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В. Клименко

Публічне адміністрування екологічної безпеки в Україні та країнах ЄС 9

Я. Кукоба

Захист прав орендаторів комерційної нерухомості в умовах економічної нестабільності.....31

О. Макаревич

Інтелектуальні права виробників засобів індивідуального захисту
в умовах загрози національній безпеці: між захистом прав інтелектуальної власності
та потребою в відкритих інноваціях.....47

В. Рудик

Правові проблеми соціального захисту студентства в умовах воєнного стану61

О. Сиров

Адміністративно-правове регулювання агропромислового комплексу
в умовах «зеленого» переходу84

О. Яра, О. Сологуб

Конституційні права і свободи людини і громадянина в Україні та країнах ЄС 103

О. Улютіна, А. Старокінь

Правове забезпечення охорони навколишнього
природного середовища в Україні та країнах ЄС 124

Д. Чепіжак

Незаконне виробництво, зберігання, транспортування
та збут підакцизних товарів: їх вплив на навколишнє середовище
та кримінальна відповідальність 144

CONTENTS

V. Klymenko

Public administration of environmental safety in Ukraine and EU countries 9

Ya. Kukoba

Protection of the rights of commercial property lessees amidst economic instability31

O. Makarevych

Intellectual rights of manufacturers of personal protective equipment
in the context of national security threats: Between protection
of intellectual property rights and the need for open innovation47

V. Rudyk

Legal challenges of social protection of students under martial law61

O. Syrov

Administrative legal regulation of the agro-industrial complex
in the context of the “green” transition84

O. Yara, O. Sologub

Constitutional rights and freedoms of human and citizen in Ukraine and EU countries 103

O. Uliutina, A. Starokin

Legal support for environmental protection in Ukraine and EU countries 124

D. Chepizhak

Illegal production, storage, transportation, and sale of excisable goods:
Their environmental impact and criminal liability 144



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Public administration of environmental safety in Ukraine and EU countries

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Abstract

This study aimed to analyse the environmental safety policies of Ukraine and the EU, identifying major instruments and implementation challenges. Using hermeneutical and comparative methods, the study revealed the essence of environmental security and defined the content of the state policy on environmental protection. The guidelines for implementing this policy in Ukraine and the European Union were analysed. National and international regulations covering the implementation of environmental policy were identified, and the most significant of them were analysed. The study identified concrete public administration bodies that implement environmental policy in Ukraine and within the European Union. The study delineated the concepts of environmental safety and state policy for environmental safety, together with their characteristics and the importance of their implementation. Despite enhancements to the national legal framework aligning with EU standards, the issue of ineffective environmental policy implementation in Ukraine persists, attributed to constrained financial resources, inadequate monitoring, and flawed regulatory mechanisms. Furthermore, the EU faces challenges in terms of coherence of strategies across sectors. The practical

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significance is in its utility for Ukrainian government agencies, international organisations, and scholars to enhance the efficacy of environmental governance, refine legal frameworks, and adopt best practices

Keywords: environment; eco-policy; state policy; environmental protection; natural legislation; public authorities

Introduction

The escalating global environmental crisis has heightened the imperative to establish robust mechanisms for environmental safety governance in Ukraine and European Union member states. These regions confront multifaceted ecological challenges, encompassing environmental degradation, elevated greenhouse gas emissions, biodiversity loss, and climate destabilisation, necessitating the formulation of comprehensive policies and enhancement of administrative frameworks to facilitate sustainable environmental stewardship. Moreover, the ongoing military conflict within Ukraine's territorial boundaries has substantially exacerbated environmental deterioration, underscoring the critical importance of efficacious policy implementation and institutional responses from Ukrainian regulatory authorities. Of particular significance is the harmonisation of Ukraine's environmental legislative framework with European Union environmental acquis and directives, a process that demands meticulous attention to regulatory alignment and implementation protocols.

Negative environmental change is a global problem (Rebhi & Bouderbala, 2023). As a result of systematic missile attacks on Ukrainian cities, hits on critical infrastructure and businesses, hazardous chemicals are released into the air, soil, and water bodies. These hazardous substances are spreading throughout Ukraine, crossing the borders of other states, particularly through winds, groundwater, and rivers (Albakjaji, 2022). Thus, there is an increasing need for effective environmental policy implementation by both Ukrainian and EU authorities, the principles and

problems of which have been repeatedly investigated in the scientific literature.

C. Vashchenko & B. Nosachenko (2024) examined the key role of public policy in overcoming environmental problems on which Ukraine's national security depends. The researchers underscored the necessity for efficient environmental management to enhance environmental safety and establish secure living circumstances amid war actions in Ukraine. Their study pointed to the need to strengthen national control and response to the environmental consequences of military operations. This will facilitate further recovery and sustainable development in post-war Ukraine.

L.O. Ostapenko *et al.* (2023) emphasised the need to reform the environmental governance system and strengthen environmental sustainability. The researchers underscored the importance of public engagement in the execution of environmental policy to enhance the environment.

K.W. Cynk (2024) explored how ministers of Central European countries formulated environmental security issues during the first weeks of the war in Ukraine. The researcher analysed the political statements and decisions made at ministerial meetings, addressing the relationship between military conflict and environmental issues. The study emphasised the need for a comprehensive approach to integrate environmental security into national and regional political strategies caused by military operations. Furthermore, the study emphasises the value of joining forces to address both security and environmental issues in Central Europe. D. Pietrzyk-Reeves *et al.* (2024)

investigated the issue of public involvement in solving environmental problems in Ukraine, where the researchers surveyed 30 members of the public. Their study found that citizens are more likely to be involved when environmental issues directly affect their daily lives. Thus, this study emphasised the need for cooperation between civil society and the state.

E. Alblas and J. van Zeven (2023) analysed how effective these schemes can be in terms of biodiversity conservation of agricultural activities. Furthermore, the study examined the challenges and prospects for engaging farmers and other stakeholders. The need for co-management to improve environmental outcomes was particularly emphasised. Overall, this study helped to understand the interaction between agricultural policy and biodiversity management within the EU. K. Kluza *et al.* (2024) analysed the implementation of climate policy by EU countries according to the Sustainable development goals (n.d.). The researchers determined the effectiveness of this policy in promoting sustainable development and overcoming climate threats. Furthermore, they addressed the role of adapting national legislation in line with EU provisions to ensure environmental sustainability.

Overall, the level of research on environmental security is quite extensive due to the relevance of this issue. Researchers have mostly investigated its essence, identified factors that adversely affect the environment, and analysed legislation related to these issues, as well as its effectiveness. However, much fewer researchers have explored the issue of public administration of environmental security in the EU, and especially in Ukraine.

This study aimed to delineate the function of administrative governance in safeguarding environmental safety in Ukraine, specifically identifying the challenges associated with successful environmental governance. The study's aims were as follows:

- to delineate the notion and articulate the official policy of environmental safety;
- to analyse the environmental legislation of Ukraine and the EU;
- to identify the competent authorities implementing environmental policy in Ukraine and the EU.

Materials and Methods

During the study of Ukrainian legal documents, the study reviewed and analysed the provisions of the following legislative acts: the Constitution of Ukraine (1996); the Law of Ukraine No. 1264-XII "On Environmental Protection" (1991); No. 2086-VIII "On the Ratification of the Agreement between the Cabinet of Ministers of Ukraine and the Government of the Republic of Moldova on Cooperation in the Field of Protection and Sustainable Development of the Dniester River Basin" (2017); No. 2059-VIII "On Environmental Impact Assessment" (2017); the Association Agreement Between Ukraine, of the One Part, and the European Union, the European Atomic Energy Community and their Member States, of the Other Part (2017); No. 2697-VIII "On the Basic Principles (Strategy) of the State Environmental Policy of Ukraine for the Period up to 2030" (2019).

International treaties include the United Nations Framework Convention No. 30822 "On Climate Change" (1992); the Convention on Biological Diversity (1992); the Consolidated Version of the Treaty on the Functioning of the European Union (2012); the European Green Deal (2019); the Regulation of the European Parliament and of the Council No. 2021/1119 (2021) (European Climate Law).

The comparative method facilitated the analysis of current definitions of environmental safety and state policy concerning environmental safety, as delineated in scholarly articles, dictionaries, and online resources, leading to a conclusion about these concepts. In addition, this method

was employed to some extent in identifying the bodies that implement environmental policy in Ukraine and the EU, namely, by demonstrating the difference in the levels at which it is implemented. By analysing national and international legislation, the governing aspects of policy implementation were compared.

Another key element of the methodology was an institutional analysis. This involved identifying the institutions responsible for formulating and implementing environmental policy in Ukraine and the EU, analysing their role in this process, and their interaction with each other. Specifically, this included an analysis of the legislative, executive, and judicial authorities and specialised EU institutions that influence environmental policy.

Results

The concept and content of state policy in the field of environmental safety. According to Article 50 of the Law of Ukraine No. 1264-XII (1991), environmental safety implies a state of the environment that ensures the avoidance of deterioration of this state and threats to the population. Whereas security for Ukrainian citizens is guaranteed by a set of interrelated measures in the political, economic, technical, organisational, legal, and other spheres. It also provides that in case of damage to the environment by individuals or legal entities, their activities may be suspended.

The state policy for environmental safety largely entails the provision of a secure environment by governmental bodies. This is accomplished by using the concepts of balanced environmental management across all sectors of the state's socio-economic development, specifically in Ukraine (Law of Ukraine No. 2697-VIII, 2019). This type of state policy is aimed at ensuring the rights of citizens enshrined in Article 50 of the Constitution of Ukraine (1996) and Article 9 of the Law of Ukraine No. 1264-XII (1991). It specifically pertains to the human right to a secure

environment, the efficient utilisation of natural resources, and the conservation and rehabilitation of ecosystems.

For the effective implementation of this policy, its principles are important. They include 1) the "polluter pays" principle, one of the guiding principles that aims to impose responsibility on the person who caused the pollution. Such a person should make payments for the damage caused and for other measures to address its consequences (van Bueren, n.d.); 2) the principle of precautionary measures, which is aimed at taking preventive actions in case of disputes, which allows preventing and eliminating a possible threat to the environment before it actually occurs (What are environmental principles?, 2019); 3) the principle of integration mandates that environmental protection concerns must be incorporated into many sectors of public policy in alignment with the plan for sustainable development. Adherence to these principles will help build an effective state policy on environmental issues. Overall, these principles are the basis for protecting the entire ecosystem.

Article 6 of the Law of Ukraine No. 1264-XII (1991) prescribes the development and implementation of environmental programmes of local, state targeted, and interstate significance. This is accomplished directly to assure the efficacy of environmental protection measures and safety, as well as to ensure the equitable utilisation of Ukraine's natural resources. This strategy is executed at multiple levels: international (global), national (state), regional (international), and local (Environmental policy of Ukraine..., 2021).

The international global level includes the formulation and adherence of governments to numerous international treaties and engagement in international organisations dedicated to environmental preservation. This addresses global issues including climate change and the release of dangerous compounds into water, air, and soil. For ex-

ample, Ukraine ratified the United Nations Framework Convention on Climate Change (1992), which prompted the state to take adequate measures to monitor the level of emissions of harmful substances into the atmosphere, etc. The Convention on Biological Diversity (1992) can be added to these treaties. The execution of global environmental policy connects the majority of the world's nations, including the most isolated or impoverished regions.

The implementation of environmental policy at the international regional level involves solving concrete problems within a particular region. EU directives primarily pertain to EU member states, and the same is true for countries that are members of the North Atlantic Treaty Organisation (NATO). In Ukraine, it is implemented at this level, specifically, through the Basin Agreement (Law of Ukraine No. 2086-VIII, 2017). As a future member of the EU, Ukraine is adapting its national legislation to the EU legislation, and after final accession to the EU, Ukraine will be subject to the EU directives. A vital step towards the EU was the adoption of the Law of Ukraine No. 2059-VIII (2017), which allows for a more accurate environmental impact assessment.

These international treaties, along with others, have helped to create a more effective system of legislation in Ukraine. International cooperation is a vital indicator of a democratic state, as it demonstrates the state's desire to improve its system of government, which is tantamount to improving the living conditions of society. It implies the unity of states in solving global problems, which include the issue of environmental protection.

Principal state bodies responsible for the implementation of public administration of environmental safety in Ukraine. The execution of environmental policy at the state level is essential, as state authorities are accountable for ensuring a safe environmental condition (Amblard & Carter, 2022). The Ministry of Ecology and

Natural Resources of Ukraine (MENR) is the principal governmental authority addressing this matter. The Ministry of Ecology and Natural Resources is tasked with developing and executing programs for environmental protection and conservation. To this end, the Ministry develops draft regulations (e.g., the Strategy), systematically monitors and assesses water, air, and soil quality, controls industrial pollution and the waste management system, etc. To achieve comprehensive and, most significantly, effective implementation of this policy, the Ministry closely cooperates with a wide range of stakeholders (Regulation on the Ministry of Ecology..., 2015). Specifically, with state authorities, local self-government bodies, international organisations, and political parties (Environmental policy of Ukraine..., 2021).

The Ministry of Environmental Protection and Natural Resources (MENR) maintains a comprehensive approach to natural resource management through the continuous enhancement of environmental monitoring mechanisms. This systematic framework encompasses rigorous assessment protocols, and empirical investigations of contamination levels across aquatic ecosystems, atmospheric conditions, and pedological systems, while simultaneously monitoring greenhouse gas emissions (Ministry of Environmental Protection and Natural Resources, n.d.). The foundational policy instrument governing environmental governance in Ukraine is codified in the Strategy of the State Environmental Policy of Ukraine for the Period up to 2030 (2019). This strategic document presents a multifaceted approach, incorporating a thorough analysis of Ukraine's contemporary environmental conditions and associated challenges. Furthermore, it delineates strategic objectives and targeted outcomes to be achieved by pertinent governmental entities by 2030. The policy framework establishes distinct implementation phases for environmental initiatives and incorporates a robust monitoring and evaluation

mechanism to assess policy effectiveness and implementation progress.

The Strategy of the State Environmental Policy of Ukraine (2019) articulates a comprehensive framework of environmental governance through five interconnected strategic objectives. The policy framework begins by emphasising the cultivation of environmental consciousness and sustainable resource management principles within Ukrainian society, particularly about industrial production practices. Building upon this foundation, the strategy seeks to establish favourable conditions for the sustainable enhancement of Ukraine's natural resource capacity. The third objective focuses on mainstreaming environmental considerations into Ukraine's socio-economic development planning and decision-making processes. The fourth goal addresses the mitigation of environmental hazards to reduce their adverse effects on socio-economic development and public health outcomes. Finally, the strategy aims to enhance the efficiency of state environmental monitoring and management systems. These strategic objectives were specifically designed to strengthen Ukraine's existing environmental policy framework while facilitating more effective policy implementation by governmental institutions (Environmental policy of Ukraine..., 2021).

The Strategy (2019) outlines the phases for executing these environmental policy objectives. By 2025, Ukraine is expected to attain a consistent enhancement of the environmental conditions, necessitating reforms in the public administration system regarding environmental issues and adherence to international norms. Structural changes in the ecosystem should be based on improving the environmental accounting system, strengthening control over compliance with the provisions established by legislation, and introducing effective financial and economic mechanisms to stimulate energy efficiency and the transition to more environmentally friendly

technologies. Raising public awareness of environmental issues and introducing an e-government system will increase transparency and engage the public in environmental protection processes. Consequently, these measures will enhance sustainable development and elevate the quality of life in Ukraine, with the objective of significantly improving the environmental condition by 2030 through an integrated approach addressing socio-economic and environmental requirements. This will enable productive cooperation between government agencies, businesses, and the public, and thus sustainable low-carbon development will contribute to economic growth and environmental improvement. This strategy will enhance environmental management in the country and serve as a significant catalyst for socio-economic advancement, achieving a balance between economic development and environmental conservation (Law of Ukraine No. 2697-VIII, 2019).

The Verkhovna Rada of Ukraine (VRU) is crucial in executing environmental policy, directly adopting laws and other legal documents related to environmental policy (mostly approving projects of the Ministry of Ecology). For instance, in 2017, the VRU adopted the Law of Ukraine No. 2059-VIII (2017), which is essential on the path to the EU, and the adoption of the first transboundary Basin Agreement (on water resources) (Law of Ukraine No. 2086-VIII, 2017) was a major progress.

The VRU is updating Ukraine's environmental legislation, monitoring compliance with this legislation, and establishing more stringent liability for its violation. The VRU also monitors compliance with the environmental plan of the Ministry of Ecology and Natural Resources (National Council for the Recovery of Ukraine from the Consequences of the War, 2022). The Verkhovna Rada of Ukraine (VRU), as the exclusive legislative authority, is tasked with aligning Ukrainian legislation with European Union law. Specifically, after Ukraine joined the European Green Deal (2019)

in 2020, it became necessary to make substantial adjustments to Ukraine's environmental legislation (Ministry of Environmental Protection and Natural Resources of Ukraine, 2024). The signing of the Association Agreement (2017) ensured the improvement of this legislation. The leading role in the VRU's activities belongs to its relations with the population of the state, as the Parliament ensures transparency in its decisions by engaging the public and stakeholders.

Auxiliary state bodies involved in the implementation of environmental policy in Ukraine. State specialised bodies are equally important for the execution of environmental policy in Ukraine. The State Environmental Inspectorate (SEI) oversees adherence to environmental legislation and evaluates environmental performance. Therewith, it performs a legal function – it investigates environmental offences and establishes liability for them, and issues licences and permits on environmental protection issues. The SEI also conducts scientific research on the environmental impact of the Chornobyl Nuclear Power Plant (ChNPP) accident and takes the necessary measures to eliminate existing threats (State Ecological Inspectorate of Ukraine, 2018). Among such bodies is the State Agency of Water Resources of Ukraine (2020), which ensures the rational use of the water environment and regulates the implementation of EU directives on analogous issues (specifically, water quality); the State Service of Geology and Subsoil of Ukraine (which controls the optimised use of mineral resources and establishes safe methods of mining) (Regulation on the State Service of Geology and Subsoil of Ukraine, 2015); Regulations on the State Agency of Ukraine on Exclusion Zone Management (2014) (which systematically monitors the ChNPP territory, conducts research on the affected facilities and implements measures to minimise the consequences of the accident), etc. The synchronised efforts of these governmental

entities constitute a fundamental component of implementing a successful environmental policy in Ukraine, focused on safeguarding and guaranteeing environmental safety.

The final level (local) pertains to the execution of environmental policy by local self-government entities. The necessity and relevance of these entities is elucidated by their capacity to address the issue directly at its source (Kyrychenko, 2020). The competence of local self-government bodies is defined by the Law of Ukraine No. 1264-XII (1991). Thus, Article 15 stipulates that local councils are responsible for the natural environment on their territories. They facilitate the direct execution of environmental policy; oversee the placement of enterprises within designated territories; authorise projects and formulate programs and measures to enhance the environment in specific areas; apprise the local populace regarding environmental conditions; issue permits for natural resource utilisation; manage the environmental repercussions of disasters or anthropogenic incidents; and monitor adherence to the Law of Ukraine No. 1264-XII (1991). Thus, local councils implement environmental policy exclusively at the local level, which is limited to the territory of the respective local council.

Another representative of local self-government bodies is the executive bodies of village, town, and city councils, according to Article 19 of the Law of Ukraine No. 1264-XII (1991), they carry out the following activities: implement local environmental policy; coordinate activities between different entities; manage waste; approve limits on the use of resources in specific territories; formulate and implement environmental protection programmes and take part in them directly. These entities are crucial for sustaining optimal environmental conditions and enhancing the quality of life in the surrounding area. In addition, the authorised bodies at the local level are

region, Kyiv and Sevastopol city state administrations, whose competence is defined by Article 204 of the Law. These administrations are essential in safeguarding and conserving the environment by executing environmental policies, monitoring and evaluating ecological conditions, optimising natural resource utilisation, and swiftly addressing issues stemming from environmental catastrophes (Powers of local self-government bodies..., n.d.).

The jurisdictional scope of Ukrainian local self-government bodies encompasses comprehensive environmental governance responsibilities. Their mandate extends to industrial zoning regulations, comprehensive waste management protocols, and the remediation of environmental damages stemming from disasters. Furthermore, these governmental entities are tasked with environmental stewardship through systematic monitoring procedures and expeditious intervention in ecological challenges. This framework enables local authorities to implement preventive measures while maintaining responsive capabilities for addressing emerging environmental concerns within their administrative territories.

Instruments for implementing environmental policy in Ukraine. The Strategy (2019) delineates the most exhaustive compilation of instruments for executing environmental policy in Ukraine. Thus, the key instrument is cross-sectoral partnership and interaction with stakeholders. These methods can facilitate the active participation of all relevant stakeholders, including representatives from public authorities, local governments, commercial entities, the private sector, the public, and other interested parties, in the formulation and execution of environmental policy. Such cooperation increases the chances that the policy will be comprehensive and well-grounded and will accommodate the interests and needs of multiple segments of the population and meet their expectations. Joint efforts will result in improved efficiency and sustainable functioning of

environmental protection measures (Implementation of environmental reforms..., 2023).

Information and communication remain vital instruments for the practical implementation of environmental policy. The key purpose of this tool is to ensure that citizens are aware of environmental issues, as well as of the activities of executive authorities and the environmental situation. Communication enhances awareness of the need of environmental preservation in society and fosters skills in sustainable environmental management. Through this approach, government agencies can promote a culture of environmental responsibility among citizens. Specifically, this is achieved by raising their awareness and participation, which is crucial for the effective implementation of any environmental policy (Law of Ukraine No. 2697-VIII, 2019; National Council for the Recovery of Ukraine from the Consequences of the War, 2022).

State regulation significantly establishes scientifically based constraints on the extraction of natural resources and the extent of industrial pollution. This regulatory framework includes the issuance of integrated permits for the control of industrial emissions, following the EU directives on industrial pollution control. By adhering to these provisions, Ukraine aims to prevent environmental degradation and at the same time promote sustainable environmental management practices. A robust legal regulatory framework ensures stringent adherence to environmental norms by firms, hence enhancing overall environmental safety (Law of Ukraine No. 2697-VIII, 2019; Pavliuk *et al.*, 2023).

The use of strategic environmental assessment is another powerful tool in Ukraine's environmental policy. Such an assessment allows determining the probable environmental consequences of projects before they are implemented. This preventive method ensures compliance with applicable environmental legislation and

rational resource use in future activities. By incorporating environmental assessment into the decision-making process, the state seeks to mitigate detrimental effects on the environment and assure adherence to environmental norms (Law of Ukraine No. 2697-VIII, 2019; National Council for the Recovery of Ukraine from the Consequences of the War, 2022).

Establishing environmental management systems, which includes audits and certification, increases the efficiency of enterprises while improving environmental performance. Audits check how well companies are implementing their management systems and achieving their environmental goals. Through systematic audits, companies can identify shortcomings, improve production efficiency, and reduce environmental risks. In addition to audits, environmental accounting is used as a way to monitor and report on the environmental performance of an enterprise. By integrating environmental accounting into decision-making procedures, enterprises can combine their economic viability with social and environmental responsibilities (The World Bank, 2016; Law of Ukraine No. 2697-VIII, 2019).

Another valuable tool for implementing environmental policy is legal regulation of this issue, specifically, the fact that Ukrainian legislation should be adapted to EU directives (and especially those on sustainable development and environmental protection). This encompasses the execution of a waste management and climate change strategy, essential for tackling present environmental challenges and adhering to European regulations and standards. Alongside its legislative activities, Ukraine pays special attention to the educational sphere, which aims to form an environmentally conscious society. It is founded on the notion of sustainable development, which ought to be included in educational curricula (Environment. Mission from Ukraine..., 2021). And since the environmental awareness of citizens is the key

guarantee of compliance with Ukrainian environmental legislation, these two instruments are interrelated (Law of Ukraine No. 2697-VIII, 2019).

Furthermore, there are a series of economic and financial instruments that provide support for environmental measures and projects by creating favourable conditions for their implementation. These instruments help to encourage investment in environmentally friendly and resource-saving innovative technologies, as well as provide favourable conditions for international financing of environmental projects. Monitoring systems are being implemented to control compliance with environmental legislation and engage the public in environmental management (Law of Ukraine No. 2697-VIII, 2019). Thus, by using all these tools, the Ukrainian state seeks to strengthen environmental safety and ensure effective climate change mitigation, while following international obligations.

Public administration of environmental safety in the EU. The European Union comprises 27 member nations and has 9 candidates for membership, namely Ukraine, Bosnia and Herzegovina, Albania, Moldova, Georgia, Montenegro, Serbia, Turkey, and North Macedonia (Kosovo is a possible candidate, but 5 EU member states still do not recognise it as independent) (EU enlargement, n.d.). All these states form a single entity, and together they are struggling with problems of a global scale. The challenge of guaranteeing environmental security is exacerbated by climate change, anthropogenic pollution, and the systematic release of greenhouse gases and other harmful compounds into the air, land, and water bodies. Environmental issues affect not only a single country but the entire international community. This has led to the need to create a single effective public administration within the EU.

Articles 11 and 191-193 of the Consolidated Version of the Treaty on the Functioning of the European Union (2012) designate the EU itself as the

competent authority in the field of environmental policy. Its authorities encompass climate change, air and water contamination, and waste management. The European Union's environmental policy is founded on four basic principles. These include 1) the precautionary principle implies refraining from certain actions or policy strategies that may be dangerous (until such actions are deemed safe). This helps to prevent threats before they occur; 2) the precautionary principle emphasises the need to take precautions to avoid damage to the environment. It prioritises actions aimed at preventing environmental violations over responding to such violations; 3) if pollution has already occurred, measures should be taken to clean the contaminated areas. This is part of the policy aimed at restoring ecological balance; 4) and the last principle of "polluter pays", which places responsibility for the damage caused on the party that caused it. This means that the guilty party must not only eliminate the consequences of its actions on the environment but also cover the costs of restoration (Ruiz *et al.*, 2022; Kurrer & Petit, 2024).

These principles are the key norms that should guide both member states and candidates for EU accession. They form the system of environmental protection in the European Union and are mostly preventive in nature. Specifically, these principles are used when making significant decisions (e.g., when addressing climate change), as such issues are of global significance.

The EU's environmental policy, alongside legislation, relies on the execution of pertinent initiatives, notably The Eighth European Union Action Programme for the Environment until 2030 (2022). This Programme came into force in 2022 and is designed to be implemented until 2030, and is aimed at achieving six goals, including:

- attainment of the objective to diminish greenhouse gas emissions by 2030 and achieve climate neutrality by 2050. This implies achieving

a balance between the level of emissions and their removal from the atmosphere, which will ensure a more environmentally friendly and sustainable future;

- enhancing adaptive capability, fostering resilience, and reducing vulnerability to climate change. Building resilience will help to counter climate threats more effectively, as it will reduce the vulnerability of the population and natural environments to possible threats;

- shift towards a regenerative growth model that separates economic expansion from resource use and environmental harm, while promoting a swift transition to a circular economy. In the transition to a circular economy, the key purpose is to minimise waste, maximise resource efficiency, and ensure that economic activity has a favourable effect on the environment;

- attaining the objectives of zero pollution, particularly concerning air, water, and soil, while safeguarding the health and social welfare of the European populace. Thus, the primary task should be to protect public health, and reducing pollution will contribute to improving living standards and the environment;

- safeguarding, preservation, and propagation of biodiversity, together with augmentation of natural resource volume. By preserving habitats and protecting biodiversity, natural capital can be strengthened;

- alleviating the environmental and climatic impact resulting from production and consuming activities, particularly in sectors such as energy, industry, construction, infrastructure, mobility, tourism, international trade, and the food system. This will primarily help to increase the efficiency of environmental management and achieve the goals of the Eighth European Union action programme (2022).

The Programme is a comprehensive strategy for implementing environmental policy in the EU, setting ambitious goals for achieving climate

neutrality, reducing pollution and protecting biodiversity (Tosun, 2023). By promoting sustainable development and strengthening cooperation between EU member states, the Programme aims to overcome critical environmental threats while improving the living standards of European citizens.

The European Council is crucial in executing environmental policy inside the EU, establishing strategic directions and defining political goals. Overall, the Council sets targets (including those related to minimising greenhouse gas emissions) that directly affect setting the legislative agenda. Its function is also to shape environmental policy and identify issues that require immediate attention (e.g., climate change). Through the recommendations of the European Council, political assistance and support is provided to draft laws submitted by the European Commission (The European Green Deal, 2019). In addition, by reviewing reports and analytical assessments, the European Commission can hold Member States accountable for their commitments. Thus, by exercising the control function, the Council encourages EU member states to take adequate measures on environmental issues (Selin & Van Deveer, 2015).

Through the establishment of a bilateral conversation, the Council guarantees the alignment of national interests with EU objectives, which is essential for the efficient implementation of environmental legislation (The European Green Deal, 2019). Consequently, although the European Council does not actively engage in the execution of environmental policies, it is crucial in establishing strategic objectives. It also plays a key role in achieving unanimity among member states, providing a legislative framework that facilitates the creation of an effective EU environmental policy and its implementation (Selin & Van Deveer, 2015).

The European Parliament serves as a crucial legislative institution within the European Union's governance framework, operating in conjunction with the Council of the European Union

to fulfill essential legislative responsibilities. This dual legislative authority encompasses the formulation and implementation of regulations across diverse policy domains, with particular emphasis on environmental matters such as climate change mitigation and adaptation strategies. Both institutions possess the constitutional prerogative to propose amendments and conduct formal voting procedures on environmental legislation of critical significance. Through the Parliament's dedicated legislative endeavors, the European Union has established a comprehensive body of environmental law that imposes binding obligations upon all Member States. The Parliament's influence has been instrumental in underscoring the imperative for Member States to incorporate and enforce EU environmental directives within their respective national legal frameworks, thereby ensuring consistent environmental protection standards across the Union.

The European Parliament has enacted substantial environmental policy changes with far-reaching implications. Through comprehensive legislative frameworks, the Parliament has addressed multiple ecological challenges simultaneously. The development of climate change legislation stands as a cornerstone of these efforts, accompanied by parallel initiatives in waste management protocols and biodiversity preservation measures. Of particular significance is the Parliament's instrumental role in crafting and implementing an action plan centered on circular economy principles. This commitment was further solidified through the ratification of the Paris Agreement, marking a decisive step in the institution's approach to climate change mitigation (Kurrer & Petit, 2024). A watershed moment occurred when the Parliament formally declared a climate and environmental emergency, which subsequently catalysed the establishment of the European Climate Law (2021). This pivotal legislation codifies the European Union's binding commitment

to achieve climate neutrality by 2050, while simultaneously establishing specific greenhouse gas emission reduction targets for individual member states to pursue (Kurrer & Petit, 2024).

A prominent achievement was the implementation of the European Green Deal (2019), which was aimed at creating the first climate-neutral territory (Hereu-Morales *et al.*, 2023). The Parliament is actively engaged in formulating strategic plans for the execution of environmental policy within the EU. Similar to the VRU, the EU Parliament advocates for the engagement of concerned citizens in the formulation of environmental policy decisions. Consequently, citizen trust in the Member States escalates, and the openness of enacted legal provisions enhances. Consequently, the EU Parliament is crucial for the execution of environmental policy inside the EU and is directly engaged in the formulation of the Union's environmental legislation. The Parliament ensures the efficacy of the legislative process.

The principal tenets of the European Green Deal (2019) encompass attaining net-zero greenhouse gas emissions by 2050; eradicating pollution from the environment by 2050; aligning the environmental legislation of EU Member States with established objectives; formulating a sustainable production policy to diminish material usage and foster recyclable products; and preparing for the execution of a hydrogen-based clean steel initiative (Smol *et al.*, 2020).

The European Commission has a significant role in executing environmental policy across EU Member States. It offers new draft rules that tackle environmental concerns, such as initiatives to mitigate greenhouse gas emissions, and is also engaged in their formulation. The Commission's activities also extend to the implementation of The European Green Deal (2019), mainly addressing concrete issues and implementing relevant strategies within the framework of this Agreement. The Commission possesses the authority to oversee

adherence to EU environmental legislation and to assess the conformity of Member States' national legislation with EU law. In case of non-compliance, the Commission lodges a claim against such a state, and if the issue is not resolved through negotiations, the European Court of Justice is competent to resolve the problem (The eighth European Union action programme..., 2022).

It is the Commission that is responsible for providing technical support to Member States to help them implement EU environmental policy (to prevent litigation). Specifically, the Commission uses such an effective tool for implementing environmental policy as the Environmental Implementation Review (which involves the preparation of reports that help implement EU legislation) (Environmental implementation review, 2019). The European Commission serves as the official representation of the EU in international discussions and the execution of agreements pertaining to environmental matters. The Commission participates in talks about climate change, biodiversity conservation, and pollution reduction on international platforms (e.g., the Framework Convention) (Selin & Van Deveer, 2015).

Furthermore, the Commission ensures that environmental interests are considered in other policy areas (including energy, transport, and agriculture). This mainstreaming fosters sustainable development in environmental and other domains. Consequently, the European Commission guarantees the execution of the EU environmental policy primarily through the proposal and development of new legislation. It additionally oversees adherence to regulations, offers assistance to member states, and advocates for the EU's stance on the world stage.

The European Court of Justice is another entity executing environmental policy. It primarily interprets the requirements of EU environmental regulations at the request of a Member State.

This helps states to correctly understand the provisions of EU treaties or legislation, which affects their adaptation to national legislation. The European Court of Justice may also be approached by national courts of Member States to request possible precedents in analogous circumstances (Sobotta, 2020). Consequently, national courts may utilise prior rulings from the European Court of Justice when the cases have analogous components or references to EU legislation and its interpretation. Furthermore, these judgments have elucidated for Member States the implementation of required safeguard measures (Cenevska, 2016).

This Court is empowered to impose liability on the infringer of EU environmental legislation. After the EU Commission submits a case of violation of EU legislation, the Court considers the case and decides what penalty the violator should be punished. In most cases, such penalties are either direct fines or obligations on the part of the infringing state. The European Court of Justice considers cases related to environmental rights, thereby providing an opportunity for citizens and non-governmental organisations to challenge decisions that pose a threat (Jacobs, 2006). This approach promotes public involvement in environmental governance and ensures control over the activities of the authorities.

EU subsidiary bodies for the implementation of environmental policy in the EU. The European Environment Agency (EEA) is important in tackling environmental challenges and is recognised as the EU's official environmental agency. It was established under the European Economic Community Regulation in 1990, and the Agency began its operations in 1993. For the most part, this body covers the EU member states, but there are a few exceptions (specifically, Iceland, Norway, Switzerland, Turkey, and Liechtenstein), and thus the Agency has 32 member states (Our knowledge network..., n.d.). The EEA was established to

conduct systematic monitoring of environmental quality, specifically: to assess air, soil, and water quality; to evaluate climate change; to examine biodiversity conservation status; to monitor pollution levels; and to measure greenhouse gas emissions, among other factors.

Consequently, the Agency guarantees the accuracy and validity of the gathered data regarding environmental conditions, while producing publicly accessible reports that enable universal readership, irrespective of one's affiliation with the EEA or the EU. This ensures the transparency of the Agency's activities and allows it to change the public's attitude towards the perception of the natural environment (Kovacic & Benini, 2022). These reports allow for the creation of draft laws, as they identify the key problems, strategies, and possible solutions to environmental issues. This both greatly simplifies the work of the EU bodies and contributes to the efficiency of its legislative function. The EEA also acts as the coordinator of the European Environmental Information and Observation Network (Eionet), which comprises public environmental authorities and other stakeholders. The network enables the exchange of information and best practices across member governments, thereby enhancing the availability and quality of environmental information (Our knowledge network..., n.d.).

This is achieved by conducting comprehensive environmental control, providing well-founded proposals on draft laws on environmental issues to the EU bodies. It also plays a vital role in informing the public about the environmental situation, ensuring proper compliance with environmental legislation, and cooperating with stakeholders. The EEA's successful operations and environmental reporting enable EU member states and other nations to tackle significant global environmental challenges, including climate change.

A significant instrument for executing the EU's environmental policy is the European Union

Network for the Implementation and Enforcement of Environmental Law (IMPEL). The principal task of IMPEL (n.d.) is to improve the implementation process of national legislation and ensure its strict compliance: EU Member States, the Single Economic Area (SEA), the European Free Trade Association (EFTA), and future candidates for accession to them. IMPEL focuses on capacity building, coordination of law enforcement actions in the environmental sector, and addressing existing gaps in the implementation of environmental legislation. The Network also cooperates with stakeholders and provides an information basis for environmental policy development. Its initiatives foster the establishment of a cohesive strategy for addressing environmental issues in European nations. IMPEL executes EU environmental policy by promoting sustainable development and environmental protection on a progressively intricate global scale.

Local administrations have a crucial role in executing environmental policy inside the EU. The operations of each EU member state dictate their obligatory performance and compliance with EU environmental legislation. Their primary function is to implement EU regulations into national legislation, while ensuring compliance with EU legislation. Local authorities monitor compliance with environmental legislation at the local level (in a particular state), and in case of violations, they conduct relevant inspections and impose penalties (Environmental implementation review, 2019). Through the development of national policies on waste management, air quality, and biodiversity conservation, they adapt local policies to EU goals (specifically, the European Green Deal (2019)). This allows them to address concrete environmental issues within their region and respond effectively to them. Local authorities cooperate with regional and national governments, which ensures harmonious policy implementation at all levels of government.

Discussion

In recent decades, environmental conditions have been progressively declining, constituting a global concern (Chaudhary & Piracha, 2021). This is due to several anthropogenic disasters that result in a rise in the frequency of natural disasters. The dropping of nuclear bombs over Hiroshima and Nagasaki, the Chornobyl accident, systematic oil spills into the Nigerian Delta, the growth of enterprises and factories that emit hazardous chemicals, and finally wars (specifically, the war in Ukraine and the explosion of the Kakhovka hydroelectric power plant) have all led to the environmental safety of the entire world being threatened (van Steenberghe, 2023).

The techniques of warfare inflict significant harm on the environment, including missile strikes on infrastructure and other strategically vital assets, the destruction of military equipment, the excavation of trenches, and the deployment of tanks, among others. This results in the release of hazardous chemicals into the environment, which destroy fertile black soil and deal a devastating blow to the ozone layer (Rawtani *et al.*, 2022; Reshetilov, 2022). That is why there is a pressing need for effective implementation of environmental policy aimed at strengthening environmental safety and improving the state of the environment. Public administrations both in Ukraine and within the EU Member States should improve their activities and join forces to ensure environmental safety.

G. Reshetilov (2022) investigated the issue of integrating circular economy principles into Ukraine's environmental policy. The researcher emphasised the significance of sustainable resource management and waste minimisation as the key elements of this approach. Reshetilov also reviewed the current environmental policy, regulatory framework, and practical tools. The researcher pointed out that these instruments ensure environmental sustainability and at the same time contribute to economic growth. Specifically, the

study focuses on the need for interaction between government agencies, business, and the public. First and foremost, this is done to ensure an effective transition to a circular economy in Ukraine.

This study has consistently emphasised the importance of collaboration among authorities, businesses, and the public to enhance efficacy in guaranteeing environmental safety. Thus, it can be correlated with the study by G. Reshetilov (2022) directly in the context of the need for cooperation between these actors. This approach will not only help to engage stakeholders to improve environmental policy but will also influence the environmental awareness of citizens. And this will have an impact on reducing environmental pollution.

M. Imran *et al.* (2024) investigated the impact of environmental legislation on the advancement of renewable energy sources among EU nations. The researchers specifically examined the efficacy of mechanisms like subsidy programs and regulations to stimulate investment and innovation in the renewable energy sector. The research indicated that an effectively formulated environmental policy enhances the utilisation of renewable energy, hence facilitating the attainment of the EU's climate objectives.

The current study and the study by M. Imran *et al.* (2024) had some common conclusions, specifically, the significance of establishing effective public administration for the implementation of environmental policy. It will also ensure that Ukraine meets the EU's strategic goals and demonstrate that Ukrainian legislation is in line with EU regulations.

C. Wang and A. Naveed (2024) analysed data on the regulatory framework and its impact on economic performance, innovation, and sustainable development practices in various sectors. Enhancing oversight of adherence to environmental standards can foster competitiveness and innovation. This will help improve the environmental situation and accelerate economic growth.

