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# ЮРИДИЧНИЙ ЧАСОПИС
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# Political and legal guarantees of human and civil security

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**Abstract**
In this article, the authors consider the essence of human and civil security, determine the factors that threaten it, and the consequences that violations of human rights, including the right to personal security, lead to. By personal security, the authors understand the state of absence of danger when interacting with objects of the external environment and the process of ensuring legal guarantees for the implementation of constitutional rights and freedoms. Security cannot exist without danger; it finds its existence with the emergence of threats. Personal security is threatened by wars, socio-economic instability, poverty, corruption, crime, domestic interethnic and religious conflicts, injustice, etc. The consequence is a violation of human rights, primarily the right to life and restrictions on its freedoms. The, the subject of this study is relevant. The purpose of this study was to find threats to personal security and analyse the possibilities of their elimination by political and legal means. The methodological basis of this paper was the dialectical approach, as well as several other methods: formal logical, systematic, formal legal, structural-functional. Results: personal security, as a special type of human and civil security, despite its close relationship with the security of society and the state, is an independent socio-legal phenomenon that requires special attention. Personal security is ensured, foremost, by the norms of constitutional, criminal, and administrative law. Restriction of the rights and freedoms of offenders, however, may be accompanied by restriction of the rights and freedoms of law-abiding citizens. The originality of this study lies in the investigation of political and legal guarantees of personal security and the identification of opportunities for its provision in the modern world, considering the principles of the rule of law, civil society, and justice. Security as a complex social phenomenon is an element of other complex social systems, which include a human, society, the state, as well as the economic, political, and spiritual spheres of public life. Security is an essential factor in the functioning and very existence of all social systems. The main subject that organizes the life of society is the state. The international community also plays an essential role in this process

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## Introduction

Human security, life and health, honour and dignity are the highest social values in Ukraine. Personal security implies the following: the absence of threats from anyone within the borders of the state; the use by citizens of all civil, political, social, economic, and cultural rights prescribed by the Constitution; the rule of law, legal equality and justice; the opportunity to take part in public life and exercise all legitimate interests.

Any interaction with other people, communities, technical means, etc. can be a potential source of danger to humans. Six groups of hazards are distinguished by origin: natural, technogenic, anthropogenic, ecological, social, biological, which are further subdivided by the particular source and object of influence, methods of influence and consequences, possibilities of countering the danger, etc. This study is limited to a group of social hazards.

The exercise of the right to personal security means the duty of the state to provide its citizens with the security and protection of life, health, and freedom, which is difficult to do at the present stage of society's development, given the circumstances, primarily the war that russia has unleashed against Ukraine. Recently, the president of Ukraine, in his speech at the GLOBSEC International Security Forum in Bratislava, stressed: "we must respond to all the challenges and dangers that the russian federation has created for us. Politics, economy, military sphere, food, ecology, migration – there is no area of our life in which there is no catastrophe, crisis, threat of catastrophe or crisis as a result of russia's actions" (President of Ukraine…, 2022).

The right to personal security is proclaimed in the documents of international organizations. Specifically, the Preamble of the UN Charter stipulates: "we, the peoples of the United Nations, determined to save succeeding generations from the scourge of war, … to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained and to promote social progress and better standards of life in larger freedom, and for these ends, to practice tolerance and live together in peace with one another as good neighbours, and to unite our strength to maintain international peace and security, and to ensure … that armed force shall not be used, save in the common interest, have resolved to combine our efforts to accomplish these aims"[1]. In connection with russia's efforts to achieve its interests exclusively through the military plane, by force, the issue of personal security is still relevant, and it is clear that this relevance will stay for many years to come.

But this is not the only threat to personal security. The growing number of crimes and other offences that threaten personal safety forces us to constantly search for the most effective ways to deal with the danger. Furthermore, the state itself in some cases (state of emergency, martial law) is forced to restrict the personal safety of citizens, but only legally. The means and conditions for ensuring personal security are its legal guarantees, which the state must constantly improve. Presently, this duty of the state is receiving special attention. Accordingly, the subject of this study is relevant.

*The purpose of this study* was to identify threats to personal security and analyse the possibilities of their elimination by political and legal means.

The originality of this study lies in the investigation of political and legal guarantees of personal security and the identification of opportunities for its provision in the modern world, considering the principles of the rule of law, civil society, and justice.

The results of this study will contribute to creating conditions for real human security and the social systems to which it belongs, preserving their integrity, sustainable development, and effective functioning. This is their practical significance.

The problem of ensuring the security of individuals, society, and the state has been investigated by scientists mainly in the context of war and peace and changes in the environmental situation for the better. Specifically, F. Crump, F. Hegazi & Stacey D. Van Deveer proposed three mechanisms by which improved natural resource management in post-conflict contexts could theoretically have a positive impact on the world: a) the contact hypothesis, according to which promoting intergroup cooperation substantially reduces bias; b) dissemination of transnational norms, where the introduction of environmental and other good governance norms supports human empowerment and strengthens civil society; c) the rendering of public services when the provision of access to public services meets the instrumental needs of communities, thereby strengthening their faith in the state (Krampe *et al*., 2021).

The impact of coronavirus on human rights and security was investigated by O. Nye, who justified the opinion that fear can change the attitude of citizens towards freedom. As global and environmental threats increase, citizens may be inclined to give up some of their constitutional rights. The desire for security can quickly undermine the desire for freedom. This leads to people choosing the authority of a leader over the ethics of democratic discussion (Nay, 2020). Citizens' perception of security issues, namely emotional responses to threats to national security, is considered by L.G. Valla (Valla, 2022). Constitutional means of ensuring human

[1]Charter of the United Nations. (1945, October). Retrieved from https://www.icj-cij.org/charter-of-the-united-nations#:~:text=The%20Charter%20of%20the%20United,integral%20part%20of%20the%20Charter.

security were investigated by V. Tyhyi, who argued that human security is ensured by human rights, freedoms, and their guarantees, and considered security as an objective state and subjective sense of physical, social, and moral protection of a person, their rights and freedoms (Tyhyi, 2016). The specifics of human rights and security in the digital age were investigated by O. Petryshyn & O. Hyliaka, who cocluded that the era of digital technologies provides entirely new and qualitatively different opportunities for their implementation, but at the same time it creates new challenges and threats to ensure these rights and freedoms (Petryshyn & Hyliaka, 2021). The recognition of security as an element of statehood, which is related to the concept of humanism and human rights, is characteristic of V. Pylypchuk, P. Bohutskyi & I. Doronin, who suggested considering the law of national security as an independent branch of law that manifests its social significance in the legal support of national security (Pylypchuk *et al*., 2021).

These authors considered the essence of national and personal security, analysed numerous threats to national security, its connection with human rights, and determined the importance of security for human existence. However, the named scientists did not focus on political and legal guarantees of personal security and the possibilities of ensuring it in the modern world, when new, unprecedented threats emerge. The study of these issues is necessary for both legal science and political and legal practice. Such study is the task of the authors of this paper.

## Materials and Methods

The methodology of this paper is based on a dialectical approach. It makes provision for concreteness, comprehensiveness, and objectivity in the consideration of political and legal institutions and phenomena, at the same time, their inherent connections and contradictions are established, the interdependence of the essence of the phenomenon and its form is characterized, etc. This allowed investigating the essence of personal security, its interpretation in connection with other social phenomena. Thanks to the dialectical approach, the causes of processes leading to security threats are explained, and the consequences of these threats for humans, society, and the state are determined.

The formal logical method was used to analyse terms, such as "security", "personal security", "corruption", etc. This method helped identify logical contradictions in the structure of certain judgments, which allowed avoiding errors in scientific research. Two methods of the formal logical method – analysis and synthesis – were mainly used, as well as the laws of formal logic – identity, contradiction, excluded third, sufficient grounds.

The system method was used in the study of the components of the phenomena under study, while attention was focused on the study of their integral, integrative properties, which are inherent in the system as a whole, but are absent from its elements. However, it will not be possible to know the system as a whole, even if one conducts an in-depth analysis of each of the elements of the system, since the properties of elements, although they affect their own systems, do not give a complete picture of them. When analysing the elements of the system, the systemic approach requires paying attention to their importance for the system as a whole, to the functions performed by the elements in the system, to the connections and relations between the elements. This method expands the boundaries of knowledge about security, since it is not the subject of research in any one science. It involves considering the entire set of objective and subjective factors that affect the formation of threats and their perception by humans, considering theoretical and practical aspects in dialectical unity and interdependence.

The formal legal method is used to formulate legal terms. This method is formed within the framework of law based on formal logic. It was used only in the study of legal categories of political and legal reality. The main functions of the formal legal method were to obtain knowledge about threats to human security and form a scientific system of legal knowledge obtained as a result of the study.

The structural and functional method helped identify the components of the security phenomenon, its functions and tasks. The use of the methodology of a systematic approach (according to structural and functional analysis) is determined precisely by the objective conditions of society's existence. A comprehensive and complete study of state and legal reality is impossible without the use of both functional and institutional, structural methods in the aggregate: in-depth knowledge of state and legal phenomena is impossible without research not only of the static structure of a given state or legal institution, but also an understanding of those aspects and properties that are actualized by this institution as a result of its functioning, achievement of the goals and tasks assigned to it, as well as the results of various areas of its activity.

## Results and Discussion

The current stage of development of human civilization is characterized by the fact that it is necessary to overcome new threats, dangers, challenges that require innovative approaches to their solution (Tymoshenko *et al*., 2021). Any threat is characterized by the most important essential signs, it is an actualized form of danger in its transformation from a possibility into reality and the intention of some subjects to harm others (Dzyoban, 2006, p. 38).

In modern Ukrainian language, the word "security" means a state when no one or nothing is threatened by anyone (Dictionary of the Ukrainian language, 2010, p. 430). Security can be considered as a state of protection

of vital interests of the individual, society and the state from external and internal threats (Khramov, 2003, p. 42).

It is worth noting that an individual, being themselves a subject and object, is present in all other security systems, thereby playing a basic system-forming role. The position of the individual is determined by the state, society, and nature. Personality is a biosocial system, and acts simultaneously in the role of both a person as a member of society and a person as a living organism that exists in the limited parameters of the environment. Being in the focus of almost all dangers, specifically, any destructive socio-political, environmental, ethnic and technical events, the individuals themselves suffer (Dudnikova, 2003, p. 13-14).

The UN Charter of 1945[1] became the first international act whose goals are based on general respect for human rights; in Articles 1 and 55, it obliged the United Nations to promote respect for human rights and fundamental freedoms for all, regardless of race, sex, language, or religion. These goals were further developed in the Universal Declaration of Human Rights (UDHR)[2] adopted by the UN General Assembly on December 10, 1948. In the preamble, it is stated that the recognition of the inherent dignity of all members of the human family and their equal and inalienable rights is the basis of freedom, justice, and universal peace.

The provisions of the UDHR and other international conventions and covenants have become the basis of national constitutions. The Ukrainian state declared in Article 3 of its Constitution that a human, their life and health, honour and dignity, inviolability and security are recognized as the highest social value[3]. The content and direction of the state's activities determine human rights and freedoms and their guarantees.

It is quite obvious that a state can be safe only if certain conditions are met, specifically, its territory is not under threat; its people feel safe regardless of their place of residence, their existence and development are guaranteed, and their rights and freedoms are protected; power is sovereign and exists pursuant to the Constitution (Gierszewski, 2018).

The global community as a whole also needs security. Without this, personal security is impossible. The problem of security of the international community includes issues of preserving and maintaining peace, international policy of preventing the escalation of conflicts and the growth of local wars, reducing weapons of mass destruction and conventional weapons, banning certain types of weapons and eliminating their reserves, etc. The doctrine of human rights can provide the necessary framework for the continued coexistence of human communities in the conditions of an increasingly dangerous and interdependent world –a world where the collective survival of humanity is at stake. To survive and be successful, the idea of human rights must adapt to all sorts of new threats, to all sorts of new challenges. Seeing in the theory of human rights "the distillation of accumulated historical wisdom and the best level of approximation to the moral truth regarding the human condition", it can be perceived as the best hope of people for the future of humanity itself (Holovatyi, 2016).

Personal security of citizens has always been considered as an opportunity to enjoy life, health, and physical freedom without hindrance. The presence of these benefits is a necessary prerequisite for a full-fledged existence in society. The state should provide (including legislatively) favourable conditions for the enjoyment of citizens' rights concerning personal security. It is this approach that will contribute to the development of an individual as an active subject of ensuring their security, along with public and state institutions that have their own protection mechanisms. In the context of the development of civil society and the rule of law, whose interests focus on the rights, freedoms, and protection of the individual, legal problems of personal security of a human and citizen acquire special importance.

The level of development of the legal system, economy, politics, and ideology affects the ability to achieve personal security. A special role is assigned to political and legal means – a political regime, developed legislation, an effective mechanism of legal realization, and a prominent level of legal consciousness. The mere existence of legal norms that consolidate the rights of citizens to life, health, and freedom does not mean that every citizen is automatically guaranteed personal safety. Such norms are a necessary but insufficient condition for the real safety of the individual in the practice of social relations. The principal legal means of ensuring personal security, according to the authors of the article, is law enforcement. The subject of law enforcement is an active participant in law enforcement relations endowed with proper competence, who has the main role in the development and promotion of these relations towards solving particular life situations through acts of law enforcement. The enjoyment of many rights and freedoms can only be achieved through law enforcement. This applies to all those cases when, to exercise a particular right, a citizen will have to enter into legal relations with a state body, official, or organization that is competent to satisfy their particular claims for the use of certain social benefits and their demands for personal safety.

The ability to achieve human security depends substantially on the security of the entire society. In

[1]Charter of the United Nations. (1945, October). Retrieved from https://www.icj-cij.org/charter-of-the-united-nations#:~:text=The%20Charter%20of%20the%20United,integral%20part%20of%20the%20Charter.
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society, there is a common life activity of people united by common values, interests, and goals. However, such unity is possible only when the political power represented by the state creates the necessary conditions for this, allowing citizens to meet their material needs, take an active part in political life and freely fulfil their creative potential.

Presently, the state of affairs with ensuring personal security in Ukraine leaves much to be desired. The economic situation, escalating social contradictions, crime, and especially the russian-Ukrainian war are a serious threat to individual security.

From the standpoint of the economic situation, the greatest threat to human security is corruption. Corruption is usually seen as the abuse of entrusted power for personal purposes. Corruption is currently a global issue that entails poverty, greed, unemployment, weak government institutions and lack of law enforcement, and it exists in every country at various levels, despite the efforts of national and international regulatory bodies to tackle it (Bahoo, 2020). Corruption hinders a country's economic development and adversely affects investment, competition, and government efficiency (Bui *et al*., 2021).

In 2021, Ukraine worsened its performance in the Corruption Perceptions Index and dropped to 122nd place in the world. According to Transparency International Ukraine, Ukraine moved from 117th to 122nd place out of 180. Over the course of a year, Ukraine lost one point in the Corruption Perceptions Index and now has 32 points out of a possible hundred. Over the past few years, Ukraine has managed to become the most corrupt state in Europe and one of the most corrupt states in the world, rapidly outstripping the already "traditional" corrupt states. Currently, in the general ranking, Ukraine is next to Eswatini, Zambia, Nepal, Egypt, and the Philippines (Ukraine has lost positions…, 2022).

The most usual form of corruption is bribery. Bribery is defined as the acceptance of an offer, promise, or receipt of an unlawful benefit by an official, as well as a request to provide such an advantage for themselves or a third party before the official performs or fails to perform any action using the power or official position granted to them in the interests of the person offering, promising, or providing an unlawful benefit, or in the interests of a third party. Responsibility for this is prescribed in Article 368 of the Criminal Code of Ukraine[1].

Bribery can be formally considered in the form of its typical and common manifestations: unofficial payment or "a token of gratitude"; a gift – a material object, a thing that is given at one's own will and given free of charge to satisfy certain needs; unofficial payment as "fee for services". If an informal payment in the form of "a token of gratitude" is usually given by "those who thank" for receiving a service, then this payment as payment for a service is always made before the service itself is provided (to receive it in the proper form with the right to receiving it) or during its implementation (to "improve" the dynamics and other qualitative characteristics of the consumed service, having the right to it; to obtain an unfair advantage against the background of other consumers of this service, e.g., advancement in the queue towards certain benefits, etc.). Based on the received bribe or as a result of other abuse of official powers, a corrupt official can provide patronage (grant illegal privileges), which in a broad sense is expressed in the fact that the corrupt official, using their position, distorting the principle of equality of human rights (predominantly in access to public service), provides advantages for one person or a group of persons, guided not by public, but by their personal interests and benefit (Buiter, 2021).

Curbing corruption in modern Ukraine is one of the urgent issues. The shadow economy, which must be substantially reduced, is no less a problem. It is necessary to simplify and make the taxation mechanism more transparent, to reduce monopolies to a minimum (through distribution or competition from the European Union). Any remaining monopolies should be regulated transparently (Hladky, 2018). Without the implementation of these tasks, personal security is impossible.

Notably, the guarantee of state security in relation to human security is related to the duty of the state to recognize, respect, and protect human and civil rights and freedoms. A considerable role in ensuring human security belongs to criminal law regulation, the implementation of the protective function of criminal law. The organization of criminal law protection of human security against criminal encroachments is only part of the multifaceted problem of ensuring personal security. The tragic events of recent times, specifically the russian-Ukrainian war, terrorism, increasing crime rates, ubiquitous corruption, as well as the blatant inability of law enforcement officers to ensure the safety of citizens, necessitate the solution of such issues as the ratio of constitutional rights to freedom (on the one hand) and security guarantees and effectiveness of security measures currently in use (on the other hand). After all, for the sake of human security, this human's freedom can be limited (Anyanwu, 2018).

The current criminal legislation has certain shortcomings. What is humane and fair in the field of criminal-legal relations now is not unilateral softening of measures against individuals who have committed a crime, caused pain and suffering to other people, but compliance with the rights and legitimate interests of victims. More severe penalties for grave and especially grave crimes, such as a terrorist act, would be justified. Today, the world faces such challenges as the ineffectiveness of legal norms, the crisis of national identity, financial instability, unemployment, and lack of functional security. These problems make society an enabling environment for global terrorism. The latter is a social problem that spreads in the social structure of society, affects human security in medical, social, political, food, economic, and environmental dimensions (Alsawalqa, 2021).

Injustice and inequality, including economic inequality, pose a substantial threat to human security. The vast gap between the rich and the poor leads to the exclusion of people with low incomes from society, which provokes social instability and human rights violations. At first glance, human rights appear to be powerless and ineffective in the fight against growing economic inequality because they are focused on minimal or sufficient needs, and therefore they are insufficient to achieve justice. However, human rights are still the cause of limiting inequality, they can to some extent help limit national and global economic inequality and introduce global justice. If there are global norms of justice beyond human rights, they are likely to provide more reasons for the danger of material inequality (Jones, 2021).

Activities to ensure the safety of the individual involve considering the psychological component of its response to the impact of a dangerous environment. Psychological security is based on the feelings of the individual, the assessment of their personal security and safety, it is aimed at preserving mental health, and therefore safety in general.

## Conclusions

Security as a complex social phenomenon is an element of other complex social systems, which include a human, society, the state, as well as the economic, political, and spiritual spheres of public life. Security is an essential factor in the functioning and very existence of all social systems. The main subject that organizes the life of society is the state. The international community also plays an essential role in this process.

As an object of scientific cognition, human security is determined by two components: objective conditions of its formation, development, and functioning, as well as subjective factors, the purpose of which is to ensure its optimal functioning for the preservation of human life and health and the enjoyment of their rights and legitimate interests.

Individual security of a human and a citizen can be presented as a special type of personal security, which includes a set of subjective rights to life, physical freedom and inviolability, honour and dignity, consolidated in the constitution and other regulations, which are ensured by the state against illegal encroachments by anyone or anything. The state is obliged to prevent threats to the well-being of society and the quality of life of the country's citizens. Therewith, objective human security conditions create new opportunities for improving the security system. Subjective factors, including the moral position of management entities, are an essential condition for maintaining the security of the system, and therefore human security.

Personal security is strengthened and ensured by many norms of various branches of law, but a special place in legal regulation is occupied by the norms of constitutional, criminal, and administrative law. The specificity of legal guarantees of personal security lies in the fact that protecting the personal safety of law-abiding citizens often has to restrict not only the rights and freedoms of offenders in the course of coercive influence on the latter, but also the rights and freedoms of law-abiding citizens themselves. The procedure and limits of this coercive influence should be clearly defined in the legislation.

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# Політико-правові гарантії безпеки людини та громадянина

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**Анотація**
Розглянуто сутність безпеки людини та громадянина, визначено фактори, що їй загрожують, та наслідки, спричинені порушенням прав людини, зокрема права на особисту безпеку. Безпекою особи визнано стан відсутності небезпеки за умови взаємодії з об'єктами зовнішнього середовища та процес забезпечення правових гарантій реалізації конституційних прав і свобод. Зауважено, що безпека не може існувати без небезпеки, про неї йдеться лише за наявності загроз. Особистій безпеці загрожують війни, соціально-економічна нестабільність, бідність, корупція, злочинність, внутрішньодержавні міжетнічні та релігійні конфлікти, несправедливість тощо. Наслідком є порушення прав людини, передусім права на життя та обмеження її свобод. Зазначене підтверджує актуальність статті. Метою дослідження є визначення загроз особистій безпеці й аналіз можливостей їх усунення політико-правовими засобами. Методологічну основу статті становить діалектичний підхід, а також комплекс методів: формально-логічний, системний, формально-юридичний, структурно-функціональний. Результати: особиста безпека як особливий вид безпеки людини і громадянина, попри її тісний взаємозв'язок з безпекою суспільства та держави, є самостійним соціально-правовим феноменом, що потребує особливої уваги. Особиста безпека забезпечується передусім нормами конституційного, кримінального, адміністративного права. Обмеження прав і свобод правопорушників водночас може супроводжуватися обмеженням прав і свобод законослухняних громадян. Наукова новизна полягає в дослідженні політико-правових гарантій особистої безпеки та позначенні можливостей її забезпечення в сучасному світі з огляду на принципи правової держави, громадянського суспільства та справедливості. Безпека як складне соціальне явище є елементом інших складних соціальних систем, до яких належить людина, суспільство, держава, а також економічна, політична й духовна сфери суспільної життєдіяльності. Безпека є важливим фактором функціонування та власне існування всіх соціальних систем. Основним суб'єктом, що організує життєдіяльність суспільства, є держава. Вагоме значення в цьому процесі має й міжнародна спільнота

**Ключові слова:**
загроза; шкода; злочин; держава; свобода

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# Ensuring state, public, and personal interests in criminal proceedings under martial law or a state of emergency

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**Abstract**
The full-scale invasion of the russian federation on the territory of Ukraine led to the need to change and amend the Criminal Procedural Code of Ukraine, specifically its Section IX-1. The purpose of this study was to analyse the development of criminal procedural legislation on the regulation of criminal proceedings under martial law through the lens of state, public, and personal interests of participants in criminal proceedings; analysis of legislative regulation of special procedures for apprehension and detention both in Ukrainian legislation and in the legislation of other countries. This study uses a set of special methods inherent in the study of the phenomena of legal science, namely historical legal, formal legal, comparative legal, and system-structural. It was found that both the title and the text of Section IX-1 of the Criminal Procedural Code of Ukraine have no indication of the specific features of criminal proceedings during other, except for military, special situations in the state that threaten its national security. It was substantiated that when regulating criminal proceedings under martial law, the emphasis on the priority of the interests of the participants in the criminal proceedings shifts towards the benefit of the interests of the state and society. Attention was drawn to the substantial expansion of the prosecutor's powers. The lack of a systematic approach to introducing changes and amendments to the criminal procedural legislation was proved. The procedural form of restriction of the right to freedom and personal inviolability during martial law has undergone substantial changes. An analysis of the criminal procedural legislation of Great Britain, Spain, France, and the United States suggests that these states respond to national security threats by introducing special procedures in the investigation of crimes that caused such threats. These special procedures relate to the period for detaining a person without notifying them of their charge, without bringing them to court. The conducted study allows forming a conceptual approach to the regulation of criminal proceedings, thereby ensuring a reasonable balance of state, public, and personal interests

**Keywords:**
apprehension; detention; court; interests of the state and society; interests of participants

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## Introduction

Military aggression against Ukraine forced to adapt the legislation to the new realities of public relations. Criminal procedural legal relations have also changed. This was conditioned by the fact that during martial law, it is objectively impossible to adhere to the general rules for conducting criminal proceedings. Military operations, air alarms or attacks make it impossible to conduct law enforcement intelligence or other procedural actions pursuant to the general procedure established by the criminal procedural legislation for peacetime.

Although the Criminal Procedural Code of Ukraine[1] (CPCU) was supplemented in 2014 with Section IX-1 "Special regime of pre-trial investigation in conditions of martial law, state of emergency or in the area of an anti-terrorist operation", as of February 2022, this section had only one norm, which consisted of one part, which was formulated in one sentence. Such statutory regulation could not cover the full range of features of criminal procedural legal relations caused by the actions of martial law. Therefore, in fact, three weeks after the full-scale invasion of the russian federation on the territory of Ukraine, Section IX-1 of the CPCU[2] was substantially changed and amended.

Discussions immediately arose in the scientific community whether all changes and amendments to the specified section of the CPCU are justified. Said changes introduced a deviation from standard criminal proceedings by substantially expanding the powers of the prosecutor, including restrictions on the constitutional rights of participants in pre-trial or judicial proceedings (Hloviuk, 2022; Glovyuk *et al*., 2022).

This issue has been investigated by I.V. Glovyuk & V.A. Zavtur (2022), O.V. Kaplina (2014; 2022), O.V. Lazukova (2018), V.K. Matviichuk (2022), O.M. Drozdov, V.V. Mykhailenko, V.V. Rohalska, H.K. Teteriatnyk, T.H. Fomina (2022), R.I. Melnyk & T.P. Chubko (2016), O.V. Oderii & I.S. Klechanovskyi (2017), M.M. Stefanchuk (2022), V.M. Yurchyshyn (2017). However, most of the above studies investigated the issue of special procedures for pre-trial investigation in a state of martial law or state of emergency before the adoption of the new version of Section IX-1 of the Criminal Procedural Code of Ukraine[3] in April 2022.

Regulation of the procedural form of pre-trial investigation and judicial proceedings in a state of martial law or emergency is a complex legislative process that requires considering both the interests of the state and society in the investigation of criminal offences, as well as the rights and legitimate interests of a suspect or accused. Therewith, it is necessary to ensure a reasonable balance of these interests because on the one hand are the interests of society, which is threatened by terrorist acts or military aggression, and on the other hand are the rights of the individual, which are guaranteed by the Constitution of Ukraine and international regulations.

*The purpose of this study* was to identify the principles for regulating criminal proceedings in circumstances caused by military aggression or other extraordinary events, which will ensure a balance of state, public, and personal interests during pre-trial investigation or judicial proceedings during the implementation of this special procedure of criminal proceedings.

## Materials and Methods

To fulfil the purpose of this study and ensure the reliability of the results obtained, a set of general scientific and special methods of cognition was used. Specifically, such general theoretical methods of theoretical research as observation, description, comparison, analysis, synthesis, abstraction, generalization, and a systematic approach were used, which allowed to highlight the subject of research, describe the results of observations, compare the norms of criminal procedural legislation, and substantiate the conclusions of the study.

When authoring this study, a set of special methods for investigating the phenomena of legal science was also applied, specifically historical legal, comparative legal, formal legal, and system-structural. The historical legal method allowed tracing the development of Ukrainian criminal procedural legislation and the legislation of certain European countries concerning the regulation of the procedural form of restriction of the constitutional right to freedom and personal inviolability of a suspect in committing crimes against the foundations of national security. The formal legal method was used to analyse the regulations that will determine a special procedure for pre-trial investigation in a state of emergency or martial law. Using the comparative legal method, the statutory regulation on apprehension and detention of individuals suspected of committing terrorist crimes in the legislation of Ukraine, Great Britain, Spain, France, and the United States was studied. The system-structural method allowed identifying the main approaches to improving the criminal procedural legislation of Ukraine in the regulation of criminal proceedings under martial law and determining trends in ensuring state, public, and personal interests during this special procedure of criminal proceedings.

[1]Law of Ukraine No. 1631-VII "On Amendments to the Criminal Procedural Code of Ukraine Concerning the Special Regime of Pre-Trial Investigation in a State of Martial Law, Emergency or in the Area of an Anti-Terrorist Operation". (2014, August). Retrieved from https://zakon.rada.gov.ua/laws/show/1631-18#n5.

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

[3]Law of Ukraine No. 2201-IX "On Amendments to the Criminal Procedural Code of Ukraine Concerning the Improvement of the Procedure for Conducting Criminal Proceedings Under Martial Law". (2022, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2201-20#Text.

These methods were used in conjunction, which enabled a complete and comprehensive study and allowed substantiating the formulated scientific conclusions and proposals.

During the research, the scientific works of proceduralist scientists were analysed, namely I.V. Glovyuk & V.A. Zavtura (2022), O.V. Kaplina (2014; 2022), O.V. Lazukova (2018), O.M. Drozdova, V.V. Mykhailenko, V.V. Rohalska, H.K. Teteriatnik & T.G. Fomina (2022) and others. The regulatory framework of this study included the Convention on the Protection of Human Rights and Fundamental Freedoms[1], the Constitution of Ukraine[2], the CPCU[3], the Laws of Ukraine "On the Legal Regime of a State of Emergency"[4], "On the Legal Regime of Martial Law"[5], "On the Fight against Terrorism"[6], "On Amendments to the Criminal Procedural Code of Ukraine Concerning the Improvement of the Procedure for Conducting Criminal Proceedings Under Martial Law"[7], the legislation of European countries and the decision of the European Court of Human Rights[8].

## Results and Discussion

When the CPCU was adopted in 2012[9], it did not contain a separate section that would regulate the specific features of conducting criminal proceedings in special conditions caused by armed aggression against Ukraine. For the first time, the Criminal Procedural Code was supplemented by Section IX-1 pursuant to the Law of Ukraine dated August 12, 2014, which was entitled "Special regime of pre-trial investigation in conditions of martial law, state of emergency or in the area of anti-terrorist operation"[10]. Given that the events in the east of Ukraine from an anti-terrorist operation were reformatted into an operation of joint forces, the Law of Ukraine dated April 27, 2021 amended the title of Section IX-1 with the words "or measures to ensure national security and defence, repel and deter armed aggression of the russian federation in the Donetsk and Luhansk regions"[11].

In March 2022, the title of this section was corrected, and it was indicated that the special regime concerns not only pre-trial investigation, but also judicial proceedings. Therewith, the title still indicates that the specific features of the proceedings also applied to the state of emergency[12]. In April 2022, both the title of Section IX-1 of the CPCU and its content underwent substantial changes. Pursuant to the Law of Ukraine No. 2201-IX dated April 14, 2022, this section was named "Special regime of pre-trial investigation, trial under martial law"[13]. Both the title and the text of this section removed the regulation of the specific features of an investigation or trial during special situations in a state other than military ones that threaten its national security.

Special situations that require differentiation of criminal procedural legislation can be caused not only by armed aggression of other states, but also by acts of terrorism, an attempt to change the constitutional order, which serves as the basis for introducing a state of emergency in Ukraine pursuant to the Law of Ukraine "On the Legal Regime of a State of Emergency"[14]. Furthermore, the text of the Constitution of Ukraine also speaks in favour of regulating the specific features of criminal proceedings not only during a state of martial law, but also during a state of emergency. Thus, Part 2 of Article 64 of the Constitution of Ukraine[15] states that in the conditions of martial law or state of emergency, separate restrictions of rights and freedoms may be established, specifying the

[1]Convention for the Protection of Human Rights and Fundamental Freedoms. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004.
[2]Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text.
[3]Criminal Procedural Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17.
[4]Law of Ukraine No. 1550-III "On the Legal Regime of the State of Emergency". (2000, March). Retrieved from https://zakon.rada.gov.ua/laws/show/1550-14#Text.
[5]Law of Ukraine No. 389-VIII "On the Legal Regime of Martial Law". (2015, May). Retrieved from https://zakon.rada.gov.ua/laws/show/389-19.
[6]Law of Ukraine No. 638-IV "On Combating Terrorism". (2003, March). Retrieved from https://zakon.rada.gov.ua/laws/show/638-15#Text.
[7]Law of Ukraine No. 2201-IX "On Amendments to the Criminal Procedural Code of Ukraine Concerning the Improvement of the Procedure for Conducting Criminal Proceedings Under Martial Law". (2022, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2201-20#Text.
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[9]Criminal Procedural Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17.
[10]Law of Ukraine No. 1631-VII "On Amendments to the Criminal Procedural Code of Ukraine Concerning the Special Regime of Pre-Trial Investigation in a State of Martial Law, Emergency or in the Area of an Anti-Terrorist Operation". (2014, August). Retrieved from https://zakon.rada.gov.ua/laws/show/1631-18#n5.
[11]Law of Ukraine No. 1422-IX "On Amendments to the Criminal Procedural Code of Ukraine Concerning the Improvement of Certain Provisions in Connection with the Implementation of a Special Pre-Trial Investigation". (2021, April). Retrieved from https://zakon.rada.gov.ua/laws/show/1422-20#Text.
[12]Law of Ukraine No. 2125-IX "On Amendments to the Criminal Procedural Code of Ukraine Concerning the Procedure. for Revoking a Preventive Measure for Military Service on Conscription During Mobilization, for a Special Period, or Its Changes on Other Grounds". (2022, March). Retrieved from https://zakon.rada.gov.ua/laws/show/2125-20#n6.
[13]Law of Ukraine No. 2201-IX "On Amendments to the Criminal Procedural Code of Ukraine Concerning the Improvement of the Procedure for Conducting Criminal Proceedings Under Martial Law". (2022, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2201-20#Text.
[14]Law of Ukraine No. 1550-III "On the Legal Regime of the State of Emergency". (2000, March). Retrieved from https://zakon.rada.gov.ua/laws/show/1550-14#Text.
[15]Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text.

period of validity of these restrictions. The terms "martial law and state of emergency" are used simultaneously in the regulation of the same rules and in other regulations – Articles 41, 43, 83, 157 of the Constitution of Ukraine[1].

