, December). Retrieved from https://eur-lex.europa.eu/eli/treaty/lis/sign/eng.
[6] Protocol (No. 4) on the Statute of the European System of Central Banks and the European Central Bank. (2016, June). Retrieved from https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:12016M/PRO/04.
[7] Ibidem, 2016.
[8] Treaty on European Union. (1992, July). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOC_1992_191_R_0001_01.
[9] Ibidem, 1992.

exclusively within the framework of the ESCB's activities. For example, the Agreement Between the European Central Bank and the National Central Banks of the Member States Outside the Euro Area Laying Down the Operating Procedures for an Exchange Rate Mechanism in Stage Three of Economic and Monetary Union[1] sets out the operating procedures for the exchange rate mechanism within the third stage of Economic and Monetary Union. All these legal acts are aimed at ensuring effective coordination between national and supranational financial institutions.

The European system of Central Banks covers all EU member states, regardless of whether they are part of the eurozone. A distinction should be made between eurozone member states and derogatory states that have not switched to the euro. The latter include, in particular, Denmark, which has an official deviation from the obligation to introduce the euro, and Poland, Hungary, the Czech Republic, Sweden, Romania, and Bulgaria, which still retain their national currencies. They are not involved in making decisions on the EU's single monetary policy, but can cooperate with the ECB within the framework of agreed mechanisms for coordinating monetary policy and financial supervision. After joining the eurozone, national central banks become full participants in the Eurosystem, which plays a central role in shaping the Union's financial policy.

The ECB's activities are financed by contributions from the national central banks of the member states. The share of each National Bank is determined based on a special coefficient calculated considering the country's share in the total gross domestic product of the EU and its demographic indicators. This ratio is reviewed every five years, which allows adapting the financial system of the ESCB to changes in the structure of the economies of member states. The participation of non-eurozone countries in making decisions on a single monetary policy is limited.

Thus, the legal status of the European system of central banks and its key body – the European Central Bank – is based on a comprehensive system of legal norms of primary and secondary EU law. The ESCB ensures the unity of the Union's financial policy, promotes economic stability and regulates the activities of national central banks, forming a single monetary policy for the eurozone member states. The relationship between the ECB and national banks is determined by the principles of coordination and subsidiarity, which ensures the effective functioning of the ESCB in the context of multi-level financial integration of the EU.

**Features of national legislation of EU member states**. Within the European Union, the legislative regulation of central banks is largely unified by the provisions of the Treaty on the Functioning of the European Union[2] and Protocol (No. 4)[3]. However, the national legislation of the member states continues to play an important role, which leads to differences in the interaction of central banks with the ECB and in the level of their independence. Analysis of the legislation of Germany, France, and Poland allows identifying different approaches to financial regulation and specifying mechanisms that can affect the competence of the ECB (Table 1).

**Table 1.** Features of national approaches of Germany, France, and Poland to financial regulation and interaction with the ECB

| Germany | France | Poland |
|---|---|---|
| **Legislative framework** | | |
| Act on the German Bundesbank, Law on the Federal Financial Supervisory Authority | Monetary and Financial Code, Law No. 2010-1249 | Act on the National Bank of Poland, Act on Financial Market Supervision |
| **Status of the central bank** | | |
| Bundesbank is an independent institution, but operates within the Eurosystem | Banque de France has relative autonomy, but performs important government functions, in particular, regarding financial stability | Narodowy Bank Polski (NBP) is independent, but not part of the eurozone, so it has broader internal powers |
| **Cooperation with the ECB** | | |
| The Bundesbank is one of the most influential institutions in the ECB, and its role is historically strong | Banque de France is an active participant in the ECB's policy, in particular, on financial stability issues | Poland is not a member of the eurozone, so its cooperation with the ECB is limited to advisory mechanisms and macroeconomic monitoring. |
| **Financial regulation** | | |
| BaFin is responsible for regulating banks, insurance companies, and capital markets | ACPR regulates the financial sector accountable to the Bank of France | KNF exercises overall control over the financial sector |

[1] Agreement Between the European Central Bank and the National Central Banks of the Member States Outside the Euro Area Laying Down the Operating Procedures for an Exchange Rate Mechanism in Stage Three of Economic and Monetary Union. (2006, March). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32006X0325(01)&from=cs.

[2] Treaty on the Functioning of the European Union. (2017, December). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=legissum:4301854.

[3] Protocol (No. 4) on the Statute of the European System of Central Banks and of the European Central Bank. (2016, Jube). Retrieved from https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:12016M/PRO/04.

*Table 1, Continued*

| Germany | France | Poland |
|---|---|---|
| **Level of autonomy in monetary policy** | | |
| Bundesbank operates within the ECB, but historically has a strong position in decision-making on the eurozone | Banque de France serves as an adviser to the government, but also operates within the ECB | NBP has its own monetary policy, as Poland retains its own currency (PLN) |

**Source:** compiled by the author based on Act on the German Bundesbank1; Law on the Federal Financial Supervisory Authority[2]; Monetary and Financial Code[3]; Law No. 2010-1249[4]; Act on the National Bank of Poland[5]; Act on Financial Market Supervision[6]

Comparative analysis indicates that the main difference between the countries under study is the degree of influence of national legislation on the activities of central banks. Germany demonstrates the most stringent model of central bank independence, which is stipulated in the Act on the German Bundesbank[7], according to which the Bundesbank operates independently of the government and cannot receive instructions from the federal government or other authorities. The Law also stipulates that the central bank is required to perform its functions exclusively within the framework of EU and ECB legislation, which further limits the possibility of government intervention.

France adheres to the model of a balanced approach, which is confirmed by the provisions of the Monetary and Financial Code[8]. According to Article L141-1, the Bank of France is formally independent, but has an obligation to advise the government on economic and financial policy issues. In addition, according to Law No. 2010-1249[9], the financial regulator ACPR, accountable to Banque de France, performs supervisory functions, while coordinating its activities with government agencies, which demonstrates a certain level of government influence.

Poland, in turn, retains elements of state influence through the mechanisms of appointing the bank's management and coordinating monetary policy, which is consolidated in the Act on the National Bank of Poland[10]. According to Article 9, the President of the National Bank of Poland is appointed by the President of Poland with the consent of the Sejm, which creates opportunities for political influence. Additionally, according to the Act on Financial Market Supervision[11], the KNF, which regulates the financial sector, has significant powers, but its leadership is also appointed by government agencies, which indicates a certain level of coordination with government agencies. This confirms that Poland has not yet completed the process of integration into the eurozone and remains more flexible in implementing national policies. These differences are important for understanding how national legislation can influence the implementation of the ECB's monetary policy and the effectiveness of its regulatory functions within the EU.

The national legislation of Germany, France, and Poland contains provisions that directly or indirectly affect the powers of the European Central Bank, defining the boundaries of interaction between national regulators and supranational financial authorities. An important feature is the different level of integration of these countries into the European financial system and the specific features of their legal approaches to regulating the banking sector (Poghosyan, 2020). In Germany, the main provisions on financial regulation and cooperation with the ECB are contained in the Act on the German Bundesbank[12], which defines the role of the Bundesbank as a body operating within the European system of central banks. Moreover, this law retains significant financial supervisory powers for Bundesbank, which, despite its integration into the ESCB,

[1] Act on the German Bundesbank. (1957, July). Retrieved from https://www.gesetze-im-internet.de/bbankg/BJNR007450957.html.
[2] Law on the Federal Financial Supervisory Authority (Financial Services Supervision Act – FinDAG). (2002, April). Retrieved from https://www.gesetze-im-internet.de/findag/BJNR131010002.html.
[3] Monetary and Financial Code of France. (2001, January). Retrieved from https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006072026/2001-01-01.
[4] Law of France No. 2010-1249 "On Banking and Financial Regulation". (2010, October). Retrieved from https://www.legifrance.gouv.fr/loda/id/JORFTEXT000022940663.
[5] Act on the National Bank of Poland. (1997, August). Retrieved from https://nbp.pl/o-nbp/akty-prawne-i-dokumenty/ustawa-o-nbp/.
[6] Act of Poland on Financial Market Supervision. (2006, July). Retrieved from https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20061571119/U/D20061119Lj.pdf.
[7] Act on the German Bundesbank. (1957, July). Retrieved from https://www.gesetze-im-internet.de/bbankg/BJNR007450957.html.
[8] Monetary and Financial Code of United Kingdome. (2001, January). Retrieved from https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006072026/2001-01-01.
[9] Law of France No. 2010-1249 "On Banking and Financial Regulation". (2010, October). Retrieved from https://www.legifrance.gouv.fr/loda/id/JORFTEXT000022940663.
[10] Act on the National Bank of Poland. (1997, August). Retrieved from https://nbp.pl/o-nbp/akty-prawne-i-dokumenty/ustawa-o-nbp/.
[11] Act on Financial Market Supervision of France. (2006, July). Retrieved from https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20061571119/U/D20061119Lj.pdf.
[12] Act on the German Bundesbank. (1957, July). Retrieved from https://www.gesetze-im-internet.de/bbankg/BJNR007450957.html.

creates conditions for autonomous influence on domestic financial stability policies. Banking Act[1] defines the rules for the functioning of the banking system, contains provisions on ensuring financial stability and establishes banking supervision mechanisms that are coordinated with the ECB, but simultaneously leave a significant amount of authority to German regulators, in particular BaFin. Law on the Federal Financial Supervisory Authority[2], which regulates the activities of the Federal Office of Financial Supervision, which cooperates with the ECB in matters of regulatory control, but retains a certain institutional independence.

France, unlike Germany, has a more centralised model of financial regulation, which is defined by the provisions of the Monetary and Financial Code[3]. This regulatory act establishes the functions of Banque de France as a key regulator of monetary policy, but in the context of membership in the eurozone, its powers largely depend on the decisions of the ECB. The Law No. 2010-1249[4] establishes oversight mechanisms for financial institutions and provides for France's participation in the Single Supervisory Mechanism (SSM), which restricts the sovereignty of national regulators in key financial control issues. The French financial supervision system is concentrated in the activities of the ACPR, which regulates banking activities and coordinates with the ECB, but simultaneously maintains direct links with government structures, which can potentially affect the degree of independence from pan-European monetary decisions.

A significant difference between Poland and Germany with France is that this country is not a member of the eurozone, which means that NBP retains full control over its domestic monetary policy in accordance with the provisions of the Act on the National Bank of Poland[5]. This legislation defines the independence of the NBP in setting interest rates, regulating the money supply, and managing the exchange rate of the national currency. The Act on Financial Market Supervision[6] sets the rules for the functioning of the KNF, which oversees the banking sector and coordinates certain aspects of regulation in accordance with EU requirements. Although Poland does not delegate NBP directly to the ECB's single monetary policy mechanisms, national regulations are being adapted to European directives, in particular, through macroeconomic monitoring mechanisms and cooperation with the European Systematic Risk Board (ESRB) (2025).

In Germany, the regulatory framework retains significant institutional powers for Bundesbank, which allows it to actively influence European Monetary Policy. French law formally provides for the broad participation of Banque de France in the regulation of the financial system, but due to the centrality of decision-making in the ECB, its actual autonomy is limited. Poland, while remaining outside the eurozone, has an Independent National Bank, whose legislative powers allow the country to independently determine monetary policy, which narrows the ECB's influence on Poland's financial sector compared to the eurozone states.

**Analysis of conflicts and overlaps between national and supranational legislation.** Legal conflicts between the national laws of Germany, France, Poland, and European Union regulations in the field of financial regulation are a serious challenge for legal integration within the eurozone. The main contradictions arise due to differences in approaches to regulation of central banks, the division of competence between national authorities and the ECB, and the specifics of the implementation of European norms in domestic legislation.

One example of legal conflicts between German law and EU norms is the Judgment of the Court (Grand Chamber) Proceedings Brought by Heinrich Weiss and Others[7], in which the German Federal Constitutional Court (BVerfG) questioned the legitimacy of the Public Sector Purchase Programme (PSPP) (European Central Bank, n.d.). The main contradiction arose due to the conflict between Articles 123 and 127 of the Treaty on the Functioning of the European Union[8], establishing the independence of the ECB in monetary policy, and Article 20 Basic Law for the Federal Republic of Germany[9], which assumes that Germany retains state sovereignty and restricts the powers of supranational bodies.

[1] Banking Act (Kreditwesengesetz – KWG) of Federal Republic of Germany. (1961, July). Retrieved from https://www.gesetze-im-internet.de/kredwg/BJNR008810961.html.
[2] Law on the Federal Financial Supervisory Authority (Financial Services Supervision Act – FinDAG) of Federal Republic of Germany. (2002, April). Retrieved from https://www.gesetze-im-internet.de/findag/BJNR131010002.html.
[3] Monetary and Financial Code of France. (2001, January). Retrieved from https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006072026/2001-01-01.
[4] Law of France No. 2010-1249 "On Banking and Financial Regulation". (2010, October). Retrieved from https://www.legifrance.gouv.fr/loda/id/JORFTEXT000022940663.
[5] Act on the National Bank of Poland. (1997, August). Retrieved from https://nbp.pl/o-nbp/akty-prawne-i-dokumenty/ustawa-o-nbp/.
[6] Act of Poland on Financial Market Supervision. (2006, July). Retrieved from https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20061571119/U/D20061119Lj.pdf.
[7] Judgment of the Court (Grand Chamber) in Case No. C-493/17 "Heinrich Weiss and Others". (2018, December). Retrieved from https://curia.europa.eu/juris/liste.jsf?language=en&num=C-493/17.
[8] Treaty on the Functioning of the European Union. (2017, December). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=legissum:4301854.
[9] Basic Law of the Federal Republic of Germany. (1949, May). Retrieved from https://www.gesetze-im-internet.de/gg/BJNR000010949.html.

Article 3 of the Banking Act[1] establishes the independence of the Bundesbank, but requires that national economic interests be respected. This has sparked a conflict with Article 130 of the TFEU, which requires national central banks not to receive any guidance from national governments. In its Headnotes to the Judgment of the Second Senate[2], the court ruled that the PSPP exceeds the ECB's mandate because its impact on national economies is not sufficiently justified, contrary to the principle of proportionality (Article 5(4) of the Treaty on European Union[3]). This has created the risk of a precedent where domestic courts begin to assess the lawfulness of supranational institutions' actions.

France has a high level of harmonisation of national legislation with EU norms, but some contradictions still exist. Monetary and Financial Code[4] establishes broad powers of the Bank of France, but they are limited by the requirements of European Banking Supervision. For example, Article L141-1 of the Monetary and Financial Code defines the independence of Banque de France, but it is not absolute, since the French government has influence on decision-making processes. This creates a legal conflict with Article 130 of the Treaty on European Union[5] on the independence of central banks.

In the field of banking regulation, France faced problems with the implementation of Directive No. 2013/36/EU[6] regarding capital claims, in particular, in connection with the provisions of Articles L511-41 and L511-42 of the Monetary and Financial Code[7]. The requirements of French legislation provided for a higher level of liquidity reserves for banks than established by pan-European standards, which contradicted the principle of harmonisation of financial regulation within the EU. The issue sparked legal and regulatory disputes between the French government and the ECB in 2014. As a result of negotiations and legal assessment, Order No. 2014-158 "Containing Various Provisions for Adapting Legislation to European Union Law in Financial Matters"[8] was adopted to align French regulations with the requirements of Directive No. 2013/36/EU of the European Parliament and of the Council, while preserving certain national peculiarities in the management of systemically important banks.

Poland, which is not a member of the eurozone, has the largest number of conflict-of-laws rules in relations with the EU, as it retains broader autonomy in financial regulation issues. The main problem is the conflict between the Act on the National Bank of Poland[9] and the Treaty on the Functioning of the European Union[10]. Moreover, Polish legislation contains a number of provisions that duplicate European norms: for example, the provisions of the Act on the Restructuring of Cooperative Banks and the Bank Gospodarki Żywnościowej and on Amending Certain Acts[11] contain similar criteria for the rehabilitation of financial institutions, which are already fixed in Directive No. 2014/59/EU[12].

In particular, Article 227 of the Constitution of the Republic of Poland[13] guarantees the independence of the NBP, but the Act on the National Bank of Poland[14] in Article 23 provides that the bank's governor is appointed by a person approved by the President of Poland, which contradicts Article 14.2 of Protocol (No. 4)[15], which stipulates that the heads of national banks should be independent of political influence. This led to a conflict with the ECB in 2016, when the Polish government tried to change the procedure for appointing the NBP governor, which was regarded as a violation of the principle of central bank independence. In response,

[1] Banking Act (Kreditwesengesetz – KWG) of the Federal Republic of Germany. (1961, July). Retrieved from https://www.gesetze-im-internet.de/kredwg/BJNR008810961.html.
[2] Headnotes to the Judgment of the Second Senate of the Federal Republic of Germany. (2020, May). Retrieved from https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2020/05/rs20200505_2bvr085915en.html.
[3] Treaty on European Union. (1992, July). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOC_1992_191_R_0001_01.
[4] Monetary and Financial Code of France. (2001, January). Retrieved from https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006072026/2001-01-01.
[5] Treaty on European Union. (1992, July). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOC_1992_191_R_0001_01.
[6] Directive of the European Parliament and of the Council No. 2013/36/EU "On Access to the Activity of Credit Institutions and the Prudential Supervision of Credit Institutions". (2013, June). Retrieved from https://eur-lex.europa.eu/eli/dir/2013/36/oj/eng.
[7] Monetary and Financial Code of France. (2001, January). Retrieved from https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006072026/2001-01-01.
[8] Order of the Government of France No. 2014-158 "Containing Various Provisions for Adapting Legislation to European Union Law in Financial Matters". (2014, February). Retrieved from https://www.legifrance.gouv.fr/loda/id/JORFTEXT000028625279
[9] Act on the National Bank of Poland. (1997, August). Retrieved from https://nbp.pl/o-nbp/akty-prawne-i-dokumenty/ustawa-o-nbp/.
[10] Treaty on the Functioning of the European Union. (2017, December). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=legissum:4301854.
[11] Act on the Restructuring of Cooperative Banks and the Bank Gospodarki Żywnościowej and on Amending Certain Acts. (1994, June). Retrieved from https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19940800369/U/D19940369Lj.pdf.
[12] Directive of the European Parliament and of the Council No. 2014/59/EU "Establishing a Framework for the Recovery and Resolution of Credit Institutions and Investment Firms". (2014, June). Retrieved from https://eur-lex.europa.eu/eli/dir/2014/59/oj/eng.
[13] Constitution of the Republic of Poland. (1997, April). Retrieved from https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm.
[14] Act on the National Bank of Poland. (1997, August). Retrieved from https://nbp.pl/o-nbp/akty-prawne-i-dokumenty/ustawa-o-nbp/.
[15] Protocol (No. 4) on the Statute of the European System of Central Banks and the European Central Bank. (2016, June). Retrieved from https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:12016M/PRO/04.

the ECB in its Opinion of the European Central Bank[1] pointed out the inconsistency of the proposed changes with European legislation and highlighted the risks of political influence on the NBP. As a result, the Polish government revised its initiative, retaining the current procedure for appointing the bank's governor.