Overall, C. Wang and A. Naveed (2024) established the direct role of compliance with environmental laws, which both distinguishes and combines their study with the data. The distinction pertains to the focus of the research: authors study aimed to assess the influence of compliance on the shift towards a green economy in the EU, whereas the current study seeks to identify the authorised entities responsible for the enforcement of environmental policy in Ukraine and the EU. The common aspect of both studies is the fact that it is vital to ensure compliance with regulations on this issue and their influence on society.

The researchers emphasised that such control over compliance with environmental legislation may entail short-term costs for enterprises. However, in the long term, it will help them achieve longer-term outcomes by promoting the adoption of environmentally friendly practices and technologies. The researchers emphasised the necessity of aligning legislation with economic considerations to enhance the efficacy of environmental policy in advancing a green economy. Comparing the present study with the study by C. Wang and A. Naveed (2024), both emphasised the need for proper monitoring of compliance with environmental legislation.

I. Cadoret and F. Padovano (2016) analysed whether internal political, economic, and social preconditions or international agreements and cooperation have a greater effect on the shaping of this policy. The study helped to clarify the correlation between national and international influence in the development of effective environmental regulations. Comparing the study by I. Cadoret and F. Padovano (2016) with the present study, it can be concluded that they have certain shared aspects. This pertains to the need of establishing an efficient environmental management system and the necessity for collaborative efforts between national and international organisations. Both studies showed that to solve environmental problems, serious

national commitments and international cooperation are needed. Furthermore, comprehensive environmental programmes need to be developed to meet both local and international needs.

Overall, the above studies have some similarities in their findings, including those of the present study. The effective implementation of environmental policy encompasses several critical dimensions within the European Union's framework. The process begins with the fundamental task of incorporating EU environmental legislation into member states' national legal systems, including Ukraine's legislative framework. This integration requires careful harmonisation of national environmental statutes with EU directives and programs, ensuring comprehensive alignment across jurisdictional boundaries. Rigorous enforcement mechanisms and compliance monitoring form an essential component of this process, creating a robust foundation for environmental protection. Furthermore, successful environmental governance necessitates enhanced collaboration among various stakeholders at the national level, including governmental institutions, commercial entities, and civil society organisations. This domestic coordination is complemented by strengthened international cooperation between EU member states and Ukraine, particularly given its status as an EU accession candidate. The overarching objectives of environmental sustainability and judicious natural resource management serve as guiding principles throughout these efforts. These interconnected elements collectively constitute the cornerstone of successful environmental policy implementation, forming a comprehensive approach to addressing contemporary environmental challenges within the European framework.

Consequently, aligning Ukrainian legislation with EU standards and norms will facilitate a swift and efficient reaction to emerging offenses in the realm of environmental safety in Ukraine (Bak *et al.*, 2024). Simultaneously, enhancing collaboration

between the Ukrainian government and the European Union will aid in mitigating the detrimental environmental effects of Russian aggression.

The result of this section was that the analysis and comparison of the researchers' studies revealed that ensuring that the state properly follows environmental legislation is a key means of strengthening global environmental security. Therewith, it is vital to reform the state bodies authorised to implement environmental policy and strengthen cooperation between stakeholders. Specifically, as for Ukraine, considering the military actions, there is an even more urgent need to adapt Ukrainian legislation to EU provisions. This will facilitate the implementation of a more effective environmental policy and help improve the environmental safety of Ukrainians.

Conclusions

This investigation examines the conceptual foundations of environmental safety and corresponding state policies, with particular emphasis on comparative analysis of regulatory frameworks between Ukraine and the European Union. Environmental safety encompasses comprehensive measures designed to shield ecosystems from degradation while simultaneously safeguarding public health from environmental hazards. The research demonstrates that state environmental safety policies incorporate multiple dimensions, including systematic monitoring of environmental risk factors, development and deployment of pollution prevention protocols, and implementation of natural resource conservation measures. The comparative analysis reveals the intricate legal and administrative architectures governing environmental protection in both jurisdictions. Through careful examination of the regulatory landscape, this study delineates the specific governmental bodies and administrative entities tasked with environmental policy implementation in Ukraine and across EU member states. This institutional

mapping provides crucial insights into how environmental safety mandates are operationalised within different administrative contexts.

Environmental policy in Ukraine is implemented at four levels: international global (addressing global environmental problems (climate change)); international regional (addressing environmental problems within a particular region (EU)); state (implemented by the Ministry of Ecology and Natural Resources, the Verkhovna Rada of Ukraine, the State Environmental Inspectorate, etc.); and local (local self-government bodies – local councils; executive bodies of village, town, and city councils; regional, Kyiv, and Sevastopol city state administrations). The entities accountable for executing environmental policy within the EU are the European Council, European Parliament, European Commission, and European Court of Justice.

Ukrainian public authorities implement environmental policy through administrative instruments. However, since the state does not fully implement one of the crucial instruments – ensuring effective legal regulation – such policy implementation is not particularly effective. However, the problem lies in the direct implementation of the provisions of this legislation, as the public authorities on environmental issues do not fully perform

their obligations. The deficiency of financial resources and the inadequate methods for monitoring and enforcing compliance with environmental legislation remain a pressing issue.

Despite the comprehensiveness of the EU legal framework, there are still certain challenges in implementing EU environmental strategies, especially in terms of coherence among EU sectors. The 8th Environment Action Programme pointed out the necessity of improving regulatory methods and stakeholder participation in addressing obstacles to effective environmental governance. This will facilitate fast responses to environmental disasters and their prevention in EU member states and candidate countries, including Ukraine.

Future study opportunities encompass an examination of the execution of environmental policy by public authorities across many nations, especially those with varying degrees of environmental safety, facilitating a comparison of the mechanisms for policy implementation.

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None.

Conflict of Interest

None.

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Публічне адміністрування екологічної безпеки в Україні та країнах ЄС

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Анотація

Метою дослідження був аналіз державної політики України та ЄС у сфері екологічної безпеки, а також визначення її ключових інструментів та проблем реалізації. За допомогою герменевтичного та порівняльного методів у дослідженні розкрито сутність екологічної безпеки, визначено зміст державної політики стосовно захисту навколишнього природного середовища. Проаналізовано керівні принципи реалізації даної політики в Україні та Європейському Союзі. Встановлено національні та міжнародні нормативно-правові акти, що відповідають за здійснення екологічної політики, проаналізовано найбільш вагомі з них. В ході дослідження виокремлено конкретні органи публічного адміністрування, які здійснюють екологічну політику в Україні та в межах Європейського Союзу. У результаті дослідження було визначено поняття екологічної безпеки та державної політики у сфері екологічної безпеки, їх особливості та важливість реалізації. Було встановлено, що незважаючи на вдосконалення національної правової бази в умовах адаптації до стандартів ЄС, проблема низької ефективності реалізації екологічної політики в Україні залишається актуальною через обмеженість фінансових ресурсів, недосконалі механізми моніторингу та правового регулювання. Крім того, у ЄС існують виклики щодо узгодженості стратегій між секторами. Практична цінність роботи полягає в тому, що результати можуть бути використані державними органами України, міжнародними організаціями та науковцями для підвищення ефективності екологічного врядування, вдосконалення правових механізмів і впровадження кращих практик.

Ключові слова: навколишнє природне середовище; екополітика; державна політика; захист довкілля; природне законодавство; органи державної влади



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Protection of the rights of commercial property lessees amidst economic instability

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Abstract

The purpose of this study was to identify the problematic aspects of protecting the rights of commercial real estate lessees in the context of crisis phenomena that lead to economic instability. The study confirmed that the situation in the field of commercial real estate lease in Ukraine has deteriorated substantially due to the effects of such phenomena as the pandemic and the war, which led to economic instability. The review of the Ukrainian legislative framework revealed that, since the beginning of the pandemic, adequate mechanisms have been introduced to protect lessees' rights (deferred lease payments, eviction moratoriums, etc.). However, an analysis of Ukrainian judicial practice showed that these mechanisms do not always adequately protect lessees' rights in practice. The analysis of international practices in protecting lessees' rights during the pandemic identified a series of effective protection mechanisms that have been used in individual countries. These mechanisms can be adapted to Ukrainian realities to improve the effectiveness of lessee protection. At the same time, the study noted that in virtually any legislation, the lessee must prove that the deterioration of its financial situation was caused by extraordinary circumstances, which will help to maintain a balance in the rights and

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obligations of lessees and lessors based on the principles of reasonableness and fairness. Accordingly, it is essential to address the development of effective mechanisms for proving this fact on the part of lessees, with adequate regulation in the legislative framework

Keywords: contractual relations; deferred payment; moratorium on eviction; early termination of the contract; force majeure; extraordinary circumstances

Introduction

In the context of economic instability caused, among other things, by various local and global crises, along with the protection of individuals, business support matters are of particular significance. Business development directly contributes to economic growth by creating new jobs, providing the population with necessary goods and services, and increasing the share of tax revenues to the state budget. Measures to protect business support in an unstable environment contribute, on the one hand, to ensuring economic stability at the state level, and, on the other hand, to maintaining the financial stability of individual business entities and the exercise of entrepreneurs' rights. Among these rights, it is worth highlighting the right to property and freedom to conduct business, which are fundamental human rights. Optimisation of the legal framework in the area of commercial real estate lease can prevent violations of the above rights guaranteed by national and international standards.

The global crisis associated with the spread of the COVID-19 virus has prompted governments around the world to take measures to prevent mass gatherings of people. Among such measures was the closure of a series of business units of shops, restaurants, cafes, etc. P.J. Ricotta and K.R. Walsh (2023) investigated how these measures affected commercial property lessees who lost access to leased premises and, consequently, the ability to conduct their business. The researchers noted that commercial real estate lessees faced severe losses, which sparked a debate

between lessees and lessors about who should withstand the worst of the major risks in the current environment. R. Allan *et al.* (2021) found that during the pandemic, a significant decline in lease rates occurred and capital began to flow to the residential and industrial sectors, indicating a drop in demand for commercial property lease due to emerging risks. Thus, the need has arisen to introduce measures that not only protect people's health but also support businesses in a crisis.

Apart from the COVID-19 pandemic, the full-scale war that began in 2022 was another catastrophic event for Ukraine. D. Ciuriak (2022) and M. Izzeldin *et al.* (2023) demonstrated the devastating consequences of this war for the global economic system and financial markets. I. Hanechko (2023) noted that Ukraine's real estate market suffered devastating losses due to the destruction caused by the war. In contrast, B. Będowska-Sójka *et al.* (2022) noted that in the context of the Russian-Ukrainian war, the global real estate market has shown resilience to geopolitical risks. However, in the context of the impact on contractual relations, according to R. Januarita and Y. Sumiyati (2021), such crises can become factors that destroy the very foundation on which contractual agreements are based. Such discrepancies in conclusions indicate the need for further research for broader conceptualisations.

During the pandemic, courts in many jurisdictions have been flooded with claims regarding who should bear the economic risks of the pandemic, and for Ukraine, the military actions.

M. Manville *et al.* (2023) identified the key aspects around which lessees and lessors most often disagreed. These disagreements concerned such aspects as the reduction or termination of lease due to the inability of lessees to use the leased premises, unilateral decisions to terminate the contract prematurely, imposition of penalties for failure to perform contractual obligations, eviction of lessees, etc. Therewith, the views of theoreticians and practitioners on these issues differ. Thus, in the opinion of M.A. Wolf (2020), the legislation should protect the rights of the parties to the contract and hold them liable for failure to perform their obligations. D.K. Hart (2021), in contrast to the previously mentioned study, suggested that unprecedented force majeure circumstances may be considered as a reason to change, at least temporarily, the established approaches to performance of obligations. Therefore, it is vital to investigate what substantiates the changes made due to the introduction of emergency legislative acts and how this affects the rights and obligations of the parties to lease agreements. Particular attention should be paid to the protection of the rights of commercial property lessees, as they are largely dependent on lease terms and conditions and risk losing their primary source of income in case of a deterioration in the economic situation. S. Schindler and K. Zale (2020) reflected this position concluding that existing legal remedies protect property owners much more than lessees.

The purpose of the present study was to investigate the problematic aspects of ensuring the rights of commercial real estate lessees in the context of economic instability and to characterise the international practices of protecting their rights and interests.

Materials and Methods

The regulatory framework of the study was based on the legislation of Ukraine and other European countries. Furthermore, the study was based on a

series of court precedents. The formal legal method was employed to analyse the Ukrainian legislation relating to the protection of lessees' rights in case of an emergency. This method helped to characterise the effects of legislative innovations on the legal system and relations in the field of commercial real estate lease. Within the application of this method, the following regulations were analysed: the Civil Code of Ukraine (2003), the Law of Ukraine No. 530-IX "On Amendments to Certain Legislative Acts of Ukraine Aimed at Preventing the Occurrence and Spread of Coronavirus Disease (COVID-19)" (2020), and the Law of Ukraine No. 540-IX "On Amendments to Certain Legislative Acts of Ukraine Aimed at Providing Additional Social and Economic Guarantees in Connection with the Spread of Coronavirus Disease (COVID-19)" (2020).

The historical legal method helped to note how legal provisions have changed over time and in connection with the events such as the spread of the COVID-19 pandemic and the full-scale invasion of Russia in Ukraine. Specifically, this method helped to observe that Ukrainian legislation contained a suitable response to these events, expressed in the adoption of new legislative acts that improved the existing legal relations in the field of commercial real estate lease. These legislative acts include, first of all, the Law of Ukraine No. 1071-IX (2020) and the Tax Code of Ukraine (2010).

A valuable method in the context of the present study was the comparative legal method. This method helped to describe and compare legislative changes in the field of commercial real estate lease introduced in Ukraine and a series of European countries (Austria, France, Germany, Italy, Portugal, Spain, Sweden, the Netherlands, England, and Wales) in response to the large-scale crisis. The method of precedent analysis helped to characterise the court precedents of Ukraine regarding the protection of lessees'

rights in the context of economic instability and to identify the imperfections in the existing legislation. The following court precedents were included in the analysis: No. 911/3067/20 (2021), No. 922/2531/15 (2016), No. 910/7679/22 (2023), No. 914/675/22 (2023). These precedents were chosen because they demonstrate that the provisions consolidated in the legislation do not always contribute to the proper protection of commercial property lessees in practice.

Results

Protection of the rights of commercial real estate lessees in Ukraine. Commercial property leasing is an indispensable tool for meeting key business needs. Recently, Ukrainian businesses have faced substantial challenges due to the spread of the COVID-19 pandemic and the outbreak of a full-scale war, which, among other things, has adversely affected the commercial property market (Fig. 1).

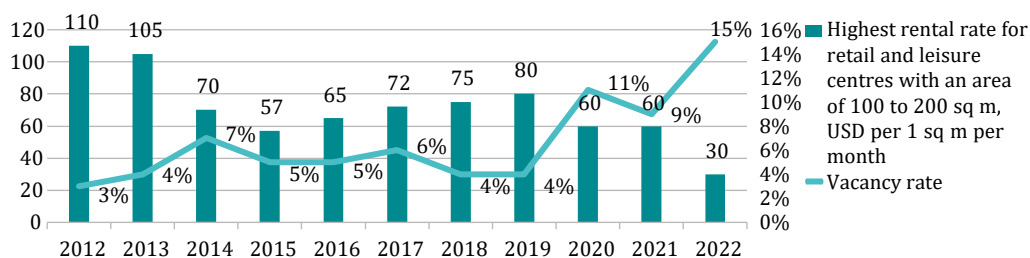


Figure 1. Highest lease rates and vacancy rates in commercial property

Source: N. Aleynik (2023)

As illustrated in Figure 1, the pandemic has severely affected the commercial property market in Ukraine. The highest lease rates for retail and shopping centres with a take-up area of 100 to 200 m² fell by USD 20 per 1 m² per month (in 2020 compared to 2019). At the same time, in 2020, the vacancy rate for commercial property increased considerably, by 7% year-on-year.

However, a particularly negative impact on these indicators was recorded after the outbreak of a full-scale war in 2022, when the highest lease rate was halved compared to the year of the pandemic, while the vacancy rate for commercial property reached 15%. However, the commercial property market has subsequently begun to recover gradually (Fig. 2).

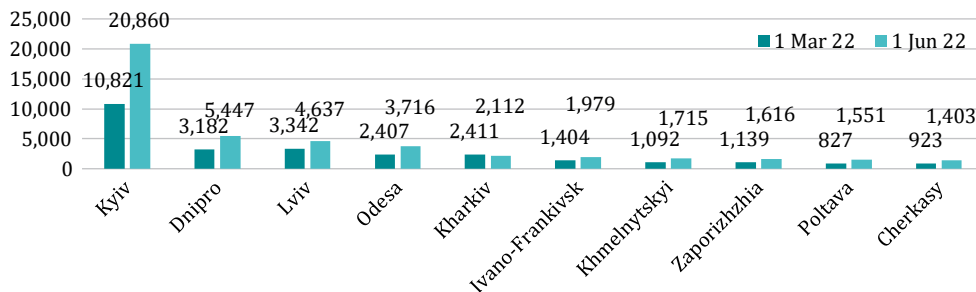


Figure 2. Regions of Ukraine with the highest number of commercial property lease ads at the beginning of the large-scale invasion

Source: Commercial property lease market starts to revive (2022)

Figure 2 demonstrates that the number of commercial property advertisements started to grow as early as June 2022. As of 2024, demand for commercial property is expected to increase. However, in the context of economic instability and crises of various origins, approaches to lease agreements should be very balanced and contain clear discussion of the lease terms in case of various risks. The main such terms include the procedure for determining and changing the lease payment, the procedure for early termination of contracts, consideration of the possibility of force majeure, and the procedure for vacating and returning leased commercial property. The essential terms of a lease agreement are set out in Part 1 of Article 284 of the Commercial Code of Ukraine (2003).

The procedure for determining and changing the lease payment relates to the amount of payments, the procedure for their payment, and the possibility of revising payments. The imperfection of the mechanisms for determining and changing lease payment in Ukraine became most evident after the outbreak of the COVID-19 pandemic and, subsequently, with the outbreak of a full-scale war, when many business entities lost the ability to make full use of their leased premises.

At the beginning of the pandemic, Ukrainian legislation was supplemented by the Laws of Ukraine No. 530-IX (2020) and No. 540-IX (2020), which contained provisions on business support, limitation of penalties, specifically for non-payment of lease for business entities that could not operate due to quarantine, and a moratorium on eviction of lessees for non-payment of lease.

The procedure for determining and changing the lease payment is regulated by Article 762 of the Civil Code of Ukraine (2003), namely, parts 4 and 6. Part 4 prescribes the lessee's right to demand a reduction in lease payment in cases where its ability to use the leased property has significantly decreased due to circumstances for which the lessee not responsible. Part 6 prescribes a

complete exemption of the lessee from the obligation to make lease payments for the period during which they were unable to use the property due to circumstances beyond their control.

However, the analysis of the judicial practice suggests that the above legislative provisions do not provide adequate protection to the lessee. As an example, see certain comments of the Supreme Court in case No. 914/675/22 (2023). It was noted that the fact of military aggression in itself does not indicate that it is categorically impossible to use the leased premises. Another illustrative example is the position of the Supreme Court in Case No. 911/3067/20 (2021). The State Enterprise Boryspil International Airport (IA) applied to the court with a request to recover from Coffee Bar Plus LLC the lease payment for March-July 2020 (i.e., during the quarantine period), in the amount determined by the terms of the lease agreement. For the period of quarantine, the Government's resolution reduced the lease payment for the use of state property, and therefore the defendant was forced to pay a share of the lease payment in the amount of 25% of the accrued amount. In turn, the plaintiff argued that the lease payment reduction could only be applied if the lease agreement was amended accordingly. In contrast, the defendant believed that due to the impossibility of using the leased premises under quarantine, it should have been completely exempted from making the lease payment. However, the Supreme Court's position in this regard contained a note that the imposition of quarantine restrictions does not in itself indicate a complete inability to use the leased premises. As the courts found, the lessee did not prove that its business activities were completely suspended during the quarantine, including due to the impossibility of access to use the premises, as the plaintiff provided the defendant with such access and recorded the defendant's employees entering the premises. These circumstances gave the courts grounds to reject the defendant's

certificate of force majeure. In the end, the cassation appeals of Boryspil International Airport and Coffee Bar Plus LLC were not satisfied.

The above examples demonstrate the imperfection of the mechanisms for protecting commercial property lessees in the context of economic instability and crisis. Lessees could only hope for understanding from lessors, who, recognising the gravity of the lessees' situation, could voluntarily agree to reduce or suspend lease payments. However, this does not solve the problem of the lack of reliable legal mechanisms to protect lessees' rights. In the absence of such mechanisms, it is particularly important for lessees to pay as much attention as possible to all the details and contingencies at the time of entering into the lease agreement.

Notably, if the lessee already knew or could have foreseen certain circumstances that may prevent the use of the leased premises at the time of entering into the lease, the courts may reject the request for reduction or exemption from lease payment due to the occurrence of such circumstances. For example, in case No. 910/7495/16 (2018), the plaintiffs filed a lawsuit to recover the debt from the defendant under the lease agreement. The defendant objected to the claim, arguing that it should not make the lease payment due to the impossibility of using the disputed premises associated with the anti-terrorist operation in Donetsk, where the leased property was located. In this regard, the Supreme Court concluded that the fact of the anti-terrorist operation was not a ground for not making the lease payment, as the defendant was already aware of the emergency in Donetsk at the time of acceptance of the leased premises.

Accordingly, in the force majeure section of the lease agreement, such factors as an ongoing war are not likely to be considered as force majeure. Overall, the fact of such circumstances is most often evidenced by a certificate issued by the Ukrainian Chamber of Commerce and Industry (CCI). However, the parties are not

deprived of the opportunity to prove the fact of such circumstances even in the absence of a certificate issued by the UCCI. For instance, in case No. 910/7679/22 (2023), the force majeure event was the partial destruction of the shopping centre where the leased premises were located. The lessee filed a lawsuit to terminate the lease agreement due to such circumstances, as they rendered the lessee unable to use the leased premises, and to recover the guarantee payment from the lessor. The claim was partially satisfied without the need to present the CCI certificate, and the case was sent for reconsideration.

A significant aspect of lease agreements is the determination of the terms and conditions of early termination. If the agreement makes provision for unilateral termination, it should clearly define the timeframe for notifying the other party of such intention. However, in case of a conflict, it is essential that the agreement also sets out the permissible ways of notifying the other party of the intention to terminate the agreement, such as e-mail, postal mail, etc., the necessary details, deadlines, actions in case of refusal to receive the notification, etc. (Expert opinion..., 2024).

Another vital point is to discuss the terms of return of the leased property. It should be borne in mind that the lessor cannot refuse to accept the leased property even if its condition deteriorates, which can be demonstrated in practice by the example of case No. 922/2531/15 (2016). The High Commercial Court of Ukraine noted that in case of vacating the premises by the lessee, even if the condition of the leased property deteriorates, the lessor must accept the property by signing the relevant act and cannot demand lease payment for the period during which the lessee no longer occupied the premises.

Experience of the European Union countries. One of the most striking examples that demonstrated the ability and readiness of the European Union to respond adequately to economic

instability and crises was the COVID-19 crisis. The measures taken directly affected the areas of contractual relations and litigation related to commercial real estate leases. Consideration and use of the case law of European countries in this regard may be useful for Ukraine, with respective adaptation to local conditions and consideration of the specifics of the problems faced by Ukraine.

Since the beginning of the pandemic, Austria has not adopted any new laws on real estate relations. At the same time, the country applies the provisions of general civil law already in force before the pandemic (Civil Code of Austria, 2017). These provisions contain regulations for early termination and reduction of lease payment for the lessee, while retaining the right to use the leased property. The decrees issued by the Federal Minister of Health in March 2020 contained a series of prohibitions, including a ban on customers entering the area, which effectively rendered commercial premises unusable for the purposes for which they were leased. Such restrictions did not apply to office premises. However, the regulations adopted by the country in relation to COVID-19 (Ordinance of the Federal Minister..., 2020) did not prescribe new rights to terminate agreements or reduce lease payments under commercial real estate lease agreements.

The French government developed a mechanism under which the lessor could not impose fines or demand termination of the lease agreement if the lessee decided to suspend the payment of lease for a specified period (Law of France No. 2020-290, 2020). This applied to the period from 12 March 2020 until the end of the two-month period following the lifting of the public health emergency. Conditions were set for lessees to meet to benefit from the above mechanism, namely: the number of employees should not exceed 10 people and the turnover should not exceed EUR 1 million for the last reporting year, they were prohibited from accepting clients or their

turnover excluding taxes decreased by at least half for the period from 1 to 31 March 2020, etc.

In Germany, a moratorium was introduced on the termination of the lease agreement by the lessor in case of non-payment of lease by the lessee of commercial real estate during the period from 1 April to 30 June 2020 (Act to Mitigate the Consequences..., 2020). The moratorium could be further extended. However, the lessees were not exempted from the obligation to pay the arrears and interest, and the deadline for this was set at 30 June 2022. To take advantage of the government's options, the lessees had to prove that their non-payments were caused by the impact of the pandemic. For example, that their activities were prohibited or significantly restricted according to clearly defined legal requirements.

The Civil Code of Italy (1942) does not contain any provisions for reducing or suspending lease payments or terminating lease agreements related to the spread of the coronavirus (with the exception of sports centres and gyms). However, certain documents contain provisions for certain subsidies and tax benefits. The "Cura Italia" (Decree-Law of Italy No. 18, 2020) introduced tax credits for persons engaged in retail or food and beverage trade, which amount to 60% of the rent paid in March 2020. The said document also contains an article stating that compliance with the restrictions established by it shall be considered for the purpose of excluding the liability of debtors under the terms of lease agreements for non-performance of obligations, including termination of agreements and imposition of fines. Furthermore, the "Rilancio Decree" (Decree-Law of Italy No. 34, 2020) established the right of lessees to a tax credit equal to 60% of the monthly lease payment paid for the spring months of 2020. This right was granted to lessees whose revenue did not exceed EUR 5 million for the previous fiscal year, as well as to representatives of hotel and agritourism businesses, with a mandatory

requirement of a decrease in turnover by at least 50% for the relevant months. The tax credits mentioned in the above documents could not be combined. Separate articles prescribed the right to tax credits for bringing premises into compliance with sanitary requirements aimed at preventing the spread of the virus.

Portugal imposed restrictions on the unilateral termination or cancellation of lease agreements by lessors, who also could not prevent the renewal of such agreements. In addition, if the lessee did not agree to the termination of the lease, the expiry date of the lease was not applied, and other statutory deadlines were postponed. Furthermore, deferrals of lease payments were applied. The deferral applied to retail establishments whose operations were suspended or closed due to legal quarantine restrictions, even if they continued to operate online (using electronic means). In addition, catering establishments could take advantage of the benefits, even if they continue to produce confectionery products that are sold for consumption outside the establishment or through delivery services. However, the relevant regulations did not contain provisions for commercial property lessees providing basic services or selling essential goods. The deferred lease was to be paid in instalments over a specified period without penalty or interest. Additionally, restrictions were imposed on the termination of lease agreements in case of closure of the establishment due to pandemic precautions. In case of termination of the lease by the lessee, the deferred lease payment was to be made in full upon termination of the lease (Law of Portugal No. 1-A/2020, 2020).

In Spain, commercial property lessees who were forced to suspend operations due to the spread of the pandemic were entitled to deferred lease payment if the lease was with a state-owned company or a large property owner. Lessees who did not fall into the above category could request

a temporary moratorium on lease payments, but the decision on whether to accept these terms was left to the lessor's discretion (Royal Decree of Spain No. 463/2020, 2020).

In Sweden, a grant scheme was applied for those lessors who agreed to introduce discounts for their lessees. This scheme made provision for the state financial aid in the amount of half of the discount provided by the lessor if said lessor operates in the hotel, restaurant, or retail sector, or provides certain services (e.g., a hairdresser). Furthermore, conditions were set regarding the timing of lease agreements, the timing of the discount, the submission of applications, etc. Grants were limited to 25% of the initial fixed rent and EUR 800 thsd (Ordinance of Sweden No. 2020:237, 2020).

In the Netherlands, no new real estate regulations have been introduced since the start of the pandemic. As in Austria, the country applied the existing provisions of the Civil Code of the Netherlands (1992). Therewith, the operation of catering establishments was temporarily suspended. At the same time, several new arrangements were introduced that were not directly related to the real estate sector. For example, the Emergency Bridging Measure for Employment (2020) stipulated that in case of a loss of defence by at least 20%, employers are entitled to a subsidy for salary-related costs (up to 90%). Additionally, other measures were introduced, such as the "corona credit" and various tax measures, which did not directly affect lease relations, but contributed to creating a favourable environment for business, giving it more opportunities to make lease payments (The impact of COVID-19..., 2021). Thus, no new legislation was introduced in the Netherlands to improve the situation of lessees or lessors in the crisis, but the government encouraged these parties to engage in a constructive dialogue. This resulted in the Support agreement for lessees and lessors of retail space (2020), according

to which the lease payment for April-June 2020 could be suspended by agreement of the parties if the lessee's turnover fell by at least 25%.

In England and Wales, a moratorium on commercial property confiscation was introduced, which prevents lessors from confiscating leases due to non-payment of lease for a specified period. The moratorium also applied to other payments due from lessees (insurance, utility, interest, etc.). However, this measure did not affect lease payment reductions or deferrals – these decisions had to be agreed between the lessor and lessee. Furthermore, other temporary measures were introduced to protect lessees, such as a ban on filing a petition for liquidation, a ban on the application of the commercial lease debt recovery system under certain conditions, etc. (The impact of COVID-19..., 2020).

As for the case law of the European Union, it is worth noting that most national courts have recognised that the spread of the COVID-19 pandemic can be considered a force majeure event. However, in practice, the courts have not always justified the lessee's failure to pay the lease stipulated in the lease agreement on this basis, being cautious about recognising the pandemic as force majeure. Thus, the example of Italy in relation to the existing case law shows that the mere fact of a pandemic did not relieve lessees from liability under the contractual terms. They had to reasonably prove that the spread of the virus had caused such obstacles that they were effectively unable to perform their contractual obligations. This position is reflected in the Pisa Court Order (2020), which states that a lessee claiming that its difficulties are caused by the spread of the pandemic must prove it – it cannot refer to a general deterioration in its financial condition in abstract terms, but must provide concrete evidence. The courts of the Netherlands and France have mostly issued analogous decisions, noting that if the mere existence of a pandemic does not prevent the per-

formance of contractual obligations, the parties must perform them in any case (The impact of COVID-19..., 2021).

On the other hand, in some cases, courts have recognised the problems caused by the spread of the pandemic as force majeure. Most often, this was associated with the need to follow restrictions imposed legislatively to prevent the spread of the virus. The case law of the Verona Court, for instance, shows that if the defendant is unable to reach the place of performance due to restrictions imposed by the government, performance is declared impossible (ruling of 8 July 2020) (The impact of COVID-19..., 2021). Analogous decisions have been issued by the courts of France, Spain, and others.

As for the possibility of renegotiating the agreement, the EU courts mostly sought to restore the contractual balance that had been disturbed by unforeseen circumstances caused by the pandemic, while rejecting measures that would lead to the termination of the agreement. Referring to the need to observe the principles of fairness and good faith inherent in any contractual relationship, Italian case law demonstrates that the courts have noted the obligation of the parties to revise the contract due to substantial changes in circumstances. Moreover, the courts allowed that in case of failure to perform such an obligation, the aggrieved party could apply to the court to review the contractual terms (The impact of COVID-19..., 2021). Considering the practices of the EU countries, Ukrainian legislators should pay closer attention to developing mechanisms for temporary lease payment reduction and ensuring their practical implementation; developing effective approaches to individual assessment of the circumstances of each case; introducing state support, for instance, in the form of compensation for part of the lessor's discount on the lessee's lease, following the example of the Swedish grant scheme; encouraging the parties to engage in dialogue and cooperation, etc.

Discussion

The study noted that the Ukrainian legal framework at the beginning of the COVID-19 pandemic was adequately supplemented by a series of legislative acts, including restrictions on penalties for commercial property lessees and a moratorium on evictions for non-payment of lease. At the same time, an analysis of Ukrainian judicial practice revealed that the measures taken did not provide lessees with adequate protection, both in a pandemic and in a full-scale war. As business development is often associated with the need to lease commercial premises, this issue requires increased attention, as business efficiency directly affects the financial stability and support of the country's economy in wartime.

To find useful practices for Ukraine in protecting the rights of lessees in times of economic instability, the practices of the European Union were reviewed. The study focused on effective initiatives to develop mechanisms for temporary lease payment reductions for lessees, implementation of state support measures, opportunities to encourage lessees and lessors to cooperate, etc. The above examples of amendments to the legislation of the European Union and the case law of these countries can provide Ukraine with valuable experience in protecting lessees' rights in the context of economic instability, specifically, related to military operations and risks.

The findings of the present study should be compared with conclusions of other researchers on the effectiveness of lessee protection measures in the context of economic instability contained in the research of authors from other countries. For example, E.S. Ti (2022) revealed how the pandemic has affected the relationship between lessees and lessors in the UK. The researcher noted that the government has a long history of adopting laws that differ from conventional ones in the context of emergency situations, which is certainly the spread of a pandemic such as

COVID-19. However, the adoption of any laws, even in an emergency, requires proper substantiation. Factually, the laws adopted in the field of commercial real estate lease during the pandemic prevent lessors from asserting their legal rights, and thus usurp existing contractual rights. However, in the researcher's opinion, this does not apply to the property aspect of commercial leases, i.e., the state is entitled to temporarily restrict the rights of lessors, as this does not violate property. The researcher's position is based on Honoré's theory that property rights imply a duty to prevent harm to others. E.S. Ti believes that this theory rationalises the introduction of restrictions in emergency situations. The reference to Honoré's theory distinguishes the conclusions of E.S. Ti (2022) from the findings of the present study since the researcher substantiates the introduction of restrictions on the rights of lessors mainly by the current economic situation and the need to support business in a crisis. At the same time, E.S. Ti's (2022) position allows explaining the need for such restrictions not only from the economic standpoint, but also from the standpoint of property theory.

According to the findings presented by V. Mak (2022), it can be concluded that, overall, changes in contract legislation in the context of force majeure are justified. Based on the analysis of lessee protection in England and the Netherlands, the researcher concluded that Dutch legislation gives greater opportunities for lessees to receive lease payment discounts. V. Mak's study emphasised the significance of proper valuation of lease payment discounts and noted that long-term changes should include adjustments to the standard rules to address problems with such valuation. These conclusions are also consistent with the findings of the present study, as it noted the need to adjust Ukrainian legislation due to force majeure and the resulting economic instability.

M. A. Wolf (2020) described the experience of the United States of America in introducing new

legislation in the field of commercial real estate lease with the spread of the COVID-19 pandemic. As the primary examples, the researcher noted the government orders issued in the most populous states of the country. For instance, the Governor of New York issued an order prohibiting the eviction of commercial or residential lessees or foreclosure of property for 90 days (the period was subsequently extended). The Governor of California issued an order to suspend evictions of commercial property lessees who have suffered a substantial reduction in business income due to the pandemic. However, this moratorium did not affect the lease payment obligations of lessees who were able to pay in full or in part. These and other examples described in the study allowed the researcher to formulate his position on the justification of introducing such measures in an emergency. The principal idea of the study is that the fact of the existence of an emergency may be the basis for the implementation of respective state decisions but does not create new or cancel existing constitutional provisions. In other words, state measures, even in the context of emergency situations, cannot violate constitutional rights and fundamental freedoms. In this regard, it was noted that judges' opinions on the restriction of contractual terms differ – some consider it justified due to the presence of emergency conditions, while others express fears that these restrictions will ultimately lead to a violation of constitutional provisions. It can be argued that the introduction of restrictions in the context of emergency situations is justified but has its limits. Thus, as noted in the study, a prominent aspect that ensures compliance with the principles of reasonableness and fairness is the need for the lessee to prove that its problems were caused by the emergency.

This opinion is reflected in the decision of the highest court of Germany (Bundesgerichtshof) dated 12 January 2022 (XII ZR 8/21), commented on by M. Zachariasiewicz (2023). Overall, this

decision concerns the issue of whether lessees must make the lease payment in full in the context of the COVID-19 pandemic. The German highest court concluded that a lessee cannot completely waive its contractual obligations. At the same time, the lessee may request a judicial review of the lease payment during the quarantine. Such a review will not always result in an equal distribution of risk between the parties, as such risk should be allocated based on individual circumstances. These circumstances include the amount of financial losses incurred by the lessee due to the inability to use the leased premises, the significance and duration of the closure of the premises, and the actions taken by the lessee to mitigate the losses, including state aid or insurance. P. Ratusznik (2024) reached analogous conclusions, referring to the practices of Germany and Poland. The researcher noted that before the pandemic, European law was based on the *pacta sunt servanda* principle, according to which agreements must be executed. However, the pandemic has disrupted the established order, as the judicial practice has become predominantly based on an assessment of the individual circumstances of the case.

In the studies by S.M. Viljoen (2020) and L. Richardson (2021), encouragement of negotiations between the parties is considered a possible measure to improve the financial stability of both parties in a crisis. However, other studies do not support these assumptions: C. Martin *et al.* (2023) found that lease payment measures based on dialogue between lessees and lessors had limited effect, with only 8-16% of such negotiations leading to changes in lease payments. However, the differences identified in the present study and the findings of other researchers do not change the position expressed in the former, as the recommendations made in the Ukrainian context may have more positive effects, considering the specifics of the war situation and the experience of countries gained during the pandemic.

Conclusions

Commercial property leasing is an essential tool for meeting the needs of many businesses. However, in the context of economic instability caused by various crisis factors, lessees may face major challenges. For instance, during the COVID-19 pandemic and the widespread war in Ukraine, national businesses have faced substantial economic difficulties due to the inability to access leased premises. Considering the significance of business in meeting the needs of the population and making a crucial contribution to the state budget, lessees' rights must be properly protected in the face of the crisis and economic instability.

The study noted that during the pandemic, lease rates have fallen dramatically, and commercial property vacancy has increased. With the outbreak of a large-scale war, these indicators experienced even more negative trends, but later the commercial property market began to recover gradually. The growing supply must be matched by adequate demand, and this is expected to grow gradually in 2024. However, lessees should be extremely cautious about leasing commercial property in an environment of economic uncertainty. Lease agreements should contain a clear discussion of the terms and conditions, including rights and obligations in case of various risks. The key terms that should be set out in detail in lease agreements are the procedure for setting and reviewing lease payments, the possibility of premature termination of agreements, actions in case of force majeure, and the procedure for vacating and returning leased commercial property.

Overall, at the beginning of the pandemic, Ukrainian legislation was supplemented by a series of laws that contained provisions limiting penalties for non-payment of lease, a moratorium on eviction of lessees, etc. The Civil Code of Ukraine also contains provisions stipulating that lessees may demand a reduction in lease payments if, as a result of circumstances for which

they are not responsible, their ability to use the leased property has been significantly reduced. However, the analysis of court practice conducted in this study revealed that in practice, the above legislative provisions do not provide adequate protection to commercial real estate lessees.

To find approaches and mechanisms to improve the legal protection of commercial real estate lessees, the study analysed international practices. This analysis showed that the following mechanisms exist in different countries to protect lessees' rights during a pandemic: provisions in the law for premature termination of agreements and reduction of lease payment for the lessee while retaining the right to use the leased property (Austria); a mechanism that prescribes the non-application of fines and requirements for termination of the lease agreement to the lessee if they decide to suspend the payment of lease for a period specified by law and in case of their compliance with the requirements specified by law (France); a moratorium on termination of the lease agreement due to non-payment of lease, which was in force for a certain period, provided that the lessee proves that the non-payment was caused by the impact of the pandemic (Germany); introduction of tax credits for lessees who meet the requirements set out in the law (Italy); restrictions on unilateral termination or cancellation of lease agreements by lessors, deferred payment of lease for certain categories of lessees (Portugal); deferral of lease payment in cases where the lease agreement was concluded with a state-owned company or a large property owner (Spain); application of grant schemes for lessors who agreed to introduce discounts for their lessees (Sweden); introduction of measures not directly related to the real estate sector, but contributing to the improvement of the situation of businesses in crisis ("corona credit", eligibility for subsidies, various tax measures); call for dialogue between lessees and lessors (the Netherlands); a moratorium on

the confiscation of commercial property, a ban on filing a petition for liquidation, a ban on the application of the system of reimbursement of commercial lease arrears under certain conditions, etc. (England and Wales).