Part 1 of Article 15 of the European Convention on Human Rights[2] (ECHR) states that the High Contracting Party may take measures deviating from its obligations under this Convention in times of war or other public danger. In other words, the ECHR also refers not only to military events, but also to other events that pose a public danger (e.g., terrorism, a pandemic, etc.).

In connection with the above, the authors of this study believe that Section IX-1 of the CPCU[3] should be called "Special regime of pre-trial investigation, trial in conditions of martial law or state of emergency" and define special procedures for criminal proceedings during the introduction of both martial law and state of emergency.

In April 2022, not only the title of Section IX-1 of the CPCU[4], but also its content underwent substantial changes. A new wording of Article 615 of the CPCU was presented[5]. In this norm, the legislator defined the specific features of conducting such procedural institutions: the beginning of a pre-trial investigation, search, inspection, and detention of an individual. A separate group should single out innovations related to procedural terms, namely an added reason for stopping the pre-trial investigation and a feature of the procedure for calculating the terms of the pre-trial investigation are defined; the possibility of carrying out certain procedural actions no later than fifteen days after the termination or cancellation of martial law is prescribed; the deadline for notifying a detained person of suspicion has been increased to forty-eight hours; the specific features of extending the terms of detention are determined.

Furthermore, exceptions to the principle of immediacy of court examination of evidence were introduced. According to Part 11 of Article 615 of the CPCU[6], statements obtained during interrogation can be used in court as evidence, if video recording was used during the interrogation, and the participation of a defence attorney is defined as an added condition for the interrogation of the suspect. As for the participation of a defence attorney, under martial law, their participation can be remote (using technical means of video and audio communication). Regarding the participation of the interpreter, according to Part 12 of Article 615 of the CPCU[7], if it is impossible to involve an interpreter for objective reasons, the inquirer, investigator, or prosecutor may personally translate if they speak one of the languages spoken by the suspect or victim.

The above shows that when regulating criminal proceedings under martial law, the priority is shifted in favour of the powers of individuals conducting criminal proceedings, by simplifying certain procedures for conducting procedural actions and making procedural decisions.

In addition to the above, the legislator substantially expanded the powers of the prosecutor, delegating to them certain powers of the investigating judge, the court to make the following decisions: on the application of certain measures to ensure criminal proceedings (pretext, seizure of property, temporary access to things and documents); on conducting law enforcement intelligence actions related to breaking into a person's home or other property, on conducting cover law enforcement intelligence actions; on receiving samples for examination or extension of pre-trial investigation terms (Item 2, Part 1, Article 615 of the CPCU[8]).

Before the changes introduced by the Law of Ukraine dated July 27, 2022[9], the head of the prosecutor's office was also authorized to decide on detention for pretext (Articles 187, 189, 190), choosing a preventive measure in the form of detention for a period of up to thirty days to individuals suspected of committing crimes prescribed in Articles 109–115, 121, 127, 146, 146–1, 147, 152–156-1, 185, 186, 187, 189–191, 201, 255–255-2, 258–258-5, 260–263-1, 294, 348, 349, 365, 377–379, 402–444 of the Criminal Code of Ukraine[10], and in exceptional cases – also in the commission of other serious or particularly serious crimes, if there are added risks of loss of evidence or escape of the suspect[11].

However, these powers of the prosecutor to restrict the constitutional right to freedom and personal inviolability during apprehension and detention during martial law have been substantially criticized by both scientists and human rights defenders. After all, they contradict the provisions of Article 29 of the

[1]Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text.
[2]Convention for the Protection of Human Rights and Fundamental Freedoms. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004.
[3]Criminal Procedural Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17.
[4]Law of Ukraine No. 2201-IX "On Amendments to the Criminal Procedural Code of Ukraine Concerning the Improvement of the Procedure for Conducting Criminal Proceedings Under Martial Law". (2022, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2201-20#Text.
[5]Ibidem, 2022.
[6]Criminal Procedural Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17.
[7]Ibidem, 2012.
[8]Ibidem, 2012.
[9]Law of Ukraine No. 2462-IX "On Amendments to the Criminal Procedural Code of Ukraine Regarding the Improvement of Certain Provisions of Pre-Trial Investigation Under Martial Law". (2022, July). Retrieved from https://zakon.rada.gov.ua/laws/show/2462-20#n59.
[10]Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[11]Law of Ukraine No. 2201-IX "On Amendments to the Criminal Procedural Code of Ukraine Concerning the Improvement of the Procedure for Conducting Criminal Proceedings Under Martial Law". (2022, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2201-20#Text.

Constitution of Ukraine[1], which declares the obligation of judicial control when deciding on arrest or detention.

Therefore, in July 2022, another Law of Ukraine "On Amendments to the Criminal Procedural Code of Ukraine Regarding the Improvement of Certain Provisions of Pre-Trial Investigation Under Martial Law"[2] was adopted, which cancelled the power of the prosecutor as a party to the prosecution to decide on the restriction of the constitutional right to freedom or personal integrity during martial law.

The above shows that the regulation of the procedural form of pre-trial investigation and judicial proceedings under martial law is a complex legislative procedure that requires considering the interests of the state and society regarding the investigation of criminal offences and the interests of the suspect, accused as a participant in criminal proceedings. Therewith, as H.K. Teteriatnyk (2022) notes that "in such conditions, a complex issue is being resolved to ensure a reasonable balance of state and public interests and create guarantees of the rights and legitimate interests of a person as the highest social value in the conditions of their forced restriction".

Along with this, the above-mentioned provisions suggest the unsystematic and situational nature of the introduction of individual changes and amendments to the CPCU[3] during the regulation of the procedural form of criminal proceedings under martial law. Such an approach to the improvement of criminal procedural legislation allows solving only the problems that arise in the particular situation that has developed at the moment. But the code is not a one-time rule, it is a norm that should be characterized by formal certainty and stability. The same cannot be said about Section IX-1 of the CPCU[4], which was changed or amended five times during 2021-2022 alone. Moreover, such changes not only introduced new rules of conduct, but also cancelled those that were introduced by previous laws.

The procedural form of restriction of the right to freedom and personal inviolability in the context of martial law or a state of emergency has undergone the greatest transformations. Specifically, from August 2014 to April 2022, during the investigation of terrorist crimes, the prosecutor could decide to detain an individual in custody for up to 30 days[5]; from April 2022 to August 2022, the head of the prosecutor's office was authorized to make such a decision, and the term of detention of an individual without a decision of an investigating judge or court was increased from 72 to 216 hours[6]. Since August 2022, all these special procedures for apprehension and detention during martial law have been abolished[7]. The specific features of the procedural form of detaining an individual during the period of martial law are still the extension of the period of notice of suspicion to the detained individual (not 24 hours, as prescribed in the general procedure, but 48 hours), determination of an added reason for detention (possible escape for evading criminal responsibility), the possibility of remote participation of the detained individual in the consideration of the request for the selection of a preventive measure (using available technical means of video communication) (Part 7 and Clause 6 of Part 1 of Article 615 of the CPCU[8]).

Notably, the prosecutor was empowered to decide to detain an individual for up to thirty days not in March 2022, but in August 2014, when Chapter IX-1 was first added to the CPCU[9]. And such powers concerned only cases when an individual was suspected of committing a limited range of criminal offences, namely terrorist crimes, crimes against the foundations of national security of Ukraine, public order, peace, security of humanity, and international law and order.

The possibility of apprehension and detention without a court decision for up to 30 days is currently prescribed in Article 15-1 of the Law of Ukraine "On Combating Terrorism"[10], which states that in case of reasonable suspicion that an individual has committed terrorist activity, the term of preventive detention cannot exceed thirty days. Such detention is applied without a decision of the investigating judge but based on a decision of the head of the Main Department of the Security Service of Ukraine or the head of the territorial body of the National Police with the prosecutor's approval.

Although this law stipulates that preventive apprehension of individuals involved in terrorist

[1]Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text.
[2]Law of Ukraine No. 2462-IX "On Amendments to the Criminal Procedural Code of Ukraine Regarding the Improvement of Certain Provisions of Pre-Trial Investigation Under Martial Law". (2022, July). Retrieved from https://zakon.rada.gov.ua/laws/show/2462-20#n59.
[3]Criminal Procedural Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17.
[4]Ibidem, 2012.
[5]Law of Ukraine No. 1631-VII "On Amendments to the Criminal Procedural Code of Ukraine Concerning the Special Regime of Pre-Trial Investigation in a State of Martial Law, Emergency or in the Area of an Anti-Terrorist Operation". (2014, August). Retrieved from https://zakon.rada.gov.ua/laws/show/1631-18#n5.
[6]Law of Ukraine No. 2201-IX "On Amendments to the Criminal Procedural Code of Ukraine Concerning the Improvement of the Procedure for Conducting Criminal Proceedings Under Martial Law". (2022, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2201-20#Text.
[7]Law of Ukraine No. 2462-IX "On Amendments to the Criminal Procedural Code of Ukraine Regarding the Improvement of Certain Provisions of Pre-Trial Investigation Under Martial Law". (2022, July). Retrieved from https://zakon.rada.gov.ua/laws/show/2462-20#n59.
[8]Ibidem, 2022.
[9]Law of Ukraine No. 1631-VII "On Amendments to the Criminal Procedural Code of Ukraine Concerning the Special Regime of Pre-Trial Investigation in a State of Martial Law, Emergency or in the Area of an Anti-Terrorist Operation". (2014, August). Retrieved from https://zakon.rada.gov.ua/laws/show/1631-18#n5.
[10]Law of Ukraine No. 638-IV "On Combating Terrorism". (2003, March). Retrieved from https://zakon.rada.gov.ua/laws/show/638-15#Text.

activities for more than 72 hours must be carried out pursuant to the criminal procedural legislation, there is no norm in the CPCU that would indicate the specific features of detaining such individuals[1]. The authors of this paper believe that the CPCU does not necessarily have to have a separate article that would define the procedure for carrying out preventive apprehension. However, a blanket rule that would indicate the possibility of such detention and its regulation by a separate law should be prescribed in CPCU.

The above analysis of criminal procedural legislation shows the unsystematic nature of law-making activities during the regulation of criminal procedural legal relations in the conditions of martial law, which in turn causes the legal uncertainty of the legislation and the difficulties of law enforcement. Among the reasons for such a law-making process, it is worth mentioning the lack of a fundamental, conceptual vision of the regulation of the criminal procedural form in circumstances caused by military aggression or other extraordinary events.

To determine the most balanced and optimal approach to regulating the criminal procedural form of criminal proceedings under martial law, it is advisable to analyse the criminal procedural legislation of other countries. Although it is worth noting that after the end of World War II, most countries in Europe and the world did not face direct military aggression. However, many countries have dealt with terrorist wars, which also necessitated the adaptation of criminal procedural legislation to the specific features of investigating and bringing to justice those who committed terrorist acts.

The practices of Great Britain should be considered, where since 1969, 2,646 people died directly as a result of terrorist activities, and 30,658 were maimed or injured, while 43,649 attacks were carried out using explosives and firearms (Case of Brogan…, 2001). Comparable cases have occurred in Spain, France, and the United States, particularly after the September 11, 2001 terrorist attacks.

A series of terrorist acts in Great Britain led to the adoption of the Prevention of Terrorism Act[2] in 1974, which was subject to parliamentary review every six months. Under that Act, the police were given special powers of arrest. Specifically, an individual suspected of committing terrorist acts could be arrested by a constable without a court decision. As a general rule, the period of detention could not exceed forty-eight hours. In case of reasonable suspicion of committing terrorist crimes, the minister was granted the right to extend the period of detention for another five days (Case of Brogan…, 2001).

That is, in the UK, under the Prevention of Terrorism Acts, the police were granted the right to keep an individual in custody without bringing them to court for seven days. Therewith, the purpose of increasing the period of detention without a court decision was to ensure the secrecy of the investigation, since the hearing of the case in court would determine the publicity of the investigation methods.

The decrease in the number of terrorist acts and the number of deaths from these crimes since the mid-1980s was explained, among other things, by the presence of such detentions. Therefore, during the extension of these laws, it was noted that proposals to transfer the court's authority to decide on the extension of detention were rejected for reasons of confidentiality of information on the grounds of detention (Case of Brogan…, 2001).

That is, the fact of increasing terrorism in the UK has necessitated the protection of the interests of society and the state as a matter of priority, including by granting added powers to investigative bodies to restrict the right to freedom and personal inviolability of individuals suspected of committing terrorist acts.

The other side of this issue is the need to guarantee the inadmissibility of abuse of the right to long-term detention without a court decision. British judicial practice knows the cases called "Guildford Four" and "Maguire Seven" – the collective names of two groups whose charges in English courts in 1975 and 1976 for explosions in Guildford pubs were overturned after long campaigns for justice. The Guildford Four were wrongly convicted of explosions carried out by the IRA (Irish Republican Army), and the Maguire Seven – for manufacturing and storing explosives found during the investigation of the explosions. The charges against both groups were found unsatisfactory and overturned after the individuals served 15–16 years in prison (Alastair Logan…, 2022).

One of the reasons for issuing such an unfair court decision is the possibility of detention for seven days without being brought to court because during this period the detainees were put under pressure to confess, on which all further accusations were based. After the review of the court decision and the acquittal of the convicted individuals, three police officers were charged with conspiracy to pervert the course of justice, but their guilt was not proven.

In 2000, the UK passed a new Terrorist Act[3], according to which the police have the right to detain suspects for no more than 48 hours, and after every 12 hours the appropriateness of further detention is reviewed by a higher-level officer, based on a written report on the reasons leaving the detainee in custody. After 48 hours, any extension of the detention period shall be authorized by a High Court judge based on appropriate explanations indicating which

[1]Criminal Procedural Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17.
[2]Scorer, C. (1980). The United Kingdom Prevention of Terrorism Acts, 1974 and 1976. JSTOR, 10(1), 105-111. Retrieved from https://www.jstor.org/stable/40469875.
[3]Terrorism Act 2000. (2000). Retrieved from https://www.legislation.gov.uk/ukpga/2000/11/contents/enacted.

investigative actions have not yet been completed, what results of these investigative actions are expected during the added time of detention, and to clarify which issues the detainee will be questioned at that time. On good grounds, a detainee may be denied access to a lawyer of their own choosing, but in such cases, another lawyer must be provided immediately (Overview of Terrorism…, 2010).

The above-mentioned changes have struck a fair balance between the public interest in countering terrorist activities and the interest in protecting the fundamental rights of an individual suspected of committing such crimes.

In Spain, which has also suffered from terrorist acts for a long time, the specific features of the detention of individuals suspected of committing terrorist crimes are regulated by criminal procedural legislation (Overview of Terrorism…, 2010). According to the provisions of the Criminal Procedural Code of Spain[1], during the investigation of any criminal offence, the court may authorize the detention of suspects in incommunicado for the minimum period necessary to take immediate measures to prevent the risks of evading responsibility, harming the rights of the victim, hiding, changing, or destroying material evidence or committing new crimes. A detainee must be released or brought before a judge no later than 72 hours after the arrest (Articles 509 and 520 of the Criminal Procedural Code of Spain[2]).

Therewith, in cases involving armed gangs, terrorist groups or rebels, the period of detention may be extended for the time required to conduct an investigation, but not more than 48 hours. Detention of an individual without a court decision may not last longer than 5 days. There were attempts to extend this period to 10 days, but the Constitutional Court limited the time of detention by a police decision without the involvement of a court to 5 days. If the case concerns terrorism or organized crime, this period is additionally extended by the court for no more than five days. Exclusively for terrorism cases, it is possible to repeatedly deprive the suspect of contacts with the outside world by court decision for a period not exceeding 3 days from the moment when the investigation considers it appropriate. The permissible cumulative period of incommunicado detention, which is 13 days, includes 5 days during which a suspect can be held by the police (Overview of Terrorism…, 2010).

The right of a detainee to a medical examination is defined as the guarantee of prevention of abuse and ill-treatment (Article 520 of the Criminal Procedural Code of Spain[3]). Therewith, an individual detained on suspicion of terrorism and held in solitary confinement by order of a judge is entitled to consult only with a lawyer appointed to them, but cannot choose a lawyer independently, and also cannot have contact with other individuals during the initial period of detention (Article 527 of the Criminal Procedural Code of Spain[4]).

Notably, the ban on the involvement of private lawyers at the initial stage of detention was recognized by the international human rights organization "Human Rights Watch" as justified in the light of the fact that the arrested members of the terrorist organization ETA were provided with legal aid by lawyers associated with this organization, which was detrimental to the investigation (Overview of Terrorism…, 2010).

According to French procedural legislation, detention after the first two days is authorized by a judge after hearing the detainee. If the case concerns terrorism, the period of detention without charge can be extended up to 6 days. This provision applies in emergency situations with the permission of the judge who decides on personal freedoms and detention. Until 2005, it was allowed to extend detention by a court decision to no more than 96 hours (4 days). But after the bombings in Madrid and London in 2005, the maximum period of detention of suspects by the police for questioning was increased to 6 days. The prosecutor and investigating judge must also provide the detainee with access to a doctor and lawyer, who may be prohibited from disclosing information about the meeting with the detainee (Overview of Terrorism…, 2010).

In the United States, special detention procedures are declared in the Constitution[5], which states that no one can be deprived of the privilege granted by the law "Habeas Corpus", except in those cases when public safety requires it during a rebellion or attack (Item 2 of Section 9 of Article 1). The Habeas Corpus rule prescribes that only the court exercises control over the legality of detention of individuals suspected of committing crimes. The decision to suspend the "Habeas Corpus Act" was first adopted by US President Lincoln in 1863 in the cases of individuals accused of war crimes (President Lincoln's…, 2022).

The repeated need to limit the rule of habeas corpus in the USA arose after the terrorist acts of September 11, 2001 (Attack…, 2022).

Congress adopted the Military Commission Act according to which foreign fighters were deprived of the right to "Habeas Corpus"[6]. However, in Boumediene v.

[1]C Ley de enjuiciamiento criminal. (1882). Gaceta de Madrid, 260. Retrieved from https://www.boe.es/buscar/act.php?id=BOE-A-1882-6036.
[2]Ibidem, 1882.
[3]Ibidem, 1882.
[4]Ibidem, 1882.
[5]Constitution of the United States of America. (1789). Retrieved from http://lib.rada.gov.ua/static/LIBRARY/catalog/law/usa_const.htm#%D1%81%D1%821.
[6]Military Commissions Act of 2006. (2006). Retrieved from https://www.govinfo.gov/content/pkg/BILLS-109s3930es/pdf/BILLS-109s3930es.pdf.

Bush, the Supreme Court[1] declared this law unconstitutional, on the basis that it does not comply with the rule of admissibility of suspension of this right. Furthermore, after the terrorist attacks of September 11, 2001, the Federal Patriot Act ("Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act") was passed in the United States[2], which was valid until 2015. This law gave the government and law enforcement agencies broad powers to monitor citizens, including expanding the FBI's wiretapping and electronic surveillance powers, which many advocates considered a violation of the Fourth Amendment to the Constitution[3].

The lack of a proper mechanism for countering the abuse of the broad powers granted to them by investigative bodies is evidenced by the story of Mohamed Ould Slahi, who was held in the Guantánamo Bay prison without charges for 14 years (from August 2002 to October 2016) (Mohamedou Ould Slahi..., 2015).

The above shows that when determining the balance between the interests of society, which suffers from terrorist crimes, and the interests of an individual who is suspected of committing such crimes, priority is given to the interests of society and the state.

Notably, the possibility of deviating from the observance of human rights, guaranteed by both the constitutions and the ECHR[4], is prescribed by international standards. Specifically, pursuant to Part 1 of Article 15 of the ECHR[5], during war or other public danger that threatens the life of the nation, it is allowed to take measures to deviate from the assumed obligations, but only to the extent required by the urgency of the situation.

Ukraine took advantage of this right and as early as May 2015, the Verkhovna Rada of Ukraine adopted a resolution "On the withdrawal of Ukraine from certain obligations defined by the International Covenant on Civil and Political Rights and the Convention on the Protection of Human Rights and Fundamental Freedoms"[6], where it indicated that such a withdrawal is implemented to ensure the vital interests of society and the state in conditions of armed aggression (item 4).

Therewith, withdrawal from the provisions of the Convention is not absolute. After all, the possibility to withdraw does not concern all rights. According to Clause 2 of Art. 15 of the ECHR[7], this provision cannot serve as a basis for derogating from the right to life, the prohibition of torture and ill-treatment, the prohibition of slavery and forced labour or from punishment without law. Furthermore, the European Court of Human Rights has repeatedly considered the issue of the legitimacy of derogation from obligations in the decisions "Lawless v. Ireland"[8] dated June 1, 1961, "Ireland v. United Kingdom"[9] dated January 18, 1978, "Brogan and others v. United Kingdom"[10] dated May 27 and October 28, 1988.

## Conclusions

The study analysed the development of criminal procedural legislation regarding the regulation of criminal proceedings under martial law through the lens of state, public, and personal interests of the participants in criminal proceedings. A comparative analysis of the legislative regulation of special procedures for restricting the right to freedom and personal integrity was carried out both in Ukrainian legislation and in the legislation of other European countries (Great Britain, France, Spain). The approaches of the case law of the European Court of Human Rights regarding the extension of the general terms of detention of suspects of committing terrorist crimes have been determined.

The analysis of changes and amendments to the Criminal Procedural Code of Ukraine regarding the regulation of the procedural form of criminal proceedings in the conditions of martial law or state of emergency shows that they are unsystematic. This allows solving only situational problems, which in the absence of a fundamental approach to the regulation of the criminal procedural form in circumstances caused by military aggression or other extraordinary events, will undergo permanent changes and amendments.

The criminal procedural legislation of other countries that have dealt with systematic terrorist acts responds to threats to national security by introducing

[1]Boumediene v. Bush No. 05-5062. (2007, February). Retrieved from https://casetext.com/case/boumediene-v-bush-7.
[2]Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act dated 2001. (2001, October). Retrieved from https://www.congress.gov/107/plaws/publ56/PLAW-107publ56.pdf
[3]Ibidem, 2001.
[4]Convention for the Protection of Human Rights and Fundamental Freedoms. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004.
[5]Ibidem, 1950.
[6]Resolution of the Verkhovna Rada of Ukraine No. 462-VIII "On The Withdrawal of Ukraine from Certain Obligations Defined by the International Covenant on Civil and Political Rights and the Convention on the Protection of Human Rights and Fundamental Freedoms". (2015, May). Retrieved from https://zakon.rada.gov.ua/laws/show/462-19#Text.
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[8]Case of "Lawless v. Ireland" No. 332/57. (1961, July) Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57518%22]}.
[9]Case of "Ireland v. the United Kingdom" No. 5310/71. (1978, January). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57506%22]}.
[10]Case of Brogan and Others v. the United Kingdom Case Law of the European Court of Human Rights. Decision. Comments. (2001). Retrieved from http://eurocourt.in.ua/Article.asp?AIdx=430.

special procedures in the investigation of such crimes, which relate to increasing the terms of detention of an individual without notice of their charge or without bringing them to court and the procedure for involving a defence attorney. Therefore, when determining the balance between the interests of a society suffering from terrorist crimes or military aggression and the interests of an individual suspected of committing such crimes, priority should be shifted in favour of the interests of society and the state, while ensuring that the expanded powers of individuals conducting pre-trial investigations are not abused.

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# Забезпечення державних, суспільних та особистих інтересів під час кримінального провадження в умовах воєнного чи надзвичайного стану

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**Анотація**
Повномасштабне вторгнення Російської Федерації на територію України зумовило потребу у внесенні змін і доповнень до Кримінального процесуального кодексу України, зокрема до розділу IX-1. Метою роботи є аналіз розвитку кримінального процесуального законодавства щодо регламентації кримінального провадження в умовах воєнного стану крізь призму державних, суспільних та особистих інтересів учасників кримінального провадження; законодавчого регулювання особливих порядків затримання й тримання під вартою як в українському законодавстві, так і в законодавстві інших країн. У статті використано комплекс спеціальних методів, притаманних дослідженню явищ правової науки, зокрема: історико-правовий, формально-юридичний, порівняльно-правовий і системно-структурний. Визначено, що як у назві, так і в тексті розділу IX-1 Кримінального процесуального кодексу України відсутня вказівка на особливості кримінального провадження під час інших, окрім воєнних, особливих ситуацій у державі, які загрожують її національній безпеці. Обґрунтовано, що в разі регламентації кримінального провадження в умовах воєнного стану акцент у пріоритетності інтересів учасників кримінального провадження зміщується на інтереси держави й суспільства. Акцентовано на суттєвому розширенні повноважень прокурора. Доведено відсутність системного підходу під час внесення змін і доповнень до кримінального процесуального законодавства. Суттєвих змін зазнала процесуальна форма обмеження права на свободу й особисту недоторканність під час дії воєнного стану. Аналіз кримінального процесуального законодавства Великої Британії, Іспанії, Франції та США дозволяє стверджувати, що вказані держави реагують на загрози національній безпеці шляхом запровадження особливих процедур під час розслідування злочинів, які спричинили такі загрози. Ці особливі процедури стосуються строків затримання особи без повідомлення їй обвинувачення, без доставляння її до суду. Проведене дослідження дозволить сформувати концептуальний підхід до регламентації кримінального провадження, який забезпечить розумний баланс державних, суспільних та особистих інтересів

**Ключові слова:**
затримання; тримання під вартою; суд; інтереси держави та суспільства; інтереси учасників

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# Identification, collection, and investigation of electronic imagery as sources of evidence

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**Abstract**
Given the rapid pace of informatization of society, the number of criminal offences involving the use of computers, their software, as well as telecommunications systems is continuously growing. Such illegal actions are characterized by leaving traces, including electronic imagery. They can be evidence of the commission of criminal offences, which explains the development and improvement of methods for their detection, collection, and investigation by law enforcement agencies. However, today such methods of detecting, collecting, and investigating electronic imagery of evidence are separately contained in several scientific papers of Ukrainian and foreign scientists, which allowed comprehensively covering them in this study. The purpose of this study was to review the theory and practice of the activities of authorized entities for the detection, collection, and investigation of electronic imagery of evidence. The study uses a set of various methods, namely scientific cognition of real phenomena and their connections with the practical activities of authorized bodies for the detection, collection, and investigation of electronic imagery (dialectical method), as well as special and general scientific methods of legal science. The study showed as follows: usually, investigators and operational officers detect electronic imagery independently, or as part of an investigative task force during the investigation of criminal offences, or before their commission; the collection of electronic imagery occurs during procedural actions (usually law enforcement intelligence actions) both from technical devices with which a criminal offence was committed, and from those that were attacked. When extracting electronic imagery, it is advisable to involve a suitable specialist (if possible, a cyberpolice officer); an authorized investigator, specialist, and expert are authorized to examine electronic imagery. Expert research of electronic imagery belongs only to experts and is carried out using the following examinations: computer equipment and software products, telecommunications systems and tools, as well as technical and forensic examination of documents. The conducted review will help authorized practitioners restore the memory of knowledge about information about the tools for detecting, collecting, and investigating electronic imagery, which will ensure the effective implementation of the tasks of criminal proceedings

**Keywords:**
law enforcement intelligence actions; investigator; digital evidence; electronic document

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## Introduction

Since the beginning of the 21st century, there has been a continuous development of information technologies. This is primarily explained by rapid progress, which is manifested in an increase in the functionality of their actions and the number of tasks they solve. Informatization has not spared the criminal world. Offenders are increasingly committing criminal offences, using information technologies as a means of committing and concealing such criminal offences. That is why law enforcement agencies should always be prepared for such actions of criminals and ensure a quick, complete, and impartial investigation of such facts.

In this regard, law enforcement agencies are increasingly faced with electronic imagery in their practical activities, which obliges them to collect and examine such factual data to form a high-quality evidence base.

In an effort to counteract cybercrime and collect digital evidence of criminal actions, these bodies introduce appropriate tools for analysing digital evidence into their law enforcement infrastructure, as well as use all the possibilities of computer forensic expertise (Belshaw & Nodeland, 2022). However, as practice shows, not all law enforcement officers who work with electronic imagery use advanced both Ukrainian and international practices, which led to the conduct of this study.

Today, there is no unified approach to the name of evidence that is available in electronic (digital) form. They are called "virtual traces", "electronic evidence", "electronic traces", "computer evidence", "digital evidence", "digital (electronic) evidence", "electronic imagery", etc. Earlier studies proved that the statement of scientists regarding the name "electronic imagery" is now quite well-founded, which is supported (Grebenkova, 2021). Electronic imagery is a system of information and/or computer instructions in an information network or technical medium that can be evidence of a fact or circumstances established during an investigation (Orlov & Chernyavskyi, 2017). Thus, this paper refers to the subject under study using the term specified above, and when referring to the scientific achievements of other scientists, this paper will use their concept, implying the term "electronic imagery" with certain features.

Considering the scientific studies of Ukrainian scientists, one can point out a certain intensification of scientific research aimed at solving certain issues of collecting and investigating electronic imagery. Among them, the following theses can be distinguished: A. Ratnova (2021), A. Skrypnyk (2021), Yu. Kohut (2021). However, a comprehensive review of the detection, collection, and investigation of electronic imagery as sources of evidence, using international practices, has not yet been carried out.

If one pays attention to the global scale of the subject under study, one can observe certain progress in the development of methods of detection, collection, and investigation of electronic imagery in the criminal procedural activities of certain countries (the United States of America, the Kingdom of Norway, Great Britain, the United Arab Emirates, etc.). First of all, this is explained by the fact that such states were among the first in the world to introduce electronic technologies in the activities of their state institutions. However, as determined by scientists from Australia (McCord *et al*., 2022), the Kingdom of the Netherlands (Stoykova *et al*., 2022), the Kingdom of Norway (Stoykova *et al*., 2022), the Republic of Estonia (Aksamitowska, 2021), the United States of America (Belshaw & Nodeland, 2022), (Holt & Dolliver, 2021), (Holt *et al*., 2020), Great Britain (Tun *et al*., 2020), Austria (Forgó *et al*., 2017), the Federal Republic of Germany (Hawellek *et al*., 2017), the Republic of Ecuador (Granja & Rafael, 2017), the Republic of Peru and other countries, such studies are not sufficient. Until now, it has not been fully clarified to what extent law enforcement agencies use the methodology and tools of digital criminalistics, how they implement recommendations and standards of digital forensic expertise, and how they receive, investigate, and analyse digital data sources (Stoykova *et al*., 2022). Cyberattacks on electronic media leave certain artefacts in the target device's storage that can detect a cybercriminal and its behaviour if handled and analysed correctly. Law enforcement agencies of the world use several digital forensic tools, both commercial and open source, to achieve digital evidence (Javed *et al*, 2022).

In 2012, the Joint Technical Committee of the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC) developed the international standard ISO/IEC 27037:2012[1]. This standard provides recommendations for particular actions in working with digital evidence, which include identifying, collecting, extracting, and storing potential digital evidence that may have evidentiary value[2]. Such processes are necessary during a pre-trial investigation to ensure the admissibility and relevance of electronic imagery during court proceedings. After the publication of this international standard, the order of the State Enterprise "Ukrainian Research and Training Center for Standardization, Certification and Quality Assurance" (SE "UkrRTC") No. 400 was adopted[3]. Thanks to the latter, on January 1, 2019, the

[1]ISO/IEC 27037:2017. (2019). Information technology. Security techniques. Guidelines for identification, collection, acquisition and preservation of digital evidence. Retrieved from http://online.budstandart.com/ua/catalog/doc-page?id_doc=74978

[2]Ibidem, 2019.

