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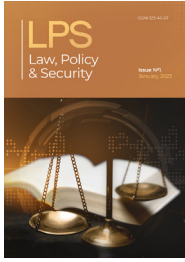
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Reparations and compensation for damage caused by the war (The case of Ukraine)

Abstract. The study of reparations and compensation for war-related damage is of utmost relevance in the context of modern armed conflicts, where the restoration of the rights and freedoms of victims is becoming an urgent need. A review of Ukraine's initiatives in this area and an analysis of the results achieved is an important contribution to understanding effective compensation mechanisms in the context of hostilities and can serve as an example for other countries facing similar challenges. The purpose of this paper was to provide a comprehensive study of the national strategy for compensation and redress for war-related damage, taking into account the need to fully restore the rights of individuals and legal entities. In the course of this research, the following methods were used: deductive, analysis of monographic studies, theoretical generalisation, abstract and logical generalisation and comparative legal analysis. The paper highlighted Ukraine's initiatives in the field of compensation for damage caused by Russia's aggressive war against Ukraine and focuses on the positive results achieved, in particular, analyses the developed legal framework and system of the compensation mechanism aimed at restoring certain real estate objects (including housing) and housing rights of the affected persons. The analysis revealed inconsistencies in the legal regulation that need to be improved, in particular, by expanding the scope of compensation by including some other types of property (e.g., vehicles and household items) in the list of destroyed or damaged objects of compensation. It is determined that the effectiveness of the system depends on an accurate definition of damage and losses. Changes are proposed to improve the compensation mechanism, including expanding the scope of compensation and taking into account different categories of victims. The author suggests that the solution to the problems of compensation for destroyed and damaged property should be based not only on the compensation mechanism, but also contribute to the full restoration of the rights and freedoms of the affected persons. The practical significance of this study lies in the fact that it not only analyses the national strategy of compensation and reparation for war-related damage, but also develops recommendations for improving the compensation mechanism in order to fully restore the rights and freedoms of the affected persons. The experience gained by Ukraine can serve as a valuable example for other countries facing similar challenges in the context of armed conflicts

Keywords: compensation mechanism; reparation procedure; court; justice; damages; real estate; housing; housing rights; destroyed property; damaged property; martial law

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INTRODUCTION

The issue of studying the compensation for war-related damage is closely intertwined with the recognition of full sovereignty of states. Despite the fact that the existing wars and peace treaties created the basis for modern international relations, they did not have a proper legal mechanism for restoring the situation of victims. Even the adoption of the Hague and Geneva Conventions, which established the rules of warfare to minimise harm to civilians and provided for the legal basis for their protection, did not resolve the issue of establishing the obligation to compensate for the damage caused by war. Therefore, the protection of the rights and restoration of property losses of affected persons becomes a matter of paramount importance in the context of hostilities. The need to develop effective mechanisms for compensation is becoming more urgent as armed conflicts spread, and civilians become the main victims.

Establishing legal and international instruments for war-related reparations is an important step in ensuring justice and a humane approach to victims. The absence of an effective mechanism for reparations may lead to further violations of the rights and deterioration of the situation of victims. Therefore, the initiatives of individual countries, including Ukraine, on the issue of reparation and compensation for war-related damage are important for setting an example of effective reparation and recognition of the rights of victims in international practice. In the context of Russia's current war against Ukraine, the issue of reparations is becoming relevant not only at the national level, but also in the context of international law and interstate relations, as the experience gained and mechanisms developed can serve as an example for other countries facing similar challenges, contributing to the creation of more effective and fair reparations systems.

Nevertheless, the rule on the obligation of the defeated to pay reparations in favour of the victorious state remained a well-established rule in the matter of reparations. However, this method of making reparations after an international military conflict was based solely on the parties' own discretion, when in the process of concluding agreements the parties tried to look for other ways than solely satisfying the desire to receive full compensation for the damage caused by the war (Moffett, 2022b). As the experience of Germany's reparations payments to former Soviet citizens imprisoned in concentration camps and taken for forced labour shows, the decision to grant reparations was made by the German authorities themselves.

In fact, the issue of liability for damages has only developed since most countries have introduced criminal liability for war crimes and implemented a mechanism

of compensation through civil lawsuits (Valendiuk, 2023). In addition, with the adoption of the Declaration of Human Rights and the creation of the European Court of Human Rights (ECHR), legal international mechanisms for defending human rights in disputes with the state have also emerged. However, it is quite obvious that most of the implemented mechanisms for compensation for war-related damage can be used after the war against the defeated state. In view of this, it is urgent to establish both national and international mechanisms of reparation to ensure the restoration of the rights (including property rights) of those affected by Russia's aggressive war against Ukraine. The study of the issue of reparation and compensation for damage caused by the war is complex not only in terms of theory, but also in terms of law enforcement practice (as evidenced by the numerous changes to the legal mechanism of compensation established by law in such a short period of time since its adoption). Nevertheless, there are some developments aimed at finding and developing an effective legal mechanism for redress and compensation. Thus, the authors L. Moffett (2022a), O. Kuznietsov (2023), L. Mamchur & M. Tulchevska (2021) focused their research on analysing the mechanisms of compensation for war-related damage in Ukraine, taking into account the experience of compensation in existing military conflicts and tried to adapt it to Ukrainian realities. In particular, the authors examine the mechanism of compensation for damage and suggest ways to adapt it to the realities of Ukraine. The authors consider the possibility of protecting violated rights as a result of hostilities in court, and outline the advantages and disadvantages of the judicial form of protection of violated rights in times of war.

A. Serbina (2023) analysed the mechanisms of compensation for damage caused by the armed aggression of the Russian Federation in view of existing legislative initiatives in Ukraine. E.T. Jensen (2005) and E.V. Koppe (2012) conducted a study of the impact of armed conflicts on the environment, which is also important for Ukraine given the significant damage to the environment and the need to ensure its restoration. A. Anisimova (2020), N. Filatova-Bilous (2022) and M. Batenchuk (2023) examined the peculiarities of compensation for damage caused by the destruction and damage to housing, as well as other numerous violations of housing rights in connection with Russia's military aggression. In particular, the authors analysed the peculiarities of compensation for lost housing, considered different approaches to analysing the compensation mechanism based on the characteristics of different types of housing.

The issues of studying the national strategy of compensation and redress for the damage caused by the war

as a complex problem that concerns both redress and compensation for the damage caused and full restoration of the rights of individuals and legal entities remain insufficiently developed. The purpose of this paper was to provide an in-depth analysis of the national strategy for compensation for damage caused by the war and to study the effectiveness of the judicial form of protection of the violated rights of victims of the conflict, taking into account the need for full restoration of the rights of individuals and legal entities.

MATERIALS AND METHODS

When considering the factual material of the study of compensation and reparation for damage caused by Russia's war against Ukraine, it should be noted that this concept includes various aspects. First of all, the factual material includes the results of the analysis of national legal norms and international agreements on compensation for war-related damage. The factual material also includes data on the experience of other countries in dealing with similar issues, which can provide important conclusions for Ukraine in developing its own national compensation and reparation mechanism. It also includes information on initiatives and programmes developed by the Government of Ukraine to compensate and reimburse victims. The factual material also includes data obtained from the analysis of scientific research and expert assessments on the effectiveness of various approaches to addressing this issue. It also includes information on the losses and damages suffered by Ukraine as a result of the hostilities, such as human losses, destruction of infrastructure, destruction of residential properties and other material damage.

The methodology of this study was based on both general scientific and special legal methods of scientific knowledge. The deductive method was used in writing this article. In exploring the outlined scientific issues, the author presents the views of various scholars who have studied the issue of compensation and redress for damage caused by war, and on the basis of this, the author substantiates the most rational approach to the formation of a national strategy for compensation and redress for damage. In particular, the author examines the procedures for redress and compensation for war-related damage in the course of judicial proceedings (national judicial mechanism and international, in particular, the ECHR) and through the use of the administrative and legal mechanism of compensation. This made it possible to identify the positive and negative aspects of each of the analysed mechanisms and to develop proposals for their improvement and enhancement of their effectiveness in the context of the war in Ukraine. This method is informed by the scientific works of such

scholars as: M. Tulchevska (2021), L. Moffett (2022b), O. Kuznietsov (2023), & L. Mamchur.

The method of analysing monographic studies made it possible to identify the range of problematic issues related to improving the mechanism of compensation for damage to and destruction of real property, which is currently implemented in Ukraine based on the study of theoretical developments of scholars and practicing lawyers. Using the method of theoretical generalisation, the author examines the elements of the legal regulation mechanism for the procedure for compensation and reimbursement of damage caused by the war in Ukraine. The author also used the method of abstract and logical generalisation to identify the definitions of "compensation" and "reparation", and to formulate the elements of the concept of "damage".

The article used the method of comparative legal analysis to substantiate the effectiveness of the national compensation mechanism and emphasize the expediency of improving its individual elements. In particular, based on the study of the views of scholars on the formation of subjects of the right to compensation, it is proposed to expand this list to include tenants of the State housing stock. This method is based on the following scientific works A. Anisimova (2020), N. Filatova-Bilous (2022) and M. Batenchuk (2023). Using the method of generalisation, the author argues that the approach to compensation and redress for war-related damage established by current legislation and developed within the framework of the national reparations strategy requires improvement of its individual elements in order to better ensure protection of the violated rights of individuals and legal entities with a focus on their fullest possible restoration.

RESULTS AND DISCUSSION

Peculiarities of forming a national strategy for reparation and compensation for damage caused by the war.

Despite the fact that wars in their various manifestations and scales have continued throughout human history, international law has not developed a historically effective mechanism for compensation for war-related damage. Numerous human rights violations, destruction and damage to property of individuals and legal entities, significant damage to the state and the environment require effective mechanisms to address the issue of redress and compensation for victims (Walker, 2014). In this sense, the development of an effective compensation procedure is the responsibility not only of Ukraine, but also of the entire international community, since without proper legal regulation, there will be no restoration of the violated rights of the victims. Law enforcement practitioners and scholars have different opinions on the development of a reparations strategy, but most

proposals focus on the fact that war victims should be actively involved in the development, implementation and monitoring of the reparations mechanism. Therefore, it is obvious that any mechanism, strategy, or plan for compensation for damages caused during the war in Ukraine, despite the involvement of the international community in their development, must first and foremost be implemented at the local level.

According to L. Moffett (2022a), there are various options for implementing and enforcing approaches to compensation for damages, which should take into account the real state of affairs and challenges facing the justice system in Ukraine, given the significant scale of damages. In particular, the author proposes four different approaches to the formation of a mechanism for compensation: 1) a special United Nations (UN) commission to consider claims from individuals and legal entities for compensation for damage caused as a result of the war in Ukraine; 2) a strategy of internal reparation, which would include the development of a national programme of compensation for victims, including the creation of an appropriate legal framework, an administrative body with a register of losses and an interagency coordination body; 3) a Ukrainian-Russian arbitration commission established by agreement of both parties on the basis of a bilateral agreement to settle disputes; 4) a hybrid mechanism created jointly by Ukraine and international partners to implement reparations through the implementation of an independent investigation mechanism, the creation of a register of damages and a trust fund for Ukraine. Critically assessing the opinion of L. Moffett, it should be noted that while his proposals have potential, they may also face certain practical limitations in practice. For example, the establishment of a special UN commission to review claims could delay the reparations process and require significant resources, especially in times of war. In addition, the question of Russia's participation in arbitration commissions or hybrid mechanisms may be difficult given the controversial nature of international relations and the political context. It is worth considering that the effectiveness of the proposed approaches may depend on the political will of the parties and their ability to cooperate, which can be

unpredictable in military conflicts. It seems that the idea of developing internal reparations is the most logical, but it requires significant material resources, which are not enough in the context of the war in Ukraine.

The issue of compensation and reparations for the damage caused by the war is also complicated by the fact that the justification of reparations by a violation of the UN Charter and aggression concerns the victim of such a violation: it is only the affected state or all individuals and legal entities affected by the war. As noted by F. Rosenfeld (2012), International law does not provide for a personalised right to compensation for violations of *jus ad bellum*, as the state is the primary victim of violations of sovereignty and territorial integrity. There is no precedent in court practice that would give grounds to recognise an individual as an injured party and create a legal basis for recognising their right to claim damages for aggression (Darcy, 2021). However, this position may be questionable, as the crime of aggression is included in the competence of the International Criminal Court (ICC). This leads to individualisation of criminal liability for violation of the territorial integrity of another state. In turn, the existence of a court conviction would enable victims to obtain the right to compensation for damages. However, this scenario is complicated and obviously unlikely.

Authors of this article agree with the opinion of P. Gaeta (2011) unclear understanding of the issue of identification of the perpetrator (according to the Geneva Conventions and Additional Protocol I, states are responsible for unlawful violations, not for individual soldiers who are subject to identification)^{1,2,3,4,5}, blurring the approach to individualising the right to reparations for violations of International Humanitarian Law (IHL). Experience shows that most war compensation programmes focus on the harm suffered by victims of hostilities rather than on establishing the legal aspects of the details of such violations, reflecting the discrepancy between international law and the law enforcement practices of individual states (Ferstman, 2018). Nevertheless, certain legal uncertainties at the level of international law do not exclude (but rather ensure) the possibility for war victims to seek protection of their rights even despite the legality of the harm from the point of view of IHL (Muleefu, 2014).

¹ Convention "On the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field". (1955, January). Retrieved from https://zakon.rada.gov.ua/laws/show/995_151#Text.

² Convention "On the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea". (1955, January). Retrieved from https://zakon.rada.gov.ua/laws/show/995_152#Text.

³ Convention "On Relative to the Treatment of Prisoners of War". (1955, January). Retrieved from https://zakon.rada.gov.ua/laws/show/995_153#Text.

⁴ Convention "On Relative to the Protection of Civilian Persons in Time of War". (1955, January). Retrieved from https://zakon.rada.gov.ua/laws/show/995_154#Text.

⁵ Protocol Additional to the Geneva Conventions of 12 August 1949 "On Protection of Victims of International Armed Conflicts (Protocol I)". (1977, July). Retrieved from https://zakon.rada.gov.ua/laws/show/995_199#Text.

Nevertheless, based on paragraph 153 of the Advisory Opinion of the International Court of Justice (ICJ) on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, even if restitution is not possible, the state is 'under an obligation to compensate for the damage caused', which 'reflects the damage suffered by individuals and communities'¹. The actual absence of a foreseen right to reparations for war victims and IHL norms has led to a model of reparations that involves recourse to national mechanisms of reparations. Therefore, a national programme of compensation for war-related damage, with international cooperation in recording and assessing evidence, and confiscation of Russia's assets to finance such a programme, remains the most realistic scenario, especially given the ongoing hostilities. Obviously, this is the option that Ukraine has chosen to speed up the process of compensation for war-related damage.

When analysing the existing legal framework, you should first of all pay attention to Law of Ukraine No. 2923-IX², which actually laid down the legal and organisational basis for compensation for damaged and destroyed real estate of individuals. This Law refers, in particular, to certain categories of real estate. However, the consequences of the war are quite different and differ in form and manner of manifestation and scale, which clearly has an impact on the formation of the legal framework as a basis for compensation. Therefore, the Cabinet of Ministers of Ukraine by Resolution No. 326 of 20 March 2022³ year approved the procedure for determining the damage and losses caused to Ukraine by Russia's aggression, according to which the damage is determined in the following areas: 1) human losses (death or injury of civilians); 2) economic losses resulting from a decrease in the population and economic indicators of the country; 3) losses of human and material potential caused by hostilities, which illustrate the losses and costs that are a direct result of hostilities, etc. The most obvious losses include human losses and damage to human health, damage or destruction of property of various forms of ownership, damage to the environment and the environment, etc. (Jensen, 2005; Koppe, 2012, Serbina, 2023).

Russia is violating a number of rights guaranteed by international law, including the right to life, the right to property, the right to a court of law, the right to education, the right to free choice of residence, the right to housing, the right to a safe environment and many other rights, the exercise of which has become virtually impossible or complicated as a result of armed aggression. In this context, we should agree with the opinion of B. Dickson (2012) that it is advisable to formulate a solution to the problem of compensation as a reparations programme, and not solely as a compensation commission, as the negative effects of war on individuals and society in all its manifestations cannot be eliminated by compensation alone, as it would look more like a payoff than a guarantee of non-recurrence of such violations. Therefore, it is clear that reparations must go beyond mere compensation and reflect the serious and lasting harm suffered by victims due to numerous violations of human rights and IHL (Sandoval, 2018). This suggests that building a comprehensive approach to the development of a legal framework for reparations should be based not only on the idea of compensation for damages, but also on the idea of creating a framework for alleviating the suffering of victims and affirming their dignity. Effective mechanisms should be developed not only at the national but also at the international level to create a public consciousness intolerant of war in order to prevent the possibility of recurrence of such human rights violations in the future.

It is worth noting that under martial law, Ukraine is trying to fulfil its international obligations enshrined in the norms of the conventions to which Ukraine is a party and to create effective procedures and mechanisms for the protection and restoration of violated rights. In particular, such obligations arise from the Preamble to the Convention for the Protection of Human Rights and Fundamental Freedoms, which states that the contracting parties are obliged to guarantee respect for human rights by fulfilling positive and negative obligations⁴. When examining this provision, the Grand Chamber of the Supreme Court identified the following state obligations under Article 2 of the European Convention: a negative duty, a substantive positive duty and a procedural

¹Jurisdiction of the Court of Justice No. 131 "On Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory". (2004, July). Retrieved from <https://unispal.un.org/pdfs/B59ECB7F4C73BDBC85256EEB004F6D20.pdf>.

²Law of Ukraine No. 2923-IX "On Compensation for Damage to and Destruction of Certain Categories of Real Property as a Result of Hostilities, Terrorist Acts, Sabotage Caused by the Armed Aggression of the Russian Federation Against Ukraine and the State Register of Property Damaged and Destroyed as a Result of Hostilities, Terrorist Acts, Sabotage Caused by the Armed Aggression of the Russian Federation Against Ukraine". (2023, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/2923-20#Text>.

³Resolution of the Cabinet of Ministers of Ukraine No. 326 "On the Procedure for Determining Damage and Losses Caused to Ukraine as a Result of the Armed Aggression of the Russian Federation". (2022, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/326-2022-%D0%BF#Text>.

⁴Convention "On the Protection of Human Rights and Fundamental Freedoms". (1997, September). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004#Text.

positive duty¹. In a general sense, a (substantive) positive obligation implies the obligation of the state to establish legislative provisions that would protect human rights and provide for legal liability for their violation in connection with criminal acts of third parties (Dakhova & Kovtun, 2023). In addition, based on the provisions of Article 13 of the Convention, everyone whose rights and freedoms have been violated has the right to an effective remedy by a national authority, even if the violation was committed by persons acting in their official capacity². Such protection measures should be as effective as possible, which is also confirmed by legal conclusions contained in national court practice. In other words, the procedural positive obligation implies the state's obligation to ensure an objective investigation of human rights violations by an independent body. The purpose of this obligation is to identify and bring to justice those responsible for human rights violations³. Moreover, such obligations arise from national court practice^{4,5}. As practice shows, the most effective mechanism for compensation is usually to go to court (Mamchur & Tulchevska, 2021). In this context, it is worth paying attention to the conclusion of the Supreme Court (SC) set out in its ruling of 14 April 2022 in case No. 308/9708/19, which states that "the court of Ukraine has the right to ignore Russia's immunity and consider cases on compensation for damage caused to an individual as a result of Russia's armed aggression in a lawsuit filed against this particular foreign person"⁶. Justifying the positivity of this decision, even though it is somewhat revolutionary and controversial, B. Karnaukh (2022) draws attention to the fact that, based on the analysis of the ECHR case law, the purpose of the principle of judicial immunity of the state is to preserve "polite and good neighbourly relations" between countries. However, during an ongoing armed conflict initiated by the aggressor, it is only fair to provide for exceptions to the principle of judicial immunity to encourage the aggressor state to stop violating rights and conclude

agreements with the state subject to armed aggression on the payment of compensation and reparations. Without questioning the importance of this legal position of the Supreme Court of Ukraine, it is worth emphasising that in order to ensure that the issue of limiting the jurisdictional immunity of a foreign country that carries out aggression against another country is properly resolved in the legal field, the Verkhovna Rada of Ukraine should adopt a relevant law. This will help to protect the rights of individuals and legal entities in disputes with the aggressor country at the proper legal level.

Interestingly, the United Nations Convention on Jurisdictional Immunities of States and Their Property of 2004 contains a separate provision that allows ignoring the immunity of another country, which gives grounds to assert a certain freedom in the matter of filing a claim. However, given the content of Article 18 of the said UN Convention, enforcement of a court decision may be possible only with the prior consent of such country⁷. Taking into account the legal positions of the Supreme Court, Ukrainian courts accept cases of individuals' claims for damages against Russia, and there is even a relevant court practice⁸. The register of court decisions contains many decisions in favour of victims, and the number of positive court decisions in such cases is increasing. However, there are difficulties with the enforcement of such decisions.

In general, there are several promising ways to enforce Ukrainian court decisions to recover compensation from Russia: activation of the procedure for recognition and enforcement of a Ukrainian court decision in a foreign country where the property of the aggressor country or individuals and legal entities supporting military aggression is present; general domestic enforcement procedures can be used to enforce court decisions in Ukraine, which are carried out within the framework of a joint enforcement proceeding coordinated by the Ministry of Justice (Pohribnyi, 2023). Nevertheless, there is no

¹ Resolution of the Grand Chamber of the Supreme Court No. 635/6172/17 "On Compensation for Damage Caused by the Death of an Individual". (2022, May). Retrieved from https://verdictum.ligazakon.net/document/104728593?utm_source=jurliga.ligazakon.ua&utm_medium=news&utm_content=jl03.

² Convention "On the Protection of Human Rights and Fundamental Freedoms". (1997, September). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004#Text.

³ Judgment of the European Court of Human Rights No. 158/1996/777/978 "On Case of Kaya v. Turkey". (1998, February). Retrieved from <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-581388%20filename=001-58138.pdf>.

⁴ Resolution of the Grand Chamber of the Supreme Court No. 265/6582/16-ts "On Compensation for Property Damage". (2019, September). Retrieved from <https://zakononline.com.ua/court-decisions/show/86310215>.

⁵ Resolution of the Supreme Court No. 242/68/19 "On Compensation for Material and non-Pecuniary Damage". (2021, September). Retrieved from <https://zakononline.com.ua/court-decisions/show/95767645>.

⁶ Resolution of the Supreme Court No. 308/9708/19 "On Compensation for Non-Pecuniary Damage Caused by Russia's Armed Aggression Against Ukraine". (2022, April). Retrieved from <https://reyestr.court.gov.ua/Review/104086064>.

⁷ United Nations Convention "On Jurisdictional Immunities of States and Their Property". (2004, December). Retrieved from <https://ips.ligazakon.net/document/MU04277>.

⁸ Resolution of the Supreme Court No. 308/9708/19 "On Compensation for Non-Pecuniary Damage Caused by Russia's Armed Aggression Against Ukraine". (2022, April). Retrieved from <https://reyestr.court.gov.ua/Review/104086064>.

effective mechanism for the enforcement of a Ukrainian court decision on compensation by Russia, so at this stage, a court or arbitral award will rather certify the fact, amount of damage, circumstances of the damage, and the link between the armed aggression and the occurrence of damage than guarantee the payment of compensation.

Individuals and legal entities that have suffered losses as a result of military aggression have the opportunity to apply to the ECHR. However, on 15 March 2022, the Russian Federation withdrew from the Council of Europe¹, therefore, the applicants could file applications for offences committed by Russia until 16 September 2022 inclusive. In addition, the ECHR judgment cannot be enforced, which gives rise to doubts as to the voluntariness of Russia's compliance with the compensation award. Nevertheless, there are several aspects of the importance of obtaining a judgment of the ECHR: it should be regarded as proper proof of fixing the amount of damages, which will not require re-proving; the implementation of such judgments will obviously become a condition for Russia's reintegration into the international community; the possibility of Ukraine paying compensation on the basis of the ECHR judgments (Kuznietsov, 2023). Therefore, ECHR judgments, along with decisions of national courts and arbitration tribunals, are also an important element of the mechanism of compensation for war-related damage.

It should be acknowledged that in the context of the war in Ukraine, international courts and tribunals also have limited competence and do not offer an effective enforcement mechanism. Therefore, the introduction of an effective national mechanism for the implementation of the right to compensation for war-related damage is the best idea. The relevance of developing an effective legal framework for compensation is also related to the fact that Article 92, paragraph 22 of the Constitution of Ukraine expressly provides that the basis of civil liability is determined exclusively by the laws of Ukraine². Such an approach to the legal regulation of relations related to compensation for damage caused by war actually makes it impossible to apply analogy and provides for the possibility of legal regulation exclusively at the level of law. That is, it is the law that should provide for the grounds, procedure and subjects of responsibility for human rights violations by armed aggression. Analogy of law and analogy of law are not allowed in this type of legal relationship, based on the provisions of the Constitution of Ukraine. This position additionally justifies the need to adopt special legislation

that would guarantee the right to social protection and take into account the peculiarities of compensation for damages as a result of armed conflict (Anisimova, 2020). On this basis, it is the domestic (national) reparations programme through the implementation of an administrative (non-judicial) compensation mechanism that can best meet the needs of war victims for reparations.

As a result of the analysis, it should be noted that the development of a national strategy for compensation for damage caused by Russia's war against Ukraine is based on several key ideas: the formation of an appropriate legal framework (development of legislation to define legal mechanisms for compensation for damage that would take into account international norms and standards and create the basis for making claims and filing lawsuits in international courts); legal and economic assessment of losses, including maintaining the Register of Losses (recording the losses incurred, assessing the amount of economic damage); close international cooperation (interaction with international partners to jointly address compensation issues (for example, engaging international experts to objectively assess the economic and social consequences of war) and creating support to address the consequences of military aggression); social rehabilitation (creation of programmes and mechanisms to compensate for the loss of property, health and other social losses, ensuring access to adequate medical, psychological and social services for victims); ensuring the right to judicial protection (ensuring legal protection of individuals and legal entities and support for their rights in international courts, introduction of effective judicial procedures for consideration of cases for compensation). **Analysis of the mechanism of compensation for damage caused by the war in Ukraine.** First of all, it is important to emphasise the importance of distinguishing between such legal procedures as compensation and reimbursement, especially given the administrative procedure for compensation for damage caused by Russian aggression established by the current legislation. Compensation for damage involves the recovery of an amount of compensation from the guilty party that will allow the injured person to fully compensate for the losses incurred and/or restore the original situation that existed before the violation. In other words, in this case, the damage is compensated in full, taking into account actual losses and lost income. As a rule, property damage is compensated in civil proceedings by filing a lawsuit against the guilty party (which in the case of military aggression is extremely difficult or even impossible to

¹Resolution of the Committee of Ministers No. CM/Res (2022)2 "On the Cessation of the Membership of the Russian Federation to the Council of Europe". (2022, March). Retrieved from <https://rm.coe.int/0900001680a5da51>.

²Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

identify). Compensation for property damage can also be made in criminal proceedings, when, during criminal proceedings, before the trial begins, the victim may file a civil claim, and the court, when rendering a guilty verdict, satisfies the civil claim in full or in part or dismisses it. However, as discussed above in this article, such a procedure for compensation for property damage is not an effective way of protection and does not contribute to the proper restoration of the victim's rights.

In turn, compensation is one of the types of state social assistance, which provides for the obligation of the state to pay a certain category of affected persons at its own expense in the amount and on the terms determined by the state itself, taking into account the current situation. Given the content of these categories, compensation for damage would guarantee the most complete restoration of the violated rights of individuals and legal entities, but the absence of special laws in the current legislation regulating the procedure for compensation for damage caused by hostilities is one of the important reasons for the introduction of a compensation mechanism to restore the rights of persons affected by war.

Adoption Law of Ukraine No. 2923-IX¹ actually gave impetus to the formation of a national mechanism for compensation for damaged and destroyed real estate as a result of Russia's armed aggression. Given the dynamism of the conditions for the implementation of the law and the complex nature of legal relations, this law is constantly undergoing systemic changes aimed at improving the mechanism of legal regulation of the issue of compensation for damage. Analysing the legal mechanism of compensation for damaged and destroyed real estate, the proposed Law of Ukraine No. 2923-IX², attention should be paid to the following fundamental provisions. The study of the law gives grounds for the formation of a scheme of the compensation mechanism in the following form: subjects of the right to compensation, objects of compensation, location of the damaged property, condition of the property (damaged or destroyed), creation of a commission to assess the cost of compensation, terms of compensation, method of compensation, search for sources of funding, etc.

