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Legal and socio-psychological means to address child delinquency and ensure their rights in criminal proceedings

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Abstract. The study addresses an urgent dilemma, as the rates of child delinquency are not decreasing, and traditional reactive methods are losing their effectiveness. On the one hand, proactive measures are needed to prevent the criminalisation of children, and on the other hand, there is no comprehensive mechanism to ensure the rights of children who are already in conflict with the law, as the existing one is showing signs of cracking. The study aimed to critically analyse the evaluative concepts regarding the risks of violating children's rights, which are outlined in Section 38 of the Criminal Procedure Code of Ukraine. For this purpose, the comparative approach employed the case study method, dogmatic and legal hermeneutics, and terminological methods. The study established that the use of the term "minor" in Ukrainian legislation does not comply with the Convention provisions. The study confirmed that the path of returning a child in conflict with the law to normal coexistence within society does not lie using isolation measures. The study proved that no single institution could implement proactive models to prevent the criminalisation of children. Only joint project activities (programmes to replace aggression, form common unifying goals, social development, and crime prevention) and multidisciplinary teamwork (such as the Barnahus model), based on experimental data from studies of intra-group and inter-group relations, will succeed. The study argued that in a theoretical and legal construct such as a mechanism for protecting the rights of a child, the evaluative concepts used in criminal procedure legislation equally carry both

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risks and progress. At the same time, it is harmful to deprive the law of evaluative concepts. The study argued that it is necessary to improve the professionalism of juvenile investigators, detectives, prosecutors, and judges, for whom it will not be a problem to move away from a template approach to law enforcement and move to the stage of their own objective assessment of facts and circumstances, using standardised evaluative concepts. The practical value of the study is determined by the possibility for law enforcement officers to seek the problem of evaluative concepts not from the negative side, but as part of the mechanism for ensuring the rights of children in criminal proceedings

Keywords: child protection mechanism; pre-trial investigation and trial; re-criminalisation; stigmatisation; discrimination; legal certainty; evaluative concepts

Introduction

Current practice is characterised by a profound departure from reactive models of responding to children's deviance and the choice of a proactive approach. The search for a comprehensive mechanism that would combine legal and socio-psychological means to respect the rights of children who are already in conflict and in contact (witnesses, victims) with the law is becoming more relevant. Academic platforms on this issue are necessary because the principle of respecting the interests of the child requires a rethinking of the existing institution of bringing children to legal responsibility.

S. Baidawi and R. Ball (2023) call for a system that ensures "importance of proposed frameworks for defining the heterogeneous pathways of dual system youth, and the need for targeted and collaborative strategies across court and youth justice systems to address such children's unique needs". In Ukraine, there are shifts towards conducting criminal proceedings in the best interests of children and with respect for the rights of the child (child-friendly criminal proceedings) (Butyrin, 2021). M.V. Chervinko (2023) has already defended a dissertation on this issue, which includes the development of a training course of the same name.

With this progress, violations of children's rights still occur, such as deprivation of liberty in violation of reasonable time limits and without proper grounds for such a severe measure of coercion; in the absence of proof of the real risk of flight, other evasion or obstruction of investigation and trial; the right to defence and legal representation is negated, as was in the Case of Selçuk v. Turkey (2006), Case of Ichin and others v. Ukraine (2010), Case of Korneykova v. Ukraine (2012), Case of Budan v. Ukraine (2016), Judgment of the Court of Justice in Case No. C-603/22 (2024). These problems are urgent and not unique to Ukraine.

There is also a national problem with Chapter 38 of the Criminal Procedure Code of Ukraine (2012), which regulates the rules of criminal proceedings against children. It is oversaturated with evaluative concepts that are applied unequally. Legal certainty is causally related to those evaluative concepts that the legislator has overly provided for in the Criminal Procedure Code of Ukraine (2012). However, an absolute imperative does not result in perfect law enforcement. There are a significant number of situations where the discretion of the law enforcement officer is required in order not to turn the intellectual activity, which is criminal procedure, into a robotic one, unable to sense real needs and respond adequately. Following such beliefs that the use of evaluative concepts by the legislator provides for the maximum involvement of intellectual resources, and to some extent protects against a template approach by law enforcement, which is one of the keys to a balanced approach to respecting children's rights. The evaluative concepts used in Chapter 38 of the Criminal Procedure Code of Ukraine (2012), which belong to the theoretical and legal construct that is the mechanism of child protection, entail not only the above-mentioned benefits, but also risks, which will be discussed in more detail later.

Regarding the adequate proactive components of preventive activities, one should also consider the fact that researchers have described the so-called "resilience model". For example, J.J. Navarro-Pérez *et al.* (2023) identified the above model as a parallel one. In this model, protective factors are conceptualised as assets that can be used to promote resilience in children at risk. In their review, they identified that a positive family environment and supportive relationships seem to be associated with resilience development.

There is also an opposing theory that predisposition to violent, criminal behaviour can be developed in the family, school, informal environment, within the community or through the media. Accordingly, relevant measures need to be included in the prevention of criminal behaviour of children and to prevent the criminalisation of children. These are also part of the mechanism for changing the situation with child delinquency. There should also be proactive programmes, as well as those that promote the socialisation of children in conflict with the law to avoid stigmatisation. C. Trull-Oliva and P. Soler-Masó (2021) noted that intervention programmes cover psychoeducational and/or behavioural aspects. They aim to redirect and consolidate best practices for education, relationships and coexistence free from any kind of violence, and aim to involve both the child and the family in the process of rehabilitation and social inclusion reintegration. Regarding judicial measures for children who have committed criminal acts, C. Trull-Oliva and P. Soler-Masó (2021) recommended an effective 6–9-month programme that would include training, sports and recreational activities, according to age and needs, educational tutoring and psychological therapy. Another unacceptable way is to perceive a child who has conflicted with the law as a potential criminal and stigmatise instead of socialisation. A. Gayapersad *et al.* (2023), having considered the problem of street children, noted the labelling and deep stigmatisation that led to discrimination. Otherness and devalued status limit children's access to public resources and violate their human rights. As horrifying as it is for our time, stigma and discrimination can be legitimised and promoted in the media, expressed "through imbalances and injustices inherent in social structures, political decisions and legal norms" (Gayapersad *et al.*, 2023). Targeted programmes to counteract such phenomena are needed.

In the above-mentioned studies, the authors did not combine legal and socio-psychological means in the mechanism of ensuring the rights of children in conflict and in contact with the law. Therefore, this study aims to address the issue of existing risks of violating the rights of children in conflict and in contact with the law through the prism of

Ukrainian realities: existing evaluative concepts, which are overloaded in Section 38 of the Criminal Procedure Code of Ukraine (2012), and the experience of international justice.

Materials and methods

The legal comparative approach has stated that the problem of juvenile delinquency is not exclusively Ukrainian, and there are grounds to implement some of the already effective and proven prevention measures. The applied problem analysis studied the possibilities for changing approaches from reactive ones, such as detention and prosecution, to proactive ones, such as proper prevention, development of long-term programmes aimed to redirect, involve both the child and family in the process of rehabilitation and provide social support reintegration, etc. The dogmatic method also concluded that the components of the mechanism for changing the situation with child delinquency and gradually removing them from the sphere of criminalisation should be ensured at the present stage through a proactive approach. The method of comparing existing modern best practices of "communication" with children (who are in conflict with the law and/or who have been abused and/or are involved in criminal proceedings as witnesses), inviting those participants who can create a child-friendly environment and are included in a multidisciplinary team (such as Barnahus), the choice of successful location and interior solutions allowed by the criminal procedure legislation (such as the Green Rooms already implemented in Ukraine), etc., identified relevant components of child-friendly criminal proceedings and the theoretical and legal construction of the mechanism for protecting children's rights.

The method of legal hermeneutics and the terminological method determined the place and significance of value concepts in this mechanism. The study formulated conclusions regarding the process and consequences of the legislator's use of evaluative concepts through the prism of observance of children's rights. The problematic analysis made it possible to classify certain evaluative concepts of Chapter 38 of the Criminal Procedure Code of Ukraine (2012) as "unambiguous" and "especially unambiguous", which leads to problems of their law enforcement and predictable violations of children's rights.

The case study method identified those violations of children's rights that were determined by the ECtHR from a representative sample of ECtHR judgments. In particular, in the course of Ukrainian criminal proceedings, there are violations such as: arbitrary deprivation of liberty of children, as in the case of Budan v. Ukraine (2016); disproportionality of the chosen measure of coercion and its duration in the case of Korneykova v. Ukraine (2012); violation of Article 5 § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) (the right to liberty and security of person) was stated in the case of Ichin and others v. Ukraine (2010), etc. The rights provided for in international documents may not be fully integrated into national legislation, and the rights of the child (the right to a defence counsel, legal representative, summons through parents or other legal representatives, etc.) may be generally levelled out in the course of criminal proceedings, which is unacceptable (Judgment of the Court of Justice of the EU in Case No. C-603/22, 2024). This selection of ECtHR and Court of Justice judgments demonstrates the undeniable fact of existing violations of the rights of children, both those in conflict with the law and those who are witnesses and/or victims, despite the measures already taken to implement child-friendly criminal proceedings and elements of proactive methods, which in fact remain partly reactive in practice.

Results and Discussion

The debate on the use of the term "children" or "minors" takes place in general in the national legal and, in particular, criminal procedural doctrine. According to Article 32(1) of the Civil Code of Ukraine (2003), a minor is a natural person aged between fourteen and eighteen years. However, this approach does not comply with Article 1 of the ratified Convention on the Rights of the Child (1989), which stipulates that a child is any human being under the age of 18.

O.G. Lytvynenko (2023) addressed the issue of word use from the perspective of "minor" and "suspect". The study formulated a rather controversial conclusion that "child" as an international legal term and "minor" as a national term are synonymous. Referring to foreign sources and analysing modern approaches, it is not possible to accept this author's approach. The term juveniles used in the Ukrainian criminal (Criminal Code of Ukraine, 2001) and procedural legislation (Criminal Procedural Code of Ukraine, 2012), Civil Code of Ukraine (2003) should correlate with the international legal description, in particular the Declaration on the Rights of the Child (1959), the European Convention on the Rights of the Child (1996), the Convention on the Rights of the Child (1989), the Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice (2010), etc. Therefore, it is worthwhile to stick to the use of words such as "child", "child in contact with the law" and "child in conflict with the law". This should be the beginning not only of a fragmentary implementation, which is partly devoid of practical content and essence, but also of a departure from the provisions of the Criminal Procedure Code of Ukraine (1960), which lack a view to future positive changes in the behavioural aspects of the child through the formation of common unifying goals, positive socialisation and avoidance of revictimisation, recriminalisation, discrimination and stigmatisation.

Legal and socio-psychological approaches to address juvenile crime and ensure the rights of children. The problem of child delinquency in Ukraine is one of the phenomena that requires not only active public attention and publicity, but also competent proactive actions on the part of lawmakers and law enforcement. Even though, since 2005, official statistics show a significant decrease in the number of convicted children (a particularly sharp jump from 17556 in 2005 to 2406 in 2019 (Statistics, n.d.)), researchers say that the actual rates of deviance among children are not decreasing, only the approaches to accounting and reporting have changed (Syzonenko, 2021; 2022). Recidivism among children accounts for 12-17% of crimes. As for children who were victims, in 2023, out of the total number of victims of crime, minors accounted for 1.6 thousand against 1.3 thousand in the previous reporting period, including 682 girls (Supreme Court, 2023). Therefore, O.I. Derenko (2023) highlighted that the increase in juvenile delinquency is present and is caused by factors such as the devaluation of values and the loss of moral guidelines. The ongoing war and re-socialisation in the wake of the COVID-19 pandemic have also contributed to this. They do not have a negative impact alone, but in combination with the cultural, social

and economic factors that determine them. Moreover, there are new challenges associated with the large-scale invasion of Ukraine. This concerns the situation with the outflow of children outside Ukraine for various reasons, such as seeking refuge from the war or illegal displacement by the aggressor country, Russia, which is committing against our children, and the exact numbers of forcibly displaced children are unknown (Basysta & Savyuk, 2025). In both cases, the number of Ukrainian children on Ukrainian territory has sharply decreased and is decreasing, which has a direct impact on the relevant statistics of crimes committed against children and by children in Ukraine. However, the deviant behaviour of Ukrainian children is included in crime statistics in other countries. For example, according to data published by the German Ministry of the Interior, "children and adolescents from Ukraine under the age of 18 are suspected in Germany of committing 4,294 crimes in 2022 (including violations of migration law). In 2021, this number was 441" (Sotnikov, 2023). This tenfold increase in crime is attributed to the traumatic experience of Ukrainian children.

Nevertheless, the problem of crime among and against children is not unique to Ukraine. For example, the results of a study by L. Contreras and M.d.C. Cano Lozano (2016) show that, for example, violence by a child against parents is associated with a previous history of violence in the family environment. Exposure to violence at home was significantly correlated with hostile social perceptions of adolescents. In England, Wales, and Australia, despite the existence of a deterrent system, there is still a trend towards the criminalisation of children. Researchers have shown that the trauma of residential care has a direct impact on a child's subsequent tendency to commit crimes: "15% of children appearing before the criminal division of the Children's Court had experienced at least one OOHC placement, with 68% of these children spending some time in residential care. Similar patterns are reported in NSW and South Australia" (Paterson-Young *et al.*, 2024).

Due to their age and psychological characteristics, lack of moral and value orientations, children are more susceptible to repeated criminalisation (Buldakova & Fedchenko, 2019). H. Haas and M. Cusson (2015), after conducting several clinical studies, found that individual theories are not as effective as interdisciplinary ones in predicting, among other things, violent criminal behaviour. These studies argued that, of course, a variety of biographical, medical and social factors influence human behaviour, including that of children, but ultimately, the chosen behavioural pattern depends on individual free will. No one is a hopeless case and is capable of socialising and avoiding criminal behaviour. It is necessary to use this in the process of rehabilitating an offender.

Along with the above, other authors substantiated that the criminalisation of children is also facilitated by the antisocial environment in which children who have already committed a criminal offence find themselves. Bringing a child to criminal responsibility should not be defined as a way to return to normal coexistence within society. Especially regarding sanctions such as restriction or deprivation of liberty. When serving such sentences, children are placed in a complex hierarchical system that can often have influences that are the opposite of correction and proper socialisation. Children who do not have life experience, achievements and established authority are often guided by the desire for self-assertion in the easiest way, and therefore, criminal authorities become role models (Rohatynska & Voitiuk, 2023). Statistical data confirm, and the authors scientifically substantiate, the above hypotheses, which have been unchanged for decades. For instance, more than 60% of convicts with multiple convictions committed their first offence when they were underage (Zakaliuk, 2017). Tracing the dynamics from 2016 to 2020, then, respectively, by year, 424, 112, 53, 60, 54 children committed crimes again with unspent and unexpunged convictions (Syzonenko, 2022).

Under such conditions, it is necessary to change approaches from reactive ones, such as detention and prosecution, to proactive ones, such as proper prevention, timely application of correctional programmes by a psychologist, awareness of the legal consequences of illegal behaviour, the ability to conduct dialogue, etc. For this purpose, Ukraine is implementing, among other things, the project "Educational Security Service", which was announced by the Educational Ombudsman of Ukraine in 2024 (School security police officer..., 2024). No state body alone can actively implement proactive models to prevent the criminalisation of children. This is proved by the experience that has already been summarised by researchers. Cooperation with local governments and non-government organisations is required to create safety models. Such joint project activities are essential for the effectiveness of preventive measures. Regional and local programmes (such as mentoring, school conflict resolution services with peer mediators, etc.) are notable (Moroz, 2008).

I.A. Fedchak (2024) provides an in-depth professional summary of the existing scientific and practical progress in this area and states that Community policing, i.e. a model of law enforcement that is primarily focused on the needs of communities, involves the active involvement of community representatives in preventive activities, including the prevention of deviant behaviour of children. It has also been proven that the Broken Windows prevention model is able to prevent serious crimes by stopping lesser offences, such as alcohol abuse, petty hooliganism, etc. In conclusion, to improve the protection of human and civil rights and freedoms, introduce an effective system for the resocialisation of individuals who have come into conflict with the law, etc., I.A. Fedchak (2024), based on a decade of national experience and long-term international best practices (based on Intelligence-Led Policing (ILP) intelligence analytics; Predictive Policing (PredPol) forecasts, DDACTS data, criminal analysis (Teresina Robbins, 2020), etc.), proposed a Strategy for the Development of Proactive Activities for 2025-2027 in Ukraine.

Concerning personalities, researchers have already summarised that the period of early childhood is the most favourable for early prevention programmes, which should be based on a multifactorial approach: emphasis not on the individual (aggressive behaviour, stress, etc.) but on the unfavourable characteristics of the immediate family and social environment. As a result, children's social competence is improved through programme activities that include parent education, joint parent-child learning combined with home visits and school activities. The goal is to improve the child's social functioning in society (in educational institutions, outside of them, etc.). Programme activities (such as those aimed to replace aggression, form common unifying goals, social development, prevent cruelty and offences, etc.) should be planned in such a way that they are supported by a group that is a reference point for the adolescent (Moroz, 2008; Yushkevych, 2021). The positive impact of

such measures on reducing child crime has been confirmed (Yushkevych, 2021), as illustrated by the experience of countries such as New Zealand ("Family Group Conferences") (Umbreit, 2000), the United States ("Life Skills for Kids", "Teen REACH programme"), England and Wales ("Technical and Vocational Education Initiatives"). Similar initiatives to implement programmes have also taken place in Ukraine, such as "School of Life Creativity" (Dnipro and region), "Useful Skills" (Kharkiv, Odessa), as well as life skills development programmes for "at-risk groups" (Kucherenosov, 2015; Yeligulashvili *et al.*, 2021; Andreenkova *et al.*, 2023).

The effectiveness of such programmes should be based on experimental data from studies of intra-group and inter-group relations. Following N.Yu. Volanyuk *et al.* (2019), as early as 1954, M. Sheriff, studying intergroup relations in an American camp for teenagers, was one of the first to formulate the conditions of competition, neutrality or cooperation of intergroup interaction. The individualisation of a child's social environment, their identification with specific social categories, and their commitment to their group social affiliation can, when taken together, positively socialise the child and prevent deviant behaviour. These are all components of the mechanism for changing the situation with juvenile crime, gradually removing children from the sphere of criminalisation and promoting socialisation and proper maturation (Andreyenkova *et al.*, 2018; Andreenkova *et al.*, 2020). It is worth noting that children are the driving force behind this mechanism. Since 2015, the Ministry of Education of Ukraine (MEU) has been implementing the educational programme "Basic Mediator Skills in Educational Institutions and Communities", and subsequently, based on the programme developed and approved by the MEU, a club called "Peaceful Conflict Resolution" was launched in educational institutions in Ukraine. Basic mediation skills. Positive results in favour of changing the situation with crime among children are stated in the relevant preambles (Andreyenkova *et al.*, 2018). Children strive for healthy relationships with the adult world and constantly signal this. For instance, among the most radical initiatives, in the #teens_rights guide, children themselves compiled ten rights that need to be recognised, such as the right to physical integrity, to emotions, to mistakes and to personal space (Kishinevskiy, 2024).

Following the aforementioned, there are also social deviations that violate the norms accepted in society. Some of them fall under the qualification of the Criminal Code of Ukraine (2001), i.e. children commit criminal offences. The procedural framework for investigations is provided by the Criminal Procedure Code of Ukraine (2012). To ensure that the criminal procedural rights of children are protected, the Criminal Procedure Code of Ukraine (2012) provides for a separate Chapter 38 on criminal proceedings against children. Other articles of the Criminal Procedure Code of Ukraine (2012) also highlight the specifics of criminal proceedings involving children as witnesses or victims. Of course, the legislation, particularly the Criminal Procedure Code of Ukraine (2012), should be at least partially proactive, not reactive. After all, the laws regulate the relevant rights, including those of children. In turn, the Criminal Procedure Code of Ukraine (2012) provides for the procedural rights of children as participants in criminal proceedings (in the procedural status of witnesses, victims, suspects). The Criminal Procedure Code of Ukraine (2012) also contains several procedural features that relate exclusively to proceedings against children and with their participation, the failure to comply with which results in violations of children's procedural rights and the cancellation of court decisions on appeal and cassation. These violations, which may also be referred to as "conventional" violations, also serve as grounds for review by the ECtHR. Therefore, it is believed that legislation is also part of the mechanism for observing children's rights, and not just a declaration of such rights. This legislation, along with the existing judicial practice, which is a litmus test of the problems it contains, demonstrates the degree of regularity and effectiveness of the declared changes in the situation with child delinquency and the observance (or non-observance) of children's rights.

Notably, the European Court of Human Rights (ECHR) has found that Ukrainian criminal proceedings are subject to violations such as the arbitrary deprivation of liberty of children, as the formal requirements of criminal procedural law are not sufficient to take a child into custody, this measure to ensure the proceedings must be proportionate and required by specific circumstances (Case of Budan v. Ukraine, 2016); the disproportionate nature of the coercive measure chosen and its duration the detention of children is considered a radical measure and is applied for the minimum necessary period (Korneykova v. Ukraine (2012); a violation of Article 5 § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) (right to liberty and security) was found in the Case of Ichin and others v. Ukraine (2010), etc.

Therefore, the implementation of the tasks of criminal proceedings is reflected in such a theoretical and legal construct as a mechanism for the protection of rights. Usually, such a mechanism is perceived as a set of certain interconnected elements that serve to perform work or achieve a result. Each element of the mechanism should be in a defined place and be responsible for performing its function. Considering the elements of the criminal procedural mechanism for the protection of rights, V.M. Baranyak and O.D. Nesimko (2019) argue that the consequences of criminal proceedings depend primarily on the internally coordinated structure of the relevant bodies, institutions and officials (their personal factor) involved in it. This mechanism primarily pursues a three-pronged goal, namely: restoration of the violated right; inadmissibility of its violation in the future; and development of appropriate guarantees for this. It is advisable to summarise the characteristics that are found in the definitions of researchers and form the mechanism of rights protection, namely: 1) the requirement to have a coherent structure of bodies, officials and institutions; 2) the requirement to protect constitutional human and civil rights.

O.P. Kuchynska (2013) provided a slightly different vision of the mechanism of rights protection from the already analysed ones, which includes: means that facilitate the restoration of rights violated by unlawful actions, as well as the onset of liability of the person who violated the protected right. In other words, the mechanism of rights protection does not focus on the relevant authorities and their structure, but on ways to restore rights and bring to justice those who have violated them.

Thus, in the legal sphere, the mechanism for ensuring rights, including the rights of children in criminal proceedings, functions in a similar way. It consists of several specific interconnected elements, ensuring a fair process and effective protection of rights. These elements may include

legal framework, judiciary and law enforcement agencies, international standards and treaties, oversight and monitoring mechanisms, and legal aid system, among others. Each component has a specific role in the overall mechanism. For example, legislation defines the basic principles and rules that should guide courts and law enforcement agencies. Judges and law enforcement officers, in turn, are responsible for the fair and lawful application of these rules. And monitoring bodies ensure that the rights of minors are respected. Notably, a mechanism for the effective protection of the rights of minors cannot function without proper coordination between its elements. For instance, law enforcement agencies must interact with social services, psychologists and other professionals to ensure comprehensive protection of children in the judicial process. International standards are also a substantial component, with which national legislation needs to be harmonised, and certain steps have already been taken (Letter of the Supreme Court of Ukraine No. 223-66/0/4-17, 2017; Unified standards for specialist training..., 2021). The Criminal Procedure Code of Ukraine (2012) obliges to ensure that pre-trial investigations are conducted by professional investigators, inquirers, and that cases are heard by judges authorised to hear such cases, and that juvenile prosecutors provide procedural guidance in such proceedings and, if there are grounds, ensure that an indictment is sent to court, including in situations where children are victims of their parents' unlawful acts (Criminal Ukraine, 2025). These international standards are contained both in the above-mentioned Declarations and Conventions (Declaration of the Rights of the Child, 1959; Convention on the Rights of the Child, 1989; European Convention on the Rights of the Child, 1996;), as well as in the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (2010), "Riyadh Guidelines" (1990), "Beijing Rules" (1985), Vienna Guidelines (1996), Recommendations of the Committee of Ministers of the Council of Europe (2018), Directive of the European Parliament and of the Council No. 2016/800 (2016), Principles of conducting (2021), etc. Researchers such as A. Omarova and S. Vlasenko (2022) proposed an algorithm for such authors' harmonisation with international juvenile justice standards. And M.V. Chervinko (2021) proposed the Ukrainian state of affairs regarding compliance with international standards of such justice, which could be called "child-friendly" in the context of one of the regions. In general, basic comments and recommendations can be found in the UN guidelines (2013) for different countries on justice reform, the development of appropriate legislation that meets international standards in the field of protection of the rights of children in conflict with the law and in contact with the law.

Each element of this mechanism should be clear and coordinated, as this determines how effectively the rights of children in conflict and in contact with the law (witnesses, victims) are protected. If at least one element fails, this can lead to serious violations of children's rights. Therefore, it is necessary not only to create such a mechanism, but also to constantly improve it, analyse it, correct its shortcomings and adapt it to new challenges and changes in society.

The mechanism of rights protection under consideration has an axiological focus on the protection of the rights of children who belong to the subcategory of persons with increased vulnerability. Accordingly, it is inappropriate to apply to them the measures applied to adults, to implement a general mechanism for the protection of rights within criminal proceedings, and it will not contribute to the achievement of the purpose of such a mechanism. Therefore, it is necessary to adhere to the peculiarities of the proceedings already defined by the current Criminal Procedure Code of Ukraine (2012) and the innovative and reasoned ideas that permeate the doctrinal developments, in particular, V.O. Kaplina *et al.* (2021), suggesting how to interview young and underage children who are witnesses without causing them psychological trauma and avoiding violation of their rights. O. Nadybska *et al.* (2020) noted the issues of why the presence of a children's rights ombudsman is relevant in legislation and in the practice of respecting children's rights, and what arguments from positive foreign experience confirm this satisfaction. The authors conclude that a comparative study of the experience of Norway, Croatia, Chile, and others has established that, in contrast to these countries, Ukraine has two such Children's Rights Ombudsmen: The Ukrainian Parliamentary Commissioner for Human Rights and the Commissioner for Children's Rights under the President of Ukraine. However, the latter's powers embody the activities of the entire structural unit of the Presidential Administration of Ukraine, which threatens the independence and impartiality of the Children's Rights Ombudsman (Nadybska *et al.*, 2020). This is one of the key problems of the Ukrainian child protection mechanism. G.V. Savchenko *et al.* (2020) provided recommendations on how to communicate with children of different age groups in a psychologically and tactically correct manner, as these authors addressed the establishment of psychological contact and the inviolability of children's rights during criminal proceedings. The authors in comprehensive methodological recommendations addressed how these and other recommendations can be applied during investigative (search) activities and the importance of involving specialists such as psychologists, educators, and doctors (Sirenko *et al.*, 2018).

In general, all the above recommendations, as well as others, fall within the scope of "child-friendly criminal proceedings". Following S. Baidawi and R. Ball (2023) and M.V. Chervinko (2023), it is necessary to continue implementing mechanisms for conducting criminal proceedings within the interests of children and with respect for children's rights (child-friendly criminal proceedings). Such criminal proceedings are primarily aimed to create additional guarantees for the observance of children's rights, prevent and avoid revictimisation, re-criminalisation, discrimination and stigmatisation of children. It also addresses the issue of multidisciplinary team of specially trained professionals (Kohut, 2020; Draft Law of Ukraine No. 5617, 2021), such as doctors, teachers, representatives of children's services, psychologists (Order of the Office of the Prosecutor General of the Ministry of Internal Affairs of Ukraine Ministry of Justice of Ukraine Ministry of Social Policy of Ukraine No. 150/445/2077/5/187, 2023; Order of the Ministry of Justice of Ukraine No. 1326/5, 2023), police officers (Order of the Ministry of Internal Affairs of Ukraine No. 855, 2022), investigators, inquirers, prosecutors, judges, social workers, representatives of free legal aid centres (Order of the Ministry of Justice of Ukraine, the Ministry of Internal Affairs of Ukraine, the Prosecutor General's Office No. 493/5/67/32, 2022), etc. in an equipped and adapted room for working with children, such as a "green room" (Methodological recommendations, 2021) and according to

the Barnahus Model (Barnahus Model and its implementation, 2022). All this was discussed at length in 2021 in the draft Law on Child-Friendly Justice (Draft Law of Ukraine No. 5617, 2021).

For the mechanism of child protection to be implemented effectively, the requirements for the structure of the bodies responsible for bringing children to justice and the professionalism of the authorised persons belonging to these bodies must be met. As the research team of L. Forde and U. Kilkelly (2024) rightly notes, it is necessary to involve professional specialists in procedural actions with children. This provides a feeling of safety, which mitigates the negative impact on both the child and the outcome of the proceedings. At the same time, the law enforcement agencies, as correctly emphasised by scholars such as D. Ospanova *et al.* (2024), should be guided by the rights of the child, since the child's future depends on their observance at the time of the proceedings. In turn, the state system as a whole should prioritise the welfare of any child who has received the procedural status of a suspect or accused (Abdullah & Ferdousi, 2024).

Conventional provisions also require that cases involving minors be dealt with more expeditiously, avoiding unjustified delays; the transfer of children to adult courts, if juvenile courts exist; the detention and imprisonment of children (Convention on the Rights of the Child, 1989), except in cases specified by national legislation. In such proceedings, the issue of compliance with the presumption of innocence is particularly acute; the right to use the services of a defence lawyer, who may be officially appointed and whose services are covered by the state; the right to the presence of parents or other legal representatives, who must be informed from the very beginning of the process, etc. One of the constitutional goals enshrined in part 2 of Article 3 of the Constitution of Ukraine (1996) depends on the effectiveness of the mechanism of protection of rights in criminal proceedings: the content and direction of the state's activities are determined by human rights and freedoms and their guarantees. Court practice shows that these rights may not be fully integrated into national legislation, and children's rights may be levelled in the course of criminal proceedings. For example, in the analysed case, the suspect was under the age of 18 but was summoned for questioning. Parents were not informed in advance. They were not informed of the right to have a lawyer present, and one was not appointed. The mother arrived at the place of interrogation but was not allowed to be present during the interrogation (Judgment of the Court of Justice in Case No. C-603/22, 2024).

Thus, legal and socio-psychological means are dominant in the mechanism of changing the situation with child delinquency and ensuring their rights, including criminal procedural rights. It is necesary that legal means are clear and unambiguously contribute to legal certainty, which is problematic due to the use of several evaluative concepts in the articles of the Criminal Procedure Code. However, the question of whether this is harmful remains relevant.

Evaluative concepts in the mechanism of child protection. Researchers such as I.V. Svetlichny (2020) and K.O. Yusupova (2022) argue that in the context of the mechanism for protecting the rights, including those of children, there is a complex problem of using "evaluative concepts". The issue of the essence and positive or negative value of evaluative concepts does not have a single denominator, as in the general theory of law, and the same applies to sectoral disciplines. There is no unity in the use of the term "evaluative concepts", because scholars call them as follows: evaluative (evaluative, evaluative). The authors argue that the use of the word "evaluative" is unacceptable, as it is a Russian copycat that does not comply with the rules of Ukrainian language formation (Zelenko, 2021). The notion of "concepts" is not always central, but the authors characterise them as signs, categories or terms (Yusupova, 2022).

A separate aspect of the problem under study is that some of the evaluative concepts can reflect not only a few phenomena, but a number of them, and this is not always a negative, even for legislation. For example, K. Orobets (2021) argues that in the Criminal Code of Ukraine (2001), there are cases when it is not possible to formally enshrine all the features of a certain concept or an exhaustive list of manifestations of a phenomenon, and then evaluative concepts can help. Continuing the above position, the study emphasised that this also applies to the Criminal Procedure Code of Ukraine (2012), which will be discussed in more detail in this section later.

To summarise the above definitions, it is possible to state that evaluative concepts are a certain legal gap caused by the impossibility of regulatory and legal regulation of all possible aspects of social relations, which provides for possible variability of actions of authorised bodies and legal consequences, based on the specific circumstances of the case, the characteristics of the person in respect of whom they are used and on whom they have an impact, etc. Evaluative concepts are an integral part of legislation, inextricably linked to the natural concept of law and a departure from legal positivism, the main idea of which is that law is what is provided for in the law.