[3]Order of the State Enterprise "Ukrainian Research and Training Center for Standardization, Certification and Quality Assurance" No. 400. "On the adoption of national regulatory documents harmonized with European and international regulatory documents, cancellation of national regulatory documents, changes to national regulatory documents". (2017, December). Retrieved from http://www.leonorm.com.ua/P/NL_DOC/2017/Nak_400.htm.

state standard DSTU ISO/IEC 27037:2017[1] entered into force in Ukraine. The adoption of such standards indicates that the state aims to counteract cybercrime and those offences that are directly or indirectly related to the use of information technologies.

Considering the relevant international practice and the above-mentioned international and state standards for working with electronic imagery, it is advisable, according to the authors, to highlight modern methods of detecting, collecting, and investigating electronic imagery during the pre-trial investigation of criminal offences. Such a review will help familiarize authorized practitioners with a set of modern tools for detecting, collecting, and investigating electronic imagery, which in turn will effectively ensure a quick and complete investigation of criminal proceedings.

*The purpose of this study* was to review the theory and practice of the activities of authorized subjects for the detection, collection, and investigation of electronic imagery of evidence.

The objectives of this study are as follows: to analyse the scientific studies of scientists and the results of a survey conducted by investigators of the National Police of Ukraine on this subject.

## Materials and Methods

Considering the purpose of the study, the specifics of the object and subject of the study, the relevant methodological framework was chosen. It was based on the method of scientific cognition of real phenomena and their connections with the professional activities of authorized subjects (pre-trial investigation and inquiry bodies), specialists and experts, as well as special and general scientific methods of legal science. Among the general scientific methods, the following methods were used: analysis (in the part of cognition of the following phenomena: detection, collection, and investigation of electronic imagery by law enforcement agencies, specialists, and experts), deductions (identification of common law enforcement intelligence actions during which electronic imagery is detected and collected), interpretation (of the above-mentioned international and state standards ISO/IEC 27037:2012[2] and the state standard of DSTU ISO/IEC 27037:2017[3], classification (identification of information carriers on which electronic imagery can be extracted). The system-structural method was also used, which allowed comprehensively analysing the provisions of the following regulations: the Criminal Procedural Code of Ukraine (the CPCU) dated April 13, 2012[4], the Law of Ukraine "On Forensic Examination" dated February 25, 1994 (Law No. 4038 -XII)[5], Order of the Ministry of Internal Affairs of Ukraine No. 575 dated 07.07.2017 (Order of MIAU No. 575)[6], Order of the Ministry of Justice of Ukraine No. 53/5 dated October 8, 1998 (Order of MJU No. 53/5)[7], as well as the practice of their application.

Apart from the general scientific methods, special methods were also used, namely comparative legal (determination of subtypes of examination of computer equipment and software products, their similarity and difference among different opinions of scientists).

The results of the latest fundamental research of Ukrainian and other scientists (Orlov & Cherniavskyi, 2017; Ratnova, 2021; Stoykova *et al*., 2021; Belshaw & Nodeland, 2022) from various countries (the United States of America, the Kingdom of Norway, the Islamic Republic of Pakistan, the Republic of India, Australia, Great Britain, the United Arab Emirates, the People's Republic of China) in the field of information technologies, cybersecurity, conducting examinations of computer equipment and software products, conducting law enforcement intelligence actions for collecting electronic imagery, etc. were used as the theoretical framework of the present study.

The empirical framework of the study is the results of a sociological survey of 113 investigators of the National Police of Ukraine (Kyiv, Lviv, Vinnytsia, Kirovohrad, Poltava regions), who were anonymously asked to answer several questions, specifically: "who most often detects electronic imagery during the investigation of a criminal offence, or before such investigation". Among the proposed answers were the following: a) citizens; b) employees of public and private enterprises, organizations, and institutions (11 people, which is 9.7%); c) investigators and operational workers (independently or as part of an investigative task force) – (79 people – 69.9%); d) police officers (23 people – 20.4%); e) other answers. It was also suggested to answer the question: "Do you have basic specialized knowledge in collecting and extracting electronic imagery (electronic evidence)?".

[1]ISO/IEC 27037:2017. (2019). Information technology. Security techniques. Guidelines for identification, collection, acquisition and preservation of digital evidence. Retrieved from http://online.budstandart.com/ua/catalog/doc-page?id_doc=74978.
[2]Ibidem, 2019.
[3]Ibidem, 2019.
[4]Criminal Procedural Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17.
[5]Law of Ukraine No. 4038-XII "Forensic Examination". (1994, February). Retrieved from https://zakon.rada.gov.ua/laws/show/4038-12#Text.
[6]Order of the Ministry of Internal Affairs of Ukraine No. 575 "On the Approval of the Instructions on the Organization of the Interaction of Pre-Trial Investigation Bodies with Other Bodies and Units of the National Police of Ukraine in the Prevention of Criminal Offences, Their Detection and Investigation". (2007, July). Retrieved from https://zakon.rada.gov.ua/laws/show/z0937-17#Text.
[7]Order of the Ministry of Justice of Ukraine No. 53/5 "On the Approval of the Instructions on the Appointment and Conduct of Forensic Examinations and Expert Studies and Scientific and Methodological Recommendations on the Preparation and Appointment of Forensic Examinations and Expert Studies". (1998, October). Retrieved from https://zakon.rada.gov.ua/laws/show/z0705-98#Text.

## Results and Discussion

One cannot but agree with the statement of A. Amelina, S. Dementieva (2021) that "the use of information contained in electronic form on magnetic, optical, and other media in the evidentiary process is quite relevant today". This information can be used to determine the content of financial and economic activities carried out by business entities. This information can provide the understanding of the content of tax and accounting, the number of financial and economic operations, and methods of committing a criminal offence, etc.

According to Part 1 of Article 93 of the CPCU[1] "evidence is collected by the parties to the criminal proceedings, the victim, the representative of the legal entity in respect of which the proceedings are being conducted, in the manner prescribed by this regulation"[2].

The present paper specifically addresses the detection, collection, and investigation of electronic imagery by law enforcement agencies, i.e., the prosecuting party. Such authorized entities pursuant to Item 19 Part 1 of Article 3 of the CPCU[3] are the head of the pretrial investigation body, the investigator, the head of the inquiry body, the prosecutor, the interrogating officer[4].

According to Articles 36, 39, 40-1 of the CPCU[5], the specified entities are authorized to detect, collect, and investigate evidence, including electronic imagery. However, for the readability of a scientific article, as an authorized subject, the authors will indicate only the investigator.

Having surveyed 113 investigators of the National Police of Ukraine, the authors of this study found that electronic imagery is most often detected during the investigation of a criminal offence, or before such an investigation: by investigators and operational officers independently or as part of an investigative task force (69.9%), by other police officers (20.4%), by employees of public and private enterprises, organizations, and institutions (9.7%).

It is possible to detect electronic imagery during the investigation of any criminal offence or beforehand. At the same time, as practice shows, such evidence in most cases is found during the investigation of criminal offences in the sphere of official and professional activities; the use of electronic computers, systems, and computer networks and telecommunication networks; related to the provision of public services; entrepreneurial activities; as well as lately the circulation of narcotic drugs, psychotropic substances, their analogues, or precursors (Zelena, 2020). This indicates that electronic imagery in this category of criminal offences can be independent (main) sources of evidence, and not additional ones.

As the results of the survey indicate, quite often the investigator detects electronic imagery unassisted, or as part of an investigative task force (ITF). According to Item 1 Part 1 of the Order of MIAU No. 575[6], the investigator directs the actions of other ITF members and is responsible for the quality of the inspection of the crime scene; seizes things and documents relevant to criminal proceedings, and things that have been withdrawn from circulation, including material objects that are subject to proof, ensures their proper storage according to the established procedure for further dispatch for conducting an examination; together with other ITF members and other participants in criminal proceedings, records information about the circumstances of the commission of a criminal offence, etc[7].

As for the specifics of the ITF's activities in the above categories of criminal offences, this is partially presented in Sections XII and XV of the Order of the MIAU No. 575 dated July 7, 2017[8].

Thus, the investigator is authorized to seize electronic imagery independently, however, in most cases they do not have special knowledge of their collection. This is evidenced by the results of a survey of 113 investigators, which showed that only 8% of them have basic skills in this area.

Such skills can be obtained through the introduction of added disciplines in the preparation of applicants in higher education institutions in the speciality "pretrial investigation", during the organization of postgraduate education with investigators (completion of specialization, retraining, advanced training, internships), as well as conducting special trainings, webinars and practical classes with investigators with the involvement of relevant national and foreign specialists.

Apart from the above, according to Article 71 of the CPCU[9], detection and collection of evidence must be conducted by an authorized specialist who is involved by the investigator in the investigation procedure. According to Part 2 of Article 71 of the Criminal Procedure Code of Ukraine[10], a specialist may be involved in providing technical support (drafting diagrams, plans, drawings, photographing, sampling for examination, etc.) by the

[1]Criminal Procedural Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17.
[2]Ibidem, 2012.
[3]Ibidem, 2012.
[4]Ibidem, 2012.
[5]Ibidem, 2012.
[6]Order of the Ministry of Internal Affairs of Ukraine No. 575 "On the Approval of the Instructions on the Organization of the Interaction of Pre-Trial Investigation Bodies with Other Bodies and Units of the National Police of Ukraine in the Prevention of Criminal Offences, Their Detection and Investigation". (2007, July). Retrieved from https://zakon.rada.gov.ua/laws/show/z0937-17#Text.
[7]Ibidem. 2007.
[8]Ibidem. 2007.
[9]Criminal Procedural Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17.
[10]Ibidem, 2012.

court during the trial and by the parties to criminal proceedings during the pre-trial investigation, etc.[1].

When investigating a criminal offence, the investigator collects the evidence base using a certain algorithm of actions and certain tools. One of these tools is law enforcement intelligence actions.

As practice shows, quite often electronic imagery is detected during a search. It is correct to agree with the methodological recommendations of scientists that before carrying out this law enforcement intelligence action, it is necessary to find answers to the following questions: "What computer equipment and software can be at the place of search? How many devices can be detected? Who handles the equipment? How much data needs to be copied? Are data backups available, and where are they stored?" (Gutsalyuk et al., 2020). Notably, when conducting such a law enforcement intelligence action, it is advisable to involve an employee of the cyberpolice as a specialist because pursuant to the Order of the National Police of Ukraine No. 85[2], this department "takes part in the formation and implementation of the national policy on prevention and counteraction of criminal offences, the mechanism of preparation, commission, or concealment of which involves the use of electronic computing machines (computers), systems and computer networks and telecommunication networks"[3]. Only in extreme cases can other individuals who have the proper knowledge and are not cyberpolice officers be involved as specialists. This is explained by the fact that cyberpolice officers are full-time police officers who know, understand, and are aware of the consequences of disclosing information obtained during a pre-trial investigation, which cannot be said about civilians, to whom the usual warning by investigators about legal liability can be taken lightly.

Notably, if the investigator plans to use electronic information as evidence, then such information should be copied with the involvement of a specialist. However, if the information is needed for purposes other than proof, it is not necessary to involve a specialist. The specialist must be competent in information technology issues, knowledgeable in the techniques of verification of the integrity of information (Lytvynchuk et al., 2020).

When conducting the designated law enforcement intelligence action, the specialist is obliged to indicate to the investigator on the devices from which information can be extracted, on which devices it is advisable to do this and how to withdraw it (i.e., explain the methods of such information collection, which will affect the time of extraction and the amount of data received).

Typically, during a search, investigators decide to seize all technical equipment that contains evidentiary information. This allows the investigators to reduce the time of conducting this law enforcement intelligence action and give more time to the specialist in a calm environment, without making mistakes, to seize electronic imagery fully. Before investigators decide on the seizure of technical equipment, the specialist examines both their technical condition and the software.

There are cases when experts recommend that the investigator seize electronic imagery on the spot, because their further removal may no longer be possible. For instance, a specialist will not be able to re-enable a technical device because its hard drives may be encrypted using BitLocker, or the data is located on the server.

When extracting electronic imagery, the following storage media can be used:

– drives on magnetic discs (hard disks);

– drives on optical discs (compact discs (CD-R; CD-RW), DVD discs, Blu-ray Disc and floppy discs);

– flash cards.

If items, valuables, and documents, in the opinion of the investigator, are of interest to the investigation process, they must be seized and properly packaged (attached labels with signatures of participants in the law enforcement intelligence action with the seal of the authorized body) (Gutsalyuk et al., 2020).

Apart from the fact that the investigator removes evidentiary information from electronic computers and electronic data carriers during the search of suspected individuals, they also decide on such removal during the examination of the attacked system of other electronic computers of the victims. As research objects of the attacked system, the following can be removed: "information carriers or their clones or bit images; RAM dumps; log files of services and applications; logging settings; files-reports of diagnostic utilities; configuration of diagnostic utilities; diagrams of the structure of automated systems, their integration into clusters, networks; schemes of internal networks (LAN, Local Area Network) and connection to the global network (WAN, Wide Area Network); setting up network equipment; setting up the software (system, server, user) of the automated system, specifically setting up remote access; email correspondence –primarily letters with attached files (potentially malicious software) or external links (potential sources of downloading malicious software)" (Nizovtsev & Omelyan, 2021).

Notably, during the seizure and examination of electronic imagery, the investigator, specialist, and expert must observe the confidentiality of private information of both the suspect and the victim. First of all, it is necessary to treat with the information seized from the suspect or victim with caution, since it also concerns third parties who are not involved in the commission of a criminal offence. It is clear that in some cases, access to such

[1]Criminal Procedural Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17.
[2]Order of the National Police of Ukraine No 85 "On the Approval of the Regulations on the Cyber Police Department of the National Police of Ukraine". (2015, November). Retrieved from http://tranzit.ltd.ua/nakaz/.
[3]Ibidem, 2015.

information and its analysis can help the investigation. However, if such data is not of significant use for investigation, efforts should be made to limit their use. Authorized individuals having access to a digital device within the framework of any investigation should try to distinguish between "private information relevant to the investigation" and ordinary privileged information that does not affect the investigative procedure (Horsman, 2022).

After the investigator, together with a specialist, has seized (collected) electronic imagery during a certain law enforcement intelligence action, they analyse it, evaluate it, and decide on conducting a certain type of forensic examination. At the same time, the investigator may not send electronic imagery to the forensic examination but have it as reference information. However, in this case, this electronic imagery will not be eligible as evidence within the meaning of Article 84 of the CPCU[1].

According to Article 1 of the Law No. 4038-XII[2], "forensic examination is an investigation based on special knowledge in the field of science, technology, art, craft, etc., of objects, phenomena, and processes, intended to provide an opinion on issues that are or will be the subject of judicial proceedings"[3].

Forensic experts who meet the requirements defined in Law No. 4038-XII[4] are authorized to conduct forensic examinations. Other requirements for an expert in criminal proceedings and their opinion are covered in Articles 69, 70, 102, 103 of the CPCU[5].

If in criminal proceedings there is a question of expert examination of electronic imagery, then in such cases the investigator decides to send them for the following examinations: computer equipment and software products and telecommunications systems and tools. In some cases, a technical and forensic examination of documents may also be appointed, if the electronic document is materialized.

According to Item 13.1. of the Order of the MJU No. 53/5[6], the key tasks of examination of computer equipment and software products include: establishing the working condition of computer and technical means; determination of circumstances related to the operation of technical devices, information, and software; installation of information and software contained on technical devices; determining compliance of software products with certain versions or requirements for its development"[7].

As correctly noted by P.S. Mykhailov, M.P. Klymchuk (2020), before appointing a computer-technical examination, it is necessary to contact the appropriate specialist to clarify and draft a correct list of issues that can be resolved during the specified examination. Such a specialist can be an expert from the specified field of research. This is justified by the fact that one should not re-apply with a power of attorney to appoint an expert examination, delaying the time of the pre-trial investigation.

It should also be noted that the court's failure to provide a decision on the use of computer equipment and the information contained on it to commit a certain action is a typical mistake of the subjects of criminal proceedings. Messages stored on a seized device may be considered inadmissible evidence in the absence of declassified investigative measures or a separate resolution or approval to disclose the secrecy of messages in criminal proceedings. In addition, when downloading information from a hard disc, phone, or flash card, one cannot add anything, or extract messenger texts by "creating a screenshot" from the device, as this will change the data. The results of such investigations are recognized as inadmissible evidence if the expert immediately begins the examination with an "open" device, since a separate court order is required to "overcome the logical defence" (Knysh, 2019).

It is advisable to point out that today the verification of computer equipment and software products belongs to one expert speciality, which means that the presence of such two diverse branches does not lead to the need to appoint a comprehensive examination, when it is necessary to simultaneously verify both software and technical equipment. However, if it is necessary to involve several highly specialized specialists for an expert examination, a commission examination is carried out (Moussa, 2021). Furthermore, sometimes "apart from specialists in the field of expert research of computer technology and software products, the judicial practice still requires complex examinations with the involvement of experts in the field of telecommunication systems (equipment) and means (to establish the circumstances of the case, related with the dissemination of information on the Internet), etc." (Chvankin, 2021).

Objects of expertise of computer equipment and software products are conventionally divided into the following types: hardware, software, and information objects (Teplytskyi, 2019).

B.B. Teplytskyi (2019) identifies three relatively independent subtypes of the mentioned expertise: "1) examination of computer equipment (establishes circumstances and facts related to the functioning and

[1]Criminal Procedural Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17.
[2]Law of Ukraine No. 4038-XII "Forensic Examination". (1994, February). Retrieved from https://zakon.rada.gov.ua/laws/show/4038-12#Text.
[3]Ibidem, 1994.
[4]Ibidem, 1994.
[5]Criminal Procedural Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17.
[6]Order of the Ministry of Justice of Ukraine No. 53/5 "On the Approval of the Instructions on the Appointment and Conduct of Forensic Examinations and Expert Studies and Scientific and Methodological Recommendations on the Preparation and Appointment of Forensic Examinations and Expert Studies". (1998, October). Retrieved from https://zakon.rada.gov.ua/laws/show/z0705-98#Text.
[7]Ibidem, 1998.

operation of computer systems); 2) examination of software products (establishes circumstances and facts related to structural, methodological and hardware features of software development and use); 3) information and computer expertise (establishes circumstances and facts related to information processing of the content of file systems, their storage, and reproduction on computer storage devices)".

First of all, the authors of the methodological recommendations "use of electronic (digital) evidence in criminal proceedings" distinguish the following subtypes of the examination under study: "hardware; software; information; network" (Gutsalyuk, 2020).

Comparing the above positions of scientists, such subtypes as examination of computer equipment and hardware; examination of software products and software, as well as information expertise are similar examinations, differing only in the name given by the author of the cited study. However, the team of authors of the above methodological recommendations identifies another subtype of this expertise – this is network expertise. According to the authors, this is a justified step because the expertise of telecommunications systems and tools does not solve the following tasks: whether the technical tool had access to the internet; how the technical tool was used to access the Internet; what software tools were used to connect the technical tool to the Internet; whether the technical tool contains files that were obtained through copying from the Internet, etc.

Furthermore, one of the key tasks of computer and network expertise is to identify software that was installed to hide the IP address. Common ways to replace a real IP address are as follows: connecting to a proxy server, using the TOR internet browser, and masking the IP address via a VPN. Today, attackers can use the following software to hide their IP address: "NordVPN, OpenVPN, ExpressVPN, PureVPN for Teams, ProtonVPN, NetMotion – programs that provide VPN service; TOR Browser, Tor Control (anonymity layer) for Firefox; ProxyCap, Proxyfier, Proxy Switcher – proxy programs". Thanks to the expert establishing all chains of IP addresses through which, e.g., monetary transactions or relevant files passed, it is highly probable that they will establish network traces that will help solve a crime (Kovalenko, 2020).

It is reasonable to note that the expertise of computer equipment and software products can not only solve issues of detecting electronic imagery, etc., but also of identifying the user using keyboard handwriting. Keyboard handwriting recognition involves the selection of a certain standard from the list of criteria stored in the computer's memory, based on an assessment of the similarity with this standard of the handwriting parameters of one of the users, among others who use the computer. A classic statistical approach to user identification using keyboard handwriting (a set of keywords) can reveal several features: the dependence of handwriting on letter combinations in a word, the presence of connections between a set of certain symbols, the presence of "delays" during the input of symbols, the dependence of the speed of typing words from their content, the time interval of pressing various keys. Another important feature of biometric identification is the password length. Practice shows that its length should be easy to remember and consist of 21 to 42 keystrokes. In this regard, the features of keyboard handwriting are manifested by two methods: typing "free" text and typing a key phrase (Borysova & Bilenchuk, 2020).

As V.V. Pavlov (2020) appropriately noted, when conducting procedural actions (inspection or hardware expertise), the electronic information carrier as material evidence will be connected to the expert's workstation, the performer should be careful when carrying out all manipulations and procedures. This statement is explained by the fact that experts who investigate electronic imagery contained on digital media are required to use those software tools that block the recording of any information from the media. That is, the software first examines such electronic imagery in the information viewing mode, preventing it from being recorded and making changes to the information contained on the digital storage medium.

Only after such an initial examination-research if the expert needs to examine such electronic displays, and they cannot do it without making changes, then they make a file-image of the information carrier, which is located on the disc space of the expert's workstation (Pavlov, 2020).

An approximate list of issues to be resolved by hardware examination is prescribed in Item 13.2 of the Order of the MJU No. 53/5[1].

It is a well-known fact that criminals exchange information among themselves during the commission of a particular criminal offence using both local computer networks and the Internet. Such information, which can be electronic imagery and, as a result, evidence of the commission of a criminal offence, can be established through the examination of telecommunications systems and tools.

As aptly noted by M.G Shcherbakovskyi, V.A. Korshenko (2019), telecommunications expertise is a fairly young, but very modern and progressive type of forensic expertise.

The main tasks of examination of telecommunication systems and means are as follows: establishment of facts and methods of transmission (reception) of information in telecommunication systems; determination

[1]Order of the Ministry of Justice of Ukraine No. 53/5 "On the Approval of the Instructions on the Appointment and Conduct of Forensic Examinations and Expert Studies and Scientific and Methodological Recommendations on the Preparation and Appointment of Forensic Examinations and Expert Studies". (1998, October). Retrieved from https://zakon.rada.gov.ua/laws/show/z0705-98#Text.

of characteristics and parameters of telecommunication systems and means; establishment of facts and methods of access to systems, resources, and information in the field of telecommunications; research of information processing algorithms and its protection in the field of telecommunications; determination of the configuration and working condition of telecommunication systems and facilities; determination of the quality of provision of telecommunication services at the level of their consumption; determination of types, brands, models, and other classification categories of telecommunication systems and means[1]. However, despite the wide range of tasks solved by this examination, as practice shows, to identify the full extent of electronic imagery that will have evidentiary value in court, investigators appoint a complex forensic examination, which includes examination of both computer equipment and software products, and examination of telecommunication systems and means.

Notably, investigators, specialists, and experts need to remember that the detection, collection, and investigation of evidence must be accompanied by its pertinence and admissibility, which is prescribed in Chapter 4, Paragraph 1 of the CPCU[2]. In this regard, it is also advisable to focus on the practices of the people's Republic of China, where the review of evidence before the trial mainly lies in judging the use of evidence for the prosecution and defence. The content of the review includes the competence of subjects who withdraw evidentiary information and their evidentiary value. From the standpoint of legal requirements and technical norms, such rules can be constructed as follows:

– the content of the verification of electronic imagery mainly includes the subject's competence and qualification for their investigation;

– the content of verifying the evidentiary value of electronic imagery mainly includes their reliability and integrity;

– when proving, the participation of professional personnel must be accompanied by the appropriate permission to provide support during the trial (Du, et al., 2020).

## Conclusions

Digital evidence is diverse and rapidly improving. It varies in form and type and may include source data, monitoring systems in networks and servers, or electronic documents and digital signatures, or audiovisual recordings or attachments stored in email. The diversity of the electronic directory determines the breadth of its network. The development of several types of digital evidence is typical for the virtual world.

The present paper showed that:

– usually, investigators and operational officers detect electronic imagery independently or as part of the ITF during the investigation of criminal offences, or before their commission;

– the collection of electronic imagery takes place when conducting procedural actions (usually law enforcement intelligence actions) both from the technical devices using which a criminal offence was committed, and from those devices that were attacked. When extracting electronic imagery, it is advisable to involve the appropriate specialist (if possible, a cyberpolice officer);

– an investigator, specialist, and expert is authorized to investigate electronic imagery.

Only experts are authorized to conduct expert research on electronic imagery. Electronic imagery is investigated by conducting the following examinations: telecommunications systems and tools, computer equipment and software products, as well as technical forensic examination of documents (if the electronic document is tangible). Expert examination of electronic images must necessarily include updating the software with which they are investigated, focusing on the requirements of time and the development of criminal activities in this area. This is the prospect of further scientific research.

From the above overview, the world evidently aims to effectively combat "electronic crime", which is manifested in the development of international standards for the collection, identification, and storage of potential electronic images that can be evidence. This is also reflected in the improvement of practical skills of law enforcement agencies in working with them. Modern conditions point to the active informatization of society and the transfer of criminal activity to the information sphere, as well as to the fact that, according to the legislation of Ukraine, the investigator is authorized to extract trace information (electronic imagery) unassisted, which means that they must also possess the basic skills of collection, which is not always the case in practice.

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# Виявлення, збирання та дослідження електронних відображень як джерел доказів

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**Анотація**
З огляду на швидкі темпи інформатизації суспільства, щоразу зростає кількість кримінальних правопорушень, учинених з використанням електронних обчислювальних машин, їх програмного забезпечення, а також телекомунікаційних систем. Такі протиправні дії характеризуються залишенням слідів, серед яких й електронні відображення. Вони можуть бути доказами вчинення кримінальних правопорушень, що пояснює процес розроблення та вдосконалення методів їх виявлення, збирання та дослідження правоохоронними органами. На сьогодні такі методи виявлення, збирання й дослідження електронних відображень висвітлено в низці наукових праць національних та іноземних учених, що зумовило комплексне висвітлення їх у науковому дослідженні. Мета статті – здійснення огляду теорії та практики діяльності уповноважених суб'єктів щодо виявлення, збирання й дослідження електронних відображень. У роботі застосовано сукупність різноманітних методів, зокрема наукового пізнання реальних явищ та їхніх зв'язків з практичною діяльністю уповноважених органів щодо виявлення, збирання й дослідження електронних відображень (діалектичний метод), а також спеціальні та загальнонаукові методи юридичної науки. Дослідження засвідчило, що зазвичай слідчі й оперативні працівники виявляють електронні відображення самостійно чи в складі слідчо-оперативної групи під час розслідування кримінальних правопорушень або передування їх учиненню; збирання електронних відображень відбувається під час проведення процесуальних дій (слідчих (розшукових) дій) як з технічних пристроїв, за допомогою яких було вчинено кримінальне правопорушення, так і з тих, які було атаковано. До вилучення електронних відображень доцільно залучати відповідного фахівця (за можливості – працівника кіберполіції); досліджувати електронні відображення уповноважені слідчий, спеціаліст й експерт. Експертне дослідження електронних відображень здійснюють експерти шляхом проведення таких експертиз: комп'ютерної техніки та програмних продуктів, телекомунікаційних систем і засобів, а також техніко-криміналістичної експертизи документів. Проведений огляд допоможе відновити в пам'яті уповноважених практичних працівників знання щодо відомостей про інструментарій виявлення, збирання та дослідження електронних відображень, що забезпечить ефективне виконання завдань кримінального провадження

**Ключові слова:**
слідчі (розшукові) дії; слідчий; цифрові докази; електронний документ

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# Some aspects of perfecting the system of penitentiary bodies and institutions

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**Abstract**
Recently, Ukrainian society has been undergoing essential reforms, which were dynamically changing during democratization and humanization, and did not leave the penitentiary institutions aside. The optimization of the penitentiary system itself started in 2017, which allowed obtaining legal and organizational tools for closing unnecessary penitentiary institutions. The purpose of this study was to investigate and analyse the aspects of optimization of the penitentiary system of Ukraine, which currently is one of the equally important social institutions that solves large-scale legal, economic, social, and psychological-pedagogical tasks. Presently, crime stays one of the issues in Ukraine. The study used the general dialectical research method and the formal logical method. The theoretical framework of this paper included the studies of scientists, which contributed to the comprehensive investigation of crime and the development of the mechanism for the proper functioning of the criminal executive system considering its modernization. The study examines the current state of national legislation on the activities of penitentiary institutions in Ukraine, their development concepts and the need to improve innovative technologies borrowed from foreign practices (USA, Great Britain, France) in the activities of penitentiary workers. Ways and proposals for their improvement were formulated. To date, Ukraine has still not fully resolved the problems regarding the mechanism for the protection of human rights in matters of optimization of the system of bodies and institutions for the execution of punishments

**Keywords:**
optimization activities; penitentiary system; financial and human resources; innovative technologies; cell-prison system; private prisons; penitentiary activities

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## Introduction

Today, the world lives in a time of optimization. The term "optimization" refers to improving the mechanism of the penitentiary system and selecting all viable resources to improve results. The optimization began with the adoption in 2017 of the Resolution of the Cabinet of Ministers of Ukraine No. 396 "On the Procedure for Optimizing the Activities of Pre-Trial Detention Facilities, Penitentiary Institutions and Enterprises of Penitentiary Institutions"[1].

The penitentiary system aims not only to keep the criminal isolated, but also works towards their re-education, and subsequently their reintegration in society. Ukraine has taken a course to improve, modernize, and perfect the system of bodies of penitentiary institutions according to the standards of the European Union in many aspects of public relations, which requires bringing them in line with international requirements. During the reform of the penitentiary system, human and civil rights play an essential role in the application of international practices.

The penitentiary system should not only be an instrument of punishment, but also provide an opportunity for correction to individuals who have lost their way.

The system of penitentiary bodies and institutions still does not have a well-established mechanism for working in cooperation with other state bodies, which prevents them from achieving positive changes.

From the standpoint of perfecting the activity of the criminal justice system, it is no less important to introduce the improvement of the social education and programs that are applied to the convict for further resocialization and prevention of subsequent crimes after serving the sentence. First of all, the system of penitentiary bodies and institutions requires improvement in work with probation bodies regarding the supervision of individuals serving sentences and their individual re-education program. Admittedly, international regulations concerning probation can greatly aid Ukraine (Bogatyreva, 2012, p. 117).

Employees of penitentiary bodies and institutions do not always properly inform individuals serving sentences about improving their living conditions (Fedoryshyn, 2014, p. 55). These measures will contribute to the re-socialization of convicts, specifically their mastery of a new profession.

This is indicative of the situation that has developed at the regulatory, legal, and practical levels in the field of sentence execution (Kostyantyn, 2016, p. 227).

The problem of re-socialization is rather complex and is a voluminous social legal issue (Kubrak, 2019, p. 248). The problems of perfecting the system of bodies and institutions serving sentences were investigated by well-known Ukrainian researchers who analysed the mechanism, means, and ways to improve them. According to I.S. Yakovets (2013, p. 153), there is no unified regulated system for perfecting penitentiary bodies and institutions in Ukraine. According to R. O. Kolba (2020, p. 259), the legal system needs to improve the mechanism at the level of international requirements, considering all the principles of legality when practically implementing these improvements. I. Khrystych (2019, p. 108) noted that changes should be aimed specifically at the liquidation of the penitentiary service, placing responsibility for the execution of punishments on the Ministry of Justice and the probation authority. According to S.V. Zalyvko (2019, p. 84), the impact on the penitentiary system is exerted by society and the changes that occur specifically on the part of the state.

Today, special attention is paid to certain aspects of re-socialization, supervision, and preparation of prisoners for their return to society as full-fledged individuals.

*The purpose of this study* was to analyse the system of bodies and institutions serving sentences, as well as ways to improve them.

## Materials and Methods

During the study, the authors used a system of philosophical and ideological, general scientific methods and special scientific principles. The principle of objectivity allowed the authors to understand that it is necessary to proceed not only from the issues of the current mechanism, but also to consider them in further transformations so that there are no problems in their practical application. Guided by the principle of completeness, some problematic aspects of perfecting the system of penitentiary bodies and institutions were investigated, the causes and their consequences were determined. The dialectical method helped analyse the theoretical and legal recommendations for improving the national policy regarding the penitentiary system. The comparative legal method allowed determining the further development and improvement of the existing mechanism of the system of penitentiary bodies and institutions. The modelling method helped note aspects of improving the penitentiary system and regulating the mechanism of the system of bodies and institutions serving sentences in Ukraine. The formal logical method provided insight into the concept of optimization of penitentiary institutions and the need to legislatively improve it. Using the system method, the authors investigated the positive changes in the reorganization and optimization of the system of penitentiary institutions in economic, political, and legal aspects.

