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Role of the international criminal court in achieving social protection

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Abstract. The relevance of the study is determined by the growing role of international criminal law not only in ensuring punishment for international crimes but also in shaping broader mechanisms of social protection in post-conflict societies. The aim of the paper was to determine how the International Criminal Court (ICC) may indirectly contribute to the achievement of social protection through its legal and institutional mechanisms. The study employed an analytical-interpretive approach within a socio-legal framework, based on the analysis of the Rome Statute, case law, and policy documents of the Office of the Prosecutor. The findings demonstrated that the ICC exerts an indirect influence on social protection through a set of interconnected legal mechanisms. In particular, the principle of legal equality, enshrined in Article 27 of the Rome Statute, contributes to combating impunity by reshaping expectations regarding the accountability of political elites and strengthening public trust in justice. The recognition of vulnerable social groups under Articles 6 and 7 provided a legal qualification of collective violence, including gender-based crimes, which influences the development of national approaches to their investigation and prosecution. The reparations system established under Article 75 operates as a hybrid instrument combining elements of criminal responsibility and social support aimed at restoring victims and affected communities. The principle of complementarity, set out in Article 17, encourages states to reform domestic legal systems, strengthen judicial institutions, and incorporate international standards of accountability. Taken together, these mechanisms created institutional and normative conditions conducive to social protection, although their impact remains indirect and does not guarantee immediate outcomes. The practical value of the study lies in its potential application for improving national legal policies in the field of victim protection and ensuring accountability for international crimes

Keywords: justice; equality; atrocity; impunity; institutional reform

Introduction

Committing grave human rights violations that qualify as international crimes under the Statute of the International Criminal Court (ICC) has diverse and long-lasting consequences. The most important of these consequences is the emergence of social groups whose rights, and sometimes even their existence, have been denied, preventing them from accessing justice as a result of internal institutional collapse or weakness. This context reveals the extent to which the ICC can fill this institutional void. This can be achieved not only through a punitive framework, that is, by prosecuting perpetrators of grave violations of the rights of these social groups but also by creating an institutional and legal environment that guarantees their social care and protection.

There are important, but fragmented, insights offered by scientific literature into this topic. For example, C. Sperfeldt (2022) examined the general assistance mandate of the Trust Fund for Victims and argues that the ICC's institutional architecture has developed beyond conventional criminal adjudication by incorporating forms of victim support that are not dependent on conviction. In addition, she shows that this expansion is causing conceptual tension, as assistance-oriented functions cannot be neatly incorporated into traditional punitive models. M. Lostal (2021) highlighted the importance of reparations in the "Al Mahdi" case and showed that reparative justice is not only a matter of judicial recognition of harm, but also of institutional capacity. She demonstrated that reparations could contribute to restoration and recognition but also reveals enforcement practical limitations. M. Ingber (2025) argued that the ICC's reparations regime aims not only to repair harm, but also to support recovery and formally recognise victims' suffering. Their analysis suggested that reparations are not just legal remedies after conviction, but part of a broader framework that shapes how victimhood, harm, and justice are conceived.

Another area of research has focused on the recognition of victims and vulnerable groups in recent years. The Office of the Prosecutor (OTP) (2022) developed a policy for understanding gender persecution as part of its efforts to acknowledge

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that harm that have traditionally been marginalised in criminal law should be identified and treated. In this context, the Policy on Gender-Based Crimes makes OTP's approach to sexual and gender-based violence clearer and more organised and comprehensive. It shows that prosecutors should deal with these crimes in a way that is informed by gender issues and should make these harms more visible in the Court's work. In this way, the ICC contributes to defining and recognising the suffering of vulnerable groups, even when it cannot protect them directly. A. Jones (2025) argued that, although the Rome Statute grants victims an important place in ICC proceedings, this does not always lead to equal participation in practice. In other words, formal recognition alone does not guarantee that all victims are equally heard or and protected. A similar point is made by S. Pellet (2025), who indicated that the Court often expects victims to present their experiences in specific legally accepted ways. Consequently, while the Court recognises victims, it may also limit how fully and freely they can express their suffering during proceedings.

Recently, a number of studies have been published that have enriched the debate on reparations and the role of the Court. K.J. Fisher (2024) described the Barlonyo massacre and the Ongwen reparations process, arguing that victims' strong expectations may turn into frustration when reparatory outcomes are limited or delayed. Author cautioned scholars not to overestimate the protective capacity of the Court and points out that symbolic recognition does not always translate into meaningful redress. A. Barnes (2025) revisited the nature of reparations orders, arguing that they can be both compensatory and punitive. This intervention is valuable because it challenges the idea that reparations are only meant to restore what was lost. Instead, it showed that reparations work within a mixed approach to justice. In his article R. Jain (2025), analysed victim assistance under the Rome Statute and concluded that it has institutionalised a reparative dimension to international criminal justice that goes beyond punishment alone. In addition, C. Hillebrecht & H.R. Read (2023) argued that the Court can generate hidden impacts that traditional assessments do not capture. They suggested that the Court's influence extends into social and institutional domains that are hard to measure directly.

Overall, these studies demonstrate the value of recent scholarship in advancing understanding of victim assistance, reparations, participation, gender-based harms, and the broader influence of the ICC. However, these themes are still usually analysed as separate doctrinal or institutional issues rather than as interconnected mechanisms through which the Court may indirectly contribute to social protection. The cumulative sociolegal significance of these mechanisms when read together remains under-researched: how legal equality, the recognition of vulnerable groups, reparations, as well as complementarity-driven strengthening of domestic accountability frameworks influence the possibility of achieving protection. This gap makes the present study necessary. Accordingly, this article aims to examine how the ICC contributes indirectly to social protection through its legal framework, jurisprudence, victim-oriented mechanisms, and influence on domestic legal systems.

Materials and methods

The study was based primarily on the analysis of legal rules of the Rome Statute of the International Criminal Court (2002), the International Criminal Court (2013), selected policy documents issued by the OTP and selected judicial decisions and reparations-related rulings of the ICC. Particular attention was devoted to the analysis of Articles 6, 7, 17, and 27 of the ICC framework and their social implications. This study focused on legal equality, recognition of vulnerable groups, reparations, and complementarity, which are addressed in the Court's constitutive instruments, prosecutorial policies, and case law, they were particularly relevant for this study.

In addition to these primary legal sources, the study also used secondary sources, including academic journal articles, legal commentaries on the Rome Statute, and other scholarly writings addressing immunity, complementarity, victim participation, reparations, sexual and gender-based crimes, and the wider social effects of international criminal law. These secondary sources were of considerable importance as they contributed to the interpretation and implementation of relevant legal rules at both the international and national levels.

The secondary sources were accessed through Google Scholar, HeinOnline, JSTOR, and SSRN. During searching for these sources, the focus was on the period between 2020 and 2025 to identify recent developments concerning the non-traditional roles of the ICC, particularly in the field of social protection. However, it was sometimes necessary to review some earlier sources to build legal arguments, as they provided a foundational conceptual background for several legal standards and rules, such as the principle of complementarity and the rule of irrelevance of official status for international crimes perpetrators. In addition, sources were selected that provide broad interpretations of the Rome Statute, mechanisms for the protection of victims, and models of local institutional impact. The sample of sources for the study included specialised books and peer-reviewed articles of academic credibility, as well as reports and documents prepared by international and national institutions. This study adopted an analytical-interpretive approach, focusing on the significance of legal rules, their elements and practical applications, rather than on empirical findings. These analytical interpretations go beyond simply describing legal rules; they extend to analysing their operational mechanisms within broader conceptual frameworks, such as equality before the law, accountability, recognition of the rights of social groups, the concept of the victim, restorative justice, and indirect protection.

The interpretive analysis was carried out in two successive phases. In the first phase, the ICC Statute and its Rules of Procedure and Evidence (International Criminal Court, 2013) were examined to explore and understand the general elements of key concepts relevant to the study, namely: legal equality, vulnerable groups, reparations, and complementarity. The second phase was devoted to analysing a selection of ICC case law concerning, for example, non-immunity of perpetrators of international crimes, and reparations, in order to understand how these legal standards and rules, as set forth in the ICC Statute, are interpreted and applied in the context of achieving social protection. In addition, the second stage involved reviewing prosecutorial policies to better understand how the Court conceptualises sexual and gender-based crimes, gender persecution, and cooperation with national systems. The documents were considered relevant interpretive materials since they shed light on how legal norms are operationalised within prosecutorial strategies.

The materials were then compared in order to determine how each of them contributes to answering the central question of the article, namely whether and how the ICC's legal framework and practice may contribute indirectly to social protection. The comparison focused on accountability, recognition of victims and vulnerable groups, reparations, and complementarity. A material's contribution to one or more of the following dimensions was assessed: challenging impunity through legal equality, recognising vulnerable groups and specific forms of harm, expanding justice through reparations, and fostering domestic accountability through complementarity. As part of the analysis, context was considered by reading legal materials in relation to mass atrocities, post-conflict justice, and institutional weakness. Furthermore, the study explored how judicial engagement with international criminal norms, legislative reform, and broader recognition of victims' rights could be fostered through the ICC's legal framework. In this sense, norms have been evaluated through their normative and institutional implications rather than quantitative measures of impact.

There are several limitations to this study. The study was mostly doctrinal and interpretive, so it does not provide a full empirical measurement of how ICC norms affect political leaders, states, or domestic institutions. It used selected examples from legal scholarship and institutional practice to illustrate how ICC rulings and policies may affect accountability strategies, legal reform, and approaches to international crimes. A second limitation of this study is that it relies solely on selected legal sources and key academic works, rather than examining every ICC decision or all national practices. It examined how the ICC can indirectly contribute to social protection through careful legal analysis. In a wider socio-legal context, this approach helps identify the main legal mechanisms by which indirect contributions may occur and how accountability, recognition, reparations, and complementarity are linked.

Results and discussion

Promoting the principle of legal equality

The ICC provisions and its jurisprudence, in this respect, are an authoritative legal framework in developing the ideas of national actors on issues of accountability, justice, and protection. Therefore, the influence of the ICC is less about direct policy transfer but more about gradual institutional adaptation, professional socialisation, and internalisation of accountability norms. In other words, rather than relying merely on formal enforcement for international rules, this approach to the legal diffusion is something that comes in line with sociolegal scholarship, which emphasises interpretation, repetition, and professional practice.

The principle of legal equality is highlighted in Article 27(1) of the Rome Statute (2002), which does not recognise the official capacity of the person who commits an international crime, "whether as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official". This means that the official capacity of the perpetrator of an international crime will not exempt them from international criminal responsibility for any of those crimes, nor can it be a reason for mitigating their punishment. In other words, no one, including those working for a State, whether citizens of States parties or non-States parties, is exempt from criminal prosecution by the Court (Triffterer & Ambos, 2016) This provision is not novel; it is rooted in historical precedents established after World War II by the Nuremberg and Tokyo trials, as well as in the Statutes of the "International Criminal Tribunals for the former Yugoslavia and Rwanda" (Klamberg *et al.*, 2023). There has been extensive scholarly debate on Article 27 of the Rome Statute for more than twenty years, which precludes international criminal responsibility for officials and heads of states. Studies by D. Akande (2018), F. Nkusi (2013), D. Jacobs (2015) have examined the tension between Article 27 and customary international law on immunities, particularly in relation to non-State parties and Security Council referrals. Article 27 has been examined as a progressive development of international law, an exception limited to the ICC's jurisdictional framework, or a challenge to traditional sovereignty-based immunity. The debates -especially in the context of the Al Bashir litigation – have been well documented and do not need to be repeated in detail.

The principle of legal equality that resides in Article 27(1) of the ICC Statute is more than a procedural rule. According to S.M.H. Nouwen (2013), it is a foundational norm that challenges the possibilities of impunity which often fuel social fragmentation and violence perpetrated by States. D. Akande (2018) emphasised, when the ICC denies official immunity, it directly challenges the authority of States to shield their agents from prosecution, thereby seeking to rebalance the relationship between the governing and the governed. This legal intervention by the ICC has significant social implications, as it aims to remove the quasi legal means that enable political elites to perpetrate crimes against vulnerable populations with impunity. C. Gevers (2011) believed that a rejection of status-based immunities under Article 27 has a sociolegal significance, as it changes expectations and incentives. Article 27 reshapes the legal understanding of officials, victims, prosecutors and lawyers, and provides domestic judges with authoritative texts for justifying the application of criminal responsibility equally. The power of this provision lies not just in its text, but also in how institutions use it, teach it in judicial academies, and use it in prosecution decisions, leading to integrating equality norms into domestic law.

Under Article 27(2), the ICC may exercise jurisdiction over perpetrators of international crimes regardless of the immunity they enjoy under international or national law. This constitutes an explicit denial by the ICC of the immunities provided by international and national law to persons in official capacity, such as heads of state or government, or others referred to in Article 27(1), for example. Neither the Nuremberg or Tokyo Statutes, nor the Statutes of the Former Yugoslavian and Rwandan International Criminal Tribunals have a counterpart to Article 27(2) of the ICC Statute (Akande, 2004) By removing immunity for officials under Article 27(2), the ICC reinforced its victim-centered approach, enabling justice for victims of serious crimes irrespective of the perpetrator's status. This aligns with the Court's foundational goal of addressing victims' demands for accountability and reparations.

The ICC Pre-Trial Chamber I applied the provisions of Article 27 in the case of the Prosecutor v. Omar Hassan Ahmad Al Bashir (2021) when it decided that, although Al Bashir is a head of state not party to the Rome Statute, he does not enjoy immunity from proceedings before the ICC taking into account that the Security Council's decision to refer the situation in Darfur on 1 July 2002 to the ICC constitutes the legal basis for the Court to consider international crimes committed in that region (United Nations Security Council, 2005).

Clearly, the provisions contained in Article 27 of the ICC Statute affirm an important rule referred to by the States parties to the ICC Statute which is ending impunity for perpetrators of international crimes set forth in Article 5 of the ICC Statute (Triffterer & Ambos, 2016). The States parties declared in the ICC Statute preamble that “the most serious crimes of concern to the international community as a whole must not go unpunished and are determined to put an end to impunity for the perpetrators of such crimes” (Rome Statute of the International Criminal Court, 2002). Undoubtedly, these interconnected provisions all serve to provide social protection within societies, based on the premise that individuals will be reassured as long as there is an international judicial institution that is not concerned with the status of the perpetrator of the international crime, as the law will be applied to all persons regardless of their political or social standing within a State. The ICC’s non-recognition of immunity for State officials could indeed enhance the prevention aspect of international criminal justice, contributing to social protection. To clarify, the intervention of the ICC, and its demonstrated willingness to prosecute leaders responsible for international crimes, may function as a deterrent against the commission of further atrocities and may encourage such actors to engage in negotiations. In this way, the Court’s involvement may contribute indirectly to the promotion of security and reassurance for potential victims. For instance, the Prosecutor of the ICC issued arrest warrants for five senior leaders of the Lord’s Resistance Army in northern Uganda, which prompted them to sit down for talks with Ugandan President Yoweri Museveni, who had previously referred the case to the Prosecutor of the ICC on 16 December 2003 (Schabas, 2007). In the same context, John Prenderston, a former Clinton administration official and analyst for the International Crisis Group on Africa, stated in 2005 that Sudanese leaders were concerned about the consequences of the ICC’s investigation into international crimes in Sudan, and he considered this a positive development for resolving the bloodshed in Darfur (Schiff, 2008) It is clear from these examples that the ICC may play a deterrent role that has a positive impact on social protection.

However, it is important to be cautious when claiming that Article 27 directly deters atrocities or encourages good governance. In this article, no detailed evidence is provided to demonstrate that ICC prosecutions directly influence decision-making in leaders (Dutton & Alleblas, 2017). It therefore cannot be argued that Article 27 directly prevents international crimes. Rather, it promotes social and institutional conditions that make accountability more likely. In indirect way, it contributes to social protection, because it challenges impunity and affirms legal equality, which strengthens public trust in the possibility of accountability for victims. These effects are achieved through domestic legal adaptation, professional socialisation, and civic engagement rather than through automatic deterrence. Accordingly, Article 27 contributes to social protection not by ensuring behavioural change, but by reshaping the legal and social environment in which protection against mass atrocities is pursued.

Protection of vulnerable social groups

Article 6 of the Rome Statute (2002) states that committing “murder, causing serious bodily or mental harm, inflicting on the group conditions of life calculated to bring about its destruction, imposing measures intended to prevent births, or transferring children from a group to another may all constitute crime of genocide if committed against a national, ethnical, racial, or religious group”. In this context, the General Assembly of United Nations declared that genocide constitutes the denial of the right to exist of entire human groups (Resolution of the United Nations General Assembly No. A/RES/96-I, 1946) and so Article 6 of the ICC Statute protects the physical and social existence of these groups. (Fronza, 1999). Despite the 1948 Genocide Convention prohibiting genocide, the Rome Statute adds a distinct layer of social relevance by embedding this prohibition within a standing judicial institution with investigative, adjudicative, and reparative functions. The Genocide Convention articulates a collective moral and legal norm; the ICC brings that norm to life on a procedural level. The Court implements its abstract obligations to prevent genocide into practical legal processes involving domestic institutions, legal professionals, and affected communities through prosecutions, victim participation, and reparations. For social protection in post-atrocity contexts, institutionalisation is more important than mere prohibition. In other words, the importance of Article 6 of the ICC Statute cannot be found in the definition of genocide as such which is well established in international law but in the institutionalisation of genocide prohibition within a permanent criminal court. While the Genocide Convention focuses primarily on state responsibility and enforcement measures, the ICC treats genocide as a criminal offense subject to individual prosecution, punishment, and reparations. A significant consequence of this institutional change is that it converts genocide from an abstract violation to a legally actionable harm, in which victims and perpetrators will be able to be identified, and there will be redress and consequences.

There is no claim in this article that the Rome Statute or ICC practice directly promote social harmony. It is rather international criminal law that contributes through its symbolic and institutional effects: the ICC reinforces legal recognition of group-based vulnerability and affirms the illegitimacy of collective violence by formally naming and prosecuting acts aimed at the destruction of protected groups. Rather than ensuring a change in behaviour, these effects shape how societies understand mass violence and its unacceptability through legal discourse, education, and institutional memory. In addition, Article 7(1)(g) of the ICC Statute considered the widespread and systematic commission of “rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, or any other form of sexual violence of comparable gravity” against women to constitute a crime against humanity. According G. Werle & F. Jeßberger (2014) this article is that it combined all forms of sexual violence together, not to mention that it left room for any sexual act not specifically addressed, as long as it was of similar gravity to the listed acts.

One of the most prominent cases heard by the ICC relating to the punishment of sexual violence against women is that of Dominic Ongwen, a leader of the Ugandan rebel group, the Lord’s Resistance Army, which committed numerous war crimes and crimes against humanity during the group’s armed insurgency against the Ugandan government (The Prosecutor v. Dominic Ongwen, 2024). According to the ICC’s Trial Chamber IX, Ongwen was found guilty of 61 counts of war crimes and crimes against humanity, including sexual crimes. These crimes included “forced marriage, torture, rape, sexual slavery, enslavement, enforced pregnancy, and outrages upon personal dignity, committed against seven women whose names and individual stories are identified in the judgment. On 6 May 2021, the Trial Chamber IX sentenced Ongwen to 25 years' imprisonment". It would be difficult to make a conclusive claim that the Ongwen case has changed societal perceptions toward sexual violence without extensive empirical evidence. The importance of its effects is more evident in their being clearly visible and capable of being institutionally verified. There were detailed factual findings, survivor testimonies, and explicit legal recognition of harms like forced marriage, sexual slavery, and enforced pregnancies characterised one of the most comprehensive judicial involvements in international criminal law concerning sexual and gender-based crimes. These judicial practices have helped document that sexual violence constitutes a serious international crime, rather than a peripheral or incidental one. From a sociolegal standpoint, the impact of Ongwen's actions is primarily felt in downstream institutional changes rather than on immediate cultural shifts. The Court's Policy Paper on Sexual and Gender-Based Crimes (Office of the Prosecutor, 2014) and related procedural reforms embody the Court's legal interpretations on sexual violence, which in turn shape prosecutorial approaches, evidentiary requirements, and practices for victims' involvement. Through legal recognition, procedural inclusion, and access to reparative measures, these developments strengthen the protective mechanisms for survivors of sexual violence by influencing how domestic courts, investigators, and victim-support organisations conceptualise and respond to the crime. In that sense, the protective value of such cases lies in institutional learning and professional practice rather than in demonstrable changes in societal attitudes.

There are other provisions in the ICC Statute that grant the Court jurisdiction over crimes of sexual violence against women. The Court may also exercise jurisdiction over such conduct when it is committed as a war crime under Article 8 or as an act of genocide under Article 6(b), as sexual violence crimes constitute "causing serious bodily or mental harm to members of the group" (Rome Statute, 2002). The legal framework of the ICC Statute, which also addresses sexual violence as a war crime under Article 8 and as an act of genocide under Article 6, presents a comprehensive, integrated legal approach to combating sexual and gender-based violence.

The explicit inclusion of rape and other crimes of sexual violence in the ICC Statute represents a significant advance in their classification as criminal acts targeting the physical and mental integrity of women and ensuring that such crimes are not marginalised or ignored, compared to their previous classification by international instruments as being only violations of women's honor and reputation (Triffterer & Ambos, 2016). Furthermore, F. Ní Aoláin (2014) the criminalisation of these specific acts under the ICC Statute represents a process of legal codification of dealing with social vulnerability. A law that protects women, children, and distinct ethnic and religious groups from genocide and crimes against humanity reflects and reinforces a social consensus about which groups are most vulnerable to systematic destruction. Using this legal framework, as in the Ongwen case, empowers these groups within social and political discourses, transforming them from passive victims into international rights holders (Seyed Norani, 2022)

On the implementation level, there exists no direct legal hierarchy between the Rome Statute and ICC jurisprudence, but an identifiable process of normative diffusion and institutional adaptation that exerts influence on domestic legal approaches. The ICC Statute crimes are incorporated into domestic criminal codes by legislation, ICC jurisprudence is cited as persuasive authority by the judiciary, prosecutorial and investigative reforms aligned with ICC evidentiary standards, and legal actors are socialised professionally through training, cooperation, and complementarity-related activities (Imoedemhe, 2017). The implementation of international criminal law standards in domestic legal practices impacts how states address issues of minority protection and gender-based violence. National legislation stands out as a key area of this influence. Since the adoption of the Rome Statute, as noted by J. Pérez-León-Acevedo (2024), many States Parties have incorporated international crimes into their domestic criminal codes, including genocide, crimes against humanity, and sexual violence. As a result of these legislative amendments, acts such as slavery, forced pregnancy, and forced marriage are now criminalised as separate offenses, moving beyond traditional classifications of sexual violence. While pressure from the ICC was not the sole driver of these reforms, the Rome Statute has served as a key reference point and model for legislative drafting, particularly in post-conflict and transitional periods, where domestic legal systems seek to enhance their international legitimacy and meet required accountability standards.

In addition to legislative texts, the jurisprudence of the ICC influences domestic legal systems through case law. It has become increasingly common for domestic courts and prosecution authorities to draw on concepts of international criminal law such as patterns of criminal responsibility, contextual elements of crimes against humanity, and gender-sensitive interpretations of harm when addressing cases of mass violence and systemic violations. With the ICC's jurisprudence on sexual and gender-based crimes and with the OTP's policy instruments, survivor-centred evidentiary practices have become more common and sexual violence has become recognised as a structural crime rather than an incidental byproduct of conflict. The development does not seem to be a wholesale transfer of doctrine, but rather a gradual shift in how domestic legal actors frame and pursue accountability for group-based and gendered harm. So, the ICC Statute and case law have an impact on domestic legal approaches by influencing legal categories, institutional expectations, and professional practices through which protection of vulnerable groups is pursued.

Achieving social justice for victims

The reparations provided by the ICC can be considered a hybrid legal-social instrument. I. Ullrich (2024) believes that ICC-ordered measures and Trust Fund programs are often designed to mimic social-protection modalities provided by state agencies and NGOs, including cash transfers, psychosocial services, education, and livelihood support. A sociolegal analysis of these programs reveals how implementation partnerships, professional discretion, and community governance shape the sustainability of reparations as safety nets (Brodney, 2016).

Article 75 of the Rome Statute (2002) empowers the Court to issue direct orders, either upon request or proprio motu, against perpetrators of the international crimes set forth in Article 5, to reparation victims or their associates. The Court may also "order that the award for reparations be made through the Trust Fund provided for in article 79". This legal framework relating to the right of victims of international crimes to compensation is a reflection and affirmation of States' obligation to compensate victims of gross violations of international humanitarian law (International Committee of the Red Cross, 1946) and Article 24(4) of the international human rights law (Resolution of the United Nations General Assembly No. 61/177, 2006). According O. Triffterer & K. Ambos (2016), due to the fact that this obligation relates strictly to perpetrators of international crimes, it differs somewhat from obligations addressing States directly. However, the provision for the right to compensation in Article 75 of the ICC Statute, which is directed at perpetrators of international crimes, stems from States' general obligation to compensate victims of gross human rights violations, particularly since the Trust Fund for Compensation to Victims is administered by the Assembly of States parties to the Rome Statute (2002), Article 79(3). This confirms the commitment and guarantee of States to compensate victims of international crimes in an effective and appropriate manner. However, in all cases, Article 75 of the ICC Statute does not aim to oblige the State of nationality of a perpetrator of an international crime to compensate the victims (Triffterer & Ambos, 2016).

By establishing a right to compensation for victims and their dependents under Article 75, the ICC Statute mandates the Court not only to prosecute perpetrators of international crimes but also to achieve justice for victims (Triffterer & Ambos, 2016) This function of providing compensation acts as a form of social protection, representing a secondary objective of the provision. The scope of application of Article 75 has been expanded by the inclusion of the concept of "victims or in respect of them", such that compensation may be awarded to persons related to victims of international crimes. The Rules of Procedure and Evidence (2002) supplementing the ICC Statute interpret the concept of victims as meaning "natural persons affected by the commission of any crime within the jurisdiction of the Court". This interpretation could include the families and heirs of victims, according to the Working Group on the Interpretation and Analysis of Article 75 (Triffterer & Ambos, 2016). Such a broad interpretation reflects the desire of the drafters of the ICC Statute to improve and address the social conditions of those harmed by the commission of international crimes, whether they are victims or other relatives. This is the core of social protection that the ICC Statute seeks, albeit indirectly.

In the context of achieving social justice for victims of international crimes through the right to reparation, the Trust Fund was established under Article 79 of the ICC Statute to provide reparations and assistance to victims of international crimes prosecuted by the ICC. The Trust Fund has two main functions: providing reparations and direct assistance to victims following ICC judgments. According to the interpretation of O. Triffterer & K. Ambos (2016), the ICC provides various forms of reparations depending on the specific harm suffered by victims. These include:

1. Individual reparations, such as financial compensation and Assistance. They are broad programs that provide psychological, physical, social, and economic support, such as housing, healthcare, or scholarships for victims, even in the absence of a conviction. For example, in the Lubanga case (Democratic Republic of the Congo), Thomas Lubanga, leader of the Union of Congolese Patriots (UPC), was convicted in 2012 of recruiting and using child soldiers during the Ituri conflict (1998-2003) (The Prosecutor v. Thomas Lubanga Dyilo, 2020). The ICC sentenced him to 14 years in prison, and Trial Chamber II approved a collective service compensation program consisting of three reparation areas: medical treatment, psychological rehabilitation, and social and economic support. The Chamber stated that the proposed program is appropriate to meet the diverse and evolving needs of direct and indirect victims, based on their unique circumstances. Under this program, compensation was paid to child soldier victims, and former child soldiers received vocational training, education, psychological support, and community reintegration programs. The commencement of collective reparations in the Lubanga case was characterised as a significant milestone, particularly for victims who had suffered substantial harm during childhood and required a prolonged period of recovery demanding considerable resilience. Representatives of the Trust Fund for Victims further emphasised that the protection of victims' identity and well-being remains a priority, with the aim of ensuring access to reparations with due regard for their personal safety.

2. Collective reparations, which include community programs, mental health services, and the rebuilding of infrastructure, such as schools and hospitals. In the Katanga case (Democratic Republic of the Congo), militia leader Germain Katanga was convicted in 2014 of war crimes, including the 2003 attack on the village of Bogoro, in which numerous civilians were killed. (Prosecutor v. Germain Katanga, 2017) The ICC sentenced him to 12 years in prison, and victims received individual reparations of $250 each to address direct harm. The court also approved the disbursement of funds to build homes and schools to rebuild affected communities, and to provide agricultural tools and vocational training to help families regain social and economic stability.

3. Symbolic reparations: these include public apologies, the construction of memorials, or the determination of remembrance days to acknowledge the suffering of victims and restore their dignity. In the Al Mahdi case (Mali) concerning the destruction of cultural heritage, Ahmad al-Faqi al-Mahdi, a member of Ansar Dine, was convicted in 2016 of war crimes related to the destruction of several buildings considered and protected as an important part of the cultural heritage of Timbuktu and Mali, and which were not military objectives (Prosecutor v. Ahmad Al Faqi Al Mahdi, 2022). He was sentenced to nine years in prison and ordered to pay €2.7 million as reparations. The ICC also supported the reconstruction of destroyed mosques and shrines protected by UNESCO. The court also notified the people of Timbuktu, the people of Mali, and the rest of the international community of Mr. Al Mahdi's apology, which he offered during his trial, as a form of symbolic reparations.