At the same time, the literature criticises the existence of evaluative concepts, and the authors emphasise that due to such uncertainty of terminology, there are problems of practical application, and there is a difficulty in perceiving and awareness their nature (Zelenko, 2021). There are also problems in the context of the discretion of law enforcement agencies, but in general, it is well known that legal certainty is causally related to evaluative concepts. It is necessary for participants in legal relations, in this case, children and their parents (legal representatives in proceedings), to determine the possible consequences of their actions. It should also be clarified that the components of the European principle of legal certainty are foreseeability, proportionality, enforceability, coherence and consistency, clarity, etc. At the same time, only at first glance, the evaluative concepts seem to contradict this set. Further analysis shows that these concepts should not be opposed, since it is not about their mutual exclusivity or problems with the technique of rulemaking (Vlasenko, 2024), which are present in large numbers, but about the adaptation of legal norms to circumstances, their (norms') flexibility in situations where the legislator is unable to act "comprehensively". Only when and where discretion makes no sense or is not permissible, the need to improve the legal technique of the legislator are relevant, when evaluative concepts are used.

There is also a not unfounded doctrinal belief that, first, the protection of children's rights should be determined by an unambiguous imperative (Goshovska, 2016). However, it is difficult to agree with the author's thesis. After all, the problem of using evaluative concepts lies in the complexity of their law enforcement, granting discretion to the body or

official responsible for certain decisions or actions. A valuation concept can be applied at the discretion of the subject of the valuation, and thus directly or indirectly affect the legal status of the person in respect of whom it is applied. This complexity in the application of valuation concepts, of course, creates risks of legal uncertainty and uneven decisions. On the one hand, evaluative concepts ensure flexible adaptation of legal norms to specific circumstances of a case, which is especially necessary in complex situations where clear rules may be insufficient. On the other hand, however, such an application creates opportunities for abuse, subjectivity, or even violations of the rights of children.

The discretion provided by the evaluative concept enable authorities or officials to make decisions based on a personal assessment of the facts and circumstances. This can be both an advantage and a risk, as the outcome of law enforcement depends on the level of competence, objectivity and impartiality of the subject. In the absence of sufficiently developed criteria or verification mechanisms, such decisions may affect the legal status of a person unfairly or disproportionately. Another problem is that evaluative concepts can be applied differently in similar situations by different actors, leading to inequality in legal protection. This is particularly critical in matters relating to the rights of children and other vulnerable groups, where even minor deviations in interpretation can have a significant impact on a person's fate.

With all of the above, the law cannot be deprived of all evaluative concepts, because it would be wrong to turn it into an instruction containing clear rules of action that can be applied to each practical situation algorithmically. Articles of a legislative act are primarily a way of formalising the rules of law, fixing and consolidating them in a certain document. Nevertheless, legal norms are a much broader and more comprehensive concept than an article of law, but there is a plurality of opinions on the interpretation of relevant legal structures due to different authorial approaches and methodologies used (Pidhorodskyi, 2022; 2024).

Given the regulation of procedural actions defined by the Criminal Procedure Code of Ukraine (2012) and based on the requirements to ensure the rights, freedoms and legitimate interests of the subjects of criminal proceedings, the need to unify approaches to the application of evaluative concepts by authorised subjects is notable. The requirements that should be applied to criminal procedural rules can be partially applied to criminal law rules, namely, their proper fixation, clarity of wording (Panov, 2020). However, regarding formal certainty, the situation is somewhat more complicated and requires a separate argument.

Evaluative concepts are an integral part of the legal framework, as they provide flexibility and incorporates the individual circumstances of each case involving children. However, this flexibility can become a tool for manipulation by both the prosecution and the defence. Therefore, a structured approach to law enforcement is needed, which consists of the consistent use of legal categories that require assessment to ensure effective protection of children's rights in criminal proceedings. This approach includes the following stages (elements): 1) recording of factual circumstances; 2) analysis of the factual circumstances of criminal proceedings; 3) search for a rule of law applicable to a particular case; 4) analysis and interpretation of the rule of law; 5) correlation of the found rule with the basic principles of law enshrined in the Criminal Procedure Code 6) correlation of the rule of law and the actual circumstances of the case; 7) analysis of the correlation of the rule and the facts in terms of protecting the rights of the child (in the context of Chapter 38 of the Criminal Procedure Code of Ukraine (2012), the Constitution of Ukraine (1996) and international treaties ratified by the Verkhovna Rada of Ukraine).

In applying the proposed approach, several guidelines should be used and considered. The vulnerability of children is the first of these, as children are physically, psychologically and emotionally more vulnerable than adults. They are not always aware of their rights and may not have the capacity or knowledge to protect them. For this reason, they need special treatment and additional guarantees. The psychological development of children should also be addressed, as they have not yet reached full psychological maturity, which affects their ability to assess the consequences of their actions or the circumstances of the proceedings. For this reason, it is necessary to incorporate the child's developmental characteristics in order not to harm mental health. The best interests of the child must also be respected. Ukrainian legislation, as well as international treaties, state that the best interests of children should be paramount in all decisions concerning them. This means that in criminal proceedings, all decisions should be made to minimise the negative impact on the child.

Children in conflict with the law need not only legal protection but also rehabilitation. They need to be guided on the path of correction and social reintegration to enable them to return to normal life. It is also necessary to ensure equal opportunities for children to access justice through appropriate criminal procedural guarantees. The use of excessive coercion is unacceptable. By applying legal hermeneutics, judges must balance social and legal justice so that the best interests of children can be served and reintegrated (Muchtar *et al.*, 2024). The specific international standards discussed above, as well as the European Convention on the Rights of the Child (1996), impose an obligation on states to protect children in all legal contexts. This includes both children in conflict with the law and those in contact with the law (witnesses, victims).

Regarding the legal system of Ukraine, it is worth noting the fact that Ukraine, following Article 1 of the Constitution of Ukraine (1996), is a state governed by the rule of law, where, based on Article 8(1), the principle of the rule of law is recognised and applied. Valuation concepts are part of the law, which should be applied primarily and only with the notion that it is based on law. Accordingly, it cannot be agreed that evaluative concepts should be ousted from the law or replaced by imperative concepts that would not provide freedom of interpretation and law enforcement. The arguments that such "pluralism" in relation to value concepts is exclusively harmful are insufficient (Zelenko, 2021).

Regarding the conciseness and compactness of the criminal procedure law, two opposing positions can be cited: on the one hand, proper detailing of the law is a guarantee of its unambiguous application, and, as a result, it is an easy way to legal certainty. On the other hand, it significantly complicates the criminal procedural legislation, necessitates constant monitoring of compliance of the actual circumstances of the case with the law, creates a pattern that threatens the rights of participants in criminal proceedings, and provokes the lack of need for in-depth intellectual work to establish the truth, identify the causes and conditions that contributed to the commission of a criminal offence and eliminate them.

Analysing Chapter 38 of the Criminal Procedural Code of Ukraine (2012), more than a dozen evaluative concepts can be identified, those contained in Part 2 of Article 484, Paragraphs 1 and 3 of Part 1 of Article 485, Paragraphs 1, 2 and 3 of Part 1 of Article 487, Part 3 of Article 488, and Part 2 of Article 496. An analysis of each of the terms contained in the aforementioned articles and their paragraphs and sections of the Criminal Procedural Code of Ukraine (2012) noted several observations. The wording of Part 2 of Article 484 of the Criminal Procedural Code of Ukraine (2012), "causes the least disruption to the normal life of the minor," can be interpreted in various ways. From the point of view of a child who leads an antisocial lifestyle, a normal and acceptable way of life can be manifested in the daily use of alcohol or tobacco products, communication with a social group that meets their interests and shares common views. Often, the "usual way of life" does not include attendance at educational institutions, development, socialisation, reading literature, or communication with parents or relatives. These children may lack social responsibility towards their family members or teachers. Any change in the paradigm of their behaviour, even one applied by a law enforcement agency in the framework of criminal proceedings, may be perceived by them as a gross interference with their personal space and the destruction of their usual way of life. From the point of view of the law enforcement agency, the usual way of life can be interpreted as the daily performance of duties related to the need to obtain education, communication with parents and relatives, a circle of friends and acquaintances who do not have a destructive influence.

The phrase "corresponds to the minor's age and psychological characteristics", contained in Part 2 of Article 484 of the Criminal Procedural Code of Ukraine (2012), may be perceived by the minor in a manner opposed to how it is viewed by law enforcement agencies, psychologists and educators. In this context, different views may also arise with the parents or guardians of the minor, who consider that drinking alcohol, smoking tobacco products or electronic cigarettes, using profanity or engaging in early sexual activity are normal. The difficulty of defining this evaluative concept is compounded by the fact that, due to rapid technological development, typical ideas about the age and social needs of children are becoming blurred. Two children of the same age may be at completely different levels of development and require radically different conditions. It is worth mentioning the position of H. Marshall (2024), highlighting that children, due to their different way of thinking compared to adults, may not share information about their characteristics for fear of adults or the criminal justice system.

The notion of "measures aimed to avoid negative influence on a minor" is complicated because negative influence on a child can be defined in different ways. For instance, a source of negative influence may be the need to communicate with parents or guardians who lead an antisocial lifestyle, or attendance at an educational institution where, as part of a violation of academic discipline and educational standards, destructive social groups are formed among children who unite based on common illegal ideas and intentions. Depending on the child's psychological characteristics, the negative impact may be caused by activities that are common to most children of their age.

The "State of health and level of development". Both characteristics of a child listed in Article 485(1)(1) of the Criminal Procedure Code of Ukraine (2012) must be determined by relevant specialists. For example, doctors who can conduct a comprehensive expert assessment of the child's health can identify pathologies or causes that may contribute to a deterioration in health in the future. Developmental assessments can be conducted by professional psychologists and educators who can use educational tests and complexes to identify the main features that characterise a child's intellectual and emotional development through a conversation with the child. To check the state of health, it is also advisable to involve a physical education specialist who can check the minor for compliance with age-appropriate standards of exercise and load. At the same time, as part of such checks, a minor may try to underestimate or overestimate physical condition and developmental level. Speaking about the level of development of a minor, it is worth referring to modern research in the field of cognitive sciences. Australian scientists M. Tuomi and D. Moritz (2024) highlighted that the age of 14, as the age of criminal liability, often does not correspond to the child's developmental level, which is influenced by individual characteristics, childhood trauma, and problems in relationships with parents. In turn, the ECHR judgement states that children aged ten and over are mature enough to distinguish right from wrong. At the same time, English law imposes criminal liability on children aged ten to fourteen, provided that at the time of the offence the child understood that behaviour was wrong, not just naughty: "was wrong as distinct from merely naughty" (Case of V. v. The United Kingdom (1999). Ukrainian researchers O.M. Krukevych (2017) and O.G. Lytvynenko (2023) argue that the Criminal Procedure Code of Ukraine (2012) should regulate the obligation for investigators, coroners, and judges to order a comprehensive psychological and psychiatric examination and refer a child for it.

The "Other socio-psychological traits of a person" in the context of the evaluative concepts contained in Article 485(1)(1) of the Criminal Procedure Code of Ukraine (2012) is ambiguous, as it implies a broad possibility for the law enforcement agency to use it at its discretion. It may cover the fact that a child who leads an antisocial lifestyle may show a positive attitude towards animals. Another example is excellent academic performance in the educational process. In such circumstances, criminal justice actors, despite their often-excessive workload (Cherniei & Cherniavskyi, 2019), need to analyse in detail certain aspects of the child's personality. Such aspects may include, in particular, the child's neurodiversity, which entails the need to conduct procedural actions in writing without the child's involvement (Day *et al.*, 2024), if this is permissible under the rules of criminal proceedings.

The problem of interpreting and assessing the "moral and living conditions of the family" quoted from Article 487(1)(1) of the Criminal Procedure Code of Ukraine (2012) may be caused by the fact that a child growing up in conditions sufficient for a proper quality of life, provided with everything necessary for everyday life, may face pressure, moral influence, condemnation and humiliation from parents and guardians. An appropriate, proper assessment in this context requires the competent authorities to go beyond a visual assessment of the family and the child to a deeper and more comprehensive analysis of their living conditions. Analysing the moral and living conditions of the family through the prism of practice in the United States of America, S. Wakefield *et al.* (2024) highlighted that the

criminal behaviour of a child may be influenced by the criminal prosecution of parents or siblings. Economic status is a common factor (Purnamawati *et al.*, 2024).

Within the framework of the interpretation of the evaluative concept contained in paragraph 2 of part 1 of Article 487 of the Criminal Procedure Code of Ukraine (2012), namely "the nature and effectiveness of the educational measures previously applied to a child", the criminal proceedings authority needs to comprehensively consider and analyse all educational measures applied to the child, such as special measures aimed to restrict the circle of communication, consultations and visits to a psychologist, etc. It is necessary to consider and evaluate all measures applied, the impact of each of them individually and all of them together. In the study of the role of child protection agencies in Australia, U. Athanassiou *et al.* (2024) came to the empirically confirmed conclusion that the risk of criminalisation of a child depends on the fact and timing of the professional start of behavioural correction.

The "Connections and behaviour of a minor outside the home", which are quoted from Article 487(1)(3) of the Criminal Procedure Code of Ukraine (2012), are difficult to track. First, it is necessary to determine the circle of communication outside the home, to determine who is included in the list of friends and classmates. It is worth analysing the hobbies of the child's immediate environment and involvement. Children often hide their true hobbies and social circle. Accordingly, the authorities conducting criminal proceedings face a difficult but solvable task.

The "Harm to the interests of a minor", as provided for in part 3 of Article 488 of the Criminal Procedure Code of Ukraine (2012), can have a rather variable meaning in the context of the fact that the child's main interest may be to maintain stable social ties with a social circle that has a destructive impact on them, such as joint consumption of alcoholic beverages, cigarette smoking, etc. The state views the interests of the child through the prism of guarantees to protect rights and freedoms, and the need to fulfil the obligations assumed under international agreements and declarations. The state's goal is to make children a full-fledged part of society. In contrast, investigating authorities and courts commit violations such as holding a minor in pre-trial detention for unreasonable periods of time, as in the case of Selçuk v. Turkey (2006), where the ECtHR found a violation of Article 5 § 3 ECHR (1950). There is another side to this issue when it comes to children in contact with the law (witnesses, victims). Their interests can also be harmed by the investigation, especially when it comes to child victims of violence. Procedural rules should protect their testimony, and the adoption of such rules is the duty of the state (Case of R.B. v. Estonia (2021)).

The concept of "proper behaviour" contained in Article 493(2) of the Criminal Procedure Code of Ukraine (2012) requires the establishment of the definition of proper and improper behaviour. Subjective mistakes may be made. For instance, behaviour that may be perceived by some as fully compliant with the category of propriety may be interpreted by others as not complying with established norms and rules of morality. Accordingly, there is a need to determine what constitutes proper behaviour.

The notion of "circumstances that may adversely affect", as provided for in Part 1 of Article 495 of the Criminal Procedure Code of Ukraine (2012), is inextricably linked to the specifics of criminal proceedings against a child. This is determined by the fact that criminal proceedings in themselves are a circumstance that causes stress in an incompletely formed personality associated with the use of coercion. Accordingly, this evaluative concept serves as a kind of guideline and is used to limit possible negative consequences caused by the actions of law enforcement agencies.

The concept of "the most appropriate measures in relation to the accused for the purpose of re-education" in Article 496(2) of the Criminal Procedure Code of Ukraine (2012) emphasises that when choosing from possible measures that will contribute to the re-education of a child, it is necessary to proceed from the fact that they are the most appropriate. The requirement of appropriateness means that the educational measures applied must correspond to the offender's personality, moral and psychological qualities and the need for influence. In this regard, there are violations of the ECHR (1950) already established by the ECtHR, such as the lack of educational influence on children during their detention in a reception centre for children, which restricted their right to liberty and security of person (Judgment of the European Court of Human Rights in Cases Nos. 28189/04 and 28192/04, 2010).

The analysis of the above evaluative concepts concluded that they create an wide variety of possible further actions in criminal proceedings. This raises the issue of professionalism and the maturity of the law enforcement officer. A mechanical and algorithmic application of the provisions of the law is unacceptable. A balanced intellectual assessment of each situation is relevant. It may require the assistance of various specialists, professionals, and experts. In general, all of the above is an obstacle to a template approach of law enforcement, which is one of the keys to respecting the rights of children who are both in conflict with the law and in contact with it (witnesses, victims). The use of restorative approaches (Svetlichny, 2020) and the socialisation of children in conflict with the law are prospects for real redirection of deviant behaviour and, as a result, a real reduction in crime.

Conclusions

The study stated that the term "juveniles", which migrated from the Criminal Procedure Code of 1960 to the current Criminal Procedure Code of Ukraine, is not consistent with the accepted approaches of age psychology or with the provisions of the Convention on the Rights of the Child. It is proven that the use of the words "child", "child in contact with the law" and "child in conflict with the law" is correct for this study and for national legislation. Using a legal comparative approach, the author establishes that the problem of juvenile delinquency is not exclusively Ukrainian. It is proven that due to the lack of moral and value orientations, children are more exposed to both criminalisation and its repeated cycle. The applied problem analysis confirmed the belief that it is necessary to change approaches from reactive ones, such as detention and prosecution, to proactive ones, such as proper prevention, timely application of correctional programmes by a psychologist, etc. The methods of legal hermeneutics and the terminological method were used to determine the place and significance of evaluative concepts in the mechanism of observance of children's rights.

The study substantiated the belief that the realisation of the tasks of criminal proceedings is manifested in such a theoretical and legal construct as a mechanism for the

protection of rights, including those of children. The study stated that, among other things, legislation is a component of this mechanism. The author identifies all other components of this mechanism and proves that they should not exist and operate separately. Law enforcement agencies should cooperate with social services, psychologists and other professionals to ensure comprehensive protection of the child in the judicial process. The study proved that international standards of juvenile justice are also a substantial component, to which national legislation still needs to be harmonised (investigations are already conducted by professional investigators, inquirers, and cases are considered by judges authorised to hear such cases; procedural guidance and support of prosecution by juvenile prosecutors is provided in these proceedings; the Barnahus model is being implemented).

The study stated a complex problem of the application of evaluative concepts in the context of the mechanism of protection of the rights of children in conflict with the law. The study proved that the use of evaluative concepts by the legislator involves the use of intellectual resources and protects against a template approach of law enforcement, which is one of the effective guarantees of children's rights. At the same time, due to the complexity of applying evaluative concepts, of course, there are risks of legal uncertainty and uneven decisions, which are a prerequisite for abuse. In order to prevent them, the author argues that certain evaluative concepts from Chapter 38 of the current Criminal Procedure Code of Ukraine should be interpreted. The conclusions from the ECHR judgments and modern foreign doctrinal developments are used as a guide, among which the proposal to conduct procedural actions in writing without involving a child when establishing neurodiversity deserves relevance. At the end of the analysis of evaluative concepts from Chapter 38 of the current Criminal Procedure Code of Ukraine, the study noted about thirteen legislative formulations which are not unambiguous for perception. As a result, the study argued that the use of evaluative concepts where discretion is not appropriate or permissible is an indicator of the need to improve the legislator's legal technique.

Prospects for further research are to develop recommendations for the continued implementation of international standards of child-friendly criminal proceedings, and to increase the diversity of proactive practices to reduce the level of criminalisation of children and their involvement in criminal activities. The goal is a theoretical and legal construct called "Effective mechanism for the protection of children's rights", in which all its elements interact precisely and which can adapt to new challenges and changes in society.

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Правові та соціально-психологічні засоби для зміни ситуації зі злочинністю дітей та забезпечення їх прав у перебігу кримінального провадження

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Анотація. Дослідження присвячене актуальній дилемі, адже показники злочинності дітей не зменшуються, а традиційні реактивні методи вечерпують свою дієвість. З однієї сторони необхідні проактивні заходи на випередження криміналізації дітей, а з іншої – відсутній комплексний механізм із дотримання прав дітей, які вже перебувають у конфлікті із законом, бо наявний дає свої тріщини. Метою дослідження був критичний аналіз оцінних понять щодо ризиків порушення прав дітей, якими перенасичений Розділ 38 Кримінального процесуального кодексу України. Для цього, в межах компаративістського підходу було використано метод case study, догматичний, юридичної герменевтики та термінологічний методи. Встановлено, що вживання в українському законодавстві терміну «неповнолітній» не відповідає конвенційним положенням. Підтверджено, що шлях повернення дитини, яка перебуває у конфлікті із законом, до нормального співіснування в рамках соціуму, не пролягає через застосування ізоляційних заходів. Доведено, що жодна інституція не здатна самотужки впровадити проактивні моделі задля упередження криміналізації дітей. Лише спільна проєктна діяльність (програми заміщення агресії, формування спільних об'єднавчих цілей, соціального розвитку, профілактики правопорушень) та мультидисциплінарна командна робота (на кшталт моделі «Барнахус»), які виходитимуть із експериментальних даних досліджень внутрішньо-групових та міжгрупових відносин, матимуть успіх. Аргументовано, що у теоретико-правовій конструкції, як от механізм захисту прав дитини, оцінні поняття, які використовуються у кримінальному процесуальному законодавстві, у рівній мірі несуть, як ризики, так і поступ. При цьому є шкідливим позбавити закон оцінних понять. Обґрунтовано, що радше варто удосконалювати фаховість ювенальних слідчих, дізнавачів, прокурорів, суддів, для яких не складатиме проблеми відхід від шаблонного підходу у правозастосуванні та перехід на щабель власної об'єктивної оцінки фактів і обставин, послуговуючись унормованими оцінними поняттями. Практична цінність роботи полягає у можливості для правозастосовувачів поглянути на проблему оцінних понять не з негативної сторони, а у складі механізму забезпечення прав дітей у перебігу кримінального провадження

Ключові слова: механізм захисту прав дітей; досудове розслідування та судовий розгляд; повторна криміналізація; стигматизація; дискримінація; правова визначеність; оцінні поняття

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Notarial registration of inheritance of real estate in independent Ukraine: Socio-legal dimension

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Abstract. The transfer of ownership of real estate from a deceased person to their heirs is carried out in accordance with the legislation in force on the day of the deceased's death. Notarial registration of the transfer of ownership of immovable property from the testator to their heirs is accompanied by certain social ties (relationships), both between the heirs and the authorities authorised to carry out such transactions. The aim of the work was to analyse the legal regulation of inheritance of immovable property in independent Ukraine through the prism of social relations between heirs that arise when registering inheritance in a notarial order. The methodological basis of the work consisted of historical-legal, formal-logical and sociological survey methods. This methodology made it possible to conduct a retrospective review of the legal and legislative regulation of the notarial registration of inheritance of immovable property in modern Ukraine, taking into account elements of sociology. The first stage of legal regulation of inheritance of immovable property covered the period from 1991 to 2008; the second stage covers the period from 2009 to 2020, and the third stage began in 2021. As of the end of 2024, the bodies authorised to indisputably secure the transfer of ownership of immovable property from the testator to the heirs by issuing certificates of inheritance are state and private notaries of Ukraine. The judicial authorities divide the testator's estate in the event of a dispute between their heirs. As of the end of 2024, officials of local self-government bodies in rural areas do not issue certificates of inheritance. A comparative analysis of the inheritance of immovable property in Ukraine and Indonesia has been carried out. In Ukraine, the notarial process for registering inheritance is more regulated and digitised. In the event of disputes between heirs, the judicial authorities of Ukraine and Indonesia decide on the division of inherited property, including real estate. Real estate received by an heir through inheritance serves as a guarantee of improved living standards and social status for the heir and their family members. The results of the study can be used in the educational process, by practitioners, including notaries, and in improving legal regulation in the field of inheritance

Keywords: real estate; inheritance; heir; notary; certificate of inheritance; digitisation; mediation

Introduction

In connection with the death of a person who owned immovable property, the heirs have the right to receive it. When registering inheritance rights for heirs (both by will and, in particular, by law), legal and social ties are formed related to the need to legalise the transfer of ownership rights to real estate from the testator to their heirs. Certain socio-legal relations also arise with the authorities authorised by the state to carry out such operations, in particular notarial ones. Notarial activities are carried out as a type of legal and, accordingly, social activity. The process of notarising inheritance rights to immovable property is lengthy, as the law does not set any time limits for this procedure. In addition, in modern Ukraine, with the adoption of the Civil Code of Ukraine (2003), there have been significant changes in the field of inheritance, including in the number of lines of succession under the law.

The war in Ukraine in 2022 and the need to protect the interests, including inheritance interests, of defenders and their families have led to an expansion of the circle of persons authorised to certify wills equivalent to notarial wills during martial law in the country. Therefore, it is considered necessary to trace the development of legal and legislative regulation of inheritance in independent Ukraine during 1991-2024, both from the point of view of sociology of law and the basic principles of the procedure for notarising inheritance rights to immovable property.

The issue of inheritance, including immovable property, has been considered by both foreign and domestic scholars, mainly in the writing of manuals and textbooks on civil and inheritance law, as well as notarial procedure. In most cases, in the studies of lawyers, the problems of inheritance were considered broadly, only as a legal insti-

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tution, without highlighting the social aspect of inheritance of immovable property. O. Kukharev (2022) conducted research in the field of legal regulation of inheritance. In particular, the author examines the peculiarities of inheritance registration during martial law and outlines the peculiarities of applying the provisions of Resolutions of the Cabinet of Ministers of Ukraine No. 164 (2022) in notarial practice. The issues of extending the deadline for heirs to accept inheritance under martial law and the place of opening the inheritance are highlighted. A conclusion is formulated on the need for additional legal regulation of issues related to determining the place of opening the inheritance under martial law. The above proposals of the scientist were subsequently regulated by the legislator, in particular Law of Ukraine No. 3450-IX (2023).

O. Kukharev (2023) also considered the essence of the heirs' obligation to compensate for the costs incurred for the burial of the testator. The author argues that this obligation is not an element of inheritance. The scholar believes that payment for the burial of the testator gives rise to a non-contractual obligation, in which the creditor is the person who incurred the burial expenses and the heirs are the debtors. At the same time, it is emphasised that the expenses incurred must be reasonable and paid for with the personal funds of the person claiming their reimbursement.

V. Vatras (2021) analysed the sources of international and national (Ukrainian) inheritance law. The author identifies six main groups of sources of inheritance law, which are generally supported. At the same time, it should be noted that legal custom or contract should not be combined into a single group of sources of inheritance law, as these are different legal categories, and separate consequences arise for non-compliance with these sources.

Certain issues of legal regulation of inheritance relations during martial law in Ukraine are considered by V. Makovii *et al.* (2022). The authors emphasise that the legal regulation of inheritance relations during martial law in Ukraine requires the following provisions to be taken into account: temporary (due to the threat) restrictions on the constitutional rights and freedoms of individuals and citizens and the rights and legitimate interests of legal entities, with an indication of the duration of these restrictions; as well as assistance in the exercise of civil rights and the fulfilment of civil obligations by the parties to the relations. The authors pay particular attention to the authorities authorised to certify wills equivalent to notarial wills, in accordance with Resolutions of the Cabinet of Ministers of Ukraine No. 164 (2022). However, the authors do not pay sufficient attention to the practical application of this regulatory act.

A. Barankevych (2023) studied the legal regulation of minors' rights to a compulsory share in inheritance law in EU countries. In her study, the author emphasises that the established right to a compulsory share in the inheritance of minor heirs is due to both the lack of full legal capacity of such persons and the need to ensure an adequate standard of living for such heirs after the death of the testator. The researcher concludes that in EU member states, the right of minor heirs to receive a compulsory share is exercised through legal institutions: compulsory share and reserve share.

M. Mykhailiv (2020) has conducted numerous studies on the problems of legal regulation of inheritance relations in private international law. The author considered the issue of inheritance law in the context of the recodification of civil legislation. In particular, the author argues that the concept of a will, mainly in terms of its content, is similar to that in the civil legislation of foreign states in the field of inheritance, and that multilateral conventions regulate only certain issues of inheritance (Mykhailiv, 2021). In other words, the author focuses mainly on general theoretical issues of inheritance.

A. Kiryk (2020) devoted her research to the issue of guarantees of the rights of heirs in inheritance law. The Article emphasises that in Ancient Rome there were "prerequisites for the development of legal guarantees, which were later transformed into the institution of civil law guarantees." The author is right in saying that one of the ways to acquire ownership is through inheritance, which in turn provides guarantees of the rights of participants in inheritance relations. The characteristics of guarantees of the rights of heirs include: targeting a specific group of heirs; designed to protect and safeguard the rights of heirs; based on the principles of protecting the interests of the family and arising only from legal facts.

A. Goncharova (2021) devoted her research to the judicial procedure for establishing inheritance rights. The author considers the practice of courts to recognise the illness of an heir or the fact that the heir-plaintiff is on a business trip in another region of Ukraine as valid reasons for missing the deadline for submitting an application for acceptance of inheritance to be erroneous. According to the scholar, this should only be confirmed by witness testimony. The peculiarities of the emergence and realisation of inheritance rights to land plots are considered by M.R. Gabriadze (2023). In particular, the legal relations associated with the inheritance of a land plot by several heirs of joint ownership rights to such a plot are characterised. The author argues that social relations regarding the inheritance of land rights should be subject to legal regulation of land law, since inheritance has a special nature. This view is disagreed with, as the inheritance of land plots follows the general principles of inheritance.

From the above, it appears that Ukrainian scholars have not paid sufficient attention to the social aspect of inheritance registration in Ukraine, in particular with regard to the entities authorised to register inheritance in the state. A. Silviana and A. Fuadi (2023) examine Indonesia's legal policy on the inheritance of immovable property, including citizens' land rights. The authors emphasise that the adoption of the Population Law in Indonesia eliminated racial discrimination in the classification of the population, leaving a division into two main categories: Indonesian citizens and foreigners. According to the authors, as a result of the pluralism of the civil law system in Indonesia, land policy in the process of land registration due to inheritance requires that a Certificate of Inheritance Rights/ Heirs' Certificate be issued on the basis of documents drawn up by three institutions: SKAW drawn up by the village head/lura and notary, as well as SKAW from the Inheritance Property Centre for each population group, which is the basis for registering the transfer of land ownership from the testator to the heirs .

The aim of the work was to analyse the legal and legislative regulation of the institution of inheritance of immovable property in independent Ukraine through the prism of social relations that arise when registering inheritance in a notarial order, including in terms of entities authorised to register inheritance in the state.

Materials and methods

The methodological basis of the work consisted of general scientific and specialised methods of research, both legal and social. Using a synergistic methodological approach, the author considers the notarial registration of inheritance rights to immovable property in Ukraine as a process that is developing and improving consistently and independently. This was reflected in the evolution of notarial bodies authorised to carry out transactions in the field of inheritance. The author used general scientific methods, including analysis and synthesis.

The hermeneutic method was used to interpret the texts of regulatory and legislative acts, as well as scientific achievements of scholars on the subject of research. The historical and legal method was used to reveal the transformation of the social aspect of legislative regulation of inheritance of immovable property within the specified chronological limits. The formal-logical method facilitated the analysis of the norms of the current civil, notarial and land legislation of Ukraine in the field of notarial registration of inheritance rights to immovable property. In order to reveal the social significance of the institution of notarial registration of inheritance of immovable property and to provide a more thorough disclosure of the topic of the article, the study used: the sociological method of questioning as a method of collecting information through questionnaires; the method of statistical processing of information and the method of comparative analysis.

The materials for analysis were regulatory and legislative acts of civil (special inheritance), land and notarial law. The study used a survey method conducted in October-December 2024, which concerned family, inheritance and land legal relations, in which 194 respondents, students of Lviv State University of Internal Affairs, voluntarily participated. The survey was conducted offline with a list of questions with fixed answer options. Respondents were assured of compliance with ethical standards when conducting the survey (American Sociological Association's, 1997). The survey was conducted to identify public perceptions of common practices for protecting land and inheritance rights through notarial procedures, in particular, regarding the choice of a notary to handle the inheritance, methods of disposing of real estate acquired through inheritance, the effectiveness of digitalisation, etc.

Results and Discussion

General principles of inheritance: Socio-legal aspect. The registration of citizens' inheritance rights is based on rules established by the state, which are reflected in both legislative and regulatory acts. These, in turn, take into account the interests of the state and society, including socio-economic, socio-political and socio-cultural interests. According to Y. Zaika (2020), inheritance law is the most conservative sub-branch of civil law. It is based on the national traditions of the country and the particular mentality of society, which has been shaped over centuries.

The emergence of certain rules of inheritance, which were later enshrined in regulatory legal acts, is socially conditioned. These inheritance rules were formed on the basis of existing rules of conduct that had developed in society, i.e. they reflected the needs of society or its main strata and were socially conditioned. The institution of inheritance of immovable property has its roots in ancient times, its origins can be traced back to the tribes that inhabited both the territory of state and the territories of other states of the world. The transfer of ownership of immovable property by inheritance gave heirs the right to ensure a sufficient standard of living for themselves and their family members.

The genesis of the legal regulation of inheritance of immovable property can be seen in the rules of customary law. Subsequently, the main acts confirming the transfer of inherited rights to immovable property from the testator to the heirs were wills, which were drawn up by quasi-notarial bodies (officials, in addition to their main powers) and were subject to state registration.