The authors analysed socio-legal events, possible patterns and connections between them, which will further help assess the level of productivity and

[1]Resolution of the Cabinet of Ministers of Ukraine No. 396 "On the Procedure for Optimizing the Activities of Pre-Trial Detention Facilities, Penitentiary Institutions and Enterprises of Penitentiary Institutions". (2017, June). Retrieved from https://zakon.rada.gov.ua/laws/show/396-2017-п#Text.

effectiveness of national legislation in the field of penal enforcement law, as well as differences of opinions and doubts that currently exist in states regarding the optimization of the system of penitentiary bodies and institutions. The theoretical basis of this study included the research of Ukrainian scientists who were investigating the stages of reorganization of the penitentiary system and the problems of their application. Based on the analysis results, it was indicated exactly what issues need to be solved in the penitentiary system. Methods of analysis, synthesis, induction, and deduction were also applied, which allowed building a logical research mechanism by including certain stages in optimizing penitentiary institutions: 1) a brief analysis and prospects for optimization of penitentiary institutions in Ukraine; 2) substantial improvements to regulations that will improve work towards reorganization; 3) the need to improve new means of humanization in criminal executive policy; 4) conceptual deficiencies in the criminal executive system.

## Results and Discussion

**Optimization of the system of penitentiary bodies and institutions.** Throughout the entire period of formation of the criminal executive law, the structure of the penitentiary institutions has been improved and changed, introducing the humanistic paradigm of the development of the penitentiary system (Kutiepov, 2019). Today, when in Ukraine, based on important state decisions, an active reforming of the criminal executive system is underway, a meaningful scientific analysis is needed, which would clarify the state of regulatory support for the execution of criminal punishment in the form of deprivation of liberty from the standpoint of the theory and history of the state and law with the definition of promising areas for the development of this process (Shevchenko & Biba, 2019).

Recently, the question has been raised about how the reform and optimization of the penitentiary system should take place, which thereby attracts attention and criticism from a society that does not fully understand the advantages of this reform. During the optimization of the criminal executive system, a considerable number of state employees was reduced, which is a negative factor in the reorganization, increasing the vector of unemployment in the state and resentment among the staff. It is also worth paying attention to the convicts themselves, who have problems with the change of conditions and place of serving their sentences. Since this is also a big shock for them and the consequences of adapting to new living conditions.

The changes that are taking place in the penitentiary system provide for improving the mechanism and programs to improve the efficiency of the work of penitentiary bodies and institutions. Considering the practice, then renaming the body, reducing the number of staff, reorganizing, or closing territorial offices without an appropriate developed mechanism will not give the appropriate results or minimize the level of recidivism. In addition, when reorganizing the penitentiary system, an equally important aspect is the study of international legislation and the causes of conflicts that arise in the activities of the system of penitentiary bodies and institutions. The institution of private penitentiary institutions is widespread in the USA and Great Britain (Zavadska, 2018). For instance, in France, some prisons operate based on public-private partnership (certain services are delegated to private companies) (Ukrainian prisoners…, 2020). The state, for its part, can facilitate that private entrepreneurs can help in the construction of institutions, providing work for prisoners, as well as providing food products, etc.

Furthermore, the institution of private prisons operates in several European countries such as the United Kingdom, France, and it has also gained considerable development in the United States. Borrowing such practices would positively contribute to improving the system of penitentiary bodies and institutions in Ukraine. As for determining the effectiveness of private prisons, I. P. Melnychenko (2016) identified the following advantages: the cost of prisoners' stay is considerably lower than in state prisons; the national economy is improving due to the payment of the corresponding tax for the functioning of private prisons; employment is generated for the population due to the creation of private prisons. Ukraine also does not have an improved mechanism that would allow interacting with European countries, which prevents certain positive changes in the criminal executive system.

It should also be emphasized that success in perfecting the system of penitentiary authorities and institutions requires the support and participation of the state, both legislatively, to regulate the mechanism for applying their norms, and financially.

**Aspects of improving the penitentiary system and regulating the mechanism of the system of bodies and institutions serving sentences in Ukraine.** Today, Ukraine ranks one of the first countries in terms of mistreatment in places of deprivation of liberty, which is an impetus for changes in the mechanism of the penitentiary system. Speaking of the mistreatment in prisons, it predominantly refers to poor medical care for individuals serving sentences and suffering from serious infectious diseases, unqualified medical workers, as well as poor funding, which leads to low-quality medical equipment. Consequently, it increases the death rate among persons serving sentences due to an imperfect mechanism and poor funding on the part of the state. As noted by L.I. Olefir (2015), the reorganization of the criminal-executive inspectorate into a probation body allows individuals released from serving sentences to choose an alternative serving of sentences and establish a mechanism for their socialization in society. The authors of this paper cannot but agree that the

optimization of the criminal executive system and its interaction with the probation authority contributes to this category of individuals' reintegration into society and helps in improving everyday life. This step of optimization of penitentiary institutions is the right one and brings the penitentiary system closer to the humanization of people's rights and freedoms. Since while serving a sentence in places of deprivation of liberty, there are changes in the perception of temporary segments of life, namely there is a deficit in the meaningfulness of each of them and a loss of meaning in life.

According to D.V. Yagunov (2011), alternative sanctions are a forced step taken by the state to effectively reduce funds for the maintenance of penitentiary institutions and the number of employees. Today, the issue of alternatives and optimization of punishment in the criminal executive system and the correctness of its implementation has become rather relevant. Not a single state, by punishing an individual and thereby sending them to serve their sentence in a penitentiary institution, has solved the issues or problems that exist in society. Therefore, we cannot but support the opinion that thanks to alternative sanctions, it is possible to reduce the number of financial expenditures of the state for the maintenance of penitentiary institutions and for the remuneration of a considerable number of employees.

According to M.H. Verbenskyi (2004), the management of the penitentiary system is an exceptional form and practice that requires a regulated mechanism to ensure the high-quality implementation of the tasks set for the execution of sentences that the penitentiary system sets for itself. Thus, the penitentiary system should be considered as a comprehensive mechanism that is aimed at improving the current legislation while choosing the most acceptable option to achieve satisfactory results, considering the current conditions. According to I.S. Yakovets (2014), among the main methods used for optimization, it is advisable to distinguish the following groups: a) economic; b) organizational and administrative; c) socio-psychological; d) legal. Notably, today the methods and groups that are still not fully improved need to be perfected legislatively. Absence of diagnostic centres that could, thanks to a qualified specialist (psychologist, doctor), analyse individuals serving a sentence, draft individual programs to improve their behaviour and provide conclusions on the changes that occurred during this program for further existence in society.

**Development and improvement of the existing mechanism of the penitentiary system.** The process of management in bodies and institutions for the execution of punishments requires high qualifications and an understanding of the features associated with the specifics of the criminal executive sphere. The optimization of the penitentiary system is an integral part of the reorganization, and in no case should it fade into the background. Due to the optimization of the penitentiary system, the problem of organizing a high-quality solution of criminal punishments will be solved. There is also a need to improve the algorithm of actions during the constant reorganization of the State Penitentiary System, considering the following aspects: 1) improvement of the penitentiary system in terms of innovations and technologies by cooperating with foreign partners; 2) raising awareness of the work of full-time personnel in the conditions of reorganization and optimization of the penitentiary system; 3) take measures to increase the level of public confidence in the work of the penitentiary system; 4) a sequence of actions that will help avoid recidivism and inconsistency in compliance with European standards.

Considering the dynamics of modern reformation processes, M.S. Puzyriov (2017) derived the following definition of private penitentiary institutions – it is a type of penitentiary institution inherent in foreign criminal executive law, the main feature of which is that the state concludes contracts with private institutions to take control of the management of the penitentiary institution, or to execute its certain aspects in the psychological, medical, or educational work. Therefore, considering the penitentiary system and the speed of changes in reforms that must follow international standards, it should be emphasized that this is not a simple process that requires significant efforts, which lie in the regulation and interaction of all levels of public administration. Furthermore, one should note the financial costs of constant reforms, which also adversely affect the state.

Based on the study of foreign practices, T. Poltavets (2019) concluded that a suitable alternative for Ukraine is the introduction of private prisons. Furthermore, the researcher believed that by attracting private enterprises in this way, the state would reduce the cost of keeping a penitentiary institution. Notably, according to Item 88 of the European Prison Rules, which apply to the territory of Ukraine, the European Penitentiary Rules, which establish uniform standards for the detention of convicts in penitentiary institutions, must apply in private penitentiary institutions[1]. These rules are very often violated in penitentiary institutions.

V.V. Myna (2011) highlights the ways of correction of convicts in the study "Correcting the convict as the purpose of punishment through the lens of the philosophy of law".

Each of the above-mentioned institutions should function to protect the interests of the individual, society, and the state, promote the preservation and restoration of socially useful ties by convicts through the mechanisms available in the current legislation, ensure the re-socialization and adaptation of the convicted

[1]Committee of Ministers of the Council of Europe. "Recommendation No. R (87) 3 to Member States on the European Prison Rules". (1987, February). Retrieved from https://zakon.rada.gov.ua/laws/show/994_a15#Text.

individual by correcting and contributing to their psychological and pedagogical influence, create conditions for cooperation between private and public partnerships and implement measures to prevent convicts and staff from committing criminal offences in places of deprivation of liberty (Bogatyrev, 2018). An equally principal factor that needs to be regulated legislatively when optimizing the penitentiary system is the assistance to individuals who have served sentences in providing them with housing and education, which will provide an opportunity for further adaptation and communication in society. Many people have problems with employment, which also need to be resolved at the state level. Psychological influence is also important in adapting the convicted individual to society, which is often cruel towards them. In perfecting the penitentiary system, every aspect needs to be improved to complete the goals set and achieve positive results.

**Theoretical and legal recommendations for improving the national policy in the penitentiary system.** Today, the penitentiary system directs its efforts to improve its work in the social legal direction so that persons who have served their sentences can adapt to society as full-fledged individuals (Pavlov, 2016). Notably, the management process in penitentiary bodies and institutions requires high qualification and understanding of the specific features of the criminal executive sphere (Buzyrnyi, 2019).

Yu.V. Kerniakevych-Tanasiichuk (2002) positively believed that the liquidation of penitentiary institutions would badly influence the employees and the convicts themselves. A negative factor should also be considered the instability and constant reforms that are taking place in the penitentiary system, which lead to considerable financial costs on the part of the state for its material and technical support. These reforms require a more detailed study of whether the already existing changes will help achieve satisfactory results and will not be even more costly for the state. According to O.V. Tavolzhanskyi & O.A. Protsenko (2021), the purpose of punishment is to correct an individual so that they can become a full-fledged accepted member of society and accept them in return with all their rules of cohabitation. Therewith, it should be noted and emphasized that when perfecting the penitentiary system, it should be about individuals who are and are not related to isolation from society.

Having analysed the scientific doctrine of research and reform of the penitentiary system, their ways to perfect the penitentiary system, the greatest need is to understand the very purpose and tasks that can be achieved by improving its current mechanism and the conditions of the society in which it will operate.

The Order of the Ministry of Justice of Ukraine No. 2865/5 "On Optimization of Penitentiary Institutions" dated September 13, 2017 defined 13 state penitentiary institutions to be temporarily shut down[1]. During the government meeting, the First Deputy Minister of Justice of Ukraine N. Sevostianova noted that "to save budget funds, we propose to temporarily shut down 13 institutions that are filled from 8% to 44%. This decision will save more than UAH 70 million of budget funds" (In search of the optimal…, 2020). Since the maintenance of a large number of institutions with poor logistical support and non-compliance with the requirements for the detention of convicts per European Prison Rules will contribute to reducing financial costs and thereby take a step towards creating favourable conditions in the penitentiary system.

The Decree of the Cabinet of Ministers No. 1153-r "On the Approval of the Penitentiary System Reform Strategy" dated December 16, 2022 for the period until 2026 and the approval of the operational plan for its implementation in 2022-2024[2] states that today many results have been achieved in the optimization of the penitentiary system, namely: 1) new bodies and institutions were formed, specifically the Department for the Execution of Criminal Punishments as an interregional territorial body of the Ministry of Justice with the status of a legal entity under public law, state institutions "Probation Centre", "General Directorate of the State Criminal Executive Service of Ukraine", "Healthcare Centre of the State Criminal Executive Service of Ukraine"[3]; 2) creation of a Unified Register for Individuals serving sentences or in custody; 3) the system of penitentiary bodies and institutions, including their enterprises, has been optimized; 4) repair works were carried out in penitentiary institutions for better detention of individuals serving sentences; 5) improvement and adjustment of the supply of food products, as well as expansion of their quantity to be kept; 6) improving the conditions for access to social networks; 7) monitoring systems are partially operational. Evidently, the reforms to optimize the system of penitentiary bodies and institutions are successful and effective, especially in a clear understanding of their mechanism of application in the State Criminal Executive System of Ukraine.

The need to choose the optimal number of penitentiary institutions for the execution of punishment is also determined by the norm of the Law of Ukraine "On the Staffing of the State Criminal Enforcement Service of

[1]The Ministry of Justice approved the list of prisons that will be temporarily shut down. (2017, September). Retrieved from https://zn.ua/ukr/UKRAINE/min-yust-zatverdiv-perelik-tyurem-yaki-budut-zakonservovani-255218_.html.
[2]Decree of the Cabinet of Ministers No. 1153-r. "On The Approval of the Penitentiary System Reform Strategy" for the period until 2026 and approval of the operational plan for its implementation in 2022–2024. (2022, December). Retrieved from https://www.kmu.gov.ua/npas/pro-skhvalennia-stratehii-reformuvannia-penitentsiarnoi-systemy-na-period-do-2026-roku-ta-zatverdzhennia-operatsiinoho-planu-ii-realizatsii-u-20222024-rokakh-s1153-161222.
[3]Ibidem, 2022.

Ukraine"[1]. Thus, according to Item 2 of the specified regulation, it is indicated that the total number of personnel who ensures the operation of penitentiary institutions is determined in the amount of 33 percent of the number of individuals serving their sentences.

The problematic aspects of the penitentiary system are as follows: 1) regulations do not correspond to the conditions of today; 2) the full-time staff is much larger than the number of people serving sentences. Management activity defines strategic and operational goals, areas for perfecting and improving the work of penitentiary institutions, methods, and measures to influence the behaviour of convicts, approaches to re-socialization, etc. (Nagorny, 2022).

The study of the above-mentioned scientists once again allows confirming the effective changes that are taking place in the penitentiary system, as well as drawing attention to the problems and reasons for their imperfection in implementation. The scientific doctrine for the State Criminal Executive Service serves as the basis in developing and improving the mechanism for optimizing the penitentiary system; it is important and will further contribute to the improvement of existing regulations and their correct interpretation. It is also worth noting that the introduction of private prisons, which operate in foreign countries to improve the economy and reduce the cost of maintaining institutions, may be a suitable alternative to optimize the penitentiary system of Ukraine.

Presently, it is also worth highlighting the special attention of the society and the not entirely positive feedback towards the state regarding the management of private prisons, which emphasize the loss of control over the observance of law and order. However, the system of private prisons can be justified and the advantages of private prisons are as follows: 1) a positive impact on the national economy; 2) ensuring the relief of the penitentiary system; 3) provision of high-quality and appropriate social conditions for persons serving prison sentences (food, medical care, educational development, and organization of labour). For this, the state needs to choose the right vector to improve the mechanism by which it will eliminate the gaps in the legislation that exist today. The results of optimization of the system of bodies and institutions for the execution of sentences in the state penitentiary system of Ukraine are crucial, first of all, for persons serving sentences and their further reintegration into society. Changes will also, to some extent, change human values and rights, which are very often violated. Therefore, the specified body must be improved according to European Prison Rules and integrate foreign practices in certain aspects of perfecting the penitentiary system, namely the practice of the private prison system.

## Conclusions

To summarize, the penitentiary system is currently undergoing a stage of reforms that require improving its legal mechanisms and modernizing the regulatory framework. In Ukraine, despite the implemented set of reforms, there are still certain inconsistencies and shortcomings in the practice of applying measures to perfect the penitentiary system. Promising areas in optimizing the activities of the State Criminal Executive Service are as follows: improvement of the regulatory framework; the activities of the penitentiary institutions and enterprises are optimized through their liquidation, restructuring, and reorganization of the penitentiary system; improvement of the mechanism for work and interaction with probation authorities; improvement of medical care for individuals serving their sentences in penitentiary institutions; improvement of material and technical support, which plays an important role in the penitentiary system; ensuring better control over the exercise of the rights of individuals detained in penitentiary institutions. It is necessary to determine the principal model of the penitentiary system and only then implement reform it. Proceeding from the positive results already achieved, one of the priority and urgent issues facing the penitentiary system of Ukraine, from the author's perspective, is the problem of optimizing the financial and human resources of penitentiary institutions. At the same time, the effectiveness of the criminal executive policy should be emphasized in the interaction of society with the state. Today, to improve and optimize the penitentiary system, proposals for the introduction of private prisons are of interest. Thus, Ukraine has taken considerable steps towards optimizing penitentiary institutions, despite the reforms that are not fully regulated by the state. At the same time, the legislative level of reforming the penitentiary system is only the tip of the iceberg, which should include concepts in solving these problems.

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[1]Law of Ukraine No. 1254-VI. "On the Staffing of State Criminal Executive Service of Ukraine". (2009, April). Retrieved from https://zakon.rada.gov.ua/laws/show/1526-14#Text.

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# Окремі аспекти оптимізації системи органів та установ виконання покарань

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**Анотація**
Упродовж останніх років в українському суспільстві відбуваються численні реформування, означені динамічними змінами в процесах демократизації та гуманізації, що позначилося, серед іншого, на системі установ виконання покарань. Власне процес оптимізації кримінально-виконавчої системи, розпочатий 2017 року, дав змогу отримати правові й організаційні інструменти щодо закриття непотрібних кримінально-виконавчих установ. Метою статті є дослідження й аналіз аспектів оптимізації кримінально-виконавчої системи України, що на сьогодні є одним з важливих соціальних інститутів, який виконує важливі завдання правового, економічного, соціального та психолого-педагогічного характеру, адже в сучасних реаліях злочинність залишається однією з найбільш актуальних проблем. У дослідженні використано формально-логічний і загальний діалектичний метод дослідження. Теоретичне підґрунтя публікації становлять праці науковців, що сприяло всебічному дослідженню негативного явища та розробленню механізму функціонування в умовах сьогодення в окремих аспектах оптимізації кримінально-виконавчої системи. Досліджено сучасний стан національного законодавства щодо діяльності установ виконання покарань в Україні, їх концепції розвитку та необхідності щодо втілення інноваційних технологій досвіду (США, Великої Британії, Франції) у роботу фахівців із засудженими. Сформульовано пропозиції щодо їх удосконалення. Зауважено, що наразі в Україні остаточно не вирішено питання стосовно механізму захисту прав людини в питаннях оптимізації системи органів та установ виконання покарань

**Ключові слова:**
оптимізаційна діяльність; пенітенціарна система; фінансові та людські ресурси; інноваційні технології; камерно-тюремна система; приватні в'язниці; виконання покарань

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# Terminological conflicts in the application of the terms "public (civic) security and order"

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**Abstract**
The adoption of the Law of Ukraine "On the National Police" has normalized the activities of the National Police of Ukraine regarding the respect for the rights and freedoms of citizens, ensure optimal living conditions, well-being, and order and legality in the state. In the Law, the updated terms "public security and order" were introduced to replace the fixed terms "public security" and "public order", which caused a lively and still ongoing discussion in scientific circles, and in some places, even disagreement with the innovations. The arbitrary combination of the two terms into one word combination is still unclear, in some regulations "public" (civic) is used at the same time, with the latter taken in parentheses, thereby confirming the semantic similarity and the impracticality of simultaneous use. The purpose of this study was to analyse various scientific views, opinions of practitioners on the content and expediency of using the terms "public (civic) security and order" and their phrases. During the study, scientific methods were employed, which allowed obtaining reasonable conclusions, including system method, hermeneutics, analysis and synthesis, terminological, formal legal, and comparative legal methods. Various literature was processed, including special literature, various scientific sources, provisions of the Constitution of Ukraine, Laws, Decrees, orders, etc., on the subject under study. Based on the study results, there are discrepancies and a lack of consensus regarding the use of the terms "public (civic) security and order", the legislators did not define these terms in the Law of Ukraine "On the Militia" and the Law of Ukraine "On the National Police". Proceeding from the processed array of data on the use of the terms "civic security" – "public security", "civic order" – "public order", the authors of this paper justified the need for their unification through changes to the entire array of laws, resolutions, orders, etc., that are directly or indirectly related to organizing the work of law enforcement agencies in terms of securing law and order

**Keywords:**
law and order; public; scientific sources; state bodies; regulations; legislator

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## Introduction

The issue of securing public, and in the days before the adoption of the new Law – civic order, the fight against offences was defined by the state as the main vector of law enforcement agencies' activities in building a welfare state. Moreover, a stable rule of law underlies the foundations of an independent, rich and prosperous country. Presently, in the situation of full-scale military operations by russian troops on the territory of Ukraine, the latter is in an extremely inconvenient situation. The war affected all spheres of life of citizens, there is no family that would not be affected by these events. Residents of entire cities, even regions, left their homes to preserve the life and health of their children, relatives, and friends. The conduct of hostilities in some regions of Ukraine, the illegal and uncontrolled entry of weapons and ammunition deep into the territory, the activation of reconnaissance and sabotage groups, and currently cynical and ruthless attacks and bombings of civilian objects and critical infrastructure objects in Ukraine, these are the factors which, according to the statistics of crimes committed, directly affect public (civic) security and order in Ukraine. Thus, as of November 30, 2022, 345,962 criminal offences were registered by law enforcement agencies and units, which is 23,570 more than in the corresponding period of 2021[1].

The issue of securing law and order, protecting the rights and freedoms of citizens is one of the most pressing issues that the state should solve through the National Police of Ukraine. The National Police should carry out its activities together with bodies, enterprises, institutions of both the state and public sector, exclusively within the legal framework, with respect for the rights and freedoms of citizens, acting exclusively in the interests of society. According to the Law of Ukraine "On the Police"[2], the Cabinet of Ministers of Ukraine adopted the Resolution No. 878 "On the approval of the Regulation on the Ministry of Internal Affairs of Ukraine" dated 28.10.2015, the basis of which was the creation of a central executive body – the National Police of Ukraine, subordinate to the Ministry of Internal Affairs of Ukraine, which became the starting point of the police reform that took place in 2015[3] and objectively led to changes in all spheres of law enforcement. The regulatory framework that guides the National Police of Ukraine in its activities has been radically changed. Therewith, problematic issues of using terminology in law enforcement activities have also become relevant. In turn, scientists should make every effort to develop theoretical and legal approaches to solving controversial issues that arise.

There is a fairly considerable number and variety of scientific opinions, statements, approaches, and legal practice concerning the topics covered in this paper. Not only scientists, but also the legislators in their rule-making activities, allowed the practice of using different terms to describe the same categorical concepts.

Legislatively, the regulations did not consolidate the term "civic security", although in the system of internal affairs bodies, there was an entire unit – the civic security police, whose main task was to ensure law and order. The legislators followed the same path in the new law, did not explain the new terminology, moreover, combined them into one phrase "public security and order". Thus, now the current regulations continue the practice of applying old and updated terms. Along with the terms "civic order" and "civic security", such a concept as "public security and order" is applied.

According to the subject of the study, the goals, and objectives set by its authors, it is necessary to investigate the practice of applying such terms as "civic order", "civic security", "public order" and "public security" and their correlation. These terms have a fairly wide range of applications, both in administrative and criminal legislation, and therefore are the subject of scientific research in various branches of law. Such a spread and common use of the mentioned concepts implies the need for their theoretical research, which allows outlining law enforcement ways of their use, including by units of the National Police of Ukraine, whose activities are primarily aimed at securing law and order in the state.

## Theoretical Overview

The following researchers worked on certain aspects of the concepts of ensuring public (civic) security and order: I.P. Holosnichenko (2020) explored a wide range of administrative terminology. He paid special attention to the terms "civic order" and "civic security" and noted that despite the presence of a fairly large array of interpretations of the categories of civic order and security, they still need to be investigated. With the introduction of new terminology into the legislation, he touched on the problems of its use, expressing his vision and developing approaches to solving conflicting interpretations. O.O. Panova (2016) clarified the essence and meaning of such concepts as "public order and security", their impact on peace and well-being in society, the level of crime, and the effectiveness of law enforcement and other state bodies. D.Yu. Tolstonosov (2017) considered the content and significance of the terms "civic security" and "civic order", their features, ways of improvement, clarified their understanding, established how they differ and how they are similar. O.V. Bratchenko (2014) investigated the concept and

[1]On registered criminal offences and the results of their pre-trial investigation: the unified report on criminal offences in Ukraine for 2022. (2022, December). Retrieved from https://gp.gov.ua/ua/posts/pro-zareyestrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2.
[2]Law of Ukraine No. 580-VIII "On the National Police". (2015, July). Retrieved from https://zakon.rada.gov.ua/laws/show/580-19#Text.
[3]Resolution of the Cabinet of Ministers of Ukraine No. 878 "On the approval of the Regulation on the Ministry of Internal Affairs of Ukraine". (2015, October). Retrieved from https://zakon.rada.gov.ua/laws/show/878-2015-п#Text.

signs of public security and order and gave his interpretations, explained the content and features of these concepts through the lens of administrative legal security. N.S. Pih (2020) covered issues of ensuring public (civic) security in Ukraine. Based on the analysis of scientific sources, he argued that ensuring public (civic) security is an indicator of the well-being of not only one community, but the state as a whole. He noted that security is influenced by many factors, specifically those that exist directly in the state and that come from outside. D.O. Tykhomyrov (2020) analysed the normative definition of the terms "civic security" and "public security" and highlighted their correlation. A.Ye. Kryshchenko (2019) noted the need to highlight the regulatory features of the term "public security", cover its essence and content, and formulate its meaning. In addition, to compare the terms "public security" and "public order", it is necessary to analyse and highlight the terms "security" and "order". I.V. Zozulia and O.I. Dovhan (2015) held positions on the conflict of laws that arises with the introduction of new terminology, which results in the incomplete performance of the tasks assigned to the National Police. V.H. Fatkhutdinov (2015) also touched on the terms "civic security and civic order" and "public order and security" and had a more principled position. Having analysed opinions on the introduction of new terminology, Fatkhutdinov argued that the police carry out their activities to secure law and order outside the legislative framework. He stressed the importance of implementing reforms and reorganizing the police, but the updated terms introduced by the legislators are not widely used in rule-making activities and rather create a scientific discussion among scientists. D.H. Muliavka (2017) worked out his position on terminology and provided his vision under which he considered public security as a certain environment in which all citizens, their rights and freedoms are secured. He noted public order as an opportunity for citizens, state bodies, enterprises, and local self-government bodies to voluntarily perform their duties assigned to them to keep law and order. O.F. Kobzar (2015) conducted a study of regulations that ensure law and order. He defines public order as a rule-governed system of relations within society, which aims to promote proper conditions for the activities of both state bodies and divisions and civil society.

Presently, in the field of scientific and practical activity, unfortunately, there is no consensus on the expediency of using new terminology or returning to the old classical one, as well as the identity or difference of the concepts of public (civic) security and order in ensuring law and order. All this once again confirms the relevance of the subject under study and requires a theoretical study of the problem raised.

*The purpose of this study* was to analyse different scientific opinions on the meaning and appropriateness of using the terms "civic security", "civic order" and "public security", "public order" and phrases combining these terms.

## Materials and Methods

To achieve the goals set, the research uses a set of scientific methods, namely system analysis, structural analysis, comparison, as well as other methods of scientific cognition. The main methodological component included general scientific methods, among which the key place was occupied by a systematic approach consisting of structural and functional methods: using system analysis, the terms "civic security", "civic order", "public security", "public order", their combination into phrases and practice of application were comprehensively described, hermeneutics was used to investigate regulations and other scientific sources related to the subject, with their further interpretation; analysis and synthesis were used for clearer coverage and clarification of the meaning and content of the terms considered in this study; the terminological and formal legal methods were involved to define the terms "civic security", "civic order" and "public security", "public order", their correlation, similarity, and difference.

The comparative legal method, using which the authors attempted to confirm the opinion that these terms are similar in content, is quite significant.

To investigate the issues raised in this paper, consultations were held with experts – practical workers who directly carry out activities aimed at preventing the commission of offences, take measures to ensure public security and order in streets, squares, parks, stadiums, train stations, and other public places. 3 employees of the Department of Preventive Activities and 4 inspectors of the Department of the Patrol Police of Ukraine in Kyiv were interviewed (during May-September 2022) The purpose was to find out the need for legislative interpretation of terminology and unification of the legal framework, in the activities of practitioners in securing law and order. Through conversations and an anonymous survey, the opinion of the authors was confirmed regarding the presence of problematic issues and some disagreements in the application of terminology that they encounter in their daily activities as law enforcement officers. Attention was also focused on the need to conduct a scientific study, based on the results of which there should be developments and proposals for solving the issues raised by the authors in this paper. All respondents supported the offer and gave consent to highlight their opinion and use the results of the survey, which in one way or another touch on the specified issue in further research, including when authoring this paper.

The application of methods of analysis, synthesis, induction, and deduction allowed to develop a logical structure of the scientific paper, which includes the following blocks: 1) an overview of the regulatory framework of the terms under study; 2) the analysis

of regulations, in the part related to illegal encroachments on law and order, indicates the absence of the terms "public security" and "public order" in their texts, instead, the legislator adheres to "classical" and already established terminology and their word combinations; 3) the fact of the absence of normative confirmation of the mentioned terms was ascertained; 4) the position of the scientific community is also shared by the employees of practical bodies and units; 5) to introduce new terminology or amend the legislation, there is a need for their regulatory clarification by the legislators to avoid different interpretations of the same term; 6) analysis of terms and positions of scientists.

Empirical material on the following issues was analysed: public security and public order, civic security and civic order, law and order, and the public.

During the study, the authors used the regulatory framework, the results of thesis research, publications in print and electronic publications of scientists who investigated this issue, as well as special scientific literature available in the public domain.

## Results and Discussion

In regulations and scientific literature, the terms acquire a synonymous understanding and are used in the same categories. A reform that resulted from objective changes in all areas of police activity and the transformation of this body from a punitive and repressive one to an entirely new, law enforcement service body – the Police, which aims to help people. The balance between immediate and sometimes hasty actions and the quality of the results obtained was disrupted, including in terms of amending the array of legislative acts and introducing updated terms. The starting point in the emergence of terminological conflicts in the application of already established legal categories was the adoption of the Law of Ukraine "On the National Police" dated July 2, 2015 No. 580-VIII[1], and at the same time an attempt was made to abandon "old", "irrelevant" concepts and introduce new terminology. The law offers a new phrase "public security and order", although it is not used in modern legal science. Therewith, according to the legislative technique, the legislators had to interpret them. For the objectivity of the study, the authors state that the term "civic order" is not legally consolidated in regulations, and therefore its definition was formed from available literary sources and the practice of applying the legislative framework.

The application of the terms investigated in this study must be started with a review of the legal framework, and first of all with the Fundamental Law – the Constitution of Ukraine[2] where the term "civic order" is used. Having studied the Constitution of Ukraine[3], it does not contain such terms as "public security" or "public order", this fact should be considered, since the Constitution of Ukraine is the starting point for the legislative and general activity of the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine and all state bodies and institutions. Similarly, the mentioned categories are also absent in the Decree of the President of Ukraine "On the Decision of the National Security and Defence Council of Ukraine No. 392/2020 "On the National Security Strategy of Ukraine" dated September 14, 2020[4], the terms "civic order" and "civic security" are used in the text of the document instead. In the Law of Ukraine "On National Security of Ukraine"[5], Section 1 of Article 1, Item 3 combined the terms security and order into one phrase and defined civic security and order as the protection of vital interests, rights, and freedoms of a person and a citizen, the protection of which is a priority task of the security forces and other state bodies, local self-government bodies, their officials, and the public, who engage in coordinated measures to exercise and secure national interests from threats. Subsequently, the legislators noted that in Section IV, Part 1, Item 1 of Article 18[6], the Ministry of Internal Affairs of Ukraine is defined as the central body of executive power that ensures the formation and implementation of national policy, including in the field of keeping civic security and law and order, while Clause 1, Part 4 of the same Article[7] entrusts the National Police of Ukraine with the function of ensuring civic security and order[8].