It can be said that ICC reparations represent a fascinating hybrid of punitive justice and restorative social policy. According M. Lostal (2021), criminal courts are unconventional vehicles for administering social services, but the Trust Fund's work in providing psychological support, education, and infrastructure blurs the line between legal remedy and social development. The harm caused by international crimes is not solely individual, but collective and societal, damaging the very fabric of society. So, reparations are not only about compensating individual losses, but about restoring the functional capacity of societies that have been broken by conflict through judicially-mandated social reconstruction.

Encouraging of national accountability

Rome Statute of the International Criminal Court (2002) states in its preamble that “the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes”. This is confirmed by Article 1, which states that the Court “shall be complementary to national criminal jurisdictions”. This is known in the jurisprudence of international criminal law as the principle of complementarity. This principle means that national courts have the priority to prosecute and punish perpetrators of international crimes set forth in Article 5 of the ICC Statute. If national courts are unable or unwilling to do so, in accordance with the provisions of Article 17 of the ICC Statute, the ICC shall have jurisdiction. In other words, the principle of complementarity within the ICC Statute aims to achieve a balance between respect for State sovereignty and the establishment of an international judicial authority by granting States the primary right to prosecute perpetrators of international crimes.

According to L.E. Carter (2013), complementarity is a powerful tool for national judicial authorities to maintain control over criminal matters and limit the intervention of the ICC. Additionally, the principle provides a strong incentive for national jurisdictions to prosecute international crimes, which aids the ICC’s goal of ending impunity for atrocities. To elaborate, complementarity affects professional domestic communities. A domestic prosecutor develops charging policies based on international crimes and trains prosecutors in international crime investigations; a judge relies on ICC reasoning to justify novel doctrines; a bar association educates lawyers about victim involvement; a medical professional or social worker prepares expert reports. (Office of the Prosecutor, 2024) In general, international obligations become operational domestic social protection through these professional practices.

In the context of the principle of complementarity, the Pre-Trial Chamber I of the ICC decided on 11 October 2013 that “the case against Mr. Al-Senussi was currently subject to domestic proceedings conducted by the competent Libyan authorities and that Libya was genuinely willing and able to conduct such an investigation” (The Prosecutor v. Saif Al-Islam Gaddafi, 2013). The ICC judges therefore concluded that the case was inadmissible before the Court, in accordance with the principle of complementarity set forth in the ICC Statute. In some cases, the effects of complementarity and ICC pressure become visible in the legal and political responses of states. For example, Colombia has suffered from a long-running violent conflict for nearly six decades. the conflict has spread over generations, affecting wide swaths of Colombia’s population and resulting in millions of victims. As wrote A. Björkdahl & L. Warvsten (2021), the Colombian armed forces, paramilitary groups, and other forces all contributed to the conflict’s complexity. A final agreement to end the conflict and establish a stable and long-lasting peace was signed in November 2016. In fact, the ICC played a major role in Colombia’s peace process, forcing the Colombian judiciary to comply with ICC requirements while maintaining its judicial sovereignty at the same time.

The Colombian judicial system adapted international judicial norms and practices to its domestic context, resulting in an emergent, hybrid, intersubjective understanding of justice. A key outcome, the Victims’ Agreement, incorporated elements of reparation, retribution, and restoration, and was acknowledged by the ICC Prosecutor as sufficient retribution (International Criminal Court, 2016). In addition, the Colombian justice system strategically adopted the anti-impunity international norm into its domestic sentencing regime to avoid ICC pressure. Consequently, a hybrid sentencing regime differentiated between political crimes and Rome Statute crimes that were not eligible for amnesty/pardon, preventing ICC admissibility (Björkdahl & Warvsten, 2021). In this case, ICC pressure generated positive complementarity by adoption of measures and policies on domestic prosecutions for human rights violations, which supports the fact that the Court can influence national accountability systems indirectly.

However, the ICC may sometimes be necessary because national courts are not always an available and effective option. In E. Piccolo Koskimies’s (2026) view, there may be a clear justification for accepting cases before the ICC when national courts are unwilling to prosecute perpetrators of international crimes, particularly when the perpetrators are state leaders who control the national judicial system. In the case of Ahmed Harun (the Minister of Interior in the former Sudanese government headed by Omar al-Bashir) and Ali Kushayb (the commander of the Janjaweed forces supporting the former Sudanese government), the Pre-Trial Chamber issued a preliminary ruling on admissibility on the basis that certain incidents in Darfur under investigation in Sudan did not involve the “same conduct” as the ICC case (The Prosecutor v. Ahmad Muhammad Harun (“Ahmad Harun”), 2007).This means that international crimes may have been committed by the concerned parties but have not been investigated by the national judiciary in Sudan. This prompted the Pre-Trial Chamber to rule that the ICC has jurisdiction to prosecute both Ahmed Harun and Ali Kushayb. There are instances in which national authorities may be willing but unable to pursue and prosecute perpetrators of international crimes for reasons that may include an inability to arrest the accused, obtain evidence, lack of necessary resources, or the collapse of the judicial system as a whole due to the ongoing conflict (King, 2015).

Clearly, national courts within a State have an objective and timeframe framework for initiating and pursuing prosecution against perpetrators of international crimes. This is expected, given their sovereign jurisdiction to prosecute perpetrators of crimes in general. On the other hand, another institution, the ICC, awaits and monitors the performance of these national courts in dealing with international crimes. However, at some point, the wait for the ICC must end, allowing it to commence proceedings in The Hague to accomplish what national courts have failed to do. L.E. Carter (2013) wrote, that given the role of the ICC under the principle of complementarity, it encourages national judicial authorities to prosecute perpetrators of genocide, war crimes, and crimes against humanity by developing their national capacities and enacting the necessary legislation. The benefits of such improvements to society as a whole are indisputable, as they create a more just and equitable legal system. Furthermore, the principle of complementarity reinforces the notion that States bear the primary responsibility for protecting their citizens from mass atrocities. This is in line with the concept of the Responsibility to Protect, which emphasises states' obligations to protect human rights (Report of the International Commission..., 2001).

In general, the complementarity principle works through legal mechanisms to promote global governance (Adigun, 2021). Essentially, it creates a dynamic whereby the threat of international intervention prompts domestic legal reforms, effectively outsourcing the "peer review" of national justice systems to an international body. As a result, social protection is directly affected, since a functioning, impartial judiciary is a cornerstone of public trust and confidence. Indirectly, the complementarity principle fosters national legal institutions by urging states to strengthen their courts to avoid ICC intervention. Any social protection system is built on these institutions, which ensure that citizens' rights are protected every day, creating a more stable economic and social environment.

Conclusions

This article examined how the ICC may contribute indirectly to social protection. This is accomplished by promoting legal equality, recognition of vulnerable groups, reparations, and complementarity as key legal mechanisms outlined in the ICC Statute through, which this influence occurs. The paper concludes with several findings that demonstrate the ICC's indirect contribution to social protection through normative dissemination, institutional incentives, and victim-centred legal mechanisms rather than direct welfare provision:

First, the ICC contributes to accountability by limiting the immunity of State agents and affirming the principle of legal equality. However, as international criminal accountability remains selective, politically contingent, and unevenly enforced, ICC does not produce stable social orders, nor does it address entrenched impunity. Instead, the ICC provides authoritative reference points for accountability claims within domestic and transnational legal discourse by articulating and institutionalising legal expectations that challenge absolute impunity.

Second, this article does not demonstrate that ICC criminalisation strengthens societal safeguards against discrimination, violence, or exploitation for vulnerable groups. It rather illustrates how the Rome Statute and ICC jurisprudence recognise group-based and gendered harms as international concerns and justiciable crimes. In national legal systems, this determination impacts how violence against women, children, and protected groups is classifying, investigated, and prosecuted.

The results of the study showed that the ICC contributes to social protection not by ensuring accountability or safeguarding vulnerable groups in practice, but by developing the legal and institutional frameworks through which protection is claimed, contested, and pursued. Through its rules, judicial interpretations, and complementarity-based legal mechanisms, the Court influences how national institutions understand the concepts of responsibility, victimhood, and legally recognised harm. While these contributions do not guarantee tangible results in the field of social protection, they do create the conditions that make achieving such results possible. Future research should focus on empirically assessing how ICC-related legal norms are implemented within national jurisdictions and how they influence concrete social protection outcomes. In particular, comparative and interdisciplinary studies incorporating qualitative and quantitative data would help to better evaluate the practical effectiveness, limitations, and contextual variability of the Court's indirect impact.

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Роль міжнародного кримінального суду у досягненні соціального захисту

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Анотація. Актуальність дослідження зумовлена зростанням ролі міжнародного кримінального права у забезпеченні не лише покарання за міжнародні злочини, але й формування ширших механізмів соціального захисту в постконфліктних суспільствах. Метою роботи було визначення того, яким чином Міжнародний кримінальний суд (МКС) може опосередковано сприяти досягненню соціального захисту через свої правові та інституційні механізми. У дослідженні застосовано аналітико-інтерпретаційний підхід у межах соціально-правової методології з аналізом норм Римського статуту, судової практики та політик Офісу прокурора. У результаті встановлено, що МКС здійснює непрямий вплив на соціальний захист через низку взаємопов'язаних правових механізмів. Зокрема, принцип правової рівності, закріплений у статті 27 Римського статуту, сприяє подоланню безкарності, змінюючи очікування щодо відповідальності політичних еліт та формуючи довіру до правосуддя. Визнання вразливих соціальних груп у статтях 6 і 7 забезпечує юридичну кваліфікацію колективного насильства, включно із гендерно зумовленими злочинами, що впливає на розвиток національних підходів до їх розслідування та переслідування. Система репарацій, передбачена статтею 75, функціонує як гібридний інструмент, поєднуючи елементи кримінальної відповідальності та соціальної підтримки, спрямованої на відновлення постраждалих осіб і спільнот. Принцип комплементарності, закріплений у статті 17, стимулює держави до реформування національних правових систем, посилення судових інституцій та впровадження міжнародних стандартів відповідальності. Сукупно ці механізми сформували інституційні та нормативні передумови для соціального захисту, хоча їх вплив є опосередкованим і не гарантує безпосередніх результатів. Практична цінність дослідження полягає у можливості використання його результатів для вдосконалення національних правових політик у сфері захисту жертв та забезпечення відповідальності за міжнародні злочини

Ключові слова: справедливість; рівність; звірства; безкарність; інституційна реформа

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International treaty law as the fundamental regulatory basis for the phenomenology of the "constitutional person"

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Abstract. The purpose of this study was to substantiate the role of international treaty law as the basic normative framework for the formation and functioning of the phenomenology of the "constitutional person" through a systematic analysis of human rights treaties and mechanisms for their domestic implementation in relation to constitutional principles and judicial practice. The study was conducted in the format of doctrinal-analytical and comparative-legal analysis using elements of descriptive legal statistics based on international human rights treaties, constitutional texts, and decisions of constitutional courts of Ukraine, Germany, Poland, and Indonesia for the period 2015-2024. The main results of the study showed that international treaty law forms a multi-level normative structure of the constitutional status of the individual, defining the core of fundamental rights and freedoms, the limits of state discretion, and procedural guarantees for their protection. It was found that, on average, about 30-35% of constitutionally significant court decisions in the legal systems studied contain references to international human rights treaties, with this figure being significantly higher in states with a predominantly monistic model of the relationship between international and domestic law. The data obtained confirmed the dominance of the interpretative function of international treaties in judicial practice and their use as a normative minimum, limiting the possibility of restricting constitutional rights. It was concluded that international treaty law transforms the concept of the "constitutional person" from an element of the

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national legal system into a component of the global system of legal protection, which is of significant importance for the further development of constitutional law and its application in practice

Keywords: human rights and freedoms; constitutional rights; municipal human rights; international municipal law; international legal obligations; international legal standards; implementation of international treaties

Introduction

The issue of domestic implementation of international human rights standards is traditionally viewed through the prism of the interaction between politics, law, and institutional capacity of the state. In this context, M. Krennerich (2024) systematically demonstrated that the implementation of international obligations at the national level is determined not only by formal legal mechanisms, but also by the internal configuration of state human rights policy, which leads to fragmentation and uneven implementation practices. The issue of the impact of international treaties and standards on the national legal order has been developed within the framework of comparative legal studies. In particular, M. Baimuratov *et al.* (2024) demonstrated that the integration of international norms into domestic legal systems is not a linear process and depends on the structural features of national legislation, which allows implementation to be viewed as a systemic transformation of the legal order rather than a formal borrowing of norms.

The empirical measurement of the implementation of universal human rights treaties at the national level is presented in studies focused on individual states. For example, F. Adegalu & T. Mitchell (2024) used South Africa as an example to show that even with a developed treaty base, the effectiveness of implementation remains limited due to institutional gaps between international obligations and domestic mechanisms for their application. The European context of the implementation of international human rights treaties is highlighted in works that analyse the interaction of international standards with national constitutional systems. In particular, G. Baranowska *et al.* (2024) showed that, in the context of European Union membership, the implementation of UN treaties is carried out through a complex multi-level system in which international obligations are mediated by constitutional principles and legislative traditions of the state.

A separate area of research focuses on the role of the judiciary in correcting defects in the implementation of international treaties. In this regard, J. Bell (2025) argued that judicial review of incorrect or incomplete implementation of international obligations is a key tool for ensuring their practical effectiveness, especially in the absence of clear political or administrative enforcement mechanisms. The problems of implementing international standards in developing countries are considered as a separate structural group of challenges. In particular, A. Purwanto & M. Hassan (2025) summarised typical barriers to implementation related to limited institutional capacity, fragmentation of legislation, and dependence on external regulatory models, which emphasises the need for contextualised approaches to the implementation of international norms.

Despite a significant body of research on the implementation of international human rights standards, a number of gaps remain in this area. First of all, most studies focus on formal legal models of transformation or incorporation of international norms, leaving institutional mechanisms for their actual implementation in the domestic legal order without due attention. The interaction between legislative, executive, and judicial bodies in the process of implementing international obligations, as well as the role of judicial practice as a corrective element in cases of defective or inconsistent implementation, remain insufficiently analysed. In addition, the scientific literature provides only fragmentary coverage of the issue of asymmetry between universal international standards and national constitutional and political-legal contexts, which makes it impossible to develop a generalised analytical model of effective implementation and limits the explanatory potential of existing approaches.

The purpose of this study was to substantiate the role of international treaty law as the basic normative framework for the formation and functioning of the phenomenology of the "constitutional person" through a systematic analysis of international human rights treaties and the mechanisms for their domestic implementation in relation to constitutional principles and the practice of their application. To achieve this goal, the study aimed to accomplish the following tasks: analyse the evolution of ideas about the "constitutional person" in the context of the development of international treaty law; determine the place and significance of international treaties in the system of sources that define the content and scope of constitutional human rights and freedoms; identify the key regulatory mechanisms through which international treaty standards influence national constitutional law; identify the main contradictions and limitations of the implementation of international treaty obligations in national constitutional legal systems; outline the theoretical and legal consequences of such influence for the formation of the modern phenomenology of the "constitutional person".

Literature review

In contemporary international and constitutional law, the problem of implementing international treaties is viewed as a complex, multi-level process combining normative, institutional, and judicial dimensions. In this context, F. Abdullah (2024) drew attention to conceptual and institutional asymmetries in the fulfilment of treaty obligations, showing that the difference between international standards and national institutional structures leads to uneven implementation of human rights. The classic legislative approach to the implementation of international law was systematised by E.B. Beenakker (2018), who emphasised the decisive role of the national legislator in the transformation of international norms, although this approach is increasingly criticised for its limited ability to explain the real effect of treaties in the constitutional space.

The impact of international humanitarian and human rights law on domestic legal systems is also considered through the prism of sectoral legislation. In particular, V. Boiko (2025) showed that international standards are integrated into national law in a fragmented manner, which affects the systematic protection of human rights. The judicial dimension of the application of international treaties in national legal systems has been analysed in works devoted to constitutional jurisprudence. Thus, S. Butt *et al.* (2025) proposed a typology of the use of international law by constitutional courts, demonstrating that international treaties can perform both an argumentative and a normative function.

The normative centrality of human dignity as the basis for international treaty standards was substantiated by N. Carrillo-Santarelli & F. Seatzù (2023), who showed that international law forms an anthropocentric approach to the protection of rights, relevant to the concept of the "constitutional person". The issue of the practical application of international human rights law in the national context was explored in a study by P.K. Cashman (2024), which emphasised the importance of judicial practice in giving international norms real legal force. The effectiveness of international human rights protection mechanisms as a prerequisite for their constitutional integration was analysed by O. Dashkovska *et al.* (2025), who pointed to the gap between international guarantees and their domestic implementation.

New treaty obligations of states, particularly in the field of climate, occupy a special place in contemporary doctrine. In this regard, C.E. Foster (2025) demonstrated that the advisory practice of the UN International Court of Justice expands the content of states' treaty obligations, which has a direct impact on national constitutional approaches to human rights. A critical view of the functioning of international treaty bodies is presented in the work of J. Haynes (2025), which shows that implementation practices can reproduce structural inequalities, calling into question the universality of treaty standards. The principle of good faith as a fundamental element of treaty and constitutional law was conceptualised by A. Kochman (2026), who justified its importance for the interpretation and application of international treaties in a constitutional context.

The problems of implementing international standards at the national level are also summarised in the works of M.I. Krasko & S.I. Omelchenko (2025), who pointed out the dependence of the effectiveness of human rights implementation on domestic legal mechanisms. The application of international standards through the practice of international courts in the national context was analysed by A. Kuchuk *et al.* (2025), who emphasised the role of supranational jurisprudence in shaping human rights protection standards. The theoretical foundations of the relationship between international and domestic law were summarised by R. Kunz (2024), who considered international treaties as a structural element of the national legal order. The role of international law in shaping constitutional values and the legal status of individuals was studied by M. Mishra & S. Khanna (2025), who showed that international treaties directly influence the evolution of the constitutional image of the individual.

Summarising the results of the analysis of scientific literature, it should be noted that contemporary studies convincingly demonstrate the multidimensional nature of the implementation of international treaty law in national constitutional legal orders, but remain fragmentary in explaining its system-forming role in shaping a holistic image of the human person in constitutional law. Existing works focus mainly on individual aspects – institutional asymmetries, legislative models of transformation, judicial application, or sectoral standards – without offering a general conceptual framework within which international treaty law appears as the basic normative basis for the phenomenology of the "constitutional person". This creates a scientific need for an integrative analysis capable of combining treaty standards, constitutional values, and the practice of their implementation into a single theoretical and legal model.

Materials and methods

The research was conducted in 2024-2025 as a doctrinal-analytical and comparative-legal study with elements of descriptive legal statistics, which corresponds to the goal of substantiating international treaty law as the fundamental normative basis for the phenomenology of the "constitutional person". The work was carried out in the form of a desk study without the use of experiments or sociological surveys and was not tied to a specific institutional base, as its material basis consisted of open official legal and statistical sources.

The research materials included international human rights treaties, in particular universal and regional conventions ratified by states, including the International Covenant on Civil and Political Rights and the European Convention on Human Rights (Convention for the Protection of Human Rights and Fundamental Freedoms, 1950; General Assembly Resolution No. 2200A, 1966), the practice of international judicial bodies, represented by the decisions of the European Court of Human Rights (n.d.), available through the official HUDOC database, as well as national constitutional acts and decisions of higher courts that refer to international treaty law. National legal materials included, in particular, the Constitution of Ukraine (1996) and legislative acts regulating the procedure for concluding and executing international treaties (Law of Ukraine No. 1906-IV, 2004), as well as the constitutional texts of other states included in the sample, in particular Constitution of the Republic of Poland (1997), Basic Law for the Federal Republic of Germany (1949), and Constitution of the Republic of Indonesia (1945).

To ensure comparative measurement, the legal systems of states with different models of the relationship between international and domestic law were used. In addition, aggregated statistical data on the level of ratification of key international treaties obtained from the official United Nations Treaty Collection database (General Assembly Resolution No. 2200A, 1966) were used, as well as data on the frequency of application of international treaties in national judicial practice, based on an analysis of court registers, in particular decisions of the Constitutional Court of Ukraine (n.d.), the Federal Constitutional Court of Germany (n.d.), the Constitutional Tribunal of Poland (n.d.), and the Constitutional Court of Indonesia (n.d.).

The sample of legal acts and court decisions was formed according to a targeted non-random principle. The criteria for inclusion were: direct or indirect reference to international human rights treaties, the presence of constitutionally significant arguments regarding the legal status of a person, as well as chronological relevance to the period 2015-2024. Declarative acts and decisions that did not contain legal arguments regarding the role of international treaties in shaping the constitutional status of individuals were excluded from the sample. The total set of documents analysed covered more than 60 regulatory and judicial sources, which provided sufficient breadth of legal material for a well-founded qualitative and limited quantitative generalisation.

To achieve the results of the study, the following steps were taken: identification of contractual norms relevant to determining the legal status of a person based on the texts of international treaties (Convention for the Protection of Human Rights and Fundamental Freedoms, 1950; United Nations, n.d.); comparison of their content with national constitutional provisions; analysis of judicial practice regarding the application of international treaties; generalisation of the results obtained within the phenomenological model of the "constitutional person", which was used as an analytical framework for interpreting the interaction between international treaty norms and the constitutional status of a person, rather than as an independent research method.

Descriptive legal statistics were used to quantitatively summarise the frequency of use of international treaties in court decisions and to identify trends in their integration into the constitutional interpretation of human rights based on data from court databases (European Court of Human Rights, n.d.). Non-parametric statistical criteria, in particular the Mann-Whitney U test and the Wilcoxon test, were used to verify the homogeneity of distributions and the correctness of comparisons. Comparisons were made between groups of legal systems with different models of the relationship between international and domestic law in terms of the frequency of references to international treaties in constitutionally significant court decisions; the level of statistical significance was set at $p < 0.05$. The technical means of the study included the use of official electronic databases of international organisations, national court registers, and standard software for processing statistical data. This methodological design ensured the reproducibility of the results and their relevance to the research objective.

Results

Treaty law and individual constitutional status

The study found that international treaty law in the field of human rights formed a multi-level regulatory structure that directly influenced the content and functioning of the constitutional status of individuals in national legal systems. An analysis of universal and regional human rights treaties, primarily the International Covenant on Civil and Political Rights and the European Convention on Human Rights, showed that these acts performed not only a guaranteeing but also a system-forming function, defining the basic parameters of a person's legal capacity at the constitutional level (European Convention on Human Rights, 1950; United Nations, n.d.). The results of a textual analysis of the treaty provisions showed that international treaties enshrined universal minimum standards of human rights, which were subsequently integrated into national constitutional systems through mechanisms of recognition, incorporation, or constitutional interpretation. At the same time, it was found that the treaty norms did not function in isolation, but formed an interrelated normative complex within which human rights and freedoms were considered directly applicable and limiting the discretion of state power.

A comparison of the provisions of the International Covenant on Civil and Political Rights with the relevant constitutional norms of the states included in the sample showed that international treaties defined the core of the constitutional status of the individual by enshrining fundamental rights, the principle of equality, the prohibition of discrimination, and guarantees of judicial protection (United Nations, n.d.). A similar normative logic was enshrined in the European Convention on Human Rights, where human rights took the form of legally binding standards subject to control by an international judicial institution (Convention for the Protection of Human Rights and Fundamental Freedoms, 1950).

A comparative analysis showed that the normative structure of international treaty law influenced the constitutional status of individuals in three main ways: first, through the creation of a catalogue of fundamental rights and freedoms; second, through the enshrinement of the principles of their limitation and protection; and third, through the establishment of procedural guarantees for the realisation of human rights. Together, these elements created a normative model within which the individual was recognised as the central subject of the constitutional legal order. To systematise the results obtained, the key treaty provisions that were directly relevant to the formation of the constitutional status of the individual were summarised. The relevant results are presented in Table 1.

An analysis of national constitutional texts showed that the provisions of international treaties were reproduced in domestic law not by mechanical copying, but through adaptation to national constitutional traditions. Thus, the Constitution of Ukraine enshrined the principle of the primacy of international treaties upon their ratification, which ensured the direct influence of treaty standards on the content of human rights and freedoms (Constitution of Ukraine, 1996; Law of Ukraine No. 1906-IV, 2004). Similar mechanisms were enshrined in the constitutional models of Poland, Germany, and Indonesia, although the degree of their practical implementation varied (Constitution of the Republic of Indonesia, 1945; Basic Law for the Federal Republic of Germany, 1949; Constitution of the Republic of Poland, 1997).

Table 1. Key treaty provisions relevant to the formation of the constitutional status of the individual

Treaty	Normative element	Significance for the constitutional status of the individual
International Covenant on Civil and Political Rights	Recognition of inalienable human rights	Formation of a universal core of constitutional rights
International Covenant on Civil and Political Rights	Prohibition of discrimination	Establishment of the principle of equality as a constitutional value
European Convention on Human Rights	Right to a fair trial	Institutionalisation of judicial protection of human rights
European Convention on Human Rights	Principle of proportionality of restrictions	Limits on state discretion in the field of human rights

Source: United Nations (n.d.), European Convention on Human Rights (1950b)

The results of the comparative analysis showed that in states with a monistic model of the relationship between international and domestic law, treaty norms had a more direct impact on the formation of the constitutional status of the individual. In contrast, in states with dualistic elements, this influence was mediated by national legislation and judicial practice. At the same time, all the legal systems studied showed a tendency to use international treaties as an interpretative guide in determining the content of constitutional rights.

Additional analysis of aggregated data from the United Nations Treaty Collection showed that a high level of ratification of universal human rights treaties correlated with the expansion of the constitutional catalogue of rights and freedoms and the growing role of international standards in national law (United Nations, n.d.). This led to the conclusion that international treaty law served as a normative minimum below which the constitutional status of individuals could not be lowered without violating the state's international obligations. In order to generalise the results regarding the interaction between treaty and constitutional norms, a comparison of models for integrating international treaty law into national legal systems was carried out. The results are presented in Table 2.

A summary of the results of this section allows to conclude that international treaty law formed the normative framework for the phenomenology of the "constitutional person", within which the individual was recognised as the bearer of inalienable rights guaranteed not only by domestic law but also by the international obligations of the state. It was this multi-level normative structure that led to the transformation of the traditional concept of the constitutional status of the individual from a purely national construct to an element of the global legal order.

Table 2. Models of normative integration of international treaty law in the formation of the constitutional status of the individual

State	Model of the relationship between law	Nature of the influence of treaties
Ukraine	Predominantly monistic	Direct normative and interpretative influence
Germany	Monistic with constitutional reservations	Interpretative influence through judicial practice
Poland	Mixed	Indirect influence through legislation
Indonesia	Dualistic	Limited normative influence

Source: Constitution of the Republic of Indonesia (1945), Basic Law for the Federal Republic of Germany (1949), Constitution of Ukraine (1996), Constitution of the Republic of Poland (1997)

Treaty integration in human rights interpretation

The study found that the judiciary played a key role in the practical integration of international human rights treaties into the national constitutional interpretation of individual rights and freedoms. An analysis of the decisions of the constitutional courts of the states included in the sample, as well as the practice of the European Court of Human Rights (ECHR), showed that it was judicial interpretation that ensured the transition from formal recognition of international obligations to their actual functioning in the domestic legal order (European Court of Human Rights, n.d.).

The results of the analysis of court decisions showed that international treaties were used by courts not only as an external argument, but as a normative source capable of influencing the content of constitutional provisions. In this context, it was noted that the International Covenant on Civil and Political Rights and the European Convention on Human Rights served as an interpretative standard, with the help of which national courts clarified the scope and limits of constitutional human rights (General Assembly Resolution No. 2200A, 1966; European Convention on Human Rights, 1950).

As a result of a systematic analysis of the practice of the European Court of Human Rights, it was established that decisions made on the basis of the Convention actually formed supranational criteria for the interpretation of human rights, which were subsequently taken into account by the constitutional courts of the member states of the Council of Europe. Access to the HUDOC database made it possible to identify a stable trend towards using ECHR standards as a benchmark when assessing the proportionality of restrictions on rights and freedoms and when determining the positive obligations of the state (European Court of Human Rights, n.d.).

An analysis of the case law of the Constitutional Court of Ukraine showed that international human rights treaties were used in its decisions as a source of interpretation of constitutional norms regarding the rights and freedoms of individuals. It was found that references to the European Convention on Human Rights and the International Covenant on Civil and Political Rights were found mainly in cases related to the right to a fair trial, the prohibition of discrimination, and the principle of legal certainty (Constitutional Court of Ukraine, n.d.). At the same time, international treaties were not applied autonomously, but in conjunction with the provisions of the Constitution of Ukraine, which indicated the integrative, rather than subordinate, nature of their use (Constitution of Ukraine, 1996).

