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# Legal Status of the Business Entities in Ukraine in the Context of Changes in Current Legislation

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**Abstract**
This study is relevant since currently, Ukraine undergoes the reformation and revision of private legislation, considering the European vector of development of the state. The problems of improving the status of legal entities as business entities were also considered. Therefore, the purpose of this study is to examine the legal status of business entities in Ukraine in terms of changes in legislation and to develop on its basis the original view of this issue. In accordance with the purpose of the study, the following methods are used: historical, systems analysis, generalisation, comparative and functional methods of scientific knowledge. The reform of civil legislation is under study and its necessity in the area of solving problematic issues of legal regulation of business entities in Ukraine was determined. It was stated that civil law eliminates the full liability of full members for the obligations of a general partnership. Ways to improve the legal mechanisms for regulating relations with the involvement of business entities and their participants were investigated. Moreover, the paper provides recommendations for amendments to the legislation to address the issues identified in the study. Provisions and conclusions of the study can be used in the preparation of relevant textbooks, manuals, and comments on regulations governing the status of the business entity and in the activities of such entities to address certain issues regarding their status

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## Introduction

The business entities, as the participants in civil relations, play one of the key roles in the national economy, and the business entity category not only provides the legal personality but also allows increasing the effectiveness of the legal regulation mechanism for a number of associations of the individuals [1–3]. As of today, there is a dualism in the regulation of private relations [4]. This fully applies to the business entities, which in turn leads to the conflicts of legal regulation (for example, different approaches to the category of "enterprises" in the Civil and Economic Codes of Ukraine, which impacts the scope of responsibility of the members of a production cooperative, etc.) [5].

The normative definition of the concept of a business entity is given in Article 80 of the Civil Code of Ukraine[1] as an organisation established and registered in accordance with the procedure established by law. Such a law regulating the procedure for establishing entities with the status of business entities is the Law of Ukraine No. 755 "On State Registration of Legal Entities, Natural Persons-Entrepreneurs, and Public Establishments"[2]. Therewith, the certain types and organisational and legal forms of business entities are given attention at the level of special laws, in particular, the laws: Law of Ukraine No. 1576-XII "On Business Associations"[3], Law of Ukraine No. 514-VI "On Joint Stock Companies"[4], Law of Ukraine No. 2275-VIII "On Limited and Additional Liability Companies"[5], Law of Ukraine No. 1087-IV "On Cooperation"[6], Law of Ukraine No. 819-IX "On Agricultural Cooperation"[7] etc. The norms of the Economic Code of Ukraine are also devoted to the status of business organisations that have the rights of business entities[8]. In particular, at the level of the Economic Code of Ukraine, the status of state unitary and municipal unitary enterprises is regulated, while the legal regimes of property, economic management, and operational management rights are defined.

The concept of updating the Civil Code of Ukraine is also devoted to improving regulations on the business entities. Thus, it is proposed: to add an exhaustive list of organisational and legal forms of the business entities to the Civil Code of Ukraine[9] (the Civil Code of Ukraine, as a fundamental act of private law which regulates the general provisions on business, should determine an exhaustive list of its organisational and legal forms while abandoning the archaic structures of the business entities (especially enterprises)); to return the general provisions on limited liability companies to the Civil Code of Ukraine and separately indicate the existence of special regulation in the Law of Ukraine No. 2275-VIII "On Limited and Additional Liability Companies"[10]; to clarify the content of the sub-clause on the involvement of the state, the Autonomous Republic of Crimea, and territorial communities in the civil relations [6–8].

According to O. Ovcharenko *et al*. [7], the defining feature that characterises the legal status of the business entity is its economic competence, which is realised based on property rights, economic management rights, and the right of operational management in accordance with the definition of this competence in law. W.S. Dodge [3] considers the legal status of the business entity as constitutional and distinguishes the legal status of certain branches of law, namely civil procedure, criminal procedure, and administrative procedure law. According to V.I. Tsikalo [5], the problem of the legal status of business entities in Ukraine is that it is characterised as a collective type of rights, freedoms, and responsibilities of business entities. D. Palombo [4] notes that civil law tends to develop general principles of legal regulation of legal entities, while their general structure must meet the purpose of creation, which is quite sufficient in their division into business and non-business companies, leaving features at the level of self-regulation and regulatory influence. In this aspect, N.V. Trusova *et al*., examining the agreements on making contributions by the participants of business entities, emphasised that the agreement between the founders of a limited liability company is the basis for making contributions by them, it is valid until its proper execution and after the state registration of this company [8].

Therewith, in the course of improving legal mechanisms for regulating relations involving business entities and their participants, it is necessary to provide that after the established limited partnership enters into an agreement with the contributors on mutual rights and obligations, it is subject to notarisation. Despite this, in the context of changes in current legislation, these issues are relevant. Thereby, the originality of the work is that the results of the study fill to some extent the gap in the science of civil law regarding the status of the business entity.

[1]Civil Code of Ukraine. (2003, January). Retrieved from https://zakon.rada.gov.ua/laws/show/435-15#Text.
[2]Law of Ukraine No. 755-IV "On State Registration of Legal Entities, Natural Persons-Entrepreneurs and Public Formations". (2003, May). Retrieved from https://zakon.rada.gov.ua/go/755-15.
[3]Law of Ukraine No. 1576-XII "On Business Associations". (1991, September). Retrieved from https://zakon.rada.gov.ua/laws/show/1576-12#Text.
[4]Law of Ukraine No. 514-VI "On Joint Stock Companies". (2008, September). Retrieved from https://zakon.rada.gov.ua/laws/show/514-17/conv#Text.
[5]Law of Ukraine No. 2275-VIII "On Limited and Additional Liability Companies". (2018, February). Retrieved from https://zakon.rada.gov.ua/laws/show/2275-19#Text.
[6]Law of Ukraine No. 1087-IV "On Cooperation". (2003, July). Retrieved from https://zakon.rada.gov.ua/laws/show/1087-15#Text.
[7]Law of Ukraine No. 819-IX "On Agricultural Cooperation". (2020, July). Retrieved from https://zakon.rada.gov.ua/laws/show/819-20#Text.
Economic Code of Ukraine. (2003, January). Retrieved from https://zakon.rada.gov.ua/laws/show/436-15.
[8]Civil Code of Ukraine, op. cit.
[9]Law of Ukraine No. 2275-VIII "On Limited and Additional Liability Companies", op. cit.

*The purpose of this study* is to examine the legal status of business entities in Ukraine in the context of changes in current legislation.

## Materials and Methods

The methodological basis of the study was a set of general and special scientific methods, techniques, and tools of scientific knowledge, and their comprehensive application aims to achieve the goals and objectives of the study. The theoretical basis of this study was the papers devoted to issues of legal regulation of business entities. The normative and legislative base of the study consisted of materials of the relevant public authorities[1-3], statistical data[4-6], and generalisations of practice contained in the materials of periodicals [7–9].

The historical method was used in the analysis of the establishment and development of legislation on the legal status of the business entity. The comparative legal method was used in comparing the relevant legislation of Ukraine and other countries to formulate proposals for improving domestic legislation, considering foreign experience. Generalisation was used in the study of the practice of reforming and updating private legislation, which considers the European vector of state development.

Using the methods of induction and deduction and the axiomatic method, the main aspects of the legal status of the business entity were specified. Through the functional method, recommendations for amendments to the legislation were prepared to address the problems identified in the study. The application of systems analysis allowed systematising and refining the provisions on the main elements of the status of the business entity.

## Results and Discussion

Business entities play a vital role and perform important functions. They are not only one of the main taxpayers and the employers in Ukraine, but also a means of attracting investment into the country. Therefore, the issue of improving the legal status should be given due attention. Many of the proposals that are covered in the Concept of Updating the Civil Code of Ukraine (except, probably, for the proposal to consolidate the status of business entities under the public law for the state, the Autonomous Republic of Crimea and territorial communities) should be agreed on[7]. Therewith, when reforming the civil legislation of Ukraine, it is advisable to pay attention to the following aspects in the context of the business entities status:

1. It is advisable to make changes that would clearly provide for the need to adopt a special law that would provide for the specific features of the legal status of business entities under public law. As of today, the legal status of the business entities of public law is ambiguously defined. As a result, for example, PJSC "Oschadbank" is a business entity of private law, although the state guarantees by law the deposits of individuals in this bank; the Concern Ukroboronprom is a business entity of public law (although there have been some attempts to change this situation), any utility company (including one that is engaged, for example, in cleaning adjacent territories) is a business entity of public law.
2. It is necessary to fix the requirements for notarising the founders' signatures on the constituent documents of the business entities at the level of the Civil Code of Ukraine, which is an effective mechanism for preventing abuse. Those requirements already exist in other regulations, but given the legal force and level of stability of the Civil Code of Ukraine, they should also be provided for in the code[8].
3. Considering that, according to Article 83 of the Civil Code of Ukraine, the business entities can be founded not only in the form of companies and institutions but also in the other forms established by law; the lack of legislative technology creates the erroneous phrases in Article 88 of the Civil Code of Ukraine, such as: "The company Charter specifies…" and "The founding agreement of the company…". Therefore, the word "companies" should be replaced with "business entities". In addition, it should be detailed and provided that the recognition by the court of the constituent documents of a business entity as invalid does not affect the validity of any obligations assumed by this business entity that arose before the relevant court decision entered into legal force[9].
4. As of today, the requirements for a commercial (corporate) naming are actually defined only by the Company regulations as of 1927, which is unacceptable. In the Civil Code of Ukraine, it is advisable to provide for the need to adopt a special law[10].
5. The changes should be made that would provide for an approach according to which any public authorities, except for the court, are not allowed to make decisions on the termination of business entities.

[1]Civil Code of Ukraine. (2003, January). Retrieved from https://zakon.rada.gov.ua/laws/show/435-15#Text.
[2]Law of Ukraine No. 755-IV "On state registration of legal entities, natural persons-entrepreneurs and public formations". (2003, May). Retrieved from https://zakon.rada.gov.ua/go/755-15.
[3]Law of Ukraine No. 1576-XII "On Business Associations". (1991, September). Retrieved from https://zakon.rada.gov.ua/laws/show/1576-12#Text.
[4]Law of Ukraine No. 514-VI "On Joint Stock Companies". (2008, September). Retrieved from https://zakon.rada.gov.ua/laws/show/514-17/conv#Text.
[5]Law of Ukraine No. 2275-VIII "On Limited and Additional Liability Companies". (2018, February). Retrieved from https://zakon.rada.gov.ua/laws/show/2275-19#Text.
[6]Law of Ukraine No. 1087-IV "On Cooperation". (2003, July). Retrieved from https://zakon.rada.gov.ua/laws/show/1087-15#Text.
[7]Civil Code of Ukraine, op. cit.
[8]*Ibidem*, 2003.
[9]*Ibidem*, 2003.
[10]*Ibidem*, 2003.

6. Article 107 of the Civil Code of Ukraine should provide for effective mechanisms for protecting the rights and interests of the creditors of a reorganised business entity, considering the need to ensure the stability of civil turnover and the legitimate interests of the debtor[1].

7. It is advisable to consolidate the approach according to which the allocation is a way to reorganise business entities. As of today, this approach is found in many regulations (for example, in the Law of Ukraine "On Agricultural Cooperation", Law of Ukraine "On Banks and Banking Activities"[2], etc.

8. It should be provided that the participants in full companies (full participants in limited partnerships) can be individuals with full civil legal capacity and/or business legal entities.

9. It is advisable to enshrine the need for notarisation of the founding contracts of the full and limited partnerships, which is conditioned by the scope of responsibility of the parties to such contracts based on the results of their signing.

10. It is necessary to legislatively expand the arsenal of mechanisms for managing full and limited partnerships, consolidating the possibility of entrusting their current activities management to the third parties.

11. It is necessary to introduce an approach according to which the members of a production cooperative bear the subsidiary responsibility for the obligations of the cooperative in the amounts and in accordance with the procedure established by the cooperative's charter. As of today, the different regulations provide for the different rules. This wording would introduce the uniform principles for determining the scope of responsibility of the production cooperatives members, etc.

In addition, civil law eliminates the liability of full members for the obligations of a general partnership, as it does not impose restrictions on participation in a general partnership of companies (in particular, limited liability companies) [6–8]. One way to solve this is to consider the proposals of individual researchers to introduce joint and several liability for the obligations of the general partnership for officials of the participants – business entities [9–11]. The other options for resolving those issues include an addition to the current legislation of Ukraine of one of the following provisions: a) the minimum amount of the authorised capital of business entities-participants of full partnerships (full participants of limited partnerships); b) subsidiary liability with all their property for the obligations of full/limited partnerships of individuals-participants of business entities, directly or indirectly related to the relations of involvement with such full/limited partnerships; c) subsidiary liability with all their property for the obligations of full/limited partnerships of the ultimate beneficial owners of business entities that are the participants of such partnerships; d) the founders (participants) of full/limited partnerships may be the business entities exclusively in the organisational and legal form of full or limited partnerships, etc.[3;4];

Therefore, it is necessary to increase the role and the importance of contractual regulation of the relations between the participants of different business entities. Nevertheless, the legal literature [12–15] still continues to discuss the relevant contracts. According to V.I. Tsikalo, the subject of the agreement between the participants (shareholders) of a business company is not the obligations of the parties or even the rights that belong to them, but the methods of exercising the rights of participants in the business company [9]. Therewith, any agreement on exercising the rights and obligations between the founders (participants) of the business companies by its nature and purpose should: firstly, be characterised as civil one; secondly, further specify the features of exercising the rights and obligations to establish or terminate business companies, involvement in such business companies, the order for the transfer of shares (its part) in the authorised capital of the participant to the others, the civil and legal consequences of failure to fulfill the obligations on making contributions to the authorised capital, including in the form of refunding damages, penalties, etc .; thirdly, be aimed at the emergence, change, or termination of the civil rights and obligations of the founders (participants) of the business companies [10].

As of today, the issues of the procedure for managing business entities in case of the death of its participants before their entry and registration of inheritance remain unresolved. Similar issues were the subject of consideration in different court cases. According to the paragraph 2.30 of the Resolution of Plenum of Supreme Economic Court of Ukraine No. 4 as of 02/25/2016 On Certain Issues of Dispute Resolution Practice Arising from Corporate Legal Relations, before deciding on the entry (acceptance) of heirs (legal successors) of a deceased (liquidated) participant, the competence of the general meeting of the participants is determined without considering the share in the authorised capital that belonged to the deceased (liquidated) participant. Therefore, in this case, when establishing the competence of the general meeting of participants, it is necessary to consider the votes of other members of the company, which without votes fall on the deceased

[1]Civil Code of Ukraine. (2003, January). Retrieved from https://zakon.rada.gov.ua/laws/show/435-15#Text.
[2]Law of Ukraine No. 819-IX "On Agricultural Cooperation". (2020, July). Retrieved from https://zakon.rada.gov.ua/laws/show/819-20#Text.
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[4]Resolution of the Grand Chamber of the Supreme Court No. 917/1338/18 (2018, November). Retrieved from https://verdictum.ligazakon.net/document/101829986?utm_source=jurliga.ligazakon.ua&utm_medium=news&utm_content=jl03&_ga=2.20556792.1525163594.1640690978-239597050.1640690.

(liquidated) participant and together constitute 100% of votes to be considered when determining the quorum[1]. A similar position is applied in a number of court decisions, in particular, when making decisions of the Civil Court of Cassation as a part of the Supreme Court as of 02/14/2018 in the case No. 740/2194/15-ts and the decisions of the Economic Court of Cassation as a part of the Supreme Court as of 11/05/2019 in the case No. 927/242/19 and as of 08/08/2018 in the case No. 911/3215/17.

However, the Grand Chamber of the Supreme Court, adopting a resolution as of 11/02/2021 in case No. 917/1338/18, deviated from this legal position, indicating that "the decision to refuse to accept an heir to the company is made by more than 50% of the total number of votes of the company's participants, including votes that fall on the share of the participant who died, although this participant (their representative) does not take part in voting"[2]. This position of the Grand Chamber of the Supreme Court is disputable since it is difficult to ensure the activities of the company's highest management body when resolving other, sometimes equally important issues related to the activities of such a company.

## Conclusions

The main aspects in the context of the status of business entities in reforming the civil legislation of Ukraine were examined. It was indicated that the civil legislation eliminates the full liability of full members for the obligations of a full company since it does not establish the restrictions on the involvement of business companies in a full partnership. In addition, it was stated that it is necessary to increase the role and the importance of contractual regulation of the relations between the participants of different business entities. Moreover, this study provided recommendations for amendments to the legislation.

The recommendations presented in this study do not cover all the issues of the legal status of business entities in Ukraine in terms of updating legislation. Promising areas of development of the issue should be based on managing a business entity with a single participant in the event of the death of such a participant.

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# Правовий статус суб'єкта підприємництва в Україні в умовах змін чинного законодавства

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**Анотація**
Актуальність дослідження зумовлена тим, що нині в Україні відбувається процес реформування та оновлення приватного законодавства з урахування європейського вектора розвитку держави. У зв'язку з цим нагальністю вирізняються проблеми вдосконалення статусу юридичних осіб як суб'єктів підприємництва. Метою наукової статті є дослідження правового статусу суб'єктів підприємництва в Україні в контексті змін законодавства й вироблення на його основі авторського бачення щодо цього питання. Відповідно до поставленої мети дослідження використано історичний, порівняльно-правовий і функціональний методи, а також методи системного аналізу, узагальнення й наукового пізнання. Визначено ключові аспекти статусу суб'єктів підприємництва в межах реформування цивільного законодавства України. Проаналізовано реформу цивільного законодавства в контексті вирішення проблемних питань правового регулювання суб'єктів підприємництва в Україні. Запропоновано шляхи вдосконалення правових механізмів регулювання відносин за участю суб'єктів підприємництва. Доведено потребу в підвищенні ролі й значення договірного регулювання відносин між учасниками різних суб'єктів господарювання. Сформульовано рекомендації щодо внесення змін до законодавства для вирішення визначених у межах дослідження проблем. Положення та висновки роботи можуть бути використані під час підготовки відповідних підручників, навчальних посібників, коментарів до нормативно-правових актів, що визначають статус суб'єкта підприємництва, а також у діяльності суб'єктів господарювання під час вирішення питань щодо їх статусу

**Ключові слова:**
правовий режим власності; цивільні відносини; підприємство; товариство; кооператив

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# Legal Status of the Initiator and the Person Granting Permission to Conduct a Polygraph Test

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**Abstract**
The relevance of the study is conditioned by the need to regulate the legal status of participants in a polygraph examination as subjects of relevant legal relations. The purpose of the study is to improve the theoretical justification and applied component of the legal regulation of a polygraph examination in the security and defence sector of Ukraine, in particular the legal status of its participants. The methodological basis of the study consists of general and special methods of scientific knowledge, namely: hermeneutics, logical, system-structural, dogmatic, Aristotelian, generalisation, etc. It was proved that the peculiarity of a polygraph examination in the activities of the security and defence sector is that it is conducted to solve the problems of primary legal relations. Accordingly, the status of subjects in a polygraph examination is directly related to their legal status as participants in primary legal relations. It was determined that in the area of personnel support, during the examination of candidates for service (work, a polygraph test is appointed by the relevant subject represented by its head based on a regulation that establishes the procedure for checking candidates. It was noted that in the area of psychological support of counterintelligence and intelligence-gathering activities, the decision on the appointment of a polygraph test should be made by an official who has the right to approve the decision on the establishment of the relevant case; as for the initiator of the examination, it can be both the intelligence officer in charge of the case or the head of the operational unit or body. It was established that the appointment of a psychophysiological examination using a polygraph in criminal proceedings can be initiated by: the parties to criminal proceedings (in relation to themselves and other persons, the applicant, a witness (only in relation to themselves and their representatives and legal representatives (in relation to persons whose interests they represent. Persons who have the right to appoint a psychophysiological examination using a polygraph are the investigator and the investigating judge

**Keywords:**
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## Introduction

Today, a polygraph examination is applied in the activities of subjects of the security and defence sector of Ukraine, which, according to paragraph 16 of Article 1 of the Law of Ukraine "On National Security"[1] also includes the Armed Forces of Ukraine, other military formations developed in accordance with the laws of Ukraine, law enforcement and intelligence!agencies, state special purpose bodies with law enforcement functions. These subjects belong to state authorities, and therefore, in accordance with Part 2 of Article 19 of the Constitution of Ukraine, "they are obliged to act only on the basis, within the limits of their powers, and in the manner provided for by the Constitution and laws of Ukraine"[2]. a polygraph examination as a form of relations, one of the participants of which is the subjects of the security and defence sector of Ukraine, should be regulated by law, that is, have legal status. In turn, one of the components of legal regulation of legal relations is the regulation of the legal status of its subjects. The legal status of the subject of legal relations is the subject of studies on the theory of law, constitutional and administrative law.

The initiator and the person who grants permission to conduct a polygraph test are mandatory participants in the relevant legal relations. As D. Kutsenko correctly noted, "any social relations have a primary source – the person who initiates them. The procedure for conducting a polygraph test, which is always initiated by a person when making a decision on the need to conduct this examination, is no exception" [1].

Issues related to the use of a polygraph were covered by many Ukrainian and foreign researchers. Thus, Yu. Dmytrenko also considered the legal aspects of the use of polygraphs in the security and defence sector at the dissertation level [2]. T. Morozova covered the issue of introducing a polygraph to law enforcement agencies and special services of Ukraine, including certain aspects of the legal status of a polygraph examiner [3]. O. Motljakh in his dissertation research examined certain aspects of the legal status of participants in criminal proceedings in terms of assigning a polygraph examination and attaching the results of such examinations to the materials of criminal proceedings [4]. The famous polygraph examiner J. Widacki devoted his studies to the legal issues of using the polygraph in Poland [5]. Separate issues of legal regulation of the use of the polygraph and judicial practice were covered by the South African researcher M.R. Charles [6]. The publications of D. Krapohl [7] and T. Amsel [8] are devoted to the development of polygraphology. The publication by O. Motljakh is devoted to the analysis of the special knowledge of a polygraph examiner that is the basis of their professional activity [9]. Some issues regarding the legal status of participants in a polygraph examination were investigated by I. Okhrimenko [10], O. Zhyvolzhna [11]. However, only D. Kutsenko separately covered the issue of the legal status of the initiator of a polygraph examination. In particular, he provided a single definition of "initiator of psychophysiological research using a polygraph" as "a person who, if there are appropriate grounds, exercised their rights (powers) by setting a task to conduct an examination using a polygraph" [3, p. 58].

The scientific originality of the study lies in the fact that the legal status of the initiator of a polygraph examination and the person who grants permission to conduct a polygraph examination in connection to the legal relations that determine the purpose and conduct of such examination (primary legal relations) is considered. In addition, the powers of the initiator and the person granting permission to conduct a polygraph examination were investigated, depending on their legal status in the primary legal relations.

Thus, the relevance of the study on the legal status of the initiator and the person granting permission to conduct a polygraph examination is conditioned by the growth of cases of polygraph use by subjects of the security and defence sector, and fragmentary coverage in the scientific theory of the legal status of these participants in legal relations.

Therewith, the investigation of scientific literature on this issue showed that the problems and features of the legal status of these participants in a polygraph examination are not given due attention.

Therefore, the tasks of the paper are:

– to differentiate the legal status of the initiator and the person who has the right to prescribe a polygraph test;

– to determine the specific features of the legal status of the initiator and the person who has the right to appoint a polygraph test, depending on the area of its conduct.

Therefore, the *purpose of the study* is to justify that the legal status of the initiator and the person who has the right to appoint a polygraph test depends on the type of legal status acquired by entering into legal relations within which these examinations are appointed.

## Materials and Methods

The methodology of the study is based on general and special methods of scientific knowledge, the use of which is determined by the purpose, object, and subject of the study. The method of hermeneutics was used to examine the texts of regulations and scientific materials of Ukrainian and foreign researchers who investigated the use of a polygraph. The logical method showed the direct relationship of the legal status of participants in a polygraph examination with the legal status of participants in the legal relationship within which these examinations are conducted. The dogmatic method helped to formulate the definition of "legal status" and

[1]Law of Ukraine No. 2469-VIII "On National Security of Ukraine". (2018, June). Retrieved from https://zakon.rada.gov.ua/laws/show/2469-19#Text.
[2]Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254к/96-вр#Text.

"person granting permission to conduct a polygraph test". The system-structural method identified the features of the legal status of the initiator of a polygraph examination and the person who grants permission to conduct it and determined the scope of application of the polygraph. The use of the formal-logical method allowed analysing the norms of current legislation and the practice of its application during a polygraph examination. Using the generalisation method, relevant conclusions were developed, in particular, that the legal status of participants in a polygraph examination is directly related to their legal status as participants in legal relations within which these examinations are conducted.

The study is based on the papers of such researchers as J. Widacki [5], Yu. Dmytrenko [2], O. Zhyvolzhna [11], D. Kutsenko [3], O. Motljakh [4], I. Okhrimenko [10], etc. The study used regulations governing the conduct of polygraph tests, in particular: the Constitution of Ukraine[1], The Criminal Procedure Code of Ukraine[2], the Law of Ukraine "On National Security of Ukraine"[3], etc.

## Results and Discussion

In the theory of law, legal status is a set of subjective rights, legal obligations, and legitimate interests of legal entities [12, p. 237]. There is a distinction between general, special, and individual legal status. Considering the subject and purpose of this study, it is necessary to focus in more detail on the definition of special legal status.

Special (collective) is a legal status that is granted to certain groups of individuals and citizens. It covers special, peculiar (additional) rights and obligations of a certain group of subjects [13, p. 149].

The special legal status of an official is conditioned upon the specific features of professional activity. Special status characterises a representative of a particular social group who is endowed, according to laws and other regulations, with special, additional rights, obligations, restrictions, and responsibilities [14, p. 129]. This legal status is reflected in regulations as a system of rights, obligations, and legal responsibility of a certain category of persons performing the tasks assigned to them [14, p. 132].

Notably, in the activities of subjects of the security and defence sector, a polygraph examination takes place only within the framework of certain legal relations (the process of recruitment, internal investigation, implementation of counterintelligence or intelligence-gathering activities or criminal proceedings) and to solve the problems of these primary legal relations, legal relations arise that consist in conducting a polygraph examination. A polygraph test by the decision of the subject of power cannot be conducted "by itself", even at the request and initiative of the person in respect of whom it should be conducted.

Accordingly, the legal status of participants in a polygraph examination consists in its direct connection with their legal status as participants in the legal relations within which these examinations are conducted (primary legal relations). Therefore, the legal status of the same participant in a polygraph examination differs depending on the type of primary legal relationship.

As for the legal status of the initiator and the person who grants permission to conduct a polygraph examination, it is possible to consider these categories of participants in legal relations together, since they are related to each other, sometimes this is the same job. In addition, in this context, it is necessary to pay attention to the erroneous identification of these participants in legal relations.

Thus, it is better to consider the specific features of the legal status of the initiator of a polygraph examination and the person authorised to appoint it based on the legal relations within which these examinations are conducted.

Notably, the specific features of the legal status of the initiator of a polygraph test and the person who grants permission to conduct it are conditioned by the following:

a) firstly, the purpose of a polygraph test is a complex legal fact that consists of a set of actions;

b) secondly, the initiators and persons who grant permission to conduct the examination are simultaneously participants in the primary legal relationship, respectively, their legal status differs depending on the type of legal relationship in which these examinations are assigned;

c) thirdly, the initiation and conduct of polygraph tests (again, depending on the type of legal relationship in which they are conducted) can be either mandatory for a certain category (if there is a direct consolidation in the relevant provision of the law) or selective. Then, the basis for its implementation in the first case should be a legal norm and in the second – ad hoc regulation.

The specificity of polygraph examinations as legal relations is that the legal status of each of the participants is governed both by the norms of public relations within which polygraph examination is conducted and by the norms of legislation concerning the specific features of conducting these examinations.

In accordance with the established practice of conducting a polygraph examination in the security and defence sector, the following main areas of application of the polygraph are distinguished:

– personnel work (so-called screening studies, polygraph examinations within internal investigations);

counterintelligence and intelligence-gathering activities (as a measure to ensure these types of activities);

– criminal process (conducting psychophysiological examinations using a polygraph).

Therefore, it is advisable to consider the specific features of the legal status of the initiator of a polygraph

[1]Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254к/96-вр#Text.
[2]Criminal Procedural Code of Ukraine. (2012, April). Retrieved from http://zakon0.rada.gov.ua/laws/show/4651-17.
[3]Law of Ukraine No. 2469-VIII "On National Security of Ukraine". (2018, June). Retrieved from https://zakon.rada.gov.ua/laws/show/2469-19#Text.

test and the person authorised to appoint it in accordance with certain areas of application of the polygraph.

Personnel work. Today, passing a polygraph test when applying for service in many subjects of the security and defence sector of Ukraine is a mandatory condition. Since the very procedure of conducting a polygraph examination affects the right of a person to private life, based on the provisions of Article 32 of the Constitution[1], the corresponding restriction of such a right by the state can take place only if such cases are determined by the law and only in the interests of national security, economic well-being, and human rights.

This provision does not cancel the requirement for a person's voluntary consent to undergo legal examination, since the very specificity of its conduct implies not just consent, but the assistance for the examined person to do so. However, if one refuses to pass, it also affects the primary legal relationship (for example, the termination of the examination of a person as a candidate for service).

Therefore, the appointment and conduct of polygraph tests as a measure of personnel selection of subjects of the security and defence sector of Ukraine should be based on the requirements of the legislation and detailed in the relevant bylaws issued by the subject of the security and defence sector. Based on this, since such a procedure should be standard for all persons of a certain category (for example, candidates for service), the initiator of such an examination is a particular employee (division represented by its head) who organises the examination of the candidate (as a rule, this is a personnel division). Therewith, the initiation of such an examination takes place if there are two conditions: the person's voluntary consent to undergo a polygraph test, and the conduct of other verification measures in relation to this person that precede the examination.

In this case, the basis for the polygraph examination is the relevant rule of law and bylaws of the subject of the security and defence sector, which determines, among other things, the order of appointment and conduct, a list of standard (typical) questions.

Nevertheless, if it is necessary to resolve additional questions from the examined person or conduct a second examination, the initiator of the examination should be one of the employees involved in the examination of the candidate, and the person who gives permission to conduct the examination should be the body, the head of the subdivision that made the decision to test the candidate. The basis for assigning an examination should be ad hoc regulation. Therewith, the subject of making a decision on the appointment of an examination, in this case, is the compliance of the actual circumstances that determine the need for repeated or additional examination with the grounds stipulated in the bylaw regulating the procedure for conducting a polygraph examination; the list of issues with the tasks that are supposed to be solved during such an examination.

Internal investigations. A separate area of conducting polygraph examinations as a component of personnel support for the activities of subjects of the security and defence sector is their conduct within the framework of internal investigations. Given the differences from screening studies, the legal status of the initiator and the person authorised to order polygraph examinations as part of internal investigations are investigated separately.

Notably, the concept of "internal investigation" is absent in the current legislation regulating the activities of subjects of the security and defence sector of Ukraine. It is used simultaneously in the legislation and law enforcement practice of many countries. It should be understood as a type of investigation conducted in accordance with certain procedures, based on the decision of an authorised official of the security service of Ukraine, issued in the form of ad hoc regulation against employees. The person who appoints such an investigation, those who conduct it, and the person(s) in respect of whom it is conducted are employees of the same subject of the security and defence sector.

The analysis of the current state of legal regulation allows identifying several categories of internal investigations that can be conducted against employees of the security and defence sector: official investigations and inspections; official investigations to determine the causes of damage to the state, its size and perpetrators; investigations into violations of legislation in the field of state secret protection; investigations into the loss of documents or disclosure of information containing official information. Each of these categories of investigations is governed by separate regulations.

In accordance with the requirements of regulations on the conduct of various types of internal investigations, they are conducted either individually by a certain person or by a commission. The person authorised to appoint an internal investigation determines the personal composition of the internal investigation commission and the chairman of the commission.