The judicial authorities of the time, both secular and ecclesiastical, played a fundamental role in resolving issues relating to the inheritance of immovable property, including in the event of conflicts. In most cases, inheritance legal relations are related to social and family relations. This is particularly evident in the notarisation of the inheritance rights of citizens of the first line of succession. When registering an inheritance in a notarial order, forms of social interaction between people (heirs) become apparent. It is appropriate to highlight the social relationships between the members of the testator's family in the case of inheritance by law. The family has always been at the heart of society, and the welfare and well-being of all family members has usually been a priority, which in turn was ensured by the availability of real estate. Therefore, the transfer of ownership by inheritance was one of the important grounds for the enrichment not only of the heir, but also of his family members, with the family at its centre.

As noted by M. Dolynska (2021), Article 3 of the Family Code of Ukraine (2003) does not provide a legal definition of the concept of family, but only a social one. The survey shows that 26.3% (51) of respondents understand the concept of family as a social institution, and 59.8% (116) as a group of persons bound by rights and obligations. 86.6% (168) of respondents consider it important to have a legal definition of family, while 7.2% (14) hold the opposite view. In other words, family and kinship relations continue to be at the heart of social relations, and preserving the well-being of future generations of families is one of the means of their further development and improvement.

It should be noted that a church marriage between individuals does not give spouses the right to inherit from each other by law. The Civil Code of Ukraine (2003) does not distinguish the concept of family, but only lists the persons who belong to each of the five lines of succession by law (Articles 1261-1265 of the legislative act). To a certain extent, the concept of family can be observed in the provisions of Article 1261 of the legislative act, which establishes a list of heirs who belong to the first order of succession.

Part 1 of Article 1266 of the Civil Code of Ukraine (2003) also contains a list of persons who may be members of the testator's family. Notarial registration of inheritance is an indisputable complex civil, inheritance and notarial legal relationship based on compliance with the current legislation of Ukraine, and in certain cases also the norms of foreign legislation, with the aim of formalising the transfer of the testator's rights and obligations by issuing a certificate for the deceased's property to their heirs. Taking into account their financial and social situation, the heirs may consider the needs of one of the heirs (in particular, a family member who is in a difficult financial situation or needs expensive

medical treatment) and waive their inheritance rights in favour of other heirs (both by will and by law).

Development of legal regulation of inheritance of immovable property during 1991-2008. In the second half of the 20th century, during the Soviet era in Ukraine, according to the provisions of Chapter 10 of the Civil Code of the Ukrainian SSR (1963), only residential buildings were considered real estate subject to inheritance. That is, the state notary at that time had the right to certify both a will and issue a certificate of inheritance by law or by will for immovable property (residential buildings) that was in the possession of the testator on the day of his death. After the declaration of independence in August 1991, state notaries of state notary offices continued to perform notarial acts in Ukraine, including the issuance of certificates of inheritance rights to residential buildings as real estate objects.

During the period of Ukraine's independence, radical reforms took place, including political, socio-economic, legal, and land and agrarian reforms. The starting point for the rapid development of inheritance and notarial legal relations, including in relation to the inheritance of immovable property in modern Ukraine, should be considered to be 1992, when numerous privatisation regulations were adopted: Law of Ukraine No. 2482-XII (1992), No. 2196-XII (1992), No. 2163-XII (1992), No. 2171-XII (1992), and others. This gave impetus to the reform of the notarial system, as state notaries were overloaded and long queues were forming.

The Law of Ukraine No. 3425-XII (1993), adopted in September 1993, introduced the creation of new notarial and quasi-notarial bodies, in particular a new subject of notarial activity – private notaries – from 1 January 1994. In other words, the Law changed the conditions for the activities of state notaries and granted both state notaries and persons intending to become notaries (subject to certain requirements and passing a qualifying notarial examination) the right to engage in private notarial practice.

As evidenced by notarial practice, it was only in February 1994 that the Ministry of Justice of Ukraine began issuing certificates of the right to engage in notarial activities in accordance with Order of the Ministry of Justice of Ukraine No. 3/5 (1994). Private notaries were granted a wide range of notarial powers, including the drafting of wills, but they were not entitled to issue certificates of inheritance rights or take measures to protect inherited property.

As evidenced by notarial practice and the personal experience of the author of the Article (as a practicing state notary in Lviv at that time), there were many misunderstandings and disputes regarding the registration of inheritance in terms of notaries verifying the existence of wills certified by the testator (in different parts of the state by notarial and quasi-notarial bodies). A similar problem also arose when opening inheritance cases after the death of testators (here is no specific inheritance cases, as this is notarial secrecy).

The above prompted changes to the current legislation. Therefore, the next important step in the development of notarial and inheritance legal relations was the introduction of the Unified Register of Wills and Inheritance Cases into Ukrainian notarial practice on 1 December 2000, i.e. the digitisation of notarial and inheritance legal relations. Only state notaries became full users of this Register, as they entered information not only on certified wills, but also on inheritance cases and issued certificates of inheritance rights. It should be noted that the main type of notarial action in state notary offices was the issuance of certificates of inheritance rights under the law. In 2000, there were 795 state notary offices operating in Ukraine and 7,709 notaries engaged in private notarial practice, who performed almost twice as many notarial acts as state notaries (3,920,000 and 7,709,000, respectively) (Werner, 2021).

Article 78 of the Land Code of Ukraine (2001) enshrines private ownership of land, which gives the owner the right not only to possess and use the land, but also to dispose of it, including by transferring it by inheritance. Given the socio-economic and legal reforms in the country, it was logical to adopt the Civil Code of Ukraine (2003) in 2003. In addition to the five stages of inheritance, the act grants the testator the right to draw up a secret will and have it notarised, including for immovable property, and introduces property rights to use other people's land plots (on the basis of concluded emphyteusis and superficies agreements).

According to Article 1299 of the Civil Code of Ukraine (2003), if real estate is included in the inheritance, the heir is obliged to register such a certificate with the relevant state authorities that register real estate (Article 182 of the act). Such authorities were municipal enterprises of the technical inventory and expert assessment bureau (until 31 December 2012). At the same time, the right of ownership of immovable property arose for the heir only from the moment of state registration of such inherited property on the basis of a certificate of inheritance issued by state notaries.

The only body authorised to register the inheritance rights of citizens in an indisputable manner during 1991 – May 2009 was the state notary of the state notary office. At the same time, a private notary was only entitled to draw up a will for immovable property from its owner. Relationships related to the state registration of property rights to immovable property were carried out in accordance with the requirements of Law of Ukraine No. 1952-IV (2004). According to statistics, in 2005, there were already 3,273 private notaries working in Ukraine (who performed 14,510,000 notarial acts) and only 826 state notary offices (which performed only 4,094,000 notarial acts) (Werner, 2021).

Thus, there continued to be long queues at state notary offices for the registration of citizens' inheritance rights, which in turn created a certain amount of social tension in the country. There was also a further reduction in the number of state notaries working in state notary offices. One of the reasons for the reduction was that state notaries were resigning from their positions in order to engage in private notarial practice. The same trend is observed as of 2025.

Development of legal regulation of inheritance of immovable property during 2009-2020. There was a need to expand the types of entities authorised to perform notarial acts, in particular those that would carry out such activities at their own expense, but under the guidance and control of the state. Law of Ukraine No. 614-VI (2008), among other things, granted the right to perform all types of notarial acts not only to state notaries, but also to private notaries of the state from 1 June 2009. In particular, private notaries were granted the right to issue certificates of inheritance rights to immovable property and certificates of ownership of a share in the joint property of spouses in the event of the death of one of the spouses. At the same time, private notaries had had the right to certify wills since 1 January 1994, i.e. they performed certain notarial acts relating to the registration of inheritance rights in the future and provided advice on these

issues. Documents relating to inheritance issued by state and private notaries had equal legal force.

As of 1 April 2009, there were 789 state notary offices in the country, where 1,309 state notaries performed notarial acts. At the same time, 4,655 notaries carried out private notarial activities (Notaries were equalised, 2009). Private notaries received the above powers in the field of notarial and inheritance legal relations only after 1 December 1999, and only on condition that they had undergone further training in inheritance law. This training was conducted by the Ministry of Justice of Ukraine and its territorial bodies, and only 2,613 private notaries in the state underwent it. Thus, not all private notaries at that time expressed a desire to engage in the registration of citizens' inheritance rights. It should be noted that this practice did not apply to all parts of the country. Thus, the author, who at that time was the head of the notary department of the Lviv Regional Department of Justice, claims that all private notaries in the Lviv region underwent advanced training in inheritance law.

On 31 December 2010, the Convention on the Establishment of a Scheme of Registration of Wills (1972), ratified by Ukraine, came into force. Therefore, it is logical to adopt the Procedure for State Registration of Wills and Inheritance Cases in the Inheritance Register, the new Regulations on the Inheritance Register, in accordance with Order of the Ministry of Justice of Ukraine No. 1810/5 (2011). As of 2025, the register is operational, and private and state notaries not only use its information but also independently enter data on certified wills and inheritance contracts, opened inheritance cases, issued certificates of inheritance rights, and more.

E. Nel (2021) draws attention to the importance of registering and drawing up wills for citizens residing in other countries. The author highlights the wills of South African citizens who work, invest or reside in foreign jurisdictions, as the actions of testators may inadvertently leave family members in a financially vulnerable position or reduce family assets due to an underestimation of private international law.

The above prompts heirs to resolve disputes over the division of such inherited property, including real estate, in court. According to statistics, at the end of 2010, there were 843 notary offices operating in the country and 5,325 notaries practising privately. In accordance with Law of Ukraine No. 1878-VI (2010), since 2013, ownership of immovable property, including land plots, has been subject to state registration in the State Register of Real Rights to Immovable Property, which is carried out by state and private notaries when issuing certificates of inheritance rights to inherited immovable property.

Law of Ukraine No. 402-VII (2013) deleted Article 1299 of the Civil Code of Ukraine (2003) concerning state registration of inheritance rights. Law of Ukraine No. 1709-VII (2014), effective from 1 January 2016, granted authorised officials of local self-government bodies who meet certain conditions and have passed an examination in inheritance law in accordance with the procedure established by the Ministry of Justice of Ukraine the right to issue: certificates of inheritance rights and certificates of ownership of a share in the joint property of spouses in the event of the death of one of the spouses.

However, these rules have not been implemented in practice. The reasons for this were the process of decentralisation in the state, which led to the amalgamation of territorial communities in the state (including rural, settlement and urban adjacent councils). As a rule, at the time of their consolidation, the merged territorial communities already had a state notary office and one or more notaries practising privately. Secondly, Law of Ukraine No. 775-IX (2020) stipulated those notarial acts could only be performed in rural settlements.

Thus, the notarial acts provided for in Article 37 of Law of Ukraine No. 3425-XII (1993) may be performed by authorised officials of rural local self-government bodies who must meet certain requirements. Based on the above, it can be argued that the issuance of certificates of inheritance rights, in particular for immovable property, is the sole prerogative of state notaries (both public and private).

An analysis of statistical reports on the activities of notarial bodies during 2015-2020 shows that there has been a reduction in the number of state notary offices (from 780 in 2015 to 719 in 2020) (Werner, 2021). In 2020, there were 5,779 private notaries operating in Ukraine. Compared to 2000, their number has increased almost threefold (Werner, 2021). Therefore, in practice, there has been an increase in the number of certificates of inheritance issued by private notaries.

Legal regulation of inheritance of immovable property during 2021-2024. In 2021, state notary offices performed 1.145 million notarial acts, which is 9.57% more than in 2020. Private notaries performed 11.833 million notarial acts, which is 26.04% more than in 2020. Compared to 2000, the number of notarial acts performed by state notary offices decreased by 70.79%, while those performed by private notaries increased by 53.5% (according to 2021 data) (Number of notarial acts performed, 2024).

According to statistical data (Statistical report on the work..., 2024), this trend regarding the majority of notarial acts performed by private notaries continued in 2024. Thus, private notaries performed 11,536,000 notarial acts, while state notaries performed only 1,053,914. Accordingly, 638,770 and 412,533 certificates of inheritance rights were issued, and 107,088 and 24,012 wills were certified. In other words, there is trust in private notaries when it comes to formalising inheritance rights. Insurance of private notarial practice also serves as a guarantee of the correctness of notarial acts.

Borrowing the best international experience in diversifying legal activities by introducing new areas of activity into its practice, it seems logical for Ukraine to introduce the use of mediation in various spheres of life, including jurisprudence. Law of Ukraine No. 1875-IX (2021), from 15 December 2021, state and private notaries are granted the right, in addition to performing notarial acts aimed at legally establishing indisputable civil rights and facts, also to conduct mediation as an out-of-court procedure for resolving conflicts (disputes). However, only notaries, at their own discretion, decide whether to undergo mediator training.

M. Bondareva (2019) believes that mediation can be seen as a way to sort out differences (not just resolve disputes) that happen in private, voluntarily by the parties, and carried out by an independent and unbiased person (like a notary as part of their notarial work). When registering inheritance, state and private notaries de facto use certain means of mediation (Dolynska, 2023). Notaries will primarily conduct mediation with the aim of preventing conflicts (disputes) in the future or resolving any conflicts (disputes) in civil, family and inheritance matters.

The war started by Russia, due to the possibility of losing important information, led to the suspension of almost

all electronic registries in the country for a certain period of time. Legal regulation of the specifics of notarial activities, including the certification of wills and the issuance of certificates of inheritance rights, during martial law in Ukraine was mainly based on resolutions of the Cabinet of Ministers of Ukraine, including No. 164 (2022), No. 209 (2022), No. 480 (2022), No. 469 (2023), No. 1038 (2023), No. 1309 (2023), No. 330 (2024), and No. 131 (2025). In accordance with Resolution of the Cabinet of Ministers of Ukraine No. 164 (2022), the following persons have the right to certify wills equivalent to notarial wills under martial law: the commander (chief) or a person authorised by such commander (chief) of the Armed Forces, other military formations established in accordance with the law, as well as law enforcement (special) bodies (including the National Police), civil protection bodies involved in measures to ensure national security and defence, repel and deter armed aggression by a foreign state; the head of a camp (institution where a section has been established) for prisoners of war. Thus, state and private notaries are entitled to issue certificates of inheritance on the basis of the above-mentioned wills.

Significant changes regarding the notarisation of inheritance rights were introduced by Law of Ukraine No. 3449-IX (2023) and 3450-IX. Law of Ukraine No. 3450-IX (2023) sets out a new version of Article 1221 of the Civil Code of Ukraine (2003). The above-mentioned Article has been supplemented with a new third part, which regulates the formalisation of inheritance after the death of a testator who had their last place of residence in a foreign country. In other words, the state has regulated the rules of inheritance for testators residing outside its borders, including those who were forced to relocate due to military actions in Ukraine.

Therefore, from 30 January 2024, the registration of inheritance left after the death of a testator who, at the time of death, resided in a foreign state (including Ukrainians who relocated due to military events in Ukraine) shall be carried out in accordance with Law of Ukraine No. 2709-IV (2005). The rules for inheritance are the same for Ukrainians and foreigners, including the deadlines for accepting inheritance. On the basis of the above-mentioned legislative acts, amendments were made to both Order of the Ministry of Justice of Ukraine No. 296/5 (2012) and Resolution of the Cabinet of Ministers of Ukraine Order of the Ministry of Justice of Ukraine No. 3253/5 (2010) during 2024-2025, including in terms of the place of opening of the inheritance and the procedure for preserving inheritance cases.

Certain social aspects of formalising citizens' inheritance rights through notarisation. It should be noted that the Civil Code of Ukraine (2003) gives preference to inheritance by will rather than by law. In other words, the personal will of the testator, as a subject of social and legal relations, takes precedence over the rules established by law. Due to the war in Ukraine, in 2022 there was a reduction in the number of state notaries and notarial acts performed in the country as a whole. In 2023, there were only 565 state notary offices operating in Ukraine (i.but, 2024). As of the end of 2024, only 518 state notary offices were operating in Ukraine (Statistical report on the work..., 2024). In other words, there was a further reduction in the number of state notary offices and, accordingly, state notaries. The reasons for the reduction are military actions, occupation of territory, death or retirement of notaries, as well as the intention of state notaries to engage in private notarial practice.

This is confirmed by statistical data: as of April 2009, there were 1,309 state notaries, and by the end of 2023, there were only 726, i.e. the number had almost halved (1.8 times). During the same period, the number of private notaries involved in inheritance registration increased from 2,613 (who had undergone advanced training in inheritance law) to 5,607, i.e. an increase of 2.1 times. In 2023, private notaries issued a total of 650,399 inheritance certificates, which is almost 1.5 times more than state notaries (425,167 certificates) (Ministry of Justice summarised, 2024). The above data indicates the trust of ordinary citizens in documents drawn up by private notaries, since most of them have previously gained notarial practice in state notary offices. Insurance of private notarial activities also serves as an additional guarantee of the authenticity and legality of certificates of inheritance issued by private notaries.

It should be noted that private and state notaries have issued almost twice as many certificates of inheritance by law as by will. In other words, society continues to prefer inheritance by law. The opinions of 73.2% (142) of the respondents regarding the most effective form of inheritance indicate that the most effective form of inheritance is still inheritance by will. At the same time, for 14.4% (28) of respondents, it does not matter whether inheritance is by law or by will. The registration of inheritance of immovable property and property rights to it is a complex, comprehensive and lengthy notarial process. According to 67.5% (131) of respondents, it is worth contacting a notary who has experience in registering inheritance rights. 9.3% (18) of respondents preferred a notary recommended by acquaintances as qualified. 16% (31) of respondents wanted to contact a private notary to register their inheritance, and only 2.1% (4) wanted to contact a state notary.

When issuing certificates of inheritance, including for immovable property, state notaries of state notary offices and private notaries are guided by the provisions of the current legislation of Ukraine (primarily the Civil Code of Ukraine (2003), the Land Code of Ukraine (2001), the Family Code of Ukraine (2002), Tax Code of Ukraine (2010) and subordinate regulatory acts issued on their basis, and in certain cases, the provisions of foreign legislation, explanations of the Ministry of Justice of Ukraine, the Notary Chamber of Ukraine, existing notarial and judicial practice.

Social and inheritance relations are manifested in the behaviour of heirs when they formalise their inheritance. The formalisation of inheritance is to a certain extent linked to the consciousness of the heirs, their values, desires and needs. Also, when inheriting immovable property, it can be seen that some heirs take into account the interests of both social communities (to which they belong, including ethnic communities) and members of the testator's family and relatives. According to 49.5% (96) of the respondents, inheriting real estate (including land) will improve the socio-economic status of the heir. The same number of respondents believe that this will depend on the value of the inherited property.

The right to inherit is exercised by heirs through acceptance or rejection of the inheritance. Heirs, guided by the norms of legislation, social values and rules, decide whether to accept the inheritance or to refuse it in favour of another heir. As evidenced by notarial practice and the personal experience of the author of this Article in issuing certificates of inheritance rights, in some cases, heirs take into account their social status, membership of a particular social

community or ethnic group when registering the inheritance rights of citizens.

A period of six months is established for accepting or refusing an inheritance, which begins from the time the inheritance is opened. It is important that the Civil Code of Ukraine (2003) gave the heir the right during this period to change their mind about accepting or refusing an inheritance, including in favour of another heir. If the heir does not submit an application for acceptance of the inheritance to the notary's office within six months, they are considered not to have accepted the inheritance. However, the court may grant an heir who has missed the deadline for accepting the inheritance for a valid reason an additional period sufficient for them to submit an application for acceptance of the inheritance. A. Goncharova (2021) considers the practice of local courts of recognising the validity of reasons for missing the deadline for submitting an application for acceptance of inheritance as actual use and possession of the testator's property or cohabitation with the testator at the time of the opening of the inheritance to be unfounded.

As evidenced by judicial practice, during 2018-2024, courts began to increasingly refuse to grant an additional period for accepting inheritance. This follows, in particular, from reviews of the judicial practice of the Civil Cassation Court within the Supreme Court, both in disputes arising from civil legal relations for 2018-2023, as well as judicial practice for 2024 in disputes arising from inheritance legal relations. Decisions entered into the Unified State Register of Court Decisions for the period from 2018 to February 2023 of the judicial practice of the Civil Court of Cassation within the Supreme Court for 2024. An example is civil case No. 619/2906/23 (2024).

We believe that in connection with the military actions in Ukraine, local courts should continue to use the practice of recognising valid reasons for missing the deadline for accepting inheritance at their "own discretion", using a human-centred approach. A. Kondratova (2016) is right in saying that the peculiarities of inheriting rights to immovable property are related to the type of rights being inherited and may have their own characteristics in each individual case.

When issuing a certificate of inheritance, a notary must comply with clear rules established by law, including the obligation to verify: the fact of the testator's death; the time and place of the opening of the inheritance; the existence of grounds for calling to inheritance by law of persons who have applied for the issuance of a certificate; the composition of the inherited property for which a certificate of inheritance is issued (Order of the Ministry of Justice of Ukraine No. 3253/5, 2010). The heirs are required to provide relevant documents to confirm these circumstances.

When issuing certificates of inheritance rights to immovable property, notaries use information from the Unified Registers of Ukraine system. In particular, notaries are required to use information from the following registers: the Inheritance Register, the State Register of Real Rights to Immovable Property, and the State Land Cadastre. When issuing certificates of inheritance rights to immovable property, notaries not only obtain information from the above registers, but also enter information about the certificates of inheritance rights they have issued in the name of the heirs to such inherited property. In particular, after issuing a certificate of inheritance by law or by will for immovable property, notaries immediately enter information about the notarised document into both the Inheritance Register and the State Register of Real Rights to Immovable Property.

The annexes to Order of the Ministry of Justice of Ukraine No. 3253/5 (2010), which are still in force nowadays, provide for forms of certificates of inheritance, but no separate forms have been established for specific types of immovable property and real rights to it. This leads to notaries interpreting the forms at their own discretion. A manifestation of social interaction (social dialogue) between the heirs of the deceased is the conclusion of a notarised agreement on the division of the inherited property between them. However, this notarial practice is not widespread. It applies to cases where the estate includes several types of immovable and movable property. This allows the heirs, by mutual agreement, to agree on the personal ownership of specific property.

Comparative analysis of authorities authorised to register citizens' inheritance rights to immovable property under the legislation of Ukraine and other countries. Comparing inheritance of real estate in different countries around the world, it appears that there are certain peculiarities in each particular state. As of 2025, in Ukraine, as a general rule, the re-registration of citizens' inheritance rights takes place in an indisputable manner by notary authorities, which issue the relevant certificates of inheritance rights. In the event of a dispute between heirs regarding the division of inherited property, the issue is resolved in court. According to Article 1297 of the Civil Code of Ukraine (2003), an heir must apply to a notary or local government body for the issuance of a certificate of inheritance, including in cases where the inherited property includes real estate. An analysis of the provisions of Article 461 of Law of Ukraine No. 3425-XII "On Notaries" (1993) and paragraph 21 of the Transitional and Final Provisions of the Civil Code of Ukraine (2003), as amended by Law of Ukraine No. 3450-IX (2023), Law of Ukraine No. 402-VII (2013), it appears that the only authority in Ukraine that has the right to conduct inheritance proceedings regarding real estate as of 2025 is a notary, namely: a state notary of a state notary office or a private notary. Notaries not only issue certificates of inheritance, but also register the notarial acts they issue regarding the inheritance of immovable property, both in the Inheritance Register and in the State Register of Real Rights to Immovable Property and Their Encumbrances.

An analysis of the provisions of Chapter 84 of Book Six, "Inheritance Law," of the Civil Code of Ukraine (2003) shows that Article 1225 of the legislative act highlights the peculiarities of inheriting rights to land plots. At the same time, the Civil Code of Ukraine (2003) does not specify the peculiarities of registering inheritance rights to other types of immovable property. Land is one of the most important and significant types of real estate. In certain countries, the inheritance of land is primary, and the objects built on it are considered additional. It is worth remembering that in Ukraine, the inheritance of land plots, as one of the most important types of real estate, as in other countries, is one of the ways to improve the social status of the heir and their family. This is because the inheritance of land allows the heir to build a residential house on the inherited land plot, i.e. to exercise the right to housing.

In the case of inheriting agricultural land, this gives the heir the opportunity to engage in agricultural production, i.e. to exercise one of their social rights – the right to work.

However, only 20.6% (40) of respondents say they would use the inherited land for its intended (agricultural) purpose. 18.6% (36) of respondents expressed a desire to start a farm if they inherited a large plot of land. The same number of respondents wanted to sell the agricultural land. On a positive note, 39.7% (77) of respondents considered it necessary to consult with their family about the fate of the inheritance when receiving agricultural land as an inheritance.

In France, Poland and Germany, notaries are the main authorities that register the inheritance rights of the deceased are notaries, and in the event of a dispute between heirs, the judicial authorities act as such.

From the point of view of research and the scientific interests of the author of the article, it is proposed to identify specific rules for the inheritance of real estate, including land, in Indonesia. Land in Indonesia, as in most countries of the world, is a strategic asset (Zhang *et al.*, 2023) and, from time to time, has high value, therefore it often causes conflicts, in particular regarding the inheritance of land rights between heirs. The body responsible for registering inheritance rights in Indonesia, as in Ukraine, is a notary.

Notaries in Indonesia can register inheritance for all Indonesian residents, regardless of their ethnic group. Legal confirmation of land ownership in Indonesia is carried out through land registration by state authorities. J. Palenewen (2023) is right in saying that registration gives heirs legal confirmation of their rights to inherited land plots. The SKAW (certificate of inheritance) is a necessary document for registering the transfer of land rights from the testator to the heirs. In Indonesia, separate legislation has been established regarding the rules of inheritance by Indonesian citizens in order to obtain SKAW. The bodies authorised to deal with the re-registration of inheritance rights for Muslims in Indonesia are religious courts (Sharia courts). In Indonesia, the body that can cancel SKAW is the court.

Analysing Indonesian legislation, A. Parlindungan (1999) states that SKAW is issued according to the classification of citizens, namely: the European group with a certificate of inheritance issued by a notary; indigenous groups with a certificate of inheritance from heirs, certified by the village head. Lura, known as the sub-district head; groups of Chinese origin notarised and for other foreign groups of Eastern origin (Indians, Arabs), inheritance certificates are issued through inheritance at the Property Office (Parlindungan, 1999).

The issuance of a certificate of inheritance (SKAW) by the village head and its confirmation by the sub-district head is a custom from the Dutch colonial era, especially for the Bumi Putra group. The officials authorised to sign and ratify SKAW are the village head/Lura and the sub-district head for local or indigenous residents (Dewanata, 2021). S. Rohmatin *et al.* (2022) are correct in stating that SKAW, which is signed by the heirs and confirmed by the village/district head and the district head, is not sufficient as evidence, but it must have legal validity. The above order only confirms the veracity of the SKAW's content, legally confirming the absence of other heirs or other people who do not have inheritance rights but are included in the SKAW as heirs (Yuliyana *et al.*, 2021). In other words, the above document confirms the existence of the deceased's heirs listed therein. However, there are cases when not all heirs are included in this document. In such cases, other heirs who are not included in the document must apply to the court to protect their inheritance interests.

Compared to Ukrainian legislation, as of 2025, modern Ukrainian notaries obtain information about heirs and the place of residence of the testator, in accordance with Article 461 of Law of Ukraine No. 3425-XII "About the Notary" (1993), independently through direct access to unified and state registers, including the Unified State Demographic Register and the State Register of Civil Status Acts of Citizens.

The SKAW is essential for confirming the acquisition of a land plot as a result of inheritance and is the basis for registering the transfer of land rights, namely the certificate of proof (Sugitha & Dahana, 2021) issued by the land administration. In the case of the transfer of land rights as a result of inheritance without SKAW, the land administration refuses to register the transfer of such rights from the testator to the heirs. SKAW is a mandatory legal act and a condition for registering land rights as a result of inheritance. It can also be used as evidence in resolving a legal dispute over inheritance. In Ukraine, between June 1992 and April 2009, there was a practice of confirming ownership rights to inherited land plots, which was carried out by the relevant state land authorities – the State Committee for Land Resources. This document was a state act on the right of private ownership of land, issued by the State Committee on Land Resources on the basis of a certificate of inheritance rights to a land plot.

Comparing the procedure for issuing certificates of inheritance rights to immovable property in Ukraine and Indonesia, it is clear that in Ukraine this process is more regulated, unified and digitised. This is because only state and private notaries are authorised to issue certificates of inheritance rights to immovable property in Ukraine. At the same time, they (along with issuing the relevant certificates to each heir) also carry out state registration of the transfer of rights to such inherited immovable property (from the testator to the heirs) by performing the relevant registration actions in the State Register of Real Rights to Immovable Property and Their Encumbrances.

Unlike Indonesian Sharia law, ecclesiastical law in Ukraine cannot be considered a source of law in inheritance matters. In particular, a marriage concluded in accordance with church rites does not give rise to inheritance legal relations. Notarial registration of inheritance of immovable property is an indisputable comprehensive civil and inheritance notarial legal relationship, which is carried out in compliance with the civil, notarial and land legislation of Ukraine, and in certain cases also foreign legislation, with the aim of formalising the transfer of the testator's rights and obligations to immovable property and property rights to it to their heirs.

Conclusions

The Article examines the social aspect of legislative and legal regulation of notarial registration of inheritance rights to immovable property in Ukraine during 1991-2024. The evolution of legislative and legal regulation of notarial registration of inheritance rights to immovable property is traced, highlighting three main periods. During the first period (1991-2008), it was established that two main groups of bodies were authorised to register citizens' inheritance rights. The bodies of indisputable jurisdiction were state notary offices represented by state notaries. The judicial authorities confirmed the transfer of ownership of immovable property from the deceased owner to the heirs in the event of a dispute between the latter. From 1 June 2009, in addition to state notaries, the legislator granted private

notaries the right to register citizens' inheritance rights by issuing certificates of inheritance (in an indisputable manner).

Despite the fact that Law of Ukraine No. 1709-VII, effective 1 January 2016, granted the right to register inheritance, subject to certain conditions, to authorised officials of local self-government bodies and for certain categories of testators, these provisions remained only declarative. Granting notaries the powers of a mediator in 2021 contributed to the expansion of their powers and gave them the right to carry out mediation agreements, including when re-registering inheritance rights to immovable property. Using mediation and the heirs' intention to settle the inheritance issue peacefully, private and state notaries have the right to conclude an agreement on the division of inherited property between the heirs. The war of 2022 brought significant changes to the legal regulation of inheritance in the country, including on the basis of Resolution of the Cabinet of Ministers of Ukraine No. 164. Significant changes have taken place in the legal regulation of inheritance by will, including on the basis of expanding the circle of persons authorised to certify wills equivalent to notarial wills during martial law in Ukraine.

The importance of obtaining inheritance of immovable property is particularly felt during martial law in Ukraine. Holding inheritance of immovable property is one of the ways to ensure the proper financial status of displaced persons, especially those who have lost their property as a result of Russian aggression. In the event of the sale of inherited real estate, this can become the start-up capital for a new stage in the formation of a family. State and private notaries not only certify wills and issue certificates of inheritance rights to real estate, but also re-register ownership rights to heirs in the State Register of Real Rights to Real Estate.

As of the end of 2024, the only authorities authorised to indisputably register citizens' inheritance rights to real estate located in Ukraine are state and private notaries. In the event of a dispute between heirs, the judicial authorities divide the inherited property between the heirs. Comparing the procedure for issuing certificates of inheritance rights to immovable property in Ukraine and Indonesia, the following conclusions may be drawn: in Ukraine, this process is more digitised; in Indonesia, the right to re-register inheritance is exercised by other authorities in addition to notaries; the registration of the transfer of ownership rights to land plots is carried out by bodies specified by law, and in Ukraine – by notaries who issue certificates of inheritance; in the event of disputes between heirs regarding the division of inherited property, this is resolved in court.

The limitation of research abroad, particularly in Indonesia, is the lack of published statistical information on certificates of inheritance issued for immovable property. Further research will consist of comparative studies of the legislative regulation of inheritance by compulsory (vulnerable) heirs in other countries and in Ukraine as one of the social means of protecting the rights of the above-mentioned persons.