Similar results were recorded in the practice of the Federal Constitutional Court of Germany. An analysis of its decisions showed that the provisions of the European Convention on Human Rights were used as a minimum standard of human rights protection, which supplemented but did not replace the provisions of the Basic Law. In this context, international treaties performed a corrective function aimed at harmonising the national interpretation of rights with international standards (Federal Constitutional Court of Germany, n.d.).

In the practice of the Constitutional Tribunal of Poland, international treaties were applied more cautiously. It was established that international standards were used primarily as an auxiliary argument in the interpretation of constitutional norms, while priority was given to domestic legislation and the provisions of the Constitution of the Republic of Poland (Constitutional Tribunal of the Republic of Poland, n.d.; Constitution of the Republic of Poland, 1997). At the same time, even in such a model, international treaties served as an external criterion of constitutionality.

The practice of the Constitutional Court of Indonesia has shown a more limited level of judicial integration of international treaties. An analysis of decisions has shown that international acts were used sporadically and mainly as a general context, without giving them direct normative force. This was consistent with the dualistic model of the relationship between international and domestic law enshrined in the Indonesian constitutional system (Constitutional Court of the Republic of Indonesia, n.d.; Constitution of the Republic of Indonesia, 1945). To quantify the results, the frequency of references to international treaties in constitutionally significant court decisions for the period 2015-2024 was calculated. The summary data are presented in Table 3.

The application of non-parametric statistical criteria made it possible to establish that the difference between groups of legal systems with predominantly monistic and dualistic models of the relationship between international and domestic law was statistically significant ($p < 0.05$). In particular, in states with a monistic model, the frequency of references to international treaties in constitutional jurisprudence was on average 2.6 times higher than in states with a dualistic model. In addition to quantitative indicators, qualitative differences were found in the ways in which international treaties were applied in court. In monistic systems, international treaties were used as a normative basis for recognising the unconstitutionality of national norms, while in dualistic systems, they performed mainly an argumentative or declarative function. To summarise the established types of judicial integration of international treaties, three models were identified, the results of which are presented in Table 4.

Table 3. Frequency of references to international human rights treaties in the practice of constitutional courts (2015-2024)

Judicial institution	Number of decisions analysed	Decisions with references to international treaties	Percentage (%)
Constitutional Court of Ukraine	82	29	35
Federal Constitutional Court of Germany	96	41	42.7
Constitutional Tribunal of Poland	74	18	24.3
Constitutional Court of Indonesia	68	9	13.2

Source: Constitutional Court of Ukraine (n.d.), Federal Constitutional Court of Germany (n.d.), Constitutional Tribunal of the Republic of Poland (n.d.), Constitutional Court of the Republic of Indonesia (n.d.)

Summarising the results of this section, it was established that the judicial integration of international treaties was a key mechanism for shaping the phenomenology of the "constitutional person" in national legal systems. It was through judicial interpretation that international human rights standards were transformed into real constitutional guarantees that limited state power and strengthened the legal status of individuals. The results obtained provide a basis for further analysis of the quantitative and structural trends in the implementation of international treaties, which will be discussed in the next section.

Table 4. Models of judicial integration of international treaties into constitutional interpretation of human rights

Model	Characteristics	Typical legal systems
Normative	International treaties have direct legal force	Ukraine
Interpretative	Treaties are used as a standard of interpretation	Germany
Limited	Treaties are of an auxiliary nature	Poland, Indonesia

Source: Constitutional Court of Ukraine (n.d.), Federal Constitutional Court of Germany (n.d.), Constitutional Tribunal of the Republic of Poland (n.d.), Constitutional Court of the Republic of Indonesia (n.d.)

Comparative trends in treaty implementation

The study found that the implementation of international human rights treaties in national legal systems was characterised by significant variability, determined by the model of the relationship between international and domestic law, the constitutional architecture of the state, and the practice of constitutional jurisdiction. A comparative analysis of the legal systems of Ukraine, Germany, Poland, and Indonesia showed that even with a formally identical level of ratification of universal and regional treaties, the actual degree of their integration into national law differed significantly (United Nations, n.d.).

An analysis of aggregated data from the United Nations Treaty Collection showed that all states included in the sample had ratified the International Covenant on Civil and Political Rights and recognised the binding nature of key international human rights standards (General Assembly Resolution No. 2200A, 1966). At the same time, the results of the study showed that the mere fact of ratification did not ensure the automatic transformation of treaty norms into effective elements of the domestic legal order. This confirmed the hypothesis about the gap between the formal participation of states in international treaties and the actual intensity of their application in national constitutional law.

To quantify implementation trends, the frequency of use of international treaties in constitutionally significant court decisions for the period 2015-2024 was analysed. Within the sample, 320 constitutional court decisions were identified that met the inclusion criteria, of which 97 contained direct or indirect references to international human rights treaties. Thus, the average level of judicial implementation was 30.3%, indicating a moderate but not universal integration of international standards into constitutional jurisprudence. A comparative distribution of these indicators among the legal systems studied is presented in Table 5.

The quantitative results obtained showed a clear differentiation between legal systems with different models of the relationship between international and domestic law. In particular, in countries with a predominantly monistic model (Ukraine, Germany), the average rate of judicial implementation was 39.1%, while in countries with a mixed or dualistic model (Poland, Indonesia), it was only 18.8%. The application of Mann-Whitney's U-test confirmed the statistical significance of the differences identified ($p < 0.05$), which allowed to consider the model of the relationship between laws as one of the determining factors in the implementation of international treaties.

Table 5. Quantitative indicators of judicial implementation of international treaties in national legal systems (2015-2024)

Country	Number of decisions analysed	Decisions with reference to treaties	Percentage of implementation, %
Ukraine	82	29	35
Germany	96	41	42.7
Poland	74	18	24.3
Indonesia	68	9	13.2
Total	**320**	**97**	**30.3**

Source: Constitutional Court of Ukraine (n.d.), Federal Constitutional Court of Germany (n.d.), Constitutional Tribunal of the Republic of Poland (n.d.), Constitutional Court of the Republic of Indonesia (n.d.)

In addition to frequency indicators, the nature of the use of international treaties in court decisions was analysed. The results of qualitative coding of decisions showed that international treaties were used by courts in three main functional roles: as a direct normative basis, as an interpretative standard, and as a general contextual argument. The quantitative distribution of these roles is shown in Table 6.

The results showed that the interpretative function of international treaties dominated in judicial practice, which corresponded to the general trend of using international standards as a minimum benchmark in the interpretation of constitutional rights. At the same time, the proportion of decisions in which treaties were used as a direct normative basis was significantly higher in monistic legal systems than in dualistic ones, confirming the systemic nature of the differences identified. In addition, a correlation was established between the level of ratification of international treaties and the intensity of their judicial application. Although all states in the sample formally ratified key human rights treaties, only in legal systems with developed mechanisms of constitutional control was ratification accompanied by active judicial implementation. This led to the conclusion that the effectiveness of implementation depended not so much on the international legal status of the treaty as on the internal institutional conditions for its application. Summarising the results of this section, it was found that comparative and quantitative trends in the implementation of international treaties confirmed their role as a structural but not self-sufficient element in the formation of the phenomenology of the "constitutional person". International treaties created a normative framework, but its practical content depended on the model of the national legal order, the activity of constitutional courts, and the nature of judicial interpretation.

Table 6. Functional roles of international treaties in the judicial practice of constitutional courts

Functional role of contracts	Number of decisions	Share, %
Direct regulatory basis	31	32
Interpretative standard	4	45.4
Contextual argument	22	22.6
Total	**97**	**100**

Source: European Court of Human Rights (n.d.)

Discussion

The results confirmed that international treaty law played a system-forming role in shaping the phenomenology of the "constitutional person", influencing not only the catalogue of rights and freedoms, but also the methods of their constitutional interpretation and judicial protection. The revealed multi-level integration of treaty norms made it possible to consider the constitutional status of a person as a result of the interaction of international standards, national constitutional principles, and judicial practice, rather than as an autonomous domestic construct. This conclusion was consistent with the conceptual approach of J. Ouyang (2024), who showed that modern law increasingly forms an "embedded" image of a legal subject integrated into supranational regulatory structures. Although J. Ouyang's study concerned European Union law and the consumer sphere, the results of this study showed a similar trend at the constitutional level, where the "constitutional person" is formed under the direct and indirect influence of international treaty standards.

At the same time, quantitative results of judicial practice showed that the implementation of international treaties remained uneven and dependent on the national model of the relationship between international and domestic law. This differentiation confirmed the conclusions of M. Ssenyonjo (2025), who, in his studies of African states, proved that the formal ratification of international treaties does not guarantee their effective implementation without appropriate domestic institutional mechanisms. Similarly, the results of this study showed that the activity of constitutional courts played a key role, rather than the international legal status of the treaty itself. The revealed dominance of the interpretative function of international treaties in judicial practice confirmed that treaty norms were most often used as a standard of interpretation rather than as an autonomous normative basis. This result correlated with the conclusions of O. Volokhov *et al.* (2025), who noted that international standards influence national legislation primarily through the transformation of law enforcement logic, rather than through the direct copying of norms. At the same time, the results of this study supplemented their approach with a quantitative measurement, demonstrating a statistically significant difference between legal systems with different implementation models.

Particular attention was drawn to the results that showed the expansion of the content of the constitutional status of the individual under the influence of new areas of international obligations. In this respect, the data obtained were consistent with the position of S.P. Subedi (2025), who showed that modern international treaties, particularly in the field of climate and due diligence of states, directly influence the evolution of human rights and broaden the understanding of the scope of state obligations. Although this study did not focus on climate law, its results confirmed the general trend towards expanding the phenomenology of the "constitutional human being" through a new generation of international treaty standards. The identified role of judicial practice as a corrective mechanism for implementation was also consistent with the findings of Ø. Ravna (2025), who, using the Karasjok case as an example, showed that international and supranational norms can significantly transform the national legal interpretation of a person's status, particularly in sensitive issues of minority rights. Similarly, the results of this study showed that it was judicial interpretation that transformed treaty norms into effective elements of the constitutional status of the individual.

At the same time, the results did not fully coincide with the approach of E. Pomes (2017), who emphasised the growing tension between international legal standards and national sovereignty in the context of technological transformations. In contrast, the results of the study showed that in the field of human rights, international treaty law did not so much create conflict as it formed a minimum normative level within which states carried out constitutional interpretation. Overall, the discussion of the results led to the conclusion that international treaty law was not an external factor but an internal element in the formation of the phenomenology of the "constitutional person". It defined normative boundaries, interpretative guidelines, and judicial mechanisms for the protection of rights, while leaving room for national constitutional specificity. This created a basis for further research aimed at an in-depth analysis of the interaction of international treaties with new areas of constitutional law and the evolution of judicial doctrine on human rights.

Conclusions

The study found that international treaty law in the field of human rights performed a basic normative function in shaping the phenomenology of the "constitutional person", defining the content, limits, and mechanisms for realising the constitutional status of individuals in national legal systems. The objective of the study was achieved through a systematic analysis of international treaties, national constitutional provisions, and judicial practice, which revealed the multi-level nature of the interaction between international and domestic law. The study confirmed that international human rights treaties formed the normative core of the constitutional status of the individual by enshrining universal standards of rights and freedoms, principles of equality, non-discrimination, and procedural guarantees for their protection. A qualitative analysis showed that these standards were integrated into national legal systems not by direct copying, but through adaptation to the constitutional principles and legal traditions of specific states.

Quantitative results of judicial practice showed uneven implementation of international treaties. It was found that, on average, about one-third of constitutionally significant court decisions contained references to international human rights treaties, with this figure being significantly higher in states with a predominantly monistic model of the relationship between international and domestic law. This made it possible to conclude that the effectiveness of implementation depended not only on the ratification of treaties, but above all on the institutional capacity and activity of constitutional jurisdiction. An important result was the establishment of the dominance of the interpretative function of international treaties in judicial practice. International norms were mainly used as a guideline for interpreting constitutional rights and freedoms, confirming their role as a normative minimum that limited state discretion in the field of human rights.

The practical significance of the results lay in the possibility of using them to improve national mechanisms for the implementation of international treaties, in particular by strengthening the role of constitutional courts and developing the doctrine of judicial application of international human rights standards. The conclusions could also be used in law-making to harmonise national legislation with international obligations of states. At the same time, the study had limitations related to the analysis of a limited range of legal systems and a focus primarily on constitutional jurisdiction. Further research should focus on expanding the comparative base, involving courts of general jurisdiction, and analysing the impact of new areas of international obligations on the evolution of the phenomenology of the "constitutional person".

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Міжнародне договірне право як фундаментальна нормативна основа феноменології «конституційної особи»

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Анотація. Метою цього дослідження було обґрунтування ролі міжнародного договірного права як базової нормативної бази для формування та функціонування феноменології «конституційної особи» шляхом систематичного аналізу договорів з прав людини та механізмів їх внутрішньодержавної імплементації у зв'язку з конституційними принципами та судовою практикою. Дослідження проводилося у форматі доктринально-аналітичного та порівняльно-правового аналізу з використанням елементів описової правової статистики на основі міжнародних договорів з прав людини, конституційних текстів та рішень конституційних судів України, Німеччини, Польщі та Індонезії за період 2015-2024 років. Основні результати дослідження показали, що міжнародне договірне право формує багаторівневу нормативну структуру конституційного статусу особи, визначаючи ядро основних прав і свобод, межі дискреції держави та процесуальні гарантії їх захисту. Було встановлено, що в середньому близько 30-35 % конституційно значущих судових рішень у досліджуваних правових системах містять посилання на міжнародні договори з прав людини, причому цей показник значно вищий у державах з переважно моністичною моделлю взаємозв'язку між міжнародним та внутрішньодержавним правом. Отримані дані підтвердили домінування тлумачної функції міжнародних договорів у судовій практиці та їх використання як нормативного мінімуму, що обмежує можливості обмеження конституційних прав. Зроблено висновок, що міжнародне договірне право трансформує поняття «конституційної особи» з елемента національної правової системи на складову глобальної системи правового захисту, що має суттєве значення для подальшого розвитку конституційного права та його застосування на практиці

Ключові слова: права та свободи людини; конституційні права; муніципальні права людини; міжнародне муніципальне право; міжнародно-правові зобов'язання; міжнародно-правові стандарти; виконання міжнародних договорів

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Criminological analysis of the causes of mercenary activity

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Abstract. The purpose of the study was to analyse the causes of mercenary, as it was used in different contexts, and the peculiarities of the legal control of this phenomenon. It was analysed causes of mercenary activity, which involved a complex examination of the social, economic, political and legal factors that favour the emergence and proliferation of the mercenary phenomenon. Also, it was identified factors such as political instability, regional armed conflicts, poverty, unemployment or lack of professional opportunities, that determined individuals to engage in paid military activities outside the legal framework. Criminological analysis was conducted that also explored the influence of transnational criminal networks, geopolitical interests, and legislative loopholes that allowed the recruitment, financing, and use of mercenaries. In addition to financial motivation, some individuals may be attracted by the desire for adventure, belonging to a group, personal affirmation or perpetuation of an identity built around military experience. In the absence of effective mechanisms for social reintegration, former combatants may become vulnerable to recruitment into mercenary structures. Therefore, understanding the mechanisms of recruitment, motivation and operation of mercenaries involved correlating macro-social factors with individual and organisational ones. The analysis was researched to allow the foundation of effective public policies, oriented both towards preventing structural causes and directly combating mercenary recruitment and financing networks. Only through an integrated approach, based on international cooperation and the consistent application of legal norms, can the scale and impact of the mercenary phenomenon on security and international legal order be limite. The results obtained from studying the causes of mercenary activity are mainly of a practical and strategic nature, contributing to better management of this phenomenon

Keywords: violent actions; curiosity; vulnerable childhood; paramilitary organisations; criminal antecedents; defective socialisation

Introduction

Crime is not an accidental or sporadic phenomenon, but represents the expression of a complex social reality, determined by the continuous interaction between the individual and his environment of existence. Applying this approach to the phenomenon of mercenarism, a broad and systematic examination of all the determining factors that contributed to its emergence, development and perpetuation was necessary, including by analysing the causes of mercenary activity. A considerable contribution to the field of mercenary activity research had been made by numerous researchers. The authors' Ye. Hryhorenko *et al.* (2023) examined the characteristics and essence of illegal paramilitary and armed formations in Ukraine, identifying their differences from legal military and paramilitary structures. Researchers highlighted a number of defining features, such as the absence of legal regulation, an independent organisational structure, combat readiness, discipline, and the capacity to conduct military operations, which allow them to be classified as illegal formations. O. Bontea (2022) noted that the activity of mercenaries was illegal, and mercenaries were not protected, although they take part in the armed conflict. In authors opinion, mercenaries do not benefit from the legal status granted to legitimate combatants and were not protected by the rules of international humanitarian law to the same extent as members of regular armed forces. R. Grecu (2022) supported the idea that increased attention needs to be paid to the prevention of crimes against public security and public order. Scientist emphasised the danger posed by crimes such as war propaganda and mercenary activity, which can destabilise the climate of peace and fuel internal or international tensions. War propaganda contributed to the spread of violent ideas and attitudes, influencing public opinion and justifying the use of force, while mercenary activity involved illegal participation in armed conflicts and connections with transnational networks. N. Savescu (2022) was of the opinion that mercenaries do not have a stable origin, they can be recruited from all provinces. M. Gherman (2023) noted that the activity of mercenaries was illegal, which was recognised by most global leaders and international organisations. K. Rękawek (2023) noted that the purpose of mercenaries was to fight continuously.

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Z. Lippai *et al.* (2024) emphasised that the presence of Hungarian mercenaries in contemporary armed conflicts raised sensitive issues related to the legal qualification of their status, the applicability of international criminal law norms and the respect for fundamental principles of human rights. Reserachers also highlighted that mercenaries may be involved in committing acts that fell under international crimes, but establishing their legal responsibility was hampered by the lack of a uniform regulatory framework, the difficulties in collecting evidence and the transnational nature of their activity. V. Jitariuc & A. Secrier (2024) noted that mercenary groups can be part of groups involved in committing acts of terrorism. The authors emphasised that the integration of mercenaries into such structures can take place both directly, through formal recruitment, and indirectly, through occasional or contractual collaborations. This association amplified the degree of social danger, as it combined the financial motivation specific to mercenaries with the ideological or political objectives of terrorist groups, generating violent actions with a major impact on international security. A. Schmidt (2024) pointed out that the activity of mercenaries brought only negative examples, such as the mercenaries in Mali, who seriously worsened relations between France and Mali. S. Cebotari & V. Lungu (2025) believed that mercenaries represented a direct threat to the territorial integrity of the state. Mercenaries may be involved in military actions aimed at supporting separatist movements, unrecognised entities or other non-state actors, which directly affected the sovereignty and control of the state over its own territory. Through their interventions, they can influence the balance of power in internal or international conflicts, prolonging hostilities and complicating peaceful settlement processes. The authors also drew attention to the difficult nature of mercenary activities to control, given that they often operated outside the legal framework. V. Kostiuk & I. Yefimenko (2025) noted that mercenaries resorted to war crimes out of the desire to obtain personal gain or to achieve other forms of individual benefits. The aim of the study was to analyse the reasons underlying the emergence and use of mercenaries in various historical and contemporary contexts, and to highlight the determining causes that favour the use of such forces, such as armed conflicts, periods of political instability or the economic interests of the actors involved.

Materials and methods

Methodological approach of this research was based on the use of a complex and coherent set of scientific research methods. Analysis method was applied, through which the key concepts, the legal norms and the particularities of the studied phenomenon were dissected and examined in detail, as well as the synthesis method, which allowed the integration of information obtained from various sources into a unified and systematised theoretical framework. Also, the historical method was used to highlight the evolution of relevant regulations and practices, providing a perspective on how the analysed phenomenon took shape and evolved in different historical stages. In addition, the comparative method facilitated the identification of similarities and differences between various legal regulations, doctrines or criminological approaches, thus contributing to a deeper understanding of the specifics of the subject in a national and international context. The theoretical and legal basis of the work was constituted by an international normative framework, such as: Additional Protocol I to the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol I) (1977), OAU Convention for the Elimination of Mercenarism in Africa (1977), and International Convention against the Recruitment, Use, Financing and Training of Mercenaries (1989). At the same time, the legal basis was also formed by the national legal framework of the Republic of Moldova, represented mainly by Article 130 and Article 141 of the Criminal Code of the Republic of Moldova No. 985 (2002), which provided the essential legal references for the legal classification of the facts and for the delimitation of criminal liability. This normative foundation was completed by an extensive analysis of the specialised literature, which included valuable doctrinal contributions and studies in the field of criminal law and criminology. In this context, the works of the authors S. Noshadha & M. Duka (2023) as important for the study because it provided grounds for examining mercenarism as a component of contemporary hybrid conflicts and for analysing the role of non-state armed actors in the transformation of the nature of war. The study by N. Savescu (2022) was important for this research due to its highlighting of the socio-economic and criminogenic factors that contributed to the recruitment of individuals into mercenary activity. The work of K. Rękawek (2023) was used to explain the psychological and behavioural characteristics of mercenaries, as well as the motivational mechanisms underlying their continuous participation in armed conflicts. These doctrinal sources contributed to the solid theoretical foundation of the research, offering varied perspectives on the interpretation of legal norms, on the legal-criminal qualification of the facts and on criminological approaches regarding the causes and conditions that favour the occurrence of the phenomenon studied. At the same time, the comparative analysis of these contributions allowed highlighting doctrinal divergences and convergences, as well as outlining an argumented and coherent position in relation to the issue addressed.

Results and discussion

Mercenaryism was a practice with a long history in the history of armed conflicts, having been used, at different times, as an instrument to supplement regular military forces. From the perspective of international humanitarian law, mercenaryism was subject to restrictive regulation, designed to limit and eliminate the use of such practices. The main international legal instruments prohibited not only the participation of mercenaries in hostilities, but also related activities, such as their recruitment, use, financing and training. This prohibition applied both to the state's public authorities and institutions, and to natural and legal persons acting on its territory or under its jurisdiction. States therefore had a positive obligation to prevent, criminalise and punish any form of involvement in mercenary activities. In response to the expansion of this phenomenon, the United Nations, through the General Assembly, adopted a series of resolutions designed to create a coherent legal framework for combating mercenaryism. These normative steps led to the adoption of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries (1989). The Convention was of particular importance, as it provided a legal definition of the notion of mercenary and qualified mercenaryism as an international crime. Another relevant example in this regard was the OAU Convention for the Elimination of Mercenarism in Africa (1977), which reflected the concern of African states regarding the destabilising impact of mercenaries on sovereignty, territorial integrity and self-determination processes. These regional initiatives emphasised the need for a coordinated and multilateral approach in combating mercenaryism, given its cross-border nature and serious implications for the international legal order. Therefore, it can be stated that mercenaryism represented a complex phenomenon, located at the intersection of international humanitarian law, international criminal law, contemporary criminology and collective security.

M. Bîrgău (2010) supported the idea that the cause represented the phenomenon that specified and determined or generated another phenomenon, called effect, acting in circumstances that favour or prevent the production of the effect. These circumstances were called conditions and represented the circumstances that influenced the cause through their presence, favouring it, enhancing it or slowing it down to the stage of producing the effect. At the same time, a similar position regarding the concept of causality of the criminal environment was found in the work of I. Larii (2004). The author supported the idea that the causes of crime were social phenomena and processes that generated and maintained the existence of crime or cause its increase or decrease. Criminal act represented the concrete expression of a set of actions and conducted that strongly contrasted with the criminal norms, through which the most important social values relating to the life and integrity of the individual, family, society and the state were protected (Bujor & Pop, 2002). Researchers D. Banciu *et al.* (2002) noted that identifying the causes of crime consisted in researching the social contexts of life, in locating the general and particular circumstances that accompanied or preceded the concrete situation, in which the crime was committed. Often, comparing these different situations allowed for a more adequate identification of these causes. This цфs why a particular task of criminological research consisted in determining, on a statistical or casuistic basis, the main variables that characteriied the life of various social groups with antisocial orientations, certain categories of individuals with problems, and the life contextsб in which these individuals were placed. Therefore, taking into account the four mentioned perspectives of criminology specialists regarding the interpretation of the content and essence of the "cause of crime", it can be concluded that these represented the set of social, economic, psychological, cultural and individual factors that favour the emergence, maintenance and development of the criminal phenomenon in society. Crime does not occur by chance, but was the result of the complex interaction between the individual and the environment, in which he lives. Criminology, as a science that studied the criminal phenomenon, started from the idea that no criminal act had a single cause, but was determined by a set of conditions and influences. The caused for the crime of "participation" of a mercenary in armed conflict, military actions, or violent acts aimed at undermining the constitutional order or violating territorial integrity may include those that transform the possibility into reality or always favour this antisocial activity. S. Noshadha & M. Duka (2023) provided essential theoretical and conceptual benchmarks for the analysis of mercenarism as a constitutive element of contemporary hybrid conflicts, as well as for examining the role of non-state armed actors in the process of redefining and transforming the nature of modern warfare. Researchers srudy highlighted the fact that, in the current context of international relations, wars are no longer fought exclusively between states and regular armies, but increasingly involve paramilitary structures, private military companies and other categories of non-state combatants acting outside the traditional military framework.

For example, one of the reasons could be the person's need to lead a decent life. Some people resorted to practicing mercenary activity because they came from socially vulnerable families and their family situation cannot provide them with some minimum living conditions, such as: food, clothing, payment of monthly services, possession of strictly necessary computing equipment, founding a family or, if one already exists, ensuring a prosperous future for children. Thus, by practicing this illegal activity in an armed conflict, in military actions or other violent actions and obtaining remuneration for the actions performed, mercenaries can satisfy their needs. Mercenary work can be analysed, from a legal and criminological perspective, as a marginal option that occured in unfavourable socio-economic contexts, especially for people, who failed to integrate into the civilian labour market, or who faced social exclusion. In criminological terms, this option was not just an individual choice, but the result of the complex interaction between structural, economic, psychological and cultural factors, which contributed to the orientation of some individuals towards activities located on the border or beyond legality. The lack of employment opportunities, precarious jobs, social inequalities and difficulties in accessing education and vocational training can generate an environment conducive to the adoption of deviant behaviours. In such conditions, individuals may perceive participation as mercenaries as a quick solution to obtain significant income, even if this activity involved major risks and was located in an area of ambiguity or even illegality, depending on the applicable legal regulations.

The involvement of mercenaries was regulated and restricted by the rules of international humanitarian law. Instruments such as Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol I) (1977) defined and limited the status of mercenaries, excluding them from the protection granted to lawful combatants and highlighting their problematic nature from the perspective of the legality of participation in armed conflicts. Many states also provided for sanctions in their domestic legislation for the recruitment, financing or participation as a mercenary, which underlined the legal risk nature of this activity. Participation as a mercenary can be explained by the theory of multifactorial causality of crime, which highlighted the cumulative role of environmental, individual and social context factors. Thus, people in situations of economic vulnerability, social exclusion or lack of perspective may be more susceptible to external influences, including recruitment into groups or organisations involved in armed conflicts. In addition, factors such as the desire for affirmation, the need for recognition, group influence or even radicalisation processes may intervene. Psychological motivations, which may include the search for identity, social status or a form of personal validation, as well as situational factors, such as proximity to conflict zones or exposure to recruitment networks, should not be neglected. In some cases, the choice to become a mercenary may be determined by a combination of economic constraints and opportunity factors, which highlighted the complex and dynamic nature of the phenomenon. Mercenary involvement must be understood as a multidimensional phenomenon, situated at the intersection of socio-economic vulnerabilities, individual motivations and legal constraints. This raised serious problems both from the perspective of legality and compliance with international law, and from a criminological point of view, through its implications for individual and collective security and social stability.

The need for a decent living was one of the most important causes of people engaging in mercenary activities. This need should not be understood only as a desire for material well-being or comfort, but as a fundamental condition of human existence, linked to the satisfaction of basic needs and the assurance of a dignified life. When these needs cannot be met through legal and stable means, some people ended up resorting to extreme solutions, such as mercenary work. In many regions of the world (Democratic Republic of Congo and Angola, Syria and Iraq, Latin America), these conditions were not guaranteed due to poverty, unemployment, economic instability, armed conflicts or poor economic development. In such contexts, people were faced with a lack of future prospects and the impossibility of improving their social situation through legal work. Mercenary work appeared as an economic alternative for people, who had military skills or experience in the security field, but who failed to integrate into the labour market. The "salaries" offered to mercenaries were higher than those obtained in the civilian occupations available to these people. For this reason, mercenary activity was perceived as an opportunity to quickly obtained sufficient income to ensure a decent living. Family responsibilities also played an important role in this decision. Many feel the pressure to support their children, parents or other dependents. In the absence of a stable income, this responsibility became a burden that was difficult to bear. People, who failed to ensure an acceptable standard of living, may be determined to seek alternative sources of income, even if these involved major risks. Mercenary activity, which usually offered salaries much higher than those in civilian life, thus became an apparently quick and efficient solution for obtaining the resources necessary for survival. In many regions affected by poverty, economic crisis or political instability, well-paid jobs were rare. Even skilled professions do not guarantee a sufficient income to cover daily expenses. This was not necessarily a desirable choice, but a consequence of economic and social constraints. Frustration generated by the lack of money, the feeling of social inadequacy or comparison with those, who made a better living can lead the person to seek risky solutions. In this context, mercenary work was perceived as a temporary escape from poverty, a means of gaining social respect or achieving financial independence. Conflict-affected and poverty-stricken communities also tend to normalise the idea that money can be obtained through risky means, which can further encourage involvement in mercenary work. The need to earn a decent living not only driven involvement in mercenary work, but also perpetuated it. Those involved can become part of a cycle of violence, dependent on income from illegal or dangerous activities. This situation showed how important economic equity and access to real opportunities were to prevent people from being pushed into such risky solutions.