Notably, the bylaws of certain subjects of the security and defence sector, which regulate, primarily, the conduct of official investigations, have norms that establish the possibility of conducting a polygraph examination within the framework of these investigations. For example, the relevant provisions are contained in: paragraph 10 of the procedure for conducting official investigations in the Armed Forces of Ukraine[2]; instructions on the procedure for conducting official investigations and official inspections in relation to military personnel of the Security Service of Ukraine[3].

[1]Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254к/96-вр#Text.
[2]Order of the Ministry of Defense of Ukraine No. 608 "On Approval of the Procedure for Conducting an Official Investigation in the Armed Forces of Ukraine". (2017, November). Retrieved from https://zakon.rada.gov.ua/laws/show/z1503-17#Text.
[3]Order of the Security Service of Ukraine No. 45 "Instruction on the Procedure for Conducting Official Investigations and Official Inspections Regarding Servicemen of the Security Service of Ukraine". (2016, February). Retrieved from https://zakon.rada.gov.ua/laws/show/z1503-17#Text.

In this case, the person granting permission to conduct a polygraph examination in a particular internal investigation is the person who appointed this investigation, and the initiator of the examination is either one of the members of the internal investigation commission or the person against whom such an investigation is being conducted.

Therewith, the grounds for making a decision on the appointment of a polygraph test within the framework of a specific internal investigation should be the correspondence of the test questions to the subject of the internal investigation, the presence in the materials of the internal investigation of factual data indicating that the person in respect of whom the examination is planned is trying to hide information about the circumstances or reports false information, or the inability to confirm or refute the information that became the basis for conducting an internal investigation in another way. In the case of initiation of a polygraph examination by a person against whom an internal investigation is being conducted, the subject of making an appropriate decision is also the establishment of the actual voluntariness of such a decision.

Notably, the right to appoint polygraph tests within the framework of internal investigations should be fixed in the legislation regulating the activities of a particular subject of the security and defence sector, and the procedure for assigning such an examination in this area should be regulated in a bylaw that governs the conduct of an internal investigation or polygraph tests.

Counterintelligence and intelligence-gathering activities. The initiator of a polygraph examination, as a measure of psychological support for counterintelligence and intelligence-gathering activities (hereinafter referred to as intelligence activities), and the person who grants permission for its conduct, are the subjects of counterintelligence and intelligence-gathering activities.

Since it is quite logical that in this area a polygraph examination is one of the measures of intelligence activity, and the organisational form of this activity is the relevant case, the decision on the appointment of a polygraph examination should be made by an official who has the right to approve the decision on the establishment of the relevant case. As for the initiator of the examination, it can be either an intelligence officer in charge of the case or the head of an operational division or body. If a polygraph test is initiated by an official who has the right to approve a decision on initiating a case, such official is both the initiator of the polygraph test and the person granting permission to conduct it.

It should be clarified that polygraph tests as a measure of psychological support for intelligence activities can be conducted only with the voluntary consent of the person, in addition, they are exclusively indicative for the intelligence officer and their result does not affect the legal status of the examined person. In addition, one of the key points of organising and conducting these examinations is the issue of privacy and secrecy.

Considering the above, it is more correct to discuss the authority of a person to grant not permission to conduct an examination but to agree on the feasibility of conducting it, if the voluntary consent of the examined person to do so is present. This provision is also based on the fact that obtaining a person's voluntary consent to conduct a polygraph examination can take place both in advance and immediately before conducting the examination based on tactical considerations, the voluntary consent is the basis for conducting the examination, and any decision of an authorised person without voluntary consent does not have any legal consequences.

Regarding the legal status of the initiator of a polygraph examination as a measure of psychological support for intelligence activities, it is worth paying attention to their obligation to provide conditions for such examination that would meet certain requirements for their conduct and the requirements necessary for conspiracy.

In addition, for high-quality preparation for the examination, the polygraph examiner should get acquainted with the materials about the examined person, first of all with the operational information accumulated on the case, which has access restrictions. Therefore, the initiator of the examination is obliged to provide the polygraph examiner with the necessary information to prepare for the examination at the request. Otherwise, its lack is one of the grounds for refusing to conduct such an examination.

Therewith, it is necessary to pay attention to the fact that conducting a polygraph examination in this area involves the risks of familiarising the examined person with the information that the subjects of counterintelligence and intelligence-gathering activities have, based on the content of the developed tests. The legal status of the initiator of the examination should include the right to get acquainted with the prepared tests and the obligation not to allow the possibility of communicating information to the examined person, which may negatively affect further work on the case.

In addition, in other areas of the polygraph examination, video and audio recordings of the examination should be mandatory to assess its quality. However, when taking measures of psychological support for counterintelligence and intelligence-gathering activities, the corresponding decision should be made in each individual case by the person granting permission to conduct such examination at the suggestion of the initiator. In particular, such fixation may provide for measures that would allow identifying the person (image retouching, etc.) in relation to whom a polygraph examination is being conducted.

Criminal proceedings. The use of a polygraph in criminal proceedings, and especially the use of a polygraph examination results as evidence, is still a controversial subject among both Ukrainian and foreign researchers and legal practitioners. As for the Ukrainian legislation, certain changes in the recognition of polygraph tests as a type of expert study occurred in 2015, polygraph tests were included in the list of forensic examinations by

adding the relevant norms (paragraph 6.8) of Section VI of the Order of the Ministry of Justice of Ukraine No. 53/5 of 10/08/1998 (hereinafter referred to as methodological recommendations)[1].

However, these provisions are not consistent with the requirements of Part 2 of Article 84 of the Criminal Procedure Code of Ukraine[2], according to the abovementioned provisions of the methodological recommendations (which are a bylaw) limited the use of the results of polygraph tests only to obtaining orientation information, forming a hierarchical (subordinate) conflict.

This has affected the heterogeneity of judicial practice in similar circumstances, which is quite logical and expected. Moreover, it can be noted that the initiator and the person who appoints the polygraph examination are participants in criminal proceedings, the list of which is defined by paragraph 25 of Article 3 of the Criminal Procedure Code of Ukraine[3]. In particular, the initiators of a polygraph test should include the parties to criminal proceedings, the applicant, the witness, their representatives and legal representatives. Considering the provisions of Paragraph 19 of the same norm[4], the initiators of polygraph tests on the part of the prosecution can include the investigator, the victim, on the part of the defence – the suspect, the accused, their defenders and legal representatives.

Therewith, if such an expert examination is initiated by the person in respect of whom it is supposed to be conducted, the relevant application must contain the voluntary consent of this person to conduct a psychophysiological examination. If such an examination is initiated by one participant in the process in relation to another, its consideration can take place only with the voluntary consent of the person in respect of whom the polygraph examination is supposed to be conducted.

In accordance with the provisions of Article 242 of the Criminal Procedure Code[5], an expert institution, expert or experts are involved by the parties to criminal proceedings or an investigating judge at the request of the defence party. Considering the provisions of this norm, it should be noted that persons who have the right to appoint a psychophysiological examination using a polygraph can only be ones authorised to perform state functions, as a rule, this is an investigator, an investigating judge. Other participants in the process can either apply to the investigator and the investigating judge with a corresponding request, or if this refers to a party to the criminal process (victim, suspect, accused), involve an expert on a contractual basis.

In addition, concerning the powers of persons who have the right to appoint polygraph tests, when making an appropriate decision, their competence should include determining:

– if a person who is planned to be involved as an expert in conducting a polygraph test has the necessary qualifications and the right to conduct forensic examinations;

– if the purpose of the questions submitted for the expert's decision is to clarify the circumstances relevant to the criminal proceedings;

– if there a voluntary consent of the examined person to conduct a psychophysiological examination both documented and in fact;

– if the examined person is aware of the right to freedom from self-disclosure and the right not to testify in relation to themselves, family members, or close relatives, the circle of which is determined by law.

The study shows for the first time the direct relationship between the legal status of participants in a polygraph examination with the legal status of participants in the legal relationship within which these examinations are conducted. For the first time, the "person who grants permission to conduct a polygraph examination" is considered a mandatory participant in a polygraph examination. The features of the legal status of the initiator and the person granting permission to conduct a polygraph examination, depending on the legal relations within which these examinations are conducted, were covered.

## Conclusions

In the activities of subjects of the security and defence sector, polygraph tests are conducted only within the framework of certain legal relations (the process of recruitment, internal investigation, counterintelligence or intelligence-gathering activities, or criminal proceedings).

The legal status of participants in a polygraph examination is directly related to the legal status of participants in the legal relations within which these examinations are conducted.

According to the general rule, during the examination of candidates for service (work), a polygraph test is appointed by the relevant entity in the person of its head based on a regulation that determines the procedure for checking candidates. Nevertheless, if it is necessary to resolve additional questions from the examined person or conduct a second examination, the initiator of the examination should be one of the employees involved in the examination of the candidate, and the person who gives permission to conduct the examination should be the body, the head of the subdivision that made the decision to test the candidate. The

[1]Order of the Ministry of Justice of Ukraine No. 53/5 "Instruction on the Appointment and Conduct of Forensic Examinations and Expert Research and Scientific and Methodological Recommendations for the Preparation and Appointment of Forensic Examinations and Expert Research". (1998, October). Retrieved from https://zakon.rada.gov.ua/laws/show/z0705-98#Text.
[2]Criminal Procedural Code of Ukraine. (2012, April). Retrieved from http://zakon0.rada.gov.ua/laws/show/4651-17.
[3]*Ibidem*, 2012.
[4]Ibidem, 2012.
[5]Ibidem, 2012.

basis for assigning an examination should be ad hoc regulation.

The person granting permission to conduct a polygraph examination in a particular internal investigation is the person who appointed this investigation, and the initiator of the examination is either one of the members of the internal investigation commission or the person against whom such an investigation is being conducted.

Based on the fact that the organisational form of counterintelligence or intelligence-gatherning activity is a case, the decision on the appointment of a polygraph test should be made by an official who has the right to approve the decision on the establishment of the relevant case. As for the initiator of the examination, it can be either an intelligence officer in charge of the case or the head of an operational division or body. If a polygraph test is initiated by an official who has the right to approve a decision on the initiation of a case, such an official is both the initiator of the polygraph test and the person granting permission to conduct it.

In criminal proceedings, polygraph tests are conducted in the form of a psychophysiological examination using a polygraph. According to the requirements for the appointment of an expert examination, the initiators of polygraph examination must include the parties to criminal proceedings (the prosecution can include the investigator, the victim, the defence – the suspect, the accused, their defenders and legal representatives), the applicant, the witness, their representatives and legal representatives. Persons authorised to perform the functions of the state, as a rule, an investigator and an investigating judge can be attributed to the ones who have the right to appoint a psychophysiological examination using a polygraph.

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# Правовий статус ініціатора та особи, яка надає дозвіл на проведення поліграфного дослідження

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**Анотація**
Актуальність теми дослідження зумовлена необхідністю унормування правового статусу учасників поліграфних досліджень як суб'єктів відповідних правовідносин. Метою дослідження є теоретичне обґрунтування та визначення прикладної складової правового регулювання поліграфних досліджень у секторі безпеки й оборони України, зокрема правового статусу їхніх учасників. Основу методології наукового дослідження становлять загальні та спеціальні методи наукового пізнання, зокрема герменевтичний, логічний, системно-структурний, догматичний, формально-логічний методи, а також метод узагальнення. Доведено, що особливістю проведення поліграфних досліджень у діяльності суб'єктів сектору безпеки й оборони є те, що вони передбачають виконання завдань первинних правовідносин. Відповідно, статус учасників поліграфних досліджень безпосередньо пов'язаний з їхнім правовим статусом як учасників первинних правовідносин. Визначено, що в межах кадрового забезпечення в процесі вивчення кандидатів на службу (роботу) поліграфне дослідження призначає відповідний суб'єкт в особі його керівника на підставі нормативно-правового акта, який встановлює порядок перевірки кандидатів. Зауважено, що в межах психологічного забезпечення контррозвідувальної та оперативно-розшукової діяльності рішення про призначення поліграфного дослідження повинна приймати службова особа, яка має право затверджувати постанови про заведення відповідної справи. Встановлено, що ініціатором дослідження може бути як оперативний співробітник, у провадженні якого перебуває справа, так і керівник оперативного підрозділу або органу. Призначення психофізіологічної експертизи із застосуванням поліграфа в кримінальних провадженнях можуть ініціювати сторони кримінального провадження (стосовно себе та інших осіб), заявник, свідок (лише стосовно себе), їхні представники (стосовно осіб, інтереси яких вони представляють). Зауважено, що психофізіологічну експертизу із застосуванням поліграфа мають право призначати слідчий і слідчий суддя

**Ключові слова:**
поліграф; посадова особа; правовідносини; призначення; суб'єкт

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# Features of External Government Debt of Ukraine in the Current Conditions

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**Abstract**
Today, the external debt tends to grow, and the full-scale war with the Russian Federation in 2022 introduces many forced changes in the regulation and management of external government debt in Ukraine, along with changes in external and internal factors that affect the economy of Ukraine, its diplomatic relations with other states, and consequently the external government debt, so this study is of great relevance. The purpose of the study is to consider the external debt of Ukraine and its features. To identify the main problems that arise in the regulation of public relations related to government debt. To establish factors that affect the national debt of Ukraine. To disclose the concept, content, and the main signs of government debt. In the study, a set of scientific methods was applied: system, induction, deduction analysis, synthesis, analogy, comparison, and bibliographic. The scientific originality lies in the fact that based on the results of the study, a holistic view of the features of Ukraine's external debt in current conditions was developed. Its concept, content, principles, and main features were analysed and covered. The factors of external government debt that affect it were established: the quality of legislation, the state economy, the level of public confidence in the country, currency stability, war, pandemic, diplomatic relations with foreign partners, etc. Recommendations for minimising it were developed. It was proposed to exert influence in a comprehensive way – both from the economic and legislative sides, building productive relations with other countries and international organisations. Moreover, to promote transparency in the use of borrowed funds and adopt a separate law that would regulate public relations related to the state debt of Ukraine. The features of regulation and management of external government debt during the war were highlighted. It was proposed to develop methods that allow using the borrowed funds more efficiently. The practical value of the study is that the investigation and analysis of the budget process can be the basis for improving national financial legislation, as some proposals were formulated to amend the current legislation of Ukraine. In addition, the results of the study on the budget process can be used in scientific activities for further consideration of the problems of legal regulation of the budget process

**Keywords:**
subspecies of external government debt; economic situation; investors; restructuring of government debt; development of government debt; diplomacy; genesis of government debt; foreign countries

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## Introduction

The national debt of Ukraine affects various spheres of the state's existence: the Ukrainian economy, diplomatic relations with foreign partners, and, ultimately, the quality of life of ordinary citizens. A high level of government debt can repel potential investors and demand payment of interest on the debt, which delays a large part of budget funds and complicates cooperation with foreign partners; therefore, it requires high-quality legislative regulation and constant work with all multi-level factors that affect the national debt of Ukraine. Since external debt exists not only at the national but also at the international level, its problems are specific, that is, they are at the international level.

In particular:

1) Problems with diplomacy, because diplomatic relations affect external debt, and external debt affects diplomatic relations.

2) Problems in attracting foreign investors during the war.

3) Problems affecting international processes that can lead to both restructuring and an increase in external government debt.

4) Problems in the global economy and its impact on the Ukrainian economy.

5) Problems of using international experience in regulating external government debt.

The following researchers considered the issues of external government debt of the state. L. Brazhnik, who investigated the historical retrospective of the emergence and development of the entire government debt of Ukraine along with the problems of ensuring its repayment, analysed the ratio of government debt to GDP (gross domestic product) and the experience of foreign countries regarding government debt management methods. In comparison with this study, the paper of L. Brazhnik disclosed issues related to government debt in general and explored more deeply its historical retrospective, its ratio to GDP, and the experience of foreign countries. This paper examines the external government debt, its problems, various factors that affect it, and possible ways to solve such problems [1].

Yu.V. Makogon and O.A. Pakhomova also considered the external government debt of Ukraine in their study. In particular, they analysed the current state of Ukraine's external government debt, evaluated it, provided scientific and practical recommendations for improving the entire policy of Ukraine's external debt, analysed the impact of external debt on the world's economies, the dynamics of Ukraine's external debt, and the economic potential of Ukraine. This study has a broader structure, considering a variety of factors that affect the external government debt of Ukraine and its historical origin [2].

As for the study of O.V. Brezhneva-Ermolenko, O.V. Volko, and A.M. Dakhlalla, it covered the practice of developing external government debt in Ukraine, the impact of international organisations on the economy of Ukraine, the ratio of gold and foreign exchange reserves and external government debt of Ukraine, approaches to modernising government debt servicing of Ukraine, key areas for improving government debt management based on the principles of medium-term and risk orientation. This paper examines not only the purely economic and legal factors of government debt but also social and diplomatic ones in the complex. In addition, the war changed some approaches to the external government debt of Ukraine, which was also mentioned in this paper [3].

Now, due to many crisis circumstances, the national debt of Ukraine tends to increase, which is further complicated by the war and leads to the loss of people, infrastructure, architecture, etc. As a result, Ukraine needs additional financial support, both for protection from the enemy and for recovery after the war. In such a situation, new approaches to government debt and regular work with it are needed, especially given that even pre-war problems related to government debt, such as the high level of corruption, have not yet been solved. There is also the issue of the high-quality use of borrowed funds, which is no less important. For these reasons, it is difficult to overestimate the relevance of the issue under study.

*The purpose of the study* is to cover the features of external government debt of Ukraine in the current conditions to identify the main problems that arise in the regulation of public relations related to government debt, to establish factors that affect the government debt of Ukraine, to disclose the concept, content, and main features of external government debt, to outline new approaches to its qualitative regulation and minimisation.

## Materials and Methods

To achieve the purpose of this study, information was analysed using both general scientific and special legal methods of scientific knowledge. The research methods used primarily depended on the specific features of this study and the problems posed in it. The methodology of this paper was based on dialectical, comparative legal, formal legal, system-structural methods, inductive and deductive methods, methods of analysis and synthesis, and the empirical method. The dialectical method of cognition was used to determine the essence of government debt, disclose the features and content of external government debt, determine the features of external government debt, and identify the content and features of types of external government debt. The use of the system-structural method contributed to the examination of public relations related to external government debt. The formal legal method allowed analysing the content of the norms of the Constitution of Ukraine, the Budget Code of Ukraine, and other acts of Ukrainian and foreign legislation. Methods of generalisation, analysis, and synthesis of information, along with induction and deduction are the

basis for investigating the legal regulation of external government debt in Ukraine and foreign countries, they helped to analyse external government debt in Ukraine, highlight its features, factors that are associated with it, and the relationship between them. The comparative legal method allowed analysing and comparing this paper with studies of other researchers, both Ukrainian and foreign. Methods of description, comparison, and classification were used to determine the patterns that characterise the external government debt of Ukraine and related factors. Furthermore, the historical and legal method was used to highlight the development of external government debt and related problems and factors in historical retrospect, which is important for understanding the reasons for which the external government debt of Ukraine arose and the consequences that it can bring, both positive and negative. The dogmatic method was used to clarify the conceptual and categorical apparatus regarding the external government debt of Ukraine. The generalisation method was applied to draw conclusions in this paper.

During the investigation of this problem, the available studies of Ukrainian and foreign researchers were used and analysed. The legal basis of this paper consists of: the Constitution of Ukraine[1], Budget Code of Ukraine[2], Law of Ukraine "On International Treaties of Ukraine"[3], Constitutional Acts of the European Union[4], resolutions of the Cabinet of Ministers of Ukraine[5], orders of the Ministry of Finance of Ukraine[6], and other regulations of national and foreign legislation.

## Results and Discussion

External government debt is considered more dangerous and complex than national government debt because money and resources are circulating not only within the Ukrainian economy. Firstly, it is advisable to consider the definition of Ukraine's external debt.

S.I. Ozhegov, in his dictionary, specifies that "external government debt is the state's debt on outstanding external loans and unpaid interest on them. External government debt consists of the state's debt to international and state-owned banks, governments, private foreign banks, etc." [5, p. 106]. While T. I. Vasiliev and S. S. Ilyin note that "external government debt is a debt to foreign states, organisations, and individuals" [6, p. 236].

Thus, government debt arises as a consequence of financial loans of the state, contracts and agreements on the provision of loans, and prolongation and restructuring of debt obligations of previous years [2, p. 109]. In general, the development and servicing of government debt largely affect the state of public finances, the investment climate, the development of international cooperation in the context of globalisation, etc. [1, p. 65].

One of the types of external government debt, according to studies, can be considered the current external government debt, and the second – capital. The national capital debt consists of the amount of issued and outstanding debt obligations of the country, including the interest that must be paid on them. Whereas the current debt consists of expenses for the payment of income to each of the creditors of the state and expenses for the payment of obligations that already expired. As for debt obligations, they can be expressed in the following three forms: the first is loans borrowed by the state represented by the Cabinet of Ministers of Ukraine; the second is government loans made through the issuance of various securities issued on behalf of the Government; the third is other debt obligations guaranteed by the government. Debt obligations can be short-term – up to 1 year, medium-term – 1–5 years, and long-term – 5–30 years. All debt obligations are repaid within the terms specified in the terms of the loan, in addition, such terms may not, in any case, exceed 30 years. In what form and under what conditions the debt obligations of the subjects are issued, should be determined by the governing bodies and authorities of such subjects [7, p. 40].

External debt is much more complex and riskier than a country's domestic debt. Even getting it is much more difficult, especially if the state cannot repay previous debts, but already needs to collect debts again. Ukraine also faced this problem. It is becoming increasingly difficult to repay old debts and incur new ones that are needed to stabilise the economy. This was caused by various factors, which are discussed in this paper. The problem of government debt faced the economy of Ukraine, starting with the acquisition of its independence [3, p. 13].

One of the first problems that Ukraine faced at the beginning of its independence was the problems and debts that the collapsed USSR left behind. The 1990s were remembered as a difficult time for citizens, and, accordingly, left their mark on the country's economy. Unfortunately, the economy could not function without additional external funds at the beginning of its independent years in the hope that in the future it would repay its debts by developing entrepreneurship. At first, the amount of government debt was reduced and repaid. However, the global crisis of 2008 largely affected Ukraine, leading to a fall in the state currency and the need to collect new debts. Further stabilisation of the

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Ukrainian economy was undermined by the war that began in 2014, which led, again, to a sharp drop in the national currency. Evidently, it is very difficult to attract investors to a country in which there is a war and infrastructure is regularly destroyed. Considering the losses suffered by industrial production in the east of Ukraine, where most of the goods which allowed Ukraine to get foreign currency earnings were produced, the problem of external debt became acute [8, p. 124; 9, p. 30].

The greater the debt in the state, as noted by L.V. Brazhnik, the greater its impact on the economic and financial situation in the state [10, p. 101].

Nevertheless, over time, the economic situation levelled off, military operations became less intense, regions and areas that were located at a distance from the places of military operations gained the opportunity to work in pre-war mode, and the national currency got stabilised. As the main thing is not the ratio of the national currency to foreign ones, but its stability and the possibility of conversion, because with a stable currency, businesses do not suffer losses from its fluctuations, and therefore taxes are paid to the state budget from the income received by entrepreneurs and new places for work are created for citizens.

Yet a new problem that again hit the Ukrainian economy was the COVID-19 pandemic, causing economic destabilisation around the world because quarantine was necessary to save human lives, which happened to be much longer than most expected. As a result, some businesses could not work and receive income, and therefore closed. Many people became unemployed. In addition, a lot of public funds had to be spent on the conversion of hospitals and special equipment, because, obviously, they were not ready for the pandemic, as in other countries, so it is impossible to blame the Ukrainian government and legislation in this case. To the above, the costs of vaccination and other various related costs must be added, which also created an additional burden on the country's budget.

There appeared a need for additional financial injections into the country's budget, which, unfortunately, could only be obtained through new debt. Yet the possibilities of repaying old debts, on the contrary, decreased. Thus, external government borrowing, to some extent, increases the resources of economic development, but at the same time, it involves their servicing (payment of the principal amount of debt and payment of interest) [3, p. 101]. The fact that the state actively uses loans is conditioned by the insufficient amount of its own, domestic, and financial resources that are needed to replenish the state budget and investment projects. If they are used effectively, these funds can become an additional positive factor for the economic growth of Ukraine, but if this is not achieved, an increase in government debt can lead to a financial and political crisis and a violation of macroeconomic stability [11, p. 241].

In addition to the pandemic, a full-scale war launched by the Russian Federation began this year. During the war, both infrastructure and architectural facilities, along with plants and factories were destroyed. Any activity in places where hostilities are taking place or which are under occupation is very dangerous and, often, simply impossible. In addition, even if a certain business still has some opportunity to work under occupation, it seems unrealistic to pay taxes to the state budget of Ukraine in such cases. Moreover, the sowing campaign is under threat. The invaders are taking agricultural machinery en masse for engineering work, building fortifications, and using it as tractors for armoured vehicles. Equipment is forcibly taken away from the population [12].

It is exceedingly difficult to trade with foreign partners, especially paying attention to the fact that ports are either blocked or shelled. It is required to look for new transportation routes, which increases economic losses. Investors are also afraid to invest in a country in which fighting is taking place, people are dying, and warehouses with goods are burning. It is very difficult to convince them otherwise because there is no guarantee that their investments will not be destroyed, and they will not suffer continuous losses. Therefore, war can be devastating for the state's economy in various aspects.

Government debt is very closely linked to the economy and politics in the country, including its legislation, so various factors that affect the government debt of Ukraine were considered. At the moment, Western partners are trying to take a position of support in relation to Ukraine, and therefore provide monetary support in various forms. But it, although very necessary now, often leads to an increase in Ukraine's external debt. On the other hand, within the framework of such support, the issue of debt restructuring in Ukraine is raised. In particular, the US Treasury Department welcomed the agreement on debt restructuring of Ukraine and called on the creditors' committee to quickly complete this restructuring. The report also states that the United States supports the efforts of the Ukrainian authorities aimed at improving the business climate, fighting corruption, improving the financial sector, eliminating inadequate targeted electricity subsidies, and protecting the most vulnerable members of society [13].

At the legislative level, it is necessary to be prepared not only for the most favourable scenarios for solving the problem with external debt but also for less favourable ones for the Ukrainian economy. In addition to the above-mentioned problems that war creates for the economy, there is another one, although this is more of a tragedy than just a problem. It is the deaths of young people, children, and the rape of women and girls so that they no longer want or cannot have children. In addition, many people, fleeing from the war, simply leave for other countries, and may not return. As a result of such extermination of the working-age population, the country's economy can suffer very considerably. However, no matter how terrible and crushing the war may be, it is not the only source of problems that prevent Ukraine from reducing its external government debt.

In particular, there are problems of an internal, more everyday origin. For example, corruption, which has always existed, but has become even more merciless during the war. Since the money that comes from external borrowing was often not fully used to meet the needs for which it was borrowed, but to a substantial extent was simply stolen at various levels of both administration and execution.

Therefore, to improve the situation with Ukraine's government debt, including external debt, it is necessary to increase efforts to fight corruption, which, unfortunately, has not yet reached the required level, and, on the contrary, may act as an additional source for corruption. To do this, it is necessary to change the attitude of society to corruption, so that it is not as normalised as it is now.

At the expense of foreign financing, a number of important projects are implemented that contribute to the transformation and modernisation of the system of providing social protection and services, and despite the materiality and importance of such an area of foreign assistance, a great part of the projects do not reach their completion in full, are performed with a lag from the plan, or funds for their implementation are used inappropriately [14, p. 177]. Therefore, financing the social development of Ukraine through foreign borrowing should provide, primarily, for increasing the efficiency, transparency, and targeted nature of the use of financial resources [14, p. 177].

An additional factor for the growth of external debt is that part of the money is used in vain, not to implement certain projects that can bring income to the country's budget in the future. Admittedly, it is vital to understand that this is exceedingly difficult to do when even the payment of pensions and wages requires borrowing funds abroad. Nevertheless, it is necessary to look for ways to implement this effectively, as the constant living on borrowed funds brings the country to bankruptcy, which entails devastating consequences and partial isolation. In addition, it is necessary to look for alternative ways to obtain energy that would be suitable for Ukraine, because excessive dependence on external energy sources binds the economy to changes in energy prices and makes Ukraine dependent on countries that sell such resources, which may not be friendly. The source of regulation of a country's external debt is diplomacy, which determines the attitude of other countries towards Ukraine and may determine whether they agree to make some concessions and accept conditions for the return or receipt of borrowed money or resources favourable to Ukraine.

The issue of Ukraine's external public debt depends on many factors that need to be influenced in the complex, not only at the legislative level, because the legislation itself may be ideal, but not implemented properly or at all. Moreover, this year the external debt in Ukraine as of 03/31/2022 has already reached UAH 1,473.52 billion (52.03% of the total amount of state and state-guaranteed debt) or 50.37 billion USD [15].

The main factors of growth of Ukraine's external government debt are:

– problems and debts left behind by the collapsed USSR [16];

– at the beginning of its independent years, the country could not do without additional external funds;

– the global crisis of 2008 largely affected Ukraine, leading to a fall in the state currency and the need to collect new debts;

– the war that began in 2014 undermined further stabilisation of the Ukrainian economy;

– the COVID-19 pandemic affects government spending and reduces economic potential [17];

– a full-scale war with the Russian Federation.

An additional factor for the growth of external debt is:

– corruption at various levels of both administration and execution. Dependence of the state of public finances on their transparency and the level of corruption in the country [18];

– part of the money from the external government debt is used in vain [19; 20];

– excessive dependence on external energy sources binds the economy to changes in energy prices and makes Ukraine dependent on countries that sell such resources.

According to Yu.V. Makogon and O.A. Pakhomova [3, p. 113], the main principles of government debt management should be: minimisation of costs and risks associated with debt; optimisation of the debt structure; development of the internal government borrowing market. Transparency in the use of the funds provided is of immense importance in optimising Ukraine's external debt. When developing the national policy in the field of external debt, it is advisable to use the following measures: to balance revenues and expenditures in budget systems that are the basis of centralised finance; to conduct a qualitative and quantitative analysis of how much Ukraine and the financial destabilisation of its budget system depend on external and internal factors; to identify factors that the state does not control; to increase the efficiency that investments in additional budget revenues can provide [3, p. 113]. Government borrowing does not harm the economy if the opportunities provided by debt are optimally used [15, p. 57].

In addition to the above, it is also necessary to prepare the legislation and economy of Ukraine for various unpredictable events, which, unfortunately, constantly occur. It is also necessary to adopt a separate law that would regulate public relations related to the state debt of Ukraine.

Nevertheless, government debt may not always indicate negative aspects, including its growth. In particular, America has one of the largest government debts in the world, which does not interfere with its development. The large external government debt indicates not only the economic problems of the state but also its cooperation with other states and integration into the world economy. Alcidi Cinzia and Daniel Gross agree with this, arguing that an increase in government debt

can be successful if the economic growth rate is faster than the growth rate of government debt [21].

To do this, it is necessary to influence all factors in a comprehensive manner, including balancing the country's budget, as Italian economists Elton Beckwirai, Silvia Fedeli, and Francesco Forte noted [22].

## Conclusions

The study established: the main factors for the growth of external government debt of Ukraine; additional factors for the growth of external debt, and factors for minimising the country's external government debt. During the regulation of public relations related to government debt, the following problems arise:

1. The lack of a single regulation that would govern relations related to the internal and external debt of Ukraine, which makes the use of legislation inconvenient and therefore less effective.

2. The problem of diplomatic relations, because the readiness of foreign partners to cooperate and provide favourable conditions depends on them.

3. The problem of unpreparedness of Ukraine's economy for unexpected circumstances (such as a pandemic, global crisis, and war).