First of all, it should be noted that the entities that, according to the Law of Ukraine No. 2923-IX³ entitled to compensation are: individuals (citizens of Ukraine) who own property and their heirs; construction customers

and their heirs; owners of property rights to residential properties under construction, future residential properties or persons who have paid a share of the price of such property; persons who have invested in the construction of housing and their heirs; members of housing cooperatives who have purchased an apartment or other residential premises in a building but have not registered their ownership. Certain categories of legal entities may also receive compensation, including the following: Associations of co-owners of apartment buildings (condominiums); managers of apartment buildings; housing cooperatives; persons authorised by co-owners of apartment buildings. Interestingly, the subjects of the right to compensation do not include individuals who are legally residing in Ukraine but are not its citizens (including foreigners and stateless persons). There is no provision for compensation for legal entities that own housing infrastructure and have acquired the right to such property (and therefore the right to compensation for its loss or damage) as a result of fulfilling their loan obligations.

Authors agree with the opinion of N. Filatova-Bilous (2022), that such an approach to determining the range of subjects to apply for compensation for damage caused by violations of housing rights does not contribute to the protection of the housing rights of all affected persons. For example, persons who lived in residential premises under a social rental agreement and whose housing was destroyed or damaged should also have the right to restore their property rights. The same opinion is shared by M. Batenchuk (2023), which indicates the shortcomings of this legislative approach, especially given that the tenants of residential premises and apartments in the state housing stock are often families with children, including families of military personnel of the Armed Forces of Ukraine. As can be seen, the law relates to the property of individuals, while the multibillion-dollar losses of legal entities have been left without a proper legislatively regulated compensation procedure. Therefore, to a certain extent, the operation of the established State Register of Damaged and Destroyed Property suggests that its function is perceived as mostly statistical, rather than actually fully compensatory.

In accordance with the provisions of the Law of Ukraine No. 2923-IX⁴ "compensation shall be provided for damaged and destroyed housing infrastructure objects from 24 February 2022, among which the exhaustive

¹Law of Ukraine No. 2923-IX "On Compensation for Damage to and Destruction of Certain Categories of Real Property as a Result of Hostilities, Terrorist Acts, Sabotage Caused by the Armed Aggression of the Russian Federation Against Ukraine and the State Register of Property Damaged and Destroyed as a Result of Hostilities, Terrorist Acts, Sabotage Caused by the Armed Aggression of the Russian Federation Against Ukraine". (2023, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/2923-20#Text>.

²Ibidem, 2023.

³Ibidem, 2023.

⁴Ibidem, 2023.

list of objects includes apartments, other residential premises in a building, manor houses, garden and country houses, as well as construction objects (manor houses, garden and country houses), components of construction objects (apartments, other residential premises in a building), which, after commissioning, are independent real estate objects" (Analysis of the compensation mechanism..., 2023)). Damaged housing infrastructure may be considered to be that which has suffered damage that can be repaired. Destroyed housing infrastructure objects are those that have become uninhabitable and cannot be restored (Anisimova, 2020). An analysis of the law also suggests that it contains provisions that relate to compensation only for destroyed real estate, while various types of movable property are left out. In fact, the compensation rules do not apply to non-residential property, vehicles and household items. In addition, international law provides for an obligation to compensate only direct losses based on the status quo ante principle, which provides for the restoration of the injured person's position before the offence through the implementation of a compensation mechanism (the limited nature of the compensation mechanism is due to the fact that the compensation payment will not restore the subject's position to the state before the offence) (Moiseev & Uralova, 2022).

Based on the content Law of Ukraine No. 2923-IX¹, Another condition for compensation is the location of the damaged or destroyed property. The provisions of this law do not apply to real estate that was located within the temporarily occupied territory until 24 February 2022, the legal regime of which is determined in accordance with the provisions of Law of Ukraine No. 1207-VII² (for the Autonomous Republic of Crimea and the city of Sevastopol) and Law of Ukraine No. 2268-VII³ (for Donetsk and Luhansk regions). Therefore, compensation is provided if the damaged or destroyed housing was not located within the temporarily occupied territory of Ukraine on the date of the full-scale invasion.

It should be noted that an effective mechanism for compensation for damages caused by the war in Ukraine

has not been developed since 2014. A report by the Norwegian Refugee Council (NRC) states that as of 2018, Ukrainian legislation provides for various legal remedies to protect violated property rights, covering both civil and criminal law aspects. However, no special procedure for compensation for damages has been developed so far. Ukrainian law provides for a sequence of actions, including filing a criminal complaint with law enforcement agencies, filing a complaint with the heads of state bodies or higher authorities against unlawful actions or omissions, and filing civil actions in court to recover damages. This approach, while providing a possibility of protection, is not always optimal in cases where quick and effective measures to compensate for property losses are required (Report of the Norwegian Refugee Council, 2018). One of the few legislative provisions that could regulate these legal relations, taking into account the damage caused during the Anti-Terrorist Operation (ATO), is Article 19 Law of Ukraine No. 638-IV⁴. This article provides for compensation for damage caused by a terrorist act from the state budget in accordance with the law, followed by a claim for compensation from the state to the offender⁵. However, the absence of a legally provided mechanism for compensation for damage caused by a terrorist act has actually prevented the provisions of this law from being applied at the proper level.

Nevertheless, even the absence in the legislation of Ukraine of relevant provisions on compensation to the owner of damage caused to his non-residential property by a terrorist act does not prevent a person who believes that a certain positive obligation was not fulfilled by the state in relation to his ownership of such property, from demanding compensation from the state for this failure to fulfil the positive obligation⁶.

The specifics of choosing the method of compensation will be influenced by whether the property or facility is damaged or destroyed. For example, for damaged real estate, compensation is provided in the form of: repair work, development of construction project documentation, its examination, construction work; provision of construction materials for such work. Real estate that

¹ Law of Ukraine No. 2923-IX "On Compensation for Damage to and Destruction of Certain Categories of Real Property as a Result of Hostilities, Terrorist Acts, Sabotage Caused by the Armed Aggression of the Russian Federation Against Ukraine and the State Register of Property Damaged and Destroyed as a Result of Hostilities, Terrorist Acts, Sabotage Caused by the Armed Aggression of the Russian Federation Against Ukraine". (2023, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/2923-20#Text>.

² Law of Ukraine No. 1207-VII "On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine". (2014, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/1207-18#Text>.

³ Law of Ukraine No. 2268-VII "On the Peculiarities of State Policy to Ensure State Sovereignty of Ukraine in the Temporarily Occupied Territories of Donetsk and Luhansk Regions". (2018, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/2268-19#Text>.

⁴ Law of Ukraine No. 638-IV "On the Fight Against Terrorism". (2003, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/638-15#Text>.

⁵ Ibidem, 2003.

⁶ Resolution of the Great Chamber of the Supreme Court No. 265/6582/16-ts "On Compensation for Property Damage". (2019, September). Retrieved from <https://zakononline.com.ua/court-decisions/show/86310215>.

has been destroyed will be compensated by providing cash or by financing the purchase of a housing certificate. Law of Ukraine No. 2923-IX¹ clearly defines the conditions for granting each type of compensation. For example: the funds are provided to finance the construction of a house of the appropriate type (manor, garden, dacha); the funds are transferred to a bank account with a special regime of use; the intended use is to finance construction. The law prohibits foreclosure and seizure of such property. Despite this, the law also does not set a time limit for their use, so it is not entirely clear what the timeframe for the realisation of these funds and possible verification of their intended use is.

As for the housing certificate, it is an instrument that allows persons to purchase a residential property, such as an apartment, a manor house, a garden or a country house, including financing their construction. This certificate can be in electronic format, which is sent via the Diia portal or to an electronic mailbox, or in paper form, which is delivered to a postal address if the application was submitted in paper form or there is no electronic communication. It can be used by contacting a legal entity clearly defined by the Government, which is authorised to implement it. Unlike the use of cash, the law sets a time limit for its use of 5 years from the date of issue, and the real estate acquired under the certificate cannot be alienated within five years. Interestingly, the certificate can only be used by its owner or his or her heir. This decision also partially influenced the amendments to the legislation on property inheritance, especially with regard to the inheritance of minors (children of the testator), who are now able to inherit regardless of their place of residence (stay), the last place of residence of the testator, the location of immovable property or the main part of movable property (Barankevych, 2023). Thus, to use a housing certificate Law of Ukraine No. 2923-IX² sets stricter requirements than monetary compensation.

It is worth noting that even despite martial law, the issue of exercising and protecting inheritance rights has received the necessary legislative solution in view of the challenges. The compensation mechanism is put into effect through the establishment of the Commission for Consideration of Compensation for Destroyed Objects, which is empowered to make decisions on compensation. The relevant Commission is formed as an advisory body by the executive body of the council, the military

administration of the settlement or the military-civilian administration of the settlement. The Commission has the right to make decisions on granting or refusing to grant compensation for destroyed or damaged objects. As for the timeframe within which compensation will be provided, the Law does not specify it. The same applies to the amount of compensation, as there is no clear understanding of the exact amount of compensation (its range) that can be set for damaged or destroyed property. Based on this, the amount of compensation is calculated individually in each case, taking into account the total area and the cost per square metre of space. Given that the issue of compensation funding is complex, the law also clearly defines the sources of funding for compensation payments. In particular, they include: funds from the state and local budgets; funds from international creditors and investors; all possible types of international financial assistance; reparations and other penalties from Russia, etc.

In addition, one of the sources of compensation for the damage could be Russia's property located on the territory of Ukraine or the aggressor country's assets frozen abroad. The creation of a legal mechanism would allow Ukraine to transfer \$300 billion of Russia's gold and foreign exchange reserves as compensation for the damage caused by the war. To this end, Ukraine proposes to conclude a multilateral agreement between the countries where Russia's frozen assets are stored. However, based on sovereign immunity, such actions require changes in the legislation of the countries where these funds are kept, or the relevant rules should be set out in international agreements. In turn, the Verkhovna Rada of Ukraine adopted Law of Ukraine No. 2116-IX³. It must be acknowledged that without the support of foreign partners, the implementation of this law may be difficult.

Despite the enormous efforts of Ukraine to provide compensation to all victims, it is worth agreeing with the opinion of S. Pohribnyi (2023), a judge of the Civil Court of Cassation of the Supreme Court, who in his report at the conference on reparation and compensation for war damage, emphasised that the path to compensation is long and may not always have a positive outcome. Therefore, the development of a high-quality legal mechanism for compensation for damage caused by the aggression of the Russian Federation requires a proper approach to addressing the issue of compensation and restoration of violated rights of individuals and legal entities not only

¹Law of Ukraine No. 2923-IX "On Compensation for Damage to and Destruction of Certain Categories of Real Property as a Result of Hostilities, Terrorist Acts, Sabotage Caused by the Armed Aggression of the Russian Federation Against Ukraine and the State Register of Property Damaged and Destroyed as a Result of Hostilities, Terrorist Acts, Sabotage Caused by the Armed Aggression of the Russian Federation Against Ukraine". (2023, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/2923-20#Text>.

²Ibidem, 2023.

³Law of Ukraine No. 2116-IX "On the Basic Principles of Forcible Expropriation in Ukraine of Objects of Property Rights of the Russian Federation and Its Residents". (2022, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/2116-20#Text>.

in terms of improving national legal regulation mechanisms, but also in terms of the expediency of improving international law in general.

Procedure for obtaining compensation for damage caused by armed conflict in Ukraine. As already mentioned, compensation should be understood as one of the types of state social assistance, which provides for the payment of funds to a certain category of victims, in the amounts and on the conditions determined by the state (Compensation for damage..., 2023). In addition to Law of Ukraine No. 2923-IX¹ Ukrainian legislation also contains certain provisions on the basis of which compensation may be paid to persons who have lost their housing as a result of emergency situations (and according to Article 5 of the Civil Protection Code of Ukraine, situations of a military nature are considered to be emergency situations), and according to Articles 84, 85, 86 Civil Protection Code of Ukraine² are entitled to receive assistance from the state in the form of compensation. However, the existence of a specially developed procedure for compensation for damage creates a special mechanism that should be applied to compensate for damage caused as a result of the war.

Analysis of the content of Law of Ukraine No. 2923-IX³ gives grounds to distinguish four main stages in the procedure for obtaining compensation. The first stage is related to reporting the damaged property for subsequent entry of data on the damaged object into the State Register of Damaged and Destroyed Property. In order to receive compensation, the requirement to enter information about the destroyed or damaged object is key. In order to establish certain temporal limits, the legislator has provided for the possibility of filing applications for compensation during the martial law period, as well as within one year after its termination. In addition, given the extensive mining of the territory of Ukraine, and the possibility of destruction or damage to property after the end of martial law due to mining or demining, an additional period of three years from the end of martial law has been established for filing an application for compensation. A positive aspect is the possibility of

filing an application without reference to the applicant's place of registration or the location of the destroyed or damaged object. This practice is considered positive in view of the internal migration of the population from the combat zone to safer regions of Ukraine. It is stipulated that an application may be submitted in electronic and paper form (in electronic form - through the services of the Diia online portal, in paper form - through Administrative Service Centres, social protection authorities or notaries). It is worth noting that the possibility of submitting an application through the Diia portal creates favourable conditions for ensuring compensation for the widest possible range of people, given the significant level of population displacement due to the war.

The electronic public service "eVidnovlennia" is a compensation service provided on the basis of an application submitted to the Register of Damaged and Destroyed Property, through the means of the Unified State Web Portal of Electronic Services Diia, in particular using the mobile application of the Diia Portal (Diia), or in another way provided for by law⁴. The algorithm for filing an application with Diia is as follows: 1. Go to the Services section - eVidnovlennia; 2. Report the damaged property in the Diia application; 3. Open a specialised eVidnovlennia account in one of the banks participating in the programme (this can be done immediately when submitting an application in Diia); 4. Fill out an application for financial assistance for the repair of damaged housing or compensation for destroyed property through the Diia application; 5. Diia will automatically generate an application that should be checked and sent for processing. After processing the application, a special commission will record the damage and determine the amount of assistance. If the house is completely destroyed and cannot be restored, Diia will generate a housing certificate that can be exchanged for a new home.

Thus, at the first stage, you should submit an application that clearly describes the list of property and the extent of its damage, provide evidence to confirm ownership, and take photos or videos. The second stage involves consideration of the application. To optimise the

¹Law of Ukraine No. 2923-IX "On Compensation for Damage to and Destruction of Certain Categories of Real Property as a Result of Hostilities, Terrorist Acts, Sabotage Caused by the Armed Aggression of the Russian Federation Against Ukraine and the State Register of Property Damaged and Destroyed as a Result of Hostilities, Terrorist Acts, Sabotage Caused by the Armed Aggression of the Russian Federation Against Ukraine". (2023, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/2923-20#Text>.

²Civil Protection Code of Ukraine No. 5403-VI. (2012, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/5403-17#Text>.

³Law of Ukraine No. 2923-IX "On Compensation for Damage to and Destruction of Certain Categories of Real Property as a Result of Hostilities, Terrorist Acts, Sabotage Caused by the Armed Aggression of the Russian Federation Against Ukraine and the State Register of Property Damaged and Destroyed as a Result of Hostilities, Terrorist Acts, Sabotage Caused by the Armed Aggression of the Russian Federation Against Ukraine". (2023, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/2923-20#Text>.

⁴Resolution of the Cabinet of Ministers of Ukraine No. 381 "On the Approval of the Procedure for Providing Compensation for the Restoration of Certain Categories of Real Estate Objects Damaged as a Result of Hostilities, Acts of Terrorism, Sabotage Caused by the Armed Aggression of the Russian Federation, Using the Electronic Public Service "eVidnovlennia"". (2023, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/381-2023-%D0%BF#Text>.

review process, the law sets a time limit of no more than thirty calendar days from the date of submission of the application. If the destroyed or damaged object is located in the temporarily occupied territory or in the area of hostilities, the statutory period may be extended for another thirty days. The application is reviewed by the Commission for consideration of compensation issues established in each community as an advisory body. The Commission is formed by the executive body of a village, town, city, district council, military administration of a settlement or military-civilian administration of a settlement. The rule on the mandatory establishment of the relevant Commission in each settlement corresponds to the right of citizens who have the right to file an application to exercise this right regardless of the registered place of residence or stay of the person entitled to compensation or the location of the destroyed or damaged real estate. The Commission operates on the basis of a regulation adopted by the relevant village or city council. Model Regulation on the organisation of the work of the commission for consideration of issues related to the provision of compensation, developed by the Cabinet of Ministers of Ukraine and presented in Resolution No. 516 of 19 May 2023¹.

In order to enable the Commission to properly exercise its statutory powers, the Commission may include not only officials of state and local governments, but also representatives of enterprises, institutions, organisations, experts, appraisers, valuation entities, performers of certain types of works (services) related to the creation of architectural objects, representatives of international organisations and other persons whose knowledge and experience will be useful in the work of the Commission. The Law also provides for the operation of on-site application acceptance points, the organisation of which is entrusted to the Centres for the Provision of Administrative Services and social protection authorities.

The local self-government body is obliged to ensure proper inspection of the damaged or destroyed property and to enter the relevant documents and information into the Register of Damaged and Destroyed Property. Fulfilment of this obligation is excluded if such documents/information are subject to entry or are created using other state-owned information and communication systems. It should be noted that at the stage of

consideration of the application, the Commission has the right to suspend consideration of the application if the required documents/information are not submitted in the required amount or information about the suspicion of a crime against the foundations of national security of Ukraine by the recipient of compensation or his/her heir is confirmed.

The law also establishes the order of consideration of applications for compensation for destroyed real estate and defines the list of persons who have a priority right to receive compensation for destroyed real estate (articles 5 and 9 Law of Ukraine No. 2923-IX)². If the application was submitted using the Diia portal (through the Diia mobile application), the compensation recipient will be notified of the decision made by the commission and the amount of compensation by means of a message no later than the next business day after the date the decision is entered into the Register of Destroyed and Damaged Property. If the application was submitted in paper form, the compensation recipient will be notified of the decision in writing by the commission/authorised body that made the decision no later than the next business day after the date of the relevant decision (Dudchenko, 2023). The logical conclusion of the second stage will be the receipt of an inspection report drawn up by the commission of the local self-government body, which will be the legal basis for the payment of compensation for destroyed or damaged property or for refusal to pay. The third stage is related to decision-making, which involves the Commission making a decision and approving this decision with the executive body of the relevant council within five calendar days. In fact, after the Commission enters the information on the results of the survey into the Register, a person may (or may not) be included in the list of persons who must receive compensation.

The main tasks of the Commission specified in the law include: reviewing applications for compensation; providing consultations to compensation recipients; establishing the presence/absence of grounds for compensation based on the verification of submitted documents and information; ensuring that an investigation of an unfinished construction project or destroyed real estate object is conducted to establish whether repair work was carried out at the expense of other sources of funding; assisting in the renewal or obtaining documents for

¹Resolution of the Cabinet of Ministers of Ukraine No. 516 "On Some Issues of Organizing the Work of the Commission for Consideration of Issues Regarding the Provision of Compensation for Destroyed Real Estate Objects as a Result of Hostilities, Acts of Terrorism, Sabotage Caused by the Armed Aggression of the Russian Federation Against Ukraine". (2023, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/516-2023-%D0%BF#Text>.

²Law of Ukraine No. 2923-IX "On Compensation for Damage to and Destruction of Certain Categories of Real Property as a Result of Hostilities, Terrorist Acts, Sabotage Caused by the Armed Aggression of the Russian Federation Against Ukraine and the State Register of Property Damaged and Destroyed as a Result of Hostilities, Terrorist Acts, Sabotage Caused by the Armed Aggression of the Russian Federation Against Ukraine". (2023, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/2923-20#Text>.

the destroyed object; ensuring preparation of the Commission's decisions for their approval by the authorised body; issuance of a housing certificate in electronic and/or paper form (if the Commission's decision is positive) by the Register and sending it to the applicant.

Based on these tasks, the Commission has the right to involve officials of government and local authorities, enterprises, institutions, organisations, experts, appraisers, architects, representatives of international organisations, etc. in meetings and discussions; to request the original documents from the compensation recipient; to submit the necessary requests and receive documents and/or information; to form working groups, if necessary, etc. The list of these rights is not exhaustive and may be expanded based on the tasks assigned to the Commission. Based on the results of consideration of the application, the Commission may decide on: the presence/absence of legal grounds for the testator to receive compensation (provided within 30 days from the date of receipt of the request from the heir or the notary who initiated the inheritance case); suspension/resumption of consideration of the application; granting/refusal to grant compensation, indicating the method and amount of compensation.

The fourth stage is not mandatory, as it is associated with the possibility of appealing the decision in court if the applicant does not agree with the Commission's decision. At the same time, the allocation of this stage has a positive side, given the importance of ensuring transparency, fairness and guarantees of a fair trial in the implementation of the compensation mechanism. This approach opens up the possibility for individuals or legal entities to go to court to review a decision of a public authority that may affect their rights and interests in connection with receiving compensation, which is a key element of the rule of law. It is the guarantee of the right to judicial review at a separate stage that promotes transparency in the activities of the authorities, as it allows the public and stakeholders to monitor and analyse the dispute resolution process. In addition, ensuring the right to appeal helps to avoid possible abuse of power, as the decision can be reviewed and assessed by an independent court. Therefore, in general, such an approach not only contributes to the development of

the legal system, as judicial practice can form new legal standards and precedents that improve the protection of citizens' rights, but also contributes to ensuring fair, transparent and effective judicial protection of the rights and interests of citizens and organisations. In addition, the decision of the commission to grant/refuse to grant compensation for destroyed real estate may be appealed to the body that established it¹.

Despite the importance of establishing commissions at the national level, the idea of creating an effective international compensation mechanism should not be dismissed. In particular, the idea of establishing a Compensation Commission to award payments for damaged and destroyed property caused by Russian aggression, similar to the UN Compensation Commission in 1991-2022, which considered complaints and provided compensation for damages caused by Iraq's illegal invasion of Kuwait in 1990-1991, is worthy of attention. The UN Compensation Commission faced a number of challenges, which resulted in the completion of compensation payments in February 2022, where \$52 billion of the \$350 billion of claims were approved due to the lack of adequate evidence and insufficient resources of the Commission to consider a significant number of individual claims (Buryachenko, 2022). Therefore, given the experience of the UN Compensation Commission, it is very important to legally record the damage caused to create a proper evidence base.

In November 2022, the UN General Assembly adopted a resolution² on legal protection in connection with the aggression against Ukraine, in which states recognised the need to establish an international mechanism of reparation in cooperation with Ukraine. Subsequently, on 12 May 2023, the Council of Europe adopted a resolution³ on the establishment of the International Register of Damage Caused by Russia's Aggression against Ukraine, and about fifty states and the European Union have joined the Register, which will provide for documentary records of claims for losses and damage. This lays the foundation for the future international compensation mechanism, which is planned to be established under separate cooperation agreements with Ukraine. In fact, international law provides the necessary legal basis for Russia to pay reparations for its aggression

¹Resolution of the Cabinet of Ministers of Ukraine No. 516 "On Some Issues of Organizing the Work of the Commission for Consideration of Issues Regarding the Provision of Compensation for Destroyed Real Estate Objects as a Result of Hostilities, Acts of Terrorism, Sabotage Caused by the Armed Aggression of the Russian Federation Against Ukraine". (2023, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/516-2023-%D0%BF#Text>.

²Resolution of the United Nations General Assembly No. S/2014/136 "On Furtherance of Remedy and Reparation for Aggression Against Ukraine". (2022, November). Retrieved from https://digitallibrary.un.org/record/3993657/files/A_ES-11_L.6-EN.pdf?ln=en.

³Resolution of the Committee of Ministers No. CM/Res(2023)3 "On Establishing the Enlarged Partial Agreement on the Register of Damage Caused by the Aggression of the Russian Federation Against Ukraine". (2023, May). Retrieved from <https://rm.coe.int/0900001680ab2595>.

and violations of Ukraine's territorial sovereignty, human rights and IHL. The restoration of violated rights through reparations should include the right to compensation not only for Ukraine, but also for individuals and legal entities. The political will and decisions of Ukraine's partners give millions of Ukrainians hope for justice through compensation for the damage caused by Russia and bringing the perpetrators to justice.

CONCLUSIONS

The provision of reparation and compensation for the damage caused by the war is becoming an integral part of the legal protection of persons whose rights and property have been affected by military events. Despite the fact that there are no analogues of the war damage compensation model in the world, Ukraine is making significant efforts to address the issue of compensation and has already achieved a number of positive results. For this purpose, a special legal regulation on compensation for destroyed and damaged individual real estate objects has been developed, which takes into account the specifics of hostilities and martial law to provide adequate remedies and compensation.

The developed and implemented system of compensation mechanisms is primarily aimed at restoring certain real estate objects and ensuring the housing rights of affected persons. An analysis of the damage caused by the war allows us to determine the scope and nature of compensation, taking into account the destruction of certain types of real estate (including housing) and violations of a number of human rights. The developed national compensation programme pays special attention to the restoration of real estate, provision of housing and restoration of housing rights of affected persons. At the same time, the effectiveness of the compensation mechanism directly depends on determining the value of destroyed and damaged property, taking into account the actual losses suffered by the affected persons.

However, a detailed analysis of the proposed compensation system also reveals a number of inconsistencies and gaps at the level of legal regulation that need to be addressed promptly. The study has shown that the national compensation mechanism in the administrative procedure, although the most effective compared to the judicial method of compensation for damage, is not as effective as society would expect due to certain shortcomings. The issue of expanding the compensation mechanism for destroyed or damaged property due to Russia's aggression can be improved by amending the following key problematic aspects of the legal regulation of compensation. Firstly, the compensation mechanism should be extended to cover the facts of damage caused as a result of the war since 2014, given the homogeneity

of these relations and the equality of the right to compensation of all affected citizens. Secondly, it is advisable to expand the list of entities entitled to compensation for destroyed or damaged housing to include tenants of housing in the state and municipal housing stock. Thirdly, it would be fair to compensate for the loss of other property, such as household items or vehicles that were destroyed or damaged as a result of the war.

The determination of property damage has become a key issue in the development of compensation mechanisms to ensure fair and adequate compensation for losses. However, it must be admitted that there is a difficult path ahead to restore not only property damage, but also the irreversible losses of physical destruction of a part of society, negative impact on the nation's mental health, environmental damage, etc. The complexity and depth of the problem of compensation for damage caused by Russia's aggressive war against Ukraine and the Ukrainian people is impressive. Therefore, the development of a national strategy for compensation and reparation should be based not only on the idea of implementing a compensation mechanism, but also on the restoration of human and civil rights and freedoms to the fullest extent possible. Therefore, the general conclusion of this study is that the development and implementation of effective compensation mechanisms is a necessity to address the problems associated with war-related harm in Ukraine, but will also be an important experience for determining effective ways to implement a strategy for compensation and redress for war-related harm in the case of any other armed conflicts in the world.

The issue of compensation and reparation for war-related damage is of particular importance, as it is becoming not only a pressing problem for law enforcement, but also an integral part of the process of restoring the rights of persons affected by military events in the world in general. Despite the positive results achieved in addressing this issue, further research should focus on the development of a comprehensive compensation mechanism for all facts of damage caused by war and for all affected persons. It is extremely important to take measures to eliminate gaps and inconsistencies at the level of legal regulation in national and international law that impede the effective functioning of the compensation mechanism. Such actions will be an important step towards improving the future strategy of reparation and compensation for damage in other armed conflicts in the world.

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CONFLICT OF INTEREST

None.