The second reason for the mercenary activities was curiosity. For a significant number of people, the routine of daily life can be perceived as lacking stimulation, characterised by repetitiveness and a certain lack of existential meaning. From this perspective, some individuals developed a tendency to seek intense, out-of-the-ordinary experiences that provided them with a sense of adrenaline, challenge and overcoming personal limits. This need for strong sensations can constitute a vulnerability factor, leading to the assumption of significant risks and the involvement in dangerous or socially contested activities. In this context, participation in mercenary activities can be interpreted as an extreme form of stimulation seeking, in which the individual satisfied his need for emotional intensity, but also the desire to experience borderline situations, often associated with armed conflicts or unstable environments. At the same time, this choice usually involved a reassessment of the risk-benefit ratio, in which the potential gains – material, symbolic or related to personal identity – were perceived as outweighing the negative consequences, including legal, ethical or related to physical integrity. Thus, mercenaryism became not only an economic option, but also a manifestation of the desire to escape from the mundane everyday life and access an environment perceived as more intense, more challenging and more meaningful, even at the cost of exposure to considerable risks. Curiosity can also include the desire to test one's own physical, mental, or strategic abilities. Participation in illegal mercenary activities, such as in: the conflict in the Democratic Republic of the Congo in the 1960s-1965, the Angolan civil war in the 1970s-1980s, private military security companies in the Middle East from the 2000s to 2026, private military expeditions in West Africa in the 1990s-2000s, allowed individuals to test their limits in situations of extreme stress, developed military skills, and faced real challenges. For some, this experience can be more valuable than money or social recognition, as it gave them a sense of self-improvement and competence. Curiosity can be influenced by social environment, peer pressure, and the desire to experience something out of the ordinary. Young people were often attracted to risks and challenges, and the desire to experience "adventure" can be stronger than the fear of danger. In this sense, curiosity became a psychological factor that complemented economic or material motivations, explaining why some people choosen mercenary work even without an urgent need for money.

An important example of curiosity as a motivating factor for recruitment into mercenary activities was the scenario, in which a young person with no military experience was fascinated by the subject of armed conflicts. Young adult constantly watched documentaries, reports and online materials about contemporary wars, being attracted by the complexity of combat situations, military strategies and the idea of life in extreme conditions. Simple information was no longer enough for him, and his curiosity evolved into a strong desire to directly experience the reality he had read about and seen only from the outside. Against the backdrop of a daily life perceived as monotonous and lacking in challenges, the individual began to seek experiences that will provide him with adrenaline and a sense of existential intensity. In this context, he came into contact, through the online environment, with people or groups that promoted opportunities to participate in conflict zones, sometimes presented in an attractive manner, emphasising financial gains and "unique" experiences. His curiosity was amplified by this information, and real risks, such as danger to life, psychological trauma or legal consequences, were minimised or ignored. The decision to go to such an area was not determined exclusively by the need for money, but especially by the desire to answer a personal question: what was it really like there? Thus, curiosity became the trigger for action. Once in the conflict environment, the individual gradually got involved in activities specific to mercenaries, initially perhaps in secondary roles, but later even in direct actions. Only at this point does he begin to fully realise the seriousness of the situation, the difference between the initial perception and reality being significant. This example illustrated the fact that curiosity, although apparently harmless, can become a factor of vulnerability, especially when combined with the desire for adventure, lack of experience and the influence of the information environment. In such cases, involvement in mercenary activities does not occur as a result of a well-evaluated rational decision, but as a consequence of the desire to experience the unknown and live in unusual situations. At the end of the analysis of curiosity as a cause of the manifestation and spread of the mercenary phenomenon, that the desire for adventure and curiosity can attract inexperienced people to conflict situations, which can lead to high risk for the individual and for those around them. However, it explained, why mercenary work was not exclusively an economic choice: some people were motivated by lived experience, the unknown and the desire to test their limits.

Another reason for mercenarism was accident (at the initiative of the recruiter). This cause generally refered to, when the person was misled. That was, the individual ended up as a mercenary in the first place without his initial will and without knowing what activities he was going to carry out. The person ended up in such circumstances, because he entrusted too much to either another person or a group of people, for vast reasons, such as: going to a job abroad, travelling for rest, and as a result, the “initiator” of these trips through deception brought the individual to the obstacle to the location, where the mercenary activities were to be carried out, and not having the ability/knowledge to return, the person practices the mercenary activities. Activity of mercenaries was not always determined by economic, ambitious or psychological factors, such as the desire for a decent living, the desire for luxury or curiosity. Sometimes, unexpected circumstances or chance can be the decisive factor that led a person to become a mercenary. By chance in this context those situations, in which the individual: did not actively seek to become a mercenary; was in a place and at a suitable time, but without prior intention to participate in the conflict; was exposed to the influence of unexpected external factors, such as meeting with recruiters or emergency situations in conflict zones. Basically, the person ended up participating in war or military actions by chance, and his activity was not determined by planned desires or clear objectives. Some examples in this regard would be the civil war in Sierra Leone from the 1990s-2000s, when many volunteers or former foreign soldiers unexpectedly became involved, having already been present in the country for other reasons and being recruited by armed groups or security companies; or in the case of the conflict in the Democratic Republic of the Congo around 1960, when some people became mercenaries simply because they were in the region for other reasons (civilian work, business, exploration) and were contacted by armed or government groups. This case showed that mercenaryism was not always the result of deliberate motivation. Chance can attract inexperienced people into dangerous situations, which increased the risk for them and for those around them. At the same time, it emphasised the role of chance and external circumstances in human decisions, demonstrating that the activity of mercenaries cannot always be explained by economic needs, desires for luxury or curiosity. Similarly, that some random situations that attract people to mercenary activities can also be the following: being in a conflict zone – an individual can travel or work temporarily in a country affected by war and got involved in fighting or was recruited by armed groups. Acceptance of this offer was determined more by opportunity than by premeditated desire; the existence or emergence at the moment of external pressures or social circumstances – coincidences of life, such as the loss of a job, friends or acquaintances, who were already participating in military activities, or the need to remain in an unstable area, can lead a person to become a mercenary without initial plans.

The fourth reason for mercenary activity was defective socialisation (at the request of the person in need). Online communication on various social media platforms was widespread, many people had acquaintances, friends, former colleagues, who were abroad, and upon returning to the country, some of them tend to demonstrate their income through vast, fabulous “stories”. Under these conditions individual out of the desire to also had major financial rewards, was liable to fall into the trap of mercenarism. Therefore, due to the lack of details provided and poor communication, the citizen ventured into the chase for income and insisted on the person with fabulous “stories” to help him in order to get a job abroad, in a well-paid job. In such a situation, the experienced person promised the individual major benefits and convinced the latter to accompany him to work, on the battlefield, without the latter initially knowing about this fact, and in the end, finding himself at his destination being forced to practice mercenary activities. In such situations, mercenary activity, i.e. the involvement of individuals in armed conflicts in exchange for sums of money, can also be explained by psychosocial factors. One such factor was poor socialisation, i.e. inadequate education and social environment that do not provide the individual with moral values, social norms or healthy behavioural models. People with poor socialisation may be more likely to accept major risks or to get involved in illegal or dangerous activities, such as mercenary work.

Poor socialisation can create a risk-prone psychological profile, in which the individual was not perceived the danger associated with involvement in armed conflicts, sought membership in groups that provided structure and meaning, or was more easily attracted by financial promises or adventure, without analysing the morality or consequences of actions. Thus, people who had not been taught to respect social rules and norms may be more willing to accept dangerous or immoral activities, such as mercenary work, because there were no solid references in their psychological baggage to stop them. Some examples in this regard would be the conflicts in Sierra Leone and Liberia in the early 1990s, the conflict in the Democratic Republic of the Congo in the 1960s-1965s. Defective socialisation as a cause of mercenary activity also had some specific characteristics, such as: the lack of strong moral values that was, people who had not learned the clear difference between good and evil, between acceptable and unacceptable behaviours, may consider violence or involvement in armed conflicts to be a normal or justifiable option; the influence of a negative environment, which manifested itself through the growth and development of the "needy" in a disorganised, violent or emotionally unsupportive family environment, which can lead people to seek meaning and belonging in alternative groups, such as private military organisations or armed groups; the absence of positive social models that was, living together without mentors, teachers or responsible adults to guide behaviour and provide moral guidance, young people can adopt risky or illegal behaviours, without being aware of the consequences; difficulties in social integration – poorly socialised people may have problems adapting to rules, norms and societal values. These difficulties can make them vulnerable to the influence of external groups or to recruitment into paramilitary groups. Therefore, a final line to the mercenary cause of defective socialisation as being an important psychosocial cause of mercenary activity. The lack of solid moral benchmarks, the negative influence of the family or community environment, the absence of positive role models and difficulties in social integration cause the "needy" to become more prone to accept dangerous activities, such as mercenaryism. This cause highlighted that education and the social environment played a decisive role in shaping behaviour and in choosing risky activities.

Another reason, why people choose to work as mercenaries was lack of qualified studies and lack of a job. Various categories of people can be found in society. Some of them had a well-secured future and at the same time work daily for it, other people came from a more vulnerable environment, which unfortunately ensured their daily survival. There were various circumstances that determined the human personality to ensure their living only on a daily basis, among these the lack of a job, which was the result of the absence of a professional qualification, which was not offer the individual the possibility of a stable salary with a profitable income. The caused that favoured the lack of qualified studies and the lack of a job were various, namely: people did not learn at school, their lack of intellectual capacities, unfavourable family situation, lack of motivation/support/encouragement to study, lack of financial sources to obtain a qualified job. In such cases, people who were a part of the respective category were always looking for a "better" job with a financial remuneration within the limits of spiritual satisfaction, which would give them the opportunity to realise their vast dreams and accomplishments. In the absence of adequate educational training and recognised professional skills, the individual may face marginalisation, social exclusion and restricted access to the labour market. This situation can generate economic instability, financial insecurity and increased pressure on personal coping mechanisms. In such conditions, some individuals may become more susceptible to external influences or to opportunities that involved high risks, but promised quick financial benefits. These factors were frequently associated with an increased level of vulnerability to deviant or illegal phenomena, including involvement in mercenary activities. Such activities can be perceived as an alternative to the lack of legitimate employment opportunities, offering attractive material rewards, but at the same time involving major legal, physical and ethical risks. Therefore, deficiencies in education and the lack of a stable job were not only individual problems, but also reflected societal dysfunctions, contributing to the creation of an environment conducive to the emergence and perpetuation of risky behaviours.

Education played a key role in the social and professional integration of each individual. The lack of solid training can have wide and diverse consequences, including: reduced employment opportunities that was, people without higher education or professional qualifications had difficulty finding a well-paid or stable job; dependence on temporary or low-paid jobs – this can led to financial instability and frustration; vulnerability to recruitment – therefore, the lack of training made the individual more susceptible to the influence of mercenary groups, which promised attractive salaries, adventure and status. Even people with some secondary or technical education can be affected by unemployment or economic instability. The lack of a job had direct effects on the decisions of each individual, by creating the need to find alternative sources of income even under risky conditions, amplified frustration and the feeling of social futility, causing people to accept dangerous or illegal offers or made the material benefits offered by mercenaries seem tempting, regardless of the risks that may arise later (loss of life on the battlefield, "obtaining" the degree of disability, being subject to legal liability for practicing mercenary activity). Mercenary work offered an apparently quick solution to the lack of studies and a job. People in this situation saw in this activity the opportunity to earn quickly and consistently much higher than the salaries legally available in their countries of origin, the feeling of belonging and status especially if they came from marginalised backgrounds, the possibility of acquiring new experiences and military skills that can compensate for the lack of professional qualifications in other fields. Thus, the lack of studies and a job became a cause that reduced legitimate earning options and increased the attractiveness mercenaryism. A real and objective example of mercenary activity due to the lack of qualified education and the lack of employment was the activity of mercenaries in Mali. In Republic of Mali, a combination of poverty, unemployment and low educational levels had created an environment, in which young people were very vulnerable to recruitment by armed groups and mercenaries. Lack of long-term schooling. This meant that young people do not develop skills for stable or well-paid jobs, which made it difficult for them to integrate into the local labour market. In conflict-affected regions, young people not only lacked qualifications, but also cannot find suitable jobs to support their families or to have a stable income. I. Soroceanu (2022) showed that a low level of education was correlated with recruitment into armed groups, and unemployed young people were perceived by these groups as "easy targets" for recruitment, as they have few other economic options. This was an indirect form of economic motivation that intersected with the phenomenon of paid mercenaries, in the sense that money and survival became the main reasons for accepting involvement in war.

Vulnerability was manifested by difficulties in securing the resources necessary for daily living, by the lack of financial security and by exposure to situations of economic risk. In the absence of viable employment alternatives in the formal economy, some people may be tempted to resort to alternative activities, including some that are risky or borderline legal. This type of vulnerability may constitute a favourable factor for involvement in activities such as mercenary work, which offered rapid and significant financial rewards, but at the same time involved major legal, physical and moral risks. Thus, the decision to participate in such activities can be influenced by economic constraints, lack of legitimate opportunities and pressure to obtain material resources in a context of precariousness. The relationship between lack of education, economic vulnerability and involvement in mercenary activities highlighted the importance of investing in education and vocational training as essential means of preventing social marginalisation and high-risk behaviours. By strengthening access to education and employment opportunities, the likelihood that individuals will be drawn to dangerous or illegal activities as a solution to economic difficulties can be significantly reduced.

The sixth reason for mercenary activity was greed. This state of mind determined the individual to carry out any activity to fulfill his dreams, including resorting to illegal actions. Therefore, his tendency to possess various movable and immovable property, determined even more in the antisocial direction, until finally he knowingly admits to a criminal activity of the mercenary order. And as a result of practicing mercenary activity and obtaining financial remuneration according to expectations, individuals fulfill their dreams by purchasing the desired goods, including by travelling to "exotic" places in various locations around the world. From a criminological perspective, this conduct can be analysed through the lens of motivational theories, which highlighted the role of material incentives and opportunities in determining criminal or deviant behaviour. Mercenary activity was frequently regulated and sanctioned by the norms of international law, International Convention against the Recruitment, Use, Financing and Training of Mercenaries (1989) and national legislation, Article 141 of the Criminal Code of the Republic of Moldova No. 985 (2002), being considered incompatible with the fundamental principles of the law of armed conflict. Involvement in such activities may attract criminal liability, depending on the applicable legal framework, as mercenaryism was often associated with the violation of norms regarding neutrality, state sovereignty and the legitimate monopoly on the use of force.

Mercenary activity, the involvement of individuals in armed conflicts in exchange for large sums of money, is not always driven by patriotic, political or ideological ideals. A common motive was the desire to live in luxury, the need or ambition to achieve a standard of living well above that which was usual or necessary for survival. This desire represented a material and ambitious cause that can push some individuals to accept major risks in order to satisfy their aspirations for wealth and social status. Unlike the need to live a decent life, which was related to survival and meeting basic needs, the desire for luxury involves aspirations above the average standard of living, such as: the purchase of expensive cars, large houses, state-of-the-art electronics, exotic holidays or other material privileges. This motivation reflected the individual's desire to differentiate themselves socially and to achieve prestige and recognition through wealth. Under these conditions, mercenary work became attractive to such individuals because it offered significantly higher remuneration than regular work, and the associated risks, such as involvement in armed conflicts, were perceived as an investment to quickly obtain the desired luxury.

People motivated by the desire for luxury were not necessarily looking for survival, but to improve their lifestyle. This can also be influenced by the social environment, where comparison with others or the pressure to display material success led the individual to seek quick sources of income. The lack of legal and well-paid alternatives can make mercenary work a tempting option, even if the activity involved major risks. For example, young former soldiers or people with military training (from regions such as: the Democratic Republic of Congo and Angola, the Middle East, Latin America, etc.), who aspired to a luxurious lifestyle and cannot achieve these standards through regular wages, may be attracted by the offers of paramilitary groups or private security companies, which offered salaries considerably higher than in civilian life. At the same time, it was notable that the desire for luxury can influence the psychology of the individual, making him more willing to accept high risks. The feeling of inadequacy, comparison with others, who led a better life, the desire for social status and recognition contributed to the decision to become a mercenary. In addition, the social and cultural environment can normalise the idea that money obtained quickly and through risky methods was acceptable to achieve the desired luxury. Case demonstrated how psychological and social factors combined with the need for money, generating decisions that can have negative effects on individuals and communities affected by conflicts. Mercenaryism thus became an option to quickly obtain the desired luxury, highlighting the social imbalances and aspirations of members of society that can led people to dangerous activities. Therefore, a final idea at this stage of research represented a material and ambitious cause of the activity of mercenaries. This does not refer to survival, but to obtaining an above-average standard of living, to accumulating wealth and to acquiring a high social status. People motivated by luxury were willing to accept major risks, and mercenaryism offered them a quick and efficient way to achieve these goals. The phenomenon reflected both economic inequalities and social and psychological pressures, which determined people to choose risky ways (modalities) to satisfy their material desires. Embarking on the pursuit of wealth, especially to have more than someone else, people were always looking for activities that will bring them a "decent income". And the activity in the field of mercenary work, being a paid one, can become attractive to the type of people, who want more and more income. So, they mercenaries for the highest payer, not for just causes; they do not care about the suffering of people or the destruction caused, as long as they receive money or sometimes change their loyalty even during the war, if they receive more advantageous offers. Therefore, greed becomes the driving force that pushed them to participate in conflicts and accept major risks (Table 1).

So, greed was the main cause of mercenary activity because: it determined the acceptance of dangerous conflicts without moral conviction; it determined mercenaries to prioritise material gain over any other principle; or it can destabilise societies and prolong wars. Vulnerable childhood – every human being came from different families, where they grew up and developed differently. In the situation of a family, where the phenomenon of domestic violence (Pădure *et al.*, 2024), parental alcoholism (Tănăsescu, 2007), sleeping on the street/with relatives persisted, children can suffer various physical, psychological, bodily and/or behavioral consequences. The behaviour of children as a result of these gloomy circumstances can manifest itself through school dropout, violence, substance use, suicide or attempted suicide, so that, in adulthood, such human beings were prone to participate in armed conflicts, military actions or other violent actions aimed at overthrowing or undermining the constitutional order or violating the territorial integrity of any state, regardless of the place and time of such activities. In the context of the initiation of mercenary activity or wars, vulnerable children were easy to recruit because the lack of protection and education made them manipulated or forced to become soldiers, or the appearance of a promise of survival or money for poor or orphaned children can lead them to join armed groups, and the lack of alternative – that is, if there was no access to school, family or social support, people become a "resource" for mercenary recruitment (Table 2).

Table 1. Consequences of greed as a cause of mercenary activity

Cause	Consequence	Explanation
Greed	Instability and protracted wars	Mercenaries participate in conflicts solely for financial gain, which can fuel and prolong wars, maintaining instability in conflict zones
	Disrespect for laws and civil rights	Motivated by money, mercenaries may ignore legal and moral norms, which can lead to violations of international law and the commission of atrocities
	Betrayals and changes of allegiance	Loyalty becomes unstable, with mercenaries being able to quickly change sides depending on the material advantage offered

Source: developed by the author

Table 2. Consequences of involving children in mercenary activities

Category	Consequences	Explanation
Children	Physical and psychological trauma	Children are exposed to violence, extreme stress, and traumatic experiences
	Loss of education	Recruitment or involvement in criminal activities prevents access to school and normal development
	Risk of death	Participation in armed conflict significantly increases the risk of death
Society	Perpetuation of conflicts	The involvement of minors contributes to the maintenance and expansion of violence
	Political instability	The use of children in conflict weakens social and political structures
	Difficulties in rebuilding communities	Affected communities have difficulty recovering from protracted conflicts
Mercenaries/armed groups	Exploitation of vulnerable children	Children are easy to manipulate and recruit
	Low recruitment costs	Children are a cheaper labour force than adults
	Easily controlled loyalty	Children can be influenced and controlled more easily through manipulation

Source: developed by the author

Vulnerable childhood was a direct cause of mercenary activity, because it created an easily manipulated "resource", made children accept dangerous conditions for survival; and contributed to the perpetuation of wars and instability. Human trafficking – victims of human trafficking can often be victims of domestic violence (Pădure *et al.*, 2024), who once arrived in the destination country, were liable to be subjected to various types of activity, including in order to practice mercenary activity. Human trafficking can be seen as one of the main causes of mercenary activity, because it can provide labour and military personnel (i.e. armed groups or mercenaries recruit trafficked persons to fight, carry weapons or carry out dangerous missions, or these people were often vulnerable and accepted orders without opposition, being manipulated or forced), it can reduce costs and increase profits (which meant that victims of trafficking do not receive real wages or compensation, which made the activity of mercenaries more profitable for those who hire the force), it can exploit social vulnerability (i.e. trafficked persons often come from poor backgrounds, conflict zones or vulnerable childhoods, or the lack of education and protection made them easy to manipulate and control), it can perpetuate instability and conflicts/military aggression. Human trafficking fueled mercenary activity by providing a vulnerable, exploitable and easily controlled human force, which made conflicts cheaper, longer and more devastating. In Bosnia and Herzegovina, as in Ukraine, human trafficking had not always taken the classic form of kidnapping, but often took the form of exploitation of refugees and displaced persons, recruitment through fraud and manipulation, and taking advantage of post-conflict or war chaos. These conditions had favoured the involvement of mercenaries and foreign fighters, contributing to the prolongation of violence that can be characterised "by impulsiveness and unpredictability of actions" (Bujor & Bejan, 2016). In areas with frozen conflicts, ethnic tensions or strategic competition, human trafficking became an indirect, but effective mechanism to support the activity of mercenaries, by exploiting human vulnerability.

A comparative analysis of different regions affected by armed conflicts – Central and West Africa, the Middle East, Latin America, Eastern Europe, the Caucasus, Central Asia and emerging strategic areas – highlighted the fact that human trafficking was one of the major causes that fueled and sustained the activity of mercenaries. Regardless of the geographical or political context, the exploitation of vulnerable people appeared as a common element in all these situations.

Human trafficking offered mercenaries and armed groups a constant source of cheap, easily controlled and easily replaceable human force, reducing the costs of military operations and increasing their efficiency. Trafficked persons – children, young people, refugees, displaced persons or vulnerable workers – were recruited through force, manipulation or false promises, deprived of fundamental rights and transformed into mere instruments of armed violence. In all these regions, human trafficking fueled mercenary activity by providing a vulnerable human force, reduced the costs of military operations, allowed for rapid recruitment and contributed to the prolongation of conflicts and/or the destruction of local societies. At the same time, the use of human trafficking in support of mercenary activity perpetuated armed conflicts and social instability. By continuously feeding the fighting force, wars became longer, more difficult to resolve and more devastating for the civilian population. Affected communities suffered profound losses: the destruction of social structures, the loss of younger generations, collective trauma and major difficulties in the post-conflict reconstruction process. The analysis also showed that human trafficking was not limited to classic war zones, but also occured in frozen conflicts, regional crises or contexts of strategic competition, where mercenaries and private military companies exploited human vulnerability in less visible but equally harmful forms. Finally, it was worth noting that human trafficking and mercenary activity were deeply interconnected phenomena that supported each other. Combating one without addressing the other was insufficient. Only by protecting vulnerable people, strengthening state institutions, respecting human rights and international cooperation can the devastating impact of these practices on global peace and security be reduced.

Criminal record – the reintegration into society of a person after serving a sentence, who was convicted of committing a serious or particularly serious crime, was very difficult and required a long period of time. It often happened that, during the execution of the sentence for committing a crime from the category of those listed, the perpetrator remained without family support, possible divorces may occur if the person was married, friendships with other people became distant, and other consequences may arise as a result of the conviction. Thus, after serving the sentence, the person encountered difficulties in the process of socialisation and integration into the human community, but taking advantage of the fact that person possessed a behaviour specific to detention institutions, he can easily accept "a new criminal adventure". In certain circumstances, the person with a criminal record for committing a serious or particularly serious crime may find himself in a new position, carrying out activity in an armed conflict, or other types of violent actions as a mercenary. It was also worth mentioning that criminal records represented the totality of criminal acts committed by a person in the past, for which he/she was convicted. These can be an important cause of involvement in mercenary activity, as they influenced both the social situation and the individual's mentality and behaviour.

Firstly, people with criminal records often faced social marginalisation and serious difficulties in reintegrating into society. After serving a sentence, their access to legal and stable employment was limited, as employers showed distrust. In the absence of legal opportunities for a living, these people may be tempted to resort to illegal or dangerous activities, such as mercenary work, which promised quick profits. Secondly, many of those with criminal records already have experience in the use of violence, weapons or illegal activities, which made them easier to recruit by mercenary groups. Familiarity with risk, forced discipline or harsh living conditions reduced the moral and psychological barriers that would prevent other people from engaging in such activities. Criminal records can also contributed to the formation of an attitude of rejection of legal and moral norms. People who have broken the law in the past may show increased tolerance for illegality and may perceive mercenary work not as a serious crime, but as an opportunity for survival or enrichment. Last but not least, the lack of future prospects, stigma and economic pressure can lead these people to accept mercenary contracts, even if they involve major risks and violations of international law. For some, mercenary work became an alternative to social exclusion and poverty. Therefore, criminal records can be a cause of mercenary activity through their effects on social integration, access to legal work, the mentality and behaviour of the individual. The combination of economic difficulties, criminal experience and lack of other options favours the involvement of these people in mercenary activities.

Tolerating the participation of mercenaries – essentially, by the concept of tolerance the action of directly or indirectly allowing a person or a group of people to carry out a specific activity. Therefore, the phenomenon of "tolerating the activity of mercenaries" may also have the support of the political situation or "decision makers" or other people interested in this subject, who pursue certain goals and interests. Thus, this activity being *de jure* illegal but *de facto* convenient for a certain person or for a certain group of people, it was tolerated and mercenaries can easily participate in illegal activities. Moreover, by "tolerance of mercenary participation" the tacit acceptance or lack of firm reaction on the part of states, authorities or the international community towards the involvement of mercenaries in armed conflicts. This tolerance can be an important cause of the development and maintenance of mercenary activity. When mercenaryism was not clearly or effectively sanctioned, a climate of impunity was created. Mercenaries came to believe that they can act without serious legal consequences, which encouraged the recruitment and expansion of these groups. The lack of firm punishments reduced the risks perceived by those involved.

Tolerance can come from political, economic or military interests of some states or power groups. Some authorities choose to ignore the participation of mercenaries because they can be used as an additional armed force, without officially assuming responsibility. Thus, mercenaries became a convenient tool in conflicts, which increased their demand and importance. Also, the weakness of state institutions, the lack of control over the territory or corruption can lead to the tolerance of mercenary participation. In fragile or conflict-affected states, authorities lack the necessary means to prevent or sanction mercenary activity, thus allowing it to continue. Another important aspect was the lack of international cooperation. Even if mercenary activity was prohibited by international law, enforcement was difficult, when states do not collaborate effectively. This lack of coordination favours the mobility of mercenaries across borders and the continuation of their activities. Finally, it was noteworthy that tolerating the participation of mercenaries – whether through inaction, hidden interests or lack of capacity on the part of states – directly contributed to the expansion of mercenary activity. When the phenomenon was not firmly combated, mercenary activity was consolidated and becomes an increasingly widespread practice in armed conflicts.

The existence of paramilitary organisations – the existence of these entities sometimes led to the prevalence of their members in relation to the regular armed military forces of some states. Under the given conditions, the large number of members of paramilitary organisations was due to the fact that they were meant to carry out the service for the achievement of the goals of the states that established them, on the territory of other states. At the same time, paramilitary organisations can also served in support of international institutions or non-governmental organisations that pursue some well-defined goals on a certain administrative territory. These organisations can be an important cause of mercenary activity, as they created a favourable framework for their recruitment, organisation and use. Paramilitary organisations often operated outside the strict control of state authorities. This legal gray area allowws illegal activities, including the recruitment of mercenaries, to be carried out without being promptly sanctioned. The lack of effective control favours the transformation of these groups into mercenary-type structures. These organisations represented a training and selection environment for mercenaries. Their members gained military experience, get used to the use of weapons and specific discipline, which made them ideal candidates for mercenary service. Some of them ended up participating in armed conflicts in exchange for material benefits. Also, paramilitary organisations may have their own sources of funding, including illegal ones, which allowed the payment of fighters. The promise of financial gains attracts people motivated by profit, and mercenary work became an organised and constant activity, not an occasional one. Likewise, bring to the attention of the interested public that some paramilitary organisations were tolerated or indirectly supported by certain states or interest groups. This tolerance facilitated their transformation into mercenary forces used in internal or external conflicts, without officially assuming responsibility. Following the description of this cause, that the existence of paramilitary organisations favours the activity of mercenaries through the lack of state control, the military training provided, the financing possibilities and political tolerance. These groups created a favourable environment for the development of mercenary work and its involvement in armed conflicts.