4. The problem of encouraging foreign investors to invest in the Ukrainian economy during the war.

5. The problem of efficient use of borrowed funds.

6. High level of corruption in the country.

7. Other social problems (lack of public trust in the state, ageing of the nation, etc.).

The main features of external government debt are:

1. It is fixed by the conclusion of an international legal agreement.

2. It tends to grow.

3. One of the parties is necessarily a state, and the other is a foreign entity.

4. Covers the shortfall in the budget.

5. Publicity.

6. It consists of fixed-term debt obligations.

7. The optimisation and reduction of external government debt are influenced by the following factors: economy, legislation, politics, diplomacy, etc. Therefore, it is clear that it also needs to be influenced comprehensively – both from the economic and legislative sides, building productive relations with other countries and international organisations. It is also necessary to promote transparency in the use of borrowed funds and adopt a separate law on the state debt of Ukraine. Only by acting comprehensively is it possible to effectively influence Ukraine's external debt and start a downward trend.

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# Особливості зовнішнього державного боргу України в сучасних умовах

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**Анотація**
Повномасштабна війна Російської Федерації 2022 року спричинила чимало вимушених змін, пов'язаних із регулюванням й управлінням зовнішнім державним боргом України, зовнішніми та внутрішніми чинниками, які впливають на економіку держави, її дипломатичні відносини з іншими країнами, а отже, на зовнішній державний борг, що підтверджує актуальність тематики дослідження. Мета статті полягає у визначенні особливостей зовнішнього боргу України, зокрема шляхом: з'ясування основних проблем, які виникають під час регулювання суспільних відносин, пов'язаних із державним боргом; виявлення чинників, що впливають на державний борг України; тлумачення поняття, змісту й виокремлення його основних ознак. У межах дослідження застосовано комплекс наукових методів, з-поміж яких: системний, індукції, дедукції аналізу, синтезу, аналогії, порівняння та бібліографічний. Сформовано цілісне уявлення щодо особливостей зовнішнього боргу України в сучасних умовах. Проаналізовано та розкрито його поняття, зміст, принципи й основні ознаки. Встановлено чинники зовнішнього державного боргу, які на нього впливають, а саме: якість законодавства, економіка держави, рівень довіри населення до країни, стабільність валюти, війна, пандемія, дипломатичні відносини з іноземними партнерами тощо. Надано рекомендації щодо його мінімізації, зокрема шляхом комплексного впливу, тобто вибудовуючи плідні відносини з іншими країнами та міжнародними організаціями як в економічній, так і в законодавчій сферах. Констатовано важливість сприяння прозорості використання запозичених коштів. Доведено необхідність прийняти окремий закон, який би регулював суспільні відносини, що стосуються державного боргу України. Висвітлено особливості регулювання та управління зовнішнім державним боргом під час війни. Запропоновано розробити методи, які дозволять ефективніше використовувати запозичені кошти. Практична значущість статті полягає в тому, що одержані результати дослідження та аналізу бюджетного процесу можуть слугувати підґрунтям для вдосконалення національного фінансового законодавства, проведення наукових досліджень з проблем правового регулювання бюджетного процесу

**Ключові слова:**
підвиди зовнішнього державного боргу; економічна ситуація; інвестори; реструктуризація державного боргу; формування державного боргу; дипломатія; генезис державного боргу; зарубіжні країни

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# Forensic Examinations During the Investigation of Threats or Violence Against a Law Enforcement Officer

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**Abstract**
Forensic expertise, as a form of using special knowledge, is one of the most effective ways to establish the truth during the investigation of threats or violence against a law enforcement officer, especially given the often-limited amount of criminally valuable information in such proceedings, which conditions the relevance of this paper. The purpose of the paper is to establish the types and analyse the possibilities of forensic examinations that can be assigned during the investigation of threats or violence against a law enforcement officer. During the study, a set of scientific methods was applied – system, comparative legal, statistical, analysis, bibliographic, synthesis, induction, and deduction. According to the results of the study, a holistic view of the complex of forensic studies was presented, which: are most often assigned in the proceedings under consideration (examination of sound and video recordings, fingerprinting, examination of cold steel and firearms, forensic trasological examination, are mandatory if injuries are caused to the victim (forensic medical, can be assigned depending on the needs of the specific production (engineering and transport, phototechnical, forensic psychiatric examination; also, the types of examinations, the capabilities of which are not fully used by investigators (forensic psychological, were identified. The most important problems that arise at the stage of assigning expert examinations and can largely affect the quality of expert opinions were identified: violation of the deadlines for assigning expert examinations, incorrect formulation of questions to the expert, provision of insufficient quantity and/or poor quality of materials for research, incorrect definition of the type of expert study. It is emphasised that in the conditions of martial law and the expansion of the list of methods and tools of committing the investigated criminal offences in connection with it, there is a need for expert study, the objects of which are explosives and substances, various weapons, etc.

**Keywords:**
criminal proceedings; special knowledge; expert support; criminalistics

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## Introduction

The number of criminal offences related to the threats or violence against a law enforcement officer (Art. 345 of the CC of Ukraine)[1] is quite large compared with the total number of criminal offences against state authorities in the field of law enforcement and remains consistently high: 2016–967, 2017–1,115, 2018–817, 2019–821, 2020–909, 2021–819, January-April 2022-189 criminal proceedings [1]. Therewith, these illegal actions are aimed not only at law enforcement officers but generally undermine the authority of state power and make it impossible for law enforcement agencies to ensure the safety of society and protect it from criminal threats and other destabilising factors. Whereas, under martial law, the public danger of these criminal offences largely increases. This actualises the issues of effective counteraction to the mentioned illegal acts, especially considering that the process of their investigation is complicated by many factors: latency, the need for additional internal verification, problems with the correct qualification of illegal acts (since these criminal offences are often committed in conjunction with others), etc.

The achievement of the goals of a pre-trial investigation depends on the optimal set of investigative and procedural actions performed. Being a procedural form of using special knowledge in legal proceedings, forensic expertise is one of the most effective ways to establish the truth on the issues that constitute the subject of evidence. It is difficult to overestimate the role of using expert knowledge during an investigation: frequently, with a timely expert study of the appropriate type, the investigator receives the necessary data, which, even in conditions of a shortage of criminally valuable information, allows making the right decisions and effectively building the investigation process. In addition, considering the method of committing the criminal offences under study, the appointment of separate expert studies is mandatory.

Given the relevance, the level of scientific interest in the issues under study is quite high today, and many publications are devoted to the expert support for the investigation of criminal offences, including against the authority of state authorities. V.O. Husieva analysed the current possibilities of psychological [2] and features of the appointment of forensic medical [3] examinations during the investigation of criminal offences committed against law enforcement officers. A.A. Yukhno examined the current state, theoretical and applied issues, and prospects for the development of forensic support for the activities of pre-trial investigation and inquiry bodies in general [4]. The interest of Ukrainian researchers in forensic medical examination remains permanently high. In particular, D. Ivanov clarified the importance of forensic medical examination for establishing and compensating for damage caused by criminal actions [5]; I. Senyuta, O. Orlyuk, S. Buletsa, D. Ivanchulynets covered urgent issues of appointment and legal regulation of forensic medical examination [6], S. Lykhova, A. Pletenetska, V. Sysoieva actualised the importance of forensic medical examination for the qualification of crimes [7]. Among foreign authors, many studies are also devoted to the features of forensic medical expert study, including injuries to law enforcement officers. Thus, within this issue, the publications of J. Payne-James [8], H. Tiesman [9], B. Schram [10], and other scientists are presented.

However, given the lack of a separate methodology for investigating threats or violence against a law enforcement officer and based on the need to make changes to the investigation of criminal offences (including in terms of expert support) caused by the conditions of martial law, the problem under study is relevant and requires further development.

*The purpose of this paper is* to examine the possibilities of certain types of expert studies that are assigned in the framework of criminal proceedings on a threat or violence against a law enforcement officer, to determine the objects, goals, and range of tasks that are solved during their conduct, and to identify problems that arise during the implementation of this form of using special knowledge in investigating the criminal offences under study.

## Materials and Methods

To achieve the purpose, a set of scientific methods was used: system – provided an opportunity to determine the types of forensic examinations that are assigned in the studied proceedings, among the general system of expert study, and to analyse the theoretical developments of researchers to determine the typical problems that arise during the appointment of forensic examinations in criminal proceedings of the studied category; comparative legal – allowed analysing the provisions of the current criminal procedure legislation, individual existing bylaws, and proposed in wartime projects of regulations governing the expert activity. Within the framework of the bibliographic method, the relevant provisions of the Criminal Procedure Code of Ukraine (Art. 69–71, Art. 242–244)[2] and certain regulations on expert activity in Ukraine (the law of Ukraine "On Forensic Expertise"[3], Instructions on the appointment and conduct of forensic examinations and expert studies[4], Instructions on conducting forensic medical expertise[5])

[1]Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[2]Criminal Procedural Code of Ukraine. (2012, April). Retrieved from http://zakon0.rada.gov.ua/laws/show/4651-17.
[3]Law of Ukraine No. 4038-XII "On Forensic Examination". (1994, February). Retrieved from https://zakon.rada.gov.ua/laws/show/4038-12#Text.
[4]Order of the Ministry of Justice of Ukraine No. 53/5 "On Approval of the Instruction on Appointment and Conduct of Forensic Examinations and Expert Research and Scientific and Methodological Recommendations on Preparation and Appointment of Forensic Examinations and Expert Eesearch". (1998, October). Retrieved from http://zakon2.rada.gov. ua/laws/show/z0705-98.
[5]Order of the Ministry of Health of Ukraine No. 6(z0248-95) "On Approval of the Instruction on Conduct of Forensic Medical Examination". (1995, January). Retrieved from https://zakon.rada.gov.ua/laws/show/z0254-95#Text.

were considered. Statistical methods (grouping, analysis of quantitative indicators) were used to summarise and process statistical reports, and materials of investigative, judicial, and expert practices.

The use of analysis, synthesis, induction, and deduction allowed building a logical structure of the study, which includes the following blocks: 1) a brief general description of expert study that is assigned during the investigation of threats or violence against a law enforcement officer; 2) analysis of the most popular types of examinations in such proceedings; 3) justification of the need and disclosure of the possibilities of forensic examinations, the capabilities of which are not fully used during such investigations.

## Results and Discussion

The examination of the materials of criminal proceedings initiated on the commitment of a threat or violence against a law enforcement officer indicates that most often in such proceedings, expert examinations from the forensic block are appointed (more than 50% of proceedings). The above is conditioned by the fact that the method of committing the studied criminal offences is often associated with causing bodily injuries to the victim, and determination of the severity and nature of them, according to p. 2 of pt. 2 of Art. 242 of the CPC of Ukraine[1], requires an appropriate expert study. Furthermore, the analysis of the practice of investigating the criminal violations and the types of examinations appointed in such proceedings shows that among the forensic expert studies common in these proceedings are the appointment of: fingerprint examination, technical study of materials and means of video and sound recording, examination of cold steel and firearms, forensic trasological examination, examination of materials, substances, and products. If necessary, in accordance with the needs of specific proceedings, other examinations may be appointed, such as engineering and transport (investigation of the circumstances of the road accident), phototechnical (study of photographs and technical means of their manufacture) or forensic psychiatric (in case of doubt) sanity or limited sanity of the suspect), etc.

Notably, the conditions of martial law and a certain update of the methods and tools of committing criminal offences in general and in relation to law enforcement officers also necessitate expert study, the objects of which are explosive devices and substances, traces and circumstances of the explosion, non-kinetic weapons, grenade launchers, etc. It should be recognised that now some of these objects are not currently the subject of any expert specialisation available in the Expert Service of the Ministry of Internal Affairs (MIA). Given the urgent need, the specialists of the State Research Forensic Center of the Ministry of Internal Affairs of Ukraine for the immediate introduction of new types of forensic science and expert specialties for the appropriate level of expert support of criminal proceedings during the war prepared a draft order amending the Regulations on the Expert Qualification Commission of the Ministry of Internal Affairs and the procedure for attestation of forensic experts of the Expert Service of the Ministry of Internal Affairs[2], the processing of which is currently underway.

From the block of forensic examinations assigned during the investigation of threats or violence against a law enforcement officer, primarily, it is worth highlighting the examination of video and sound recordings. Attention to this type of expert study in these proceedings is conditioned by the fact that often illegal actions of intruders can be recorded on video surveillance cameras since the criminal offences under study are mainly committed in public places (on streets, squares, parks, courtyards of residential buildings, territories of enterprises, shopping institutions, etc.). In addition, since portable body cameras are an integral part of the equipment of modern police officers, violent actions against them are also recorded without fail. Thus, one of the most common types of expert study assigned during the investigation of the commission of a threat or violence against a law enforcement officer is the examination of video and sound recordings. For example, in accordance with the established circumstances of criminal proceedings, a field officer and a senior inspector of the prevention department responded to a call to report domestic violence. Citizen S., being in a state of alcoholic intoxication, caused injuries to the senior inspector of the prevention department by striking with his right foot, which was recorded on video from the body cameras of the field officer[3].

The expertise of video and sound recording is a forensic examination, which, in turn, consists of three areas: a technical examination of materials and means of video and sound recording; identification of the announcer on the physical parameters of oral speech; acoustic signals and media; linguistic inspection of oral speech. The subject of forensic examination is video and sound recordings of factual data that are relevant for pre-trial investigation and consideration of cases in courts and fixed in video and sound recordings [11].

The types of examinations within the framework of video and sound recording expertise are diverse:

– identification studies of human voice and speech (establishment of the identity of individuals (individual and/or group) by comparing their voices and speech on the signals and samples provided for the study);

[1]Criminal Procedural Code of Ukraine. (2012, April). Retrieved from http://zakon0.rada.gov.ua/laws/show/4651-17.
[2]Order of the Ministry of Internal Affairs of Ukraine No. 675 "On Approval of the Regulations on the Expert Qualification Commission and the Procedure for Attestation of Judicial Experts of the Expert Service of the Ministry of Internal Affairs". (2020, September). Retrieved from https://zakon.rada.gov.ua/laws/show/z0022-21#Text.
[3]Case No. 234/119/21, proceedings No. 1-кп/234/531/21"The Verdict of the Kramatorsk City District Court of Donetsk region". (2021, April). Retrieved from https://reyestr.court.gov.ua/Review/96479773.

– diagnostic examination of a person's voice and speech (identification of individual signs of a person's voice and speech);

– examination of audio and video recording devices. A diagnostic examination that establishes technical conditions and technology for obtaining a record (establishment of the identity of the recording device, the presence (absence) of signs of installation);

– identification and diagnostic studies of the sound environment (establishment of the identity and characteristics of the sound environment based on the characteristics of the object under study) [12].

The objects of the considered examinations are track records fixed on material media: phonograms, which are recordings of audio signals; videograms – recordings of image signals; videophonograms – recordings of both sound and image signals, and the material media themselves, means of recording and reproducing audio and video information.

Notably, video recording can also be the object of photographic examination, within which the identification of objects, premises, and areas depicted in photographs (negatives) and videos; setting the size of images on photographs (film frames, video frames) or their negatives; establishment of technological and technical features of shooting and production of photographs, films and videos, etc.[1]

When conducting a portrait examination, in addition to photographs, the following methods are used to identify a person (corpse): videorecords.

Identification of a person in a video recording also becomes particularly important during the investigation of the category of proceedings under study. As O.P. Vashhuk notes [13, p. 508], "the legislation of Ukraine does not prohibit the study of a person based on the features of nonverbal information obtained from their appearance in a video recording and allows the development of a new methodology for the comprehensive expert study of a person based on video recording materials." The researcher indicated that in the study of nonverbal information coming from the appearance of a person (anthropogenic nonverbal information), its main sources are appearance, emotional state, and accompanying signs (design of appearance, clothing).

Additional sources may include objects of verbal support for a person's activities. The sources of nonverbal information themselves, firstly, simultaneously act as independent objects of examination, which in this case are studied in aggregate and secondly, in the presence of objects of verbal information (which also act as independent objects of research) – these objects (verbal and nonverbal) are also studied collectively. The lack of information about one of these sources can largely affect the receipt of such an expert opinion as the inability to solve the issues raised [13, p. 508].

It is necessary to pay special attention to the fact that to conduct a high-quality expert study of video recording, the specialist must provide the original sound recording (video recording or video sound recording); the original device with which the recording (phonogram, videogram, videophonogram) was recorded; additional equipment used for recording: microphone, power supply, signal transmission devices, control, etc.; if necessary – complete information about making structural changes to the recording device and additional equipment indicating the chronology of such transformations and a description of the recording path from the transmitter (microphone, video camera) to the receiver (technical fixing tools) with an indication of the number of channels and other related technical means [11].

It should be borne in mind that the original, from a technical standpoint, is a record that is fixed simultaneously (during the period) with those events that are recorded in it and which is contained exactly on the media (cassette, digital media, etc.) that was used. As a rule, it is impossible to establish the authenticity of records by expert methods based on copies of records, without the presence of their originals [11].

In addition to the above, to accurately determine the object of study and its location on the media, it is necessary to indicate in the question submitted for the decision of forensic examination the name of the investigated file with extension (file name), the name of the directory (folder) where the investigated file is contained, type and name of the medium, device (identification marks of the medium, device (serial number, IMEI)), on which it is fixed (for example: "… in the phonogram of the file named "1181.wav" in the folder with the name "audio" contained on the disk for laser reading systems "MAXIMUS" DVD-RW 4.7 Gb 16x …"). According to practitioners, the issue of solving the forensic examination of video and sound recordings should be raised only after careful processing of the recordings, drawing up protocols for their inspection and listening, and only in relation to those objects (fragments) that are essential for solving the tasks of the investigation. Moreover, to avoid long deadlines for performing an expert examination and to clarify the purpose, expediency, and accuracy of the issues raised, expert advice is required before appointing an expert examination [14].

It is noteworthy that the provision of video recording is also necessary during forensic medical studies, for example, to determine the severity and nature of injuries caused to a law enforcement officer. In practice, it is not uncommon for the expert to fail to provide relevant records. In this way, for example, video cameras placed

[1]Order of the Ministry of Justice of Ukraine No. 53/5 "On Approval of the Instruction on Appointment and Conduct of Forensic Examinations and Expert Research and Scientific and Methodological Recommendations on Preparation and Appointment of Forensic Examinations and Expert Research". (1998, October). Retrieved from http://zakon2.rada.gov. ua/laws/show/z0705-98.

near the scene recorded that the accused on a motorcycle hit a field officer and dragged him behind for a few metres to the roadway. However, during the proceedings in the Darnytskyi District Court of Kyiv, the investigators were not provided with relevant video recordings[1].

The provision of relevant video materials could simplify the determination of the mechanism of causing bodily injuries and the establishment of its compliance with that recorded on video recordings or in protocols of investigative actions. Furthermore, the video materials provided allowed experts to refute the possibility of a law enforcement officer receiving injuries in other circumstances that are not related to the service or at other times.

It is quite obvious that the investigation of a criminal offence related to causing violence can be successful only if the possibilities of forensic medical examinations are properly used. In addition, the results of forensic medical examinations are important in the preparation and conduct of investigative (search) actions. The use of special forensic medical knowledge during the forensic examination in criminal proceedings of crimes against the life and health of a person allows identifying the most important issues related to the establishment of the mechanism of offence, the nature and degree of harm caused to health, and, in many cases, a person who is subject to involvement as an accused [15, p. 150].

Analysis of criminal proceedings under Art. 345 of the CC of Ukraine[2] indicates that injuries caused to law enforcement officers are mostly minor, less often moderate and severe. Commonly, during the forensic medical examination in criminal proceedings on crimes related to the infliction of bodily injuries, a number of typical tasks are solved, including: the degree of severity of bodily injuries; the number, nature, location, and origin of bodily injuries; the statute of limitations for inflicting bodily injuries; the sequence of bodily injuries; the mutual location of the victim and the suspect during the infliction of bodily injuries, the presence of traces of struggle; the determination of the tool that inflicted bodily injuries; the degree of disability [16, p. 178]. In addition, forensic medical examinations are a key factor in creating legal prerequisites for compensation for physical harm to health [5].

The stages of preparation and appointment of forensic medical examination of living persons are: issuance of a resolution on appointment of examination with the establishment of issues, identification of the person and ensuring their arrival at the expert institution, provision of materials for acquaintance with the circumstances of the proceedings and medical documentation on the person who is sent for examination, and drawing up an expert opinion [17, p. 279].

Within the framework of the issue under study, it is also worth focusing on forensic medical examination based on the results of an investigative experiment. An analysis of the practice of investigating threats or violence against a law enforcement officer showed that this investigative action is often conducted within the framework of such proceedings. The main purpose of this subtype of forensic examination is to establish compliance with the mechanism of infliction of bodily harm, reproduced by the suspect during the investigative experiment, found on the body of the victim during the forensic examination. The appointment of this expert examination may also be extremely appropriate in cases of changing the suspect's testimony at the stage of pre-trial investigation or even during the trial. The relevant expert opinion, in this case, acts as irrefutable evidence in criminal proceedings.

Since the method of committing the studied offences is often accompanied by active physical confrontation, traces of biological origin (bloodstains, hair, skin particles, etc.) may remain at the place of illegal actions. These objects are examined as part of forensic examinations of traces of biological origin, during which the issues of establishing the affiliation of biological traces (fat traces, blood, etc.) and other physical evidence of biological origin to a particular person are resolved.

The study of blood traces is essential for exposing the perpetrators, and the form and location of such traces can be used to judge important circumstances of a criminal offence. Therewith, experts note that for the effective study of such traces, competent actions of the investigator are necessary to identify, seize, pack, and send them [18, p. 134]. In addition, V.O. Husieva emphasises the rule according to which the defining moment of the appointment of a forensic examination of traces of biological origin is that it should be appointed and conducted immediately after the emergence of issues that require special knowledge [19, p. 297]. For that reason, the appropriate specialist should be involved in the inspection of the scene of an accident.

The guarantee of conducting an objective forensic medical examination, which ensures the provision of a correct legal assessment of the event that occurred and provides an opportunity to conduct a quick and complete investigation, is the correct appointment of a specific type of examination. Typical mistakes made by investigators that make it impossible to conduct a high-quality forensic medical expert study are:

– failure to provide sufficient medical data necessary for the expert to address a number of issues;

– failure to inform the expert of important data established during the investigation and failure to provide materials of criminal proceedings;

– late appointment of forensic examinations;

[1]Case No. 234/119/21, proceedings No. 1-кп/234/531/21"The Verdict of the Kramatorsk City District Court of Donetsk region". (2021, April). Retrieved from https://reyestr.court.gov.ua/Review/96479773.
[2]Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.

– incorrect formulation of questions to the expert;

– appointment of several examinations to solve the same issues and incorrect determination of the type of future examination [3, p. 103, 105].

In addition to the above-mentioned expert studies, conducting a forensic psychological examination in some cases is of great importance for establishing the circumstances of criminal offences related to the commission of violence or threats against a law enforcement officer. This examination is conducted in accordance with p. 4 of pt. 1 of Art. 91, p. 1 of pt. 1 of Art. 485 of the CPC of Ukraine and p. 2 of Art. 486 of the CPC of Ukraine[1].

As V.O. Husieva [2, p. 261] and O.O. Slipets [20, p. 509] emphasised, this type of expert research is unjustifiably underestimated during the investigation of such proceedings. Therewith, through the conduct of such examinations, individual psychological characteristics, emotional reactions and states of mentally healthy suspects, victims, and witnesses can be established, the ability of victims, witnesses, and suspects to perceive important circumstances in the case and give correct (adequate) testimony about them, issues of compensation for non-pecuniary damage to the victim can be resolved, orientation information obtained during the investigation and the conclusions of this examination in terms of determining the typological characteristics of the individual can be used in criminal and administrative proceedings to establish elements of the subjective composition of the crime and individualise the punishment.

The object of forensic psychological examination – mentally healthy persons-participants in criminal proceedings (suspects, accused, defendants, acquitted, convicted, witnesses, victims, plaintiffs, defendants: minors; adults, and the elderly), and the main task of this class of examination is the identification of features of individual psychological nature, key personality traits; factors-motives of mental life and behaviour; emotional reactions and states; patterns of mental reactions, the level of development and individual qualities of the subject[2].

A forensic psychological examination is especially important in the case of the involvement of minors in the proceedings. Thus, these individuals often witness domestic violence and other domestic crimes, to clarify the circumstances of which law enforcement officers are called. In addition, Art. 345 of the CC of Ukraine[3] also defines relatives of law enforcement officers, who may also be minors, as victims.

Considering the above, such subspecies of forensic psychological expertise as:

a) forensic psychological examination of the ability of a minor suspect, accused to fully realise the meaning of their actions and manage them (main questions: Is a minor able, based on the level of their mental development, individual psychological characteristics, and specific circumstances of the case (specify which ones), to fully realise the meaning of their actions and fully manage them?; Does the minor have mental disorders that are not signs of mental illness? If so, what are these signs? etc);

b) forensic psychological examination of the ability of a witness or victim to correctly perceive the circumstances that are relevant to the case and provide correct testimony about them (main questions: Can a subject, considering their emotional state, individual psychological characteristics and level of mental development, correctly (adequately) perceive the circumstances that are important in the proceedings and provide appropriate (adequate) testimony about them?; Whether and how the individual properties of the mental processes of the subject affected (indicate depending on what is essential in the proceedings: memory, attention, perception, thinking, features of emotional reactions or functioning of sensory processes: sight, smell, hearing, etc.) the adequacy of their perception of a specific situation (indicate the available signs of the situation), which is investigated in the proceedings, their reproduction in the testimony?; Does the witness (victim) have a pronounced tendency to fantasise?; Does the witness (victim) have a pronounced tendency to suggest?) [21].

In addition, despite the fact that video recordings often act as evidence in such proceedings, a forensic psychological examination of the communication activity of the person recorded in the video may also be important. This expert examination is appropriate in cases when the suspect (accused, victim, witness) refuses initial testimony, claiming that it was provided not independently, but under the psychological influence, or imitating information about the event of a crime previously reported to them by other persons (for example, operational workers, investigators, accomplices in the case, etc.). Within the framework of such an expert study, the following questions can be resolved: What are the psychological features of reproducing the situation and circumstances of events by a person (based on video recordings of investigative actions performed with the participation of this person)?; What are the psychological features of a person's communicative activity (surname, first name, patronymic) during the reproduction of certain events by them (specify which ones), during the conduct (specify the date) of an investigative action with their participation (based on the video recording of this investigative action)?; Are there any psychological qualities in a person's behaviour that are characteristic of independent,

[1]Criminal Procedural Code of Ukraine. (2012, April). Retrieved from http://zakon0.rada.gov.ua/laws/show/4651-17.
[2]Order of the Ministry of Justice of Ukraine No. 53/5 "On Approval of the Instruction on Appointment and Conduct of Forensic Examinations and Expert Research and Scientific and Methodological Recommendations on Preparation and Appointment of Forensic Examinations and Expert Research". (1998, October). Retrieved from http://zakon2.rada.gov. ua/laws/show/z0705-98.
[3]Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.

non-independent reproduction of certain events during the relevant investigative action with their participation?; Are there any signs in the video recording of the reproduction of the situation and circumstances of the events (date of the event) with the participation of the person (surname, first name, patronymic) indicating the exercise of psychological influence on them by the persons who took part in the conduct of this investigative action? etc.[1]

The expert examination requires: an authentic video recording, a protocol of the relevant investigative action (it is possible to provide a properly certified photocopy). Other materials of the criminal case are not needed, since it is not the identity of the person involved in the case that is being investigated, but only their communication activities recorded in the video.

Evidently, within the framework of this paper, it is not possible to characterise all types of expert studies that can be assigned during the investigation of criminal offences related to the commission of threats or violence against a law enforcement officer. The needs of specific production make it necessary to attract specialists from various branches of expert knowledge.

## Conclusions

Forensic expertise, as one of the forms of using special knowledge in legal proceedings, is an effective means of establishing the truth in criminal proceedings in the shortest possible time and in conditions of a limited amount of criminally valuable information. Considering the fact that the method of committing a threat or violence against a law enforcement officer is often accompanied by causing bodily harm, certain types of expert study (forensic) are mandatory in accordance with the current criminal procedure legislation. Therewith, their appointment is often accompanied by problems that affect the quality of the expert examination: late appointment; incorrect questions; insufficient medical data required by the expert; failure to provide the necessary materials of criminal proceedings; incorrect determination of the appropriate type of examination, etc.

Given the fact that video recordings often act as physical evidence in the analysed proceedings, their expert study is extremely popular. Moreover, video recordings act as objects of different types of examinations: phototechnical, examination of video and sound recording, portrait, psychological, examination of the communicative activity of a person, etc.

A forensic psychological examination is unnecessarily underestimated during the investigation of threats or violence against a law enforcement officer. This type of expert study is indispensable when the persons involved in the proceedings are minors and there is a need to establish the ability to fully understand the importance of their actions and correctly perceive the circumstances that are valuable for the proceedings. In addition, this type of expert examination may be appointed in cases when the suspect (accused, victim, witness) refuses the initial testimony.

The conditions of martial law and the expansion of the arsenal of methods and tools of conducting the considered proceedings necessitate expert study, the objects of which are explosive devices and substances, traces and circumstances of the explosion, and non-kinetic weapons, grenade launchers, etc.

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# Судові експертизи під час розслідування погрози або насильства щодо працівника правоохоронного органу

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**Анотація**
Судова експертиза як форма використання спеціальних знань є одним з найефективніших способів встановлення істини під час розслідування погрози або насильства щодо працівника правоохоронного органу, особливо з огляду на недостатній обсяг криміналістично значущої інформації в таких провадженнях, що підтверджує актуальність цього дослідження. Метою статті є встановлення видів та аналіз можливостей судових експертиз, які можуть призначати під час розслідування погрози або насильства щодо працівника правоохоронного органу. У межах дослідження застосовано комплекс наукових методів – системний, порівняльно-правовий, статистичний, бібліографічний, аналізу, синтезу, індукції та дедукції. Сформульовано цілісне уявлення про комплекс судово-експертних досліджень, які найчастіше призначають у розглядуваних провадженнях (експертиза звуко- та відеозапису, дактилоскопічна, експертиза холодної, а також вогнепальної зброї, судово-трасологічна експертиза). Доведено, що вони є обов'язковими за умови спричинення потерпілому тілесних ушкоджень (судово-медична) та можуть призначатися залежно від потреб конкретного провадження (інженерно-транспортна, фототехнічна, судово-психіатрична експертизи). Встановлено проблеми, які виникають на етапі призначення експертиз і можуть суттєво вплинути на якість експертних висновків: порушення термінів призначення експертиз, некоректне формулювання питань експертові, надання недостатньої кількості та/або низька якість матеріалів для дослідження, неправильне визначення виду експертного дослідження. Наголошено на тому, що в умовах воєнного стану, який передбачає розширення переліку способів і знарядь учинення досліджуваних кримінальних правопорушень, виникає потреба в призначенні експертних досліджень, об'єктами яких є вибухові пристрої та речовини, різні види зброї тощо

**Ключові слова:**
кримінальне провадження; спеціальні знання; експертне забезпечення; криміналістика

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# Genesis of the Institute of Procedural Guidance: Historical and Legal Aspect

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**Abstract**
The result of the reform of the criminal process in 2012 was the introduction of a new institute of procedural guidance for pre-trial investigations. This institute has become the object of many scientific discussions, and therefore there is a need to analyse its historical and legal genesis to clearly understand the place and role of the prosecutor in modern criminal proceedings. The purpose of the study is to examine the institute of procedural guidance in criminal proceedings and identify promising areas for improving its legal regulation. The study used dialectical, system-structural, synthesis, formal-logical, and historical methods. It is proved that the institute of procedural guidance originated quite a long time ago. From the very beginning, monarchs used civil servants to represent exclusively their interests in certain processes that were important to them. It is established that the genesis of the institute of the prosecutor's office began to be used quite widely, up to the development of a separate structure of the relevant state bodies and assigning them the function of supervision over certain spheres of life, that is, the functions of the prosecutor's office expanded sufficiently and representation of the interests of the state in criminal proceedings became part of the overall function of supervision. With the change in the socio-political orientation of Ukraine's development after independence, the place and role of the prosecutor's office in the system of state bodies have evolved under the influence of advanced European trends. The reverse process of changing the functions of the prosecutor's office in criminal proceedings has begun, namely, the function of total prosecutor's supervision has begun to narrow and be reduced to procedural guidance of the criminal process and representation exclusively in certain cases. As a result of the study, it was stated that the legislation regulating the legal status of the prosecutor's office has contradictions, namely, the Law of Ukraine "On Prosecutor's Office" imposes broader powers on the prosecutor than the Constitution of Ukraine, which undoubtedly requires legislative correction by making appropriate changes. The findings of the study can be used in rule-making and law enforcement activities

**Keywords:**
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## Introduction

Nowadays, the active development of society, the continuous process of regulating public relations, globalisation and integration on the European continent require the active development of legal institutes to bring them in line with international standards. Not an exception is the system of prosecutor's offices, which during the years of independence of Ukraine has been undergoing both structural and functional changes. The most relevant change in the activities of the prosecutor's office, which took place in 2012 with the adoption of the new Criminal Procedure Code of Ukraine[1], was the introduction of a new function – procedural guidance of pre-trial investigations. In addition, further amendments to the Constitution of Ukraine in 2016[2] showed a narrowing of the powers of the prosecutor's office and their reduction exclusively to participation in criminal proceedings and representation in clearly defined cases. The function of procedural guidance of the pre-trial investigation and the role of the prosecutor in criminal proceedings as the head of the pre-trial investigation causes a lot of discussion in connection with the consolidation of the principle of immutability of the prosecutor throughout criminal proceedings, which raises doubts about their impartiality during the pre-trial investigation because under such conditions, the prosecutor actually prepares to maintain the state prosecution in court even from the stage of collecting evidence during the pre-trial investigation.