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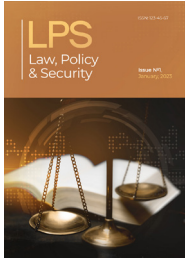
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Відшкодування та компенсація шкоди, завданої війною (кейс України)

Анотація. Дослідження відшкодування та компенсації шкоди, завданої війною, набуває надзвичайної актуальності в контексті сучасних збройних конфліктів, де відновлення прав та свобод постраждалих осіб стає нагальною потребою. Розгляд ініціатив України у цьому напрямку та аналіз досягнутих результатів є важливим внеском у розуміння ефективних компенсаційних механізмів у контексті воєнних дій та може послужити прикладом для інших країн, що стикаються з подібними викликами. Метою даної роботи стало комплексне дослідження національної стратегії відшкодування та компенсації шкоди, завданої війною, з огляду на необхідність повного відновлення прав фізичних та юридичних осіб. В процесі даного наукового дослідження застосовано такі методи: дедуктивний, аналізу монографічних досліджень, теоретичного узагальнення, абстрактно-логічного узагальнення та порівняльно-правового аналізу. У роботі висвітлено ініціативи України у сфері компенсації завданої шкоди від агресивної війни росії проти України та зосереджено увагу на досягнутих позитивних результатах, зокрема проаналізовано розроблену нормативно-правову базу та систему компенсаційного механізму, спрямованого на відновлення окремих об'єктів нерухомого майна (зокрема, житла) та житлових прав потерпілих осіб. Аналіз показав неузгодженості в правовому регулюванні, які потребують вдосконалення, зокрема щодо розширення сфери відшкодування шляхом включення в перелік знищених чи пошкоджених об'єктів компенсації деяких інших видів майна (наприклад, транспортні засоби та побутові речі). Визначено, що ефективність системи залежить від точного визначення збитків та втрат. Запропоновано зміни для покращення компенсаційного механізму, зокрема розширення сфери компенсації та врахування різних категорій постраждалих. Висловлено думку, що розв'язання проблем компенсації за знищене та пошкоджене майно повинно ґрунтуватися не лише на компенсаційному механізмі, а й сприяти повному відновленню прав та свобод постраждалих осіб. Практичне значення даного дослідження полягає у тому, що воно не лише аналізує національну стратегію компенсації та відшкодування шкоди внаслідок війни, але й розробляє рекомендації щодо удосконалення компенсаційного механізму з метою повного відновлення прав та свобод постраждалих осіб. Набутий досвід України може послужити цінним прикладом для інших країн, що стикаються з подібними викликами в умовах збройних конфліктів

Ключові слова: механізм компенсації; порядок відшкодування; суд; правосуддя; збитки; нерухоме майно; житло; пошкоджене майно; воєнний стан



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Attribution of conduct to an International Organisation: Theory and practice

Abstract. The growing role of international organisations in international relations and their rapid development prompts the creation of a coherent international legal framework that will ensure that these subjects of international law bear full responsibility. Attribution of conduct to an international organisation is a crucial step that precedes attribution of responsibility. The study analysed the Articles on the Responsibility of International Organisations regarding attribution of conduct to an international organisation and the case law on their application with a view to determining whether the application of general rules will be sufficient to attribute conduct to international organisations. An analysis of a series of court decisions on attribution of conduct to international organisations found that judicial institutions are guided by the provisions of the Articles. It was noted that attribution of conduct to international organisations is based on general principles and under agreements between states and an international organisation or between international organisations. It was substantiated that when attributing the conduct of a state body, a body or an agent of an international organisation placed at the disposal of another international organisation, the key criterion should be the exercise of effective operational control and command. It was emphasised that regulation of international responsibility is hardly possible based on general rules, considering the legal nature of international organisations, their specific features and uniqueness. The study proposed to revise the Articles in the light of the practice of their application since 2011, specifically, by judicial institutions, to give them the form of an international legal act and to further expand the practice of using agreements as an additional mechanism for attributing conduct in joint actions or when transferring bodies to another entity. The key provisions of this study will form the basis for further research in this area, the ultimate result of which should be an effective international legal regulation of international responsibility of international organisations in general and attribution of conduct to them, specifically, considering the sui generis nature of international organisations

Keywords: exercise of effective control; rules of an international organisation; agent of an international organisation; transfer of peacekeeping contingents to the United Nations; shared responsibility; delegated powers

INTRODUCTION

The issue of attribution of conduct has become particularly relevant due to the growing number of international organisations. Their engagement in international relations has intensified accordingly, and the issues

of attributing conduct for internationally wrongful acts are becoming more frequent. The number of international organisations will continue to grow, their nature will change towards greater efficiency in achieving the

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goals and objectives of the organisation, and their role as a subject of international law will increase. Therefore, the issue of international legal regulation of their responsibility is one of the top priorities in modern international law.

International lawyers investigate the topic of international responsibility quite actively and in depth, albeit in the context of state responsibility. When it comes to international organisations, the researchers mostly limit themselves to a general analysis of the Articles on Responsibility of International Organisations (ARIO)¹. However, firstly, they did not take the form of an international legal act. Secondly, by its nature, ARIO is not a codification act, such as the Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA)², but rather an example of the progressive development of international law. While ARSIWA codifies existing customary law, ARIO fills in the gaps that are not yet supported by practice. The lack of practice is a major problem in the issue of international responsibility of international organisations, and a certain part of it stays behind the scenes of the international organisation's activities and its relations with member states. ARIO is the only document that has collected both customary norms and norms of the progressive development of international law to fill in the gaps in the topic of international responsibility of international organisations.

Among the studies on the responsibility of international organisations in recent years, it is worth highlighting the research by K.S. Won (2020), who analysed the practice of double and multiple attribution of conduct, and M. Seršić (2022), who focused on the provisions of ARIO on the attribution of internationally wrongful acts. Special attention should be paid to the studies that explore the shared responsibility of international organisations and member states. Of fundamental nature is the study by A. Nollkaemper *et al.* (2020) on the Guiding Principles on Shared Responsibility in International Law, which attempted to systematise and expand the existing rules of international law in this area. To some extent, it is a complement to ARIO at the doctrinal level. It is also necessary to pay attention to the studies of L. Gasbarri (2020) and V. Lanovoy (2021) and their contribution to the development of the topic of the Guidelines in the context of modern international law. Even though L. Gasbarri (2020) criticises the Guidelines, noting that

they complicate the already complex issue of attribution of responsibility in international law, both researchers note that such studies are positive in the context of the progressive development of international law.

It is necessary to mention the study by R. Collins (2023), which offers an in-depth analysis of the very nature of international organisations, their legal personality and responsibility, which arise from the uniqueness of an international organisation. Without an understanding of the special nature of international organisations, one cannot begin to discuss the attributing of conduct to them or their overall international responsibility. Studies on the activities of peacekeeping contingents and the attribution of behaviour for the damage they cause should be highlighted separately. Ch.F. Tsega (2021) analysed the practice of double attribution of responsibility in United Nations (UN) peacekeeping operations. E. Carli (2021) analysed the practice of multiple attribution of behaviour during European Union security missions. The subject of this study was the investigation of attribution of conduct, not responsibility.

The issue of attributing conduct to an international organisation is virtually unexplored in Ukrainian scholarship. Some of its aspects have been touched upon in the studies on international responsibility in general. Specifically, this is the thesis on attribution of conduct to the state, conducted by S.S. Andreychenko (2016). The research is interesting in that it directly examines the attribution of conduct, but of a different subject of international law – the state. The general principles of international responsibility and attribution of conduct to a state and an international organisation are comparable. It is also worth noting the study on international responsibility of intergovernmental organisations conducted by D.O. Denysova (2013), the subject of which was the international responsibility of international organisations, which is much broader than attribution of conduct, but the key elements of this study were the analysis of the practice of responsibility for damage caused by UN peacekeeping missions, which is interesting in the context of the present study. Even though these studies were published several years ago, they are still some of the few studies of overall international responsibility of international organisations and attribution of conduct to a subject of international law in the modern Ukrainian science of international law.

¹ Resolution of the General Assembly No. A/CN.4/L.778. "On Responsibility of International Organizations: Texts and Titles of Draft Articles 1 to 67 / Adopted by the Drafting Committee on 2nd Reading in 2011". (2011, May). Retrieved from <https://digitallibrary.un.org/record/705710?ln=en&v=pdf>.

² Resolution of the General Assembly No. A/RES/56/83 "On Responsibility of States for Internationally Wrongful Acts". (2002, January). Retrieved from <https://digitallibrary.un.org/record/454412?ln=en&v=pdf>.

The purpose of this study was to analyse the provisions of Articles 6 and 7 of ARIO¹ regarding the attribution of conduct to an international organisation, the exhaustiveness of the provisions of these Articles and their application by judicial institutions in practice. Considering that the issue of attribution of conduct to an entity is quite broad, the scope of scientific research is narrowed to the conduct of bodies or agents attributed to an international organisation.

MATERIALS AND METHODS

The empirical basis of the study was the 2011 Articles on the Responsibility of International Organisations², the 2001 Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA)³, the Guiding Principles on Shared Responsibility in International Law (2022), international treaties, court decisions, and international legal doctrine on the attribution of conduct to an international organisation. The theoretical framework included the studies according to the subject under study, such as L. Gasbarri (2021), M. Seršić (2022), etc. The study employed a multi-level concept of scientific methods, which includes philosophical, general scientific, and special legal methods. The deductive method was used to investigate the general norms of attribution of conduct to an international organisation, based on which conclusions were drawn on the main concepts, criteria, and gaps. To formulate the purpose and subject of the study, the method of comparative analysis of empirical data was used. The methods of induction, analysis, and synthesis were used to analyse the case law on the application of the provisions of the Articles on the International Responsibility of International Organisations with a view to identifying general trends in court decisions, and to distinguish certain criteria for attribution of conduct, such as the criterion of effective control and attribution of conduct based on the vesting of functions.

The method of analogy helped to identify common principles, features, and trends in attributing conduct to the state and an international organisation. The method of generalisation and analogy was also used in analysing the nature of international organisations and its impact on the specifics of their international responsibility and attribution of unlawful conduct. The method of analysis and synthesis helped to distinguish the concepts and

general principles of attribution of unlawful conduct to the state and compare them with the concepts and general principles of attribution of unlawful conduct to an international organisation. Using the formal legal method, the study analysed the rules of international law on attribution of conduct to an international organisation, established their content and interrelationships, and established general principles. The logical legal method was employed to analyse the concepts, features, criteria, principles of attribution of conduct to an international organisation and to explain the logic of its attribution when applying the criterion of effective operational control. The logical legal method was also used to explain the logic of double or multiple attribution of conduct, which is interesting considering that there is no single approach to this issue. Summarising the findings using the method of generalisation, the study found that when attributing conduct to an international organisation, there is no difference between an organ and an agent, the principal criterion is the performance of the functions provided, judicial institutions are guided by the provisions of the Articles on the Responsibility of International Organisations when making decisions, and the attribution of conduct to international organisations is based on general rules and agreements.

RESULTS AND DISCUSSION

Attribution of conduct to an international organisation: General principles. In 2011, the United Nations General Assembly (UNGA) adopted the 2011 Articles on the Responsibility of International Organisations, developed by the International Law Commission (ILC), which it had been working on since 2002, by resolution A/RES/66/100⁴. Since the adoption of ARIO, the UN General Assembly (GA) has put the issue of giving it the form of an international legal instrument on its agenda in 2014, 2017, and 2020 (Analytical guide..., n.d.). And each time, it recommended that states and international organisations consider them and apply them when addressing issues related to the responsibility of international organisations. The General Assembly also instructed the UN Secretary-General to update the compilation of decisions of international judicial institutions relating to the responsibility of international organisations, as well as the practice of states and international organisations,

¹ Resolution of the General Assembly No. A/CN.4/L.778 "On Responsibility of International Organizations: Texts and Titles of Draft Articles 1 to 67 / Adopted by the Drafting Committee on 2nd Reading in 2011". (2011, May). Retrieved from <https://digitallibrary.un.org/record/705710?ln=en&v=pdf>.

² Ibidem, 2011

³ Resolution of the General Assembly No. A/RES/56/83 "On Responsibility of States for Internationally Wrongful Acts". (2002, January). Retrieved from <https://documents.un.org/doc/undoc/gen/n01/477/97/pdf/n0147797.pdf?token=kzjwhre9Uf9Bqp7ZTW&fe=true>.

⁴ Resolution of the General Assembly No. A/RES/66/100 "On Responsibility of International Organizations". (2011, December). Retrieved from https://digitallibrary.un.org/record/724634/files/A_RES_66_100-EN.pdf.

and to collect their written comments on this issue. Once again, the issue of the form of the Articles on the International Responsibility of International Organisations was included in the agenda of the 78th session of the UN General Assembly in 2023. On 12 November, the UN General Assembly adopted Resolution A/C.6/78/L.18¹, which once again invited states and international organisations to be guided by ARIIO in resolving issues of responsibility of international organisations, and instructed the Secretary-General to update the compilation of court decisions and practice of application of ARIIO and return to the issue of possible convention at the 81st session of the UN General Assembly, which will be held in 2026.

According to Article 4 of the ARIIO, attribution of conduct under international law to an international organisation is one of the two essential elements of the commission of an internationally wrongful act. In ARIIO, Chapter II (Articles 6-9) is devoted to the attribution of conduct to an international organisation. It considers the attribution of conduct of organs or agents of an international organisation (Article 6), conduct of organs of a state or organs or agents of an international organisation placed at the disposal of another international organisation (Article 7), abuse of authority or violation of instructions (Article 8) and conduct recognised and adopted by an international organisation as its own (Article 9)².

Thus, under international law, an international organisation is assigned the conduct of its organs and agents in the performance of functions, regardless of the position held by the organ or agent in relation to the organisation. The conduct of a state, organs, or agents of an international organisation placed at the disposal of another international organisation shall be considered as an act of the latter, provided that it exercises effective control over this conduct. If the conduct of an organ or agent acting officially and within the functions of an organisation exceeds its authority or violates instructions, it is considered under international law to be an act of an international organisation. An international organisation is also attributed the conduct that it recognises and adopts as its own. In 2020, international researchers attempted to develop Guiding Principles on Shared Responsibility in International Law. The authors were guided by the fact that under the existing rules of inter-

national responsibility law, it is sometimes exceedingly difficult to divide responsibility and allocate compensation between states and/or international organisations that together cause damage to a third party. The guidelines define the conditions for shared responsibility, the consequences of shared responsibility (including the possibility of shared responsibility) and the ways in which shared responsibility can be implemented (Nollkaemper *et al.*, 2020). They rely on existing rules of international responsibility law and sometimes propose new interpretations. The Guidelines are, in fact, an attempt to regulate the consequences of double or multiple attribution of conduct, since first there is attribution of conduct, and then responsibility arises based on this attribution. It is also important to distinguish between attribution of conduct and attribution of responsibility.

Conduct of bodies and agents of an international organisation. According to Article 6 of ARIIO, under international law, an international organisation is attributed the conduct of its organs and agents in the performance of functions, regardless of the position held by the organ or agent in relation to the organisation. When determining the functions of the organisation's bodies and agents, the rules of the organisation are applied, which, according to Article 2 of ARIIO, include the constituent acts, decisions, resolutions, and other acts of the international organisation adopted according to these documents, and the established practice of the organisation³. The attribution of conduct to an international organisation does not depend on the name – “body”, “agent” – but on the characteristics of the acting official or body. In the 1949 ICJ Reparation for Injuries opinion, the term “agent” is interpreted as any person, whether or not they are an official receiving remuneration and whether or not in the regular service, who is entrusted by an organ of an organisation to perform or assist in the performance of one of its functions, in short, any person through whom it carries out its activities⁴.

In addition, in its advisory opinion on the Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations of 1989, the ICJ noted that the UN grants privileges and immunities to individuals not depending on their administrative status, but on the nature of their mission, even

¹ Draft of Resolution of the General Assembly No. A/C.6/78/L.18 "On Responsibility of International Organizations". (2023, November). Retrieved from <https://documents.un.org/doc/undoc/ltd/n23/349/70/pdf/n2334970.pdf?token=Xo3pIXFfohXvI9vgLf6fe=true>.

² Resolution of the General Assembly No. A/RES/66/100 "On Responsibility of International Organizations". (2011, December). Retrieved from https://digitallibrary.un.org/record/724634/files/A_RES_66_100-EN.pdf.

³ *Ibidem*, 2011.

⁴ Reparation for injuries suffered in the service of the United Nations. (1949, April). Retrieved from <https://www.icj-cij.org/case/4>.

without granting them official status¹. According to the 1999 advisory opinion *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights*, the conduct of the UN that can be attributed to it, in addition to the conduct of its principal and subsidiary organs, includes the act or inaction of its “agents”, whether in an official capacity or acting for the UN by virtue of functions entrusted to them by the organisation².

Based on the analysis of the practice of international organisations and the commentaries to ARIO³ and court decisions, it can be argued that for the purpose of attributing conduct to an international organisation, there is no distinction between organs and agents, and regardless of the place of the organ or agent in the structure of the international organisation. Conduct is assigned when a person performs a function, but not when they act as a private individual. An international organisation determines which functions are entrusted to an organ or agent based on the organisation’s “rules”, although this is not the only basis. The wording of Article 6 leaves open the possibility of considering, in exceptional circumstances, the functions entrusted to an organ or agent as entrusted to them, even if this was not based on the rules of the organisation. This includes individuals and groups that are factually acting at the direction or under the control of an international organisation – i.e., they are considered to have the functions of an international organisation, even if this does not comply with its rules. The term “agent” in the Articles has a broad meaning according to the ILC interpretation – it covers generally all persons and entities that have the authority. The interpretation and application of Article 6 usually does not raise any questions in the international law doctrine, since it attributes the conduct of an organ of an international organisation or its official (agent), effectively, based on an internal institutional link arising from the relationship between the international organisation and an entity within it.

Conduct of an organ of a state, organ, or agent of an international organisation placed at the disposal of another international organisation. An international organisation is attributed the conduct of an organ of a state

or of an organ or agent of an international organisation placed at the disposal of another international organisation (Article 7 of ARIO)⁴. This is not a complete transfer to the control of another international organisation, but rather a case where a body or agent stays part of an international organisation but is temporarily placed at the disposal of a state or another international organisation to perform certain tasks. In such cases, the question may often arise as to whether the conduct of the body or agent in question should be attributed to the organisation of which it is a part or to the state or international organisation to which it is placed. Sometimes there can be double or multiple attribution of conduct. For instance, the conduct of a state to which an organ or agent is placed at its disposal can be attributed to the international organisation of which it is a member, and vice versa. It is also possible for two or more international organisations to simultaneously attribute conduct to each other, for instance, when they establish a joint body and act through it (*Responsibility of international organisations*, 2011).

Even though ARIO makes provision for options for dual attribution of conduct, the judiciary has not taken a unified stance on this issue. According to K.S. Won (2020), this is mainly caused by the lack of practice and the nature of the primary rules on the responsibility of international organisations, with which the authors of this study can fully agree. The practice of attributing conduct to a subject in such cases can be analysed on the example of the transfer of peacekeeping contingents by a UN state for peacekeeping operations. The state retains disciplinary powers and criminal jurisdiction over members of the national contingent, which is usually stipulated in an agreement between the UN and the contributing state. Often in such cases, the question arises whether the conduct of such an organ should be attributed to the international organisation to which it has been transferred or to the contributing state or international organisation. The issue of international responsibility for the actions of peacekeeping contingents is stipulated in the agreement between the parties. The treaty provides that the UN is responsible for the loss of UN property or damage to it, compensation for death, injury, or illness arising

¹ Convention "On The Privileges and Immunities of the United Nations in the Case of Mr. Dumitru Mazilu, Rapporteur of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights". (1989, December). Retrieved from <https://www.icj-cij.org/case/81#:~:text=It%20reached%20the%20conclusion%2C%20inter>.

² Decision of the Secretary-General of the United Nations No. 1998/297 "On the Privileges and Immunities of the United Nations to a Special Rapporteur of the Commission on Human Rights, and on the legal Obligations of Malaysia in that Case". (1998, August). Retrieved from <https://www.icj-cij.org/case/100>.

³ Resolution of the General Assembly No. A/RES/66/100 "On Responsibility of International Organizations". (2011, December). Retrieved from https://digitallibrary.un.org/record/724634/files/A_RES_66_100-EN.pdf.

⁴ *Ibidem*, 2011.

out of the performance of official duties on behalf of the UN, and loss of personal property¹.

The principles of attribution of international responsibility to an international organisation are also reflected in court practice. For the first time, the European Court of Human Rights (ECHR) considered a case related to the conduct of military personnel within the framework of the UN Interim Administration Mission in Kosovo (UNMIK) and the Kosovo Force (KFOR) in the case *Behrami and Behrami v. France and Sarmati v. France, Germany, and Norway*². The Court was guided by the ILC's work on the responsibility of international organisations and decided that the determining criterion was whether the UN Security Council (SC) retained real power and control, as it had delegated operational command. The Court acknowledged the effectiveness of NATO's operational command over KFOR and noted that KFOR was deployed in Kosovo based on a UN Security Council resolution. And concluded that KFOR exercised validly delegated powers under Chapter VII of the UN Charter, and the actions could be attributed to the UN under Article 4 of ARIO³. The principal criterion in making the decision was the criterion of effective control, which is essentially the so-called operational control and involves participation in the act. General control, on the other hand, does not usually involve direct participation in an act. In 2008, in his report on UNMIK, the UN Secretary-General also distanced himself from the criterion of overall ultimate control, limiting the UN's responsibility to the effective operational control it exercises (Report of the secretary-general..., 2008).

In contrast to the cases of *Behrami and Behrami v. France and Sarmati v. France, Germany, and Norway*⁴, it is worth mentioning the case *Al-Jedda v. the United*

Kingdom, which was first considered by the House of Lords and then by the ECHR⁵. A case involving the detention of an individual by British military personnel in Iraq, whose stay there was authorised by a UN Security Council resolution⁶. The case notes that even though the House of Lords upholds the conclusions of the ECHR in *Behrami and Sarmati*⁷, there are considerable differences between the facts and circumstances, which makes it impossible to conclude that the US and UK forces were under effective UN command when they arrested the applicant. This conclusion is precisely in line with the principal criterion for attributing conduct – the exercise of effective control. In this case, effective operational control was actually exercised by the forces of national contingents.

After the judgment in the *Al-Jedda* case⁸, the applicant applied to the ECHR. In its judgment in this case, the ECHR referred to Article 7 of ARIO⁹, which had not yet been approved by the ILC and the General Assembly, and noted that the UN Security Council exercised neither effective operational control nor ultimate control over the actions and inactions of foreign troops that were part of a multinational force, and therefore the responsibility for the applicant's detention could not be attributed to the UN. *Al-Jedda* was detained in custody in a prison in Barca controlled exclusively by the British Armed Forces, and therefore the responsibility for his detention should lie with the respondent State, as he was under the custody and control of the United Kingdom at all times. The UN acknowledges that it exercises effective control over the deployment of national contingents in peacekeeping forces. Thus, on 3 February 2004, the UN Legal Counsel stated in a memorandum that since UN forces are a subsidiary organ of the UN, their actions are, in principle, attributable to the UN, and if they violate international

¹ Report of the Secretary-General No. A/46/185 "On Model Agreement Between the United Nations and Member States Contributing Personnel and Equipment to United Nations Peace-Keeping Operations". (1991, May). Retrieved from <https://digitallibrary.un.org/record/114426?ln=en>.

² Information note on the Court's case-law No. 97 "On *Behrami and Behrami v. France and Sarmati v. France, Germany and Norway*". (2007, May). Retrieved from <https://hudoc.echr.coe.int/fre?i=002-2745>.

³ Resolution of the General Assembly No. A/RES/66/100 "On Responsibility of International Organizations". (2011, December). Retrieved from https://digitallibrary.un.org/record/724634/files/A_RES_66_100-EN.pdf.

⁴ Information note on the Court's case-law No. 97 "On *Behrami and Behrami v. France and Sarmati v. France, Germany and Norway*". (2007, May). Retrieved from <https://hudoc.echr.coe.int/fre?i=002-2745>.

⁵ Application of The European Court of Human Rights No. 27021/08 "On Case of *Al-Jedda v. the United Kingdom*". (2011, July). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-105612>.

⁶ Opinions of the Lords of appeal for judgment in the cause No. UKHL 58 "R (on the application of *Al-Jedda*) (FC) (Appellant) v Secretary of State for Defence (Respondent)". (2007, December). Retrieved from <https://publications.parliament.uk/pa/ld200708/ldjudgmt/jd071212/jedda-1.htm>.

⁷ Information note on the Court's case-law No. 97 "On *Behrami and Behrami v. France and Sarmati v. France, Germany and Norway*". (2007, May). Retrieved from <https://hudoc.echr.coe.int/fre?i=002-2745>.

⁸ Application of The European Court of Human Rights No. 27021/08 "On Case of *Al-Jedda v. the United Kingdom*". (2011, July). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-105612>.

⁹ Resolution of the General Assembly No. A/RES/66/100 "On Responsibility of International Organizations". (2011, December). Retrieved from https://digitallibrary.un.org/record/724634/files/A_RES_66_100-EN.pdf.

obligations, this entails the international responsibility of the Organisation and obliges it to pay compensation¹. This statement summarizes UN practice in relation to the UN operation in the Congo^{2,3,4,5,6,7}, of the UN peacekeeping forces in Cyprus⁸, as well as other operations carried out later. There is also a statement by the UN Secretariat in its comments to draft Article 6 on a series of reasons, primarily political, for which the UN will continue to be guided by the principle of its own responsibility with respect to third parties in connection with peacekeeping operations⁹. However, as the wording of the documents shows, the UN, like judicial institutions, considers the exercise of operational control to be the principal criterion. Or, in other words, real power at that moment over the subjects who committed the internationally wrongful act. Therefore, it is necessary to consider each situation separately, considering the full context, determining the limits of real effective operational control of each party. A. Mohay (2020) notes that the concept of effective control is valid, but the criterion itself needs to be detailed for more successful application, the provisions on double attribution of conduct need to be regulated in detail, and the practice of attribution of conduct specifically, and international responsibility of international organisations in general, should prevail over the ARIO provisions¹⁰. The authors of the present study fully agree with these theses, considering the lack of practice and understanding that general theoretical provisions in the field of international responsibility cannot replace it.

The activities of UN peacekeeping contingents are just one example of the duality of attribution of conduct

in cases of joint actions by an international organisation and a state or other international organisation. The principles applicable to UN peacekeeping forces can also be extended to other bodies placed at the disposal of the UN and other international organisations, such as disaster relief units. The Guide principles provide that shared responsibility arises in cases of assistance, concerted action, and in cases of control (Nollkaemper *et al.*, 2020). From these joint actions comes the attribution of conduct to an international organisation. By analogy with the UN, the European Union is also attributing conduct to the EU. According to N. Nedeski (2021), the practice of concluding agreements between the EU and its member states is indicative of the joint obligations and responsibilities of the EU and its member states. There is an overlap in their obligations in the treaties, and it is worth distinguishing between two types of joint obligations – when the Member State is responsible and when the EU is responsible. In fact, this refers to the same two ways of attributing conduct as in the two aforementioned ECHR judgments – Behrami and Behrami v. France and Sarmati v. France, Germany, and Norway and Al-Jedda v. the United Kingdom. In security operations, the EU is also guided by Article 7 of ARIO, which derives from the aforementioned concept of effective control. Accordingly, the same scenarios of attribution of conduct are possible in the context of EU Common Security and Defence Policy missions as in the case of UN peacekeeping operations (Carli, 2021).

The main principle of international responsibility is reparation, and therefore the issue of double or multiple

¹ Interoffice memorandum No. 10 A/58/10 "To the Director of the Codification Division, Office of Legal Affairs and Secretary of the International Law Commission Regarding the Topic Responsibility of International Organizations". (2004, September). Retrieved from https://legal.un.org/unjuridicalyearbook/pdfs/english/by_volume/2004/chpVI.pdf.

² Agreement of the United Nations and Belgium No. 7779 "On the Financial Questions Outstanding as Regards the Former Belgian Military Bases in the Congo". (1965, February). Retrieved from https://treaties.un.org/Pages/showDetails.aspx?objid=080000028012d802&clang=_en.

³ Agreement of the United Nations and Greece No. 8230 "On the Settlement of Claims Filed Against the United Nations in the Congo by Greek Nationals". (1966, June). Retrieved from https://treaties.un.org/Pages/showDetails.aspx?objid=080000028012b785&clang=_en.

⁴ Agreement of the United Nations and Greece No. 8525 "On the Settlement of Claims Filed Against the United Nations in the Congo by Italian Nationals". (1967, January). Retrieved from https://treaties.un.org/Pages/showDetails.aspx?objid=080000028012a032&clang=_en.

⁵ *Ibidem*, 1967.

⁶ Agreement of the United Nations and Luxembourg No. 8487 "On the Settlement of Claims Filed Against the United Nations in the Congo by Luxembourg Nationals". Retrieved from https://treaties.un.org/Pages/showDetails.aspx?objid=080000028012a205&clang=_en.

⁷ Agreement of the United Nations and Switzerland No. 621 "On the Settlement of Claims Filed Against the United Nations in the Congo by Swiss Nationals". Retrieved from https://treaties.un.org/Pages/showDetails.aspx?objid=080000028012b828&clang=_en.

⁸ Agreement of the United Nations and United Kingdom of Great Britain and Northern Ireland "On the Service with the United Nations Peace-Keeping Force in Cyprus of the National Contingent Provided by the Government of the United Kingdom of Great Britain and Northern Ireland". (1966, February). Retrieved from https://legal.un.org/unjuridicalyearbook/pdfs/english/by_volume/1966/chpII.pdf.