There were also significant conflicts during the implementation of Directive No. 2014/59/EU[2] on mechanisms for resolving banking crises. Act on the Restructuring of Cooperative Banks and the Bank Gospodarki Żywnościowej and on Amending Certain Acts[3] requires that decisions on the rehabilitation of financial institutions be made exclusively by the Polish Financial Stability Committee, whereas Article 114 of Directive No. 2014/59/EU provides for coordination of such actions with the ECB and the European Banking Supervision Authority (EBA).

Legal conflicts between the national laws of Germany, France, Poland, and EU regulations in the field of financial regulation are an important aspect of legal integration within the eurozone. In the context of these conflicts, it is advisable to classify them based on such criteria as the independence of central banks, the implementation of European norms, the economic interests of member states, and the coordination of national and European bodies.

The first criterion on which the classification is based is the independence of central banks. Within this category, the main conflicts arise due to differences in approaches to determining the degree of political influence on national institutions. The second important criterion is the implementation of European norms in national legislation. There are legal contradictions here due to differences in the interpretation and implementation of EU directives in national legal systems. Legal conflicts between national norms and European legislation in the field of financial regulation demonstrate the complexity of integrating national systems into the EU common economic space. In Germany, the main conflicts are related to the definition of the limits of competence of the ECB and national institutions, which is revealed in case-law court cases. France faces difficulties in harmonising national financial norms with European standards, especially in the field of banking supervision and taxation. Poland, having the status of a non-member country of the eurozone, demonstrates the greatest legal autonomy, which causes numerous conflicts with the requirements of the ECB and the norms of European law. The third classification criterion concerns the economic interests of member states. Problems arise when national governments try to consider the specifics of their economic interests, which may contradict the European principles of integration and economic unity. The fourth important aspect is the coordination of national and European bodies. Legal conflicts may arise as a result of differences in the distribution of competencies between national authorities and the European Central Bank or other European institutions. Table 2 below provides the main criteria for classifying legal conflicts, which help to better systematise these problems and highlight the main aspects of their occurrence.

**Table 2.** Classification of legal conflicts in the field of financial regulation

| Indicators | Characteristics |
|---|---|
| Independence of central banks | Political influence on central bank decisions |
| | Different levels of central bank autonomy in national systems |
| | Defining the boundaries of political influence in financial policy |
| Implementation of European standards | Partial or complete harmonisation of national laws with European legislation |
| | Difference in the interpretation and application of EU directives |
| | Problems in integrating European standards into national legal systems |
| Economic interests of member states | Consideration of national economic priorities in monetary policy implementation |
| | Differences in financial policy at the national level that contradict European requirements |
| | Influence of national interests on the management of economic processes within the EU |
| Coordination of national and European bodies | Distribution of competencies between national authorities and European institutions |
| | Conflicts between national and European authorities regarding the regulation of financial markets and banking activities |
| | Problems in coordinating national and European financial strategies |

**Source:** compiled by the authors based on D. Paravisini *et al*. (2023), J. Radojičić & S. Marinković (2023) and E.J. Reite (2023)

As a result, legal conflicts between the national legislation of the EU member states and European norms in the field of financial regulation demonstrate the need for further unification of legal norms and more detailed

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adaptation of European standards to the specifics of national economic systems. This will ensure more effective integration of financial systems and minimise legal contradictions, contributing to the stability and growth of the EU common economic space.

**Areas for improving interaction between the ECB and national regulators.** Considering the identified legal conflicts, it is advisable to highlight several strategic areas for improving cooperation between the ECB and National Financial Supervisory Authorities. Firstly, a necessary step is to increase the level of coordination between the ECB and national regulators in the process of implementing European norms in national legislation. The introduction of a unified approach to the harmonisation of financial law will reduce contradictions between EU norms and the legal systems of individual states. To this end, it is advisable to expand the ECB's advisory role in developing national legislative initiatives, and improve the mechanisms for information exchange between national regulators and European institutions. Secondly, an important aspect is the expansion of the ECB's authority to oversee financial institutions. In the context of modern financial integration, the existing regulatory mechanisms do not always allow responding effectively to crisis phenomena, which requires strengthening the supervisory function of the ECB. One possible area is the introduction of a Single Supervisory Mechanism that would give the ECB the right to directly monitor systemically important banks, regardless of their jurisdiction. Thirdly, it is necessary to improve the mechanisms for allocating competencies between the ECB and national regulators. A clear definition of the limits of responsibility of each body will help to reduce legal contradictions and increase the efficiency of regulatory activities. In this context, it is appropriate to develop a detailed regulation of powers that should consider the specifics of the financial systems of individual member states and pan-European economic priorities. Fourthly, enhanced cooperation under the joint oversight mechanism is an important aspect. Since this mechanism plays a key role in regulating the EU banking sector, it is necessary to ensure its further development by improving joint decision-making procedures, expanding opportunities for national regulators to participate in strategic planning and strengthening responsibility for implementing joint decisions. Fifthly, in order to minimise legal conflicts, it is advisable to improve the mechanisms for resolving contradictions between national and European regulatory authorities. The creation of an effective arbitration mechanism or a special commission for resolving financial and legal conflicts will help to reduce the level of imbalance in law enforcement and build trust between institutions. In general, improving interaction between the ECB and national regulators requires a comprehensive approach that combines legal, organisational, and economic aspects. Optimising these processes will help to strengthen the EU's financial stability, improve the effectiveness of regulatory policies, and harmonise banking supervision within the common economic space.

## Discussion

The results of the study confirmed the importance of the national legislation of the EU member states as one of the key factors influencing the powers of the ECB. The analysis showed that macroprudential policy, which is implemented through regulatory legal acts at the national level, plays a critical role in ensuring the financial stability of the banking system. This is consistent with the conclusions of M. Ampudia *et al.* (2021), who emphasised the importance of preventive regulatory measures to minimise the likelihood of financial crises. Their research showed that effective macroprudential mechanisms integrated into national legislation can mitigate systemic risks and prevent them from developing into crisis phenomena. In this context, the results of this study confirmed that the presence in national legal systems of provisions on increased requirements for capital and liquidity of banks can significantly reduce the threat to the stability of the financial sector.

The analysis showed that adapting national regulatory approaches to EU standards is a complex and ambiguous process that can create both opportunities and threats to the functioning of the ECB. This correlates with the findings of F. Franch *et al.* (2021), who analysed the cross-border effects of macroprudential regulation in the eurozone. They noted that the harmonisation of national regulatory practices with supranational EU norms can have both positive and negative consequences for the financial systems of individual countries, depending on the level of their economic development and the specifics of banking markets. This study showed that the lack of unified approaches to macroprudential regulation in EU member states leads to conflicts between national and supranational norms, which complicates the implementation of a single monetary policy of the ECB.

In addition, the results of the study showed that the level of integration of financial markets is influenced by such key economic indicators as the short-term and long-term interest spread. This was supported by H.A. Ahmed & M.W.R. Khan (2022), who indicated a link between the dynamics of the yield curve and banking risks. Their research showed that narrowing the spread between short-term and long-term rates can pose a threat to banks' profitability, which increases their risky behaviour. In the context of legal regulation, this means that national legislation should consider the risks associated with interest rate policies and create conditions for stabilising the financial sector.

It was confirmed that global banks show different models of capital allocation depending on their localisation, which is consistent with the findings of

C. D'Avino (2024), J. Kelly *et al.* (2019). In particular, the analysis showed that large multinational banks have advantages in accessing international capital markets and can diversify their assets in different jurisdictions. However, regional banks are more dependent on local economic conditions and regulatory environments, which creates problems in coordinating national and supranational norms. This supports the hypothesis that regional differences in financial regulation and macroeconomic indicators influence banks' strategic approaches to capital allocation and Risk Management, in particular, due to the need to comply with both local legislation and international regulatory standards.

The findings indicate that the risks associated with regulatory arbitration remain a significant problem for the global banking system. This was confirmed by B. Clark & A. Ebrahim (2022), D. Heller *et al.* (2025), who reported that banks actively exploit regulatory gaps and jurisdictional differences to minimise regulatory compliance costs. This situation arises due to the lack of uniform mechanisms for interaction between national and supranational regulators, which leads to overlap or, conversely, to the emergence of conflicting requirements. This practice can create systemic risks, especially during economic crises, when the weaknesses of the financial system become more pronounced. Given this, it is particularly important to improve regulatory oversight mechanisms and strengthen international coordination in the field of financial regulation, which would reduce the level of regulatory conflicts.

The analysis also showed that macroprudential measures aimed at reducing risks in the banking sector have a mixed impact on its stability. This is consistent with the findings of F. Meuleman & R.V. Vennet (2022), who analysed the relationship between macroprudential and monetary policy. It was found that strict macroprudential restrictions, such as increasing capital requirements or introducing restrictions on lending, can help strengthen financial stability. However, if there is no consistency between international standards (e.g., the Basel Accords) and national legislation, individual jurisdictions may impose excessive restrictions or, conversely, leave gaps in regulation, making it difficult to ensure equal conditions for competition.

In the context of improving cooperation between the ECB and national regulators, the results of this study confirmed the need to increase the level of coordination and the introduction of a Single Supervisory Mechanism, which is an important step towards the harmonisation of financial norms in the EU. Support for this idea was reflected in the study by F. McCann & C. O'Toole (2019), who pointed out the need to strengthen macroprudential policy in the context of international financial integration and investigate its impact on risky banking operations. In particular, the researchers emphasised the importance of stable coordination between countries to reduce financial crises and increase the effectiveness of supervision.

As for the expansion of the ECB's powers, the results of this analysis are consistent with the views expressed in the paper by D. Kuvshinov *et al.* (2022), who emphasised the need to strengthen the central bank's monitoring functions in response to financial shocks. The study added to the idea of the possibility of direct supervision of systemically important banks, which goes beyond the research of these researchers, who did not focus on the need for centralised supervision.

Another important issue is to improve the division of competences between the ECB and national authorities, which, as shown by the analysis of E. Meuleman & R.V. Vennet (2022), can significantly increase the effectiveness of supervisory activities. It was noted that the division of powers avoids legal contradictions, which was confirmed by the conclusions of this study, which proposed to develop detailed regulations to clarify the responsibility of each body. The strengthening of cooperation under the joint oversight mechanism proposed in this study was also supported by L. Laeven & F. Valencia (2020), J.E. Galán & M. Lamas (2025), who emphasised the need to improve joint decision-making processes to ensure the stability of the banking sector in times of crisis. Their conclusions are more focused on general principles, while the current study focuses on specific mechanisms that will help to improve strategic planning.

Ultimately, considering the issue of resolving legal contradictions between the ECB and national regulatory authorities, the results of this study partially coincide with the findings of P.J. Morgan *et al.* (2019) and T.T. Le *et al.* (2022), who discussed the importance of macroprudential policy regulation for reducing financial risks. However, the proposal to establish a special commission to resolve financial conflicts is a new aspect that requires further study and clarification. Overall, the study confirms the importance of an integrated approach to regulating financial relations in the EU and points to key areas for improving interaction between the ECB and national regulators. Comparison with existing studies shows that new solutions have been proposed to improve the legal harmonisation and stability of financial institutions within the EU.

## Conclusions

The establishment of the ESCB was a key stage in the integration development of the European Union, which provided for the creation of effective institutional mechanisms for monetary management and the reorganisation of the legal status of national central banks of the eurozone member states. This has led to a reduction in the autonomy of national banks, which now operate within a single financial system that guarantees independence from governments and regulators. The legal status of the ESCB and the ECB, defined by the main EU

treaties, ensures price stability and economic integration. The ESCB performs numerous functions, including monetary policy, foreign exchange operations, foreign exchange reserve management, and banking supervision. A special feature is the operation of the ECB as a central body that coordinates the actions of national banks, establishing common regulatory norms. EU secondary law acts and intra-system agreements play an important role in ensuring the legal regulation of the ECB and ESCB. Cooperation with non-eurozone member states is limited, but it still contributes to financial coordination. Contributions from national banks that finance the ECB's activities confirm the importance of balancing the economic performance of member countries. Consequently, the legal structure of the ESCB ensures the stability and efficiency of the single monetary space, while simultaneously contributing to the integration and economic development of the EU through coordination and cooperation between different levels of financial institutions.

The findings on the legal conflicts between the national laws of Germany, France, Poland and the European Union's financial regulatory acts demonstrated significant challenges for legal integration in the eurozone. In particular, differences in the interpretation of the independence of central banks, and difficulties in implementing European norms in national legislation, indicate the need for further improvement of coordination mechanisms between national and European bodies. The specifics of national economic interests, which do not always coincide with the requirements of the EU, become a source of legal conflicts, which makes it difficult to achieve a single legal space in the financial sphere.

Germany, France, and Poland have different approaches to balancing national autonomy and EU requirements, which creates contradictions regarding the independence of their central banks and the division of powers between national and European institutions. In the case of Germany and France, problems arise because of national legal norms that restrict or contradict European standards, and Poland, given its status as a country outside the eurozone, shows the greatest legal autonomy, which also leads to numerous conflicts.

Overall, these conflicts point to the need for further reforms to ensure greater harmony between national legal systems and EU regulations, which will help to strengthen legal integration and stability in financial regulation at the eurozone level. Prospects for further research include extending the analysis to other EU member states, in particular, those that joined after 2004, to assess their approaches to central bank independence and integration into the European Central Banking System. It is also expedient to conduct empirical studies of the impact of court decisions on the law enforcement practice of member states and the mechanisms for adapting national legislation to EU requirements.

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## Conflict of Interest

None.

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# Вплив національного законодавства держав-членів ЄС на повноваження Європейського центрального банку: аналіз колізій та дублювання

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**Анотація**
Метою дослідження був аналіз впливу національного законодавства держав – членів ЄС на повноваження Європейського центрального банку й виявлення правових колізій та дублювання компетенцій між ним і національними фінансовими регуляторами. Для досягнення цієї мети застосовано спеціальні юридичні методи, зокрема порівняльно-правовий аналіз, формально-юридичний метод, метод системного підходу та метод правового моделювання. Дослідження засвідчило, що наявні значні правові колізії між національними законодавствами й регуляторними механізмами Європейського Союзу, які стосуються наглядових повноважень Європейського центрального банку. Виявлено дублювання функцій національних фінансових регуляторів і Європейського центрального банку, що може призводити до правових суперечностей та неефективного функціонування наглядових інститутів. Аналіз механізмів координації між національними регуляторами та Європейським центральним банком дав підстави стверджувати, що відсутність єдиного підходу до імплементації європейських норм у національне законодавство ускладнює гармонізацію фінансового права. Також з'ясовано, що наявні механізми взаємодії між Європейським центральним банком і національними регуляторами потребують удосконалення, зокрема у сфері нагляду за системно важливими банками. Здійснений аналіз дав змогу сформулювати рекомендації щодо посилення координації наглядових функцій Європейського центрального банку й національних регуляторів, а також запропонувати шляхи для усунення правових колізій і дублювання повноважень. Розроблені пропозиції спрямовані на оптимізування механізмів обміну інформацією, розширення ролі Європейського центрального банку в нагляді за банківським сектором, а також створення ефективних правових механізмів для вирішення суперечностей між європейськими та національними органами фінансового нагляду

**Ключові слова:**
банківський нагляд; гармонізація; координація; наглядовий механізм; фінансова стабільність

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# Forensic characteristics of exceeding authority or official powers by a military official, committed under martial law or in a combat situation

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**Abstract**
The relevance of the subject matter under investigation was due to the need to improve the methodology for investigating criminal offences committed by military personnel in armed conflict. This will contribute to the establishment of the rule of law by adhering to the norms of national legislation and international legal standards for conducting hostilities and ensuring the protection of the civilian population during armed conflict. The aim of the study was to form a comprehensive forensic characteristic of military personnel exceeding their authority or official powers in order to develop effective and efficient mechanisms for their investigation. The methodological toolkit of the study encompassed a complex of general scientific and special methods that ensured a comprehensive study of the causes and conditions of military personnel exceeding their authority and official powers, and also contributed to the formation of scientifically sound approaches to their investigation, including: the comparative legal method for analysing legislative norms regulating legal relations in the military sphere; the formal-logical method for clarifying legal definitions on the research topic; the context analysis method for systematic processing of scientific approaches to investigating military offences, and also the inductive method for generalising the obtained results. The main elements of the forensic characteristic of the investigated criminal offence have been identified and analysed. These elements are divided into general and special, or contextual. They include: the place, time, and period of commission the unlawful acts, the identity of the offender, the purpose, motives, and conditions that contributed to the commission of the criminal offence, the methods of implementing criminal acts (intentions), the identity of the victim, the socially dangerous consequences of the offence, the degree of their danger, and also the connection of the investigated criminal offence with actions that imply a different criminal legal qualification

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or exclude criminal liability for the committed act. The scientific significance of the obtained results lies in the improvement of the f ve as a basis for creating methodological guidelines for investigating these types of criminal offences

**Keywords:**
serviceman; military criminal offences; military discipline; forensic analysis; military legal relations; criminal liability

## Introduction

The concept of forensic characteristics is not new in legal literature. It developed as a result of a long evolutionary process in forensic science and, in particular, its fourth section – investigative methodology. In scientific literature, it is suggested that this term was first used in 1967 by the Ukrainian forensic scientist O. Kolesnichenko (Orzhynska, 2021; Artyukhova, 2023). The relevance of the researched topic remains to this day. The main discussions around it focus on defining a unified structured approach to systematising the elements of forensic characteristics. The main reason for disagreements is the lack of unity among theorists and practitioners in formulating a single structured approach to defining the elements of forensic characteristics, as it can be analysed not only from the perspective of the name of a specific forensic doctrine but also as an integral part of the methodology for investigating criminal offences.