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Нотаріальне оформлення спадкування нерухомості в незалежній Україні: соціально-правовий вимір

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Анотація. Перехід права власності на нерухоме майно від померлої фізичної особи до її спадкоємців здійснюється згідно із законодавством, діючим на день смерті спадкодавця. Нотаріальне оформлення переходу права власності на нерухоме майно від спадкодавця до його спадкоємців супроводжується певними соціальними зв’язками (відносинами), як між спадкоємцями, так і органами уповноваженими на здійснення таких операцій. Мета роботи полягала у аналізі правового регулювання спадкування нерухомого майна у незалежній Україні крізь призму соціальних взаємозв’язків спадкоємців що виникають при оформленні спадщини у нотаріальному порядку. Методологічну основу роботи склали історично-правовий, формально-логічний та соціологічний метод опитування. Така методологія дозволила провести ретроспективний огляд правового та законодавчого регулювання нотаріального оформлення спадщини на нерухоме майно в сучасній Україні з врахуванням елементів соціології. Перший етап правового регулювання спадкування нерухомого майна оххоплював 1991-2008 роки; другий етап охоплює 2009-2020 роки, третій етап розпочався у 2021. Станом на кінець 2024 року, органами, уповноваженими у безспірному порядку закріплювати перехід права власності на нерухоме майно від спадкодавця на спадкоємців, шляхом видачі свідоцтв про право на спадщину, є державні та приватні нотаріуси України. Судові органи здійснюють поділ спадкового майна спадкодавця у випадку виникнення спору між його спадкоємцями. Станом на кінець 2024 року посадові особи органів місцевого самоврядування сільських населених пунктів не видають свідоцтва про право на спадщину. Проведено порівняльний аналіз спадкування нерухомого майна в Україні та Індонезії. В Україні нотаріальний процес щодо оформлення спадщини є більш унормованим та діджиталізованим. Судові органи України та Індонезії у разі виникнення спорів між спадкоємцями вирішують поділ спадкового майна, в тому числі нерухомості. Отримане спадкоємцем в порядку спадкування нерухоме майно виступає гарантією покращення життєвого рівня, соціального стану його та членів його сім’ї. Результати дослідження можуть бути використані у навчальному процесі, практичним працівникам, в тому числі нотаріусами, при вдосконаленні правового регулювання у сфері спадкування

Ключові слова: нерухоме майно; спадщина; спадкоємець; нотаріус; свідоцтво на спадщину; діджиталізація; медіація

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Formation of the first labour standards of the International Labour Organisation in the context of contemporary international law

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Abstract. The relevance of the study was determined by the need to improve international labour regulation in the context of the transformation of social and labour relations caused by global social, economic and political processes, in particular the COVID-19 pandemic, the growth of migration and the spread of informal employment. The aim of the study was to highlight the peculiarities of the creation of the International Labour Organization as a basis for improving modern international labour standards. In the course of the study, historical-legal, axiological, comparative and systematic methods were used, which made it possible to conduct a comprehensive analysis of the organisation's development as a key international actor in the field of social protection. The ideological, political and socio-economic factors that contributed to the establishment of the International Labour Organization at the beginning of the 20th century were examined. The social, legal and political factors that preceded the establishment of the organisation were analysed, and the key decisions of the Paris Peace Conference and the first session of the International Labour Conference were highlighted. It was established that the key principle of the organisation's activities was tripartism, which ensured equal representation of workers, employers and states. The significance of the first six conventions of the International Labour Organization as sources of labour law was summarised, and the relevance of the principles laid down in the organisation's activities more than a hundred years ago was proven. It was concluded that the experience of creating the International Labour

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Organization is of great importance for revising contemporary approaches to labour law in the context of global change. The practical value of the work lies in the possibility of using its results by specialists in the field of international labour law, public employment services and authorities in the development of social protection and labour regulation policies

Keywords: international institutions; international relations; legal principles of labour; ILO conventions; international legal regulation; social dialogue

Introduction

The International Labour Organization (ILO), established in 1919, became the first institution in the field of international relations to receive a mandate to develop and implement standards directly related to workers. From the outset, its activities focused on combining ideas of social justice with economic processes, which gave the organisation a special place among other international institutions. Throughout its existence, the ILO has been caught between two dimensions: the desire to guarantee workers' rights and the need to take into account the economic interests of states and entrepreneurs (Kott, 2023). As of 2025, there is still a need to assess the ILO's activities not only in retrospect, but also in the context of current global transformations. The organisation occupies a special place among global labour governance institutions, as it combines legal mechanisms with a system of statistical measurement. It is appropriate to compare the ILO with the Organisation for Economic Co-operation and Development (OECD), given its unique ability to create universal labour standards that have become part of the international legal order.

An important area of research into the ILO's activities has been the study of the organisation's role in ensuring decent work. Thus, E. Senghaas-Knobloch (2025) shows that the concept of "decent work" has become a central element in international discussions on sustainable development, especially in the context of the implementation of the Sustainable Development Goals. In turn, F. Koliev (2025) argues that the ILO actively uses its experience to promote this idea in a globalised economy, which allows the organisation to be seen not only as a rule-maker but also as a coordinating centre for international labour policy.

The issue of labour standards in the context of international trade is reflected in the study by R. Bazillier and A.T. Rana (2025), who showed that social provisions in trade agreements can be an effective means of improving working conditions in partner countries. The experience of the agreement between the EU and Vietnam was analysed by L.T.T. Huong (2025), focusing on the combination of international commitments with corporate social responsibility practices. These results confirm that the ILO's influence extends far beyond traditional rule-making and touches on the broader sphere of international economic relations.

Research by D. McCann and A. Stewart (2024) shows that the organisation is actively working to develop new standards that meet the current requirements of the labour market. In particular, the standard on quality apprenticeships has become an important milestone in the development of international labour law. At the practical level, this confirms the ILO's commitment to ensuring the training of personnel capable of working in new conditions. In turn, M. Pucheta and J. Namgoong (2025) draw attention to the fact that contemporary challenges raise questions about the future of international labour standards beyond the framework of the ILO, especially in relation to human rights and international trade mechanisms. In the same context, the study by M. Dhermy-Mairal *et al.* (2024) is noteworthy, emphasising that Germany's integration into the ILO immediately after the First World War allows to trace not only the scale but also the limits of the internationalisation of labour standards.

In the field of labour relations regulation, considerable attention is paid to the issue of remuneration. M. Petreski and S. Tanevski (2024) show that the bargaining power of workers directly affects income distribution in transition economies, which is also relevant for Eastern European countries. The issue of protecting migrant workers is explored by D. Zavando Cerda and L. Gómez Urquijo (2023), who analyse the mechanisms of international coordination of social protection between the EU and Ibero-America. K. Kim (2024), analysing the case of South Korea during the COVID-19 pandemic, showed how interaction between the government and trade unions affects the preservation of labour rights in crisis conditions. S. Tsymbaliuk *et al.* (2025) examined wages in the agricultural sector of Ukraine from the perspective of the concept of decent work, emphasising the need for international cooperation to address social problems in rural areas.

Thus, an analysis of recent publications reveals the multidimensional nature of the ILO's activities, which cover the legal, economic and social levels of international relations. The relevance of the study lies in the need to combine a historical analysis of the ILO's development with an assessment of its role in contemporary global processes. Despite the significant number of works, there is still a lack of studies summarising the first decades of the organisation's existence in relation to its current state. Therefore, the aim of the article was to clarify the historical conditions of the ILO's formation and to analyse the content of the first labour standards in the context of the development of contemporary international law. To achieve this aim, the following tasks were set:

- to identify the historical preconditions for the emergence of ideas for international regulation of social and labour relations;
- to examine the content of the founding documents, the first ILO conventions and the formation of the principles of tripartism as the basis for its activities;
- to outline the significance of the ILO's normative heritage for contemporary international legal practice in the field of labour.

Literature review

Research into the formation and early activities of the International Labour Organization (ILO) occupies an important place in the scientific discourse on the history of international institutions and the development of the social protection system in the 20th century. One of the first fundamental works in this field was the monograph by A. Alcock (1971), which provided a thorough analysis of fifty years of ILO experience. The author showed how the organisation initially positioned itself as a unique institution combining the political, legal and social dimensions of international relations.

This work remained a starting point for further research for a long time, as it initiated the tradition of systematically understanding the ILO's activities in the broader context of the transformation of the international legal order.

In subsequent literature, more and more attention began to be paid not only to formal institutional aspects, but also to the social and political preconditions for the creation of the ILO. A significant contribution to this direction was made by J. Daele (2005), who examined the importance of international associations, in particular the International Association of Labour Legislation and the Second International, which played a role in preparing the ideological and organisational basis for the future organisation. The researcher emphasises that the concept of social justice, which became the fundamental principle of the ILO, emerged as early as the Paris Peace Conference of 1919, where various international actors attempted to reconcile the needs of the working class with the political compromises of the post-war settlement. The author later substantiated the need for an interdisciplinary approach to analysing the origins of the ILO, drawing on methodological tools from history, sociology, law and economics, which allows for a more complete understanding of the organisation not as a purely legal institution, but as the result of complex interactions between ideological currents, social movements and state policy (Daele, 2008).

A similar issue is explored in a study by R. Tosstorff (2005), who emphasises the significant role of the international labour movement in the creation of the ILO. According to the author, it was the activities of trade unions during the First World War that became the catalyst for the international labour protection project, as workers' organisations sought not only to defend their own interests, but also to propose universal approaches to guaranteeing labour rights. Thus, the creation of the ILO can be seen not only as an initiative of the victorious governments, but also as a response to growing international pressure from social movements.

Of particular interest in contemporary historical science is the monograph by D. Maul (2019), prepared for the centenary of the ILO. The author analyses a wide range of scientific works devoted to the organisation and emphasises that its roots date back to the 19th century, when the ideas of international labour regulation were formed. The researcher argues that the emergence of the ILO was driven not only by the desire of the great powers to establish social standards after the war, but also by the long-term development of liberal and socialist movements, which found common ground in their demands for improved working conditions and protection for workers. The author emphasises the importance of the international trade union movement, which for a long time remained in the shadow of official versions of history, but in fact played a decisive role in the establishment of the ILO.

Understanding the conditions under which the organisation was created is closely linked to the study of the international context after the First World War. H. Teichler (2014), drawing on the generalisations proposed by C. Clark (2012), showed that the reformatting of the international legal order after 1918 was so extensive that the creation of the ILO was a natural consequence of the epochal changes. At the same time, H. Thomas *et al.* (2020) point out that the process of institutionalisation took place in conditions of serious social and economic upheaval, in particular post-war instability and the Spanish flu pandemic. The authors argue that the establishment of the ILO had not only humanitarian but also clear political significance, as it was aimed at neutralising radical ideas and preserving the liberal order.

A separate body of literature concerns organisational and communication practices in the early stages of the ILO's activities. A study by J. Wilke (2023) emphasises that the organisation's founders paid particular attention to disseminating information about working conditions, establishing international communication channels and collecting statistics. This approach ensured not only the development of conventions, but also increased awareness among governments and society, which contributed to strengthening the ILO's authority in the international arena.

Works that examine the ILO's activities in a comparative national context are also important. For example, B. Thomann (2018) studied Japan's relations with the ILO in 1919-1938, showing how membership in the organisation influenced the formation of national labour policy. Based on archival materials, the author proved that even developed countries had difficulties implementing international labour standards. Similar conclusions are contained in the study by A. Blaskiewicz-Maison (2025), which analyses the experience of France, which declared its openness to international initiatives but did not always ensure their implementation in its domestic policy.

The example of Germany, discussed in the article by M. Dhermy-Mairal *et al.* (2024), is of particular interest for understanding the mechanisms of internationalisation of labour standards. The authors show that the integration of the defeated country into the ILO structures immediately after the war was a kind of experiment that made it possible to trace the limits and possibilities of the spread of international norms in complex political circumstances. Such studies allow to evaluate not only the political compromises of the time, but also the universalism of an organisation that sought to encompass as wide a range of states as possible. J. Fried's (2014) study broadens the understanding of the evolution of the organisation in the interwar period and after the Second World War. The author analyses in detail the process of the ILO's transition from the status of an autonomous institution within the League of Nations to cooperation with the newly created United Nations, emphasising the continuity of its activities and its ability to adapt to the new conditions of the international system while maintaining its specialisation in the field of labour law.

Recent studies focus on less explored areas. In particular, F.S. Montesano *et al.* (2023) showed that since 2015, the ILO has been trying to integrate the environmental dimension into its policies, gradually combining social and environmental parameters of development, which indicates an expansion of the organisation's traditional mandate and a desire to respond to current global priorities. An important addition is the work of D. Barros Leal Farias (2024), which focuses on the role of non-European and small states in the early years of the ILO. The author shows that their active participation not only diversified international discussions but also contributed to the establishment of the organisation as a truly universal institution, allowing the ILO to be viewed not simply as a product of agreements between large states, but as an institution that was global in nature from the outset.

In general, an analysis of the scientific literature shows that the problem of the formation and initial stage of the ILO's activities is considered from many angles. Researchers focus on legal ideas and international agreements, as well as

on the role of social movements, national policies, communication practices and symbolic dimensions. This approach allows to trace that the creation of the ILO was the result of the interaction of various factors – from political compromises and international negotiations to the activities of workers' organisations and states seeking to find new forms of labour regulation, which forms the necessary basis for further research into the organisation's normative heritage and assessment of its significance for contemporary international law.

Materials and methods

The methodological foundation of the study was based on a combination of conceptual approaches, each of which made it possible to highlight the subject of the study in different dimensions. The central approach was the civilisational one, which involved interpreting international legal institutions as the result of the historical maturity of socio-political processes. In this context, the formation of the International Labour Organization is seen as a natural response to the evolution of democratic institutions in the early 20th century and the need to institutionalise a new form of social dialogue. It is this perspective that allowed to explain the emergence of the principle of tripartism not only as a legal innovation, but also as a reflection of broader civilisational processes. An important addition was the axiological approach, which made it possible to reveal the value dimension of the ILO's normative activity. Particular attention was paid to the concept of "social justice," which defined the fundamental guidelines in the organisation's first documents and legitimised it in the international legal order. This approach made it possible to examine how the ILO's norms reflected the desire to combine economic requirements with the need to protect human dignity. The systematic approach ensured the integration of the results of the analysis, as the ILO's activities were considered part of a broader system of international relations. The interdisciplinary nature of the study was reflected in the combination of methods from jurisprudence (normative analysis, interpretation of sources of international law), history (study of the stages of institutional development), sociology of labour (analysis of transformations in labour relations), and ethics (assessment of the humanitarian foundations of the ILO's activities).

The use of the historical method made it possible to explain legal and political phenomena as the result of specific circumstances of the post-war era. This method was used to clarify the interdependence between the development of the international regulatory framework and the socio-economic conditions after the First World War. Within the framework of this analysis, the impact of war destruction, mass unemployment and international conflicts on the formation of the first labour standards was outlined. The comparative method was used to compare the ILO with the League of Nations as two organisations created in the same political context. Given the different nature of these institutions, the following criteria for comparison were identified: legal status, decision-making mechanisms, organisational structure and actual effectiveness, which showed that the ILO was more universalist in nature due to its focus on specific regulatory provisions, while the League of Nations remained primarily a political entity.

Among the special methods used was content analysis of the texts of ILO conventions and recommendations, which made it possible to identify the key categories that formed the basis of international labour standards. Discourse analysis was used to reconstruct the logic of normative formulations and to identify hidden value emphases in ILO rhetoric. Both methods made it possible to trace the evolution of legal provisions from declarative formulas to specific legal norms.

The empirical basis of the study consisted of ILO normative documents – the 1919 Constitution (International Labour Office, 1920), the first six conventions and acts of the International Labour Conference (1920); international agreements that shaped the context of the organisation's formation; ILO analytical reports and statistical data, which made it possible to trace the long-term dynamics of the implementation of principles. An important component of the source base of the study was the memoirs and statements of direct participants in the events, in particular the memoirs of J.M. Keynes (1919), H. Nicolson (1933), D. Lloyd George (1938), and F.D. Roosevelt (1941), which reflect the perception of international institutions and issues of social justice in the context of the formation of a new world order. The use of these sources made it possible to combine a historical perspective with an analysis of current trends.

Results and Discussion

Retrospective of the establishment of the ILO. In academic literature, it is common to approach the formation of the ILO as being driven by four main groups of subjective factors. Firstly, the humanitarian factor - the need to overcome exploitation and ensure fair working conditions, as especially emphasised by D. Maul (2019), who analyses the ILO's establishment as a response to the need to institutionalise principles of social justice on a global scale. Secondly, the domestic political factor – the realisation that without a significant improvement in workers' living standards, the threat of social instability and the radicalisation of protest movements would grow, as reflected in research that highlights the ILO's role in balancing socio-political tensions in member states. Thirdly, the foreign policy factor – the conviction that long-term international peace could only be achieved through the establishment of social justice principles in the field of labour. An example of this is the analysis of international relations within the ILO in its early years, which shows states' desire to combine political and moral grounds for cooperation (Barros Leal Farias, 2024). Finally, the economic factor – the understanding of the link between social reforms and increased competitiveness of national economies on the world stage, which, as modern research shows, was a significant argument for many governments in supporting ILO initiatives (Maul, 2019; Barros Leal Farias, 2024). However, this schematic presentation of factors should be contrasted with a significant wealth of factual information. The creation of an international organisation with a mandate in the field of labour is due to a complex combination of socio-political, legal, and socio-economic preconditions, which have been thoroughly covered in modern research.

The origins of social and labour relations regulation date back to the late 18th and early 19th centuries, as before this time, state labour policy was based exclusively on coercive measures and a system of punishments. It was during this period that the preconditions for the social protection of workers were formed in Europe, largely driven by industrial development (the Industrial Revolution) and socio-cultural changes. Modern research confirms that the formation of labour relations during this period was directly related to the

processes of industrialisation, the formation of the working class, and the gradual establishment of the first elements of a social security system. For example, M. van Leeuwen (2020) shows that in the 18th–19th centuries, European societies developed new forms of social support that gradually transformed from local aid systems into more organised social protection mechanisms. A.R. Zolberg and I. Katznelson (2021) hold similar views, arguing that the formation of working-class communities in Western Europe and the United States was not only a consequence of the Industrial Revolution but also a catalyst for the development of social support institutions. Thus, the emergence of the first social regulation mechanisms in Europe in the late 18th and early 19th centuries was due to a combination of economic, social, and cultural transformations that determined the further development of the European model of social protection. The Industrial Revolution not only brought about technical innovations but also led to profound social transformations. This era laid the groundwork for the formation of new social structures, particularly the bourgeoisie and proletariat classes, which became decisive in the subsequent development of industrial society (Zolberg & Katznelson, 2021; Berlanstein, 2021). Simultaneously with economic growth, social contradictions intensified. According to modern estimates, "the rise of factory work meant not just a technological transition, but rather a change in human relationships, creating unprecedented pressure on the status of workers, especially children and women, often with minimal regulatory protection" (Lartey, 2025). In this regard, there was an urgent need to introduce social regulation measures and establish the foundations of fair labour relations.

The Industrial Revolution, as noted in contemporary research, had complex socio-economic consequences. It was accompanied not only by technical innovations, but also by significant changes in social relations, which led to the emergence of new social groups and expanded economic opportunities for European states (Berlanstein, 2021). At the same time, industrialisation intensified expansion into colonial territories, where labour resources and natural resources were used to ensure the economic growth of the metropolises, which is emphasised in contemporary historiography as one of the fundamental factors in the formation of the capitalist economy (Zolberg & Katznelson, 2021). Within European societies, there was growing debate about the distribution of wealth and the search for models that would combine economic development with social stability. These processes contributed to the emergence of a liberal economic model based on the principles of freedom of labour, competition, trade, and limited state intervention in economic relations (van Leeuwen, 2020; Tribe, 2021). In this way, the industrial revolution determined the directions of not only economic but also socio-political modernisation of European societies, creating the basis for the further development of the system of labour relations and the search for their international regulation.

The socio-cultural preconditions in this context also include the gradual formation of public opinion on the need to introduce at least basic guarantees of social protection for workers, especially minors and women. On this basis, political and political-legal systems were gradually improved in many countries, which ultimately contributed to the gradual democratisation of social relations. Naturally, Great Britain, which at that time was called the "world's factory," stood out among such countries. In 1801, a court decision was made to convict a factory owner for cruel treatment of his apprentices – this decision later became a binding legal precedent (Case of the Journeymen Clothworkers, 1801). In 1802, the Health and Morals of Apprentices Act (1802) was passed, which is considered the first labour protection act in the modern sense (Health and Morals of Apprentices Act, 1802). However, the beginnings of full-fledged legal regulation of social and labour relations in the British Empire are associated with An Act to Regulate the Labour of Children and Young Persons in the Mills and Factories of the United Kingdom (1833), which introduced state supervision of the working conditions of minors for the first time.

The gradual formation of ideas about the protection of workers began in the era of early industrial development. One of the first figures to openly raise the issue of fair working conditions at the international level was the English manufacturer and social reformer Robert Owen, who in 1818 proposed that the victorious countries in the Napoleonic Wars create a special commission to develop regulations for the protection of hired workers (Wojtaszczyk, 2024). Although this initiative did not initially find support among governments and political leaders, it was later taken up and developed in the works of scholars and reformers. According to modern estimates, the idea of legally enshrining social protection for employees gradually became a subject of attention in legal science and international practice (Dhermy-Mairal *et al.*, 2024). The idea of creating an international system of labour standards gained increasing recognition among intellectuals, industrial circles and civil society activists. In the mid-19th century, the idea gradually matured that working conditions could be improved not only at the national level, but also through international coordination of government actions, which became an important basis for the later institutionalisation of such initiatives.

In the second half of the 19th century, efforts to improve working conditions in Western Europe took two separate paths. On the one hand, trade unionists organised themselves at the international level through the "International Workingmen's Association" ("First International", formed in 1864) and the "Second International", formed in 1889. On the other hand, liberal reformists, led by the Swiss government, promoted the idea of international labour legislation as a means of standardising working conditions in different countries (Leterme, 2016).

At the turn of the 19th and 20th centuries, most industrialised countries already had basic legal norms in place to limit labour abuses by governments and business owners. However, in practice, such protection for workers remained limited (Hoehtker, 2022; Dhermy-Mairal *et al.*, 2024). During this period, reformers, lawyers, trade union leaders and socially responsible industrialists became more active and began to raise labour issues at the international level. A significant step was the creation in 1900 of the International Association for Labour Legislation (Encyclopaedia Britannica, n.d.), which became the first structure to attempt to coordinate the efforts of states in the field of labour regulation.

The immediate implementation of the idea of creating an international organisation with powers in the field of labour took place at the end of the First World War. The preconditions for the global crisis that led to a war of unprecedented scale and colossal human losses were already forming at the end of the 19th and beginning of the 20th

centuries. In 1914-1919, they became particularly acute, combined with aspirations to establish a new international order. At the same time, considerable attention was paid to finding ways to improve the system of social and labour relations at the international level.

The events of the First World War prompted an active search for a new world order. Added to this were the socio-political and social consequences of the Bolshevik revolution. Representatives of business circles and social reformist ideologies sought to prevent another escalation of relations between "labour" and "capital," trying to create a reliable legal foundation for the civilised development of social and labour relations. In 1919, in the context of the end of the war, there was an agreement between government, trade union and business circles on key social goals, in particular guarantees of fair working conditions, protection of employees and support for social stability. As researcher D. Maul (2019) points out, this interaction was also an attempt to counter the Bolshevik revolutionary wave in Europe. Similarly, D. Barros Leal Farias (2024) emphasises that the creation of the International Labour Organization was a tool for balancing social expectations and fears of radicalisation of the labour movement. Recent studies also emphasise that the formation of the ILO was seen from the outset as a means of preventing revolutionary upheavals through the institutionalisation of social justice at the international level (Dhermy-Mairal *et al.*, 2024).

The Paris Peace Conference, which opened on 18 January 1919, was intended to shape a new system of international relations after the First World War. Its significance can be compared to the Congress of Vienna in 1815, but in 1919 the focus had shifted – it was not only about creating mechanisms to prevent new wars, but also about introducing humanistic ideas into international politics. Delegations from 27 countries and 5 dominions of the British Empire took part in the conference. Key decisions were made within the "Council of Ten," which consisted of representatives of the victorious countries, and was later narrowed down to the "Council of Four" – the heads of government or presidents of France, Great Britain, the United States, and Italy. The Prime Minister of France, Georges Clemenceau, the Prime Minister of Great Britain, David Lloyd George, and the President of the United States, Woodrow Wilson, had a particular influence on the course of the conference. Presiding over the conference, G. Clemenceau insisted on severe punishment for Germany and compensation for all war damages. His position dominated the negotiations – contemporaries noted him as the most influential participant in the process (Datskiv, 2008). J.M. Keynes (1919), a prominent economist and participant in those events, described the position of the French delegation as "Clemenceau's Carthaginian peace".

The idea of creating the League of Nations as a new universal mechanism for international settlement was formulated by W. Wilson in his famous document "14 Points". For him, this provision was the central element of the entire peace treaty (Fakir *et al.*, 2022). D.L. George advocated a balanced approach, emphasising the importance of professional and expert preparation of decisions. One of the secretaries of the British delegation, H. Nicolson, recalled that the head of the delegation always listened to professional opinions and carefully evaluated all proposals (Nicolson, 1933). In general, the leaders of the major powers focused on general issues of restructuring the world order and did not interfere in the activities of the specialised commissions that had been set up to prepare the most important provisions of the future treaty. The exception was D.L. George, who, according to own memoirs, took an active interest in the creation of the International Labour Organization (Lloyd George, 1938).

During the same period, European and American trade unions, whose influence had grown significantly in the pre-war years thanks to the expansion of their organisational structures and their increasing role in socio-political processes (Hoehtker, 2022), insisted on their right to participate in the process of concluding peace and forming a new architecture of international relations. It was primarily thanks to their persistent actions that a decision was made to create a separate Commission with powers in the field of international labour regulation. It is also worth noting that as early as 1916, trade unions in the Allied countries raised the issue of the need to create an international representative body, a kind of "labour parliament", which would consider and make decisions on social issues (Dhermy-Mairal *et al.*, 2024). Thus, their initiatives to regulate international labour law did not arise "out of thin air".

At the plenary session of the conference on 25 January 1919, a decision was made to establish a Commission on International Labour Law, composed of 15 representatives. Its members represented the interests of trade unions, employers and governments, laying the foundation for tripartism as a fundamental principle of regulating social and labour relations (Maul, 2019; Farias, 2024). Among the participants of the Commission were Samuel Gompers, President of the American Federation of Labor, who headed it as a well-known supporter of international cooperation in the field of protecting workers' rights; British trade unionist John Barnes, developer of the project to create a labour commission within the framework of the peace conference; French labour movement leader Leon Zhuo, who later won the Nobel Peace Prize for his contribution to the trade union struggle for peace; English public figure Harold Butler, who later headed the International Labour Office as Director-General; Czechoslovak Foreign Minister Eduard Benes and other prominent trade union and political figures. The Commission's work was delayed for several months, primarily due to a number of contentious issues (in particular, regarding the representation of states in the future organisation, the nature of international labour acts, the specifics of their ratification, and the form and level of control over their application). Representatives of Italy and France proposed that the International Labour Conference should be able to adopt conventions that would be automatically binding on member states; the British, for their part, advocated an almost automatic ratification system. Under pressure from the American participants, a compromise decision was adopted, which was enshrined in the ILO Constitution (Dhermy-Mairal *et al.*, 2024).

During the Commission's work, particular attention was paid to the issue of membership in the future organisation. Two main approaches were discussed, which differed in their vision of the representation of countries and dominions. Some delegations, including the American one, proposed to do without separate membership of the dominions, but this idea did not gain widespread support. The British delegation's proposal, which provided for the participation of not only national states but also individual dominions in

the new organisation, received the most votes. At the same time, even this option needed clarification. In particular, the Canadian delegation objected to some of the wording regarding membership, namely the provision that "the self-governing dominions of the British Empire and India may become members of the agreement and have the same rights and obligations as they would have had as nation states." Canada was effectively being offered to join the organisation "through the back door" (Choko, 2012). Ultimately, a decision was made that guaranteed the dominions full membership and equal rights in the newly created organisation.

Discussions on the draft Constitution continued for 35 meetings, and it was only on 11 April 1919, at a plenary meeting of the Paris Peace Conference, that the document presented by the Commission was approved and a decision was taken to establish an organisational committee to prepare for the first session of the International Labour Conference. The authors of the English text of the Constitution, which the Commission took as a basis, were the future heads of the International Labour Office, Harold Butler and Edward Filene. The Constitution became an integral part of the Treaty of Versailles and thus acquired the status of an important international legal document (International Labour Office, 1920). It is also important to note that the Constitution was adopted even before the formal establishment of the Organisation, which further emphasises the fundamental nature of its principles and operating principles (Gerwarth, 2021). Thus, in its early years, the ILO laid not only conceptual but also organisational foundations that enabled it to become a full-fledged international actor in the field of labour.

The fundamental provisions enshrined in the Constitution of the International Labour Organization have determined the main directions for the development of international regulation of social and labour relations for a long period. In the preamble to the Constitution, the term "principles" was mentioned only twice: in the context of recognising the principle of equal pay for work of equal value and affirming the freedom to organise in trade unions, as well as organising vocational and technical training. At the same time, an analysis of the content of this document shows that at the time of its adoption, a broader system of provisions had already been formulated which, although not always directly defined as "principles", actually fulfilled this role (International Labour Office, 1920). Taking into account the author's compilation, these provisions include the following: the establishment of universal and lasting peace based on social justice; the urgent need to eradicate social injustice; the need to improve working conditions, in particular by establishing maximum working hours per day and week, as well as regulating the hiring of labour; combating unemployment; guaranteeing a level of wages that ensures satisfactory living conditions; protecting workers from the dangers of industrial accidents, occupational diseases and health hazards; special protection for the labour of children, adolescents and women; the introduction of old-age and disability pensions; the protection of the interests of migrant workers; and the development of vocational and technical education (Dreval, 2015).

All of the above principles are also relevant to the modern regulation of labour issues. It is no coincidence, as D. Maul (2019) notes, that although the world has changed since 1919, many of the fundamental principles of the ILO have not lost their relevance. In this context, the principle of tripartism, which was established in 1919 and has since become a kind of calling card for the ILO, should be given importance. Indeed, as modern research points out, the main goal of this organisation since its inception and to this day remains the improvement of working conditions around the world, and this mission is as relevant now as it was in 1919 when the Organisation was founded (La Hovary, 2015). At the same time, as the researcher emphasises, it is tripartism that distinguishes the ILO from other international organisations, and the current situation only reinforces the need for additional attention to this principle. It is no coincidence that this principle was subsequently included in the fundamental principles and rights at work and found expression in the ILO's fundamental conventions, in particular the ILO Declaration on Fundamental Principles and Rights at Work (International Labour Organization, 1998), Convention No. 87 on Freedom of Association and Protection of the Right to Organise (International Labour Organization, 1948) and Convention No. 98 on the Right to Organise and Collective Bargaining (International Labour Organization, 1949).

The ILO Constitution (Treaty of Versailles, 1919) was adopted on 28 June 1919, together with the creation of the League of Nations. In the summer of 1919, the Organising Committee for the preparation of the first session began its work. The main burden of the preparatory work was borne by representatives of Great Britain and France, with the British government providing significant financial assistance to the Organising Committee. Initially, 44 states became members of the ILO: 31 members of the League of Nations (the victorious countries in World War I that signed the Treaty of Versailles) and 13 states that were invited to join the League of Nations and the ILO.

In the process of preparing for the first session, some technical difficulties arose. This was mentioned by F.D. Roosevelt, the 32nd President of the United States (1933-1945), who on 6 November 1941 addressed ILO officials and trade union leaders from countries that had already suffered from fascist aggression. Unlike his predecessors, F.D. Roosevelt was a consistent supporter of international cooperation in the field of labour, calling the ILO "the parliament of human justice". In his speech, he emphasised that at the time of its creation, there were no models on which to base the League of Nations and the ILO: there was no financial support, no suitable premises and not even basic technical resources. According to F.D. Roosevelt, "to many, the idea seemed like a wild dream." It was he, then Assistant Secretary of the Navy, who had to personally search for office space in the Navy building and provide it with typewriters and other necessary materials (Roosevelt, 1941).

The first session of the ILO began on 29 October 1919, which can formally be considered the date of the ILO's establishment. At that time, 44 states became members of the ILO: 31 members of the League of Nations, i.e. the victorious countries in the First World War, which actually signed the Treaty of Versailles, and 13 states that were invited to join the Covenant of the League of Nations and the Constitution of the ILO. At this session, the first six conventions were adopted, which constitute an important source of modern international labour standards (on working hours in industry, unemployment, maternity protection, night work for women, minimum age for employment in industry, and night work for adolescents in industry) (Table 1).

Table 1. First conventions of the International Labour Organization

No. p/p	Convention Title	Current status of the convention
1	Convention limiting the hours of work in industrial undertakings to eight in the day and forty-eight in the week (ILO Convention No. 1, 1919)	In force
2	Unemployment convention (ILO Convention No. 2, 1919)	In force
3	Convention concerning the employment of women before and after childbirth (ILO Convention No. 3, 1919)	Revised by Convention No. 103 in 1952, which was in turn revised in 2000
4	Convention concerning employment of women during the night (ILO Convention No. 4, 1919)	Revised by Convention No. 41 in 1934 and Convention No. 89 in 1948.
5	Convention concerning the minimum age for admission of children to industrial employment (ILO Convention No. 5, 1919)	Revised by Convention No. 59 in 1937.
6	Convention concerning the night work of young persons employed in industry (ILO Convention No. 6, 1919)	Revised by Convention No. 90 in 1948.