The general trend in the development of human rights and freedoms in the world has become an increase in the standards of these rights and freedoms, which leads to the activation of the state represented by its bodies in the relevant field of activity. An important tool in ensuring human rights and freedoms by combating crime is the activity of law enforcement agencies, in particular, the prosecutor's office, as one of the key subjects of criminal proceedings. During the existence of the prosecutor's office on the territory of Ukraine, the functions and powers of these bodies have been changed by the state. Thus, in Soviet times, the prosecutor's office mainly served the political regime and senior officials in the state, controlling all spheres of public life and all branches of the national economy. During the years of independence, the prosecutor's office has undergone structural and functional changes, and its role and tasks in the system of state bodies have changed.

The institute of procedural guidance in the scientific literature causes quite a lot of discussion since it is a novelty of national legislation and many of its aspects remain unexplored and theoretically unfounded. In particular, historical periods in the development of national prosecutor's offices, the genesis of their powers, and the place and role of the prosecutor in modern criminal proceedings remain understudied.

In most studies on the chosen issue, only the functions of the prosecutor in criminal proceedings are compared with their status as a procedural leader in criminal proceedings. Since the procedural guidance is one of the guarantees for achieving the tasks of criminal proceedings defined in Art. 2 of the Criminal Procedure Code of Ukraine[3], this function of the prosecutor's office requires scientific analysis with an appeal to the historical origins of the foundations of the prosecutor's office's leadership in criminal proceedings to investigate the genesis of the role of the prosecutor in criminal proceedings in different historical epochs. The issue of studying the dependence of the place and role of the prosecutor in criminal proceedings on the general tasks of criminal proceedings remains important, along with the consideration of the principle of immutability of the prosecutor throughout criminal proceedings.

The People's Deputy of Ukraine S. Ionushas in his study analyses many options for regulating the powers of the prosecutor's office in the constitutional drafts of Ukraine, but emphasises the problem of the relationship between the function of supervision of the prosecutor's office and procedural guidance rather superficially [1]. S. Nazaruk, a graduate student of the Department of State Legal Disciplines and Administrative Law of V. Vynnychenko Central Ukrainian State Pedagogical University, in his paper, indicated certain periods in the development of prosecutor's offices in Ukraine without detailing the genesis of their role and powers [2]. A. Mykhailyuk, a graduate student of the Security Service of Ukraine Academy, in his paper correlated the concept of "prosecutorial supervision" and "procedural guidance", but did not highlight the problem of contradiction between the regulation of prosecutorial powers in the Law of Ukraine "On Prosecutor's Office" and the Constitution of Ukraine[4] [3]. D. Mirkovets, in his study, distinguished between the powers of the head of the prosecutor's office and the procedural head but did not indicate the supervisory component in the powers of the head of the prosecutor's office [4].

As a result of examining the above studies, it was established that all of them are reduced to conducting a similar periodisation in the development of prosecutor's offices, analysing their powers towards narrowing the function of supervision of "everything and everyone", and actively investigating the form of prosecutor's supervision – procedural guidance. This study aims to analyse the prerequisites for changing the functions and powers of the prosecutor's office in different historical times along with the contradictions in the legal

[1]Criminal Procedure Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[2]Law of Ukraine No. 1401-VIII "On Amendments to the Constitution of Ukraine (Regarding Justice). (2016, June)". Retrieved from https://zakon.rada.gov.ua/laws/show/1401-19#Text.
[3]Criminal Procedure Code of Ukraine, op cit.
[4]Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254к/96-вр#Text.

regulation of the functions of the prosecutor's office in the Constitution[1] and the Law of Ukraine "On Prosecutor's Office"[2].

*Purpose of the study:* to analyse procedural guidance as a form of implementation of functions by a prosecutor in criminal proceedings and develop scientific recommendations to improve the legal regulation of the institute of procedural guidance.

## Materials and Methods

The study is based on conventional systems of general scientific and special legal methods. The development of the powers of prosecutor's offices in dynamics was considered using the dialectical method. The system-structural and synthesis methods were used when considering the powers of the prosecutor's office in different historical times. The formal-logical method was used to identify the features of procedural guidance as a form of prosecutor's activity. The historical method was used to examine the periods of development of prosecutor's offices and their powers.

In the course of the study, papers on criminal law were processed, namely, the study of S. Nazaruk in which the detailed periodisation of the history of national prosecutor's offices was conducted and the genesis of powers of prosecutors was investigated [2]. Furthermore, the study of the applicant of Kharkiv National University of Internal Affairs E. Shinkarenko was processed, in which he analysed in detail the problem of lack of definition in the legislation of "prosecutorial supervision" along with its theoretical content, but did not specify procedural guidance as one of the forms of supervision [5]. In addition, a study by V. Klochkov, Candidate of Law, Prosecutor of the Main Investigation Department of the Prosecutor General's Office of Ukraine, was analysed, which covered the relationship between "prosecutorial supervision", "procedural guidance", "organisation of pre-trial investigation" [6].

The Institute of procedural guidance, periodisation of the development of prosecutor's offices, and Soviet and modern criminal procedure legislation were also analysed.

## Results and Discussion

Prosecution as a social phenomenon has undergone a long path of development from ancient times to the present. The genesis of this phenomenon indicates that it gave rise to criminal proceedings.

However, according to M. Muravyov, the original prosecution is characterised exclusively by private features, and in the future, the functions of the prosecution began to be assumed by the state, which gives grounds from early times to divide its forms into private and public [7].

At the first stages of implementing the functions of the prosecution, the monarch usually instructed representatives of the Senate to organise the collection of evidence and support the prosecution of the most complex and high-profile offences. Thus, in Ancient Rome, the terms "prokuro" – trustees and "procurator" – administrator or manager appeared. There is no historical information about the participation of these persons in the prosecution proceedings, mostly these persons were engaged in tax collection and administration of specific policy areas [8].

In the early stages of development, the state did not need to maintain special bodies to perform the accusatory function and represent its interests. The state enjoyed the privilege of exercising the prosecution function selectively, that is, from time to time, when a certain state interest was seen in a particular case.

The homeland of the prosecutor's office is France, and its direct ancestor is Philip VI (the Fair), who in 1302 formalised the existence of the prosecutor's office as a separate institution of France. Initially, the powers of the newly created body included only representation of the interests of the monarch in the judicial bodies, but later, with the strengthening of the absolute monarchy, the powers of the prosecutor's office were expanded [9].

The institute of the prosecutor's office in France developed and strengthened along with the institute of the monarchy and reflected the level of absolutism in the state. In fact, the scope of powers of the French prosecutor's offices under Philip VI (the Fair) reflected the dynamics of the growth of the monarch's power, and the prosecutor's office with the possibility of exercising the function of the prosecution to represent the interests of the monarch was, so to speak, the privilege of the latter.

According to Montesquieu, the King of France was ex officio a party to the charge of all offenses committed in France, as he was responsible for ensuring the rights of its citizens and maintaining public order [10].

The date of establishment of the prosecutor's office in the Russian Empire is considered to be January 12, 1722, when Tsar Peter I signed a decree on the establishment of prosecutorial positions in the Senate and Boards. The purpose of signing this decree was to develop a separate structure designed to combat bribery and lawlessness in the course of court activities. During the stay of Peter I in power, the powers of the prosecutor's office changed several times towards their expansion, but it is worth noting that among other powers these bodies already had the obligation to participate in criminal proceedings in the form of supervision of legality, including pre-trial investigation bodies. Until the middle of the 19th century, the Russian Empire had a system of prosecutor's offices, which was mainly supervisory, including in the field of criminal proceedings at the pre-trial stage [10].

The signing of the above-mentioned decree on the establishment of prosecutor's offices was preceded by an

[1]Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254к/96-вр#Text.
[2]Law of Ukraine "On the Prosecutor's Office". (2014, October). Retrieved from https://zakon.rada.gov.ua/laws/show/1697-18#Text.

investigation of the French experience of their functioning. Therewith, it is worth noting that the prosecutor's offices of France and Russia at that time actually had nothing in common, since the French prosecutor's office performed the function of prosecution, and the Russian prosecutor's office was primarily entrusted with the function of supervision – the "eye of the sovereign". The need for such a supervisory body can be explained by the fact that most of the regulations that were adopted in the Russian Empire did not meet the interests of society, and therefore were not implemented.

The first regulations that directly instructed the prosecutor's office to monitor pre-trial investigations were the Code of Laws of the Russian Empire in 1832, which stated: "prosecutors must carefully monitor justice" [11]. In 1862, the authorities developed and adopted a concept for the development of the prosecutor's office, which was later embodied in the "Institutions of Judicial Institutions" [12] and the "Statute of Criminal Procedure" [13]. In particular, the prosecutor's office was charged with supervising the compliance of pre-trial and judicial bodies with the procedural form. According to the statute of criminal proceedings, the prosecutor had the right: to independently initiate criminal cases; to provide written requirements and demand materials from the bodies of inquiry and investigation; to provide instructions to the bodies of inquiry and preliminary investigation; to demand an additional inquiry and preliminary investigation; by their decision to remove inquirers and investigators from further participation in cases; to be present during investigative actions [13].

According to Art. 53 and 54 of the Criminal Procedure Code of the Ukrainian SSR of 1922, the prosecutor had the authority to monitor the state of pre-trial investigation of criminal cases by investigative bodies, initiate criminal cases, make decisions on sending them to court, and the Criminal Procedure Code of the Ukrainian SSR completely duplicated the relevant provisions of the National Code[1].

The next stage in the genesis of the prosecutor's office was the adoption of the Criminal Procedure Code of the Ukrainian SSR of December 12, 1960, which imposed on the prosecutor's office, according to Art. 25, the duty to "monitor compliance with laws by bodies conducting inquiries and pre-trial investigations"[2].

Notably, the provisions of the law "On the Prosecutor's Office" of 1991 actually duplicated its Soviet-style function, regarding supervision of the legality of activities and decision-making by bodies of inquiry and pre-trial investigation[3].

The next stage in the genesis of the functions of the prosecutor's office was the adoption of the Constitution of Ukraine[4] in 1996, which devoted the seventh section to the prosecutor's office and imposed on these bodies the duty to monitor compliance with the law by bodies that conduct intelligence-gathering activities, inquiry, and pre-trial investigation.

Amendments to the law "On the Prosecutor's Office" of 1992 to bring it into line with the Constitution of Ukraine were made in 2001 [11].

An important element of these changes was the consolidation in the principle of the adversarial nature of the criminal process of the participation of the prosecutor as its subject. In general, the function of the prosecutor in criminal proceedings was mainly supervisory, not accusatory, as evidenced by the title of Art. 25 of the Criminal Procedure Code of 1960 "Prosecutor's Supervision in Criminal Proceedings"[5].

With the adoption of the new Criminal Procedure Code of Ukraine in 2012, the status of the prosecutor in criminal proceedings changed[6]. Thus, the new Code:

– excluded the provision concerning the supervision of criminal proceedings by the prosecutor;

– established a new form of procedural activity of the prosecutor – procedural guidance of pre-trial investigation;

– expanded the powers of the prosecutor at the stage of pre-trial investigation;

– consolidation of the principle of invariable participation of one prosecutor in pre-trial and judicial criminal proceedings;

– principle participation of prosecutors in all criminal proceedings without exception;

– granting prosecutors the right to determine the boundaries of judicial consideration of a case;

– introduction of the institute of agreements with the participation of the prosecutor.

The expediency of fixing the principle of immutability of the prosecutor throughout criminal proceedings remains an urgent issue today. Thus, when taking part in criminal proceedings at the stage of pre-trial investigation, the prosecutor understands in advance that in the future they will support the state prosecution in court in this case, and therefore is actually interested in collecting indictment evidence as a guarantee of successful support of the state prosecution.

On 10/14/2014, the Verkhovna Rada of Ukraine adopted a new Law "On the Prosecutor's Office"[7], which should improve the legal status of the prosecutor, detail their functions, and harmonise national legislation with international one. The law distinguished itself by eliminating the function of general supervision by the prosecutor's office over compliance with laws by bodies, legal entities, and individuals, and reducing the functions of the prosecutor's office to the representation of the interests of the state and citizens in certain cases in court, procedural guidance of pre-trial investigations, and maintenance of public prosecution in court.

[1]Criminal Procedure Code of the USSR. (1922, August). Retrieved from https://web.archive.org/web/20170527070402/http://leksika.com.ua/12860501/legal/kriminalniy_kodeks_usrr_1922.
[2]Code of Criminal Procedure of Ukraine. (1960, December). Retrieved from https://zakon.rada.gov.ua/laws/show/1001-05#Text.
[3]Law of Ukraine No. 1401-VIII "On the Prosecutor's Office". (1991, November). Retrieved from https://zakon.rada.gov.ua/laws/show/1789-12#Text.
[4]Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254к/96-вр#Text.
[5]Code of Criminal Procedure of Ukraine, op cit.
[6]Criminal Procedure Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[7]Law of Ukraine "On the Prosecutor's Office", op. cit

On June 2, 2016, the norms of the Constitution of Ukraine were harmonised with the norms of the Criminal Procedure Code, namely section 7 was excluded from the text of the basic law and Art. 131–1, according to which the functions of the prosecutor's office are defined[1].

The text of Article 131–1 of the Constitution of Ukraine[2] defines that the prosecutor's office, in addition to the procedural guidance of pre-trial investigation, also performs the function of organising it, but for some reason, this function is ignored in most of the studies that were analysed. From the above, it is appropriate to indicate that the current national legislation does not contain a definition of "organisation of pre-trial investigation" and "procedural guidance", which undoubtedly complicates law enforcement practice.

Thus, according to Art. 25 "supervision of compliance with laws by bodies conducting intelligence-gathering activities, inquiry, pre-trial investigation" of the Law of Ukraine "On Prosecutor's Office" of 10/14/2014[3], the prosecutor's office is assigned the function of supervision of bodies of inquiry and pre-trial investigation, but the text of Art. 131–3 of the Constitution of Ukraine[4] indicates the procedural guidance of pre-trial investigation, its organisation, and supervision of investigative (search) actions as a function [4].

The analysis of the norms of the basic law and the specified law "On the Prosecutor's Office"[5] showed their contradiction. Therefore, according to Art. 131–3 of the Constitution of Ukraine[6], the prosecutor's office is assigned the function of supervising only the conduct of investigative (search) actions, and the provisions of the law assign the function of supervising compliance with laws by bodies, including inquiry and pre-trial investigation. Moreover, Art. 133–3 of the Constitution of Ukraine[7] indicates the "organisation of pre-trial investigation" as one of the functions of its activities, but this function is not detailed in the legislation [1].

Given that the Constitution of Ukraine[8] and the current Law of Ukraine "On the Prosecutor's Office"[9] interpret the functions of the prosecutor's office somewhat differently. It is worth noting that the above-mentioned current law "On the Prosecutor's Office"[10] more broadly regulates the powers of the prosecutor's office using the word "supervision", while Art. 131–1 of the Constitution of Ukraine[11] indicates the supervision of the prosecutor's office exclusively over the conduct of investigative (search) actions by law enforcement agencies as a function [14].

## Conclusions

Prosecutor's offices in Ukraine have gone through a long path of development, and their functions have changed depending on the socio-political orientation of the state's development. Today, the reform of the prosecutor's office of Ukraine continues, the driving force of which is to raise human rights standards. The current trend of reforming the powers of the prosecutor's office is to narrow the function of general supervision and highlight the function of participation of the prosecutor in criminal proceedings, which can manifest itself in the following forms: organisation of pre-trial investigation; guidance of pre-trial investigation; maintenance of public prosecution; supervision of secret and other investigative and search actions of law enforcement agencies; resolution of other issues during criminal proceedings in accordance with the law. In the Constitution of Ukraine, the word "supervision" is used exclusively in the context of supervision "of covert and other investigative and search actions of law enforcement agencies", not supervision of pre-trial investigation in general, which is certainly not limited to covert and other investigative actions. However, Art. 131–3 of the Constitution of Ukraine enshrined, as one of the forms of activity of the prosecutor's office "the resolution of other issues in accordance with the law during criminal proceedings", one of such other issues, according to Art. 25 of the Law of Ukraine "On Prosecutor's Offices" is the supervision of compliance with the law by bodies conducting intelligence-gathering activities, inquiries, and pre-trial investigation. Undoubtedly, conducting covert investigative and other investigative and search actions is a considerably narrower activity in comparison with the activities of bodies engaged in intelligence-gathering activities, inquiry, and pre-trial investigation. The constitutional activity of the prosecutor's office in the form of "decision in accordance with the law of other issues during criminal proceedings" is detailed in Art. 25 of the Law of Ukraine "On the Prosecutor's Office" and imposes on these bodies the function of supervision, which objectively includes supervision of covert and other investigative actions.

These inconsistencies must be corrected by bringing the rules set out in Art. 25 of the law of Ukraine "On Prosecutor's Office" with those tasks which are set before bodies of prosecutor's office of Ukraine, according to Art. 133–1 of the Constitution of Ukraine. Primarily, the law "On the Prosecutor's Office" in its content should regulate "the participation of the prosecutor in criminal proceedings", not supervision of the implementation of criminal proceedings.

[1]Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254к/96-вр#Text.
[2]*Ibidem*, 1996.
[3]Law of Ukraine No. 1401-VIII "On the Prosecutor's Office". (1991, November). Retrieved from https://zakon.rada.gov.ua/laws/show/1789-12#Text.
[4]Constitution of Ukraine, op. cit.
[5]Law of Ukraine No. 1401-VIII "On the Prosecutor's Office", op. cit.
[6]Constitution of Ukraine, op. cit.
[7]*Ibidem*, 1996.
[8]*Ibidem*, 1996.
[9]Law of Ukraine No. 1401-VIII "On the Prosecutor's Office", op. cit.
[10]Ibidem, 1991.
[11]Constitution of Ukraine, op. cit.

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# Генеза інституту процесуального керівництва: історико-правовий аспект

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**Анотація**

Результатом проведення реформи кримінального процесу 2012 року стало запровадження інституту процесуального керівництва досудовим розслідуванням. Зазначений інститут став об'єктом численних наукових дискусій, а отже, існує потреба в проведенні аналізу його історико-правового генезису для чіткого розуміння місця й ролі прокурора в сучасному кримінальному процесі. Метою статті є вивчення інституту процесуального керівництва в кримінальному провадженні та визначення перспективних напрямів удосконалення його правового регулювання. У межах дослідження застосовано діалектичний, системно-структурний, формально-логічний та історичний методи, а також метод синтезу. Доведено, що інститут процесуального керівництва зародився досить давно. Спочатку монархи використовували державних службовців для представлення виключно їхніх інтересів в окремих важливих для них процесах. У процесі генезису інститут прокуратури почали використовувати досить широко, аж до формування окремої структури відповідних державних органів і покладення на них функцій нагляду за окремими сферами життєдіяльності, з огляду на що представництво інтересів держави в кримінальному процесі стало частиною загальної функції нагляду. Зі зміною суспільно-політичної формації розвитку України після здобуття незалежності місце й роль прокуратури в системі державних органів еволюціонували під впливом передових європейських тенденцій. Почався зворотний процес зміни функцій прокуратури в кримінальному процесі, а власне функція тотального прокурорського нагляду почала звужуватись і зводитися до процесуального керівництва кримінальним процесом та представництва виключно у визначених випадках. Констатовано, що законодавство, яке врегульовує правовий статус прокуратури, містить суперечності, зокрема Закон України «Про прокуратуру» покладає на прокурора більш широкі повноваження, ніж Конституція України. Результати дослідження можуть бути використані в нормотворчій і правозастосовній діяльності

**Ключові слова:**

досудове розслідування; процесуальний керівник досудовим розслідуванням; нагляд; повноваження; розслідування; дізнання

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# Features of the Mechanism of Unlawful Appropriation of Vehicles During Martial Law

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**Abstract**
Today, the unlawful appropriation of vehicles in wartime is relevant because Ukrainians are faced with the problem of preserving their property during the war. The purpose of the paper is to consider the features of the mechanism of unlawful appropriation of vehicles in wartime, to identify and classify the subjects of their commission, to disclose and systematise the methods, means, and place of committing such crimes in accordance with the type of subject of their commission. To solve these issues, the study used a complex of both general scientific and special methods of scientific knowledge – system-structural, formal-logical, method of scientific knowledge, induction, deduction, analysis, synthesis, generalisation. Based on the results of the study, the features of the mechanism of unlawful appropriation of vehicles in wartime were established and disclosed. The subject of unlawful appropriation of vehicles during martial law was described and its classification was presented. The features of the method of committing unlawful appropriation of vehicles, depending on the subject of commission, were identified. A proportional dependence on the type of subject of committing a crime to the conditions, goals, means, and place of unlawful appropriation of vehicles in wartime was established. The methods of committing such crimes were systematised. Wartime conditions that promote unhindered unlawful appropriation of vehicles were established. Places of unlawful appropriation of vehicles during martial law were identified and classified. Purposes of committing unlawful appropriation of vehicles during martial law were investigated. The practical value of this study lies in the fact that the results obtained can serve as a basis for further scientific activities to investigate the features of the mechanism for unlawful appropriation of vehicles in wartime and used to more effectively counteract unlawful appropriation of vehicles, especially during martial law

**Keywords:**
car; theft; perpetrator; subject of crime; method of committing a crime; means of committing a crime; organised groups; military of the Russian Federation

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## Introduction

Since the beginning of Russia's full-scale invasion of Ukraine, 1,200 people have been caught looting, as reported by the Head of the National Police Ihor Klymenko. In total, investigators conduct more than 5,500 criminal proceedings for property crimes during martial law [1]. There are rare cases when marauders steal not only the property of city dwellers who left their place of residence to escape shelling and bombing, but also vehicles. Criminals work in garages, yards of citizens in parking lots right during shelling, while the owners of vehicles are in bomb shelters. In addition, in wartime, unlawful appropriation of vehicles and other crimes on the territory of Ukraine are committed by the military of the Russian Federation, robbing shops and homes of the population for profit and satisfaction of their needs. It is worth noting that according to Ukrainian legislation, foreign citizens are criminally liable for crimes committed on the territory of Ukraine.

Since the beginning of the full-scale war in Ukraine, a substantial number of complaints about the theft of cars have been received by the police department of Kyiv and the Kyiv region. All the facts are entered in the Unified register of pre-trial investigations under the article "unlawful appropriation of vehicles" of the Criminal Code of Ukraine[1]. Criminal investigation officers, working out calls and viewing dozens of videos from surveillance cameras, including those belonging to the Safe City system [1], also interviewed citizens who might have witnessed the crime.

Thus, in Kyiv, criminals were caught while trying to smuggle stolen luxury foreign cars. After performing priority investigative and operational search activities, law enforcement officers found the parking place of the assigned vehicles. Where the perpetrators used tow trucks to transport abandoned cars from parking lots. "During searches of the residences of the perpetrators, law enforcement officers found automatic weapons, pistols and cartridges, grenades, military equipment, and state license plates. Physical evidence was seized and sent for examination, and natives of the capital, born in 1978 and 1985, were detained in accordance with Art. 208 of the Criminal Procedural Code of Ukraine[2]", as the communication department of the Kyiv police stated [2]. Now law enforcement officers are checking the involvement of detainees in the commission of similar criminal offences in Ukraine. The pre-trial investigation continues [2]. The detainees were informed of suspicion of committing a crime under p. 3 of Art. 289 of the Criminal Code of Ukraine[3] – unlawful appropriation of a vehicle committed by an organised group, or if the subject of unlawful appropriation is a vehicle the value of which is two hundred and fifty or more times higher than the non-taxable minimum income of citizens. The detainees face a prison term of 8 to 12 years with confiscation of property.

The struggle of law enforcement and judicial bodies of the modern legal state and the entire society with crimes is necessarily associated with the need for an in-depth investigation of crimes, their essence, the structure of constituent system elements, forms of external manifestation, which is a mandatory condition for the development of the latest effective means of combating criminal offence [3, p. 262]. The mechanism of crime as an integral system of circumstances, processes, and factors that cause the emergence of material and other media of information about the very event of the crime, its participants, provides the possibility of putting forward working investigative versions, planning an investigation, purposeful search for the consequences of the crime, identifying the criminal, victim, contributes to the criminal legal qualification of the committed, and therefore undoubtedly acts as an object of forensic knowledge [4, p. 142]. Among these problems, crimes committed during martial law are of particular importance. The unlawful appropriation of vehicles is not lagging behind other criminal acts, which causes considerable material damage to the owners, considering the fact that it is almost impossible to restore a lost car today. Since funds are needed for more urgent problems, given the fact that a great number of people lost their jobs, have damaged housing, or physically injured relatives who need medical recovery, etc. Therefore, the establishment of the features of committing unlawful appropriation of vehicles in wartime, today, is extremely important.

The scientific originality of the study consists in identifying the features of the mechanism for unlawful appropriation of vehicles in wartime, along with the subjects and the types of subjects of such crimes in accordance with which the methods, means, places, times, and purpose of committing such crimes were disclosed and systematised.

*Purpose of the study:* investigation of the features of unlawful appropriation of vehicles in wartime, in particular the disclosure of their essence of the mechanism of commission, in accordance with the type of subject of the crimes, to establish and characterise the methods, means, and place of their commission.

## Literature Review

Thus, in 2018, S.V. Knyazev in his study [5] noted that the stages of the mechanism of committing a crime as a dynamic phenomenon should include: preparation for a crime, commission, and concealment of a crime. The mechanism of committing a crime as a statistical phenomenon should include: the identity of the

[1]Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[2]Criminal Procedural Code of Ukraine". (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[3]Criminal Code of Ukraine, op cit.

criminal; accomplices of the crime; the identity of the victim; the subject of criminal encroachment; random participants in the crime; the situation of committing the crime; the method of committing the crime; the means and tools of committing the crime; the trace picture; the circumstances contributing to and preventing the commission of the crime; connections and relations between actions and the criminal result; criminal consequences [5]. It should be noted that a number of researchers who covered the mechanism of committing a crime have defined it differently in accordance with their own conceptual views.

In 2017, O.S. Tsibenko, in the study, [6] considered the ways of unlawful appropriation of a car, committed by overcoming protection systems. The paper concluded that unlawful appropriation of cars, which is committed with the overcoming of protection systems, is characterised by a full-structure composition with elements of preparation and concealment of the crime. The features of actions to prepare for the commission of a criminal offence were determined [6]. The study by O.L. Hristov [7], published in 2017, classified the methods of unlawful appropriation depending on the place of storage of the vehicle, namely, secret: by free access to the vehicle, from the garage, from the yard, etc. and open: an attack on the driver by pulling out (jerking) during a short-term stop in random places (to comply with traffic rules, etc.). It was found that such a crime is characterised by both methods of preparation and concealment. The study provided a description of the person who commits crimes in the area of one's residence, established the type of object of criminal encroachment [7].

In 2020, V.V. Syedakova, in the study [8], identified the main methods of committing unlawful appropriation of vehicles, methods of preparation and concealment, noted that penetration to the location of the vehicle is mainly determined by the specific location and conditions of parking and storage of the vehicle, and emphasised that the methods of breaking into a motor vehicle differ depending on the qualifications of the criminal. The paper described the victim and the criminal, established the goals of committing such criminal actions, and concluded that the knowledge of natural connections between these elements contributes to the successful solution of tasks at all stages of the investigation [8].

In their study of 2021, O.M. Bryskovska, O.L. Avramenko emphasised the importance of the subject of the crime in the mechanism of its commission, distinguished their types and provided a description. They established the tactics and peculiar algorithm of unlawful appropriation of motor vehicles for the purpose of their subsequent paid return to their owners [9].

For the investigation process of any committed crime, it is essential to examine its mechanism of commission, since this allows not only establishing how the event of the crime unfolded, in what sequence, and what tools and means of committing the crime were used, but also determining all the circumstances that are relevant to the case and, most importantly, to give a criminal legal assessment of the crime [5].

The analysis of these papers indicates that there are no theoretical developments on the features and mechanism of unlawful appropriation of vehicles during martial law, which can be used for more effective countermeasures against illegal appropriation. Such achievements give grounds for law enforcement officers, especially during martial law, to predict and analyse the criminal situation and to establish the exchange of information about the subjects of such crimes and the facts of their illegal activities.

## Materials and Methods

To achieve the purpose of the study, a set of methods was used: system – to examine the system of elements of the mechanism for committing crimes, analyse the information obtained by applying special legal and general methods of scientific knowledge. Methods of generalisation, analysis, and synthesis of information, induction and deduction are the basis for investigating the features of committing unlawful appropriation in wartime. The study is based on the system-structural method and the dialectical method of scientific knowledge to identify the features of the mechanism of committing this crime. The use of formal-logical and system-structural methods allowed concluding that the features of the mechanism for unlawful appropriation of vehicles in wartime are a new dynamic system of relevant circumstances that have developed in a separate territory, which includes the situation of the crime, determines the content and totality of the criminal actions of the perpetrator and one's accomplices; the attitude of the subject of the crime to one's actions and their consequences; the victim's behaviour and the relationship between the actions and the criminal outcome. During the study of this problem, the available studies of Ukrainian researchers, both special literature and official data of law enforcement agencies of Ukraine: analytical references, reports, official reports, and statistical data, were used and analysed. The formal and legal method analysed the content of the norms of Ukrainian legislation regarding the unlawful appropriation of vehicles during martial law.

The normative basis of the study is: the Constitution of Ukraine[1], the Criminal Code of Ukraine[2], the Criminal Procedure Code[3], and Resolutions of the Supreme Court[4], On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine: Law of Ukraine dated 04/15/2014 No. 1207-VII[5], IV of the Convention on the Laws and Customs of War on Land and its annexe: Regulations on the

[1]Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text.
[2]Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[3]Criminal Procedural Code of Ukraine". (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[4]Ruling of the Supreme Court No. 742/2146/20. (2021, January) Retrieved from https://verdictum.ligazakon.net/document/101712316.
[5]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.

Laws and Customs of War on Land dated 10/18/1907 No. 995_222[1].

## Results and Discussion

Criminalistic teaching about the mechanism of crime examines the nature, essence, and content of the functional side of criminal activity, the regularities of the processes of interaction of participants in a criminal event with each other and with the surrounding material situation (environment), including the regularities that cause the emergence of sources of criminally valuable information about the crime itself and its participants [4, p. 142]. V. A. Zhuravel considered the mechanism of committing a crime in his study. In particular, analysed modern scientific approaches to understanding the mechanism of crime as a structural element of the subject of criminalistics, came to the conclusion that the criminalistic teaching about the mechanism of crime examines the nature, essence, and content of the functional side of criminal activity, the regularities of the processes of interaction of participants in a criminal event with each other and with the surrounding material situation (environment), including the regularities that cause the emergence of sources of criminally valuable information about the crime itself and its participants, and defined the mechanism of crime as a system that includes the situation of crime; the subject of criminal encroachment; the totality of actions of the criminal and related persons regarding the preparation, commission, and concealment of crimes; the attitude of the subject to the crime, one's actions and their consequences; the behaviour of the victim and the actions of persons who became accidental participants in the crime; connections between actions and the criminal result [4, p. 151].