⁹ Document No. A/CN.4/637 and Add.1 "On Responsibility of International Organizations". (2011, February). Retrieved from https://legal.un.org/ilc/documentation/english/a_cn4_637.pdf.

¹⁰ Resolution of the General Assembly No. A/RES/66/100 "On Responsibility of International Organizations". (2011, December). Retrieved from https://digitallibrary.un.org/record/724634/files/A_RES_66_100-EN.pdf.

attribution of conduct will have prospects for development in judicial practice and in the practice of states and international organisations. However, at the moment, the issue of attribution of conduct of a state organ or an organ or agent of an international organisation placed at the disposal of another international organisation is the most controversial, considering the factual absence of international legal regulation of this issue. International treaties are one way to further regulate the attribution of responsibility. The study has already mentioned above the treaties between the UN and its member states on peacekeeping missions. Such agreements are also concluded by other international organisations in their joint actions with states or international organisations. This way of additional legal regulation is quite logical and closes many gaps, as noted by N. Nedeski (2021), as it allows thoroughly regulating and distributing the obligations of the Member State and the EU. At the same time, N. Nedeski (2021) opposes the common approach of joint obligations and proposes to distinguish between them within such agreements, which makes it possible to clearly distinguish not only obligations but also, as a result, attribution of conduct and responsibility, which is difficult to agree with – except for the EU.

Ch.F. Tsega (2021), investigating the responsibility of international organisations for internationally wrongful acts during UN peacekeeping operations, stressed that the introduction of dual responsibility is a step forward in ensuring accountability for violations of international legal obligations. K.S. Won (2020) supported this opinion, noting that joint attribution of conduct to an international organisation and a state or other international organisation ensures reparation to the injured party. E. Carli (2021), studying the multiple attribution of conduct, concluded that this phenomenon considerably strengthens the guarantees of accountability, but at the same time notes that this requires an international legal framework that is currently absent. C. Ferstman (2019) shared an analogous opinion. One can fully agree with the opinions of the above researchers on multiple attribution of conduct, but without fail noting that additional international legal regulation is needed, which is currently lacking, as mentioned by E. Carli (2021). Examining UN reparations for massive violations during peacekeeping operations, the researcher notes that the UN should not shift responsibility to Member States and their national contingents, while attribution of responsibility should be dual or multiple to ensure that the injured party is compensated. When conduct is attributed to one of the entities involved in a joint operation, it is not always possible to guarantee compensation for damage, which is contrary to the above-mentioned principle of mandatory compensation for damage. L. Gasbarri (2021)

supported this opinion, noting that the analysis of the ECHR case law shows that the Court is looking for various ways to avoid attributing conduct to an international organisation, often referring to the rules of the international organisation. But first and foremost, all entities are guided by international law, and then by their own internal regulations. If the principle of double or multiple responsibility is denied, individuals will be left without compensation, as there are no mechanisms that would allow individuals to apply to international organisations exclusively through the state (due diligence). In fact, if conduct is not attributed to a state, attribution of conduct to an international organisation does not always entail responsibility.

N. Voulgaris (2019) noted that the attribution of conduct stems from the control or organic connection between the subject and the conduct. In fact, this is an interpretation of Articles 6 and 7 of ARIO. However, in some cases, these two criteria will not allow compensation to the injured party, and in this case, the position of member states should be considered, since they are entitled to ultimate control over the international organisation. In cases where an organisation is unwilling or unable to take responsibility for its actions, the final decision stays with states. However, the researcher is against the position that the state is responsible in such cases. S.Ø. Johansen (2019) believes that the attention to double attribution of conduct is exaggerated by theorists, because in practice it is exceedingly rare when actions are carried out jointly and joint responsibility for the commission of an internationally wrongful act by both parties may arise. Otherwise, it is more often a question of attributing conduct to the party that exercised effective control, which is quite logical. One can disagree with this, because if in the past cases of joint actions of an international organisation and states or other international organisations were rather infrequent, there is a clear trend towards an increase in the number of such actions.

An interesting question of attributing responsibility to an international organisation is raised in the thesis of R. Jorritsma (2021). Thus, the researcher investigated the practice of human rights judicial institutions and concluded that they are not guided by ARSIWA, but by customary rules of international responsibility, and do not follow the principles of *lex specialis* when attributing conduct. Considering that the general principles in ARSIWA and ARIO are common, it can be assumed that the same will apply to international organisations when such cases are considered by human rights courts. The biggest problem with the international responsibility of international organisations in general, and with attribution of conduct specifically, is the lack of sufficient practice. Furthermore, at the moment, the attribution of

conduct is based on several articles of ARIO¹ (Articles 6-9), which have never been adopted as an international legal instrument, and on judicial practice. When attributing responsibility, one can also use an exclusively doctrinal source – the Guiding Principles on Shared Responsibility. When it comes to ARIO, it is a well-balanced draft international legal act. According to M. Seršić (2022), despite the criticism of certain provisions of the draft articles, the positive contribution of the ILC to the international responsibility of international organisations should be recognised, and the authors of the present study fully agree with this. The prevailing opinion in the international legal literature is that the ILC has created a harmonised and consistent system of rules on the responsibility of international organisations for internationally wrongful acts. If one considers the Shared Responsibility Guidelines, many questions arise. Thus, L. Gasbarri (2020) believes that the Guidelines complicate the already complex issue of the responsibility of international organisations compared to ARIO. At the same time, V. Lanovoy (2021) noted that even though the Guidelines do not provide answers to all questions, their very emergence is another step that brings the modern concept of international responsibility closer to effective international legal regulation.

M. Milanovic (2020) noted that the attribution of conduct to an international organisation is based on the same principles as the attribution of conduct to a state. Difficulties usually arise when the conduct is the result of cooperation between an international organisation and a state or between an international organisation and a private organisation, which is much less common. One should definitely agree with the researcher that the ARIO provisions alone are not enough to resolve these issues. The researcher emphasises that the concept of effective control applied to the attribution of conduct to international organisations by judicial institutions is often ineffective, and the authors of the present study cannot disagree with this. It is effective, efficient, and based on this concept it is even possible to establish the subject's share of responsibility, or rather internationally wrongful behaviour, but it lacks international legal regulation, as mentioned above. The basis for attributing responsibility to an international organisation is currently ARIO² – the result of the work of the ILC, considering the comments of all stakeholders, which has not yet taken on an international legal form. S. Bayani (2022) insisted that the general rules for attributing conduct are acceptable

enough and do not have substantial gaps, but the author refers to the responsibility of states and ARSIWA. When it comes to the rules for attributing conduct to international organisations, there is a significant difference – ARSIWA is based on practice, while for ARIO it was not enough, although the general rules are analogous for both entities. In fact, the practice of attributing conduct to international organisations is currently being developed. The author makes a good point, which can be transferred to ARIO, that despite the shortcomings of the Articles on Responsibility – ARSIWA and ARIO – they perform a unifying function and allow integrating the rules of international responsibility into a system and prevent their fragmentation.

The doctrinal provisions of the Guiding Principles on Shared Responsibility in International Law can be partially used. An important role is played by judicial decisions on the attribution of conduct to international organisations, in which judicial institutions are guided by ARIO³, thus reinforcing its application and filling in gaps (Krieger *et al.*, 2021). In such circumstances, it is only a matter of time before the ARIO international legal act takes the form of an international legal act. Another problem arises here – whether a convention on the international responsibility of international organisations would be sufficient if ARIO is used as a basis. International organisations differ not only from states, but also from each other, as they do not have general competence and are created to perform specific tasks and functions. R. Collins (2023) refers to their “elusive identity” and believes that to fully understand the nature of international institutions, something special, unique, *sui generis* needs to be included in this conceptual mix. M. Milanovic (2020) emphasised that considering the specific features of attributing conduct to international organisations of a supranational and integrative nature, primarily the EU, the concept of effective control may be subject to controversy and ambiguity. A. Mohay (2020) believes that the issue of international responsibility should be analysed through the lens of the unique nature of international organisations, such as the European Union, and the authors of this study fully agree with this. While fully supporting the opinion of these researchers, each international organisation has a unique nature, and therefore it can be assumed that ARIO will not be able to regulate all issues of responsibility of international organisations with general rules. It appears impossible to consider the specific features of all international organisations in a single international

¹ Resolution of the General Assembly No. A/CN.4/L.778 "On Responsibility of International Organizations". (2011, May). Retrieved from <https://digitallibrary.un.org/record/705710?ln=en&v=pdf>.

² Ibidem, 2011.

³ Ibidem, 2011.

legal act. Clearly, international treaties as an additional means of regulation will still be necessary for a complete settlement. However, this does not diminish its significance as a basic document in this area and an instrument for the progressive development of international law.

With the active development of the practice of international responsibility by international organisations, many questions regarding the international responsibility of international organisations will disappear. It is possible that the ILC will then be able to find a common denominator for such heterogeneous subjects of international law and make another attempt to codify their international responsibility. Even so, this international legal act will be of rather limited use due to the active and rapid development of international organisations. One way or another, all researchers agree on one thing – it is imperative that the development of international law moves faster in this area. There are issues that require detailed regulation to fill the currently existing gaps.

CONCLUSIONS

Summarising the above, when attributing conduct to an international organisation, there is no distinction between bodies and agents and their place in the organisation's structure. The key criterion is the performance of functions based on the rules of an international organisation or those entrusted outside them. In judgments attributing the conduct of an organ or agent placed at the disposal of another entity, the key criterion is the exercise of effective control at the time of the internationally wrongful act. The attribution of conduct to international organisations is governed by general norms and agreements based on which joint actions are taken or a body is made available to another entity. In such agreements, there is a duplication of obligations of the parties, which provides additional legal grounds for assigning double or multiple conduct. Judicial institutions are guided by the

ARIO in their decision-making, even though it has not yet taken the form of an international legal instrument, reinforcing the ARIO norms and creating a practice of its application that will eventually fill many gaps. It is clear that ARIO in its current form is not sufficient to regulate the overall international responsibility of international organisations, and the attribution of conduct to an international organisation specifically. The legal nature of modern international organisations is very heterogeneous, which is shaped by their unique goals, functions, and tasks assigned to them by their member states. And even if ARIO is given an international legal form, its general rules will not be able to effectively regulate the international responsibility of all international organisations.

It is necessary that the development of international law in this area should be rapid, considering the dynamics of international organisations and their practice of bearing responsibility. The system of norms of international responsibility of international organisations should be based on the principle of reparation. At this stage, it is possible to revise ARIO to consider current practice at the time of its adoption in the form of an international legal act and use agreements as an additional regulatory mechanism. This study is part of a comprehensive investigation of international responsibility of international organisations in modern international law. Considering the wide scope of the issue of responsibility of international organisations, the next stage of the study is to analyse the responsibility of international organisations for the acts of other states or another international organisation, as well as for the acts of member states.

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CONFLICT OF INTEREST

The authors of this study declare no conflict of interest.

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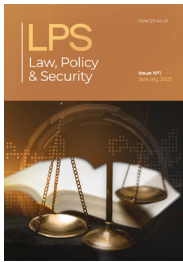
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Присвоєння поведінки міжнародній організації: теорія та практика застосування

Анотація. Зростання ролі міжнародних організацій в здійсненні міжнародних відносин та їх швидкий розвиток спонукає до створення цілісної міжнародно-правової бази, яка зможе забезпечити несення відповідальності цими суб'єктами міжнародного права в повному обсязі. Присвоєння поведінки міжнародній організації є важливим кроком, який передуює присвоєнню відповідальності. Автор проводить аналіз Статей про відповідальність міжнародних організацій щодо присвоєння поведінки міжнародній організації, судової практики їх застосування з метою з'ясувати, чи достатнім буде застосування загальних норм для присвоєння поведінки міжнародним організаціям. Аналіз низки судових рішень щодо присвоєння поведінки міжнародним організаціям встановив, що судові установи керуються положеннями Статей. Відзначено, що присвоєння поведінки міжнародним організаціям відбувається на загальних принципах та за угодами між державами та міжнародною організацією чи між міжнародними організаціями. Обґрунтовано, що при присвоєнні поведінки органу держави, органу чи агента міжнародної організації, наданих в розпорядження іншої міжнародної організації, основним критерієм має бути здійснення ефективного оперативного контролю та командування. Підкреслено, що регулювання міжнародної відповідальності навряд чи можливе на підставі загальних норм, враховуючи правову природу міжнародних організацій, їхні особливості й унікальність. Пропонується перегляд Статей з урахуванням практики їх застосування з 2011 року, зокрема, судовими установами, надання їм форми міжнародно-правового акту та подальше поширення практики використання угод як додаткового механізму присвоєння поведінки при здійсненні спільних дій чи передачі органів у розпорядження іншого суб'єкта. Основні положення статті ляжуть в основу подальших досліджень в цій царині, кінцевим результатом якої має стати ефективне міжнародно-правове врегулювання міжнародної відповідальності міжнародних організацій загалом та присвоєння їм поведінки, зокрема, враховуючи *sui generis* міжнародних організацій

Ключові слова: здійснення ефективного контролю; правила міжнародної організації; агент міжнародної організації; передача миротворчих контингентів у розпорядження Організації Об'єднаних Націй; спільна відповідальність; делеговані повноваження



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Machine learning models for judicial information support

Abstract. The modern information society requires effective digital justice based on innovative technologies. This research aims to create machine-learning algorithms to evaluate the likelihood of prisoners reoffending, utilising their socio-demographic attributes and past criminal history. In this paper, the experimental method, modelling method, forecasting, field research, statistical analysis, case study, meta-analysis, comparative analysis, and machine learning techniques have been used. It was investigated that the main factors influencing the risk level (low, moderate, high) of recidivism are dynamic characteristics associated with previous criminal activities (court decisions for specific individuals provided for suspended sentences and early releases, rather than serving sentences in correctional institutions). The age at which a person was first involved in the criminal environment (first convicted to a suspended sentence or imprisonment for a certain period while serving in correctional institutions) also significantly affects the propensity for criminal relapse. Individual characteristics of convicts (age at the time of the study, gender, marital status, education level, place of residence, type of employment, motivation for release) are not correlated with a tendency to commit repeated crimes. The age at which a person was first sentenced to actual imprisonment or given their first suspended sentence, the age at which a person was first sentenced to the actual degree of punishment, the number of early dismissals, and the young age at which a person was first involved in the criminal environment (received their first suspended conviction or real conviction) are significant factors increasing the risk of committing

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a recidivist crime in the future. The proposed model can be applied to predict the level of propensity for recidivism crimes for new cases. The obtained results can provide reliable information support for court decisions and become part of a comprehensive court information system

Keywords: judiciary; predictive justice; legal support of the judiciary; court; artificial intelligence; decision-making; information systems

INTRODUCTION

Until recently, the potential for applying data science, artificial intelligence (AI), and machine learning (ML) to legal practice was seen as doubtful. Law involves so-called “human” tasks of critical analysis, analytical thinking, and logical reasoning. However, the use of new information technologies, especially ML, in the legal field is growing, opening up new possibilities for analysing large volumes of historical data, detecting non-obvious connections, and uncovering useful associations. AI systems can improve data quality and make justice systems more efficient. Modern jurisprudence requires effective analytics and forecasting tools to enhance legal analysis by examining vast datasets. Machine learning is being integrated more and more into judicial systems worldwide to support data-driven decision-making.

A growing number of researchers from different countries and leading international experts, particularly in the fields of information technology and cybersecurity, lawyers and judges, have been conducting new studies at the intersection of AI and law. Zh. Duan (2021) used an inter-jurisdictional and interdisciplinary approach to studying AI and law issues in a comparative context. P. Sarzaeim *et al.* (2023) conducted a systematic literature review on the application of ML methods in law enforcement. The authors examined the advantages and limitations of using these methods in smart policing to simplify understanding of the effectiveness of integrating machine learning into law enforcement practices. A. Tursunaliyeva *et al.* (2024) presented an overview of the main methods for interpreting AI models in the context of human-AI interaction and ensuring compliance with regulatory requirements. N.A.K. Rosili *et al.* (2021) presented a systematic review of studies on the application of machine learning methods to predict court decisions. K.M. Pilkov (2022) studied the benefits of integrating AI into the decision making process.

One important use of machine learning in legal systems is to enable “predictive justice”, where algorithms analyse precedents to statistically forecast the outcomes of new cases. S. Yassine *et al.* (2023) explored the capabilities of using AI tools and assessed their impact on the efficiency of the judicial system. B. Mathis (2022) compared the effectiveness of using different machine learning algorithms for extracting relevant information

from open court case data. By leveraging vast collections of case law and encoding it in a digestible form, the algorithms can statistically forecast the likely result of a given dispute through comparison to similar prior cases. D. Alghazzawi *et al.* (2022) applied a hybrid neural network model for efficiently predicting court decisions based on historical court data sets. E.Q. Nuranti *et al.* (2022) presented predictions on first instance court decisions using a collection of Indonesian court documents. Predicting legal case outcomes can support judicial decision-making. With recent advances in artificial intelligence, machine learning methods may serve as decision-support tools within the legal system. O.A. Alcántara Francia *et al.* (2022) analysed the effectiveness of different machine learning, deep learning and natural language processing methods for predicting judicial and administrative decisions. However, the potential downsides of utilising these technological tools must also be weighed. Careful oversight is needed to ensure fairness.

AI platforms offer various opportunities for improving justice systems. But Artificial intelligence systems do not replace human decision-makers. On the contrary, they can augment human decision-making and efficiency. S. Bhupatiraju *et al.* (2021) stated that AI provides informational support to human decision makers, but cannot replace them. Machine learning and artificial intelligence have immense potential to aid the legal system and court decisions by efficiently analysing massive amounts of data, and identifying patterns and connections that humans may miss. However, care must be taken to ensure these systems remain free of bias and generate fair outcomes. J. Zeleznikow (2023) explored the proper use of ML to support and generate legal predictions by examining proper data usage in global legal domains, including common law, civil law, and mixed jurisdictions.

AI/ML, data science, and law involve very different disciplines – Computer Science, Mathematics, Logic, Rhetoric, Psychology, and so on. Interdisciplinary will be key to successfully integrating these fields. Court decisions have high stakes, so AI/ML systems used in this context must undergo rigorous testing and monitoring. Transparency in system operations is vital for assessing fairness and engendering public trust. Overall, there is tremendous potential to leverage these technologies

to enhance efficiency and justice in the legal system. However, care must be taken to weigh societal impacts and mitigate risks that could undermine core legal safeguards and values

The work aim was to study the possibilities of practical application of machine learning to assess the risk level of repeated offences by prisoners and provide information support for judicial decision-making. The resulting new knowledge and insights can provide the justice system with solid information to make relevant judicial decisions devoid of subjective judgements. The presented study employs a multidisciplinary approach to analysing the socio-behavioural characteristics of

convicts and developing prognostic models based on them to calculate the probability of recidivism.

MATERIALS AND METHODS

The research presented in this paper provides reliable results on the extent (level) of such propensity based on the analysis of significant individual characteristics of persons convicted to imprisonment. This work presents the results of empirical studies conducted based on a dataset containing real data on 13,010 convicts sentenced to imprisonment in Ukraine. The input dataset contains information about the previous crimes of convicts and their social and personal characteristics (Table 1).

Table 1. Dataset description

Variable	Description	Value
RR	Recidivism rate	Nominal: low – crime levels lower than 2; moderate – crime levels between 3 and 4; high – crime levels higher than 4.
AGE	Age at the time of the study	Integer
AAP	Age at which a person was first sentenced to the actual degree of punishment	Nominal: 1 – age lower than 18; 2 – age between 18 and 30; 3 – age between 30 and 45; 4 – age higher than 45.
AAS	Age at which a person was first sentenced to actual imprisonment or given their first suspended sentence	Nominal: 1 – age lower than 18; 2 – age between 18 and 30; 3 – age between 30 and 45; 4 – age higher than 45.
ED	Number of early dismissals	Integer
SC	Number of suspended convictions	Integer
SEX	Sex	Binominal: 1 – male; 2 – female.
MS	Marital status	Nominal: 1 – single; 2 – married.
EL	Education level	0 – incomplete secondary; 1 – secondary; 2 – special secondary; 3 – incomplete higher, 4 – higher.
PR	Place of residence	Nominal: 1 – rural area; 2 – urban area.
TE	Type of employment	Nominal: 0 – unemployed; 1 – part-time; 2 – full-time.
MD	Motivation for dismissal	Nominal: 0 – no; 1 – yes.

Source: compiled by the authors

To determine the level of convicts' tendency to potentially commit repeated crimes in the future and

identify the most significant factors (social and personal characteristics) influencing this level, authors built the

following machine learning technique (Iorkaa *et al.*, 2021; Kamiri & Mariga, 2021):

- ▶ Naive Bayes;
- ▶ Generalised Linear Regression Model (GLM);
- ▶ Logistic Regression;
- ▶ Fast Large Margin;
- ▶ Deep Learning (DL) model;
- ▶ Decision Tree (TDs) model;
- ▶ Random Decision Trees (RDT) algorithm;
- ▶ Gradient Boosted Trees model (GBM).

A simple way to evaluate model performance is overall accuracy. This metric measures how accurately the model identifies convicts prone to recidivism. Accuracy is computed as the proportion of correctly classified samples (15 must-know machine learning..., 2021):

$$Accuracy = \frac{TP+TN}{TP+TN+FP+FN}, \quad (1)$$

where *TP* – True Positives, *TN* – True Negatives, *FP* – False Positives, and *FN* – False Negatives.

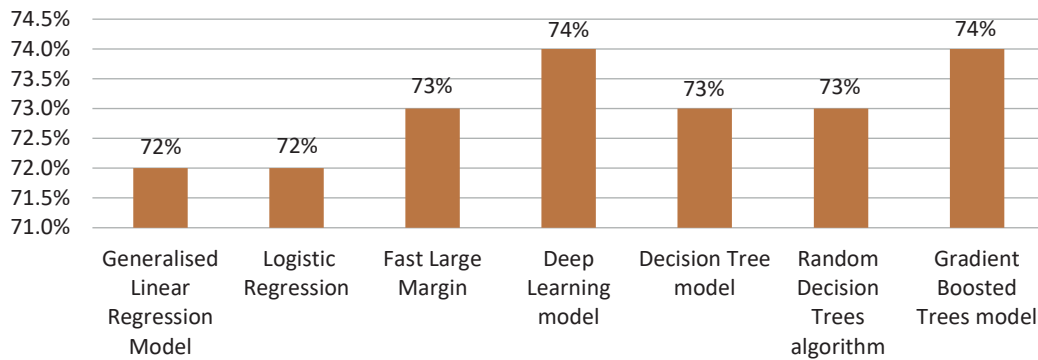


Figure 1. The accuracy of the built machine learning models

Source: compiled by the authors

In the generic gradient boosting approach, at step *m* a decision tree $h_m(x)$ is fitted to the pseudo-residuals. If J_m is the number of leaves of $h_m(x)$, then the tree partitions the input space into J_m disjoint regions $R_{1m}, R_{2m}, \dots, R_{Jm}$, and predicts a constant value in each region. The output of $h_m(x)$ for input *x* can be written as:

$$h_m(x) = \sum_{l=1}^{J_m} b_{jm} 1_{R_{jm}}(x), \quad (4)$$

where b_{jm} – the predicted value in region R_{jm} . The coefficients b_{jm} are then multiplied by a value γ_m , chosen by line search to minimise the loss function. The model is updated as:

$$F_m(x) = F_{m-1}(x) + \gamma_m h_m(x), \quad (5)$$

$$\gamma_m = \underset{\gamma}{\operatorname{argmin}} \sum_{i=1}^n L(y_i, F_{m-1}(x) + \gamma h_m(x_i)). \quad (6)$$

Precision and recall are two key metrics for evaluating model performance. The first of them measures how accurate the model's positive predictions are, and the other measures what fraction of all positive cases the model correctly identified:

$$Precision = \frac{TP}{TP+FP}, \quad (2)$$

$$Recall = \frac{TP}{TP+FN}. \quad (3)$$

For a model to be acceptable, it needs both high precision (low false positives) and high recall (low false negatives). DL and GBM models have the highest accuracy (74%) (Fig. 1). For empirical studies, choose a Gradient Boosted Trees model (Gradient boosting..., 2024). Gradient boosting commonly uses decision trees, specifically Classification and Regression Trees (CARTs), of a fixed size as base learners. J.H. Friedman (2001) proposed a modification to the generic gradient boosting method that improves the fit of each base learner decision tree.

The modified algorithm “TreeBoost” is a choose a separate optimal γ_{im} for each of the tree's *J* regions, instead of one γ_m . The coefficients γ_{im} from tree-fitting can then be discarded. The model update rule becomes:

$$F_m(x) = F_{m-1}(x) \sum_{l=1}^{J_m} \gamma_{jm} 1_{R_{jm}}(x), \quad (7)$$

$$\gamma_m = \underset{\gamma}{\operatorname{argmin}} \sum_{i=1}^n L(y_i, F_{m-1}(x_i) + \gamma). \quad (8)$$

A Gradient Boosted Trees model was built to predict the risk level of convicted criminals committing repeat offences in the future. The model was trained on criminal records and personal characteristics of 13,010 convicted individuals. The model development process consists of 5 steps. The process operators are presented in Figures 2-3. Table 2 presents the operators of the Gradient Boosted Trees model algorithm.

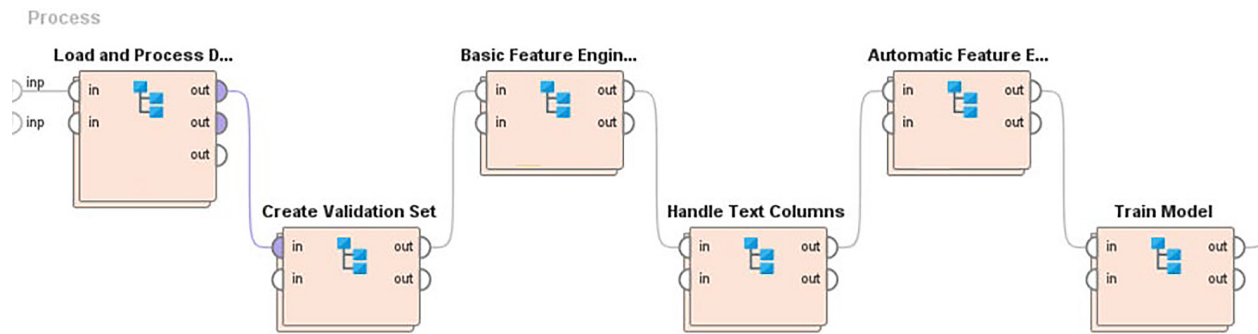


Figure 2. Process operators of the GBM model to predict the level of risk of recidivism (step 1-2)

Source: compiled by the authors

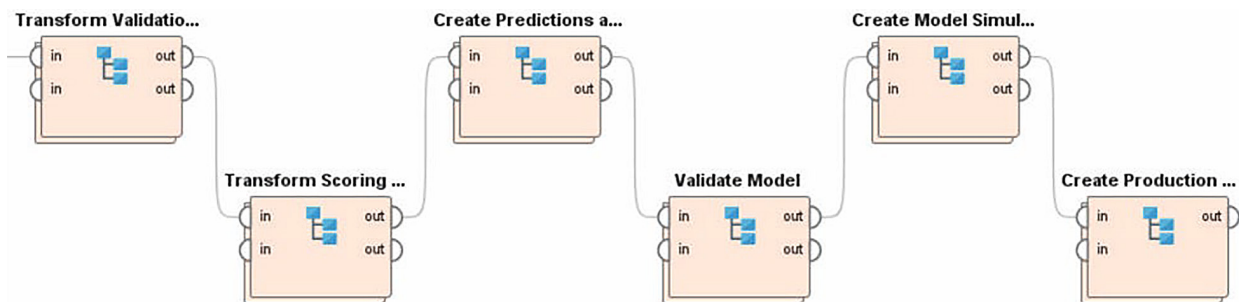


Figure 3. Process operators of the GBM model to predict the level of risk of recidivism (step 3-5)

Source: compiled by the authors

Table 2. GBM model process operates

No	Step	Operator	Description
1.	Basic Pre-processing	Load and Pre-process Data	The data set is loaded and basic pre-processing tasks are performed. Both labelled and unlabelled data points are provided – the unlabelled points will later be used for model application.
		Crete Validation Set	The data is split into training and validation sets, with the validation set to be used for robust performance evaluation across multiple hold-out fold.
		Basic Feature Engineering	Basic feature engineering and pre-processing steps are taken, like handling missing values and encoding categorical variables. Text columns will be processed separately at a later stage.
2.	Feature Engineering and Modelling	Handle Text Columns	Text columns are processed if needed and the text processing model is persisted.
		Automatic Feature Engineering	Automatic feature engineering is performed if desired, in addition to the basic pre-processing done earlier (text processing, date handling, encoding etc.).
		Train Model	The model is then trained, with automatic hyperparameter tuning (parameter optimisation) applied if wanted.
3.	Transform Validation and Scoring Data	Transform Validation Data	The validation data (with known target values) is transformed using the same pre-processing steps and feature engineering as the training data
		Transform Scoring Data	The scoring data (with unknown target values) is then pre-processed and engineered in the same way, to be consistent with the training and validation data.
4.	Scoring, Validation, Explanations, Weights and Simulator	Create Predictions and Explanations	The trained model is used to generate predictions and explanations on both the validation data and scoring data. Model-specific weights are also calculated during this scoring process.
		Validate Model	A robust validation approach using multiple hold-out sets is implemented, providing performance estimate quality comparable to cross-validation but with reduced computational runtime.
		Create Simulator Model	

Table 2. Continued

No	Step	Operator	Description
5.	Production Model	Create Production Model	The final production model is created by training a new model using the same parameters on the combined training and validation datasets.