According to A. Volobuev (2024), this circumstance not only contributed to the development of scientific discussions but also influenced the process of teaching the academic course of forensics. In this regard, V. Zhuravel (2021) notes that different theoretical and applied approaches to defining the elements of forensic characteristics, as well as existing discrepancies in scientific views regarding their significance, negatively affect law enforcement practice. As a result, this complicates the practical application of criminal offence investigation methodology and causes ambiguity in the use of scientifically sound recommendations.

In a general sense, forensic characteristics are an abstract concept reflecting the initial data and characteristic features of specific types or groups of criminal offences, methods of their commission, concealment, likely participants in illegal activities, their motives, as well as the time, place, and other circumstances that contributed to the commission of the criminal offence, and other components or elements that have a clearly defined structure. According to V. Guseva (2019), an obligatory condition for forming the elements of forensic characteristics is the generalisation of investigative practice materials. Without this, as the scholar notes, forensic characteristics are a theoretical model devoid of applied value. She considers forensic characteristics as a system of forensically significant information about a criminal offence, formed on the basis of generalising investigative practice. This system is used to identify the features of a specific type, kind, or subtype of criminal offence, to determine the methods and means of its investigation, and to model individual circumstances of its commission.

Despite this, forensic characteristics are based not only on applied aspects. They integrate theoretical approaches aimed at developing appropriate investigation methodologies. Through this systemic approach, new methods and techniques are formed that can be applied in practice to increase the effectiveness of the activities of authorised participants in criminal proceedings. This achieves a balance between scientific pragmatism and practical necessity, making the methodology for investigating criminal offences a useful and reliable tool for pre-trial investigation bodies.

As Yu. Chaplinska (2019) notes, the use of forensic characteristics is a necessary condition for the initial stage of investigation, especially when there is a deficit of information about the criminal offence, which serves as the basis for making a procedural decision. Thanks to stable correlational links between its individual elements, an extended analysis of available data on the mechanism of the offence can be carried out, its circumstances modelled, investigative versions put forward, and motives and likely participants identified.

However, not all elements of forensic characteristics have equal significance for every type of offence. Some of them may play a key role, while others may be entirely uncharacteristic of a particular unlawful case. That is why forensic characteristics provide a comprehensively structured approach to analysing and describing the key features of a criminal offence, increasing the effectiveness of law enforcement agencies in combating crime. Firstly, it contributes to the systematisation of forensic knowledge about different types, groups, kinds, or subtypes of offences, helping to navigate the specifics of their commission. Secondly, it facilitates the identification of traces and evidence characteristic of a particular offence, which is necessary for constructing investigative versions and putting forward hypotheses in the investigation process. Thirdly, it contributes to establishing the circumstances of the offence, including the methods, means, and motives of its commission, characterising the offender, victim, etc. And fourthly, it guides participants in criminal proceedings in forming the necessary evidentiary basis for proving the accused's guilt in court.

An analysis of modern scientific discourse gives grounds to assert that the forensic understanding of the criminal offence provided for in Article 426-1 of the

Criminal Code of Ukraine (CC of Ukraine)[1], is at the initial stage of theoretical and methodological development. his state of affairs is due to the relative novelty of this offence within the system of military criminal violations, which, in turn, has resulted in a lack of scholarly attention and the absence of established investigative approaches.

In this context, the theoretical foundations for investigating crimes related to military personnel exceeding authority or official powers under martial law or in a combat situation remain insufficiently conceptualised. This complicates the formation of a holistic forensic methodology and the implementation of effective mechanisms to counter such offences. Scientific discourse in this area is mainly focused on researching the psychological and criminological factors of deviant behaviour of military personnel. For example, E. Pashchenko (2020) analyses approaches to defining the concept and features of violent crimes committed by representatives of military formations, particularly in the context of the armed aggression of the Russian Federation against Ukraine (Pashchenko, 2024). Among modern developments, it is also worth noting the research of S. Stetsenko (2024), who indirectly considers the forensic characteristics of a serviceman as a subject of official crimes. In addition, the works of foreign researchers, in particular Ch. Salvatore & T. Taniguchi (2021), as well as T.L. Kweilin *et al*. (2022), who focus on the psychological features of military service as a social institution capable of forming conditions that contribute to illegal behaviour, remain relevant in the scientific sphere.

Considering the above, the aim of this Article was to clarify the forensic characteristics of a military official exceeding authority or official powers committed under martial law or in a combat situation. To achieve this goal, the content of the forensic characteristics of this subtype of offence was defined, its key structural elements were identified, and their comprehensive theorisation was carried out.

## Materials and Methods

The main materials used in the study were legal norms regulating liability for exceeding authority and official powers in the military sphere. These include specific provisions of Ukrainian criminal law[2]. Norms regulating the activities of military personnel in both national and international contexts, establishing standards of conduct, rights, and duties under martial law and in combat situations[3,4,5,6]. Provisions detailing the procedure for performing official duties in the military sphere were also examined. Among them were laws and statutes defining internal service activities, and regulating its discipline and legality[7,8]. This provided a regulatory basis for a better understanding of the specifics of the investigated offence and assisted in defining individual elements of its forensic characteristics.

The methodological toolkit was based on a complex of general scientific and special methods. Thus, the systemic-structural method allowed the subject of research to be considered as an ordered system encompassing information about the offence committed. Among the special methods used, the comparative legal method ensured the analysis of norms regulating the aspects of military activity under investigation. The formal-logical method facilitated the clarification of legal definitions pertaining to the subject of research. The content analysis method contributed to the study and systematisation of scientific approaches regarding the peculiarities of investigating official criminal offences in the military sphere.

In the process of forming conclusions, an inductive method was used, which made it possible to generalise the results obtained and formulate the concept of a forensic medical characterisation of a military serviceman who exceeded his authority or official powers during martial law or in a combat situation. The comprehensive application of relevant materials and methods ensured the scientific validity and reliability of the conclusions and contributed to the creation of a comprehensive forensic medical characterisation of this type of abuse of authority in the context of armed conflict.

## Results and Discussion

**Structural elements of the forensic characteristics of the criminal offence under investigation**. In legal literature, two main periods in the development of the concept of forensic characteristics are distinguished (Bernaz, 2017). The first covers the Soviet past, which is considered foundational in its establishment. It was within this period that the modern vision of forensic

[1] Criminal Code of Ukraine. (2001, May). Retrieved from https://zakon.rada.gov.ua/laws/show/2001-05#Text.
[2] Ibidem, 2001.
[3] Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text.
[4] Law of Ukraine No. 3543-XII "On Mobilisation Training and Mobilization". (October, 1993). Retrieved from https://zakon.rada.gov.ua/laws/show/3543-12#Text.
[5] Law of Ukraine No. 389-VIII "On the Legal Regime of Martial Law". (May, 2015). Retrieved from https://zakon.rada.gov.ua/laws/show/389-19#Text.
[6] Law of Ukraine No. 1932-XII "On the Defense of Ukraine". (December, 1991). Retrieved from https://zakon.rada.gov.ua/laws/show/1932-12#Text.
[7] Law of Ukraine No. 551-XIV "On the Disciplinary Statute of the Armed Forces of Ukraine". (March, 1999). Retrieved from https://zakon.rada.gov.ua/laws/show/551-14#Text.
[8] Law of Ukraine No. 2232-XII "On Military Duty and Military Service". (March, 1992). Retrieved from https://zakon.rada.gov.ua/laws/show/2232-12#Text.

characteristics was formulated as an independent legal category used to describe and systematise the key features and peculiarities of certain types of criminal offences or their classified groups. During this period, the theoretical foundations of forensic characteristics were formed, and its study was integrated into the academic course on forensics (Chernyavskyi & Yusupov, 2021).

At this stage, the main goal of forensic characteristics became the modelled-systemic analysis of information, aimed at identifying typical features and properties of criminal offences in order to develop effective methods for their investigation. Forensic characteristics are considered as an informational model that systematises the key elements of a criminal offence necessary for its detection, disclosure, investigation, and prevention (Chornyy, 2020). That is, it acts as a scientifically sound tool that provides a comprehensive approach to analysing criminal activity and contributes to increasing the effectiveness of investigative practice.

In this regard, it should be noted that military criminal offences are serious violations of the order of military service by relevant participants in military legal relations. This legal order is defined by national legislation and international acts regulating the activities of military personnel in domestic and international contexts. The subjects of military legal relations, on the one hand, are the state, and on the other, citizens of Ukraine and, in some cases, foreigners or stateless persons. The state acts as the main organiser and regulator of military legal relations, defining the legal framework for military activity, the order of military service, the rights and obligations of its participants, and also ensures the fulfilment of military duty through authorised bodies responsible for the organisation and management of military affairs.

Citizens of Ukraine undergo military service as servicemen or reservists, including during military training camps. The concept and types of military service, its beginning and end, categories of participants in military legal relations, their rights and obligations, the procedure and conditions of their selection or admission, as well as other important aspects related to military activity, are defined by separate regulatory legal acts. In essence, to answer questions regarding the exceeding of the established order of military service by participants in military legal relations, it is necessary to first analyse the subjects of these legal relations, the scope of their rights and obligations, as well as the methods and limits of their exceeding of granted powers. The seriousness of the committed offences is determined by their public danger, which manifests itself in the destabilisation of national security and the state's defence capability through violations of military discipline. That is why, as N. Dmytrenko & O. Shkuta (2022) note in their research, criminal offences against the established order of military service can formally be considered as crimes against the state.

That is, if consider military criminal offences against the established order of official duties, their subjects can only be military personnel endowed with authority or official powers (German, 2021). Features that increase the degree of public danger of such offences include not only the severity of the damage caused or the consequences incurred, but also the presence of special or contextual circumstances under which the criminal offence was committed, such as a special period, including martial law or a combat situation. These circumstances are fully justified, as the emergence of extraordinary conditions requires maximum coordination, moral stability, high responsibility, and unwavering discipline from military personnel of all ranks and positions.

This issue is particularly relevant in cases involving the activities of military commanders. Military commanders (superiors) bear increased responsibility for ensuring law and order among subordinates. They are not only the embodiment of discipline and legality but are also obliged to maintain high standards of moral and legal conduct. Their ability to organise and control the performance of official duties affects the overall state of discipline and legality in the military environment, especially in extraordinary conditions when maximum responsibility and determination in making lawful decisions are required.

Thus, the forensic characteristics of a military official exceeding authority or official powers committed under martial law or in a combat situation consist of elements that characterise: the subject of the criminal offence (a serviceman who has authority or official powers); the object of the criminal encroachment (social relations regulating the order of subordination and performance of duties in the military sphere); the motives and goals of illegal activity (use of official position to satisfy one's own needs, achieving certain results by unforeseen methods); circumstances affecting qualification (committing acts under martial law or in a combat situation); methods and means of implementing criminal intentions (specific actions that go beyond official powers, such as illegal orders, use of coercive measures, weapons, etc.); and evidence found necessary to establish the guilt of the accused (illegal orders, assignments, other instructions, regulatory and law enforcement acts, witness testimonies, video recordings from surveillance cameras, mobile communication devices, weapons, etc.). To better understand these elements, it is necessary to analyse each of them.

**Place, time and period of commission of unlawful acts.** This element is crucial for qualifying the offender's actions and determining their responsibility in terms of their violation of legislation regulating social relations in the military sphere. Since the subjects of military offences can only be persons who, at the time of their commission, are undergoing military service under contract, by assignment, or by conscription, as well as persons who are in reserve or military reserve and

are undergoing military training or exercises (Art. 401 CC of Ukraine [1]), the place of commission of the investigated offence can be defined as an organisational-staff unit of a specific military formation, in particular, the territory of a military unit, its structural subdivisions, or other places of military service or duty.

The concept of a military unit is widely used in normative legal acts regulating social relations in the military sphere. However, in none of them is its definition concretised. An analysis of scientific and methodological sources on this matter allows a military unit to be defined as an organisational-staff, territorial entity that includes barracks, camp, or field forms of deployment in a certain area of terrain allocated for military purposes (Kisel, 2005; Shkuropatskyi, 2014). According to V. Sokurenko (2015), it is at least characterised by the presence of a security and access control regime, which is ensured by a guard, detail, or other forms, methods, and means in accordance with the requirements established by the commander or higher command. For example, in the context of the navy, a vessel can be considered the territory of a military unit. In border troops, this territory includes both the area where the border unit is located and the deployment site of border outposts, etc.

By "other place of military service or duty" should be understood the actual territory where a serviceman performs their duties, as defined by the commander (superior) or higher command. That is, the place where a serviceman performs their duties is not limited to the territory of a military unit. Military leadership can designate specific deployment locations for servicemen to perform assigned tasks, which constitutes the actual place of duty.

This issue becomes relevant when servicemen perform their duties under a special period of martial law or in a combat situation. The definition of "special period" has a clear legislative definition that is interconnected with categories such as mobilisation, demobilisation, and martial law[2]. However, there is no need to reproduce already well-known aspects. The main goal in this part of the study is to clarify the essence, content, and meaning of martial law in the context of a military official exceeding authority or granted powers. In view of this, analysing the concept of martial law[3], attention is drawn to the term "legal regime". In scientific literature, this category is interpreted as a system of legal norms and mechanisms that define the order and conditions of functioning of individual subjects of social relations in clearly defined cases (Vakaryuk, 2016; Kovalenko, 2019). In other words, it refers to a set of rules of conduct, rights and obligations, and restrictions for certain categories of subjects within relevant legal relations and/or types of activities.

The classification of legal regimes is carried out according to various criteria, but in a general context, special and extraordinary legal regimes can be distinguished. They differ in terms of their intended use, field of application and level of restrictions imposed. For example, special legal regimes may be applied in individual cases to ensure certain types of activities that require increased control and security (passport regime, customs regime, detention regime, internal regulations, etc.).

At the same time, the introduction of extraordinary legal regimes occurs exclusively in conditions of emergency circumstances that pose a threat to security, public order, the system of state administration, sovereignty, and/or territorial integrity of the state. The scale of such regimes is determined by the nature and consequences of the relevant circumstances, which determines their application both throughout the country and in a separate part of it. During periods of emergency legal regimes, the legal status of individuals and legal entities is subject to increased regulation through the introduction of additional restrictions. This approach is due to the need for prompt, large-scale, and effective response to crisis situations that require increased impact and control. That is why the key reason for introducing an extraordinary legal regime is extraordinary circumstances that pose a threat to national security, public order, health of citizens, the population, or disrupt the balance of the normal functioning of the environment. This refers to situations where the usual conditions for the functioning of the state are violated as a result of accidents, catastrophes, natural disasters, dangerous events of an unconstitutional nature, or other destabilising social and/or military factors. As a result of the interaction of such circumstances, extraordinary conditions are formed, necessitating the introduction of a state of emergency or martial law (Kostiuk & Sakovskyi, 2024).

In a general sense, a state of emergency is an exceptional measure introduced to eliminate the consequences of emergency circumstances caused by certain events, in order to normalise the socio-political life of the country, including restoring law and order[4]. Since achieving these goals through ordinary mechanisms (methods) of public administration is extremely difficult, depending on the nature of the emergency circumstances, special legal regimes are temporarily established – a state of emergency or martial law [5]. Such military situations arise as a result of armed aggression

[1] Criminal Code of Ukraine. (2001, May). Retrieved from https://zakon.rada.gov.ua/laws/show/2001-05#Text.
[2] Law of Ukraine No. 3543-XII "On Mobilisation Training and Mobilisation". (October, 1993). Retrieved from https://zakon.rada.gov.ua/laws/show/3543-12#Text.
[3] Law of Ukraine No. 389-VIII "On the Legal Regime of Martial Law". (May, 2015). Retrieved from https://zakon.rada.gov.ua/laws/show/389-19#Text.
[4] Law of Ukraine No. 1550-III "On the Legal Regime of the State of Emergency". (March, 2000). Retrieved from https://translate.google.com/?hl=ru&sl=en&tl=uk&text=March%202000&op=translate.
[5] Law of Ukraine No. 389-VIII "On the Legal Regime of Martial Law". (May, 2015). Retrieved from https://zakon.rada.gov.ua/laws/show/389-19#Text.

or other military events that cause serious social and infrastructural consequences, including mass casualties and disruption of state functioning. In response to these circumstances, martial law is introduced as a temporary special legal regime, the purpose of which is to implement a complex of special measures aimed at guaranteeing national security, mobilising resources, strengthening control, and effectively coordinating the actions of state authorities in responding to military threats.

In the context of studying the category "combat situation", it is worth noting that its definition has not only legislative regulation (Art. 401 CC of Ukraine[1]), but also scientific substantiation (Bondaevskii, 2013; Gurchenko, 2023). Analysing different approaches to understanding this concept, it can be concluded that a combat situation is derived from military operations. It arises as a consequence and at the same time reflects active combat operations that significantly affect the situation in the areas of hostilities. The combat situation is primarily shaped by military actions, which determine the deployment of forces, changes in strategy and tactics, interaction with the civilian population, and other relevant factors.

Obviously, in the context of military criminal offences, the legislator sought to draw a line between a military official exceeding authority or official powers under martial law outside the areas of hostilities, and similar actions committed in a combat situation, i.e., within the areas of military operations. This distinction allows for a more precise determination of qualifying circumstances that are important for the investigated criminal offence by evaluating the situation that affects the degree of public danger and the severity of the consequences caused by the serviceman's unlawful actions.