The study of M.I. Panova, S.O. Kharytonova, V.V. Haltsova, indicated the need to examine the essence of the structure of constituent system elements, crimes, and investigated the object of a criminal offence, which greatly affects the definition of the social properties of the offence. This study has a broader structure. Existing scientific approaches (positions) regarding the definition of the object of the criminal offence were analysed. The study made a reasoned conclusion that the object of a criminal offence is social relations that arise and exist in society regarding its social values, which are protected by the law on criminal responsibility [3].

O.V. Pchelina covers the question of the identity of the criminal as an element of forensic characteristics of crimes. She listed features that characterise and develop the system of a criminal's personality in the forensic characteristics of crimes in the sphere of official activity. Moreover, she characterised persons who commit crimes in the sphere of official activity, on general and special grounds [10].

In the study, V.V. Silko covered the circumstances of the commission of a crime as an element of the forensic characteristics, distinguished the elements of the circumstances of the commission of a crime, identified forensically important signs of a favourable environment for the commission of a crime, identified the correlations of the latter with other elements of the forensic characteristics of the relevant crime [11].

H. O. Khrystova examined the concepts and conditions of military occupation and proved that the state's obligations to respect and ensure the rights of the local population are contained both in the law of occupation and in the law of human rights. She justified that the state, part of the territory of which is occupied, must contribute by all available means to ensuring and protecting the rights of its citizens in the temporarily uncontrolled territory to fulfil its positive obligations [12].

In the studied papers, some researchers considered the mechanism of committing a crime, its essence, content, and composition. Others investigated the question of individual structural elements of the crime mechanism, from the object of the criminal offence, the identity of the criminal, and the situation and conditions of wartime. However, in complex, the problem of unlawful appropriation of vehicles during martial law has not been considered by researchers.

With the change in the situation in the country, living conditions, social relations, the mechanism and methods of committing crimes are changing as well, such changes have not spared the methods of unlawful appropriation of vehicles and the types of subjects of their commission. The mechanism and methods of unlawful appropriation of vehicles also depend on the subjects of crimes. It is advisable to consider the identity of the subject of unlawful appropriation of vehicles in wartime. The most typical characteristics of a criminal include: demographic; professional and educational; the field of employment; connections with the victim; propensity to commit crimes; physical and psychological conditions. This information allows determining the area and methods of searching for the person who committed the crime, choosing the most optimal methods of investigating crimes, predicting the behaviour of a person in a particular situation, establishing a connection between data on the identity of the criminal, the scheme or technology of criminal enrichment, and the circumstances of committing the crime, and obtaining data on those who most often commit crimes of this type [10, p. 148].

Subjects of unlawful appropriation of vehicles in wartime are:

– persons who have repeatedly come to the attention of the police on the facts of seizing vehicles and other deliberate mercenary crimes against property;

– military personnel of the Russian Federation.

For example, the 31- and 37-year-old residents of the Litynsk community of the Vinnytsia region, repeatedly convicted of similar crimes and thefts, tried to steal a car, taking advantage of the owner's absence. By breaking the locks, the perpetrators took action to steal a Renault Kangoo vehicle parked by the owner in the yard of one's home. They were prevented from stealing the car by neighbours who witnessed the crime [13]. Thus, on April 1, 2022, a previously convicted resident of

[1]Regulations on Laws and Ordinary War on Land of No. 995_222 "IV of the Convention on Laws and Ordinary War on Land and its Annex". (1907, October). Retrieved from https://zakon.rada.gov.ua/laws/show/995_222#Text.

the Kyiv region was exposed and detained in Berdychiv, who in early March committed a series of thefts from apartments in occupied Irpin and stole a Mercedes-Benz car from a guarded parking lot. The marauder drove off in a stolen car for a long time, until, ironically, he caught the eyes of the owner of the car while shopping at the market. It happened to be a local resident who left his car in the parking lot at the beginning of the war and was unable to pick it up due to the unlawful occupation of Irpin [14]. According to the National Police, during the detention of members of an organized group for unlawful appropriation of vehicles, it was found that one of the co-organisers was wanted for a long time for unlawful appropriation of vehicles. He lived on the territory of the state under various forged documents, while committing unlawful appropriation [9, p. 59].

Therefore, during a full-scale war of the Russian Federation on the territory of Ukraine, persons who have been repeatedly convicted of similar crimes overwhelmingly commit unlawful appropriation of vehicles in the following ways:

– during an air alert. When the streets are empty of people, the owner and one's family are in a bomb shelter, and the vehicle is left near the house, in the parking lot;

– during a curfew characterised by a longer period of absence of both the owner and other people in the appropriate place;

– the owner evacuated from the dangerous place of stay leaving the vehicle in the garage or other place for a long period.

This method is characterised by the penetration of intruders into the household using appropriate means of committing a crime, namely mechanical, technical, and electronic, to obtain access to the stored vehicle. For example, on March 29, 2022, at the checkpoint before entering Zhytomyr, police officers stopped and exposed the perpetrators when they were driving a stolen car out of the occupied city. It was established that three residents of one of the western regions stole a BMW X1 car from the yard of a resident of Irpin, who fled the country due to hostilities [15].

The above-mentioned methods of unlawful appropriation are united by a characteristic feature, that is, the absence of the owner and people near the planned crime scene for a considerable period of time, which ensures comfortable conditions for intruders, the absence of undesirable eyewitnesses, and confidence in the availability of sufficient time to implement the criminal plan. The time of the crime, day or night, does not matter in wartime. The age of criminals who commit unlawful appropriation of vehicles has not changed since peacetime; these are persons aged from 18 to 45 years. In most cases, men.

However, such methods of unlawful appropriation, as a rule, are preceded by preliminary preparation. Namely, organised groups conduct so-called intelligence on the presence of the owner of the vehicle near the place of its storage.

In most cases, members of an organised group investigate in advance the availability of certain vehicles in the relevant area along with storage conditions and determine their owners, namely, whether the owner has not evacuated and is not near the place of storage of the vehicle. Criminals conduct visual surveillance of the owner of the vehicle, one's daily routine, the features of behaviour in accordance with the conditions of wartime, and the attitude of the owner to the protection and storage of their vehicle.

Organised groups, for the purpose of unlawful appropriation of vehicles, act according to a clearly developed plan with careful distribution of participants according to the relevant specialisation, having criminal experience in the unlawful appropriation of expensive car brands. Some people search for the necessary car brands, identify their storage conditions, and collect information about their owners, while others turn off electronic security systems, start the engine (erase the chip key from the car's memory and register a new one, disabling the anti-theft function of the standard immobiliser), others drive the car, there are also persons who hide such a vehicle, others – legalise and sell cars (change body and unit numbers, make fake documents), disguise criminal profits received from the sale of cars [8, p. 161–162]. In addition, criminals can move the vehicle to a neighbouring district or region to a pre-selected place of storage or sell it to resellers almost immediately after the crime is committed [16, p. 256]. To plan the unlawful appropriation of a vehicle, it is necessary to conduct training on criminal actions, eliminate possible obstacles, carefully examine the place and conditions of its storage, and prepare technical and mechanical tools for entering the place in which the intended, appropriate vehicle is stored. Methods of penetration into the storage areas and into the vehicle itself differ depending on the qualification of the criminal [17].

The public danger of organised groups that commit unlawful appropriation of vehicles increases due to the fact that in wartime, the probability of intruders having firearms increases. "Under the procedural guidance of the Zhytomyr District Prosecutor's Office, considering the evidence collected by the investigation, three persons were notified of suspicion of illegal acquisition, storage, and carrying of military supplies (p. 1 of Art. 263 of the CC of Ukraine[1]), and two of them – of unlawful appropriation of a vehicle committed by a group of persons based on a prior conspiracy, related to home invasion (p. 2 of Art. 289 of the CC of Ukraine[2])" [15].

During the war, Russian troops stole and smuggled dozens of cars from Ukraine. Entire collections of restored retro cars. Among the missing cars were rare collectible models [18].

In the temporarily occupied territories of Ukraine, the military of the Russian Federation, along with other criminal offences, commit unlawful appropriation of vehicles. For example, only on May 10 in the Luhansk region, the police received 5 reports of unlawful appropriation

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

of vehicles [19]. During the three months of the war, more than 14,000 criminal proceedings were initiated on crimes committed by Russian servicemen and their accomplices [20]. Such crimes are not preceded by preliminary preparation, since in the occupied territories the Russian military is confident in the impunity of their criminal activities. When the victim leaves the house, in an attempt to prevent one from taking the car, there is a fight with the criminal, armed or unarmed, which forces the victim to give up one's vehicle [21, p. 148].

A special feature of unlawful appropriation of a vehicle by the military of the Russian Federation is daring methods of commission, which are characterised by open actions in the presence of the owner of the vehicle, threatening with weapons, or on the territory of households that are temporarily abandoned, the owners of which were evacuated. Such actions are committed at the beginning of the unlawful occupation or from the beginning of the liberation of the occupied territory.

The purpose of unlawful appropriation of vehicles by the military of the Russian Federation on the territory of Ukraine is:

– for their own needs to move around the occupied territory;

– in the vast majority of cases, to smuggle property looted from the civilian population;

– to escape under the guise of civilians to break through to other cities;

– for the purpose of profit for the sale of a vehicle in the territory of Belarus, the Russian Federation, or in the temporarily occupied territories of Luhansk and Donetsk regions and Crimea.

Such vehicles are sold on car markets (internet portals) in periodicals, which contain advertisements for the purchase, at a reduced cost [22, p. 276].

In the Russian Federation, on car sales platforms, the following ads have already appeared "I am selling cars from Ukraine without registration. For those who understand the topic", "I am selling cars from Ukraine as iron without pre-registration" or "my husband brought a car after a military operation in Ukraine." Examples of the prices are, for Camry, 2021-600 thousand RUB; Helen Brabus, 2015-2,000,000 RUB; Prado 4-2,000,000 RUB; Lexus LX570, 2019-2,000,000 RUB. The sellers indicate the telegram phone number as a contact.

Means of unlawful appropriation of vehicles for the military of the Russian Federation are the keys to the ignition lock of the car obtained by extortion from the owner or rough improvised means to overcome obstacles to finding cars, firearms, or other vehicles (tank, infantry fighting vehicle, and other armoured combat vehicles) obtained by demolishing the wall of the garage or other premises in which the vehicle was stored. They get into the vehicle without the appropriate key by breaking the side window of the car. The age of the subjects of such crimes varies from approximately 18 to 35 years. Depends on the maximum age of recruitment for a full-scale war in Ukraine of the Russian military. Such criminals are male. The time of unlawful appropriation of a vehicle by the Russian military, in most cases, falls during daylight hours.

The Russian military steals both school buses, Kamaz trucks, special services cars (ambulances, fire trucks), and civilian vehicles. The Russian military prefers the following civilian vehicles in committing unlawful appropriation: Land Rover, BX, Infiniti, Toyota Cruso, Toyota Corega, Toyota Corolla, BMW, Nissan Qashqai, Renault Duster, Renault Scenic, Renault Traffic, Chevrolet Aveo, Volkswagen Golf, Volkswagen Multivan, Ford Kuga, Mitsubishi Lancer, Dacia, Hyundai. Today, agricultural machinery is exported to Russia in the occupied territories for further sale and profit.

Therefore, through all available mass media, it is necessary to conduct preventive work with the population to convey information about the possible risks of losing a vehicle due to its careless storage [23]. It is advisable to inform the population about the risk of losing a vehicle in the occupied territory and preventive measures against the sudden unlawful appropriation of vehicles by the Russian military, such as: drained gasoline, removed battery or replaced with a faulty one, removed wheels, flat tires, etc.

Countermeasures against the unlawful appropriation of vehicles committed by organised groups and the selection of the necessary operational search measures (usually applied in a complex) should be characterised by offensiveness and be built on the recommendations of operational search tactics, considering the nature of countering the criminal environment [24, p. 70].

The most effective counteraction to the unlawful appropriation of vehicles, especially during martial law, is complex operations involving the powers and means of law enforcement agencies [25].

## Conclusions

As a result of the study, the features of the mechanism of unlawful appropriation of vehicles in wartime were established. Thus, the following features can be distinguished:

– wartime conditions that promote unhindered unlawful appropriation of vehicles,

– types of crime subject,

– places of commission,

– available means of committing a crime,

– goals of the commission.

A characteristic feature of unlawful appropriation of vehicles in wartime is the proportional dependence on the type of subject of the crime to the conditions, goals, means, and place of commission.

The subjects of committing a crime in wartime were divided into two separate types:

– persons who repeatedly in pre-war times on the territory of Ukraine came to the attention of the National Police on the facts of seizing vehicles and other deliberate mercenary crimes against property;

– military personnel of the Russian Federation.

Wartime conditions that promote unhindered unlawful appropriation of vehicles were established:

– absence of the owner and other persons for a certain period of time (air alarms, curfew, evacuation of the owner, which is characterised by the absence of the owner for a considerable period of time and contributes to the unhindered unlawful appropriation of the vehicle);

– law lessness of citizens in the occupied territory.

The actions of subject of a crime that has repeatedly come to the attention of the police on the unlawful appropriation of vehicles and other deliberate mercenary crimes against property are facilitated by the following wartime conditions: air alarms, curfews, evacuation of the owner, which is characterised by the absence of the owner for a considerable period of time and contributes to the unhindered unlawful appropriation of the vehicle.

Such subjects, as a rule, commit the secret unlawful appropriation of a car, without the presence of the owner and other people.

The actions of subject of unlawful appropriation in the person of a serviceman of the Russian Federation are facilitated by wartime conditions such as being in the occupied territory with weapons, the lack of rights of the owner of the vehicle, lawlessness, and the factor of impunity. These subjects of crime are characterised by such a feature of the commission as openness and audacity.

The means of unlawful appropriation of vehicles during martial law should include:

– spontaneous military:

– mechanical (cold and firearms);

– technical (armoured military vehicles (for transporting the vehicle, or overcoming obstacles to its place of storage), (own keys to the vehicle);

– pre-prepared:

– electronic devices (use of devices that read the pin codes of immobilisers and program them to input the corresponding signals of the security system, special devices for replacing the control unit and controlling the vehicle, etc.);

– technical (availability of keys, use of transport for loading and transportation from the place of its storage);

– mechanical: vehicle keys, wires, hammer, crowbar, etc.

Places of unlawful appropriation of vehicles during martial law were identified:

– occupied territory – from the territory of households of vehicle owners or near households;

– non-occupied territory – spontaneous parking on the territory of the house, parking lots, parking lots near shops, metro stations, less often from closed premises (garages, hangars).

The purpose of committing unlawful appropriation of vehicles during martial law was determined:

– for profit purposes (to sale vehicles, smuggle looted property);

– for one's own needs (escape, move around the occupied territory).

The negative component of human rights obligations (the obligation to respect) must be met under all conditions, and therefore the occupying state is prohibited from acting in a manner that does not respect the rights of the population. The occupying state must also ensure the functioning of a law enforcement system capable of restoring and ensuring public order and security, observing the existing laws in the country.

In wartime, in accordance with the legislation of Ukraine, foreign citizens are criminally liable for crimes committed on the territory of Ukraine, in particular, the military of the Russian Federation that commits the unlawful appropriation of vehicles and other crimes.

Such knowledge enables law enforcement officers to analyse and predict the criminal situation, establish the exchange of information about persons, members of organised groups who commit unlawful appropriation, and the facts of their illegal activities.

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# Особливості механізму вчинення незаконного заволодіння транспортним засобом під час воєнного стану

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**Анотація**
Актуальність проблематики незаконного заволодіння транспортним засобом у воєнний час зумовлена тим, що українці нині стикнулися з проблемою збереження власного майна під час війни. Мета статті – розглянути особливості механізму вчинення незаконних заволодінь автомобілями у воєнний час, виявити і класифікувати суб'єкти їх учинення, розкрити й систематизувати способи, засоби та місце вчинення цих злочинів відповідно до виду суб'єкта їх учинення. Для вирішення зазначених питань у дослідженні застосовано комплекс загальнонаукових і спеціальних методів наукового пізнання – системно-структурний, формально-логічний, методи наукового пізнання, індукції, дедукції, аналізу, синтезу, узагальнення. За результатами дослідження розкрито особливості механізму вчинення незаконних заволодінь транспортними засобами у воєнний час. Схарактеризовано суб'єкти незаконного заволодіння транспортним засобом під час воєнного стану та запропоновано відповідну їх класифікацію. Розкрито особливості способу вчинення незаконних заволодінь транспортними засобами залежно від суб'єкта. Виявлено пропорційну залежність від виду суб'єкта вчинення злочину й умов, цілей, засобів і місця вчинення незаконного заволодіння транспортним засобом у воєнний час. Систематизовано способи вчинення вказаних злочинів. Встановлено умови воєнного часу, що сприяють безперешкодному незаконному заволодінню транспортним засобом. Виокремлено та класифіковано місця вчинення цих протиправних дій, окреслено їхні цілі. Практична значущість роботи полягає в тому, що отримані результати дослідження можуть слугувати підґрунтям для подальшої наукової діяльності з вивчення особливостей механізму вчинення незаконних заволодінь транспортними засобами у воєнний час і сприятимуть підвищенню ефективності протидії незаконному заволодінню транспортними засобами, особливо в умовах воєнного стану

**Ключові слова:**
автомобіль; викрадення; зловмисник; суб'єкт злочину; спосіб вчинення злочину; засоби вчинення злочину; організовані групи; військові Російської Федерації

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# Features and Legal Regulation of the Procedure for Granting Employee Consent to Work in New Working Conditions

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**Abstract**
In the conditions of dynamic development of the country and the world, the employer is in fact dependent on the Labour Code adopted in Soviet times, because it formulates concepts exclusively and does not define a mechanism for changing essential working conditions at all, which in practice is often abused by employees. The purpose of the study is to provide theoretical justification and develop proposals for improving the organisation of changes in essential working conditions at the legislative level based on the results of an analysis of the practice of applying the law in relevant legal relations. The main results of the study were obtained by methods of theoretical and methodological analysis of scientific literature, and formal-legal, comparative-legal, system-structural analysis, value-normative, and institutional methods. Based on the investigation and generalisation of the laws of Ukraine and judicial practice, the study covers the problems of providing employees with consent to work, systematises their existing forms, suggests ways to solve gaps in the current legislation, considers theoretical and practical problems of providing limited and conditional consent to continue work. Based on the results of the study, relevant conclusions in terms of achieving a balance of interests of the employee and employer, and a number of proposals for improving the current labour legislation were formulated. This paper is advisory, legal, and has practical value for both employers and employees. The studied issue is promising for further application in legislation, in particular the new Labour Code of Ukraine, and the detailing of certain points that are considered in the publication

**Keywords:**
labour relations; employer; changes in essential working conditions; consent to continue work; new Labour Code of Ukraine

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## Introduction

Trends in the development of labour law are an important theoretical and practical problem, the importance of which cannot be overestimated. It can be classified as eternal, which also does not lose its relevance. Primarily, this is explained by the complex transformation processes taking place in the world and directly affecting labour law [1]. The world does not stand still, the way of life of citizens is changing, while the labour legislation is quite stable, which creates a considerable number of obstacles for both parties to the employment contract.

Article 43 of the Constitution Of Ukraine[1] defines the right to work as one of the fundamental rights and freedoms of a person and citizen of Ukraine. Labour Code of Ukraine[2] contains an expanded procedure for exercising labour rights for an employee and restricts the employer. However, the current legislation is not adapted to the modern realities of conducting economic activities, which is why entrepreneurs and enterprises increasingly go into the shadows in labour relations with their employees.

Today in Ukraine, almost the only regulation that governs labour and relevant relations is the Labour Code of Ukraine (LC)[3]. Three articles of the LC are devoted to changes in labour relations, which are included in ch. III "Employment Contract" [2].

Article 32 of the Labour Code of Ukraine[4] establishes the procedure for changing essential working conditions for employees in the event of changes in the conditions of the organisation of production and labour. The code stipulates that such changes can only occur with the employee's consent. However, the form and procedure for granting consent to continue work are not established. In practice, some employees openly abuse this and produce various ways to confuse the employer: to provide limited consent, an ambiguous one, or on their own terms.

When disputes arise, the courts of various instances mainly take the side of the employee. The employer is left alone with the employee and the Law. Therewith, the current Labour Code[5] was developed and adopted in the Soviet period. Plenum of the Supreme Court of Ukraine, which is authorised in accordance with the Law of Ukraine "On the Judiciary and the Status of Judges"[6], to ensure the uniform application of legal norms in the resolution of certain categories of cases, generalise the practice of applying substantive and procedural laws, systematise the legal positions of the Supreme Court, based on the results of analysis of judicial statistics and generalisation of judicial practice, give advisory explanations on the application of legislation in the resolution of court cases[7]. However, the only clarification of the Plenum in labour disputes is Resolution No. 9 of 11/06/1992 "On the practice of consideration of labour disputes by courts"[8].

In such circumstances, the problem of flexibility and variability of employment contracts is particularly urgent. An innovative model of production development should guide productive employment. Given this, the issue of legislative regulation of the procedure for granting an employee's consent to continue work in new working conditions is relevant and promising for investigation.

This issue is understudied in modern science. As Professor A.O. Sobakar notes, a crucial role in the implementation and protection of subjective rights of employees is played by legal guarantees, the socio-legal importance of which is that they provide the employee with a real opportunity to enjoy a certain social benefit, which is consolidated by labour legislation, to freely exercise their rights, serve as the "reliable bridge" that provides the necessary transition from the opportunity that is proclaimed in the law to reality [3].

The purpose of the conclusion of any legal transaction in the sphere of Labour is to ensure the effective and stable functioning of the relevant legal relations. The purpose of the employment contract is to create a stable employment relationship between the employee and the employer. Therewith, considering the complexity of legal relations that arise in the sphere of Labour, the presence of objective social, economic, and other factors that often make it impossible to properly perform an employment contract, its parties are guaranteed the right to change the terms of the employment contract and labour [4].

In accordance with this purpose, the paper sets the following tasks: to identify the legal essence of "change in essential working conditions" and its importance for the employee, to analyse the application of the Labour Code of Ukraine[9], including judicial practice in relevant legal relations, to propose modern ways to solve the problem of constancy of the employment contract and uncertainty of labour legislation for the employer, to develop ways to improve the procedure for granting consent by employees when changing essential working conditions to ensure

[1]Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254к/96-вр#Text.
[2]Labour Code of Ukraine. (1996, July). Retrieved from https://zakon.rada.gov.ua/laws/show/322-08/#Text.
[3]*Ibidem*, 1996.
[4]*Ibidem*, 1996.
[5]*Ibidem*, 1996.
[6]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.
[7]*Ibidem*, 2016.
[8]Plenum of the Supreme Court of Ukraine Resolution No. 9 "On the Practice of Consideration of Labour Disputes by Courts". (1992, November). Retrieved from https://zakon.rada.gov.ua/laws/show/v0009700-92#Text.
[9]Labour Code of Ukraine, op cit.

productive employment and achieve a balance between the interests of the employee and the employer.

The issues of changing the legal status of the employer were covered by researchers, in particular, the justification was provided by I.V. Kolosov [5; 6] O.G. Sereda [7], and other.

Thus, as A.M. Yushko noted, "the concept of essential working conditions is evaluative since it is not specified by the legislator and is clarified every time in the process of law enforcement. Therefore, if there is a need to change the essential working conditions, the owner or the body authorised by them must coordinate this issue with each employee, because the same working condition may be suitable for one of them, but not for the other" [8].

According to L.A. Chikanova, the essential terms of the contract are usually considered those on the content of which, based on the law, an agreement must be reached, and which are sufficient and necessary for the contract to be considered concluded and thereby capable of causing the emergence of rights and obligations of the parties [9].

O. Ostapenko proposed to develop the main fundamental approaches to the methodology of legal regulation of Labour Relations in the conditions of the current development of Ukraine [10].

F. Wettstein investigated the relationship between respect for human rights to work in the context of globalisation and business development [11].

V.S. Deyneka was one of the few people who defended the rights of employers. He proposed to resolve the issue of the content of the essential terms of the employment contract at the legislative level, because fixing the clear content of the employment contract would simplify the procedure for concluding and protecting the rights of both employees and employers [12].

Despite the studies on the terms of the employment contract and its importance for the employee and employer, the provision of work consent is understudied.

*The purpose of the paper* is a theoretical justification and scientific development of proposals for improving the organisation of changes in essential working conditions and consent of the employee to work in new working conditions at the legislative level to ensure productive employment and achieve a balance between the interests of the employee and the employer.

## Materials and Methods

The study analysed the problems of legal regulation of changes in essential working conditions and provision of consent to continue work in new working conditions. The regulatory framework for this study included legislation and judicial practice materials. Provisions of the Constitution of Ukraine[1] were used to highlight the main aspects of the rule of law. Provisions of the Labour Code of Ukraine[2] were used to identify gaps in legislation regarding insufficient legal certainty of employees and employers in conditions where the previous working conditions cannot be preserved, and new ones have not yet been introduced. In addition, the study identified the key problems that Ukrainian employers most often face when implementing management.

The study used theoretical materials, materials of judicial practice related to changes in essential working conditions, reduction of the scope of work, transfer of employees to another job, relocation, etc.

The paper used logical-semantic, comparative, hermeneutical, dogmatic (Aristotelian) methods, and system analysis. The logical-semantic method was used to analyse the term "essential working conditions". The comparison method was used to cover judicial practice.

The dialectical method was used to analyse the current legislation and the practice of its application to examine the features of legal regulation of essential terms of an employment contract and the procedure for changing working conditions.

The Aristotelian method allowed formulating proposals for improving the labour legislation of Ukraine. In particular, it proposed to specify the procedure for approving employees to work in new working conditions.

To interpret the studied rule of law, the principles of legislation and features through the best practices of the science of hermeneutics were considered [13].

Thus, the hermeneutical method clarified the current Labour Code[3], the Civil Code of Ukraine[4], and other studies, which allowed establishing the legal essence of "working conditions", interpreting the meaning of working conditions for the employee and employer, and investigating the legal nature of their changes.

## Results and Discussion

The content of each employment contract consists of conditions established by law and the agreement of the parties and defines the rights and obligations of the employee and employer. The conditions stipulated by labour legislation are applied to each employee and cannot be changed. These are the maximum length of working hours and the minimum length of leave, the minimum wage, discipline and labour protection, material liability, the procedure for resolving labour disputes, etc. However, those can be detailed by the parties. Such conditions are determined by agreement of the parties and may be mandatory (in the absence of an agreement on which the employment

[1]Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254к/96-вр#Text.
[2]Labour Code of Ukraine. (1996, July). Retrieved from https://zakon.rada.gov.ua/laws/show/322-08/#Text.
[3]*Ibidem*, 1996.
[4]Civil Code of Ukraine. (2003, Jaunuary). Retrieved from https://zakon.rada.gov.ua/laws/show/435-15/ru/ed20131011#Text.

contract cannot be considered concluded) and additional (the presence of which is not mandatory).

Labour relations are not permanent or unchangeable. The reasons for their changes can be both the introduction of new technologies, the redistribution of employee responsibilities, an increase or decrease in the volume of work, etc., the personal qualities of a particular employee, for example, obtaining an education, increase in work experience. External factors that are not directly related to work, but can become crucial for the employee, also have an impact: the distance of the place of work from the place of residence, the operation of public transport, social guarantees, etc.

Despite the fact that labour relations are in continuous motion, changing an employment contract is a rather infrequent phenomenon. The reason is not that employers are uneducated, but that the legislation itself is imperfect, which causes a lot of misunderstandings in practice.

According to Article 32 of the LC of Ukraine, due to changes in the organisation of production and labour, it is allowed to change essential working conditions while continuing to work in the same speciality, qualification, or position[1]. The legislator identifies essential and non-essential working conditions.

Courts of various instances interpret essential working conditions more broadly and attribute certain elements of the circumstances of production to them. In this case, the personal interests of a particular employee are considered [14].

Thus, in judicial practice, the addition of the labour function with additional duties is recognised as a change in essential working conditions. For example, in case No. 766/12480/17[2], the academic load of academic staff is recognised as an essential working condition, since it determines the working hours of teachers for which they receive wages.

Consequently, essential working conditions are an evaluation norm in labour legislation.

As O. Protsevsky stated: "in labour legislation, the concept of "working conditions" is applied in a broad sense and covers various elements of the industrial and socio-psychological atmosphere in enterprises, institutions, organisations. It should not be reduced to labour protection, safety, proper condition of machines, proper quality of tools and materials, their timely submission, etc. This concept represents a more general meaning. It is broader than the concept of "labour protection", since it includes the rights and obligations of employees, work and rest regimes, remuneration, forms of incentives, types of bonuses, opportunities for promotion, improvement of housing conditions, that is, everything that an employee faces in the course of work" [15].

The question of whether a particular condition belongs to the essential ones arises when there is a need to change it. "The employee must be notified no later than two months in advance of changes in essential working conditions – pay systems and rates, benefits, working hours, establishment or cancellation of part-time work, combining professions, changing categories and names of positions, etc.", – provided for in Article 32 of the LC of Ukraine[3].

Changes in essential working conditions are implemented by the following procedure established by the law:

1) adoption of an order on changes in the organisation of production and labour to fix the relevant decision in the legal field;

2) employee warnings – notifications at least 2 months before the changes are implemented, and offers to make a decision on consent or refusal to work. A written warning should be issued with the mandatory indication of the date of notification, the date of familiarisation of the employee, and the date of changing the conditions;

3) approval or refusal of the employee to continue the employment relationship after the introduction of changes in essential working conditions. This point is further considered in more detail;

4) issuance of an order on the introduction of new working conditions. If the employee has not agreed to continue the employment relationship after changing the essential working conditions, they are subject to dismissal based on p. 6 of Article 36 of the LC[4] [16].

A warning, according to some researchers, is an offer to an employee to continue work after the owner changes essential working conditions in compliance with the established deadline [17].

It is advisable to consider the procedure for approving employees in more detail through the prism of judicial practice. The study proposes to divide the options for employees' actions after informing them about further changes in working conditions into five categories:

1) agreed to continue work;

2) agreed, but appealed the order to change the essential conditions;

3) provided limited or ambiguous consent, or one on their own terms;

4) evaded any action;

5) refused.

The first and fifth categories are the easiest because both the employee and the employer understand the meaning of their actions and treat each other with respect. The employee either agrees and continues to work in the new working conditions or refuses and

[1]Labour Code of Ukraine. (1996, July). Retrieved from https://zakon.rada.gov.ua/laws/show/322-08/#Text.
[2]Unified State Register of Court Decisions. (2013). Retrieved from https://reyestr.court.gov.ua/Review/53042819.
[3]Labour Code of Ukraine, op cit.
[4]*Ibidem*, 1996.

is dismissed in accordance with the procedure established by law.

The second category concerns those situations when the employee, without giving any signs of their will, appealed the order to change essential working conditions to the court. The employer logically interprets such actions as a refusal of work, and, accordingly, dismisses. In such a situation in case No. 559/321/16-C[1], the court sided with the employee, recognising the dismissal as illegal and reinstating the employee at work with all the ensuing consequences, such as paying the average salary for each day of forced absenteeism.

The third category is limited or ambiguous consent, or one on the employee's own terms. For example, in case No. 766/12480/17[2], the employees gave the following consent: "I consider the order to change essential working conditions illegal, so I appeal it, but I do not intend to resign." In such wording, actually certifying their consent to work, but on their own terms. The courts of the first, appellate, and cassation instances took the positions of the employee and restored them.

The fourth category is employees' evasion from making any decisions. Employers also have an ambiguous opinion on the wording of the LC[3] "and the employee does not agree to continue working under new conditions". Thus, in case No. 607/83/16-C,[4] the employee did not factually provide any response, and after the transfer appealed the order, which expressed their disagreement.