These measures can be a valuable experience for Ukraine in the context of improving the legal framework for the protection of lessees' rights. With adequate adaptation to local conditions and consideration of the specifics of the situation in Ukraine, international practices can improve the

situation of commercial property lessees in crisis conditions. Further research could focus on developing concrete proposals for changes to Ukrainian legislation to improve the protection of lessees' rights during wartime.

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None.

Conflict of Interest

None.

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Захист прав орендарів комерційної нерухомості в умовах економічної нестабільності

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Анотація

Метою дослідження було визначення проблемних аспектів захисту прав орендарів комерційної нерухомості в умовах дії кризових явищ, що призводять до економічної нестабільності. У результаті проведеного дослідження було підтверджено, що ситуація в сфері оренди комерційної нерухомості в Україні через вплив таких явищ як пандемія та війна, що призвели до економічної нестабільності, суттєво погіршилася. За результатами дослідження української законодавчої бази засвідчено, що із початком пандемії у ній було запроваджено адекватні механізми захисту прав орендарів (відстрочки виплат орендної плати, мораторій на виселення та ін.). Проте, аналіз судової практики України довів, що ці механізми не завжди належним чином захищають права орендаря на практиці. В процесі аналізу міжнародного досвіду щодо захисту прав орендарів в умовах пандемії було виявлено низку ефективних механізмів захисту, що застосовувалися в окремих країнах. Ці механізми можуть бути адаптовані під українські реалії з метою покращення ефективності захисту прав орендарів. Водночас, було відзначено, що фактично у будь-якому законодавстві орендар має довести, що погіршення його фінансового становища було спричинене саме дією надзвичайних обставин, що дозволить зберегти баланс у правах та обов'язках орендарів та орендодавців на засадах принципів розумності та справедливості. Відповідно, важливо приділити увагу розробці ефективних механізмів доведення цього факту з боку орендарів із належним закріпленням у законодавчій базі

Ключові слова: договірні відносини; відстрочка оплати; мораторій на виселення; дострокове припинення договору; форс-мажор; надзвичайні обставини



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Intellectual rights of manufacturers of personal protective equipment in the context of national security threats: Between protection of intellectual property rights and the need for open innovation

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Abstract

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The purpose of this study was to examine the mechanisms for regulating and protecting intellectual property rights in the context of the production of personal protective equipment in the context of a threat to national security. To this end, the study analysed Ukrainian legislation and international regulations governing intellectual property rights, particularly those of manufacturers of personal protective equipment. Thus, in the context of a threat to national security, the intellectual property rights of Ukrainian manufacturers of personal protective equipment were found to be crucial due to the military conflict and the need to protect both the population and the armed forces. The state must guarantee access to vital technologies while respecting the rights of producers, which makes the issue of intellectual property particularly relevant considering the growing demand for the latest developments in the personal protective equipment sector. Cooperation with international partners in the field of technology and intellectual property protection can help develop national production of personal protective

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equipment and reduce dependence on imported supplies. Government agencies should focus on developing policies that promote the protection of intellectual property rights and provide mechanisms to support manufacturers in critical situations. Raising awareness of producers about their rights and opportunities to protect intellectual property is a crucial step in strengthening their market position. It is essential to strike a balance between the protection of intellectual property rights and the needs of society in the context of a threat to national security. Governments should consider temporary relaxation of rights in times of crisis to ensure overall security

Keywords: public interest; patent law; external situations; licensing; COVID-19; military conflict

Introduction

In the face of growing threats to national security, such as military conflicts or pandemics, personal protective equipment (PPE) is becoming critically important. However, intellectual property rights protection can inhibit the rapid production and distribution of such PPE, which can negatively affect the national security. Intellectual property rights protect innovation and stimulate the development of innovative technologies. However, during crises, such as military threats, there may be a need for open innovation, when patents are temporarily “opened” to provide access to vital technologies. Research on this topic helps to strike a balance between the rights of producers and the needs of the state for rapid access to technology. The country’s military-industrial complex requires constant development and implementation of innovative technologies, specifically in the field of protection of military and civilians. The study of intellectual property rights in relation to PPE will help to regulate licensing, joint development, and access to critical technologies in the interests of the state. In times of global threats, international cooperation in the production and exchange of innovations is essential. Intellectual property rights issues can hinder or facilitate such cooperation. It is vital to explore how countries can interact within the framework of international intellectual property treaties in the face of threats. In cases of emergencies, governments

may require the opening of innovations for the public good, which requires legislative solutions. The study of the topic offers insight into how states can effectively attract innovation while maintaining a balance between business interests and security. Thus, the relevance of the topic is determined by the need to find the best solutions to protect the rights of PPE manufacturers and simultaneously ensure national security through access to critical technologies.

According to P.C. Neves *et al.* (2021), intellectual property (IP) rights play a key role in stimulating innovation and research. PPE manufacturers develop advanced technologies that must be protected through patenting and other IP mechanisms. However, according to F.M. Abbott and J.H. Reichman (2020), in emergency situations, such as pandemics or military conflicts, IP protection can become a barrier to the rapid production and distribution of PPE. For example, according to V.A. Vdovichenko and T. Zosimenko (2021), during the COVID-19 pandemic, the issue of unrestricted access to technologies for the development of vaccines and medicines was raised at the international level. Open innovations facilitate rapid access to the latest technologies, but at the same time can undermine the economic interests of patent holders.

According to V.O. Kopanchuk (2020), the availability of personal protective equipment on

national markets is important not only for the safety and health of the population. To have access to such means, it is imperative to ensure the implementation of the fundamental principles of flexibility of intellectual property rights, while maintaining the freedom to choose the production technology of personal protective equipment by other manufacturers, flexibility in pricing goods in comparison with consumer preferences for their safety, stability of supply markets, and, finally, it is necessary to ensure public access to such goods guaranteed by the state.

K. Zaman (2022) investigated how Germany and Switzerland are shaping approaches to the temporary weakening of IP rights in emergency situations. Furthermore, at the international level, for instance, within the framework of the World Trade Organisation (WTO), mechanisms are being considered that enable countries to access patented technologies during crisis situations. This creates the basis for a balance between IP protection and the needs of society. According to N. Yurkiv and V. Shemaev (2023), in the context of threats to national security, such as war or terrorism, the development of the military-industrial complex requires innovation and rapid production of protective equipment. This includes the need for access to advanced technologies, sometimes even through the relaxation of patent protection or through compulsory licensing mechanisms. Governments may consider mechanisms to accelerate access to technology, allowing for a more effective response to threats.

This study was conducted to strike a balance between the intellectual property rights of producers and the public demand for access to innovation, especially in the context of national security threats. The objectives of this study were to analyse how the protection of intellectual property rights of PPE manufacturers affects their ability to produce and supply products during national crises; determine how legislative mechanisms can

facilitate or restrict open innovation in critical situations (pandemics or military conflicts); and review international practices in the relationship between intellectual property rights and the need for rapid access to PPE.

Materials and Methods

The study employed the following methods of scientific cognition. The method of formal legal analysis was used to review the regulations governing the protection of intellectual property under martial law in Ukraine. Thus, within the framework of this study, the following regulations governing the intellectual property rights in Ukraine were examined: the Law of Ukraine "On Protection of Rights to Inventions and Utility Models" (1993), the Law of Ukraine "On State Regulation of Activities in the Field of Technology Transfer" (2006), the Law of Ukraine "On Copyright and Related Rights" (2022). The study also investigated the relevant legislation of other countries, including the United States of America (The Defence Production Act, 1950), Israel (Emergency Regulations Ordinance, 1948), Germany (Patent Act, 1980), the EU (Directive of the European Parliament No. 2004/48/EC, 2004), and international agreements (Agreement on Patent Cooperation, 1970; Agreement on Trade Aspects..., 1994). The specific features of the state standards were studied separately: DSTU: 50744:2009 (2009), 8782:2018 (2018).

The problematisation method helped to form a holistic vision of the problem of intellectual property rights protection in wartime. The comparative method was employed to analyse the legislation and practice of intellectual property rights protection in different countries, including those that have also faced military conflicts. This helped to understand the advantages and disadvantages of various approaches and to identify effective mechanisms for protecting the intellectual property rights of manufacturers of personal

protective equipment. The systematic approach helped to consider the protection of intellectual property rights in wartime as an element of national and economic security. Using the case study method, the study examined concrete cases of infringement of intellectual property rights to PPE, including counterfeiting of well-known brands.

Results

The intellectual property rights of manufacturers of personal protective equipment in the context of a threat to national security are critical in the context of modern challenges such as military conflicts and pandemics. The urgent need for the development of the military-industrial complex requires a novel approach to the protection and use of intellectual property (IP) in this area. This issue is related to how to balance the interests of manufacturers investing in innovation with government priorities for security and protection of the population. Manufacturers of personal protective equipment create innovative technologies that can be commercially viable and patentable. IP rights protect the interests of these companies by enabling them to monetise innovations and promote the development of new products. In the context of national security, the state should look for ways to stimulate the development of PPE while protecting the rights of developers. To meet the needs of the army, PPE manufacturers should work closely with government agencies to develop innovative technologies and equipment. In times of national crises, there is an urgent need for effective and rapid innovation in this area, which requires easier access to advanced technologies and international cooperation.

To understand the current situation with manufacturers of personal protective equipment and intellectual property rights, it is necessary to analyse the mechanisms for their protection. The creation of knowledge through research and development and its subsequent transformation

into innovations often requires extensive initial investment. However, if the obtained results are not protected by law, knowledge can always be used free of charge. The illegal use of unpatented intellectual property in the production of personal protective equipment has become particularly prominent during the COVID-19 pandemic, when demand for PPE has increased dramatically. Cases of counterfeiting of well-known brands, such as 3M respirators and Honeywell medical masks, have been reported (Joskow, 2022). Manufacturers illegally copied respirator or face shield designs developed by large companies, even if they were not patented. For instance, elements of the design of masks were copied and the products were passed off as original, misleading consumers. This can limit investment, especially for small and medium-sized companies. It is through the recognition and protection of intellectual property rights that governments around the world have decided to guide and regulate technology transfer. In the modern society, the key instruments of such guidance and regulation are patents for innovative technical solutions and industrial designs, copyrights of authors and related rights of performers. These instruments can increase the market value of final services and products and motivate private sector investment. In this regard, patents play a special role.

In the international context, specifically within the World Trade Organisation (WTO), there is discussion of the possibility of temporarily weakening patent protection in crisis situations (Narlikar, 2021). The COVID-19 pandemic is one example of when the international community has faced the need for global technology sharing to produce medical products and equipment. Analogous principles can be applied in the context of national security and the military-industrial complex (Lamping *et al.*, 2023). Some countries, such as Germany, already have legislative mechanisms for compulsory licensing of patents

in case of a national crisis. Article 13 of the German Patent Act (1980) allows for compulsory licensing of patents if it is necessary to protect the public interest, especially in times of public emergency that threaten the health of the nation. This may apply, for instance, to medicines, medical technologies, or personal protective equipment. It enables the state to use patented technologies to produce protective equipment and other necessary goods without the patent holder's consent, paying compensation. This approach can be applied in military conflicts when it is necessary to rapidly expand the production of PPE to protect military personnel and civilians.

The production of personal protective equipment is not conventionally considered part of the military-industrial complex (Zhuravlov *et al.*, 2020). However, masks, including those made of composite fabric material, helmets, and other elements of military uniforms, are part of the personal protective equipment of military personnel, law enforcement officers, firefighters, rescuers, medical workers, and industrial facility personnel.

High requirements to the protective properties and performance characteristics of this special fabric necessitate the use of advanced high-tech equipment, materials, and special processing methods. One of the signs that the fabric is special is the innovative nature of its production. Investments are made in the fair design and testing of new developments, as well as in the legal protection of the intellectual property rights of the creators and producers of special fabrics. The protection of these intellectual rights stimulates the further development of speciality textiles and fabrics.

In Ukraine, the protection of intellectual property rights is governed by the Law of Ukraine "On Protection of Rights to Inventions and Utility Models" (1993), which defines the procedure for protecting inventions that can be used in the production of PPE. In case of a threat to

national security, special licensing mechanisms may be applied, including compulsory licensing. The Law of Ukraine "On Copyright and Related Rights" (2022) protects copyrights to design and innovative solutions, but they can be restricted if necessary to protect national security.

Functionality is not the only principal factor that determines the properties; the geometric characteristics of the product also greatly affect the comfort and activity of the members of the military unit who use it. In the technological solution to the problem, the manufacturer of personal protective equipment must accommodate the special needs of the product user when providing the required level of protection. Such products must often meet the strict requirements of regulatory documents governing the manufacturing process. Approved by Resolution of the Cabinet of Ministers No. 771 (2021), the Technical Regulation defines mandatory requirements for PPE, including its design, manufacture, and safety. The regulation establishes categories of protection and requires mandatory certification of PPE. The key provisions of this regulation cover aspects such as PPE protection categories (first, second, and third), design and manufacturing requirements (PPE must be ergonomic and fit the size and physiological characteristics of the users), testing and inspection (PPE must undergo mandatory tests before being placed on the market to confirm their compliance with safety standards and protection against certain risks), labelling (each product must be labelled with a mark of conformity with the technical standards), and certification of PPE. The Technical Regulation on PPE ensures standardisation and quality control of products, which is mandatory to protect the health and safety of users.

The military-industrial complex operates in special conditions that require compliance with certain rules, which complicates the task of creating personal protective equipment. For

instance, DSTU: 8782:2018 (2018) sets out requirements for bulletproof vests, including their bulletproof performance, resistance to mechanical impact, weight, and ergonomics, while DSTU: 50744:2009 (2009) sets out the general requirements for body armour, including its level of protection, strength, and durability of materials.

That is why, when developing a product, it is important to clearly understand the goals to be achieved. Thus, the principal goal of developing such products as PPE for individual specialised and personal use by military personnel is to ensure the safety and reliability of officers and soldiers while performing their duties in various military environments. To meet this challenge and make relevant technological decisions, the manufacturer must develop high-quality, ergonomic, and easy-to-use products.

The intellectual property rights of personal protective equipment manufacturers in Ukraine are becoming a key issue in the context of the national security threat due to the war and the need to protect the population and the military. Amid the growing need for the latest developments in the field of PPE, the issue of intellectual property is becoming particularly relevant, as the state must ensure access to critical technologies while respecting the rights of manufacturers.

Protecting the intellectual property rights of PPE manufacturers in the context of a threat to national security requires a comprehensive approach that accommodates the needs of both manufacturers and the state. The primary means of such protection may include patent protection, licensing, and special legal regimes (Livingston *et al.*, 2020). Some countries (the United States, Israel, and the European Union) are implementing legal regimes that facilitate access to national security innovations. The EU has adapted its regulatory framework, especially during the COVID-19 pandemic, which has influenced the current situation (Wolff & Ladi, 2020). It has

also been effective in introducing temporary relaxations that allow for the rapid certification of new security products. Some of these changes are still in place today for defence purposes. The United States, through The Defence Production Act (1950), has mechanisms that allow the federal government to quickly redirect resources to the production of necessary protective equipment. Government support for innovation in this area through grants, fast-track licensing, and simplified procedures for companies developing and producing PPE is significant. In the face of constant threats, Israel encourages innovation in the field of PPE. The government provides special grants for start-ups developing new protective materials or technologies that can be used for military or civilian purposes (Raska & Bitzinger, 2023). Israel also simplifies procedures for certification of these products.

The key problem with protecting the rights of PPE manufacturers in the face of a national security threat is the mismatch between the legal framework and reality. The intellectual property legislation is outdated and does not cover adequate copyright protection for PPE innovations. This allows for copying of products and technologies without sanctions, which reduces the incentive for innovation in this area (Rondinone *et al.*, 2021). The absence of updated regulations on digital rights protection also limits the ability of rights holders to assert their rights in the online environment, which is especially significant in the context of the active use of digital technologies for the sale and distribution of PPE. The current Technical Regulation on Personal Protective Equipment (Resolution of the Cabinet of Ministers No. 771, 2019), approved by the Cabinet of Ministers, mandates complex certification requirements that often delay the launch of new products. Under martial law, this complicates the rapid introduction of critical PPE needed by both the army and civilians. Although the

government has simplified certain procedures, this does not always cover all aspects of certification, especially for small and medium-sized businesses. Despite the urgent need for PPE, manufacturers often face a lack of government financial support programmes. Deficiencies in government policy impede Ukrainian manufacturers' ability to adopt modern technologies and standards, which could increase their competitiveness in the global market

The European Union Intellectual Property Office (EUIPO) has conducted an analytical study on the number of infringements of intellectual property rights in the European Union (EUIPO, 2023) (Fig. 1). The results of this study revealed that intellectual property infringement substantially affects the manufacturing sector, reducing innovation potential, profitability, reputation, and opportunities for expansion into international markets.

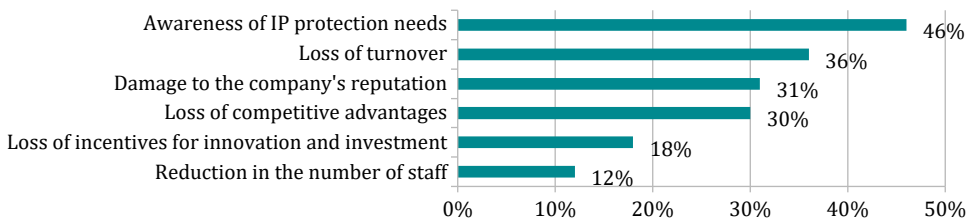


Figure 1. Impact of IP infringements on businesses

Source: EUIPO (2023)

To address such problems, it is necessary to create clear regulations governing the production of PPE, as well as to introduce mechanisms to protect the rights of producers (Mehrotra *et al.*, 2020). The state can provide subsidies or soft loans for small and medium-sized PPE manufacturers, which will enable them to modernise production. To this end, Israel has introduced simplified certification procedures for manufacturers of protective equipment, such as body armour and helmets, in the face of growing military threats. Local manufacturers received the opportunity to produce and supply PPE for the army and civilians faster. The reduction in bureaucratic procedures has increased the availability of such equipment at the national level. In case of a threat to national security or during military conflicts, the Israeli government activates the Emergency Regulations (Leaving the Country) Ordinance (1948), which enables the government to issue temporary regulations aimed at expediting certification, particularly for defence products.

Even in wartime, manufacturers must continue to register their inventions, innovative technologies, or materials for PPE production through the Ukrainian Intellectual Property Institute (Ukrpatent) (Martyuk, 2023). This has provided an opportunity to protect the rights to use the technologies in Ukraine and abroad, as these technologies may be used for commercial purposes after the war. Ukrainian companies that have developed new materials or components for bulletproof vests or helmets register patents for their intellectual property to avoid unauthorised use of these developments by competitors.

Ukrainian producers can protect their innovations not only in Ukraine but also abroad using the Patent Cooperation Agreement (1970). This enables them to file a single patent application in several countries, which is vital in the context of the expanding international PPE market. In wartime, Ukrainian companies that produce high-tech protective equipment use international patent systems to enforce their rights in countries where

their products can be exported or where their technologies can be copied (Upadhyay, 2024).

Ukrainian companies can cooperate with international organisations that help protect IP rights in times of war. For instance, the World Intellectual Property Organisation (WIPO) provides technical support and advice on IP rights protection during conflicts and crises (Walsh *et al.*, 2021). In wartime, companies can seek advice from WIPO on how to protect their patents or trademarks in an international context.

The rights of manufacturers to innovate, develop, and design PPE are regulated by patent law and international treaties. The key provisions of the Agreement on Trade Aspects of Intellectual Property Rights (TRIPS) (1994) include the definition of intellectual property: patents, copyrights, trademarks, industrial designs, geographical indications of the origin of goods and others; minimum requirements for protection: member countries must establish a certain minimum level of protection for all types of intellectual property; fair protection: the agreement requires that the legislation of each member country guarantees effective mechanisms for the protection and enforcement of intellectual property rights; balance and TRIPS seeks to balance the interests of rights holders and society, which is particularly relevant for industries such as pharmaceuticals, biotechnology, and security technologies. In the context of personal protective equipment, especially in the context of national security, TRIPS may pose challenges to the balance between the protection of intellectual property rights and the need for public access to such equipment.

The balance between the intellectual property rights of personal protective equipment manufacturers and the national interest in the context of war in Ukraine is complex, as it is vital to protect the rights of developers on the one hand, and to ensure the rapid and affordable production of critical equipment to protect the

military and civilians on the other. In extraordinary circumstances, such as war, Ukraine can use a compulsory licensing mechanism. This allows the government or businesses to manufacture or use patented technologies without the consent of the patent holder, but with fair compensation. This mechanism is in line with international law, specifically TRIPS (1994) and EU legislation. According to Directive of the European Parliament and of the Council No. 2004/48/EC (2004), countries may adapt their IP laws to ensure that national security is given priority. For example, in case of military conflicts or pandemics, the registration of patents for technologies used to manufacture PPE may be accelerated. PPE manufacturers can work with government authorities to obtain licences to use certain patentable technologies to ensure national security (Mills, 2023). However, it is crucial to involve manufacturers in discussions of viable solutions to find compromises that satisfy both national interests and commercial rights.

Thus, in wartime, the state must strike a balance between protecting the rights of producers and ensuring rapid access to the latest technologies to protect national interests. It is necessary to strengthen legislative mechanisms for compulsory licensing in emergency situations, which will enable the rapid adoption of advanced PPE developments. The state should support the innovation sector by offering incentives to PPE companies to ensure the sustainable development of the national security infrastructure. Thus, the issue of protecting the intellectual property rights of PPE manufacturers in the context of a threat to national security requires a comprehensive approach that will ensure the protection of intellectual property rights and at the same time contribute to the national security of Ukraine.

Discussion

The protection of patents, copyrights, and trade secrets allows companies to benefit from their

proprietary technologies. However, in conditions of national security, the state may apply special regimes that temporarily restrict the rights of producers to expedite the introduction of the latest developments. G.D. Sharma *et al.* (2022) emphasised the significance of finding flexible solutions to protect innovation while ensuring the availability of the latest technologies for the state in crises. According to the present study, finding solutions to protect innovation and the availability of the latest technologies in wartime is strategically significant for ensuring security, supporting economic development, and humanitarian aid. The activities of the Israeli government demonstrate the need for continuous investment in the latest security technologies, such as air defence systems (e.g., Iron Dome). The government supports start-ups developing innovative defence solutions, providing them with quick access to the market.

According to D. Settembre-Blundo *et al.* (2021), open innovation facilitates faster technology and knowledge sharing, especially in the military-industrial sector, where speed of development and implementation is critical. For Ukraine, which is facing a military threat, it is essential to strike a balance between stimulating the production of innovative PPE and ensuring its availability to the military and civilian population. Open innovation can contribute to the development of the military-industrial complex, allowing Ukraine to quickly adapt to emerging challenges.

Having studied this topic, A. Gilad *et al.* (2021) found that the practice of state interference in patent law often violates the interests of companies but is justified from the standpoint of national security. Ukraine, on the other hand, has been found not to directly interfere with the intellectual property rights of PPE manufacturers, as there are no direct mechanisms for interfering with the intellectual property rights of PPE manufacturers in Ukraine. However, it is possible to use open

innovation tools and limited patents in emergency situations. A. Gilad *et al.* (2021), E. Auriol *et al.* (2022) noted that during military conflicts or threats, the state is entitled to demand access to technologies and means of protection without following standard intellectual property rights protection. This is crucial when the lives and safety of citizens are at stake. Thus, some countries, such as the United States, Israel, and the United Kingdom, are developing special legal regimes for national security innovations, which allows for faster implementation of developments. Investments in research and development in this area help to avoid conflicts between the interests of the state and rights holders.

The emergence of threats to national security, according to H. Bauchner *et al.* (2020), leads to an increase in demand for emergency PPE. After the outbreak of hostilities in Ukraine in 2022, there was a sharp increase in demand for bulletproof vests, helmets, medical kits, and gas masks among both the military and civilians. In the context of the ongoing war in Syria, demand for protective clothing, medical supplies, and gas masks increased considerably due to the use of chemical weapons and threats to civilians. During the US military operations in Iraq, the demand for armoured protective equipment and medical supplies increased due to the elevated risk of terrorist attacks and clashes. However, according to U.J. Munasinghe and M.N. Halgamuge (2023), the demand for disposable PPE can lead to a decrease in the quality of product performance, putting enormous pressure on the industry. As a result, manufacturers, including new entrants, and the PPE supply chain may face challenges and become exposed to substandard PPE, including counterfeit or mislabelled products. Substandard products and products that do not meet product performance requirements may reduce protection levels, properties, or service life for a variety of technical reasons. It is essential to control the

quality of PPE to ensure effectiveness throughout the entire period of use.

The intellectual property rights of PPE manufacturers should be protected, but with due regard to security needs. According to J. Cohen and Y. van der Meulen Rodgers (2020), threats to national security can affect the position of PPE manufacturers in several ways. On the one hand, companies that produce this type of product may become targets of special support. Thus, it is challenging for the private sector to allocate resources for the development and effective use of personal protective equipment, considering its limited use by ordinary consumers. In most cases, small and medium-sized enterprises, including those in basic industries, continue to be the manufacturers of such equipment. On the other hand, protectionist measures introduced in response to threats to national security may negatively affect the equipment manufacturers. This happens, for example, when personal protective equipment needed for national defence, law enforcement, and disaster response is produced by foreign manufacturers who find more efficient use of production capacity in civilian markets. The protective effects provided to foreign producers substantially distort the incentives for private domestic companies to invest in the creation of their production of personal protective equipment, which can be a potentially dangerous factor for national and global security. The current study found that national security threats affect PPE manufacturers in Ukraine through changes in demand, regulations, financing, worker safety, and the need for innovation. Manufacturers must adapt to these challenges to stay competitive and operate effectively in an uncertain environment.

Thus, in the context of a threat to national security, it is crucial to strike a balance between protecting the intellectual property rights of personal protective equipment manufacturers and the need for open innovation. In situations

of crises and threats to national security, manufacturers should be prepared to adapt their technologies and processes. Open innovation can stimulate the development of innovative technologies in the production of PPE. Collaboration between manufacturers, research institutions, and the state can ensure the exchange of knowledge and resources, which facilitates rapid response to threats. The state should play an active role in creating a favourable environment for innovation. This includes not only the protection of IP rights, but also the promotion of unrestricted access to technologies that may be critical in the context of a national security threat.

Conclusions

Protecting the intellectual property rights of personal protective equipment manufacturers in the context of a national security threat is becoming a complex subject due to the need to balance the defence-related interests of the state with the rights of private companies to their innovations. In the field of personal protective equipment production, there is a need to strike a balance between the protection of intellectual property rights and the need for open innovation. The former provides manufacturers with exclusive rights to their designs, while the latter facilitates the rapid exchange of knowledge and technology, which is critical in the context of national security.

A comprehensive strategy that factors in the requirements of both manufacturers and governments is needed to protect the intellectual property rights of PPE manufacturers in the face of national security threats. The United States, Israel, and the European Union have demonstrated how effective it is to implement a legislative framework that facilitates access to national security innovations. An effective step is to introduce a short-term exemption that allows for quick certification of new protection methods. The rights of PPE manufacturers are also positively

influenced when innovation is encouraged by grants, accelerated licensing and simplified procedures for companies that design and manufacture PPE. Start-ups working to develop new protective materials or technologies that can be used for military or civilian purposes should always receive special grants.

Ukrainian production is working hard to create new materials and methods of protection that may require the protection of intellectual property rights. The purpose of government initiatives that promote innovation is to create high-quality personal protective equipment (PPE) for both military and civilian protection. Ukrainian producers can protect their innovations not only in Ukraine but also abroad, using international legislation that allows manufacturers of high-tech PPE to use international patent systems to protect their rights in countries where their products may be exported or where production technologies may be copied.

The principal problem with protecting the rights of PPE manufacturers in the context of

national security threats is that intellectual property legislation is outdated and does not adequately cover copyright protection for PPE innovations. The current legislation mainly imposes complex certification requirements that often delay the entry of new products to the market. In the context of martial law, this hinders the rapid introduction of critical PPE.

One of the key areas for further research is to examine the legal aspects of compulsory licensing in emergency situations. It is necessary to analyse how states can use patents and other IP rights to meet the needs of the army without violating international legal provisions and agreements. Research could include a comparison of national and international practices of compulsory licensing during military conflicts.

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Conflict of Interest

None.

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Інтелектуальні права виробників засобів індивідуального захисту в умовах загрози національній безпеці: між захистом прав інтелектуальної власності та потребою в відкритих інноваціях

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Анотація

Метою дослідження було вивчення механізмів регулювання та захисту інтелектуальних прав в контексті виробництва засобів індивідуального захисту в умовах загрози національній безпеці. Для цього було проаналізоване українське законодавство та міжнародні нормативно-правові акти, що регулюють права інтелектуальної власності, зокрема виробників засобів індивідуального захисту. Так, було встановлено, що в умовах загрози національній безпеці права інтелектуальної власності українських виробників засобів індивідуального захисту стають вирішальними у зв'язку з військовим конфліктом та необхідністю захисту як населення, так і збройних сил. Держава має гарантувати доступ до життєво важливих технологій, дотримуючись прав виробників, що робить питання інтелектуальної власності особливо актуальним з огляду на зростаючий попит на новітні досягнення в секторі засобів індивідуального захисту. Співпраця з міжнародними партнерами у сфері технологій і захисту інтелектуальної власності може сприяти розвитку національного виробництва засобів індивідуального захисту та зниженню залежності від імпорتنих постачань. Державні органи повинні зосередитися на розробці політик, які сприятимуть захисту інтелектуальних прав, і забезпечити механізми підтримки виробників у критичних ситуаціях. Підвищення рівня обізнаності виробників щодо їхніх прав і можливостей захисту інтелектуальної власності є важливим кроком у зміцненні їх позицій на ринку. Важливо знайти баланс між захистом інтелектуальних прав і потребами суспільства в умовах загрози національній безпеці. Уряди повинні розглядати можливість тимчасового послаблення прав у кризових ситуаціях для забезпечення загальної безпеки

Ключові слова: есупільний інтерес; патентне право; екстерні ситуації; ліцензування; COVID-19; військовий конфлікт



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Legal challenges of social protection of students under martial law

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Abstract

The study aimed to establish the legal framework governing the social protection of students during martial law, and to identify the main legal issues in this regard in Ukraine and Myanmar. To achieve this goal, hermeneutical, comparative and historical methods were used. The study analysed the conceptual approaches to determining the social protection of students under martial law. In particular, the study demonstrated the impact of martial law on the provision of social protection and assistance to students by the State, highlighted the main legal problems of such provision. An analysis of international and Ukrainian legal acts related to the protection of social rights of the population, including students, was conducted. The study identified the main legal issues related to the protection of the social rights of higher education students based on the experience of martial law in Ukraine and Myanmar. The study also demonstrated the correlation between these concepts in the provision of higher education during the military conflict in Ukraine and Myanmar. It was emphasised the need for state authorities to respect fundamental human rights in ensuring the right to education (in particular, the right to life and health, which are under threat given the systematic shelling of educational institutions). The practical significance of

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this study is determined by the possibility of its use by scientists for a deeper study of the problems of social protection of students in states where martial law is in force

Keywords: emergency; vulnerable segments of society; armed conflict; difficult life circumstances; higher education student

Introduction

In the context of the martial law in Ukraine, which has been in force since February 2022, the issue of social protection of citizens, including students, by state authorities is becoming increasingly important. The imposition of martial law has had a dramatic impact on the legal order in the country, especially in terms of ensuring the protection of vulnerable groups such as students. In the context of the military conflict, higher education institutions and students faced several challenges, including systematic interruptions in the educational process, threats to the safety of students' lives and health, and limited access to basic educational facilities. In such circumstances, the legal issues of ensuring an adequate level of social protection of students' rights are of particular relevance.

An important problem is the legal ambiguity regarding students' rights under martial law. As current legislation does not sufficiently address the extraordinary circumstances arising from the armed conflict, this creates problems in protecting and enforcing students' rights (Kurapov *et al.*, 2022). For instance, despite the existence of regulations on general social support, there are no specific provisions governing the educational rights and protection of students during martial law. As a result, students are left without legal remedies in case of violation of their rights or discrimination in access to educational resources or financial aid. Therefore, the research relevance is determined by the need to address the problems of legal regulation to develop an effective state policy that will ensure the continuity of the

educational process and social support for students in these conditions (Tymochko, 2022).

T.Y. Hren (2022), analysing the implementation of social protection policies under martial law, addressed the challenges faced by local governments in providing adequate social support during the conflict. The study determined that effective social protection requires a more flexible approach focused on the specific needs of the affected population. V. Kremen *et al.* (2023) analysed the main challenges facing higher education in the context of martial law in Ukraine. The authors addressed the potential danger to students and teachers, the destruction of educational facilities and the need to ensure equal access to education. The study formulated priority areas for further development, including improving the quality of education, introducing the latest technologies, and strengthening international cooperation to address current challenges.

V. Novikov (2024), however, analysed the leading concepts and principles of social protection. The author formulated a comprehensive definition of social protection and identifies its fundamental principles and public administration instruments that increase the effectiveness of social protection systems. Lastly, the study emphasised the need to create an appropriate legal framework to improve social protection policies and improve the lives of vulnerable groups in society. I. Ivanyshyn (2024) analysed the legal frameworks governing the provision of social services in the European Union (EU) member states. The study highlighted the diversity of legal

acts and practices, which leads to inconsistencies in the provision of and access to social services. The author called for the harmonisation of regulations to improve the efficiency and quality of social services.

The study by I.O. Nalyvaiko (2024) identified the historical development of social standards in Ukrainian legislation. The study highlighted the current problems of effective implementation of these standards in the context of socio-economic changes. The author examined possible options for reforms that would strengthen the legal mechanisms for ensuring social rights. Overall, the study necessitated a comprehensive review of the current state policy to align it with current needs and international standards. L. Proserpio (2022) revealed how the public, including student unions and international organisations, reformed educational activities to create an independent education system. Through surveys, the study demonstrated the emergence of alternative educational systems in the face of political instability, emphasising the importance of public participation. While S.T.M. Htun and S. Mortensen (2023), investigated barriers to access to higher education, including the problem of non-recognition of students' qualifications obtained in non-state educational institutions. The emphasis was placed on the dependence of Myanmar students on alternative ways of obtaining higher education (outside the control of the military), such as the General Educational Development (GED) programme.

In general, the study of the legal issues of social protection of students under martial law is rather limited, despite the relevance of this issue. Despite the ongoing discussions on social protection during martial law, there is still a significant gap in research that directly addresses the legal issues faced by students. Previous studies have focused mainly on more general issues of social protection or specific categories of vulnerable groups in society. However, the specifics of the so-

cial security situation of students under martial law are understudied.

The study aimed to identify problematic legal aspects of social protection of students during armed conflict, based on the experience of Myanmar and Ukraine, and to analyse the legislation of the states to ensure this protection. The primary objectives of the study were:

- to conduct a critical analysis of conceptual approaches to the definition of social protection of students in the context of armed conflicts and martial law;
- to analyse international and Ukrainian legal acts that establish the state's obligation to provide social protection to the population, including provisions relating to students;
- to study the legal issues of social protection of students during martial law, using the military experience of Ukraine and Myanmar.

Materials and Methods

To study the legal issues of social protection of students during martial law, the experience of Ukraine and Myanmar was primarily used. These countries were chosen due to the presence of a military conflict that has been going on in the countries for several years (in Ukraine since 2022 and in Myanmar since 2021). The experience of these countries was used due to the situation with growing problems of social protection of students in Ukraine.

In the course of the study, the following legal acts of Ukraine were analysed: Law of Ukraine No. 1556-VII "On Higher Education" (2014); Law of Ukraine No. 2671-VIII "On Social Services" (2019); Constitution of Ukraine (1996); Resolutions of the Cabinet of Ministers of Ukraine No. 576 (2019), No. 294 (2022), No. 560, (2022); as well as Draft of the Law of Ukraine No. 10399 "On Amendments to Certain Laws of Ukraine on Financing Higher Education and Providing State Targeted Support to its Applicants" (2024). The

analysis of amendments to legal acts and draft laws after the introduction of martial law was substantial for the study.

The study employed the analytical method to study international acts on social protection of students, in particular, under martial law: Universal Declaration of Human Rights (1948); International Covenant on Economic, Social and Cultural Rights (1976); Convention on the Rights of Persons with Disabilities (2008); Convention on the Rights of the Child (1990); Convention on the Elimination of All Forms of Discrimination against Women New York (1979); C102 – Social Security (Minimum Standards) Convention (1952); R202 – Social Protection Floors Recommendation (2012), Constitution of the Republic of the Union of Myanmar (2008); The Social Security Law of Myanmar (2012), etc.

During the study of legal acts, they were compared with each other, especially concerning the definition of certain concepts (social protection), their tasks and goals, and the purpose of certain legislation. A systematic comparison of Ukrainian and international legislation was used to correlate the existing legal norms regulating the social protection of the population (in particular, social security, social assistance, etc.). A particular place among the general theoretical methods and research techniques used in the study was occupied by the historical method. It was used to trace the development of the legal framework in the field of social protection.

Results

The concept of social protection in science and law. Social protection is a set of various public and private sector measures designed to assist low-income individuals. It protects vulnerable segments of society (disabled people, pensioners, the unemployed, single mothers, children growing up without parents) and marginalised groups (homeless people, refugees, etc.) from the

threat of losing their livelihoods and promotes better social status (Marwala & Mpedi, 2024). The main objective of such measures is to reduce the social and economic vulnerability of the poor, disadvantaged and marginalised (Devereux & Sabates-Wheeler, 2004).

The main objectives of this protection are: 1) to overcome poverty among the population, which, in turn, implies the allocation of funds (mostly from the state budget) to provide poor and low-income people with the most necessities for existence; 2) to support vulnerable categories of the population, including children, people with disabilities and women, by creating social resources and prospects available to them. This will contribute to social cohesion and create equal opportunities for different segments of the population; 3) protecting members of vulnerable social groups from the dangers that lead to impoverishment, including the possibility of a certain emergency (in particular, martial law or natural disaster), illness or job loss. This will help ready such groups for negative changes and partially protect them from their consequences (Carter *et al.*, 2019); 4) maintaining economic stability in the country, which involves providing social assistance during emergencies so that the population can continue to be active participants in market relations. As a result, the conditions for economic stability are established; 5) guaranteeing equality of the population, in particular, by providing financial support to vulnerable groups, the state contributes to improving their living standards and creating equal opportunities. For example, in the field of education, the state provides free education to persons belonging to vulnerable groups, as well as other benefits (scholarships for students, free accommodation in dormitories, etc.) This, in turn, creates equal opportunities, in this case, the opportunity to study in educational institutions (Social protection, n.d.); 6) alignment with broader development goals, such as the

Sustainable Development Goals (SDG). This approach is aimed at eradicating poverty, combating gender inequality and discrimination in general, creating decent working conditions, etc. (Mishra *et al.*, 2024).

Through the operation of social protection programmes, the state develops the capacity to cope with the consequences of crises and strengthens its ability to respond quickly and effectively. Such protection manages emergencies in a sustainable and controlled manner. It is also effective in the context of fragility and protracted crises, as it aims to ensure that affected populations are supported (Social Protection, n.d.).

Social protection of the population is an important component of state policy and has a direct impact on the spheres of public life. For instance, the most common categories of people receiving social assistance include people with illnesses and disabilities, mothers, the unemployed, workers injured at work, and dependents, etc. Social assistance to large families and children without parents plays an important role. They are unable to provide themselves with the conditions for a normal existence and are dependent on social services.

To ensure effective social protection, there are implementation methods, including social payments, social assistance, social insurance, and a secure labour market (De Neubourg *et al.*, 2021). Thus, social payments involve the provision of funds by the state in the form of social protection, social assistance, and other forms of social insurance. They are granted in the event of certain circumstances that negatively affect the financial situation of the population. This, in turn, can increase the consumption of their resources or a reduction in their income (An Explanation of social..., 2013).