Source: systemised by the authors

As of 2025, two of the conventions are still in force, while four others remained in force for many subsequent decades. The content of the conventions also shows a choice of an optimal form for the relationship between international and national labour standards (international standards set general requirements that were to be specified in national labour legislation). It should also be noted that, in general, these conventions concerned two important areas of labour law – working hours and the protection of certain categories of workers (ILO Convention No. 2, 1919). This fully correlates with the modern vision of the ILO as an organisation that consistently integrates issues of safety and health at work into all areas of its normative activities. This is discussed, in particular, in the research by Yu. Dreval *et al*. (2020), which justifies the fundamental importance of these issues for the implementation of international labour standards.

The meticulous preparation of decisions that laid the foundation for the formation of international labour standards should also be noted. The practice of preparing reports on the main issues that were to form the basis of the conventions was already initiated at that time. For example, among the five main reports, the following deserve attention: Report I "The Eight-Hour Day or Forty-Eight-Hour Week," Report II "Unemployment," and Report III "The Employment of Women and Children and the Berne Conventions of 1906" (International Labour Conference, 1920).

Particular attention should be paid to the fact that a significant part of the conference's work consisted of organisational issues, primarily related to the consideration of admitting new states to the ILO. Given the strained relations between countries that had recently been in opposing blocs, this issue took on special significance and also had symbolic meaning related to the formation of a renewed international legal order in the post-war period. In this context, the decision to invite Austria and Germany to participate in the organisation's activities should be singled out, which was preceded by careful preparation: the allied and associated states referred the question of their accession to the conference itself. The resolution adopted on this matter, titled "Admission of Germany and Austria to the International Labour Organization," stated that "in anticipation of their entry into the League of Nations and in view of their expressed readiness to cooperate in the work of the Labour Organization, Germany and Austria are admitted as members of the International Labour Organization with the same rights and obligations as are conferred upon the other members of the Labour Organization by the terms of the Treaties of Peace signed at Versailles on 28th June 1919 and Saint-Germain on 10th September 1919" (International Labor Conference, 1920). At the same time, some delegations were denied admission due to a violation of the formally defined procedure for acquiring membership (this applied to Luxembourg, the Dominican Republic, and Mexico). A special resolution on this matter stated that without an official application from the government for admission to the conference, no recommendation for their admission would be legitimate (International Labor Conference, 1920).

The balanced approach to the election of the Director-General of the International Labour Office (ILO), i.e., the organisation's secretariat, should also be noted. Albert Thomas (1878-1932), who was elected the first Director-General of the ILO, had been elected to the French Chamber of Deputies in the pre-war period and was actively involved in lawmaking in the field of social protection for miners, industrial workers, and farmers (including issues of their pension provision). Despite the fact that he did not directly participate in the Paris Peace Conference, his candidacy was nominated by trade unions and received support due to his close ties with the labour movement, as well as his experience of cooperation with entrepreneurs and state bodies during the First World War.

Albert Thomas actively applied the so-called "policy of presence," visiting numerous countries to familiarise himself with the practice of social and labour relations while also spreading knowledge about the ILO's activities. This approach allowed to establish the Organisation as an authoritative platform for international dialogue in the field of labour (Maul, 2019). His vision of the ILO's activities was based on a combination of a scientific approach, technical expediency, and humanitarian ideals. As researchers note (Bolle, 2013; Blaskiewicz-Maison, 2016), it was thanks to Albert Thomas that the ILO transformed from its early years from just an administrative institution into an analytical centre for the study of labour issues. Albert Thomas particularly emphasised that the implementation of international labour standards should be based not on a system of sanctions but on the principles of voluntariness, moral authority, and public support, and it is no coincidence that he is considered by some sources to be the "most active Director-General in the history of the ILO," and his management style significantly influenced the formation of the organisation's policy in the following decades (Charnovitz, 2004). Considering that only eleven people have held this position throughout the ILO's

existence, one can also speak of a more than century-long continuity in this matter.

At the same time, the so-called "American paradox" arose in international politics: for a number of formal reasons, the United States refused to ratify the Treaty of Versailles and the agreement to create the League of Nations. The formal date of the break with the newly formed society was 20th November 1919, when the US Senate voted against the ratification of the relevant agreements. Thus, the United States found itself outside the League of Nations and, consequently, outside the ILO structure. This state of affairs is generally explained by a lack of trust in the League of Nations, which the US never became a member of, as well as domestic political nuances and the echoes of traditional American isolationism.

Interestingly, the US began to rethink the 1919 decision during the period leading up to the so-called "Great Depression," which formally began on 29th October 1929. It, among other things, caused a sharp escalation of social problems and mass unemployment. In publications of that time, the opinion was voiced that the US government recognised the need to create a similar international organisation, despite its previous rejection of participation in the League of Nations: "Whatever the present attitude of the people of the United States toward the League of Nations, it now seems obvious that the Government of the United States has felt the necessity of such an international organisation" (Hudson, 1929). S. Berdahl (1929) held a similar opinion, emphasising the political shortsightedness of the US's avoidance of cooperation in international organisations. In later research literature, it is emphasised that after the official accession of the US to the ILO in 1934 (as well as its re-entry in 1980 after leaving in 1977), the Organisation received significant impulses for institutional strengthening (Joyner, 1978; Beigbeder, 1979).

Naturally, for the US, the path to joining the ILO was much easier, as it was not accompanied by certain dogmatic prejudices. Thus, a preliminary conclusion can be drawn that the significance of international labour standards and the ILO's activities, in general, particularly increases in conditions of social and political upheaval. Researchers from the ILO Century Project also draw attention to this, noting that in the 1930s, the ILO actively participated in the formation of economic and social policy on the international stage, responding to crisis phenomena in the world of work (Hughes & Haworth, 2012). One of the important directions of the ILO's activities immediately after its establishment was informing member states and the interested professional community about working conditions, labour legislation, and socio-economic aspects in the field of labour. For this purpose, the International Labour Office (ILO) launched extensive publishing activities, which included periodicals and thematic publications, reports, and collections of legal acts (Table 2).

Table 2. Types of publications by the International Labour Office and subscription costs (1920)

Type of publication	Description	Price (Francs)	Price (Pounds Sterling)	Price (US Dollars)
International Labour Review	Popular science publication with analytics, statistics, and articles on labour issues	50	1/4.0	5.00
Official Bulletin	The official weekly bulletin of the ILO, containing reports, documents, and decisions	25	0.12/0	2.50
Daily Intelligence	Daily news on current events in the fields of labour and industry	165	4/0/0	17.00
Studies and Reports	Reviews across 14 thematic series: hygiene, employment, trade unions, etc.	200	4/16/0	20.00
Bibliographical Series	Bibliography of official and unofficial sources on labour issues	10	0/5/0	1.00
Legislative Series	Texts of laws and regulations on labour, published in several languages	35	0/16.0	4.00
Documents of the Annual Conference	Reports of conferences, texts of conventions, and recommendations	35	0/16.0	4.00
Special Reports	Special thematic reports with the results of ILO research	–	–	–
Inclusive Subscription	A comprehensive subscription that includes all regular, irregular, and special publications	500	12.0/0	50.00

Source: developed by the author's based on the International Labour Office (1920)

As shown in Table 2, the Office offered several subscription options, both for individual series and for a general subscription covering the entire set of printed materials. When determining the cost, currency fluctuations and the economic situation in individual countries were taken into account in order to ensure wider access to the Bureau's materials, which demonstrates the ILO's desire to disseminate information on working conditions and promote the exchange of knowledge between countries at an early stage of its operation. The ILO's publishing model demonstrates the seriousness of its approach to institutional communication. The regular publication of statistics, legal norms and analytical reviews not only contributed to the transparency of the organisation's activities, but also ensured the harmonisation of labour practices around the world. This approach formed the basis for the development of international labour discourse, which later transformed into a system of global social dialogue.

Thus, the creation of the International Labour Organization was the result of the long-term development of socio-economic thought, social transformations and the intellectual efforts of a number of figures. From the first factory acts in Great Britain to the creation of international commissions and conventions, the formation of international labour law was a response to the new realities of the industrialised world. The creation of the ILO was not only an institutional response to the consequences of the First World War, but also the realisation of the idea of global responsibility for working conditions and the dignity of working people. Its creation was the result of the consolidation of humanistic, economic, political and legal factors that formed the basis

for a new system of international coexistence, centred on social justice and peace. It is these values that remain relevant as the ILO continues its work as a leading international organisation in the field of labour.

Implementation of ILO labour principles in new forms of employment. The approaches embedded in the first normative acts of the International Labour Organization (ILO) in 1919 were shaped by the specific conditions of the post-war period, industrial production, and the need for a normative response to threats to human dignity in the workplace. However, despite the change in economic models and the emergence of new forms of labour, these provisions have not lost their significance. Studying the first six ILO conventions in light of modern labour changes allows us to determine their relevance and ability to provide basic guarantees in the contemporary legal field.

One of the fundamental provisions declared at the first ILO session is the idea of fair pay. This concept, enshrined in ILO Convention No. 1 (1919) on working hours, was intended to ensure the economic security of the worker within a stable work schedule. Currently, this idea takes on new meaning with the expansion of the gig economy. Work performed on digital platforms often lacks fixed hours, and its remuneration fluctuates depending on orders, hourly load, or algorithmic ratings. The absence of a formal mechanism for ensuring fair pay creates a situation where the basic provisions that were relevant in the 20th century are insufficiently defined for modern realities. This does not diminish their importance but indicates a need for a normative re-evaluation of the meaning of fair pay in the context of new forms of employment.

Primary attention in the 1919 acts was also given to the protection of women and young persons. For example, ILO Convention No. 5 (1919) on the minimum age for industrial work set a clear limit on the involvement of children in production. In the context of digital communication and transnational interaction, the line between learning, play, and work is blurring, especially in the online environment. Children can participate in content monetisation, work in e-commerce, or be involved in creating visual products on a platform without a clear understanding of the legal status of this activity. Accordingly, the principle of prohibiting child labour takes on new dimensions that require updating legal approaches without abandoning the original concept of protecting childhood.

Another important provision enshrined in the ILO's founding documents is the duration of working hours and minimum rest. In the modern context, where the physical presence of an employee is not a mandatory condition of employment, traditional approaches to regulating the working day lose their clarity. Labour using digital tools, especially in the context of remote work, casts doubt on the effectiveness of the classic division between working and non-working hours, creating a situation where the conventional provisions lose their effectiveness not due to imperfection but due to a change in the subject of regulation. The content of the occupational health and safety provisions, which were discussed at the first ILO session and later embodied in the relevant conventions, aimed to create safe conditions in the workplace, prevent occupational diseases, and establish employer responsibility for the state of the environment in which the employee is located. In modern conditions, when a significant part of labour activity has moved into the virtual space, the problem arises of defining the boundaries of responsibility for the consequences for the employee's physical and mental health. For example, in cases of remote work or activities related to constant interaction with digital systems, it is not always possible to establish technical or organisational health and safety measures in the classic sense. At the same time, the impact on a person's health performing work duties can be no less serious than in traditional production conditions (Jiang *et al.*, 2025). There was an increase in the number of workers seeking help from medical institutions, occupational health specialists, and psychological support due to emotional burnout, visual and musculoskeletal disorders, and disorientation in work duties due to a poorly structured management system. Therefore, the provisions of the first ILO session on creating conditions that ensure the preservation of life and health need to be conceptually rethought, taking into account the nature of new forms of labour (Ojakorotu, 2025).

A separate issue deserving consideration is the phenomenon of algorithmic management of the labour process. In 1919, no legal system foresaw that the evaluation, workload allocation, task monitoring, and even the termination of labour relations could be carried out not directly by a human employer, but by an automated system. In the modern context, such a practice has become widespread in delivery, mobile taxi services, translations, copywriting, and other types of digital work. The worker often has no ability to influence the algorithm that determines their level of access to tasks, rating, or even the amount of pay. The lack of transparency, a responsible managing entity, and clear appeal procedures creates significant legal uncertainty. And although the principles of the first ILO session did not anticipate such situations, they were based on the foundations of equal treatment, regulatory transparency, and employer responsibility - elements that must remain as the foundation for any modern legal models. Thus, while there is no direct answer to the algorithmisation of labour in the 1919 documents, the logic of regulation embedded in them allows for the identification of directions for formulating appropriate modern standards.

No less significant is the issue of maintaining the stability of labour relations as one of the central principles of international labour regulation, which was established as early as 1919. In the post-war period, European and North American countries sought to enshrine long-term employment models that provided the worker not only with income but also with access to social security, professional growth, and participation in trade unions. The ILO's founding documents, as well as the first conventions adopted, reflected this aspiration: labour relations were to be built on a basis of permanence, predictability, and legal protection. At the heart of this approach was the idea that labour is not only a source of income but also a social process that ensures an individual's integration into society. From a legal standpoint, the classic employment model provided for a permanent employment contract concluded between an employer and an employee for an indefinite period. This not only ensured legal certainty of rights and obligations but also established long-term guarantees regarding working conditions, opportunities for professional training, and social security. This form of employment stimulated the development of legal institutions for protection against unfair dismissal, the establishment of fixed working hours, guaranteed rest periods, participation in collective bargaining, and the resolution of labour disputes.

In the modern economic environment, this model is gradually losing its dominance. Classic employment is being replaced by alternative forms of work organisation: project-based employment, fixed-term employment contracts, part-time work, temporary agency work, and self-employment without registering legal relationships. Such practices are developing particularly actively in the digital sector, where workers who perform tasks through online platforms or digital services often have no direct legal relationship with the client or employer. Such individuals do not fall under the protection provided by classic labour law and are effectively outside the scope of ILO mechanisms, which were developed in completely different economic conditions.

Project-based employment is based on the completion of a defined scope of work for a specific period, without the continuation of legal relations after the project's completion. Although this model provides some flexibility for the parties, it does not guarantee long-term income and, therefore, economic security. Fixed-term contract employment may provide social guarantees, but in many jurisdictions, such workers do not have full access to insurance mechanisms or a pension system. The situation is even more vulnerable for self-employed individuals who work without a formal employment contract: their legal status is uncertain, and their opportunities to protect their interests are minimal. The lack of clearly defined obligations regarding pay, working hours, rest, protection against discrimination, and the right to association makes them completely dependent on the conditions imposed by the more economically powerful party. In this regard, it is relevant to refer to the ideas that were laid down in the ILO conventions as early as 1919. In particular, ILO Convention No. 2 (1919), which concerned unemployment, provided for the obligation of states to promote employment and coordinate actions to reduce social destabilisation. And although modern forms of work do not fit into the classic model of full employment, the very principle of maintaining a stable labour status has not lost its significance. It can be realised by developing modern normative approaches to fragmented employment - for example, creating a universal social security system that would cover not only workers in the classic sense but also independent contractors.

The concept of the continuity of labour relations, which in 1919 was understood primarily as long-term employment, can now be given a new interpretation - as ensuring consistent legal protection for an individual regardless of their employment format. This means that every person performing paid work should be covered by a minimum level of legal protection: the right to pay, rest, health protection, protection against discrimination, and the right to association. In this way, the succession of the basic ideas laid down by the ILO is ensured, taking into account changes in the socio-economic system.

Thus, although the classic provisions on the duration of labour relations may be literally unsuitable for the new format of employment, their conceptual essence retains its normative value. They not only enshrine a certain historical model of interaction between employee and employer but also provide guidelines for modern legal regulation - through the principle of predictability, guarantees of social well-being, legal certainty, and a minimum level of protection for all subjects of labour activity. Extending the scope of these principles to new forms of work is not a rejection of historical experience but its consistent implementation in the 21st century. Applying ILO principles to the latest forms of work requires both legal analysis and the involvement of related fields of knowledge - labour sociology, digital ethics, platform economics, and the philosophy of technology (Ancilla, 2025; Setiawan *et al.*, 2025; Chae & Chae, 2025). For example, the problem of ensuring decent conditions in the gig sector is impossible without analysing the motivational structure of a worker operating in a virtual space (Alekseienko, 2021).

The issue of the limits of responsibility in the case of automated decision-making cannot be fully resolved without taking into account ethical considerations, particularly those related to personal autonomy, the right to privacy, and the right to be informed about evaluation mechanisms. The economic component is no less important: the mechanisms for forming remuneration on digital platforms are not regulated by classic market principles and, accordingly, require a separate legal approach. Thus, the legacy of the first ILO session should be considered not as a completed stage but as a basis for further dialogue between the disciplines that form the modern model of labour regulation. The overall structure of the decisions adopted at the first session of the International Labour Conference in 1919 was aimed at forming a normative basis capable of ensuring minimum standards of protection for workers in different countries, regardless of their level of economic development (International Labor Conference, 1920). The application of these standards over a century has demonstrated the possibility of universalising the basic provisions in the field of labour, even in conditions of significant socio-economic changes. The modern transformation of the labour market, caused by digital technologies, decentralisation of employment, automation, and a departure from classic models of industrial cooperation, has set a task for legal systems to rethink the functionality of traditional approaches to regulating labour relations. In this context, the provisions formulated during the first ILO session remain as guidelines that allow the principles of the dignity of labour to be maintained even in new conditions. They are based on the idea of preventing exploitation, ensuring the economic security of the worker, recognising the role of the state in regulating labour processes, and respecting social dialogue as a basic element of legal influence. The content of such provisions as establishing a maximum duration for working hours, the necessity of rest, the protection of minors and the prohibition of their exploitation, the creation of safe conditions in the workplace, and the provision of fair remuneration can be adapted to the realities of the digital economy by reviewing the forms and methods of their implementation.

Instead of formally transferring the 1919 provisions into new technological conditions, legal doctrine requires a consistent interpretation of the initial goals and meanings of these norms. In the field of regulating digital labour, it is important to restore the centre of gravity to the person performing the tasks, not the algorithm that distributes them. Similarly, in situations with partial or unstable employment, it is important to ensure at least basic guarantees, regardless of the duration or form of the legal connection between the worker and the client. Thus, the legacy of the first ILO session is not only historically significant but also conceptually necessary for building a new system of labour law that combines classic principles of protection with the realities of the 21st century.

Conclusions

The subject of the study in the article was to clarify the historical conditions of the emergence of the International Labour Organization, analyse its first documents and conventions, and comprehend the principles that laid the foundation for the formation of international labour standards. The study combines historical analysis with an assessment of current trends in the development of the ILO, which allows its activities to be interpreted not only as part of the post-war settlement of 1919, but also as a factor in contemporary global transformations in the field of labour.

It was found that the creation of the ILO was a direct consequence of the First World War and the Paris Peace Conference, where the desire to avoid social upheaval was combined with ideas of social justice. Analysis of scientific research showed that the process of forming the organisation was based on previous experience of international associations in the field of labour legislation. The study of documents revealed that the ILO's founding documents contained norms that were innovative for their time, aimed at limiting working hours, protecting motherhood and protecting children's labour. Analysis of the content of the first conventions helped to establish that they laid the foundations for the modern concept of human rights in the field of labour. The study showed that the principle of tripartism played a special role, thanks to which the ILO differed from other international institutions and ensured the participation of various social groups in decision-making. These data indicate that it was tripartism that became a factor in the legitimacy of the adopted norms and increased their effectiveness in different legal systems. The analysis also revealed that the ILO's activities had a universal dimension from the outset, as its standards applied to a wide range of countries, including states with different socio-economic conditions. The results obtained allow to conclude that the first decades of the organisation's activities formed the basis for the further codification of international labour law.

To summarise the study, it can be noted that the initial stage of the ILO's activities provides an understanding of the origins of modern international labour standards and explains their universality. Conceptually, this indicates that the historical experience of the organisation is directly relevant to assessing its current role in the context of global socio-economic transformations. A promising direction for further research is the analysis of the evolution of labour standards in the second half of the 20th century, the study of the ILO's influence on the formation of national legislation, in particular Ukrainian legislation, as well as the understanding of the relationship between the organisation's activities and the modern system of international human rights protection.

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Формування перших трудових стандартів Міжнародної Організації Праці в контексті сучасного міжнародного права

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Анотація. Актуальність дослідження зумовлена необхідністю удосконалення міжнародного трудового регулювання в умовах трансформації соціально-трудових відносин, викликаної глобальними соціальними, економічними та політичними процесами, зокрема пандемією COVID-19, зростанням масштабів міграції та поширенням неформальної зайнятості. Метою дослідження було висвітлення особливостей створення Міжнародної організації праці як основи для вдосконалення сучасних міжнародних трудових стандартів. У процесі дослідження було використано історико-правовий, аксіологічний, порівняльний і системний методи, що дозволило провести комплексний аналіз становлення організації як ключового міжнародного актора у сфері соціального захисту. Було досліджено ідеологічні, політичні та соціально-економічні чинники, що сприяли заснуванню Міжнародної організації праці на початку XX століття. Було проаналізовано соціальні, правові й політичні чинники, що передували заснуванню організації, а також висвітлено ключові рішення Паризької мирної конференції та першої сесії Міжнародної конференції праці. Було встановлено, що ключовим принципом діяльності організації став трипартизм, який забезпечив рівне представництво працівників, роботодавців і держав. Було узагальнено значення перших шести конвенцій Міжнародної організації праці як джерел трудового права, а також доведено актуальність принципів, закладених у діяльність організації понад сто років тому. Було зроблено висновок, що досвід створення Міжнародної організації праці має вагоме значення для перегляду сучасних підходів до трудового права в умовах глобальних змін. Практична цінність роботи полягає у можливості використання її результатів фахівцями у сфері міжнародного трудового права, державними службами зайнятості та органами влади при розробці політики соціального захисту та трудового регулювання

Ключові слова: міжнародні інституції; міжнародні відносини; правові принципи праці; конвенції МОП; міжнародне правове врегулювання; соціальний діалог

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Protection of mineral resources under martial law: Problems of administrative-legal and criminal-legal support

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Abstract. The purpose of the study was to identify and analyse key administrative and criminal problems in the field of subsoil protection under martial law, and to develop proposals for reducing the level of offences and combating corruption. The methodology covered an integrated approach, including analysis of current legislation, processing of official statistics and expert surveys. The main factors affecting the effectiveness of law enforcement and control over the use of subsoil resources were identified, gaps in the regulatory framework were identified, and the effectiveness of existing tools for combating violations was assessed. The study involved 15 experts: lawyers, representatives of law enforcement agencies and specialists in the field of public administration. The results showed that the situation with subsurface protection has progressively become more complicated: the criticality indicators of individual problems have increased from "significant" to critical. The most important areas of improvement were the creation of transparent administrative and legal procedures and effective counteraction to corruption groups. The change in the configuration of threats is characterised: from mostly moderate manifestations to a combination of significant and critical conditions, which are aggravated by complementary control failures. The actual scale of law enforcement has been established. The proposed recommendations are aimed at strengthening control, updating the regulatory framework, and introducing electronic tools for recording the activities of subsurface users. The practical significance of the study lies in the fact

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that its results can become the basis for making managerial decisions aimed at ensuring legality and transparency in the use of natural resources even during a difficult period of martial law

Keywords: protection of mineral resources; martial law; administrative and legal problems; criminal and legal problems; corruption; paired comparisons; regulatory framework

Introduction

Countering criminal offences in the field of subsurface use and protection requires a set of organisational, operational-search, and other measures aimed at constant monitoring of the operational situation at subsurface use facilities and along the line of work to respond in a timely manner to negative changes, detection, prevention, and disclosure of criminal offences. Subsurface protection is a critical component of environmental safety and rational use of natural resources in Ukraine. Mineral resources constitute an object of property rights of the Ukrainian people – Article 13 of the Constitution of Ukraine (1996), so the state is obliged to ensure their protection both in peacetime and in special conditions, such as a pandemic or martial law. Since 2019, the situation in the field of subsurface use has undergone drastic changes: if in the pre-war period (2019) the main challenges were to improve outdated regulation and combat illegal mining, then in 2020-2021 (the period of the COVID-19 pandemic) quarantine restrictions were introduced, and in 2022-2025 (the period of martial law) there were unprecedented threats caused by a full-scale war.

When considering the issues of subsurface protection from the standpoint of an interdisciplinary approach, then it is important to turn not only to the administrative-legal and criminal-legal planes, but also to the socio-legal dimension. Thus, the deterioration of the efficiency or total destruction of the system of control over the use of mineral resources during martial law and in the long-term post-war period leads to complex consequences. This is an imbalance of the ecological balance, a decrease in available economic resources and the appearance of significant social tension at the local level. However, the deterioration of the environment and the lack of strategic resources will lead to a decrease in confidence in the state regulator and create the risk of prolonged destabilisation in society.

Criminalisation of the facts of illegal use of mineral resources can perform a dual function. This is a powerful legal tool for protecting national heritage and a means of preserving the economic security of regions and their social stability. The onset of martial law on the level of public environmental safety should be considered as a complex social phenomenon. In this context, it includes a complex relationship between legal mechanisms for environmental protection, the sustainability of local communities, and the state's ability to prevent environmental threats. The implementation of this relationship requires a comprehensive adaptation of existing regulatory instruments, including administrative and criminal measures, to ensure their effective operation in the conditions of war and post-war reconstruction.

Notably, the issue of administrative and legal regulation of subsurface use was considered by O.I. Lysiak (2021), who analysed in detail the legal conflicts that arise in the process of issuing permits for the development of minerals. The expediency of updating the mechanisms of criminal legal response to criminal offences against the environment was outlined in the study by O.O. Dudorov and R.O. Movchan, (2020), who proposed to strengthen responsibility for the illegal use of natural resources. For its part, M.I. Panov *et al.* (2021) emphasised the need for a clear definition of the object of a criminal offence, especially with regard to the environmental component. When there is a threat of illegal or uncontrolled use of mineral resources, society begins to realise the weight of transparent procedures and effective control mechanisms. As a result, this encourages deep reform not only of individual legislative acts, but also forms a request for a general increase in legal awareness – from officials and businesses to ordinary citizens, who are increasingly demanding that the authorities protect national interests and preserve natural resources for future generations.

F.A.F. Alazzam and M.F.N. Alshunnaq (2023) examined the impact of the latest challenges on legal training, emphasising that the pandemic has become a catalyst for the digital transformation of the legal sphere. The researchers emphasised that the transition to remote formats and digital services requires lawyers not only knowledge of legislation, but also developed creative thinking and the ability to integrate technological solutions into law enforcement practice. In the context of our research, these conclusions are relevant for the block of administrative and legal problems, because the effectiveness of procedures and control mechanisms largely depends on the competence of specialists who can design and maintain transparent digital tools for monitoring subsurface use. Yu.A. Turlova and H.S. Polischuk (2020) focused on criminalising illegal amber mining, describing the legal elements of crimes and typical schemes of illegal activities. Such approaches can only be effective if they are integrated with unified administrative and legal procedures and digital control tools, since local oversight without proper coordination and information support can leave room for avoidance of liability. Ultimately, both studies complement the vision of ways to reduce risks in the field of subsoil protection: the first through the training of qualified personnel with digital skills, and the second through the improvement of practices for detecting and stopping criminal violations. In addition, as an example, M.V. Stelmakh (2017) noted that the qualification of illegal mining of local minerals still raises many questions in law enforcement activities due to the inconsistency of the norms of the Criminal Code and bylaws.

Apart from that, as noted by D. Makovicka and D. Makovicka (2014), engineering solutions should be integrated into legal subsurface use regimes and environmental impact assessment; this reduces damage from legal work and facilitates the detection of anomalies inherent in illegal mining. Secondly, the determinants of industry efficiency lie in the quality of regulation and human resources capacity of the public service. In the absence of transparent procedures, digital registers and responsibility, institutions lose out to criminal networks (Kryshtanovych *et al.*, 2022a; 2022b; Leonova, 2025). Thirdly, comparative studies by A.K. Gupta (2024), and C.F. Neto *et al.* (2024) proved that without interagency coordination, remote sensing monitoring, and the inevitability of punishment, illegal mining is replicated even after one-time raid campaigns.

But despite such attention, there is an acute problem among researchers to rethink the problems of administrative-legal and criminal-legal support, considering the martial law in Ukraine. The fact is that the subsurface contains strategically important minerals – from energy resources (coal, oil, gas) to building materials and rare minerals. During the period of martial law, the need for these resources becomes even more urgent, since their rational use depends on ensuring defence capability, the functioning of industry and the restoration of damaged infrastructure. Any violations related to mineral resources harm not only the environmental balance, but also weaken the economic and military potential of the state. As a result of military aggression, part of the Ukrainian territories was under the temporary control of the occupation administrations, which leads to systematic and uncontrolled theft of mineral resources: from unauthorised mining and quarrying to the removal of valuable minerals. This not only reduces national natural reserves and causes irreparable damage to the environment, but also creates precedents when criminals avoid responsibility, because they are outside the zone of Ukrainian justice.

Accordingly, the purpose of this study was to identify and further analyse key administrative and criminal problems in the field of subsoil protection under martial law, and to develop proposals aimed at reducing the level of offences and improving the effectiveness of countering corruption. The objectives of the study were to analyse key macroeconomic factors that affect the effectiveness of law enforcement and control over the use of mineral resources, identify gaps in the regulatory framework, and evaluate the effectiveness of existing tools to counteract violations.

Materials and methods

The paper used a comprehensive approach that combines qualitative and quantitative methods. Initially, four key issues (P1, P2, P3, and P4) were identified based on expert opinions. Fifteen experts were involved: practising lawyers, representatives of law enforcement agencies, and specialists in the field of public administration. All had at least five years of experience in subsurface use and proven practical involvement in cases related to martial law. The survey was conducted in November-December 2023, and focus group approvals were conducted in January 2024. Prior to participation, written informed consent was obtained; voluntary participation, anonymity, and confidentiality were ensured. All procedures were in accordance with the International Code of market, public and social research and data analysis ICC/ESOMAR (2025). The survey was conducted in two stages: completing structured questionnaires with scores of 1-3 points for three periods (until 2022; 2022; 2023-2024) and subsequent focus groups to coordinate responses. Estimates are aggregated through binary logical matrices to the final indicators by period; in the future, the shares of expert estimates of the "minimum", "moderate", and "high" levels were summarised and their dynamics were analysed.

Within each period and each problem, probabilities were determined by expert means (through legal specialists, representatives of regulatory authorities, etc.) (these probabilities were designated as m_{ij}), with which the problem can be considered:

- 1 (minimal problems) – the problem has almost no effect on the effectiveness of subsurface protection;
- 2 (significant problems) – the problem has noticeable effect, but there are mechanisms to partially contain it;
- (critical problems) – the problem has become large-scale, systemic in nature and requires an immediate response.

The study was based on the analysis of key laws and regulations governing subsurface use under martial law. The main source was Law of Ukraine No. 2805-IX "On Amendments to Certain Legislative Acts of Ukraine on Improving Legislation in the Field of Subsoil Use" (2022), which entered into force in March 2023. In the field of administrative responsibility, the provisions of articles 57 and 58 of the Code of Ukraine on Administrative Offences (1996), which define sanctions for illegal use of mineral resources, were used. Section 8 of the Criminal Code of Ukraine (2001), which covers crimes against the environment, in particular illegal mining and storage of minerals, was also analysed. Data from the Unified State Register of Court Decisions (2025) reflecting administrative and criminal practice in 2022-2024, and reports from the Office of the Prosecutor General of Ukraine (2024) on investigations in the field of subsoil use, were used.

Results and Discussion

The full-scale military aggression that began in February 2022 put Ukraine in emergency conditions of martial law. This dramatically changed the priorities of the national policy, including in the field of subsurface use and subsurface protection. On the one hand, there is an urgent need to meet the country's internal needs for minerals (energy resources, building materials for restoration, strategic minerals for defence, etc.). On the other hand, military operations have complicated the normal functioning of the industry and its control. In response to the challenges of wartime, the state has implemented urgent regulatory changes. The Law of Ukraine No. 2805-IX (2022) entered into force in March 2023 This act reformed the codified legislation on mineral resources. It significantly updated the Code of Ukraine on Subsoil (1994) and related laws. The law reduced the time frame for obtaining special permits for the use of mineral resources, introduced their full digitalisation (transition to electronic auctions, an electronic cabinet of a subsurface user, etc.). Mandatory approvals of local councils regarding the provision of mineral resources for use for local minerals have also been cancelled – previously, this bureaucratic requirement often delayed projects and could become a source of corruption. However, the war also led to an objective reduction in cases of illegal mining in a number of regions. For example, in the northern oblasts (Rivne, Zhytomyr), which were traditionally a hotbed for the illegal extraction of amber, a curfew and enhanced territorial defence patrols were in effect in 2022 – large illegal mines were not recorded there. Notably, the legislation updated in 2022 continued to operate during the war. If it was possible to expose the fact of illegal mining, the perpetrators were already subject to much stricter punishment. There were few such cases, but it is significant that even in 2022, the courts sentenced prospectors under Article 240 of the Criminal Code of Ukraine (2001). Thus, the legal framework for criminal prosecution of violators of subsurface protection in 2022-2023 was extremely effective, but its application was limited by objective military circumstances (Legal amber mining in Rivne..., 2025).