Consequently, in the absence of legislative regulation, similar situations arise. The employer, not always wanting to actually dismiss the employee, allegedly becomes a hostage to circumstances and tries to find a balance between the interests of the employee and the business, which is why then suffers considerable losses.

As M. Inshyn indicted, "the labour legislation of Ukraine needs to be improved. In particular, it is necessary to adopt a special law regulating individual employment contracts (agreements) for various forms of employment" [18].

It is recommended to apply the norms of the Civil Code of Ukraine to resolve such situations: "the response of the person to whom the offer to conclude a contract is addressed on its acceptance must be complete and unconditional. If a person who has received an offer to conclude a contract, within the time limit for a response, has performed an action in accordance with the terms of the contract specified in the offer (shipped goods, provided services, performed works, paid the established amount of money, etc.), which certifies their desire to conclude a contract, this action is considered as acceptance of the offer, unless other is specified in the offer to conclude a contract or established by law. A person who has accepted an offer may withdraw their response to its acceptance by notifying the person who made the offer to conclude a contract before or at the time of receiving a response on accepting the offer" (Article 642 of the CC of Ukraine)[5].

Applying the principle of analogy, it is required to give the employee a certain period of time to respond to the employer's offer to work in new working conditions. During this time, their response must be complete and unconditional. Such a legislative position puts both sides of the issue on an equal footing and contributes to the establishment of legal certainty.

Considering the above, to legally resolve the problem of granting consent to continue work in new working conditions, it is proposed to supplement the third paragraph of Article 32 of the current Labour Code of Ukraine[6] with the following: "the employer has the right to set a deadline for granting consent, but not less than seven days before the date of introduction of new working conditions. Consent to continue work must be complete and unconditional."

## Conclusions

The Constitution of Ukraine, as the main law of the state, establishes the right of a citizen of Ukraine to work. Nevertheless, the Labour Code of Ukraine, which should specify the procedure for citizens to exercise their labour rights, is outdated. The changes made to it are insufficient and do not change the situation of deregulation. Analysis of Article 32 of the current Labour Code of Ukraine allows establishing insufficient certainty of the issue of changing essential working conditions.

According to the results of the study, it was found that even the judicial authorities do not have one stable position, and constantly make completely opposite decisions in similar cases. Therefore, given the existence of a legal problem in the state, it is worth paying due attention to the issue of regulating not only changes in essential working conditions but also the conscientious disposal of employees' rights.

Considering judicial practice, analysing and systematising the behaviour of employees who were informed about changes in essential working conditions, it is proposed to supplement the third paragraph of Article 32 of the current Labour Code of Ukraine with the following: "the employer has the right to set a time limit for granting consent, but not less than seven days before the date of introduction of new working conditions. Consent to continue work must be complete and unconditional". This wording would allow specifying the stated norm of labour legislation and help to achieve a balance of interests of the employee and the employer.

Further studies in the field of labour law are recommended to be devoted to the mechanism of ensuring the exercise of the employee's right to state guarantees.

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# Особливості та правове регулювання процедури надання згоди працівника на роботу в нових умовах праці

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**Анотація**
В умовах динамічного розвитку країни та світу дії роботодавця фактично залежать від прийнятого ще за радянських часів Кодексу законів про працю, у якому лише сформульовано поняття та взагалі не визначено механізм зміни істотних умов праці, чим на практиці часто зловживають працівники. Метою роботи є теоретичне обґрунтування та розробка пропозицій стосовно вдосконалення організації зміни істотних умов праці на законодавчому рівні на підставі аналізу практики застосування закону у відповідних правовідносинах. Основні результати дослідження отримано завдяки застосуванню методів теоретико-методологічного та системно-структурного аналізу літературних наукових джерел, а також формально-юридичного, порівняльно-правового, ціннісно-нормативного й інституційного методів. На основі вивчення та узагальнення законів України, судової практики в статті розкрито питання щодо проблем надання згоди працівників на роботу, систематизовано їхні форми, запропоновано шляхи усунення прогалин у чинному законодавстві, розглянуто теоретичні та практичні проблеми надання неповної та умовної згоди на продовження роботи. За результатами дослідження сформульовано відповідні висновки з точки зору досягнення балансу інтересів працівника та роботодавця, а також сформульовано низку пропозицій з удосконалення чинного трудового законодавства. Ця стаття є дослідженням науково-рекомендаційного, правового характеру, що має практичну значущість як для роботодавців, так і для працівників. Розглянута тематика є перспективною для подальшого застосування в законодавстві, зокрема новому Кодексі законів про працю України, а також деталізації окремих аспектів публікації

**Ключові слова:**
трудові відносини; роботодавець; зміна істотних умов праці; згода на продовження роботи; новий Кодекс законів про працю України

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# Typical Investigative Situations of the Initial Stage of the Investigation Legalisation (Laundering of Property Obtained as a Result of Tax Evasion

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**Abstract**
Based on an analysis of the macroeconomic situation in Ukraine, it is evident that the shadow sector of the national economy is intensifying. Its fictitious component has acquired a global scale, which consists in the withdrawal of significant financial resources from the legal economic sector by illegal means, the redistribution of billions of dollars in profits in favour of individual business entities, and the outflow of capital abroad, which determines the relevance of this study. The purpose of the study is to establish typical investigative situations of the initial stage of investigation of legalisation (laundering of property obtained as a result of committing a tax crime. A system of general scientific and special research methods was used to achieve this goal, the main of which are comparative, comparative legal, logical and legal, statistical, and modelling. Typical investigative situations were systematised (depending on the established initial information, its nature and specifics regarding the number and reliability of data containing verification materials at the stage of entering information in the Unified Register of pre-trial investigations; procedural consequences of entering information in the Unified Register of pre-trial investigations related to the identification of the person who committed the crime; characteristics of sources of initial information about the crime, and the degree of awareness of interested persons about the progress and prospects of the investigation; degree of validity and volume of collected evidence regarding the predicate crime and the areas of investigation and the algorithm for conducting procedural actions inherent in each stage in different investigative situations were proposed. It is established that investigative situations at the initial stage affect the definition of the tasks of investigation of legalisation (laundering of property obtained as a result of tax evasion: establishing the event, method and subject of a criminal offence; identifying and exposing the persons who committed it; determining the nature and amount of damage caused by a criminal offence; identifying and procedurally consolidating traces of a crime; establishing links between tax evasion and other offences; identifying the causes and conditions that contributed to the commission of illegal acts (with a legal response to their elimination. The obtained results will help optimise the initial stage of investigation of crimes of this category and eliminate threats to the economic security of the state related to the sphere of taxation

**Keywords:**
tax crime; economic security; criminal proceedings; shadow economy; investigative (search procedure

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## Introduction

The instability of the macroeconomic situation in Ukraine and periodic crisis conditions in the economy contribute to the establishment of a strong shadow sector in the national economy. Its fictitious component has now acquired a global scale, which consists in the withdrawal of significant financial resources from the legal economic sector by illegal means, the redistribution of billions of dollars in profits in favour of individual business entities, and the outflow of capital abroad, as indicated by the reporting data of the state financial monitoring service of Ukraine [1]. These trends lead to an increase in the threat to the economic security of the state, the aggravation of the existing socio-economic crisis. Such crisis states have not spared the sphere of taxation.

Taxes and fees (mandatory payments) are the most important instrument of the state, established by the highest legislative body that guarantee the existence of society, which are paid by individuals and legal entities, and on which the further development of the Ukrainian economy depends. The problem of legalisation (laundering) of property obtained as a result of tax evasion became particularly important for Ukraine at the beginning of the 21st century in the context of the development of shadow schemes, the emergence of offshore zones, the invention of sophisticated tax evasion schemes that negatively affect both the development of the economy and the implementation of international programmes.

A separate block of studies by foreign and Ukrainian researchers is devoted to the issues of legislative regulation of certain stages of investigation and counteraction to crimes of this category [2; 3; 4], building models of countering the shadow economy [5; 6], determining its criminal characteristics [7] and indicators [8], improving the effectiveness of its assessment [9]. In the context of this research, the best practices concerning the methodology of financial investigations in the field of countering the legalisation of criminal proceeds [10; 11] and forensic support for the activities of relevant subjects of the investigation process [12], are worthy of attention.

Determining the stages of investigation of legalisation (laundering) of property obtained as a result of tax evasion, among other things, was facilitated by studies that reveal the algorithm for determining factors of economic shadowing [13], methods of committing financial transactions of a criminal nature in this area [14]

These and other researchers have made a sufficient contribution to the theory and practice of investigating criminal offences in the sphere of economic activity, and have created a significant basis for further research. However, typical investigative situations of the initial stage of the investigation of legalisation (laundering) of property obtained as a result of tax evasion were not identified and considered, which determines the need for additional, in-depth and comprehensive research.

The scientific originality of the results obtained lies in the fact that this study comprehensively, using modern methods of cognition and the practice of law enforcement agencies of Ukraine, considers typical investigative situations in the investigation of legalisation (laundering) of property obtained as a result of tax evasion.

*The purpose of the study* is to define typical investigative situations of the initial stage of investigation of legalisation (laundering) of property obtained as a result of tax evasion. Achieving the goal involves the implementation of a number of *tasks,* within the framework of which it is necessary to outline the specifics of the development and content of these situations, based on which to formulate their classification groups and establish the range of tactical operations that are carried out during the investigation of crimes of this category.

## Materials and Methods

The methodological basis of the study is the dialectical and materialistic method of scientific knowledge, general scientific and special methods of legal science, in particular: *comparative* and *comparative legal method* – for a comprehensive analysis of Ukrainian legislation and bylaws, analysis of the opinions of researchers and practitioners on the issues under study, which form the basis of research; *logical and legal method, methods of induction and deduction*, *modelling* – to establish similarities in the features and properties of technologies for committing criminal illegal activities in the field of taxation and in its mechanism, highlighting typical investigative situations, and in the methods and means of investigation, tactics of conducting investigative (search) actions; *statistical* – to analyse the studied materials of criminal proceedings, investigative, prosecutorial, and judicial practice.

These methods were used at all stages of the study, which include: defining a scientific problem, setting the purpose and objectives of the study; detailing the content of the mechanism of marking formation; determining the essence of legalisation (laundering) of property obtained as a result of tax evasion, specifying typical investigative situations of the initial stage of investigation of such crimes, and the actions of the investigator to solve them.

The empirical basis of the study consists of systematised reporting data of the State Financial Monitoring Service of Ukraine [1], statistical information of the Prosecutor General's Office of Ukraine [15], and analytical reviews on the accounting and statistical work of the state judicial administration of Ukraine for 2019–2020 [16].

## Results and Discussion

At various times, the forensic literature has attempted to develop a system of typical investigative situations for the investigation of certain types of crimes, including economic ones. According to some authors, various crimes in the economic sphere generally form three typical situations at the initial stage of Investigation.

At the same time, the criterion for their allocation is not only the volume and content of initial information, but also the awareness of interested parties about the course and results of the investigation, and the possibility of using the "surprise factor" by the investigator [17, p. 12].

Problematic situations of investigation of tax crimes are primarily related to overcoming the limited information about the event of a criminal offence when it is detected and the identity of the criminal. Systematisation of situations of the initial stage of investigation of tax criminal offences provides information and organisational and methodological support when building a methodology for their investigation. Their proper assessment allows the investigator to navigate the available factual data, form plausible versions, outline a set of procedural actions, and determine their optimal set and sequence.

According to V. Kyrychenko and V. Pahomov [18], the situations of the initial stage of investigation of tax crimes carry the main informational and organisational-methodological load when constructing the methodology for their investigation. Their proper assessment allows the investigator to navigate the available factual data, put forward plausible versions, outline a set of investigative and operational search measures, and determine their optimal set and sequence [18].

Considering the above, it is necessary to characterise the specifics of the establishment, content, and highlight typical situations of the investigation of legalisation (laundering) of property, received as a result of tax evasion.

Firstly, it is advisable to identify typical situations, each of which corresponds to the availability of information contained in the data entered in the Unified Register of pre-trial investigations (URPI)[1], in particular:

1) materials of intelligence-gathering activities contain all the necessary data on the circumstances of the crime;

2) initial data is insufficient to enter information in the URPI[2];

3) available data display criminal illegal signs, but the subject of the commission, its motive and purpose are unknown (for example, identifying the fact of submitting false information to the tax authorities; identifying signs of fictitiousness in the activities of a business entity) [19];

4) materials do not contain sufficient data to enter information in the URPI[3] (for example, after the destruction of documents for recording the activities of the business entity; the inability to conduct documentary checks, etc.);

5) materials indicate that there is no corpus delicti in the actions of business entity officials (accounting error, incorrect accounting, etc.).

Depending on the amount and content of information that primary materials contain at the stage of implementation of verification materials, V. V. Lysenko suggests identifying three situations, in particular: "materials contain the necessary data on the circumstances of the commission of a crime, but they are not enough to initiate a criminal case, which requires further verification; materials do not contain the necessary data on the circumstances of the crime, based on which a decision is made to initiate a criminal case, and they cannot be supplemented during additional verification measures or pre-trial investigation; materials indicate the absence of corpus delicti in the actions of business entity officials" [12, p. 297–298; 20, p. 150]. However, in the context of fundamental changes in the criminal procedure legislation, such situations are outdated.

Secondly, considering the procedural consequences of entering information in the URPI[4], it is advisable to distinguish two situations of the initial stage of the investigation. The first situation includes cases where the source information contains data about the person who committed the crime. According to the data, situations of entering information in the URPI[5] in relation to a specific person(s) occur in 28%.

Another group includes crimes based on non-obviousness (situations when the initial information does not contain data on the commission of a crime by a specific person, that is, only the fact of committing a crime is known to the investigating authorities) – 72% of the total number of criminal proceedings (cases) studied. The investigation, in this case, is complicated due to the lack of information about the identity of the offender and the event of the crime, which requires simultaneous verification of several versions and a significant amount of intelligence-gathering measures. The distribution of investigative situations is related to the characteristic conditions that develop at the time of entering information in the URPI[6]. These conditions depend primarily on the characteristics of the sources of initial information about the crime and the awareness of interested parties about the state and prospects of the investigation.

*Situation 1*. The information was entered in the URPI[7] and criminal proceedings were initiated (Article 214 of the Criminal Procedure Code of Ukraine[8]) based on materials provided by the State Tax Service of Ukraine (tax inspections), the State Financial Monitoring Service of Ukraine, or other authorised bodies based on the results of special inspections.

The peculiarity of this situation is that the initial information is collected as a result of conducting public verification activities and is contained in the materials:

[1]Order of the Office of the Prosecutor General of Ukraine No. 298 "Regulations on the Unified Register of Pre-trial Investigations, the Procedure for Its Formation and Maintenance". (2020, June). Retrieved from https://zakon.rada.gov.ua/laws/show/v0298905-20#Text.
[2]*Ibidem*, 2020.
[3]*Ibidem*, 2020.
[4]*Ibidem*, 2020.
[5]*Ibidem*, 2020.
[6]*Ibidem*, 2020.
[7]*Ibidem*, 2020.
[8]Criminal Procedure Code of Ukraine. (2012, April). Retrieved from http://zakon3.rada.gov.ua/laws/show/4651-17.

– documentary check (planned, unscheduled, desk, or counter), during which signs of a crime were identified;

– inspections of the tax authority in case of detection of tax evasion;

– customs control (when detecting the movement of goods that do not correspond to the information reflected in customs and transport documents);

– received from the judicial authorities that considered claims in the order of economic proceedings;

– press reports and other official data indicating signs of a crime.

For example, in practice, there are such situations of receiving information about cases of fictitious export of inventory values to form a negative value of value-added tax in order to further reimburse it from the budget:

– the fact of fictitious export or non-compliance of actually exported goods with the data specified in customs clearance documents is revealed by customs officials at the stage of real or fictitious movement of goods and material values across the customs border of Ukraine;

– the fact of tax evasion is revealed during a desk or on-site audit conducted by tax authorities in connection with the provision of a tax return by the business entity;

– signs of a crime were identified after the tax authorities made a decision to transfer the corresponding amounts from the budget;

– signs of a crime were revealed as a result of a prosecutor's check of tax and other regulatory authorities [14].

The source of information on such facts of legalisation is the materials of the State Financial Monitoring Service of Ukraine, the State Audit Service of Ukraine and other bodies responsible for carrying out financial monitoring and identifying dubious financial transactions, and conducting inventory.

*Situation 2*. Criminal proceedings were initiated based on materials of intelligence-gathering activities of divisions of the Economic Security Bureau (tax police) and the National Anti-Corruption Bureau of Ukraine.

The source of information about the facts of receiving income of illegal origin and their legalisation is the materials of intelligence-gathering activities [21, p. 232], and the reason is materials collected by employees of operational services during intelligence-gathering activities. Such sources in this case are characterised by a significant amount of accumulated operational and procedural information about the circumstances of the crime, in particular, the method of committing the crime, the perpetrators, and channels for the sale/legalisation of funds obtained illegally.

This situation is the most favourable for investigation, since the intelligence-gathering nature of the check ensures the identification of sufficient circumstances of criminal activity and ensures surprise for the subject of such activity, while simultaneously conducting a series of operational measures and investigative (search) actions. The materials of the pre-investigation audit collected by operational employees are previously discussed with investigators and tax specialists, which allows developing an agreed plan of investigative and operational measures. The success of implementing the results of the activities carried out depends, first of all, on the consistency and well-established interaction of all participants in the implementation of materials: operational employees, tax authorities, the bank, and experts.

As part of the intelligence-gathering activities, special messages can be received from employees of the business entity and regulatory authorities, operational observations, reviews of accounting documentation, preliminary research of tax and accounting documents, information from operational and specialised search engines and data banks can be obtained.

*Situation 3*. Criminal proceedings were initiated based on established facts on the basis of the materials of the investigation of other criminal offences.

The practice of pre-trial investigation bodies shows that there are signs of embezzlement of budget funds by tax evasion (Articles 212, 212[1] of the Criminal Code of Ukraine[1]) can be detected during the investigation of other crimes in the sphere of economic activity (provided for in Articles 201, 205[1], 222 of the Criminal Code of Ukraine[2]), and official activities (Articles 364, 366 of the Criminal Code of Ukraine[3]). This may be the result of initiating unscheduled audit inspections, operational measures and investigative (search) actions [22, p. 254].

In support of the above, S.S. Cherniavskyi and O.Ye. Korystin note that "a characteristic feature of the already completed form of legalisation is too complex, confusing, and sometimes even inaccessible to verification mechanism for the generation of criminal funds that are legalised" [11].

Today, three typical investigative situations of the initial stage of investigation of crimes of this category are used. According to *the first scheme,* in the course of conducting intelligence-gathering activities, a criminal offence containing signs of legalisation of criminal illegal income from its commission was revealed; *the second one* – the fact of legalisation of criminal illegal income or a person who used the property in respect of which factual circumstances indicate its receipt by committing a predicate criminal offence to commit another criminal offence is revealed; *the third* – the fact of legalisation of tax funds is revealed, during the investigation of a crime under Article 209 of the Criminal Code of Ukraine[4], measures are taken to establish the circumstances that preceded such legalisation, to identify individuals.

In these schemes, all episodes of criminal activity are sent to court within the same criminal proceedings [4].

[1]Criminal Code of Ukraine. (2001, April). Retrieved from http://zakon3.rada.gov.ua/laws/show/2341-14.
[2]*Ibidem*, 2001
[3]*Ibidem*, 2001
[4]*Ibidem*, 2001

During the investigation of the legalisation (laundering) of property obtained as a result of tax evasion, tactical operations are carried out:

1. "State registration". It is carried out before entering information about a criminal offence in the URPI[1]; it provides for a set of operational search measures aimed at identifying signs of a crime (requesting documents, interviewing persons, receiving explanations, surveillance (external, electronic);

2. "Document". This is a universal tactical operation, the priority of which is conditioned by the high probability of destruction or concealment of documents used in the commission of fictitious entrepreneurship in connection with the investigation of criminal proceedings. As part of this operation, audits of financial and economic activities are appointed, counter-inspections are organised, interrogations are conducted, searches are carried out, investigative inspections of documents are carried out, and technical and forensic examination of documents is performed;

3. "Straw man". It is carried out in cases when a citizen-founder, without the intention to carry out business activities under duress or for remuneration, registered an enterprise in their name, or a business entity established without the citizen's knowledge using their documents. By conducting interrogations, presenting for identification, it is found on whose initiative and for what purpose they did this, the terms of the agreement under which payment for participation in the creation of the enterprise was made, or the circumstances under which the passport was lost (in particular, the deceased citizen); conduct a technical and forensic examination of documents and a forensic psychiatric examination;

4. "Accomplice". It is carried out in an investigative situation when several persons – representatives of various business entities, having entered into a criminal conspiracy, carried out illegal activities under the guise of a fictitious enterprise. Attention is focused on the need to identify customers of illegal services. The goals of the operation are achieved by removing information from communication channels, establishing operational surveillance, promptly introducing it into a criminal group, conducting searches, interrogations, assigning inventories, audits, documentary checks, and forensic examinations;

5. "Search". It is a set of investigative (search) procedures and operational search measures, the task of which is to identify the person who is hiding. To do this, by conducting searches, interrogations and other actions, it is necessary: to collect information about the criminal (personal, family, business, financial); to establish the circle of persons who may have the wanted person; to check the places of their possible location;

6. "Ensuring compensation for material losses". During the implementation of this tactical operation, by conducting searches, interrogations, and a number of operational search measures, the presence and location of property and funds in bank accounts belonging to the criminal are established, they are seized, and other measures are taken to ensure the safety of material values [22; 23].

One of the main tasks of the methodology for investigating the legalisation (laundering) of property obtained as a result of tax evasion is the development of standard systems (and subsystems) of investigator actions that reflect the most effective ways to solve a crime and contribute to choosing the optimal system of actions in criminal proceedings depending on the specific investigative situation. In this context, it should noted that typical investigative situations depend on the spectrum of certain classification features.

At the same time, despite determining the optimal list of typical investigative situations, it is impossible to formulate universal investigative schemes applicable to any case, just as it is impossible to foresee the actions of criminals in advance. Thus, each specific situation of the investigation requires the investigator to be creative within the framework of criminal procedural regulation based on the generalisations of practice, theoretical provisions, and methodological recommendations formed in science.

## Conclusions

Several classification groups of typical investigative situations are considered depending on:

1) quantity and reliability of data containing verification materials at the stage of entering information in the URPI;

2) procedural consequences of entering information in the URPI related to the identification of the person who committed the crime;

3) characteristics of sources of initial information about the crime, and the degree of awareness of interested parties about the progress and prospects of the investigation;

4) degree of validity and weight of the obtained evidence regarding the predicate crime.

At the same time, according to the latter classification group, the following varieties can be distinguished:

a) pre-trial investigation on the grounds of Article 209 of the Criminal Code of Ukraine was initiated simultaneously with the proceedings on a predicate crime;

b) pre-trial investigation was launched at the stage of charging for a predicate crime;

c) pre-trial investigation was initiated when a predicate crime case was at the trial stage.

At the stage of entering information about a criminal offence with signs of legalisation (laundering) of property obtained as a result of tax evasion in the URPI, the following typical situations are possible:

1) a criminal offence under Articles 212, 212[1] of the Criminal Code of Ukraine has been established, as a result of which criminal unlawful income was obtained through failure to pay taxes, which were subsequently used to put them into legal circulation;

[1]Order of the Office of the Prosecutor General of Ukraine No. 298 "Regulations on the Unified Register of Pre-trial Investigations, the Procedure for Its Formation and Maintenance". (2020, June). Retrieved from https://zakon.rada.gov.ua/laws/show/v0298905-20#Text.

2) unpaid tax funds were revealed, in respect of which factual circumstances indicate their receipt by committing a predicate criminal offence, and their transformation, transfer, acquisition, or use are aimed at concealing or masking their true origin;

3) dubious banking or financial transactions, conclusion of transactions that certify the commission of illegal actions aimed at legalisation (laundering) were identified, but there was no information about the predicate criminal offence.

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# Типові слідчі ситуації початкового етапу розслідування легалізації (відмивання) майна, одержаного внаслідок ухилення від сплати податків

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**Анотація**

На підставі аналізу макроекономічної ситуації в Україні, кризових станів у цій сфері констатовано активізацію тіньового сектору національної економіки. Глобального масштабу набула його фіктивна складова, що полягає у виведенні значних фінансових коштів з легального економічного сектору протиправним шляхом, перерозподілі мільярдних прибутків на користь окремих суб'єктів підприємницької діяльності й відтоку капіталу за кордон, що визначає актуальність цього дослідження. Метою статті є встановлення типових слідчих ситуацій початкового етапу розслідування легалізації (відмивання) майна, одержаного внаслідок учинення податкового злочину. Для досягнення поставленої мети використано систему загальнонаукових і спеціальних методів дослідження, основними серед яких є компаративний, порівняльно-правовий, логіко-юридичний, статистичний і метод моделювання. Систематизовано типові слідчі ситуації (залежно від встановленої вихідної інформації, її характеру та специфіки щодо кількості й достовірності даних, що містять матеріали перевірки на стадії внесення відомостей до Єдиного реєстру досудових розслідувань; процесуальних наслідків внесення відомостей до Єдиного реєстру досудових розслідувань, пов'язаних із встановленням особи, яка вчинила злочин; характеристики джерел вихідної інформації про злочин, а також ступеня поінформованості зацікавлених осіб про перебіг і перспективи розслідування; ступеня обґрунтованості й обсягу зібраних доказів щодо предикатного злочину) та запропоновано напрями розслідування й алгоритм проведення процесуальних дій, притаманних кожному етапу за різних слідчих ситуацій. Доведено, що слідчі ситуації на початковому етапі впливають на визначення завдань розслідування легалізації (відмивання) майна, одержаного внаслідок ухилення від сплати податків: встановлення події, способу та предмета кримінального правопорушення; виявлення та викриття осіб, які його вчинили; визначення характеру та розміру завданої кримінальним правопорушенням шкоди; виявлення та процесуальне закріплення слідів злочину; встановлення зв'язків ухилення від сплати податків з іншими правопорушеннями; виявлення причин та умов, які сприяли вчиненню протиправних діянь (з правовим реагуванням на їх усунення). Одержані результати дослідження сприятимуть оптимізації початкового етапу розслідування злочинів зазначеної категорії, усуненню загроз економічній безпеці держави, пов'язаних зі сферою оподаткування

**Ключові слова:**

податковий злочин; економічна безпека; кримінальне провадження; тіньова економіка; слідча (розшукова) дія

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# Observance of the Constitutional Rights and Freedoms of Man and Citizen During Surveillance

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**Abstract**
The relevance of the study, given the law enforcement practice of the courts of Ukraine and the case law of the European Court of Human Rights, based on the coverage of standard decisions, lies in identifying some errors in the pre-trial investigation. Further, the study disclosed the issues related to the observance of human and civil rights and freedoms during the surveillance. The purpose of the study is to identify the main reasons for recognising the evidence obtained during covert investigative action as inadmissible in the course of the trial. The methodological basis of the study is a comparative legal method based on the evaluation approach, a formal legal (dogmatic method, analysis and synthesis. The study highlights individual papers in the context of the issue under consideration, which allowed disclosing the content of each of the areas and tracing their relationship. Based on the review of judicial practice and decisions of the European Court of Human Rights, the main reasons for declaring evidence inadmissible are presented and substantiated. In addition, individual court decisions on non-compliance with constitutional human rights and freedoms during such a covert investigative (search action as surveillance are summarised and characterised. It was proved and argued that authorised bodies that have the right to authorise surveillance must comply with the norms of the European Convention on Human Rights. It is determined in which cases the court may recognise evidence obtained during surveillance as admissible. The ultima ratio principle, which guarantees the observance of constitutional human and civil rights and freedoms during pre-trial investigations, is highlighted separately. A personal opinion on each of the analysed decisions is formulated, considering national and international legislation. The practical value lies in the fact that the results of the study allow the prosecution to avoid mistakes during the collection of evidence in criminal proceedings

**Keywords:**
covert investigative (search actions; admissibility of evidence; criminal proceedings; covert surveillance; European Court of Human Rights

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## Introduction

The issue of ensuring the constitutional rights and freedoms of a person and citizen during the surveillance is one of the urgent problems of pre-trial investigation because the evidence that is collected during this covert investigative (search) action (hereinafter – CI(S)A) is often recognised inadmissible by the court. In particular, this is stated in the generalisation of the case law of the Court of Cassation and in the decisions of the European Court of Human Rights (hereinafter – the ECHR). Confirmation of the above is that this procedural action has certain difficulties in implementation. Therewith, it should be noted that during the surveillance, certain actions or inaction of investigative or operational units may lead to violations of constitutional rights and freedoms of man and citizen, enshrined in the Constitution of Ukraine[1]. This is now crucial both at the Ukrainian and international levels regarding the observance of the above-mentioned right for persons who are under covert surveillance.

The issue of surveillance is not widely studied, however, there are researchers who considered the case law of the ECHR decisions on the observance of human and civil rights and freedoms by Ukrainian legislation in accordance with the European Convention on Human Rights (hereinafter – Convention)[2]. Among them, there are V.A. Zavhorodnii [1], A.R. Tumaniants and I.O. Krytska [2], A.V. Shylo [3].

V.A. Zavhorodnii considered "the influence of the ECHR practice on legal activity in Ukraine: theoretical, methodological, and applied aspects. In particular, he noted that the decision of the ECHR should be considered as an interpretive precedent, or rather a case-law precedent, namely as a law enforcement regulation, which specifies the rules of the Convention through rules of understanding the content[3] and which is precedent-setting for the Court States Parties to the Convention" [1, p. 12].

In comparison with V.A. Zavhorodnii, such researchers as A.R. Tumaniants and I.O. Krytska considered "issues of guarantee systems related to the conduct of CI(S)A, in the context of the Ukrainian judicial practice of the ECHR…The proposed systematisation can be used in further analysis of normative requirements that regulate CI(S)A" [2, p. 210, p. 214].

"The issue of ensuring the admissibility of evidence in the presence of special legal status of a subject whose actions are recorded through CI(S)A was covered by researcher A.V. Shylo. He formulated that in some cases in criminal proceedings the specificity of the legal status of the person in respect of whom the evidence is being collected is important" [3, p. 275].

Based on the review of the above-mentioned findings, this study combines three areas into a single whole, namely: case law of ECHR decisions and consideration of individual decisions of Ukrainian jurisprudence; system of guarantees of observance of the constitutional rights and freedoms of the person and the citizen during surveillance; issues of ensuring the admissibility of evidence during the pre-trial investigation. The content of each of the areas is disclosed and their relationship is traced.

*The purpose of this study* is to identify possible reasons for declaring such evidence inadmissible.

## Materials and Methods

The study is based on examining materials of case law and decisions of the ECHR on the observance of constitutional rights and freedoms of man and citizen during surveillance to identify the main reasons for declaring such evidence inadmissible. The methodological basis of the study is the comparative legal method, which allowed comparing court decisions based on an evaluation approach, applied to determine the content of some concepts traced in ECHR decisions and absent in Ukrainian case law. A formal legal (dogmatic) method established the relationship between the decisions of the ECHR and the decisions of the Court of Cassation, provided an individual evaluation of each of the decisions, and identified the main reasons for declaring evidence obtained through surveillance inadmissible.

Notably, the analysis and synthesis of selected materials were conducted, including the regulatory framework of Ukraine: the Constitution of Ukraine[4], Criminal Procedure Code of Ukraine[5], Criminal Code of Ukraine[6], court decisions of Ukraine (rulings and resolutions). The above methods, in particular, analysis, allowed identifying issues related to the observance of human and civil rights and freedoms, based on the available information in court decisions of Ukraine and decisions of the ECHR. In turn, synthesis combined the materials under study and identified typical errors during the pre-trial investigation regarding covert surveillance.