Social benefits are provided in the following circumstances: reduced income in case of birth of a child or illness; support of disabled persons, children, elderly relatives, or spouses; unemployment (forced unemployment or resignation);

need for medical care; lack of housing; death of a person who was responsible for the financial support of another person (for instance, death of the child's parents); lack of financial opportunity for education (provision of state places in universities (free education) and scholarships) (An explanation of social..., 2013; Ferraz & Mantilla, 2023).

Social assistance involves the provision of funds by the state to the population as a whole and certain category of the population (pensioners, disabled, etc.). Such assistance can be provided through direct cash transfers to people in need; food stamps to cover basic living needs; and assistance in resolving housing issues (e.g., subsidies or other benefits for low-income families to buy housing). Another social protection measure is social insurance, which is characterised by systematic contributions from employers and employees. This is done to ensure a secure financial situation in the event of unforeseen circumstances (unemployment, illness, and pension calculation) (Pennings & Vonk, 2023).

For instance, unemployment benefits are provided to people who lost a job due to external factors. The prerequisite is that the person in question is actively seeking employment and can work. This category of persons is entitled to payments ranging from 50-75% of their basic salary, and such payments are based on previous insurance contributions made by the employer or employee (or both).

An important measure is also to ensure a stable and secure labour market, which directly affects the standard of living of citizens as it creates safe working conditions. Labour market security is ensured by the development of a regulatory framework that contains provisions defining the minimum wage and ways to protect labour relations (Gogsadze, 2022). In general, the process of implementing a social protection system is complex and involves a wide range of instruments. Their combination results in an effective model of

protection for the population that is implemented throughout their lives.

Legal regulation of social protection, particularly the category of students under martial law. Social protection is an integral part of ensuring fundamental human rights, which implies the obligation of states to create appropriate conditions for effective regulation of the provision of social assistance. The issue of social protection is enshrined at both the national and international levels and is provided for in human rights regulations. Despite the large number of legal acts regulating social protection in general, as well as certain specific groups (disabled, children, mothers, women subject to discrimination, etc.), there are no specific acts regulating such protection of students (only those that partially do so).

The same applies to the regulation of social protection of students during martial law, however, given the wide range of persons belonging to the category of students, it is necessary to consider this issue in a general context. This is determined by the fact that higher education students may come from different strata of society, including children, mothers, disabled people, etc. This is evidenced by paragraph 4 of part 1 of Article 4 of the Law of Ukraine No. 1556-VII "On Higher Education" (2014), which establishes the equality of persons in obtaining higher education and prohibits any restrictions. The martial law, in turn, increases the vulnerability of the population and leads to an increased need for social assistance for more people.

Thus, following the main legal acts – the Universal Declaration of Human Rights (1948), namely Article 22, everyone has the right to expect to receive social protection and to enjoy social, cultural and economic rights. These rights are implemented within the framework of state and international measures and are integral elements of a person's dignified and free life. While Article 25 of the Universal Declaration of Human

Rights (1948) stipulates that everyone has the right to a life of basic conditions for the maintenance of health, this also includes the right to social services. These services cover their use in cases of disability or illness, unemployment, old age, widowhood, etc. This Article also establishes the exclusive right to social protection for mothers and children.

Another, equally important, normative act ensuring social protection is the International Covenant on Economic, Social and Cultural Rights (1976). Article 9 stipulates that States Parties to the Covenant must affirm the right of the individual to the protection of social needs, which also includes the right to social insurance. According to Article 10, paragraph 2, mothers who were employed before the birth of a child should be granted paid leave and appropriate social benefits (which again indicates the vulnerability of this category of persons and the need for assistance). The Covenant also enshrines the obligation of states to implement such social security rights as the right to an adequate standard of living (Article 11), the right to health (Article 12), and the right to education (Article 13).

Other key international instruments that guarantee the right to social protection for vulnerable groups in society include the Convention on the Rights of Persons with Disabilities (2008) (Article 28); Convention on the Rights of the Child (1990) (Article 26); and Convention on the Elimination of All Forms of Discrimination against Women (1979) (Article 11). These conventions identify three groups of the population that are most vulnerable and require special support in ensuring their social rights (persons with disabilities, children, and women subject to gender discrimination).

An important role in the legal regulation of various aspects of social protection is performed by the legal acts of the International Labour Organisation (hereinafter – ILO), which

has developed a comprehensive system of social protection. C102 – Social Security (Minimum Standards) Convention (1952) defines minimum standards for nine areas of social security, including medical care, temporary disability (sickness), unemployment benefits, pension benefits, compensation for work-related injuries, family assistance, maternity benefits, disability benefits, and survivors' benefits. R202 – Social Protection Floors Recommendation (2012), in turn, laid the foundation for universal social protection. This is done by establishing minimum criteria for the scope of assistance, the number of payments and the principles of public administration (Article 1).

The main provision for ensuring social protection of students is the guarantee of the right to education in certain cases (in case of disability or for children from low-income families) this means providing free education in higher education institutions. This right is enshrined in Article 13(2c) of the International Covenant on Economic, Social and Cultural Rights (1976), and establishes the need for states parties to the Covenant to ensure equal accessibility for future students. It emphasises the need to account for their abilities, as well as the importance of introducing free education for this level of education (similar statements are contained in Article 26 of the Universal Declaration of Human Rights (1948), Article 10 of the Convention on the Elimination of All Forms of Discrimination against Women New York (1979), Article 24 of the Convention on the Rights of Persons with Disabilities (2008), and Article 28 of the Convention on the Rights of the Child (1990).

These international legal acts do not contain specific provisions on the possibility of derogation from the obligations assumed by the state parties to these acts. This indicates that states are obliged to provide social protection to the population, including students, even in an emergency (martial law). In general, international law emphasises the

importance of ensuring the right to education as a fundamental human right and the obligation of states to implement this right at all times. However, at the same time, Articles 3 and 22 of the Universal Declaration of Human Rights (1948) affirm the duty of the state to protect and ensure the security of citizens, which also applies to the period of martial law. Thus, the obligation to provide education to some extent contradicts the state's duty to ensure the security of citizens, because, during martial law, there is always danger, which negatively affects the educational process.

The issue of social protection in Myanmar remains relevant given the military conflict in the country. Article 26b of the Constitution of the Republic of the Union of Myanmar (2008) establishes the state's obligation to provide social security and protection to such a category of citizens as civil servants. In particular, the Union must create conditions to provide them with housing, food, clothing, and maternity benefits for married women (who must be civil servants), and improve the welfare of pensioners. However, no provision in the Myanmar Constitution specifically states a similar obligation of the state to provide social protection and welfare for all citizens.

Article 28 of the Constitution of the Republic of the Union of Myanmar (2008) addresses to some extent the social protection of citizens, establishing the Union's obligation to develop the education system and promote public health. With this provision, the state introduced compulsory and free primary education and engaged the public in education reform. In particular, the provisions on social protection include Article 31, which provides for the reduction of unemployment in Myanmar. Article 32 establishes the state's obligation to provide social benefits to vulnerable groups (including orphans, mothers and children, disabled persons (including those who were members of the Defence Service), pensioners, and children of fallen soldiers).

The Social Security Law of Myanmar (2012) is the key legal act regulating social security. Article 3 sets out its main objectives, which include providing social benefits to workers and their families, guaranteeing healthcare, and promoting welfare and social equality. Although the Law does not contain specific provisions for the social protection of students, the content of its provisions includes this category of population. Part b of Article 13 refers to the provision of social assistance to families, which also includes a scholarship for education. The provision of state scholarships depends on the level of income in the family, except in the case of primary education – Article 28 of the Constitution of the Republic of the Union of Myanmar (2008).

As a state party to the Convention on the Rights of the Child (1990), Myanmar is responsible for compliance with Article 26 of the Convention, which provides for the social protection of the child (including students). This, in turn, obliges the state to ensure the social protection of students (minors, according to this Convention) in any situation, including martial law.

Following the Martial Law Order 3/2021 in Myanmar, all power was transferred to the military, which effectively suspended the laws of the state, enabling violations of the rights of Myanmar's people without responsibility (Myanmar: Martial law..., 2021). Thus, along with the introduction of martial law, regulations related to the fundamental human right to social protection were suspended or severely restricted (Radio Free Asia, 2023).

Given the martial law in Ukraine, which was imposed since the beginning of the full-scale invasion in 2022, the state has faced the problem of social security for students. This problem concerns not only the provision of the educational process but also the system of payments (scholarships) and benefits (Ihnatyuk *et al.*, 2023). Thus, the main normative act guaranteeing social

protection of Ukrainian citizens is the Constitution of Ukraine (1996). Article 46 establishes the right of the population of the state to social security in old age, in case of illness, disability, loss of breadwinner and in other circumstances determined by law. This provision creates a legal basis for the implementation of social protection programmes.

Law of Ukraine No. 2671-VIII "On Social Services" (2019) regulates the provision of social services aimed at overcoming difficult life circumstances. Following Article 1, paragraph 1, clause 15 of the Law, difficult life circumstances imply the presence of negative factors that impede the normal existence and development of an individual or the family and which are unable to be overcome independently. In particular, these factors include homelessness; old age; disability; lack of mobility or memory problems; unemployment; illnesses that interfere with normal existence; poverty; domestic violence; problems with a child's behaviour after a parental divorce; gender-based violence; child abuse; the presence of a human trafficking situation; damage caused by an emergency or natural disaster; loss of relationships with people (during imprisonment).

In general, the idea of hardship is quite similar to the concept of vulnerable groups in society, as both concepts imply circumstances that put people in a position of dependence on the state and other actors (Boyko, 2023). During martial law in Ukraine, most of the national population faces challenging life circumstances. Since the beginning of the full-scale armed conflict, the number of internally displaced persons (IDPs) has been growing. In particular, as a result of rocket attacks, a large number of people lost their homes and suffered significant health damage, etc. This, in turn, has highlighted the urgency of the problem of social protection of citizens.

Since 2022, the Ministry of Social Policy has introduced recommendations for ensuring the social protection of Ukrainian citizens during

martial law. These recommendations were aimed to simplify the procedure for providing social assistance by authorised state bodies. It also reduced the time for decision-making on this issue to one day after receiving the relevant application (Social services in times of war..., 2023). The adoption of Resolution of the Cabinet of Ministers of Ukraine No. 294 (2022) amended Resolution of the Cabinet of Ministers of Ukraine No. 576 (2019) and established the urgency of providing the following social services: home care; inpatient care; palliative care; supported accommodation. The Resolution of the Cabinet of Ministers of Ukraine No. 560 (2022) made certain clarifications that the provision of these services on an emergency basis is possible in case of a threat to the health or life of an individual during martial law or another emergency.

Another legal act that to some extent regulates the issue of social protection of students in Ukraine is the Law of Ukraine No. 1556-VII (2013). Article 61(2)(1) of this Law defines a student as a person who has entered a higher education institution to obtain a junior bachelor's or master's degree. Article 3(3)(8) of the Law states that the state policy in the field of education is ensured by providing students with appropriate benefits and other types of social security following the Law. Article 4 provides for the right of every Ukrainian citizen to receive free education in higher education institutions on a competitive basis. Article 4, paragraph 7, defines the state's obligation to implement the right to social support for those who need it. Part 15 of Article 44 of the Law provides for the obligation to provide social support to those students who have been recognised as victims of hostilities in the period from 2014 (including the events of the Revolution of Dignity and Euromaidan) until the end of martial law. Such support should be provided until the completion of studies at any degree level, but before such persons reach the age of 23. Such

support is provided in the form of scholarships or full or partial payment of tuition fees; free accommodation in dormitories; free books, Internet access, and other learning tools; long-term loans, etc.

In general, since the introduction of martial law in Ukraine, the government has expanded the powers of local authorities and prioritised the provision of social assistance to the most vulnerable groups of the population. The adoption of the Law of Ukraine "On Social Services" (2019) and the introduction of further clarifying provisions improved the system of legal regulation of social protection of citizens under martial law. However, there is still a problem with the regulation of this issue directly concerning such a category as students, and social security concerning education in general. Since the Law of Ukraine "On Higher Education" (2014) contains norms only regarding the basic provisions on the provision of social services to students.

Legal issues of social protection of students during martial law in Ukraine and Myanmar. The right to education is one of the social rights that must be provided and protected by the state both in times of peace and in times of war. However, since the beginning of the full-scale invasion of Ukraine by the Russian armed forces, there has been a significant problem with the enforcement of this right. This concerns the systematic rocket attacks on higher education institutions (69 higher education institutions were damaged during martial law) (Higher education in the time of war..., 2023). This has not only affected the quality of education and the guarantee of educational services to students but also the state's provision of fundamental human rights (the right to life and health, as well as their protection).

Kharkiv higher education institutions were particularly affected, including State Biotechnology University, Ukrainian State University of Railway Transport, Kharkiv National University of Civil Engineering and Architecture, Ukrainian

Engineering and Pedagogical Academy, Kharkiv Institute of Physics and Technology, National Academy of Public Administration under the President of Ukraine, and Karazin Kharkiv National University, among others. Other universities in Ukrainian cities have also been subjected to similar attacks, which have caused a major problem in the provision of educational services to students. Some of the universities were forced to move their actual locations to other cities in the country (e.g. Karazin University). This, in turn, simultaneously ensured the relative safety of students and caused a lot of problems in the field of their social security (Analytical Centre "Observatory of Democracy", n.d.).

Such problems included the provision of accommodation (dormitories) for students who lived in other areas, as the relocation of departments or institutes of higher education institutions made it impossible to provide them with accommodation (there were no suitable buildings, or they were already occupied). Such destruction and displacement significantly affected the provision of scholarships and other benefits by the state. In addition, because of the hostilities, many students were forced to leave the cities where they were studying, as it threatened their safety. This has led to the problem of temporary suspension and resumption of studies, as many universities in Ukraine have established rules for providing documents on previous places of study and relevant achievements. Some students lost their documents due to the bombing of Ukrainian cities, which became an obstacle to resuming their studies in the programmes they had been enrolled in. Thus, students were forced to re-enter higher education institutions for the same or different specialities.

Another global challenge is the inconsistency of the legal and regulatory framework in the education sector under martial law in Ukraine. While the Ministry of Education and Science of Ukraine

introduced several regulations to help maintain the continuity of the educational process, they do not clearly define the rights and mechanisms for protecting students during this period. This applies to the changes introduced in March 2022, which provided for the preservation of jobs for education workers, but did not consider the needs of students who were unable to attend classes due to a change of place of study (Nazarenko *et al.*, 2022).

Significant shortcomings were also observed in the protection of the labour rights of student interns. Current legislation does not sufficiently protect their rights to prevent exploitation and the risk of unemployment during this period. In addition, due to the hostilities, many citizens have experienced financial difficulties, which have further exacerbated the situation with student employment (reduction in the number of jobs) (Vakariuk *et al.*, 2023). A serious problem is a significant reduction in social assistance to students, including internally displaced students, as a result of the hostilities in Ukraine. Thus, many educational scholarship programs were cut or closed altogether. This resulted in students losing most of the financial assistance they needed to continue their studies. This issue was especially relevant for vulnerable groups in society (those affected by displacement or loss of income due to the war) (Chmeliuk, 2024).

The adoption of the Draft Law of Ukraine No. 10399 (2024) will be significant in ensuring the social protection of students. Its main feature is the introduction of amendments to the Law of Ukraine "On Higher Education" (2014), namely the absence of part 1 of Article 72 of the Law, which provides for minimum volumes of state orders (it is only mentioned that the Ministry of Economy of Ukraine forms such volumes). This, in turn, will eliminate public procurement, which violates the provisions of the Constitution of Ukraine (1996). Thus, the Draft of the Law of

Ukraine No. 10399 (2024) replaces the guarantee of state order with the introduction of a grant system, which significantly reduces the opportunities for future students to receive free education (Samsonenko, 2024).

The mentioned Draft of the Law of Ukraine No. 10399 (2024) will not only reduce the number of state-funded places for studying in higher education institutions but also reduce the flow of students (in particular, children from disadvantaged families may lose the opportunity to receive higher education due to lack of funds). Given the martial law and the consequences of the shelling, more and more citizens are losing their homes and jobs, which is weakening their financial situation. Thus, this educational reform violates the constitutional rights of citizens, namely the right to accessible and free education – Article 53 of the Constitution of Ukraine (1996).

The military experience of Myanmar can be contrasted with the social protection of students in Ukraine. Thus, on 1 February 2021, a military coup occurred in Myanmar, which resulted in the detention of key political figures (including Aung San Suu Kyi) and the coming to power of military officials led by the Council of State Administration (hereinafter – the Council) (McKenna, 2024). After the people of the state began to protest massively against the state changes and the *de facto* martial law, on 15 March 2021, the Council imposed martial law (as of March 2024, it was introduced in 61 municipalities of Myanmar) (ASIA/MYANMAR – Martial..., 2024). This was done so that the junta (the authoritarian governing body, in this case, the Council) could establish order and stop those who opposed the state change (the military takeover) (Saw, 2024).

Thein Tun Oo (Executive Director of the Theyninga Institute for Strategic Studies) noted that during the fight against the insurgency, the military reacted with as much restraint as possible and sometimes even avoided the use of force.

As such, rebels had a chance to develop a peaceful solution to the conflict, while hoping that they would support them during the elections. Despite their hopes, however, the insurgents did not back down. Thein Tun Oo argued that such resistance can be likened to an ulcer that never heals over time. Furthermore, martial law was imposed to suppress the uprising of citizens who were against the coup and to ensure peace and security in the country (Radio Free Asia, 2023). Thus, the state is dominated by an authoritarian regime established by the military, which denies any manifestations of negative attitudes and disrespect by Myanmar citizens.

After the military coup d'état, more than 300,000 teachers and other employees of educational institutions joined the militia. This resulted in the dismissal by the Council of a large number of people involved in the militia, which led to a shortage of specialists in Myanmar's educational institutions. In particular, the number of pupils and students decreased, as many were against studying under military control (International Trade Administration, 2023; Shahrudin & Fauziah, 2024). For instance, in 2021, the Council closed higher education institutions and carried out large-scale arrests of teachers and expulsions of students involved in opposition to the government (in 2022, they reopened, but very few students returned) (Rodriguez, 2023). This forced closure of educational institutions violates the fundamental human right to education and is completely contrary to the notion of social protection that the state authorities are supposed to provide.

In parallel, the people (including trade unions, international organisations, scholars invited from abroad, ethnic nationality education departments, etc.) began to develop and implement their educational system, which proved to be both critical and comprehensive (South *et al.*, 2024). Most importantly, they were strikingly different

from the military nationalism that was promoted in schools and higher education institutions. In general, the social protection of Myanmar's students is largely dependent on those responsible for implementing the revamped education system rather than on government agencies (Wong & Kareng, 2024). However, the only manifestation of social protection by the state is the enrolment of students in higher public education institutions, which is funded by the state budget and depends on the results of the national exam (which accounts for about 30% of students) (Ei Phyu & Siriwato, 2022). A substantial problem of social protection for students in Myanmar is the difficult accessibility of higher education. This applies to educational institutions that are not subject to state authority, which completely denies student dissent. Those educational institutions that are not controlled by the military have too expensive tuition fees that are unaffordable for most of the population (Aung, 2024).

Furthermore, the report "Schools Under Attack: Challenges to the right to education in

Southeast Burma" (Karen Human Rights Group, 2024), identified the following obstacles to access to education in Myanmar: 1) poor security in educational institutions, which causes injuries and deaths of students and pupils, as well as damage to educational facilities; 2) the Council's interference in the public education system, which has led to confrontation between educational systems; 3) cases of violence against guardians and financial difficulties in families; and 4) protracted forced displacement of rural residents.

In general, Myanmar's military authorities do not provide significant legal protection (including social protection), as the state authorities have completely suspended *habeas corpus* (a constitutional guarantee aimed at protecting human life and liberty (for example, a guarantee against unlawful arrest)) and other legal remedies. Thus, during the period of martial law, Myanmar's state authorities retreated from their obligations not only to the international community but also directly to their citizens (ICJ, 2022; Chambers & Cheesman, 2024).

Table 1. Statistics on student welfare in Ukraine and Myanmar

Metric	Ukraine	Myanmar
Number of destroyed educational institutions	3,798 institutions (365 of which were destroyed)	146 educational institutions were fully destroyed
Lack of access to the educational process	~30% of children did not have access to education	About 12 million children by 2022 and 5 million by 2023
Access to the educational process for internally displaced persons (hereinafter – IDPs)	86% of children in urban areas, 80% in rural areas	Limited access due to the closure of a large number of educational institutions
Form of study	15% full-time, 33% distance learning, 51% mixed	15% formal state education (run by the military (similar to full-time education)); 30% alternative education systems (curricula created by Myanmar NGOs or ethnic armed organisations; 25% non-formal education (moving the learning process to safe places); ~10% distance learning
State funding of education	UAH 290.76 billion (6.2% of GDP) in 2022	Unknown

Source: compiled by the author based on ICJ (2022), Vox Populi Agency (2024), Karen Human Rights Group (2024), Radio Free Asia (2024), Khine (2024)

Table 1 shows statistics on student welfare under martial law in Ukraine and Myanmar. Based

on the data in Table 1, the damage to educational institutions in Ukraine is much higher than in

Myanmar, although a significant gap in Myanmar's state monitoring of access to education is notable. This is determined by the lack of specific data on this issue, as well as the fact that the state is exercised by the military, which has been targeting educational institutions and students. Another reason for this absence is that a large number of educational institutions are closed, and education is provided in several forms, making it difficult to calculate the exact number of people deprived of access to education.

Given the growing legal challenges faced by students in their social security during martial law in Ukraine and Myanmar, there is a need to improve the system of ensuring their legal right to social protection. International practice plays an important role in this, namely the legal framework that is binding on both countries. For example, the Convention on the Rights of the Child (1990) establishes a general rule regarding the obligation of states to ensure the right to education for their citizens, during states of emergency and martial law. Thus, the provisions of the Convention point to the importance of continuous attendance at educational institutions and equal access to education (Articles 28 and 29 of the Convention). At the same time, ILO standards (Humblet *et al.*, 2001) contain recommendations on the protection of the rights of workers, in particular, student interns. This applies to those who are trainees or part-time workers, and such protection is crucial in preventing the exploitation of their labour in conditions where employment opportunities are reduced due to armed conflict.

The Guiding Principles on Business and Human Rights (UNHR, 2011) are particularly relevant to the protection of the right to social security, which, in turn, stipulate those states must protect the rights of people within their jurisdiction (including access to education under martial law). Principle 4 states that states should take appropriate precautions to prevent human rights

abuses by third parties, including business enterprises and armed groups. This principle emphasises the need for state intervention to protect educational institutions from military attacks and to ensure that students can study safely under martial law. In Ukraine, however, this principle is not fulfilled, given the damage to a significant number of educational institutions and the constant threat of shelling.

According to international standards, possible ways to improve the social protection system in both Ukraine and Myanmar are as follows: 1) firstly, strengthening the legal framework of the states clearly defining the rights of students (including during martial law), by revising the existing legal acts regulating education. The main provisions that should be reviewed are access to education, defining specific documents required for admission to higher education institutions during martial law and receiving financial support; 2) improving the system of providing financial assistance to students, particularly those affected by military operations; 3) ensuring that states provide a special protective mechanism for education during martial law. For instance, the creation of bodies or groups at the state level that will deal with issues of ensuring the continuity of the educational process; 4) creating proper and uninterrupted access to education in the distance mode. This includes the creation of a single learning platform that will contain the materials passed (lectures and practice lessons), as well as be easy to use and ensure stability in learning; 5) consideration of possible crises during the educational process under martial law. This is directly related to access to education, which should be provided in difficult circumstances; 6) international organisations such as the ILO, the United Nations Educational, Scientific and Cultural Organisation (UNESCO), the United Nations Children's Fund (UNICEF), etc. are important for ensuring social protection of students

under martial law. This will help to develop effective strategies to restore state provision of educational services in the regions most affected by the war, etc.

Table 2. Comparison of legal issues of social protection of students during martial law in Ukraine and Myanmar

The legal problem	Ukraine	Myanmar
Access to educational services	Limited due to missile attacks, which interfere with education in educational institutions, and systematic power outages hinder distance learning.	Limited, due to the control of state educational institutions by the military. Shelling and bombardment prevent safe learning in schools. The absence or interruption of the Internet does not allow for remote training.
Legal and regulatory framework	The lack of clear provisions regulating the social protection of students under martial law concerns the issues of necessary documents for admission to a university; financial support for students affected by the war and access to education.	The unstable nature of the state's legal acts, including frequent amendments to legislation that are difficult for civilians to follow; the lack of a unified mechanism for social security for students, etc.
Ensuring the social protection of students	State budget cuts and cancellation of social benefits for IDPs; lack of free places in dormitories; the problem of suspension and resumption of studies due to the departure of students from the occupied territories; and a decrease in the number of jobs, which prevents students from finding employment.	The closure of educational institutions by the military authorities; lack of financial support for students from non-state higher education institutions; low employment rates; harassment and repression of students.

Source: compiled by the author based on Y. Nazarenko *et al.* (2022), L. Vakariuk *et al.* (2023), K. Chmeliuk (2024)

Table 2 shows the main legal issues of social protection of students in the context of the military conflict in Myanmar and Ukraine. Comparing the legal issues, the legal framework of Ukraine provides guarantees of access to education, including distance education, but in practice, there is a reduction in the amount of state support. By cancelling payments for internally displaced students, the state has put them in a serious problem of access to education. In addition, access to educational services in Ukraine has become more difficult due to power and internet outages. In Myanmar, due to the economic crisis and lack of social support, students are forced to combine their studies and job search (which is extremely difficult due to the low labour market). This causes many students being unable to continue their studies due to financial difficulties.

In general, these problems are quite similar in both countries, given the shelling and bombing of educational institutions, limited access to

educational services, insufficient state funding, and the lack of clear provisions in the legislation on the social protection of students during martial law. Nevertheless, the situation with social protection in Myanmar is much more complicated due to the violent seizure of state power by the military, which not only terrorises the population but also controls all spheres of life (including education). This demonstrates the urgency of making significant changes to the social policy of student protection.

Comparing the implementation of social protection for students in Ukraine and Myanmar during martial law, unlike Myanmar, Ukraine implements such protection. In Myanmar, the military authorities almost entirely abandoned the provision of legal protection of citizens, including social aspects (except for the provision of free higher education in state institutions under military control). In Ukraine, the social protection of students during martial law became quite low

compared to the pre-war situation. The state has reduced the provision of financial aid to students, the legislation is rather unclear, and possible educational reforms (if the draft law is adopted) will lead to the cancellation of the provisions on the minimum number of budget places, the need for IDPs to provide documents from previous educational institutions that were destroyed (which led to the destruction of relevant documents) makes it impossible to obtain higher education, etc. Nevertheless, the Ukrainian government has not abandoned fundamental human rights and their protection, as the Myanmar government has done.

Discussion

The issues of social protection of students during martial law in Ukraine and Myanmar are becoming increasingly relevant in the academic discourse. Studies have shown that the declaration of martial law has a significant impact on the legislative framework governing social rights, which often entails restrictions on fundamental human rights and freedoms (Gusarov *et al.*, 2023). In general, the analysed studies highlighted contradictions between existing legal norms, which necessitates the creation of special legal regulations (Nornes, 2022). Despite the absence of studies directly comparing the legal issues of social protection in Ukraine and Myanmar, the data comparison concluded that in both countries there is a need to create a regulatory framework that accounts for the vulnerability of the population (including students) in wartime. In addition, comparative studies between Ukraine and Myanmar reveal different approaches to protecting students' rights in conflict, highlighting the need for tailored legal solutions that consider the specific aspects of vulnerability faced by students in these contexts. The extension of martial law in 2024 in both countries highlights the importance of developing an effective legal protection mechanism to address the challenges of martial law. This will

help to guarantee equal access to social services for vulnerable segments of society.

R. Sabates-Wheeler *et al.* (2024) in their study considered the development of the social protection system in the context of global crises. The study highlighted the need to ensure the adaptability and sustainability of this system. The authors noted that in times of uncertainty, classical social protection systems are not always effective. This, in turn, necessitates the introduction of non-standard approaches that consider the needs of population groups suffering from the consequences of crises. In addition, the researchers stressed the importance of developing a comprehensive strategy that combines economic, social and political factors to provide more effective support to vulnerable segments of society during emergencies.

Comparing the study by R. Sabates-Wheeler *et al.* (2024) with the present study, they are aimed at studying the problems arising from emergencies. R. Sabates-Wheeler *et al.* (2024) addressed the issues of global uncertainty, while this study directly addressed the legal issues of social protection of students under martial law. Both studies emphasise the need for social protection measures by state authorities. However, this study focuses on the importance of implementing effective legislation for the social protection of students during wartime. It also analyses the legal problems of ensuring such protection and the role of legislation in guaranteeing the social rights of students by the state. In addition, while R. Sabates-Wheeler *et al.* (2024) advocated for a comprehensive approach to social protection, this study emphasised the specificity of legal provisions and their shortcomings in meeting the needs of students in the context of martial law.

E. Aurino and S. Giunti (2021) addressed the impact of emergencies on the development of children (who are also most students), as well as the effectiveness of the social protection system.

The authors highlighted significant gaps in the evidence on how social protection systems can be improved to help children during emergencies (particularly in low- and middle-income countries). The study emphasises the need to implement effective measures directly in child welfare. It also highlights the fact that despite the current legal regulation of this issue, there are problems with resolving crises faced by children in a state of emergency.

Thus, both studies highlight the importance of providing social protection by the state during emergencies, including martial law. However, the study by E. Aurino and S. Giunti (2021) addressed the problem of social protection of children in general, in various crises. Whereas this study identified a specific group of children – students (this category can include both children and adults) and aimed to analyse the problems of their social protection during martial law on the example of the experience of Ukraine and Myanmar. This study highlighted the need for the state to provide an effective legal framework for such protection of students to overcome current legal problems and uncertainties.

A. Banerjee *et al.* (2023) examined the main problems and challenges of providing social protection in developing countries. In particular, the authors emphasised the need to create effective social safety nets to reduce the effects of poverty and discrimination, especially in emergencies. The researchers pointed out that despite the existence of social protection and assistance programmes, their implementation systematically faces several problems. These include insufficient state funding and inefficiency of the state government in general, which, in turn, hinders the social protection of vulnerable segments of society.

The study by A. Banerjee *et al.* (2023) is broader, given that the researchers examined social protection for different demographic groups in developing countries. Whereas this study is

aimed directly at identifying legal issues of social protection of students during martial law. However, this study analysed the problems of Ukraine and Myanmar, which are also developing countries, and students are also a separate category of society. Despite the differences in context and scope, both studies point to the importance of social protection of the state during the state of emergency and martial law.

The study by K.P. Htut *et al.* (2022) identified the challenges faced by Myanmar's higher education system during the COVID-19 pandemic, military coup, and ongoing conflict. The authors demonstrate how these crises have exacerbated pre-existing problems with access to and quality of education. This caused significant disruptions in the academic continuity and social well-being of students. The study highlighted the need for major reforms in Myanmar's higher education system, including the provision of social protection for students.

Both studies analysed the effects of political instability (in particular, martial law) on the higher education system. However, while K.P. Htut *et al.* (2022) addressed the broader aspects of reforming higher education in Myanmar amidst multiple crises, this study directly analysed the analysis of the legal framework and problems of social protection of students under martial law. In addition, the study by K.K.P. Htut *et al.* (2022) addressed access to education and its quality. Instead, this study delves into the legal protection and rights of students, highlighting various aspects of social protection under martial law. Authors analysed the discrepancies between the available evidence on social protection measures and actions taken in a global emergency. In particular, the authors highlighted the reason for the ineffectiveness of these measures. The researchers emphasised that despite the existence of legal regulation of social protection, with the onset of crises (introduction of martial law), many

vulnerable segments of society remain without proper social security. The study points to the need to create effective mechanisms for the implementation of social protection, which will ensure this implementation in full.

E.L. Basterra *et al.* (2023) addressed a more global perspective, also discussing systemic issues that significantly impact the social protection of international society. This study focuses on the legal framework and issues of student social protection in two specific countries (Ukraine and Myanmar). This study identified the legal challenges faced by students during martial law. Overall, both studies highlighted the need for effective social protection in times of global crises and highlighted gaps in its implementation.

The martial law in Ukraine has led to large-scale human rights violations (including against students), and the state authorities are trying to counteract this, even in the face of a lack of financial resources and the systematic destruction of educational institutions. Similarly, the repressive measures of Myanmar's military regime have exacerbated the vulnerability of the population, impeding the enjoyment of fundamental rights and access to education. In particular, the analysed studies have shown that to overcome these problems, both countries should prioritise reforming the legal system and strengthening social protection. In addition, cooperation with international organisations and strict adherence to international standards are important to ensure the protection of students' rights and improve living standards in times of crisis.

Conclusions

The study defined the concept and content of social protection of the population, as well as the concept of such a category of higher education students as students. The analysis of the international legal framework and laws of Ukraine on the protection of the social rights of students and the population

(including vulnerable groups of society) under martial law was a substantial part of the study.

Thus, social protection implies that the state assists people in need of financial support. This mostly concerns vulnerable groups in society, including the disabled, large families, the unemployed, children deprived of parental care, etc. A student is an individual who is pursuing a degree (master's, bachelor's, or junior bachelor's) in higher education institutions.

By examining the issue of social security for students under martial law in the example of the experience of Ukraine and Myanmar, the author identified the main legal problems with its implementation by state authorities. The main problem was the rocket attacks on higher education institutions. This led not only to the destruction of buildings and equipment but also had a significant impact on the state's provision of the right to education and on the fundamental human rights to protect the life and health of citizens. Due to the systematic shelling, students were transferred to distance learning, which significantly deteriorated the quality of educational services.

Among the main legal problems of social protection of students is the imperfection of the legislative framework for guaranteeing their rights during martial law. There are also no effective mechanisms for exercising these rights. In addition, the legislation often ignores the special social needs of students in wartime, which in turn contributes to discrimination against students. The issue of lack of funding for social support measures for students and uncertainty about holding the state accountable for violations of their rights also remains relevant. All of this creates significant difficulties for students in wartime, who face numerous challenges.

To address these issues and ensure social protection of students, the legal framework should be improved to ensure a definition of students' rights and social support systems should be improved,

especially for students affected by the hostilities. In addition, to protect students during martial law, it is important to create safeguards for education, including ensuring uninterrupted access to education through unified platforms and cooperating with international organisations.

This research can make a significant contribution to further study of the issue of identifying legal problems of social protection of students under martial law. It establishes a direct link between violations of the human right to social protection and the imposition of martial law, provides a thorough analysis of international and Ukrainian regulations on social protection of the

population (including students), and points to violations of social rights during martial law in Ukraine and Myanmar.

Prospects for further research are an analysis of the experience of more countries, including the Philippines and Sudan, as these countries also have serious problems with violations of students' social rights.

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Conflict of Interest

None.

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Правові проблеми соціального захисту студентства в умовах воєнного стану

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Анотація

Метою даного дослідження було встановлення нормативно-правової бази, яка регулює питання соціального захисту студентів, зокрема, під час воєнного стану, а також визначення основних правових проблем з даного питання в Україні та М'янмі. Для досягнення мети було використано герменевтичний, порівняльний та історичний методи. У дослідженні проаналізовано концептуальні підходи до визначення соціального захисту студентів в умовах воєнного стану. Зокрема продемонстровано вплив воєнного стану на забезпечення державою соціального захисту та допомоги студентам, а також виокремлено основні правові проблеми даного забезпечення. Було здійснено аналіз міжнародних та українських нормативно-правових актів, що стосуються захисту соціальних прав населення, включаючи студентів. На прикладі досвіду воєнного стану в Україні та М'янмі, було виокремлено основні проблемні місця правового характеру стосовно забезпечення соціального права студентів на здобуття вищої освіти. Також продемонстровано нерозривний зв'язок між даними поняттями у сфері надання вищої освіти під час воєнного конфлікту в Україні та М'янмі. Було наголошено на необхідності дотримання основоположних прав людини державними органами у здійсненні забезпечення права на освіту (зокрема, це стосується права на життя та здоров'я, які знаходяться під загрозою, враховуючи систематичні обстріли закладів освіти). Практичне значення даного дослідження полягає у можливості його використання науковцями, для більш глибокого вивчення проблем соціального захисту студентів у державах, де діє воєнний стан

Ключові слова: надзвичайна ситуація; вразливі прошарки суспільства; збройний конфлікт; складні життєві обставини; здобувач вищої освіти



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Administrative legal regulation of the agro-industrial complex in the context of the “green” transition

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Abstract

This study aimed to determine optimal methods for aligning the national legal framework with international norms to promote sustainable agricultural development and mitigate environmental concerns. The study encompassed a comparative investigation of regulatory frameworks in nations including the United States, Germany, the Netherlands, Denmark, and Japan, recognised for their high environmental standards and successful integration of financial and non-financial incentives. The study results indicated common patterns in the development of extensive legislative frameworks and the application of both financial and non-financial instruments to promote environmental transition. The key challenges of digitalisation were identified: insufficient funding, lack of a unified strategy, and poor interagency coordination. A model for optimising administrative legal regulation has been developed, which includes the introduction of innovative environmental standards, the creation of a system of incentives for green innovations and the development of digital infrastructure. Concrete amendments to Ukrainian legislation were proposed, including amendments to the Law of Ukraine “On Environmental Protection” regarding the monitoring of the impact of agricultural activities and the creation of a unified information system of environmental indicators

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of agricultural enterprises. It was recommended to develop a new Law “On Environmental Certification in the Agricultural Sector” and to amend the Tax Code of Ukraine to introduce tax benefits for environmentally responsible enterprises. The research highlighted the necessity for a holistic strategy in governing the green transition within the agro-industrial sector, considering global trends and digital technologies capabilities. The results inform the establishment of a national policy for the sustainable advancement of the agricultural industry, integrating global trends with distinct local characteristics, thus assuring a holistic approach to the administrative legal regulation of the green transition

Keywords: environmental standards; sustainable production; digital technologies; regulatory instruments; energy efficiency

Introduction

The administrative legal management of the agro-industrial complex is increasingly vital in light of global difficulties during the green transition. The exigencies of climate change, resource depletion, and increasing demand for sustainable products need a reformation of traditional agricultural management practices. The “green transition” involves the introduction of innovative technologies and practices that minimise the adverse environmental impact while increasing production efficiency. The administrative law regulation is crucial for establishing favourable conditions for the sustainable growth of the agriculture sector, reconciling economic interests with environmental mandates and social accountability. This subject’s significance is highlighted by the necessity to establish new legislative frameworks that promote the adoption of green technology and practices in agriculture, so maintaining its competitiveness in the global market and adherence to international environmental norms. Moreover, in the context of global food security and growing pressure on natural resources, effective administrative legal regulation is becoming a tool not only for environmental policy, but also for economic stability and social welfare.

O. Olshanska *et al.* (2022) emphasised the special significance of implementing the bioeconomy on a scientific basis to overcome global

challenges: economic, environmental, and social problems, including the food crisis. The researchers observed that the bioeconomy will enhance sustainable development to secure the long-term competitiveness of agricultural, forestry, food, and chemical sectors, while also alleviating climate change and decreasing greenhouse gas emissions. J. Huseynli *et al.* (2024) extended this understanding by exploring the role of ESG principles in the corporate world and their implications for governments and businesses. The researchers determined that corporations are progressively recognising the importance of addressing environmental and social concerns to attract investors and cultivate sustainable practices. Their examination of investment trends in agricultural companies indicated that they can significantly broaden their operational scope and expedite the adoption of sustainable agricultural practices globally, particularly concerning food security and the necessity for economic diversification.

O. Boky and O. Kovalenko (2024) emphasised the growing role of state regulation in the country’s food sector. The researchers organised the policy documents pertaining to the agro-industrial complex and the food industry, examined their interrelations, and proposed recommendations for policy documents focused on the food industry’s development, targeting post-war

recovery and subsequent innovative advancement. This correlates with findings I. Furman *et al.* (2021), who considered Ukraine's agricultural sector to be one of the critical parts of the economic systems of most market economies. The scholars assert that the agricultural-industrial sector's productive foundation relies fundamentally on comprehensive infrastructural networks and robust scientific research frameworks, which collectively shape the developmental trajectory of Ukraine's agro-industrial complex through systematic structural reorganisation across all subsectors, while optimising the integration of technological innovations, international best practices, and advanced organisational methodologies.