The existence of private military companies – private military companies were established by individuals, who had certain goals to achieve. The activity of these companies was carried out according to an unofficial “custom”, manifested by a long-standing practice of participation in armed conflicts, military actions or other types of violent actions aimed at overthrowing or undermining the constitutional order or violating the territorial integrity of third states, that was, states whose members of private military companies were not citizens. The place and role of employees of private military and security companies in contemporary armed conflicts is omnipresent. The services and the share of participation of these persons both at the level of preparation of hostilities and directly in them is different (Zacon, 2002). Thus, these companies, being in existence, can ensure the participation of their members in armed conflicts, military actions or other violent actions aimed at overthrowing or undermining the constitutional order or violating the territorial integrity of any state. The existence of these companies can be an important cause of the development of mercenary activity, because they create an organised and apparently legal framework for carrying out activities close to mercenaryism. Private military companies institutionalised the use of armed force for commercial purposes. Even if they present themselves as security providers, in practice they can hire people with military experience to operate in conflict zones, in exchange for high remuneration. This practice reduced the difference between the regular soldier and the mercenary, facilitating the involvement of financially motivated fighters.

These companies represented an efficient recruitment mechanism for former soldiers, people with experience in conflicts or socially marginalised people. Once integrated into such structures, they can be involved in missions that exceed the legal limits of private security and approach mercenaryism itself. Also, the insufficient regulation of private military companies at the international level allowed their activities to be carried out in areas where state control was weak. The lack of clear rules and effective control favours abused and the use of mercenaries under the cover of commercial contracts. Another important aspect was that states or non-state actors can turn to private military companies to avoid political and legal responsibility for the use of armed force. Thus, mercenaries can be used indirectly in armed conflicts, without the state officially assuming its involvement. Finally, the fact that the existence of private military companies contributed to the expansion of mercenary activity by commercialising military services, facilitating recruitment, poor regulation and their use as alternative instruments in armed conflicts. These companies can transform mercenaryism into an organised activity, masked by the appearance of legality.

Time of war, armed conflict, military actions or other violent actions. By the concept of wartime it represented the “interval from the date of the declaration of mobilisation or the start of war operations until the date of the army’s transition to a state of peace” (Bujor & Pop, 2002). At the same time, the meaning of this terminology can also be associated with the other causes, only by substituting, “wartime” with “time of armed conflict”, “time of military actions” and “time of other violent actions”, all of which in turn had a negative and substantial contribution to the overthrow or undermining of the constitutional order or the violation of the territorial integrity of one or more states. Therefore, the group of causes listed represented the target stage of determining and favouring the development of mercenary activity, or, as long as peace prevailed in society, the commission of the crime of mercenary activity was not find its place in objective reality. During wars and armed conflicts, the need for military personnel increased rapidly. Regular armies may become insufficient, poorly trained or exhausted, and the states or groups involved seek alternative solutions to complete their forces. In this context, mercenaries were used as an additional fighting force, being appreciated for their military experience and immediate availability. Armed conflicts often led to the degradation of state institutions and the weakening of law enforcement. In areas affected by war, the control of the authorities was limited or non-existent, which created a favourable space for the conduct of illegal activities. Under these conditions, mercenaries can act with a high degree of freedom, making it difficult to identify and sanction. War transformed violence into an everyday reality. The use of weapons, armed confrontations and the loss of human lives became common phenomena. This normalisation reduced the moral and psychological barriers of people, making it easier to accept participation in violent activities, including mercenary work. Armed conflicts destroyed the economy, infrastructure and jobs. The increase in poverty, unemployment and insecurity led many people to seek alternative sources of income. In this context, mercenary work appeared as an economic option, offering attractive financial gains for people in difficulty.

During times of conflict, borders became more permeable and the movement of people was more difficult to control. Mercenaries can be recruited from different states and quickly transported to conflict zones. This international mobility favours the transformation of mercenary work into a transnational phenomenon. Modern wars often involved irregular armed groups, paramilitary organisations, or private actors. These actors frequently resorted to mercenaries to bolster their military strength, which increased demand and indirectly legitimised mercenary activity. Times of war, armed conflict, military action, or other violent action constituted one of the most important causes of mercenary activity. By increasing the demand for fighters, weakening state control, normalising violence, worsening economic problems, and facilitating international mobility, these contexts created an extremely favourable environment for the development of mercenaryism.

Social maladjustment of military personnel – military personnel were the type of persons, who had spent their entire lives or most of their time wearing their service uniform, carrying a weapon in their hands and ensuring their presence in some armed conflicts, military actions or other violent actions produced in objective reality. At the same time, military personnel were also the categories of persons, who were permanently and continuously involved in various exercises and/or tactical training applications. Thus, once they reached retirement age or upon dismissal from military service, the respective persons may encounter some difficulties in the reprofiling process. Under the given conditions (Cioclei, 1999), former military personnel were liable to be subject to the crime of mercenary activity, because the respective activity was analogous to the legitimate one of the military. Many former soldiers faced problems such as lack of employment, difficulty adapting to social rules and rhythms different from those of the military, and the loss of the status or respect they enjoyed in the army. This difficulty in reintegration can lead to the search for activities that allowed them to use the experience and skills acquired in the army, even if these were illegal or dangerous, such as mercenary work.

Former soldiers possessed military training, skills in the use of weapons, strategy and discipline, all of which were very valuable for groups that hire mercenaries. Paramilitary organisations or private military companies were interested in such people because they can be quickly integrated into combat or security structures. Participation in armed conflicts can lead to trauma, post-traumatic stress, or difficulties in managing emotions and social situations. This psychological instability can make former soldiers feel more comfortable in violent or strictly hierarchical environments, specific to mercenary activity, than in ordinary civilian life. Social maladjustment and associated economic difficulties led many former soldiers to accept mercenary contracts for higher financial gains than those available in the civilian sector. Immediate payment and material rewards were a strong incentive for people in difficulty. In many countries, military reintegration programmes were insufficient or ineffective. The lack of professional, psychological, and social support can push former soldiers towards alternative solutions, including employment as mercenaries, where their experience was sought and rewarded.

So, former soldiers face difficulties in reintegration, lack of economic opportunities, psychological problems and material needs that made them vulnerable to recruitment by paramilitary organisations or private military companies. The category of economic causes included: poverty and lack of jobs (in some regions of the world, those pursuing various interests determine civilians to accept fighting against payment), large financial gains (these can be offered by groups or states that can afford to pay mercenaries) and economic inequalities (which exist between states or regions). The list of political causes that favour the emergence and development of mercenaries was formed by political instability (often manifested through coups d'état, civil wars, incitement to hatred in society), the weakness of the state (i.e. fragile institutions, insufficient army) and the desire of some political actors to avoid the direct involvement of the national army. Regarding the social causes of the spread of mercenary activities, that these contributed negatively to the decline in life prospects for young people, the radicalisation or normalisation of violence in conflict areas that "endanger the very existence of the social system, introducing elements that disorganise and unbalance it, overthrowing the most important conditions of existence of society" (Bujor & Bejan, 2016). Also, the lack of trained military personnel in a state, the need for specialised military experience (special operations, security) and prolonged conflicts that exceeded the capacity of the regular army were directly part of the category of military causes that contributed to the manifestation of mercenary activity.

Conclusions

Mercenarism was a complex criminal phenomenon, with a multifactorial determination, which reflected the dynamic interaction between social structures and the individual characteristics of the person. The phenomenon fell within the paradigm of relative social determinism, according to which crime was conditioned by structural factors – economic, political, institutional – without excluding the role of individual will and responsibility. Thus, economic precariousness, unemployment, accentuated social inequalities and the lack of opportunities for social mobility can constitute factors generating orientation towards mercenary activities, especially in the case of people with military training or experience in the security field. At the same time, political instability, the existence of armed conflicts, the weakness of state institutions and the diminishing efficiency of social control mechanisms created the structural premises for the recruitment and use of mercenaries in various theaters of operations. At the individual level, involvement in mercenaryism can be influenced by traits such as risk-taking, the need for affirmation, the search for social status or difficulties in reintegration after the end of military activity, and knowledge of the causes of this illegal phenomenon was essential. Previous socialisation experiences in violent or militarised environments can contribute to the normalisation of the use of force as a means of achieving personal goals. Cultural and ideological factors can also reinforce this orientation, by valorising violence, military heroism or quick gain, generating an informal normative framework that reduced the perception of the seriousness of the acts. Consequently, mercenarism must be understood as the result of the accumulation and interdependence between causes (generating factors) and conditions (favouring factors), which facilitated the adoption and maintenance of criminal behaviours. Prospects for further research lie in the analysis of the identity of the criminal mercenary, the characteristics of the mercenaries, the war crimes committed by the mercenaries and the study of statistical data on the participation of mercenaries in theaters of war.

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Кримінологічний аналіз причин найманства

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Анотація. Метою дослідження було проаналізувати причини діяльності найманців у різних контекстах та особливості правового контролю цього явища. Було проаналізовано причини найманської діяльності, що передбачало комплексне вивчення соціальних, економічних, політичних та правових факторів, які сприяють виникненню та поширенню явища найманства. Також було виділено фактори, такі як політична нестабільність, регіональні збройні конфлікти, бідність, безробіття або відсутність професійних можливостей, які зумовлювали залучення осіб до оплачуваної військової діяльності поза межами правового поля. Кримінологічний аналіз також досліджував вплив транснаціональних злочинних мереж, геополітичних інтересів та законодавчих прогалин, що дозволяли вербування, фінансування та використання найманців. Окрім фінансової мотивації, деякі особи могли бути приваблені бажанням пригод, приналежністю до групи, самоствердженням або підтриманням ідентичності, пов'язаної з військовим досвідом. У разі відсутності ефективних механізмів соціальної реінтеграції колишні бойовики могли стати вразливими до вербування у структури найманців. Таким чином, розуміння механізмів вербування, мотивації та діяльності найманців передбачало кореляцію макросоціальних факторів з індивідуальними та організаційними. Проведений аналіз дозволив обґрунтувати ефективну державну політику, спрямовану як на запобігання структурним причинам, так і на пряме протидіяння мережам вербування та фінансування найманців. Лише інтегрований підхід, заснований на міжнародній співпраці та послідовному застосуванні правових норм, був здатен обмежити масштаби та вплив явища найманства на безпеку та міжнародний правовий порядок. Отримані результати дослідження причин найманської діяльності мають переважно практичний та стратегічний характер і сприяють ефективнішому управлінню цим явищем

Ключові слова: насильницькі дії; цікавість; вразливе дитинство; парамілітарні організації; кримінальні передумови; дефектна соціалізація

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The responsibility of business entities for breaches of data protection legislation in process management

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Abstract. The aim of this study was to offer a comprehensive theoretical analysis of the development of the system of liability of business entities for violations of the legislation on personal data protection at the stages of collection, storage and processing. The methodology was based on the use of the systemic approach and the comparative legal method to the regulatory frameworks of Ukraine, the United States of America and the Federal Republic of Germany. Research showed that the legal responsibility of business has moved from a strategy of formal compliance to a concept of comprehensive accountability. Under this new paradigm, entities had to demonstrate the practical effectiveness of the protection algorithms they have implemented. In the Ukrainian legal field, it was found that the most critical offences arise at the stages of obtaining consent, inconsistency between the purpose of further use of information and the original purpose, and disregard for the duty to distinguish between business and personal data in personnel processes. Neglecting to identify roles in writing when engaging information processors was found to create conditions for the uncontrolled transfer of data, leading to joint and several liability for counterparties. The study revealed a fundamental difference between the German vertical system of sanctions, which prioritises technical system integrity, and the American sectoral decentralisation model, which is characterised by a strong punitive enforcement approach. It was found that European case law permits compensation for non-material damage in cases of breach of personal data protection legislation, provided an individual has experienced psychological distress or fear of unlawful data use. It was determined that institutional fragmentation in Ukraine, coupled with the absence of an autonomous supervisory authority, reduces the level of legal protection for processing operations, compared to the German model. The study confirmed the necessity of integrating the three-part public interest test into all internal regulations governing access to confidential information, with the aim of preventing mass offences in the municipal sector. The practical significance of the results lies in their potential application by legal departments and enterprise management to implement the concept of data protection by design and conduct security audits to minimise legal risks in the context of digital transformation

Keywords: personal information; data holder; processor; information leaks; institutional fragmentation; confidentiality assurance

Introduction

The relevance of studying the responsibility of business entities for breaches of data protection legislation in process management is determined by the complete digitalisation of business operations, in which information has become both a vital asset and a source of legal risks. When process management requires the continuous collection and processing of large volumes of personal data relating to clients and employees, technical failures or unauthorised access can result in financial sanctions and the destruction of the business's reputation. This issue is also relevant for Ukraine in the context of its European integration obligations, as well as the need to adapt the national legal framework to the standards set out in Regulation (EU) No. 2016/679 of the European Parliament and of the Council "On the Protection of Natural Persons with Regard to the Processing of Personal Data and On the Free Movement of Such Data (General Data Protection Regulation)" (2016). The development of clear theoretical foundations of responsibility in business processes is necessary to form a transparent and safe digital market, ensuring legal certainty that guarantees investment attractiveness and social stability.

G.I. Chanysheva (2026) considered the problem of protection of personal data of employees in terms of international standards, the compliance of Ukrainian legislation with the standards of the International Labour Organisation (ILO). The researcher has found that the current Ukrainian legislation on employees' personal data does not consider the specific requirements of data protection in la-

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bour relations. This has highlighted the need for a separate chapter on the confidentiality of professional and business qualities in the Draft Labour Code of Ukraine (2026). D. Karpyn *et al.* (2026) researched the rise of digital culture and the collective responsibility for cybersecurity in organisations. They concluded that security should be an integral part of the organisation's activity, with clear responsibility distribution among all roles, starting with risk awareness at the employee level. O.R. Balatska & I.M. Kushnir (2026) analysed the implementation of the European right to be forgotten into the Ukrainian legal field. Their research has confirmed the fragmented nature of the national regulation and the need for a comprehensive legislative reform to protect human dignity and reputation in digital space.

O.V. Klymchuk & O.I. Yaremenko (2026) studied the theoretical and conceptual foundations for harmonising Ukrainian legislation with European cybersecurity standards, focusing on the challenges facing public authorities. They proved that this process cannot be merely formal, but rather requires the transformation of the entire public administration system to strike a balance between state security interests and human rights. O.M. Bykov & V.V. Savchenko (2024), meanwhile, examined the challenges of personal data protection caused by the rapid development of information technologies and growing cyber threats, such as social engineering and large-scale information leaks. They found that national legislation cannot adapt to the pace of digitalisation, resulting in the emergence of "grey areas", while organisational management shortcomings and a lack of regular business entity audits undermine public trust in information-operating institutions. M. Surzhynskyi (2025) studied the challenges of adapting legislation to data protection standards in the field of artificial intelligence (AI), examining the provisions of the Regulation (EU) No. 2024/1689 of the European Parliament and of the Council "Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act)" (2024). The author identified the need to introduce regulatory "sandboxes" and ethical codes to ensure algorithmic transparency and protection against biased automated decisions.

V. Strelnyk & I.E. Brazhnichenko (2022) studied the general theoretical aspects of legal regulation and the hierarchy of concepts in the field of information protection. The researchers analysed the criteria for classifying information as personal data and proposed a classification system based on the form of expression and the medium. They also examined the controversial issue of the legal consequences of a data subject's refusal to consent to processing during the conclusion of legal transactions. The study emphasised the importance of developing effective mechanisms to hold data controllers accountable for data becoming publicly accessible on the internet and substantiated the need to align employment and civil law contracts used by Ukrainian companies with international standards.

C. Smith & R. Hawkins (2026) proposed a methodology for demonstrating compliance with data protection principles, developing a framework for business entities and supervisory authorities. The authors demonstrated how structured compliance claims could improve consistency in the way certification bodies assess the lawfulness of data processing. A. Hennig *et al.* (2026) studied the impact of regulatory acts on software development processes by analysing discussions in open-source projects on GitHub. They found that the introduction of the European Parliament and of the Council Regulation (EU) No. 2016/679 (2016) led to a substantial rise in the number of requests to improve the privacy of the code. This indicated the success of legislative incentives to open dialogue within the professional developer community. L. Belli (2026) discussed the evolution of digital architectures and trends towards "legal interoperability" in the BRICS countries with a focus on new regulatory agencies in Brazil, India and China. The author noted that these countries were looking to coordinate policies to push for a global data governance framework, which was indicative of their desire for innovation but with more state control. P. Singh *et al.* (2026) considered the privacy threats in the field of mental health with the application of AI, discussing the ethical limits of automated psychological assessment. They found that the absence of reliable data governance in this realm could lead to patients being re-traumatised and their personal information being used to create profiles. M. Faccioli (2026) analysed civil liability for unlawful processing of data under Article 82 of Regulation (EU) No. 2016/679 of the European Parliament and of the Council, in particular, the criteria for compensation of damage. The author stressed the importance of the Court of Justice of the European Union's (CJEU) case law in the evolution of the concept of compensable damage, particularly non-material damage, which has become a point of reference for Italian and German law. L. Thomas *et al.* (2022) looked at information breach notification systems and intrusion prevention measures, considering the interaction between privacy and cybersecurity laws. The researchers found that, in cases where data owners were unable to prove that adequate technical protection measures had been implemented, case law tended towards full liability.

Despite the thoroughness of existing studies, certain gaps remain that require further investigation. In particular, the specific responsibilities of business entities within process management models are not well understood, since the responsibilities of processors and data holders often overlap. Additionally, there is a lack of systematic, comparative analysis of sanctioning mechanisms that considers the challenges of martial law and digital hypermobility.

This study aimed to provide a theoretical basis and analysis of the legal system for non-compliance with regulatory requirements concerning the protection of personal data within operational business models. To this end, the following tasks were undertaken: analysing the legal regulation of personal data protection in Ukraine, examining the mechanisms of legal responsibility and enforcement practices in the United States, Germany and Ukraine, and formulating strategic recommendations for aligning the system of business entity responsibility in Ukraine with international standards.

Materials and methods

The research methodology was based on a systemic approach, enabling the responsibility of business entities to be considered as a system encompassing the interrelationship between regulatory provisions, the composition of the parties involved (data holders and processors), types of legal responsibility and the stages of the operational data processing cycle (collection, storage and processing) within process management. The analysis covered three jurisdictions: Ukraine, the Federal Republic of Germany, and the

United States of America. The choice of these jurisdictions was determined by the need to compare a transitional legal system undergoing European integration harmonisation (Ukraine), a codified model with the highest protection standards (Germany), and a sectoral, decentralised model with active state-level law-making (the United States). The study's chronological scope covers the period from 1992, when Ukraine's fundamental information legislation – the Law of Ukraine No. 2657-XII "On Information" (1992) – was adopted, to March 2026. This enabled the retrospective development of legal norms to be analysed, as well as their adaptation to the challenges of global digitalisation.

A variety of methods were employed to analyse offences relating to personal data protection, categorised according to the type of material examined. The formal legal method was applied to regulatory legal acts in Ukraine, the United States, Germany and the European Union. These included the Criminal Code of Ukraine (2001), the Federal Trade Commission Act (2006), the Law of Ukraine No. 2297-VI "On Personal Data Protection" (2010), the Code of Ukraine on Administrative Offences (2017), the Federal Data Protection Act (2017), and EU acts in the field of data protection. This method aimed to establish the legal basis for liability, the elements that constitute offences, the conditions for liability, the authority of supervisory bodies, and the types of sanctions. Content analysis was applied to the acts and materials of supervisory authorities, analytical reports and statements. Particular focus was given to the materials of the United States FTC, the California Privacy Protection Agency (CPPA) (The 2025 privacy…, 2025; Q2 2025 privacy…, 2025), the annual report of the Commissioner for Human Rights of the Verkhovna Rada of Ukraine (n.d.), and the reports of the Federal Commissioner for Data Protection and Freedom of Information (2025). This method enabled typical violations to be identified, such as unlawful or excessive data processing, inadequate information provided to data subjects, information leaks, digital monitoring, the use of AI and shortcomings in consent to personal data processing. Statistical analysis was applied to quantitative data on fines, complaints, personal data leaks, inspections, investigations and sanctions. For this purpose, statistical and monitoring data from the DLA Piper GDPR Fines and Data Breach Survey: January 2026 (2026) were used. The aim of the statistical analysis was to compare the intensity of enforcement in Ukraine, the United States, Germany and the European Union. The case study method was applied to individual court decisions, regulatory decisions and examples of law enforcement. This category included acts of the Constitutional Court of Ukraine, in particular Decision of the Constitutional Court of Ukraine No. v002p710-12 (2012) "In the Case on the Constitutional Submission of the Zhashkiv District Council of Cherkasy Region on the Official Interpretation of the Provisions of Parts One, Two of Article 32, Parts Two, Three of Article 34 of the Constitution of Ukraine", as well as decisions of the FTC (Federal Trade Commission), CPPA, European data protection authorities and other regulators in cases concerning violations of personal data processing rules (The 2025 privacy..., 2025; Q2 2025 privacy..., 2025). This method made it possible to establish how courts and regulators qualify violations, assess the lawfulness of data processing and determine the proportionality of sanctions.

The logical legal method was applied when drafting laws such as the Resolution of the Verkhovna Rada of Ukraine No. 4065-IX "On Adopting as a Basis the Draft Law of Ukraine on Personal Data Protection" (2024), and the American Data Privacy and Protection Act (ADPPA) (2022). It was also applied to strategic documents, particularly the Commission Staff Working Document: Ukraine 2025 Report (2025), and reports on the activities of the Federal Commissioner for Data Protection and Freedom of Information (2025). This method was used to reveal the legal content of new institutional instruments that define the obligations of data holders and processors, ensuring responsibility for offences is inevitable. The final stage involved applying the comparative legal method to the Constitution of Ukraine (1996), which is an act of the highest legal force, as well as to foundational regulations and laws: Regulation (EU) No. 2016/679 of the European Parliament and of the Council (2016); the Federal Data Protection Act (2017); and the Colorado Privacy Act (CPA) (2021). The comparison was carried out according to unified criteria, including the composition of those responsible – data holders, controllers, and processors – the legal grounds for imposing sanctions, and the scope of legal responsibility for violations of personal data processing regimes. This method aimed to identify common patterns and specific differences in the legal regulation of personal data protection across different legal systems. Taken together, these methods ensured a comprehensive analysis of the responsibility of business entities by March 2026. The limitations of this study are determined by the absence of uniform case law on compensation for non-material damage in Ukraine.

Results

Legal regulation of the responsibility of business entities for breaches of personal data protection legislation in Ukraine. The constitutional and legislative basis for the protection of personal data in Ukraine is a system of regulatory guarantees for informational privacy. According to Article 32, Part Two of the Constitution of Ukraine (1996), the collection, storage, use and dissemination of confidential information about a person is strictly prohibited without their free consent, except in cases clearly defined by law for the purposes of national security, economic well-being or the protection of human rights. For business entities, this creates a basic obligation to ensure the legality of every operation, including at the business model planning stage. Breaching this principle is considered non-compliance with the general requirement of lawful processing. This constitutional provision was given an expanded interpretation in the Constitutional Court of Ukraine's Decision No. v002p710-12 (2012), which emphasises the inadmissibility of any arbitrary handling of information about individuals. Additionally, Article 31 of the Constitution of Ukraine guarantees the secrecy of correspondence, obliging businesses to provide technical protection for communication channels when transmitting data to third parties. For legal entities implementing process management, these provisions are the main regulatory restriction, since any business operation involving the processing of information of clients or employees must comply with the established criteria of legality and lawfulness at the highest legislative level. The primary legal instrument regulating the processing activities is Law of Ukraine No. 2297-VI (2010), which delineates the scope of application and the main categories of legal relations in the digital era. The law requires the controller to obtain the voluntary and informed consent of the data subject at the data collection stage.

Article 1 of the Law states that the regulations apply to any data processing activity carried out in whole or in part by automated means, and to structured paper filing systems. In the course of their activities business entities usually act as controllers or processors of personal data. Article 2 defines the controller as a person who decides the purpose of processing data and the way to process data. The processor acts on behalf of the controller under a written agreement. In the absence of such a document, or in the event of an ambiguous distribution of obligations, there may be civil liability and it may be difficult to establish the responsibilities of the parties. The determination of the roles is important in the field of process management because both entities are responsible for the protection regime under Article 24 of the Law within the limits of their powers. The controller must ensure the protection of data against unlawful processing and accidental loss, and must designate a person or unit responsible for the organisation of this work. A business entity shall respect the principle of proportionality when storing personal information; The purpose of processing shall be clearly defined and, according to Article 6 of the Law, it shall be lawful, transparent and open. Processing data beyond the necessary scope or for purposes that are incompatible with those originally stated is considered a violation. If a company continues to use information for marketing purposes after archiving or deleting it without additional consent, administrative liability arises. Another obligation is to ensure that employees have proper access to the database. The controller must appoint a responsible person and develop instructions to prevent unauthorised viewing of information by personnel without the relevant authority.

The Standard Procedure for Personal Data Processing, which was approved by the Commissioner for Human Rights of the Verkhovna Rada of Ukraine (n.d.), provides further details on these requirements by specifying that the collection method and storage period must be proportionate to the defined purpose (Ombudsman of Ukraine, 2014). Controllers must document the granting of consent by the data subject, who must give their consent voluntarily and be fully informed. In e-commerce, consent can be given by selecting a box on an information system, provided processing does not begin before activation (Law of Ukraine No. 2297-VI, 2010). Any deviation from these procedures in internal business processes may result in legal action being taken. The general principles of business entities' information activities are also regulated by Law of Ukraine No. 2657-XII (1992). Article 2 of this law sets out the principles for lawfully obtaining, using, disseminating, storing and protecting information.

The analysis provided grounds to assert the need for a clear distinction between open information and personal data with restricted access. According to Law of Ukraine No. 2657-XII (1992), confidential information is information about a person to which access is restricted by that person or by law, and its dissemination without consent is only possible in the interests of national security or economic well-being. Business entities that handle such information within the framework of process management bear disciplinary, civil, administrative or criminal liability for breaches of the established regime. In addition, the processing stages within HR processes required analysis. Article 11 of Law of Ukraine No. 2657-XII establishes that business entities must not use information about an employee's private life to assess their professional qualities. Breaching this rule during recruitment or internal evaluation is classified as the unlawful collection and use of confidential information. In such cases, the business entity is obliged to compensate for the caused moral damage in accordance with Article 31 of the above-mentioned Law. In this respect the significance of Law of Ukraine No. 80/94-VR "On Information Protection in Information and Communication Systems" (1994) is obvious for digitised management. The standard establishes the requirements for the development of complex information protection systems (CIPS), which are binding for state resources and also serve as the benchmark for the private sector. The owner or administrator of a system shall be directly liable for ensuring the integrity, confidentiality and availability of the data of the system, in accordance with Article 9 of the Law. If information is blocked, leaked or destroyed as a result of unauthorised actions, this indicates the failure of the business entity to meet its obligations. Article 11 states that individuals who violate requirements concerning technical or cryptographic protection are liable under the law.

Electronic document management is covered by Law of Ukraine No. 851-IV "On Electronic Documents and Electronic Document Management" (2003). Article 8 of this Act obliges businesses to ensure that electronic documents can be restored in their original format. Breaching file storage or integrity procedures at this stage of the business process renders the document legally invalid, and criminal liability for falsification of information may arise where intentional manipulation is detected. Additionally, under Articles 8 and 9 of Law of Ukraine No. 80/94-VR (1994), as amended in 2025, the system owner is responsible for ensuring the confidentiality and integrity of data during processing in information and communication systems. Failure to implement technical protection measures that results in the blocking or destruction of information constitutes a criminal offence under Articles 361–363-1 of the Criminal Code of Ukraine (2001).

Breaching procedures for storing electronic documents to the extent that they cannot be restored in their original format is also regarded as an offence. Telecommunications companies are subject to the additional provisions of the Law of Ukraine No. 1089-IX "On Electronic Communications" (2020), which are based on the principles of transparency and regulatory predictability. Network providers must protect user data and ensure the electromagnetic compatibility of equipment. They are liable under Article 12 of Law of Ukraine No. 2163-VIII "On the Basic Principles of Cybersecurity in Ukraine" (2017) for breaches of legislation in the field of information protection in cyberspace. Business entities' activities are also subject to rules on access to public information. While personal data usually has restricted access, information on the receipt of budget funds or property by legal entities under public law cannot always be classified. According to Article 6 of Law of Ukraine No. 2939-VI "On Access to Public Information" (2011), the "three-part test" must be applied to restrict access. This process involves assessing the public interest against potential harm. The unjustified classification of open information as confidential constitutes an administrative offence under Article 212-3 of the Code of Ukraine on Administrative Offences (2017). An analysis of enforcement practices and human rights observance in 2024 revealed systemic problems in data protection (Commissioner for Human Rights of the Verkhovna Rada of Ukraine, n.d.).