## Results and Discussion

The Constitution of Ukraine "declares that a person, their life and health, honour and dignity, inviolability and security are recognised as the highest social value, while the approval and ensuring of their rights and freedoms are the main duties of the state" (Art. 3)[7]. In addition, "the Constitution of Ukraine contains a large number of regulatory provisions that are important for governing

[1]Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254к/96-вр#Text.
[2]European Convention for the Protection of Human Rights. (1997, September). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004 -Text.
[3]*Ibidem*, 1997.
[4]Constitution of Ukraine, op. cit.
[5]Criminal Procedural Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17.
[6]Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14 - Text.
[7]Constitution of Ukraine, op. cit.

criminal procedural activities. In general, the norms of the Constitution are the conceptual basis of criminal procedural legislation, they determine the strategy for its development and application" [4, p. 119].

The results of the analysis of the materials of individual court decisions of the ECHR and Ukrainian courts indicate that in all cases, without exception, both surveillance and other types of CI(S)A should be conducted legally, in compliance with the constitutional human rights and freedoms defined by the Constitution of Ukraine[1] and the Convention[2]. Moreover, according to the law of Ukraine "On the implementation of decisions and application of the practice of the European Court of Human Rights"[3], courts should apply the Convention and the practice of the court as a source of law when considering cases[4]. Therefore, all situations in which it is impossible to fully exercise the constitutional rights and freedoms of a person during surveillance are recognised as a violation of these rights [5, p. 255–256].

It can be noted that in case of violation of constitutional rights during the surveillance, the court may call into question the evidence obtained as a result of the above-mentioned procedural action and declare it inadmissible. One of the reasons for this is: "... when the procedural documents for their conduct were not disclosed under the Art. 290 of the Criminal Procedure Code (hereinafter – CPC) of Ukraine or were disclosed untimely" [6, p. 2]. On the other hand, "decisions and rulings not opened at the stage of pre-trial investigation, which became the basis for surveillance, may be declared admissible by the court... if the defence party, having read the materials of the pre-trial investigation, finds that they have a protocol on the results of surveillance, but no procedural documents that led to these actions, did not apply to the investigator, prosecutor, or court to open and involve specified documents to the materials of the proceedings" [6, p. 20].

The practice of the ECHR indicates the existence of separate cases of non-disclosure of certain evidence in criminal proceedings to ensure the protection of public interests[5]. This is stated, in particular, in the decisions of the ECHR in the cases: "Jakuba v. Ukraine" of 02/12/2019[6], "Doorson v. The Netherlands" of 03/26/1996[7], "Leas v. Estonia" of 03/06/ 2012"[8]. Therewith, this may contradict the actions of authorised bodies regarding legitimate interference in the private life of individuals and lead to restrictions on constitutional rights and freedoms of man and citizen [7, p. 704]. Thus, upon examining the criminal proceeding No. 42016051110000054, included in the Unified Register of Pre-trial Investigations (hereinafter – URPI) since 03/20/2016 on charges of committing a criminal offence under p. 3 of Art. 368 of the Criminal Code[9] (hereinafter – the CC) of Ukraine, it can be noted the court found the following: "the protocol on the visual surveillance of persons was obtained as a result of a violation of human rights and freedoms guaranteed by the Constitution[10]. Therefore, guided by Art. 87,89,372,395 of the CPC of Ukraine[11], the court ruled to declare evidence inadmissible, in particular, the protocol on the results of the CI(S)A in criminal proceedings dated 07/06/2016 based on the prosecutor's decisions No. 05-278t, No. 05-279t dated 03/21/2016 on visual surveillance"[12].

It is advisable to agree with the court's decision, which is fully justified, because the prosecutor in court did not prove that visual surveillance took place exclusively under such conditions, namely: in the interests of national and public safety, to prevent the commission of a serious or particularly serious crime, to save life and protect health, and to protect the rights and freedoms of others.

The opposite example is the cassation appeal in case No. 751/7557/15-k (proceedings No. 13-37ks18[13]), in which the defence party requested to cancel the court decisions on the convict under Part 3 of Art. 307 of the CC of Ukraine[14] and appoint a new trial. The grounds for annulment of court decisions included: decisions of the investigating judge on permission to conduct CI(S)A, the materials of which are the basis of the sentence and material evidence were not disclosed to the defence under the Art. 290 of the CPC of Ukraine[15]. "The panel of judges of the Second Judicial Chamber of the Cassation Criminal Court, composed of the Supreme Court,

[1]Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254к/96-вр#Text.
[2]European Convention for the Protection of Human Rights. (1997, September). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004 -Text.
[3]Law of Ukraine No. 3477-IV "On the Implementation of Decisions and Application of the Case Law of the European Court of Human Rights". (2006, February). Retrieved from https://zakon.rada.gov.ua/laws/show/3477-15-Text.
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[12]Decision in the case No. 225/5822/16-k Dzerzhinsky City Court of Donetsk region. (2019, May). Retrieved from https://zakononline.com.ua/court-decisions/show/81620702.
[13]Resolution in the case No. 640/6847/15-k. (2019, October). Retrieved from https://zakononline.com.ua/court-decisions/show/85174578.
[14]Criminal Code of Ukraine, op. cit.
[15]Criminal Procedural Code, op. cit.

drew attention to the fact that it was also important to understand the legal nature of the investigating judge's decision to authorise CI(S)A, which was not a separate piece of evidence along with the protocols concerning the results of CI(S)A. In the case under consideration, all materials that were at the disposal of the prosecutor at that time, including declassified protocols on the results of surveillance, were opened to the defence pursuant to Art. 290 of the CPC of Ukraine[1]. For the first time, the defence expressed its arguments on the inadmissibility of protocols of investigative actions as evidence, in addition to the appeal against the verdict, noting the non-disclosure to the defence, pursuant to Art. 290 of the CPC of Ukraine[2], during the pre-trial investigation of the relevant decisions of the investigating judge, who granted permission to conduct CI(S)A. During the evaluation of the fairness of the trial, the Grand Chamber of the Supreme Court considered that the appellate court stated in its decision that the CI(S)A materials themselves indicated the preparation of the accused for the crime, but the crime itself was proved by other evidence"[3].

In this situation, it is advisable to pay attention to the fact that the defence party was not deprived of the right to submit petitions for conducting procedural actions, including those aimed at collecting and verifying evidence. In addition, it should be remembered that the decision of the investigating judge to conduct surveillance of a person does not contain materials of the guilt of the accused person, it is solely permissive. In fact, the defence was familiarised with the protocols for conducting visual surveillance, which at that time were declassified and at the disposal of the prosecutor[4]. Thus, the constitutional rights and freedoms of man and citizen were observed in the judicial process. Therefore, this judicial practice is consistent with the position of study, because the right to a fair trial was ensured.

In the following example of the recognition of evidence as inadmissible, it is worth noting the decision of the Cassation Criminal Court of 04/04/2019 in case No. 727/4888/16-k [8], which states that: "…The permission to conduct visual surveillance of one of the convicts was granted by the decision of the investigating judge of the Appellate court in the framework of other criminal proceedings. Furthermore, the data on combining the materials of criminal proceedings and the decision of the investigating judge, ruled under Art. 257 of the CPC of Ukraine[5], were absent, which remained without the attention of the appellate court" [8, p. 16].

In the context of the above, there are some problems in the application of the CPC of Ukraine[6]. In cases which refer to proving. As already noted, in practice, protocols for conducting surveillance can be disputed by the defence. Thus, in this example, there was no court ruling on combining the materials of criminal proceedings into one proceeding, which is a violation, in particular, non-compliance with the constitutional rights and freedoms of man and citizen. Moreover, the court had to consider this and declare the evidence inadmissible during the trial, because when conducting visual surveillance, it is necessary to remember that the right to privacy may be violated.

In the international case law of the ECHR, It is advisable to examine the following decision in the case "Hambardzumyan V. Armenia "of 12/05/2019[7]. Referring to Art. 22 of the Constitution of the Republic of Armenia (Art. 22)[8] and Art. 105 of the CPC of the Republic of Armenia (Art. 105)[9], the plaintiff stated that the evidence that was obtained during the pre-trial investigation was unjust since illegal covert surveillance measures were applied. However, the decision of this case states that the impugned materials were not the only information on which the conviction was based, and therefore the evidence obtained as a result of secret surveillance fully meets the requirements of Art. 6 p. 1 of the Convention (Art. 6)[10] and the national legislation of the Republic of Armenia[11].

"As to whether the interference in this case was "necessary in a democratic society" to achieve a legitimate aim, the ECHR reiterates that the power to secretly monitor citizens is allowed under Art. 8 of the Convention (Art. 8)[12] only to the extent that they are really necessary for the protection of democratic institutions." Notably, an important condition for conducting visual surveillance is, primarily, the evaluation of the situation and the course of the circumstances of the case. The duration of measures authorised by authorised bodies must be based on legal grounds and within the framework of

[1]Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14-Text.
[2]Criminal Procedural Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17.
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[4]*Ibidem*, 2019.
[5]Criminal Procedural Code of Ukraine, op. cit.
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[10]European Convention for the Protection of Human Rights. (1997, September). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004-Text.
[11]Judgment of the European Court of Human Rights in the "Case of Khambardzumian v. Virmenia", op. cit.
[12]European Convention for the Protection of Human Rights. (1997, September). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004-Text.

national legislation[1]. Compliance with the requirements of the Convention[2], primarily, aims to prevent abuse by bodies that have procedural rights.

Thus, to summarise, the court recognised the evidence obtained during the investigation as permissible and noted that the restrictions during covert surveillance occurred without violations, which complies with the norms of the Convention[3] in terms of ensuring the right to a fair trial and the right to respect for private and family life, constitutional rights and freedoms of man and citizen.

It is advisable to present the following example of the ECHR's decision on the observance of constitutional human and civil rights and freedoms when conducting surveillance in the case "Liblik and others v. Estonia" of 05/28/2019[4]. Having considered the decision of the above-mentioned case, it can be noted that referring to Art. 6 of the Convention[5] and Art. 8 of the Convention[6], the plaintiffs complained that criminal proceedings had been instituted against them for too long and about the retrospective motivation of the permits for covert surveillance of them, which led to non-compliance with the right to respect for private life. The Supreme Court of the Republic of Estonia (the SC) clarified the interpretation of the ultima ratio principle[7], which is literally translated from Latin as the last argument. Pursuant to Art. 111 of the CPC of the Republic of Estonia[8], the above principle is used to ensure the proportionality of the interference with private life"[9]. Failure to comply with this principle when granting permission to conduct covert surveillance may lead to non-compliance with the constitutional rights and freedoms of a man and citizen, as a result of which, evidence may be recognised by the court as inadmissible[10].

Having read the above-mentioned case of the ECHR, it is worth noting that the correct interpretation of the ultima ratio principle is an important approach to understanding the circumstances of criminal proceedings. This concept is not tracked in the decisions of Ukrainian case law, but this does not mean that this principle should not be applied, since its non-compliance does not guarantee the observance of the constitutional rights and freedoms of man and citizen, and therefore the evidence gathered during the pre-trial investigation may be declared inadmissible by the court.

However, the practice of the ECHR has a somewhat negative decision to declare evidence obtained as a result of CI(S)A inadmissible. The above refers to the case "Evdokimov v. Ukraine" dated 04/22/2021[11]. "The plaintiff complained to the ECHR, pursuant to Art. 6 of the Convention[12], about the failure of the defence to disclose the text of the court order authorising covert investigative actions to supervise them, the ECHR concluded that at the time of the adoption of that decision, the national authorities had not invoked the public interest to prevent the defence from disclosing the text of the relevant order. There was also no evidence that the courts that examined the applicant's case had access to the text of the ruling. In addition, the plaintiff was not informed about the reasons for the restriction of their rights, therefore, the court found a violation of p. 1 of Art. 6 of the Convention[13]"[14].

When justifying the opinion on this decision of the ECHR, it is worth noting that this may become a negative precedent for the prosecution in considering further cases both at the national and international levels. Therefore, failure to comply with the requirements, in particular, Art. 6 of the Convention[15] in terms of non-disclosure to the defence of the court ruling on permission to conduct covert surveillance violates the rights of equality of the parties and the adversarial nature of the trial, which in turn leads to the lack of proper guarantees for protecting the interests of the accused. Considering the above, the decision itself does not contain any evidence of the person's guilt, however, this legal act is permissive, due to which the court determines the admissibility of evidence[16].

Another positive example of the ECHR decision is the case "Ekimdzhiev and others v. Bulgaria" of 01/11/2022[17]. "It should be noted that in accordance

[1]The ECHR Found a Violation of the Hambardzumyan v. Armenia Convention on the Illegal Use of CI(S)A Data. (2020). Retrieved from https://unba.org.ua/publications/print/5131-espl-viznav-porushennya-konvencii-u-spravi-hambardzumyan-proti-virmenii-shodo-nezakonnogo-vikoristannya-danih-nsrd.html.
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[4]Judgment of the European Court of Human Rights in the "Case of Libkin v. Estonia". (2019, May). Retrieved from http://privacy.khpg.org/files/doc/1604922744.pdf.
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[6]*Ibidem*, 1997.
[7]Judgment of the European Court of Human Rights in the "Case of Libkin v. Estonia", op. cit.
[8]Criminal Procedure Code of the Republic of Estonia. (2004, July). Retrieved from https://www.riigiteataja.ee/en/eli/530102013093/consolide.
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[13]*Ibidem*, 1997.
[14]Judgment of the European Court of Human Rights in the "Case of Evdokimov v. Ukraine", op. cit.
[15]European Convention for the Protection of Human Rights, op. cit.
[16]Judgment of the European Court of Human Rights in the "Case of Evdokimov v. Ukraine", op. cit.
[17]Judgment of the European Court of Human Rights in the "Case of Ekimdzhiiev v. Bulgaria". (2022, January). Retrieved from https://www.echr.com.ua/translation/sprava-ekimdzhiyev-ta-inshi-proti-bolgarii.

with the main relevant legislation, namely: the Law of Bulgaria "On special means of surveillance" of 1997[1] and Art. 172–176 of the CPC of Bulgaria[2], covert surveillance is legal in Bulgaria and can be used to ensure national security or in case of suspicion of a "serious intentional offence" committed with abuse. However, in view of Art. 8, 13 of the Convention[3], the plaintiffs argued that the above laws did not provide sufficient safeguards against arbitrary or unlawful covert surveillance of abuse. They also complained of the lack of an effective remedy in respect of those violations. The ECHR found that the relevant legislation governing covert surveillance does not meet the requirements of the Convention[4] regarding the quality of law and cannot ensure surveillance only of what is necessary"[5].

Considering the national legislation that must meet the requirements of the Convention[6]. Violation or non-compliance with the constitutional rights and freedoms of a man and citizen when conducting surveillance and failure to fully comply with the norms of the Convention[7] should not be allowed. As evidenced by the above practice of ECHR decisions.

In addition, the following should be stated: "the decisions of the ECHR are designed not only to resolve cases pending before the court on the merits but also to specify and interpret the norms" [9, p. 23].

In general, based on the above, it can be noted that "most fundamental rights are formulated in general terms that are consistent with basic ethical and social values and do not consider specific situations and circumstances. The advantage of these broad formulations is that these rights provide space for interpretation and can be easily applied to different situations and in different contexts. This aspect undoubtedly helped most fundamental rights to stand the test of time and remain fundamental" [10, p. 4].

## Conclusions

Based on the review of case law and decisions of the ECHR, the main reasons for recognising evidence as inadmissible in the context of the observance of constitutional human rights and freedoms during surveillance are:

– violation of the rights and freedoms of a citizen, since there was no decision of the investigating judge and the prosecutor in the court session did not prove the circumstances confirming the impossibility of fulfilling the requirements of the Criminal Procedure Code of Ukraine;

– permissive procedural documents for conducting the surveillance were not disclosed under the Art. 290 of the CPC of Ukraine or were disclosed untimely;

– permission to conduct surveillance was granted in the framework of other criminal proceedings. Therewith, there is no combination of materials of criminal proceedings and the decision of the investigating judge;

– ECHR emphasises the exclusivity of the use of covert surveillance, additionally focusing on the duty of investigative bodies, prosecutor's offices, and judges not only to indicate the impossibility of establishing certain information in another way but also to confirm this with proper justification;

– non-compliance of national legislation on surveillance with the requirements of the Convention, in particular, the lack of guarantees to prevent illegal covert surveillance.

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# Дотримання конституційних прав і свобод людини та громадянина під час спостереження за особою

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**Анотація**

Результати аналізу правозастосовної практики судів України та прецедентної практики Європейського суду з прав людини засвідчують актуальність наукового дослідження щодо окремих помилок у процесі досудового розслідування на підставі висвітлення типових рішень. Розкрито проблемні питання стосовно дотримання прав і свобод людини та громадянина під час проведення спостереження за особою. Метою статті є виявлення основних причин визнання доказів, отриманих у межах цієї негласної слідчої (розшукової) дії, недопустимими в процесі судового розгляду. Методологічну основу дослідження становлять формально-юридичний (догматичний), порівняльно-правовий методи, застосовані на основі оцінного підходу, а також методи аналізу й синтезу. На підставі аналізу наукових праць з досліджуваної тематики, судової практики та рішень Європейського суду з прав людини наведено й обґрунтовано основні причини визнання доказів недопустимими. Узагальнено та схарактеризовано окремі судові рішення щодо недотримання конституційних прав і свобод людини під час проведення такої негласної слідчої (розшукової) дії, як спостереження за особою. Доведено, що уповноважені органи, наділені правом санкціонування проведення спостереження за особою, мають дотримуватися норм Європейської Конвенції про захист прав людини. Встановлено умови, за яких суд може визнати допустимими докази, отримані під час проведення візуального спостереження за особою. Виокремлено принцип «ultima ratio», який гарантує забезпечення дотримання конституційних прав і свобод людини та громадянина під час досудового розслідування. Висловлено авторську позицію щодо кожного з проаналізованих рішень з огляду на національне й міжнародне законодавство. Практична значущість дослідження полягає в тому, що отримані результати нададуть можливість стороні обвинувачення уникати помилок у процесі збирання доказів у кримінальному провадженні

**Ключові слова:**

негласні слідчі (розшукові) дії; допустимість доказів; кримінальне провадження; таємне спостереження; Європейський суд з прав людини

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# Legal Regulation of Defence Lawyer's Involvement in Criminal Proceedings Against Minors: Genesis of the Issue, Stages of Development

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**Abstract**

The relevance of the study is conditioned by the need to establish the genesis of legal regulation of the defence lawyer's involvement in criminal proceedings against minors, to identify correlations of this process with the regulation of legal activity in Ukraine. The purpose of the study is to investigate the history of legal regulation of the involvement of a defence lawyer in criminal proceedings against minors. The study used a set of scientific methods: historical, historiographic, terminological, system-structural, formal-logical, and comparative-legal. It was established that the origin of the institute of protection of the parties in legal proceedings begins in the times of Kyivan Rus with the established practice of speeches in court by "good people" who represented the plaintiff and the defendant. It was proved that the development of the institute of protection of minors in court took place in parallel and in close connection with the development of judicial representation and sureties. Based on the analysis of international acts in the field of criminal justice against children ratified by Ukraine, the need to introduce juvenile specialisation of defenders was indicated. Stages of development of legal regulation of the defender's involvement in criminal proceedings against minors: stage 1 – 1016–1529; stage 2 – 1529–1864; stage 3 – 1864–1917; stage 4 – 1917–1991; stage 5 – from 1991 to the present. The emergence of protection of the rights of minors in court was accompanied by the establishment of a regulatory condition for the involvement of a defender in the process on a gratuitous basis for certain categories of children. At the present stage, the law enforcement process embodies the principles and guarantees of involvement of a defender in criminal proceedings against minors, which are provided for by international treaties in the field of protection of children's rights ratified by Ukraine. The proposed predictive trends in the development of legal regulation of the involvement of a defender in criminal proceedings allow law enforcement agencies to plan their practical activities in the interaction with human rights organisations, take coordination measures between juvenile prevention bodies of the national police, investigators and prosecutors specialising in the investigation of juvenile delinquency, juvenile judges and lawyers for effective compliance with international standards for the protection of the rights of children in conflict with the law

**Keywords:**
minor; lawyer; defence lawyer; regulations; investigation of criminal offences of minors

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## Introduction

The investigation of historical trends in the development of the Institute for the protection of minors in court proceedings and the identification of patterns of legislative regulation of this process are important not only for establishing the historical heritage of Ukrainian law but also for predicting the further development of juvenile justice, the involvement of lawyers in it.

Researchers have recently covered a number of issues related to improving the protection of minors in criminal proceedings.

The role of defence lawyers in reviewing court decisions on the application of a preventive measure in the form of detention in the special institutions for young people is covered by the Turkish researcher N. Kavur [1]. M. Clemente and D. Padilla-Racero considered the protection of children and the moral and ethical sphere of responsibility of minors before the law [2]. They raised the issue of the dangers of using certain judicial opportunities that affect the vulnerability of minors. R. C. Fauth and J.G. Winestone [3] covered the lagal improvement of the juvenile justice system in the United States by introducing home visits by specialists to the families of juveniles who found themselves in conflict with the law. T.J. Holt, J. Cale, B. Leclerc, J. Drew disclosed the issues of legal provision of professional protection for children victims of crimes related to exploitation on the Internet [4]. J. Einbond, A. Diaz, A. Cossette, R. Scriven, S. Blaustein, M. R. Arden [5] considered the involvement of victim's defender in child trafficking cases for sexual exploitation Legal regulation of relations in the justice system of American school police officers with other participants in the process was investigated by N. Ghavami, B.E. Thornton, S. Graham [6]. Certain regulatory problems of attracting specialists by defenders to conduct forensic medical examinations to determine the age of minors, its compliance with the child's development were disclosed by E. Sironi, S. Gittelson, S. Bozza, F. Taroni [7].

Therewith, the historical issues of the emergence of protection of minors in court proceedings, the genesis of its rulemaking, the analysis of the features of the defender's involvement in criminal proceedings against minors under martial law, which has existed in Ukraine since February 24, 2022, and forecasting the development of legal regulation of the defender's involvement in criminal proceedings against minors remain understudied.

*The purpose of the study* is to establish the genesis of legal regulation of the protection of the rights of a minor by a lawyer in criminal proceedings. To achieve this purpose, it is necessary to solve the following tasks: to identify the stages of development of legal regulation of the institute of protection in criminal proceedings against minors; to establish the origin of protection of the rights of minors in court proceedings, representation of their interests; to identify current trends in regulatory support for the involvement of a defender in criminal proceedings against minors.

## Literature Review

The investigation of the issues of defence lawyers' involvement in criminal proceedings against minors begins with the genesis of the development of the legislative framework for the relevant issues. At various stages of the development of the legal profession, provisions on the involvement of defence lawyers in court proceedings, their powers, and issues of the legal protection of vulnerable groups, especially minors, arose, changed, and improved.

At the monographic level of the dissertation research, a number of issues regarding criminal proceedings concerning minors and the development of the corresponding normative-legal maintenance were disclosed: the process of proving in criminal proceedings concerning minors – O.O. Levendarenko [8], M.O. Karpenko [9], N.M. Obrizan [10], H.V. Didkivska [11], O.Yu. Lan [12]; the features of the proceedings in the investigation of socially dangerous acts committed by minors who have not reached the age of criminal responsibility, – S.M. Zelenskyi [13]; application of measures of procedural coercion to minors – S.V. Pastushenko [14] and other.

Certain aspects of the legal regulation of protection in criminal proceedings, including in criminal proceedings against minors, were considered in the dissertation research by O.M. Skriabin, who conducted a comprehensive regulatory study of the defender's activity in criminal proceedings [15], T.V. Varfolomeieva, who systematically analysed the organisational, procedural, and criminalistic problems of protecting the rights of participants in criminal proceedings by a lawyer, including minors [16]; A.B. Romaniuk, who examined the actual problems of protecting minors in criminal proceedings [17], A.M. Tytov – the principles and features of the defender's involvement in the pre-trial investigation, the legislation of Ukraine regulating the involvement of a defender in criminal proceedings from the standpoint of international standards [18], O.Yu. Khakhutsiak, who investigated the problems of legal regulation of the protection of the rights of minor accused in criminal proceedings and formulated a number of proposals for improving the current legislation and law enforcement practice [19], A.M. Biriukova, who developed recommendations for ensuring the legal right of the accused to defence in criminal proceedings and defined the requirements for legal regulation of lawyers' activities [20], T.V. Korcheva – analysed the activities of a defender in pre-trial proceedings and in the court of first instance, the features of legal regulation of the lawyer's activities-representative in criminal proceedings, and formulated practical proposals for improving the current criminal procedure legislation of Ukraine [21], R.A. Chaika, who described the involvement of the

defender in the pre-trial investigation, investigated the procedural features of the implementation of the defence in criminal cases against minors [22], Ye.I. Vybornova, who investigated the implementation of the right to defence at the stage of pre-trial investigation, identified the reasons for the unsuccessful legal regulation of the grounds and conditions for the involvement of the defender in the criminal process at the stage of pre-trial investigation [23], N.V. Borzykh – covered the activities of the defender to ensure the rights and freedoms of the suspect and accused in the criminal process, gave suggestions for improving the procedural status of the defender [24], P.V. Kuchevskyi who investigated the general provisions of the lawyer's activity in criminal proceedings, determined the specific features of lawyers' defence, representation, and provision of legal assistance to participants in the process [25], A.A. Akhundova, who examined the issues of protecting the rights of a suspect in criminal proceedings, analysed the new rules of legal relations between the defender, suspect, and pre-trial investigation bodies [26], I.V. Dubivka, who analysed the activities of a lawyer at the stage of pre-trial investigation, including the legal regulation of the defender's involvement in criminal proceedings under the legislation of foreign countries [27], O.V. Dudko, who identified and proposed a set of measures to prevent and eliminate lawyer mistakes in criminal proceedings [28], etc.

## Materials and Methods

In the study, a number of general scientific and special methods were used. Using the historical method, it was possible to analyse the emergence of legal regulation of the bar on the territory of Ukraine in chronological order and legal practice for the protection of the rights of minors in court. The historiographic method provided an opportunity to comprehensively highlight the state of the development of the issue under study, the findings of researchers on the legislative regulation of the protection of the rights of minors in criminal proceedings at different times, and objectively characterise the connection between the development of the bar in Ukraine and the trends in the activities of defenders in criminal proceedings against minors. The terminological method allowed investigating the development of the concept of "lawyer" in regulations of various historical periods. A systematic and structural method was used to provide a comprehensive scientific approach to the consideration of legal regulation of the defence lawyer's involvement in criminal proceedings against minors. The formal and logical method helped to analyse historical trends in the legal regulation of a lawyer's involvement in criminal proceedings against minors, identify modern features of this process, and predict trends in the development of Ukrainian legislation in the field of criminal justice in relation to children. To analyse the legal regulation of legal practice and the protection of the rights of minors in court on the territories of Ukraine, which at different times were part of different states, a comparative legal method was used.

To achieve the purpose of the study, a number of regulatory documents from different historical periods of the development of Ukrainian statehood were analysed: *pre-Soviet period*– Pravda Ruska, Statutes of Lithuania, "The rights under which the people of Little Russia are tried" [29], etc.; *the Soviet period* – criminal and criminal procedure codes (Criminal Code of 08/23/1922[1], Code of Criminal Procedure of 09/13/1922[2], Code of Criminal Procedure of 07/20/1927[3]), documents of the highest authorities on criminal liability of minors and the specific features of the investigation of their crimes, considering the involvement of defenders (Decree of the CPC of the Ukrainian SSR "On Commissions for Minors" of January 14, 1918; Decree of the CPC of the Ukrainian SSR of March 4, 1920 "On Cases of Minors Accused of Socially Dangerous Acts"; Decree of the CPC of the Ukrainian SSR of June 12, 1920 "On Liability of Minors", Resolution of the CEC and the CPC of the USSR of April 7, 1935 "On Measures to Combat Juvenile Delinquency") [30; 31] *period of development of independent Ukraine* – Constitution of Ukraine[4], Criminal Code of Ukraine[5], Criminal Procedure Code of Ukraine[6], laws "On Bodies and Services for Children and Special Institutions for Children"[7], "On the Bar and Legal Practice"[8], "On Free Legal Aid"[9], "On Preventing and Countering Domestic Violence"[10], including international treaties ratified by the state: Declaration of the Rights of the Child[11], Convention on the Rights of the Child[12], UN Standard Minimum Rules on Juvenile Justice ("Beijing Rules")[13], etc.

[1]Criminal Code of the Ukrainian Socialist Soviet Republic. (1922, August). Retrieved from https://textbooks.net.ua/content/view/1060/17/.
[2]Criminal Procedure Code of the Ukrainian Socialist Soviet Republic. (1922, September). Retrieved from https://leksika.com.ua/10130506/legal/kriminalno-protsesualniy_kodeks_usrr_1922.
[3]Criminal Procedure Code of the USSR. (1927, July). Kyiv: Legal p.h. of the PCJ of the USSR, 1940. 174 p.
[4]Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text.
[5]Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2947-14#Text.
[6]Criminal Procedure Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[7] Law of Ukraine No. 20/95-BP "On Bodies and Services for Children and Special Institutions for Children". (1995, Jaunuary). Retrieved from https://zakon.rada.gov.ua/laws/show/20/95-%D0%B2%D1%80#Text.
[8] Law of Ukraine No. 5076-VI "On the Bar and Legal Practice". (2012, July). Retrieved from https://zakon.rada.gov.ua/laws/show/5076-17#Text.
[9] Law of Ukraine No. 3460-VI "On Free Legal Aid". (2011, June). Retrieved from https://zakon.rada.gov.ua/laws/show/3460-17#Text.
[10] Law of Ukraine No. 2229-VIII "On Prevention and Counteraction to Domestic Violence". (2017, December). Retrieved from https://zakon.rada.gov.ua/laws/show/2229-19#Text.
[11]Declaration of the Rights of the Child. (1959, November). Retrieved from http://zakon2.rada.gov.ua/laws/show/995_384.
[12]Convention on the Rights of the Child. (1989, November). Retrieved from http://zakon1.rada.gov.ua/laws/show/995_021.
[13]United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"). (n.d.). Retrieved from https://resourcecentre.savethechildren.net/document/united-nations-standard-minimum-rules-administration-juvenile-justice-beijing-rules/.

## Results and Discussion

The analysis of regulatory documents (Ruska Pravda, Statutes of Lithuania, "The rights under which the people of Little Russia are tried", the Statute of criminal proceedings [29], criminal and criminal procedure codes of the Ukrainian SSR[1-3], Criminal Procedure Code of Ukraine[4] monuments of the law of different historical periods allowed identifying separate stages in the development of legislative regulation of the institute for the protection of minors in the judicial process, the connection with the development of the legal profession in Ukraine in general.

Therewith, when investigating the stages of development of legal activity to protect the rights of minors in court proceedings, the periodisation of the development of criminal liability of minors and the investigation of their crimes was considered.

In particular, in the development of the sphere of juvenile justice, N.M. Krestovska identified the following periods: 1) the child in the legal field of traditional society – old Russian, High Middle Ages in Ukraine, Ukrainian post-medieval society (from ancient times to the middle of the 19th century); 2) the emergence of "children's" law and juvenile justice (from the second half of the 19th century to 1917); 3) the development of the Soviet system of juvenile legislation and juvenile justice (1917–1990) [32, p. 78–79]. A.O. Silkova cites her own periodisation: 1) from ancient times to 1864 – the origin of the features of criminal liability and punishment of minors; 2) the period 1864–1921 is characterised by the development of the first special norms on criminal liability of minors, their release from punishment and its serving; 3) 1922–1991 – codification of criminal law, considering changes in criminal liability of minors; 4) 1991 – the present – the development and establishment of the modern institute of criminal liability of minors [33, p. 28–29].

On the territory of Ukraine in the period of Kyivan Rus, the trial was adversarial. It was considered a dispute between the parties (plaintiff and defendant, victim and accused), which had to be decided by a judge (usually a prince). The criminal trial was no different from the civil one. A number of scientific sources note that during the time of Kyivan Rus, relatives and friends of the defendants acted in court as "lawyers" for the defence of the party and could vouch for it [34]. The same position was extended to the judicial proceedings of earlier states.