Source: compiled by the authors

ML models can be very useful for predicting recidivism risk levels. They demonstrate high computational power and accuracy in predicting the likelihood of prisoners committing repeat offences.

RESULTS AND DISCUSSION

Out of the 13,010 convicted persons who comprised the initial dataset, 7,053 have a low propensity for repeat recidivism, 3,245 have a moderate propensity, and 2,713 are characterised as having a high propensity for repeat recidivism (Fig. 4). The SEX variable turned out to be insignificant, so it was not included in the predictive model. For the other variables, weights were calculated for Gradient Boosting Trees weights (Fig. 5).

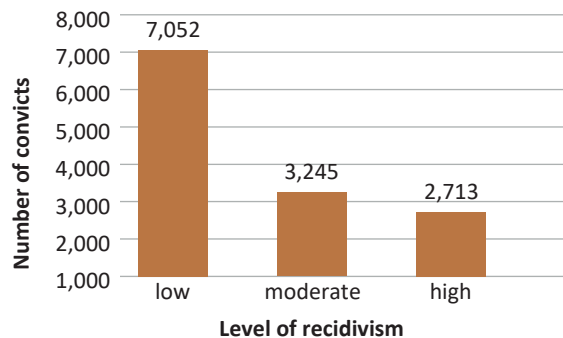


Figure 4. Distribution of convicted persons from the initial dataset into groups by level of propensity for recidivism

Source: compiled by the authors

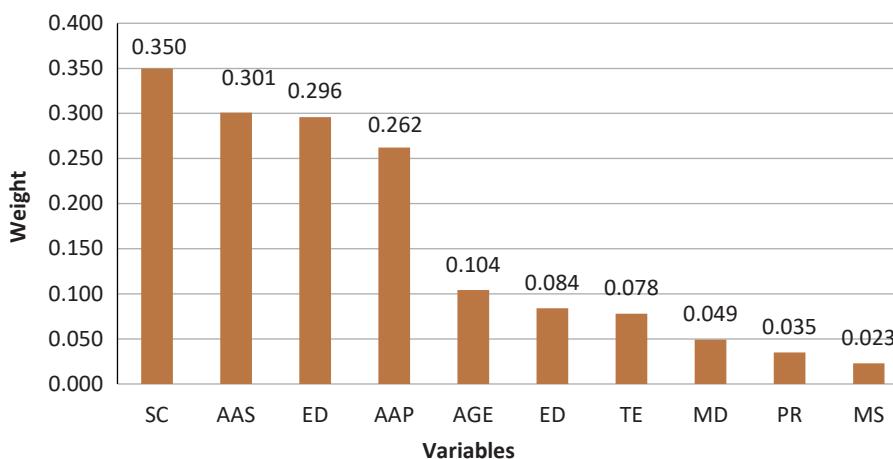


Figure 5. Gradient Boosting Trees weights

Source: compiled by the authors

The SC variable has the greatest weight in distributing convicts into groups according to their tendency to commit repeat offences (0.350). Therefore, the most significant characteristic of convicts associated with recidivism is the number of suspended convictions. The lack of real punishment for criminal activity creates the illusion of impunity and is the main reason that prompts offenders to commit new crimes. The second most important is the AAS variable (0.301). The age at which a person was first sentenced is also crucial for the distribution of convicts into groups (low, moderate, high) according to the risk level of committing repeat offences in the future. The earlier a person becomes involved in criminal activity, the more likely they are to commit recidivism. Next

in importance is ED (0.296). Early dismissals are a significant factor correlated with repeat offending. Reducing the term of punishment is the cause of future recidivism. The AAP variable is the last in the top 4 characteristics of convicts that are most relevant to repeat offending. The age of the person when they are first convicted to serve a sentence in a penitentiary institution significantly affects their future criminal activity. The sooner they become integrated into the environment of professional criminals, the more likely they will be involved in criminal networks in the future. Indicators characterising the previous criminal activity of convicts have the greatest impact on the risk level of repeat offending. Individual statistical indicators such as a prisoner’s actual age

(weight = 0.104), education level (weight = 0.084), type of employment (weight = 0.078), motivation for dismissal (weight = 0.049), place of residence (weight = 0.035), marital status (weight = 0.023) have a significantly lower impact on the convicts' tendency towards recidivism. Therefore, penitentiary institutions do not perform a

corrective function. On the contrary, in most cases, a person's integration into the criminal environment is the reason for their involvement in criminal activities in the future. Table 3 presents the bivariate correlations between the dependent variable and each of the independent variables.

Table 3. Correlations coefficients for all variable pairs

	AGE	AAP	AAS	ED	EL	MS	MD	PR	SC	TE
AAP	0.370									
AAS	0.343	0.869								
ED	0.146	-0.214	-0.228							
EL	0.079	0.179	0.181	-0.057						
MS	0.117	0.112	0.101	0.030	0.106					
MD	-0.010	0.056	0.046	0.019	0.084	0.117				
PR	-0.027	-0.049	-0.048	0.025	0.147	-0.006	0.040			
SC	-0.002	-0.129	-0.226	0.187	-0.048	-0.010	0.004	0.052		
TE	0.057	0.133	0.126	0.022	0.236	0.165	0.163	0.111	-0.063	
RR = low	-0.140	0.358	0.412	-0.404	0.115	0.028	0.066	-0.046	-0.474	0.107
RR = moderate	0.004	-0.157	-0.191	0.152	-0.062	0.003	-0.026	-0.000	0.086	-0.048

Source: compiled by the authors

The variables that correlate most with a low propensity for future recidivism are: SC (-0.474), AAS (0.412), ED (-0.404), and AAP (0.358), with inverse correlations observed between RR = low and SC, as well as between RR = low and ED. Therefore, the earlier dismissals and suspended convictions the convict had, the higher the likelihood that they will commit new crimes in the future. If a person is first brought into the criminal environment (receives their first suspended conviction or real conviction) at a younger age, the higher the risk that they

will commit recidivism in the future. The variables that correlate most with a moderate propensity for repeat offences are: AAS (-0.191), AAP (-0.157), and ED (0.152). The inverse correlations for the AAS and AAP variables confirm that an individual's involvement in the criminal environment at a younger age is a significant factor in their propensity for repeat offences. Early dismissals give such criminals hope for reduced punishment for any future crimes they commit. Table 4 presents the high estimation of the precision and recall of created models.

Table 4. Variables correlation and repeat offenses precision-recall: Confusion Matrix

	true high	true moderate	true low	class precision
predicted high	487	167	31	71.09%
predicted moderate	184	426	133	57.34%
predicted low	116	335	1838	80.30%
class recall	61.88%	45.91%	91.81%	

Source: compiled by the authors

Precision and recall are sufficient. The model is acceptable. The Gradient Boosting Tree simulator predicted a low propensity for recidivism for 64% of prisoners from the initial dataset, a moderate level for 30%, and a high level for only 6% of convicts serving sentences in the penitentiary institutions of Ukraine (Fig. 6). Therefore, the criminal environment in Ukraine is characterised by a low level of repeat offences, despite the fact that the judicial system gives many prisoners chances for rehabilitation.

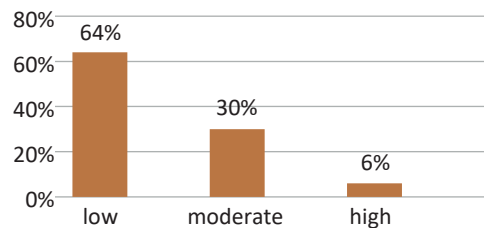


Figure 6. Predicted propensity of convicts to recidivism by levels (low, medium, and high)

Source: compiled by the authors

For each of the prisoners from the input dataset, the probability of predicted belonging to the groups (low, moderate, high) according to the propensity level for committing repeat offences in the future was determined

(Table 5). Using the simulator of the constructed Gradient Boosting Tree Model, it is possible to determine with high probability the belonging to one of the recidivism levels (low, moderate, high) for each new case (Fig. 7).

Table 5. Predictions of the Gradient Boosting Tree (fragment)

Row No.	RR	Prediction (RR)	Confidence (high)	Confidence (moderate)	Confidence (low)	AAS	AAP	SC	ED
19	moderate	moderate	0.231	0.601	0.168	2	2	0	2
775	low	low	0.042	0.116	0.842	3	2	4	0
1,033	low	low	0.038	0.058	0.905	4	4	0	2
1,316	high	high	0.744	0.063	0.163	1	1	1	3
2,233	moderate	moderate	0.230	0.602	0.169	2	2	2	2
2,509	high	high	0.782	0.055	0.163	2	1	5	1
2,298	high	moderate	0.252	0.580	0.068	2	2	2	2
2,916	moderate	moderate	0.163	0.579	0.258	3	2	1	1
3,274	low	low	0.037	0.057	0.905	4	4	3	0
3,687	high	high	0.783	0.055	0.163	1	1	5	1
4,308	moderate	low	0.048	0.110	0.842	2	2	4	0
5,044	high	high	0.781	0.056	0.163	4	3	2	1

Source: compiled by the authors

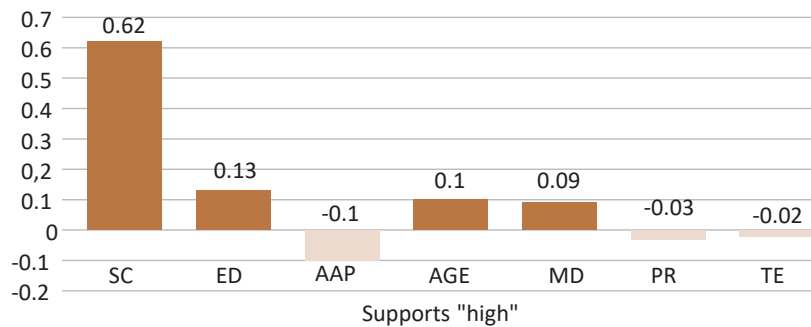


Figure 7. Important factors for recidivism level = "high"

Source: compiled by the authors

The most important factors for assigning individuals to the group with a high propensity for repeat offences are the number of suspended convictions (SC) and the number of early dismissals (ED). These factors identify convicts as "persistent recidivists". Also important is the age at which a person first goes to prison (AAP). At a young age, convicts are more susceptible to the influence of the criminal environment and realise their involvement in it. The influence of the AGE variable can be explained by the fact that a person acquires criminal experience throughout life, and recidivists are usually no longer young. An interesting fact turned out to be the influence of the MD (motivation for dismissal) variable on the high propensity for recidivism. This category of people already has experience with early dismissals and aims to return to the criminal environment. The insignificant influence of the variables PR (place of residence) and TE (type of employment) indicates that

people living in an urban area and having a full-time job are less likely to become persistent recidivists. In this paper, a multidisciplinary perspective has been taken, drawing from machine learning algorithms and their application to predicting recidivism rates to contribute to the need for new approaches to evaluating the risks of parole, and probation, calculating optimal incarceration terms, and determining a defendant's level of danger to society. This article continued a series of studies from a multidisciplinary data science and machine learning perspective to build reliable information support for judicial decisions. In previous works of the authors, a factor model was built to identify consolidated factors that highlight substantive individual characteristics of criminals and increase the risk of repeated criminal offences. Machine learning models have been developed to identify factors (individual characteristics of prisoners) that have a significant impact on the propensity to

commit criminal recidivism, according to O.Ya. Kovalchuk et al. (2023). An associative rule mining model has been built to extract non-obvious interdependencies between a historical crime data set of convicted and repeated offences. Correspondence analysis has been applied to identify relationships between criminal recidivism and elements of convicted persons' previous criminal histories. Earlier research focused on predicting the likelihood of convicted persons reoffending. For example, a logistic regression model was created that, by analysing real dynamic and statistical characteristics of convicts, provides relevant information for making effective post-trial decisions, as was noted by K.M. Berezka et al. (2022).

This work aimed to assess the risk level of reoffending, which is the risk of danger to society and is a mandatory criterion considered by the court when imposing a sentence. In the judiciary, making the right decisions is critical because people's freedom and lives depend on them. The modelling results must be reliable and indisputable. It is important to verify their reliability by applying several methods to the same data and comparing outcomes. The estimates obtained as a result of the analysis in this article confirm the results of the author's previous studies. The number of suspended convictions and early dismissals has the greatest impact on convicted persons' propensity to commit criminal recidivism. Offenders who have not served or fully served a term of actual punishment for previous crimes perceive the leniency of the judicial system not as a chance for correction but as a guarantee of impunity. The convicted person's age when sentenced to actual punishment or when a soft conditional sentence is imposed is also important. In adolescence, the personality is not yet formed, so there is a high probability of imitating the behaviour of a criminal environment and imitating criminal authorities.

The problem of choosing the best methods for predicting the risk of criminal recidivism remains relevant in scientific circles. However, it is difficult to develop a universal ML application approach that will be effective for different data sets with different attributes. Therefore, it is important to find the optimal ML model for each specific case. This statement is confirmed by the work of researchers M.M. Farayola et al. (2023). They used interpretable ML models to predict recidivism. The authors experimentally proved that ML models can be more accurate if trained separately for different data sets and constantly updated. In addition, there are regional differences in the sets of individual characteristics of a person that are used to assess the risk of recidivism. For example, skin colour is a significant characteristic for many countries engaged in developing such predictive models. G. Mohler and M.D. Porter (2021) proposed linear and gradient-boosting models to predict recidivism to

reconcile performance metrics in black and white groups. Such studies are not relevant for examining the issue of recidivism in Ukraine, since in Ukraine the percentage of black people in the general population is low, and cases of their conviction are isolated incidents. S. Fazel and A.A. Wolf (2015) performed a comparative examination of numerous studies evaluating recidivism rates for reoffending across different nations and determined that cross-national data lacked comparability, as the sampling of crime data and definitions employed for recidivism exhibited substantial variability between countries.

The obtained in this paper results are only approximate estimates and require careful advanced analysis. However, they can provide reliable information support when making judicial decisions regarding the appropriateness of conditional punishment, early release, or the possibility of the defendant's participation in probation. In Ukraine, the application of data science, artificial intelligence, and machine learning to legal practice has not yet become widespread. The Ukrainian judicial system faces difficulties associated with processing huge amounts of data and transparency of the judicial system. The proposed machine learning model for determining the propensity of prisoners to commit future recidivism can become part of the information support of a unified information system to support judicial decision-making. As foreign experience shows, the mass integration of machine learning into judicial systems around the world contributes to improving the efficiency of supporting data-based judicial decisions, according to F.F. Vasconcelos et al. (2023) and P. Sarzaeim et al. (2023). In addition, it has been scientifically proven that the results of ongoing court cases are influenced by decisions made regarding previous, even unrelated court cases (Bhupatiraju et al., 2021). P. Saravanan et al. (2021) explored the capabilities of analysing data from huge repositories, analysing various socioeconomic factors related to criminal events, and developing effective computational models for predicting crimes using data mining and ML methods. They conducted an analysis of recidivism rates on an international scale, however, they did not find obvious connections in the crime data sets with the level of re-incarceration. The authors explained such a result by significant differences in the legislation of different countries. For example, in some countries, a repeated conviction entails fines as a form of punishment.

W. Safat et al. (2021) studied the possibilities of improving the accuracy of crime prediction based on machine learning models. Unlike author's research, they predicted the risk of committing different types of crimes and forecasted the regions in the United States most threatened by the commission of future crimes. Scientists pay particular attention to assessing the

probability of criminality and the risk of recidivism. This explains the fact that it is the criminal's personality, not the fact of the crime itself, that shapes this risk and is the subject of thorough study. As experience shows, the probability of committing repeated crimes significantly exceeds the probability of committing a primary crime. J. Zhang (2023) applied ML algorithm models for assessing criminal recidivism risk. An offender who has already been convicted is exposed to a much greater risk of pre-conisation (adopting elements of the criminal subculture) and stigmatisation (following criminal traditions). These results correlate with the estimates obtained by the authors: the number of previous incarcerations increases the risk of committing a repeat offence. K.S. Anazodo *et al.* (2019) investigated the social stigmatisation of former prisoners' identities. Research reveals that having a prior conviction and history of incarceration influence an individual's self-perception as part of the criminal milieu. This finding further corroborates the conclusions drawn from author's study. The machine learning model presented in this work is developed based on a real dataset about convicts and can provide unique information for each specific case. This will reduce bias against convicts and existing "traditions" in making judicial decisions.

Modern Ukrainian jurisprudence requires effective analytical tools to improve legal analysis. Machine learning has enormous potential to increase the efficiency of the judicial system. Ukraine's justice system has already undergone digital transformation by introducing information technologies, in particular e-justice, into its activities, according to V. Teremetskyi *et al.* (2023). However, inconsistencies at the legislative and institutional levels, as well as resource constraints, do not yet make it possible to fully utilise data science, artificial intelligence, and machine learning tools to ensure reliable judicial information support.

The development of universal predictive models and the integration of machine learning into judicial systems around the world are increasing to improve data-driven judicial decision support. Ukraine's justice system is undergoing digital transformation and requires the implementation of new approaches to assessing the risks of parole/probation, calculating optimal incarceration terms, determining the convict's propensity for repeat offences, and the defendant's level of danger to society. Such information is taken into account when rendering judicial verdicts and can provide reliable information support to the judicial authorities.

CONCLUSIONS

The modern judicial system requires reliable information support based on innovative data science, machine learning and artificial intelligence tools. Particular

attention should be paid to the problem of developing reliable models for predicting the level of criminal recidivism. Its solution is directly related to making effective judicial decisions that must balance adequate punishment of criminals with public safety. Research in this area must take into account the specifics of the criminal environment and the legislation of a particular country. In Ukraine, such developments are still in their infancy.

This paper presents the results of applying machine learning algorithms to predict the propensity of persons previously convicted of crimes to commit repeated offences. The model was trained on a unique dataset of 13,010 prisoners serving sentences in Ukraine's correctional institutions. The records about the convicts contain information about the prisoners' previous criminal activities (age at which a person was first sentenced to actual imprisonment to the actual degree of punishment, age at which a person was first sentenced to actual imprisonment or given their first suspended sentence, number of early dismissals, number of suspended convictions) and their characteristics (age at the time of the study, sex, marital status, education level, place of residence, type of employment, motivation for dismissal). An ensemble of ML models was developed and their effectiveness in predicting recidivism was compared. The Gradient Boosted Trees algorithm produced the most accurate model for classifying prisoners as having low, moderate, or high propensity for reoffending after release. The analysis found that past criminal activities, such as several suspended sentences and early releases, along with age at first conviction are the most predictive factors of recidivism risk. These dynamic characteristics outweighed individual demographic variables like gender, education level, and employment status. Lenient court decisions indirectly become a probable cause creating a false sense of impunity for criminals. The model achieved sufficiently high precision and recall, indicating its effectiveness for recidivism risk estimation. It predicted that 64% of prisoners have a low tendency for repeat offences, 30% moderate risk, and 6% high risk. The tool can assist courts by providing data-driven risk assessments to inform sentencing and parole decisions.

The obtained results are not absolute indisputable assessments but can provide significant information for making subsequent judicial decisions in similar cases. The developed Gradient Boosting Trees model can be used to predict the probable level of propensity for criminal recidivism separately for each new offender. This will provide reliable information support when making judicial decisions regarding the type of punishment, term of punishment, and the possibility of participating in probation for the convicted person. The potential for applying machine learning to improve judicial information

support and the justice process itself is undeniable. However, information technology cannot replace decision-makers and will never become a panacea for the justice system. It only increases the objectivity of judicial decisions. The subject of further research will be the construction of an associative model of hot spots of crime based on data on previous crimes.

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CONFLICT OF INTEREST

None.

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Моделі машинного навчання для інформаційної підтримки судочинства

Анотація. Сучасне інформаційне суспільство вимагає ефективного цифрового правосуддя, заснованого на інноваційних технологіях. Метою цього дослідження було створення алгоритмів машинного навчання для оцінки ймовірності вчинення рецидиву злочинів ув'язненими, використовуючи їхні соціально-демографічні характеристики та минулу кримінальну історію. У цій роботі були використані експериментальний метод, метод моделювання, прогнозування, польові дослідження, статистичний аналіз, аналіз конкретних ситуацій, мета-аналіз, порівняльний аналіз та методи машинного навчання. Досліджено, що основними факторами, які впливають на рівень ризику (низький, помірний, високий) рецидиву, є динамічні характеристики, пов'язані з попередньою злочинною діяльністю (судові рішення щодо конкретних осіб передбачали умовне засудження та дострокове звільнення, а не відбування покарання у виправних установах). Вік, у якому особа вперше була залучена до кримінального середовища (вперше засуджена до умовного покарання або позбавлення волі на певний строк під час відбування покарання у виправних установах), також суттєво впливає на схильність до кримінального рецидиву. Індивідуальні характеристики засуджених (вік на момент дослідження, стать, сімейний стан, рівень освіти, місце проживання, вид зайнятості, мотивація звільнення) не корелюють зі схильністю до вчинення повторних злочинів. Вік, у якому особа вперше була засуджена до реального позбавлення волі або отримала перше умовне покарання, вік, у якому особа вперше була засуджена до реальної міри покарання, кількість дострокових звільнень, а також молодий вік, у якому особа вперше потрапила у кримінальне середовище (отримала перше умовне засудження або реальний вирок), є значущими факторами, що підвищують ризик вчинення рецидивного злочину в майбутньому. Запропонована модель може бути застосована для прогнозування рівня схильності до рецидивних злочинів за новими справами. Отримані результати можуть забезпечити надійну інформаційну підтримку судових рішень та стати частиною комплексної інформаційної системи суду

Ключові слова: судочинство; прогнозне правосуддя; правове забезпечення судової влади; суд, штучний інтелект; прийняття рішень; інформаційні системи



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Theoretical and legal fundamentals of administrative offences prevention

Abstract. The relevance of the research of the institute for administrative offences prevention is stipulated by the increasing trend of administrative offences, emergence of new types of administrative offences and the need to minimize possible harmful consequences for society. In view of the above, the purpose of the article was to analyse the theoretical and legal fundamentals of administrative offence prevention in order to formulate proposals for improving its legal regulation and implementation practice. The following set of methods is used in the course of the research: dogmatic, comparative, statistical, hermeneutical, systemic and functional. The composition of an administrative offence and its significance for the development of measures to prevent administrative offences are analysed. The author examines the existing doctrinal approaches to defining the essence of the terms “prevention of administrative offences” and “averting of administrative offences”, due to the lack of their clear legislative interpretation. Despite the fact that prevention of administrative offences and averting of administrative offences are aimed at ensuring compliance with the law, it is established that prevention focuses on general measures to avoid the commission of offences, while averting is aimed at specific individuals or groups of individuals in order to avoid the recurrence of administrative offences. The author identifies the absence of a unified legislative act which would enshrine the mechanism of administrative offences prevention. The author distinguishes the legal acts regulating the institution of administrative offences prevention at the legislative and subordinate levels. As a result of the analysis of the controversial aspects of the legal framework for administrative offences prevention, the author formulates proposals for improving the institute of administrative offences prevention. The practical significance of the results obtained is that the research is of a theoretical and applied nature, and its conclusions and proposals can be used in law-making to improve legislative and other regulations on legal support for the institution of administrative offences prevention, in research activities for further scientific analysis of the areas of improvement of legal regulation of administrative offences prevention, as well as in the educational process of higher education institutions during lectures and practical classes

Keywords: illegal act; prevention of offences; averting of offences; legal regulation; public order; rights and freedoms of citizens

INTRODUCTION

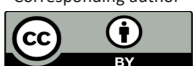
Ensuring law and order is fundamental to the effective functioning of the state and its development. The functioning of the rule of law contributes to stability and

security in society, as people feel confident that their rights and interests are protected from violations. It is worth noting that most foreign countries do not have

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codes on administrative offences. This is due to the fact that historically administrative offences were regulated by criminal law.

Instead, Ukraine adopted the Code of Ukraine on Administrative Offences¹, which regulates public relations in matters of bringing to administrative responsibility. Administrative offences are on the rise in Ukraine, are harmful, especially if they are widespread, violate public order or cause significant damage to society. In view of the above, the state policy should be aimed not only at punishing those who commit administrative offences, but also at preventing their massive spread and minimizing possible consequences for society. In this context, it should be noted that in Ukraine, preventive activities are not comprehensive and are carried out chaotically. Despite the growing number of administrative offences, the country lacks a unified system of bodies engaged in prevention activities. Aspects of expediency of legal regulation of prevention of administrative offences within a single legislative act, definition of measures and system of subjects of prevention of administrative offences remain debatable.

S. Petkov *et al.* (2023) investigated the problematic issues of legal regulation of military administrative offences (in particular, those related to abuse of power or official position by a military officer, as well as drinking alcohol, low-alcohol beverages or use of narcotic drugs, psychotropic substances or their analogues by servicemen, persons liable for military service and reservists). As a result of the analysis of the identified shortcomings, it is proposed to implement a number of measures to prevent the commission of military administrative offences. O. Ilnytslyi and N. Ilkiv (2023) explored the challenges faced by the public administration system under martial law. The researchers highlighted the need to use alternative means of communication with citizens regarding the legal regime and restrictions of martial law in order to ensure mutual understanding between public authorities and citizens.

D. Giulmagomedov *et al.* (2023) analysed the process of achieving efficiency in the activities of pre-trial investigation bodies, identifying the main criteria that affect it. The researchers drew attention to the negative aspects of management activities that are unable to ensure the quality of the functions performed by law enforcement agencies. In addition, the researchers propose measures to introducing changes in the management activities of law enforcement agencies. Y. Nazar *et al.* (2023) defined state control as one of the ways of strengthening the

high level of discipline and legality in society, and drew attention to the role of administrative guarantees of human rights in the process of such control. L.H. Chystokletov *et al.* (2023) noted the need to develop measures aimed at preventing information risks in the national security system through the prism of various biological threats. The authors pointed out the need to prevent a decline in the quality of life and economic activity, as well as to prevent the unauthorised dissemination of medical information, which depends on the development of the public administration mechanism. O. Ostapenko *et al.* (2022) pointed out that administrative and legal regulation in Ukraine needs to be significantly improved. When analysing administrative offences in the financial sector, the researchers drew attention to administrative liability and the need to prevent the commission of such administrative offences. A.O. Volkova (2020) drew attention to certain aspects of preventing administrative offences in the information sphere. The researcher notes that one of the components of the preventive mechanism for administrative offences in the information sphere is to establish the causes of these offences.

The purpose of the article was comprehensive research of the institute of administrative offences prevention based on the analysis of its theoretical foundations and legal consolidation at the legislative and subordinate levels. In order to achieve this goal, the following tasks are set: to analyse the essence of the term “prevention of administrative offences” and its correlation with the term “averting of administrative offences”; to characterise the legal support of the institute of prevention of administrative offences at the legislative and subordinate levels; to propose a set of measures to improve the institution of preventing administrative offences in Ukraine.

MATERIALS AND METHODS

To achieve the goal and fulfil the objectives of the research, the author used an appropriate set of methods. The dogmatic method made it possible to analyse the theoretical and legal foundations of administrative offence prevention, and to interpret the terms of the institution of offence prevention, and as a result, the author identified the need for its proper legal consolidation. In particular, it is established that legal regulation of administrative offence prevention is carried out at the legislative and subordinate levels. Using the comparative method, the author identified the differences between prevention and averting of offences. The use of this method was due to the fact that at the legislative

¹ Code of Ukraine on Administrative Offenses No. 80731-X. (1984, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/80731-10#Text>.

level and in legal science there is no single interpretation of the term “prevention of administrative offences”. Moreover, it is often identified or compared with the term “averting of offences”.