D.A. Saparova (2024) focused on financial instruments aimed at financing green projects, while G.D. Amanova *et al.* (2020) analysed the efficiency of using the reserves of the agricultural sector when integrating energy saving processes. Both studies stressed the significance of public policy in the field of alternative energy sources, noting that agriculture can be a valuable source of green energy through the processing of waste, organic oils, and wood. N. Stoyanets *et al.* (2022) focused on the European practices of integrated development of such territories, emphasising the role of stimulating and investing in effective rural innovation, while M.Z. Karbekova *et al.* (2023) analysed the international practices of managing sustainability risks in the agricultural sector, focusing on the legal regulation of food supply chain risk management and quality assurance procedures.

The study by O. Zgurska *et al.* (2022) examines digital transformation and its effects on the agro-industrial complex, identifying that the national agro-industrial production possesses significant potential for future development through enhanced efficiency in the land, labour, and biological resources. This aspect was complemented by T.D. Searchinger *et al.* (2020), analysed the effects

of agricultural support on climate change mitigation, noting that countries producing two-thirds of the world's agricultural products provided an average of USD 600 billion in annual financial support to agriculture from 2014 to 2016. A. Nurmanbetova *et al.* (2022) examined the role of Kazakhstan's agro-industrial complex within the national economic framework, identifying key challenges and priority objectives for resolution, while analysing the agro-industrial complex's contribution to the nation's GDP, as well as the dynamics and composition of gross agricultural production.

This study aimed to thoroughly analyse existing methods of administrative legal regulation within the agro-industrial complex amid the green transition and to formulate recommendations for enhancing the regulatory framework to promote sustainable agricultural development. To achieve this goal, the subsequent objectives were established:

1. to investigate the existing models of administrative legal regulation of the "green transition" in the agro-industrial complex at the international level;
2. to assess the potential of digital technologies in the transformation of administrative legal mechanisms for regulating the greening of the agro-industrial complex;
3. to systematise the mechanisms of administrative legal regulation of the agro-industrial complex in the context of the "green transition" at the national, regional, and local levels.

Materials and Methods

The investigation into administrative legal regulation of the agro-industrial complex within the context of the "green" transition was predicated upon a systematic methodological approach and sustainable development theoretical framework. This research synthesised theoretical contributions from both Ukrainian and international scholars across environmental law, agricultural

policy, and public administration domains. The methodological architecture encompassed both general scientific and specialised cognitive approaches, with the dialectical method facilitating an examination of the intricate relationship between agro-industrial complex economic development and environmental imperatives, thereby illuminating both contradictions and opportunities within the “green” transition paradigm. Through systematic analysis, the administrative legal regulatory framework was conceptualised as an integrated system comprising regulatory, institutional, and economic elements. The comparative legal methodology proved instrumental in evaluating international administrative legal regulatory practices concerning “green” transition in the agro-industrial sector, enabling a comprehensive comparative analysis of legislative and regulatory frameworks across multiple jurisdictions, including the United States, Germany, the Netherlands, Denmark, and Japan. The selection criteria for these jurisdictions were predicated upon three primary factors: the existence of comprehensive agricultural sector “green” development strategies, innovative regulatory approaches, and robust empirical data regarding implementation efficacy. The following legislative documents were analysed: Agriculture Improvement Act (2018), Climate Protection Programme 2030 of Germany (2019), National Climate Agreement of the Netherlands (2019), Climate Act of Denmark (2021), Green Growth Strategy of Japan (2021). The study also reviewed the Act on the Promotion of Renewable Energy of FAO No. 1392 (2008), Green Projects Scheme (2022), Public Law of the USA No. 97-219 “Small Business Innovation Development Act” (1982) and others. The formal legal method was employed to assess the rules about the environmental dimensions of the agro-industrial complex in Ukraine and the examined nations.

The statistical method was utilised to analyse and analyse quantitative data regarding the environmental impacts of the agro-industrial complex, the efficacy of environmental initiatives, and the economic metrics of the “green transition”. The expert evaluation approach was employed to examine the impact of digital technologies on the creation and execution of administrative law provisions within the framework of environmental sustainability. Within the framework of this method, 35 experts were interviewed, including 15 representatives of agricultural regulatory authorities, 10 academics specialising in agricultural law and digital technologies, and 10 representatives of agrotechnology companies. The criteria for inclusion of experts were as follows: at least 5 years of experience in the relevant field and publications or practical experience in implementing digital technologies in the agricultural sector. The survey was conducted online through a structured questionnaire using the Qualtrics platform. The questionnaire of 25 questions categorised into three sections: evaluation of the current status of digitalisation in administrative legal regulation, future applications of blockchain and AI, and possible hazards and obstacles to the use of digital technology. To assess the consistency of experts’ opinions, a five-point Likert scale was applied, where experts rated their agreement with key statements from 1 – “strongly disagree” to 5 – “strongly agree”. To process the results of the expert survey, descriptive statistics were used, including the calculation of mean values and standard deviations for expert assessments. The study was conducted following the ethical standards set out in the Code of Ethics of the American Sociological Association (1997), the International Code of Conduct for Market, Community and Social Research and Data Analysis ICC/ESOMAR (n.d.), and the European Commission’s (2021) guidelines on ethics and data protection.

The modelling method was applied to develop an optimised model of administrative legal regulation of the green transition in the Ukrainian agro-industrial complex, considering international practices and specific national features. The study was conducted in several stages: collection and analysis of legal acts, scientific publications, and analytical materials; comparative analysis of international practices; conducting an expert survey and analysing its findings; development of recommendations and modelling of an optimised regulatory system. The study was based on international agreements in the field of ecology and sustainable development, as well as on the regulations of Ukraine and the countries under study that governed the agro-industrial complex and environmental aspects of management. In terms of Ukrainian legislation, special attention was paid to the analysis of Law of Ukraine No. 2697-VIII (2019), as well as relevant provisions of the Constitution of Ukraine (1996) and sectoral laws. To analyse the effects of digital technologies on administrative legal regulation, materials from technology companies and industry associations, as well as scientific publications in the field of digitalisation of the agricultural sector were used.

Results

Analysis of existing models of administrative legal regulation of the “green” transition at the international level. The examination of the legal frameworks of the nations analysed indicated a prevalent inclination to establish extensive legislative structures addressing multiple facets of the green transition in agriculture. In the United States, the key document is the Agriculture Improvement Act (2018), which sets priorities for sustainable agricultural development and prescribes extensive investments in the introduction of environmentally friendly technologies. Germany is guided by the Climate Protection Programme 2030 of Germany (2019), which sets ambitious

targets and concrete measures to reduce greenhouse gas emissions in various sectors of the economy, including agriculture. The Netherlands is implementing the National Climate Agreement (2019), which aims to achieve 100% circular agriculture by 2050. Denmark has adopted the Climate Act (2021), setting legally binding targets for reducing emissions and developing organic farming. Japan is implementing an act (Ministry of Economy..., 2020), which envisages achieving zero carbon footprint in agriculture by 2050 and full digitalisation of the agricultural sector.

To stimulate the “green transition”, all the countries under study employ a combination of financial and non-financial instruments. The most prevalent options encompass subsidies and grants for the adoption of eco-friendly technologies, tax incentives for sustainable investments, emissions trading schemes, and training and advisory support programs for agricultural producers. Innovative mechanisms such as the system of green certificates for agricultural enterprises in Denmark, which encourages continuous improvement of environmental performance, and the creation of specialised investment funds to support green start-ups in the Netherlands and the United States have proved particularly effective. For instance, in Denmark, the system of green certificates is governed by the Act on the Promotion of Renewable Energy of FAO No. 1392 (2008), specifically Article 31, which sets out the requirements for certification and the mechanism for issuing certificates. In the Netherlands, the creation of specialised investment funds to support green start-ups is regulated by the Green Projects Scheme (2022), which is described in detail in Article 5.14 of the Income Tax Act (amended 2023). This article defines the requirements for green projects that contribute to sustainable development and the conditions for granting tax benefits to investors who invest in such projects. In the United States, support for green start-ups is

provided through the Small Business Innovation Research (SBIR) programme, which is governed by US Public Law No. 97-219 (1982), particularly Section 9 of this law. According to the provisions of this section, federal agencies with extensive research and development budgets are required to allocate a certain percentage of these funds to finance innovative small business projects, including environmentally oriented start-ups, which contributes to the “green transition” and sustainable development of the US economy.

A significant element of successful implementation of the green transition policy is the availability of effective monitoring and reporting systems. The analysed countries, such as Germany, the Netherlands, and Denmark, have developed mechanisms to track progress and evaluate the effectiveness of the measures implemented,

which is key to achieving sustainable development. Specifically, Germany uses an annual report that contains a detailed analysis of achievements in each sector of the economy, promoting transparency and prompt policy adjustments. Studies confirm that countries with monitoring systems in place achieve better outcomes in reducing greenhouse gas emissions. According to a report by the European Environment Agency, countries with developed monitoring systems, such as Germany and the Netherlands, achieved substantial emissions reductions between 1990 and 2020, while countries with less effective mechanisms showed slower emissions reductions (European Environment Agency, 2021). Table 1 demonstrates the key trends in administrative legal regulation of the green transition in the agricultural sector of the countries under study.

Table 1. Trends in administrative legal regulation of the green transition in the agricultural sector

Country	Legislative initiative	Goals of the “green” transition	Key aspects for the agricultural sector	Instruments and mechanisms
USA	Agriculture Improvement Act (2018).	Promotion of sustainable development in agriculture.	- Assistance for initiatives aimed at the conservation and repair of ecosystems. - Promotion of the use of renewable energy on farms.	Subsidy and grant programmes for farmers taking part in green initiatives.
Germany	Climate Protection Programme 2030 of Germany (2019).	Reduction of emissions from agriculture by 31% by 2030 (compared to 1990).	- Implementation of precision farming technologies. - Support for organic farming. - Improvement of the efficiency of fertiliser use.	- Introduction of quotas and standards for greenhouse gas emissions. - Funding for research in environmental innovation.
Netherlands	National Climate Agreement of Netherlands (2019).	- Reduction of greenhouse gas emissions by 49% by 2030. - Transition to a circular economy.	- Promotion of sustainable practices in agriculture. - Reduction of the use of pesticides and chemical fertilisers.	- Tax incentives for farmers implementing environmentally friendly technologies. - Research and innovation programmes in climate-smart agriculture.
Denmark	Climate Act of Denmark (2021).	Reduction of emissions by 70% by 2030.	- Support for sustainable agricultural practices. - Development of bioenergy on farms.	- A system of state subsidies for farmers who reduce emissions. - State support for research in sustainable agriculture.

Table 1. Continued

Country	Legislative initiative	Goals of the “green” transition	Key aspects for the agricultural sector	Instruments and mechanisms
Japan	Green Growth Strategy Through Achieving Carbon Neutrality in 2050 of Japan (2021).	Achievement of carbon neutrality by 2050.	➤ Support for organic farming. ➤ Investments in highly efficient agricultural technologies.	➤ Creation of national programmes for the development of sustainable agriculture. ➤ Funding for innovation and research in agri-technology.

Source: compiled by the author

The United States focuses on promoting sustainable development through subsidy and grant programmes for farmers who adopt environmental practices, while European countries set concrete quantitative emission reduction targets ranging from 49% in the Netherlands to 70% in Denmark by 2030. Germany additionally introduces quotas and standards for greenhouse gas emissions, complementing them with funding for research in environmental innovation. Japan, for its part, has set a goal of achieving carbon neutrality by 2050, with a focus on creating national programmes for sustainable agriculture and financing agrotechnological innovations. Common elements for all countries are support for organic farming, implementation of energy-efficient practices, and development of ecosystem conservation programmes, with each country adapting tools and mechanisms to suit its national characteristics and agricultural policy priorities.

The analysis identified several effective techniques of administrative-legal regulation for the “green transition” in the agro-industrial complex, which may be adaptable in other countries, including Ukraine.

1. It is recommended to amend the Law of Ukraine No. 2697-VIII (2019) by supplementing Article 3 “Strategic goals and objectives” with concrete quantitative indicators for the agro-industrial complex. The proposal includes the following objectives: to attain a 25% share of organic farming in total agricultural land by 2030 and

to decrease greenhouse gas emissions in the agricultural sector by 40% by 2030 relative to 1990 levels. This recommendation is based on the successful practices of Germany, where an analogous approach, prescribed in the Climate Protection Programme 2030 of Germany (2019), has led to major progress in greening agriculture.

2. It is proposed to develop a new Law of Ukraine “On Environmental Certification in the Agricultural Sector”, which would include the definition of criteria for assessing the environmental performance of agricultural enterprises, certification procedures, and verification mechanisms, as well as economic incentives for certified producers, such as tax breaks or preferences in public procurement. This recommendation is based on the experience of Denmark, where the system of green certificates regulated by the FAO Act on the Promotion of Renewable Energy No. 1392 (2008), specifically Article 31, has become an effective tool for stimulating the greening of agriculture.

3. It is recommended to amend the Law of Ukraine No. 1560-XII (1991) by adding a section on “Investing in environmental projects of the agricultural sector”. This section should define the legal status of specialised green investment funds, mechanisms for their formation and operation, criteria for selecting projects for financing, and requirements for transparency and accountability of the use of funds. This recommendation is based on the practices of the Netherlands, where

an analogous system regulated by the Green Projects Scheme (2022), specifically Article 5.14, has contributed to a significant increase in investment in green agricultural technologies.

4. It is proposed to amend the Law of Ukraine No. 1264-XII “On Environmental Protection” (1991) by adding a section on “Monitoring and Reporting on the Environmental Status of the Agro-Industrial Complex”. This section must delineate the operational framework of the environmental monitoring system within the agro-industrial complex, enumerate the indicators for evaluating the advancement of the “green transition”, stipulate the requirements for the format and substance of reporting, and outline the mechanisms for data verification and public disclosure. This recommendation is based on the practices of Germany, where the introduction of the Klimaschutzbericht monitoring and annual reporting system has helped to improve the effectiveness of environmental policy in the agricultural sector.

5. It is recommended to develop and adopt the Law of Ukraine “On the System of Agricultural Education and Extension”, which would regulate the functioning of the system of agricultural education and extension, establish qualification requirements for advisors, and define mechanisms for financing and evaluating the effectiveness of programmes. This recommendation is based on the practices of the United States, where an analogous system regulated by the Agriculture Improvement Act (2018), namely Title VII “Research, Extension, and Related Matters”, has proven to be highly effective.

Notably, the effectiveness of these practices in the countries studied is conditioned not only by their content, but also to the overall level of development of the institutional environment, the maturity of market mechanisms, and the elevated level of environmental awareness of society. Therefore, their adaptation in other countries, including Ukraine, will require consider specific

local features, including the structure of the agricultural sector, available resources, and institutional capacity.

Study of the impact of digital technologies on the development and implementation of administrative legal provisions in the context of environmentalisation. The study identified significant deficiencies in the existing digitisation of administrative legal regulation within Ukraine’s agricultural sector. According to the findings of the expert survey, only 8 respondents rated the current level of digitalisation as satisfactory. The overwhelming majority of the surveyed experts (24) emphasised the need to greatly improve both the digital infrastructure and the regulatory framework for the effective implementation of innovative technologies in regulatory processes. An examination of the experts’ comments identified critical obstacles that impede the effective adoption of digital solutions in the realm of administrative-legal regulation within the agro-industrial sector. These include insufficient funding for digital initiatives (27), lack of a unified strategy for digital transformation of the industry (24), low level of interagency coordination (22), and insufficient qualifications of personnel in the field of digital technologies (21).

The study revealed major potential for the digitalisation of a series of administrative legal processes in the agricultural sector. The most promising areas, according to experts, are the automation of reporting and monitoring processes (23 respondents), the creation of unified digital platforms for interaction between government agencies and business entities (28), and the introduction of electronic document management systems and digital signatures (25). Experts emphasised the importance of incorporating environmental indicators into digital systems for the monitoring and regulation of agricultural production, aligning with the principles of the green transition and sustainable sector growth.

The empirical investigation of domain expert perspectives revealed significant opportunities for the integration of blockchain and AI technologies to enhance regulatory oversight transparency and operational efficiency within Ukraine's agricultural framework. Specifically, the qualitative survey data indicated that 29 subject matter experts identified substantial potential in leveraging distributed ledger technologies to implement robust agricultural product provenance tracking systems and facilitate verifiable adherence to environmental compliance protocols. Specifically, respondents noted the potential of blockchain to solve such problems as certification of organic products (27), monitoring the use of pesticides and agrochemicals (25),

and monitoring compliance with crop rotations and other agro-environmental requirements (23).

In terms of the prospects for the use of AI, 26 experts surveyed noted its strong potential for automating decision-making processes and predicting environmental risks in agriculture. Among the concrete areas of AI application, the respondents highlighted the analysis of satellite images to monitor the condition of agricultural land (28), yield forecasting and optimisation of resource use (25), and automated assessment of agricultural producers' compliance with environmental provisions and standards (23). Figure 1 demonstrates experts' evaluations of the capacity of diverse digital technologies to enhance the administrative legal regulation of the agricultural sector:

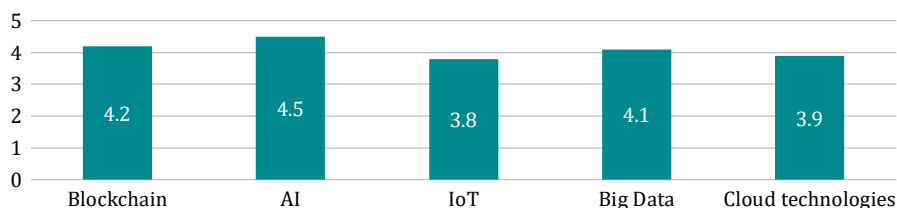


Figure 1. Average expert assessments of the potential of digital technologies in administrative legal regulation of the agricultural sector

Source: the survey was conducted on a 5-point Likert scale

The results of the expert evaluation illustrated in Figure 1 indicate the considerable potential of diverse digital technologies to enhance the administrative legal control of the agriculture industry. The analysis of the data shows a high appreciation of the potential of AI and blockchain technologies, which are considered as powerful tools for automating decision-making processes, analysing large amounts of data, and ensuring the reliability of information. The relatively high standard deviation of these technologies suggests the need for further research and experimental implementation. Big Data and cloud computing technologies also received high scores, highlighting their significance for data processing and storage in agricultural

production and regulatory activities. The Internet of Things (IoT), despite having a lower average score, demonstrates the potential to improve monitoring and control processes. The assessment results underscore the necessity for a holistic strategy in the deployment of digital technologies, emphasising the development of integrated solutions that consider the nuances of agricultural production and the demands of the "green transition". The findings also point to the significance of developing the regulatory framework and creating the appropriate infrastructure, including the development of standards to ensure interoperability of technological solutions and data protection and cybersecurity mechanisms.

The research identified significant risks and obstacles that could hinder the efficient use of digital technology in the administrative legal regulation of Ukraine's agricultural sector. The most significant factor, according to experts, is the lack of digital literacy of staff of both government agencies and business entities (30 respondents). This factor directly affects the speed and quality of the introduction of innovative technologies, as well as on the efficiency of their use in everyday practice. Data protection and cybersecurity issues were identified as the second most significant barrier (29 experts). Considering the sensitivity of the information processed under administrative legal regulation, ensuring an adequate level of data protection is critical to maintaining trust in digital systems and preventing possible misuse.

Experts also paid considerable attention to the economic aspects of digitalisation. Specifically, 25 respondents noted the prohibitive costs of implementing and maintaining digital systems as a substantial barrier. This concern is particularly pertinent for small and medium-sized agricultural firms that may lack adequate financial resources for comprehensive digital transformation. Moreover, 24 experts identified the inadequacy of the regulatory environment as a significant barrier to the implementation of digital technology. Specifically, the experts noted the lack of clear legal mechanisms for the use of electronic evidence, insufficient regulation of procedures for electronic interaction between government authorities and business entities, and uncertainty over the legal status of certain digital instruments (e.g., blockchain-based smart contracts). The dangers linked to the potential adverse effects of digitisation on the environmental facets of agricultural production were especially significant. 22 experts voiced apprehension about the possible rise in energy consumption resulting from the implementation of digital technologies, which could undermine the objectives of the green transition.

Furthermore, 21 respondents pointed to the risk of over-reliance on technology, which could lead to the loss of conventional knowledge and practices of sustainable land use.

Following an examination of expert perspectives and identified issues, a set of recommendations was developed for the efficient incorporation of digital technology into the administrative legal regulation procedures of Ukraine's agriculture industry. 33 specialists assert that the foremost objective is to formulate a comprehensive strategy for the digitalisation of administrative legal regulation within the agricultural sector, taking into account environmental considerations. Such a strategy should include clear goals, stages of digital technology implementation, and mechanisms for monitoring and evaluating the effectiveness of digital transformation. A crucial component of the approach must be the alignment of national legislation with international norms for digital regulation in the agricultural sector.

The second key recommendation, supported by 31 experts, concerns the creation of a single digital platform for interaction between government agencies and business entities in the agricultural sector. Such a platform should enable electronic reporting, obtaining permits, online consultations, and provide access to up-to-date information on changes in legislation and regulatory requirements. Special emphasis must be placed on incorporating modules for monitoring and regulating adherence to environmental regulations and standards within this platform.

The third important recommendation, which was supported by 32 experts, is the implementation of pilot projects on the use of blockchain for the certification of organic products. These initiatives will evaluate the efficacy and security of blockchain technology in practical applications, as well as establish methods for interaction among various stakeholders in the organic supply chain. Successful implementation of pilot projects

can become the basis for the large-scale implementation of blockchain in the system of administrative legal regulation of the agricultural sector.

The fourth recommendation, which was supported by 28 experts, concerns the development and implementation of digital literacy programmes for employees of government agencies and agricultural enterprises. Such programmes should include not only the technical aspects of working with digital tools, but also issues of information security, personal data protection, and legal aspects of using digital technologies in administrative legal regulation.

It is noteworthy to notice the recommendation to establish an incentive system for agricultural firms that actively adopt digital technology and comply with the principles of the “green transition”, as endorsed by 26 experts. Such incentives could include tax breaks, priority access to government support programmes, simplified reporting procedures, etc. This will accelerate the digitalisation of the industry and contribute to the achievement of sustainable development goals.

Development of proposals to improve administrative legal regulation mechanisms. The developed model for optimising the administrative legal regulation of the “green transition” in the agro-industrial complex should be implemented in national legislation by amending the existing regulations of Ukraine and developing new provisions that specify the mechanisms for implementing the proposed reforms. The basis for implementation should be the improvement of Ukraine’s environmental legislation, considering the provisions of the Constitution of Ukraine (1996), the Law of Ukraine No. 1264-XII “On Environmental Protection” (1991) and No. 2697-VIII (2019), as well as provisions on the protection of land, water resources, and atmospheric air. A national strategy for the “green transition” in the agro-industrial complex is offered, grounded in current state environmental strategies,

particularly within the context of the National Environmental Strategy.

The recommendations for national legislation include the development of comprehensive amendments to the Law of Ukraine No. 1264-XII “On Environmental Protection” (1991), namely Articles 13, 16, 31, 35, which would introduce new environmental standards for the agricultural sector. Specifically, it is necessary to add provisions on mandatory monitoring of the environmental impact of agricultural activities, including the collection of data on the use of pesticides, fertilisers, state of soil and water resources (a special unit is established to collect and analyse data based on modern technologies). To implement such mechanisms, it is proposed to amend the Law of Ukraine No. 962-IV “On Land Protection” (2003), supplementing Articles 34, 38, 40 and No. 2697-VIII (2019), supplementing Articles 9 and 12, which stipulates the need to establish new environmental standards for agricultural activities and introduce appropriate environmental monitoring at all levels.

The regional level of regulation envisages the adoption of additional regional environmental development programmes based on the provisions of Law No. 280/97-VR (1997) (Article 26), which will allow the national strategy to be adapted to local conditions. The regional programmes should include the establishment of regional environmental funds and environmental innovation centres to provide financial and technical support to agricultural enterprises in the implementation of environmentally friendly technologies. A significant step is the creation of regional funds that will accumulate funds from environmental taxes and fines to finance local environmental projects. This is possible through amendments to the legislation on local taxes and fees.

The local level of regulation envisages the mandatory introduction of environmental management at agricultural enterprises, which can

be regulated through subordinate regulations based on the provisions of Law 2694-XII “On Labour Protection” (1992), namely Article 18, which would oblige enterprises to develop individual environmental plans. Furthermore, environmental training mechanisms should be developed for employees of enterprises, which would ensure increased environmental awareness and responsibility.

Incentive mechanisms should include amendments to the Tax Code of Ukraine (2010) (Articles 14, 150), which would allow for tax benefits for enterprises that implement environmentally friendly technologies, as well as preferential lending and a system of green bonds to finance environmental innovations. At the same time, a system of sanctions and environmental insurance should be prescribed in legislation to encourage companies to follow the environmental regulations and minimise their environmental impact.

Ensuring transparency and accountability in the regulatory process is an essential aspect of the model. It is recommended to establish a comprehensive information system that would consolidate data on the environmental performance of agricultural operations, inspection outcomes, and implemented response actions, among other relevant information. This system should be accessible to the public, which would help to increase trust in regulatory authorities and encourage companies to take a responsible attitude towards the environment. It is also proposed to introduce a mechanism for public monitoring of the environmental condition of agricultural areas, including the creation of a network of public environmental inspectors and the development of mobile applications for prompt reporting of environmental violations.

The model includes provisions for modifying regulatory policy in response to technological advancements, market fluctuations, and environmental changes. It is proposed to establish

a permanent interagency working group on the green transition in the agricultural sector, which would coordinate the procedure of adapting the regulatory policy and ensure its consistency with Ukraine’s international environmental obligations. A crucial component is the establishment of a set of indicators to evaluate the efficacy of regulatory policy in the realm of agricultural greening, facilitating the swift identification of issues and the modification of regulatory mechanisms.

Discussion

The findings of the study on optimising the administrative legal regulation of the “green” transition in the agro-industrial complex of Ukraine demonstrated a comprehensive approach to solving environmental problems in the industry and are consistent with current global trends in sustainable agricultural development. A key element of the developed model is a differentiated approach to regulating diverse types of farms, which is consistent with the findings of S. Lowder *et al.* (2021), who analysed the structure of agricultural enterprises in several countries and emphasised the need to adapt policies to diverse types of farms. This proposal for a simplified regulatory system and additional incentives for small farms is in line with the recommendations of V. Ricciardi *et al.* (2021), who found that small farms are often more efficient in terms of biodiversity conservation and sustainable use of resources. The system of incentives and sanctions proposed in the model echoes the findings of E.F. Lambin *et al.* (2018), who investigated the effectiveness of various environmental policy instruments in the agricultural sector. The researchers emphasised the significance of combining financial and non-financial incentives, which is fully consistent with the approach. Specifically, the proposal to introduce “green tariffs” for agricultural products is consistent with the findings of E.-M. Meemken and M. Qaim (2021) on the positive influence of

price premiums on the adoption of sustainable practices in agriculture.

The research emphasised transparency and accountability within the regulatory framework, aligning with contemporary trends in environmental policy management. The proposal to establish a consolidated information system for the aggregation of data on the environmental performance of agricultural enterprises aligns with the research conducted by D.C. Rose *et al.* (2021), which highlighted the importance of digitalisation in enhancing the efficacy of environmental monitoring in agriculture. Furthermore, the examined method for establishing a mechanism for public oversight of the environmental status of agricultural regions aligns with the concept of “citizen science”, as explored by S.F. Ryan *et al.* (2018) within the framework of environmental governance. Moreover, the mechanism for adapting regulatory policy to changes in technology, market conditions, and environmental situation, which was proposed in the present study is in line with the principles of adaptive management explored by A. Botequilha-Leitão and E.R. Díaz-Varela (2020). The researchers emphasised the significance of flexibility and continuous learning for the effective management of complex ecological systems, which is fully consistent with the approach.

The analysis of green transition cases in various regions of Ukraine revealed the effectiveness of integrating the efforts of different stakeholders, which is in line with the concept of collaborative governance studied by Ö. Bodin *et al.* (2020). The researchers emphasised the significance of network structures and social capital for effective cooperation, which is in line with the recommendations for developing mechanisms for interaction between distinct levels of government. The conclusions on the significance of creating common platforms for dialogue and exchange of practices between distinct levels of government are also

consistent with the findings of C.J.A.M. Termeer *et al.* (2020), who analysed the mechanisms of vertical integration in environmental governance. Furthermore, a particularly interesting aspect of the study is the analysis of the scaling potential of successful local initiatives. The decisions on the key factors that determine the possibility of scaling up such initiatives to other regions are in line with the findings of P. Nicol (2020), who explored the processes of scaling up agroecological innovations. The researcher also emphasised the significance of a coherent regulatory framework and the development of knowledge sharing infrastructure, which is fully in line with the recommendations.

The SWOT analysis of the integration of local initiatives and centralised regulation revealed both potential opportunities and threats to this process. Specifically, the risk of uneven regional development identified in this study is consistent with the findings of E.B. Barbier and J.C. Burgess (2020), who analysed the spatial aspects of sustainable development. The researchers also emphasised the need to balance centralised regulation with local initiatives to ensure even development. Equally relevant is the emphasis on the development of training and experience exchange programmes for local authorities and agribusiness. J. Klerkx *et al.* (2019) underscored the importance of human capital development for the effective execution of innovations in agriculture.

The study also highlighted the importance of incorporating digital technology into the administrative legal regulation procedures of the agro-industrial complex. This aligns with the findings of C.B. Barrett *et al.* (2021), who examined the capacity of digital technologies to revolutionise food systems. The researchers emphasised the need to develop digital infrastructure and increase digital literacy in the agricultural sector, as well as address the issue of digital inclusion, which is fully in line with the study's recommendations.

The proposals for the implementation of an environmental certification system for medium-sized enterprises are consistent with the study by P. Schleifer and Y. Sun (2020), who analysed the effectiveness of different certification systems in promoting sustainable practices in global supply chains. The empirical findings underscore the critical importance of contextualising certification frameworks to accommodate both regional specificities and diverse producer typologies, aligning comprehensively with the methodological approach. Furthermore, the study makes a substantial contribution through its rigorous examination of agro-cluster dynamics and their catalytic function in facilitating environmental sustainability transitions. A.E. Pigford *et al.* (2019) emphasised the role of creating common infrastructure and knowledge-sharing mechanisms within clusters, which is in line with the recommendations presented in the current study.

The research also focused on energy efficiency and the advancement of renewable energy sources within the agro-industrial sector. Proposals to promote the adoption of energy-efficient technologies align with the conclusions of V. Smil (2022), who examined the potential for energy transformation in agriculture. The researchers emphasised the need for a systematic approach to improving energy efficiency, which is fully consistent with the optimisation model.

The empirical evidence derived from this investigation into optimising administrative legal frameworks governing ecological transformation within Ukraine's agro-industrial sector demonstrates concordance with contemporary global paradigms in sustainable agricultural development and environmental stewardship. The theoretical model advanced herein acknowledges the inherent complexity and multidimensional character of agricultural ecological transition processes, proposing adaptive regulatory mechanisms characterised by sufficient flexibility. Particular

emphasis on synthesising grassroots initiatives with centralised regulatory approaches aligns with established principles of polycentric governance and collaborative environmental problem-solving methodologies. Nevertheless, the research illuminated several critical challenges and potential vulnerabilities warranting additional scholarly inquiry and strategic intervention. Of particular significance are the persistent tensions between economic imperatives and environmental objectives, coupled with the imperative to ensure equitable regional development trajectories within the context of ecological transformation – both of which remain compelling areas for subsequent investigation.

Conclusions

Through comprehensive empirical investigation, this research accomplished its primary objective of analysing contemporary approaches to administrative legal frameworks governing the agro-industrial sector's ecological transition, while developing evidence-based recommendations for regulatory enhancement to facilitate agricultural sustainability. The investigation encompassed a comparative analysis of administrative legal mechanisms facilitating environmental transformation across multiple jurisdictions, specifically examining regulatory frameworks in the United States, Germany, the Netherlands, Denmark, and Japan. This cross-national examination revealed convergent patterns in the establishment of integrated legislative structures that address multifaceted aspects of ecological transition, utilising both monetary and non-monetary policy instruments to catalyse sustainable development initiatives. The research methodology incorporated an assessment of digital technology's influence on both the formulation and execution of administrative legal provisions within the context of agricultural sector environmentalisation. A systematic expert consultation process illuminated the

substantial transformative capacity of emergent technologies - specifically blockchain systems, artificial intelligence applications, Big Data analytics, and Internet of Things infrastructure - in optimising regulatory oversight and monitoring protocols within agricultural operations. Drawing upon both the international comparative analysis and expert consultation findings, the research culminated in the development of strategic recommendations for enhancing administrative legal mechanisms governing ecological transition across national, regional, and local governance tiers within Ukraine's agro-industrial complex.

The empirical evidence garnered from this investigation bears substantial implications for advancing both theoretical frameworks and practical applications in administrative law governance of the agro-industrial sector, particularly concerning environmental imperatives and digital modernisation initiatives. The conceptualised optimisation framework for regulatory mechanisms encompasses several key elements: implementation of enhanced environmental compliance standards, establishment of incentive structures promoting ecological innovations, development of robust digital infrastructure, and augmentation of regulatory transparency. This framework presents a viable foundation for formulating a

comprehensive strategic approach toward ecological transition within Ukraine's agricultural domain. The comparative analysis of international best practices and their potential adaptation to the Ukrainian context yields particularly significant insights, encompassing both proposed amendments to current legislative frameworks and the formulation of novel regulatory instruments.

The investigation encountered notable methodological constraints, primarily concerning the insufficient availability of comprehensive statistical data regarding the impact of digital technologies on environmental performance indicators within Ukraine's agricultural sector. Such data limitations potentially compromise the precision of predictive models concerning the efficacy of the proposed regulatory frameworks. Consequently, future research endeavours should prioritize the development of robust methodological approaches for quantifying the agricultural sector's digital technology impacts, with the aim of generating statistically significant empirical evidence.

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Conflict of Interest

None.

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Адміністративно-правове регулювання агропромислового комплексу в умовах «зеленого» переходу

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Анотація

Метою дослідження було виявлення оптимальних шляхів адаптації національної правової бази до міжнародних стандартів з метою забезпечення сталого розвитку аграрного сектору та мінімізації екологічних ризиків. У рамках дослідження було проведено порівняльний аналіз моделей регулювання в таких країнах, як Сполучені Штати Америки, Німеччина, Нідерланди, Данія та Японія, які відзначаються високим рівнем екологічних стандартів та ефективним поєднанням фінансових і нефінансових інструментів стимулювання. Результати дослідження виявили спільні тенденції у створенні комплексних законодавчих рамок та використанні комбінації фінансових і нефінансових інструментів для стимулювання екологічного переходу. Експертне опитування показало значний потенціал цифрових технологій для вдосконалення регуляторних процесів. Виявлено ключові проблеми цифровізації: недостатнє фінансування, відсутність єдиної стратегії, низька міжвідомча координація. Розроблено модель оптимізації адміністративно-правового регулювання, яка включає впровадження нових екологічних стандартів, створення системи стимулів для «зелених» інновацій та розвиток цифрової інфраструктури. Запропоновано конкретні зміни до законодавства України, зокрема доповнення до Закону «Про охорону навколишнього природного середовища» щодо моніторингу впливу сільськогосподарської діяльності та створення єдиної інформаційної системи екологічних показників агропідприємств. Рекомендовано розробку нового Закону «Про екологічну сертифікацію в агропромисловому комплексі» та внесення змін до Податкового кодексу для введення податкових пільг екологічно відповідальним підприємствам. Дослідження продемонструвало необхідність комплексного підходу до регулювання зеленого переходу в агропромисловому комплексі з урахуванням міжнародного досвіду та потенціалу цифрових технологій. Отримані висновки можуть бути використані для формування національної політики сталого розвитку аграрного сектору, яка враховувала б як глобальні тенденції, так і місцеві особливості, забезпечуючи комплексний підхід до адміністративно-правового регулювання зеленого переходу.

Ключові слова: екологічні стандарти; стале виробництво; цифрові технології; регуляторні інструменти; енергоефективність



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Constitutional rights and freedoms of human and citizen in Ukraine and EU countries

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Abstract

The purpose of this study was to substantiate the conceptual foundations and develop practical recommendations for improving the mechanisms for protecting human and civil rights and freedoms in Ukraine based on a comprehensive comparative interpretation of the constitutional legal provisions of Ukraine and the EU Member States. The study employed the methods of comparative legal and historical legal analysis, and a systematic approach. Using these methods, the study examined the nature and content of the rights and freedoms of Ukrainian citizens in the modern constitutional context. The study examined the fundamental constitutional rights and freedoms set out in the Constitution of Ukraine and the constitutions of the European Union member states. The scope of these rights, mechanisms of

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their implementation, and protection were compared. Particular attention was paid to common features and differences in approaches to ensuring human freedoms. The study analysed the compliance of Ukrainian human rights legislation with European standards and outlined the prospects for harmonising legal regulation in the context of Ukraine's European integration aspirations. Particular attention was paid to the analysis of legal provisions and protection mechanisms that guarantee the fulfilment of fundamental rights, including social, political, economic, and cultural rights. Comparison of Ukraine and the European Union revealed commonalities and differences in approaches to human rights protection, as well as highlighted problems and prospects for harmonising national legislation with European standards. The findings of this study revealed the need for further improvement of human rights protection mechanisms in Ukraine. The study can serve as a scientific basis for improving legislation and further implementation of international human rights instruments into national legislation

Keywords: legislation; democratic states; ombudsmen; rule of law; derogation; *erga omnes partes*

Introduction

The significance of human rights for modern European societies is the subject of intense academic debate. Such a question seemed unlikely to be raised in academic circles. Recent geopolitical and socioeconomic changes in Europe have necessitated a reassessment of the importance of rights in shaping social order and public policy. Recent trend analysis indicates the growing importance of rights issues in the contexts of European integration, migration dynamics, and national security. The study of this subject is of particular significance considering the transformation of social values and the challenges faced by European states in the 21st century. However, in the European Union and beyond, human rights systems have been under constant threat since then, being criticised as overly politically correct, as a tool to serve only the elite, or as an obstacle to prompt action. Human rights and freedoms have been a fundamental and universal value of civilisation for more than three centuries.

The significance and immediacy of the research topic are dictated by the necessity for harmonising constitutional human and civil rights and freedoms, which is particularly relevant considering Ukraine's ambitions for European integration.

Reforming Ukraine's legal system requires a detailed analysis and comparison of constitutional provisions relating to fundamental freedoms in Ukraine and the EU. Contemporary scientific literature extensively examines the comparative examination of constitutional rights in Ukraine and the European Union. O.V. Gigin *et al.* (2023) conclude that while Ukrainian legislation largely aligns with European standards, specific discrepancies in implementing and safeguarding rights systems necessitate additional harmonisation.

B. Custers (2023) revealed that the constitutional frameworks of numerous European nations inadequately address emerging forms of discrimination associated with data and algorithm usage, highlighting the necessity to update constitutional rights protections for the digital era. Y. Leheza *et al.* (2023) examined the function of international institutions, particularly the Venice Commission, in safeguarding human rights. The researchers concluded that the recommendations of these bodies significantly affect the formation of national legal systems, especially in countries seeking European integration. M.R. Ulrich (2022) examined the gun control problem and identified challenges in reconciling individual rights with public safety.

D. Guillery (2020) stated that a more sophisticated view of the relationship between governmental coercion and individual freedom is necessary.

M. Höpner and S.K. Schmidt (2020) identified a tendency to expand the scope of EU fundamental freedoms and suggested ways to reduce their restrictive impact on national social protection systems. A. Broderick (2019) examined a crucial element of the influence of digitalisation on the implementation of constitutional rights. The researchers focused on the rights of individuals with impairments pertaining to digital accessibility.

To achieve the objectives of this study, the subsequent tasks were delineated:

1. To conduct a comparative analysis of the fundamental constitutional rights of individuals and citizens as delineated in the Constitution of Ukraine and the constitutions of the European Union, with a focus on rights relevant to digitalisation and European integration.