Thus, during the investigation of criminal proceedings concerning the abuse of power or official authority by a military serviceman committed under martial law or in a combat situation, particular attention should be paid to establishing the time of the offence. In particular, two key aspects must be clarified: first, whether the military personnel was on active duty at the time of the unlawful actions, and second, what time period the offence covers. This will make it possible to determine the legality of his behaviour within the limits of his official powers, as well as to ascertain whether the suspect acted in accordance with his functional duties. The establishment of these circumstances concerns not only the suspect but also the victim, since their legal status at the time of the incident may significantly affect the legal classification of the act. In addition, the validity of the relevant legal regime at the time of the commission of the acts directly affects the classification of the offence and the degree of responsibility. Proper correlation of the defendant's actions with the conditions of the legal regime is a necessary prerequisite for forming an objective, balanced legal assessment and imposing a fair punishment.

The declaration of martial law or a state of emergency has a clear legal context based on constitutional provisions and special normative legal acts. They are usually accompanied by significant public resonance and informational support. At the same time, the period of military service often has an ambiguous nature, which is associated with legal uncertainty of certain categories of servicemen, especially in emergency circumstances. This issue requires detailed analysis due to possible legal conflicts or non-standard situations that may arise during the introduction of such regimes. In this context, it is necessary to analyse the duration of military service under contract, conscription, and assignment by servicemen, as well as the period of military training for reservists. It is also important to highlight the significant differences and similarities between these categories of persons regarding the beginning and end of their service.

This means that during the investigation of cases of a military official exceeding authority or official powers, pre-trial investigation bodies must have sufficient information about the participants in this criminal offence, particularly regarding their belonging to military service and the duties assigned to them. The blanket nature of Art. 426-1 CC of Ukraine[2], necessitates referring to normative legal acts regulating the issue of military service by relevant subjects of military legal relations. The complexity of this issue lies in the fact that the time, duration, and procedure for military service in Ukraine are regulated by various legislative acts, which depend on the type of military structures and paramilitary formations. In each of them, the specifics of military service are regulated by both general legislation and special normative legal acts that define the peculiarities of military service depending on the functional purpose and organisational structure of paramilitary formations. However, in most cases, military service falls under the general provisions of the Laws of Ukraine "On Military Duty and Military Service"[3] and "On Mobilisation Training and Mobilisation"[4]. These acts actually contain fundamental provisions that define the key aspects of military service by subjects of military legal relations in Ukraine.

**Identity of the offender (perpetrator)**. When examining a serviceman as the subject of a criminal offence under Article 426-1 of the Criminal Code of Ukraine[5], four mandatory criteria must be highlighted. First of all,

[1] Criminal Code of Ukraine. (May, 2001). Retrieved from https://zakon.rada.gov.ua/laws/show/2001-05#Text.
[2] Ibidem, 2001.
[3] Law of Ukraine No. 2232-XII "On Military Duty and Military Service". (March, 1992). Retrieved from https://zakon.rada.gov.ua/laws/show/2232-12#Text.
[4] Law of Ukraine No. 3543-XII "On Mobilisation Training and Mobilisation". (October, 1993). Retrieved from https://zakon.rada.gov.ua/laws/show/3543-12#Text.
[5] Criminal Code of Ukraine. (May, 2001). Retrieved from https://zakon.rada.gov.ua/laws/show/2001-05#Text.

the person must have the status of a military serviceman and be duly authorised as part of a military unit or military command body. Secondly, this person must hold a military position, be a serviceman, or have an equivalent status. Thirdly, this position must be provided for by the staffing table, confirming its legal status and subordination during military service. Fourthly, the person must be authorised to perform organisational-administrative or administrative-economic duties related to the leadership or organisation of military activities or administrative work of the respective military unit.

In this context, a serviceman acts as a subject of legal relations combining a number of mandatory characteristics. Firstly, their status is determined by the military position held in accordance with the requirements of military service legislation. Secondly, the powers vested in them involve the performance of tasks related to the defence of the state, its sovereignty, territorial integrity, defence, participation in combat operations, and command of military units. Thirdly, the actions of a serviceman are clearly regulated by legal norms established by military legislation and internal statutes of military formations. Fourthly, they possess specific rights and obligations assigned to the military position, which determine their functional purpose. Fifthly, in addition to legal capacity and legal competence, a serviceman must also have delictual capacity, which defines responsibility for exceeding their granted authority or official powers.

**Scope of official powers of the guilty person (offender)**. In legal literature, "powers" usually refer to the totality of official rights and duties granted to officials or bodies for the proper performance of their assigned functions (Mayorov, 2020). In the sphere of public administration, powers encompass the rights and duties of subjects aimed at implementing their functions and tasks. In accordance with the specifics of a particular subject's activity, the scope and limits of powers must be clearly regulated in a normative aspect, which is particularly emphasised in the provisions of the Constitution of Ukraine (Articles 6, 19)[1].

Despite the lack of a single interpretation, this term is actively used in regulatory and administrative activities and is combined with various forms of public administration, such as authoritative, delegated and self-governing powers (Kovbasyuk *et al*., 2010). An analysis of these categories provides grounds for defining official powers as a system of rights and duties granted to officials to perform their official functions (areas of activity) within the established competence. These powers must have normative reflection, aimed at ensuring the effective functioning of state authorities, as well as the implementation of state policy tasks.

A specific type of official powers is authoritative powers. These powers are related to the ability to influence the activities and behaviour of other persons (Dem'yanova, 2023). That is why all authoritative powers are by nature official, but not all official powers have an authoritative character.

Official powers are closely related to categories such as "civil service" and "civil servant", which are defined in Article 1 of the Law of Ukraine "On Civil Service"[2]. An analysis of these concepts leads to the conclusion that the sphere of civil service is encompassed by the scope of official activity carried out within the granted rights and duties. That is, the functioning of the civil service must be carried out within a clearly regulated legal system that ensures compliance with official discipline, accountability, and responsibility of civil servants during the performance of their powers.

In this context, an integral part of civil service is official discipline. This circumstance also applies to servicemen and military service, where responsibility is determined by a negative assessment of their behaviour. Such behaviour is a violation of the requirements of military discipline and legality, and depending on the consequences, may lead to the application of disciplinary or criminal measures.

Military discipline is one of the key elements of the functioning of the Armed Forces of Ukraine and implies the unconditional observance by servicemen of the requirements of the Constitution of Ukraine, state laws, military statutes, and lawful orders of commanders (superiors) [3]. Its substantive content is based on the awareness by personnel of the duty of military service, personal responsibility for ensuring the state's defence capability, preserving its sovereignty and territorial integrity, and adhering to the principles of fidelity to the military oath. The implementation of these requirements demands conscientious performance of functional duties by servicemen, adherence to the provisions of current legislation, and ensuring an adequate level of protection of military and state secrets.

In the context of military service, this category closely correlates with the institution of disciplinary power, which is one of the main mechanisms for maintaining law and order in military formations. Disciplinary power is exercised through the authorisation of commanders (superiors) to apply prescribed disciplinary measures against servicemen who have violated established norms and regulations of military service. In the investigation of criminal offences related to military officials exceeding authority or official powers, there is a need for a clear distinction between this disciplinary competence and general statutory measures of influence.

[1] Criminal Code of Ukraine. (May, 2001). Retrieved from https://zakon.rada.gov.ua/laws/show/2001-05#Text.
[2] Law of Ukraine No. 889-VIII "On Civil Service". (December, 2015). Retrieved from https://zakon.rada.gov.ua/laws/show/889-19#Text.
[3] Law of Ukraine No. 551-XIV "On the Disciplinary Statute of the Armed Forces of Ukraine". (March, 1999). Retrieved from https://zakon.rada.gov.ua/laws/show/551-14#Text.

Thus, disciplinary power implies the commander's functions of holding liable for violations of military discipline norms, which has a legal character and a correspondingly regulated procedure for implementation. In contrast, statutory measures of influence are a broader concept and include organisational, administrative, and educational tools aimed at ensuring a proper level of military service. A clear distinction between these categories contributes to the effective functioning of the military service management system, allows avoiding abuses of power, and creates a basis for the lawful application of means of influence within the granted powers.

Thus, official powers in the sphere of military activity are determined by a system of special normative legal acts and administrative documents, including job descriptions, functional duties, regulations, military statutes, orders, and directives that regulate the rights and duties of servicemen. In case of violation of established legal norms, servicemen may be brought to legal responsibility, which, depending on the nature of the act and its consequences, may be qualified as a criminal offence under Article 426-1 of the Criminal Code of Ukraine[1]. This indicates that, from a constructive-legal point of view, the composition of the specified criminal offence covers a number of key categories, including: official and authoritative powers, requirements of military discipline, principles of legality, and the institution of disciplinary power, which includes disciplinary and statutory measures of influence. Collectively, these elements form the conceptual basis of the legal mechanism of control and responsibility in the system of military service.

**Purpose, motives, and conditions contributing to the commission of a criminal offence.** Although purpose and motives belong to the subjective elements of a criminal offence, they can influence the objective evaluation of the committed act. In certain cases, the purpose, motives, and circumstances that contributed to the commission of the criminal offence may be taken into account when analysing the objective side of a socially dangerous act (Komarynska, 2022). In the context of a military official exceeding authority or official powers, establishing these elements is crucial for the correct legal assessment of the investigated criminal offence, as the criminal excess can only be carried out with direct intent aimed at satisfying personal interests, illegally achieving a set goal, or consciously violating established limits of official powers to the detriment of the interests of the service, the state, or individuals.

Motives themselves are not unlawful. Their unlawfulness is determined by the behaviour of the offender, which depends on the chosen method of their implementation. The method of implementing criminal intentions is conditioned by the offender's internal impulses to achieve a specific criminal result. In the context of military officials exceeding authority or official powers, the main purpose of this act is to achieve a specific result that corresponds to personal interests or the interests of third parties, namely: maintaining or strengthening control over subordinates through the illegal use of violence or threats; achieving personal gain due to mercenary motives, such as concealing one's own mistakes, improving one's financial situation, or satisfying personal needs; maintaining discipline or reputation through a demonstration of power or force over subordinates, often with the aim of suppressing possible resistance or forcing compliance with orders (lawful or unlawful).

In this context, two main groups of motives for the criminal offence provided for in Article 426-1 of the Criminal Code of Ukraine[2] can be distinguished. The first includes mercenary motives, such as the desire to obtain personal gain, hide work deficiencies, or realise other forms of individual interest (e.g., careerism or other personal interests). The second group of motives is violent and aimed at demonstrating power or suppressing or subjugating subordinates through the use of violence for various reasons, such as revenge, envy, or personal animosity.

That is, mercenary motives involve a serviceman committing actions that clearly exceed the limits of their powers with the aim of achieving personal or professional gain. This may include active actions aimed at satisfying one's own ambitions, needs, or desire for control, including increasing one's authority among subordinates, gaining advantages in the military collective, its hierarchy, gaining recognition, obtaining material benefits, etc. (Bereznyak, 2020; Brusso & Tarasenko, 2022). Violent motives involve committing actions that clearly go beyond authoritative or official powers, including the use of physical or psychological pressure on a subordinate. Such actions may serve as a means of achieving specific goals or satisfying personal ambitions (needs).

Taking into account various aspects of military activity, the conditions that contribute to the commission of the criminal offence provided for in Article 426-1 of the Criminal Code of Ukraine[3], are diverse and primarily associated with organisational, socio-psychological, and systemic factors that facilitate the implementation of such actions. The main among them are those that create fertile ground for exceeding official powers and stimulate the commission of this offence. These factors include: insufficient control and oversight of military officials' activities by senior management or higher command bodies; unsettled or unclear assigned official duties and powers; low level of discipline among

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

subordinates; excessive workload or stressful situations; existence of conflicts between management and subordinates; mercenariness; social and/or cultural factors.

**Methods of implementing criminal intentions**. The methods of implementing criminal intentions during the investigated criminal offence largely depend on the sphere of defined powers. This means that specific actions that can be qualified as exceeding authority or official powers vary depending on the functions, tasks, and duties enshrined in legislative or subordinate normative legal acts, as well as in internal regulations or statutes of relevant military formations. Thus, for a proper assessment of servicemen's actions, it is important to consider a contextual analysis of the specific acts regulating their activities.

The methods of implementing criminal intentions for the investigated offence can be differentiated into two main groups. The first covers situations involving the use of violence. The second includes methods that do not involve violent actions. In each of these cases, the forms of committing the offence can be classified into several main types. Firstly, this is the application of non-statutory measures of influence, which include actions that go beyond the statutory norms of internal service. Secondly, this is the abuse of disciplinary power, which consists of the illegal use of disciplinary levers.

Forms of exceeding authority or official powers can vary depending on specific circumstances and spheres of official activity, which determine the specifics of such offences. The main ones include: the use of physical violence; the use of psychological violence; illegal disposal or use of material resources; coercion to obey orders; using official position for personal gain, exceeding granted powers; illegal application of disciplinary measures of influence; applying non-statutory measures of influence, including the use of weapons; unduly severe or unlawful punishment; illegal deprivation of rights; using disciplinary power for one's own benefit; unlawful interference in official activities; ignoring internal regulations (procedures); abuse of trust. All these forms can manifest in various combinations and vary in severity, requiring a thorough analysis for proper qualification of servicemen's actions as exceeding their authority or official powers.

**Identity of the victim**. The identity of the victim as an element of the forensic characteristics of a criminal offence under Article 426-1 of the Criminal Code of Ukraine[1], must be considered taking into account the peculiarities of military relations. In such cases, the victim acts as a subordinate to the offender, who holds a command or superior position. An important aspect is establishing the fact of subordination relations between the victim and the suspect. The presence of such relations can significantly complicate the evidentiary process due to possible psychological pressure from the perpetrator on the subordinate victim or the latter's fear of potential negative consequences for reporting the committed act.

The military sphere is a hierarchical structure that implies the existence of two main forms of subordination. The first concerns relations between servicemen by military rank, the second – by official position. Thus, depending on military rank and position, some servicemen act as superiors, and others as subordinates. In cases where the nature of official relations is not defined, during joint performance of official tasks, the superior is determined by the higher position, and for equivalent positions – the higher military rank.

Similar provisions apply to the correlation of the powers of superiors regarding commanders. In the system of military legal relations, a commander is a serviceman who heads a military unit, subdivision, or other organisational-staff unit of the Armed Forces or other military formations and is responsible for its overall condition, level of combat readiness, performance of assigned tasks, as well as for the moral and psychological climate, training, and discipline of personnel. The commander is endowed with permanent administrative-executive and organisational-management powers over subordinate servicemen. At the same time, the term "superior" refers to any official who, within the scope of their functional duties, is authorised to manage other servicemen. Unlike a commander, the powers of a superior can be exercised on both a permanent and temporary basis. Thus, any serviceman who holds a higher position or has a senior military rank can act as a superior, regardless of whether they perform the functions of a unit commander (Fig. 1).

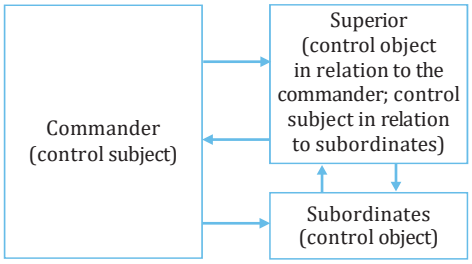


**Figure 1.** Schematic model of a military command and control system
**Source:** developed by the authors

Depending on the specifics of the organisational structure, which are determined by the tasks, position and nature of official activities, the superior may be subordinate to the commander within the hierarchical management system. Such subordination is carried out within the scope of official powers, with the commander bearing full responsibility for the effective functioning of the unit or military unit. At the same time, the

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

nature of these relations may vary depending on specific circumstances and operational needs of the service. In particular, in combat conditions, when an operational response is required, the superior may act autonomously, which illustrates the flexibility and dynamism of hierarchical relations in the military management system.

**Socially dangerous consequences of the offence and the degree of their danger**. An obligatory element of the forensic characteristics of the investigated criminal offence is establishing a causal link between the offender's unlawful actions and the consequences caused. This offence can have an intentional or negligent form of guilt, which is realised exclusively through active actions. The consequences, in this case, perform two important functions: they differentiate a criminal offence from a disciplinary misconduct and influence the legal qualification of the committed act.

In this context, criminal law establishes evaluative concepts such as "significant harm" and "grave consequences" (Art. 364 CC of Ukraine [1]). In both cases, these negative consequences reflect the material aspect, according to which the crime is considered completed from the moment of the occurrence of the corresponding financial (material) damage within the limits and/or amounts defined by law.

It should be recognised that unlawful actions in the form of military personnel exceeding their powers may violate the rights of citizens protected by law and adversely affect state or public interests. These negative consequences can manifest not only in the form of material (property) damage but also in the form of immaterial harm, or in combination. In this context, this refers to moral harm, which manifests itself in psychological suffering or emotional stress; physical harm, which is associated with bodily injuries or other traumas; environmental harm, which arises as a result of environmental pollution; social or ideological harm, which consists in violating social norms, values, and ideals, which can lead to the disorganisation of society or loss of public trust in military or other state institutions and as a result – call into question the justice in the actions of authorities and justice, which are interdependent with such a category as the protection of citizens.

This issue gains particular attention when it comes to a commander (superior) using violence or weapons against a subordinate, or when this act is committed in a special period, including martial law and in a combat situation. In such circumstances, the exceeding of authority or official powers by a military official acquires not only new content but also a distinct resonance, as such actions can directly affect the combat readiness of the unit, the moral and psychological state of personnel, and the overall outcome of hostilities.

Unlawful actions of a commander (superior) can undermine the trust of subordinates, which is critically important in situations where cohesion and discipline are decisive factors for success on the battlefield. This highlights the need to adhere to legal norms and principles of command, especially during military operations, when any deviation from legal powers can lead to serious consequences for individual servicemen or the unit where they serve, and for the state as a whole.

The severity of these consequences requires careful evaluation, taking into account the specific circumstances of the committed act. In some cases, the use of violent methods of influence on subordinates (part 2), including the use of weapons (part 3), can lead to serious consequences in the form of physical or moral suffering. However, if such actions are committed under a special period (part 4), martial law, or during a combat situation (part 5), they are capable of causing even greater harm to both the state and its citizens, including grave consequences of a social or ideological nature that can negatively affect the country's defence capability and its national security.