The statistical method was the basis for collecting, processing and highlighting the state of spread of administrative offences under Articles 173-184 of the Code of Ukraine on Administrative Offences¹ for 2019 and 2022 years. Statistical data is provided for each of the articles separately and includes: the number of persons who committed administrative offences; the number of detected administrative offences; the number of administrative protocols drawn up; the number of decisions considered and made. The information on administrative offences made it possible to state the tendency of spreading administrative offences, increasing their types, and therefore the expediency of identifying the causes and conditions that lead to their commission.

The hermeneutic method helped to clarify the legal acts regulating certain aspects of administrative offence prevention. Given the fact that there is no single legal act in Ukraine which would contain a comprehensive regulation of all aspects of administrative offence prevention (state policy in the field of administrative offence prevention, the system of entities authorized to prevent administrative offences, the specifics of the process of identifying the causes and conditions which lead to the commission of administrative offences, the system of measures to prevent administrative offences depending on the type of administrative right), the author used the hermeneutic method to identify the specific aspects of administrative offences. In particular, attention was paid to the provisions of the Constitution of Ukraine², the Code of Ukraine on Administrative Offences³, the Law of Ukraine No. 580-VIII⁴, the Law of Ukraine No. 876-VII⁵, the Law of Ukraine No. 280/97-VR⁶, the Order of the Ministry of Family, Youth and Sports of Ukraine, the Ministry

of Internal Affairs of Ukraine No. z0917-09⁷, Order of the Ministry of Internal Affairs of Ukraine No. z0686-18⁸.

Using the systemic and functional methods, the institute of administrative offence prevention is researched through the prism of its various elements, which contributed to the consideration of the institute of administrative offence prevention as an integral system. In particular, the analysis of the elements of an administrative offence made it possible to identify their significance for the development of measures to prevent administrative violations. In order to form a vision of the institution of preventing administrative offences, the author examined the provisions of legal acts establishing the subjects involved in preventing administrative offences and their powers. In addition, the systemic and functional methods helped to identify the controversial provisions regarding the expediency of adopting a single special law in the field of prevention of administrative offences.

RESULTS AND DISCUSSION

Corpus delicti of an administrative offence and its significance for the development of measures to prevent administrative violations. Measures to prevent administrative offences are an important element of the modern legal system aimed at ensuring law and order, security and economic development of society. They help to avoid potentially negative consequences of administrative offences that may pose a threat to public welfare. In addition, measures to prevent administrative offences contribute to creating conditions for more effective anti-corruption. This is because by identifying and addressing the causes of administrative offences, the possibility of abuse of power and corrupt practices can be reduced. Another reason for researching ways to prevent administrative offences is that they help to maintain public trust in the legal system.

¹ Code of Ukraine on Administrative Offenses No. 8073-X. (1984, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/80731-10#Text>.

² Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

³ Code of Ukraine on Administrative Offenses No. 8073-X. (1984, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/80731-10#Text>.

⁴ Law of Ukraine No. 580-VIII “On the National Police”. (2015, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/580-19#Text>.

⁵ Law of Ukraine No. 876-VII “On the National Guard of Ukraine”. (2014, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/876-18#Text>.

⁶ Law of Ukraine No. 280/97-VR “On Local Self-Government in Ukraine”. (1997, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/280/97-%D0%B2%D1%80#Text>.

⁷ Order of the Ministry of Family, Youth and Sports of Ukraine, Ministry of Internal Affairs of Ukraine No. z0917-09 “On the Approval of the Instructions on the Procedure for the Interaction of Structural Units Responsible for the Implementation of the State Policy on the Prevention of Violence in the Family, Services for Children, Centers of Social Services for Family, Children and Youth and Relevant Units of the Internal Affairs Bodies on Matters of Implementation of Measures to Prevent Violence in the Family”. (2009, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/z0917-09#Text>.

⁸ Order of the Ministry of Internal Affairs of Ukraine No. z0686-18 “On the Approval of the Instructions for Organizing the Work of Juvenile Prevention Units of the National Police of Ukraine”. (2017, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/z0686-18#Text>.

Pursuant to Article 9(1) of the Code of Ukraine on Administrative Offences, an administrative offence (misdemeanour) is an unlawful, culpable (intentional or negligent) act or omission that infringes upon public order, property, rights and freedoms of citizens, the established order of governance and for which the law provides for administrative liability¹. Administrative offences are characterised by a number of specific features that form their legal elements. It should be noted that, depending on the legal properties, there is a distinction between those features that have legal significance and those that do not. In turn, legally significant features may be included in the legal composition of an offence (so-called constructive features), while others are not included in such a composition (for example, circumstances that mitigate or aggravate liability, etc.). The composition of an administrative offence is a set of main, defining features that are identified by the legislator as typical, necessary and at the same time sufficient to bring a person to legal liability (Kubakh, 2019).

In general, legal science distinguishes four elements of an offence: object, objective side, subject, and subjective side, which are characteristic of the administrative law branch. Describing the object as an element of an administrative offence, it should be noted that it is the social relations encroached upon by an unlawful act. From the above legislative definition, it can be established that the object is public order, property, rights and freedoms of citizens, and the established order of governance. At the same time, a significant clarification is needed: the object of an administrative offence is public relations in the field of public administration, which are regulated by administrative law and protected by administrative liability measures (Samofalov, 2020). As noted by M.V. Volchenko (2022), in the legal literature, the objective side is defined as an element of the offence that includes the features that determine the act of external behaviour of the offender. The content of the objective side of the offence is made up of such features as the act (action or inaction), its harmful consequences, the causal link between the act and the consequences, place, time, setting, method, tools and means of committing the offence.

With regard to the third element of an administrative offence, it should be noted that there is no legislative definition of the concept of a subject of an administrative offence. At the same time, in the theory of administrative law, the research of the essence of this concept has repeatedly aroused scientific interest. Thus, in particular, K.Ye. Tsabeka (2020) noted scientific positions according

to which the subject of an administrative offence is a person who committed it, who has reached a certain age and is sane. Analyzing administrative offences and liability, researchers A.M. Kulish and O.M. Reznik (2019) defined that the subjective side of an administrative offence is an internal, psychological attitude of a person to a socially harmful act committed by him/her and its consequences. The psychological content of the subjective side is revealed through such legal features as guilt, motive and purpose.

Having analysed the elements of an administrative offence, it should be noted that their significance for the development of measures to prevent administrative violations lies in the several aspects. Firstly, the definition of the object could help to identify which areas require special control and regulation (for example, if the object is public order, then prevention measures can be aimed at maintaining public safety and counteracting undesirable behaviour). Secondly, the objective perspective allows for a focus on specific situations and contexts, which helps to develop effective, context-specific prevention measures. Another aspect is that identification of the subject makes it possible to understand which groups or categories of people may be prone to offences, which in turn helps to develop preventive measures aimed at these groups. Understanding the subjective side allows to identify the factors that motivate people to commit offences and develop prevention measures aimed at strengthening ethical and legal norms.

Doctrinal approaches to defining the essence of the terms “prevention of administrative offences” and “averting of administrative offences”. The need to pay attention to the prevention of administrative offences is enshrined in law. Pursuant to Article 6 of the Code of Ukraine on Administrative Offences², executive authorities and local self-government bodies, public organisations and labour collectives develop and implement measures aimed at preventing administrative offences. In this regard, it is advisable to define the term “prevention of administrative offences” for a correct understanding of the measures, subjects and directions in this area. It should be noted that both at the legislative level and in legal science there is no single interpretation of the term “prevention of administrative offences”. Moreover, it is often identified or compared with the term “averting of offences”. In view of the above, the peculiarities of the functioning of each concept should be highlighted.

The researcher A.O. Volkova (2020) noted that the administrative law doctrine establishes the provision

¹ Code of Ukraine on Administrative Offences No. 8073-X. (1984, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/80731-10#Text>.

² Ibidem, 1984.

that prevention of administrative delinquency should be the activity of formal and informal formations and individuals organised by the state, which is carried out on the basis of and for the implementation of laws with a view to eliminating the causes and conditions which contribute to administrative misconduct and ensure the formation of law-abiding behaviour of citizens in the field of public administration. Particular attention in the context of the research of prevention of administrative offences under martial law is paid by B.O. Logvinenko (2022), who notes that among the measures to prevent administrative offences under martial law, it is extremely important to prioritise the organisation and implementation of preventive measures. Thus, the emphasis should be shifted to those problematic issues, the escalation of which can cause mass unrest, panic among the population, destabilisation of the situation in the service area, and harm people's lives and health.

Researchers L.O. Makhova and A.O. Vyprytskyi (2019) in their research on the averting of administrative offences in public places proposed the following hierarchy of averting elements: the averting direction; groups of averting measures that implement the practical application of the main areas of offence averting; averting measure; averting complex; averting programmes. K. Pisotska (2023) paid special attention to the averting of juvenile delinquency during martial law in Ukraine. In her research, she points out that the averting of juvenile delinquency is a crucial aspect of maintaining order and security in peacetime. However, in wartime, the role of juvenile prevention units becomes even more important, as, in addition to their daily tasks, juvenile police officers face new challenges caused by armed aggression. The priority areas of work are, on the one hand, the averting of juvenile delinquency, and, on the other hand, the creation of a safe environment for children, evacuation from dangerous cities where active hostilities are taking place. One of the main tasks of the police is to prevent administrative offences, prevent children from being involved in war crimes, and to work with children on averting work with youth movements (it should be explained that such actions are subject to both administrative and criminal liability).

One of the main shortcomings of the system of averting of juvenile delinquency is the problem of legal regulation. Despite the wide range of legal provisions regulating the activities of actors involved in the averting of youth crime, they are characterised by inconsistency, contradictory content of legal acts, inadequacy of legislation to protect the interests of minors, failure to take into account the state and peculiarities of crime and the political course of the state in general. For example, considerable attention is paid to the observance of children's rights and the protection of their interests, as

provided for in international legislative documents ratified by Ukraine. This determines the general course of Ukraine towards restorative justice, alternative systems of responding to juvenile delinquency, which provide an individual approach to the child. In turn, the lack of integrity of the averting system is primarily manifested in legislation. By looking at the list of actors involved in the prevention of juvenile delinquency, the duplication of functions, which creates organisational disputes within the system, is identified. Accuracy in the legislative definition of competences and delineation of functions of the subjects of averting activities will lead to more effective performance of these functions (Muranenko, 2019).

Another area of public relations that researchers focus on in the context of the need to prevent offences is the area of taxes and fees. It should be noted that information and analytical activities of state bodies are of great importance due to their influence on tax offenders by appropriate measures. In other words, it is about counteracting, averting and deterring such offences. These factors can be united by the concept of "counteraction to offences", which covers almost all areas of activity of the state, society and citizens that can have a positive impact on the offender, certain types of offences, and specific acts. This, in turn, combines a set of general social and special administrative measures (Trynchuk, 2023). Researchers S.O. Baranov and S.P. Rybachenko (2022) conceptualized offense prevention as a distinct form of social management directed at safeguarding the integrity of legal norms. This approach involves devising and executing specific measures to identify and mitigate the root causes and circumstances of offenses, along with implementing preventive actions targeting individuals predisposed to illegal conduct.

Commenting on the proposed scientific approaches to defining the essence of the terms "prevention of administrative offences" and "averting of administrative offences", it should be noted that the authors have done a deal of generalising work, but made several systemic mistakes. Firstly, prevention of administrative offences and averting of administrative offences are two approaches to ensure order and compliance with the law, but they have different emphasis and nature. Secondly, prevention of administrative offences is aimed at eliminating factors that may lead to the commission of an administrative offence. The main emphasis is on taking measures in advance to avoid situations that lead to violations of the law. Preventive measures may include education, training, information campaigns, improvement of living conditions, legislative reform, institutional changes, etc. Finally, averting of administrative offences is aimed at those individuals or groups who are at increased risk of committing an administrative offence.

Avertive measures may include surveillance, monitoring of certain categories of citizens, restriction of access or opportunities for those who have previously committed administrative offences, as well as other measures to avoid recurrence of violations.

Legal regulation of the institute of prevention of administrative offences in Ukraine. At the constitutional level, there are provisions that are fundamental to the formation of the institution of crime prevention in Ukraine. In particular, Article 60 of the Constitution of Ukraine¹ stipulates that no one is obliged to execute manifestly criminal orders or instructions. The giving and execution of a manifestly criminal order or instruction is subject to legal liability. This provision contributes to the creation of a legal framework for the prevention of offences in the following ways:

1. By establishing the principle of executing only lawful orders or instructions, the use of power within the law and the inviolability of citizens' rights are ensured.

2. Guaranteeing the right to refuse to comply with instructions or orders if they are clearly criminal serves as a tool to prevent administrative offences.

3. Providing for legal liability for the execution of manifestly criminal orders or instructions creates a deterrent that may influence a person's decision to execute or refuse to execute manifestly criminal orders or instructions.

Another provision that serves as a basis for preventing administrative offences in the field of finance is Article 67 of the Constitution of Ukraine². The provision establishes the obligation of everyone to pay taxes and fees in the manner and amounts established by law. All citizens annually submit declarations of their property status and income for the previous year to the tax inspectorates at their place of residence in accordance with the procedure established by law. This provision contributes to the prevention of offences in the following ways:

1. The requirement to submit asset and income declarations promotes transparency of financial transactions. This helps to avoid shadow transactions, the withdrawal of funds abroad, and prevents tax evasion.

2. The obligation to file declarations and pay taxes also contributes to the fight against corruption. The verification of declarations and compliance with tax obligations enables the state to detect illegal schemes and tax evasion, which helps to prevent the commission of offences.

Article 129 of the Constitution of Ukraine³ establishes the fundamental principles of judicial proceedings. These principles include the equality of all participants in the judicial process before the law and the court, the requirement to establish proof of guilt, the adversarial nature of the proceedings allowing the parties to present evidence and arguments, the presence of a prosecutor to support public prosecution in court, the right to defense for the accused, the requirement for the trial to be public and recorded by technical means, the need for a reasonable timeframe for the court to consider the case, the right to appeal and, in certain cases specified by law, to file a cassation appeal against the court decision, and the binding nature of the court decision. In addition, the perpetrators of contempt of court or judge are held legally liable. Analysing this provision, it can be stated that it serves to prevent the commission of administrative offences that encroach on the established order of governance by participants in the judicial process. In particular, the principle of equality before the law excludes the possibility of unlawful interference in the judicial process or favouring one party. This helps to prevent corruption or other forms of influence on the judicial process. Another aspect is that publicity contributes to public control over the trial, which can prevent possible misconduct or misbehaviour of participants in the trial. Moreover, the existence of liability for contempt of court or judge serves as a tool to prevent administrative offences that infringe on the established order of governance.

At the legislative level, the importance of preventing the commission of administrative offences is enshrined in Article 6 of the Code of Ukraine on Administrative Offences⁴ also. The Article proposes a systematic approach to preventing administrative offences, covering various levels of government and public structures, which allows for a comprehensive and effective approach to preventing offences. The Article gives local self-government bodies and local state administrations the authority to manage the activities of administrative commissions and other bodies accountable to them, which can ensure effective control over the implementation of tasks to prevent administrative offences. At the same time, there are certain shortcomings that may have a negative impact on the process of preventing administrative offences. Firstly, the Article does not provide specific mechanisms for the implementation of certain tasks, which may lead to misunderstandings in the process of

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 Ibidem, 1996.

³ Ibidem, 1996.

⁴ Code of Ukraine on Administrative Offences No. 8073-X. (1984, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/80731-10#Text>.

their implementation. Secondly, the Article provides for measures to prevent offences, but they are not specified. This may make it difficult to assess the effectiveness and efficiency of the measures taken. Finally, insufficient definition of the role and functions of civic organisations and labour collectives can lead to discrepancies in their participation in crime prevention. In addition, the need

to take measures to prevent administrative offences is confirmed by the fact that in recent years, Ukraine has seen a trend towards the spread of administrative offences, as evidenced by the statistics for 2019 and 2022 years (for example, under Articles 173-184 of the Code of Ukraine on Administrative Offences¹), as shown in Table 1 and Table 2.

Table 1. Information on administrative offences under Articles 173-184 of the Code of Ukraine on Administrative Offences for 12 months of 2019

Articles of the Code of Ukraine on Administrative Offences	Identified persons who committed administrative offences	Detected administrative offences	Among them	
			Administrative protocols drawn up	Decisions considered and made
173	47,263	53,213	53,209	32,193
173-1	86	89	89	48
173-2	76,186	109,345	109,332	70,096
174	343	345	344	192
175-1	251,896	275,886	6,241	4,554
176	24,752	32,890	748	723
177	14,608	20,237	561	554
178(1)	373,386	379,272	4,914	3,725
178(2)	66,726	68,921	412	336
179	769	824	786	396
180	2,607	2,908	1,361	793
180-1	176	203	202	143
181	123	130	121	49
181-1	913	1,557	970	391
182 (1)	11,610	11,869	1,671	855
183	45,568	56,242	9,475	4,080
184	33,184	39,111	38,544	25,311
184-1	2	2	2	1
184-2				

Note: data on Article 184-2 are not available as it was not provided by the Department of Information and Analytical Support of the National Police of Ukraine

Source: compiled by the author based on the data provided by the Department of Information and Analytical Support of the National Police of Ukraine (Document of National Police of Ukraine No. 36zi,37zi/27/02/2-2023..., 2023)

Table 2. Information on administrative offences under Articles 173-184 of the Code of Ukraine on Administrative Offences for 12 months of 2022

Articles of the Code of Ukraine on Administrative Offences	Identified persons who committed administrative offences	Detected administrative offences	Among them	
			Administrative protocols drawn up	Decisions considered and made
173	38,090	43,174	43,171	27,789
173-1	75	75	75	54
173-2	85,314	120,533	120,530	81,041
173-4(1)	40	47	47	33
173-4(2)	2	2	2	1
173-4(3)	53	54	54	33
173-4(4)	8	8	8	3
173-4(5)	5	5	5	3
174	415	415	415	306
175-1(1)	258,149	261,494	4,005	2,806
175-1(2)	34,309	51,385	177	127
176	34,307	48,371	163	137

¹ Code of Ukraine on Administrative Offences No. 8073-X. (1984, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/80731-10#Text>.

Table 2. Continued

Articles of the Code of Ukraine on Administrative Offences	Identified persons who committed administrative offences	Detected administrative offences	Among them	
			Administrative protocols drawn up	Decisions considered and made
177	22,474	34,459	211	200
178(1)	375,842	38,2320	4,673	3,439
178(2)	69,207	71,878	267	189
178(3)	3,100	3,694	3,622	1,981
179	355	387	374	174
180	3,917	4,653	1,150	565
180-1	105	129	100	50
181(1)	124	124	124	60
181(2)	3	3	3	1
181(3)				
181-1(1)	456	488	255	78
181-1(2)	112	220	158	79
182(1)	31,234	31,681	659	382
182(2)	254	288	217	121
183	67,449	83,040	3,214	1,694
183-1	444	453	452	313
184(1)	23,836	27,182	27,173	18,089
184(2)	2,734	4,039	4,037	2,694
184(3)	3,517	3,716	3,716	2,676
184(4)	162	167	167	116
184(7)				
184-1				
184-2	2	2	2	2
184-3	16	17	17	7

Note: data on Articles 181(3), 184(7), 184-1 are not available as it was not provided by the Department of Information and Analytical Support of the National Police of Ukraine

Source: compiled by the author based on the data provided by the Department of Information and Analytical Support of the National Police of Ukraine (Document of National Police of Ukraine No. 36zi,37zi/27/02/2-2023..., 2023)

The Law of Ukraine No. 580-VIII¹ establishes provisions regarding the fundamentals of preventing administrative offenses. According to Article 2(1) of this law, the police are tasked with providing police services in several key areas, including ensuring public safety and order, protecting human rights and freedoms, safeguarding the interests of society and the state, combating crime, and offering assistance services to individuals who require such support due to personal, economic, social reasons, or emergency situations, within the limits prescribed by law. Ensuring public safety and order includes an active police presence in public places, interaction with the public and timely response to events that may disturb public order. Public safety contributes to the creation of a safe environment that makes it difficult to commit administrative offences. Moreover, ensuring the protection of human rights and freedoms,

as well as the interests of society and the state, should contribute to the creation of a stable society in which the level of administrative offences should be reduced. Another aspect is that assistance to people in difficult life circumstances can prevent their potential involvement in administrative offences or other negative phenomena. The police can provide social and psychological support, help resolve conflicts and otherwise reduce the social causes of administrative offences.

The National Guard of Ukraine is also vested with functions in the area of offences prevention. According to the Article 12(1)(3) of Law of Ukraine No. 876-VII², the National Guard of Ukraine, is obliged to take measures aimed at preventing and detecting criminal (administrative) offences. Provisions aimed at preventing administrative offences are also contained in the Law of Ukraine No. 280/97-VR³. In accordance with Article 38, the

¹Law of Ukraine No. 580-VIII "On the National Police". (2015, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/580-19#Text>.

²Law of Ukraine No. 876-VII "On the National Guard of Ukraine". (2014, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/876-18#Text>.

³Law of Ukraine No. 280/97-VR "On Local Self-Government in Ukraine". (1997, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/280/97-%D0%B2%D1%80#Text>.

executive bodies of village, town and city councils have the following delegated powers: to take the necessary measures in accordance with the law in case of emergency to ensure state and public safety and order; to resolve issues on holding meetings, rallies, demonstrations and demonstrations, sports, entertainment and other mass events in accordance with the law; to control the maintenance of public safety and order during their holding. Local self-government bodies have additional powers related to the prevention of administrative offenses. These include establishing rules, in accordance with the law, for improving the territory of a settlement, ensuring cleanliness and order within it, regulating trade in markets, and enforcing rules on noise levels in public places, violations of which incur administrative liability. These bodies also make decisions on combating natural disasters, epidemics, and epizootics, violations of which also result in administrative liability.

It should also be noted that there are legal acts regulating certain issues of prevention and detection of administrative offences at the subordinate level. In particular, the Order of the Ministry of Ukraine for Family, Youth and Sports and the Ministry of Internal Affairs of Ukraine No. z0917-09¹ was approved. This departmental act serves as a tool for preventing administrative offences related to domestic violence. For the proper implementation of the state policy on the prevention of domestic violence, the powers are assigned to the structural units responsible in this area. Firstly, coordination of activities of children's services, centres of social services for families, children and youth and internal affairs agencies on the prevention of domestic violence is provided. Secondly, keeping records of data on organisations, institutions and establishments working to prevent domestic violence and the services they provide to organise the provision of necessary assistance to family members where violence has been committed or against whom there is a real threat of violence, is foreseen. Thirdly, cooperation with NGOs (non-governmental organization) and citizens' associations to prevent domestic violence is envisaged. Finally, organising seminars, roundtables, conferences and other events on the prevention of domestic violence is stated.

Another departmental regulatory act is the Order of the Ministry of Internal Affairs of Ukraine No. z0686-18²,

governs the activities of the National Police of Ukraine concerning the identification and mitigation of factors that contribute to the commission of administrative and criminal offenses by children. Section II of the Order outlines the main tasks of the juvenile prevention units, which include conducting preventive activities to deter children from committing criminal and administrative offenses, identifying underlying causes and conditions, and taking measures within their authority to address them. These units also maintain preventive records of children at risk of offending and implement individual prevention measures with them, as well as work to prevent and combat domestic violence involving children and child abuse.

Having studied the system of regulatory legal acts in the field of prevention of administrative offences, the following features and generalisations can be identified. Firstly, the issue of preventing administrative offences is given attention at both the legal and subordinate levels. Secondly, there is an extensive and diverse range of legal acts regulating various aspects of preventing administrative offences and the absence of a single law in this area. Finally, there is no comprehensive vision of the legislator and departmental institutions in preventing administrative offences in various spheres of public relations, and therefore there is uneven legal support for the prevention of administrative offences.

Controversial aspects of the legal framework for the administrative offences prevention. An important aspect of the proper functioning of the administrative offence prevention system is its clear legal certainty. Based on the analysis of the legal regulation of the institute of prevention of administrative offences, it should be revealed that there is no single law in this area, which leads to a discussion in the scientific community and in the law application process. In this regard, attention should be paid to the scientific positions of researchers who have studied the expediency of adopting a special law in the field of prevention of administrative offences.

L. Gachak-Velychko (2021) noted that during the years of independence, a significant number of legal acts aimed at creating a system of bodies responsible for the prevention of child abuse was adopted. However, according to statistics, the effectiveness of these acts has been and remains low. The author mentioned the

¹Order of the Ministry of Family, Youth and Sports of Ukraine, Ministry of Internal Affairs of Ukraine No. z0917-09 "On the Approval of the Instructions on the Procedure for the Interaction of Structural Units Responsible for the Implementation of the State Policy on the Prevention of Violence in the Family, Services for Children, Centers of Social Services for Family, Children and Youth and Relevant Units of the Internal Affairs Bodies on Matters of Implementation of Measures to Prevent Violence in the Family". (2009, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/z0917-09#Text>.

²Order of the Ministry of Internal Affairs of Ukraine No. z0686-18 "On the Approval of the Instructions for Organizing the Work of Juvenile Prevention Units of the National Police of Ukraine". (2017, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/z0686-18#Text>.

absence of a single regulatory act regulating the prevention of offences – the Law of Ukraine “On Prevention of Offences in Ukraine”, although the issue of the expediency of adopting such a legislative act has been repeatedly raised and drafts of such an act have been submitted. Also, K.Yu. Muranenko (2020) emphasised the need to concentrate in a separate legal act (the Law of Ukraine “On Prevention of Offences”) legal norms on the prevention of offences, including administrative ones, and in the future – to allocate a separate branch of law to ensure the prevention of offences.

The analysis of mentioned scientific positions makes it possible to identify the following advantages and disadvantages of adopting a single legislative act which would comprehensively regulate the issues of administrative offences prevention. On the one hand, the existence of a single legislative act that would regulate all aspects of administrative offence prevention can really help in defining consistent norms, systemic vision and understanding of this area. At the same time, if it is necessary to amend various aspects of administrative offence prevention, this process may be quite complicated, given the volume and diversity of areas of social relations that require the definition of mechanisms for preventing administrative offences within them. On the other hand, detailing different aspects of administrative offence prevention in several legal acts allows for a better focus on legal support for specific areas and easier amendments if necessary. At the same time, such laws may have different levels of detail and provide different standards, which may lead to ambiguity and certain contradictions in the administrative offence prevention system.

In view of the above advantages and disadvantages, it should be noted that regulation of various aspects of the administrative offence prevention system by several legal acts is more appropriate and justified, but sectoral legislation and coordination in this area need to be improved. It is necessary to focus on the proper implementation of the existing legal norms in the field of prevention of administrative offences. To this end, the set of measures to implement is proposed. In particular, it is important to focus on identifying potential risks, developing and implementing preventive measures to prevent all types of administrative offences. In addition, conducting educational campaigns for citizens, businesses and other stakeholders on laws, regulations and consequences of administrative offences is essential for raising awareness of the need for and content of preventive activities. Another proposal is to improve the skills of law enforcement officers in the field of preventing administrative offences. Finally, it is significant to provide for expenditures from the state and local budgets to finance activities to prevent administrative offences.

CONCLUSIONS

The analysis of the institution of administrative offences prevention allows drawing the following conclusions. For effective, unambiguous application of legislation in the field of administrative offences prevention, a clear, unified legislative definition of the term “prevention of administrative offences” and its distinction from similar concepts is necessary. A comparative analysis of the terms “prevention of administrative offences” and “averting of administrative offences” has revealed several differences. Prevention of administrative offences is aimed at eliminating factors that may lead to the commission of an administrative offence. The focus is on taking measures in advance to avoid situations that lead to violations of the law. Preventive measures may include education, training, information campaigns, improvement of living conditions, legislative reform, institutional changes, etc. Averting of administrative offences is aimed at those individuals or groups of individuals who are at increased risk of committing an administrative offence. This may include control, warning and taking measures against specific individuals or groups, restricting access or opportunities for those who have previously committed administrative offences, as well as other measures to avoid recurrence of violations.

Although both approaches are aimed at ensuring compliance with the law, deterrence focuses on general measures to avoid the occurrence of violations, while averting is more focused on specific individuals or groups of individuals to avoid the recurrence of administrative offences. The institute of preventing administrative offences is complex, given the diversity of administrative offences and entities authorised to carry out activities to prevent administrative offences. This has led to the creation of a system of legal acts regulating the prevention of administrative offences, and therefore there is no single legislative act in this area. As a result of the analysis of the expediency of adopting a special law in the field of prevention of administrative offences, regulation of various aspects of the administrative offence prevention system by several legal acts seems to be more justified, but it is noted that sectoral legislation and coordination activities in this area need to be improved.