Under martial law, it is extremely important to comply with the requirements of the legislation regulating liability for violating the rules for the use of mineral resources and causing damage to the environment. In the sphere of administrative jurisdiction, the defining norms are articles 57 and 58 of the Code of Ukraine on Administrative Offences (1996), which establish the composition of the offence and sanctions for illegal actions with mineral resources (in particular, mining without appropriate permits, unauthorised use of mineral resources, etc.). Therefore, within the scope of the chosen topic, it would be appropriate to highlight Section 8 "Criminal Offences against the environment" of the Criminal Code of Ukraine (2001). It covers articles that define liability for serious encroachments on natural resources (including illegal extraction, storage, or sale of minerals), and provide for increased penalties for acts that have a particularly harmful impact on the environment during military operations. It is these norms of legal regulation that are designed to ensure effective protection of mineral resources at a time when their safe and rational use becomes critical for the national security of the state.

Instead, a new, unprecedented criminal legal challenge has emerged – the looting of mineral resources in the occupied territories. Russian occupation forces and occupation "administrations" under their control seized a number of fields and mines in the temporarily occupied territory (TOT). In particular, coal deposits in Donetsk and Luhansk oblasts, titanium ore deposits, salt production (in Soledar), etc. There is evidence that the invaders use these resources without authorisation: they export the extracted coal and ore to the Russian Federation, damage the mines with barbaric mining methods. Such actions are actual theft of Ukraine's national heritage and are classified by Ukrainian law as serious crimes (theft, damage to property, criminal offences against the environment), and under certain conditions may also be considered ecocide. Ukraine will be able to bring those responsible to justice only after the de-occupation of these territories. These facts are recorded by the Prosecutor's Office (collecting data for future cases) and international organisations that recognise such actions as a violation of international law (UK Defence Ministry, 2024). This aspect of subsurface protection is completely new and extremely dangerous, because the damage caused to subsurface resources during military operations and occupation (mine explosions, flooding of mine workings, and uncontrolled mining) can be irreversible. All this only increases the relevance of the chosen research topic.

Firstly, it should be noted that according to data released by law enforcement agencies, during the period of martial law (from late February 2022 to mid-2024), more than 300 people were brought to administrative responsibility for illegal use of subsoil resources and other related offences (Unified State Register of Court Decisions, 2025). The main administrative proceedings concerned the lack of proper permits, non-compliance with the established limits, and unauthorised mining. Within the framework of criminal proceedings under the articles of Section 8 of the Criminal Code of Ukraine (2001), approximately 40 cases were initiated and charges were brought against 15 defendants involved in serious violations of the rules for the protection of mineral resources or theft of resources (Office of the Prosecutor General of Ukraine, 2024). In comparison with the pre-war period, there is a qualitative change in the nature of offences: if earlier "shadow" extraction activities prevailed (in particular, illegal amber or sand), then as of mid-2024, there are frequent cases of organised theft of minerals, sometimes covered up by military needs (Fig. 1).

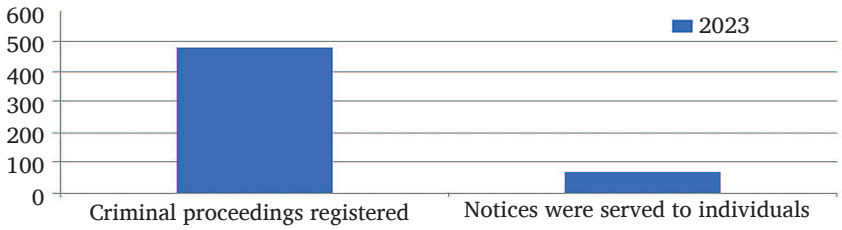

Figure 1. Dynamics of changes in the number of open offences during martial law for illegal use of mineral resources under articles 240 and 188-5

Source: developed by the authors based on Specialised Environmental Prosecutor's Office of the Prosecutor General's Office (2023)

Based on a study of the current regulatory framework, law enforcement analytics, and official statistics, the problem area was identified and, using factor grouping and the Ishikawa diagram, they were narrowed down to four positions. It should be noted that the selection was based on repeatability in sources, the scale of influence on the subsurface protection regime, and the stability of manifestations over time. As a result, the key factors are reasonably identified: P1 – procedural licensing and control deficits; P2 – inefficiency of legal liability mechanisms; P3 – illegal mining and shadow operations; P4 – corruption practices. According to the authors of this study, they were the primary "nodes" of risk, from which other problems were derived, which was further confirmed in empirical results. For each group, the method of paired comparisons based on the preference of variants was applied, and reduced logical convolution matrices were constructed that allow calculating the integral indicator of the problem level (Fig. 2). Then there is an aggregation of problems P1/P2 and P3/P4, respectively. Each row and column contains possible points (1, 2, or 3). The cell contains the result of a "summary" assessment according to the expert method (for example, the "maximum" or "greater of two" rule). The model shown in Fig. 2 captures a shift in the threat configuration: by 2022, criminal law factors (P3-P4) were mostly minimal or moderate, while administrative law factors (P1-P2) were moderate. Since 2022, the criticality of liability and sanctions (P2) and the corruption and criminal component (P4) has sharply increased; in 2023, the share of high ratings for P2 and P4 became dominant. It should be noted that maintaining moderate procedural and control failures (P1) reinforces criminal practices, creating the highest final risk in the

P1-P2 and P3-P4 combinations. Logical convolution matrix in Table 1 summarises these observations. A brief explanation on one of the examples from Table 1: if P1 = 1 and P2 = 3, the summary score takes on the value 2, because the second problem is "critical", so as a result, group A is evaluated as "2" – significant.

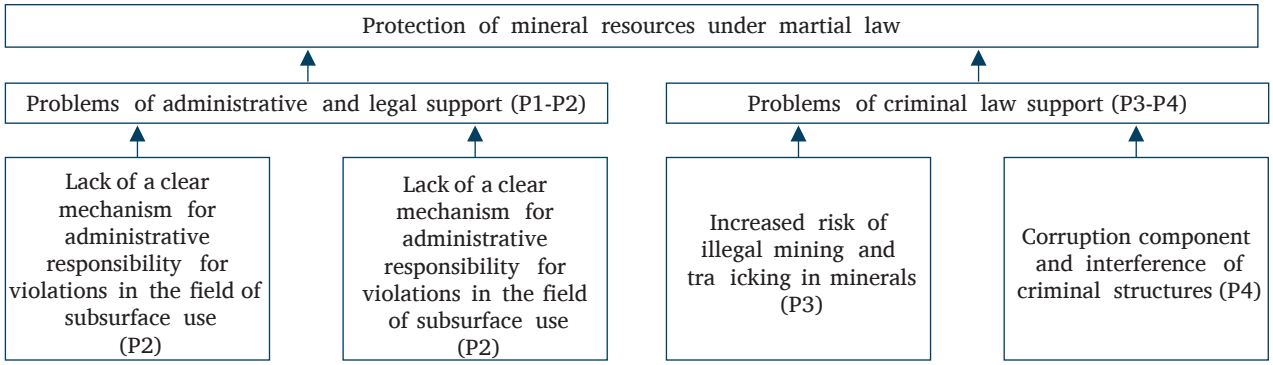

Figure 2. Model of identification and impact of problems of administrative-legal and criminal-legal support
Source: created by the authors

Table 1. Logical convolution matrix for problems of administrative-legal and criminal-legal support

P1/P2			
	1	2	3
1	1	1	2
2	1	2	2
3	2	2	3
P3/P4			
	1	2	3
1	1	1	2
2	1	2	3
3	2	3	3

Source: created by the authors

Another important step is a retrospective expert assessment of the severity of problems in each group for each period. Summary estimates are presented separately by period in Table 2. Further analysis is provided for the periods 2022-2023 and 2023-2024, since the impact of individual problems is long-term and is correctly estimated only in this time perspective.

Table 2. Logical convolution matrix generalisation of shares of expert assessments of strengthening a particular problem of administrative-legal and criminal-legal support

Before 2022			
	m_{i1}	m_{i2}	m_{i3}
P1	0.4	0.4	0.2
P2	0.3	0.4	0.3
P3	0.5	0.3	0.2
P4	0.45	0.35	0.2
2022-2023			
	m_{i1}	m_{i2}	m_{i3}
P1	0.2	0.5	0.3
P2	0.15	0.4	0.45
P3	0.3	0.4	0.3
P4	0.25	0.35	0.4
2023-2024			
	m_{i1}	m_{i2}	m_{i3}
P1	0.1	0.55	0.35
P2	0.1	0.4	0.5
P3	0.25	0.35	0.4
P4	0.15	0.4	0.45

Source: created by the authors

Next, using convolution matrices, for each period, the integral probability of obtaining the result “1 (minimal)”, “2 (significant)”, or “3 (critical)” is determined within the groups P1/P2 and P3/P4. The last step is to combine two groups (administrative-legal and criminal-legal) into a single integral indicator R (Table 3).

Table 3. Logical convolution matrix for integrating two groups of problems

P1-P2 / P3-P4	1	2	3
1	1	2	2
2	2	2	3
3	2	3	3

Source: created by the authors

If both groups are “minimal” (1), then the integral assessment of the problem (on the scale of the entire subsurface protection system) is also “1”. If one of the groups is “critical” (3) and the other is “significant” or :minimal”, the integral score will be 2 or 3 – depending on the accepted convolution rule. Next, considering the probabilities for each group, the probability for the final result “1 (min)”, “2 (significant)”, and “3 (critical)” is calculated. Next, the numerical value of the integral indicator can be calculated, for example, using the equation (1):

$$R = 1*p(R = 1) + 2*p(R = 2) + 3*p(R = 3), \quad (1)$$

where, $p(R=k)$ – probability that the integral estimate will be k. So the results within the defined period are the following:

1) before 2022: $R_{before2022} = (1 \times 0.35) + (2 \times 0.50) + (3 \times 0.15) = 1.80$;

2) 2022-2023: $R_{2022} = (1 \times 0.20) + (2 \times 0.40) + (3 \times 0.40) = 2.20$;

3) 2023-2024: $R_{2023} = (1 \times 0.10) + (2 \times 0.45) + (3 \times 0.45) = 2.35$.

The overall level of problems (considering administrative and criminal factors) before 2022 was mostly in the “significant” zone (the indicator was close to 1.8-1.9). The indicator of 2.35 in 2023-2024 indicates that the situation remains difficult, and the share of “critical” components is actually growing. Thus, the greatest role in the development of general “criticality” in different periods was played by two problems:

- P2 (increased administrative and legal uncertainty and lack of effective recovery mechanisms),
- P4 (corruption and organised crime in the field of subsurface use).

It is for them that a response mechanism has been created to overcome these problems (Fig. 3). Given the priority of P2 and P4 problems, an integrated response mechanism is proposed. For P2, it is envisaged to improve legislative procedures with a clear definition of the powers of regulatory authorities, simplification of proceedings in wartime, and unification of regional instructions with the national database, which will minimise conflicts and speed up actions at the local level. In addition, electronic platforms for monitoring issued permits, cash flow, and production volumes are introduced for continuous supervision. For P4, the key is the institutional strengthening of specialised anti-corruption bodies (powers, resources, independence), the creation of interdepartmental working groups with the participation of the State Service of Geology and Mineral Resources, the Environmental Inspectorate, the National Police, the Security Service and the Prosecutor General Office as a single coordination centre, and the involvement of communities through public councils under regional military administrations and motivational programmes for reporting illegal mining. After the end of martial law, full-fledged environmental impact assessment procedures and public hearings adapted to the updated legislation should be restored.

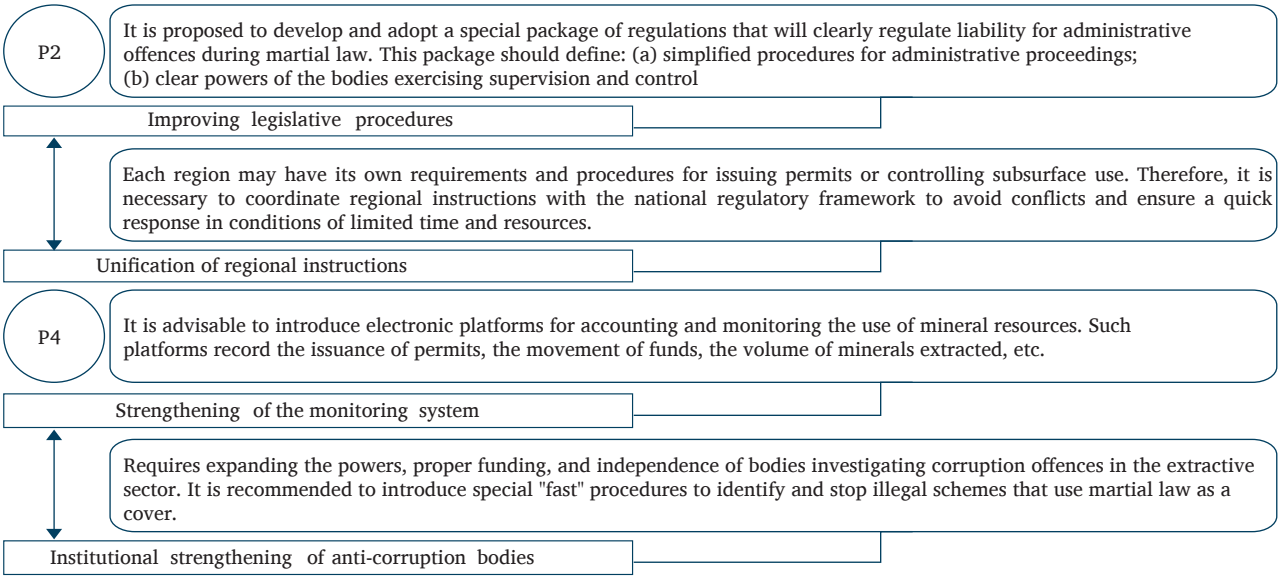

Figure 3. Mechanism of response to the most significant problems of administrative, legal, and criminal law provision of subsurface protection in Ukraine in the current conditions

Source: created by the authors

Under martial law, it is important to ensure transparency, even in the absence of broad access. It is possible to create public councils under regional military administrations on ecology and mineral resources, which would receive information about plans for the use of mineral resources and the state of the environment, and could signal problems. After the war, it is mandatory to return to decision-making the mechanisms of environmental impact assessment (EIA) and public hearings adapted to the updated legislation. In addition to the above, it is also proposed to establish joint working groups on subsoil issues under military administrations or regional councils (after their restoration) with the participation of representatives of the State Geological Service, the Environmental Inspectorate, the National Police, the Security Service of Ukraine, and prosecutors. Such groups will ensure the exchange of information on the situation with mineral resources, coordination of actions to identify and stop violations. A single decision-making centre will reduce the likelihood of duplication or conflict of authority. Communities should become an ally of law enforcement agencies in detecting illegal mining. It is recommended to introduce motivation programmes: for example, remuneration for reporting an underground mine that led to its liquidation. In addition, after the war, it is necessary to create opportunities for legalising small-scale mining for the local population (cooperatives of prospectors under state control), which will provide an alternative to illegal activities.

It is also necessary to implement the provisions of Law of Ukraine No. 2805-IX (2022) and the updated Code of Ukraine on Subsoil (1994) in practice as soon as possible. This includes approving all bylaws, launching digital services for subsurface users, and conducting an information campaign for businesses regarding the new rules. New transparent procedures should really work even under martial law. The moratorium on inspections should be gradually lifted, at least in relatively safe regions. The State Geological Service and the State Environmental Inspectorate should introduce a risk-based approach: conducting on-site inspections primarily at facilities where there are indications of violations (e.g., based on remote monitoring data or complaints from the public). Advanced technologies such as aerospace monitoring (drones, satellite images) for detecting illegal subsurface development in real time will help with this. In addition, in the context of improving the effectiveness of subsurface protection during martial law, it is advisable to introduce a clear procedure for applying administrative responsibility (including specifying the composition of offences and mechanisms for imposing sanctions in accordance with articles 57 and 58 of the Code of Ukraine on Administrative Offences (1996)) and synchronise it with the criminal law requirements of Section 8 of the Criminal Code of Ukraine (2001). Perhaps an appropriate step will be to expand the powers of the State Environmental Inspectorate and relevant divisions of the National Police in terms of prompt suppression of illegal actions.

The study obtained similar conclusions: administrative and legal uncertainty (P2) and corruption activities of criminal structures (P4) demonstrate a significant negative impact on the state of subsurface protection. The growth of illegal mining and the “legalisation” of income from it leads not only to economic losses, but also to increased public risks (Zdorovylo, 2019). The researchers also pointed to challenges in the cyber environment that are becoming relevant for accounting and controlling subsurface use (Bani-Meqdad *et al.*, 2024). The studies by B. Golovkin and K. Marysyuk (2019) and R.O. Movchan (2020) focused on empowering the law enforcement system and international cooperation, and L.O. Mostepanjuk and A.A. Pavlovsjka (2020) detailed the elements of crimes in the field of subsurface use and points out gaps in the Criminal Code of Ukraine. However, the above analysis showed a different pattern: the key trigger for escalation is a combination of procedural and sanctions dysfunctions (P1-P2) with corrupt practices (P4), while “power” strengthening without eliminating procedural gaps gives a limited effect; this is consistent with the dominance of high ratings for P2 and P4. The claim about the sufficiency of international cooperation seems debatable, since the reason for different interpretations may lie in different time horizons and data types: the obtained results are based on retrospective expert assessments during the war period, while the mentioned studies mainly consider institutional settings in more stable conditions. Conclusions of V. Alkema *et al.* (2024) on the importance of strategic management and sustainability are considered in a different plane – as complementing the results of the current study, but not replacing the needs for priority normalisation of procedures and responsibilities. In the results of discussions on the results of the study, it is worth emphasising the fact that after the end of hostilities, Ukraine is waiting for a large-scale recovery, which will require a huge amount of construction and other resources. Subsurface protection should already be integrated into the overall strategy of post-war reconstruction to prevent unauthorised mining, which will lead to devastation of territories and environmental disasters. In addition, in an effort to integrate into the European space, Ukraine is obliged to adhere to international environmental standards and transparent rules of management in the field of subsurface use.

Conclusions

The study was devoted to the investigation of changes in the subsurface protection system under martial law, considering the quantitative and qualitative characteristics of threats and their dynamics. The purpose of the study was to identify key problems and determine the degree of their impact on the effectiveness of subsurface management, and it was achieved. The subject of the study was an assessment of the state of subsurface protection during martial law, with a focus on the dynamics of offences and the structure of risks modelled using logical convolution matrices and an integral indicator. It was found that the integral indicator of the level of threats increased from the pre-war period to 2023, approaching a critical limit. Analysis of legislation and factual data helped to establish that administrative and legal shortcomings and corruption factors are the dominant components of the risk environment. The results of the study showed that the configuration of threats was complicated, in particular, due to a combination of significant and critical states that mutually increase the negative impact of each other. Such trends indicate a persistent deterioration in the quality of control and law enforcement.

Four key problems (P1, P2, P3, and P4) were identified, their formalised analysis was performed using binary logic matrices, and the probability of each of them occurring at different time intervals was estimated. Such calculations allowed establishing that the most significant contribution to

the overall level of threats was made precisely by gaps in the administrative and legal mechanism of responsibility (P2) and corruption activities on the part of organised criminal groups (P4).

The results indicate an increase in the risks of a "critical" state in the field of subsurface use, which confirms the need to strengthen control and improve regulatory mechanisms. Based on the integral assessments, it is possible to plan targeted measures aimed at preventing and suppressing violations in the use of mineral resources during martial law. It was proved that the identified trends indicate the need for purposeful improvement of mechanisms for preventing and minimising risks associated with the activities of subsurface users, considering the challenges and restrictions of wartime. Considering the established laws, it can be argued that the problems of subsoil protection during the war period directly correlate with the economic and environmental security of the state, and therefore, require constant monitoring based on agreed metric approaches demonstrated in the study.

The above suggests that the risks in the field of subsurface protection during the war period are systemic in nature, which is formed at the intersection of imperfect law enforcement and organised criminal activity. The analysis performed means that the combination of logical convolution matrices with an integral metric provides a holistic view of transitions between risk states and their time trajectory. In future studies, it is important to analyse the effectiveness of new legislative initiatives in this area and assess whether the proposed changes actually reduce the level of delinquency. In addition, a comparative analysis with the experience of other countries that have had similar experience in applying martial law and introduced special measures to protect resources would be promising.

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Conflict of interest

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Охорона надр в умовах воєнного стану: проблеми адміністративно-правового та кримінально-правого забезпечення

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Анотація. Мета дослідження полягала у виявленні та аналізі ключових адміністративно-правових і кримінально-правових проблем у сфері охорони надр в умовах воєнного стану, а також формуванні пропозицій щодо зниження рівня правопорушень та протидії корупції. Методологія охоплювала комплексний підхід, включаючи аналіз чинного законодавства, опрацювання даних офіційної статистики та експертне опитування. Було визначено основні факторів, що впливають на ефективність правозастосування та контроль за використанням надр, виявлення прогалин у нормативно-правовій базі та оцінку ефективності існуючих інструментів протидії порушенням. У межах дослідження залучено 15 експертів: юристів, представників правоохоронних органів і фахівців у галузі державного управління. Результати показали, що ситуація з охороною надр прогресивно ускладнилася: показники критичності окремих проблем зросли від «суттєвих» до критичних. Найважливішими напрямами вдосконалення виявилися створення прозорих адміністративно-правових процедур і ефективна протидія корупційним угрупованням. Охарактеризовано зміну конфігурації загроз: від переважно помірних проявів до поєднання суттєвих і критичних станів, що посилюються взаємодоповнюючими провалами контролю. Встановлено фактичні масштаби правозастосування. Запропоновані рекомендації спрямовані на посилення контролю, модернізацію нормативної бази та впровадження електронних інструментів обліку діяльності надрокористувачів. Практична цінність дослідження полягає в тому, що його результати можуть стати основою для ухвалення управлінських рішень, спрямованих на забезпечення законності та прозорості у використанні природних ресурсів навіть у складний період воєнного стану

Ключові слова: охорона надр; воєнний стан; адміністративно-правові проблеми; кримінально-правові проблеми; корупція; парні порівняння; нормативно-правові засади

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Person's declaration as deceased: Problem aspects in civil, labour, and family legal relations

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Abstract. The discourse on post-human rights is transforming the very paradigm of both the legal determination of a person's death and the attitude towards its implications. Considering the current state and vectors of development in the legal understanding and relevant legislative provisions for declaring a person dead has become an extremely urgent task of a scientific and practical nature. Research into the legal aspects of human death allows for an expansion of knowledge about the relationships and connections that exist in society. Based on the bibliographic method of analysis, as well as comparative legal and logical methods, the study examines the post-human concept of recognising and declaring a person dead, as well as the rights of a person declared dead, particularly within the frameworks of the will theory and the interest theory. It is shown that these two theories, within the post-human paradigm, stand in a certain degree of contradiction to one another. In the context of the legal systems and traditions of different countries, the civil law consequences of declaring a natural person dead are analysed, and the peculiarities of altering or terminating property and personal non-property legal relations as a result of such declaration are considered. It is emphasised that the philosophical foundations of the concept of "rights" must be taken into account when determining the legal consequences of declaring a person dead – in particular, posthumous legal rights constitute one of the core vectors of such consideration. A conceptual framework for the rights of the deceased is proposed, taking into account the post-human trajectory in the development of legal concepts of human rights. The results of the study broaden the array of components within the legal understanding of human death as a legal fact, as well as its legal consequences

Keywords: legal status; rights; post-human concept of human rights; will theory; interest theory; civil death

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Introduction

As of 2025, the legal understanding of death continues to be a crucial aspect of both civil and human rights discourse. The issue has gained renewed importance due to rapid scientific progress, global conflicts, and biotechnological developments that have blurred the traditional boundaries between life and death. For Ukraine, the ongoing war has intensified the need to establish clear legal mechanisms for declaring individuals deceased, especially those who have gone missing in combat or under occupation. Determining legal death is essential for ensuring the protection of property rights, family relations, and social guarantees. Beyond national boundaries, the problem reflects broader philosophical and ethical challenges regarding the status of the individual after death and the scope of posthumous rights. Therefore, studying the legal consequences of declaring a person deceased holds both theoretical and practical significance for modern jurisprudence and human rights systems.

Recent legal scholarship has addressed the complexity of defining and regulating death within contemporary law. M. Trabsky (2024) examined how 21st century legal systems reify the meaning of death under the influence of biotechnological and economic factors, arguing that advances in medical technologies disrupt traditional legal epistemologies. The author emphasises the need for an interdisciplinary approach that integrates law, ethics, and medicine. In Ukraine, A. Klychkov (2020) analysed the civil-law consequences of recognising an individual as missing and declaring them deceased, noting the limited scope of existing judicial practice and the need to refine legal mechanisms for terminating or restoring personal and property rights.

J.A. Chandler and T.M. Pope (2023) explored the Canadian legal definition of death in the context of the Brain-Based Definition of Death Guidelines, highlighting discrepancies between medical practice and statutory provisions. They argued that equality and religious freedom under the Canadian Charter necessitate greater clarity in diagnosing brain death. Similarly, J.D. Dinneen *et al.* (2023) investigated the intersection between death and information management, identifying ethical and legal tensions in handling digital inheritance, posthumous data, and digital immortality. Their findings illustrate how technological change generates new forms of post-death legal identity. E. Wicks (2017) emphasised that the absence of a statutory definition of death in England has led to reliance on medical guidelines recognising brainstem failure as the determinant of death. These professional norms, while effective in practice, underscore the importance of a coherent legal codification.

Further comparative insights reveal diverse approaches to post-mortem rights and their civil consequences. J. Bowen (2022) analysed the interest theory of rights, arguing that certain legal interests – such as reputation or familial welfare – may persist beyond biological death. V. Kurki (2021) supported this view, asserting that posthumous rights derive from the enduring moral and legal interests of individuals, which legislatures are increasingly recognising. K. Falconer (2020) expanded this discussion by linking the interests of the living and the dead, proposing that the regulation of posthumous rights reflects evolving social norms of dignity and respect.

Research in civil and family law further demonstrates that the declaration of death affects inheritance, property, and labour relations. J. Payne & M. Payne (2022) examined how Canadian legislation distinguishes between married and unmarried partners in succession rights, while N. Fera (2024) discussed the limits of testamentary freedom under the Family Law Act (1986). Comparative analyses by M. Bear (2023) show that in the United Kingdom and Commonwealth jurisdictions, the termination of employment upon death remains governed by common-law principles, though questions concerning compensation and severance persist. Similar studies have been conducted by N. Smith & D. Plaatjies (2024).

Within the Ukrainian context, legislative amendments in 2022 and 2023 (Law of Ukraine No. 2217-IX, 2022; Law of Ukraine No. 2345-IX, 2022) simplified procedures for registering deaths in wartime and temporarily occupied territories. However, practical implementation revealed significant difficulties concerning judicial verification, evidentiary standards, and the recognition of foreign death certificates. These challenges illustrate the need for systemic improvement in civil, family, and labour legislation to ensure coherence with international norms and human rights principles (Kryshtanovych *et al.*, 2024).

This study aimed to determine the legal grounds and consequences of declaring an individual deceased within the framework of civil, family, and labour law, taking into account comparative international experience. The research seeks to clarify the relationship between legal death and posthumous rights, assess the adequacy of Ukrainian legislation, and formulate proposals for its modernisation in light of wartime conditions and the post-human rights discourse.

Materials and methods

This study employed a multidisciplinary approach, focusing on legal, sociological, and historical perspectives. Conceptually, it was grounded in theories of post-human rights, which emphasise the legal interests and rights that may persist after death, thus extending traditional legal paradigms. The methodology combined several specialised legal methods, including comparative legal analysis, formal-legal analysis, and doctrinal methods. The comparative legal method was applied to examine similarities and differences in how various jurisdictions handle the declaration of death. This approach enabled the identification of common legal standards and distinctions across national legal systems. The formal-legal method was crucial for analysing statutory provisions and court decisions related to the status of individuals declared deceased, as well as for understanding the procedural norms governing death declarations in different jurisdictions.

A key method employed was grounded theory, which facilitated the identification of relevant categories and patterns from existing literature and case law. Through this approach, secondary sources were systematically analysed. Historical analysis was used to trace the evolution of the legal institution of declaring a person deceased, focusing on the historical development of civil law relating to death. The study drew on a diverse range of primary and secondary sources. Legislative documents, such as national laws and

international treaties, were of particular importance. For instance, Ukrainian legislation on declaring a person dead, including the Civil Code of Ukraine (2003), was analysed in depth to understand the domestic procedural framework. Additionally, international legal instruments and court decisions were examined to compare practices and outcomes (Judgment of the United Kingdom Court of Exchequer, 1867; Judgment of the United Kingdom Appeal Tribunal, 1999).

With regard to methodology, content analysis was used to systematically review relevant legal texts, identifying trends in how death is legally conceptualised and managed across different legal systems. Furthermore, comparative law was applied to assess the impact of death declarations on inheritance rights, personal relationships, and posthumous legal recognition in countries such as the USA, the UK, and Ukraine. This methodological framework enabled the development of a comprehensive model for understanding the legal dimensions of death declarations.

Results and Discussion

Circumstances of declaring death. It is useful to outline several situations in which the moment of death acquires legal relevance, in order to demonstrate the practical necessity of establishing the exact time of death. When a person is legally declared dead, their assets fall under the control of the executor designated in their will, who has the authority to manage or dispose of them in accordance with the testamentary provisions. In cases where two or more individuals die in close succession, and one has left a will in favour of another, it becomes essential to determine who predeceased whom. The beneficiary under the will cannot benefit from it if they are found to have died earlier – a rule commonly recognised in many national legal systems (Sitkoff & Dukeminier, 2021).

According to Ukrainian legislation, an individual may be declared deceased only on the basis of a court decision. Thus, according to Article 46 of the Civil Code of Ukraine (2003), an individual may be declared dead by a court if:

- no information has been received regarding their whereabouts at their permanent place of residence for three years;
- they went missing under circumstances posing a threat to life or giving reasonable grounds to presume death as a result of a particular accident – within six months;
- it is possible to consider an individual dead as a result of an accident or other circumstances arising from man-made or natural emergencies – within one month after the completion of the work of a special commission established in connection with such emergencies.

A person who goes missing in connection with military actions or an armed conflict may be declared dead by a court after two years have elapsed since the end of the hostilities (Kryshtanovych *et al.*, 2022). Taking into account the specific circumstances of the case, the court may declare an individual dead before the expiry of this period, but not earlier than six months after the disappearance. The legal consequences of declaring an individual deceased are equivalent to those that arise in the event of actual death. However, the heirs of an individual declared dead are prohibited from alienating any real estate inherited by them for a period of five years from the opening of the inheritance. The notary who issues the heir with a certificate of inheritance to real estate must impose a prohibition on its alienation. If it transpires that an individual declared dead is alive, this entails certain legal consequences as provided in Article 48 of the Civil Code of Ukraine (2003). According to this article, if a person who has been declared dead reappears, or information is received regarding their whereabouts, the court at the location of that person, or the court that issued the declaration, shall, upon the application of the person concerned or another interested party, annul the decision declaring the individual dead. Article 309 of the Civil Procedure Code of Ukraine (2004) stipulates that the court shall schedule a hearing with the participation of the individual declared dead, the applicant, and other interested parties. Accordingly, the personal presence of the individual concerned at the court hearing is mandatory.

Article 48 of the Civil Code of Ukraine (2003) also contains provisions aimed at deterring fraud, stipulating that if a person who obtained property under a compensatory contract was aware that the individual declared dead was in fact alive, such property must be returned. In some countries, such as France, recognising a person as missing and declaring them dead constitute two stages of a single process. In Ukraine, by contrast, these are similar procedures but distinct legal concepts, as the grounds for their application and their legal consequences differ.

Living will and the meaning of death. In a different context, the issue of determining the moment of death also becomes significant within the medical and societal spheres. The question arises regarding the appropriate duration for which physicians should employ artificial interventions to sustain life in patients who are in a deep coma with a prognosis of permanence and incurability. In such cases, consideration must be given as to whether life-sustaining measures should continue when there is no realistic prospect of the brain regaining its normal functions. The medical community is immediately confronted with this challenge, but, like many other medical dilemmas, it eventually affects and concerns society at large as well (Pope, 2018). Although the medical approaches used in these situations may differ, they essentially consist of prolonging life, even though the patient's mental abilities may never fully recover.