2. The research endeavors to analyse the effectiveness of existing legal frameworks and institutional safeguards by scrutinising judicial decisions, statistical indicators of human rights compliance, and authoritative reports from recognised international organizations.

3. The investigation focuses on the comparative assessment of juridical approaches, institutional mechanisms, and legislative harmonisation processes undertaken in the context of Ukraine's European integration aspirations.

Materials and Methods

The methodology incorporated three primary analytical approaches: comparative legal analysis, systematic examination, and formal logical inquiry. Through comparative legal analysis, the study scrutinised constitutional provisions governing human rights across Ukraine and EU member states, enabling the identification of significant parallels and divergences in their respective legal frameworks. The systematic approach

facilitated the conceptualisation of constitutional rights and freedoms as an interconnected legal architecture, illuminating the complex interrelationships among various rights categories and their structural position within constitutional jurisprudence. Additionally, the formal logical method enabled precise analysis of juridical concepts and categorisations about human rights, thereby establishing clear taxonomic distinctions among various constitutional rights and freedoms while enhancing conceptual clarity in their theoretical formulation.

The efficiency of human rights protection mechanisms was evaluated through institutional analysis, focussing on the operations of principal entities responsible for safeguarding human rights, including constitutional courts and the European Court of Human Rights (ECtHR).

Consequently, the study examined the subsequent international documents: Universal Declaration (1948), European Convention (1950), Charter of Fundamental Rights (2012), etc. Additionally, national legislative measures concerning the enforcement and safeguarding of rights were examined: Constitutions and fundamental statutes of European Union member states, including the Basic Law for the Federal Republic of Germany (1949), the Constitution of France (1958), etc. The ECtHR judgements were reviewed, specifically in such landmark cases as *Hirst v. the United Kingdom* (2005), *Burmych and Others v. Ukraine* (2017), *Hutchinson v. the United Kingdom* (2015), *Nechyporuk and Yonkalo v. Ukraine* (2011).

This study includes the period from 1948, the year the Universal Declaration was adopted, to 2023. This extensive timeframe facilitates the examination of the comprehensive evolution of constitutional freedoms within the international, European, and Ukrainian contexts, encompassing the establishment of standards, the progression of national constitutional frameworks in

post-war Europe, the formation and advancement of the European Union, and the inception and evolution of the constitutional system of independent Ukraine from 1991 to 2024.

The research was executed in multiple phases: (1) examination of the constitutional stipulations regarding human rights in Ukraine and EU nations; (2) investigation of the protection mechanisms; (3) comparative analysis of methodologies for safeguarding fundamental freedoms; (4) evaluation of the efficacy of human rights protection through judicial practices and statistical evidence; (5) result synthesis and conclusion formulation. To evaluate the efficacy of human rights protection systems, the following criteria were employed: the volume of applications to the ECtHR, the degree of enforcement of national court rulings, and evaluations by international groups.

Results

The essence and characteristics of constitutional rights in the EU countries. Since the conclusion of the 20th century, international relations have experienced significant shifts, mostly influenced by globalisation. The alterations encompass the political domain, the economy (heightened global interdependence), technology (the communications revolution), the legal framework, and the socio-cultural realm (escalation of intercultural interactions). In the realm

of human rights, these changes have fostered a worldwide comprehension and reinforced the procedures for their international safeguarding, although they have also introduced new obstacles in guaranteeing these rights within a globalised context. The developments have been equivocal, yielding both beneficial outcomes through enhanced international channels for rights protection and detrimental impacts by introducing new challenges to traditional human rights protection systems, particularly concerning fundamental rights. The role of international and supranational institutions in overcoming such destructive trends as transnational crime and human rights violations in armed conflicts has increased. M.P. Donnelly (2018) contends that the interval from 1945 to 2008 witnessed a notable augmentation in the role of organisations, particularly via the efforts of the United Nations (UN) and regional human rights frameworks, such as the Council of Europe (CoE) and the European Union (EU). Consequently, human rights issues have attained a global scope, transcending the authority of individual nations and becoming subject to international governance. Table 1 illustrates the historical evolution of interactions between states and supranational entities, depicting the progression from the initial phase to the gradual incorporation of the legal mandate for human freedoms within the EU.

Table 1. Advancement of human rights protections within the legal structure of the European Union (1950-2000)

Initial stage (1950s)	The European Communities did not have powers to protect human rights. Establishment of the European Coal and Steel Community (ECSC) (1951) without direct human rights protection powers.
	The signing of the Treaty of Rome establishing the European Economic Community (EEC) (1957), which also did not contain human rights provisions.
	The responsibilities for rights protection were assigned to the Council of Europe on a supplementary basis. The adoption of the European Convention (1950) established it as the primary instrument for safeguarding rights within the Council of Europe.

Table 1. Continued

Transformation period (late 1960s – early 1970s)	In the seminal decision <i>Stauder v City of Ulm</i> (Case 29/69) (1969) ECR 419, the European Court of Justice articulated, for the first time in its jurisprudence, the foundational principle that fundamental rights protection forms an integral component of the general principles of Community law.
	The ruling of the European Court in Case No. 11-70 (1970) affirmed that respect for basic rights constitutes an essential component of the general principles of law safeguarded by the Court of Justice.
	Development of the concept of human rights protection through unwritten EU legislation grounded in the foundations of Member States’ law. The 1977 Joint Declaration of the European Parliament underscored the need to safeguard basic rights throughout the operations of the European Communities.
Gradual integration of rights into the EU legal system (1980s – 2000s)	The Single European Act (1987) was the first to reference the protection of basic rights under the founding treaties. The Treaty on European Union (1992) established the respect for basic rights as a fundamental premise of EU law.
	The Treaty of Amsterdam (1997) enhanced the EU’s authority in rights protection and established a penalties mechanism. The adoption of the Charter (2012) established a comprehensive list of rights within the EU.

Source: N.A. Neuwahl and A. Rosas (2021), D.J. Harris *et al.* (2023)

The EU Charter (2000) represents a comprehensive codification of the protection of legal, political, economic, and social rights. This evolutionary process necessitated surmounting considerable initial resistance regarding the extension of human rights jurisdiction to EU supranational institutions, ultimately yielding to the recognition that effective rights protection demanded a coordinated European-level approach. Such institutional metamorphosis aligns with broader patterns of human rights globalization while illustrating the adaptability of supranational governance mechanisms in addressing contemporary challenges. The developmental phases of the European Union have each presented distinct obstacles that shaped this progression:

- 1 1950-1957 – the foundational treaties of the European Communities did not include measures for the protection of human rights.
2. 1969-1979 – there was a necessity to incorporate human rights into the EU legal framework despite the absence of governmental authority in this domain.
3. 1980-2000 – the necessity to establish an independent catalogue of EU rights and the mech-

anisms for their safeguarding. The hurdles were surmounted by the incremental enhancement of the EU’s authority in rights and the establishment of pertinent legal instruments that augmented and fortified national rights protection procedures.

The ratification of the Charter of Fundamental Rights (2012) and its immediate implementation signified a new phase in the evolution of supranational systems for safeguarding fundamental rights. The establishment of EU membership through the Treaty on European Union (1992) has significantly influenced the evolution of the EU’s involvement in rights protection. The EU has emerged as a collaborative ally of the Council of Europe in safeguarding rights, as the Charter (2012) has enhanced the protection framework created by the European Convention (1950). This collaboration generates a synergistic effect between the EU and Council of Europe systems, enhancing prospects for more effective human rights protection across Europe. The EU Court cites the case law of the European Court in its rulings, so enhancing the uniformity of human rights standards. The complementarity of the EU and the Council of Europe is seen in the reciprocal

enhancement of their rights protection institutions. This enables the creation of a multi-tiered rights protection structure, including:

1. National level (constitutional courts and other national institutions).
2. Supranational level of the EU.
3. International level (European Court, European Convention).

Constitutional human rights constitute the foundational basis of the European Union's legal framework. The Charter (2012) delineates an extensive array of rights for EU citizens. An analysis of the Charter reveals its comprehensive structuring of fundamental rights across six primary categories. The document begins with provisions concerning human dignity, encompassed within Articles 1 through 5, followed by an extensive section on freedoms delineated in Articles 6 to 19. The principle of equality is addressed in Articles 20 to 26, while solidarity rights are elaborated in Articles 27 through 38. The Charter proceeds to establish civil rights in Articles 39 to 46, concluding with justice-related provisions in Articles 47 to 50. A particularly significant aspect of the Charter's framework lies in its innovative integration of traditional civil and political rights alongside socio-economic entitlements within a unified legal instrument. This architectural decision reflects the European Union's sophisticated conceptualisation of rights protection, which recognises the fundamental interconnectedness of various rights categories and eschews artificial hierarchical divisions between different generations of rights.

In cases Nos. C-402/05 P and C-415/05 P *Yassin Abdullah Kadi and Al Barakaat International Foundation v Council of the European Union and Commission of the European Communities* (2008), the Court underscored that the safeguarding of fundamental rights is integral to the Union's legal framework, and that measures that contravene these rights are impermissible

within the EU. A comparative review of constitutional rights in the EU and Ukraine demonstrated that while both systems ensure a broad spectrum of rights, disparities exist in the procedures for their enforcement. For example, EU citizens possess the right to free movement and residence across the Member States (Article 45 of the Charter..., 2012), however in Ukraine, this right is confined to national borders. The Lisbon Treaty (2006) does not specifically use the term "right to security", yet it creates a framework for safeguarding the security of EU citizens. Article 67 of the Consolidated Versions of the Treaty and the Treaty on the Functioning of the European Union (2010) establishes a fundamental commitment to security within the Union's framework. The provision explicitly mandates that the Union pursue comprehensive security measures through multiple channels. These measures encompass preventive actions against various forms of criminal behavior, including acts motivated by racial prejudice and xenophobia. The Article further emphasises the significance of inter-agency coordination, specifically highlighting the necessity for collaborative efforts among law enforcement entities, judicial authorities, and other pertinent institutional bodies. The provision's emphasis on combating racism and xenophobia alongside general crime prevention demonstrates the Union's dual commitment to both physical security and social cohesion.

The safeguarding of individual liberty and personal security, as codified within Article 6 of the Charter (2012), constitutes a foundational pillar in the EU's comprehensive framework for protecting fundamental rights. This provision operates within a complex legislative framework that seeks to maintain an intricate balance between ensuring collective security and safeguarding individual liberties. The European Union has consistently emphasised that security measures must be calibrated to preserve essential

fundamental rights, with particular attention to privacy protections and data security protocols. The implementation of security provisions within the EU encompasses a multifaceted approach, incorporating inter-state law enforcement collaboration, specialised agencies such as Europol and Frontex, and comprehensive legislative frameworks designed to address contemporary security challenges, including terrorism and organised criminal enterprises. This integrated security architecture reflects the EU's commitment to maintaining public safety while respecting individual rights and freedoms.

The legal basis for the Freedom, Security and Justice Area (FSJA) is delineated in Article 67 of the Consolidated Versions (2010), which associates the diverse elements of the FSJA with the overarching aim of guaranteeing a robust degree of security inside the EU. Article 68 of the Treaty on the Functioning confers upon the European Council the authority to delineate strategic guidelines pertaining to legislative and operational planning within the area of freedom, security, and justice. In the post-Lisbon Treaty implementation phase, spanning 2009-2020, the Freedom, Security and Justice Area (FSJA) exhibited a marked prioritization of security-centric initiatives, demonstrating a notable shift in policy emphasis. This security-oriented trajectory reflected the broader geopolitical considerations and internal dynamics that characterised European governance during this period.

The European Convention and the national legislation of the member states. The stipulations of the European Convention (1950) are immediately enforceable under national legal frameworks. The United Kingdom enacted the Human Rights Act (1998), which integrates the provisions of the ECHR into domestic law. This statute mandates that courts interpret legislation by the Convention (1950) but prohibits them from nullifying parliamentary acts that conflict with

the Convention. In Ireland, the European Convention (2003) mandates that courts interpret and implement laws by the Convention (1950), however, it lacks direct applicability under Irish law. In Germany, the Federal Constitutional Court's ruling in Case No. 45, 187 (1977) establishes that the Convention (1950) holds the character of federal law and must be taken into account when interpreting the fundamental rights enshrined in the Constitution. Article 55 of the French Constitution (1958) asserts the precedence of international treaties above national legislation.

The methodological contradictions obstruct the formation of a hierarchy of legal norms, particularly the necessity to align national legislation with the Convention (1950). Defining the limits of application of the European Court case law by national courts. Addressing possible inconsistencies between national constitutional requirements and the stipulations of the Convention (1950). The scenario illustrates the complex interplay between international and national law within the European context, requiring a balance between respect for state sovereignty and conformity with collective European principles of freedom.

In executing the provisions of the 1950 Convention and applying the jurisprudence of the European Court of Human Rights (ECHR), it is essential that national legislative and judicial authorities possess a comprehensive understanding of the fundamental legal standards. The consistent interpretation of the essential sections of the Convention (1950) fosters the formation of coherent national notions of social order, which in the contemporary world must encompass the notion of fundamental rights.

Concrete examples of such interpretation and further harmonisation in the practice and legislation of European states include:

1. Germany: In case No. 45, 187 "Life Imprisonment" (1977), the Federal Court determined, citing the jurisprudence of the ECHR, that life

imprisonment without the prospect of release contravenes human dignity. This decision led to a change in German criminal legislation, which now prescribes the possibility of parole for life prisoners.

2. United Kingdom: Subsequent to the ECtHR ruling in *Hirst v. the United Kingdom (No. 2)* (2005) on inmates' voting rights, the British Parliament enacted amendments to the electoral legislation, granting voting rights to specific types of prisoners.

3. France: The Court of Cassation of France's ruling in Case No. 2010-14/22 QPC (2010) regarding pre-trial detention was informed by ECtHR jurisprudence and resulted in amendments to the criminal procedure rules, particularly with the right to legal counsel during interrogation.

Currently, the Convention (1950) actually serves to shape constitutional practices and institutions aimed at establishing public order. The ECHR serves as a "constitutional instrument of European public order" for rights (Judgment of the European Court..., 2005). The ECHR emphasised that constitutional courts must see the Convention (1950) as the primary regulator of European public order and the Court's distinctive and crucial position in European law.

States parties bear whole responsibility for activities that exceed their international legal commitments. In such circumstances, the importance of the Convention as a foundational text influencing the European legal framework may supersede the requirements of interstate collaboration. In *Hutchinson v. the United Kingdom* (2015), the ECHR underscored the duty of national authorities to acknowledge the obligatory nature of the Court's rulings on human rights protection, particularly when national standards fall short of ECHR benchmarks.

The integration of the Convention (1950) into the national legal systems of European countries demonstrates varied methodologies. In Ger-

many, the ECtHR holds the standing of federal law and serves as an ancillary tool for interpreting constitutional rights. These disparities influence the efficacy of constitutional rights protection. The Federal Court has determined that national courts must consider ECHR judgements when interpreting fundamental rights, provided this does not contravene constitutional principles (Headnotes to the Order of the Second Senate, 2004).

This resulted in the formulation of various provisions of the Convention (1950) throughout European nations. Two main models can be distinguished: the transformational model and the reception model. In countries that use the adoption model, the Convention takes precedence over national laws but is inferior in legal force to the national Constitution. This can lead to certain conflicts. Let us consider concrete examples:

1. The Netherlands: In *Kleyn and Others v. the Netherlands* (2003), the ECHR examined the independence and impartiality of the Dutch Council of State. Despite Dutch state legislation aligning with constitutional principles, the ECHR identified a violation of Article 6 of the Convention (1950). This judgment resulted in the restructuring of the Council of State, notwithstanding its adherence to the national Constitution.

2. Sweden: In the case of *Sporrong and Lönnroth v. Sweden* (1982), the ECHR found that the prolonged restriction of property rights without adequate compensation violated Article 1 to the Convention (1950). Although the Swedish expropriation legislation was constitutionally compliant, it was amended to meet the standards of the Convention (1950).

3. Spain: In *Ruiz-Mateos v. Spain* (1993), the ECHR acknowledged that the procedures of the Spanish Constitutional Court infringed upon the right to a fair trial. This led to changes in the procedure of the Constitutional Court, even though the previous procedure was in line with the Spanish Constitution.

Harmonising national legislation and law enforcement actions with the Convention (1950) improves mechanisms for safeguarding human rights:

1. In Cyprus, subsequent to the ECHR ruling in *Modinos v. Cyprus* (1993), criminal responsibility for consenting homosexual relations among adults was eliminated.

2. In Denmark, following the ECHR ruling in *Sørensen and Rasmussen v. Denmark* (2006), legislation regarding mandatory trade union membership was amended. This affected the practice of labour relations and the activities of trade union organisations.

3. In France, subsequent to a series of European Court rulings, notably the *Mazurek v. France* decision (2000), the French Civil Code was revised in 2016 to ensure equal inheritance rights for children born both in and out of wedlock. This changed not only legislation but also court practice in inheritance cases.

4. In Switzerland, following the ECHR judgement in *Kopp v. Switzerland* (1998), new legislation on wiretapping was introduced, which established a clear legal framework for such activities.

The Convention (1950) has significantly influenced Ukraine's legal system, serving as a key source of law and a framework for interpreting constitutional issues. By ratifying the Convention (1950) upon joining the Council of Europe, Ukraine acknowledged it and the judgements of the ECHR as integral components of its legal framework (Law of Ukraine No. 3477-IVb 2006). To exemplify this influence, it is pertinent to reference the Decision of the Constitutional Court of Ukraine in case No. 1-1/2016 (2016). The Constitutional Court, in its ruling, cited Article 5 of the Convention (1950) and relevant ECHR jurisprudence, notably the decision in *Stanev v. Bulgaria* (2012). The Constitutional Court ruled that the legislative provisions lacking judicial oversight for the hospitalisation of handicapped individu-

als in psychiatric institutions are unconstitutional.

Although the international community increasingly considers ECHR judgments as part of the national law of many countries, in Ukraine law enforcement agencies do not always properly consider the general standards and principles of protection of freedoms set out in these judgments. These violations are contrary to the standards set out in numerous ECHR judgments, specifically in the cases of *Nechyporuk and Yonkalo v. Ukraine* (2011) and *Kvashko v. Ukraine* (2013), where the ECHR stressed the significance of procedural safeguards during detention. The primary issue resides not in the formal acknowledgment of the Convention as a legal authority, but in the practical implementation of its stipulations. The significance of the Convention (1950) is evidenced by the substantial volume of applications submitted to the ECHR by Ukrainian citizens. A considerable number of complaints concern the non-enforcement of court decisions. The case of *Burmych and Others v. Ukraine* (2017) is illustrative, where the ECHR considered 12,143 cases, emphasising the lack of progress on the part of Ukraine in addressing the systemic problems identified in 2009.

The impact of the Convention (1950) and ECHR jurisprudence transcends Europe, providing a framework for the formulation of similar instruments in other areas. For instance, the American Convention (1969) and the African Charter (1986) were developed based on the experience of the 1950 Convention. The American Convention (1969) demonstrates significant intertextual connections with preceding human rights frameworks through its explicit acknowledgment of the Convention (1950) in its preamble. The textual evidence demonstrating this recognition manifests in the preamble's declarative statement, which explicitly references the foundational codification of these principles within multiple

authoritative international frameworks, specifically the Charter of the Organisation of American States, the American Declaration of the Rights and Duties of Humans, and the Universal Declaration of Human Rights. Furthermore, the preamble acknowledges the subsequent reinforcement and expansion of these principles through diverse international legal instruments operating at both global and regional jurisdictional levels.

The European Convention (1950) occupies a complex position within domestic legal frameworks, with its status fundamentally determined by the constitutional arrangements of individual member states. Within the European legal landscape, many nations have established a hierarchical structure where the Convention supersedes domestic legislation while remaining subordinate to constitutional provisions. France exemplifies this approach through Article 55 of its Constitution, which explicitly establishes the primacy of parliamentary-ratified international treaties over national laws. The European Court has consistently reinforced the Convention's foundational role in European jurisprudence through its decisions, particularly emphasising its significance in shaping continental legal norms. This constitutional character of the Convention was most notably articulated in the landmark case of *Loizidou v. Turkey* (1995), where the Court explicitly recognised the Convention as a constitutional instrument of European public order, thereby cementing its distinctive position among international agreements in molding Europe's political, cultural, and legal framework.

In many jurisdictions, like the Netherlands, the Convention holds precedence over constitutional requirements, although in Austria, they are regarded as identical. Most European countries give precedence to the Convention over national legislation, but do not put them above constitutional provisions. This method is characteristic in Belgium, France, Portugal, Spain, and Switzerland.

Article 55 of the French Constitution (1958) stipulates those foreign treaties have precedence over domestic laws, but not over the Constitution itself. In the United Kingdom, Italy, Germany, and Turkey, the stipulations of the Convention (1950) hold equal authority to national legislation. The legal status of the 1950 European Convention within the German constitutional framework warrants careful examination. While the Convention holds the status of federal law rather than customary law in Germany, its interpretative significance extends beyond this formal categorization. The landmark *Görgülü* decision of 2004 (Headnotes to the Order of the Second Senate, 2004) by the Federal Court established a sophisticated doctrinal framework wherein both the Convention and the jurisprudence of the European Court function as authoritative interpretative instruments for constitutional rights adjudication. This judicial pronouncement exemplifies the intricate dialectic between international human rights obligations and domestic constitutional architectures. The Federal Court jurisprudential approach reflects a measured synthesis, wherein the Convention and its accompanying jurisprudential corpus, while not directly constitutionalising international human rights norms, substantively inform and enrich the interpretative scope of fundamental rights enshrined in the German Basic Law.

Despite lacking formal supremacy over German domestic law, the Convention's interpretative authority in constitutional rights matters significantly elevates its practical importance within Germany's legal hierarchy. The Ukrainian legal system, through its 1996 Constitution, including the European Convention of 1950, with Article 9 specifically providing for the integration of international agreements ratified by the *Verkhovna Rada* into the national legal framework. The implementation of European Court decisions within Ukraine's legal system is further governed by specialised legislation that establishes

comprehensive procedures for executing the Court's judgments and implementing remedial measures. This legislative framework notably includes mechanisms designed to address and eliminate the root causes of Convention violations, demonstrating Ukraine's systematic approach to fulfilling its international human rights obligations. Article 17 of this legislation mandates Ukrainian courts to utilise and the jurisprudence of the European Court as a legal basis. Consequently, under the Ukrainian legal framework, the European Convention and ECHR rulings constitute an essential component of state law.

The rights enshrined are directly enforceable, necessitating no supplementary actions by Member States for their implementation. This enables them to be regarded as having a direct effect (Part I – Protecting, n.d.). Article 2 enshrines the inviolable right to life, while Article 3 puts forth an absolute prohibition on torture, establishing a cornerstone of human dignity. Article 4 addresses human autonomy by proscribing slavery and forced labor in all forms. Personal liberty and security find protection under Article 5, complemented by Article 6's guarantee of fair trial rights, which forms the basis of judicial protection. Article 7 strengthens the rule of law by forbidding extrajudicial punishment, ensuring that justice operates within established legal frameworks. The Convention additionally protects private and family life under Article 8, acknowledging the sacredness of personal spaces and relationships. Articles 9 and 10 protect intellectual and expressive liberty, including freedom of thought, conscience, religion, and communication. Article 11 completes these protections by guaranteeing the collective exercise of rights via the freedoms of assembly and association. When examined alongside national constitutional frameworks, particularly the German Basic Law (1949), one observes substantial parallels in the enumeration of fundamental rights, though with notable variations

reflecting specific national legal traditions and historical contexts.

The supremacy of the European Convention (1950) over domestic legal frameworks is predicated upon dual foundational principles. First, the Convention recognises the intrinsic and inalienable character of the fundamental rights and freedoms it seeks to safeguard. Second, the Convention's preeminence derives from its instrumental role in fostering European integration and harmonisation among Council of Europe member states, an objective explicitly articulated in its preamble.

In the seminal judgement of *Loizidou v. Turkey* (Preliminary Objections) (1995), the European Court delineated essential interpretative principles concerning the application of the Convention. The Court underscored the unique character of the Convention as a legal instrument, particularly emphasising its primary objective of collectively safeguarding the rights of people and fundamental freedoms. This interpretative approach highlights the Convention's unique nature as a comprehensive framework for protecting individual rights within the European legal order, rather than simply a reciprocal agreement between states. The Court's emphasis on "collective safeguarding" particularly reinforces the notion that the Convention operates as a unified system of human rights protection, transcending traditional bilateral treaty relationships between contracting states. The Convention's purpose and goal as a protective tool for individuals need that its provisions be read and implemented to ensure that its assurances are realistic and effective".

An analysis of the fragmentation of law by the International Law Commission (2006) revealed a fine distinction between *erga omnes* obligations and *jus cogens* provisions. The report argues that the defining feature of *erga omnes* obligations is their "legal indivisibility". This aspect indicates that these obligations create legal responsibilities

that uniformly apply to all subjects of law, binding each particular subject. At the same time, *jus cogens* provisions are distinguished primarily by the weight of the interests they protect. In this context, the primary focus is on the significance of the values protected by these provisions, as opposed to the universality of their application.

There is a special area of obligations known as *erga omnes partes*. These commitments pertain to certain groups of states and are designed to safeguard their collective interests. The preamble to the Convention (1950) emphasises its role in creating a system of collective guarantees of fundamental freedoms. This means that each state party to the Convention (1950) is entitled to demand compliance with its provisions from other states parties, even if it has not directly suffered from a violation. One of the most striking examples of this principle is the case of Ireland v. the United Kingdom (1978). Ireland filed a complaint with the European Court against the United Kingdom, claiming that its use of certain interrogation methods against terrorist suspects constituted inhumane and degrading treatment prohibited. Although Ireland was not directly affected by these actions of the United Kingdom, the Court recognised that Ireland, as a Member State to the ECtHR, was entitled to lodge such a complaint.

Ukraine: current state and prospects for the development of constitutional freedoms. The constitutional human and civil rights in Ukraine are essential rights established and assured by the Constitution of Ukraine (1996). They serve to ensure the comprehensive development of the individual, satisfaction of their needs and interests. These rights are objective opportunities for every member of society to own, use, and dispose of certain social goods, as well as to obtain and protect them. The human and civil rights enshrined are founded on the principles established in international legal instruments approved by Ukraine.

The process of improving laws stays significant, since the state and the current government are constantly faced with new challenges. The principles governing the constitutional status of individuals and citizens serve as a legal mechanism for attaining these goals, so acting as catalysts for the advancement of constitutional law. The idea of legal equality led to amendments in the Constitution (1996) in 2019, setting Ukraine on a path towards EU membership and requiring the harmonisation of Ukrainian laws with European human rights standards. The advancements in constitutional law, constitutional processes, and contemporary Ukrainian constitutionalism have significantly enhanced both theoretical and practical dimensions. However, certain articles necessitate improvement, particularly those pertaining to the protection of rights, especially with armed conflict and societal digitalisation.

Notably, the issue of updating and improving the Constitution of Ukraine (1996) has long been discussed among government and civil society figures, political scientists, and lawyers. Some experts, specifically O.O. Boyarsky and B.Ya. Kofman (2020), believe that the constitutional regulation of human and civil rights, freedoms, and interests does not require urgent changes, as it generally follows international standards. However, it is difficult to agree with this in the current context. An examination of the existing principles on the constitutional status of individuals and citizens in the Constitution of Ukraine reveals that their phrasing frequently aligns terminologically with international legal standards, without substantive content. O.V. Gigin (2023) asserts that it is essential to enhance the constitutional legal framework governing rights in Ukraine amid European integration efforts.

To enhance societal and state conditions, it is imperative to explore avenues for refining the constitutional processes that safeguard human rights. This requires the analysis and

modification of the principles and regulatory frameworks established in the current legislation. Table 2 presents a comparison of fundamental freedoms between Ukraine and the European Union.

Table 2. Constitutional rights and freedoms in Ukraine and the EU

Comparison aspect	Ukraine	EU
Key sources of rights	Constitution of Ukraine (1996), international treaties	Charter (2012), constitutions of member states, ECtHR
Legal force	Direct effect of constitutional provisions	Binding nature of the EU Charter with the entry into force of the Lisbon Treaty (2006).
Catalogue of rights	The list is expanded in Section II of the Constitution of Ukraine (1996).	Systematic catalogue in the Charter (2012)
Socioeconomic rights	An extensive list, often declarative in nature	More limited list, emphasis on real security
Environmental rights	The right to a safe environment – Article 50 of the Constitution of Ukraine (1996)	Strong environmental protection – Article 37 of the Charter of Fundamental Rights of the European Union (2012)
Restrictions on rights	Based on the law, for a legitimate purpose	The idea of proportionality and the respect for the essence of rights
Protection mechanisms	Constitutional Court, courts of general jurisdiction	Court of Justice of the European Union, national courts of the Member States
Role of the ombudsman	Commissioner of the Verkhovna Rada of Ukraine	European Ombudsman
Citizenship	Single citizenship	EU citizenship as supplementary to national citizenship
Electoral rights	At both the national and local levels	The right to engage in elections and to be elected to the European Parliament
Freedom of movement	Within the state	Within the EU for EU citizens
Right to work	Guaranteed by the Constitution	Mobility of labour inside the European Union
Right to education	Free secondary education	Mutual recognition of diplomas, exchange programmes
Language rights	State and minority languages	Linguistic diversity as an EU value
Legal status of foreigners	Limited rights compared to citizens	Enhanced rights for EU citizens in other Member States
Collective rights	Rights of national minorities	Esteem for cultural, religious, and linguistic diversity
Principle of non-discrimination	Based on race, colour, gender, etc.	Expanded list of grounds, including sexual orientation
Right to a fair trial	Guaranteed by the Constitution	Entitlement to an efficacious cure and a just trial
Implementation of international provisions	By means of the ratification of international treaties	Immediate impact of EU legislation within national legal frameworks

Source: compiled by the authors

The constitutional framework governing human and civil rights in Ukraine is fundamentally anchored in internationally recognised standards, as codified in various legal instruments to which Ukraine is a signatory. This alignment with global democratic norms enhances the efficacy of these constitutional provisions in safeguarding

fundamental liberties. The Ukrainian Constitution undergoes periodic modifications to enhance the implementation and protection mechanisms for constitutional rights, reflecting the state’s imperative to address emerging challenges through legislative adaptation. These constitutional reforms are predicated upon foundational principles

governing the constitutional status of individuals and citizens, encompassing concepts such as egalitarianism, the inviolability of rights, and the supremacy of international legal frameworks. Notwithstanding the considerable progress achieved in both theoretical discourse and practical application of constitutional law in Ukraine, there remains a compelling need for further refinement of constitutional legislation. These focal areas will significantly influence the evolutionary trajectory of constitutional principles pertaining to individual legal status within the Ukrainian jurisdiction.

Discussion

The examination of constitutional rights in Ukraine and EU nations disclosed a multifaceted interplay in the evolution and execution of these rights amid Ukraine's European integration. The study demonstrated that although Ukraine has made considerable progress in harmonising its legislation with EU provisions, there were still substantial challenges and discrepancies that needed to be addressed.

The comparative review of the constitutional provisions of Ukraine and EU countries indicates that the fundamental rights enshrined in the Constitution (1996) typically align with European standards. Fundamental rights, including life, liberty, personal security, freedom of thought and expression, are codified in Ukrainian law and the Charter (2012) and its member states' constitutions. Nevertheless, the analysis disclosed certain discrepancies in the real execution of these rights. For example, as shown in the findings, Ukraine encounters difficulties in implementing rulings from the European Court, as demonstrated by the Court's judgements in Cases Nos. 46852/13, 47786/13, 54125/13, among others (2017). A complicated interplay of constitutional human rights regarding their evolution and execution within the framework of European integration was unveiled.

T. Altwicker's study (2020) on non-universal arguments within the European Convention and the foundational work by P. Craig and De G. Búrca (2011) on EU law underscored the importance of a contextual approach to rights interpretation and the intricacies of the interplay between national and supranational legal frameworks. This is particularly relevant for Ukraine, which seeks to adapt European standards to its specific national features, balancing the universality of rights with their local interpretation.

The research conducted by B. Custers (2023) regarding discriminatory factors in the digital economy, with G. De Gregorio's (2021) examination of the emergence of digital constitutionalism in the EU, initiates a substantial discourse on the influence of technological advancement on the legal framework. These studies emphasised the need for Ukraine not only to harmonise its legislation with conventional EU provisions, but also to consider new legal concepts that arise in response to technological change.

M.P. Donnelly (2018) and A. Efrat and A.L. Newman (2020) examined the intricate interaction among democracy, sovereignty, and international human rights, a matter of particular significance for Ukraine in reconciling national interests with international commitments. Their research emphasised the importance of perceiving human rights not merely as legal stipulations, but also as essential principles that underpin international collaboration. This validates the conclusions of N.A. Neuwahl and A. Rosas (2021) regarding the development of the EU's strategies for rights protection. The table also disclosed variations in the catalogue of rights. The EU exhibits superior progressiveness in this domain, including the right to personal data protection and bioethical rights, while Ukraine provides scant recognition of these rights. This validates the findings of O.V. Gigin *et al.* (2023) regarding the imperative to modernise the constitutional

legal framework governing rights and freedoms in Ukraine within the scope of European integration.

It was found that the mechanisms for protecting inalienable individual rights in Ukraine are not well established. The study by O.V. Gigin *et al.* (2023) confirmed the constitutional legal regulation of rights in Ukraine within the framework of European integration. The findings were linked to H.V. Zubenko's (2015) conclusions concerning the correlation between constitutional freedoms and the advancement of civil society in Ukraine. The analysis revealed a tendency to broaden the definition of human rights in response to emerging challenges, such as environmental issues and technological progress. This aligns with the conclusions of B. Custers (2023), which investigated the basis for discrimination in the digital economy through a comparative analysis of the national constitutions of EU nations.

The study's significant contribution was the examination of the European Court decisions regarding the evolution of constitutional rights. This validates the findings of L.R. Helfer and E. Voeten (2020) examined the function of civil society in safeguarding constitutional rights. In Ukraine, like in several EU nations, non-governmental groups are assuming an increasingly pivotal role in the oversight of rights and the promotion of reform. This aligns with A. Koula's (2024) conclusions regarding the increasing significance of rights defenders in Europe and beyond.

The investigation revealed that harmonising Ukrainian legislation with EU rights standards is complex and multifaceted. It requires both legislative reforms and a transformation in legal culture and law enforcement methods. This validates W. Schroeder's (2023) conclusions concerning the rule of law as a constitutional imperative for the EU. A key element of the study was the comparison of the procedures for safeguarding socio-economic rights in Ukraine and the EU. The findings revealed that Ukraine has

analogous constitutional guarantees. This aligns with S. Garben's (2020) findings regarding the equilibrium of social and economic fundamental rights under the EU legislative framework.

It was found that although the legislative provision of rights in Ukraine was in line with European standards, their practical implementation faced certain challenges. This corroborated the conclusions of P.N. Thomas (2018) regarding the interconnection of information, communications, rights, and freedoms. The research identified a discernible inclination to augment the inventory of constitutional rights in Ukraine and EU nations. This aligned with D. Marrani's (2014) study regarding the interplay of the constitution, rights, and the environment.

Ukrainian legislative rules and practices are progressively aligning with EU standards. This was consistent with the findings of I. Tolkachova and I. Pushchuk (2017) on the role of the European Court in ensuring the protection of the rights of Ukrainian citizens. However, this process was not linear and faced certain obstacles. Specifically, there were cases when legislative changes were not accompanied by corresponding changes in law enforcement practice. This confirms the observation of M. De Visser (2015) regarding the complexity of internal constitutional reform processes. The study revealed an increasing impact of international tribunals, especially the European Court, in protecting the rights of Ukrainian citizens. This corresponds with the findings of D.J. Harris *et al.* (2023) and M. Krennerich (2024) concerning the development of the European Convention.

The study concluded that, although Ukraine has made substantial advancements in the establishment of rights in alignment with EU standards, it continues to encounter enormous problems and deficiencies. These findings were significant for understanding the prospects of Ukraine's further European integration and improving human rights protection mechanisms.

Conclusions

The comparative analysis of constitutional human rights frameworks in Ukraine and the European Union illuminates significant parallels and distinctions in their respective approaches to civil liberties protection. While both jurisdictions ground their fundamental rights provisions in internationally recognised standards, notable variations emerge in their constitutional codification and practical application. The member nations of the European Union exhibit a broader definition of developing rights categories, especially those addressing technology and social advancements. In contrast, the Ukrainian constitutional framework places heightened emphasis on socioeconomic entitlements, reflecting distinct historical and political trajectories. Though the foundational catalogues of rights exhibit substantial convergence between these legal systems, nuanced differences manifest in both the textual formulation and substantive scope of specific protections. This comparative examination reveals how different legal traditions and sociopolitical contexts shape the constitutional entrenchment of human and civil rights, even when derived from shared international human rights principles.

The research demonstrates that while both jurisdictions maintain comprehensive legal frameworks for safeguarding human rights and fundamental freedoms, their operational efficacy exhibits marked differences. The European Union's judicial system demonstrates superior effectiveness in human rights protection, as evidenced by empirical data from European Court proceedings and subsequent enforcement rates of judicial decisions. Although Ukraine has created necessary legislative frameworks and has committed to international rights norms, the effective

application of these protections encounters significant obstacles in the domestic sphere. These limitations primarily stem from systemic deficiencies in law enforcement practices and incomplete integration of international normative standards into domestic judicial processes. A systematic examination of the fundamental approaches to rights protection reveals that both Ukraine and EU member states maintain theoretical commitments to rule of law principles and acknowledge the primacy of international rights jurisprudence. The European Union operates under the doctrine of direct effect, whereby EU law maintains immediate applicability within national legal frameworks. In contrast, Ukraine's legal system requires explicit ratification and domestic legislative incorporation of international provisions, potentially creating additional procedural barriers to effective implementation. The study also found that the harmonisation of Ukrainian legislation with EU human rights standards is complex and multifaceted. It requires not only changes in legislation, but also the transformation of legal culture and law enforcement practices.

Thus, although Ukraine has made great strides in developing the system of constitutional rights and freedoms and bringing it closer to EU standards, major challenges and gaps still exist. The enhancement of human rights protection mechanisms in Ukraine and their alignment with European norms remain critical objectives to guarantee the effective safeguarding of citizens' constitutional freedoms.

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Conflict of Interest

None.

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Конституційні права і свободи людини і громадянина в Україні та країнах ЄС

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Анотація

Метою дослідження було обґрунтування концептуальних засад та розробка практичних рекомендацій щодо вдосконалення механізмів захисту прав і свобод людини і громадянина в Україні на основі комплексної порівняльної інтерпретації конституційно-правових положень України та держав-членів ЄС. У дослідженні використано методи порівняльно-правового та історико-правового аналізу, а також системний підхід. За допомогою цих методів було досліджено природу та зміст прав і свобод громадян України в сучасному конституційному контексті. Предметом дослідження стали основні конституційні права і свободи, закріплені в Конституції України та конституціях держав-членів Європейського Союзу. Порівнювався обсяг цих прав, механізми їх реалізації та захисту. Особливу увагу було приділено спільним рисам та відмінностям у підходах до забезпечення свобод людини. У дослідженні проаналізовано відповідність українського законодавства у сфері прав людини європейським стандартам та окреслено перспективи гармонізації правового регулювання в контексті євроінтеграційних прагнень України. Особливу увагу було приділено аналізу правових норм та механізмів захисту, які гарантують реалізацію основоположних прав, включаючи соціальні, політичні, економічні та культурні права. Порівняння України та Європейського Союзу дозволило виявити спільні та відмінні риси у підходах до захисту прав людини, а також висвітлити проблеми та перспективи гармонізації національного законодавства з європейськими стандартами. Висновки цього дослідження виявили необхідність подальшого вдосконалення механізмів захисту прав людини в Україні. Дослідження може слугувати науковим підґрунтям для вдосконалення законодавства та подальшої імплементації міжнародних документів у сфері прав людини в національне законодавство.