For the purpose of proper legal regulation of the institute of administrative offences prevention the following set of measures is proposed to be implemented: identifying potential risks that cause the commission of all types of administrative offences, resulting in the development of a system of preventive measures to prevent absolutely all types of administrative offences, taking into account their specific features; developing educational campaigns to explain laws, rules and consequences of administrative offences in order to raise

awareness of the need for and content of preventive activities; improving the skills of law enforcement officers in the field of preventing administrative offences; providing for expenditures from the state and local budgets to finance activities to prevent administrative offences. Relevant for further scientific research is the analysis of the peculiarities of the reasons prompting the commission of various administrative offences, improvement of the powers of the subjects of administrative

offence prevention and their cooperation, and the development of measures to prevent administrative offences in wartime.

None.

None.

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CONFLICT OF INTEREST

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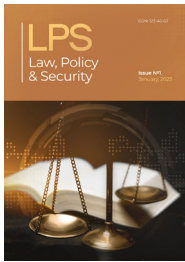
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Теоретико-правові основи запобігання адміністративним правопорушенням

Анотація. Актуальність дослідження інституту запобігання адміністративним правопорушенням зумовлена тенденцією поширення адміністративних правопорушень, появою нових їх видів та необхідністю мінімізації можливих шкідливих наслідків для суспільства. У зв'язку із зазначеним, метою статі був аналіз теоретичних та правових засад запобігання адміністративним правопорушенням для формування пропозицій щодо удосконалення його правового регулювання та практики здійснення. Під час проведення дослідження використано наступний комплекс методів: догматичний, порівняльний, статистичний, герменевтичний, системно-функціональний. У статті проаналізовано склад адміністративного правопорушення і виокремлено його значення для формування заходів запобігання адміністративним правопорушенням. Досліджено доктринальні підходи до визначення сутності термінів «запобігання адміністративним правопорушенням» та «профілактика адміністративних правопорушень», у зв'язку із відсутністю їх чіткого законодавчого тлумачення. Незважаючи на те, що запобігання адміністративним правопорушенням і профілактика адміністративних правопорушень спрямовані на забезпечення додержання закону, встановлено, що запобігання акцентується на загальних заходах для уникнення вчинення правопорушень, тоді як профілактика більше спрямована на конкретних осіб чи груп осіб з метою уникнення повторення адміністративних правопорушень. Виявлено відсутність єдиного законодавчого акту, який би закріплював механізм запобігання адміністративним правопорушенням. Виокремлено нормативно-правові акти, які регулюють інститут запобігання адміністративним правопорушенням на законодавчому та підзаконному рівнях. У результаті проведеного аналізу дискусійних аспектів правових основ запобігання адміністративним правопорушенням сформовано пропозиції щодо вдосконалення інституту запобігання адміністративним правопорушенням. Практичне значення отриманих результатів полягає у тому, що дослідження має теоретико-прикладний характер, а його висновки та пропозиції можуть бути використаними у правотворчості для удосконалення законодавчих та інших нормативних актів щодо правового забезпечення інституту запобігання адміністративним правопорушенням, у науково-дослідній діяльності для подальшого наукового аналізу напрямів вдосконалення правового регулювання запобігання адміністративним правопорушенням, а також у навчальному процесі закладів вищої освіти під час проведення лекційних та практичних занять

Ключові слова: протиправне діяння; запобігання правопорушенням; профілактика правопорушень; правове регулювання; громадський порядок; права і свободи громадян



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The impact of precedent on the development of Ukrainian Private Law

Abstract. The relevance of the research is determined by the search for a flexible legal mechanism that would contribute to the development of private law under the influence of technology. The use of precedent as a source of law can create opportunities for the formation of such an instrument that will not violate the traditions of continental law, but will expand the horizons of thought under the influence of current and future innovations. The purpose of the research was to determine the place and role of precedent in the legal system of Ukraine and its influence on the development of private law. The research is based on a complex approach, which includes several main methods, namely: methods of analysis and synthesis, systemic-structural, formal-logical, and the method of legal hermeneutics. The article highlights the role of precedent in the development of private law in Ukraine. The influence of the decisions of the Constitutional Court of Ukraine, the Supreme Court and the European Court of Human Rights on the country's legal system is considered, especially in the context of European integration processes and the constant development of legal standards. It is highlighted how legal norms are formed and applied in Ukrainian justice, as well as how court decisions affect legal practice and the legislative process. It is noted that the decisions of the Constitutional Court of Ukraine, the Supreme Court and the European Court of Human Rights play a key role in the formation of legal doctrine and practice in Ukraine. It is emphasized that in Ukraine there is a form of precedent law, the nature of which differs from the classical understanding of precedent in the Anglo-Saxon systems. Decisions of the Supreme Court can be considered a continental form of law enforcement precedent, although they formally do not have the status of directly binding precedents. This allows us to state that case law in its Ukrainian model functions and is focused on the development of the legal system, the main role of which is the formation of a unified and effective legal practice. It is concluded that the development of technology not only changes the paradigm in the economy and society, but also poses new challenges to the legal environment. In this context, judicial precedent acts as an important tool for adapting legal regulation to modern realities, ensuring stability and progress in the field of private law. The results of the research can be used for further scientific developments in the field of development of private law aimed at the development of new legal concepts and tools, as well as for application in law enforcement practice

Keywords: court decision; Supreme Court; Constitutional Court; European Court of Human Rights; case law; the Anglo-Saxon legal system; continental legal system

INTRODUCTION

The modern private law of Ukraine is defined as a complex and dynamic system that constantly evolves under the influence of many factors and covers various

spheres of social life, including but not limited to civil, labor, economic, natural resource and other relations. Taking into account the potential of prospects caused

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by the development of digital technologies, adaptation to changes, the search for new solutions and ensuring the stability of the legal system become especially relevant. The development of digital technologies significantly affects the sphere of private law, changing the conditions and methods of doing business, interaction between legal entities, and data and information management. Adaptation to these changes becomes necessary to ensure efficiency and competitiveness in a global environment. At the same time, the search for new solutions in the legal space plays a key role in ensuring transparency, protecting the rights and interests of all participants in legal relations.

Under such conditions, the development of private law goes beyond the usual forms of legal relations and contributes to the formation of new legal concepts, standards and practices. Only flexibility and openness to innovation allows developing private law, forming an effective innovative sphere of legal relations, while the use of various tools in development remains an advantage. In the context of the above, it is important to note the role of precedents. Precedents have the ability to create legal forms that influence the formation and development of legal norms and the legal system as a whole. Case law is a significant source of law that complements legislation and sets standards for the interpretation of laws and regulations. An important feature of precedents is their influence on the development of law, adaptation to changes in society, its technological progress and values. Precedents play a decisive role in European and international law, establishing standards for the interpretation of laws and regulating relations between legal subjects, taking into account their contextual significance, and are the basis of legislative decisions.

With Ukraine receiving the status of a candidate for membership in the European Union in June 2022¹ and the approval by the Council of the European Union on December 4, 2023 of the decision to start negotiations on Ukraine's accession to the European Union², the development of the legal system and Ukrainian private law, in particular, is moving to a new stage of its development. Incidentally, this is not only the need for compliance of Ukrainian legislation with European standards, but also the development of new approaches in law-making activities and law enforcement practice.

The transformation of Ukrainian private law is primarily related to the formation of legal understanding in European traditions and the formation of a strategy for the development of Ukrainian private law focused on the future. This is especially relevant, since the system of Ukrainian law is based on the methodology of Soviet law, which complicates, as R.A. Maidanyk (2016) notes, "the formation of a liberal understanding of law". Therefore, the creation of a foundation that meets international democratic standards is key to Ukraine's successful integration into the European legal space, and will contribute to the development of the legal system and private law in particular. Coincidentally, the world's focus on the constant development of technology has a huge impact on this process. The modern period defines new prospects for the development of private law, caused by the development of technologies that change the usual models of legal regulation. A characteristic feature of Ukrainian private law is that it evolves and develops not in isolation, but in the process of relentless integration of the best practices and institutions from world jurisprudence. Such convergence of legal systems is natural for open societies. One of the results of the said convergence in law can be considered the spread of judicial precedent among the sources of private law. Judicial precedent is a court decision that establishes a rule or principle that can be used by a court or other legal authority when deciding future cases with similar circumstances (Zapara, 2021).

D. Verbytskyi (2019) focuses on the analysis of judicial precedent, focusing on conceptual aspects and notes that in common law countries, judicial precedent takes precedence over the law. The author notes that in such countries, courts often resolve disputes, even when the law is ambiguous, outdated or absent at all, and points to the importance of judicial awareness in this process. Instead, in the continental legal system, judicial precedent is treated as case law or customary law, which is not binding on lower courts when deciding similar cases. V.A. Kroitor (2023) examines the use of case law created by judges of the European Court of Human Rights in the decision-making process of Ukrainian courts. The author focuses on the analysis of the impact of the practice of the European Court of Human Rights (ECtHR) on domestic justice, pointing out the specifics of the integration of international

¹Joint Statement of the President of Ukraine Volodymyr Zelenskyi, Chairman of the Verkhovna Rada of Ukraine Ruslan Stefanchuk, Prime Minister of Ukraine Denys Shmygal "On the Decision of the European Council to Grant Ukraine the Status of a Candidate for Membership in the European Union, Adopted at the Meeting of the European Council". (2022, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/n0001100-22#Text>.

²Statement of the Ministry of Foreign Affairs of Ukraine "On the Decisions of the European Council". (2023, December). Retrieved from <https://mfa.gov.ua/en/news/zayava-mzs-ukrayini-shchodo-rishen-yevropejskoyi-radi>.

standards into the national legal system. As a result of the research, it is concluded that the implementation of precedent practice of the European Court on the basis of the European Convention on Human Rights into the legal environment of Ukraine will contribute not only to the approximation of the Ukrainian state to European standards of human rights, but will also ensure the protection of human rights and freedoms in all intrastate relations, which positively will affect the implementation of the principles of the rule of law, which are specified at the constitutional level.

O. Shakirova (2019) studies the foreign experience of applying court precedent as a source of law, this work reflected different approaches to the application of precedent in world practice. The author states that in the countries of the Anglo-Saxon legal system, court precedent is considered a source of law, which is mandatory for courts in solving similar cases. This follows from the principle “to adhere to what has already been decided and not to disturb what is quiet” (*stare decisis et non quiescitur movere*). This approach has been successfully adopted by the USA, Canada and Australia, which proves its effectiveness. M. Sharenko (2019) studies the role of judicial precedent in the system of legal sources of Ukraine. The researcher emphasized the importance of understanding court precedent as one of the key elements of the country’s legal system. K. Tokaryeva (2019) focused on the scientific discussion regarding the fundamental rethinking of the role of precedent as a source of law in the legal systems of the countries of the Romano-Germanic legal tradition. The author notes that earlier in these legal systems, the possibility of the existence of legal norms in any other form, apart from official normative legal acts, was rejected.

Continuing the scientific discourse, it is important to note that precedent plays a key role in legal systems based on the principles of common law, where decisions of higher courts are a source of law and binding for use in similar cases by lower courts. And although the precedent is an atypical form of law for the continental legal family, it has taken a prominent place in the system of sources of European and national law. By updating the idea of using precedent as a source of law, it is possible to create opportunities for the formation of a flexible instrument of change, while not allowing the risk of departure from the traditions of continental law, but only to expand the range of opinions in the context of current

and future transformations. Considering that the development of private law is taking a new shape, focusing on the influence of precedent is an obvious and strategically considered step for the development of effective legal constructions. Although the article deals primarily with the influence of the precedent on the development of Ukrainian private law, an additional analysis of the significance of the precedent in international practice will contribute to a comprehensive approach to revealing the essence of its application in accordance with the trends of the modern world. The purpose of the study is to study the meaning of the court decision, the conditions for the transformation of the court decision to the role of a precedent, and to determine the influence of the precedent on legal practice and the formation of legal doctrine in the private law system of Ukraine.

The methodology of this study is based on an integrated approach, which includes several main methods: system analysis, as well as methods of analysis and synthesis. This methodology makes it possible to comprehensively investigate the influence of decisions of the Supreme Court, the Constitutional Court of Ukraine and the European Court of Human Rights on the development of private law in Ukraine. The precedent nature of these decisions is enshrined in the national legislation of Ukraine¹, part 5 and 6 of Article 13 of the Law of Ukraine No. 1402-VIII², as well as Article 17 of the Law of Ukraine No. 3477-IV³. The system-structural method made it possible to analyze the main concepts related to the subject of research, namely “judgment”, “private law”, “precedent”. Along with the system-structural method, the formal-logical method and the method of legal hermeneutics were used in the study, with the help of which normative-legal acts of national significance, as well as theoretical developments in the relevant field, were investigated. Comparative analysis has become useful for clarifying approaches to judicial precedent in Ukraine and in other countries, in order to determine how this tool is used in different legal systems and how it affects the development of private law, in particular in the countries of the European Union and the Anglo-Saxon type. In the study, the problems of applying precedent in the system of Ukrainian law are also determined by the method of analysis. The method of synthesis has become useful for researching the effectiveness of the influence of precedent on the development of private

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. 1402-VIII “On the Judiciary and the Status of Judges”. (2016, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/1402-19#Text>.

³ Law of Ukraine No. 3477-IV “On Implementation of Decisions and Application of Practice of the European Court of Human Rights”. (2006, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/3477-15#Text>.

law. The forecasting method helped to outline the significance of the precedent in the system of development of private law under the influence of introduced technologies and innovative changes.

Comparative review of scientific research by Ukrainian and foreign authors. Conducted research in the field of private law in national and international circles highlights various issues, including the modernization and harmonization of private law in accordance with modern standards. They also emphasize the importance of studying the evolution and overcoming of past problems, pointing to the role of the rule of law in the development of a quality legal system and the formation of precedents. Special attention is paid primarily to highlighting the role and place of judicial precedent from the standpoint of application in the Anglo-Saxon and continental legal systems.

M.V. Belova and I.Ye. Peresh (2023) examine the influence of Roman law on the modern legal paradigm shift. Their research focuses on the historical roots and influence of Roman law on modern legal systems, especially in the context of the development of case law. M.A. Tikhonova (2022) analyzes judicial precedent as a source of sports private law. The author examines in detail how court decisions affect the development of sports law, in particular, the formation of legal norms in this area. O.I. Kharitonova (2021) studies the concept of “actio” and the implementation of private law in ancient Rome. This study provides an important historical context for understanding the development of legal systems and their modern interpretation. S.O. Shipko (2022) draws attention to the peculiarities of subjects of private international law. The author examines the criteria for recognizing the functional legal personality of transnational companies, considering the importance of their role in international legal relations. S.I. Zapara (2021) continued the study of the influence of judicial law-making on the formation of precedent law in Ukraine. The author analyzed the role of courts in the formation of the procedural legal model and their influence on the national legal system, and comes to the conclusion that “the external influence of judicial precedents, which are formed by the ECHR and the Supreme Court’s rulings in the field of extended interpretation of the norms of the European Convention on Human Rights, actually affects on legislation and judicial practice of Ukraine”. E. Gramatskiy (2019) expanded this topic by studying the role of judicial and arbitration practice in the context of private international law. The author emphasized the importance of precedents in the international context, pointing to their influence on the formation of legal norms. S.S. Panchenko (2021) explores European Union law as a source of civil contract law. The author considered the impact of

European legislation on national contract law, pointing out the trends and prospects of its development. A.M. Melnyk (2021) studies the genesis of judicial practice and judicial precedent. The author drew attention to the historical development of judicial practice and its influence on the formation of judicial precedent. R. Babanli and P. Pushkar (2019) discuss the (non)relevant application of ECtHR jurisprudence, providing practical advice. This article examines the complexities of incorporating international standards into national justice.

O. Vladykin and O. Grachova (2023) consider the peculiarities of the application of judicial precedent in the civil process of Ukraine. The authors analyzed how court decisions affect the civil process, and also consider the interaction of precedent with legislative norms. In this context, D.M. Yasinok (2019) analyzes the judicial precedents of the European Court of Human Rights as a source of civil procedural law of Ukraine, demonstrating the importance of international standards in national legislation and draws attention to the relevance of scientific research for the development and formation of case law in Ukraine. The author emphasizes the need for a deep theoretical analysis of case law for its further development. Authors A.V. Kisil *et al.* (2022) study the place of ECtHR precedent in the system of sources of criminal law. The authors analyzed how the decisions of the ECtHR affect criminal law, considering them as an important element of the legal system. R. Sabodash (2019) examines the influence of the publication of court decisions on the formation of “persuasive precedent”. The author points out the importance of the availability of court decisions for the formation of legal practice. L.V. Dundych (2019) examines judicial precedent in the legal norms of foreign countries, providing a comparative legal characterization. This study is important for understanding international practice and its impact on the Ukrainian legal system.

The arguments expressed by national researchers are primarily based on the principles of observation, while the authors of this work definitely support the achievement of legal stability and predictability, the development of a unified judicial practice of law enforcement, and the need to maintain agreed positions in the application of legal norms. The analysis of the historical roots of Roman law and the study of its influence on the modern legal paradigm demonstrate that precedents have deep roots and can influence the formation of legal norms in modern legal systems. It is also affirmative that precedent traditions are important in the development of legal science and practice, they contribute to the formation of legal culture and ensure the connection between past and modern law, which results from the understanding of precedent as judicial practice or customary law.

Highlighting the role of precedent is primarily due to its fundamental place in the law-making sphere, despite the differences in application in the Anglo-Saxon and continental legal systems. Turning to the positions of foreign scientists who study the logic and theory of the application of judicial precedent in various legal systems, we will first of all turn to the considerations of F.P. Shecaira (2014) on the difference in approaches “between two forms of legal reasoning, namely, reasoning about the law and reasoning according to law” (Shecaira, 2014). Studying the order of the same legal system, K.N. Llewellyn (2015) noted that a particular court case contributes to the development of traditions and approaches to the formation of judicial precedents, and emphasized that the search for effective solutions requires a review of the legacy and constant renewal of the doctrine.

K.M. Ehrenberg (2023) developed the theory of the artifactual nature of precedent, noting that “once we start thinking clearly about precedent, custom seems to have an outsized role (...). Those decisions then form the basis of further decisions that maintain the authority of that custom, even as the later decisions now cite the precedent rather than the custom directly”. C. Günzl (2021) examines German law through the lens of a historical excursion into a nineteenth-century collection to understand the apparent contradiction in German law between the clear doctrine that previous decisions have no binding legal force and the facts of practice that show about the influence of past cases on future decisions. Describing the structure of the courts at the time, the author argues that although each state had its own highest court and was not legally bound to the others, mutual respect between the courts for approved decisions contributed to the unification of civil law without the incentive of the German Union or individual lands.

Examining the historical role and authority of precedent under statutory provisions in Germany, England and Wales, Sweden, and the United States, Th. Lundmark (2012) points out that, with few exceptions, judicial overturning of precedents is rare. In their work, P. Craig and G. de Búrca (2020) examine the role of judicial precedent in the European Union system and also consider the application of the doctrine of direct effect in European law. They note that although provisions of European Union law in national courts may not have horizontal direct effect, their influence on decisions of the Court of Justice of the European Union is allowed through the principles of indirect effect and harmonious interpretation. L. Leszczyński (2020) analyzes the use of previous court decisions in the countries of the continental legal system. The author points to the development of a precedent type of judicial practice, which, according to the researcher, depends on changes in the composition of

the judicial panel and the absence of relevant provisions in the legislation. M. Durovic and T. Tridimas (2021) study new directions of private law development under the influence of technological development and innovative changes. The authors noted the historical value of the precedents that were approved in the era of industrial revolutions and recognized them as a tool for better understanding of modern phenomena and the possibilities of ensuring the stable development of society. Researchers emphasize that these precedents can be useful in the context of the development of technology and innovation, helping to ensure the adaptation of the legal framework to modern challenges and needs of society.

According to the general trend of research conducted by foreign scholars, judicial precedent is recognized as a key tool for the development and stabilization of legal systems. It determines the course of development of law and ensures stability and predictability in judicial practice. Foreign scientists point to the significant role of court precedent in the formation of legal norms, the resolution of complex legal issues, and the development of legal doctrine. In addition, it highlights the importance of distinguishing between two forms of legal thinking: reasoning about law and reasoning according to law, which affects the way judicial precedent is analyzed and applied. At the same time, it is noted that for countries of the continental type, the formation of a precedent type of judicial practice is primarily characteristic. In the context of technological and innovative changes, judicial precedent acquires special importance, as it helps to adapt the legal system to new challenges and changes in society. Research also emphasizes the importance of understanding historical precedents for the correct interpretation and application of legislation in contemporary settings. The role of judicial precedent in European law, in particular through the doctrine of direct effect, is recognized as an important mechanism for the protection of citizens' rights and the effective functioning of European institutions. All these aspects emphasize the importance of judicial precedent as a tool for ensuring legal stability, development and protection of human rights in the modern legal environment.

Each of the studies contributes to the understanding of the role and significance of the precedent in the legal system, both in Ukraine and in the international context, allowing to form a more complete picture of this aspect of the modern legal form of the development of law. Combining key directions in the research of Ukrainian and foreign scientists, the analysis of different approaches of researchers to judicial precedent demonstrates its importance as a tool for ensuring the stability, predictability and development of the legal system, as well as its role in the formation of legal culture

and ensuring the connection between past and modern law, noting the importance of using legal traditions as an organic renewal of modern private law. However, the analysis of scientific works shows in favor of the fact that the role of precedent in the development of the private law of Ukraine still remains insufficiently researched, which emphasizes the relevance of the chosen topic. Taking into account the intensive development of private legal relations under the influence of the development of social relations, the role of precedent in the regulation and resolution of disputed issues acquires a defined different meaning. Changes in society, its economy and the technological environment create new challenges for the legal system, which often require adaptation and innovative approaches. In this context, precedent can contribute to ensuring the stability and predictability of the legal environment for modern challenges and needs of society.

Private law and precedents: Ancient Rome. First of all, the authors of this article considered how private law and precedents are related to each other, as well as how this relationship differs from the relationship with regulation carried out through regulatory legal acts. From the beginning of the era of Roman law, in particular during the time of praetorian law, foundations were laid that influenced the development of private law and justice in the world. Praetors in ancient Rome played a key role in shaping legal principles, many of which are still relevant today. In this context, the custom in maritime law, which was called the Rhodes Maritime Law, was analyzed. In ancient Roman times, the Mediterranean seas were the stage for ships carrying cargoes ranging from wheat to cedar, amphorae of olive oil and other goods. When these ships were caught in a storm, often provoked by Melthamy winds, the captains usually decided to throw some of the cargo overboard to lighten the ship and increase its chances of surviving the storm. After the disaster, when the sea calmed down, the ships continued their route to the port, for example, to Rhodes, but the owners of the lost cargo suffered obvious losses. These losses were necessary to save other goods and the ship itself.

In dealing with the claims arising from these events, the praetors of Rome were faced with a dilemma: whether those who lost their cargo were entitled to compensation from the owners of the salvaged goods, for an equal division of the costs caused by force majeure. Solving this issue formed the basis of a fair redistribution of risks and losses, similar to modern insurance. Thus, a precedent was formed that shaped approaches to solving similar situations in the future, distributing real risks among those who suffered losses due to unforeseen circumstances. This Roman legal principle demonstrates how a particular legal response to a unique problem

could evolve into a general rule through generalization and adaptation to similar future cases. This formed the basis for future legal consideration of similar situations, strengthening the legal tradition that was passed down from generation to generation. During the Justinian era, during the codification of law in the sixth century, there was an important collection of empirical data, but at the same time magistrates were restricted from using such empirical material in favor of stricter rules derived from available sources. This led to a certain loss of flexibility in the judiciary, as judges had to be guided by established general norms, instead of considering each case individually. This juxtaposition between the rule-based continental legal system and the more flexible, associative system of Anglo-Saxon law reflects a profound difference in approaches to law and the judiciary. That is why, in the context of private law, precedent acts as an important tool that ensures the flexibility and adaptability of the legal system.

Precedent accommodates casual interpretation of laws and other sources of law, which allows judges to adapt the content of legal provisions to specific cases, taking into account changing circumstances and socio-economic context. This contributes to a more accurate and fair resolution of cases. In other words, case law allows courts to consider the unique circumstances of each specific case, providing an individualized approach to dispute resolution. It allows law to respond to modern challenges, ensuring that legal norms do not become obsolete, but evolve with changes in society and the economy. This is particularly important in the context of private law, where relationships between individuals require a flexible approach that can adapt to diverse and dynamic circumstances. Precedents and case law allow the legal system to be more responsive to society's needs, ensuring justice is fair and efficient. This is especially important in conditions of rapid social and economic changes, when traditional legal norms may not keep up with the realities of life.

Precedent in the private law of European countries. Private law in European countries is usually based on a codified legal system, where laws and codes define the rules and regulations that are applied by the courts. However, there are aspects of the development of case law that should be taken into account. The practice of creating precedents existed already from the fourteenth and fifteenth centuries and played a significant role in the formation of law. Sanctioned by the legislative framework, precedents served as a source of law and filled significant gaps in Polish law, in particular land law, due to the fading of legislative activity and a certain stagnation in the field of private law (Lesiński, 2019). After the reception of Roman law in the middle of the 16th

century, a certain stability of the legal system was established in the western part of continental Europe. It was a period when almost all the countries of Western Europe used almost the same legal system. In Germany, as in other countries with limited courts, justice continued to take into account local customs and national characteristics, but despite this process, the principles of German law remained distinctive (Freund, 1890).

A strict hierarchical structure limits the actions of judges in the French justice system. It is worth noting that French judges do not feel the direct pressure of the rules of precedent, which was the norm in other jurisdictions. They have considerable freedom in considering each specific case based on their own interpretation of the law. However, this freedom is limited by the possibility of appeal (“appel”) and cassation to the Supreme Court (Troper & Grzegorzcyk, 1997). Romania’s path in the establishment of precedent law is primarily related to the implementation of the principles of the rule of law, which are based on a broad social and educational movement, and take place from the bottom to the top, promoting the change of values and respect for rules, as well as their creation. At the same time, “the Romanian case tells us that any simplistic reform approach based on the quantitative addition of judicial capacity, which fails to challenge the established legal and social order, will result in superficial and unsustainable outcomes” (Mendelski, 2007). The idea of precedents is known for Hungary. Until the middle of the 20th century, Hungarian jurisprudence relied heavily on customary law, which was formed by judges, but with the approval of the Civil Code in 1960, the law became the main source of decisions in Hungarian civil courts. The system of limited precedent, which is being implemented, consists of established certain rules, namely “reasons justifying deviation from precedents may include instances when “a new circumstance ... arises in the course of the assessment of the particular case which raises doubts about the applicability of the previous rule” or “new economic and political conditions come to light which make it impossible to apply the existing rule unchanged” (Novák, 2020).

In modern Germany, the resolution of court cases depends to a large extent on the legal method used in the country’s highest court, the Supreme Court (BGH). This approach is aimed at ensuring uniform interpretation and development of legislation. The Supreme Court guarantees a certain degree of legal certainty and equal treatment of similar cases, helping to eliminate legal uncertainties. The principle of equality requires the same interpretation and application of the law. In Germany, the provision of legal certainty is one of the key constitutional principles that helps ensure a uniform method of applying the law. This is done to achieve

maximum clarity and rationality in the decision-making process. It is important to note that court decisions must be consistent with the law, both written and unwritten. Judges are given the duty to consider both types of law in order to ensure the adequacy of justice and avoid a narrow positivist approach to cases (Oppermann, 2018). In 2023, the German government passed a new law that allows the country’s highest court to rule on issues related to the main legal issues that arise in mass action cases, that is, cases that bring together a large number of individuals with the same or similar requirements. Under this new law, the Federal Court of Justice (FCJ) gains the ability to select specific cases from the pending appeal list in mass action cases involving a wide range of legal issues. The court can make a “precedential decision”. It is important to note that such decisions, under this procedure, will not become official binding precedents, but will serve as an authoritative guide to lower courts regarding the interpretation of issues that may arise in other cases (Schmidt & Weißbach, 2023).