In other words, the commission of any unlawful acts by a military serviceman of the leadership in a special period or combat situation can create a cascading effect, where some negative consequences become a prerequisite for the emergence of others. This can lead not only to a violation of military discipline, mass desertion, evasion of orders, and committing criminal acts for revenge, but also undermine citizens' trust in the country's military-political leadership. In a broad sense, this can cause citizens' unwillingness to participate in the country's defence, mass dismissal of professional servicemen, desertion, an increase in anti-war sentiments, etc.

**Connection of the offence with socially dangerous acts that imply a different qualification or exclude liability for the committed act**. In a practical sense, the connection of the investigated criminal offence with other socially dangerous acts that have a different qualification or exclude criminal liability is manifested by the characteristics of the investigated elements.

In all these aspects, the category of "combat immunity" has key importance. In Ukrainian legislation, this concept is relatively new. Its emergence was a consequence of the full-scale invasion and military actions on the territory of Ukraine, which necessitated supplementing Article 1 of the Law of Ukraine No. 1932-XII[2] with this term. The content of this category allows concluding that combat immunity is a legal mechanism that protects servicemen and other persons involved in performing combat tasks from criminal liability for actions committed during the performance of official duties in a combat situation.

[1] Criminal Code of Ukraine. (May, 2001). Retrieved from https://zakon.rada.gov.ua/laws/show/2001-05#Text.
[2] Law of Ukraine No. 1932-XII "On the Defense of Ukraine". (December, 1991). Retrieved from https://zakon.rada.gov.ua/laws/show/1932-12#Text.

Classifying this legal category, two main aspects can be distinguished. Firstly, from the subjective side, combat immunity covers a range of persons from among servicemen, law enforcement officers, and other subjects participating in performing tasks of national defence. Secondly, the objective aspect of combat immunity implies actions carried out within the scope of official duties that are subject to immunity, provided that they were committed within the limits of necessary defence or in conditions of extreme necessity.

This means that the relationship between combat immunity and exceeding authority or official powers is an important aspect of legal regulation. However, combat immunity is not absolute. Its application does not cover actions that go beyond official duties or are committed with an obvious intent to cause harm. That is, if a serviceman exceeds authority or official powers, the effect of combat immunity may be called into question, and such persons may be held liable if it is proven that the offender's actions do not meet the requirements of legality, proportionality, and humanity.Thus, combat immunity is important for ensuring the effectiveness of performing tasks in armed conflict, as it contributes to the proper performance of official duties without fear of being held liable, provided that legality, proportionality, and humanity are observed, including under martial law or in a combat situation.

## Conclusions

The forensic characteristics of a military official exceeding authority or official powers, committed under martial law or in a combat situation, represent a system of features describing the mechanism and methods of committing the offence, as well as data that facilitate the investigation. This characteristic includes information about the offender, their motives and goals, the object of the criminal encroachment, circumstances affecting the qualification of the act, methods of committing the offence, and information that influences proper qualification.

A number of elements can be identified within the forensic characteristics of the investigated criminal offence. The first of these is the place, time, and period of the unlawful acts. This data allows for the precise establishment of the circumstances of the criminal offence, which is important for the subject of proof in terms of defining the circumstances of the criminal offence, establishing alibis, and linking the event to a specific special period. Furthermore, military actions often occur in specific conditions and in certain territories, which affects the course and effectiveness of the investigation.

The second element is the identity of the offender. Identifying the offender, including their military service status, helps to understand the context and motives of the unlawful encroachment. This is also important for identifying potential accomplices to the offence. Accordingly, the third element should be the purpose, motives, and conditions that contributed to the commission of the criminal offence. Analysing these aspects helps to clarify the causes and circumstances that contributed to the commission of the criminal offence, which is an important condition for developing effective strategies for preventing similar cases.

The next element is the methods of committing criminal acts. Defining the methods used to commit the criminal offence helps to identify characteristic features that may be useful for investigating other similar cases. Next, the scope of the offender's official rights and duties should be identified. Understanding the limits of the offender's powers allows for precise determination of whether and how these limits were exceeded, which is critically necessary for qualifying the act under investigation. The sixth element is the identity of the victim. Information about the victim can provide additional evidence regarding the motives and methods of committing the offence and determine the extent of the harm caused.

The socially dangerous consequences of the offence and the degree of their danger are the next element, as evaluating the consequences helps to determine the gravity of the socially dangerous act and justify the necessity of applying certain legal response measures and penalties. The final element is the links of the offence to actions that imply a different qualification or exclude criminal liability. Establishing a connection with other actions that may have a different qualification or exclude criminal liability allows for a more precise determination of the legal nature of the act committed.

These elements provide a comprehensive approach to investigating military criminal offences committed under martial law or in a combat situation. They ensure a comprehensive understanding of the context, motives, and circumstances of the act committed, making them relevant for inclusion in the forensic characteristics of the criminal offence provided for in Article 426-1 of the Criminal Code of Ukraine. In the future, this will allow for the development of effective mechanisms for investigating and preventing the acts under investigation, and will also ensure a fair and justified legal response in this area of legal relations. In further research, attention should be focused on analysing initial and subsequent investigative actions during the investigation of the criminal offence under study, taking into account the methods and motives of its commission, as well as the socially dangerous consequences.

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## Conflict of Interest

None.

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# Криміналістична характеристика перевищення влади чи службових повноважень військовою службовою особою, вчиненого в умовах воєнного стану або бойової обстановки

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**Анотація**
Актуальність досліджуваної тематики зумовлена необхідністю вдосконалення методики розслідування кримінальних правопорушень, учинених військовослужбовцями в умовах збройного конфлікту. Це сприятиме утвердженню верховенства права шляхом дотримання норм національного законодавства й міжнародно-правових стандартів ведення бойових дій та забезпечення захисту цивільного населення під час збройного конфлікту. Метою дослідження було формування цілісної криміналістичної характеристики перевищення владних чи службових повноважень військовослужбовцями задля розроблення дієвих та ефективних механізмів їх розслідування. Методологічний інструментарій дослідження охоплював комплекс загальнонаукових і спеціальних методів, що забезпечили всебічне вивчення причин та умов перевищення владних і службових повноважень військовослужбовцями, а також сприяли формуванню науково обґрунтованих підходів до їх розслідування, серед них: порівняльно-правовий метод для аналізу законодавчих норм, що регулюють правовідносини у військовій сфері; формально-логічний метод для уточнення правових дефініцій за темою дослідження; метод контекст-аналізу для системного опрацювання наукових підходів до розслідування військових правопорушень, а також індуктивний метод для узагальнення отриманих результатів. Виокремлено та проаналізовано основні елементи криміналістичної характеристики досліджуваного кримінального правопорушення. Ці елементи розподілено на загальні та спеціальні, або контекстуальні. До них належать: місце, час і період вчинення протиправних дій, особа злочинця, мета, мотиви й умови, що сприяли вчиненню кримінального правопорушення, способи реалізації злочинних дій (намірів), особа потерпілого, суспільно небезпечні наслідки правопорушення, ступінь їх небезпечності, а також зв'язок досліджуваного кримінального правопорушення з діями, які передбачають іншу кримінально-правову кваліфікацію або виключають кримінальну відповідальність за вчинене. Наукова значущість отриманих результатів полягає в удосконаленні криміналістичної методики розслідування кримінальних правопорушень, що полягають у перевищенні владних або службових повноважень військовою службовою особою в особливий період воєнного стану або в умовах бойової обстановки. Ці рекомендації можуть слугувати основою для створення методичних рекомендацій щодо розслідування зазначених видів кримінальних правопорушень

**Ключові слова:**
військовослужбовець; військові кримінальні правопорушення; військова дисципліна; криміналістичний аналіз; військові правовідносини; кримінальна відповідальність

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# The position of notaries as taxable entrepreneurs: A study of VAT obligations in notary services

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**Abstract**
This study aimed to examine the position of notaries as taxable entrepreneurs within Indonesia's value-added tax system and its implications for notaries' obligations in providing services to underprivileged communities. A normative approach was employed, involving an analysis of relevant legislation, such as Law No. 42 of 2009 on VAT and Sales Tax on Luxury Goods, Law No. 2 of 2014 on the Notary Profession, and other related tax regulations. The data used in this research were drawn from primary, secondary, and tertiary legal materials, and analysed using both statutory and conceptual approaches. The findings indicated that although notaries are subject to tax obligations as taxable entrepreneurs, challenges arise in the implementation of these obligations, particularly regarding the social function of notaries in serving economically disadvantaged individuals. The imposition of a value added tax on notarial services has the potential to restrict public access to legal services, necessitating policies that balance fiscal obligations with the principle of access to justice. Further research is therefore needed to formulate tax policies that are more adaptive to the social role of the notarial profession. It is important to reconsider the classification of notaries as public officials who serve society. Based on the considerations above, it is evident that the intention of the government and lawmakers is to acknowledge the role of notaries as public officials responsible for drafting authentic deeds in the public interest. In practice, notaries perform a public service by fulfilling state functions related to the creation of authentic notarial deeds. They are also obliged to provide services to underprivileged individuals and cannot

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refuse to do so. Therefore, the imposition of value-added tax on all notarial services imposes a burden not only on clients but also on the notaries themselves

**Keywords:**
notary profession; taxable entrepreneur; access to justice; authentic deeds; value-added tax

## Introduction

A notary plays a significant role in the legal and business sectors in Indonesia. As a public official appointed by the state, a notary is authorised to prepare authentic deeds and is responsible for ensuring legal certainty for parties engaged in transactions. In performing their professional duties, notaries earn income from the services they provide to the public, whether in civil transactions, banking, or other sectors. Given the high volume of transactions involving notaries, questions arise regarding their position within the taxation system, particularly in relation to value-added tax (VAT).

In accordance with Article 4 of Law of Indonesia No. 42 of 2009 "On the Third Amendment to Law No. 8 of 1983"[1], services subject to VAT include those in various sectors, including legal services provided by certain professions. As providers of legal services, notaries are often the subject of discussion regarding their tax obligations, particularly their status as taxable entrepreneurs. Pursuant to Article 3A, Paragraph (1) of the VAT Law, any entrepreneur delivering taxable goods or services is required to fulfil tax obligations if they meet a specific threshold. In this context, a notary whose income exceeds the threshold established by the Minister of Finance Regulation may be classified as a taxable entrepreneur, thereby being required to collect, remit, and report VAT on the services provided.

On the other hand, certain types of services are exempt from VAT, as stipulated in Article 4A, Paragraph (3) of the VAT Law. Under this provision, legal services are among the categories exempt from VAT. However, further analysis is required to determine whether the services provided by notaries fall within this exemption, given that notaries also perform administrative and commercial functions in practice (Mufidah & Habibi, 2019). Furthermore, the Directorate General of Taxes has, on several occasions, issued circulars and policy statements regarding the tax status of notaries, often resulting in differing interpretations between taxpayers and tax authorities (Supriyanti, 2023).

Another issue in the implementation of VAT obligations for notaries concerns the mechanism of tax collection and reporting. Notaries who have been designated as taxable entrepreneurs must issue tax invoices for each service provided to their clients (Ajeng Pramesthy, 2023). This imposes an additional administrative burden that may affect the efficiency and effectiveness of notarial services. Additionally, a lack of understanding among notaries regarding the procedures for fulfilling tax obligations may expose them to the risk of administrative sanctions or tax-related criminal penalties. From the perspective of tax law, the imposition of VAT on notarial services must take into account the principles of legal certainty, fairness, and utility. Legal certainty is crucial in order to prevent overlapping regulations, while fairness requires that taxation does not disproportionately burden certain parties. From a utilitarian standpoint, tax regulations should promote taxpayer compliance without impeding public access to the legal services provided by notaries. A similar issue was reported by D. Yustisianto & J. Hafidz (2023).

Several previous studies relevant to this topic include research conducted by H.K. Ajeng Pramesthy (2023), which discusses notaries as public officials providing legal services that fall within the category of VAT-taxable services. To fulfil this obligation, notaries must first be registered as taxable entrepreneurs in order to impose VAT on the services they provide. Another study, conducted by I. Akib (2021), finds that the collection of VAT by notaries has not been effectively implemented, as some notaries do not issue tax invoices for VAT collection on their services. Although many have met their responsibilities as taxable entrepreneurs under the applicable regulations, a number rely on tax consultants for administrative processes, which has led to a lack of understanding among notaries regarding tax administration. Furthermore, research by W. Damayanti *et al*. (2024) concludes that notarial services fall within the category of VAT-taxable legal services. Notaries must impose VAT on their clients and be registered as taxable entrepreneurs if their income exceeds the prescribed threshold.

B. Ispriyarso & D.C. Permana (2022) examined the juridical validity of classifying notaries as taxable entrepreneurs (PKP) and how they fulfil their obligation to collect VAT on legal services. Using an empirical juridical approach supported by qualitative analysis, the study reveals that while most notaries registered as PKP do collect VAT, many disagree with being categorised as "entrepreneurs", indicating a misalignment between legal classification and professional identity. L. Afriani (2022) explored the legal and ethical obligations of notaries to offer pro bono services as required by the Notary Law and the Notary Code of Ethics. The study finds that in Medan, the provision of such services

[1] Law of Indonesia No. 42 "On the Third Amendment to Law Number 8 of 1983 On Value Added Tax on Goods and Services and Sales Tax on Luxury Goods". (2009, October). Retrieved from https://peraturan.bpk.go.id/Details/38787/uu-no-42-tahun-2009.

has been implemented positively, driven by notaries' sense of humanity, morality, and professional integrity.

This study aimed to analyse the legal status of notaries as value-added taxpayers within the Indonesian VAT system and to identify the implications of this status for their obligations to provide services to disadvantaged individuals.

## Materials and Methods

The normative legal research conducted in this study was based on an analysis of applicable legal norms, with a focus on the conceptual framework underlying relevant regulations. This study relied on secondary data, comprising primary, secondary, and tertiary legal materials. Legal research involves several methodological approaches. The approach adopted in this study served as a means to obtain information from various sources concerning the legal issues under examination. As this research employed normative legal methods, it utilised approaches such as the statutory approach and the conceptual approach (Marzuki, 2010). Primary legal materials consist of laws and regulations that serve as binding sources of law. The primary legal materials relevant to the position of notaries as taxable entrepreneurs include the 1945 Constitution[1], Law No. 2 of 2014[2], Law No. 42 of 2009[3], and the Regulation of the Minister of Finance of the Republic of Indonesia No. 68/PMK.03/2010[4]. Secondary legal materials, such as academic books and journal articles, were used to provide theoretical perspectives and to support the analysis of legal policy. Meanwhile, tertiary legal materials, such as the Great Dictionary of the Indonesian Language, were consulted to clarify the terminology employed in the study (Irwansyah, 2022).

The statutory approach was the primary method used, involving a detailed examination of laws and regulations relevant to the research theme. In addition, a conceptual approach was applied to identify and understand the ideas and underlying principles behind the formation of legal norms. This approach enabled the research to go beyond the textual content of the regulations by examining foundational legal concepts such as justice, legal certainty, and the protection of workers' rights. By combining these approaches, the study aimed to describe the relationship between applicable legal norms and the legal objectives they seek to achieve, particularly within the context of legal policy and the protection of workers' rights. This methodological framework supports both theoretical and practical contributions to the understanding and development of related legal policies.

## Results

As a public official, a notary must be an Indonesian citizen. Indonesian citizens who meet the criteria outlined in Article 23A of the 1945 Constitution[5] "are required to pay taxes and other compulsory levies for state needs as regulated by law". Fulfilling tax obligations is therefore equivalent to fulfilling one's duties as a citizen and contributing to national development, in accordance with Article 30, Paragraph (1) of the 1945 Constitution. According to Article 3A(1) of the VAT Law[6], every entrepreneur engaged in the supply of taxable goods (BKP) and/or taxable services (JKP) within the customs territory is required to register their business for confirmation as a PKP, except for small businesses with an annual turnover below the threshold set by Regulation of the Minister of Finance of Indonesia (PMK) No. 197/PMK.03/2021[7], which is 4.8 billion IDR. As a PKP, an entrepreneur is required to collect, deposit, and report VAT on BKP/JKP transactions. Furthermore, a PKP must issue a tax invoice as proof of VAT collection and periodically submit VAT returns to the Directorate General of Taxes (DJP). The PKPs are also entitled to credit input tax against output tax under the VAT mechanism, as stipulated in Article 9 of the VAT Law. Holding PKP status enables entrepreneurs to optimise tax management and benefit from VAT restitution mechanisms in cases of tax overpayment.

Conversely, a non-PKP is an entrepreneur whose annual turnover is below 4.8 billion IDR and who is therefore not required to be confirmed as a PKP, as set out in Article 3A(1) of the VAT Law[8]. However, they may voluntarily apply for PKP status should they wish to implement the VAT mechanism in their business. Entrepreneurs not registered as PKP are not obliged to collect and deposit VAT, issue tax invoices, or file VAT returns. Nevertheless, non-PKP businesses still have other tax responsibilities, such as paying income tax according to their business scale and the applicable tax regulations.

[1] Constitution of the Republic of Indonesia. (1945, August). Retrieved from https://jdih.bapeten.go.id/unggah/dokumen/peraturan/116-full.pdf.
[2] Law of Indonesia No. 2 "On Amendments to Law Number 30 of 2004 On the Position of Notary". (2014, January). Retrieved from https://peraturan.bpk.go.id/Details/38565/uu-no-2-tahun-2014.
[3] Law of Indonesia No. 42 "On the Third Amendment to Law Number 8 of 1983 On Value Added Tax on Goods and Services and Sales Tax on Luxury Goods". (2009, October). Retrieved from https://peraturan.bpk.go.id/Details/38787/uu-no-42-tahun-2009.
[4] Regulation of the Minister of Finance of the Republic of Indonesia No. 68/PMK.03/2010. (2010, March). Retrieved from https://peraturan.bpk.go.id/Details/150340/pmk-no-68pmk032010.
[5] Constitution of the Republic of Indonesia. (1945, August). Retrieved from https://jdih.bapeten.go.id/unggah/dokumen/peraturan/116-full.pdf.
[6] Law of Indonesia No. 42 "On the Third Amendment to Law Number 8 of 1983 On Value Added Tax on Goods and Services and Sales Tax on Luxury Goods". (2009, October). Retrieved from https://peraturan.bpk.go.id/Details/38787/uu-no-42-tahun-2009.
[7] Regulation of the Minister of Finance of Indonesia (PMK) No. 197/PMK.03/2021. (2021, January). Retrieved from https://salaki-salaki.com/wp-content/uploads/2021/12/SS-2021-PMK-54.PMK_.03.2021-English-version.pdf.
[8] Law of Indonesia No. 42 "On the Third Amendment to Law Number 8 of 1983 On Value Added Tax on Goods and Services and Sales Tax on Luxury Goods". (2009, October). Retrieved from https://peraturan.bpk.go.id/Details/38787/uu-no-42-tahun-2009.