The Law of Ukraine "On the Legal Regime of Martial Law"[9] never mentions the terms "public security" or "public order", instead the phrase "civic security and order" is used. And the text of Paragraph 2 of Part 30 of Article 15 of the Law[10], which reads "...listening to the information of prosecutors and heads of the National Police bodies about the state of law, fighting crime,

[1]Law of Ukraine No. 580-VIII "On the National Police". (2015, July). Retrieved from https://zakon.rada.gov.ua/laws/show/580-19#Text.
[2]Law of Ukraine No. 254k/96-VR "Constitution of Ukraine". (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254к/96-вр#Text.
[3]Law of Ukraine No. 254k/96-VR "Constitution of Ukraine". (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254к/96-вр#Text.
[4]Decree of the President of Ukraine No. 392/2020 "On the National Security Strategy of Ukraine". (2020, September). Retrieved from https://zakon.rada.gov.ua/laws/show/392/2020#Text.
[5]Law of Ukraine No. 2469-VIII "On National Security of Ukraine". (2018, June). Retrieved from https://zakon.rada.gov.ua/laws/show/2469-19#Text.
[6]Ibidem, 2018.
[7]Ibidem, 2018.
[8]Ibidem, 2018.
[9]Law of Ukraine No. 389-VIII "On the Legal Regime of Martial Law". (2015, May). Retrieved from https://zakon.rada.gov.ua/laws/show/389-19#Text.
[10]Ibidem, 2015.

protection of civic security and order and the results of activities in the corresponding territory..." it follows that the bodies of the prosecutor's office and the National Police guard civic security and order, not public security and order[1]. Having analysed the Law of Ukraine "On the Foundations of National Resistance"[2], the authors once again state with confidence that, as in previous regulations, this law does not use the terms "public security" and "public order" and the "classic" and already established terminology. In Clause 1 of Article 21-1[3], the legislator defines the Judicial Protection Service as a state body in the justice system to ensure protection and maintenance of civic order in courts, bodies, and institutions of the justice system[4]. That is, the body of the justice system ensures the protection and maintenance of civic order, and not public order.

Analysis of the aforementioned regulations, as well as the Code of Ukraine on Administrative Offences[5], the Criminal Code of Ukraine[6], etc., in the part that concerns illegal encroachments on law and order, suggests that the terms "public security" and "public order" are not in their texts, instead, the legislator adheres to the "classical" and already established terminology and their word combinations. The terms "civic security" and "civic order" have the same meaning as "public security" and "public order", i.e., they are synonymous. Many scientists and practitioners of the Ministry of Internal Affairs of Ukraine and the National Police of Ukraine hold the same opinion.

Thus, D. Tikhomirov (2020) notes the fact that there is no regulatory consolidation of the mentioned terms. He notes that legal literary sources indicate directions for solving the specified issue, by introducing changes and amendments and making appropriate changes to the already adopted Law of Ukraine "On the National Police"[7] and replacing the term "public security", which is not used in legal terminology to define national policy in the field of civic security, with the term "civic security". Secondly, by introducing changes and amendments to the existing array of regulations, as well as defining the concept of public security by supplementing the Law of Ukraine "On the National Police"[8] with a corresponding article on the definition of terms.

O. Panov (2016) takes a similar position, in his study he concludes that the terminology for describing "public order and security" is not defined by law, but the analysis of regulations and different opinions of scientists suggest the homogeneity of the terms "civic order and security" and "public order and security".

The position of the scientific community is also shared by employees of practical bodies and divisions. The author's survey of practical workers of the Department of Preventive Activities and inspectors of the Department of the Patrol Police of Ukraine in Kyiv during May-September 2022 confirms this. As a result of the discussion, certain issues were confirmed that occurred in the everyday activities of patrol police officers to ensure law and order, in terms of the applicable practice of regulations and the drafting of procedural documents regarding individuals who have committed offences. Attention is focused on the existence of conflicts in the application of established terms and the inexpediency of introducing new terminology by the legislator. Offenders in relation to whom procedural documents were drawn up appealed to the police about the alleged illegal drafting of protocols, pointing out the presence of terminological discrepancies in some regulations. Thus, when the police draft a report on the offender concerning the commission of an administrative offence, the latter indicates the alleged illegality of their actions to draft a procedural document and the illegitimacy of their activities in general. The Code of Ukraine on Administrative Offences[9] defines an administrative offence (misdemeanour) as an illegal, culpable (intentional or negligent) act or inaction that encroaches on civic order, property, rights, and freedoms of citizens, on the established management procedure and for which the law prescribes administrative liability. The offender emphasizes the phrase "civic order", at the same time pointing out that according to the Law "On the National Police"[10], the National Police of Ukraine is a central body of executive power that serves society by ensuring the protection of human rights and freedoms, combating crime, maintaining public security and order, and one of the main tasks of police officers is to ensure public security and order, emphasizing the phrase "public security and order". Disputes also arise in the activities of members of public formations to protect civic order and the state border while ensuring public security and order. When detecting offences and trying to indicate this to a person who violates law and order, the latter, as in the situation with police officers, appeal to the illegality of the activities of members of public formations. They explain

[1]Law of Ukraine No. 389-VIII "On the Legal Regime of Martial Law". (2015, May). Retrieved from https://zakon.rada.gov.ua/laws/show/389-19#Text.
[2]Law of Ukraine No. 1702-IX "On the Fundamentals of National Resistance". (2021, July). Retrieved from https://zakon.rada.gov.ua/laws/show/1702-20#Text.
[3]Ibidem, 2021.
[4]Ibidem, 2021.
[5]Law of Ukraine No. 8073-X "Code of Ukraine on Administrative Offences". (1984, December). Retrieved from https://zakon.rada.gov.ua/laws/show/80731_10#Text.
[6]Criminal Code of Ukraine No. 2341-III. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[7]Law of Ukraine No. 580-VIII "On the National Police". (2015, July). Retrieved from https://zakon.rada.gov.ua/laws/show/580-19#Text.
[8]Ibidem, 2015.
[9]Law of Ukraine No. 8073-X "Code of Ukraine on Administrative Offences". (1984, December). Retrieved from https://zakon.rada.gov.ua/laws/show/80731_10#Text.
[10]Law of Ukraine No. 580-VIII "On the National Police". (2015, July). Retrieved from https://zakon.rada.gov.ua/laws/show/580-19#Text.

this, again, by the fact that their duties include providing assistance to the National Police in ensuring civic order and public security, and they are accused of violating public order and security. Admittedly, the authors understand that the activities of the National Police and public formations for the protection of civic order and the state border are absolutely legitimate and are carried out within a clear legal framework in compliance with national legislation. All these attempts by offenders to avoid responsibility are worthless but can and do lead to verbal conflicts and disputes between offenders and law enforcement officers. We can assume the occurrence of situations when even lawyers, defending in courts individuals against whom protocols for violations of law and order were drafted, may appeal on the mentioned issues. Considering the conducted surveys and during personal conversations with practical workers, they expressed their opinion on the need for legislative interpretation of terminology and unification of the legal base to avoid conflict situations and different interpretations and to make it impossible to level the results of their professional activities in ensuring law and order.

Thus, according to the authors, to introduce updated terms or replace them in the legislation, there is a need for their regulatory clarification by the legislators to avoid different interpretations of the same term. The change of this terminology in some regulations was hasty, and this is the reason for the emergence of legal conflict in the interpretation and enforcement of regulations during the maintenance of law and order.

It is worth paying attention to those regulations that use the new terminology. Thus, in the "Regulation on the Ministry of Internal Affairs of Ukraine" approved by the Resolution of the Cabinet of Ministers of Ukraine No. 878 dated 28.10.2015[1], the legislators use the phrase "public security and order", although the text does not define and interpret this term[2]. A.V. Dolynnyi (2017) also emphasizes that in the above-mentioned regulation, the terms "public security" and "public order" are used without legislative interpretation and simultaneously with the already established terms "civic security" and "civic order".

Thus, the Order of the Ministry of Internal Affairs of Ukraine No. 773 dated August 10, 2016 approved the Procedure for the organization of interaction between the National Guard of Ukraine and the National Police of Ukraine when ensuring (protecting) public (civic) security and order . In this document, one can see the use of the term "public" not only in the text, but also in the title; the peculiarity is that the term "civic" is taken in parentheses, which, according to the authors, is evidence of an interchangeable use and interpretation of the categories of public and civic security and order. In the same way, the legislators use the term "civic" in parentheses next to "public" in the Instructions on the Organization of Response to Statements and Reports of Criminal, Administrative Offences or Events and Operational Information in Bodies (Units) of the National Police of Ukraine, approved by the Order of the Ministry of Internal Affairs of Ukraine No. 357 dated 27.04.2020[3], which once again confirms the opinion on the interchangeable use and interpretation of the specified terms and the legislator's attempt to follow the path of not amending the already adopted regulations, but their "masking", which is not acceptable in the opinion of the authors of this paper.

A valid position in confirmation of the opinion regarding the conflicting terminology that arose after the introduction of new concepts was noted by I.V. Zozulia & O.I. Dovhan (2015). They noted that the law enforcement agency – the police – cannot fully perform its tasks to ensure law and order and respect the rights and freedoms of citizens. Although in their daily activities, despite the use of different terminology and different interpretations of terms, the police provide police services, ensure law and order, protect human rights and freedoms, protect the interests of society and the state, and fight crime. On this occasion, V.H. Fathutdinov (2015) was more categorical, he stated that proceeding from the statements made in this regard, it is possible to see the activities of the police in the field of public security outside the law. As a result, this may lead to the establishment of such a fact as the illegality of the National Police. Fathutdinov stated that, considering the importance of the reorganization of law enforcement agencies in general and the National Police of Ukraine directly, the term "public security" was not widely used in the development of new regulations. This terminology has become the subject of research and discussion in the scientific community.

For objectivity and a comprehensive consideration of scientific research issues, the authors of this paper consider it expedient to refer to the international practices of using the mentioned terms. Thus, the Law of the Republic of Latvia "On the Police" (Article 12, Item 14_1) grants the right to observe public places and persons located there, including with the use of technical means, for timely warning and identification of possible threats to public order. Article 13 of the Law gives police officers the right to use physical force, special means, vehicles, etc., including to ensure public order and security[4].

[1]Law of Ukraine No. 580-VIII "On the National Police". (2015, July). Retrieved from https://zakon.rada.gov.ua/laws/show/580-19#Text.
[2]Order of the Ministry of Internal Affairs of Ukraine No. 773 "On the Approval of the Procedure for the organization of interaction between the National Guard of Ukraine and the National Police of Ukraine when ensuring (protecting) public (civic) security and order". (2016, August). Retrieved from https://zakon.rada.gov.ua/laws/show/z1223-16#Text.
[3]Order of the Ministry of Internal Affairs of Ukraine No. 357 "On the Approval of the Instructions on the organization of response to statements and reports on criminal, administrative offences or events and operational information in the bodies (units) of the National Police of Ukraine". (2020, May). Retrieved from https://zakon.rada.gov.ua/laws/show/z0443-20#n7.
[4]Law of the Republic of Latvia. (1991, June). Retrieved from http://likumi.lv/doc.php?id=67957.

Evidently, the legislators use such phrases as public order and public order and security. Article 2 of the Law of the Republic of Lithuania "On the Police" defines the police and states that it is a set of police institutions and officials that ensure public security and public order. Article 5 defines the tasks of the police, among the principal ones – ensuring civic security and civic order. The Law uses the terms "ensuring public security and public order"[1].

The Police and Border Guard Act of Estonia uses analogous phrases public order and internal security[2].

Article 1 of the Law of Georgia "On the Police" defines the goals, which are to ensure public security and law and order. The legislator goes further and defines the terms, one of which is public security, which means the inviolability of human rights, state sovereignty, territorial integrity, and the constitutional system, laws, and other acts of Georgia. And again, we can see that the phrase "public security and law and order" is used[3].

Another country where similar terms are used in the Law "On the Police" is Moldova. Here, even one of the structural divisions is the Public Order Police, one of the main tasks of which is to support, ensure public order and security. Once again, the authors of this paper note the use of similar phrases – "public order and security"[4].

Thus, one can discuss the legislators' use of the phrases "public order", "public order and security", "public security and law and order" in regulations, which are similar in their content and scope of application.

In his study, A.Ye. Kryshchenko (2019) noted that it is logical to clarify the regulatory framework of the term "public security", to investigate its content and to formulate its definition. It is also appropriate to consider the term "public order".

O.V. Batrachenko (2014) defined public security as a high and reliable state of protection of the interests, rights, and freedoms of a person and citizen vital to the state, society, and every individual, which is the priority task of the activities of every state body, local self-government body, and their officials. Under the public order, he considered the state of order of public legal relations and the entire public legal system, according to which each individual, state body, local self-government body, their officials voluntarily comply with legal and moral and ethical norms, cultural and other social rules, comply with relevant regulations to achieve public security and general welfare.

According to D.H. Muliavka (2017), the term "public security" should be understood as the state of protection of society and each individual, interests, rights, freedoms of human and citizen. It defined public order as a state in which every individual, state body, local self-government body, and their officials voluntarily adhere to legal and moral and ethical standards to achieve public security and welfare.

Analysing the content of the Declaration on the Police, adopted by the Resolution of the Parliamentary Assembly of the Council of Europe No. 690 (1979)[5], O.F. Kobzar (2015) concludes that public order in this document is defined as a regulated state of public social relations that ensure the proper functioning of the state, its structures, public formations and citizens.

The International Police Encyclopaedia offered its own definition of public security. Public security is defined as a system of social relations governed by legal norms aimed at ensuring personal security, public peace, favourable conditions for work and recreation of citizens, normal functioning of state bodies, public associations, enterprises, institutions, and organizations from threats originating from criminal and other illegal encroachments, violation of the procedure for using a source of increased danger, objects, and substances removed from free turnover, adverse anthropogenic and natural phenomena, as well as special circumstances (International Police Encyclopaedia…, 2011).

According to A. Ye. Kryshchenko (2019), to compare the terms "public security" and "public order", there is an objective need to conduct a separate analysis of the terms "security" and "order". Turning to explanatory dictionaries, one can refer to the different semantic meanings that these phrases have.

From ancient times to today, the concept of security was directly related to the life of a person and society. The dictionary of the Ukrainian language interprets "order" as an established way of life; everyday life; the state when everything is being done, it is done as it should be, according to certain requirements, rules; compliance with rules, norms of behaviour somewhere; discipline (Dictionary of the Ukrainian language…, 1977).

Justifying his opinion, H.P. Sytnyk (2007) defines security as the ability of citizens living in the country to live safely, to have rights and freedoms, to fulfil themselves, to prevent encroachments, to protect and inviolability of their property from any harm. Sytnyk's position (2007) is correct, although the emphasis should be placed on preserving living conditions and human life itself, and then on all other aspects.

D. Tolstonosov (2017) also interpreted security as protection from any encroachments on basic human needs and the right to exist, self-fulfilment. By order,

[1]Law of the Republic of Lithuania "On Police Activity". (2020, October). Retrieved from https://www.e-tar.lt/portal/lt/legalAct/TAR.CA89372D00AA/asr.
[2]Law of Estonia. "Police and Border Guard Act". (2009, May). Retrieved from https://www.riigiteataja.ee/en/eli/512112013003/consolide.
[3]Law of Georgia. "On the police". (2013, October). Retrieved from https://matsne.gov.ge/ru/document/view/30346?publication=36.
[4]Law of Moldova No. 320 "On the activities of the police and the status of a police officer". (2012, December). Retrieved from https://www.legis.md/cautare/getResults?doc_id=110355&lang=ru.
[5]Declaration on the Police No. 690. (1979, May). Retrieved from https://ips.ligazakon.net/document/view/mu79314.

he meant a system of relationships in society based on generally accepted norms.

According to V.V. Tretiak (2010), the term "security" consists of protecting generally accepted things in society in certain situations that directly concern an individual.

At the same time, according to the convincing opinion of I.E. Andriievskyi (1874), "security" is a state in which there are no dangerous factors that pose a threat and can lead to harm. In his opinion, public security should be characterized by the absence of danger for all residents of the community.

T. Podorozhnia (2017) investigated such a term as "legal order", which the author interpreted as the situation in society when the observance of rights, the exercise of benefits by citizens, as well as the performance of their duties is ensured and controlled by the state through certain legal mechanisms.

For decades, scientists have been trying to define public order. One can safely discuss the position of authors who differ in their opinions and those who are united. One part of scientists understands public order in a broad sense, while the other understands it in a narrow sense. Moreover, the vast majority belongs to the former.

For instance, the broadest definition of public order was formulated back in the 1970s by M.I. Yeropkin & O.P. Klyushnichenko (1979), who interpreted public order as the full set of relationships that exist in society. This definition looks generalized and too broad, it does not reveal all the features of public order, but is more aimed at social norms that are regulated by customary law, traditions, etc. More detailed is the definition of I.P. Holosnichenko & Ya.Yu. Kondratiev, who considered public order as a state of social regulation, in which life, health of citizens, their rights and freedoms, public peace, morality and human dignity are ensured (Administrative activity..., 1995, p. 14-16).

Public security, according to Ye.B. Olhovskyi (2003), should be based on principles that are formed with mutual respect and are aimed at preventing factors that can lead to negative factors in the life of citizens, institutions, enterprises, organizations, which concerns both the right to work and to take part in mass events etc.

S.V. Kivalov & L.R. Biel (2002) interpreted public order as the orderliness of social relations and the order between citizens, which is formed considering the interests of citizens and the state. According to M.V. Bilokon (2003), the regulated stay of people and things in public places, the legal status of which is fixed by moral, ethical and legal norms, can be considered a public order.

According to the authors, the definition of public order by V.V. Malikov (2014) deserves attention. He noted that public order is a system of social relations in which citizens live and is aimed at upholding the rights and freedoms of citizens, peace, life, ensuring health, honour and dignity, as well as the formation of favourable factors for the existence of public and state organizations, implementation of norms existing in society.

At the same time, M. I. Yeropkin (1965) successfully noted that the value of defining the concept of public order lies in its analysis as a coherent structural system of legal social relations, which are manifested in the behaviour of people, their deeds, actions mainly in public places and outside them. Therewith, I. P. Holosnichenko (1995) noted that the variety of interpretations and explanations of concepts that hold components of public order is insufficient and does not fully cover its content. The use of such methods of investigating the concept of public order does not allow distinguishing it from other social categories that are normalized by legal and social norms and are aimed at performing the same functions.

In the legal literature, the problem of correlation between the terms "public order" and "public security" under study is debatable. The concepts considered in this paper are closely related. In theory, there are many opinions on this issue. A supporter of one of them, M. I. Yeropkin (1965), defined public security as an integral part of public order.

There is no consensus among scientists regarding the unified definition of the concept and components of which public order is formed. The position of those scientists who interpret public order in a broad sense, meaning social relations that are formed and accepted by society, through the implementation of legal norms, norms of morality, religion, corporate, family, aesthetic, ethical, as well as customs and traditions, etc. Factors that directly contribute to the formation of people's consciousness and behaviour for comfortable coexistence and the development of all spheres of social life in the state are important. The "golden mean" in definitions is important. Since some scientists in their research made an excessively generalized definition, and other authors try to be too specific, resorting to enumeration of unnecessary details. With an excessive content load on the definition of terms, concretization is impractical, since they lose their meaning and universality, there is a danger of different interpretation, and therefore application in practice.

## Conclusions

The authors of this study can state the existence of conflicts in the practice of applying the terms "public (civic) security and order". Despite the attempts of scientists to cover the problems and implement developments in solving the issues raised in this paper, the problem stays unresolved.

There are contradictions and there is no unified opinion regarding the use of the terms "public (civic) security and order", since the legislator did not interpret the mentioned terms either in the Law of Ukraine "On the Militia" or in the Law of Ukraine "On the National Police".

In some regulations, in the part concerning illegal encroachments on the rule of law, the terms "public security" and "public order" are not included in the texts,

but the legislators adhere to the position of using "classical" and already established terminology. Along with the terms "civic order" and "civic security", such a concept as "public security and order" is applied.

Conducting a scientific study allowed confirming the opinion that the terms "public security" and "public order" and "civic order" and "civic order" are similar in terms of content, in regulations and scientific literature they acquire a synonymous meaning and are used to describe the same categories. Thus, the legislators do not introduce changes to the already adopted regulations, but "mask" them.

Most scientists and practitioners agree on the hasty and inappropriate introduction of new terminology, and this is the reason for the emergence of a legal conflict in the interpretation and enforcement of regulations in ensuring law and order. Practitioners also confirmed this fact. Problematic issues arose during the performance of their professional duties to ensure law and order and in the practice of applying regulations and drafting procedural documents. The authors of this study can talk about appealing offenders to patrol police officers in terms of applying certain terms.

Terminology requires legislative interpretation and unification of the entire array of laws, resolutions, orders, etc., that are directly or indirectly related to the organization of the work of law enforcement agencies in terms of ensuring law and order.

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# Термінологічні колізії в застосуванні терміна «публічна (громадська) безпека й порядок»

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**Анотація**
Прийняття Закону України «Про Національну поліцію» унормувало діяльність Національної поліції України щодо дотримання прав і свобод громадян, забезпечення оптимальних умов проживання, добробуту, порядку й законності в державі. У Законі на зміну усталеним поняттям «громадська безпека» та «громадський порядок» було запроваджено новий термін – «публічна безпека й порядок», що викликало в наукових колах досить жваве обговорення, а подекуди й незгоду з нововведеннями. Незрозумілим залишається довільне поєднання термінів у словосполучення: у деяких нормативно-правових актах використовують «публічний» та «громадський» одночасно, причому останній подають у дужках, підтверджуючи рівнозначність змістового наповнення та недоцільність одночасного вживання. Метою статті є здійснення аналізу різних наукових поглядів, думок практичних працівників стосовно змісту й доцільності використання терміна «публічна (громадська) безпека і порядок» та варіацій сполучення його складових. Під час проведення дослідження в статті застосовано комплекс наукових методів, серед яких системний, герменевтики, аналізу й синтезу, термінологічний і формально-юридичний, порівняльно-правовий, що сприяло отриманню обґрунтованих висновків. На підставі результатів опрацювання літератури, зокрема спеціальної, різноманітних наукових джерел, положень Основного Закону України, законів, указів, розпоряджень, наказів тощо за тематикою дослідження, констатовано існування суперечностей і відсутність єдиної думки щодо застосування термінів «публічна (громадська) безпека та порядок». Так, у Законі України «Про міліцію» та в Законі України «Про Національну поліцію» законодавець не дав визначення зазначених термінів. Спираючись на опрацювання масиву даних застосування термінів «громадська безпека» – «публічна безпека», «громадський порядок» – «публічний порядок», обґрунтовано необхідність їх уніфікації через зміни всього масиву законів, постанов, наказів, розпоряджень тощо, які безпосередньо або опосередковано стосуються організації роботи правоохоронних органів у частині забезпечення правопорядку

**Ключові слова:**
правопорядок; громадськість; наукові джерела; державні органи; нормативно-правові акти; законодавець

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# Unmanned aerial vehicle as a forensic technical tool and object of forensic research

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**Abstract**
The relevance of this study was conditioned upon the scientific originality and practical significance of the use of unmanned aerial vehicles in the detection, investigation, and prevention of criminal offences. The purpose of this study was to investigate topical issues of using UAVs in two aspects – as a technical forensic tool and as a tool and means of committing a criminal offence. The research methodology included a set of general scientific and special methods that allow assuming and concluding on the specific features of using a UAV in the detection, investigation, and prevention of criminal offences. Thus, this study was based on a diagnostic method for cognition of social and legal phenomena and concepts in their development and interdependence. Along with this, general and special research methods were used, namely comparative legal, system-structural, statistical, logical, and other modern methods of scientific cognition. The theoretical framework of this study included studies of scientists and practitioners in the field of criminal procedure and forensics. The regulatory framework of the study included the norms and provisions of current regulations and their practical implementation in the law enforcement sphere. The study examined topical issues related to the UAV as a modern technical forensic tool and object of forensic research. The paper considered certain aspects and features of the use of UAVs in the detection, investigation, and prevention of criminal offences. To this end, various aspects of the use of UAVs as modern technical forensic tools were comprehensively analysed, distinguishing theoretical foundations of application, statutory regulation, organizational, technological, and scientific-methodological support. The features of using UAVs as a tool and means of committing criminal offences were determined. The study investigated typical traces left as a result of using UAVs, features of their logging and seizure. Considering investigative situations, the sequence, and specifics of conducting an inspection and seizure of a UAV and its elements at the initial stage of the investigation were determined, as well as an indicative list of issues for their expert investigation was provided. The significance of the results and practical value of this paper is that it highlights the specific features of using a UAV as a technical forensic tool and object of forensic research, formulates scientific and methodological recommendations for the use of unmanned aerial systems in the investigation, solving, and prevention of criminal offences. The study also defines the areas for improving Ukrainian legislation to regulate legal relations in the field of criminal justice on the use of unmanned aerial systems by law enforcement agencies

**Keywords:**
unmanned system; drone; unmanned aviation; criminal offence; law enforcement agencies

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## Introduction

Over the past few decades, human has conquered more natural forces than in the entire previous history of humankind. Presently, the use of modern information and digital technologies is no longer considered something fictional. Moreover, due to their accessibility and technical capabilities, they have found their wide application not only in the military sphere, but also in law enforcement activities (Kharchenko *et al*., 2005; Zhilin, 2011; Bakutin, 2020). This circumstance substantially influenced the transformation of forensic science and gave an impetus to the digitalization of modern criminalistics, saturating it with electronic-digital devices, tools, systems, and electronic communication exchange between them. Currently, the scientific literature uses the term "digital criminalistics" increasingly often. Emphasizing its revolutionary importance, scientists and practitioners define its further development as one of the priority areas for improving forensic knowledge (Kolodina & Fedorova, 2022).

The practical implementation of information and digital technologies in forensic activities is the introduction of unmanned aerial vehicles (UAVs, drones) into the work of law enforcement agencies (Bilous, 2016; Bakutin, 2020).

From a forensic standpoint, a drone can be considered an aircraft without a pilot, crew, or passengers on board, equipped with an engine that lifts it into the air due to aerodynamic forces, works both in automatic mode and through remote control, and which can be equipped with special technical and forensic means of aerial and non-aerial influence, video and photo equipment, as well as other devices and equipment for reconnaissance and monitoring of airspace, terrain, and aquatic environment.

Therewith, the rapid development of information and telecommunication systems has not bypassed crime. Existing as a social phenomenon, crime has successfully mastered the achievements of technological advance, adapting them into its activities. Thus, for instance, according to leading international organizations, even today the losses caused by criminal offences in the use of the latest information and telecommunications systems can be compared with the income from illegal trafficking of narcotic drugs and weapons. Moreover, many torts in this area stay hidden, which characterizes their high latency (Korshenko, 2020; Computer crimes in the USA, 2022).

The analysis of scientific literature and law enforcement practice suggests that UAVs enable the commission of a considerable large number of criminal acts related to espionage, terrorist activities, collaborationism, smuggling, human life and health, obtaining illegal benefits, trafficking of drugs and psychotropic substances, illegal arms trafficking, illegal obtaining of restricted information, disruption of aircraft traffic, security of critical infrastructure facilities and, as a result, national security in general (Blaguta & Movchan, 2020).

Such a wide range of applications of drones in criminal activities is primarily explained by many individual characteristics that allow using drones as tools and means for committing criminal offences. These features include the technical capabilities of the UAV, which, along with its small size, low visibility, relatively low price and availability, allow one to do the following:

– perform air delivery of items to protected ground objects.

– equip drones with diverse types of weapons and high-precision electronic devices.

– perform automatic (autonomous) piloting that does not require long-term special training.

– engage in large-scale acts that can cause considerable damage, destruction, and casualties (Kanchenko, 2015; Holotov *et al*., 2017).

Notably, unlike military doctrine, in legal science, the discussion of problematic issues related to the use of UAVs as a technical forensic tool and object of forensic research is relatively a new area of scientific research. However, some of their aspects, specifically those related to the use of drones in the activities of police, were covered in the studies of Ye. Bakutin (2020), V. Bilous (2016), R. Blahuta (2020), V. Holotov *et al*., (2017), M. Kobets (2017), Ye. Kuzmenko (2016), A. Movchan & M. Movchan (2020), S. Moslenko & S. Zelenskyi (2020), K. Sporyshev *et al*., (2018), etc. Admittedly, the scientific and theoretical developments of these authors are important for solving the problem of using UAVs by law enforcement agencies in the performance of their tasks, but they do not fully solve the complex issues concerning the specific features of using UAVs as a technical forensic tool and object of forensic research. Thus, for instance, most of these studies contemplate the role of the legal principles for conducting aviation operations using UAVs in criminal justice (Holotov *et al*., 2016; Movchan, & Movchan, 2016; Moslenko & Zelenskyi, 2020), as well as the main areas for improving the legislative regulation of the use of UAVs in police activities (Kuzmenko, 2016; Kobets, 2017; Bakutin, 2020). Therewith, some authors consider the UAV as one of the means of establishing objective truth in criminal proceedings (Moslenko & Zelenskyi, 2020), which, according to the author of this study, requires clarification. Firstly, in the conditions of the adversarial principle and the presumption of innocence, the use of such a philosophical category as "objective truth" is not entirely appropriate, and there is always the possibility of judicial errors. Secondly, those means of proof included in the criminal procedure, cannot fully ensure the objective institution discussed in the philosophical literature. Furthermore, using induction as one of the Aristotelian methods of cognition in criminal proceedings, it is not possible to obtain true knowledge. That is, if the activities of law enforcement agencies were aimed at establishing the objective truth, then in such circumstances justice would lose its significance.

In turn, the author of this study proposes to consider UAVs in two aspects: as a technical forensic tool and as an object for forensic research. Since UAVs allow obtaining not only evidentiary information that is vital to solve, investigate and prevent of criminal offences, but also enable the commission of a considerably large number of torts prescribed by the law on criminal liability. In this regard, this study will reveal the specific features of using UAVs as a technical forensic tool and object of forensic research in greater detail. For this, the tasks of this study were formulated as follows:

– to determine the features and technical capabilities of using UAVs in law enforcement, forensic, and criminal activities.

– to identify general and special forensic tasks of using UAVs as a technical forensic tool, as well as to describe the specifics of conducting an investigative inspection using UAVs on the example of eccentric, sector-wise, linear (frontal), and nodal inspection methods.

– to identify the main typical traces that can be left at the scene of an accident as a result of illegal use of UAVs, as well as to determine the features of their logging (recording) and seizure.

– to identify typical investigative situations at the initial stage of the investigation where the UAV was used as a tool and means for committing a criminal offence.

– to consider the general specifics of the tactics of conducting an investigative inspection of a UAV detected at the scene from a structural perspective.

– to formulate and justify proposals regarding the improvement of the current legislation in the part related to the use of UAVs when solving, investigating, and preventing criminal offences, as well as to formulate topical issues for further research.

*Thus, the purpose of this study* was to develop theoretical provisions that cover the specific features of using UAVs as a technical forensic tool and object of forensic research.

## Materials and Methods

The regulatory framework of this study included laws and sub-legislative acts, the norms and provisions of which govern certain issues of the use of UAVs, namely: the Air Code of Ukraine No. 3393-VI dated 15.05.2011[1], Criminal Procedural Code of Ukraine No. 4651-VI dated 13.04.2012[2], Criminal Code of Ukraine No. 2341-III dated 05.04.2001[3], Code of Ukraine on Administrative Offences as amended on 26.05.2022[4], Rules for the use of flights by unmanned aviation complexes of the State Aviation of Ukraine, approved by Order of the Ministry of Defence of Ukraine No. 661 dated 08.12.2016[5], Instructions on the use of technical devices and means that have the functions of photo and film shooting, video recording, photo and film recording equipment, video recording by police bodies, approved by the Order of the Ministry of Internal Affairs of Ukraine No. 1026 dated 18.12.2018[6].

*The theoretical framework of this study* included the studies of scientists and practitioners in the fields of criminal procedure and forensics, who investigated individual issues related to the subject under study, namely the use of UAVs in police activities; features of introduction of unmanned aerial technologies into forensic practice; legal grounds and problematic issues of legal regulation of the use of drones in the activities of law enforcement agencies, etc.

This study was based on a diagnostic method for cognition of social and legal phenomena and concepts in their development and interdependence. This method was used to investigate regulations, analytical materials, concepts, and opinions of authors regarding certain issues included in the subject of this study.

Along with this, theoretical and empirical research methods were employed. For instance, the descriptive analytical and dogmatic methods were used to analyse the interpretations of legal categories, formulations of definitions, clarifications of the terminology, formulations of proposals for improving the current legislation on the subject under study. Comparative legal and formal legal methods were used to analyse regulations governing the activities and powers of police bodies and divisions, as well as certain issues concerning the use of UAVs in the airspace of Ukraine. Using the modelling method, conclusions were formulated, as well as proposals for improving the current legislation.