In the British and Norwegian legal systems, it is common practice to consider individual court decisions as possible bases for the formulation of general legal norms. This practice has two aspects. First, each court decision can be considered part of the norm-making process because it is consistent with, or significantly extends, other decisions dealing with important norms. Second, judicial decisions can act as a basis for establishing, confirming, or changing the rules of precedent, even if the judge does not expressly state these rules. In such a case, the court’s decision is used as an authoritative argument confirming previous judgments. This distinction between judges’ “deeds” and “sayings” is important because judges’ “deeds” can often contradict their “words” in using previous court decisions as a source of law (Svein, 2009).

Therefore, the analysis of the development of case law in Europe reflects the diversity of approaches to legal regulation and the search for a balance between the stability of the legal system and the requirements of modern society. Precedent law in European countries is rooted in ancient traditions and customs that reproduce the rich history of legal culture. It plays a key role in the development of legislation in the era of transformation and formation of national legal systems. Although the attention to precedent law in the countries of Europe differed in different historical eras, modernity shows a tendency towards the convergence of the systems of common and continental law. This is due to the growing attention to the role of precedent and acts of legislation in determining legal standards. However, the development of precedent is inevitably influenced by social, political and historical factors. Under such conditions, it is

important to maintain a balance between the use of case law and its relation to legislation to ensure stability and progress in the legal field.

Precedent in the private law of Ukraine. It is generally accepted that the division of legal systems takes place according to such a basic criterion as the leading source of legal regulation. Whereas for the Romano-Germanic legal family such a source is a regulatory legal act, for the Anglo-American one it is a precedent. A soft form of precedent, which directly follows from the requirement of legal certainty as a component of the rule of law, is characteristic of all the states of the Council of Europe and most of the states that apply the continental approach to the sources of law. First of all, we will analyze the normative foundations of precedent law in Ukraine.

In the Constitution of Ukraine¹ the word “precedent” is not used, as is generally the case in the legislation of Ukraine. Meanwhile, Article 151-2 of the Constitution of Ukraine² indirectly establishes a precedent in the legal system of Ukraine, providing that the decisions and conclusions adopted by the Constitutional Court (CC) of Ukraine are binding, final and cannot be appealed. The bindingness of such decisions has a general order and applies to all national courts. Decisions of the Constitutional Court of Ukraine affected a number of private law issues, especially in the part related to the disclosure of the content of the constitutional principles of private law. In one of its decisions, the Supreme Court of Ukraine formulated an important legal position, according to which the Basic Law of Ukraine – the Constitution clearly regulates the issues of property relations, where special attention is paid to defining the scope of objects and persons who may have property rights (Articles 13, 41, 142, 143), the principle of equality of all participants in property relations (according to Article 13), the protection of the rights of owners and their obligations (Articles 13, 41) and it was declared that the norms regulating the regime of ownership should be established exclusively by Ukrainian legislation (in accordance with paragraph 7 of the first part of Article 92)³. Analysis of these articles, in the opinion of the Supreme Court of Ukraine, points to a distinction between state and communal forms of ownership at the level of constitutional legislation. At the same time, communal property acts as an independent category, not included in state

property, and represents a separate type of property right, the management of which is entrusted to territorial communities or bodies created by these⁴.

In another decision, the Supreme Court of Ukraine formed an important legal position, according to which the right of ownership is not absolute and may be subject to restrictions, but any interference with this right is allowed exclusively on the basis of legislative acts, taking into account the principles of legal certainty and proportionality. The last principle involves ensuring a balanced relationship between the needs of the individual and the interests of the public. Restrictions of one's own rights for the purpose of protecting public interests are considered justified if they constitute the least restrictive of all possible options for actions that carry less burden on the rights and freedoms of⁵. Decisions of the Supreme Court of Ukraine have a significant impact on the development of private law in the country, as they determine the fundamental principles of the legal system and establish parameters for the interpretation and application of laws. The Constitutional Court acts as the highest body of constitutional jurisdiction, which ensures compliance with the Constitution and protects the fundamental rights and freedoms of citizens.

Through its decisions, the Constitutional Court of Ukraine influences the development of private law, establishing key principles of interpretation and application of the provisions of the Constitution of Ukraine⁶, which become starting points for legislative and judicial decisions in the field of civil, family and property relations. This includes defining the limits of private property rights, freedom of contract, and other important aspects of private law. Decisions of the Supreme Court of Ukraine help resolve contradictions in legislation, ensuring its unambiguity and consistency, which is important for the stability of the legal system and the predictability of legal relations. In addition, decisions of the Supreme Court of Ukraine contribute to the harmonization of national legislation with international standards, especially in the context of human rights and fundamental freedoms. This allows Ukraine to effectively integrate into the global legal community, as well as to ensure that domestic law complies with the country's international obligations. In general, the activity of the Constitutional Court of Ukraine is key to the development of private

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 Ibidem, 1996.

³ Ibidem, 1996.

⁴ Decision of the Constitutional Court of Ukraine No. 5-p(II)/2023. (2023, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/v005p710-23#Text>

⁵ Decision of the Constitutional Court of Ukraine No. 3-p(I)/2019. (2019, June). Retrieved from http://www.ccu.gov.ua/sites/default/files/docs/3_p1_2019.pdf.

⁶ Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

law in the country, making an important contribution to strengthening the rule of law, protecting the rights and interests of citizens, and creating legal conditions for economic development.

The influence of the decisions of the Supreme Court on the private law of Ukraine. According to Article 13 of the Law of Ukraine No. 1402-VIII¹ “conclusions regarding the application of legal norms, set out in the Supreme Court’s rulings, are binding for all subjects of power that apply in their activities a regulatory legal act containing the relevant legal norm”, while “conclusions regarding the application of legal norms, set forth in the decisions of the Supreme Court, are taken into account by other courts when applying such legal norms”. From which it follows that none of the decisions of the Supreme Court are binding for judges when considering similar cases. Rather, they have a persuasive character, which, however, cannot prevent a judge from deciding a case to refuse its application in cases where he has reasonable grounds for doing so. This gives judges some freedom in deciding each specific case, allowing them to take into account individual circumstances without being strictly bound by previous decisions. Thus, the same decisions of the Supreme Court can be considered a binding precedent for all subjects of law, but in relation to courts, they have the character of a convincing precedent.

In the light of the above general remarks, there is a need to analyze specific decisions of the Supreme Court to find out how they affect private law in Ukraine. Thus, in the decision of the Joint Chamber of the Civil Court of Cassation of the Supreme Court dated April 18, 2018 in case No. 753/11000/14-ts (proceedings No. 61-11svo17) the approach to the interpretation of contract terms is highlighted². The legal position states that when it is impossible to establish the content of the terms of the contract using generally accepted methods of interpretation, in particular, those defined in parts three and four of Article 213 of the Civil Code of Ukraine³, one should resort to the principle of *contra proferentem*. This approach means that in case of ambiguity in the terms of the contract, they must be interpreted against the party that formulated them. That is, the party that entered a certain condition into the contract bears the risk associated with flaws in the wording of this condition. This

rule applies both to situations where the party formulated the condition itself, and to cases of using standard conditions developed by third parties. According to this principle, *contra proferentem* is used not only for conditions that “were not individually agreed upon”, but also for those that were included in the contract “under the significant influence of one of the parties”. According to this principle, *contra proferentem* should be applied if there are two different interpretations of one condition (or several conditions) of the contract, and not two different versions of this condition (or conditions). This rule is intended to disadvantage the party who has allowed the ambiguity, since it is he who is responsible for the ambiguity. In addition, *contra proferentem* takes into account the reasonable expectations of the party that did not participate in the formulation of the terms of the contract, including the choice of language and wording. Also, this principle applies when it is clear that only one of the parties to the contract participated in determining the wording or even drafted the contract or used standard terms developed by a third party. In case of uncertainty of the terms of the contract, the interpretation should be carried out in favor of the counterparty of the party that prepared the draft of the contract or proposed the wording of the condition. Until proven otherwise, it is presumed that the party who is a professional in the relevant field requiring specialized knowledge is the one who prepared the terms of the contract.

Another important legal conclusion in the field of private law was formulated by the Supreme Court in the ruling of the Civil Court of Cassation of the Supreme Court of May 25, 2022 in case No. 487/6970/20⁴. According to the decision of the Supreme Court as part of the Joint Chamber of the Civil Court of Cassation dated April 18, 2018 in case No. 753/11000/14-ts (proceedings No. 61-11svo17) it was established that the obligation to compensate moral damage arises in the case of causing such damage to another person. This obligation is formed under the condition of moral damage, the illegality of the actions of the person who caused the damage, the causal connection between the illegal behavior and the consequences, as well as the fault of the person who caused the damage. Once the person who caused the damage is determined, the burden of proof is divided

¹Law of Ukraine No. 1402-VIII “On the Judiciary and the Status of Judges in Ukraine”. (2016, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/1402-19#Text>.

²Resolution of the Joint Chamber of the Civil Court of Cassation No. 753/11000/14-ts “On the Cassation Appeal of the Private Joint Stock Company “Pharmaceutical Firm “Darnytsia” Against the Decision of the Kyiv Court of Appeal Dated 21 November 2017. (2018, April). Retrieved from <https://verdictum.ligazakon.net/document/73500675>.

³Civil Code of Ukraine No. 435-IV. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/435-15#Text>.

⁴Resolution of the Civil Court of Cassation as part of the Supreme Court No. 487/6970/20 “On the Cassation Appeal of the NGO Stop Sludge Against the Decision of the Mykolaiv Court of Appeal of 14 December 2021” (2022, May). Retrieved from <https://verdictum.ligazakon.net/document/104539336>.

between the plaintiff and the defendant: the plaintiff must prove the fact of moral damage and causation, while the defendant must prove the absence of wrongdoing and fault. Moral damage always has a negative character, but not every such damage leads to liability for its compensation. The obligation to compensate moral damage occurs only when the damage is caused by illegal actions of the responsible person. Money, which acts as compensation, turns the damage into a universally measurable expression, and the amount of compensation allows to “estimate” the moral damage. At the same time, the amount of compensation should reflect the moral damage and contribute to the restoration of the victim’s condition. In the process of determining compensation, various factors are taken into account, such as the nature of the violation, the depth of suffering, the impact on the victim’s abilities, the degree of guilt of the perpetrator, other significant circumstances, as well as the criteria of reasonableness and fairness. The obligation to compensate moral damages has its own characteristics, because at different stages its content may be uncertain, especially regarding the method and amount of compensation. The definition of the content of such an obligation may be based on agreements between the perpetrator and the victim, in particular regarding the amount, method, and terms of compensation. If the parties do not reach an agreement, the court decision determines the method and amount of compensation. Thus, the decision of the Supreme Court of April 18, 2018 significantly affects the development of private law, establishing key principles for consideration of cases related to compensation for moral damage. This decision not only clarifies the circumstances under which the obligation to compensate moral damage arises, but also distributes the burden of proof between the parties. In particular, the decision emphasizes that for the obligation of compensation to arise, it is necessary to prove the fact of moral damage, the illegality of the actions that caused this damage, the existence of a causal connection between the actions and the damage, as well as the fault of the person who caused the damage. Thus, the courts have clear guidelines for assessing the circumstances of the case and the obligations of the parties. The resolution of the Civil Court of Cassation of the Supreme Court of February 23, 2022 in case No. 569/693/21 (proceedings No. 61-13565CB21 has important role for the development of private law in Ukraine¹. In it, the Supreme Court came to the conclusion that in the context of private law, the

concept of invalidity can be applied to various legal acts, including decisions of general meetings of members of business associations, which are acts of bodies of legal entities. It is important to note that the decision of the general meeting of participants, as an act of a body of a legal entity, differs in its nature from a deed. Thus, the standard provisions of the Civil Code of Ukraine and other legislation that regulate transactions, in particular the rules on the legal consequences of non-compliance by the parties when concluding a transaction with the requirements of the law from Section 16 of the Civil Code of Ukraine², cannot be directly applied to such decisions.

In cases where an interested person files a lawsuit for invalidation of a decision of a general meeting of a company, the defendant is the company itself, and not its individual members, since the decision reflects the will of the general meeting of participants as a body of the company, not an individual participant. The legal position expressed in the aforementioned resolution made an important contribution to the development of private law, in particular, by clarifying the application of the concept of invalidity to the decisions of bodies of legal entities, such as general meetings of members of business associations. The decision emphasizes the differences between transactions and acts of bodies of legal entities, emphasizing that the standard rules governing transactions cannot be automatically applied to decisions of general meetings. This is important for ensuring the correct legal regulation of intra-organizational relations in economic societies, where the decisions of general meetings play a key role. Also, the Supreme Court indicated that in cases of contesting the invalidity of such decisions, the defendant is the business association itself, and not its individual members. This reinforces the understanding that the decision reflects the collective will of the body of the company, which is important for the legal nature and mechanisms for protecting the rights and interests of members of business companies. This decision contributes to the improvement of the legal framework, providing greater predictability and protection in the field of corporate relations, while at the same time emphasizing the need for detailed regulation of intra-corporate processes in accordance with legislation.

In the decision of the Central Committee of the Supreme Court dated 10.02.2021 in case No. 754/5841/17 it was established that the use of private legal mechanisms by participants in civil turnover should not serve as a means of evading the payment of debts or the

¹Resolution of the Civil Court of Cassation as part of the Supreme Court in case No. 569/693/21 "On the Cassation Appeal of the Ministry of Defence of Ukraine Against the Decision of the Romanivsky District Court of Zhytomyr Region of 22 June 2022". (2022, February). Retrieved from <https://verdictum.ligazakon.net/document/109854993>.

²Civil Code of Ukraine No. 435-IV. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/435-15#Text>.

fulfillment of obligations under the legal force of a court decision on the recovery of debts, losses or damage¹. Abuse of rights and use of private legal instruments in a manner contrary to their purpose is characterized as follows: a person (or a group of persons) uses rights improperly ("rights are used to harm"); the presence of harmful consequences for other persons (these consequences create a certain state in which other subjects find themselves, whose rights directly depend on the actions of a person who abuses their rights; such a state is unsatisfactory for other subjects; they experience deficiencies in the implementation of their rights due to the lack of necessary facts or conditions; the realization of these facts/conditions depends on the actions of the person abusing his rights; such a person may or may not have specific legal relations with the persons affected by his actions); the legal status of the person/persons is taken into account (a person as a participant in legal relations is aware not only of his own rights, but also of the rights of other participants in these relations, and also knows about the procedure for acquiring and exercising these rights; the person is not involved in this relationship for the first time, or the relationship has long-term nature, or the person is a participant in other similar legal relationships). The characterized legal position emphasizes the importance of responsible use of private legal mechanisms in civil transactions. This resolution emphasizes the inadmissibility of abuse of law, which consists in using legal instruments in a way that contradicts their main purpose, in particular, avoiding payment of debts or failure to fulfill obligations determined by a court decision.

According to the decision of the Supreme Court as part of the panel of judges of the Second Judicial Chamber of the Cassation Civil Court in case No. 757/76070/17 (proceedings No. 615817CB21)², it was stated that in the context of private law, which includes labor law, the concept of invalidity can affect various types of contracts, including labor contracts. An important feature of labor legislation is the presence of mandatory norms that not only guarantee minimum social and labor standards, but also establish criteria for the invalidity of contracts or their separate conditions in the field of labor relations. For example, Article 9 of the Labor Code of Ukraine³ defines special cases of nullity of contract terms, when such terms worsen the position of employees in comparison with the current labor legislation in

Ukraine. The legal position expressed in the said decision has a significant impact on the development of private law, in particular on the relationship between civil and labor law. It emphasizes that the concept of invalidity of contracts, characteristic of civil law, can also be applied in labor law, which regulates relations between employees and employers. This is important, because in labor law, a large part of the norms has an imperative character, which determines the mandatory minimum working conditions and protection of the rights of employees. The decision confirms that any terms of employment contracts that worsen the position of employees compared to the guarantees provided by law are invalid. This helps to strengthen the legal protection of workers, ensuring that their working conditions cannot be worsened by the unscrupulous actions of employers.

Summing up, it can be argued that the decisions of the Supreme Court have a significant impact on the development of private law in Ukraine. These decisions are important not only because they provide an opportunity to formally settle a particular disputed substantive legal relationship, but also because they shape the legal practice and doctrine on which the lower courts rely. The Supreme Court through its decisions brings clarity to the interpretation of laws, ensuring their unity and consistency in application. This approach contributes to the stability of the legal environment and the predictability of legal relations. The Supreme Court acts as a guarantor of compliance with the principles of private law, ruling on issues related to property, contractual relations, civil liability and other key aspects of private law. Its decisions help to adapt legislation to modern realities and needs of society, as well as ensure the protection of the rights and interests of individuals and legal entities. Particularly important is the influence of the Supreme Court on the development of legal doctrine through the decisions of the Grand Chamber, which often serve as a guide for the future development of the legal system and legal science. Such decisions contribute to the formation of unified approaches to the interpretation of legal norms, taking into account modern challenges and the dynamics of the development of social relations.

The influence of decisions of the European Court of Human Rights (ECtHR) on private law in Ukraine. The influence exerted by the ECtHR on the system of private law in Ukraine has a two-vector nature. First of all, the practice

¹ Resolution of the Civil Court of Cassation as part of the Supreme Court No. 754/5841/17 "On the Cassation Appeal Against the Decision of the Kyiv Court of Appeal of 03 September 2019". (2021, February). Retrieved from <https://verdictum.ligazakon.net/document/94938438>.

² Decision of the Supreme Court as part of the panel of judges of the Second Judicial Chamber of the Civil Court of Cassation No. 757/76070/17 "On the Cassation Appeal Against the Decision of the Kyiv Court of Appeal of 15 November 2021". (2021, November). Retrieved from <https://ips.ligazakon.net/document/CO23094>.

³ Code of Labor Laws of Ukraine No. 322-08. (1971, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/322-08#Text>.

of the ECtHR has a general impact on the implementation of private law norms through the introduction of a certain form of case law in Ukraine. According to the established practice of the ECtHR, the lack of consistency in judicial practice can undermine trust in the legal system and harm the predictability of law enforcement¹. This is because significant differences in court decisions on similar issues create uncertainty and can lead to the perception of justice as arbitrary or unfair. Predictability and consistency in law enforcement are key to ensuring justice, as they allow citizens to understand their rights and responsibilities and to anticipate the consequences of their actions under the law. Thus, it can be concluded that the requirements of the rule of law, in particular in terms of ensuring standards of legal certainty, are the leading reasons for the establishment of the continental model of precedents and case law in Ukraine.

The second important vector of influence is the ECtHR's use of certain principles and standards when resolving private legal disputes about violations of the Convention on the Protection of Human Rights and Fundamental Freedoms. The development of the ECtHR in terms of interpretation and application of Article 1 of the First Protocol to the Convention – protection of property rights – is especially full. Thus, in one of the considered cases, the ECtHR established that the restrictions imposed by the state on the right to property actually limited the applicants' ability to dispose of their property². In another case, the ECtHR recognized a violation of Art. 1 of the First Protocol, finding that the applicant suffered a disproportionate burden due to the state's interference with his right³. In the case of *Kasmi v. Albania*, the ECtHR recognized that the annulment of the judgment by the Supreme Court of Human Rights.

Romania, which recognized the applicant's right to property, was a violation of Art. 1 of the first protocol. The court indicated the absence of substantial grounds for such intervention by the state⁴. Therefore, the practice of the European Court of Human Rights is a source of law when considering cases in the Ukrainian court process related to the violation of human rights and fundamental freedoms. This allows to ensure compliance of court decisions with international human rights standards and contributes to the protection of the rights and freedoms of citizens in Ukraine.

Case law in Ukraine: Discussions in the context of European standards. One of the key discussions in the legal sphere of Ukraine is the question of the presence and nature of precedent law in the Ukrainian legal system. This issue is very relevant in the context of Ukraine's rapprochement with European legal standards and integration into international legal systems. The main subject of discussion is whether it can be considered that precedential law operates in Ukraine, that is, a system in which the decisions of higher courts determine the direction for consideration of similar cases in the future.

Arguments in favor of the fact that case law applies in Ukraine can be found by analyzing the practice of the Constitutional Court of Ukraine and the ECtHR. These courts play a key role in the formation of legal doctrine and law enforcement, as their decisions are binding on judges when considering cases. For example, decisions of the Constitutional Court of Ukraine are binding on all other courts and state authorities, which creates a basis for precedent in Ukrainian law. In addition, it is important to note that the decision of the Supreme Court can be considered a continental form of law enforcement precedent. Although these decisions do not formally have the status of directly binding precedents, as is the case in common law systems, they nevertheless serve as an important reference point for courts of first instance and appellate instance and influence their law enforcement practice. The Supreme Court influences the interpretation of legislation through its rulings and conclusions which brings the Ukrainian system closer to case law. Therefore, it can be considered that a peculiar form of precedent law operates in Ukraine, although its nature and forms differ from the classical understanding of precedent in Anglo-Saxon legal systems. Decisions of the Supreme Court of Ukraine and the ECtHR, as well as the practice of the Supreme Court, create a basis for the formation of precedent legal practice in Ukraine, at the same time emphasizing the importance of such a mechanism to ensure the unity of law enforcement and the predictability of court decisions. This contributes to the strengthening of legal certainty and stability, providing effective protection of the rights and legitimate interests of citizens and legal entities, and also contributes to the development of legal science and education in Ukraine. At the same time, the question of the correlation of

¹Judgment of the European Court of Human Rights No. 17780/18 "On Case of Ismayilzade v. Azerbaijan". (2024, January). Retrieved from <https://hudoc.echr.coe.int/?i=001-230293>.

²Judgment of the European Court of Human Rights No. 21371/10 "On Case of Ismayilzade v. Azerbaijan". (2021, September). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-211786>.

³Judgment of the European Court of Human Rights "On Case of the National Union of Journalists and Others v. France No. 41236/18". (2021, December). Retrieved from <https://hudoc.echr.coe.int/?i=001-229417>.

⁴Judgment of the European Court of Human Rights No. 1175/06 "On Case of Kasmi v. Albania". (2020, June). Retrieved from <https://hudoc.echr.coe.int/?i=001-203153>.

precedents in the national legal system of Ukraine, namely in the context of the interpretation of the Constitution of Ukraine, remains debatable¹.

The main problem is to find out whether the Constitutional Court of Ukraine (CSU) is obliged to interpret the Constitution of Ukraine² take into account the ECtHR's decision, whether, instead, the Constitution of Ukraine has an autonomous meaning, independent of the European Convention and the practice of the Strasbourg Court. On the one hand, the Constitution of Ukraine³ is the Basic Law of the country and has the highest legal force, which exceeds the force of any international treaties to which Ukraine is a party. According to this position, when interpreting the Constitution, international treaties, including the practice of the ECtHR, should not be taken into account as direct sources of interpretation of the Constitution. On the other hand, there is an established practice of interpreting the Constitution of Ukraine⁴, which involves taking into account the provisions of international treaties and the practice of the ECtHR in order to ensure consistency and unity in the decisions of the Constitutional Court of Ukraine and the ECtHR. This approach is based on the assumption that Ukraine, being a party to the European Convention on Human Rights and having recognized the jurisdiction of the ECtHR, must ensure that its domestic law, including the Constitution, is interpreted in a manner compatible with international obligations and consistent with the principles of the rule of law.

This discussion indicates that determining the balance between the sovereignty of the national legal system and the need for its integration into the international legal system lies in the legal orientation of the system on natural law. Accordingly, the approach of conformal interpretation, which is voluntarily adopted by the Constitutional Court of Ukraine, ensures that Ukraine's international obligations are taken into account when providing constitutional guarantees, thereby contributing to the protection of the fundamental rights and freedoms of citizens. This approach can be considered the most justified, as it reflects Ukraine's efforts to ensure high standards of human rights protection, while preserving the principles of national sovereignty.

CONCLUSIONS

In summary, the consolidating influence is characteristic of law enforcement practice. At the same time, consolidation always takes place in the light of certain legal

challenges, and therefore precedents guarantee the constant modernization of legal regulation of private-law relations and are the basis of law-making. Modern technologies not only change the paradigm in the economy and society, but also place new demands on the legal system. In this context, judicial precedent acts as a key tool of law-making and adaptation of legal regulation to modern needs, which ensures stability and progress in the field of private law. The precedent type of judicial practice, which is becoming widespread in Ukraine, crystallizes the gradual adoption of the precedent method, the value of which is in promoting the development of traditions. This process leads to the formation of a new perspective on the understanding of an authoritative court decision as a precedent for application in judicial practice, as well as as a basis for the further development of legal doctrine.

At the same time, the transformation of a court decision into a precedent is not limited to teaching a specific legal position. This process also contributes to the formation of a legal culture in society and reflects the ability of the judicial system to adapt to new challenges and develop, taking into account the fundamental principles of the rule of law. Decisions of the Constitutional Court of Ukraine have a significant impact on the development of private law in the country, as they determine the fundamental principles of the legal system, establishing parameters for the interpretation and application of laws, which is important for compliance with the principles of the rule of law and the predictability of legal relations. The Constitutional Court of Ukraine acts as the highest body of constitutional jurisdiction, which ensures compliance with the Constitution and protects the fundamental rights and freedoms of citizens. The Supreme Court acts as a guarantor of compliance with the principles of private law, making decisions on issues related to property, contractual relations, civil liability and other key aspects of private law. Its solutions help adapt legal regulation to modern realities and the basic dynamic needs of economic development, as well as ensure the protection of the rights and interests of individuals and legal entities. Such decisions are designed to form unified approaches to the interpretation of legal norms, taking into account modern challenges and the dynamics of the development of social relations, and serve as the basis of law-making.

In its approach to resolving disputes in the field of private law, the European Court of Human Rights follows

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 *Ibidem*, 1996.

³ *Ibidem*, 1996.

⁴ *Ibidem*, 1996.

a broad interpretation of the Convention on Human Rights, especially with regard to the concept of “private life”. The ECtHR believes that the right to private life covers the ability of a person to interact with the outside world, including building interpersonal relationships. This broad interpretation allows for the protection of various aspects of personal freedom and self-expression, based on the understanding that private life is not limited to intimate or domestic aspects, but also encompasses interaction with society and the state. The discussed key issues of the role of precedent and its influence on the development of private law can be considered

through the prism of the search for new approaches in the field of legal system development. This involves the possibility of finding and researching historical aspects of precedent in Ukrainian legal culture, as well as forecasting strategies for the development of private law to modern international trends and innovative changes.

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CONFLICT OF INTEREST

None.

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Вплив прецеденту на розвиток українського приватного права

Анотація. Актуальність дослідження обумовлена пошуком гнучкого правового механізму, який сприяв би розвитку приватного права під впливом технологій. Використання прецеденту як джерела права може створити можливості для формування такого інструменту, який не порушуватиме традиції континентального права, але розширить горизонти думок під впливом сучасних та майбутніх інновацій. Метою дослідження стало визначення місця та ролі прецеденту в правовій системі України та його вплив на розвиток приватного права. Дослідження базується на комплексному підході, який включає в себе кілька основних методів, а саме: методи аналізу та синтезу, системно-структурний, формально-логічний та метод правової герменевтики. У статті висвітлено роль прецеденту у розвитку приватного права України. Розглянуто вплив рішень Конституційного Суду України, Верховного Суду та Європейського суду з прав людини на правову систему країни, особливо в контексті процесів євроінтеграції та постійного розвитку правових стандартів. Висвітлено, як формуються та застосовуються правові норми в українському правосудді, а також як судові рішення впливають на юридичну практику та законодавчий процес. Зазначено, що рішення Конституційного Суду України, Верховного Суду та Європейського суду з прав людини відіграють ключову роль у формуванні правової доктрини і практики в Україні. Підкреслено, що в Україні існує форма прецедентного права, характер якого відрізняється від класичного розуміння прецеденту в англосаксонських системах. Рішення Верховного Суду можна вважати континентальною формою правозастосовного прецеденту, хоча вони формально не мають статусу прямо обов'язкових прецедентів. Це дозволяє стверджувати, що прецедентне право у своїй українській моделі функціонує та орієнтоване на розвиток правової системи, основна роль якої полягає у формуванні єдиної та ефективної юридичної практики. Підсумовано, що розвиток технології не лише змінюють парадигму в економіці та суспільстві, але й ставлять нові виклики перед правовим середовищем. У цьому контексті судовий прецедент виступає важливим інструментом адаптації правового регулювання до сучасних реалій, забезпечуючи стабільність та прогрес у сфері приватного права. Результати дослідження можуть бути використані для подальших наукових розробок у сфері розбудови приватного права, спрямованих на розвиток нових правових концепцій та інструментів, а також для застосування у правозастосовчій практиці

Ключові слова: судові рішення; Верховний Суд; Конституційний Суд; Європейський суд з прав людини; прецедентне право; англо-саксонська правова система; континентальна правова система

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