The issue raised in the previous paragraph has been addressed by specific laws in several countries. Although there is a wealth of literature on the topic, it is sufficient to cite Black's Law Dictionary (1990), which defines the concept of a "living will", adopted in various US states: "Living Will. A document which governs the withholding or withdrawal of life-sustaining treatment from an individual in the event of an incurable or irreversible condition that will cause death within a relatively short time, and when such a person is no longer able to make decisions regarding his or her medical treatment. Living Wills are permitted by statute in most states". The case of Cruzan v. Director, Missouri Department of Health (1990) established several significant precedents: it was determined that the Constitution did not provide a right to die. It also outlined the requirements for a third party to refuse medical treatment on behalf of an incompetent individual. According to the case, before a family may remove an incompetent person from life support, the state may require clear and convincing evidence of that person's wish to cease life-sustaining treatment.

The legal definition of death remains unstatutory in England; however, the issue is managed according to professional standards that have proven effective in practice. In 1976, the Medical Royal Colleges and their Faculties in the United Kingdom issued guidelines detailing the criteria for determining brain death, focusing specifically on the irreversible loss of brainstem function, with certain conditions to be avoided in the process (Wicks, 2017). Three years later, in 1979, these same medical bodies declared that death could be determined by the cessation of brainstem activity. The Department of Health in the UK recognised these criteria as authoritative and adopted them officially. Over time, these guidelines have gained widespread acceptance within the medical community, not only in the UK but also internationally, where they have influenced the understanding and practice of determining death.

Certifying the fact of death. Generally, the system for recording and certifying death includes: first, the bodies, organisations, and officials authorised to record and confirm these facts; second, the means of recording and procedural actions established by law (issuing orders, making entries in employment records or personal files, drawing up death certificates, registering death in official journals, etc.); and third, procedures for issuing information about death. It follows that the death of a person, in terms of legal regulation, constitutes the occurrence of consequences prescribed by law. In this sense, death is not limited to physical or biological confirmation. As the legal grounds for death, a number of authors (Norman, 2021; Bowen, 2022) propose to identify, firstly, the occurrence of biological death, certified by a medical practitioner; secondly, the judicial determination of the absence of a person and of any information about their whereabouts for several years; and thirdly, the judicial confirmation that a person went missing under circumstances threatening death or giving reason to presume their death as the result of a specific accident, accompanied by the person's absence for several months (Trabsky & Jones, 2024).

At the same time, the legal systems of Great Britain and the United States classify the issue of declaring a person missing or declaring a natural person dead within the sphere of procedural law. In cases where, during the consideration of a civil case, the question of ownership of property or certain obligations arises, the court is guided by the presumption of a person's death if there has been no information about them for seven years. This presumption does not apply where it is clear from the materials of the civil case that no information about the person's whereabouts could reasonably have been expected or obtained.

In France, a court decision declaring a person missing must be published in the media and entered into the death register. In the absence of such a publication, the court decision loses its legal force. The civil law consequences of such registration are equivalent to those of declaring a natural person dead. In such cases, the management of property and the marriage are terminated, and the persons involved lose their status as spouses. If the person in respect of whom such a court decision has been made returns or evidence of their survival appears, all property in the condition in which it existed at the time of return, everything that should have been received, as well as the value of any alienated property, is to be restored to that person; however, in such a case, the marriage is not automatically reinstated.

According to the explanations set out in paragraph 13 of the Resolution of the Plenum of the Supreme Court of Ukraine No. 5 "On Judicial Practice in Cases on Establishing Facts of Legal Significance" (1995), when considering such cases, it is necessary to distinguish between declaring an individual dead and establishing the fact of a person's death. Declaring an individual dead constitutes a judicial confirmation of the assumption of a person's death, that is, a finding of a high degree of probability of death. Thus, declaring a person dead is intended to eliminate the uncertainty that arises in legal relations involving a person who has been absent from their permanent place of residence for a long time and whose whereabouts remain unknown. The grounds for declaring a person dead are not facts that confirm a person's death, but circumstances that provide a basis for assuming it (Klychkov, 2020).

It is worth noting that the termination of an obligation upon the death of an individual, as a basis for ending an obligation, is set out in Article 608 of the Civil Code of Ukraine (2003). The law does not merely refer to the death of an individual as a ground for terminating an obligation, but specifically to the death of an individual who is a party to the obligation – either the debtor (Part 1 of Article 608) or the creditor (Part 2 of Article 608). At the same time, the current legislation does not contain a precise legal definition of the concept of "ways of protecting rights", which has generated considerable discussion among legal scholars and practitioners, and has also exacerbated challenges in judicial practice.

In Canada, a surviving spouse may request additional financial support from the deceased's estate through several procedures provided under the Family Law Act (FLA) (1986) and the Succession Law Reform Act (SLRA) (1990), including property equalisation and dependants' support relief. In cases of intestacy, the SLRA offers surviving spouses further protection by guaranteeing them a preferential share of the deceased spouse's estate. However, there remains a distinction between married and unmarried spouses in this area of law, since only married spouses are eligible for certain statutory remedies. Consequently, to obtain an equitable division of the deceased's assets, unmarried spouses must rely on the common law, typically through claims based on constructive trust or unjust enrichment. Drafting solicitors must also bear in mind that death may affect support agreements between divorced spouses; therefore, they should ensure that their clients' rights and obligations concerning support are not affected by possible claims from other dependants (Payne & Payne, 2022).

The FLA (1986) provides spouses with some protection following a partner's death and imposes restrictions on testamentary freedom. Under the FLA's property-related provisions, cohabiting partners are not considered spouses. The statutory remedies relating to personal property and the matrimonial home are available only to the surviving married spouse or their personal representative, such as a property attorney (Payne & Payne, 2022). The legislation grants the surviving spouse the right to request an equalisation of the net family property upon the death of a married spouse. Where there is a valid will, the surviving spouse may choose to waive their rights under the will in favour of equalisation of the net family property. According to the legislation (FLA, 1986; SLRA, 1990), the surviving spouse may choose to receive either equalisation or their SLRA entitlement in the event of intestacy. The bereaved spouse has full

discretion as to whether or not to accept an equalisation payment (Fera, 2024).

Regarding the gratuitous transfer of property upon death, married spouses receive additional legal protection. Gratuitous transfers are subject to a rebuttable presumption of a resulting trust under common law. The burden of proving that a gift was intended rests on the transferee in cases where a transfer is made without any consideration (for example, when a titled spouse places property in joint ownership with their partner). This presumption arises because equity presumes bargains rather than gifts. Consequently, the surviving spouse bears a significant burden of proof (Kirton-Darling, 2022).

In Australia, the Family Law Act (1975) and the Succession Act (2023) are interrelated, as demonstrated when a party to family court proceedings dies. Falconer (2020) explains the legal implications of such circumstances and the intersection of these two areas of law. When a person dies and neither party has initiated family law proceedings, estate law governs the distribution of assets. Under the relevant Act in each state and territory, if insufficient provision has been made from the estate or during the deceased's lifetime, a court may order that funds be taken from the estate for the "proper maintenance, education, or advancement in life" of a family member (Falconer, 2020).

The legislation governing family and estate law provides various protections for surviving spouses while imposing limits on testamentary freedom. It ensures that property rights and inheritance entitlements are primarily available to legally married partners, enabling them to seek an equalisation of family property upon a spouse's death. However, cohabiting partners do not enjoy the same legal status. Moreover, the law presumes that property transfers made without payment are not gifts unless proven otherwise, thereby placing the burden of proof on the recipient. Similar legal principles apply in Australia, where family and succession laws operate in tandem to ensure financial support and maintenance for surviving family members.

Rights of the deceased and posthumous perspectives. Numerous legal restrictions affirm that the deceased possesses no legal rights. Rights such as voting, marriage, and divorce terminate upon death. The executor of an estate cannot be sued for libel or slander committed by the deceased. Furthermore, the right to medical privacy is significantly diminished after death, allowing family members to access the deceased's personal health information. Nonetheless, substantial efforts have been made by various legal bodies to safeguard the interests of the deceased. As such, testamentary bequests, burial wishes, and organ donation instructions are generally upheld even when they conflict with the preferences of the living. Wills are enforced even when their provisions may adversely affect living individuals. Some jurisdictions formally recognise a posthumous right of publicity, and case law indicates the potential existence of a posthumous right to reproductive autonomy (Rainbolt, 2023).

Judges frequently employ the language of rights in cases involving benefits or harms to deceased persons, even though it may be assumed that courts occasionally use such terminology imprecisely. Nonetheless, the consistent use of rights-based language suggests that social and cultural norms guide legislators and courts to respect and honour the deceased, particularly in cases where the harm to the living is minimal (Norman, 2021). Even though laws pertaining to the deceased frequently include a practical component, cultural norms – such as respect for the intentions of the deceased and human dignity – are among the main, and often overlooked, factors that have contributed to the development of these laws. The Interest Theory approach to rights can therefore be applied in this context. According to Interest Theory, individuals who are currently unable to make decisions – such as infants and people with mental illnesses – may nevertheless possess rights. By extension, the deceased may have legal rights even though they are incapable of making decisions in the present. Additionally, certain interests can persist after death, such as the desire to see one's children live or the need to maintain one's reputation. The deceased are thus accorded de facto legal rights that can be invoked against the living when these interests are safeguarded by law. Death does not necessarily sever all interests, and consequently not all legal rights, even though only a subset of interests may survive death, and an even smaller portion may receive legal protection. As would be expected if legislators were motivated by a wish to treat the deceased with respect, the recognition of posthumous legal rights confers upon the deceased a significant moral standing within the legal system (Kurki, 2021).

Because society has chosen to uphold the concept of autonomy – within reasonable limits – the law also seeks to respect a decedent's preferences and safeguard their interests. For this reason, when determining how to dispose of a deceased person's body or property, courts frequently take the deceased's wishes into account. Naturally, even for the living, there are legal constraints on autonomy, and the legal community continually debates the precise scope of these restrictions. Because no one can contemporaneously speak to the decedent's wishes, and because the power to make decisions and alter preferences dies with them, autonomy is more restricted for the dead than for the living. These considerations provide a basis for defining the limits of post-mortem autonomy and posthumous legal rights.

Will Theorists contend that individuals possess legal rights only when they are conscious and competent to make decisions. This school of thought holds that the essence of a right lies in the rightholder's ability to make normatively significant decisions influencing the behaviour of others (Hearns, 2018). A Will Theorist would argue that the deceased cannot have rights, as they are incapable of making meaningful decisions or developing interests. According to Will Theory, even comatose or senile living persons cannot possess legal rights, as they are unable to formulate and communicate their wishes in a manner that would allow them to exercise such rights (Hearns, 2018). This is not to suggest, however, that entities or individuals incapable of possessing legal rights cannot receive legal protection. Although a Will Theorist might believe that the dead, senile, or comatose should be afforded legal protection, they would not describe these protections as legal rights – or at least not as rights that the deceased, senile, or comatose person themselves possess. Rather, a Will Theorist would contend that rules that appear to grant the deceased posthumous rights are in fact intended to regulate the conduct of living individuals. An Interest Theorist, on the other hand, would allow for the conclusion that an individual who lacks the capacity to make decisions – such as a person who is unconscious – might nonetheless possess legal rights because they still have interests, even if they are unable to articulate them (Hearns, 2018).

For example, in the case of Terri Schiavo, who was in a persistent vegetative state and considered non-sentient by most medical professionals, Interest Theorists would argue that she still possessed legal rights despite her inability to express them. The legal proceedings surrounding her case appeared to support this view, as the judge acknowledged her potential legal interests, even though she was unable to make decisions or communicate her wishes (Charatan, 2005).

Because society has chosen to uphold the principle of autonomy – within reasonable limits – the law also aims to respect a decedent's preferences and safeguard their interests. For this reason, when determining how to dispose of a deceased person's body or property, courts frequently take the deceased's wishes into account (Klasiček, 2023). Even for the living, there are, of course, legal restrictions on autonomy, and the law is continually debating the precise extent of these restrictions. Because no one can contemporaneously speak for the decedent's wishes, and because the power to make decisions and alter preferences dies with them, autonomy is more restricted for the dead than for the living.

For a group of individuals, death is a fact that results in the acquisition of rights and duties. Verification of death, including the establishment of property rights and obligations which extend beyond inheritance to heirs, is the first step in several legal processes. According to Alikaj (2014), several other legal relationships end with the dissolution of marriage. The most common example of a personal legal relationship that terminates with the death of one partner is marriage. The Family Codes generally define death and the acknowledgement of death as a ground for ending a marriage. Similarly, parental obligations established through adoption or natural parentage end with the death of the individual. In the case of an adoptive candidate's death, the adoption institution presents an unusual situation in which the adoption process may still be successfully completed, and the adopted child's rights are thereby acquired (Willems, 2017).

In addition to a person's natural death, which results from the cessation of all physiological functions, laws also provide for civil death, which is based on a presumed natural death. Even civil deaths must be reported to the state civil authorities, just as natural deaths are (Upadhyay, 2021).

A person can be declared dead in one of two ways: either naturally, as confirmed by a medical certificate, or civilly, as confirmed by a court ruling that declares the individual deceased. According to the Law of the Republic of Albania No. 7870/1994 (1994) for example, if a person goes missing during a natural disaster or under circumstances that suggest their death, the court may declare them deceased if no communication has been received from them for two years following the disaster, even if they had not previously been reported missing (Alikaj, 2014).

As a result of the act of death and the individual's registration in the death record, the person is removed from certain public registers, such as electoral or tax authority registers. Civil death, however, is associated with ambiguity, unlike natural death. The law allows the individual who has been declared dead to reappear, even though the legal consequences remain the same. When an individual who was pronounced dead turns out to be alive, they or any other interested party may apply to the court that issued the death certificate to have the declaration of death revoked. When a person who has been declared dead is found to be alive, they are entitled to recover all property and rights held prior to their presumed death, with the exception of marriage, which can only be reinstated if the spouse has not entered into a new marriage.

The employment-law relationships that arise after someone has been declared dead are of particular importance. This primarily concerns what happens if one of the parties to an employment contract dies. Even though the issue is rarely addressed, it warrants consideration, particularly in cases involving individual employers, as the death of a party during an employment relationship may have unforeseen consequences. However, it is uncommon for this matter to be covered by any clause in the employment contract; as a result, the heirs of the employer or employee who dies prematurely often encounter a contract that says nothing about the situation (Cabrelli, 2020).

Naturally, the question of the contract's continuation does not arise in the case of the employee's death. This does not, however, negate the employer's obligation to consider how to deliver the required documentation and payments owed at the conclusion of the contract. Unless the money is to be deposited into the account normally used for salary payments, the employer should promptly contact the notary appointed to the estate to settle at least the outstanding sums.

However, the legal provisions concerning the contract's termination must be considered more broadly in the case of an individual employer's death. Several factors may be taken into account if there is no specific law governing the matter (Zawadzka, 2024). One of the most significant questions in this context is whether the employment contract automatically transfers to the employer's heirs (Trabsky & Jones, 2024).

According to rulings by the Monegasque courts, the death of the employer does not necessarily constitute a case of force majeure that automatically terminates the employment contract, as it does not always render the performance of the contract impossible. The employer's heirs may therefore continue the contractual relationship. Consequently, if the heirs do not provide justification for such impossibility, the employer's death cannot, by itself, be considered to have terminated the employment contract; rather, it must be explicitly invoked as a valid reason for termination – the contract having lost an essential element of its existence – in order for the termination to be deemed legitimate. Following the initial containment measures implemented to address the COVID-19 epidemic, the Supreme Court heard an appeal for annulment on the grounds that a law governing unfair dismissal was unconstitutional. The court also confirmed that the death of the employer constituted one of the grounds for terminating the employment contract, as the basis of the contractual relationship had ceased to exist.

In the Republic of South Africa, an employment relationship ends by operation of law (Employment Law in South Africa, 2023) when the employer dies, relieving both parties of their contractual obligations. Employers or sole proprietors who enter into employment contracts in their individual capacity are the sole drivers of their businesses, and their death not only signifies the end of an era but also raises serious concerns regarding the rights and benefits of their employees. One of the most frequently misinterpreted issues is that of severance packages – those essential safety nets designed to mitigate the effects of a no-fault job loss. A key question is whether employees are, however, entitled to severance benefits in the event of an employer's death and

whether such provisions can apply to sole proprietors who conclude employment contracts in their personal capacity (Stelzner *et al.*, 2021).

In South Africa, dismissals based on operational requirements are governed by Sections 189 and 189A of the South African Labour Relations Act (LRA) (1995). Employees dismissed for operational reasons are entitled to severance pay equivalent to at least one week's remuneration for each year of continuous employment with that employer, according to Section 41(2) of the South Africa Conditions of Employment Act (BCEA) (1997). In this context, "operational requirements" are defined by Section 41(1) of the BCEA as requirements arising from an employer's structural, technical, economic, or similar needs. In conclusion, severance pay is only due in cases where the employee is dismissed for operational reasons. An employment contract does not automatically terminate upon the employer's death. In certain circumstances, the provisions of contract law may still apply, rendering the agreement enforceable. Moreover, upon the employer's death, the executor of the deceased's estate assumes responsibility for the deceased's assets, including employmentrelated matters. This principle, however, does not apply where the services are of a personal nature. In such cases, performance becomes impossible, and the contract terminates with the employer's death. Where the employer dies during the term of the contract, the contract is terminated due to objective impossibility of performance (Smith & Plaatjies, 2024).

In the case of Meyers / Estate Late Dr Gordon (Stelzner *et al.*, 2021), an employee's employment was terminated following the death of the physician for whom she worked. The employee filed a claim against the estate of her late employer for severance pay for ten years of service and for a thirteenth-month salary. As the employment relationship ended by operation of law rather than for operational reasons, the Commission for Conciliation, Mediation and Arbitration (CCMA) ruled that an employee whose employment is terminated by the death of their employer is not entitled to severance pay.

In the UK, an employee's death immediately ends their contract of employment (Judgment of the Court of Common Pleas of England, 1869). However, the personal representatives of the deceased employee may pursue any outstanding claims under the ERA 1996 (with a few limitations, such as the entitlement to a written statement of employment particulars). The Court of Appeal has held that the personal representative of a claimant may pursue a claim for compensation for racial discrimination (Judgment of the United Kingdom Appeal Tribunal, 1999), despite there being no express provision for the commencement or continuation of such claims. It would appear that this principle would also apply to pending claims for compensation for discrimination on any of the other protected grounds. Since there would have been no dismissal, there can be no claim for unfair dismissal (Bear, 2023). This is a general matter of contract law with regard to any settlement agreement and the payment in lieu of notice or termination payment agreed upon therein. Any cause of action that has accrued to either party prior to the employee's death remains enforceable (Judgment of the United Kingdom Court of Exchequer, 1867), but no claim may be made to enforce rights that would arise only after that date. A claim for the employee's salary or earnings up to the date of death exists where either party dies. However, it may be argued that the employee's estate would not be entitled to the PILON or termination payment, as these had not yet accrued. Since the employee was in service at the time of death, the estate would be entitled to any death-in-service benefits for which the employee qualified (Bear, 2023).

The death of an employer frustrates and therefore terminates the employment contracts of all the employer's workers under common law, where the employer is a natural person rather than a legal entity such as a company or partnership. Ownership of the business automatically passes to the deceased's personal representatives, who, except for maintaining the business in order to sell it as a going concern, lack the authority to continue its operations. However, the deceased may expressly or impliedly empower their personal representatives to continue the business through their will. This authority is generally implied from the standard clause granting executors the power to postpone the sale of the whole or part of the deceased's estate (Zawadzka, 2024).

With regard to employment relations in Ukraine, it should be noted that on 9 July 2022, the Law of Ukraine dated 1 July 2022, No. 2352-IX "On Amendments to Certain Laws of Ukraine Regarding the Optimisation of Labor Relations", entered into force. This law introduced changes to Ukraine's labour legislation, particularly under the conditions of martial law. An employee who becomes aware of the death of an individual employer, or of a court decision declaring such an individual missing or deceased, must submit an application to any district, city-district, city, or regional employment centre, stating the relevant information and, where available, providing copies of documents confirming the death or the relevant court decision (for example, a copy of a death certificate or court ruling). The date on which the employment contract is terminated is considered to be the day on which such an application is submitted.

The recognition of a foreign death certificate in another country is another pressing issue of global significance. The following question arises in relation to the aforementioned example. Suppose that, in the exercise of its authority, one of the nations A–F has declared the missing individual to be deceased. The nations that were initially involved, or even other countries, may be required, for various reasons, to accept such a declaration of death as proof of the missing person's passing. Certain nations (such as Austria, Hungary, and Italy) do not recognise a death certificate issued by a foreign court for one of their citizens. Other nations (such as Belgium and Luxembourg) leave the matter to the discretion of the trial court. The issue remains under discussion in many countries.

Lastly, it should be emphasised that, although laws relating to the deceased frequently have a practical component, cultural norms – such as respect for the wishes of the deceased and human dignity – are among the primary yet often unacknowledged factors influencing their development. Death may not necessarily result in the loss of all interests, and hence all legal rights, even though only a subset of interests may survive death, and an even smaller proportion may be legally preserved. As would be expected if legislators are motivated by a desire to treat the deceased with respect, the recognition of posthumous legal rights confers upon the deceased a considerable moral standing within the legal systems of ethically advanced nations.

As previously mentioned, the law seeks to honour a decedent's intentions and preserve their interests, since society has chosen to uphold the notion of autonomy within certain

boundaries. Courts typically consider a decedent's wishes when deciding how to dispose of their body or possessions (Klasiček, 2023). Of course, there are legal limits to autonomy, even for the living, and the law is continually grappling with the precise boundaries of these constraints. Autonomy is more limited in the dead than in the living for two reasons: no one can speak about the deceased's wishes in real time, and the ability to make choices and alter preferences ceases upon death. In this regard, establishing the boundaries of both post-mortem autonomy and posthumous legal rights is an important task in modern legal research.

Model of a multidisciplinary approach. Distinguishing between circumstances in which the deceased has a posthumous right and those in which they merely benefit without being the legal right-holder is the final issue concerning posthumous rights. A living person may, on occasion, possess a right that, in some way, benefits a deceased person when it is enforced. Because the deceased benefits in such circumstances, it is easy to assume that the law is conferring a posthumous right. The deceased, however, is only a third-party beneficiary in practice.

In circumstances involving deceased persons, the deceased, their estate, heirs, the general public, and the next of kin may all be potential right-holders. It can sometimes be difficult to distinguish the right-holder from third-party beneficiaries and other interested parties. For instance, although wrongful death lawsuits may appear to grant rights to the deceased, the true holder of these rights is usually the decedent's next of kin. Because the right to bring an action for wrongful death belongs to the next of kin, the deceased cannot properly be described as the right-holder, even though such a rule may serve their interests in retribution or the well-being of their heirs. Those who are granted standing to bring an action, those who receive the remedy, and those whom the court recognises as the right-holders are all indicators of who the actual right-holder is.

Another example of a right that appears to cease upon death is the right to marry. Obviously, a deceased person does not have the right to marry. It is physically impossible for someone who is deceased to take the vows required to enter into a legal marriage (with the possible exception of France, which permits posthumous marriages) (Allard & Murin, 2017). Some of the benefits of marriage, however, continue after death, even though the ability to marry and the marriage itself expire. In contrast to the right to vote, an analysis of the posthumous advantages of marriage helps to explain why the law may recognise some posthumous rights in a limited way while completely prohibiting others. When one spouse dies, the marriage and most of its associated legal rights and obligations are terminated. However, not all of a marriage's legal benefits and obligations end with death. For instance, some couples may benefit from the tax advantages of marriage by continuing to file taxes jointly for up to two years following the death of a spouse. Even if the surviving spouse has never been employed, they may still be eligible for social security payments upon the death of the wage-earning partner. In addition, when an estate passes entirely to a spouse upon death, it is exempt from estate tax obligations. Many of these provisions correspond with the presumed wishes of the deceased, but they also serve to benefit the surviving spouse.

The right to vote is another illustration of how rights terminate upon death. A person's right to vote ends shortly after their death when their name is removed from the register of voters. Since a deceased person cannot develop a preference for a particular candidate after death, it is reasonable in many respects to remove their name from the list. Voters must be competent in order to exercise their right to vote, meaning they must demonstrate a certain level of cognitive capacity. A person cannot form preferences for candidates or the intention to complete and cast a ballot without this fundamental level of cognitive functioning. In short, posthumous voting rights are untenable, as their exercise is impossible. Physical impossibility is a second type of impossibility. It would be difficult for a deceased person to cast a ballot in person at a polling station or to complete and submit a postal ballot, even if they had developed voting preferences while still alive and wished for them to continue after death. Despite physical impossibility and incapacity, it is nevertheless conceivable to imagine a hypothetical situation in which granting a deceased person the ability to vote might appear feasible. In theory, a person might specify in their will that they wish to vote Conservative after death. Their will could instruct the executor of the estate to vote on their behalf each year for all Conservative candidates. It would appear that an unwritten principle – that the deceased do not possess the right to vote – would be the only basis for finding such a clause unconstitutional, provided it did not contravene the rule against perpetuities. Perhaps the law should respect a decedent's voting intentions if it respects other pre-mortem wishes after death. Of course, this approach could raise difficulties. Since the deceased do not bear the consequences of their decisions, one may argue against posthumous voting rights. This detachment could distort their choices, potentially producing harmful effects on society. This is problematic and is probably what prevents posthumous voting. The law is less likely to respect the autonomy of the deceased when their interests conflict with those of the living.

The constitutional right to reproductive autonomy provides another illustration. According to the U.S. Constitution (1787), American citizens are entitled to reproductive autonomy as a fundamental constitutional right. Broadly speaking, it encompasses the rights to abortion, contraception, and other reproductive freedoms. Posthumous reproduction has become feasible due to advances in reproductive technology in recent years, leading to a variety of previously unimaginable circumstances. The use of frozen sperm following the donor's death and the delivery of children by brain-dead mothers are two of the most significant and frequently discussed forms of posthumous reproduction.

Because it appears to undermine the concept of rights and attribute to the body an ontological status that defies reason, the idea of rights belonging to a corpse might provoke disbelief. Conversely, it may be shown that the "social corpse" is created as a repository of value and meaning, remaining human and, in a social sense, alive. Appropriate obligations towards the deceased indicate that the rights arising from those obligations are an integral part of them.

Therefore, the claim that a corpse is no longer an essential component of a human being and that it is not entitled to legal human rights is no longer persuasive. Furthermore, as medical and technological advances have made it possible for machines to keep hearts beating and lungs functioning almost indefinitely, it has become necessary to redefine the notion of death. The concept of brain death emerged as a potential solution, despite its own uncertainties. The

uncertainty surrounding the time of death has been brought to light by organ harvesting, but the ability to identify this moment is equally crucial for family members and caregivers, who must decide how long to keep a patient on life support and when to withdraw the devices. Thus, a contemporary concept of a legal "lens" for considering the declaration of death and the implementation of the corpse's rights can be depicted schematically (Fig. 1).

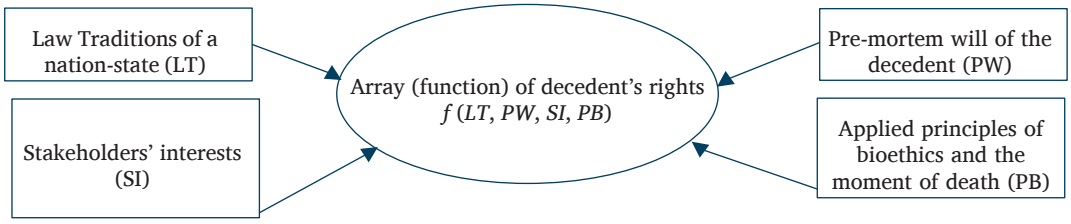

Figure 1. Contemporary concept of a decedent's rights

Source: developed by the authors

Conflict between the interests of the living and the dead is the final, and sometimes most complex, consideration when deciding whether the deceased should possess a specific right. In certain situations, courts appear to apply an implicit balancing test to determine whether the interests of a living person outweigh those of a deceased person, even when those interests would not typically override the autonomy of a living individual.

Conclusions

This study examined the legal consequences of declaring an individual deceased within the framework of civil, family, and labour law, adopting a multidisciplinary and comparative approach. Despite certain limitations – such as the scarcity of published statistical data and restricted access to some judicial decisions – the research achieved its primary aim: to identify the legal implications of such declarations and conceptualise them within the modern posthuman rights paradigm.

The analysis of national and international legislation revealed that the declaration of death functions as a crucial legal mechanism ensuring the continuity of civil circulation, the protection of property and family rights, and the regulation of employment relations. It was found that Ukrainian legislation, while generally consistent with global standards, remains fragmented in both procedural and substantive aspects. The study demonstrated that legislative amendments adopted during wartime simplified death registration procedures but also exposed notable deficiencies in evidentiary verification and in the recognition of foreign certificates. These findings underscore the need for a more coherent legal framework that balances legal certainty with humanitarian considerations.

Comparative analysis showed that different jurisdictions interpret and regulate the declaration of death through diverse legal doctrines, reflecting distinct socio-cultural and ethical traditions. Examination of the civil, family, and labour consequences of death indicated that this legal fact terminates personal non-property relations yet generates new rights and obligations, particularly in inheritance and succession law. The research further established that contemporary legal scholarship increasingly recognises the persistence of certain interests after death, thereby supporting the Interest Theory of Rights, according to which posthumous rights may be legally acknowledged and safeguarded.

The results of this study contribute to the conceptual understanding of posthumous legal personality. The identified legal patterns allow the conclusion that the phenomenon of declaring an individual deceased is not merely a procedural instrument but also a reflection of evolving moral, ethical, and social values embedded in modern legal systems. Conceptually, these findings demonstrate that death, as a legal fact, extends beyond biological cessation and continues to influence the dynamics of legal relations and the preservation of individual dignity.

In summary, the research provides a foundation for further theoretical and legislative inquiry into posthumous rights. Future studies should aim to refine the legal definitions of death, develop unified standards for cross-border recognition of death declarations, and explore the ethical implications of digital and informational posthumous identities.

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Оголошення особи померлою: проблемні аспекти в контексті цивільних, трудових та сімейних правовідносин

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Анотація. Дискурс пост-людських прав певним чином змінюють саму парадигму як правової констатації смерті людини, так і ставлення до імплікацій такої констатації. Розгляд сучасного стану та векторів розвитку правового розуміння та відповідних законодавчих положень оголошення людини померлою стає вкрай актуальною задачею наукового і практичного характеру. Дослідження юридичних аспектів смерті людини дозволяє розширити пізнання про відносини і зв'язки, що існують у суспільстві. На основі бібліографічного методу аналізу, порівняльно-правового та логічного методу в роботі розглянуто пост-людську концепцію визнання і оголошення людини померлою, а також прав людини оголошеної померлою, зокрема в рамках теорії волі та теорії інтересу. Показано, що ці дві теорії у пост-людській парадигмі знаходяться у певному протиріччі, опозиції одна до одної. У розрізі правових систем та правових традицій різних країн досліджено цивільно-правові наслідки оголошення фізичної особи померлою, розглянуто особливості зміни або припинення майнових та особистих немайнових правовідносин як наслідок оголошення фізичної особи померлою. Наголошується, що філософські основи поняття «права» необхідно враховувати при визначенні правових наслідків оголошення особи померлою – зокрема, посмертні юридичні права є одним із стрижневих векторів такого розгляду. Запропоновано схему концептуального бачення прав покійного з урахуванням пост-людського вектору розвитку правових концепцій прав людини. Результати дослідження розширюють масив складових елементів правового осмислення смерті людини як юридичного факту, а також її правових наслідків

Ключові слова: правовий статус; права; пост-людська концепція прав людини; теорія волі; теорія інтересу; громадянська смерть

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Conflicts between civil, labour and family law provisions: Ways to improve legal regulation

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Abstract. The relevance of the study lies in the existence of numerous conflicts between the norms of civil, labour and family law in Ukraine, which complicate law enforcement, create contradictory judicial practice and reduce the level of trust in the legal system. The aim of this work was to identify the most significant conflicts in these areas of law and to formulate practical proposals for their elimination or minimisation of negative consequences. The study used a method of paired comparisons based on the preference of options in combination with expert analysis. This methodological combination ensured an objective ranking of the identified conflicts and their generalisation based on the professional experience of experts. Nine legal conflicts were analysed, three for each area of law. Based on a survey of fifteen experts from various fields of law, a matrix of pairwise comparisons was formed and weighting coefficients of significance were calculated. It was established that in the field of civil law, the most significant conflict is that concerning the civil capacity of minors. In labour law, the key issue identified is the dismissal of pregnant women and mothers with young children. In family law, the priority is the conflict concerning the regime of marital property in the context of corporate rights. As a result, specific areas for improving legislation were proposed, taking into account the results of modelling and expert analysis. The results of the study can be used in the development of draft laws, as well as in the law enforcement practice of judicial system employees, scientists and lawyers in the process of harmonising legal norms and strengthening legal security

Keywords: conflicts of legislation; civil law; labour law; family law; paired comparison method; expert analysis; harmonisation

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Introduction

The legal system of Ukraine is undergoing constant reform, driven both by internal socio-economic transformations and the need to harmonise with European standards. However, alongside positive developments, there has been an increase in legal conflicts between the norms of individual branches of law, in particular civil, labour and family law. Such contradictions lead to complications in law enforcement practice, ambiguous interpretation of legal norms, legal uncertainty and a decline in trust in the judicial system.