To register as a taxable entrepreneur, a business owner must submit an application to the local Tax Service Office, following the business's registered domicile. The registration process may be completed online through the DJP e-Registration system or in person. Applicants are required to provide documents including a taxpayer identification number, an identity card (for Indonesian citizens) or immigration documents (for foreign nationals), business legitimacy documents (such as the deed of establishment and business licence), and proof of business premises ownership or lease. Once the documentation is considered complete, the DJP will conduct a verification process, which may include a site visit, to confirm eligibility for PKP status. If approved, the DJP will issue a PKP registration letter along with a tax invoice serial number for VAT administration purposes.

Services that must be registered as PKP include those subject to VAT under the VAT Law. These services include legal services (such as those provided by notaries and lawyers), consultancy services (e.g. management and financial consulting), construction, advertising, information technology, and property or asset rental. Additionally, services in the transport, entertainment, and certain education sectors that are not exempt under VAT regulations must also register for PKP status if they exceed the prescribed turnover threshold. With PKP status, service providers are required to collect and report VAT and to issue tax invoices to clients as valid proof of transaction in compliance with applicable tax laws.

A notary plays a crucial role in Indonesia's legal system as a public official authorised to draw up authentic deeds and other legal documents. This profession is regulated by Law of Indonesia No. 2 of 2014 "On the Notary Office"[1], which mandates that notaries provide legal services to the public based on principles of professionalism and integrity. In performing their duties, notaries charge service fees that are subject to taxation under the prevailing regulations, including VAT. However, issues arise when notaries are also required to provide services to underprivileged individuals who may be unable to afford both notarial fees and the associated VAT (Wahyudi, 2024).

In drafting an authentic deed, a notary must prioritise the will of the parties involved. All powers exercised by a notary must be clearly and firmly stated. The process must reflect the intentions of the parties concerned so that every legally authorised action of the notary is expressed in the appropriate terms, namely "regarding all acts, agreements and provisions" (Yani, 2020). As a public official in the legal domain, a notary is appointed and dismissed by the government. Therefore, every action must conform to the code of ethics and legal obligations stipulated by law. The notarial profession is regarded as an honourable one, and as a public official, the notary is also expected to function in the service of the public.

Furthermore, the classification of a notary as a "businessperson" appears inconsistent with their status as a public official. However, according to the Directorate General of Taxes, no alternative term is available, as "entrepreneur" is the standard term used under the VAT Law, which only recognises PKP as the official classification. Given this, it may be argued that notaries who provide legal services in the public interest should not be burdened with VAT obligations. Notaries are prohibited from seeking maximum profit, whereas, according to the Civil Code, "a business is an action, an act carried out by parties called entrepreneurs in order to obtain the greatest possible profit and/or benefit". Therefore, notaries should not be equated with the commercial definition of an entrepreneur. In civil law[2], "business" is defined as "every action, act, or activity related to the economy carried out by entrepreneurs with the aim of obtaining profit and/or profit". Notaries, in carrying out their duties, do not aim to generate profit. A notary is an individual who performs legal acts or activities and receives income; therefore, notaries should not be subject to regulations that apply to entrepreneurs.

Notaries are also prohibited from holding concurrent positions as entrepreneurs, engaging in advertising, collaborating with companies, or undertaking activities commonly associated with businesspersons – as stipulated in Article 17, Paragraph (1) of the Law of Indonesia No. 2 of 2014[3]. According to A. Elies (2025), "legal acts are every human act that is done intentionally to give rise to rights and obligations". Legal acts refer to any activity carried out by a legal subject which results in legal consequences. These consequences are seen as a reflection of the will of the party acting. This interpretation is not consistent with the classification of notaries as PKP. Moreover, the legal services provided by notaries differ significantly from other types of legal services.

According to the VAT Law[4], services rendered by taxable entrepreneurs are subject to VAT at a predetermined rate. A notary who earns income from their services may be classified as a PKP if their gross revenue exceeds the threshold specified in tax regulations. As a result, they are required to collect, deposit, and report

[1] Law of Indonesia No. 2 "On Amendments to Law Number 30 of 2004 On the Position of Notary". (2014, January). Retrieved from https://peraturan.bpk.go.id/Details/38565/uu-no-2-tahun-2014.
[2] Law of the Republic of Indonesia No. 1 "On the Chamber of Commerce and Industry". (1987, January). Retrieved from https://peraturan.bpk.go.id/Details/46815/uu-no-1-tahun-1987.
[3] Law of Indonesia No. 2 "On Amendments to Law Number 30 of 2004 On the Position of Notary". (2014, January). Retrieved from https://peraturan.bpk.go.id/Details/38565/uu-no-2-tahun-2014.
4 Law of Indonesia No. 42 "On the Third Amendment to Law Number 8 of 1983 On Value Added Tax on Goods and Services and Sales Tax on Luxury Goods". (2009, October). Retrieved from https://peraturan.bpk.go.id/Details/38787/uu-no-42-tahun-2009.

VAT on the services they provide. This has implications for the costs borne by clients seeking notarial services, including individuals who require legal assistance but lack the financial means to pay. In this context, a notary's tax obligations may conflict with the public service principle that underpins the notarial profession. Article 37 of the Notary Office Law[1] stipulates that notaries must provide services to the public based on the principle of fairness and must not refuse clients on the basis of social or economic status. In other words, notaries have both a moral and legal obligation to assist underprivileged individuals, even if the remuneration is minimal or absent.

The imposition of VAT on notarial services could impose an additional burden on individuals in need of legal assistance but unable to afford it. For instance, when drafting deeds of gift, inheritance certificates, or other legal documents essential to low-income communities, the notarial fee combined with VAT could hinder access to justice (Tan, 2020). This situation may lead people to avoid notarial services altogether or to turn to informal alternatives that lack legal validity. From a social justice perspective, the government should consider adopting tax policies that offer relief for notaries who provide services to disadvantaged groups. One possible approach is to introduce VAT exemptions or reduced rates for notarial services provided to specific groups, such as low-income individuals, persons with disabilities, or victims of natural disasters. Such policies could help to balance tax obligations with public access to legal services (Pavliv, 2023).

Additionally, the government could offer tax incentives to notaries who provide pro bono (free) services to disadvantaged communities. These incentives could take the form of income tax deductions or credits for services rendered without charge (Sulistyawati & Arta, 2022). With such measures in place, notaries could continue to fulfil their social role without being excessively burdened by tax obligations. In practice, some notaries already uphold their social responsibility by offering free legal services to those in need. However, without clear regulatory support, these efforts are often carried out individually, without incentives or official recognition from the government. Therefore, clearer regulations are needed to align notarial tax obligations with their public service role.

Furthermore, tax compliance oversight for notaries should be strengthened to ensure that the profession adheres to regulations transparently. While some notaries have registered as PKP and collect VAT by law, others have yet to fulfil this obligation. Greater awareness and supervision by the Directorate General of Taxes is necessary to ensure that all notaries understand and comply with applicable tax regulations without neglecting their social responsibilities. From the perspective of legal certainty, imposing VAT on notarial services also enhances transaction transparency. The requirement to issue tax invoices ensures that all transactions involving notaries are properly documented and auditable by tax authorities. This contributes to reducing tax evasion and ensuring that all taxed services comply with current regulations (Puttri *et al*., 2024).

In the Minister of Finance Regulation of the Republic of Indonesia No. 68/PMK.03/2010[2], concerning the small business threshold for value-added tax, a specific exemption should be considered for notaries, taking into account the strict professional standards and restrictions that govern their role. According to Article 17, Paragraph (1), letter f of Law No. 2 of 2014[3], notaries are prohibited from holding concurrent positions as business owners, meaning they cannot engage in business activities that could compromise the independence and integrity of their profession. Therefore, regulations concerning the small business VAT threshold should reflect this prohibition to prevent conflicts of interest and to provide a more appropriate tax framework for notaries.

Moreover, notaries are also prohibited from advertising, collaborating with companies, or engaging in other commercial activities, as stipulated in the Notary Law. These restrictions aim to preserve the integrity of the profession, ensuring that notaries remain impartial and free from commercial influence. If the Minister of Finance Regulation No. 68/PMK.03/2010[4] fails to offer a specific exemption for notaries, which could result in confusion and potential breaches of professional conduct. Therefore, it would be more appropriate for the regulation to include provisions that acknowledge the unique nature of the notarial profession and ensure consistency with applicable tax laws for small businesses.

## Discussion

This study focuses specifically on the legal analysis of the obligations of notaries as PKP, particularly in relation to the application, collection, and reporting of VAT on notarial legal services. It emphasises the principles of legal certainty and the implementation of tax regulations within the notarial profession while seeking to offer normative solutions to the administrative

[1] Law of Indonesia No. 2 "On Amendments to Law Number 30 of 2004 On the Position of Notary". (2014, January). Retrieved from https://peraturan.bpk.go.id/Details/38565/uu-no-2-tahun-2014.
[2] Regulation of the Minister of Finance of the Republic of Indonesia No. 68/PMK.03/2010. (2010, March). Retrieved from https://peraturan.bpk.go.id/Details/150340/pmk-no-68pmk032010.
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[4] Regulation of the Minister of Finance of the Republic of Indonesia No. 68/PMK.03/2010. (2010, March). Retrieved from https://peraturan.bpk.go.id/Details/150340/pmk-no-68pmk032010.

challenges faced by notaries in fulfilling their tax obligations. This approach differs from that of H.K. Ajeng Pramesthy (2023), whose research concentrated more on the formal requirements for PKP registration and the status of notaries as legal service providers, without exploring in depth the practical administrative barriers encountered by notaries in the field. By contrast, the research of I. Akib (2021) highlighted shortcomings in implementation, particularly the uneven understanding among notaries regarding the taxation system and their reliance on tax consultants. However, it did not engage with the normative aspects or the need for policy reformulation.

Similarly, the study by W. Damayanti *et al.* (2024) reaffirmed the classification of notarial services as subject to VAT and underlined the significance of PKP status. Nonetheless, it did not critically examine notaries' perceptions of VAT as a burden on their professional responsibilities and legal identity. In addition, research by B. Ispriyarso *et al*. (2022) introduced a social psychology perspective by highlighting the tension between the legal classification of "entrepreneur" and the notary's identity as a public official. This study contributed to the discourse by addressing notaries' internal resistance to their role within the taxation system but fell short of analysing its legal ramifications. L. Afriani (2022) took an alternative approach by focusing on the ethical obligations of notaries in delivering pro bono services, a topic that is not directly relevant to the VAT issue. A key shortcoming of previous studies is their failure to integrate normative, administrative, and sociological perspectives into a single comprehensive framework. Accordingly, this study seeks to address this gap by adopting a holistic approach that encompasses positive legal analysis, practical administrative concerns, and an assessment of the professional status of notaries within the national taxation system.

In comparison, countries such as the Netherlands regulate the imposition of VAT on notarial services under the Turnover Tax Act 1968[1]. Legal services provided by notaries in the Netherlands are also classified as taxable services, subject to a standard VAT rate of 21%. However, unlike in Indonesia, the Dutch taxation system prioritises administrative efficiency, supported by integrated digital systems and access to professional tax consultants in all areas of legal practice. Furthermore, the professional identity of notaries in the Netherlands has been formally harmonised with the framework of remunerated professional services, thus avoiding any conflict between their professional role and tax status. This demonstrates that, although there are similarities in the imposition of VAT on notarial services, the legal frameworks and their implementation differ significantly between Indonesia and countries such as the Netherlands.

In the 2020s, notaries in Indonesia faced an unclear professional status, as they were bound by strict ethical codes requiring them to serve the public without charging fixed fees (Styawardani, 2024). Notaries are responsible for providing legal services essential to various transactions – such as property deeds, wills, and contracts – but their remuneration is not always predetermined and often varies according to the nature of the service provided. This ambiguity concerning their professional classification creates challenges, particularly in reconciling ethical obligations with legal and financial requirements, such as the imposition of value-added tax on services.

If VAT were to be applied to notarial services, as stated by S. Adah & M. Faisol (2024), it could result in negative consequences for both notaries and their clients. Notaries already operate under stringent ethical constraints, and the imposition of VAT could compromise both their professional independence and the affordability of their services. Clients requiring notarial services for essential legal matters may face increased costs, thereby reducing accessibility. Furthermore, notaries themselves may experience financial pressure, as they are prohibited from functioning as business owners or commercial entities. This could lead to potential conflicts of interest and financial hardship, particularly if they are required to collect taxes or engage in commercial activities. Consequently, clearer regulatory guidance regarding the scope of notarial duties and associated tax obligations is urgently required to safeguard both the profession and the public.

It is reasonable to concur with S.A. Zanny *et al*. (2024) that the taxation of notarial services in Indonesia continues to suffer from numerous shortcomings and ambiguities, both normatively and in practice. Legally, the VAT Law and its derivative regulations do not explicitly or consistently define the status of notaries as taxable entrepreneurs. This has led to multiple interpretations regarding whether notaries, as public officials performing certain state functions, can be equated with conventional commercial actors. This ambiguity is further exacerbated by the uneven understanding among notaries of tax administration procedures – such as tax invoice issuance, tariff calculations, and submission of tax returns – resulting in inconsistent VAT collection and remittance. Moreover, the absence of specific technical guidelines tailored to the notarial profession within existing tax regulations fosters an overreliance on tax consultants and contributes to legal uncertainty. Ultimately, this situation is detrimental not only to the notaries themselves as taxpayers but also to the state (Hikmah, 2024).

Therefore, the taxation policy that imposes a value-added tax on every notarial service should be reconsidered. The imposition of VAT has the potential

[1] Turnover Tax Act of Netherlands. (1968, June). Retrieved from https://wetten.overheid.nl/BWBR0002629/2025-01-01.

to increase the financial burden on both clients and notaries, which could restrict access to legitimate and legally binding services. Furthermore, considering that almost every aspect of life requires notarial assistance, a taxation policy that fails to recognise the social function of this profession may have adverse consequences for access to justice (Wahyudi, 2024). A more adaptive policy is therefore needed, such as exemptions or tax reductions for notarial services provided to underprivileged individuals. With a more balanced approach, the role of notaries in serving the public can be preserved without being hindered by tax obligations that may obstruct their function as providers of public legal services (Prasetya, 2024). The government, notarial associations, and tax authorities must collaborate to devise appropriate solutions for aligning notaries' tax obligations with their social role. With effective policies in place, notaries can continue to fulfil their responsibilities as public officials delivering legal services to all sectors of society, without being unduly burdened by taxation (Monteiro, 2025). It should also be acknowledged that the notarial profession is a public office granted by the state to meet vital societal needs. Fees for notarial services are already regulated and may not exceed predetermined limits. Therefore, regulatory harmonisation and clearer reinforcement of this position are essential. Such matters must not be addressed arbitrarily but require thorough study and careful deliberation.

Taxation policies that impose VAT on all notarial services should be reassessed, as they risk increasing the financial burden on both clients and notaries and could limit access to lawful and binding legal services. Given the crucial role of notaries in nearly every facet of public life, policies that overlook the social function of this profession may negatively affect access to justice. A more flexible approach is required, such as VAT exemptions or reductions for services provided to low-income individuals. The government, notarial associations, and tax authorities must work collaboratively to align tax obligations with the public role of notaries, thereby ensuring that their services remain accessible without being subject to excessive fiscal pressures. As the notary profession is a state-appointed role with fees already regulated by law, it is vital that regulatory harmonisation and reaffirmation of their public function are implemented thoughtfully, based on in-depth research and careful policy analysis.

## Conclusions

The findings of this study highlighted the significant ambiguity surrounding the status of notaries as "entrepreneurs" under value-added tax legislation, despite their role as public officials. This inconsistency is problematic, as it creates a legal conflict between the notarial profession's ethical duty to serve the public and the tax obligations imposed upon them. The study emphasised that notaries, who are prohibited from engaging in business activities, should not be classified as taxable entrepreneurs, as their work is intended to fulfil a public service function rather than to generate profit. In addition, the application of VAT to notarial services may place a financial burden on both notaries and clients, particularly those from lower-income groups, thereby limiting access to essential legal services.

This study was significant in shedding light on the legal and ethical dilemmas faced by notaries when subjected to VAT regulations that conflict with their professional obligations. It contributes to a broader understanding of how the taxation of professional services can affect public access to justice and legal support. The findings demonstrated that tax policies must be adapted to reflect the unique nature of notarial duties as public service activities rather than purely commercial endeavours. The study underscores the need for policy reform that either exempts notarial services from VAT or introduces reduced tax rates for services provided to vulnerable populations.

These findings enhanced the understanding of the intersection between the legal profession, taxation, and public service, suggesting that clearer guidelines and appropriate exemptions should be introduced to ensure that notaries can continue to provide their services without undue financial strain. This research opened further discussion on how best to balance social justice and tax obligations, ensuring that legal professionals can uphold their responsibilities while remaining compliant with tax law. Future studies might explore international comparisons, examining how other jurisdictions have addressed similar issues in relation to the legal profession and taxation, or investigate the potential for additional tax incentives for notaries offering pro bono services. Further attention is needed to determine how regulatory clarity can be improved to resolve the ambiguities that currently hinder notarial practice.

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## Conflict of Interest

None.