## Results and Discussion

**An unmanned aerial vehicle as a technical forensic tool.** Due to its versatility, the use of UAVs in law enforcement and forensic expertise provides an opportunity to effectively implement the tasks set at relatively low financial costs, which previously required the use of not only a considerable number of personnel, but also general aviation[7]. Furthermore, the use of drones eliminates the risks of accidents involving participants in

[1]Law of Ukraine No. 3393-VI "On Air Code of Ukraine". (May, 2011). Retrieved from https://zakon.rada.gov.ua/laws/show/3393-17#Text.
[2]Criminal Code of Ukraine: Law of Ukraine No. 4651-VI. (April, 2012). Retrieved from https://zakon.rada.gov.ua/laws/show/4651.
[3]Criminal Code of Ukraine: Law of Ukraine No. 2341-III. (May, 2001). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[4]Code of Ukraine on Administrative Offences. (May, 2022). Retrieved from https://zakon.rada.gov.ua/laws/show/80731-10#Text.
[5]Order of the Ministry of Defense of Ukraine "On the Approval of the Rules for the Use of Flights of Unmanned Aircraft Complexes of the State Aviation of Ukraine" No. 661. (December, 2016). Retrieved from https://zakon.rada.gov.ua/laws/show/z0031-17#Text.
[6]Order of the Ministry of Internal Affairs of Ukraine No. 1026 "On the Approval of the Instructions on the Use of Technical Devices and Means that Have the Functions of Photo and Film Shooting, Video Recording, Photo and Film Recording Equipment, Video Recording by Police Bodies". (December, 2018). Retrieved from https://zakon.rada.gov.ua/laws/show/z0028-19.
[7]Criminal Code of Ukraine: Law of Ukraine No. 4651-VI. (April, 2012), op. cit.

such operations, which are accompanied by an explosion or fire hazard, injuries, or death of people. This means, for instance, neutralization of explosive objects or mine clearance of premises, pursuit of criminals, establishing their location, conducting various search and rescue operations (Bilous, 2016).

In this regard, the author of this paper agrees with the opinion of some scientists and practitioners who believe that the use of UAVs for forensic purposes should not be limited to merely examining the scene of an accident, it is much broader[1]. Thus, the modern development of information technologies allows equipping drones with special, digital equipment that can identify individuals who are wanted in the video stream, or those included in the relevant databases of law enforcement agencies, as active participants in mass riots, individuals involved in terrorist activities, organized crime and banditry, simulate their 3D images and store the information received in the relevant information resources. The use of such complexes can be especially effective during public events, sports competitions, protests, civil unrest, as well as in other places of mass gathering of people where it is technically impossible to install stationary surveillance systems (Blaguta & Movchan, 2020).

Another successful example of the adaptation of unmanned telecommunications systems in forensic activities is the use of UAVs during search activities to search for missing persons, especially when it comes to densely wooded areas, forests, mountainous areas, and other hard-to-reach or dangerous places.

One of the priority areas of using the capabilities of the unmanned aerial vehicle is to establish the facts of poaching, illegal mining, illegal felling, illegal planting of narcotic plants, and the detection and elimination of underground drug laboratories.

The technical capabilities of the UAV allow effectively implementing measures to prevent the commission of criminal offences by air patrolling objects of the main pipeline and railway transport. Features of this monitoring are the use of not only analogue, but also multichannel video recording in real time. This enables simultaneous observations in several spectral ranges (visible, infrared, radar, thermal imaging, etc.), thereby allowing to track objects both at night and in conditions of poor visibility (Korshenko, 2020).

Using aerial photography of the terrain, it is also possible to obtain orthophotomaps, digital models of the terrain and 3D images, and innovative software allows performing hyperspectral and multispectral imaging and laser scanning of the terrain, premises, structures, and other investigated objects.

Unmanned aerial systems became particularly popular during the Anti-Terrorist Operation and the Joint Forces Operation in the east of Ukraine. There, drones were used for operational purposes to identify and eliminate places of permanent and temporary deployment of militants, their checkpoints, storage places for weapons, ammunition and military equipment, reconnaissance and sabotage groups, unexploded ordnance, as well as installation and monitoring of customer devices, their interception, and geolocation (Kharchenko et al., 2005; Interdepartmental scientific and practical conference, 2021).

Presently, drones are widely used in patrolling residential areas and the state border. For instance, in 2021, according to the State Border Service, 60 drones of the Chinese company DJI Matrice 300 were purchased with a total cost of more than 50 million hryvnias, which are already successfully used today during the protection of the state border of Ukraine (2021).

UAVs also enable effective search and counter-intelligence activities for obtaining and implementing operational information, which is important to solve, investigate, and prevent criminal offences. The technical capabilities of drones, together with supplementary, special, optical devices with which they are equipped, not only prevent the risks of their unwanted detection, but also provide the opportunity to detect, inspect, investigate, control, record, and monitor various objects, terrain, and environment during law enforcement intelligence.

Thus, UAVs can be classified as separate, special forensic technical means capable of effectively performing measures to obtain forensic information essential for the investigation and prevention of criminal offences.

In this regard, the use of drones in law enforcement activities, according to their functional purpose, can be systematized into *general and special* forensic tasks. General forensic tasks include *procedural, intelligence, investigatory, and search and rescue* tasks. In turn, special forensic tasks can include:

– the use of drones in law enforcement intelligence, including the search for criminals hiding from pre-trial investigation and court bodies, conducting both overt and covert surveillance, examining premises, buildings, structures, terrain, vehicles, etc.;

– the use of drones to solve preventive tasks, including prevention of offences, recording offenders at the scene, stopping and preventing criminal attacks, photo and video recording (including in real time), certain circumstances of offences, their consequences, participants, tools and traces left by them, conducting operational and official activities to protect public order and public safety, etc.;

– the use of drones during the investigation and solving of certain types of criminal offences, including for technical forensic organization of the investigator's activities, the identification and preliminary examination of physical evidence, the search for people, animals, and things in hard-to-reach or dangerous places, the collection of samples and the removal of objects for further forensic investigation, ensuring the personal safety of

[1]Law of Ukraine No. 3393-VI. "On Air Code of Ukraine". (May, 2011). Retrieved from https://zakon.rada.gov.ua/laws/show/3393-17#Text.

participants in criminal proceedings, tracking and fixing the whereabouts of suspects, etc.

Considering the above, it is possible to conclude that the effectiveness of the use of UAVs as a technical and forensic tool can take place during the following activities:

– *survey* of large areas. It is most effective to carry out such an inspection during the search and recording of objects visible from the air left as a result of a plane crash, illegal felling, illegal sowing and cultivation of narcotic plants, as well as the identification of individuals hiding from the investigation and the court in a densely wooded area, etc.

– *survey* of the area in extreme conditions, e.g., during the investigation of socially dangerous acts, in conditions of threat to ecological safety, in the event of threats of snow avalanches, landslides, mudslides, rock falls, etc.

– *monitoring* road signs and road users to detect and record violations of the traffic rules.

– *inspection* of the scene during the pre-trial investigation.

– *searching* for individuals hiding from investigative bodies and the court, as well as pursuing them on hot tracks.

The choice of particular tactics and methods of using UAVs in each of these cases depends not only on the number of drones involved, their technical capabilities, the size of the surveyed area, weather conditions and time of day, but also on the purpose and a set of tasks that need to be solved.

Thus, in case when it is necessary to detect the maximum possible number of traces and elements of an event, the centre of which is known and located in a relatively small plane, it is advisable to use the *eccentric survey method*, which lies in the rectangular movement of the drone with a gradual expansion of its flight angles.

Given the relatively small area of the surveyed area, during the eccentric method, as a rule, only one UAV is used with a relatively moderate wind speed, or its complete absence (no-wind conditions). Therewith, the centre of the survey is always its starting point (see Fig. 1).

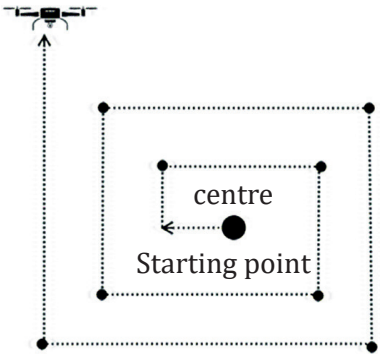


**Figure 1.** UAV movement during the use of the eccentric survey method

When the survey centre is known, and the region of the surveyed area has a rounded shape of a relatively small area, it is advisable to use *the sector-wise survey method*, where the starting point of its beginning is located at a distance outside its centre (see Fig. 2).

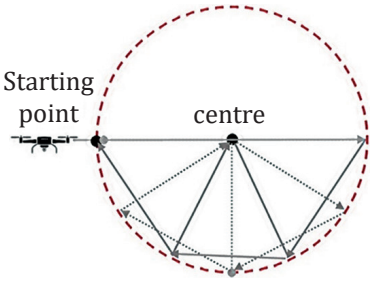


**Figure 2.** UAV movement during the use of the sector-wise survey method

When the investigator does not have a clearly defined centre, or it is not known, it is possible to apply the *concentric survey method*, which lies in surveying objects from the periphery along a narrowing spiral, to the imaginary centre of the scene (see Fig. 3).

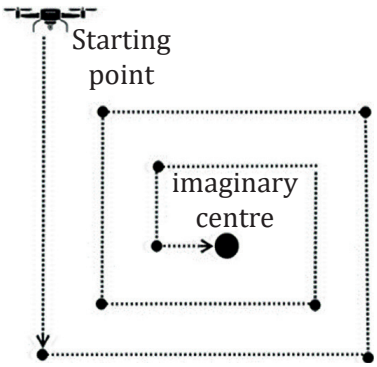


**Figure 3.** UAV movement during the use of the concentric survey method

When there is a need to survey large or extended areas, e.g., when there is information about illegal felling or illegal planting of narcotic plants, *a linear (frontal) or nodal inspection method may be applied*. In this case, the centre is irrelevant, and therefore these methods can be applied both in the presence of the survey centre and in its absence.

Furthermore, linear and nodal methods allow using two or more UAVs simultaneously, which affects the time, flexibility, and effectiveness of the survey (see Figs. 4 and 5).

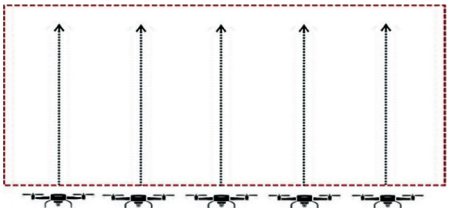

**Figure 4.** UAV movement during the use of the linear (frontal) survey method

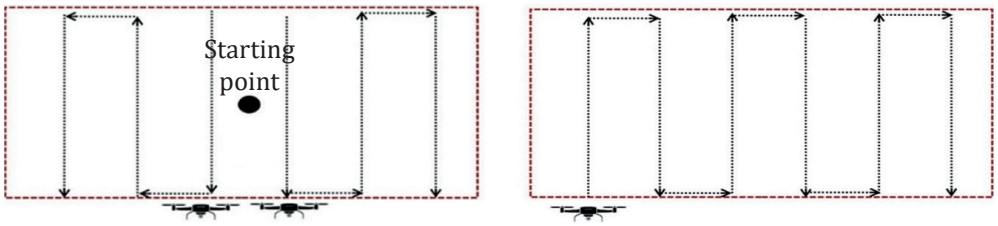


**Figure** 5. UAV movement during the use of the nodal survey method

When deciding on the choice of one of the listed survey methods, one also needs to consider the technical specifications of the UAV, namely:

– the presence of a system that allows separating the flight control of the UAV from the control of its camera.

– availability of supplementary technical equipment (added photo and video cameras, lighting sources, radio stations, other repeaters, sensors, and laser locators of various functional purposes, etc.).

– flight performance characteristics of the engine.

– the presence of a gyroscope, which is the main node responsible for the orientation of the drone in space.

– the availability of online data transmission capabilities in HD video format.

– the presence of the function of loss of communication with the operator and transition of the flight system to automatic operation mode with unassisted return of the UAV to the launch point along the marked trajectory.

– the availability of automatic tracking, using GPS (*Global Positioning System*) of the drone's flight path and returning it to the launch point, or performing a flight according to a predetermined program along a marked flight path.

In this context, there are only three space countries in the world (the USA, Japan, and China) that have the necessary number of satellites in orbit to create a full-fledged navigation system.

There are two such navigation systems in the United States. The first of which is open to public access, which allows its use for commercial purposes (it can be use it on civilians' gadgets), and the second GPS navigation system is closed and intended only for solving military and reconnaissance tasks. The military GPS, unlike the commercial one, is more precise. This system cannot be used in free access because it works through closed, coded communication channels, which are practically impossible to trace and intercept. The owner of an open navigation system is entitled to independently make adjustments and system errors to the GPS operation without notifying users.

Despite the space past, unfortunately Ukraine does not have its own navigation system, which forces Ukrainians to use the American GPS for public access.

**An unmanned aerial vehicle as an object of forensic research.** Investigating topical issues related to UAVs as a technical forensic tool, it is impossible to ignore the fact that criminal underworld could not but take advantage of the technological advance of humanity in the aviation industry.

Thus, according to the results of studying investigative and judicial practice, there has recently been a tendency for illegal use of UAVs over high-security facilities and critical infrastructure facilities. Specifically, drones are used to illegally transfer prohibited items, including phones and SIM cards, to places of deprivation of liberty. The communication tools obtained in this way are used by convicts to commit telephone fraud. This is confirmed by the results of statistical studies, which indicate that more than half of all illegal "call centres" are located in penitentiary institutions and pre-trial detention centres[1].

Therewith, only a few people are brought to real criminal responsibility for committing such acts. The consequence of this is that Article 307.2 of the Criminal Code of Ukraine prescribes liability only for the transfer of narcotic substances to places of deprivation of liberty[2]. As for the illegal transfer of phones, computers, and other prohibited items to individuals held in pre-trial detention centres and penitentiary institutions, this is the subject of an administrative offence under Article 188 of the Code of Ukraine on Administrative Offences[3].

The issue of unauthorized filming, which violates the right to inviolability of private and personal life of citizens, also requires special attention. Thus, using a UAV, it is possible to conduct an aerial survey of the private (personal) life of citizens, as well as property belonging to them, to further publish provocative photos and videos on the Internet, which can adversely affect the business reputation of an individual and/or humiliate their honour and dignity (Kobets, 2017).

During the illegal use of UAVs in the airspace, there is also a threat to people's lives and health. The possibility of accidents caused, for instance, by a UAV falling on passers-by, their vehicles, houses, and other property located within the perimeter of its flight is not excluded. Furthermore, the use of UAVs over critical infrastructure objects or within air routes can

[1]Order of the Ministry of Defence of Ukraine "On the Approval of the Rules for the Use of Flights of Unmanned Aircraft Complexes of the State Aviation of Ukraine" No. 661. (December, 2016). Retrieved from https://zakon.rada.gov.ua/laws/show/z0031-17#Text.
[2]Criminal Code of Ukraine: Law of Ukraine No. 2341-III. (May, 2001). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[3]Code of Ukraine on Administrative Offences. (May, 2022). Retrieved from https://zakon.rada.gov.ua/laws/show/80731-10#Text.

lead to particularly dire consequences, or even disasters. This primarily indicates that the UAV as an aircraft is a source of increased danger, since its unauthorized use by an incompetent person can lead to irreparable consequences for people, society, and the state as a whole.

Notably, in 2018, non-compliance with the rules for operating a drone over an airport in the UK led to the cancellation of hundreds of flights. To identify and stop the offence, not only police units were involved, but also the Royal Armed Forces. Since according to British legislation, the use of drones within a 1-kilometre radius from the perimeter of the airfield is prohibited (Kuzmenko, 2016).

This allows concluding that the illegal use of drones can lead to grave consequences, and therefore UAVs can be attributed not only to one of the means of technical and forensic support, but also to one of the objects of forensic research.

In this context, special attention should be paid to the typical traces left as a result of the use of UAVs, as well as their recording and seizure during procedural actions.

In the classical sense, all traces that can be left during the commission of a criminal offence, including by a drone, can be divided into three groups, namely:

– *material traces*, displayed in the form of damage or destruction of the hull (fuselage) of the drone itself, its individual parts, elements, devices, equipment, or video recordings or photographs with it, delivery and launch vehicles, etc.

– *perfect footprints*, reflected in the memory of eyewitnesses, victims, suspects, etc.

– *virtual (electronic-digital) traces*, displayed in the random-access memory of an unmanned device or on its information carriers.

This division allows identifying at least four investigative situations of surveying the scene of an accident at the initial stage of the investigation of a criminal offence, namely:

– direct detection of a drone at the scene, without cargo attached to it (prohibited items, objects, etc.);

– direct detection of a drone at the scene, with cargo attached to it.

– detection of only cargo at the scene, probably transported and dropped by a drone.

– detection of individual parts of elements and devices at the scene of an accident, as well as their fragments, which are probably components of the drone or cargo transported by it.

Without delving into the tactics of conducting an investigative survey in each of the listed cases separately, this study will only try to consider its general specifics structurally, which include the following:

– measures to protect the scene of an accident and resolving issues concerning the origin of objects found on the site, as well as their potential threat to human life and health and the environment (e.g., their pertinence to explosive or toxic devices, chemical or radioactive substances).

– actions to *register* the detected objects at the scene (directly of the UAV itself, its parts and fragments, the cargo transported and dropped by it, etc.), with the mandatory use of three types of recording (orientational, nodal, detailed (large-scale).

– *removal* and packaging of objects discovered at the scene, with early resolution of issues regarding the type of container to pack the removed objects in, its sealing capacity, and further storage location. Such packaging may include cardboard boxes, polymer containers, panels made of synthetic or natural fabric, including bags made of durable material (matting, burlap, leather, synthetic materials).

Special attention should be paid to traces of fingerprint, or biological (tracological) origin reflected on the identified objects. Such traces, as an example, can include traces of layering or peeling of paint, glue, fingerprints, as well as arbitrarily applied marks with various slogans, flags, emblems, symbols, and other identifying marks. All these traces require immediate recording and removal at the scene of the incident and subsequent referral for forensic examination with identification, diagnostic, situational, and other issues.

1. *Recording* the results of the inspection in the record of the scene of the incident, where data on the type of UAV, its serial number and markings, the condition of the body and its individual parts, the presence of other equipment, its condition, the presence and packaging of cargo attached to it, its contents, weight, type of attachment, etc. are subject to mandatory reporting.

2. *Transportation* of objects seized at the scene for their further forensic examination. In this context, to achieve forensic tasks, all detected parts and fragments of the drone and the cargo transported by it are subject to a mandatory expert forensic investigation. Such parts and fragments can be distinguished *as follows*:

1. Investigation of the device itself and its individual parts and body fragments. For this purpose, several forensic tasks must be solved, which lie in determining the method of manufacture of the drone discovered at the scene (industrial, hand-crafted, or modified), its name, model range, market value, availability in free sale, functional purpose, found in its design changes, conversions, other features, their purpose and designation.

2. Research of the control unit and navigation systems of the drone. In this regard, modern UAVs are equipped with full-fledged computer systems consisting not only of a processor, random access memory and installed operating systems, but also added control units and space radio navigation sensors.

Usually, the specified equipment contains forensically significant information that can be the subject of computer-technical expertise research, and provide answers to a number of questions related to:

– type of control unit and data about its computer system (model, parameters, tactical and technical characteristics, installed operating system, scope of application, etc.).

– Autopilot system data, including geolocation marks regarding the start of the flight, its route, end, and return location in case of loss of communication with the drone.

– a list of operator commands received by the drone control system.

– altitude, speed, time, coordinates, hover point, and other indicators of the drone's position in space during flight.

3. Research of added flash memory. An essential object of forensic research of the drone is its flash cards and memory cards of technical devices that it was equipped with. These objects contain archival information that can provide answers regarding the flight path, its duration, satellite navigation coordinates, photo and video images of the area, objects, things, and people that were recorded by the drone operator during the flight. All this data can be used to determine the owner of the UAV, its operator, as well as the main places, locations, and purposes of operating the drone.

4. Research of power supply units and power plant systems. The power plant system and power units may contain information about the engine manufacturer, model, type, fuel cell, electric battery, fuel brand, composition, quality, origin, etc. Using comprehensive technical and technological expertise, it is also possible to solve several issues related to the power, load capacity, speed, range, and other technical specifications of the drone.

5. Research of radio communication systems and remote-control channels. During the study of these systems, it is possible to determine the radio communication channel from which control commands were received, its security, user authentication protocol, control distance, etc.

6. Research of supplementary devices, equipment, weapons, and objects transported by the drone. The technical capabilities of the drone allow equipping it with supplementary electrical devices, various types of weapons, as well as mechanisms designed for fixing and transporting them. In this regard, it is necessary to figure out the purpose of the objects seized at the scene, their technical data and specifications. Thus, when providing an explosive device for expert research, it is necessary to determine its type, model, manufacturing method, composition, and power in TNT equivalent.

## Conclusions

Based on the results of this study, it is possible to draw the following conclusions:

Despite the noted positive trends in the introduction of unmanned aviation in the activities of law enforcement agencies of Ukraine, a complex of problematic issues currently stays unresolved. Firstly, this refers to insufficient equipment of police bodies and units with unmanned aerial systems. Secondly, this refers to the lack of a centralized management system and proper regulation of issues concerning the involvement of operators in the use of UAVs in procedural and law enforcement intelligence for the solution, investigation, and prevention of criminal offences.

In this regard, the introduction of unmanned aerial systems in the activities of law enforcement agencies, along with their advantages, still requires considerable financial costs, and not only for the purchase of unmanned systems, but also for their maintenance and training of qualified operators. This circumstance has created conditions under which it is now almost impossible to properly equip police bodies and units with unmanned aerial systems.

Proceeding from this, for proper technical support of law enforcement agencies with modern unmanned aerial systems, they should be concentrated in the subordination of a specially created single unit in the National Police system, which would have a legal basis, provided an appropriate purpose, tasks, area, and place of use, to be involved in the implementation of tasks assigned to law enforcement agencies.

Therewith, the legal grounds and limits of the use of drones by law enforcement agencies in their activities are becoming important. They must be brought into line with the constitutional norms that define the rights and freedoms of human and citizen. This refers to the fact that if the use of a drone concerns the receipt or disclosure of confidential, official, or secret information (e.g., the right to the privacy of personal and family life), then the restriction of these rights can take place only by a corresponding court decision and in cases clearly defined by law. Otherwise, obtaining information with restricted access will be considered illegal, which as a result implies the occurrence of legal liability defined by law.

The rapid development of the implementation of the capabilities of UAVs in criminal activities forces, in the near future, to develop and adopt special sub-legislative acts and regulations that would govern the issue of the organization of interaction between the bodies and units of the National Police in the fight against enemy drones and the mechanism of combating criminal offences committed using UAVs.

A separate scientific study is required on the grounds and procedure for law enforcement agencies to apply technical developments in the fight against enemy drones, which can be divided into three groups, namely:

– gun-type anti-UAV systems (e.g., a launcher for disarming glider-type UAVs Sky Wall 100);

– systems for combating UAVs of the radio-electronic type (e.g., a device that works on radio-electronic radiation Drone Defender V2 from the American company Battelle).

– systems for combating UAVs of the laser type (e.g., the HELMD laser radiation system from the Boeing company, which is in service with the United States).

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# Безпілотний літальний апарат як техніко-криміналістичний засіб та об'єкт криміналістичного дослідження

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**Анотація**
Актуальність теми дослідження обумовлена науковою новизною та практичною значущістю використання безпілотних літальних апаратів під час розкриття, розслідування та попередження кримінальних правопорушень. Метою статті є дослідження актуальних питань використання безпілотного літального апарата у двох аспектах, по-перше, як техніко-криміналістичного засобу та, по-друге, як знаряддя й засіб учинення кримінального правопорушення. Методологія дослідження включає сукупність загальнонаукових і спеціальних методів, що дозволяють сформулювати припущення та сформулювати висновки щодо особливостей використання безпілотного літального апарата під час розкриття, розслідування та попередження кримінальних правопорушень. Так, основу дослідження становить діагностичний метод пізнання соціальних і правових явищ і понять у їх розвитку та взаємообумовленості. Використано загальні та спеціальні методи дослідження, зокрема порівняльно-правовий, системно-структурний, статистичний, логічний та інші сучасні методи наукового пізнання. Теоретичне підґрунтя дослідження становлять наукові праці вчених і практиків у галузі кримінального процесу та криміналістики. Нормативно-правовою базою слугують норми й положення чинних нормативно-правових актів, їх практична реалізація в правоохоронній сфері. У статті досліджено актуальні питання щодо безпілотного літального апарата як сучасного техніко-криміналістичного засобу й об'єкта криміналістичного дослідження. Розглянуто окремі аспекти й особливості використання цих апаратів під час розкриття, розслідування та попередження кримінальних правопорушень. З цією метою проведено комплексний аналіз різноманітних аспектів використання безпілотних літальних апаратів як сучасних техніко-криміналістичних засобів з виокремленням теоретичних засад застосування, нормативно-правового регулювання, організаційного, науково-технічного та науково-методичного забезпечення. Досліджено типові сліди, що залишаються внаслідок використання безпілотних літальних апаратів, схарактеризовано особливості їх протоколювання та вилучення. З урахуванням слідчих ситуацій визначено послідовність і специфіку проведення огляду та вилучення безпілотного літального апарата, його елементів на початковому етапі розслідування, а також наведено орієнтовний перелік питань для експертного дослідження. Значущість результатів і практична цінність статті полягає в тому, що в ній висвітлено особливості використання безпілотного літального апарата як техніко-криміналістичного засобу й об'єкта криміналістичного дослідження, сформульовано науково-методичні рекомендації щодо застосування безпілотних літальних комплексів під час розкриття, розслідування та попередження кримінальних правопорушень, а також визначено напрями вдосконалення українського законодавства з метою врегулювання правовідносин у сфері кримінальної юстиції з питань використання безпілотних літальних комплексів органами правопорядку

**Ключові слова:**
безпілотна система; дрон; безпілотна авіація; кримінальне правопорушення; правоохоронні органи

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# Technical and forensic support for the investigation of war crimes: Concept, purpose, individual areas of development

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**Abstract**
The relevance of this study is conditioned upon the need to investigate the technical and forensic support for the investigation of war crimes that are massively committed in the context of a full-scale military invasion of russia on the territory of Ukraine. The purpose of this study was to define the term "technical and forensic support for the investigation of war crimes", its purpose and components; to consider the technical equipment used to search for people who disappeared during the war, to identify hidden corpses of people who died during the war, to establish their identity. The study employed a set of scientific methods: terminological, system-structural, formal logical, comparative legal. The terms "technical and forensic support" and "technical and forensic means" were analysed, and the definition of technical and forensic support for war crimes was proposed. The following components of technical and forensic support were investigated: scientific, legal, organizational, educational and methodological, scientific and technical, material and technical support. Attention was drawn to the specific features of technical and forensic support for the investigation of war crimes: constant readiness of authorized entities to use technical means and methods; integrated use of technological systems; involvement of numerous information resources; coordination of work on technical equipment of law enforcement agencies with the provision of other departments, including the Armed Forces of Ukraine. The study focuses on the possibility of using technical and forensic support for the investigation of war crimes by security investigators together with National Police investigators. It was concluded that the technical and forensic support for the investigation of crimes includes a system of legal, scientific, organizational measures aimed at the effective use of technical means and their corresponding methods for investigating criminal offences. Promising areas of development of technical and forensic support for the investigation of war crimes are as follows: the use of drone-made evidence (aerial photography); the use of ground-based 3D scanning; the introduction of systems for detecting and visualizing biological traces of participants in war crimes and their victims; the development of identification and search engines for identifying people involved in the commission of war crimes on the territory of Ukraine

**Keywords:**
technical means; military invasion; search for people; identification of corpses; ground-penetrating radar

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## Introduction

Since the beginning of a full-scale military aggression against Ukraine, the necessary conditions for preserving the sovereignty of the state are proper armed confrontation with the russian invaders, maintaining economic policy and social stability.

At the same time, the fight against crime requires constant attention of the state and leads to an improvement in the investigation of criminal offences. "Challenges" for the law enforcement agencies of Ukraine were numerous war crimes: the destruction of citizens' homes, enterprises, institutions, critical infrastructure; mass shootings of civilians, the elimination of Ukrainian servicemen, the genocide of the Ukrainian people, etc. Law enforcement agencies investigate several tens of thousands of war crimes and crimes of aggression, thousands of murders and injuries of the civilian population, and much destruction of civilian infrastructure. At the same time, russian soldiers continue to commit criminal offences in the occupied areas and areas of active military operations, which will become the subject of judicial proceedings later – after the liberation of these territories (Kaluzhna & Shunevych, 2022).

Law enforcement agencies take measures for proper regulatory support, technical equipment, scientific support and information component of the investigation of war crimes. War crimes are new types of criminal offences investigated by investigative bodies (Tataryn, 2022). These criminal offences are characterized by considerable destruction of enterprises, institutions, organizations, housing facilities, the presence of dead both among the civilian population and military personnel, the identification of unidentified corpses, the need to search for missing people. Of significant importance is the proper organization of the investigation according to the legal regime of martial law, which should consider various types of security for the work of law enforcement officers. The stability of the connections between security entities, subjects and objects, the purpose, methods, and means of war crimes investigation at each stage should be considered as a single whole.

Under these conditions, technical and forensic support (hereinafter referred to as TFS) is transformed according to the systems of relations and modern achievements of natural and technical sciences.

In recent years, scientists have developed certain aspects of technical and forensic support for the sphere of countering crime, including activities to solve war crimes. O.V. Kovalova (2022); Ye.Yu. Nikulin (2020); Kh.V. Solntseva (2019) studied the improvement of the information component of the TFS investigation of criminal offences.

Some studies were conducted based on the practice of applying the provisions of the Law of Ukraine "On the Fundamental Principles of Ensuring Cybersecurity of Ukraine"[1]. M.V. Hutsaliuk investigated the latest trends in technical and forensic support for countering cybercrime. Currently, software is being improved to prevent and detect such malicious software as WannaCryptor ransomware, loaders and cryptominers, EternalBlue exploits, etc. (Hutsaliuk, 2021).

Technical and forensic support for the investigation of terrorist acts, criminal explosions, and the investigation of illegal use of explosive materials was investigated by O. Kurman & T. Bodnaruk (2020), M. Koval & I. Koval (2021), A. Farion-Melnyk, I. Melnyk & R. Vasylevskyi (2022).

For instance, A. Farion-Melnyk, I. Melnyk & R. Vasylevskyi (2022) note the use of technical and forensic means depending on the stages of committing criminal explosions. At the same time, the method of committing the crime is considered; manufacturing or searching for means of achieving a criminal purpose; experiments with explosive devices or testing of their individual components and systems; delivery of explosives to the site; arming an explosive substance; initiating an explosion and concealing traces of a criminal offence.

Other scientists analysed the TFS of individual investigative (search) actions, usually a search and seizure. Among them are L.M. Pertsova-Todorova (2021), V.I. Halahan & O.L. Dulskyi (2019); B.B. Teplytskyi (2020).

L.M. Pertsova-Todorova (2021) offers an overview of the technical means used during a search in criminal proceedings. Both the technical equipment itself and the involvement of specialists who have the skills to use it are essential. They record the progress and results of the investigation using technical tools; provide an explanation of the specific features of the items sought during the search; carry out preliminary research of discovered objects on site using special means; discover storage facilities and caches; advise on the safe handling of detected objects, such as explosive devices, weapons, dangerous radioactive and chemical materials, etc.; carry out measurements and help in drafting procedural documents.

At the same time, the concept, purpose, and content of technical and forensic support for the investigation of such urgent criminal offences as war crimes in modern conditions of full-scale military operations in Ukraine, highlighting promising areas of its development, are still understudied.

*The purpose of this study* was to define the term "technical and forensic support for the investigation of war crimes", its purpose and components; to consider the technical equipment used to search for people who disappeared during the war, to identify hidden corpses of people who died during the war, to establish their identity.

## Literature review

Scientific sources contain various positions regarding the technical component of the investigation of war crimes,

[1]Law of Ukraine No. 2163-VIII "On the Fundamental Principles of Ensuring Cybersecurity of Ukraine". (2017, October). Retrieved from https://zakon.rada.gov.ua/laws/show/2163-19#Text.

their types, and purpose of application. Even various terms are used, including "technical and forensic support for the investigation of crimes", "technical and forensic support for investigative activities", "technical means", "special technical means of forensics", "scientific and technical means", "technical and forensic means". Accordingly, disputes arise between scientists regarding the expediency of using a particular term, and a mechanism for technical equipment of pre-trial investigation bodies is being developed according to modern needs for detecting, documenting, and solving war crimes.

Ukrainian researchers focused on various aspects of the issues related to technical and forensic support for the investigation of criminal offences.

Specifically, O.V. Kovalova (2022) considered the improvement of the legal aspect of the TFS investigation of criminal offences. The researcher identified one of the ways to improve the information support of crime investigations, the development of programs that allow comparing questionable information and verify it according to other sources.

To avoid risks in the information component, it is planned to develop technical support programs that will track software errors to avoid and correct them; reduce corruption risks due to restricting access to unreliable users; use programs that simultaneously identify questionable information and compare it with reliable data (Kovalova, 2022). G.M. Shorokhova (2019) concludes that the regulatory framework in the field of information and telecommunications technologies is inconsistent with modern requirements and the pace of development of society, the cumbersome, contradictory, and complementary nature of legal regulation in various regulations, and the need for unification and harmonization of these regulations, especially with the European legislation.