Ключові слова: законодавство; демократичні держави; омбудсмени; верховенство закону; дерогація; *erga omnes partes*



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Legal support for environmental protection in Ukraine and EU countries

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Abstract

The purpose of this study was to characterise and compare the legal mechanisms for regulating environmental protection in Ukraine and the European Union. The study examined in detail the key regulations that ensure environmental safety and assessed their effectiveness in the context of current environmental challenges. A comparative analysis of the national environmental legislation of Ukraine and the EU countries revealed key differences and similarities in approaches to legal regulation of environmental protection. Particular attention was paid to the harmonisation of Ukrainian legislation with European standards within the framework of European integration processes. The study analysed environmental standards in Ukraine and other EU countries, such as France, Sweden, Italy, where environmental law is codified in environmental codes, as well as in Germany, where it is based on environmental principles. The study examined

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the legal regulation of environmental safety in the EU, and its specific features were identified based on the regulatory documents of European environmental protection programmes. The study emphasised the role of environmental safety in the EU environmental policy and concluded on the necessity of harmonising it with European requirements, since national legislation does not have a unified approach to this complex legal category. In Ukraine, environmental safety issues are regulated at both the constitutional and regulatory levels, while in the EU these issues are addressed mainly at the legislative level. The study concluded on the need to develop a comprehensive approach that accounts for both European standards and specific national conditions. Harmonisation of legislation will ensure more effective legal regulation, improve the implementation of environmental provisions and standards, and promote international cooperation in the field of environmental protection. The practical significance of this study lies in the possibility of using the findings obtained to harmonise national legislation with European requirements, which can stimulate innovation and the introduction of the latest technologies to reduce the adverse environmental impact

Keywords: environmental protection; international cooperation; environmental legislation; regulatory framework; implementation

Introduction

Ensuring environmental safety is one of the key priorities of modern states, as not only public health but also the sustainable development of society as a whole depend on the state of the environment. In 2024, environmental challenges such as climate change, pollution of natural resources, loss of biodiversity, sea level rise, and desertification have become global in scope. In this regard, there is a growing need to analyse and improve legal mechanisms for regulating environmental protection. The relevance of this study is especially evident in Ukraine, where environmental policy is a significant part of state security, and the challenges it faces, particularly during war, require a comprehensive solution. For its part, the European Union is a global leader in the development and implementation of environmental safety standards, which makes the experience of EU countries valuable for the integration of best practices into Ukrainian legislation. The current state of scientific research in this area reflects the desire of both the scientific community and practitioners to find ways to effectively address

environmental problems but also highlights certain gaps in legal regulation.

In the field of environmental policy, a major contribution has been made by various researchers who have addressed various aspects of the problem. A.M. Nosa (2017) explored the specific features of the formation and development of the EU's common environmental policy, focusing on the significance of ensuring joint environmental security in the community. Nosa noted that such integration efforts contribute to raising environmental standards among the member states, while creating the basis for cooperation in the field of environmental protection. O.M. Semernia *et al.* (2022) focused on environmental security under martial law, emphasising the need to strengthen environmental protection measures during hostilities and rehabilitate ecosystems after they end. O.V. Bepalova (2020) examined the legal aspects of the EU environmental policy, focusing on the regulation of social relations in the field of environmental safety, which becomes a prominent example for the development of

environmental policy in other countries. S.M. Danyliuk (2022) analysed the evolution of Ukraine's environmental legislation in comparison with European standards, pointing to the need to harmonise national provisions with EU directives.

L. Squintani (2021) examines the legal barriers to sustainable development in the European Union, emphasising the necessity of improving the legal framework for implementing environmental initiatives. This study is valuable in the context of comparison with Ukrainian legislation, which faces analogous challenges in adapting to the requirements of sustainable development. A. Nagy (2019) examined the criminal legal protection of water resources, addressing the need for stricter sanctions for violators of environmental legislation to prevent environmental crimes. C. Bibi *et al.* (2024) examined the challenges faced by international environmental law, specifically in terms of biodiversity protection, emphasising the significance of international cooperation in the face of global environmental threats.

Despite the valuable contributions to the study of various aspects of environmental law, there is still a need for a detailed comparison of Ukrainian and European legal mechanisms to identify gaps and potential areas for improvement. Many studies, such as those by Semerni and Bespalova, focused on specific aspects of environmental security, but did not cover the integrative approach to building a single environmental space that is possible through synchronisation of legislation.

The purpose of this study was to compare the legal mechanisms for regulating environmental protection in Ukraine and the European Union. This helped not only to assess the effectiveness of environmental policy in each system, but also to determine the ability of these legal mechanisms to adapt to the current environmental challenges facing modern society. Considering the purpose, the following key objectives were identified: to identify the key shortcomings and advantages of

the current laws of both legal systems, to assess their compliance with the latest environmental requirements and challenges, and to compare the effectiveness of legal provisions and mechanisms within both systems.

Materials and Methods

The research process was divided into several stages, including data collection, analysis, and interpretation. The findings of the study were obtained through a comprehensive analysis of legal acts, regulatory documents, and scientific sources regulating environmental protection in Ukraine and EU countries. The sample consisted of regulations adopted in the field of environmental protection in Ukraine and key EU countries.

The study included an analysis of Ukrainian legislation governing environmental protection, as well as environmental codes of EU countries, specifically the Environmental Code of France (2000), the Environmental Code of Sweden (1998), and the Legislative Decree of Italy No. 152 "Environmental Regulations" (2006). The study analysed the key laws and regulations governing environmental protection in Ukraine (Law of Ukraine No. 1264-XII, 1991; Law of Ukraine No. 964-IV, 2003; Law of Ukraine No. 2697-VIII, 2019) to assess their structure and effectiveness. The study of the environmental codes of France, Sweden, and Italy provided an opportunity to understand the approaches of the EU countries to the implementation of environmental policy, their focus on biodiversity conservation and minimisation of the environmental impact of industry. Furthermore, the study collected and analysed the key laws, regulations, international agreements, and EU directives that directly or indirectly affect the environmental legislation.

Official reports of the European Commission (2008; 2011; 2022) and other international organisations on environmental policy and legislation (IUCN *et al.*, 1980; European Environment

Agency, 2020, 2022a, 2022b; European Union, 2022) provided valuable data for assessing the performance of environmental obligations by European countries and identifying gaps in the implementation of environmental strategies. These documents revealed both positive outcomes and shortcomings in the implementation of commitments, which confirmed the significance of further coordination of efforts in the field of environmental security. Recommendations of international environmental organisations and agencies contain key provisions that are binding for Ukraine and EU countries (UNEP, 2022; 2023). Being aimed at environmental protection and sustainable development, these documents provide vital recommendations and set international standards for performing environmental obligations.

The study focused on the analysis of laws governing waste management, pollution prevention, water and land protection, and biodiversity conservation. The assessment of the effectiveness of legislation in both systems also included an investigation of existing mechanisms for monitoring compliance with environmental regulations and sanctions for violators, which is an essential element of ensuring sustainable development. The study also examined the adaptability of laws and regulatory mechanisms in response to climate change, soil degradation, water pollution, and other global environmental threats.

Results

Environmental safety is one of the key elements of the overall security of the state and society, which is crucial for the preservation of the environment, public health, and sustainable development. In the modern world, amidst the rapid growth of industrialisation, urbanisation, and climate change, environmental security issues are becoming global. They cover a wide range of issues, such as air pollution, water pollution, land degradation, deforestation, loss of biodiversity, etc.

Ensuring environmental and technical safety is one of the fundamental principles of Ukraine's internal and external policy. This includes the rational use of natural resources and protection of the environment from excessive pollution. The country's environmental policy is aimed at solving existing environmental problems and preventing them, which is vital to avoid negative environmental, social, and economic consequences. The key environmental issues are air pollution, water resources, climate change, land degradation and pollution, waste generation and storage, overexploitation of land, and biodiversity protection (European Environment Agency, 2020).

The term "environmental safety" was introduced into Ukrainian legislation after the adoption of the Declaration of State Sovereignty of Ukraine in 1990. Subsequently, this concept was set out in the Constitution of Ukraine (1996), where ensuring and protecting environmental safety should become part of the principal duties and functions of the state, as well as recognised as a matter of concern for the entire Ukrainian people. Environmental security includes the rational use of natural resources, environmental protection, and management of hazardous areas and facilities.

The Constitution of Ukraine (1996) defines human life and health, honour, dignity, inviolability, and security as the highest social values. These provisions create the constitutional basis for environmental safety and protection. They were used as the basis for the development of the principal areas of the state policy of Ukraine in the field of environmental protection, use of natural resources and ensuring environmental safety: the Law of Ukraine No. 1264-XII "On Environmental Protection" (1991), the Law of Ukraine No. 964-IV "On the Fundamentals of National Security of Ukraine" (2003). As stated in the article of the Law of Ukraine No. 1264-XII (1991), environmental safety is the state of the environment, the

environment that prevents the deterioration of the ecological situation and the emergence of threats to human health.

This definition emphasises that environmental safety is aimed at protecting human health and the environment from possible harmful effects of natural, anthropogenic, military, or other origin. Furthermore, environmental safety involves limiting the level of threats. The Law of Ukraine No. 1264-XII (1991) emphasises the significance of preventing environmental degradation and protecting public health. The Law establishes a series of requirements aimed at reducing environmental risks and ensuring environmental safety in various sectors. The requirements cover measures to limit pollution of the air, water bodies, and soil, as well as waste and hazardous substances. For instance, the law obliges companies to take measures to minimise pollutant emissions and the impact of waste on the environment, which to some extent can counteract the problems associated with plastic and other chemical pollutants. However, considering the current challenges such as rapid sea level rise, the proliferation of microplastics, pesticide pollution in agriculture, and the need for renewable energy, Ukraine's legislation is not yet sufficiently detailed to provide comprehensive protection (Korneev, 2021).

For example, the issue of waste growth and the necessity of transitioning to sustainable waste management requires further clarification and additional provisions to effectively address it. Article 42 of the Law of Ukraine No. 1264-XII (1991) refers to the obligation of enterprises to dispose of waste, but there are no concrete requirements for microplastic management or measures to minimise plastic generation. Analogously, while the law prescribes wastewater treatment requirements (Article 48), concrete provisions to prevent chemicals from entering water bodies must be updated, especially considering the current research on water pollution by

microplastics and chemicals. In terms of the introduction of renewable energy sources, the Law contains general provisions on energy security, but no detailed requirements to promote green energy or set targets for its use. This is essential considering the global climate change and the gradual change of climate zones. In summary, despite the basic provisions of the law, current challenges such as climate change, growing plastic pollution, and the need for sustainable energy sources require more concrete regulations and additional legislative measures to effectively address them.

According to Article 16 of the Constitution of Ukraine (1996), ensuring environmental safety, maintaining ecological balance, overcoming the consequences of the Chernobyl disaster, and preserving the genetic heritage of the Ukrainian nation is the duty of the state. In Ukraine, scientists are actively discussing the content and structure of the codification act, as well as the scope of codification; there are theoretical developments and concrete proposals for a draft law on environmental protection (Semernia *et al.*, 2022; Danyliuk, 2022).

For comparison, the practices of France, Sweden, and Italy in implementing environmental codes may be useful for Ukraine in developing its own Environmental Code. The Environmental Code of France (2000) brings together the principal environmental laws and regulations, providing a legal framework for the management of natural resources, control of industrial pollution, and conservation of biodiversity. It includes provisions on chemicals control, water protection, and waste management, which has substantially contributed to reducing pollution and promoting sustainable development. Such a code not only systemises laws but also allows for more effective integration of international environmental standards, which is a valuable experience for Ukraine.

The Environmental Code of Sweden (1998) focuses on environmental management and sustainable use of natural resources. The Code prescribes the principles of prevention, responsibility, and protection of the environment, particularly regarding water and air quality. Furthermore, the Act of Sweden No. 822 “On Nature Conservation” (1964) promotes the integration of environmental policy with other areas, making it adaptable to modern challenges such as climate change and plastic pollution. This ensures the sustainability that Ukrainian legislation requires, especially in the face of current environmental challenges.

The Legislative Decree of Italy No. 152 (2006) includes basic regulations on waste management, air, water, and soil protection. This legislation promotes the implementation of air quality standards, emission control, and the remediation of contaminated areas. It also regulates the management of waste and hazardous substances, which is particularly relevant in the context of increasing waste generation and the growing

significance of the circular economy. The Italian experience demonstrates the significance of integrated approaches to create an effective environmental risk management system.

Thus, the above countries demonstrate how comprehensive environmental codes can contribute to solving modern environmental problems. The Environmental Code of Ukraine could benefit from the practices of France, Sweden, and Italy to implement national regulations that meet international standards and current challenges, such as climate change, waste management, and biodiversity protection. Measuring the state of the environment is vital for assessing its quality and effects on human health and the ecosystem. According to qualitative indicators, the state of the environment is divided into three main levels, which differ in the degree of pollution and environmental impact. Each level is characterised by different conditions and parameters that affect the environmental situation in a particular region (Fig. 1).

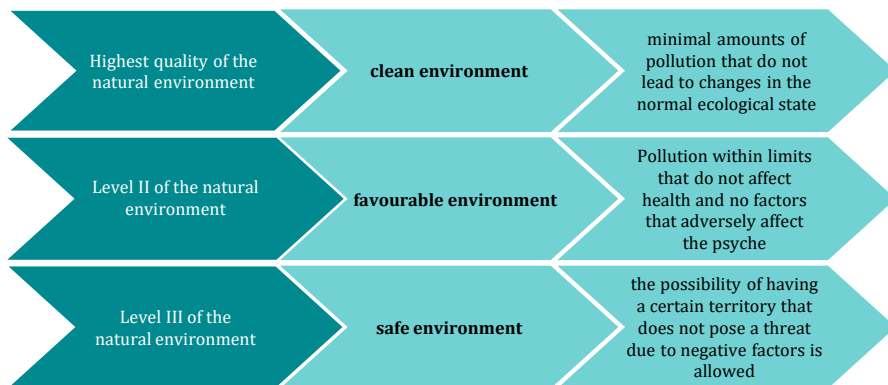


Figure 1. Levels of environmental quality indicators

Source: developed by the author of this study based on Y.V. Korneev (2021) and European Commission (2008; 2011; 2022)

The continuation of hostilities in Ukraine puts forward new requirements for national legislation, methods, and practices of regulating land and environmental relations, as the existing

mechanisms are not yet fully developed to address the complex environmental issues related to military operations. A clearer definition of the term “contaminated territory” is significant,

as the current definition often does not cover specific cases where the territory is contaminated with hazardous materials of military origin, which complicates the relevant assessments and compensation for damages. For instance, the current legislation may not include precise criteria for identifying contamination, such as the presence of heavy metals, ammunition, or other toxic substances left behind by hostilities. This creates serious difficulties in developing ecosystem restoration plans, as not all types of contamination are accounted for. The assessment of the damage caused, and potential damage carried out by environmental experts and the Ministry of Environmental Protection and Natural Resources of Ukraine requires detailed data to account for military pollution. This assessment includes an analysis of existing contamination, soil and water damage, but is still insufficiently detailed due to the lack of relevant standards and procedures for military facilities. The introduction of latest information and accounting systems could improve the visualisation of the state of land in combat zones, enable a more detailed assessment of the extent of damage and the development of a reliable system of compensation. For instance, Germany has implemented an analogous system for assessing and accounting for environmental damage, according to the Federal Environmental Protection Act of Germany (1983), which requires “precise” assessment of damage from diverse types of pollution, including military facilities.

To achieve these objectives, legislative changes to the current Law of Ukraine No. 1264-XII (1991) and amendments to the Code of Ukraine on Administrative Offences (1996) are needed to define environmental liability for military pollution. The practices of European countries, specifically Sweden, which has a comprehensive approach to compensation based on the Environmental Code of Sweden (1998), confirms that adding clear requirements for the

assessment and compensation of environmental damage can be beneficial. Consideration should also be given to adopting a separate law, analogous to the Environmental Code of France (2000), which would include provisions on military facilities and define procedures for assessing damage from them. Considering the impact of military operations, additional measures are needed to protect the land, its facilities and ecosystems located in the affected areas.

To ensure sustainable development and maintain environmental safety, Ukraine should also consider introducing new forms of legal liability for military-related offences and improving compensation procedures. To ensure sustainable development and maintain environmental safety in the context of hostilities, Ukraine may consider introducing new forms of legal liability that would factor in the specifics of war crimes. For example, in the context of armed conflict, there is a need not only for administrative but also for special criminal liability for environmental damage caused by military operations. It is vital to consider the responsibility of both individuals and organisations, especially in matters of deliberate pollution or the use of environmentally hazardous materials (UNEP, 2022; 2023).

In France and Germany, analogous mechanisms are implemented by imposing not only criminal sanctions but also large-scale fines that are used to restore ecosystems. Furthermore, it is advisable to improve the procedures for compensation for environmental damage in Ukrainian legislation, which could include special environmental funds for the affected areas, where funds are used exclusively for environmental restoration and rehabilitation. This approach has been successfully applied in Sweden, where the environmental fund is used to compensate for damages paid by companies that violate environmental standards (Ordinance of Sweden No. 660, 2004). In France, such funds exist, financed by fines and

mandatory compensation payments from perpetrators of environmental violations (Law of France No. 2011-835, 2011). The development of clear procedures for compensating for environmental damage caused by military actions could be based on principles borrowed from international practices, such as the use of compensation mechanisms to ensure the rapid restoration of affected ecosystems and the involvement of perpetrators in covering rehabilitation costs (Boyer, 2017). For this, Ukrainian legislation could include provisions on both administrative and financial measures to influence the perpetrators of environmental offences related to the armed conflict.

A vital aspect of the development of modern national administrative (environmental) legislation is its adaptation to international standards, specifically to the legislation of the European Union, other European non-governmental organisations, international environmental agreements, as well as the legislation of individual European countries and joint agreements between member states. Ukraine is a party to 20 environmental conventions and protocols and actively cooperates with international organisations that provide financial support for the implementation of environmental projects in the country. A significant regional agreement supported by the Council of Europe is the Association Agreement of the Carpathian Euroregion, concluded at the initiative of Ukraine together with Poland, Slovakia, Hungary, and Romania. The role of this agreement for environmental protection is substantial, as it has contributed to the creation of a unified approach to environmental management and planning in the region. The countries' cooperation under the agreement has improved the state of water resources, reduced pollution, and intensified monitoring of natural areas. This has contributed to the stabilisation of the Carpathian ecosystems, where implemented projects on environmental monitoring of water and biodiversity have improved

the state of the environment (Lublin Voivodeship Marshal's Office in Lublin, 2014).

Each country selects environmental protection mechanisms and instruments based on the specifics of its economy, industry, and national characteristics. For instance, France, Sweden, and Italy have introduced codification of environmental legislation in line with the historical development of their legal systems. Some European countries, such as Germany, Norway, and Spain, have adopted special laws governing the key aspects of human impact on the environment. Overall, the legislation of European countries is aimed at ensuring environmental safety.

According to the Decision of the European Parliament and of the Council No. 1386/2013/EU (2013), the uniform implementation of environmental standards across the European Union is a valuable contribution to improving the environment, public health, and the economy. At the current stage of development of the EU environmental policy, the legal basis for this activity is the Treaty Establishing the European Economic Community (1957) and the Treaty on European Union (1992). The Treaty of Amsterdam amending the Treaty on European Union (1997) included provisions on the integration of environmental objectives into all areas of the European Union's activities, adding this to Article 11 of the Lisbon Treaty (2006). This article states that environmental requirements should be integrated into the definition and implementation of all Community policies and actions to promote sustainable development. This means that the environmental component should be considered at all stages of policy development, from agriculture to industry and transport (UNEP, 2023), allowing the EU to consider environmental issues as a key element in its decision-making process.

The creation of a common environmental policy for EU member states is based on a series of basic principles set out in the Treaty of

Amsterdam amending the Treaty on European Union (1997). These include:

1. The principle of subsidiarity, which involves joint action in areas where countries are unable to handle by themselves or where an EU-level solution is more effective (Article 5).

2. The precautionary principle (Article 191(2)).

3. Precautionary principle, which aims to prevent pollution before it occurs (Article 191(2)).

4. The “polluter pays” principle, which requires that the costs of cleaning pollution be borne by those who caused it (Article 191(2)).

5. The principle of environmental orientation, i.e., considering environmental needs in all activities (Article 11).

6. The principle of mainstreaming environmental issues into the design and implementation of all other EU policies, including agriculture, development, entrepreneurship, energy, internal market, fisheries, research, structural funds, transport, economy, finance, trade, and external relations (Article 11).

The major sources of international environmental law are the decisions of the United Nations conference on the human environment (Stockholm conference) (1972), the Global Strategy for Nature Conservation (IUCN, UNEP, & WWF, 1980), and the Rio Declaration on Environment and Development (1992). These sources continue to have some relevance but are of limited effectiveness in the context of current challenges. The Stockholm Declaration of 1972 defined general principles for environmental protection, such as responsibility for pollution and cooperation between states. However, this document does not prescribe sufficient detail to address specific issues such as plastic pollution of water resources or the impact of climate change on sea levels. Considering the global changes, these provisions need to be updated to consider current threats. For instance, the Stockholm Declaration contains

principles for avoiding transboundary pollution but does not detail mechanisms for controlling newer phenomena such as microplastics in water.

The 1980 Global Strategy for the Conservation of Nature (IUCN, UNEP, & WWF, 1980) promoted biodiversity conservation and the sustainable use of natural resources, but its provisions on soil and water pollution are outdated. For example, the strategy does not prescribe restrictions on plastic pollutants or detailed regulation of pesticides and microplastics in agriculture. To counteract these threats, it is necessary to include provisions for intensive monitoring and reduction of such pollution, which are already part of current EU directives. The Rio Declaration on Environment and Development (1992) includes the precautionary principle, which is crucial in the current context of climate change and environmental degradation. It encourages preventive measures and sustainable development. However, despite its fundamental nature, this document does not set out binding standards for emission reductions or concrete protection of ecosystems from plastic pollution, wastewater, or agricultural pollutants, as is the case with current European renewable energy directives. Overall, these sources must be substantially modernised to effectively address the present-day challenges. They lay the foundations but do not contain the necessary provisions to control new types of pollution or climate change (European Commission, 2022).

In many developed countries, the legal regulation of natural resource use and environmental protection is provided through a set of laws that cover specific aspects such as waste management, pollution control, and biodiversity protection. However, the experience of countries that apply codified law, such as Germany, shows that having a single environmental code simplifies the regulatory system by providing a coherent legal framework where environmental regulations are integrated into all areas of government. This ensures

consistency in regulation, effective control, and better alignment with international standards.

Legislative approaches to environmental protection in Europe and Ukraine differ in both structure and level of detail, which affects their effectiveness in addressing current environmental challenges. In countries such as Germany, France, Italy, and Sweden, environmental legislation is based on integrated approaches, where various aspects of environmental protection are combined into codified regulations or comprehensive legislative frameworks. This ensures regulatory coherence and coherent policy implementation at all levels, which is particularly important for rapid adaptation to the requirements of sustainable development. In Germany and Sweden, for instance, codified environmental codes provide the basis for a unified regulatory system that covers pollution, biodiversity protection, waste management, and the integration of environmental requirements into industry and transport. Such approaches facilitate monitoring of compliance and allow standards to be quickly updated to meet new environmental challenges, such as climate change and plastic pollution. In France, the system is based on the Environmental Code of France (2000), which brings together separate laws but also ensures the integration of environmental policy into all areas of activity, from agriculture to urban planning. Italy, on the other hand, uses a less centralised system, with separate laws regulating concrete aspects such as water protection and waste management (Law of Italy No. 157, 1992; Law of Italy No. 179, 2002). However, the absence of a unified environmental code, as in Germany, can make coordination between distinct levels of government difficult.

In Ukraine, the legislation is fragmented and does not contain a single environmental code, which creates difficulties with the coordination and effective application of environmental regulations. For instance, environmental requirements

are distributed among laws on environmental protection, waste management, and water protection, but the lack of a comprehensive document complicates the coordination and integration of new standards. Compared to European countries, where centralised regulation facilitates the introduction of modern technologies and approaches, such as environmental impact assessment for all activities, Ukrainian regulations are less adaptive to rapid change. The advantage of European models is a clearer structure of legislation, which ensures better control over compliance with environmental standards at all levels and the ability to quickly adapt legislation to new challenges. At the same time, such systems require considerable resources for management, which may be a challenge for Ukraine.

In the criminal policy, the priority is to protect the environment, which prevails over the interest in applying specific sanctions. The legal framework for environmental protection in Hungary is set out in Articles 191-193 of the Law of Hungary No. LIII “On the General Rules of Environmental Protection” (1995). According to Article 191, Section 2, environmental policy should aim at a strong level of protection, accounting for the various situations in different regions. It should be based on the precautionary principle, as well as on the principles of preventive measures, elimination of damage where it occurs and the “polluter pays” principle.

Compliance with environmental regulations in Hungary involves parallel control, which is ensured by both the Law of Hungary No. LIII “On the General Rules of Environmental Protection” (1995) and the Law of Hungary No. LIII “On Nature Conservation in Hungary” (1996). This means that administrative sanctions do not exempt the violator from criminal, administrative, or civil liability, and the relevant authorities may impose prohibitions or require performance of obligations. The gravest violations of

environmental regulations are classified as crimes. According to the Judgment of the Constitutional Court of Hungary in Case No. 28/1994 (1994), the right to a healthy environment also includes the state's obligation not to reduce the level of protection established by environmental laws if such reduction is necessary to ensure other fundamental rights or constitutional values.

The approach to control and supervision of compliance with environmental regulations in Hungary includes not only the imposition of sanctions but also measures to prevent violations. This includes environmental monitoring, public education programmes, as well as technical and financial support for businesses seeking to meet environmental standards. Environmental legislation in Hungary is a dynamic system that includes control, enforcement, and preventive measures aimed at ensuring sustainable development and protecting natural resources at all levels.

The criminal protection of the environment in Hungary is also influenced by EU law. In this context, it is vital to mention the European Commission Directive No. 2003/80/EC (2003). According to Article 2 of this Directive, each Member State shall take the necessary measures to ensure that certain activities causing damage to the environment are criminalised under national legislation. Such activities include a) emissions of hazardous substances or ionising radiation causing death or serious bodily injury; b) illegal treatment or storage of waste; c) illegal production of nuclear materials; d) illegal possession, capture, destruction, or killing of wild animals and plants, especially those endangered under national legislation.

The criminalisation of acts such as illegal waste management or violations of wildlife protection rules underlines the significance of environmental protection not only from an administrative but also from a criminal perspective. The harmonisation of environmental legislation in the European Union ensures a level playing field for all

member states, reducing the possibility of evasion of rules due to differences in national legal systems.

Considering the global environmental issues such as climate change, biodiversity loss, and pollution, legal protection of the environment is gaining in relevance both at the national and international levels. In Ukraine and the EU, the legal systems in the field of environmental protection demonstrate different levels of development and have their specific features, which are reflected in the legal acts, enforcement mechanisms, institutional structure, as well as key problems and challenges.

The table provides a comparative analysis of the environmental legislation of Ukraine and the EU countries, which allows assessing the strengths and weaknesses of each system. It covers key aspects such as key legislation, enforcement mechanisms, institutional frameworks, and the problems and challenges faced by both sides. A comparison of the legal frameworks for environmental regulation in Ukraine and the European Union reveals both commonalities and major differences.

In the European Union, the legal regulation of environmental protection is comprehensive and combines multiple levels and areas of environmental policy. The EU's legal framework consists of regulations, directives, and decisions that set binding standards for all Member States. The EU is actively implementing long-term strategies, such as the European Green Deal (2019), which aims to achieve climate neutrality by 2050, and other initiatives aimed at combating climate change, protecting biodiversity, and promoting sustainable development. One of the key differences is the level of integration of environmental standards into national legislation. Although Ukraine also has a developed system of environmental regulations, there are problems with their implementation and compliance due to imperfect enforcement mechanisms, corruption, and weak law enforcement.

To achieve effective environmental regulation, Ukraine should focus on reforming the law

enforcement system, increasing transparency, fighting corruption, and improving monitoring and control mechanisms (Korneev, 2021; Kobets, 2022). Adapting to European standards and integrating with European practices can be crucial steps to improve the environmental situation in the country and ensure sustainable development.

The Law of Ukraine No. 2697-VIII “On the Basic Principles (Strategy) of the State Environmental Policy of Ukraine for the Period up to 2030” (2019), at first glance, contains detailed goals to reduce environmental impact, adapt to climate change, improve waste management, and implement environmental management. However, an analysis of this document reveals a series of shortcomings that affect its effectiveness. Firstly, the lack of coordination with other legislation is a severe problem. Although the strategy proclaims ambitious environmental goals, it is not always consistent with other pieces of Ukrainian legislation. For instance, industrial development or energy laws often do not include sufficient environmental restrictions, which may contradict the environmental reduction targets. This inconsistency can create legal confusion and complicate the implementation of environmental policies in practice. Secondly, the lack of detailed implementation pathways is another major shortcoming of the strategy. The strategy sets goals, such as improving waste management or adapting to climate change but does not contain detailed mechanisms for achieving them. For instance, in terms of improving waste management, the strategy does not prescribe clear guidelines or a roadmap for introducing innovative recycling technologies or creating infrastructure for waste collection and disposal. This leaves implementation to local authorities, which do not always have the resources or expertise to develop effective plans. Furthermore, the lack of sufficient funding and investment mechanisms also poses challenges. While the strategy sets goals, it does not contain

concrete provisions for financing the necessary measures. The absence of financial guarantees or instruments to attract investment can be a major obstacle to achieving the goals. This differs from European strategies, such as the European Green Deal, which spells out in detail the sources of funding and investment for environmental initiatives. Overall, the Law of Ukraine No. 2697-VIII “On the Basic Principles (Strategy) of the State Environmental Policy of Ukraine for the Period up to 2030” (2019) proclaims vital goals and vectors of development, but for its effective implementation, it is necessary to eliminate inconsistencies with other laws, develop clear implementation mechanisms, and ensure adequate funding for the implementation of the declared measures.

The EU sets ambitious environmental goals in strategic documents such as the European Green Deal (2019), which aims to achieve climate neutrality by 2050. The European Union is implementing the principles of sustainable development, green and circular economy through numerous programmes, measures, and initiatives. The European Green Deal has introduced initiatives such as the Clean Transportation Programme (n.d.), which promotes the development of electric vehicles and public electric transport, and the Just Transition Fund, which helps fossil fuel-dependent regions adapt to the demands of a green economy by supporting local communities and creating new jobs in environmental sectors. Furthermore, conditions have been created to engage citizens and organisations in measures to reduce greenhouse gas emissions (What is the European..., n.d.). Directive of the European Parliament and of the Council No. 2008/50/EC “On Ambient Air Quality and Cleaner Air for Europe” (2008) for the circular economy, aimed at reducing waste and increasing the share of recycled materials, plays a vital role in supporting the principles of the circular economy. This plan includes initiatives to eliminate single-use plastic

products and increase the reuse and recycling of materials in the construction and textile industries. To protect biodiversity, the EU has adopted the Biodiversity Strategy for 2030 (n.d.), which aims to restore degraded ecosystems, expand the coverage of protected areas and improve water resources. The strategy also includes measures to restore forests and protect marine resources, including the creation of protected marine areas to preserve marine life.

Particular attention is paid to the protection of ecosystems and biodiversity, specifically through the creation and support of protected areas, such as the Natura 2000 network, which helps to preserve rare and endangered species of flora and fauna. The EU also introduces regulations to improve air and water quality, supports environmental projects at the local level, and provides funding for research and implementation of new environmental solutions (European Environment Agency, 2022a; 2022b).

In the second quarter of the 21st century, the EU faces the challenge of not only implementing these goals at the level of all member states but also providing global leadership in the fight against climate change. This includes active participation in international climate agreements, sharing knowledge, and technology with other countries, and supporting global initiatives that promote environmental sustainability.

However, achieving these goals will require a comprehensive approach, including close cooperation between governments, business, and civil society, as well as the adaptation of national policies to European and global standards. It is essential that these initiatives are supported at all levels to ensure the sustainability and effectiveness of EU environmental policy in the long term.

Summarising the analysis, several key shortcomings can be identified in Ukraine's environmental legislation. Specifically, inconsistencies between multiple regulations were found, which

creates difficulties in law enforcement and complicates the implementation of strategic environmental goals. The effectiveness of the implementation of the laws is limited by underdeveloped enforcement mechanisms and the lack of clear financial instruments, which is particularly critical for waste management, water pollution, and climate change measures. To improve the legislation, attention should be paid to the creation of a unified environmental code to promote consistency of regulations, as well as the development of financial and investment mechanisms for environmental projects. Laws should be adapted to new challenges, such as changing climate zones, the proliferation of microplastics, and increased transport emissions, which will require modern environmental standards and integrated strategies at all levels of government.

Discussion

The study on environmental safety and legal regulation of environmental protection in Ukraine and the European Union highlighted topical issues related to ensuring environmental safety in the context of current global challenges. The examination of various approaches to environmental protection offered a better assessment of the specifics of Ukrainian legislation and its comparison with international practices.

Y.V. Korneev (2021) focused on the basic principles of environmental safety in Ukraine, noting that constitutional provisions create the necessary framework for its provision, but the lack of a comprehensive environmental code limits the consistency of legal regulation. These conclusions confirm the findings of the current study, which also emphasised the fragmentation of Ukrainian legislation and its insufficient integration with EU environmental standards. However, unlike Y.V. Korneev (2021), the present study emphasised the need for legislative changes in the context of modern environmental challenges,

such as climate change and plastic pollution, which is not addressed in Korneev's study. S.M. Danyliuk (2022) provided a comparative analysis of environmental legislation in Ukraine and the EU, with a note on the greater structure of the European legal framework and its adaptability to new challenges. S.M. Danyliuk (2022) pointed to the EU's comprehensive approach to environmental protection and the inclusion of environmental standards in all areas of legislation, which is in line with the current study's assessment of the European practices as more holistic. Although the current study assessed this approach positively, it further emphasised the need to implement analogous principles in Ukrainian legislation.

Y.A. Krasnova (2020) addressed the fact that the EU is developing legal mechanisms to ensure sustainable development, supporting this process with Directives and Regulations that are binding on all members of the Community. The current study agreed with these findings, but also added that for Ukraine, adopting this approach could increase the coherence of legal provisions and ensure a greater level of environmental security. The difference in interpretation may be related to the fact that the current study focuses on the integration of new standards on waste and microplastics, which was not addressed by Y.A. Krasnova (2020). Y. Leheza *et al.* (2023) focused on the protection of human rights to a safe environment, specifically the legal aspects of ensuring environmental safety. The researchers emphasised the need to consider modern threats such as water pollution and air quality. The current findings confirmed the significance of these issues but also extend the discussion to include the need for concrete countermeasures, for instance, in the area of waste management and renewable energy. The reasons for the discrepancy may lie in the focus of the present study on the practical aspects of policy implementation, while Y. Leheza *et al.* (2023) focused on common rights.

L. Squintani (2021) discussed barriers to sustainable development in the EU, including legal obstacles to the integration of environmental standards. L. Squintani (2021) emphasised the significance of removing such barriers through modifying the legal framework and improving the institutional structure. The current study addressed analogous challenges for Ukrainian legislation, proposing a more adaptive approach to reduce legal inconsistencies between different pieces of legislation in Ukraine. At the same time, the current study adds the need for financial incentives, which was not addressed by L. Squintani (2021). In the international context, it is vital to address the study by C. Bibi *et al.* (2024), which highlighted global challenges in biodiversity protection and the role of international environmental law in ensuring its conservation. The difference with the present study lies in the focus of C. Bibi *et al.* (2024) on the global level of regulation, while the current study analysed Ukraine's national mechanisms and the integration of European standards. The current study supported the opinion of C. Bibi *et al.* (2024) on the role of international cooperation but added that the adaptation of global standards to the specifics of national legislation is particularly significant for transition economies such as Ukraine.

Y. Kobets (2022) analysed environmental security as a component of national security, addressing its significance in martial law. The current study expanded on this idea, adding that Ukraine's current environmental legislation must be adapted to the challenges posed by military operations. Kobets's study paid less attention to issues related to the environmental rehabilitation of territories, while the current study emphasised the value of developing clear procedures for the restoration of damaged ecosystems.

The present study on the legal regulation of environmental safety in Ukraine reflected a series of issues related to the fragmentation of legislation and insufficient integration of

international environmental standards. In comparison, O.M. Semernia *et al.* (2022), which analysed Ukraine's environmental security during martial law, highlighted the need to improve legislative mechanisms in response to specific military challenges. Their conclusions highlighted that national legislation should include additional protective measures, especially in relation to contaminated areas, which is consistent with current study highlighting the role of clear legal regulation in crisis. O.V. Beshpalova's (2020) analysis of EU environmental policy pointed to a more coherent system of legal provisions that ensures uniform environmental safety standards for all member states. This contrasts with Ukrainian legislation, which, as noted in the present study, continues to be fragmented and does not always meet modern requirements. Differences in legislative approaches point to the need for deeper integration of Ukraine's environmental regulations with European standards, which could increase the effectiveness of environmental policy.

A.M. Nosa's (2017) study on EU environmental policy focused on common international approaches and efforts to ensure effective environmental safety. These findings support the current study, which pointed to the role of international cooperation in improving national environmental regulations, especially in the face of global challenges such as climate change and ecosystem degradation. Comparison with the findings of A. Nagy (2019), who examined the criminal law protection of water resources in the context of European legislation, demonstrated that Ukraine can improve criminal liability for environmental offences. The current study also pointed to the need to increase liability for environmental crimes, which would ensure more effective protection of natural resources.

Thus, the findings of previous studies confirmed the value of environmental protection in the context of global environmental challenges

and war but also indicated differences in approaches to their solution. To summarise, international practices highlight the need for a coherent system of environmental standards regulation, while the present findings highlighted the necessity of adapting the existing regulations in Ukraine to address emerging challenges, including waste management, biodiversity protection, and ecosystem resilience.

Conclusions

This study was aimed at analysing the legislative acts regulating environmental safety in Ukraine and the European Union, with a focus on identifying the key shortcomings and the effectiveness of their implementation. The purpose of the study was to determine the relevance of Ukrainian and international provisions for addressing current environmental challenges and assess their potential improvement. The study reviewed key legislative acts of Ukraine and the EU, as well as international agreements and directives affecting the environmental safety sector.

It was found that there are a series of shortcomings in Ukrainian legislation, including a fragmented regulatory framework and weak integration of international environmental standards. The Law of Ukraine "On Environmental Protection" includes basic provisions, but they need to be further developed to adapt to modern challenges such as climate change, plastic pollution, and waste management. Furthermore, the State Strategy of Environmental Policy until 2030 defines general goals but lacks clear implementation mechanisms, which complicates its effective practical implementation. Compared to Ukraine, environmental policy in the EU is more centralised and integrated through directives that set common standards for all member states. However, despite the integrity and comprehensiveness of the legal framework, some issues, such as liability for transboundary pollution and the

implementation of renewable energy standards, require greater detail.

Conceptualising the findings, it can be concluded that the improvement of Ukrainian environmental legislation can be achieved by aligning it with European directives and codes. For instance, the adaptation of the “polluter pays” and pollution prevention principles prescribes in EU Directives would facilitate more effective implementation of environmental measures. Codification of environmental legislation, following the example of Germany or France, is a vital prospect, which would avoid legal fragmentation and facilitate effective monitoring.

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The study could serve as a basis for further investigation aimed at developing a unified Environmental Code of Ukraine that would cover all aspects of environmental regulation. Further research could focus on the integration of environmental policy into the energy and transport sectors, as well as the development of a system of liability for transboundary pollution.

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Conflict of Interest

None.