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# Позиція нотаріусів як суб'єктів підприємницької діяльності: дослідження податкових зобов'язань з ПДВ під час надання нотаріальних послуг

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**Анотація**
Метою цього дослідження було вивчення становища нотаріусів як оподатковуваних підприємців у системі податку на додану вартість Індонезії та його наслідків для зобов'язань нотаріусів у наданні послуг малозабезпеченим верствам населення. Нормативний підхід застосовано шляхом вивчення відповідного законодавства, зокрема Закону № 42 від 2009 року про ПДВ та податок з продажу предметів розкоші, Закону № 2 від 2014 року про професію нотаріуса, а також інших пов'язаних з ним податкових нормативних актів. Дані, використані в цьому дослідженні, отримано з первинних, вторинних і третинних юридичних матеріалів та проаналізовано за допомогою нормативного й концептуального підходів. Результати дослідження засвідчили, що хоча нотаріуси несуть податкові зобов'язання як суб'єкти підприємницької діяльності, однак постають проблеми, пов'язані із соціальною функцією нотаріату щодо надання послуг економічно незахищеним верствам населення. Навантаження податком на додану вартість на нотаріальні послуги потенційно може перешкоджати доступу населення до юридичних послуг, що актуалізує необхідність запровадження політики, яка збалансовувала б податкові зобов'язання з принципом доступу до правосуддя. Констатовано, що подальшого дослідження потребують питання формування податкової політики, адаптованої до соціальної функції нотаріату, яка має враховувати, що нотаріуси є державними службовцями, які служать суспільству. Метою уряду й законодавців є визнання послуг нотаріусів як державних службовців, які несуть відповідальність за вчинення автентичних правочинів на користь суспільства. Вони також зобов'язані надавати послуги малозабезпеченим особам і не можуть відмовити їм у цьому. Доведено, що обкладання податком на додану вартість кожної нотаріальної послуги є тягарем не лише для клієнтів, а й безпосередньо для нотаріусів

**Ключові слова:**
професія нотаріуса; оподатковуваний підприємець; доступ до правосуддя; автентичність актів; податок на додану вартість

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# Regulating and mitigating the risks of youth sports betting in Ethiopia

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**Abstract**
The rapid expansion of sports betting in Ethiopia presents a critical challenge, demanding urgent regulatory intervention to address its detrimental impact, particularly on youth. The core objective of the study was to analyse the causal relationships and mediating factors between crime rates, familial discord, and mental health issues associated with gambling activities, and to recommend the most effective means of mitigating the activity. Employing a normative legal research methodology, this article critically examined Ethiopia's existing legal framework, including the National Lottery Administration Re-establishment Proclamation No. 535/2007 and the Sports-Betting Lottery Directive No. 172/2021. This analysis was complemented by a comprehensive literature review, comparative studies of international regulatory models (specifically the UK), and practical observations within the Ethiopian context. The findings revealed that the current regulatory focus on revenue generation inadequately addresses the profound social harms. Notably, the study established a

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clear correlation between increased betting activities and heightened crime rates, alongside significant adverse effects on family stability and mental health. The vulnerability of youth, exacerbated by pervasive advertising and online accessibility, is a central concern. Critical gaps within the existing legal framework, including unregulated advertising and weak penalties, were identified. Crucially, the current law fails to prevent money laundering by not requiring proof of the source of funds, and also fails to regulate advertisements. The practical significance of this research lies in its potential to inform immediate policy reforms. Key recommendations included stringent licensing requirements, mandatory disclosure of betting's negative impacts, comprehensive advertising prohibitions, mandatory source-of-funds declarations from bettors, mental health screening for participants, reduced maximum payout limits, and clearly defined penalties for violations. The establishment of a dedicated gambling commission, akin to the UK model, was also proposed. This study underscored the urgent need to prioritise youth protection and social well-being over short-term economic gains

**Keywords:**
sports betting regulation; youth vulnerability; crime and gambling; advertising prohibition; legal reform

## Introduction

The allure of sports betting has swept across Ethiopia over time, capturing the imagination of both adults and youth. While the industry offers potential for economic growth and entertainment, it also presents a significant challenge: the potential for addiction and adverse consequences for young people. Despite the existence of regulation, sports betting remains widespread, particularly among Ethiopian youth. Although the authors have not been able to find recent data, a 2020 report identified 42 sports betting companies operating in Ethiopia. Special studies indicate that participation in sports betting is increasingly prevalent among adolescents and young adults, often viewed as an attractive means of financial gain or entertainment (Andarge, 2021). This engagement can lead to significant negative outcomes, including addiction, financial instability, and deteriorating mental health. Research conducted among secondary school students in Addis Ababa reveals alarming trends: many young bettors report prioritising gambling over academic responsibilities, leading to declining educational performance and increased dropout rates.

The allure of quick financial rewards, as stated by A. Haji *et al*. (2022) and E. Workeshet Berhance (2024), can create a cycle of dependency in which individuals gamble not only their discretionary income but also essential funds intended for education or family support. This phenomenon is especially escalated by the normalisation of gambling through media portrayals and peer influence, which further exacerbates these issues. Young people are often exposed to messaging that glamorises betting as a socially acceptable activity, contributing to a lack of awareness regarding its potential dangers. This cultural shift towards acceptance is diminishing familial and community bonds, as individuals become increasingly isolated by their gambling habits.

Furthermore, as E.L. Grinolsa & D.B. Mustard (2021) clearly state, from a psychological standpoint, problem gambling is often associated with impulsivity and low self-control. Studies estimate that individuals identified as problem gamblers are between 4.3 and 7.6 percentage points more likely to commit crimes compared to non-gamblers. This heightened risk is compounded by the fact that many problem gamblers engage in illegal activities as a means of recouping financial losses or managing debts related to their gambling behaviour. Approximately 50% of crimes committed by individuals with gambling disorders are directly linked to their gambling activities. Sociologically, the prevalence of problem gambling within criminal populations is alarming. Research conducted by K. Lind *et al*. (2021) indicated that about 73% of incarcerated individuals meet the criteria for problem gambling, highlighting a significant overlap between gambling disorders and criminal behaviour. Many offenders report committing crimes such as robbery or theft specifically to finance their gambling habits or pay off associated debts. Furthermore, the relationship between gambling and crime can be viewed through various criminological theories. For instance, rational choice theory posits that individuals may weigh the potential benefits of committing a crime against the risks involved, often leading them to engage in illegal activities when they perceive a greater need for financial resources (Taye *et al*., 2020). O. Kolos *et al*. (2023) examined instances of uncontrolled violence that arose in Ukraine due to the gambling industry.

Another crucial aspect of this relationship is the role of co-occurring issues such as substance abuse and mental health disorders. Many individuals with gambling problems also struggle with alcohol or drug dependencies, which further exacerbates their likelihood of engaging in criminal behaviour. A study by A. Adolphe *et al*. (2018) has shown that those with both gambling and substance use disorders are significantly more likely to report having committed violent crimes compared to those without these co-occurring issues.

As the above discussion demonstrates, the problems and effects of sports betting persist even in the presence of existing laws aimed at regulation. This Article aimed to highlight the current effects of sports

betting in Ethiopia and, based on those effects, advocate for more stringent laws, including the possibility of a complete ban on the activity. It will also draw on the experiences of countries that have successfully implemented total bans.

## Materials and Methods

This study employed a normative legal research methodology, which focuses on the examination of laws and legal systems as they ought to be. Within this legal research framework, several methods are utilised, including critical analysis, literature review, comparative study, and practical observation. The critical analysis method is employed to scrutinise existing laws related to betting in Ethiopia, such as the National Lottery Administration Proclamation of 2002[1], the National Lottery Administration Re-establishment Proclamation No. 535/2007[2], the Sports Betting Lottery Directive No. 172/2021[3], and the Advertisement Proclamation No. 759/2012[4]. This analysis aimed to highlight the inadequacies of these regulations, particularly noting that they do not effectively impose a total ban on sports betting.

Since normative legal research relies heavily on secondary data sources, including legislation, court decisions, legal theories, and scholarly studies, the literature review method is employed to gather insights from scholars and researchers regarding the current expansion of betting in Ethiopia. This includes examining its relationship with crime and its effects on mental health, as well as the broader social problems associated with it. Additionally, the comparative method is utilised to draw lessons from countries such as the United Kingdom[5,6], which have implemented partial bans on sports betting. This approach seeks to provide insights into how Ethiopia can effectively enforce such a ban and develop appropriate legal measures based on the experiences of those countries. The practical observation method is applied to illustrate and narrate the current effects of betting in Ethiopia. This includes firsthand accounts and observations that reveal the real-world implications of betting activities.

## Results and Discussion

**The economic and social impact of sports betting on youth in Ethiopia.** The legal landscape governing sports betting in Ethiopia is primarily shaped by the National Lottery Administration (NLA), which oversees all gambling activities in the country. The NLA operates under the National Lottery Administration Re-establishment Proclamation No. 535/2007[7] and the more recent Sports-Betting Lottery Directive No. 172/2021[8]. These regulations aim to ensure that betting activities are conducted fairly and responsibly while generating revenue for the government. The legal age for participating in sports betting is set at 21 years, reflecting an effort to protect younger populations from potential gambling-related harms.

As noted, the rapid expansion of sports betting in Ethiopia has reshaped the social fabric and affected the mental health of users, while also introducing significant political and crimerelated challenges. As the industry continues to grow, it is essential to analyse its multifaceted impacts on the economy, the political environment, and crime rates within the country (Abdi *et al*., 2013). The economic implications of sports betting in Ethiopia are profound. On one hand, the industry has emerged as a critical source of revenue for the government. Licensed betting operators are subject to various taxes and fees that contribute significantly to public funds (Girma, 2023). For instance, it is stated in Proclamation No. 535/2007[9] that sports betting companies in Ethiopia are mandated to pay a 30% income tax on their profits, alongside a 15% tax on winnings distributed to bettors. This taxation framework generates substantial income for the state, which can be allocated to social services and infrastructure development. Moreover, the sports betting sector creates numerous job opportunities across various levels of the economy. From customer service roles in retail betting shops to positions in marketing, IT, and financial management within online platforms, the industry has stimulated employment growth (Gathuru, 2021). The proliferation of betting shops and online platforms has also led to an increase in ancillary services; for example, there is a

[1] Proclamation of the Federal Democratic Republic of Ethiopia No. 271 "On the National Lottery Administration". (2002, April). Retrieved from https://www.lawethiopia.com/images/federal_proclamation/proclamations_by_number/271.pdf.
[2] Re-establishment Proclamation of the National Lottery Administration of the Federal Democratic Republic of Ethiopia No. 535/2007. (2007, July). Retrieved from https://www.scribd.com/document/657246627/Proc-No-535-National-Lottery-Administration.
[3] Sports-Betting Lottery Directive of the Federal Democratic Republic of Ethiopia No. 172/2021. (2021, June). Retrieved from https://cms.law/en/int/expert-guides/cms-expert-guide-to-gambling-laws-in-africa/ethiopia.
[4] Advertisement Proclamation of the Federal Democratic Republic of Ethiopia No. 759/2012. (2012, August). Retrieved from https://chilot.wordpress.com/wp-content/uploads/2012/09/advertisement-proclamation.pdf.
[5] Gambling Act 2005 of the United Kingdom. (2005, April). Retrieved from https://www.legislation.gov.uk/ukpga/2005/19/contents.
[6] Statement of Licensing Policy 2023-2026 of the United Kingdom. (2023, June). Retrieved from https://www.barnsley.gov.uk/media/kepepyag/gambling-act-2005-policy-2023.pdf.
[7] Re-establishment Proclamation of the National Lottery Administration of the Federal Democratic Republic of Ethiopia No. 535/2007. (2007, July). Retrieved from https://www.scribd.com/document/657246627/Proc-No-535-National-Lottery-Administration.
[8] Sports-Betting Lottery Directive of the Federal Democratic Republic of Ethiopia No. 172/2021. (2021, June). Retrieved from https://cms.law/en/int/expert-guides/cms-expert-guide-to-gambling-laws-in-africa/ethiopia.
[9] Re-establishment Proclamation of the National Lottery Administration of the Federal Democratic Republic of Ethiopia No. 535/2007. (2007, July). Retrieved from https://www.scribd.com/document/657246627/Proc-No-535-National-Lottery-Administration.

growing demand for sports analysts, tipsters, and content creators who provide insights and information to bettors. This job creation can have a multiplier effect on local economies by increasing consumer spending and stimulating demand for related services such as hospitality and transportation (Tagoe *et al*., 2018).

However, these economic benefits come with significant costs. The rise of sports betting is often accompanied by increased financial strain on households, particularly among low-income individuals who may gamble away essential funds needed for basic necessities (Dowling *et al*., 2019). Studies have indicated that financially constrained households tend to allocate larger portions of their income to gambling activities, which can lead to detrimental effects on savings and overall economic stability (Williams *et al*., 2011). In extreme cases, individuals may resort to borrowing or engaging in criminal activities to finance their gambling habits, further exacerbating their financial difficulties. Additionally, as J.M. Gathuru (2021) stated, while the government benefits from tax revenues generated by legal betting operations, illegal gambling activities pose a substantial risk to this economic model. The existence of unregulated betting houses undermines legitimate operators and deprives the government of potential tax revenue. Consequently, more effective regulation is crucial for consumer protection.

The relationship between gambling and crime is another significant area of concern, with numerous studies indicating that increased gambling activities correlate with higher crime rates (van der Maas *et al*., 2024). This analysis explores the impact of gambling on crime from various perspectives, including statistical evidence, psychological factors, and sociological implications (Shelp, 2017). Research has consistently shown a strong link between gambling expenditure and crime rates. A landmark study conducted in New South Wales, Australia, revealed that for every 10% increase in gambling spending, there were substantial increases in various types of crime, including over 4,500 additional assaults and 2,800 home break-ins annually (Williams *et al*., 2007). This suggests that the negative impacts of gambling extend beyond individual gamblers to affect entire communities, leading to increased rates of criminal activity even among non-gamblers. The findings indicate that as gambling expenditures rise, so too does the incidence of crimes such as theft, fraud, and assault, which are often driven by the financial desperation of problem gamblers seeking to fund their habits or pay off debts incurred through gambling (Grinolsa & Mustard, 2021).

In general, sports betting in Ethiopia, regulated by the National Lottery Administration, generates significant government revenue and employment, yet its rapid growth comes at a high social cost. It contributes to financial strain, particularly among low-income households, and is strongly linked to increased crime rates driven by problem gamblers. The existing regulatory framework, focused primarily on revenue generation, fails to adequately address these profound social harms, necessitating more robust consumer protection and effective regulation of the burgeoning industry.

**From total ban to regulation with restrictions: Lessons from the UK, Saudi Arabia, Qatar, and Sudan.** The United Kingdom permits sports betting subject to comprehensive harm prevention measures. This prevention strategy is characterised by a robust and evolving regulatory framework that prioritises transparency, data-driven interventions, and targeted consumer protection (van der Maas *et al*., 2024). The Gambling Act, in force since 2005[1] and updated in 2023[2], mandates betting companies to monitor user behaviour, set mandatory spending and loss limits – particularly for the most vulnerable age group of 18-24 years – and finance treatment for pathological gambling through a dedicated tax. Operators are required to identify at-risk players by analysing behavioural data and to intervene with warnings, self-exclusion options, or referrals to support services. Advertising is tightly regulated: all promotions targeting children and adolescents are banned, as are ads featuring sports celebrities. The Premier League has voluntarily agreed to remove gambling sponsors from team uniforms (Lind *et al*., 2023). The UK also emphasises collaborative data sharing across betting companies to prevent high-risk individuals from circumventing controls by opening multiple accounts, while ensuring data privacy. Furthermore, online betting platforms must be "safe by design", incorporating features that minimise risk, such as slowing game speed and requiring mandatory limit-setting. These measures are the product of extensive consultation and are continuously refined based on behavioural science and emerging evidence, aiming to balance individual freedom with the protection of vulnerable groups.

In stark contrast, Saudi Arabia, Qatar, and Sudan adopt a prohibitionist approach rooted in Islamic law, where all forms of gambling, including sports betting, are strictly illegal and punishable by criminal penalties. There are no legal operators, no harm reduction programmes, and no responsible gambling initiatives. Prevention is achieved through legal deterrence and active law enforcement, with authorities monitoring and prosecuting illegal betting activities (PastwaWojciechowska, 2011). This absolute ban leaves no room for regulated betting or harm reduction for those who participate illicitly, and there is little public discussion

[1] Gambling Act 2005 of the United Kingdom. (2005, April). Retrieved from https://www.legislation.gov.uk/ukpga/2005/19/contents.
[2] Statement of Licensing Policy 2023-2026 of the United Kingdom. (2023, June). Retrieved from https://www.barnsley.gov.uk/media/kepepyag/gambling-act-2005-policy-2023.pdf.

or research on gambling-related harm in these societies due to the social and religious stigma attached to the activity (Dowling *et al*., 2019).

Ethiopia occupies a middle ground: sports betting is legal and regulated under the NLA, with specific directives and licensing requirements. However, the Ethiopian system is characterised by weak enforcement, widespread illegal and unlicensed operations, and poor consumer protection. Although regulations exist to restrict underage betting and promote responsible gambling, these are often not implemented effectively, allowing minors easy access to betting shops and online platforms (Grinolsa & Mustard, 2021). The rapid growth of betting establishments, driven by low entry barriers and economic incentives, has outpaced the development of regulatory and support structures. Studies in Ethiopia consistently highlight the negative psychosocial and economic impacts of betting, especially among youth, including addiction, financial distress, and mental health problems. While betting generates some government revenue and employment, these benefits are undermined by the prevalence of unregistered operators and the lack of systematic tax collection (Kryszajtys & Matheson, 2017). The absence of robust monitoring, clear regulatory frameworks, and accessible treatment or counselling services leaves vulnerable populations exposed to significant harm. From these international experiences, Ethiopia can draw several lessons. The UK's advanced regulatory model demonstrates the importance of integrating behavioural monitoring, mandatory loss limits, strict advertising controls, and collaborative data sharing into a comprehensive harm-reduction strategy (Lind *et al*., 2021).