S. Perlin (2020) offers the levels of authorized subjects of technical and forensic support: the first level is the provision of law enforcement activities in general; the second – technical equipment for the activities of the bodies of the sphere of justice; the third – technical and forensic support of individual departments, and the fourth – equipping individual subjects of the investigation. Perlin singles out the technical support of the investigation of certain types of criminal offences as an element of ensuring the investigation of crimes, as well as the technical support of the conduct of certain investigative actions, using the help of specialists.

O. Kurman & T. Bodnaruk (2020) consider the relationship between the tactics of a separate investigative action and its technical and forensic support as a prerequisite for the effectiveness of the investigation of committed terrorist acts. Kurman and Bodnaruk note that for effective solving of a terrorist act during the inspection of the scene, several specialists should be actively involved – sappers, explosives technicians, forensic specialists, canine handlers with specially trained dogs, forensic doctors, chemists.

B.B. Teplytskyi (2020) investigated search and seizure as an important activity in the investigation of crimes related to the use of computers, systems and computer networks and telecommunication networks, its technical and forensic support. He focused his study on methods of detecting evidentiary information in computers and their systems; recommended that before conducting procedural actions, measures should be taken to prevent damage or destruction of computer information, and to ensure the involvement of a specialist programmer or other specialist in the field of computer technology.

However, the issues of technical and forensic support for the investigation of war crimes are understudied because this category is relatively new for the Ukrainian forensic science. Therefore, the study of the stated problem of technical support for the investigation and the proposal to solve certain issues is relevant in theoretical and practical aspects.

## Materials and Methods

During the preparation of this study, a number of general scientific and special methods were used. *The dialectical method* was employed as a general method of scientific cognition. It allowed considering the issue of technical and forensic support for the investigation of war crimes in dynamics, covering their interrelationship and interdependence, This method was used to investigate the legal nature and specific features of the technical equipment of law enforcement agencies in the conditions of the need to work during active hostilities or in dangerous circumstances, beyond the consequences of the war. Such general scientific methods as *observation, comparison, description, classification* contributed to the definition and systematization of legal categories of technical support of law enforcement agencies in the aspect of combating modern criminal activity in general and the investigation of war crimes in particular.

*Methods of analysis and synthesis* were used to formulate conclusions and generalizations in the context of the subject of under study. *Synergetic method* provided an opportunity to investigate the processes of criminal activity in areas of active military operations and in the de-occupied territory, legal relations in countering war crimes as a certain system, characterized by irregular ties, functional instability, violation of international humanitarian law, especially in their crisis, unstable states. *The dogmatic method* allowed interpreting the terminology of the criminal procedure, criminology, forensic expertise, which contributed to the clarification of the terminology of this study.

Thanks to the application of *the terminological method*, the terms "technical and forensic support", "technical and forensic support for the investigation of war crimes", "technical and forensic means" were investigated. The author's terms "technical and forensic support for the investigation of criminal offences", "technical and forensic support for the investigation of war crimes" were

proposed. To provide a comprehensive scientific approach to the examination of the features of technical and forensic support for the investigation of war crimes in modern conditions, a *system-structural method* was used.

*The axiomatic method* was used to construct statements on the expediency of using certain technical means to solve the tasks of investigating war crimes, obtaining other knowledge in the field of technical and forensic support for combating crime according to the rules of logic. T*he formal-logical method* helped analyse the trends of statutory regulation of the use of genomic information about a person in modern electronic registers, to forecast the trends of the development of Ukrainian legislation in this area. *The comparative legal method* was applied to analyse the use of technical and forensic support for the investigation of numerous objects in different countries, including the use of devices for scanning the upper layer of the soil.

*The typology method* allowed singling out the main groups of technical equipment for the investigation of war crimes based on the commonality of essential features from a considerable number of types of technical and forensic support for pre-trial investigation. *The modelling method was used to develop and put into practice action algorithms for finding burial sites of those who suffered a violent death during hostilities, as well as searching for missing people. The hypothetical method* allowed developing recommendations for the use of search radar equipment based on the study of its tactical characteristics and technical content.

During the preparation of this paper, provisions of the following regulations were used: the Laws of Ukraine "On the Fundamental Principles of Ensuring Cybersecurity of Ukraine"[1], "On State Registration of Human Genomic Information"[2], "On the National Police"[3], Criminal Procedural Code [4]; Orders of the Ministry of Internal Affairs of Ukraine (MIAU) on the Information Portal of the National Police of Ukraine[5] and the system of forensic records of the Expert Service of the MIAU[6], modern scientific sources with the results of research into the use of certain technical and forensic means in the fight against crime, including the investigation of war crimes.

## Results

TFS is a system of certain legal, scientific, organizational, and applied measures for the creation, implementation, and application of technical means for the effective investigation of criminal offences.

TFS is an activity carried out by law enforcement agencies aimed at creating reliable conditions for their constant readiness to use forensic techniques and means when necessary to prevent, investigate, and solve criminal offences (Areshonkov, 2020).

The TFS investigation of war crimes is an organizational and functional integrity that creates conditions for the constant readiness of law enforcement agencies for timely, complete, and comprehensive resolution of technical and forensic issues, and allows the implementation of these conditions for obtaining, accumulating, processing evidentiary information and its application upon investigating war crimes (Stepaniuk, 2022).

TFS, being an organizational and functional system aimed at achieving a dual purpose (creating conditions for readiness and practical implementation of tasks), contains several areas:

– improvement of research activities (scientific support);

– development of proposals for improving criminal procedural legislation, departmental and interdepartmental regulations governing the practice of targeted application of forensic technical means and methods (legal support);

– improvement of the organizational structure of forensic units, forms and methods of their activities, interaction with other subjects of application of technical and forensic tools and methods (organizational support);

– support of the level of technical and forensic training of subjects of TFS application (educational and methodological support);

– modernization and creation of new technical and forensic tools and methods (scientific and technical support);

– improving the level of equipment of subjects using technical and forensic tools and methods and organizing its preventive maintenance (material and technical support) (Teplytskyi, 2021).

Thus, TFS crime investigation is a system of legal, scientific, organizational, and practical measures to create, implement, and apply technical means of pre-trial investigation for timely, comprehensive, and effective implementation of criminal proceedings.

In the conditions of the use of modern forensic technologies during the war, technical and forensic

[1]Law of Ukraine No. 2163-VIII "On the Fundamental Principles of Ensuring Cybersecurity of Ukraine". (2017, October). Retrieved from https://zakon.rada.gov.ua/laws/show/2163-19#Text.
[2]Law of Ukraine No. 2391-IX "On State Registration of Human Genomic Information". (2022, July). Retrieved from https://zakon.rada.gov.ua/laws/show/2391-20#Text.
[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. 4651-VI "Criminal Procedural Code of Ukraine". (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[5]Order of the Ministry of Internal Affairs of Ukraine No. 676 Regulations on the information and telecommunication system "Information Portal of the National Police of Ukraine". (2017, August). Retrieved from https://zakon.rada.gov.ua/laws/show/z1059-17#Text/.
[6]Order of the Ministry of Internal Affairs of Ukraine No. 390 "On the Approval of the Instructions for the organization of the functioning of forensic record of the expert service of the Ministry of Internal Affairs". (2009, September). Retrieved from https://zakon.rada.gov.ua/laws/show/z0963-09#Text.

support for the investigation of criminal offences should be supplemented with elements that reflect its current essence. Namely, as an organizational system for the creation of conditions for the constant readiness of services and units to quickly, timely, and effectively solve technical and forensic tasks in the conditions of martial law, based on systemic types of interaction and the wide use of the complex purpose of technological systems, for coordinated processing of forensically significant data and obtaining it in information systems in a form suitable for the direct activity of law enforcement agencies and coordination of services with various departments, institutions, units, predominantly the Armed Forces of Ukraine (AFU).

The investigation of war crimes entails obtaining, processing, and using information, since the number of information connections and interactions is complicated, and with the growing number of consequences of war crimes, the volume of information increases to a level that exceeds the human ability to process and use them systematically. At the same time, informatization, like any social phenomenon with positive advantages, unfortunately, also has negative consequences, namely the possibility of using computer technologies to commit offences, including crimes (Stratonov *et al*., 2021). With the specifics of efficiency and the need to comply with procedural requirements for solving the tasks of criminal proceedings on war crimes, it includes the effectiveness of methods for improving the quality of law enforcement intelligence and investigative work, the degree of effectiveness of its TFS on machine-free principles of its implementation. Digital technologies play an essential role in shaping the global landscape of criminal proceedings in several jurisdictions. Specifically, forecasting algorithms are now used for decision-making at almost all levels of criminal proceedings (Ugwudike, 2022).

The author of the study believes that the purpose of the TFS investigation of war crimes is a certain "coordination vector" of pre-trial investigation of these criminal offences. The tasks of the corresponding support include facilitating the collection of evidentiary information by authorized subjects, the involvement of specialists with technical knowledge and skills (military science, medicine, forensics, bomb disposal, etc.), practical implementation within the procedural competence of pre-trial investigation.

Pursuant to Part 2 of Article 216 of the Criminal Procedural Code of Ukraine[1], war crimes are investigated by investigators of security agencies. This activity is costly, considering technical means and human resources involved. Therefore, authorized subjects of other law enforcement agencies, namely investigators of the National Police, are involved in the investigation of war crimes (Tataryn, 2022).

Under these conditions, not only a new TFS system for investigating crimes in war conditions is being formed at a fundamentally new level, but also its technology, which in terms of intensifying forensic decisions will be able to provide an offensive level, working proactively and standing an order of magnitude higher than the TFS systems that existed earlier. This will objectively ensure the increased needs of technical equipment for combating war crimes.

For instance, information support is used to assist operational decision-making when a particular crime is detected. Scientists claim that this approach to grouping certain types of crimes within existing criminal offences is an effective potential of investigative bodies, which is successfully used by criminal analysts (Birks *et al*., 2020).

Thus, the main and priority areas of development of the TFS investigation of war crimes in modern conditions includes the solving of relevant offences using automation, computer technology, and modern information and high technologies, based on the creation and provision of the functioning of information identification and search systems for technical and forensic purposes. Such tools include control systems for the police and other law enforcement agencies; mobile applications for smartphones and tablets for recording the consequences of war crimes; unmanned aerial vehicles (UAVs) with functions of aerial photography of the consequences of war crimes (Using achievements…, 2021); OSINT (Open-source intelligence) technologies for searching the Internet based on the appearance of people through automated face recognition programs (Stepaniuk, 2022).

The level of technical and forensic means, capable of full use in the conditions of warfare, is only an intermediate stage of solving modern forensic tasks and cannot provide it to the full extent. As a result, it is necessary to create forensic technologies that ensure the systematic interaction of all hierarchies of the TFS system of various law enforcement agencies in its systematic form, capable of working from local to global level with effective feedback systems and ensuring the use of the obtained data in the direct activities of criminologists, specifically in the "hot pursuit". Such activities will form a new unified forensic space, where forensic technologies will be able to provide a conveyor system for systematic processing of all levels and types of forensically significant information on any facts of war crimes. This will form the modern TFS system as a mega-instrumental technology of criminal procedural relations in the investigation of war crimes.

Evidently, most forensic knowledge can only be implemented using technical means. In the conditions of martial law, the further aggravation of operational and combat circumstances and the complication of types of criminal activity, which requires adequate actions within

[1]Law of Ukraine No. 4651-VI "Criminal Procedural Code of Ukraine". (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.

the limits of TFS, all modern research complexes and systems of instrumental purpose consist of algorithmic, technical, and energy-providing subsystems, which most often perform complex tasks, and their combination into a unified complex forensic system as the basis for the formation of a unified forensic environment. This refers to the information and telecommunications system "Information Portal of the National Police of Ukraine"[1] and the system of forensic records of the expert service of the Ministry of Internal Affairs.[2]

The formalization of the scientific development of forensics lies in the detailing of forensic knowledge, and as an external manifestation of increasing its effectiveness – penetration into increasingly subtle levels of knowledge about the essence of natural systems and the place of humans in them. In a practical aspect, this indicates the use of various objects that are carriers of traces of military actions, increasingly close to intangible traces, for the purpose of proof.

Therefore, the significance of the formation of a highly effective system of TFS investigation of war crimes lies in the development of a holistic comprehensive system of both search and research level based on the created and functioning information and communication bases, the transition of which from level to level would be carried out depending on the nature of the tasks performed and the level of requirements for particular facts both in terms of scope and level of analysis of necessary decisions.

One of the areas of TFS application for the investigation of war crimes is the search for missing people and the identification of concealed burial sites containing victims of war crimes: military personnel, civilians, minors.

In this aspect, the issue of TFS for the search for missing persons in the conditions of martial law is important.

In general, the search for a missing person is a complex activity involving a wide range of multi-level tactical, methodological, and scientific-technical tasks aimed at achieving a common purpose of establishing the location of a person (Nykyforchuk & Chemerys, 2018). Photographs, video recordings, screenshots of messengers, description of appearance (distinctive features, accompanying and functional signs), handprints, samples of handwriting, blood, hair, and other objects act as traces and their carriers.

In terms of the search for missing people and the identification of corpses in wartime, the problem of expanding the complex of human identification features using dental status, DNA code, and other features is quite promising. The role of police officers and forensic experts is essential in this aspect.

Specifically, the police form their own information resources. Pursuant to Article 26 of the Law of Ukraine "On the National Police"[3], the information and communication system of the police is filled with up-to-date registers, databases, which constitute a holistic information system of the MIAU, including the search for missing people. When filling the registers and databases (banks) of data specified in Clause 7, Part 1 of Article 26 of the Law of Ukraine "On the National Police"[4], police officers collect and accumulate multimedia information (photo documents, video and sound recordings), biometric data (digitized images of a person's face, fingerprints, scanned fingerprint cards). Work with biometric data is carried out based on the law and according to the procedure established by the MIAU.

Currently, Ukraine has adopted the Law "On State Registration of Human Genomic Information"[5], which will come into force on February 6, 2023. According to the specified law, an Electronic Register of Human Genomic Information is introduced, the holder of which is the MIAU. Mandatory and voluntary state registration of genomic information is provided. The categories of mandatory registration are as follows:

– individuals suspected of committing grave or especially grave crimes against the national security of Ukraine, life and health, freedom, honour and dignity, sexual freedom and inviolability of the person, property, public security, drug trafficking, crimes against peace, human security and international law and order, or in respect of whom criminal proceedings of the above-mentioned types of crimes have been sent to court;

– unidentified corpses, their remains, body parts, upon the facts of which criminal proceedings have been initiated, and the corresponding data are contained in the Unified Register of Pre-Trial Investigations;

– identified individuals, whose samples were compared with samples of individuals who disappeared, on the facts of whose disappearance criminal proceedings were initiated, and the relevant data are contained in the Unified Register of Pre-Trial Investigations.

At the initial stage of the search, the testimony of relatives, acquaintances, and colleagues of the missing individual is important. They can not only specify the circumstances of the disappearance (time, place, plausible causes, etc.), but also provide assistance in detailing the circumstances of the disappearance.

[1]Order of the Ministry of Internal Affairs of Ukraine No. 676 Regulations on the information and telecommunication system "Information Portal of the National Police of Ukraine". (2017, August). Retrieved from https://zakon.rada.gov.ua/laws/show/z1059-17#Text/.
[2]Order of the Ministry of Internal Affairs of Ukraine No. 390 "On the Approval of the Instructions for the Organization of the Functioning of Forensic Record of the Expert Service of the Ministry of Internal Affairs". (2009, September). Retrieved from https://zakon.rada.gov.ua/laws/show/z0963-09#Text.
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[4]Ibidem, 2015.
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As the analysis of the investigative practice of investigating war crimes committed in Ukraine shows, the places where corpses are hidden are, as a rule, forest areas, landfills, wastelands, cesspools, wells, tunnels of water pipes and cable networks. Proceeding from the assumed place of hiding the corpses, various technical means are used (entrenching tool): shovels (for excavation), dredges and trawls (for surveying reservoirs), rakes (for surveying the area covered with brush and leaves). Drills and probes are used to detect objects buried in the ground. Therewith, signs of digging and loosening should be considered: modified soil, withered vegetation, holes in the soil, etc. (Stepaniuk, 2022).

For forensic specialists involved in the examination of corpses (which are often infectious, decomposed, with the presence of pediculosis, etc.), a set of personal protective equipment has been developed – special clothing such as solid overalls (Participation of a forensic specialist…, 2018).

In search activities, it is sometimes very time-consuming to search for the corpses of both killed servicemen of the Armed Forces of Ukraine and the civilian population buried by the russian invaders (Klymenko, 2022). To identify corpses in the ground and their parts, there is an exhaustive list of search equipment. Specifically, for this purpose, a corpse detector – the chemical agent monitor "Poshuk-1" is used. However, the capabilities of this device are limited, since it cannot be used for examining frozen soil (in winter, corpses freeze and decay does not occur), the probe of the device cannot be immersed below the level of groundwater and in marshy soil (Webportal of the National…, 2021).

The special electroprobe "IBM-1" has greater efficiency, the principle of operation of which is based on recording and measuring the electrical conductivity of the soil in separate places (if there is a buried corpse – the electrical conductivity of the soil increases considerably). This property means that during the decomposition and separation of the protein substances of the corpse, gaseous and liquid substances enter the soil, and this increases the electrical conductivity of the ground in the corresponding place, the strength of the current, which is recorded by a microammeter, increases (Webportal of the National…, 2021).

Together with the specified devices, the gas alarm "DZHYN-HAZ" and the chemical agent monitor "PGI-1" (field) can be used (Webportal of the National…, 2021).

If available on the territory, if necessary, law enforcement officers use a trawl to search small bodies of water. It facilitates the detection of a corpse or its parts in the water, with its help, the corpse's clothes, shoes, weapons, and other items are pulled out (Webportal of the National…, 2021).

At the current stage, the efforts of criminologists are aimed at improving devices for detecting corpses that are not connected with the need for mechanical penetration into the soil (Use of achievements..., 2021).

The author believes that the use of subsurface sounding radar devices (geographic radars) is promising in the search for missing persons and the identification of corpses of people killed during the war. Their work is based on the use of classical radar principles. The transmitting antenna of the device emits ultrashort electromagnetic pulses.

The most well-known radar devices are as follows: Airborne radar; Surface-Penetrating radar; Pulse radar (radar that emits a repeated series of scanning pulses); High-resolution radar (radar with the ability to detect objects in the distance range from a meter to several centimetres); Pulse compression radar (uses a long pulse with internal modulation); Surveillance radar (radar that detects the presence of a target and determines its location by range and angle); Tracking radar (provides tracking of the target's trajectory); Imaging radar (creates a two-dimensional image of a target or part of the earth's surface and what is on it); Weapon control radar (usually used in the air defence system); Target recognition (effective remote sensing device); Multifunction radar (designed to perform several functions of scanning, searching, and detecting objects) (Borrion, Amiri & Delpech, 2019).

In Ukraine, ground-penetrating radars of the "OKO" series are used. The devices are a new series of high-speed, high-performance ground-penetrating radars that allow sounding three times faster while increasing the quality of the radarogram. When working with the "OKO" series ground-penetrating radar, operators can use tablets, smartphones, netbooks, and other portable computer equipment, perform high-precision coordinate reference, and use new software options ("OKO-3" ground-penetrating…, 2022). These ground-penetrating radars provide sensing of different environments, soils, and waters at different depths.

As the analysis of the practices of France, the Netherlands, Great Britain (Stepaniuk, 2022) showed, the use of ground-penetrating radars with optical and hyperspectral cameras allows remote detection of various objects, namely those located in dangerous or hard-to-reach places. Ground-penetrating radars can operate in different environments – space, atmospheric air, sea, land, underground, and under different weather conditions (darkness, haze, fog, rain, or snow) (Borrion, Amiri & Delpech, 2019).

Flexible technical video endoscopes are used for inspection and visual inspection of closed, light-insulated rooms or those with small openings, hard-to-reach areas. They are equipped with video equipment for recording and monitoring in real time. The advantage of these devices is that they can work in a hostile environment (Webportal of the National…, 2021).

If the place of burial of corpses is under brick structures or concrete floors, then special devices with a built-in digital image processing system can be used to detect voids under them (Webportal of the National…, 2021).

Considering forensic recommendations, after the discovery of the corpse or its remains, it is necessary to establish the identity of the deceased. For this, a forensic medical examination establishes the statute of limitations and cause of death, the method of murder, examines the traces of the crime on the body of the deceased, their clothes, objects, and identifies the corpse. The use of dactyloscopic kits (for obtaining fingerprints and their subsequent verification against the records of the Expert Service of the MIAU and the National Police of Ukraine), kits for the selection of DNA material helps establish the identity of an unknown corpse. (Participation of a forensic specialist..., 2018).

Plastic models (masks and casts) are used to effectively extract three-dimensional traces and record signs of the appearance of unidentified corpses. The most common means of this group are impression materials for working with volumetric traces: gypsum, polymer and silicone pastes – paste "K", U1, U-4, SKTN, KLSF-305, KLT-30, "Sielast" (Participation of a forensic specialist..., 2018).

In the aspect of the TFS investigation of war crimes, it should be noted about the computer equipment and software used during the portrait examination. Specifically, if the soft tissues of the face show signs of destruction, then when examining photographs of such unidentified corpses, the expert is additionally sent X-rays of the skull or the skull itself. In this case, a comprehensive portrait and medical-forensic examination is carried out (Forensic examinations..., 2019).

## Discussion

In the modern conditions of the full-scale military invasion of the russian army in Ukraine, the de-occupation of certain territories of Ukraine and the need to document the actions committed by the russian military personnel, it is extremely necessary to analyse the technical and forensic support for the investigation of war crimes, to formulate recommendations for its use and improvement, and to develop promising areas for the development of technical equipment of law enforcement agencies.

Ukrainian researchers have developed a certain set of recommendations on TFS for countering crime, which can be used in the investigation of war crimes. The vast majority of scientific results (Kovalova 2022; Nikulin 2020; Shorokhova 2019) relate to the information component of the TFS investigation. According to the results of the present study, it is advisable to use this improvement in preventing information and psychological attacks both within cyberspace and at the level of social networks and "fake news". It is recommended to use it to protect objects of critical information infrastructure of Ukraine from cyberattacks, as well as to preserve information with restricted access, including those data that constitute state secrets.

The current provisions on TFS for the investigation of terrorist acts, criminal explosions, and the investigation of the illegal use of explosive materials (Kurman & Bodnaruk, 2020; Koval & Koval, 2021; Farion-Melnyk, Melnyk & Vasylevskyi, 2022) are already used during the demining of de-occupied territories of Ukraine, work on the detection, extraction, research of evidence of the use of missile and artillery weapons primarily against the civilian population of Ukraine, the destruction of residential and non-residential stock, enterprises, institutions, organizations, and energy system facilities.

At the same time, the technical means used to detect hidden "criminal" corpses or to scan the upper layer of the earth's surface, combing water bodies, should be used to identify the burial sites with corpses of those killed as a result of murders committed by russian servicemen, to search for missing people, and to establish their identities. The authors of this study found that among the relevant technical equipment, the most effective results are obtained by using radars.

As the analysis of the capabilities of some radars, such as Airborne, Pulse, High-resolution, Tracking, Imaging, Weapon control, Multifunction, etc. showed, the Ukrainian GPR of the "OKO" series have certain advantages that allow them to be used in the search for missing people and detection of corpses of people killed during the full-scale military invasion of russian troops on the territory of Ukraine. Specifically, the "OKO-3" GPR is characterized by scanning an increased number of points by depth – up to 2048 and more; improved radargram quality; increased scanning speed – up to 350-400 scans/sec (at 512 points); high-speed two-channel control unit (total probing speed 700-800 traces/sec.); built-in Wi-Fi in the control unit for connecting to a laptop or other control device; more precise positioning by enabling GPS connection to the control unit; "intelligent" displacement sensor – the sensor parameters are recorded in its "independent" memory and are automatically set when turned on; an updated version of the "Geoscan 32" software for the Android operating system for the use with protected tablets and smartphones.

## Conclusions

Thus, TFS for the investigation of war crimes is an organizational system of equipping law enforcement and other bodies, aimed at creating conditions for the constant readiness of services and units to quickly, timely, and effectively solve technical and forensic tasks under martial law, based on systemic types of interaction and wide use of the complex purpose of technological systems, for coordinated processing of forensically significant data and obtaining it in information systems in a form suitable for the direct activity of law enforcement agencies and coordination of services with various departments, institutions, units, including the Armed Forces of Ukraine.

The purpose of TFS for the investigation of war crimes is determined by the modern tasks of law enforcement agencies regarding their activities in de-occupied

territories and places where war crimes are committed. Such purpose determines the relevant level of technical equipment and corresponding training of employees.

TFS of the following groups are used to search for missing people and identify corpses of people who died during the war: technical devices, including an entrenching tool; special security of professional activities of specialists involved in investigative procedures; special search devices and equipment.

The prospects for the development of TFS are its formalization and transformation of scientific methods into technologies of forensic systems, as a fact of bringing the provision of the system in line with the level of information interactions of the parties involved in criminal proceedings.

Promising areas of the TFS development for the investigation of war crimes are the active introduction and use of aerial photography (UAVs with software for documenting war crimes sites); 3D scanning of the situation at the site of war crimes; technologies for detecting and identifying biological traces, including in field conditions; identification and search systems for establishing military personnel of the aggressor country regarding their commission of war crimes.

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# Техніко-криміналістичне забезпечення розслідування воєнних злочинів: поняття, мета, окремі напрями розвитку

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**Анотація**
Актуальність статті обумовлена необхідністю дослідження техніко-криміналістичного забезпечення розслідування воєнних злочинів, які масово вчиняються в умовах повномасштабного військового вторгнення росії на територію України. Мета статті полягає у визначенні поняття техніко-криміналістичного забезпечення розслідування воєнних злочинів, його мети і складових; розгляді технічного оснащення розшуку безвісно зниклих під час війни осіб, виявлення прихованих трупів осіб, загиблих під час війни, встановлення їхньої особи. У статті використано комплекс наукових методів: термінологічний, системно-структурний, формально-логічний, порівняльно-правовий. Проаналізовано зміст понять «техніко-криміналістичне забезпечення», «техніко-криміналістичний засіб», запропоновано визначення техніко-криміналістичного забезпечення воєнних злочинів. Досліджено складові техніко-криміналістичного забезпечення: наукове, правове, організаційне, навчально-методичне, науково-технічне, матеріально-технічне забезпечення. Акцентовано на особливостях техніко-криміналістичного забезпечення розслідування воєнних злочинів: постійна готовність уповноважених суб'єктів до застосування технічних засобів і методів; комплексне використання технологічних систем; залучення низки інформаційних ресурсів; координація роботи з технічного оснащення правоохоронних органів із забезпеченням інших відомств, зокрема Збройних сил України. Акцентовано на можливості використання техніко-криміналістичного забезпечення розслідування воєнних злочинів слідчими органів безпеки спільно зі слідчими Національної поліції. Доведено, що до техніко-криміналістичного забезпечення розслідування злочинів належить система правових, наукових, організаційних заходів, спрямованих на ефективне застосування технічних засобів і відповідних їм методів з метою розслідування кримінальних правопорушень. Перспективними напрямами розвитку техніко-криміналістичного забезпечення розслідування воєнних злочинів є: застосування дронової фіксації (аерофотографії); використання наземного 3D-сканування; запровадження систем виявлення та візуалізації біологічних слідів учасників воєнних злочинів та їхніх жертв; розроблення ідентифікаційно-пошукових систем встановлення осіб, причетних до вчинення воєнних злочинів на території України

**Ключові слова:**
технічні засоби; військове вторгнення; розшук осіб; ідентифікація трупів; георадар

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# Regulatory consolidation of coercion as a prerogative of the rule of law: A literary review

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**Abstract**
The right to coercion and the possibility of its application is an integral attribute of the state, its bodies, i.e., it is possible to discuss the state's monopoly on coercion. Regardless of whether the requirements of legal norms are fulfilled voluntarily, coercion stays an integral part of their implementation. Legal coercion is inextricably linked to the rule of law and human rights. This connection is especially felt in the countries of Central and Eastern Europe, which have recently been freed from totalitarianism, the dictatorship of ideological norms, dominance, and the spread of coercion. The purpose of this study, the results of which are presented in this paper, is to reveal the essence of legal coercion at the theoretical level, analyse and generalize the scientific opinions of scientists who have already expressed themselves on this matter. The study uses a natural law approach and several methods aimed at a systematic and meaningful analysis of the problems of state coercion, the key of which are logical, dialectical, historical, and integrative methods. As a result of this study, it was established that the legal coercion applied by the state should make provision for proportional measures and sanctions in such a way as, on the one hand, to create the necessary inhibitory factors in the minds of those who try to break the law. On the other hand, it is coercion that should increase the sense of security in others, instilling in them the belief that the law, the state protects them and that there is no point in resorting to non-state, unofficial means to take the law into their own hands. The scientific significance of this study lies in the fact that it is one of the first studies covering the issue of legal coercion in the context of its use by the state to exercise its power in modern political and legal realities. In a practical sense, the results of this study may be important for improving legal regulation with an emphasis on coercion, specifically when adopting criminal law norms

**Keywords:**
state; rule of law; law; normativity; morality; jusnatruralism; restraint by force

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## Introduction

The study of the problem of coercion at the philosophical and theoretical legal level is relevant today because with the growing number of regulations, it becomes necessary to differentiate them into those ensured by coercion, and those that focus on certain behaviour.

Scientists of young democracies do not pay enough attention to the problems of statutory regulation of coercion. Given that legal coercion is inextricably linked to the rule of law and human rights, this connection is especially felt in the countries of Central and Eastern Europe, specifically, in the Republic of Moldova, which have recently been freed from totalitarianism, the dictatorship of ideological norms, and which were characterized by the lack of protection of human rights and the absolute dominance and spread of coercion. Therefore, it is possible that studies of the rule of law and human rights are more relevant in these countries than in European countries of sustainable democracies in a theoretical and practical sense.

However, recently, some researchers, mainly Western European and American, have begun to pay more attention to the problems of statutory regulation of coercion, namely in the context of the rule of law. Among such studies, one should mention those covering the relationship between law and coercion (Miotto, 2021), the conceptualization of coercion as a necessary feature of the legal system (Woodbury-Smith, 2021), (Himma, 2020), the use of coercion in the context of the transnational rule of law (Rabanos, 2022). In addition, the conceptual basis for the analysis of the issues in the application of coercion in modern political and legal realities included the publications analysing the concept of coercion (Hart, Raz & Bulloch, 2012) and the tendencies of the law to become coercive (Galligan, 2006), the analysis of coercion in the interpretive concepts of the rule of law (Kyritsis, 2016). The selected studies also cover the doctrinal definition of the concept of coercion in the conditions of neoliberal society (Anderson, 2008), consider the role of coercion in international and national law (Raponi, 2016) and its application in the context of morality (Lyons, 2010), the role of coercion in legal norms (Ekow, 2008) and the question of the legal content and coordination of decentralized collective punishments (Gillian, Hadfield & Weingast, 2013).

But in general, questions concerning the relationship between coercion and law are still out of the proper attention of lawyers. The reason, according to some theorists, is that coercion tends to provide a superficial understanding of the nature of law. It is not enough to define law only as an opportunity to ensure the implementation of a regulation. Classical models of legal science, especially those proposed by J. Austin (2009) & J. Bentham (2000), developed this "rough", "clumsy" understanding of law.

According to Austin (2009) & Bentham (2000), laws are considered as regulatory requirements, the implementation of which is guaranteed by the threat of the use of force mechanisms. Such a simplified approach, according to G. Lamond (2000), does not consider the normative and authoritarian nature of how law is usually perceived. In reality, the form of power is combined with the social phenomenon that it represents.

Thus, the American researcher G. Oberdick (1976) claims that the fixation on the restraining nature of the law excessively emphasizes its restrictiveness and conceals the constructive role that the law plays in the life of society.

H. Hart *et al*. (2012) challenge the classical model of legal science, arguing that coercion itself cannot distinguish the law from the threat of force.

It appears that in the opinion of the general public, the claim that the law is inherently coercive is contradictory. Thus, legal philosophers mainly separate the concept of coercion from the concept of law through a more profound perception of the latter. For instance, H. Hart (1958) notes that law should be considered as a normative system.

The law does not just recognize punishment as a certain tax that must be paid because one cannot buy the right to murder in exchange for agreeing to spend several dozen years in prison. Upon prohibiting murder, the law stipulates that it must not be committed. H. Hart notes that violations of this rule are considered grounds not only for punishment, but also for a sense of criticism, guilt, and moral condemnation. Given that law is normative, legal norms should not be considered as an immoral order.

It can also be argued that law is a system of rules that has practical significance. In theory, the state should establish rules that determine how to act. This means that legal prohibitions cannot be identified, e.g., with a simple desire to obey the law or with one's own interests. The law does not make provision for reasoning such as mundane justifications for wrongdoings: "even though this is illegal, however..." Instead, the law clearly provides that all the circumstances were analysed, and an authoritative, legitimate decision was made. Such position is called the "legal position" (Raz, 1979).