The most common violations among business entities were the processing of data unlawfully, without proper legal grounds; the insufficient informing of data subjects about their rights; and the absence of administrative documents regulating processing operations. These violations indicate a widespread breach of the duty of lawfulness and transparency at the stage of data collection and initial processing. There were also cases of passport data and addresses being published on websites without the consent of the individuals concerned (Commissioner for Human Rights of the Verkhovna Rada of Ukraine, n.d.). This led to criminal proceedings being opened under Article 182 of the Criminal Code of Ukraine (2001). Another case involved the unlawful use of data by water supply enterprises, who published information about 24,000 debtors, including debt amounts and personal account numbers. This was stopped by order of the Ombudsman (Commissioner for Human Rights of the Verkhovna Rada of Ukraine, n.d.). This case demonstrated a disregard for the principles of proportionality and purpose in the operational cycle of the enterprise; using data for public pressure instead of debt recovery through judicial proceedings can result in joint and several civil liability for non-material damage under Article 31 of the Law of Ukraine No. 2657-XII (1992). The Council of Europe (n.d.) project "Supporting the Implementation of European Human Rights Standards in Ukraine: Phase II" emphasised responsibility for the disclosure of data during video recording and the use of mobile applications in official activities. Commission Staff Working Document: Ukraine 2025 Report (2025), stated that despite certain progress, Ukraine still needs to adopt new draft laws (Draft Law No. 6177, 2021; Resolution of the Verkhovna Rada of Ukraine No. 4065-IX, 2024) in order to fully harmonise with Regulation (EU) No. 2016/679 of the European Parliament and of the Council (2016). As of March 2026, business entities in Ukraine will be subject to multi-level responsibility. Administrative liability under Article 188-39 of the Code of Ukraine on Administrative Offences (2017) for failing to comply with data protection procedures may result in civil claims for compensation for non-material damage under Article 31 of the Law of Ukraine No. 2657-XII. Criminal liability for violating privacy may arise where substantial harm is caused. To effectively manage processes, enterprises are advised to provide professional development courses for employees and conduct regular information audits in accordance with the Ministry of Digital Transformation's recommendations (Commissioner for Human Rights of the Verkhovna Rada of Ukraine, n.d.). Table 1 provides a comprehensive description of regulatory requirements and types of legal response to breaches of information processing regimes, depending on the stage of the enterprise's operational cycle.

Table 1. Matrix of the responsibility of business entities for breaches of personal data processing regulations by business process

Stage of the business process	Regulatory basis	Key obligation of the business entity	Type of legal liability for breach
Collection and initial processing	Articles 2, 6 of Law of Ukraine No. 2297-VI (2010)	Recording voluntary and informed consent; clear definition of the purpose	Administrative liability under Article 188-39 of the Code of Ukraine on Administrative Offences (2017)
Storage and archiving	Article 2 of Law of Ukraine No. 2657-XII (1992); Article 6 of Law of Ukraine No. 2297-VI (2010)	Compliance with the principle of proportionality and processing periods	Administrative liability, civil liability, including compensation for damage
Internal access and HR processes	Article 11 of Law of Ukraine No. 2657-XII; Article 24 of Law of Ukraine No. 2297-VI (2010)	Distinguishing between professional characteristics and confidential information	Disciplinary liability; civil liability under Article 31 of Law of Ukraine No. 2657-XII (1992)
Electronic document management	Articles 12, 13 of Law of Ukraine No. 851-IV (2003)	Ensuring integrity and the possibility of restoration in the original format	Criminal liability for falsification/ forgery of information
Operation of information and communication systems	Articles 8, 9 of Law of Ukraine No. 80/94-VR (1994)	Implementation of CIPS and cryptographic protection of information	Criminal liability under Articles 361–363-1 of the Criminal Code of Ukraine (2001)
Publication and disclosure	Article 29 of Law of Ukraine No. 2657-XII; Article 6 of Law of Ukraine No. 2939-VI (2011)	Conducting the "three-part test" before disclosing data	Administrative liability under Article 212-3 of the Code of Ukraine on Administrative Offences (2017); criminal liability under Article 182 of the Criminal Code of Ukraine (2001)
Use of contractors	Article 4 of Law of Ukraine No. 2297-VI (2010)	Written identification of roles and control over information processors	Civil liability, including joint and several liability of counterparties

Source: compiled by the author

A comprehensive approach combining legal literacy, technical protection and ethical responsibility is key to minimising risks for business entities operating under martial law and in the context of active European integration. In summary, the current regulatory framework in Ukraine for data protection legislation breaches is extensive but requires further codification and alignment with European Union legislation (Regulation (EU) No. 2016/679 of the European Parliament and of the Council, 2016). The key challenges are the severity and inevitability of punishment for information leaks from state and corporate registers. This issue has become particularly relevant following the large-scale cyberattacks of December 2024 (Commissioner for Human Rights of the Verkhovna Rada of Ukraine, n.d.). Business entities must understand that personal information is not only a resource for process optimisation, but also a matter of heightened responsibility. An error can result not only in a fine, but also in reputational damage and a loss of trust in the global digital space.

Enforcement practice and mechanisms of legal responsibility of business entities in the United States, Germany and Ukraine: Comparative analysis. The institutional architecture of responsibility for breaches of personal data protection legislation in countries with developed legal systems, such as Germany and the United States, has demonstrated two distinct approaches to the normative determination of process management. The German model is based on codification and unified European Union standards (Regulation (EU) No 2016/679…, 2016), whereas the American system is characterised by sector-specific legislation and active regional and state-level lawmaking (Children's Online Privacy Protection Rule, 2013; Colorado Privacy Act, 2021). Unlike the sectoral model of the United States and the codified model of Germany, Ukraine demonstrates a transitional type of regulation. While responsibility is dispersed among the states in the United States and unified by Regulation (EU) No. 2016/679 of the European Parliament and of the Council in Germany, institutional fragmentation is observed in Ukraine as of March 2026 (Commissioner for Human Rights of the Verkhovna Rada of Ukraine, n.d.). The actual number of penalties imposed is limited by the absence of an autonomous supervisory authority.

In process management, where the collection and processing of information are integrated stages in creating added value, business entities need to implement the concept of Privacy by Design. This is not only a technological requirement, but also a legal safeguard against substantial sanctions. As of 2026, Germany's legal regime will be determined by the synergy between Regulation (EU) No. 2016/679 of the European Parliament and of the Council (2016) and the Federal Data Protection Act (2017). In German process management doctrine, attention is paid to the transparency principle enshrined in Recital 39 of Regulation (EU) No 2016/679. Natural persons must be fully informed about the scope and purposes of processing, and any deviation from the defined purpose is treated as an offence. Article 24 of Regulation (EU) No 2016/679 imposes an obligation on business entities, as controllers, to take technical and organisational measures to demonstrate compliance with the law. For German businesses, this means the need to update security policies regularly, as confirmed by the provisions of Section 38 of the Federal Data Protection Act, which establishes a mandatory requirement to appoint a data protection officer where an enterprise permanently employs more than 20 persons involved in automated processing. By comparison, in Ukraine the obligation to appoint a responsible person, or DPO, does not yet have such a clear quantitative determination, which leads to the absence of administrative documents in business processes. It was precisely this organisational deficiency that caused the unlawful publication of information about 24,000 debtors in Ukraine (Commissioner for Human Rights of the Verkhovna Rada of Ukraine, n.d.), whereas in Germany similar gaps in contractor management are punishable by fines of EUR 15 million (DLA Piper GDPR..., 2026).

An analysis of the statistical indicators presented in the DLA Piper GDPR Fines and Data Breach Survey: January 2026 (2026) revealed a high level of supervisory activity in Germany. As of January 2026, the total amount of fines imposed in this jurisdiction from the beginning of the application of Regulation (EU) No 2016/679 of the European Parliament and of the Council was €137,415,121. The figure illustrates the methodical approach of the German regulators. For instance, in 2025 the Federal Commissioner for Data Protection and Freedom of Information fined a telecommunications provider EUR 30 million for violating Article 32(1) of Regulation (EU) No 2016/679 after identifying weaknesses in the authentication of customer accounts via the hotline and online portal. It also fined the company €15 million for violating Article 28(1) because of deficiencies in its agreements with data processors that created fraud risks. Such examples highlight that process management accountability goes beyond that of the entity itself to control over the involvement of counterparties. Moreover, German legislation establishes strict administrative and criminal liability in case of particular violations. Under Section 43 of the Federal Data Protection Act (2017), a person who intentionally or negligently fails to comply with a data subject's request or gives incomplete information may be liable to a fine of up to EUR 50,000. In addition, criminal sanctions may be imposed under Section 42 of the Federal Data Protection Act: transferring data to third parties for commercial purposes without authorisation may result in imprisonment for up to three years. One of the milestones in 2025 was the decision of the CJEU (DLA Piper GDPR..., 2026) based on the request of the German Federal Court of Justice (BGH), which recognised that non-material damage under Article 82(1) of Regulation (EU) No 2016/679 of the European Parliament and of the Council may include negative emotions such as fear or irritation, if evidence of their existence is submitted. This expands the scope of civil liability of business entities to their customers for cases of leakage of information.

In contrast to the centralised solution in Europe, the legal status of data protection in the United States is based on a multi-layered system. The FTC takes a central role. Section 5 of the Federal Trade Commission Act (2006) prohibits "unfair or deceptive acts or practices". This provision puts the FTC in charge of how companies maintain their public promises of confidentiality. In Q2 2025, the regulator reached a settlement with HoYoverse for USD 20 million for violations of the 2013 Children's Online Privacy Protection Rule, misleading users regarding in-game purchases and improper data collection from minors. In Ukraine, on the contrary, the practice of enforcement has only started moving towards compensation for non-material damage in 2025. The main tools available in Ukraine are an order from the Ombudsman or a criminal case initiated under Article 182 of the Criminal Code of Ukraine (2001) (rather than sanctions, as in the US and Germany for failure to verify customer identity) (Commissioner for Human Rights of the Verkhovna Rada of Ukraine, n.d.). The development of process management is driven by the dynamic adoption of personal data protection laws at the state level in the United States.

One of the most notable examples is the Colorado Privacy Act (2021), which came into effect in July 2023. This act grants consumers the rights of access, correction, deletion and data portability, as well as the right to opt out of targeted advertising and profiling. Businesses are required to conduct data protection impact assessments for any activity posing an elevated risk to consumer rights. Breaches of the CPA are punishable by fines of up to USD 20,000 for each individual violation. In 2026, Indiana, Kentucky and Rhode Island joined the group of states with comprehensive data privacy regulation (Understanding data privacy..., 2026). This creates a "patchwork" of legislation, meaning that companies operating nationally must harmonise their business processes according to the strictest standards, as set out in the California Consumer Privacy Act (CCPA) (2024)/California Privacy Rights Act of 2020 (2020) (Colorado Privacy Act, 2021). In 2025, the CPPA showed a strong commitment to ensuring compliance with consumer rights. A landmark settlement was reached with Honda in the amount of USD 632,500 for violations relating to connected vehicle data. The regulator found that the company had required excessive verification for the exercise of opt-out rights, and had used asymmetric choice architecture in cookie consent forms (Q2 2025 privacy..., 2025). This case showed that responsibility for process management arises not only for data leaks, but also for creating obstacles to data subjects exercising their rights. California also introduced the "Delete Act", which, from August 2026, will require data brokers to use a centralised system for processing user deletion requests (Tolson, 2026). A notable feature of the American market is the Health Insurance Portability and Accountability Act of 1996 (HIPAA). In January 2025, the largest settlement was recorded with Solara Medical Supplies in the amount of USD 3 million following a phishing attack that compromised electronic protected health information (ePHI) (Q2 2025 privacy..., 2025). The main reason for the sanction was the absence of a comprehensive risk analysis in the organisation's business processes, which is a direct HIPAA requirement. This underlines the theoretical proposition that a business entity's responsibility is preventive in nature: punishment is not merely for the fact of an attack, but for negligence in building a protected management model.

From 2026 onwards, the Data Privacy Framework Program (n.d.) will regulate the global integration of data exchange processes between the United States and the European Union. While this mechanism provides legal certainty for the transfer of personal information, it requires American organisations to self-certify and publicly commit to complying with the DPF principles. Breaches of these principles are subject to review by both the FTC and European supervisory authorities. The European Data Protection Board's (2026) report emphasises the need to strengthen international cooperation in enforcing decisions. The main obstacle is the absence of cross-border enforcement mechanisms for fines, forcing governments to seek ways of recognising each other's regulatory acts. The US case has become an example of the influence of geopolitics on business responsibility. In the context of process management theory, the issue of harmonising US federal law arises. The draft American Data Privacy and Protection Act (ADPPA) (2022) is seen as an attempt to create a uniform standard to replace state legislation. Under the ADPPA, large data holders with revenue exceeding USD 250 million would be held to a higher standard of security. However, as of 2026, the law is still under discussion, leaving businesses in a state of regulatory uncertainty. Comparing Germany and the United States reveals a common trend: the increased personal accountability of management for systemic data protection failures. In the United States, this approach is implemented through orders of the New York State Department of Financial Services (NYDFS), which will require the mandatory implementation of multi-factor authentication for all financial institutions from November 2025 (New York Privacy Act, 2022; The 2025 privacy..., 2025).

In summary, the comparative analysis of the responsibility of business entities in Germany, the United States and Ukraine reveals that, by 2026, the global legal field had definitively shifted from a strategy of formal compliance with procedures, or a "compliance checklist", to the concept of demonstrating actual protection effectiveness, or accountability. In all three of the studied jurisdictions, data processing is now considered a potential threat to human rights and requires specific accountability mechanisms. In Germany, this has been implemented through a system of administrative fines of up to 4% of a company's annual turnover (Regulation (EU) No. 2016/679..., 2016), as well as the criminalisation of the commercial misuse of data (Federal Data Protection Act, 2017). In the United States, diversification is observed through judicial settlements and the expansion of the powers of state attorneys general, with the main emphasis placed on preventive risk analysis and combatting asymmetric choice interfaces (Colorado Privacy Act, 2021; Q2 2025 privacy..., 2025). Ukraine, being in a state of active transformation towards European integration, demonstrates a transitional type of responsibility. For Ukrainian businesses, this means integrating legal risks into the technical architecture of every operation at the design stage. Based on the study conducted and taking into account the Commission Staff Working Document: Ukraine 2025 Report (2025), a list of strategic recommendations for harmonising the domestic institutional framework has been developed (Table 2).

Table 2. Strategic recommendations for improving the system of responsibility of business entities in Ukraine

Area of reform	Essence of the measure and regulatory basis	Expected legal effect
Institutional autonomy	Establishment of a National Data Protection Commission as an independent regulator in accordance with the requirements of the General Data Protection Regulation (GDPR) (Commission Staff Working Document..., 2025).	Increased inevitability of punishment for cross-border information leaks.
Regulatory harmonisation	Adoption of new versions of laws to replace the outdated Act No. 2297-VI in order to ensure full compliance with EU standards (Draft Law No. 6177, 2021).	Reduction of barriers to the participation of Ukrainian companies in Europe's single digital market.
Process security	Introduction of mandatory CIPS audits for business entities providing public services online (Law of Ukraine No. 80/94-VR, 1994).	Minimisation of risks of unauthorised access to clients' passport and financial data.

Table 2, Continued

Area of reform	Essence of the measure and regulatory basis	Expected legal effect
Corporate responsibility	Introduction of the institution of certified DPOs for enterprises with more than 20 employees (Regulation (EU) No. 2016/679 of the European Parliament and of the Council, 2016).	Transition from reactive error correction to systematic risk management.

Source: compiled by the author

Unlike the American sectoral model, Ukrainian law is oriented towards the German model of comprehensive codification, but with the specific challenges of martial law. Whereas in Germany multi-million-euro sanctions are imposed for authentication breaches (DLA Piper GDPR..., 2026), in Ukraine the main problem remains institutional fragmentation: with 857 official complaints in one year (Commissioner for Human Rights of the Verkhovna Rada of Ukraine, n.d.), the actual number of penalties imposed is limited by the absence of an autonomous supervisory authority comparable to Germany's Federal Commissioner for Data Protection and Freedom of Information (2025) or the American FTC. At the same time, the Ukrainian experience of counteracting leaks from corporate registers, as illustrated by the case of water utilities, indicates the need to introduce the "three-part test" not only for state bodies but also for private business entities that operate with significant data sets (Commissioner for Human Rights of the Verkhovna Rada of Ukraine, n.d.). A common challenge for Ukraine, Germany and the United States remains adaptation to AI technologies, where European Regulation (EU) No. 2024/1689 of the European Parliament and of the Council (2024) and American regulations form new contours of responsibility. Effective process management as of March 2026 requires business entities in Ukraine not merely to provide technical protection for servers, but to deeply embed ethical standards for handling information. On the basis of the comparative analysis, it was recommended that Ukrainian legislation eliminate procedural discrimination against data subjects and introduce mandatory audits of comprehensive information protection systems for businesses providing public services. It is advisable to implement the German experience of appointing DPOs for large enterprises and the American practice of preventive risk analysis at the stage of designing business operations. This will ensure the real accountability of Ukrainian companies and their compatibility with the digital space of the European Union.

Discussion

The results of this study showed that by 2026, business entities' responsibility for breaches of data protection legislation had definitively transformed from formal compliance with procedures into a comprehensive accountability system, the key element of which was demonstrating the actual effectiveness of protective measures. The tendency identified in this study towards increased administrative and criminal pressure on businesses in Germany, the United States and Ukraine is consistent with D. Banisar's (2026) conclusions regarding the global unification of privacy standards, covering 85% of the world's population. This confirmed the thesis of the present study, namely that a strategy of documentary protection is no longer relevant for Ukrainian businesses, since international practice requires controllers to continuously assess the effectiveness of security algorithms. S. Gatti (2026) analysed the importance of the accountability principle in detail, which became the basis of the German model under the GDPR. The author determined that the key element in implementing Article 5(2) of Regulation (EU) No. 2016/679 of the European Parliament and of the Council (2016) was the controller's ongoing risk evaluation, with a direct impact on liability rules and fault criteria. The results of the present study concerning strict sanctions against German telecommunications providers for deficiencies in customer authentication were consistent with a case examined by A.Y. Şakar & D.H.A. Bağce (2026). The scholars assessed a data breach involving an airline and found that failing to implement administrative measures resulted in serious sanctions, thus confirming the theoretical thesis of the present study regarding the preventive nature of legal responsibility. This approach was supplemented by M. Cura *et al.*'s (2026) proposal for forensic photography. The researchers developed a smartphone framework that ensured compliance with the four pillars of the GDPR. This demonstrates that technological innovations can be both a source of risk and a tool for compliance. This shows that technical insecurity in business processes can automatically result in legal offences, where technological solutions must act as both a source of risk and an instrument of compliance.

This study's comparative analysis of the legal frameworks of the United States and Germany highlighted the "transatlantic divide", a concept that has been the subject of philosophical and legal reflection by R. Poscher & E. Orrù (2026). The authors stressed that the concept of privacy was complex and ambiguous: in the United States it was often understood as the right to be left alone, in Germany it was based on informational self-determination . These differences have a direct impact on the organisation of process management of business entities of both jurisdictions. In addition, S. Singal & N. Chorev (2026) examined the relationship between data collection practices and neoliberalism. They concluded that data protection policy was still largely compatible with neoliberal market rationalities. Deepanshu & A. Kumar (2026) have analysed the need for Ukraine to create an autonomous supervisory authority, as found in this study in India. The authors concluded that the success of India's new Data Protection and Data Security Act (DPDP Act) of 2023 depended on regulatory clarity and institutional independence. T. Alok & A. Ram (2026) compared the Indian law to the GDPR and concluded that the Indian setup is still in nascent stages of development. This led to the need for more detailed guidance for businesses, that is similar to the conclusions of the present study regarding the transitional period in Ukraine. A. Siddiqui (2026) further noted that the Indian approach needed better institutional safeguards and clear rules for cross-border transfers to meet global standards. The present study focused on the financial services sector, where the risk of data leaks has led to fictitious debtors being created. This was consistent with the findings of A.R. Kristanto & S.R. Slamet (2026), who investigated the liability of Indonesian banks. The scholars proved that corporations were liable under the principles of "strict liability" and "vicarious liability", even when violations were committed by internal staff. A. Suciara *et al.* (2026) compared the approaches in Indonesia and Japan, emphasising the advantages of objective liability without proof of fault for protecting the rights of bank clients in the context of modern digital transformation. This fully supports the present study's proposals for reforming Ukrainian legislation on offences.

Process management in the public sector also entails high risks of offences, particularly with regard to the sale of civil servant data, as studied by E.S. Darmayanti & A.E. Subiyanto (2026). They found that the complexity of data classification made it difficult to prove the element of "unlawfulness" in the use of information, highlighting the need to strengthen governance within state agencies. This study also found that implementing AI in business processes requires new frameworks of responsibility, which is consistent with the work of U. Joshi *et al.* (2026). The authors identified difficulties in assessing causation in cases of AI errors in medicine, calling for integrated liability legislation that would not stifle innovation. N.U. Qinvi *et al.* (2026) studied the problem of biometric data protection in AI-based photo marketplaces. They identified that indirect consent mechanisms and the complexity of algorithms created a gap between legal norms and practice, requiring greater accountability from platforms. G. Anbarasi & D. Sankar (2026), in the context of criminal justice and AI, pointed out significant discrepancies in the regulation of personal data collection between the EU and India. Discrepancies such as these pose a privacy risk in the use of algorithms for investigative purposes or to monitor people convicted of crimes. These results supported the current study's conclusions regarding the need for ethical supervision of sensitive information processing. The present study's findings concerning the importance of the right to be forgotten in the digital space were consistent with K. Faisal's (2026) work. The author examined the tension between freedom of expression and the protection of data on criminal convictions, demonstrating that the principle of proportionality is key to balancing public access to information with individual privacy. The new Albanian law analysed by I.S. Berisha *et al.* (2026) successfully approximated national law to the GDPR by prioritising the principles of lawfulness and data minimisation. This serves as an example of the harmonisation described in the present study for Ukraine. The present study found that the legal responsibility of business entities in Ukraine must be clearly defined according to the stages of the management process, from obtaining consent to the final destruction of information. The systemic absence of certified personal data protection officers was found to create gaps in the organisational structure of national enterprises, causing mass offences in the municipal and agricultural sectors. The necessity of integrating the "three-part test" procedure directly into managerial decision-making algorithms to distinguish between public interest and restricted access was proven. Theoretically, it was substantiated that enforcement practice should shift towards recognising non-material damage as an objective consequence of information leakage. Implementing these results in practice will enable Ukrainian businesses to enforce data protection and prepare their internal operations for full regulatory integration into the European digital space.

In summary, the study proved that, by 2026, responsibility for privacy violations had definitively acquired the character of an "accountability-driven" model. The results of the present study coincided with the work of international scholars on the merits of transitioning to strict liability in the financial sector, the importance of the independence of regulatory institutions, and the challenges associated with implementing AI. The importance of the results lies in confirming that, to ensure effective process management, business entities in Ukraine, the United States and Germany must integrate legal safeguards into the technical architecture of every business operation.

Conclusions

The scientific study provided theoretical substantiation for the transformation of business entities' responsibility as of spring 2026. This confirmed the definitive transition from a strategy of formal compliance with procedures to the concept of real accountability, demonstrating the effectiveness of protective measures. The study revealed that, in the context of modern process management, information processing has evolved from a technical operation to a legal risk factor, with business responsibility emerging as the primary regulator of the digital market. The study also confirmed that Ukraine has an extensive but institutionally fragmented mechanism for imposing liability that requires modernisation.

Within the Ukrainian legal framework, it was determined that the liability of business entities hinges on the precise identification of their roles as either data controllers or processors. The analysis revealed that offences most frequently occur during the consent collection stage, where businesses often fail to fulfil their duty to provide clients with comprehensive information. At the storage stage, it was found that the critical issue is inconsistency between the processing purpose and initial arrangements, leading to administrative sanctions. Within internal HR processes, a systemic breach of the duty to distinguish between an employee's business characteristics and information about their private life was identified, creating grounds for civil claims. At the stage of electronic document management, it was found that the obligation to ensure the authenticity and integrity of documents is often ignored, which jeopardises the legal validity of business operations. It was found that using information processors without detailed written agreements in place constitutes widespread non-compliance and leads to the uncontrolled transfer of information to third parties. Analysis of enforcement practices revealed that state and municipal enterprises frequently fail to comply with the proportionality procedure when publishing debtor lists, which constitutes gross interference with private life. The absence of certified personal data protection officers within organisations' internal structures was found to create systemic preconditions for cyber incidents. Despite a significant number of complaints from citizens, it was found that real legal responsibility remains low due to the absence of an independent regulator capable of imposing effective sanctions.

Analysing the models revealed a fundamental difference between the European and American systems. Germany has a strict vertical system of responsibility, where the total sanctions amounting to EUR 137 million reflects the priority given to protecting data integrity, even in cases of minor technical vulnerabilities. In contrast, the United States has confirmed the dominance of sectoral decentralisation, or a "patchwork" system, where settlements of USD 20 million for violations of children's privacy demonstrate a punitive approach to regulation. A common trend across all jurisdictions is the increased personal responsibility of management for systemic information leaks, making data protection an integral part of corporate governance. For Ukraine, this means overcoming the stage of merely completing formal documents and moving towards the real integration of technical and legal security tools into every business process. The results obtained mean that effective process management in Ukraine is impossible without full harmonisation with European Union regulations and the establishment of an independent supervisory authority. The study's practical value lies in identifying algorithms for minimising legal risks through implementing the concept of "protection by design". Further research should focus on developing legal mechanisms for holding those responsible for algorithmic discrimination and automated decision-making in global digital networks to account.

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Відповідальність суб'єктів господарювання за порушення законодавства про захист даних у процесному управлінні

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Анотація. Метою дослідження був комплексний теоретичний аналіз трансформації системи відповідальності суб'єктів господарювання за порушення законодавства про захист персональних даних на етапах їх збирання, зберігання та опрацювання. Методологія базувалась на застосуванні системного підходу та порівняльно-правового методу до нормативних масивів України, Сполучених Штатів Америки та Федеративної Республіки Німеччина. У ході роботи встановлено, що юридична відповідальність бізнесу змістилася від стратегії формального дотримання інструкцій до концепції повної підзвітності, де суб'єкти зобов'язані демонструвати реальну результативність впроваджених алгоритмів захисту. Виявлено, що в українському правовому полі найбільш критичні правопорушення виникають на стадіях отримання згоди, невідповідності мети подальшого використання відомостей та ігнорування обов'язку розмежування ділових і особистих даних у кадрових процесах. З'ясовано, що нехтування письмовою ідентифікацією ролей при залученні розпорядників інформації створює умови для неконтрольованої передачі даних, що призводить до солідарної відповідальності контрагентів. Доведено фундаментальну відмінність між німецькою вертикаллю санкцій, де пріоритетом є технічна цілісність систем, та американською секторною децентралізацією з вираженою каральною спрямованістю правозастосовчої практики. Встановлено, що європейська судова практика допускає відшкодування нематеріальної шкоди у справах про порушення законодавства про захист персональних даних, якщо особа зазнала психологічного дискомфорту або страху неправомірного використання її даних. Визначено, що інституційна фрагментарність в Україні та відсутність автономного наглядового органу знижують рівень правової захищеності процесних операцій порівняно з німецькою моделлю. Обґрунтовано необхідність інтеграції трискладового тесту суспільного інтересу в усі внутрішні регламенти доступу до конфіденційної інформації для уникнення масових правопорушень у комунальному секторі. Практична значимість результатів полягає у можливості їх використання юридичними службами та менеджментом підприємств для впровадження концепції захисту за призначенням і проведення аудитів безпеки з метою мінімізації юридичних ризиків в умовах цифрової трансформації

Ключові слова: персональні відомості; володілець; розпорядник; витоки інформації; інституційна фрагментарність; забезпечення конфіденційності

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European social standards in the era of labour digitalisation

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Abstract. The article examined European social standards for the protection of individual labour rights through the prism of the jurisprudence of the European Committee of Social Rights in the context of labour digitalisation, the expansion of platform work, and the transformation of contemporary employment relations. The relevance of the study was determined by the need to adapt national labour law systems to modern socio-economic challenges and to ensure the effective implementation of the standards of the European Social Charter in Ukraine during the period of war and European integration processes. The purpose of the article was to analyse the transformation of individual labour rights from programmatic social guarantees into practical and effective subjective rights and to determine the impact of the jurisprudence of the European Committee of Social Rights on the development of modern labour law models. The study applied a combination of general scientific and special legal methods, included the legal-dogmatic method, comparative-legal method, functional approach, and qualitative content analysis of the decisions of the European Committee of Social Rights and contemporary legal scholarship. The research findings demonstrated that the concept of "practical and effective rights" has become the key mechanism for ensuring the real effectiveness of social rights within the European legal space. The study established that the recent practice of the European Committee of Social Rights gradually adapts the European social model to the challenges of algorithmic management and platform work. The article introduced the concept of "procedural non-compliance," describing situations in which European standards are formally transposed into national legislation without the creation of effective enforcement mechanisms. It was substantiated that the primary threat to the effectiveness of social standards lies in the formalistic implementation of European norms without adequate institutional and financial support. The practical value of the study lies in developing recommendations for improving Ukrainian labour legislation, strengthening labour rights enforcement mechanisms, and ensuring the practical effectiveness of European social standards within the national legal system

Keywords: European Social Charter; individual labour rights; European Committee of Social Rights; platform work; algorithmic management; practical and effective rights

Introduction

Contemporary labour relations are undergoing profound transformations driven by economic instability, digitalisation, the expansion of platform work, and the increasing fragmentation of employment models. These developments challenge the traditional foundations of labour law, historically oriented toward stable, long-term, and physically localised employment relationships. As a result, the effectiveness of existing mechanisms for protecting individual labour rights has become increasingly contested, particularly in relation to non-standard forms of work and algorithmic management. At the same time, the growing role of supranational labour regulation has intensified the importance of European social standards as a framework for safeguarding human dignity, decent working conditions, and effective social protection. In this context, the Revised European Social Charter (1996) and the practice of the European Committee of Social Rights (ECSR) have acquired particular significance for the development of contemporary labour law doctrine and the adaptation of national legal systems to evolving socio-economic realities. For Ukraine, this issue has become especially relevant in light of ongoing European integration processes, labour law reform, and the need to ensure effective protection of workers during economic instability and armed conflict.