Ethiopia could benefit from adopting similar technological and regulatory tools, strengthening enforcement, and establishing accessible support services for problem gamblers. However, Ethiopia faces substantial challenges in replicating these policies. Implementing advanced monitoring systems and loss limits requires significant investment in technology and regulatory capacity, which may exceed current institutional resources. Moreover, the economic reliance on betting revenues and the normalisation of betting as a source of employment complicate efforts to impose stricter controls. On the other hand, the prohibitionist models of Saudi Arabia, Qatar, and Sudan are unlikely to be effective in Ethiopia's context. A total ban would not only be culturally and economically disruptive but could also drive betting underground, making it harder to monitor and mitigate harm. Furthermore, such an approach offers no support to those already affected by gambling problems. In summary, while Ethiopia's current regulatory approach is insufficient to address the growing risks of sports betting, especially among youth, the country can learn from the UK's evidence-based, harm-reduction strategies by strengthening enforcement, leveraging technology for monitoring and intervention, and fostering public awareness and support services. However, Ethiopia must adapt these lessons to its own social, economic, and institutional realities, acknowledging that both resource constraints and the existing integration of betting into the economy pose significant obstacles to adopting either the UK's comprehensive model or the total bans seen in some Islamic countries.

**Analysis of the current sport betting legislation in Ethiopia.** As per the new Sports Betting Directive No. 172/2021[1], a person who wishes to establish and operate a sports betting business in Ethiopia is required, first and foremost, to complete an application form and submit it to the National Lottery Administration. In addition to the form, the applicant is obliged to provide a bank statement confirming the availability of the initial capital required to operate the business, proof of a contract with a legally registered civil society organisation in Ethiopia for making donations as part of their social responsibility, and a bank statement serving as a guarantee of 1.5 million Br. Upon fulfilling the above requirements, the sports betting company may commence operations. These requirements are also explicitly outlined in Article 17 of the National Lottery Re-establishment Proclamation[2]. After beginning operations, if the sports betting company is found to be operating outside of these procedures and in contravention of the law, the initial response will be a seven-day warning to rectify their conduct in accordance with the legal requirements. If no corrective action is taken, a final three-day warning will be issued. Should the company fail to comply after this final notice, it will be suspended, in accordance with Article 6(1) of the Directive and Article 16 of the National Lottery Re-establishment Proclamation[3].

On the other hand, according to Article 6(2) of the Directive[4], a licence may be cancelled under the following circumstances: if forged documents were submitted during the application process; if the business fails to commence operations within 60 days of receiving the licence; if it ceases operation for more than 30 consecutive days, meaning it no longer provides services; or if the licence is not renewed within the timeframe stipulated in the Directive. These grounds are also provided in Article 14 of the National Lottery Re-establishment

[1] Sports-Betting Lottery Directive of the Federal Democratic Republic of Ethiopia No. 172/2021. (2021, June). Retrieved from https://cms.law/en/int/expert-guides/cms-expert-guide-to-gambling-laws-in-africa/ethiopia.
[2] Re-establishment Proclamation of the National Lottery Administration of the Federal Democratic Republic of Ethiopia No. 535/2007. (2007, July). Retrieved from https://www.scribd.com/document/657246627/Proc-No-535-National-Lottery-Administration.
[3] Ibidem, 2007.
[4] Sports-Betting Lottery Directive of the Federal Democratic Republic of Ethiopia No. 172/2021. (2021, June). Retrieved from https://cms.law/en/int/expert-guides/cms-expert-guide-to-gambling-laws-in-africa/ethiopia.

Proclamation[1]. Article 7 of the Directive and Article 15 of the Proclamation[2] address the conditions for licence renewal. According to these provisions, licences must be renewed annually between Hidar and Tahisas in the Ethiopian calendar (approximately from 10 November to 8 January). When applying for renewal, the betting company must provide proof of commission payments to the NLA, documentation confirming support for civil society in Ethiopia as part of its social responsibility, and evidence of income tax payment. Only upon fulfilling these requirements will the betting licence be renewed, along with the payment of a renewal fee of 1 million Br.

Directive No. 172/2021[3], under Article 9, outlines how payments are to be made to winners of sports betting. According to the article, payments must be made within 15 days, and a 15% income tax on winnings is to be deducted and paid monthly to the Revenue Ministry. The maximum amount a sports betting company can award a winner is 1 million Br; no prizes may exceed this limit. If a game on which a bettor has placed a wager does not take place, the company is required to refund the money to the bettors. Betting companies are expected to pay a 15% commission to the NLA from their gross income and deduct 15% from winners' payouts, to be submitted as income tax to the Revenue Ministry when winnings exceed 1,000 Br. This requirement is stipulated in Article 17 of the National Lottery Re-establishment Proclamation[4] and corresponds with Article 7 of the previous National Lottery Administration Proclamation of 2002[5]. Furthermore, betting companies are expected to allocate approximately 0.5% of their gross income to support civil society organisations in Ethiopia. The Directive further states under Article 16 that betting houses must not be located within 500 metres of schools or religious institutions. Additionally, it prohibits individuals from participating in betting activities while wearing school uniforms. Article 18 addresses penalties for violations. The current legislation raises the minimum betting age from 18 to 21, compared to the previous Sports Betting Directive No. 82/2005[6].

As clearly expressed in the spirit of the current sports betting law [7,8], the government's primary aim is to generate economic benefit from the operation of sports betting in Ethiopia. Less attention is given to the social and economic consequences of this activity on young people. As noted in the previous section, sports betting contributes to rising crime rates, family breakdown, and mental health issues among participants. As stated from the outset, and in light of these impacts, it would be preferable to implement a total ban on sports betting, as has been done in countries such as Qatar, Brazil, the United Arab Emirates, Brunei, Algeria, Afghanistan, Bahrain, Jordan, Cambodia, Lebanon, North Korea, the United States (Utah), Mauritania, Guinea-Bissau, Libya, Sudan, Somalia, Burundi, and Eritrea. These countries have implemented complete bans on sports betting due to religious, cultural, and societal reasons. In these contexts, governments often prioritise maintaining social order and upholding moral values over short-term economic gains. As O. Kolos *et al*. (2023) stated, in the absence of criminal liability for this type of offence, it is impossible to ensure the legal protection of individuals involved in gambling. The fear of gambling-related problems, such as addiction and financial instability, also plays a significant role in shaping these decisions. Additionally, historical and legal frameworks often influence current gambling policies, as seen in countries with long-standing bans on certain forms of gambling.

As demonstrated by these countries, Ethiopia should prohibit sports betting. The country should prioritise public health and the well-being of its youth over the economic gains generated by the sector. The multifaceted consequences of failing to implement such a ban negatively impact the country in numerous ways. At the very least, if a complete ban is not feasible, improvements and amendments to the current legislation governing sports betting are essential. Firstly, the requirements for starting a betting business, as outlined in Article 12 of the Directive, should be made more stringent, limiting entry into the sector and thereby reducing widespread involvement. For example, the guarantee currently required to enter the industry – 1.5 million Br – should be increased to deter casual participation and to raise the barrier for market entry. Additionally, the Directive should require betting companies to publicise the negative effects of gambling. Operators should be legally obliged to inform participants of the associated risks. For example, companies could

[1] Re-establishment Proclamation of the National Lottery Administration of the Federal Democratic Republic of Ethiopia No. 535/2007. (2007, July). Retrieved from https://www.scribd.com/document/657246627/Proc-No-535-National-Lottery-Administration.
[2] Sports-Betting Lottery Directive of the Federal Democratic Republic of Ethiopia No. 172/2021. (2021, June). Retrieved from https://cms.law/en/int/expert-guides/cms-expert-guide-to-gambling-laws-in-africa/ethiopia.
[3] Ibidem, 2021.
[4] Re-establishment Proclamation of the National Lottery Administration of the Federal Democratic Republic of Ethiopia No. 535/2007. (2007, July). Retrieved from https://www.scribd.com/document/657246627/Proc-No-535-National-Lottery-Administration.
[5] Proclamation of the Federal Democratic Republic of Ethiopia No. 271 "On the National Lottery Administration". (2002, April). Retrieved from https://www.lawethiopia.com/images/federal_proclamation/proclamations_by_number/271.pdf.
[6] Sports Betting Directive of the Federal Democratic Republic of Ethiopia No. 82/2005. (2005). Retrieved from https://chilot.wordpress.com/2021/02/28/sport-betting-directive-140-2013/.
[7] Sports-Betting Lottery Directive of the Federal Democratic Republic of Ethiopia No. 172/2021. (2021, June). Retrieved from https://cms.law/en/int/expert-guides/cms-expert-guide-to-gambling-laws-in-africa/ethiopia.
[8] Re-establishment Proclamation of the National Lottery Administration of the Federal Democratic Republic of Ethiopia No. 535/2007. (2007, July). Retrieved from https://www.scribd.com/document/657246627/Proc-No-535-National-Lottery-Administration.

be required to produce and distribute informational booklets outlining the harms of betting. Furthermore, both the Directive and the Advertisement Proclamation No. 759/2012[1] should explicitly prohibit the advertising of betting across social media platforms and television broadcasts. These provisions are currently absent from the legislation and must be incorporated to help minimise youth participation. Moreover, betting companies should be mandated to verify the source of bettors' funds. Before participating, individuals should be required to provide evidence that their betting money originates from legitimate sources such as a salary, business income, donations, or other verifiable means[2]. This measure would help ensure that funds from illicit or criminal sources are not used within the sector.

Directive No. 172/2021[3] should also include provisions requiring the mental health of participants to be assessed. Companies should only permit individuals who can provide proof of sound mental health to participate in betting activities. This would ensure an additional layer of protection for vulnerable individuals. Furthermore, the minimum age requirement, currently set at 21 under Article 10 of the Directive, should be raised to 25. In addition, the maximum allowable prize from a single betting event – currently 1 million Br – encourages widespread engagement in the sector and should be re-evaluated and potentially reduced to discourage excessive participation. Therefore, this requirement should be lowered to as little as 100,000 Br or less, which may serve to discourage individuals from entering the sector. Additionally, the number of branches that a single betting company is permitted to operate should be further limited to help curb the spread of the industry. Furthermore, the Directive and the National Lottery Re-establishment Proclamation[4] fail to specify the penalties applicable to individuals, such as when someone under the age of 21 engages in betting. A law without enforceable penalties lacks effectiveness. Consequently, the Directive should clearly detail the penalties for each violation outlined in both the Directive and the Proclamation. Moreover, the social responsibility obligations imposed on current betting companies are minimal and should be significantly extended.

The findings of this study, while consistent with several established trends in sports betting research in Ethiopia, also present distinct perspectives that diverge from earlier research. Notably, this analysis supports the findings of researchers such as M.G. Yitbarek & K.K. Getahun (2019), whose study in Bahir Dar City documented financial strain and interpersonal conflict linked to sports betting. Similarly, this study confirms the conclusions of A. Andarge (2021) identified a strong correlation between gambling activities and adverse social outcomes. Furthermore, these findings reinforce the well-established link between increased gambling expenditure and rising crime rates, a relationship consistently emphasised by scholars including E.L. Grinolsa & D.B. Mustard (2021). Youth vulnerability – a central concern of this research – is in line with the observations of W. Girma (2023), whose study in Hawassa City highlighted the psychosocial risks facing young adults involved in sports betting. Additionally, in line with research into the psychosocial and economic consequences of gambling among youth and adults in Bahir Dar City, this study identifies the rise of virtual betting as a major contributor to the harmful impacts on young people.

However, this research differs from previous studies in several important respects. Firstly, it provides a more comprehensive and critical analysis of the existing legal framework governing sports betting in Ethiopia. While previous studies, such as that by E. Wodaj (2024), have explored aspects of the national directives, this Article delves more deeply into the legal intricacies and incorporates a comparative international perspective, drawing lessons from the regulatory approaches of countries such as Qatar and the UK. Secondly, this study places a much greater emphasis on the regulation of advertising, a factor that, while mentioned in other studies, has not been consistently prioritised. Furthermore, this research differs from the study by A. Haji *et al.* (2022), who, despite assessing the effects of betting on youth, fails to address the relationship between gambling and criminal activity. He does not explore how increased participation in betting can lead to a greater propensity for criminal behaviour. By contrast, this study, drawing from international experience and practical observations, finds that gambling significantly increases the likelihood of criminal involvement. In addition, although previous research by M.G. Yitbarek & K.K. Getahun (2019) examined strategies for reducing the prevalence of sports betting, they did not consider banning sports betting advertisements as a means to curb participation in the industry. This study highlights that advertising prohibition is a critical and underutilised strategy in reducing gambling engagement in Ethiopia. Further, previous studies by W. Girma (2023) addressed the effects of sports betting but did not advocate for a total ban, which differentiates this study significantly from many prior investigations in the field. These findings underscore the detrimental

[1] Advertisement Proclamation of the Federal Democratic Republic of Ethiopia No. 759/2012. (2012, August). Retrieved from https://chilot.wordpress.com/wp-content/uploads/2012/09/advertisement-proclamation.pdf.
[2] Sports-Betting Lottery Directive of the Federal Democratic Republic of Ethiopia No. 172/2021. (2021, June). Retrieved from https://cms.law/en/int/expert-guides/cms-expert-guide-to-gambling-laws-in-africa/ethiopia.
[3] Ibidem, 2021.
[4] Re-establishment Proclamation of the National Lottery Administration of the Federal Democratic Republic of Ethiopia No. 535/2007. (2007, July). Retrieved from https://www.scribd.com/document/657246627/Proc-No-535-National-Lottery-Administration.

impact of pervasive advertising on youth, advocating for stricter regulatory measures. Furthermore, this research openly acknowledges the limitations arising from the lack of recent data – a challenge frequently encountered in Ethiopian scholarship. Unlike earlier studies that may rely on outdated datasets, this study explicitly highlights the urgent need for contemporary data to support evidence-based policymaking. This transparency regarding data constraints distinguishes the present study, underlining the necessity of continuous data collection for accurate and timely analysis.

## Conclusions

This study aimed to critically analyse the existing legal framework for sports betting in Ethiopia and to propose more stringent regulations – or even a complete ban – to mitigate its harmful effects, especially on youth. This objective was achieved through an examination of relevant Ethiopian proclamations and directives, a comprehensive literature review, and insights drawn from international comparative analyses. The study employed a normative legal research methodology, which included critical analysis of Ethiopian legal instruments such as the National Lottery Administration Re-establishment Proclamation No. 535/2007 and the Sports-Betting Lottery Directive No. 172/2021. This was supported by a detailed literature review on the social and economic impacts of sports betting, as well as a comparative analysis with countries such as Qatar and the UK. Practical observations further illuminated the real-world implications within Ethiopia. The findings consistently revealed that the current regulatory focus on revenue generation fails to adequately address major social harms. A strong correlation was identified between increased betting activities and rising crime rates, family instability, and mental health issues. The research highlighted the particular vulnerability of youth, worsened by extensive advertising and unrestricted online access. Critical gaps in the legal framework were exposed, including the lack of regulation over advertising, insufficient penalties, and the failure to mandate disclosure of betting funds' sources, which undermines efforts to prevent money laundering.

The findings significantly deepen understanding of the complex relationship between sports betting and societal well-being in Ethiopia. By critically assessing the legal framework, the study pinpointed specific legislative shortcomings that enable gambling-related harm, particularly among youth. The explicit correlation between betting and adverse outcomes – such as crime and familial discord – provides compelling evidence for policy reform. Moreover, the comparative analysis of international models offers tangible recommendations for harm reduction in Ethiopia. The emphasis placed on unregulated advertising and weak financial crime controls – issues often overlooked in earlier studies – broadens the discourse around key intervention points. This study strongly advocates a shift in regulatory priorities: away from economic gain and towards safeguarding youth and promoting social welfare.

One major limitation of this study was the scarcity of current statistical data on the prevalence and consequences of sports betting in Ethiopia. As a result, greater reliance was placed on qualitative observations and findings from comparable settings.

Future research should prioritise the quantification of the economic and social costs of gambling-related harms in Ethiopia through rigorous empirical data collection. Further studies should also assess the effectiveness of specific harm reduction interventions tailored to the Ethiopian context – such as mandatory mental health screenings and robust age verification procedures.

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## Conflict of Interest

None.

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# Регулювання та зниження ризиків, пов'язаних зі ставками на молодіжні спортивні змагання, в Ефіопії

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**Анотація**
Стрімке поширення спортивних ставок в Ефіопії є серйозною проблемою, яка актуалізує необхідність ужиття регуляторних заходів для подолання їхнього шкідливого впливу, передусім на молодь. Основною метою дослідження було проаналізувати причиново-наслідкові зв'язки й посередницькі фактори між рівнем злочинності, сімейними конфліктами та проблемами психічного здоров'я, пов'язаними з азартними іграми, а також рекомендувати оптимальний спосіб обмеження їхнього впливу. На підставі використання нормативної методології правового дослідження в роботі критично проаналізовано правову базу Ефіопії, зокрема Прокламацію про відновлення Національної лотереї № 535/2007 та Директиву про спортивні ставки та лотереї № 172/2021. Аналіз доповнено всебічним оглядом літератури, порівняльних досліджень міжнародних регуляторних моделей (зокрема Великої Британії) та практичними спостереженнями в контексті реалій Ефіопії. Результати засвідчили, що нинішній регуляторний фокус на генеруванні доходів неадекватно розв'язує проблему глибокої соціальної шкоди. Дослідження встановило чітку кореляцію між підвищенням активності ставок і зростанням рівня злочинності, а також значним негативним впливом на стабільність сім'ї та психічне здоров'я. Вразливість молоді, що посилюється поширеною рекламою та доступністю в інтернеті, є центральною проблемою. Виявлено критичні прогалини в правовій базі, серед яких – нерегульована реклама та не відповідні ступеню суспільної небезпечності покарання. Важливо, що чинне законодавство не запобігає відмиванню грошей, вимагаючи підтвердження джерела коштів, а також не регулює рекламу. Практичне значення цього дослідження полягає в його потенціалі для інформування про необхідність негайних реформ політики. Ключові рекомендації охопили суворі вимоги до ліцензування, обов'язкове висвітлення негативного впливу ставок, повну заборону реклами, обов'язкове розкриття джерела грошей від гравців, перевірку психічного здоров'я учасників, зниження максимальних лімітів виплат і детальні покарання за порушення, а також створення спеціальної комісії з азартних ігор за зразком британської моделі. Це дослідження засвідчує нагальну необхідність надати пріоритет захисту молоді та соціального добробуту над короткостроковими економічними вигодами

**Ключові слова:**
регулювання спортивних ставок; уразливість молоді; злочинність; азартні ігри; заборона реклами; правова реформа

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