The legal position is clear: when a person is told what they should or should not do, there are no alternatives besides those prescribed by law. Even when the law allows actions that are clearly violations, such situations are governed by law. Moreover, the law makes provision for the possibility to establish solid grounds in an unlimited range of situations, i.e., this refers to the global nature of law.

These characteristics, the authority and normativity of law, are absent in the classical model of law, which was considered by J. Austin (2009) & J. Bentham (2000). However, when abandoning the classical model, coercion is usually considered as a secondary factor in relation to law.

In connection with the above, it is possible to single out *the purpose of this study*, which lies in revealing the essence of legal coercion in the described sources, its influence on legal relations, the development of this concept in the context of further prospects for legal regulation of relations in society.

## Coercion as an Inalienable Feature of Law

One can agree with Professor Gh. Costachi (2013), according to whom "... the doctrine almost unanimously supports the idea that the coercion used by the state should be legitimate. However, it is important that this depend, foremost, on the legitimacy of the state power itself, which means recognition and confirmation of its legality. In general, the legitimacy of state power is expressed in terms of the correctness, legality, and conformity of power in relation to the expectations of individuals, social groups, and society as a whole".

The simplest known legal model proposed by Austin and Bentham involves largely the identification of coercion and law. The model developed by these scientists attempted to distinguish law from other systems (Austin, 2009; Bentham, 2000). According to Austin, law can be seen as a group of stable orders or imperatives backed up by the threat of punishment. Since someone is punished for violating an order, they must obey that order. Thus, the stricter the sanction, the stronger the duty. In this model, the concepts of sanction, order, and duty are inseparable. Therewith, the sanction not only ensures the effectiveness of the order, but rather imposes a duty. That is, "the greater the possible evil and the greater the chance of causing it, the greater the effectiveness of the order should be and the heavier the force of duty, ... the more likely it is that the order will be executed, and the duty will not be violated" (Austin, 2009).

By defining laws as orders along with the threat of sanctions, Austin's model excludes other normative systems. Specifically, Austin distinguishes between customary laws and laws that are correctly considered "lawful". Violation of customary law can lead to social sanctions, but at the same time, these norms cannot be considered a law, since state authorities do not ensure sanctions. The scholar notes that the use of the term "imperfect law" equates perfect laws with unofficial norms, which leads to the emergence of unofficial duties – whether religious or moral: "Imperfect laws", Austin notes, "are imperfect laws in the understanding of Roman jurists: that is, laws that reflect the wishes of the political leadership without securing them with sanctions. Many researchers who have written about morality and the so-called law of nature have given the term "imperfect" a different meaning (Finnis, 2006). When it comes to imperfect duties, it usually refers to duties that are not related to a law: duties imposed by God's Commandments, or duties imposed by positive morality, rather than duties imposed by positive law. Imperfect duty, in the understanding of Roman jurists, is equivalent to a lack of duty" (Austin, 2009).

By its origin, a custom is a rule of conduct that is observed spontaneously or not observed pursuant to the law established by the political leadership. Custom becomes a positive law when it is adopted as such by a court, and court decisions made on its basis are executed by the state authorities. But before a decision is made by the courts and ensured by legal sanction, it will only be a rule of positive morality: a rule that is usually followed to ensure obedience and regulate the behaviour of a group, citizens. It can be argued that the only strength of such a decision comes from the general disapproval of those who violate it.

Thus, to ensure obedience and regulate the behaviour of a certain group of people, social sanctions may be strong enough, but they only accompany social norms similar to a law. Following this thesis, J. Tolkien Bentham (2000) argues that a legal mandate cannot be acceptable if it does not unite its subjects through coercion, i.e., a law that does not force anyone is controversial.

Austin does not distinguish between a social sanction and a legal sanction based on the strength and impact of a social sanction on a person or the severity of a legal sanction. The difference, rather, depends on the source of the sanction. Any sanction applied to an individual as a result of a violation of a customary or social norm is not the result of an order from a political leader (Austin, 2009).

Bentham (2000) emphasizes that regardless of whether the burden imposed by a law is cumbersome or not, it is still imposed coercively. The researcher states that only to the extent that the law is compulsory, it can influence the practical considerations of citizens and thus bring benefits. It is coercion that makes laws effective in the end. J. Bentham, like J. Austin (2009), perceives the compulsion of law not only as a conditional function necessary to guarantee the effectiveness of law. But Bentham (2000) understands the effectiveness that coercion imposes in a more profound sense: efficiency transforms an order into a law, which in turn imposes duties and grants lawful rights. In other words, coercion, which obliges subjects of law, is just as important for the formation of a legal mandate as the very purpose of law-making. Both are fundamentally necessary to conceptualize a legal norm.

Thus, the classical model of law developed by J. Austin (2009) & J. Bentham (2000), clearly connects legal norms with coercion. Legal norms are essentially orders backed by the threat of force. That is why modern legal scholars reject the classical simplified explanation of coercion in legal norms. In itself, the ability to force someone cannot constitute the law. Coercion can only be interpreted as a form of exercising power over someone. The classical model of law only demonstrates the exercise of social power over others, without describing it as a law. Power in this context is a broader concept than coercion (Russell, 2004).

Evidently, power is a complex concept, and the law can use its power in various ways. Accordingly, coercion is only a form of social power (Lamond, 2000). Power is exercised through social status, wealth, physical strength, or personal charisma (Friedman, 1973).

Admittedly, law, despite the presented purely reductive image, often exercises its power, being normatively assimilated by its subjects. There are at least three important differences between brute force and the regulatory sanction that constitutes the essence of law (Wolff, 1998):

1. Firstly, having strict power over someone is not the same as having normative power over that person.

2. Secondly, the government should not claim to command its subjects. A robber should not feel that they have a legal right to command their victim. They certainly do not believe that the person they are robbing is obliged to listen to them.

3. Thirdly, coercion itself should not be part of a guiding or regulatory action, and therefore should not be a sanction. Thus, brute force can be used as a sanction: a robber can beat someone for not following their order to give them money. Admittedly, a robber could have beaten someone up for no good reason. Thus, the objection against a reductive picture of the connection between coercion and law is correct. Simply being able to get others to act in a certain way may not be enough to make something lawful. This ability does not claim to establish stable or systematic rules, enforce those rules, or grant authority (Wolff, 2021).

However, when exposing the shortcomings of the classical model of law, researchers often tend to believe that coercion is only conditionally related to law – a human necessity that does not determine its internal nature. Although the opinions of J. Austin (2009) & J. Bentham (2000) require reinterpretation in the present context, it is a mistake to consider coercion only conditionally related to law. Rather, there is a need to first investigate the missing characteristics necessary to fully describe legal norms to determine the role of coercion in it. The classic model outlined by J. Austin (2009) & J. Bentham (2000) can be completed without losing sight of the characterization of coercion as an integral part of law. To complete the classical model, it is important to understand that law is a normative system and that it asserts practical authority. Both of these aspects are themselves broad topics that have been analysed in detail in numerous papers (Kelsen, 2000).

At first glance, the reasoning of J. Austin (2009) & J. Bentham (2000) may raise more questions than answers. However, even a superficial approach can highlight the differences needed to define a viable concept of law and provide a platform for exploring the unique role of coercion.

Law is obviously a normative system. Like all normative systems, it seeks to guide human activity by establishing how people "must" act. Evidently, not all laws are first-order norms. Many laws, for instance, set a deadline for paying income tax, change other legal rules, or create permissive rules under which someone can take on legal responsibilities. But in general, law cannot be understood without recognizing that it is a system of rules. When a law arises, it claims to govern human behaviour (Lamond, 2000)

It is usually established that people "must" act according to the system or set of rules. This "must" is intended to describe possible actions objectively, regardless of the individual's subjective will. There are religious, moral, and personal norms. For instance, each family has a set of rules used to control the behaviour of its members. Some norms may emerge instantly. In other cases, the norm may emerge slowly, specifically in relation to customs, or as a result of philosophical or theological disputes, as in the case of moral and religious norms (Hart, 1958).

Perhaps H. Hart (1958) recognized the objective (normative) nature of "must" in the legal system, distinguishing "being obliged" and "having obligations". From Hart's standpoint, being obligated means being forced to do something. Obligations, however, exist regardless of whether a person avoids exposure, is subject to sanctions, or feels or believes that they have obligations. Arguing that someone has an obligation based on a valid and valuable regulatory system is often important to correct a lack of conviction or belief in their duty.

The normative image of law helps distinguish the role of norms from the mere presence of orders supported by force. As H. Kelsen (2000) notes, the actual norm creates an objective "must". The will of another, armed individual, for instance, creates only a subjective "must".

R. Dworkin (2019) describes this situation as follows: "We make an important distinction between the law and the general orders of a bandit. We believe that the structures of the law – and its sanctions – differ in that they are binding, unlike the orders of a bandit. Austin's theory does not make provision for such a distinction, since it defines duty as submission to the threat of the use of force, and thus the authority of the law is entirely based on the sovereign's ability and desire to punish those who do not obey [...] but a rule differs from an order precisely in that it is normative and sets a standard of conduct that affects its subject beyond the threat it poses. A rule can never be binding just because a person with physical strength wants it."

The law, on the other hand, sets rules that govern behaviour. These norms exist regardless of the concomitant threat of use of force. Thus, the law, like all regulatory systems, establishes a "must" that guides human behaviour and criticizes non-compliance. These rules set obligations and duties apart from the force or fear of being exposed.

Law is not only normative, but also a special type of regulatory system since it claims to be authoritative. The law does not hold a system of normative rules with

the ability to do whatever one wants. There is no clear definition of power. One person has power over another when their instructions prevent the other from determining other grounds for action. T. Hobbes (2016) examines this type of power in his discussion of orders. It defines an authoritative order as such, when a person does or does not do something without regard to any reason other than the will of the one who orders. J. Raz offers his own original explanation of practical power. In the words of this philosopher, "practical authority is one that can prevent or restrict consideration of other grounds for action" (Dworkin, 2019).

Raz's concept of authority can be objected to for several reasons. It appears that the law cannot claim power. Furthermore, a moral figure cannot submit to someone's authority (Dworkin, 2019). Other questions also aris e regarding the law's claim to authority. Many of the foundational legal documents in the modern world – such as the United States Constitution[1] – contain provisions that limit the scope of laws that can be passed.

The private concept of law alone makes the entire set of liberal Western legal systems impossible. In this context of ideas, Hart notes that limiting the authority of the law simply reflects the social practice of limiting the scope of grounds that the legal system can exclude. H. Kelsen (2000) complements the opinion of Hart (1958), noting that the law regulates one's own creation. Thus, while its powers may be limited, these restrictions are created by the law itself.

The difficulty of distinguishing law from other systems also means that it is not just a matter of linguistic intuition. This indicates a built-in claim about the conceptual necessity of coercion. Considering the recognized and individual concept of the law, restrictions form an integral part of the law, not just a necessity for enforcement.

The concept of coercion as conceptually necessary in law is not just a defining purpose. These examples show that the obligatoriness of coercion is one of the critical features of the regulatory system to claim legal status. Therewith, one can distinguish two points of view on this issue. Firstly, even if society voluntarily obeys many regulatory systems, which sometimes impose duties greater than those imposed by law, only a system of compulsory duties constitutes a legal system (Woodbury-Smith, 2021; Galligan, 2006).

Secondly, while people often respect the law for assorted reasons, the principal limitation of the legal system itself hinders certain areas of action. Even when the law is never violated and a much richer system of rules (such as religious ones) is constantly observed, the minimum level of enforceable rules is the only one that is characterized as law. The position of J. Raz (1979) may cause some objections within the analysis of his positivist model of law, according to which a norm can be qualified as legal because it originates from a certain social source.

A norm is a law if it is recognized as a social source defined by authoritative norms. This opinion does not change the argument that the law must be and is determined by its coercive force. Rather, the thesis about such a source simply pushes the question of the source of coercion a step back. Imagine a society with three different leaders, each claiming to be the true social source of law. Leader A leads a group of self-styled individuals occupying a large stone building, from which he enacts what he claims is legal law. Leader B manages a large group of people in a way similar to a religious structure. Leader C is appointed based on the ancient traditions of society to interpret its customs. Notably, all three normative systems are identical and fully consistent (Hart, 1958). And now imagine a situation when each of the specified normative systems takes a different stance on a socially prominent issue.

Leaders B and C appeal to the spiritual beliefs and traditions of the population, demanding compliance with the proclaimed decrees. Leader A summons an armed battalion to carry out his orders. Note that focusing on the relevant social source leads to the same conclusion: a social source that can coerce its dictates is conceptually consistent with a stable notion of law.

J. Raz (1979) believes that the claim that coercion is unique to law is exaggerated. This is partly true because some systems claim power and use coercion to force members to comply with its rules (e.g., the mafia). The mafia (criminal structures), with its own specific system of rules, seeks to compete with the legal system. If such a group of people retreat into the desert, adopt their own rules and ensure their implementation, one can probably contemplate creating a new legal system. For instance, upon arriving at the shores of America, the settlers ignored the laws of the local tribes. The settlers proclaimed their authoritarian rules, supported by their own military power. Perhaps it is inappropriate to characterize settlers as people who are simply operating illegally on Native American land. It can be stated that they have built a competing legal system.

Recognizing that coercion is a conceptual feature of law provides the necessary solution for individualizing the normative systems naturally described as law. The role of coercion in an authoritarian regulatory system illustrates the danger posed by criminal structures within the state when they seek to be competing legal systems. This discovery accordingly raises the question of how social norms that are considered authoritarian norms should be treated. A. Marmor (2014) notes that there are many social groups with accompanying norms to which a person belongs without explicit consent or voluntary participation.

There are even "complex rules" that define the "appropriate" or "correct" style of clothing for certain occasions, and people who deviate from them are harshly

[1]Constituția SUA, No. 1. (2021, May). Retrieved from https://constitutii.files.wordpress.com/2013/02/constitutia-s-u-a.pdf.

criticized. The fact that a person finds exclusion from their religious or social group so psychologically terrifying that they feel compelled to follow the group's rules does not make those rules coercive (and coupled with law-like normativity and authority). This is a complex issue where it is difficult to agree, specifically with Austin, that social sanctions cannot be considered the law because they do not come from political leadership (Marmor, 2014; Austin, 2009).

However, in contrast to A. Marmor (2014), understanding that law is not only forced, but also coercive, reveals the difference between law and strong social norms. The previous answer is contained in the ideas put forward by Aristotle regarding coercion and independent external motives. Recall Aristotle's view on the definition of coercion. Thus, the desire to be included in a social network is a desire that comes from within. In contrast, the coercive force exerted by the law is external and can be imposed on a person regardless of their attitude towards the law (Aristotle, 2011).

This approach can be considered too simplistic. Perhaps, constitutionally, people are not exactly beings who can turn their back on their social needs. It is difficult, if not impossible, to give up all socially important restrictions; a person, as a social being, cannot function effectively outside of the ethos. Thus, the proposed model may lead to the belief that at some point a socially imposed restriction will become, to some extent, a law. If a violation of an authoritarian norm on a desert island leads to social exile (which means certain death in this context), the norm can constitute the law, no matter how it is described or named. Furthermore, it may mean that the proposed model is incomplete because it was argued that coercion, along with normativity and authority, is necessary only to distinguish between law. This example may indicate why these features are probably not sufficient to describe the law (Marmor, 2014; Miotto, 2021).

The study of G. Lamond (2000) on the role of coercion in law correlates with the picture of law, which is considered in this paper. Lamond notes that law is a system of rules. Moreover, the scientist claims that the law claims the power to regulate a person's practical reasoning except for other norms and does so in the full range of actions, i.e., the law is normative and authoritative in everything. Furthermore, Lamond argues that the mere existence of sanctions does not make the law enforceable, and the conceptual role of coercion is not limited to the pragmatic question of its effectiveness.

However, G. Lamond (2000) denies that coercion is a fundamental component of law that separates law from other global normative systems. Instead, he sees coercion as defined by the status of the law as a practical authority. The law secures the right to subordinate a person's practical considerations and change their normative position. Thus, according to G. Lamond, the claim to authority is a justifying reference to the coercive force of the law. Although Lamond believes that the law can be described as compulsory simply because it requires this right, the reality is otherwise. He argues that the coercive force of the law depends on whether the threat is real or not. In the end, Lamond concludes that the unique feature of the law is that it declares this power on an indefinite range of grounds, it is an authoritative, comprehensive, and normative structure.

The justifying, rather than constitutive, concept of law from G. Lamond's standpoint (2000) leads to a more relaxed role of restriction. For instance, Lamond suggests that the law may authorize coercion by other social institutions, rejecting the idea that coercion is simply pragmatically necessary in the law. He points out that other social norms may impose sanctions on legal violations (ostracism, shame, etc.) that independently reinforce legal norms.

It is difficult to agree with Lamond's (2000) claim that the law can allow other coercive measures, such as private violence, to enforce legal norms without internalizing this force. If a violation of a legal norm leads to the permitted use of force by an organized crowd, this group will essentially turn into a police structure, no matter how unrealistic or strange it may appear. Similarly, if the legal system allows but does not require the use of coercive force to protect a lawful right, the optional nature of that right does not negate the principal coercion. In general, G. Lamond's thesis seems convincing, except for his attempt to deny that the law is inherently coercive. The conclusion that coercion is related to the law simply because the law uses its authority to justify coercion is insufficient. Not all global legal systems claim the right to forcibly impose their authoritarian demands. For instance, many religious norms are considered valuable precisely because a person should be willing to adopt a certain normative direction. The Catholic Church explicitly states that its normative power extends to certain parts of a person's moral life but leaves other areas of subjects' lives regulated by positive law (Lamond, 2000).

However, cultural traditionalists or religious fanatics claim that their normative systems are authoritative, comprehensive, and fully justify violence or coercion to enforce their decrees. Ultimately, the authority of the law is used not only to justify coercion. While other normative systems argue that the use of coercion is justified, they simply do not use or cannot effectively use coercion to enforce that power. Therefore, it is not the justifying link, but the coercion itself, that distinguishes law from other normative systems. At the same time, based on these arguments, it can be argued that coercion is constitutive for law. Law cannot be reduced to coercion, but it is coercion that turns certain rules into legal norms (Lyons, 2010).

It appears that legal reality can be considered as a fundamental element of the rule of law. The rule of law state sets the rules. These norms claim to be authoritative, and they represent exceptional grounds for action.

Finally, the right is internally enforced. Without coercion, the normative system cannot be differentiated or understood.

This image of the rule of law has implications for the reform of the current legal system. Specifically, it excludes from the law those norms that claim legal status, but do not have enforcement. It should be emphasized that a considerable part of the discussions on this topic is limited to theoretical reflections. However, in rare cases, a legal problem illustrates philosophical questions quite well.

An example is the case of Western Sahara in the International Court of Justice (Lyons, 2010), the Court issued an advisory opinion on the predecessor of the modern state of Algeria during the Spanish colonization. The court ruled that organized tribes occupied the territory and had legal ties with it through various treaties. And while Judge Dillard in that case agreed that the presence of organized tribes was sufficient to establish that the territory was not *terra nullius*, it was still insufficient to determine whether the ties established by the tribes were legal. For this, it was necessary to identify particular features that make certain connections legitimate.

Thus, Judge Dillard noted that law should exercise normative power over its subjects. Moreover, this normative power must, in some sense, be perceived as authoritative or as a "respectable duty". Thus, Judge Dillard deliberately tried to distinguish legal links from links based on ethnic, linguistic, religious, cultural, or other factors. However, Judge Dillard's analysis was incomplete because it ignored the fact that laws must be enforced, including coercively.

There is no doubt that this view represents only some of the issues that have repeatedly arisen in the legal world. Many international law regimes, to the extent that they cannot be implemented, are difficult to distinguish from rules that may be proposed by a religious institution, school, or interested group. International law, admittedly, qualifies as a legal regime to the extent that the possibility of implementing the regime of international law is ensured through the enforcement mechanism of each member state (Friedman, 1973).

The question arises, what is ultimately the basis for a theory of law, provided that it elevates coercion to a conceptual necessity in law? The above arguments allow providing at least two answers. The constitutive theory of law creates a narrow conception of law, which nevertheless insists on the presence of distinctive features that allow a normative system to be considered law. Over the past few generations, most lawyers have been concerned about investigating the conditions for the truth of legal provisions. This discussion mainly focused on the contradiction between the aforementioned positivist model and Dworkin's interpretive model (2019).

However, the definition of coercion as an essential feature of law offers a new perspective on this long-standing debate. To understand why R. Dworkin's interpretive model (2019) is so compelling, it is important to understand its difference from the positivist model and why understanding law as coercive can essentially show that R. Dworkin's model is erroneous. Dworkin's concept of law is primarily an integrative model. Rather, according to R. Dworkin, law is considered as a special model of morality: legal morality.

## The Concept of Coercion in the Context of the Positivist Approachw

Notably, moral rules are constantly subject to verification and justification by the principles on which they are based. They should be considered in the context of their application in moral conflicts to come to a correct vision of our moral responsibilities. Similarly, legal norms come into force through the norms embedded in legal values. In this regard, R. Dworkin (2019) argues that the truth of legal provisions – legal rights and obligations – is derived from a certain type of political and moral reasoning.

Law in this sense creates rights and obligations that exist based on the political rights and morals of each legal system. This basic morality includes past court decisions, as well as other related political values such as honesty, justice, equality, and freedom. R. Dworkin (2019) concludes: "A principle is a principle of law if it appears in the most well-founded theory of law, which serves as a justification for the explicit material and institutional norms of a given jurisdiction." For R. Dworkin (2000), this definition of law is critical. A provision is a law if it is the best moral explanation for all legal norms, decisions, and principles in the legal system. True norms of law necessarily follow from moral political rights and originate from them.

At first glance, the model of R. Dworkin (2000) appears irreconcilably far from positivist. For R. Dworkin (2000), the fact that legal principles are mandatory for judges is shown in the study of the role of judicial argumentation in resolving court cases. The positivist principle states, according to Dworkin (2000), that legal duties exist only by virtue of recognized social practice – the rule of recognition. No judge can imagine that where generally accepted duties end, the law also ends, leaving the individual the "wiggle room" and make decisions according to their personal reasoning. Instead, judges reason based on the principles of political morality in the law to determine legally binding rights. Therefore, according to Dworkin (2000), law is dominated by the principles of political morality.

However, most complex positivist models do not deny that moral principles play a role in determining legal rights. For instance, J. Raz (1979) acknowledges that moral principles can be incorporated into the legal system by virtue of their social origin, although it denies that a legal norm can be valid according to its moral virtue as such. If a legal rule includes a moral virtue such as "correctness" in the terms and conditions of a contract,

then validity concerns the raw facts, not whether the contract is a "moral fact" that is correct as long as relevant social sources declare it.

This formalistic doctrine ignores the fact that, from any perspective, conflicting values and goals within the law cannot be resolved by legal norms alone. The law should supplement the legal norms with other grounds. When this happens, judges are ordered by the law to take part in the best moral reasoning. This does not mean that these moral principles are part of the law, as the law may force judges to apply reasons that are not covered by the law. This means that, in any positivist conception, the application of legal rights brings law into contact with morality. Furthermore, for J. Raz (1979), the moral benefits of preserving the authoritative power of the law are a justification for separating the reasoning of the courts from direct moral reasoning. Although philosophical differences are sometimes important and often interesting, it is necessary to emphasize how close these models become when applied in practice (Moore, 2007).

R. Dworkin opposes the principles of positivism because, without recognizing political moral principles as part of the law, the rights of plaintiffs stay "outside the court" and must be based on the discretion of the judge (Dworkin, 2019). While the positivist model proposed by J. Raz *et al*. maintains some distance from R. Dworkin's model, it is a model that emphasizes the role of coercion and provides a more prominent illumination of the relevant difference (Raz, 1979). Recognizing coercion as an integral part of law shows how recognizing that legal principles are binding can provide a greater insight into the model in question.

Evidently, philosophical meaningfulness is valuable in itself. Law is an important social institution, and therefore there is an urgent need to clarify its specific characteristics constantly and appropriately. But the model of law, which assumes its coercive nature, provides much more than philosophical meaning. After all, the emphasis on the coercive force of the law focuses attention on the problem of analytical legal science regarding what is law. Coercion can be defined as a concept that involves engaging a person's moral abilities in various ways. Even if it is assumed that the right is or is not internally coercive, there is no doubt that coercion requires justification of the coercive act itself (Lamond, 2000).

Justification of the coercive nature of law is now considered the fundamental motivation of the philosophy of law. Since the purpose of coercion is a certain limitation of a person's choice or freedom of action, it often, at first glance, looks like evil. Thus, coercion, as an inalienable property of law, imposes on the law the corresponding moral burden of justification, which differs from the burden of justification that falls on other normative systems.

The law must be justified in a way that other normative systems cannot be justified. Restrictions imposed by law are imposed on all members of society, who may have different ideas about the fundamental legal principles. Finally, the moral requirement to justify the coercive nature of law within the rule of law justifies the law itself, which is associated with the need to justify a complete political theory. That is, when coercion is embedded in the very nature of law, so is the need for justification.

The coercive nature of law differs from other relationships that can bind or constrain human action – e.g., personal and social relationships – law must be uniquely justified. Therefore, the understanding of law as coercive shows that these important restrictions on grounds that justify legal force can be embedded in the very nature of law. This is not a trivial suggestion to imagine that a legal system by its very nature must meet certain grounds to be justified. Coercion may be used, may even be necessary, as an instrument of justice to secure the widest mutual liberty for all. By bringing coercion to the forefront of the modern concept of law, researchers are factually emphasizing the dangerous power of law. In practice, law claims to be the highest normative system in society. This requirement must be thoroughly investigated and given the binding nature of the law, requires constant justification.

Professor V. Gutsulyak (2008) argues that coercion can be legal and illegal. The latter can develop into despotism of state bodies, which puts the individual in an unprotected state. Such coercion is largely based on such negative phenomena as abuse of power, incompetence of the state apparatus, corruption, etc. Such coercion is particularly inherent in states with undemocratic political regimes.

According to U. Chetrus (2007), it is important to note that coercion, which is regulated by convention, civil, criminal, etc., should not reflect the interests of the party or become an instrument of the ruling party. It is known that the laws adopted in the parliament in the absence of opposition acquire the political nature of the party with the parliamentary majority.

It is considered that the legal regulation of coercion requires maximum thoroughness, even in democratic countries. Legal coercion is a form and measure that is strictly and specifically defined by legal norms and that is applied according to procedural norms in the form of particular measures. In this respect, it is important that the lawfulness, reasonableness, and fairness of legal coercion can be tested and challenged in court.

American researcher R. Hughes (2013) believes that the degree of legality of coercion is determined by the degree of its compliance with the fundamental principles of the legal system; it is single and common throughout the entire territory of the state; its content, limits, and conditions of application are regulated by the law; acts through the mechanism of mutual rights and obligations of the entity that applies coercion and the entity that bears it; it has developed procedural forms. The legal nature of coercion is closely linked to the

system of principles underlying it, which are considered a guarantee of the application of fair and just coercion.

Restriction is considered as a system of interdependent elements, the meeting of which is vital for its existence. Several scientists have discussed the structure of the restriction. For instance, W. Morris (2012) believes that the constituent elements of the structure of restriction are the subject of restriction, the implementation of restriction as a state, the process of subordination to the will of the restricted, the object of restriction.

According to the researcher T. Honoré (1990), these elements form a narrower system than state coercion – this concerns the legal relations of applying coercive measures. In the structure of legal relations, such elements as the subject of coercion, the object of coercion, and the process of its implementation can be distinguished. In this regard, the author believes that the definition of the structure of coercion (internal organization) is possible only if all the necessary and mandatory elements are highlighted in its system, without which state coercion cannot exist. Thus, according to the researcher, coercion has the following structure: norms of legal regulation that establish the legal obligations of subjects of law; norms of law protection that govern the procedure for applying state coercion to ensure the performance of obligations; legal fact – the real basis for the use of coercion; legal relations of the application (implementation) of coercion; the result of the use of state coercion.

U. Chetrus (2007) argues that state coercion is a legal relationship of a protective nature. It arises between the state and an individual when the latter commits an illegal act, in other words, any violation of a legal norm can give rise to a coercive relationship that is established between the state and the author of such a violation.

In this regard, D. Cornean (1999) notes that the force of law is materialized in public life through compulsory legal relations, which are understood as a set of rights and obligations of substantive or procedural law that arise as a result of committing an illegal act (non-compliance with the model prescribed by the norm) and through which the application of legal sanctions is achieved. According to researcher D.K. Simes (1980-1981), coercion involves a relationship where the managing entity – the competent authority for the protection of legal norms or a public official – applies coercive measures to the entity obliged to carry out and implement these measures, i.e., a managed entity. The importance of investigating state coercion as a legal relationship lies in the fact that it allows studying the grounds for the emergence of these legal relations, i.e., the legal facts underlying them are especially important for the legality of coercion. Summarizing the above, it should be emphasized that the legal coercion applied by the state should make provision for proportional measures and sanctions in such a way as, on the one hand, to create the necessary inhibitory factors in the minds of those who try to break the law. On the other hand, it is coercion that should increase the sense of security in others, instilling in them the belief that the law, the state protects them, and that they should not resort to non-state, unofficial means to take the law into their own hands. It is essential that coercion be not used to violate the rights and freedoms of an individual or to cause physical or mental suffering. Only in such a situation will legal coercion contribute to the development of an ethical attitude of citizens, increase their psychological readiness for legal respect.

## Conclusions

It can be argued that as a result of this study, the set purpose was fulfilled: the content of the problems of legal coercion described in the literature was covered, the possibilities of its influence on those legal relations that are established in society were revealed, and certain prospects for the further doctrinal development of this concept were highlighted.

Therefore, the following grounds are necessary for the use of coercion:

– the legal basis makes provision for the existence of legal norms that prescribe the possibility of applying coercion to certain subjects in particular cases;

– the factual basis makes provision for the occurrence of a legal event prescribed by the law – an event or action that gave rise to legal relations.

– the formal basis is the issuance by a state body of an act on the application of the law, which makes provision for the application of a restriction to a particular subject. In other words, coercion as a physical action is applied by special state bodies based on a court decision or an administrative act. In the absence of such actions, coercion cannot be applied.

Thus, coercive legal relations are power relations, bilateral, one of the parties of which is necessarily a state body, a representative of the state. The other party of the legal relations can be any subject to which the power of the state extends. In summary, the legal coercion used by the state should make provision for proportionate measures and sanctions in such a way as to create the necessary inhibitory factors in the minds of those who attempt to break the law. It also reinforces others' sense of security by convincing them that the state and the law protect them and that they should not resort to unofficial, non-state means to take the law into their own hands.

Legal coercion must be limited to norms and principles, the Universal Declaration of Human Rights, the European Convention on the Protection of Human Rights and Fundamental Freedoms, their Protocols, and other international regulations.

It is crucial that coercion be not used to violate the rights and freedoms of citizens or to cause physical or mental suffering. The authors of this study believe that only in such a situation will legal coercion contribute to the development of a proper legal culture of citizens, increase their legal awareness in modern conditions of social transformation.

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# Нормативне закріплення примусу як прерогатива верховенства права: літературний огляд

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**Анотація**
Право на примус і можливість його застосування є невід'ємним атрибутом держави, її органів, що підтверджує монополію держави на примус. Незалежно від того, чи приписи правових норм виконано добровільно, примусовість залишається невід'ємною ознакою їх реалізації. Правовий примус нерозривно пов'язаний з верховенством права та правами людини. Особливо цей зв'язок відчувається в країнах Центральної та Східної Європи, які порівняно недавно звільнилися від тоталітаризму, диктатури ідеологічних норм, домінування та розповсюдження примусу. Метою дослідження, результати якого наведено в цій статті, є розкриття на теоретичному рівні суті правового примусу, аналіз та узагальнення наукових позицій учених, які вже висловлювалися з цього приводу. У дослідженні використано природно-правовий підхід і низку методів, спрямованих на системний і змістовий аналіз проблематики державного примусу, найважливішими серед яких є логічний, діалектичний, історичний та інтегративний методи. У результаті дослідження встановлено, що правовий примус, який застосовує держава, повинен передбачати пропорційні заходи та санкції таким чином, щоб, з одного боку, створювати необхідні гальмівні чинники у свідомості тих, хто намагатиметься порушити закон, з іншого – саме примус повинен посилювати відчуття безпеки в інших, вселяючи переконання, що держава захищає їх, і що немає сенсу вдаватися до недержавних, неофіційних засобів, намагаючись маніпулювати положеннями закону. Наукова значущість дослідження полягає в тому, що це одне з перших досліджень, присвячених питанню правового примусу в контексті використання його з боку держави з метою реалізації її владних повноважень у сучасних політико-правових реаліях. У практичному значенні результати проведеного дослідження можуть мати значення для вдосконалення правового регулювання з акцентом на примус, зокрема в разі прийняття норм кримінального права

**Ключові слова:**
держава; правовладдя; закон; нормативність; моральність; юснатуралізм; стримування силою

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