Particularly noticeable is the inconsistency between the provisions of the Civil Code of Ukraine (2003), the Labour Code of Ukraine (1971) and the Family Code of Ukraine (2002), which, despite their systemic importance, do not always form a consistent approach to identical or related legal relationships. For example, the provisions of Articles 32-34 of the Civil Code of Ukraine (2003) on the partial civil capacity of minors are not always consistent with the provisions of Articles 6, 8 and 17 of the Family Code of Ukraine (2002), which define the legal status of children, parents and guardians. In turn, Article 184 of the Labour Code of Ukraine (1971) prohibits the dismissal of pregnant women and women with children under three years of age, but in practice its application conflicts with the general grounds for termination of employment provided for in Article 40 of the Code.

Similar conflicts are recorded in matters of guardianship, inheritance, marital property regime, social guarantees for part-time work, remote work, and alimony obligations. Such conflicts between legal norms or between laws and subordinate acts create situations in which practising lawyers, courts and other law enforcement agencies are forced to decide for themselves which norms take precedence. This, in turn, contributes to inconsistencies in judicial practice and, in some cases, to violations of the principle of legal certainty and predictability of decisions.

Contemporary conflict of laws in Ukrainian law is developing at the intersection of general theoretical approaches and applied research in specific areas. The conceptual foundations of this direction are concisely and consistently set out in the work of V. Zvonarov (2021), where conflicts are viewed as an inevitable product of the evolution of the legal system, institutional changes and multi-level rule-making. The author distinguishes between types of conflicts based on their sources and level of hierarchy, and emphasises the importance of methodological rigour in their identification and classification. The theoretical framework is further developed by S. Priyma and M. Erofeeva (2022), who clarify the concept of legal conflict, the conditions for its occurrence, and its distinction from gaps and competition between legal norms. It should be noted that the authors emphasise the communicative dimension of law-making, where inconsistencies in terminology and technical and legal techniques lead to differences in interpretation. This conclusion directly correlates with the conflicts identified in the manuscript between related fields, where terminological uncertainty is often the trigger for conflict.

I. Shchutak's (2017) contribution to legal technique is noteworthy: the author proposes a system of priorities and requirements for the linguistic, logical and structural integrity of normative acts in order to prevent collisions *ex ante*. It should be noted that the approach to preventive standardisation of law-making technique directly reinforces the conflict prioritisation tools selected in the manuscript. Ya. Bernaziuk (2022) believes that the application of the principle of specificity in judicial practice demonstrates how *lex specialis* ensures the predictability and uniformity of the application of law in the presence of general and special norms, while requiring the court to carefully establish the limits of speciality. Taken together, its results form the methodological basis for choosing between priority rules, which is a necessary foundation for harmonising the intersection of civil, labour and family law.

The study by O. Khotynska-Nor and K. Lehkikh (2024) presents practices for resolving conflicts in court proceedings, showing how courts establish a hierarchy of criteria for the priority of norms, taking into account subject matter, time of adoption, and systemic connections. It should be noted that the authors clearly identify the variability of approaches even at the level of the court of cassation, which complicates the formation of uniform practice.

In public administration, O. Strelchenko *et al.* (2024) show that conflicts arise not only between laws, but also between laws and subordinate acts, particularly in matters of competence, procedural regulations and the division of responsibilities between authorities. For the family-civil intersection, the analysis by O. Reznik and Yu. Yakushenko (2020) on surrogacy is illustrative. The authors describe the contradictions between private law contract structures, public law restrictions and medical standards, and emphasise the need for a clear definition of the status of subjects and legal consequences for the child, parents and medical institutions. This clearly illustrates that conflicts between norms in different sectors are often interdisciplinary in nature and cannot be resolved simply by applying a single rule of priority. An additional but fundamentally important vector is local rule-making. Y. Lenger (2021) shows how local government acts conflict with higher-level legal acts due to duplication, erroneous reference norms and excessive casuistry. Combined with conclusions about defects in legal technique, this confirms the need for vertical coordination and verification of the compliance of subordinate acts with basic codes, which directly resonates with the priority conflicts outlined in the manuscript for labour and family law.

In conditions of martial law and the transformation of the legal order, the emergence of new conflicts between bodies of law is accelerating. E. Orzhynska *et al.* (2024), reviewing the practice of international humanitarian law in relation to the conduct of war, points to the integrative nature of regulation, where the norms of constitutional, criminal, administrative and international law intersect in the process of qualifying acts, bringing to justice and protecting human rights. This context reinforces the arguments in favour of

institutionalising permanent mechanisms for conflict monitoring and periodic review of sectoral codes, as rapid changes in the socio-legal environment increase the likelihood of horizontal and subordinate conflicts.

The aim of the study was to identify the most critical conflicts between the norms of civil, labour and family law in Ukraine, to substantiate their impact on the legal system and to propose tools for their harmonisation through an analysis of the significance of each of them using the method of paired comparisons and expert assessment.

Materials and methods

The methodological tools used in this study consisted of quantitative and qualitative methods of analysing conflicts of legal norms. It was based on two complementary approaches: the method of paired comparisons by preference of options and expert analysis. The use of such a multidimensional methodology made it possible to assess the contradictory aspects of civil, labour and family law more objectively and comprehensively. The object of the study was the legal norms of civil, labour and family legislation of Ukraine, which in the process of law enforcement contradict each other and create conflict situations. The subject of the study was the conflicts between these norms, as well as formalised approaches to determining their priority, taking into account legal practice and expert opinion. The material basis of the study also includes the provisions of the Labour Code of Ukraine (1971), Article 1216 of the Civil Code of Ukraine (2003), and Article 7 of the Family Code of Ukraine (2002), which contain contradictions that are subject to conflict analysis.

In addition, special legal methods characteristic of legal conflict of laws were used in the study. This means that the analysis of conflicts was carried out not only in general terms, but also with the specification of normative provisions. For each identified contradiction, the articles of the Civil Code of Ukraine (2003), Labour Code of Ukraine (1971) and Family Code of Ukraine (2002) were identified, the legal content of the contradiction (subjects, objects and consequences) was determined, and its nature (lexical, chronological, subordination, vertical or horizontal) was substantiated (Bernaziuk *et al.*, 2022).

The use of the paired comparison method based on the preference of options provided a tool for formal assessment of the importance and priority of the objects selected for analysis. These objects are represented by conflicts in legislation, and their importance has been compared. The analysis was carried out by identifying specific articles, determining the legal content of the contradiction, classifying its nature (subordinate or horizontal conflict) and justifying ways to overcome it based on the principles of speciality, priority of the newer norm or act of higher legal force. Thus, experts assessed the extent to which collision A is more or less significant than collision B. To make such a comparison, a scale was formed: from equal impact (value 1), significant weight advantage (values 3, 5, 7, 9) intermediate values (2, 4, 6, 8), and inverse values (1/2, 1/3, etc.), which meant the presence of a conflict. Subsequently, a matrix of pairwise comparisons was formed, the components of which were assessments of the advantage of one conflict over another. After forming the matrix, mathematical calculations were performed to determine the geometric mean of the elements of each row and their normalisation using weighting coefficients. The collision with the highest weighting coefficient has the highest priority. In summary, the methodology is implemented using the following algorithm:

1. If collision A is significantly more important than collision B, the expert assigns a value from 3 to 9 (increasing by 1).

2. If collision A is slightly more important than collision B, the value may be 2.

3. If the collisions are equally important, the value is 1.

4. If collision A is less important than collision B, the inverse value from 1/2 to 1/9 is taken.

An expert group of 15 people was formed for the assessment: five experts in civil law, including representatives of law firms, professors and academic staff in the field of law, as well as judges; five experts in labour law, including representatives of trade unions and civil servants responsible for regulating labour relations; five experts in family law (judges who mainly dealt with family disputes, lawyers whose practice is largely related to family law, and academics whose field of research is family law). A questionnaire describing each potential conflict was prepared for the expert analysis. Each expert received this questionnaire remotely (in electronic format), which simplified the data collection process and allowed experts from different regions of the country to be involved. Once the data collection was complete, all assessments were compiled into three paired comparison matrices – separately for civil, labour and family conflicts. The recommendations of ICC/ESOMAR (2025) were taken into account when engaging experts. Next, geometric means were calculated for each row and weighting coefficients were determined. This made it possible to clearly establish which conflict in each branch of law is the most significant according to the aggregate expert opinion.

Results

The following conflicts were identified during joint discussions with civil law experts, lawyers and representatives of the scientific community. During expert interviews, a list of the most pressing conflicts was compiled, which often cause difficulties in the practical application of the Civil Code of Ukraine (2003) and accompanying laws. In the field of labour law, experts (representatives of state bodies, trade unions, employers, practising lawyers) identified the following conflicts that most often create problems in the regulation of labour relations. This also applies to conflicts in family law (Family Code of Ukraine, 2002). Each category of conflicts has been assigned a corresponding designation for further modelling (Table 1).

After forming the paired comparison matrix, the weighting coefficients (priorities) for each collision are calculated. One of the common algorithms is to use the geometric means of the products of the scores per row and then normalise (w_i) the resulting values. Based on the calculation results, the collisions are ordered by decreasing (or increasing) weighting coefficients. The collision with the highest w_i is considered the most substantial. The results of the modelling for each category of collision must be determined separately. Begin with the collisions between the norms of Civil Law (Table 2).

Table 1. Identified conflicts between civil, labour and family law provisions

Points	Assessment measurement	Family law (C1-C3)
L1. Civil capacity of minors (Conflict between the provisions of Article 31 and Article 32 of the Civil Code of Ukraine (2003) and Article 177 of the Family Code of Ukraine (2002) regarding the conditions and grounds for granting minors the right to independently perform legal acts – discrepancies in the requirements for the consent of legal representatives and the limits of such legal acts)	T1. Adoption and guardianship: different procedures and requirements (Conflict between the rules prohibiting the dismissal of certain categories of employees, as expressly provided for in Article 184 of the Labour Code of Ukraine (1971), and the general rules for the termination of employment contracts regarding the exhaustiveness of grounds, procedural guarantees and uniform application)	C1. Adoption and guardianship: different procedures and requirements (Conflict between the general provisions of the Family Code of Ukraine (2002) as provided for in Article 207 and Articles 217-220, 229-231 (adoption) and Articles 243-246 (guardianship and care) and the requirements of subordinate legislation and departmental instructions regarding procedures, stages of registration and the list of documents)
L2. Compensation for non-pecuniary damage (Conflict between the general norms of the Civil Code of Ukraine (2003) regarding compensation for non-pecuniary damage and special norms concerning the types of entities entitled to compensation and the grounds, size, and procedure for compensation, for example, Article 56 of the Constitution of Ukraine.)	T2. Part-Time work and social guarantees (Conflict of norms regarding the provision of social guarantees and insurance rules, as set out in Article 56 of the Labour Code of Ukraine (1971), and the calculation of payments to employees working part-time.)	C2. Alimony obligations and material assistance (Conflict between the rules determining the order and amount of payments in the case of multiple recipients, as defined in Article 60 (and, where necessary, Articles 57 and 61) of the Family Code of Ukraine (2002), and the various forms of employment of the payer, which leads to different interpretations of the order of payment)
L3. Succession and contract of maintenance for life (Conflict between the general norms of the Civil Code of Ukraine concerning succession and special rules governing the contract of maintenance for life with priority given to the provisions regulated by Articles 744, 748, 749, 751-756 of the Civil Code of Ukraine.)	T3. Regulation of remote working (Conflict between norms regarding health and safety protection and working time accounting, as set out in Articles 60.1 (home-based work) and 60.2 (remote work) of the Labour Code of Ukraine (1971), and control over the performance of work by remote employees.)	C3. Regime of separate and joint marital property (Conflict between Article 60 of the Family Code of Ukraine (2002) and Articles 96-1 of the Civil Code of Ukraine (2003) regarding the legal regime of corporate rights, securities, and similar assets.)

Source: compiled by the authors

Table 2. Summary matrix of expert assessments (averaged) regarding conflicts between civil law provisions

	*L*1-*L*3		
*L*1-*L*3	*Li*	*L*1	*L*2	*L*3
	*L*1	[1]	[2]	[3]
	*L*2	[1/2]	[1]	[2]
	*L*3	[1/3]	[1/2]	[1]

Source: compiled by the authors

1) $L_{12} = 2$ means that conflict *L*1 (civil capacity of minors) is on average twice as significant as *L*2 (compensation for moral damage).

2) $L_{13} = 3$ means that conflict *L*1 is three times more significant than *L*3.

3) $L_{23} = 2 +$ means that *L*2 is twice as significant as *L*3.

For each row of the matrix, the product of its elements is calculated and the *n*-th root is found (here n = 3): *L*1 = 1.81. *L*2 = 1. *L*3 = 0.55. After that, it is necessary to calculate the sum of these geometric means (S_C):

$$S_C = 1.817 + 1 + 0.55 = 3.367. \quad (1)$$

Accordingly, the weight coefficients are: $w_{L1} = 0.54$; $w_{L2} = 0.3$; $w_{L3} = 0.16$. Now, similarly, form a matrix for conflicts between labour law provisions (Table 3).

Table 3. Matrix summarising expert assessments (averaged) of conflicts between civil law provisions

	*T*1-*T*3			
*T*1-*T*3	*Ti*	*T*1	*T*2	*T*3
	*T*1	[1]	[3]	[2]
	*T*2	[1/3]	[1]	[1/2]
	*T*3	[1/2]	[2]	[1]

Source: compiled by the authors

For each row of the matrix, the product of its elements was calculated and the cube root was found (since n = 3). The resulting geometric mean values were: *L*1 = 1.8, *L*2 = 0.55, *L*3 = 1. Next, their sum was determined, which is $S_C = 3.3$. On this basis, the weight coefficients were calculated: $w_{L1} = 0.55$; $w_{L2} = 0.15$; $w_{L3} = 0.3$, reflecting the relative

importance of each criterion within the matrix. After that, a matrix was formed using a similar procedure to analyse conflicts between family law norms (Table 4).

For each row of the matrix, the product of its elements is calculated and the n-th root is found (here n = 3): $L1 = 1$. $L2 = 0.53$. $L3 = 1.88$. Next, the sum of these geometric means is calculated: $S_C = 3.37$. Accordingly, the weight coefficients are: $w_{L1} = 0.33$; $w_{L2} = 0.17$; $w_{L3} = 0.5$. This indicates the varying degrees of influence of the respective conflicts in the family law system. The analysis showed that the contradiction regarding the regime of separate and joint property of spouses has the greatest weight among those considered, after which the results were compared with similar calculations in civil and labour law.

Thus, in each branch of law (civil, labour, family), the most critical conflict was identified (based on the results of paired comparisons):

1. Civil law: *L*1 – Civil capacity of minors.
2. Labour law: T1 – Procedure for the dismissal of pregnant women and women with young children.
3. Family law: C3 – Regime of separate and joint marital property (Fig. 1).

Table 4. Matrix summarising expert assessments (averaged) of conflicts between civil law provisions

*C*1-*C*3	*C*1-*C*3		
Ti	*T*1	*T*2	*T*3
*T*1	[1]	[2]	[1/2]
*T*2	[1/2]	[1]	[1/3]
*T*3	[2]	[3]	[1]

Source: compiled by the authors

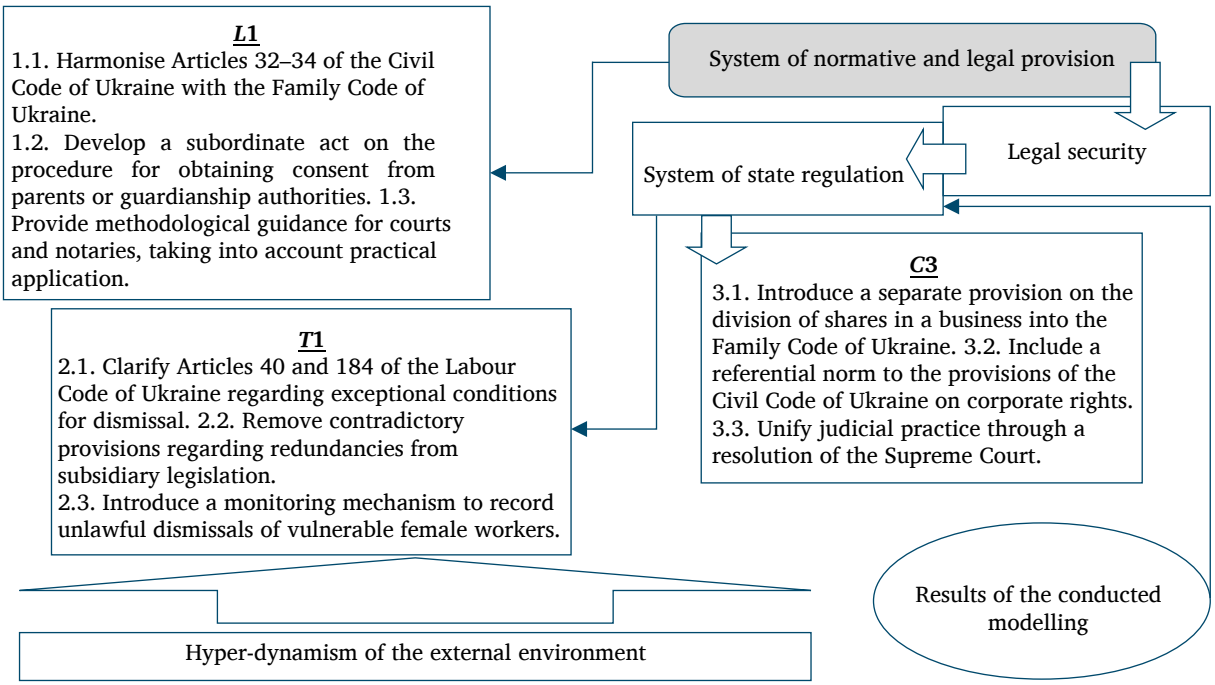

Figure 1. Mechanism for improving legal regulation to minimise the most significant conflicts between civil, labour and family law provisions

Source: compiled by the authors

Harmonisation of Articles 32-34 of the Civil Code of Ukraine (2003) with the Family Code of Ukraine (2002) should consist of a single definition of the limits of independent legal transactions by minors and identical requirements for the consent of legal representatives. It is advisable to include in Article 32 an exhaustive list of transactions that a minor may perform without parental consent, such as minor everyday transactions, disposal of their own earnings or scholarships, and to establish a threshold for the value of property transactions without consent, expressed in terms of the minimum subsistence level. Thus, Article 33 should define the form of consent, its term of validity, the possibility of restrictions by type of transaction and the procedure for revocation, and Article 34 should clearly regulate the consequences of a transaction without proper consent, with priority given to the protection of the bona fide counterparty and the interests of the child. This will eliminate the identified conflict between Articles 31-32 of the Civil Code of Ukraine (2003) and Article 177 of the Family Code of Ukraine (2002) regarding consent and limits on the disposal of property, and also corresponds to the results of expert ranking, where the issue of civil capacity of minors is identified as the most significant in civil law.

A subordinate act on the procedure for granting consent by parents or guardianship authorities should detail a step-by-step algorithm and standards of proof. It is advisable to provide for standard forms of applications and consents, mandatory identification of the child and legal

representatives, verification of powers and absence of conflict of interest, as well as the deadline for the decision-making by the guardianship authority, for example, five working days in normal cases and a shorter period for urgent transactions. The act should allow for electronic consent with a qualified electronic signature and recording in a single electronic register, which is verified by a notary or other entity certifying the transaction. It is necessary to define the list of transactions where consent is given *ex ante* and cases of subsequent approval, as well as the consequences of refusal by the guardianship authority with written justification. This type of regulation follows directly from the authors' proposal for a single electronic register verified by a notary and is intended to bridge the gap between codes and subordinate regulations.

Methodological explanations for courts and notaries should unify the practice of application through standardised checklists and models of legal positions. For notaries, it is necessary to establish a mandatory sequence of checks, in particular the age and capacity of the child, the existence and scope of consent, the compliance of the transaction with the best interests of the child, the existence of an entry in the register, as well as the recording of the child's consultation, if this is appropriate for their age. It is advisable to provide courts with algorithms for assessing the validity of transactions, the distribution of the burden of proof between the parties, the classification of the consequences of lack of consent as contestability or nullity depending on the type of transaction, as well as guidelines for the protection of a bona fide counterparty.

It is advisable to clarify Articles 40 and 184 of the Labour Code of Ukraine (1971) as a joint set of guarantees and exceptions, excluding any broad interpretations. Article 184 should explicitly list the categories of employees who are subject to an unconditional prohibition on dismissal, specifying the only exception as the complete liquidation of the employer with a mandatory offer of available vacancies, priority for transfer and written justification of the impossibility of an alternative. Article 40 should include a separate clause stipulating that the grounds for termination of employment at the employer's initiative do not apply to these employees, except for the specified exception, and should also establish the employer's obligation to prove the legality of each stage of the procedure with documentary evidence of selection and the absence of discriminatory criteria.

The removal of controversial provisions from subordinate legislation on redundancies requires an inventory of all orders and instructions that actually change or narrow the guarantees provided for in the Labour Code of Ukraine (1971). Provisions that allow circumvention of consultations with employee representatives, introduce non-standardised lists of selection criteria for dismissal, blur the obligation to offer other work, or introduce additional references without legal grounds should be abolished.

The supervisory mechanism for recording the unlawful dismissal of vulnerable female employees should be structured as a mandatory preliminary electronic notification to the state authority prior to the issuance of the order and as subsequent automatic monitoring. The employer submits a package of evidence to the electronic system proving that there are no alternatives to dismissal and that transfer offers have been made. The system generates a unique verification identifier, and the state labour authorities automatically receive a task for control actions with recording of results and legal assessment. Social insurance authorities are informed electronically to synchronise payment guarantees, the employee receives a notification of rights and a channel for submitting comments, and the judiciary has access to the verification materials as the primary evidence package.

It is advisable to introduce a separate provision into the Family Code of Ukraine (2002) that directly regulates the division of corporate rights of spouses, in particular shares in the authorised capital of companies and securities acquired with joint funds during marriage. This provision should clearly distinguish between property rights to the value of a share and the personal non-property corporate rights of a participant, establish the right of the other spouse to determine the share in the value of the asset or to monetary compensation, determine the moment of valuation, the requirement to disclose beneficial ownership and the procedure for protecting the rights of third parties. This decision directly removes the conflict identified in the study between Article 60 of the Family Code of Ukraine (2002) and Article 96-1 of the Civil Code of Ukraine (2003) regarding the legal regime of corporate rights and securities, and also implements the authors' proposed requirement for mandatory disclosure of the beneficiary during the division of property.

The special provision of the Family Code of Ukraine (2002) should refer to the provisions of the Civil Code of Ukraine (2003) on corporate rights in order not to duplicate the definitions and procedures for the creation, exercise and transfer of corporate rights. The reference structure will ensure that the procedure for disposing of a share, the pre-emptive rights of other participants, restrictions on alienation, as well as the consequences of violating statutory provisions are determined by general civil law rules, while the question of whether an asset belongs to the joint or separate property of spouses is resolved by the norms of family law. This approach minimises the conflict between the family norm of joint property and the civil law regime of corporate rights, which was identified in the Article as a systemic conflict.

To unify law enforcement, it is advisable to adopt a general resolution of the Supreme Court that will establish uniform algorithms for determining shares in corporate assets of spouses, approaches to assessing their value, the distinction between monetary compensation and actual division, as well as standards for protecting the rights of third parties, including other participants in the company and creditors. The paper directly recommends such a resolution with model algorithms and an emphasis on the protection of third-party rights, which corresponds to the variability of approaches recorded by the authors even at the cassation level and the priority of this particular conflict in the family law block.

As a result, it is advisable for civil law to harmonise Articles 32-34 of the Civil Code of Ukraine (2003) with the provisions of the Family Code of Ukraine (2002) regarding the limits of independent legal transactions by minors, while simultaneously approving the subordinate procedure for obtaining and recording the consent of parents or guardianship and custody authorities through a single electronic register verified by a notary. For labour law, we consider it necessary to clearly codify the exceptional grounds for termination of employment relationships with pregnant women and mothers with minor children in Articles 40 and 184 of the Labour Code of Ukraine (1971), establishing the employer's obligation to prove the legality of dismissal, the priority of

alternatives to dismissal, as well as automatic supervision by the State Labour Service of Ukraine and electronic notification of the social insurance fund. For family law, it is important to highlight the introduction of a separate provision on the division of corporate rights, shares in the authorised capital and securities in the Family Code of Ukraine with reference to the provisions of the Civil Code of Ukraine (2003), mandatory disclosure of beneficial ownership during the division of property, as well as the adoption of a general resolution of the Supreme Court with model algorithms for determining shares and protecting the rights of third parties. These changes directly correspond to the logic of the block on the system of regulatory and legal support, legal security and the system of state regulation.

Thus, the use of the paired comparison method is an effective tool for prioritising conflicts, as it is based on the opinion of a group of experts and provides a formalised, more objective approach to identifying the most important issues. The proposed ways to improve each of the most critical conflicts identified are designed to harmonise legal norms, reduce discrepancies in judicial practice and increase the legal protection of citizens.

Discussion

The results of the study confirm the basic thesis of N. Linnyk (2020), which emphasises the priority of children's rights, but supplement it with operational mechanisms. The specification of the limits of partial legal capacity, the unified consent of legal representatives, a single electronic register of consents, and methodological checklists for courts and notaries transfer the value-based approach to the practical level, which reduces the risk of fragmentation of practice and increases the protection of the best interests of the child. This follows directly from the identification of conflict *L*1. At the same time, the conclusions of N. Cherevko (2024) regarding the right to work under martial law are consistent with priority *T*1, in particular with the need for a clear list of exceptional grounds for dismissal and placing the burden of proof on the employer. The proposed clarifications, digital prior notification of the state authority and the removal of contradictory provisions from subordinate legislation provide a procedural framework for the implementation of the guarantees referred to by the scholar.

I. Borysiuk's (2021) work on the evolution of international mechanisms for the protection of children's rights logically reinforces the recommendations for harmonising civil and family law provisions. The determination of the moment and form of consent, the requirement to record consultations with children depending on their age, and the unification of the consequences of legal acts without consent bring national procedures closer to international standards, as evidenced by the justification of the hierarchy of conflicts and the instruments for overcoming them. V. Vlasenko's (2024) argument regarding the principle of legal certainty correlates with the idea of vertical and horizontal consistency of norms. The experience summarised by O. Maksymenko (2024) supports the administrative and procedural vector in child protection cases, which is also reflected in this article. Standard forms, verification of powers and absence of conflicts of interest, specified deadlines for decision-making, the possibility of electronic consent with a qualified signature, and verification of records by a notary reproduce best administrative practices and close the gap between codes and subordinate regulations identified during the expert analysis. The work of M. Krysthanovych *et al.* (2022) concerns the determinants of influence in the engineering sector, but its conclusion about the importance of a coherent legal environment is consistent with the family and civil block *C*3. A special provision on the division of shares in a business, references to the corporate rights provisions of the Civil Code of Ukraine, and guidelines for assessing the value of shares reduce transaction risks for enterprises, including those in the engineering sector, as we have shown by prioritising this conflict and developing practical solutions. The approach of S. Kryshtanovych *et al.* (2021) to gender parity in public administration is complemented by the labour block. Protection against unlawful dismissal of pregnant women and mothers with young children, a transparent redundancy procedure, and automatic supervision by the state labour service contribute to effective equality of opportunity in the labour market, reflecting the European values mentioned in the study and corresponding to the T1 ranking as a critical area.

The areas identified by M.A.M. Bani-Meqdad *et al.* (2024) regarding the risks of the cyber environment are consistent with the digital architecture of law enforcement. A single electronic register of consents, qualified electronic signatures, and access protocols for notaries and courts require adequate data protection, so proposals must be accompanied by cybersecurity standards and access audits that strike a balance between procedural efficiency and human rights guarantees. The focus of V. Alkema *et al.* (2024) on the resilience and strategic management of enterprises in a long-term war receives normative support. Harmonisation of labour and family-civil relations regulations increases the predictability of personnel decisions and corporate transactions, which reduces legal risks and supports economic and social security. This connection is also evident within the mechanism developed.

Conclusions

This Article examined the problem of conflicts between the norms of civil, labour and family law in Ukraine. The subject of the study was specific legal contradictions that arise in the process of law enforcement, and the goal was to identify the most significant ones and develop approaches to their formalised analysis using the method of paired comparisons combined with expert assessment. Despite limitations in the form of lack of access to some court decisions and a limited sample of experts surveyed, the objectives of the study were fully achieved.

A systematic review of Ukraine's legislative framework in three specific areas was conducted, which made it possible to identify nine common conflicts. In the course of the study, a questionnaire was developed with descriptions of each of them, and an expert survey was conducted among fifteen specialists in the fields of civil, labour and family law. Based on the survey results, a matrix of paired comparisons was formed and weighting coefficients were calculated, which made it possible to rank the conflicts according to their degree of impact on law enforcement.

It was found that in the field of civil law, the most critical conflict is that concerning the legal capacity of minors, in particular the discrepancies between Articles 32-34 of

the Civil Code of Ukraine and the provisions of the Family Code of Ukraine regarding the independent performance of legal acts by children, which creates uncertainty in the field of guardianship. It was determined that the issue of dismissal of pregnant women and mothers with young children requires more precise regulation in the Labour Code of Ukraine, in particular by revising Articles 40 and 184, as well as harmonising them with the provisions of laws on social insurance, child protection and certain subordinate acts regulating dismissal due to staff reductions and the protection of employees with family responsibilities.

Summarising the results obtained, it can be noted that a formalised approach to the analysis of inter-sectoral legal contradictions allows for greater objectivity in identifying the most problematic areas in legislation. Conceptually, the above demonstrates the effectiveness of combining quantitative and qualitative methods of analysis in solving complex legal problems. The analysis conducted means that the harmonisation of legal norms between different sectors cannot be limited to general declarations, but must be based on accurate data obtained through professional assessment.

Further promising areas of research have been identified, which consist in extending this approach to other areas and branches of law (such as administrative and commercial law), as well as providing more detailed recommendations for legislators aimed at harmonising the interaction of legal norms in different branches. In particular, it would be advisable to periodically update expert conclusions, taking into account changes in the legal system and the socio-economic space.

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Колізії між нормами цивільного, трудового та сімейного законодавства: шляхи вдосконалення правового регулювання

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Анотація. Актуальність дослідження полягає у наявності численних колізій між нормами цивільного, трудового та сімейного законодавства України, які ускладнюють правозастосування, створюють суперечливу судову практику та знижують рівень довіри до правової системи. Метою цієї роботи було виявлення найбільш суттєвих колізій у зазначених галузях права та формулювання практичних пропозицій щодо їх усунення або мінімізації негативних наслідків. У дослідженні було застосовано метод парних порівнянь за перевагою варіантів у поєднанні з експертним аналізом. Така методологічна комбінація забезпечила об'єктивне ранжування виявлених колізій та їх узагальнення на основі професійного досвіду фахівців. Було проаналізовано дев'ять правових колізій по три для кожної з галузей права. На основі опитування п'ятнадцяти експертів з різних сфер юриспруденції було сформовано матриці парних порівнянь та розраховано вагові коефіцієнти значущості. Було встановлено що у сфері цивільного права найвагомішою є колізія щодо цивільної дієздатності неповнолітніх. У трудовому праві ключовою проблемою виявлено звільнення вагітних жінок і матерів з малолітніми дітьми. У сімейному законодавстві пріоритетною є колізія щодо режиму майна подружжя в контексті корпоративних прав. У результаті запропоновано конкретні напрями вдосконалення законодавства з урахуванням результатів моделювання та експертного аналізу. Результати дослідження можуть бути використані при розробці законопроєктів а також у правозастосовній практиці працівників судової системи науковців і адвокатів у процесі гармонізації правових норм та посилення правової безпеки

Ключові слова: колізії законодавства; цивільне право; трудове право; сімейне право; метод парних порівнянь; експертний аналіз; гармонізація

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