Recent scholarly discourse increasingly focuses on the transformation of labour rights within the broader human rights paradigm. M. Smusz-Kulesza (2024) examined the evolution of labour rights as enforceable human rights guarantees and concluded that the effectiveness of labour protection increasingly depends on supranational monitoring mechanisms and access to collective remedies. K.A. Polomarkakis (2025) analysed the interconnection between social rights and economic governance within the European legal order and demonstrated that labour rights protection

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has gradually shifted from a purely contractual model toward a rights-based approach grounded in social justice principles. Earlier studies by E. Dockès (2019) explored the impact of labour market flexibilisation on workers' security and emphasised the growing imbalance between economic freedoms and social guarantees. More recent research by A. Aloisi (2024) focused on platform work and algorithmic management, concluding that digital labour models create new forms of precariousness insufficiently addressed by traditional labour regulation. Similar issues were examined by O. Khainska (2026), who analysed the challenges of adapting European labour standards to digital employment and highlighted the need for stronger institutional guarantees in states undergoing legal transformation.

At the same time, contemporary scholarship demonstrates that the practice of the ECSR concerning individual labour rights remains insufficiently systematised in legal doctrine. Most recent studies focus either on the general system of social rights protection or on comparative analyses of international legal instruments without providing a comprehensive examination of ECSR collective complaints adopted during 2022-2025 and their influence on national labour law development. Limited attention has also been devoted to the interaction between ECSR standards, platform work regulation, and labour protection during periods of economic crisis and armed conflict. Such gaps in legal scholarship determine the necessity of further research into the contemporary evolution of European social standards and their implementation within national legal systems, particularly in the context of Ukraine's European integration obligations.

The purpose of this article was to analyse the transformation of individual labour rights within the system of European social standards through the prism of ECSR practice and to assess the influence of these standards on the development of the Ukrainian legal system. To achieve this purpose, the following tasks have been addressed: identifying the key principles underlying ECSR practice concerning individual labour rights; examining the influence of the Committee's decisions on national legal models; and analysing the adaptation of European social standards to contemporary forms of work, including platform labour and algorithmic management, under conditions of economic instability and armed conflict.

Materials and methods

The methodological framework of the study is based on an interdisciplinary combination of legal-dogmatic, comparative-legal, functionalist, and human rights-based approaches to the analysis of European social standards concerning individual labour rights. The theoretical basis of the research derives from the contemporary human rights-oriented understanding of labour law, according to which labour rights are interpreted not merely as contractual guarantees but as practical and effective human rights requiring positive obligations from states and effective supranational supervision mechanisms. Such a conceptual framework made it possible to examine labour protection within the broader context of social justice, human dignity, and the transformation of employment relations under conditions of digitalisation, economic instability, and the expansion of non-standard forms of work.

The study was conducted in several interconnected stages. At the first stage, relevant normative sources, ECSR decisions, and academic literature published predominantly between 2020 and 2025 were collected and systematised. The source base of the research includes the Revised European Social Charter (1996), conclusions and collective complaints decisions of the ECSR, selected legal acts of the European Union concerning labour and social protection, the European Union Directive on platform work, and national labour legislation of Ukraine. In addition, analytical reports and contemporary academic studies devoted to platform labour, algorithmic management, precarious employment. The selected source base made it possible to analyse both the normative foundations of European labour protection and the practical evolution of supranational labour standards in response to current socio-economic challenges.

At the second stage, the legal-dogmatic method was applied to interpret the substantive content of individual labour rights guaranteed under the European Social Charter (1996) and reflected in ECSR practice. This method enabled the identification of the key doctrinal principles underlying the Committee's reasoning, including the concepts of "practical and effective rights", proportionality, protection of human dignity, social justice, and positive obligations of states in the sphere of labour protection. Through this method, the evolution of legal interpretations concerning fair remuneration, protection against dismissal, safe working conditions, social protection, and workers' access to effective remedies was examined in the context of digital transformation and the fragmentation of traditional employment relations.

The comparative-legal method was used to compare European supranational standards with the current Ukrainian labour law framework and implementation practice. Comparative analysis focused on identifying normative inconsistencies, gaps in enforcement mechanisms, and challenges arising during the adaptation of European social standards within the Ukrainian legal system under conditions of economic instability and armed conflict. The comparison also included selected European approaches to regulating platform work and protecting workers engaged in non-standard forms of employment. The use of the comparative method made it possible to assess the extent to which Ukrainian labour legislation corresponds to contemporary European approaches to labour rights protection. The functionalist approach was employed to evaluate the practical effectiveness of existing legal guarantees and institutional mechanisms aimed at protecting individual labour rights. Within this framework, attention was devoted not only to the formal incorporation of European standards into national legislation but also to the effectiveness of their implementation in practice. This approach enabled the assessment of whether existing legal remedies and institutional safeguards ensure real protection of workers' rights under rapidly changing labour market conditions.

Results

The concept and structure of individual labour rights in European Social Standards. European social standards function as supranational benchmarks that limit State discretion in social policy. Individual labour rights – access to employment, fair working conditions, and protection against dismissal – are regarded as "living standards" capable of adapting to socio-economic shifts. Unlike universal ILO standards, the European model places emphasis on a high degree of regulatory detail and the protection of subjective rights, rejecting the distinction between binding and declaratory rights. In contemporary legal doctrine, the notion of European social standards is used to denote the set of minimum normative requirements in the field of social and labour rights, developed within the European legal space and aimed at ensuring decent working conditions, social justice, and human dignity. These standards have a supranational character and function as benchmarks for national legal systems, defining the permissible limits of State discretion in social policy.

Scholarly literature emphasises that European social standards are not limited to the formal recognition of rights but also include interpretative approaches and effectiveness criteria formulated by specialised monitoring bodies of the Council of Europe (Parpworth, 2025). In this sense, they are regarded as "living social standards," capable of adapting to socio-economic transformations. Unlike universal international social standards, European social standards are characterised by their regional focus, a higher level of detail, close connection to the human rights framework, and an orientation towards the practical and effective realisation of rights (practical and effective rights). Individual labour rights are traditionally considered a component of the broader category of social rights. In European legal doctrine, social rights are recognised not merely as programmematic goals of State policy but as fully-fledged subjective rights, subject to legal protection (Coker *et al.*, 2023). Individual labour rights encompass those entitlements of a worker that are directly exercised within employment relationships and do not depend on collective representation. At the same time, they have a distinct social dimension, as they aim to address structural inequalities between workers and employers.

The European approach is based on the principle of the inseparable link between labour rights and human dignity, which allows individual labour rights to be regarded as a concretisation of social rights in the field of employment (Coker *et al.*, 2023). This concept underlies the practice of the ECSR, which consistently rejects a formal distinction between "legally binding" and "declaratory" rights. Thus, individual labour rights constitute the functional core of social rights in the labour sphere and ensure their practical implementation at the level of the individual worker. The Revised European Social Charter (1996) occupies a central place in the system of European social standards, complementing the European Convention on Human Rights (1950) in the protection of socio-economic rights. In the scholarly literature, the Charter is often referred to as the "social constitution of Europe" (Kotsoni, 2025). Unlike universal instruments such as the ILO Conventions (1948) or the International Covenant on Economic, Social and Cultural Rights, the European Social Charter (1996) sets higher minimum standards, contains detailed State obligations, and is supervised by a specialised monitoring mechanism – the ECSR (Cherevko, 2025). A key feature of the Charter is that its provisions are interpreted not in isolation but in light of contemporary social realities and the principle of effectiveness. This allows the ECSR to expand the content of individual labour rights without formally amending the text of the Charter.

Based on the analysis of the provisions of the European Social Charter (1996) and the practice of the ECSR, individual labour rights can be classified according to their functional purpose. These include fundamental rights of access to employment, such as the right to work, the right to freely choose employment, and the right to effective employment services. Another group encompasses rights guaranteeing fair working conditions, including the right to safe and healthy working conditions, reasonable working hours, and rest and leisure. Economic rights comprise the right to fair remuneration, adequate pay, and protection against in-work poverty. A separate category includes guarantees of stability in employment relationships, particularly protection against unjustified dismissal, access to effective remedies, and compensation in cases of unlawful termination.

The conducted analysis demonstrates that the system of European social standards forms an integrated mechanism for the protection of individual labour rights based on the principles of human dignity, social justice, and the effectiveness of legal guarantees. The practice of the ECSR confirms that labour rights are interpreted as practical and effective rights rather than declaratory social objectives. Such an approach substantially expands the obligations of States in the sphere of labour protection and strengthens the role of supranational supervision in ensuring compliance with social standards. At the same time, the dynamic interpretation of the Revised European Social Charter allows the adaptation of labour rights protection to contemporary socio-economic transformations, including digitalisation and the expansion of non-standard forms of employment. Consequently, European social standards increasingly influence the development of national labour legislation and determine the modern direction of labour law reform in European states.

The legal framework for the protection of individual labour rights under the European Social Charter. The key provisions of the Charter (Revised European Social Charter, 1996) establish a comprehensive standard for the individual protection of workers within employment relationships. In particular, the right to work, enshrined in Article 1 of the European Social Charter (1996), is interpreted by the ECSR not as an abstract entitlement to employment, but as the right to effective access to the labour market and the free choice of occupation. In its practice, the Committee consistently emphasises that this right entails a positive obligation for the State to develop effective employment services, implement active labour market policies, and remove structural barriers for vulnerable groups, including young people, persons with disabilities, and migrants (Decision of the European Committee of Social Rights on Complaint No. 14/2003, 2004).

The right to fair working conditions, enshrined in Article 2 of the Charter (Revised European Social Charter, 1996), encompasses requirements regarding reasonable working hours, adequate rest periods, paid annual leave, as well as guarantees of safe and healthy working conditions. The ECSR emphasises that formal legal recognition of these guarantees is insufficient if the State does not ensure effective enforcement in practice, particularly through labour inspection mechanisms (Conclusions of the European Committee of Social Rights XIV-2, 1998; Decision of the European Committee of Social Rights on Complaint No. 14/2003, 2004).

The right to fair remuneration, guaranteed under Article 4 of the Charter (Revised European Social Charter, 1996), aims to ensure a level of pay that allows workers and their families to lead a decent life. In its practice, the ECSR explicitly links this right to the concept of the "working poor" and the necessity of combating in-work poverty, recognising that the minimum wage must be adequate not only formally but also in terms of real purchasing power (Decision of the European Committee of Social Rights on Complaint

No. 11/2001, 2002; Conclusions of the European Committee of Social Rights XVIII-1, 2006; Decision of the European Committee of Social Rights in Case No. 55/2009, 2010).

A particular significance in the system of individual labour rights lies in the right to protection in the event of termination of employment, guaranteed under Article 24 of the Charter (Revised European Social Charter, 1996). The ECSR consistently emphasises that this right requires not only a formal prohibition of unjustified dismissals, but also the existence of effective remedies, including reinstatement or the award of adequate compensation with both deterrent and restorative effects (Conclusions of the European Committee of Social Rights XV-2, 2001; Decision of the European Committee of Social Rights on Complaint No. 88/2012, 2014; Decision of the European Committee of Social Rights on the Merits of the Complaint No. 158/2017, 2019).

The European approach to interpreting these rights is based on rejecting the perception of social rights as mere programmatic declarations. Contemporary doctrine recognises social and labour rights as fully-fledged subjective rights, subject to judicial and quasi-judicial protection, whose implementation is assessed through the prism of effectiveness (Coker *et al.*, 2023). This approach allows individual labour rights to be understood as a concretisation of human dignity in the field of employment and as an instrument to correct structural inequalities between workers and employers.

A key element of the European social standards system is the concept of States' positive obligations. Within the context of the European Social Charter (Revised European Social Charter, 1996), these obligations mean that States must not only refrain from interfering with the exercise of labour rights, but also actively create legal, institutional, and economic conditions for their effective realisation. As emphasised in scholarly research, it is through positive obligations that social rights acquire a practical dimension and cease to be purely declarative (Casla, 2026).

The practice of the ECSR consistently develops this approach. In its decisions on collective complaints, the Committee stresses that the mere existence of legal norms is insufficient for fulfilling obligations under the Charter if national mechanisms do not provide workers with real access to their rights. For instance, in Confederación Sindical de Comisiones Obreras (CCOO) v. Spain (2024), the Committee found that a compensation system for unlawful dismissal, which lacks a deterrent effect on employers, does not comply with the requirements of Article 24 of the Charter (Revised European Social Charter, 1996). A similar emphasis on the effective realisation of the right to fair remuneration was made in recent cases against Italy and France, where the ECSR evaluated the adequacy of minimum wage standards and State measures to combat in-work poverty.

Thus, within the European social standards system, individual labour rights are not isolated entitlements but an interconnected set of legally binding guarantees aimed at ensuring decent working conditions and social justice. Their content is shaped not only by the text of the European Social Charter (Revised European Social Charter, 1996) but also by the dynamic practice of the ECSR, which allows social standards to adapt to contemporary socio-economic challenges without the need for formal treaty revision.

The concept of practical and effective rights in the approach of the ECSR. In the practice of the ECSR, the concept of practical and effective rights plays a central role, forming the methodological basis for interpreting the provisions of the Revised European Social Charter (1996). This concept is grounded in the principle that social and labour rights cannot be limited to formal legal recognition but must be genuinely accessible to rights-holders and supported by effective mechanisms for their enforcement and protection. This approach reflects a broader European trend toward overcoming the traditional view of social rights as declaratory and confirms their status as legally binding subjective rights (Coker *et al.*, 2023; Ploszka, 2026).

Scholarly doctrine emphasises that the concept of practical and effective rights is common to the entire system of the Council of Europe's human rights protection; however, within the Revised European Social Charter (1996), it acquires particular significance in the field of labour rights. J.O. Coker *et al.* (2023) argue that labour rights in the European legal order are an integral part of the human rights framework, and their effectiveness is a key criterion for assessing States' compliance with international obligations. In this context, the ECSR stresses the necessity of a regulatory framework that ensures not only a formal right for workers but also a genuine opportunity for its exercise in cases of violation.

An analysis of ECSR practice demonstrates that the principle of rights' effectiveness operates both procedurally and substantively. On the one hand, the Committee evaluates whether the State provides effective access to judicial, quasi-judicial, or administrative mechanisms for protecting labour rights, particularly in cases involving unlawful dismissal, remuneration, or working conditions. On the other hand, it examines the substantive content of national legislation and its practical application, assessing whether it ensures the realisation of the right to work, fair remuneration, safe and healthy working conditions, and effective protection against unjustified termination of employment (Ploszka, 2026).

The practice of collective complaints in recent years confirms the dynamic application of this principle. For example, in Unión General de Trabajadores (UGT) v. Spain (2022), the ECSR found a violation of Article 24 of the Charter (Revised European Social Charter, 1996), noting that national legislation did not provide adequate protection for workers in cases of unlawful dismissal, and that established compensation mechanisms did not fully reflect the actual harm or provide a sufficient deterrent effect for employers (Council of Europe, 2025). In Unione Sindacale di Base (USB) v. Italy (2022), the Committee addressed restrictions on collective action and bargaining, including the right to strike in critical sectors, highlighting the interconnection between individual and collective labour rights. In FSC CCOO v. Spain (2023), the focus was on fair remuneration and overtime pay, reaffirming the Committee's concern with the substantive protection of labour standards and ensuring a decent standard of living for workers (Conclusions of the European Committee of Social Rights…, 2023a). Additionally, in CUB v. Italy (2024), the Committee assessed restrictions on employees' participation in collective actions, potentially limiting the practical realisation of labour rights, while in Fédération SUD Santé-Sociaux v. France (2023), issues concerning pay and working conditions for healthcare workers were examined, illustrating the ECSR's attention to the material substance of labour rights.

These cases demonstrate that the ECSR prioritises the actual protection of workers' rights, considering the real impact of regulatory mechanisms on employees' conditions rather than merely formal guarantees. Accordingly, the concept of practical and effective rights emerges as the functional core of European social standards in the domain of individual labour rights, serving as a criterion for assessing both national legislation and its practical application, promoting the harmonisation of social standards and enhancing the real protection of workers in Council of Europe member States (Cullen, 2021; Nalyvaiko, 2025).

The conducted analysis demonstrates that the concept of practical and effective rights constitutes the central interpretative principle in the practice of the ECSR and significantly influences the contemporary understanding of individual labour rights within the European legal order. The ECSR consistently proceeds from the position that labour rights cannot remain merely declaratory guarantees but must be supported by effective legal, institutional, and procedural mechanisms ensuring their real implementation. The examined collective complaints confirm the dynamic and evolutive interpretation of the Revised European Social Charter, particularly in matters concerning protection against unlawful dismissal, fair remuneration, working conditions, and access to effective remedies. Such an approach strengthens the human rights dimension of labour law and expands the positive obligations of States in the sphere of social protection. Consequently, the principle of practical and effective rights functions as a key criterion for assessing both the quality of national labour legislation and the effectiveness of its practical implementation within Council of Europe member States.

Comparative analysis with Ukraine. A comparative analysis of the ECSR case law and Ukrainian legislation reveals both convergences and divergences in approaches to the protection of individual labour rights. The Ukrainian system for safeguarding workers is primarily grounded in the Labour Code of Ukraine (1996) and a series of specialised laws that establish core worker guarantees, including protection against unlawful dismissal, the right to fair remuneration, working time regulations, paid leave, social benefits, and working conditions (Nalyvaiko, 2025). In this respect, there is a certain alignment with the principles enshrined in the European Social Charter (1996), particularly regarding the right to effective protection in cases of labour rights violations and non-discrimination.

At the same time, ECSR practice, notably in the cases Unión General de Trabajadores (UGT) v. Spain (2022) and USB v. Italy (2022), emphasises that the formal existence of legal guarantees without effective mechanisms for their enforcement and compensation is insufficient to ensure practical protection for workers. Ukrainian practice partly mirrors this issue: although the LCU establishes rights and obligations, the real effectiveness of their protection in cases of unlawful dismissal, breaches of employment contracts, or discrimination depends on the quality of judicial practice, the qualifications of judges, and the functioning of labour inspection authorities (Kotliarova, 2025).

A particularly pressing issue is the insufficient integration of the principle of practical and effective rights into the national system. Ukrainian legislation provides for formal rights, but mechanisms for their practical realisation – including administrative and judicial procedures – are often limited or fragmented. For example, issues of fair remuneration and compensation for unlawful dismissal are governed by Articles 233-237 of the LCU (Labour Code of Ukraine, 1996); however, in practice, employees do not always have prompt and accessible means to enforce their rights, and awarded compensation does not always reflect actual losses or serve a deterrent function against violations (Papadopoulos, 2023; Nalyvaiko, 2025).

Moreover, ECSR practice offers guidance for expanding workers' protections in the context of new forms of employment and the digitalisation of the labour market – an area still insufficiently addressed in Ukrainian legislation (Perehudova, 2025; Kotliarova, 2025). For instance, there is no clear regulatory framework for freelancers and platform workers, nor are there instruments ensuring their social guarantees or access to protective mechanisms. Adapting Ukrainian legislation to Charter standards, particularly through the establishment of procedural and substantive protection mechanisms, could significantly enhance the practical effectiveness of labour rights and align them with the principle of practical and effective rights (Papadopoulos, 2023; Nalyvaiko, 2025).

In conclusion, the comparative analysis indicates that while Ukrainian labour legislation provides fundamental worker protection mechanisms, there is a need for deeper implementation of European social standards, development of judicial practice, strengthening of administrative oversight, and integration of contemporary digital employment trends. Incorporating the ECSR's approaches could facilitate the harmonisation of the national worker protection system with European standards and improve the practical realisation of labour rights in Ukraine.

New forms of employment and digitalisation. Contemporary labour markets are characterised by rapid digital transformation, which directly affects the nature of employment relationships and the practical realisation of individual labour rights. One of the key trends is the growing significance of the gig economy, platform work, and freelance employment – new forms of work that extend beyond traditional employment contracts and pose novel challenges for national labour law systems (Aloisi, 2024; Adams-Prassl *et al.* 2025). These forms of employment are often associated with precariousness, lack of social insurance coverage, limited access to pension and healthcare benefits, and deficits in legal protection mechanisms, thereby exposing platform workers to heightened risks of social exclusion and economic insecurity (Kotliarova, 2025; Perehudova, 2025).

Labour markets in the digital economy are marked by a high degree of flexibility, which on the one hand enables rapid engagement of workers through digital platforms, but on the other hand generates significant risks for workers' rights, particularly with regard to timely payment of wages, guarantees of fair remuneration, and safe and healthy working conditions (Krutylin, 2025; Alauddin *et al.*, 2025). In the context of algorithmic management and automated task allocation, traditional institutions of labour law are not always capable of providing effective protection for digital workers. This makes the concept of practical and effective rights, as developed by the ECSR in both classical and emerging contexts, particularly relevant (Rainone, 2025).

Although the ECSR's case law does not yet include a substantial number of decisions directly addressing digital employment, the Committee's general approach to the effectiveness of rights can be adapted to assess the situation of workers in the gig economy. In particular, the Committee has emphasised that the standards of the Charter must be dynamic and capable of accommodating new forms of employment that fall outside traditional contractual frameworks. This approach enables an assessment not only of the formal recognition of rights, but also of their practical application and effectiveness, which is especially important in the context of platform work and freelancing, where traditional collective agreements and trade union oversight are often absent (Rainone, 2025).

Within the European Union, the regulatory response to these challenges includes Directive of the European Parliament and of the Council No. 2024/2831/EU (2024), which establishes criteria for the classification of platform workers and imposes obligations on employers to ensure transparent working conditions and access to mechanisms for the protection of rights (European Commission, 2024). This legislative instrument seeks to ensure that the rights of platform workers are realised in practice and comply with the principles of practical and effective rights enshrined in the Charter and interpreted by the ECSR. Assessing the effectiveness of regulation in the digital context involves, inter alia, access to justice, fair remuneration, and the ability to engage in collective action even under conditions of algorithmic management (Pilatti, 2024; Rainone, 2025). The research highlights that traditional labour law is ill-equipped for algorithmic management. Digital platforms create new dependency structures. The Directive of the European Parliament and of the Council No. 2024/2831/EU (2024) represents a results-oriented regulatory response, aligning with the Charter's (Revised European Social Charter, 1996) principle of effectiveness by ensuring that platform workers gain access to standard social guarantees.

Systematic reviews of the literature indicate that digital platforms create new structures of power and dependency, in which workers are heavily reliant on algorithmic decisions that determine the volume of tasks, levels of remuneration, and rating systems. This, in turn, complicates the application of classical labour standards and necessitates the expansion of regulatory approaches to ensure minimum social guarantees (Pilatti, 2024; Alauddin *et al.*, 2025). In such conditions, the effective realisation of the rights to fair remuneration, decent working conditions, and protection against discrimination becomes a key criterion for assessing States' compliance with their obligations under the Charter (Kotliarova, 2025).

The Ukrainian context reflects similar challenges (Fig. 1). National legislation has not yet been fully adapted to the realities of platform-based employment, and gig workers often remain outside the scope of social protection and effective legal regulation (Zadorozhnyi, 2025; Perehudova, 2025). Scholars emphasise that, for Ukraine, it is essential to take into account European experience and the standards of the Charter, particularly with regard to effective access to legal remedies and social guarantees tailored to the specificities of the digital economy (Nalyvaiko, 2025).

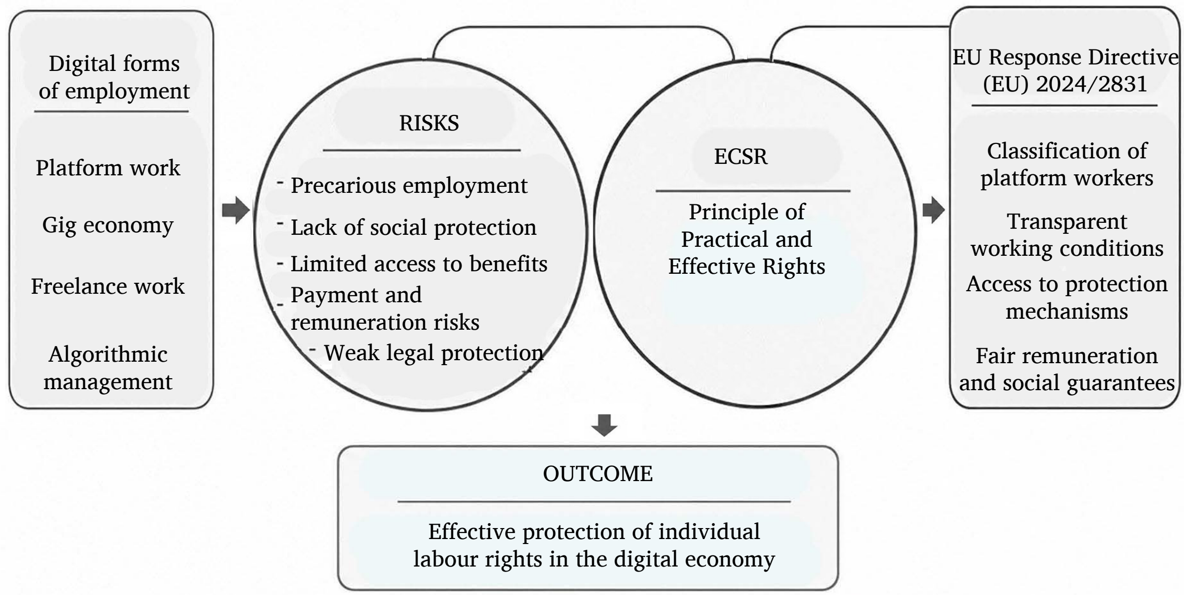

Figure 1. The impact of digital transformation on the practical and effective protection of individual labour rights
Source: developed by the author on the basis of Directive of the European Parliament and of the Council No. 2024/2831/EU (2024), the Revised European Social Charter (1996), G.R. Pilatti (2024), A. Aloisi (2024), S. Rainone (2025), I.Yu. Kotliarova (2025)

The study reveals that while the Labour Code of Ukraine (1996) generally reflects Charter standards, it suffers from "procedural fragmentation". Workers lack prompt access to enforcement, and compensation for violations often lacks a deterrent function. Furthermore, freelancers and gig workers remain in a regulatory vacuum, which constitutes a significant non-compliance risk with European social *acquis*. The Figure 1 illustrates the relationship between digital forms of employment, the specific risks they generate for workers' rights, the role of the ECSR and its principle of practical and effective rights, as well as the response of the Directive of the European Parliament and of the Council No. 2024/2831/EU (2024). The ultimate goal is to ensure effective protection of individual labour rights in the context of the digital economy.

The impact of ECSR practice on national labour law systems. The practice of the ECSR has a significant impact on the national legal orders of the States Parties, even though its decisions do not formally have binding force for national courts. This influence is exercised through the recommendatory nature of the Committee's decisions, international pressure, and the development of a doctrinal interpretation of social rights that is relied upon by courts and public authorities. ECSR decisions – particularly those adopted within the framework of the collective complaints procedure and the system of Conclusions – create an informal yet effective channel for the implementation of European social standards, contributing to the formation of "living standards" whose content continuously evolves in response to socio-economic change (Papadopoulos, 2023).

The interaction between the ECSR's practice and the case law of the European Court of Human Rights (ECtHR) demonstrates the complementary nature of the two systems of human rights protection. While the Committee focuses on social and economic rights under the European Social Charter (1996), the ECtHR safeguards civil and political rights under the European Convention on Human Rights (1950). Nevertheless, the Committee's approaches often resonate with the ECtHR's doctrine of positive obligations and the requirement to ensure the effectiveness of rights, particularly in the field of labour relations (Ploszka, 2026).