Among the ancient Romans, lawyers were initially relatives and friends of the accused, who tried to persuade the judges to decide the case in favour of the accused by their requests, sometimes by crying and pleading. Later in the Roman Republic, the defenders or *patrons* were real lawyers. In the ancient German criminal process, there was a custom according to which the accused came to court with their friends and relatives as defenders [35, p. 72].

In the days of the origin of written systematised legislation and the rule of customary law, the function of the defender was reduced to *social assistance, not professional activity* [34].

In the time of Kyivan Rus, the issue of the administration of justice was regulated in the articles of Pravda Ruska – the oldest monument of Ukrainian law. In addition to the Pravda Ruska, a number of acts of the princes of certain lands were adopted, which developed the provisions on the judicial review of cases. The most famous acts: "Charter of St. Prince Vladimir, who baptised the Russian land, on the church courts", "Pskov Judicial Charter ", "Novgorod Judicial Charter ", "Sudebnik", and others.

Having studied the above-mentioned regulatory documents of the 10th–16th centuries and highlighted in them the provisions concerning the judicial resolution of legal conflicts, the gradual emergence and development of the institute of the bar in court proceedings, judicial representation and sureties as related institutes, the allocation of involvement of defenders in cases of minors were established.

In particular, in the norms of Pravda Ruska (expanded edition), considerable attention was paid to *children's rights*. A number of provisions were devoted to the protection of their civil rights and family relations. This applied to inheriting the house after the death of the father, including between children from the first and subsequent marriages. The issue of the complicity of children in an offence and bringing them to justice was addressed: "If a serf robs someone, the master should redeem him or hand him over with the one with whom he stole, but his wife and children are not responsible; but if they stole and hid with him, the master hands over them all…" [29; 35].

It is known that a considerable amount of evidence in the proceedings of that time were testimonies [36, p. 33]. The testimony of listeners and witnesses – persons who are connected with one of the parties to the process, eyewitnesses of the event that took place, and who could confirm or refute certain facts in their own words. Such witnesses were called *good people*.

Many historical documents about the court explicitly obliged "without good people, the court does not judge." For example, the Sudebnik of 1497 identified two categories of reliable witnesses: boyar children who swore an oath of the cross and ordinary Christians. In the Sudebnik of 1550, witnesses from among the "good people" were mentioned as personally free and who had not previously been brought to any responsibility by the court [35].

Then, the regulations specifically defined the circle of persons who could not be witnesses, since they

[1]Criminal Code of the Ukrainian Socialist Soviet Republic. (1922, August). Retrieved from https://textbooks.net.ua/content/view/1060/17/.
[2]Criminal Procedure Code of the Ukrainian Socialist Soviet Republic. (1922, September). Retrieved from https://leksika.com.ua/10130506/legal/kriminalno-protsesualniy_kodeks_usrr_1922.
[3]Criminal Procedure Code of the USSR. (1927, July). Kyiv: Legal p.h. of the PCJ of the USSR, 1940. 174 p.
[4]Criminal Procedure Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.

were not "good and impeccable", namely: oath-breakers, cursed and excluded from the "Christian Assembly", persons who did not take "holy communion and oath", "secretly damaged the border landmarks", "expelled from the State", murderers, perverts, robbers, thieves, and other categories of criminals [37]. At that time, judicial representation in criminal cases was prohibited, but it was allowed in civil cases – in case of illness of one of the parties to the process. The institute of representation of the parties, including minors, in court was developed and enshrined in other historical documents. Art. 13 of Pravda Ruska (cut version), which described such a procedural action as a vault, was about the possibility of surety. The guarantor bore material and moral responsibility, along with the person for whom he vouched – the plaintiff or the defendant.

Good people who represented the side of the trial and testified to confirm its correctness were called differently in different principalities and at different times.

In the 15th century, on the lands of Kyivan Rus, the court continued to be adversarial. According to the Novgorod court charter (1471), the parties were asked before the court to hire *"narrators"* who tried to reconcile the plaintiff with the defendant in a pre-trial procedure. If the party did not agree to pre-trial reconciliation, a court was convened, which was attended by the plaintiff, the defendant, and the "narrators" hired by them.

The Pskov court charter (1462) noted that during the trial, representation of the parties was allowed, which was provided by *"accomplices"*. In particular, the interests of women, *children,* elderly people, and various categories of incapacitated persons in court were represented by "accomplices". Yet they could not be officials or persons interested in the case.

In Article 17 of the Sudebnik of 1550, it was noted that the *"mercenary"* in court is a guarantor or hired representative of the plaintiff or defendant. The requirements for the "mercenary" were high. In particular, if one refused to perform their functions, the "mercenary" was deprived of the right to serve. The "mercenary" was not involved in a court battle.

After Hetman Bohdan Khmelnytskyi concluded a military alliance with the Tsar of Moscow in 1654, the influence of Moscow law, including the Sobornoe Ulozhenie (1649), intensified on the territory of Ukraine. In accordance with the Sobornoe Ulozhenie, adversarial proceedings were abolished in civil and criminal cases, judicial proceedings became inquisitorial, and criminal proceedings became investigative [35].

Therewith, the competitive process was preserved in the monument of Ukrainian law – "The rights under which the people of Little Russia are tried." The document traces the inequality of the parties: the ruling elite had an advantage in court, and *settled* residents enjoyed greater rights than those who often moved and did not live in the area for a long time [38, p. 134]. As V.P. Didenko noted, referring to this document, "only persons of the Christian faith, of any rank and title, *good (italics – K. Yu.)*, who are not suspects, are *adults (italics – K. Yu.)* had the right to be witnesses…Persons under the age of 20 or over the age of 70 were not allowed to be witnesses" [38, p. 137].

Over time, good people who lived permanently in a certain area, whose parties (plaintiff and defendant) were invited to the trial to hear their testimony, acquired the status of "good" witnesses. Their testimony was used by the judges as the basis for making a decision on the case. Good people often acted as guarantors for the party (plaintiff or defendant) that invited them to court, so to speak, representing them in the process. They made speeches in defence of a certain person. That is, people who defended someone else's interests, not their own, began to stand out [39].

Such judicial practice served as one of the prerequisites for the emergence of the institute of representation and protection, including of minors, in court, the emergence of a category of persons who represented a party to the process in a legal dispute.

Certain aspects of protecting the rights of the parties in the courts were contained in the Lithuanian statutes applied on the territories of Ukraine, which were part of the Grand Duchy of Lithuania and the Polish-Lithuanian Commonwealth. The documents mentioned a lawyer who spoke in court.

In the first Lithuanian statute (1529), a separate provision provided for restrictions for foreigners to act as *procurators* (lawyers) in court [38, p. 43].

The second Lithuanian statute (1566) somewhat expanded the provision of protection of defendants. It granted a person the right to use the help of the prosecutor's office and regulated certain issues of the procedural activity of this defender. As noted by V.P. Didenko, "in Art. 13 and 31 of section 4 of the Statute mention the *commissioner in court*, who could represent the interests of the parties, i.e., it was the institute of the bar" [38, p. 55].

The third Lithuanian statute (1588) granted the prosecutor's office the right to act in court as a representative of the party and its assistant. It also provided *a special government defender for orphans* who could not defend themselves [40, p. 16–18]. The threatened person could bring the perpetrator to court and demand *sureties* on the part of a third party, and if there was no such person, the perpetrator was subject to imprisonment until the surety for them was present. According to this regulation, a person who reached the age of 16 was brought to criminal responsibility for committing robbery with a fatal outcome or murder [38, p. 44–45, 54].

Thus, in fact, the functions of a lawyer were performed by a "procurator", who could be a full-fledged resident of the city, well versed in written law, i.e., a professional lawyer. To enter the process, the procurator had to submit to the judge a certified document for the right to represent the interests of the party or oral confirmation of the party at the court session.

The Lithuanian statute of 1588 provided for a special government defender for *orphans*, and this defender acted on purpose without pay.

Evidently, the Lithuanian statutes (1529, 1566, and 1588) – ancient collections of European law that were in force on the territory of Ukraine during the rule of Lithuania and Poland, contained progressive norms on the activities of defence lawyers, which provided for the protection of orphans (minors). The beginning of a new stage of legal regulation of the defender's involvement in juvenile proceedings is associated with the operation of the Lithuanian statutes on the territory of Ukraine.

Analysis of the provisions of regulatory documents that were in force on the territory of Ukraine until the end of the 16th century shows that minor persons – children were not considered an independent subject of criminal law relations. Therewith, orphaned children were under the care of the state and in cases of need to protect their rights, defenders were involved in this, without payment for their work by the client.

In "The rights under which the people of Little Russia are tried" (1743), for the first time in Ukrainian law, the term *"lawyer"* in the sense of the defender of the rights of the party is used. [29] "A lawyer, patron, procurator, and attorney is one who in someone else's case defends, answers, and disposes in court" (p. 1 of Art. 7, Chapter 8) [38, p. 135]. And p. 7 regulates the mandatory involvement of a defence lawyer and their responsibility for refusing to defend: the court appointed a *lawyer* to the *orphans* from among those who worked in this court. Such a lawyer worked in the case of a minor free of charge [38, p. 134–135]. Moreover, in "The rights …" organisational issues of defenders' activities are regulated in sufficient detail.

In the "The rights under which the people of Little Russia are tried", the age from which criminal liability began was established: for men from the age of 16, for women – from the age of 13. The death penalty was not applied to minors [38, p. 80–83].

This monument of Ukrainian law preserves the institute of suretyship. Surety was applied by the court in case of threats. The perpetrator was handed over to one or two "reliable" persons living in the judicial district, who guaranteed in writing that the perpetrator would not carry out threats [38, p. 106].

The lawyer's activities in court were also regulated. In particular, the lawyer helped the plaintiff to draw up a written claim; the prosecutor, lawyer, and attorney took part in the court session. Attorneys must be jurors, that is, they took the oath in a certain form. Judges, scribes, and officials sitting in the same court were not allowed to be attorneys. Clergymen and monks could not be attorneys in any court. In addition, the relevant restriction applied to the mentally retarded and *minors*. For widows and *orphaned minors, the court appointed attorneys free of charge* [38, p. 134–135].

In the second half of the 18th century, on the territory of Ukraine, the provision of legal assistance to residents, speeches in court by lawyers, jurors, and attorneys became more frequent. A.I. Pashuk noted that in the court documents, the following names are found: "lawyer", "procurator", "attorney", and "sworn attorney" [41, p. 488–489]. In earlier sources, the rights of lawyers were also called "patron", "narrator", and "mercenary". Free representation of minor orphaned children in court and protection of their rights in civil and criminal proceedings were maintained.

During the judicial reform (1864), which affected the Ukrainian lands as part of the Russian Empire, the right of the accused to defence was proclaimed and consolidated, and the Council of Jurors was established at the district courts and court chambers.

Attorneys were divided into jurors and private attorneys. The law defined the procedures for obtaining the status of a sworn attorney, requirements for applicants, the circle of persons who could not acquire the status of a sworn attorney, the number of members, powers of the Board of Attorneys, set the amount of fees, the grounds for bringing a sworn attorney to criminal responsibility.

A characteristic feature of the procedural status of a defender was the combination of the functions of law enforcement and judicial representation. According to the statute of criminal proceedings, the defence lawyer was allowed to take part in the case only during the judicial stages. One of the responsibilities of the defence counsel was to appoint court representatives on a gratuitous basis, in particular for orphans.

Lawyers (jurors and private attorneys) were united in collegiums attached to the courts, and the collegiums elected a council of jurors. Councils were created in judicial districts. On the territory of Ukraine, there were three councils of sworn attorneys: Kharkiv (since 1874), Kyiv, and Odesa (since 1904).

In 1874, Professor of the Kyiv University of St. Volodymyr O. F. Kistyakivskyi recognised the need to establish an *institute of lawyers for the poor in criminal proceedings.* "The Institute of lawyers for the poor should not be established for the sole purpose of protecting the poor during court proceedings, on the contrary, this institute should be a defence tribunal designed to guarantee the legal freedom of citizens, from the first moment when the danger of criminal proceedings arises against them" [36, p. 45].

In the criminal proceedings of Ukrainian lands, the idea of providing free legal assistance to vulnerable segments of the population continued to smoulder, among which, in particular, the category of orphaned children as minors remained.

Thus, in the second half of the 19th century, in criminal proceedings, the accused could defend themselves or with the help of a professional defender. The defenders were persons who belonged to jurors and private

attorneys. The judicial reform legally established the bar as an independent institute. Despite the rather broad rights of defence lawyers, the law did not provide for the possibility of their involvement in criminal proceedings at the stage of pre-trial investigation. Professional defenders were involved in the criminal process. The functioning of the bar was regulated in detail; lawyers actively acted in court proceedings; the institute of protecting the rights of the parties in court proceedings developed and improved. Regulations governed the involvement of a professional defender in the affairs of orphaned children on a gratuitous basis for their intended purpose.

Therefore, since 1864, a new stage has been beginning in the legal regulation of the involvement of a defender in criminal proceedings against minors. At that time, in the territories of western Ukrainian lands, the development of the institute of protection in criminal proceedings took place under the influence of Austro-Hungarian legislation. In 1873, a new Code of Criminal Procedure was approved [42], which existed with minor changes until the collapse of Austria-Hungary (1918). It, as V.P. Danevskiy notes, "provided for protection during the judicial investigation of *minors* and other persons: parents, guardians, and trustees – they were appointed a defender even against the will of these persons. The circle of persons from whom it was possible to choose defenders was also limited: only lawyers included in the lists of defenders and officials who were listed by the court" [43, p. 40–41].

The revolutionary events of 1917 affected the legal profession. By a decree "On the Court" No. 1 of November 24, 1917, the jury was abolished as a "bourgeois institution" without any replacement. Anyone who had civil rights was allowed to represent in court, that is, the bar became a free profession. In Ukraine, a new stage has begun in the development of the protection of the rights of parties in legal proceedings, including minors, representation of their interests in court – the Soviet period, which ended in 1991 – after the declaration of independence of Ukraine.

The Ukrainian Central Rada, reforming the judicial system, left the jury bar unchanged. Therewith, on January 4, 1918, the People's Secretariat passed a resolution "On the introduction of the people's court", which abolished the jury and private bar, but in February 1918 the Central Council renewed the jury and private bar, which was liquidated again a year later. Thus, during the national liberation struggle of the early 20th century in Ukraine, the Institute of the bar did not develop, it underwent numerous changes and hardships.

On February 14, 1919, the Provisional Regulations on the People's Courts and Revolutionary Tribunals of the USSR established collegiums of *human rights defenders,* their members were elected in counties by executive committees from among citizens who met the conditions set for voters and in cities – by city councils.

At that time, the Council of People's Commissars (hereinafter – CPC) of the USSR adopted a number of regulations relating to the criminal liability of minors. Thus, the decree of the CPC "On the Commission for Minors" of January 14, 1918, established that minors were persons under 17 years of age. The following year, the age of bringing minors to criminal responsibility was changed. According to the resolution of the board of the People's Commissariat of Justice (hereinafter – PCJ) of August 4, 1920, minors were considered to be persons under 14 years of age, and they were not subject to trial or punishment. Only educational measures could be applied to them. The procedure for proceedings in criminal cases of minors was detailed by the decree of the CPC of the Ukrainian SSR "On cases of minors accused of socially dangerous acts" of March 4, 1920 [31].

The decree of the CPC of the Ukrainian SSR "On the Responsibility of Minors" of June 12, 1920, specified that persons under the age of 18 were considered minors, provided for a ban on conducting legal proceedings against minors and applying imprisonment to them. To punish minors who committed socially dangerous acts, commissions were created that had the right to apply medical and pedagogical measures to such persons [33, p. 203].

The Criminal Code of the Ukrainian SSR[1] defined tweens as under the age of fourteen, and minors between the ages of fourteen and sixteen. According to Art. 57 of the Criminal Procedure Code[2] (hereinafter – the CPC) of the Ukrainian SSR of 1922, as defenders, members of the board of defenders, close relatives of the accused, authorised representatives of institutes and enterprises, and other professional and public organisations had the right to take part in the case.

The institute of protection under the CPC of the Ukrainian SSR of 1927 was hardly changed[3]. Art. 51 provided that members of the panel of defenders, close relatives of the accused, legal representatives, representatives of state institutions and enterprises, and professional and public organisations were allowed to take part in the cases as defence lawyers.

The resolution of the Central Executive Committee (hereinafter – the CEC) of the USSR of December 1, 1934 "On the special procedure of proceedings in cases of terrorist acts" cancelled the participation of the defence lawyer in court. Special meetings at the People's Commissariat of Internal Affairs also considered cases without counsel.

At that time, the criminal liability of minors was strengthened. In 1935, criminal liability (including execution) of minors who had reached the age of 12 was established for the commission of crimes against a person. The resolution of the CEC and the CPC of the USSR

[1]Criminal Code of the Ukrainian Socialist Soviet Republic. (1922, Aygust). Retrieved from https://textbooks.net.ua/content/view/1060/17/.
[2]Criminal Procedure Code of the Ukrainian Socialist Soviet Republic. (1922, September). Retrieved from https://leksika.com.ua/10130506/legal/kriminalno-protsesualniy_kodeks_usrr_1922.
[3]Criminal Procedure Code of the USSR. (1927, July). Kyiv: Legal p.h. of the PCJ of the USSR, 1940, 174 p.

"On Measures to Combat Juvenile Delinquency" of April 7, 1935, established that minors, starting from the age of twelve, convicted of theft, causing violence, bodily injuries, murder or attempted murder, are brought to criminal responsibility with the application of all measures of criminal punishment [44, p. 207–208].

According to T.N. Shatarska, in 1941 it was mandatory for praesidiums to appoint bar associations to take part in the consideration of cases in military tribunals. During this period, the list of cases of free legal assistance to military personnel and their families was expanded. Lawyers performed important educational activities, contributed to the solution of housing and pension issues, and were engaged in the employment of orphans [45].

The role of lawyers in protecting the rights of minors in family legal relations increased. In 1943–1944, new regulations in the field of family law appeared. The adoption procedure was facilitated, and in general, the Soviet state began to pay more attention to the protection of minors. Therewith, in criminal cases of juvenile delinquency, there were no changes in protection issues [31].

After the death of J.V. Stalin and the debunking of the "cult of personality of Stalin", in the Ukrainian SSR, a certain liberalisation began. In 1958, the age of criminal liability was raised – from 16 years.

In 1959, the UN General Assembly adopted the Declaration of the Rights of the Child[1]. It states that the child should be provided with social protection by law. The child should be the first among those who receive protection and assistance, and protected from neglect, cruelty, and exploitation. This should have affected the implementation of the protection of minors during the pre-trial investigation and in court.

On November 29, 1985, the Ukrainian SSR signed an international treaty under which it undertook to comply with the UN Standard Minimum Rules for the Administration of Juvenile Justice (the "Beijing Rules")[2]. P. 2.1 of these rules emphasises the need for their impartial application. Compliance with international standards and improvement of current legislation are the main guarantees that the right to protection, especially for minors, is ensured at the proper level in the state.

In 1989, the UN General Assembly adopted the Convention on the Rights of the Child[3], which Ukraine ratified on February 27, 1991. The Convention obliges states to take measures to ensure and protect the rights of children based on four basic principles: the priority of ensuring the interests of the child; ensuring the full life of children; involvement of each child in the life of the community; non-discrimination.

With the declaration of independence of Ukraine, a new stage in the development of the legal profession began. The provisions of human rights and representation activities in many areas, primarily the protection of the rights of minors, were changed. Ukraine continued to implement and ratify a number of new international treaties in the field of protection of children's rights: Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, which entered into force for Ukraine on 3 April 2003[4]; Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, which entered into force for Ukraine on 28 July 2004[5]; Recommendation CM/REC (2008) 11 of the Committee of Ministers of the Council of Europe to member states on European rules concerning juvenile offenders subject to sanctions or measures, adopted on 5 November 2008[6]; etc.

The institute of protection in criminal proceedings is reflected in the Constitution of Ukraine[7] adopted on June 28, 1996. The issue of ensuring protection from prosecution in Ukraine was the subject of consideration by the Constitutional Court of Ukraine and the Supreme Court. The relevant practice of the European Court of Human Rights has been accumulated, which is actively used in court proceedings against children who are in conflict with the law.

On December 19, 1992, the Verkhovna Rada of Ukraine adopted the Law On the Bar[8]. According to it, the bar of Ukraine is a voluntary professional public association designed to promote the protection of rights and freedoms, represent the legitimate interests of Ukrainian citizens, foreigners, stateless persons, and legal entities, and provide them with legal assistance. The law referred to the professional rights of a lawyer as: representation, protection of the rights and legitimate interests of citizens and legal entities on their behalf in all bodies, institutes,

[1]Declaration of the Rights of the Child. (1959, November). Retrieved from http://zakon2.rada.gov.ua/laws/show/995_384.
[2]United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"). (n.d.). Retrieved from https://resourcecentre.savethechildren.net/document/united-nations-standard-minimum-rules-administration-juvenile-justice-beijing-rules/.
[3]Convention on the Rights of the Child. (1989, November). Retrieved from http://zakon1.rada.gov.ua/laws/show/995_021.
[4]Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography. (2003, April). Retrieved from https://zakon.rada.gov.ua/laws/show/995_b09#Text.
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[6]Recommendation CM/Rec (2008) 11 of the Committee of Ministers to the Member States of the Council of Europe on the European Rules for Juvenile Offenders Sentenced to Penalties and Penal Measures. (2008, November). Retrieved from https://drive.google.com/file/d/1axs45Wzf04Wn8yYsFw2_zrJJjONV-iqu/view.
[7]Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text.
[8] Law of Ukraine No. 2887-XII "On the Bar". (1992, December). Retrieved from https://zakon.rada.gov.ua/laws/show/2887-12#Text.

and organisations; collection of information about facts that can be used as evidence in civil, economic, criminal cases, and cases of administrative offences.

In accordance with the Law of Ukraine "On Bodies and Services for Children and Special Institutions for Children"[1] of January 24, 1995, services for minors were established, which were later renamed services for children. Art. 14 of this law is important, which states that the state provides special training and retraining of managers and specialists (teachers, social psychologists, sociologists, lawyers, medical workers, and law enforcement officers). This issue requires further development and the introduction of juvenile specialisation of defenders representing and protecting minors in criminal proceedings [46]. Thus, now there is a need to introduce juvenile specialisation of defenders of minors.

On July 5, 2012, the new Law of Ukraine "On the Bar and Legal Practice" was adopted[2]. In accordance with p. 1 of Art. 23 of this law "professional rights, honour, and dignity of a lawyer are guaranteed and protected by the Constitution of Ukraine, the Law "On the Bar and Legal Practice", and other laws"[3].

The Criminal Code of Ukraine of 2001[4] contains Chapter XV "Features of criminal liability and punishment of minors". The circumstances that mitigate the punishment include the commission of a criminal offence by a minor (Art. 66 of the CC of Ukraine).

Criminal Procedure Code of Ukraine 2012[5] in p. 2 of Art. 52 provides for the mandatory participation of defence lawyer: 1) in respect of persons suspected or accused of committing a criminal offence under the age of 18 – from the moment of the establishment of adolescence or the emergence of any doubt that the person is an adult; 2) persons in respect of whom the application of coercive measures of an educational nature is envisaged – from the moment of the establishment of adolescence or the emergence of any doubt that the person is an adult[6].

The Law of Ukraine "On Prevention and Counteraction to Domestic Violence"[7] of December 7, 2017, provides for the provision of assistance and protection to victims, primarily minors, compensation for damage caused by domestic violence. Art. 20 of the law defines that the assistance and protection to affected persons are provided in certain areas, including: the provision of affected persons with access to justice and other legal protection mechanisms, including through free legal assistance in accordance with the procedure established by the Law of Ukraine "On Free Legal Assistance"[8]. The rights of victims are regulated in Art. 21, namely, the victim has the right to: appeal to law enforcement agencies and the court to bring abusers to justice; timely receipt of information about the final court decisions and procedural decisions of law enforcement agencies related to the consideration of the commitment of domestic violence against them, including those related to the isolation of the offender or their release, etc.

The Law of Ukraine "On Free Legal Aid"[9] dated June 2, 2011, stipulates that free secondary legal aid includes the following types of legal services: protection; representation of the interests of persons entitled to free secondary legal aid in courts, other state bodies, local governments, before other persons; preparation of procedural documents. Certain categories of persons, including children, have the right to free secondary legal aid, including *orphans, children deprived of parental care, children in difficult circumstances, and children who have suffered as a result of military operations or armed conflict* (Art. 14 of the Law).

Currently, the Verkhovna Rada of Ukraine has adopted in the first reading the draft law "On compensation for damage and destruction of certain categories of real estate objects as a result of military operations, terrorist acts, sabotage caused by military aggression of the Russian Federation"[10]. In particular, it is proposed to supplement the current legislation with new provisions on compensation for losses caused by military operations, terrorist acts, and sabotage caused by military aggression of the Russian Federation. In addition, it is stipulated that legal representatives of minors and other persons are exempt from paying the court fee when considering relevant cases in all judicial instances.

Thus, the analysis reflects trends in the legal regulation of the defence lawyer's involvement in criminal proceedings against minors, considering the armed aggression of the Russian Federation against Ukraine.

To summarise the interim conclusions, the legal regulation of public relations provides for a written form of fixing the mechanism of legal regulation. Therefore, the periodisation of the development of regulation of the defence lawyer's involvement in criminal proceedings against minors should begin with written sources. The first such act, as was established, was Pravda Ruska (1016) [29].

[1]Law of Ukraine No. 20/95-BP "On Bodies and Services for Children and Special Institutions for Children". (1995, Jaunuary). Retrieved from https://zakon.rada.gov.ua/laws/show/20/95-%D0%B2%D1%80#Text.
[2]Law of Ukraine No. 5076-VI "On the Bar and Legal Practice". (2012, July). Retrieved from https://zakon.rada.gov.ua/laws/show/5076-17#Text.
[3]*Ibidem*, 2012.
[4]Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2947-14#Text.
[5]Criminal Procedure Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[6]*Ibidem,* 2012.
[7]Law of Ukraine No. 2229-VIII "On Prevention and Counteraction to Domestic Violence". (2017, December). Retrieved from https://zakon.rada.gov.ua/laws/show/2229-19#Text.
[8]Law of Ukraine No. 3460-VI "On Free Legal Aid". (2011, June). Retrieved from https://zakon.rada.gov.ua/laws/show/3460-17#Text.
[9]*Ibidem*, 2011.
[10]Draft Law of Ukraine No. 7198 "On Compensation for Damage and Destruction of Certain Categories of Real Estate Objects as a Result of Military Operations, Terrorist Acts, Sabotage Caused by Military Aggression of the Russian Federation". (2022, March). Retrieved from https://itd.rada.gov.ua/billInfo/Bills/Card/39283.

During 1917–1991, the issue of specialisation of defenders in juvenile affairs was not regulated or considered. In general, the protection of minors was provided by lawyers who represented the interests of adults in court. In the second half of the 20th century, the Soviet criminal process for minors was influenced by international acts and treaties that were ratified by the Ukrainian SSR.

Since 1991, Ukraine has been actively developing legislation both on the legal profession and on the protection of the rights of minors in criminal proceedings, usually considering the implementation of international treaties in the field of criminal justice in relation to children. The development of special legislation for the protection of children, including those in conflict with the law, should be recognised as positive during this period.

The current stage of regulatory support for the involvement of a defender in criminal proceedings against minors and its immediate development is characterised by the implementation of international treaties in the field of protection of children's rights and changes in national legislation, considering the norms of documents ratified by Ukraine. The relevant regulatory support will be improved in connection with the need to respond to the challenges of martial law, primarily to protect the rights of children affected by the military actions of the aggressor country.

## Conclusions

The history of the development and establishment of legal regulation of the protection of minors in criminal proceedings is connected with the emergence of legislation in the field of protection in criminal proceedings in general. The regulation of the defence lawyer's involvement in the juvenile court took place in parallel and in close connection with the legal regulation of judicial representation and sureties.

Based on the analysis, the following stages in the development of the defence lawyer's involvement in criminal proceedings against minors were identified:

Stage I – 1016–1529. At this stage, the protection of minors in court was consistent with customary law and individual written acts. The minor was considered an object of parental care, the child's representative in court was the father and individuals who performed the functions of representation, sureties, and protection.

Stage II – 1529–1864. During this period, on the territory of Ukraine, regulations began to govern the activities of a lawyer in court. For orphaned children, protection by the procurator (lawyer) was provided for by appointment on a gratuitous basis. The institute of a special government defender for orphaned minors was introduced in court proceedings.

Stage III – 1864–1917. At this time, the regulation of legal activity was effectively improved. Defence in court, including in cases of minors, became professional. Regulations established the provision of appointing a professional defender on a gratuitous basis to protect and represent the interests of the poor, in particular minors.

IV stage – 1917–1991: development of legal regulation of the Soviet legal profession in Ukraine. The protection of minors in courts was provided by lawyers, mainly by appointment, and the issue of introducing specialisation of defenders in juvenile affairs was not considered.

Stage V – since 1991 – current development of legal regulation of the defender's involvement in criminal proceedings against minors, which is related to the European vector of development of the Ukrainian state, considering the best international practices of juvenile justice.

Current trends in regulatory support for the involvement of a defence lawyer in criminal proceedings against minors are characterised by the improvement of legislation in the field of criminal justice in relation to children, considering the implementation of the provisions of ratified international treaties. The relevant legislation is being changed to respond to the current challenges of the armed aggression of the Russian Federation against Ukraine. The legal regulation of protection in criminal proceedings of orphaned children, children deprived of parental care, children in difficult circumstances, and children who suffered as a result of military operations or armed conflict through the system of free legal assistance by appointed defenders is being improved.

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# Нормативно-правова регламентація участі захисника в кримінальному провадженні щодо неповнолітніх: генеза питання, етапи розвитку

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**Анотація**

Актуальність статті обумовлена необхідністю встановлення генези нормативно-правового регулювання участі захисника в кримінальному судочинстві щодо неповнолітніх, виявлення кореляційних зв'язків цього процесу з регламентацією адвокатської діяльності в Україні. Мета статті полягає в дослідженні історії нормативно-правової регламентації участі захисника в кримінальному провадженні щодо неповнолітніх. У статті використано комплекс наукових методів: історичний, історіографічний, термінологічний, системно-структурний, формально-логічний, порівняльно-правовий. Встановлено, що зародження інституту захисту сторін у судочинстві бере початок із часів Київської Русі, зі сталої практики виступів у суді «добрих людей», які представляли позивача та відповідача. Доведено, що становлення інституту захисту неповнолітніх осіб у суді відбувалося паралельно та в тісному зв'язку з розвитком судового представництва й поруки. На підставі аналізу ратифікованих Україною міжнародних актів у сфері кримінальної юстиції щодо дітей констатовано потребу в запровадженні ювенальної спеціалізації захисників. Виокремлено такі етапи розвитку нормативно-правової регламентації участі захисника в кримінальному судочинстві щодо неповнолітніх: I етап – 1016–1529 роки; II етап – 1529–1864 роки; III етап – 1864–1917 роки; IV етап – 1917–1991 роки; V етап – з 1991 року донині. Зауважено, що становлення захисту прав неповнолітніх у суді супроводжувалося закріпленням нормативної умови участі захисника в процесі на безоплатній основі для деяких категорій дітей. Сучасний етап правозастосовного процесу передбачає втілення принципів і гарантій участі захисника в кримінальному провадженні щодо неповнолітніх, визначених міжнародними договорами у сфері захисту прав дітей. Урахування тенденцій розвитку нормативно-правового регулювання участі захисника в кримінальному провадженні дозволяє правозастосовним органам планувати власну практичну діяльність у контексті взаємодії з правозахисними організаціями, вживати заходів щодо координації роботи з органами ювенальної превенції Національної поліції, слідчими та прокурорами, які спеціалізуються на розслідуванні правопорушень неповнолітніх, ювенальними суддями й адвокатами для ефективного дотримання міжнародних стандартів захисту прав дітей, які опинились у конфлікті із законом

**Ключові слова:**

неповнолітня особа; адвокат; захисник; нормативно-правовий акт; розслідування кримінальних правопорушень неповнолітніх

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