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Правове забезпечення охорони навколишнього природного середовища в Україні та країнах ЄС

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Анотація

Метою дослідження була характеристика і порівняння правових механізмів регулювання охорони навколишнього середовища в Україні та Європейському Союзі. У дослідженні було детально розглянуто основні нормативно-правові акти, що забезпечують екологічну безпеку, і оцінюється їх ефективність у контексті сучасних екологічних викликів. Проведений порівняльний аналіз національного екологічного законодавства України і країн ЄС дозволив виявити ключові відмінності та схожості в підходах до правового регулювання охорони навколишнього середовища. Особливу увагу приділено гармонізації українського законодавства з європейськими стандартами в рамках євроінтеграційних процесів. Проаналізовані екологічні стандарти в Україні та інших країнах ЄС, таких як Франція, Швеція, Італія, де екологічне право кодифіковане в екологічних кодексах, а також у Німеччині, де воно ґрунтується на принципах, орієнтованих на захист довкілля. Розглянуто правове регулювання екологічної безпеки в ЄС, його особливості визначено на основі нормативних документів європейських програм охорони довкілля. Підкреслено роль екологічної безпеки в екологічній політиці ЄС і зроблено висновок про необхідність гармонізації з європейськими вимогами, оскільки в національному законодавстві немає єдиного підходу до цієї складної правової категорії. В Україні питання екологічної безпеки врегульовані як на конституційному, так і на нормативному рівнях, в той час як в ЄС ці питання вирішуються переважно на законодавчому рівні. Зроблено висновок, про необхідність розробки комплексного підходу, що враховує як загальноєвропейські стандарти, так і специфічні національні умови. Гармонізація законодавства забезпечить ефективніше правове регулювання, поліпшить імплементацію екологічних норм і стандартів і сприятиме розвитку міжнародного співробітництва в сфері охорони навколишнього середовища. Практичне значення дослідження полягає у можливості використання отриманих результатів для узгодження національного законодавства з європейськими вимогами, що може стимулювати інновації та впровадження нових технологій для зменшення негативного впливу на довкілля.

Ключові слова: захист довкілля; міжнародне співробітництво; екологічне законодавство; нормативно-правове регулювання; імплементація



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Illegal production, storage, transportation, and sale of excisable goods: Their environmental impact and criminal liability

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Abstract

The purpose of this study was to identify promising ways to improve the criminal legal framework for criminal liability for illegal production, storage, sale, or transportation of excisable goods with a purpose of their sale. To fulfil this purpose, various scientific methods were employed, namely: system-functional, logical-dogmatic, modelling, classification, formal-logical, formal-legal, comparative legal analysis. The study provided a detailed overview of excise taxation and control measures taken by the tax authorities in relation to excisable goods, including alcohol, tobacco, and other products. Examples from the existing law enforcement practice were provided, which demonstrate violation of the economic interests of the state under martial law and negative impact on the environment. The study emphasised the significant fiscal role of excise taxes in generating state budget revenues and regulating markets and analysed their significance in the context of environmental pollution. At the same time, the study criticised the lack of legal clarity and effectiveness of criminal penalties for illegal actions related to excisable goods under the current Criminal Code of Ukraine. It was emphasised that the current legislation does not contain a definition or interpretation of the category of “turnover of excisable goods”, as well as

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the relevant rules governing these legal relations. The study argued the expediency of removing the phrase “ethyl alcohol, alcohol distillates, alcoholic beverages, beer, tobacco products, tobacco, industrial tobacco substitutes, fuel, etc.” from Part 1 and Part 2 of Article 204 of the Criminal Code of Ukraine and consolidating the definition of the subject matter of criminal offences relating to crimes involving excisable goods. The study also proposed to amend Part 1 and Part 2 of Article 204 of the Criminal Code of Ukraine by introducing the concepts of large and especially large amounts for excisable goods. The practical significance of this study lies in the fact that its findings can be used by legislators to improve criminal law provisions, by law enforcement agencies to strengthen the fight against illicit trafficking in excisable goods, and by academics for further research in the field of criminal law

Keywords: counterfeit alcohol; ethyl alcohol; counterfeit tobacco products; tobacco smoke; modern technologies; fiscal role of taxes

Introduction

Criminal liability for the illegal production, storage, transportation, and sale of excisable goods is particularly relevant in the context of martial law in Ukraine, when there is an increase in such offences (Statistics from the Office of..., n.d.). Illicit trafficking in excisable goods such as alcohol, tobacco, and fuel causes major losses to the state budget and poses threats to the country's economic security. These offences have negative consequences for the environment, as the state does not receive the necessary funds to compensate for environmental damage. The lack of effective legal regulation complicates the fight against these crimes, which requires improvement of the criminal law framework and strengthening of control over the circulation of excisable goods.

The relevance of this study is conditioned by the adverse environmental impact of illegal trafficking in excisable goods, especially under martial law. Illegal production and trade in excisable goods, such as alcohol and tobacco, cause environmental damage that is not compensated for by the shortfall in government revenues from excise taxes. This increases environmental risks, reducing the state's ability to finance environmental protection and restoration. Therefore, improving legal mechanisms to combat these offences is

essential not only for economic security, but also for maintaining ecological balance and protecting public health.

Many researchers have focused on the issues of criminal liability for acts involving excisable goods. At the same time, there are currently no comprehensive studies devoted to this issue, considering the updates to legislation, martial law, and current trends in law enforcement practice.

Thus, T. Baranovska (2023) analysed the development of sanctions in the national criminal legislation for offences against the economic system. A. Osintseva and V. Shapovalov (2024) investigated the work of operatives of the Bureau of Economic Security of Ukraine who expose criminals who illegally produce counterfeit alcohol and propose to improve the methodology for investigating crimes under Article 204 of the Criminal Code of Ukraine (2001), specifically by establishing the circle of victims, appointing forensic medical and forensic drug examinations, determining the level of damage to the victims' health and compensation for treatment costs.

V. Andrusiv (2023), O. Dudorov and E. Pysmenskyi (2024), and A. Savchenko (2023) noted that the social danger of illicit trafficking in excisable goods extends beyond fiscal losses, as

it includes damage to the established procedure for the production and sale of such goods, promotion of the expansion of the shadow economy, reduction of the country's investment attractiveness, strengthening of organised crime, and negative impact on human health. Admittedly, the offence under Article 204 of the Criminal Code of Ukraine (2001) is also a manifestation of unfair competition, which discredits the brands of legal producers of excisable goods and reduces their sales through dumping pricing. A decrease in tax revenues from law-abiding producers due to a shrinking tax base also leads to losses for the state budget (Voloshyna, 2022; 2023). These problems are compounded by the complexities in distinguishing this crime from related offences and administrative offences, as well as the instability of the practice of qualifying this crime in conjunction with other crimes.

O. Mamotenko (2019) conducted a comprehensive study of criminal law means of combating illicit trafficking in goods in the field of excise taxation, particularly by identifying the principal reasons for criminalising such actions. At the same time, O. Vorobyov and O. Dontsova (2022) emphasised the need to investigate the illegal trade in excisable goods via the Internet, which is a separate problem that concerns not only the State Fiscal Service, but also the Verkhovna Rada Committee on Finance, Taxation and Customs Policy, as well as legal producers whose products are counterfeited and sold to consumers.

V. Bondarchuk (2023) focused on the characteristics of crimes that harmfully affect the environment. The study emphasised the need to create an international database of judicial practice in cases against persons who have committed criminal acts against the environment, which can be an effective way to identify and counteract such crimes. According to K. McCauslanfa *et al.* (2021) and S. Cnossen (2022), excise taxes allow reflecting the actual cost of consuming these goods,

including their adverse impact on health and the environment. This encourages consumers to make more informed consumption choices and can help reduce the harmful environmental impacts associated with the illegal production, storage, transportation, and sale of excisable goods.

Despite the existence of legislation that regulates liability for these crimes, the effectiveness of their application often stays low. Most studies focus on the legal aspects, leaving aside the issue of effective implementation of the legislation in practice. Therefore, the purpose of this study was to identify promising ways to improve the criminal legal framework for criminal liability for the illegal production, storage, sale, or transportation of excisable goods for their sale.

Materials and Methods

Criminal liability for the illegal production, storage, transportation, and sale of excisable goods is a crucial aspect of ensuring law and order and economic stability of the state. The research examined legislation to evaluate the current state of the issue and devise solutions. To comprehensively understand and substantiate the matter, the study scrutinised the provisions of various legal instruments, including the Criminal Code of Ukraine (2001), the Tax Code of Ukraine (2010), the Law of Ukraine No. 481/95-BP "On State Regulation of Production and Circulation of Ethyl Alcohol, Alcohol Distillates, Alcoholic Beverages, Tobacco Products, Liquids Used in Electronic Cigarettes and Fuel" (1995), the Law of Ukraine No. 1264-XII "On Environmental Protection" (1991), the Customs Tariff of Ukraine (Groups 01-49) (Annex to the Law of Ukraine..., 2022). Along with this, the study examined individual cases of law enforcement practice: decisions of the national courts of Ukraine in cases No. 750/3335/16-к (2018), No. 569/17844/20 (2022), No. 553/5783/22 (2023), No. 577/1105/24 (2024).

The problem was investigated using the following methods. The system-functional method provided a comprehensive assessment of the effectiveness of existing criminal legal means of combating the illegal production, storage, transportation, and sale of excisable goods. The study analysed the law enforcement practice and statistical data, which enabled the assessment of the current state of criminal prosecution for the offences under Article 204 of the Criminal Code of Ukraine (2001).

The application of the systemic-functional method to the study of criminal liability for the illegal handling of excisable goods facilitated a comprehensive understanding of the issue and enabled the development of recommendations for enhancing the effectiveness of law enforcement in this domain. The application of the logical and dogmatic method, together with other methods, allowed for innovative conclusions regarding some established criminal law provisions. Specifically, this method helped to make clearer not only what the subject matter is about and what it includes, but also what the crime is aimed at, as described in Article 204 of the Criminal Code of Ukraine (2001). Authors used the comparative legal analysis method to compare how things are defined, what the parts of the crime are, what the punishments are, and how the movement of excisable goods is controlled.

The modelling method was used to create some criminal law constructs, specifically, the updated corpus delicti of the offence of illicit trafficking in excisable goods, the draft of the relevant criminal law provision on liability for these actions, and the relevant Article of the Criminal Code of Ukraine (2001) reflecting these constructs. When applying the method of classification of phenomena, the mandatory requirement of compliance with certain criteria was met, namely: systematic, objective, relevant, comprehensive, scientific, and practical significance.

The formal legal method allowed for a detailed analysis of current legislation, court practice, and international standards in this area. This method helped to identify gaps in legislation, assess the effectiveness of law enforcement practice, and develop proposals for its improvement. At the same time, the formal logical method helped to establish cause-and-effect relationships between different elements of the phenomenon under study. Logic diagrams were used to model various scenarios and predict the consequences of illicit trafficking in excisable goods.

The application of these methods in the context of the study of criminal liability for the illegal production, storage, transportation, and sale of excisable goods gave a deeper understanding of the structure and content of criminal law provisions, as well as the development of recommendations to improve the effectiveness of law enforcement in this area.

Results

The economic policy of each country is aimed at securing financial resources, creating conditions for regulating the economy, and influencing inequality in the market of relations and income levels of the population. One of the oldest and most significant tools for achieving these goals is taxes, specifically excise duty. The fiscal function of taxes has been crucial at all stages of society's history. They are the primary source of budget financing needed to provide government functions, including excise taxes. These payments are mandatory according to the legislation, and their purpose is to raise financial resources for the state.

The control and supervisory activities of the tax service in relation to excisable goods include supervision of the circulation of alcohol, alcoholic beverages, and tobacco products from the point of production to the end consumer. This includes the issuance of licences, wholesale and retail trade, the establishment of excise posts, the

maintenance of a register of excise tax stamps and control over their use, as well as verification of the legality and compliance with the rules of circulation.

Excisable goods under excise taxation are subject to taxation according to the established list of goods included in tax liabilities. This special term is used in tax legislation for their legal regulation. Legislation relating to the classification of goods as excisable is based on their economic characteristics, especially their designation as consumer goods, which are usually used once and cannot be restored to their original condition, thus ensuring stable demand for them. This also applies to goods that are in high demand regardless of economic conditions and consumer purchasing power, and their cost allows for relatively low prices, minimising the negative economic impact of the inclusion of excise tax in their price (Tax Code of Ukraine, 2010).

According to the Tax Code of Ukraine, excisable goods are defined as goods with codes according to the Ukrainian Classification of Goods for Foreign Economic Activity (UCGFEA) to which excise tax rates are applied (Tax Code of Ukraine, 2010). The key criteria for their classification as excisable goods include their legal recognition only under Ukrainian law and the inclusion of excise tax in their price component. Excisable goods include a variety of goods, including ethyl alcohol and other alcoholic distillates, alcoholic beverages, tobacco products and tobacco, e-cigarette liquids, fuel, passenger cars, motorcycles, passenger transport vehicles, freight transport vehicles, and electricity (Law of Ukraine No. 481/95-BP, 1995).

From the standpoint of lexical analysis, the circulation of excisable goods can be considered as the process of exchange of goods defined by law, which include excise duty in their price when buying and selling and moving goods (products) in society. However, this definition does not cover all aspects of these social relations in the legal context. The current legislation lacks a clear

definition or interpretation of the term “turnover of excisable goods” and the relevant rules governing these legal relations. Applying the principles of the scientific theory of state and law, which make provision for the possibility of applying the statutory analogy or analogy of law in cases where concrete legal relations are not regulated by special rules, it is advisable to apply the analogy to the categories used by the legislator in the relevant regulations, namely the Criminal Code of Ukraine (2001), the Tax Code of Ukraine (2010), the Laws of Ukraine “On State Regulation of Production and Circulation of Ethyl Alcohol, Alcohol Distillates, Alcoholic Beverages, Tobacco Products, Liquids Used in Electronic Cigarettes and Fuel” (1995) and “On Environmental Protection” (1991).

For instance, the definition of “illicit trafficking of ethyl alcohol, cognac, fruit, grain distillate and other excisable goods” includes the import, export, transportation, storage, and trade of such goods and e-cigarette liquids in violation of the requirements of the legislation governing these issues. The term “trafficking” covers various aspects, including these actions with excisable goods (Annex to the Law of Ukraine..., 2022).

The Criminal Code of Ukraine (2001) prescribes liability for illegal operations with excisable goods in Article 204 “Illegal manufacture, storage, sale, or transportation for the purpose of sale of excisable goods”. However, the legal structure of this provision complicates its effective application and limits the ability of law enforcement agencies to combat destructive actions. This provision was introduced in 2018 without proper substantiation. The Explanatory Note to the Draft Law of Ukraine No. 9190 “On Amendments to the Criminal Code and the Code of Criminal Procedure of Ukraine on Ensuring Consumer Rights to Product Safety” (2011) stated the need to ensure budget revenues and perform Ukraine’s international obligations to the European Union in 2019. However, the lack of a proper analysis of the

effectiveness of the previous version of this provision and the lack of substantiation for the proposed changes created legal instability and the possibility of inadequate application of the law (Explanatory note to the Draft Law..., 2018). This allowed the legislators to limit themselves to general wording, which complicates the prospects for the enforcement of this provision. Thus, the current version of Article 204 of the Criminal Code of Ukraine (2001) needs to be revised and supplemented with scientifically sound arguments to ensure its effective application in law enforcement.

The next drawback of the wording in Part 2 of Article 204 of the Criminal Code of Ukraine (2001) is the use of the term “illegal manufacture of...”. In the sectoral legislation regulating the legal basis of operations with excisable goods, this wording is practically not used. Specifically, sub-item 14.1.281 of the Tax Code of Ukraine (2010) defines “production of excisable goods (products)” as a technological process, including mixing, which leads to the production of excisable goods by changing the form, properties, or composition of raw materials, semi-finished, or finished products.

Article 1 of the Law of Ukraine No. 481/95-BP (1995) provides a detailed definition of the illegal production of excisable goods, such as ethyl alcohol, cognac, and fruit distillate, as well as ethyl rectified grape alcohol, etc. According to this law, it is illegal to produce these goods without a licence for this type of business activity. Since the above goods are excisable, there is reason to believe that the illegal production of excisable goods means their production without a proper licence, which is required by legislation. Even when specific groups of excisable goods are concerned, it is important to understand that this definition may also apply to other groups of excisable goods. Therefore, it is proposed to consider the illegal production of excisable goods as a process that results in the production of excisable goods by changing the form, properties, or composition of

raw materials, semi-finished, or finished products without a proper licence for such business activity. Considering this, it would be logical to use the term “illegal production of excisable goods” in Part 2 of Article 204 of the Criminal Code of Ukraine (2001), as well as to replace the term “manufacture” with “production” in the title of this provision.

Article 2 of the Criminal Code of Ukraine (2001) contains a provision on the “commission by a person who has been previously convicted under this article”, which may lead to ambiguity and uncertainty. This rule is probably aimed at increasing liability for repeated violations of the rules on illegal production of excisable goods. However, the reference to the act itself and its repeated commission does not consider the strengthening of criminal liability. Therefore, it would be advisable to legalise the liability of persons who have previously been convicted under Parts 1 or 2 of Article 204 of the Criminal Code of Ukraine (2001) in Part 3 of the same provision.

Another drawback of this provision is that the subject matter of criminal offences is defined in Part 3 of Article 204 of the Criminal Code of Ukraine (2001) as “goods specified in parts one or two of this article”. This wording may not seem logical, as it is sufficient to refer to them as “excisable goods” to cover all goods that may be the subject of unlawful actions. Adoption of the proposed wording will allow simplifying the text of Part 3 of Article 204 of the Criminal Code of Ukraine (2001), while retaining its essence. Furthermore, it is advisable to consider the use of the term “production” instead of “manufacturing” in the text of this provision and to formulate Part 3 of Article 204 of the Criminal Code of Ukraine (2001) as follows: “Actions envisaged by parts one or two of this Article, committed by a person who has previously been convicted under this Article, or illegal production of excisable goods that pose a threat to human life and health,

as well as the sale of such goods that caused poisoning or death of a person”.

A major problem with the law is that the punishment for illegally getting these goods to sell or store them is not as harsh as the punishment for illegally making them, which can land you in prison for three to five years. This does not correspond to the real social danger of such actions. Since the subject matter of criminal offences under Article 204 of the Criminal Code of Ukraine (2001) is not clearly defined, the sanctions set out in parts 1 and 2 of this Article violate the principle of justice, which requires adequate punishment depending on the nature and degree of social danger of the crime. It is considered vital to clarify the liability for illegal production of excisable goods in part 1 of Article 204 of the Criminal Code of Ukraine (2001), as well as for their acquisition with the intent to sell or storage, as well as for their sale or transportation with the intent to sell in part 2 of this article.

An additional disadvantage of the provisions of paragraphs 1 and 2 of Article 204 of the Criminal Code of Ukraine (2001) is the absence of legislative establishment of quantitative or value restrictions on the subject matter of the crime in relation to excisable goods. This approach does not contribute to the humanisation of criminal legislation, since the wording of these parts of Article 204 of the Criminal Code of Ukraine (2001)

does not prescribe severe consequences for persons engaged in the purchase, sale, transportation, or storage of excisable goods, etc.

To establish the adequate size of the excise tax stamp on excisable goods, Article 199 of the Criminal Code of Ukraine (2001) should be used, which defines the criteria for large and especially large scale violations, when the amount exceeds the tax-free minimum income of citizens by two hundred and four hundred times, respectively. Considering this, it is proposed to amend Part 1 and 2 of Article 204 of the Criminal Code of Ukraine (2001) to introduce the concepts of large and especially large amounts for excisable products.

Under current conditions, the legal construction of the current Criminal Code of Ukraine (2001), which regulates liability for illegal actions with excisable goods, has considerable drawbacks. This makes it harder to fully meet modern standards and stops us from effectively controlling illegal activities involving excisable goods. This helps the black market grow, increases organised crime, and poses a big threat to the economic stability of the country. According to statistics, Ukraine annually registers a considerable number of cases of illicit trafficking in excise taxation, which seriously violates the legal order of business, destroys the country's tax system and, in some cases, poses a threat to the lives and health of citizens (Fig. 1).

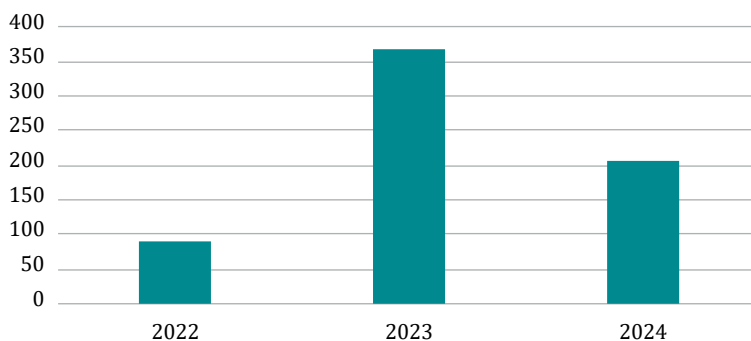


Figure 1. Statistics of recorded criminal offences under Article 204 of the Criminal Code of Ukraine
Source: Statistics from the Office of the Prosecutor General (n.d.)

According to the court statistics, Article 204 of the Criminal Code of Ukraine (2001) is the most frequently applied among all criminal law provisions set out in Section VII of the Special Part of the Criminal Code of Ukraine (2001). This Article is conventionally recognised as one of the most actively applied and includes a wide range of tasks aimed at protecting the financial interests of the state, regulating the activities of producers and sellers of excisable goods, as well as ensuring the

safety of consumers of these goods and protecting the principles of fair competition. However, the current wording of the Article in the Criminal Code of Ukraine (2001) has its drawbacks, and its practical application is fraught with challenges. Examples from judicial practice show violations of the state's economic interests under martial law, especially in the context of illicit trafficking in counterfeit alcoholic beverages, which poses a severe threat to society and public health (Table 1).

Table 1. Generalisation of court practice under Article 204 of the Criminal Code of Ukraine

Case	Brief description	Court decision
No. 569/17844/20 (2022)	In December 2019, the defendant knowingly purchased illegally produced alcoholic beverages from unidentified persons. These drinks were in 1,492 0.5-litre glass bottles. Notably, the production and circulation of alcoholic beverages in Ukraine is subject to state regulation and is carried out only under the relevant licences issued by the competent authorities.	The individual pleaded guilty to committing the offences stipulated by Part 1 of Article 204 of the Criminal Code of Ukraine (2001). According to the agreement between the parties, the individual was sentenced to a fine of 5,000 tax-free minimum incomes, which is UAH 85,000, with confiscation and destruction of the illegally manufactured goods.
No. 553/5783/22 (2023)	During the period from June 2022 to 22 September 2022, the accused committed actions that consisted of the illegal acquisition with the intent to sell and storage of illegally manufactured tobacco products for this purpose. These actions contravene the legislation of Ukraine regulating the production and circulation of ethyl, cognac, and fruit alcohol, alcoholic beverages, and tobacco products.	Having pleaded guilty to committing a criminal offence under Part 1 of Article 204 of the Criminal Code of Ukraine (2001), the defendant was fined in the amount of 5,000 tax-free minimum incomes, which is UAH 85,000, with confiscation and destruction of the illegally manufactured goods.
No. 577/1105/24 (2024)	At an unspecified time during the pre-trial investigation, but no later than 10 October 2023, the accused revealed a criminal intent to carry out illegal activities related to the sale of illegally manufactured tobacco products to make a profit from their sale. In pursuance of this criminal intent, the individual purchased illegally manufactured cigarettes without excise tax stamps at the Yunist market, known from the pre-trial investigation, without registering as a business entity and without a relevant licence, with the intention of selling them. Confirming their criminal intent, the individual transported the purchased cigarettes without excise stamps to her place of residence. In furtherance of this intent, the individual deliberately violated the law and sold two packs of Ritm cigarettes without excise stamps to other persons in an open area.	Having found the individual guilty under Part 1 of Article 204 of the Criminal Code of Ukraine (2001), the court sentenced the individual to a fine of 3,750 tax-free minimum incomes, which is UAH 63,750, with confiscation and destruction of the illegally manufactured tobacco products.

Source: extracts from national court decisions

An analysis of court practice revealed that extremely severe property and other sanctions imposed on smugglers are mostly aimed at hired guns or assistants who do not receive substantial profits from their actions. Specifically, such measures include confiscation of property, heavy fines, and other restrictions that are often disproportionate to the role of these individuals in the smuggling scheme.

This leads to several problems, including 1) ineffective measures. As the key organisers and beneficiaries of smuggling operations are left out of the loop, the fight against smuggling becomes less effective. Hired performers can be easily replaced, which does not substantially affect the smuggling business itself; 2) disproportionate sanctions, as the sanctions applied often do not correspond to the degree of guilt and the role of a particular person in the crime. This creates a situation where the perpetrators, who receive minimal profit and play a secondary role, are subject to the same or even more severe punishment than the organisers; 3) lack of justice, as such practices may be perceived as unfair by both the perpetrators and society as a whole, undermining trust in the legal system.

To address these issues, the anti-smuggling policy must be revised to include and promote the use of a case-by-case approach. Courts should consider all the circumstances of the case in detail, including the nature and extent of the offence, the role of the perpetrator in the offence, and other crucial aspects. It is equally significant that sentences be proportionate to the role and responsibility of the individual in the offence. The focus should be on the organisers and beneficiaries of smuggling schemes. Sentencing should factor in not only the offence, but also the personal circumstances of the perpetrator, including the possibility of rehabilitation, previous offences, and other social factors. Therefore, when imposing sanctions and other measures on smugglers, courts

should consider all the circumstances of the case to ensure that the sanctions imposed are proportionate and fair. In addition, parties should be encouraged to use alternative dispute resolution mechanisms that promote peaceful agreements, mediation, and reconciliation, involving criminals, victims, law enforcement officials, and the public in the active resolution of criminal matters. Thus, losses arising from violations in the production and circulation of excisable goods are incurred not only by the state, but also by legal producers of excisable goods and their consumers.

The problems associated with economic crime in Ukraine stay highly relevant. For instance, there is still illicit trafficking in counterfeit alcoholic beverages under popular brands such as vodka, whiskey, cognac, and wine (Baranivska, 2023). To address these problems and improve the effectiveness of law enforcement, it is proposed to introduce regulatory measures that increase criminal liability for violations of Part 3 of Article 204 of the Criminal Code of Ukraine (2001). Specifically, they are thinking about introducing a very harsh punishment of ten to fifteen years in prison, with the seizure of their property, including the destruction of the illegally made or bought goods and the equipment used to make them.

It is also vital to consider using existing control devices and IT systems, as well as purchasing new ones. When it comes to problems that cross borders, like security, organised crime, drug dealing, and people smuggling, both countries that share a border need to work together. This includes information exchange, law enforcement coordination, and joint operations to prevent and combat crime. To achieve long-term border security, the demand for illicit goods and services, as well as internal challenges such as corruption and poor governance, must be reduced.

Illicit production of excisable goods is a severe problem that negatively affects not only the

economic and social spheres, but also the environment. According to the National report on the state of the environment in Ukraine (2021), the primary environmental risks in Ukraine include 1) air pollution, as the illegal production and storage of excisable goods, including alcohol, can release toxic substances that pollute the atmosphere; 2) water pollution. Emissions of hazardous waste and wastewater from such industries can enter rivers and water bodies, leading to water pollution and harming aquatic ecosystems; 3) soil pollution, as emissions of waste and waste materials can contaminate soil, which has long-term adverse consequences for agroecosystems and human health.

Considering this, it is necessary to analyse the effects of such actions on natural resources and the environmental situation, considering the provisions of the Law of Ukraine “On Environmental Protection” (1991). According to the provisions of the said law, environmental protection is a priority task of the state, which is obliged to ensure the conservation, rational use, and reproduction of natural resources. Illegal production of excisable goods, including alcohol, tobacco products, and fuels and lubricants, often involves the use of toxic substances and chemical components that can harm soil, water, and air. Emissions of harmful substances, uncontrolled wastewater discharge, and disposal of hazardous waste in unauthorised locations cause major environmental pollution (Law of Ukraine No. 1264-XII, 1991).

The provisions of the Law of Ukraine “On Environmental Protection” (1991) stipulate the need for environmental control and monitoring of activities related to the use of natural resources, including the production of goods. However, in the shadow economy, such measures are often ineffective or non-existent. Illegal production of excisable goods takes place without considering the environmental provisions and standards, which leads to environmental degradation and

adverse impact on public health. For example, the Judgement of the Criminal Court of Cassation in Case No. 750/3335/16-к (2018) shows that the provided samples of aqueous ethyl alcohol solution were not manufactured industrially, contain organic substances that are not typical for industrial samples of vodka and, when consumed as alcoholic beverages, pose a threat to the life and health of consumers when consumed as alcoholic beverages.

Furthermore, the law establishes requirements for liability for violation of environmental legislation. Illegal production of excisable goods may be classified as an environmental crime, which entails criminal liability. However, in practice, such violations often stay unnoticed or do not result in adequate punishment of the perpetrators, which indicates the need to strengthen control and improve enforcement mechanisms in this area. An example is the Resolution of the Znamianskyi City District Court of Kirovohrad Region in Case No. 389/1333/20 (2023), which shows that during the period from February 2019 to 6 February 2020, the organised criminal group purchased and sold illegally produced alcoholic beverages in the amount of about 15 tonnes for a total amount of about UAH 2.7 million. At the same time, the accused were released from criminal liability.

The effectiveness of detecting environmental crimes and collecting evidence depends on the prompt implementation of relevant measures by the competent authorities. To succeed in this area, it is necessary to ensure planned actions and improve cooperation between different institutions. At the national level, the number of environmental inspectors should be increased, specialisation in this area should be made mandatory for police, prosecutors, and judges, while technical means critical to solving and proving environmental crimes should be improved. Furthermore, it is vital to reduce the period between detection and collection of evidence, which will require effective

work of the competent authorities and active investigations by public prosecutors. The regular publication and updating of environmental reports, as well as the activities of non-governmental organisations, are essential to this work. This emphasises the need for a multidisciplinary approach to preventing environmental crime. The availability of adequate technical support to ensure high-quality evidence is essential for its use in criminal proceedings. Methods of storing and destroying pollution-related evidence should also be improved.

Results

Trade, as a separate type of economic activity, is a unique legal sphere, the boundaries of which are defined by international instruments and national legislation. Economic crimes affect financial institutions, cause losses to the state budget and the private sector, undermine the competitiveness of legitimate business entities, and threaten the economic security of the state. According to L. Domagalski (2023), combating economic crime through property security lies in limiting the financing of the development of illegal activities through dirty money. This, as already noted in the findings of the present study, indicates that criminal law provisions are aimed at protecting the basic legal principles in the field of trade, which contributes to a more effective suppression of illicit trafficking in goods both within the country and abroad.

According to U. Boesen (2021), legislators should direct all efforts to generate stable revenue for general budget spending priorities through broad taxation at low rates. However, it is vital to understand that excise taxes are generally not intended to increase general budget revenues, as they are narrow, non-neutral, variable, and regressive. However, they can be substantiated when there are certain negative externalities associated with the type of transactions or con-

sumption, and when they function well in establishing user payment systems.

R. Gunawan *et al.* (2021) noted that excisable goods that are the subject of crimes under criminal law are goods whose price includes excise tax. However, this approach does not fully reflect the position of the national legislator since the Ukrainian Criminal Code does not contain a condition for recognising goods as excisable based on the inclusion of excise tax in their price. The analysis of the provisions of the Criminal Code of Ukraine (2001), specifically sub-item 14.1.4, indirectly confirms this thesis, stating that only certain types of goods (products) defined by this Code are excisable. In other words, the provisions of the Criminal Code of Ukraine only require that the goods be classified as excisable and do not require that the excise tax be included in the price of the goods.

M. Engelhart (2021), C. Tudor (2022), and Z. Zhelev (2020) concluded that extremely severe property measures and other sanctions imposed on smugglers are mostly applied to hired performers or assistants who do not profit from it. This can lead to inefficiency and disproportionality of the measures applied and requires a review of the anti-smuggling policy (Dimitrova, 2014). Therefore, it is suggested that national courts should address the fact that when applying sanctions and other measures to persons guilty of smuggling, they should factor in all the circumstances of the case, including the nature and extent of the violation committed, the role of the perpetrator in the offence, as well as other vital aspects that affect the proportionality and fairness of the sanctions applied.

The administration and analysis of tax evasion in the field of excisable goods can be effectively carried out through the implementation of supervision, inspection, and fiscal control procedures, including proposals for amendments to legislation. At the same time, according to M. Boiță *et al.* (2022), tax fraud is a consequence of imperfect legislation and reflects a lack of vision

associated with high taxes that make them unaffordable and encourage unfair practices. Therefore, it is vital to agree with L. Cobzari and N. Sargu (2021), M. Chackiewicz *et al.* (2022) that the main motive in economic crime is illegal economic and financial benefits, which primarily harm the state budget. Therefore, preventing and combating economic crime is a key principle for any state, both in terms of maintaining social order and ensuring economic stability. The process of generating revenues to the national state budget is currently mainly aimed at accumulating revenues from the real economic sector rather than from the hidden ones in the economy.

According to R. Amrullah *et al.* (2022), the factors influencing the law enforcement in the fight against excise crimes, particularly in the field of tobacco products, are legislative, law enforcement, and community facility and infrastructure factors. Agreeing with this thesis, to successfully combat tobacco excise crimes, the researchers emphasised the need to implement a non-punitive approach that reaches all social groups and promotes cultural change in relation to tobacco excise taxes and creates an infrastructure for investigating money laundering crimes.

Many criminal cases are resolved in the courts, leading to a backlog of cases that can negatively affect the judicial system. At the same time, according to A. Francescangeli (2022), none of the cases involving excisable goods or cigarettes, which are handled by the Customs and Excise Service in several regions, have reached the court. Therefore, as noted in present the study, this problem can be solved by using alternative dispute resolution mechanisms.

Reviews on various thematic issues, including the policy context, the scope of product coverage, unique traceability features, and the political and administrative challenges related to illicit trade, highlight the significance of the following approaches:

a) gradual implementation of the system and earning the trust of the industry. E. Raistenskis *et al.* (2022) suggested implementing tracking for a few products, such as tobacco, and gradually expanding to other products that are vulnerable to illicit trade;

b) use a combination of overt and covert indicators to provide additional opportunities to detect illicit products along the supply chain. It is worth agreeing with C. Sholen (2022) that visible markings that distinguish between tobacco products for domestic use and those for export are a necessary element to identify products for domestic consumption;

c) efforts at inter-agency cooperation at local and international levels enhance the effectiveness of the Track and Trace System. A particular role is played by cooperation agreements concluded between governments regarding intelligence sharing and the fight against illicit trade, specifically in cross-border areas (Munga *et al.*, 2021);

d) policy initiatives to increase fines for illicit trafficking confirm the effectiveness of the Track and Trace System (Mulyana *et al.*, 2023);

e) the review also emphasises the significance of independent estimates of illicit trade in tobacco products. Despite the overall decline in illicit trade following the implementation of the Track and Trace System, the exact volume of illicit trade, according to S. Nugroho and B. Amiq (2023), the exact amount of illicit trade stays a matter of debate based on indicators such as legal cigarette sales and tax revenues.

Z. Woźniak *et al.* (2022) emphasised that international cooperation is an essential factor in the successful fight against economic crime, which can take several forms, such as international operational activities or joint multinational investigations. However, to increase the effectiveness of crime detection, it is also critical to ensure the rapid exchange of information through digital systems (Editorial, 2022). Mutual integration of

systems and databases will influence the detection rate of crimes, including economic crime, and at the same time help reduce the losses of the State Treasury from this type of crime.

Economic crime is a social phenomenon that can be encountered on a daily basis. It affects economic market participants and threatens business security at the national and international levels. In the age of globalisation, with the free flow of goods and services and financial resources, the fight against economic crime can only be successful with a comprehensive international approach, using sophisticated methods and technologies available to specialised criminal groups.

Conclusions

Trade as an independent type of activity occupies a special place in the legal sphere, regulated by both international agreements and national legislation. This creates a specific legal situation where criminal law provisions incriminate illegal actions in the field of trade, aimed at protecting the basic legal provisions in this area. This contributes to a more effective suppression of illicit trade both within the country and abroad.

The issue of criminal liability for the illegal production, storage, transportation, and sale of excisable goods is becoming increasingly relevant in the modern legal environment. This issue affects the fiscal interests of the state through losses in excise tax revenues and has major social consequences, such as increased illicit trafficking and possible negative impact on public health. The analysis shows that the issue of criminal liability for the illegal production, storage, transportation, and sale of excisable goods is key to ensuring law and order, fiscal stability, and consumer protection.

Ensuring the legal circulation of excisable goods plays a key role in creating fair conditions for business and consumers, which contributes to the improvement of the legal culture, and welfare of society. The analysis underlines the significance

of effective tax policy and legal regulation in the field of excisable goods to protect the fiscal and socio-economic interests of the state, producers, and consumers. A properly adjusted tax policy contributes to the effective control of the shadow turnover of excisable goods, which is critical for balanced economic development and the relevant satisfaction of social needs of society.

Ukraine faces an important task of combating the illicit trafficking of counterfeit alcoholic beverages that look like well-known brands, which requires urgent criminal liability measures. The illegal production of excisable goods, especially alcoholic beverages and tobacco products, leads to a major increase in environmental risks due to non-compliance with environmental safety standards at clandestine enterprises. Such actions are often accompanied by unauthorised emissions of harmful substances into the air, water, and soil, which causes pollution of natural resources and threatens public health. Judicial practice shows that crimes in the field of illicit trafficking of excisable goods in Ukraine continue to be a fundamental problem that requires increased liability. Despite the existing legal mechanisms, their effective application is often hampered by various factors, including corruption, insufficient control, and other organisational shortcomings.

The study had its limitations, specifically, limited access to statistical data on the factual volume of illicit trafficking of excisable goods and difficulties in assessing the effectiveness of the measures taken due to the complexity of information collection. For further research, it is recommended to focus on the use of modern technologies to increase the effectiveness of control and supervision, such as the introduction of IT solutions and remote monitoring systems. It is also important to conduct research on the effects of illicit trafficking in excisable goods on the socio-economic development of regions and develop strategies to minimise the adverse effects of this phenomenon.

These areas of research will contribute to improving legal regulation and developing practical measures to combat illicit trafficking of excisable goods in Ukraine, which will help to increase trust in the state and ensure stable economic development.

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Conflict of Interest

None.

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Незаконне виробництво, зберігання, транспортування та збут підакцизних товарів: їх вплив на навколишнє середовище та кримінальна відповідальність

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Анотація

Мета цього дослідження полягала у визначенні перспективних шляхів удосконалення кримінально-правових основ притягнення до кримінальної відповідальності за незаконне виробництво, зберігання, збут або транспортування підакцизних товарів з метою їх реалізації. Для досягнення цієї мети використовувалися різноманітні наукові методи, зокрема: системно-функціональний, логіко-догматичний, моделювання, класифікації, формально-логічний, формально-юридичний, порівняльно-правового аналізу. У дослідженні надано детальний огляд акцизного оподаткування та контрольних заходів, що здійснюються податковими органами стосовно акцизних товарів, зокрема алкоголю, тютюну та інших продуктів. Наведені приклади з наявної правозастосовної практики, які демонструють порушення економічних інтересів держави в умовах воєнного стану, негативний вплив на навколишнє середовище. Підкреслено важливу фіскальну роль акцизних податків у формуванні доходів державних бюджетів і регулюванні ринків, проаналізовано їх значення в контексті проблеми забруднення навколишнього середовища. Водночас дано критику недостатній юридичній ясності і ефективності кримінальних покарань за незаконні дії, пов'язані з акцизними товарами відповідно до чинного Кримінального кодексу України. Акцентовано, що в чинному законодавстві відсутня розшифровка або тлумачення категорії «обіг підакцизних товарів», а також відповідні норми, що регулюють ці правові відносини. Аргументовано доцільність вилучення з частини 1 та частини 2 статті 204 Кримінального кодексу України словосполучення «спирту етилового, спиртових дистилятів, алкогольних напоїв, пива, тютюнових виробів, тютюну, промислових замінників тютюну, пального або інших» та закріплення визначення предмету кримінальних правопорушень, що стосуються злочинів, пов'язаних з підакцизними товарами. Також запропоновано внести відповідні зміни до частини 1 та частини 2 ст. 204 Кримінального кодексу України, передбачивши поняття великого та особливо великого розмірів для підакцизної продукції. Практичне значення дослідження полягає в тому, що його результати можуть бути використані законодавцями для вдосконалення кримінально-правових норм, правоохоронними органами для посилення боротьби з незаконним обігом підакцизних товарів, а також науковцями для подальших досліджень у сфері кримінального права

Ключові слова: фальсифікований алкоголь; етиловий спирт; фальсифіковані тютюнові вироби; тютюновий дим; сучасні технології; фіскальна роль податків

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