Despite the Committee's active role, the implementation of its decisions within national legal systems faces a number of persistent challenges. States frequently confine themselves to formal legislative alignment without ensuring the effective realisation of the relevant standards in practice. Social and labour inspectorates often lack sufficient resources and powers to monitor compliance with labour rights, while mechanisms for protecting workers are frequently ill-adapted to contemporary forms of employment, such as freelance work and the gig economy. A lack of coordination among public authorities further complicates the fulfilment of States' positive obligations (Casla, 2026).

In particular, in its Conclusions concerning Italy, the ECSR found that the existence of mechanisms protecting against unjustified dismissal in national legislation does not guarantee effective protection where the level of compensation is not adequate or sufficiently dissuasive for employers. The Committee emphasised that the formal existence of a right without a genuine possibility of its effective enforcement is incompatible with the requirements of Article 24 of the Revised Charter and with the concept of practical and effective rights (Conclusions of the European Committee of Social Rights…, 2023a; 2023c).

A similar approach is evident in the Conclusions concerning France, where, despite a highly developed legal framework regulating pay, the ECSR found that the actual level of the minimum wage failed to comply with the requirements of Article 4 of the Charter (Revised European Social Charter, 1996). The Committee stressed that the statutory establishment of a minimum wage cannot be regarded as fulfilment of international obligations if such remuneration does not ensure a decent standard of living for workers and their families and does not prevent the phenomenon of the "working poor" (Conclusions of the European Committee of Social Rights…, 2023a; 2023b).

In its Conclusions concerning Greece, the ECSR drew attention to systemic problems in the implementation of the right to just working conditions and fair remuneration in the context of economic reforms. Although the State had formally adapted its labour legislation, the Committee found that limitations on working time, guarantees of rest, and levels of remuneration did not, in practice, meet the standards of the Charter (Revised European Social Charter, 1996). This enabled the Committee to articulate an important principle, namely that economic or budgetary considerations cannot justify a reduction in the effective level of protection of social rights (Conclusions of the European Committee of Social Rights…, 2023a).

The problem of a formalistic approach to implementation is also evident in the Conclusions concerning Bulgaria, where the ECSR identified procedural barriers to access to effective remedies in dismissal cases. The Committee emphasised that even where legislative guarantees exist, their practical value is undermined by excessive length of proceedings or the absence of genuine mechanisms for the restoration of violated rights.

In its Conclusions concerning Ukraine, the ECSR acknowledged that national labour legislation generally reflects the basic standards of the Revised European Social Charter (Revised European Social Charter, 1996), while simultaneously identifying significant shortcomings in their effective implementation. The Committee highlighted the insufficient effectiveness of protection against dismissal, difficulties in the practical обеспечения of fair remuneration, and limited access to effective remedies, indicating the persistence of structural challenges in the implementation of social standards (Conclusions of the European Committee of Social Rights…, 2026).

For Ukraine and other Eastern European countries, challenges in implementing the ECSR's practice are closely linked to the need to adapt labour legislation to European standards, to ensure access to effective remedies, to overcome the lag of judicial practice behind the principles of practical and effective rights, and to address broader socio-economic challenges, including economic instability and armed conflict. Effective implementation of ECSR standards therefore requires a comprehensive approach, encompassing legislative reform informed by the Committee's recommendations, the strengthening of the role of courts and supervisory bodies, the integration of Charter standards into corporate policies and labour contracts, and the establishment of mechanisms for monitoring compliance with the Committee's decisions.

Discussion

The conducted analysis confirms that the contemporary system of European social standards increasingly develops through the dynamic interpretation of the Revised European Social Charter (1996) by the ECSR. Unlike earlier approaches that viewed social rights primarily as programmatic obligations of States, current ECSR practice treats individual labour rights as practical and effective rights requiring genuine implementation mechanisms. This conclusion generally corresponds with the position advanced by J.O. Coker *et al.* (2023), who argued that labour rights within the European legal order should be regarded as an integral component of the broader human rights framework. The results of the present study support this approach, particularly regarding the indivisible connection between labour rights, human dignity, and effective judicial protection.

The results obtained also correlate with the conclusions of M. Kotsoni (2025), who characterised the Revised European Social Charter (1996) as the "social constitution of Europe." The present analysis confirms that the Charter functions not only as a catalogue of social rights but also as a flexible instrument capable of adapting labour rights protection to changing socio-economic realities. Nevertheless, some of author's conclusions may be reconsidered in light of recent collective complaints practice. While the author primarily focused on the constitutional nature of the Charter within the European legal order, the contemporary practice of the ECSR demonstrates that the effectiveness of Charter standards largely depends on national implementation mechanisms and the willingness of States to ensure practical enforcement of rights. Consequently, the constitutional character of the Charter remains limited where States confine themselves to formal legislative compliance without guaranteeing effective remedies.

The findings of the present study also partially coincide with the position of H. Cullen (2021), who emphasised the role of the ECSR in developing "living social standards". The analysis of recent collective complaints confirms that the Committee interprets the Charter dynamically and progressively. However, the conducted research demonstrates that the concept of "living standards" currently extends beyond traditional labour law issues and increasingly covers emerging forms of employment associated with digitalisation and algorithmic control. Therefore, the present study supports author's conclusions while simultaneously demonstrating that the scope of dynamic interpretation has significantly expanded during the last decade due to technological transformation of labour relations.

Particular attention in recent legal scholarship has been devoted to platform labour and precarious employment. A. Aloisi (2024) concluded that existing labour regulation mechanisms are insufficient for protecting workers engaged in digital labour platforms and that supranational regulation must adapt to algorithmic management systems. The present analysis generally supports this conclusion. At the same time, the research demonstrates that the ECSR already possesses sufficient interpretative instruments within the framework of the Revised European Social Charter (1996) to extend labour protection guarantees to non-standard forms of employment. Accordingly, the problem lies not exclusively in the absence of new legal norms but also in the insufficient implementation of existing European social standards at the national level.

Similar conclusions were reached by O. Khainska (2026), who examined the adaptation of European labour standards within states undergoing legal transformation. The author emphasised the vulnerability of workers during periods of economic instability and institutional reform. These findings correspond with the results of the present study regarding Ukraine's difficulties in implementing the principle of practical and effective rights. However, the conducted analysis demonstrates a broader systemic problem connected not only with legislative adaptation but also with institutional capacity, judicial effectiveness, and the limited role of labour inspectorates in ensuring compliance with social standards. Therefore, the causes of ineffective implementation appear more complex than solely normative deficiencies.

The conclusions of K. Casla (2026) concerning the gap between formal recognition and effective protection of social rights are likewise supported by the present research. Author argued that States frequently adopt legislation formally complying with international standards while failing to ensure effective implementation in practice. The analysis of ECSR Conclusions concerning Italy, France, Greece, Bulgaria, and Ukraine confirms this tendency. Nevertheless, the present study demonstrates that the ECSR increasingly evaluates not merely the existence of legal guarantees but also their deterrent effect, accessibility, and practical impact on workers' living conditions. Consequently, the contemporary interpretation of social rights protection appears substantially broader than earlier doctrinal understandings focused primarily on legislative compliance.

Certain positions advanced in recent scholarship appear more debatable when compared with the results of the present analysis. N.A. Papadopoulos (2023) argued that the influence of ECSR decisions on national legal systems remains predominantly symbolic due to the absence of formally binding force. However, the conducted analysis demonstrates a different picture. Although the Committee's decisions formally possess recommendatory status, they significantly influence legislative reforms, judicial interpretation, and labour policy within Council of Europe member States. The practical importance of ECSR standards is especially visible in the context of European integration processes, where compliance with social standards becomes part of broader political and legal obligations. Therefore, the symbolic interpretation of the ECSR's role appears insufficient to explain its growing normative influence.

The conducted research additionally demonstrates that the concept of practical and effective rights increasingly functions as a unifying principle connecting labour rights, social protection, and access to justice. This conclusion supports the broader human rights-based approach to labour law while simultaneously indicating the emergence of new challenges related to digitalisation, economic crises, and armed conflict. In particular, the Ukrainian context reveals that even formally developed labour legislation may remain ineffective where judicial protection, enforcement mechanisms, and institutional guarantees are weakened by structural instability.

Overall, the findings of this study confirm the growing significance of European social standards in shaping contemporary labour law doctrine and national legal reforms. At the same time, the analysis demonstrates that the effectiveness of these standards depends not only on the development of supranational legal principles but also on the capacity of States to transform formal guarantees into genuinely accessible and enforceable rights. Consequently, further development of European labour standards will likely depend on strengthening implementation mechanisms, expanding protection for non-standard forms of employment, and ensuring the practical effectiveness of labour rights under conditions of continuing socio-economic transformation.

Conclusions

The research findings confirmed that the jurisprudence of the ECSR has effectively transitioned social rights from the realm of programmatic declarations into the sphere of subjective, enforceable rights. In answering the research questions stated in the introduction, this study demonstrates that the key principles underlying ECSR practice – specifically the "practical and effective rights" concept – serve as the primary driver for this transformation. The conducted analysis contributed elements of new knowledge through the introduction of the concept of "procedural non-compliance". This concept describes a systemic phenomenon characteristic of jurisdictions undergoing legal transformation, including Ukraine, where European Union directives and provisions of the Revised European Social Charter are formally transposed into national legislation without the simultaneous creation of effective administrative and institutional mechanisms necessary for their implementation, including sufficiently empowered and adequately resourced labour inspectorates. Under such conditions, formal legislative alignment without effective enforcement mechanisms may be characterised as a form of "social greenwashing" at the State level, where the external appearance of compliance with European social standards is not accompanied by substantive guarantees of workers' rights protection. Such a phenomenon constitutes one of the principal contemporary threats to the effectiveness and integrity of European social standards.

The obtained results generally correspond with and further develop the conclusions reached in contemporary legal scholarship. In particular, the findings support J.O. Coker *et al.* thesis concerning the central role of human dignity within labour relations and the interpretation of labour rights as an integral component of the human rights framework. At the same time, the analysis of recent collective complaints, including UGT v. Spain and USB v. Italy, demonstrates the further evolution of ECSR practice towards strengthening the "deterrent effect" in dismissal law and labour protection mechanisms. This indicates a gradual transition from a predominantly compensatory model of labour rights protection towards an approach aimed at preventing systemic violations through effective sanctions and broader positive obligations imposed upon States and employers.

Certain conclusions advanced by K. Casla appear insufficiently comprehensive in light of contemporary labour market transformations associated with digitalisation and algorithmic management. While K. Casla primarily focused on the gap between formal recognition and practical implementation of social rights, the conducted analysis demonstrates that positive obligations of States increasingly extend beyond traditional public supervision mechanisms and require active regulation of private digital platforms and algorithmic systems that substantially influence working conditions, remuneration, and access to employment. Consequently, contemporary European social standards necessitate not only formal compliance with labour guarantees but also effective oversight of technological forms of labour organisation capable of producing new forms of precarious employment and structural inequality.

The impact and significance of this study are particularly relevant for the ongoing legal reforms in Ukraine. The results provide a strategic roadmap for the development of a "New Labour Code", suggesting that legislative priorities must shift from formal transposition to the absolute prioritisation of the non-regression principle. The research underscores that labour rights have evolved from a domestic social policy tool into a vital component of a state's international human rights standing and its economic resilience. By integrating ECSR standards not merely as external obligations but as internal foundations for social justice, Ukraine can bridge the gap between formal implementation and the practical effectiveness of rights, thereby ensuring democratic legitimacy and the dignity of working people in a globalised economy. Further research in this field appears promising in relation to the legal regulation of platform labour, the influence of artificial intelligence and algorithmic management on labour rights, the implementation of European social standards during armed conflict and post-war recovery, as well as the development of effective national mechanisms for enforcing ECSR decisions within domestic legal systems.

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Європейські соціальні стандарти в умовах цифровізації праці

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Анотація. Стаття присвячена дослідженню європейських соціальних стандартів захисту індивідуальних трудових прав крізь призму практики Європейського комітету з соціальних прав в умовах цифровізації праці, розвитку платформеної зайнятості та трансформації сучасних трудових відносин. Актуальність дослідження зумовлена необхідністю адаптації національних трудових систем до сучасних соціально-економічних викликів, а також забезпечення ефективної імплементації стандартів Європейської соціальної хартії в Україні в умовах війни та євроінтеграційних процесів. Метою статті була оцінка трансформацій індивідуальних трудових прав із програмних соціальних гарантій у практичні та ефективні суб'єктивні права, а також визначення впливу практики Європейського комітету з соціальних прав на формування сучасних моделей трудового права. У дослідженні використано комплекс загальнонаукових і спеціально-юридичних методів, зокрема формально-догматичний, порівняльно-правовий, функціональний та метод контент-аналізу рішень Європейського комітету з соціальних прав і сучасної наукової доктрини. У результаті дослідження встановлено, що концепція «практичних та ефективних прав» стала ключовим механізмом забезпечення реальної дії соціальних прав у європейському правовому просторі. Доведено, що сучасна практика Європейського комітету з соціальних прав поступово адаптує європейську соціальну модель до викликів алгоритмічного управління та платформеної праці. Запропоновано концепцію «процедурної невідповідності», яка характеризує ситуацію формальної імплементації європейських стандартів без створення ефективних механізмів їх забезпечення. Обґрунтовано, що основною загрозою для ефективності соціальних стандартів є формальний підхід до їх транспозиції без належного інституційного та фінансового забезпечення. Практична цінність дослідження полягає у формуванні рекомендацій щодо вдосконалення трудового законодавства України, розвитку механізмів контролю за дотриманням трудових прав та забезпечення реальної ефективності європейських соціальних стандартів у національній правовій системі

Ключові слова: Європейська соціальна хартія; індивідуальні трудові права; Європейський комітет із соціальних прав; соціальні стандарти; платформна робота; алгоритмічне управління

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Artificial intelligence algorithms in legal practice: Legal boundaries, socio-legal implications and liability

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Abstract. The relevance of this study stems from the rapid digitalisation of legal practice and the growing role of artificial intelligence algorithms in legal decision-making processes, which gives rise to new legal and ethical challenges. The aim of the study was to examine the intersection of legal, ethical and institutional aspects of the application of artificial intelligence in the legal sphere, as well as to define the limits of permissible use of algorithmic systems and approaches to the allocation of liability. The study employed systematic, comparative legal and formal legal methods, as well as an analysis of judicial practice. The risks of automated decision-making were examined: algorithmic bias, the "black box" problem, the reproduction of discrimination and threats to judicial independence. These risks are confirmed by empirical research in the field of algorithmic justice and an analysis of the practice of using risk prediction systems in criminal proceedings (e.g., COMPAS in the US). The regulation of AI is analysed using the example of the EU Artificial Intelligence Act and the GDPR, as well as the ECHR's approaches to ensuring transparency and procedural safeguards. Approaches to the allocation of responsibility between developers, suppliers, users and the state are summarised, and a model of algorithmic transparency with human oversight and the parties' right to be informed is proposed. International experience from the US, France, Singapore and China is examined, as well as the prospects for implementing AI in Ukraine within the framework of the EU-ITC and case law analysis systems. Particular attention is paid to the concept of distributed algorithmic liability and the application of the analogy of liability for a source of increased danger to high-risk AI systems. A model of algorithmic transparency is proposed, incorporating the parties' right to be notified of AI use, algorithmic expertise, and the court's obligation to justify its consideration of AI recommendations. The principle of "human error" is outlined as a guarantee of judicial discretion and the independence of the judge. The results of the study can be used to improve national legislation in the field of digital justice and to implement standards of algorithmic transparency

Keywords: algorithmic accountability; ethics; discrimination; digital justice; EU Artificial Intelligence Act; General Data Protection Regulation

Introduction

The rapid development of digital technologies and artificial intelligence is transforming the legal profession by automating processes and optimising decision-making. Algorithmic systems are influencing the analysis of case law, risk assessment, document preparation and the prediction of dispute outcomes, thereby altering the role of lawyers, standards of professional responsibility and institutional dynamics. This poses challenges regarding the balance between efficiency and the principles of the rule of law, equality of the parties and judicial independence. Particular attention is being paid to regulating the use of algorithms, preventing bias, ensuring transparency of decisions and harmonisation with EU standards, particularly regarding the protection of human rights.

Current research at the intersection of law and artificial intelligence is giving rise to several interrelated theoretical strands, centred on algorithmic governance, the explainability of automated decisions, the transformation of justice, and the evolution of models of legal liability. Within the framework of algorithmic governance theory, K. Yeung &

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L. Ulbricht (2022) view algorithmic regulation as a form of public administration that relies on data and automated systems to perform regulatory functions. This approach emphasises improved governance efficiency, yet simultaneously raises issues of democratic accountability, oversight, and the legitimacy of delegating governmental functions to algorithms. From a philosophical-legal perspective, M. Hildebrandt (2020) conceptualises law as an interpretative system based on textual openness, proceduralism and the possibility of appeal, which enters into structural tension with automated forms of decision-making, as the latter reduce the scope for legal interpretation and individualised discretion. The issue of transparency and explainability of algorithmic decisions in European Union law is analysed in detail in the works of S. Wachter *et al.* (2017a), who question the normative certainty of the "right to an explanation" within the framework of General Data Protection Regulation (2016). The authors demonstrate that its current provisions do not establish a clear obligation to disclose the internal logic of algorithmic systems, leading to doctrinal uncertainty regarding the scope of data subjects' information rights.

Further research clarifies that there is a fundamental tension between the legal requirements for the justification of decisions and the technical complexity of modern machine learning models, which makes it impossible to equate explainability strictly with the disclosure of algorithmic logic. In this context, an approach to functional explainability is emerging, within which priority is given to procedural verifiability, the comprehensibility of results and the possibility of judicial review, allowing the requirements of legal certainty to be adapted to the technical limitations of algorithmic systems. In the field of the transformation of justice, R. Susskind (2019) argues that digital technologies do not replace the legal profession, but transform its structure, reducing the proportion of routine tasks and enhancing the importance of analytical and strategic functions. This transformation is taking place in parallel with the development of regulatory frameworks for artificial intelligence in the European Union, which are based on a risk-based approach conceptualised in the research of L. Edwards (2022) and institutionally enshrined in the Artificial Intelligence Act (2024). According to this model, artificial intelligence systems are classified according to their level of risk to fundamental rights and security, which allows for the combination of innovative development with preventive legal control.

Ukrainian legal doctrine, as presented in the works of O.A. Baranov (2023), highlights the absence of a unified legislative definition of artificial intelligence, which complicates the formation of a coherent system of legal regulation and harmonisation with European standards of digital governance. This indicates a transitional state of the national doctrine, in which conceptual understanding precedes normative institutionalisation. The issue of legal liability for harm caused by autonomous systems is traditionally analysed through the prism of classical tort law constructs, particularly in the works of U. Pagallo (2013), where the application of traditional fault-based models to robotic systems is considered to be limited. Further generalisations, presented in The Cambridge Handbook of the Law of Algorithms (Barfield, 2020), emphasise the need to adapt legal constructs to the conditions of autonomous decision-making. Contemporary doctrine is seeing a shift towards models of distributed liability, which take into account the involvement of all parties in the life cycle of an algorithmic system – developers, data providers, operators and users – thereby altering the traditional understanding of causation and individual fault.

A review of the current academic literature allows to identify three interrelated areas of research: algorithmic governance as a form of transformation in public administration; the explainability and procedural accountability of automated decisions; and the evolution of models of legal liability for the actions of autonomous systems. At the same time, conceptual fragmentation persists between these areas, as regulatory, technical-legal and tort approaches develop in parallel but are insufficiently integrated, creating a key research gap in contemporary legal doctrine on artificial intelligence.

The aim of this article was to conduct a comprehensive analysis of the legal boundaries of the application of artificial intelligence algorithms in legal practice, taking into account their socio-legal consequences, identifying key risks, and formulating conceptual approaches to the allocation of liability for the consequences of algorithmic decisions. To achieve this aim, the article examines the regulatory approaches of the European Union, the case law of the European Court of Human Rights, as well as contemporary socio-legal and interdisciplinary approaches to the analysis of algorithmic systems. The research hypothesis was that the effective integration of artificial intelligence algorithms into legal practice is possible only if a distributed algorithmic liability and a procedural model of algorithmic transparency are introduced, thereby ensuring the preservation of the principle of human judicial discretion.

Materials and methods

Conceptually, the study is based on a combination of the doctrine of the rule of law, the theory of digital constitutionalism, and a risk-based approach to technology regulation. Within the scope of the study, algorithmic systems are considered as an element of the transformation of public law governance, combining regulatory, procedural and tort aspects of legal regulation. The methodological basis of the article was a set of general scientific and specialised legal methods of inquiry, applied within the framework of contemporary concepts of the rule of law, algorithmic accountability, and risk-based regulation of artificial intelligence. The theoretical basis of the study was provided by the doctrines of digital constitutionalism, the concept of due process, and approaches to the regulation of high-risk technologies in European Union law. A range of scientific research methods were employed in the study. In particular, the dogmatic method was used to analyse the normative content of the provisions of the Artificial Intelligence Act (2024) and the General Data Protection Regulation (2016), as well as to interpret the standards of a fair trial established in the case law of the European Court of Human Rights. The application of this method made it possible to identify the normative requirements for transparency, accountability and the lawfulness of the use of algorithmic systems in the field of justice. This enabled the content of legal obligations regarding the transparency and accountability of algorithmic systems to be established and the limits of judicial review of algorithmic decisions to be determined.

The comparative legal method was used to compare the European Union' s approaches to the regulation of high-risk artificial intelligence systems, as provided for in the Artificial Intelligence Act (2024), with the doctrinal models of algorithmic liability established in contemporary European legal doctrine and regulatory practice concerning artificial intelligence systems. The systemic method allowed for the consideration of algorithmic decision-making as a cross-sectoral legal phenomenon combining substantive, procedural and public law aspects, which ensured the formation of a holistic view of algorithmic liability as a component of the modern legal system and the establishment of interrelationships between its substantive, procedural and institutional mechanisms. Functional analysis was applied to assess the impact of algorithmic systems on the implementation of the principles of the rule of law, adversarial proceedings and legal certainty, taking into account the guarantees enshrined, in particular, in Article 6 of the European Convention on Human Rights (1950). The concept of counterfactual explainability by S. Wachter *et al.* (2017b) has also been adapted to analyse the requirements for algorithmic transparency in judicial proceedings.

Results and Discussion

Theoretical and legal foundations and risks of algorithmic decision-making in the legal sphere

In contemporary legal doctrine, algorithmic decision-making is primarily viewed through the prism of ethical principles and technological risks; however, its procedural and legal dimension remains significantly less developed. First and foremost, this concerns determining the status of algorithmic conclusions in court proceedings, the standards of their probative value, and the limits of their permissible use. Algorithmic decision-making in the legal sphere is the process of applying software systems which, based on mathematical models, analyse data and generate recommendations or decisions on legal matters. A distinctive feature of such systems is the use of machine learning; autonomy in generating results; and limited explainability. As F. Pasquale (2015) emphasises, the opacity of algorithms creates a "black box" risk, where a person cannot understand the logic behind a decision that directly affects their rights. At the same time, the "black box" problem should be viewed not merely as a technical limitation, but as an independent procedural risk that affects the admissibility of algorithmic results as a source of evidence, requiring new approaches to the explainability of algorithmic conclusions (Wachter *et al.*, 2017).

Furthermore, it should be emphasised that the "black box" problem takes on not only a technical but also a procedural dimension, as in a judicial context it directly affects the standards of proof. The impossibility of fully reconstructing the logic of an algorithmic conclusion creates a situation of information asymmetry between the parties to the proceedings, which potentially violates the principle of equality of arms. In such circumstances, traditional standards of admissibility and evaluation of evidence require adaptation through the introduction of a presumption of verifiability of algorithmic results, which entails an obligation on the party using the algorithm to prove its reliability, the representativeness of the data, and the absence of discriminatory effects. The procedural implementation of the presumption of verifiability must be based on requirements for transparency and explainability, which, within the framework of the Artificial Intelligence Act (2024) are transformed from purely ethical categories into strict legal obligations for developers of high-risk systems and implemented through the introduction of a mandatory "digital algorithm passport" in the case file. Such a document must contain not only technical specifications but also the results of stress testing the model for discriminatory deviations. In the event that a party to the proceedings reasonably questions the objectivity of an algorithmic conclusion, the burden of proving the system's reliability must fall on the entity that implemented it. This will enable the transformation of the abstract principle of transparency into a concrete instrument of judicial review, where the "right to an explanation" becomes an integral part of the right to a fair trial.

Among the fundamental principles governing the use of artificial intelligence in legal practice, the principles of legality, transparency, non-discrimination, accountability and the assurance of human oversight over the functioning of AI systems (human in the loop) are highlighted. This approach has been widely discussed in the academic literature on the ethical aspects of AI use (Davenport & Ronanki, 2018). At the same time, these principles in their current form are largely declaratory in nature and do not specify the mechanisms for their procedural implementation. In this regard, the study proposes their concretisation through the categories of evidence law and procedural safeguards.

These principles are reflected in the approaches of the European Commission's High-Level Expert Group on AI (2019) to establishing ethical frameworks for artificial intelligence, as well as in the case law of the European Court of Human Rights regarding guarantees of a fair trial in the context of digitalisation. One of the most dangerous risks is the reproduction of systemic bias through training data. Research by J. Angwin *et al.* (2016) on the COMPAS system demonstrated the potential for racial bias in predicting recidivism. C. O'Neil (2016) emphasises that algorithms can exacerbate social inequality. Algorithms can also reproduce structural discrimination (Barocas & Selbst, 2016). This is particularly critical in creditworthiness assessments, the determination of preventive measures, recidivism prediction, and automated recruitment. Recent research confirms that the problem of algorithmic bias in judicial predictive tools remains a systemic challenge, requiring constant auditing and verification of training data to prevent discriminatory effects. This concludes that algorithmic conclusions cannot be presented as neutral; consequently, their use in law enforcement requires mandatory verification of data representativeness and the absence of discriminatory effects, which should be considered as an element of the procedural standard of proof.

The use of AI in judicial proceedings may affect the principle of judicial independence. Excessive reliance on algorithmic recommendations creates the risk of "de facto automated justice", where statistical probability supplants legal reasoning. In this context, it is important to consider the ethical limits of predictive justice, as a judicial decision requires not only the accuracy of the prediction but also value-based reasoning.

In accordance with Article 22 of the General Data Protection Regulation (2016), a person has the right not to be subject to a decision based solely on automated processing which produces legal effects. This provision forms a fundamental safeguard against the complete algorithmisation of justice. At the same time, it is important to bear in mind that algorithmic systems in the legal sphere are not neutral tools: they reflect the quality of the data on which they are trained and the assumptions embedded in by developers. This means that even technically sound models can produce legally and ethically problematic results. In legal practice, this creates a risk of "legitimising error through technology", where a decision is perceived as objective solely because of its algorithmic origin, even though it may in fact reproduce hidden biases or methodological limitations of the model.

Furthermore, it should be noted that algorithmic decision-making transforms the very nature of evidence and legal argumentation. Whilst traditional justice is based on the open assessment of evidence and the reasoning behind decisions, algorithmic models operate on statistical correlations that do not always lend themselves to legal interpretation. This gives rise to the problem of the "explanation gap", where a conceptual mismatch arises between the technical logic of the model and the legal logic of the judicial decision. In this context, the Artificial Intelligence Act (2024) significantly impacts traditional methods of constructing legal reasoning, requiring the adaptation of classical models of legal argumentation to the specificities of algorithmic systems. Consequently, the importance of procedural safeguards for verifying algorithmic conclusions is growing, as is the need for their critical assessment by the judge as an independent law enforcement authority.

An important element of the theoretical and legal analysis of algorithmic decision-making is the classification of risks, which allows for the differentiation of the level of legal regulation depending on the system's potential impact on human rights. In this context, it is advisable to adopt the risk-based approach set out in the European Union's Acts on artificial intelligence, which classifies systems into categories of unacceptable, high, limited and minimal risk. The European Parliament's official position confirms that this approach aims to create a safe environment for innovation whilst protecting citizens' fundamental rights. Algorithms used in the justice system are, by their very nature, high-risk systems, as they directly impact access to justice and the equality of the parties, which requires specific navigation within the framework of EU regulatory requirements. Such a classification has not only theoretical but also practical significance, as it determines the scope of mandatory requirements for transparency, auditing, risk management and human oversight that must be integrated into legal practice when using AI.

ECHR case law on standards of technological interference with human rights and their relevance to AI

The case law of the European Court of Human Rights includes judgments that establish legal standards regarding the interference of technical systems with fundamental rights, which can be extrapolated to the context of the use of AI algorithms. In particular, in the case of *Zakharov v. Russia* (2015), the Court found that the system of covert interception of mobile communications in Russia did not provide adequate and effective safeguards against arbitrary interference with the right to respect for private life, and therefore violated Article 8 of the European Convention on Human Rights (the right to private and family life). This decision highlights the need for clear procedural restrictions and judicial oversight of technological systems, which directly resonates with the requirements for transparency and accountability in the application of high-risk algorithmic tools in legal practice.

In the case of *Big Brother Watch and Others v. the United Kingdom* (2021), the Grand Chamber of the European Court of Human Rights examined comprehensive electronic surveillance regimes, in particular mass data interception, and concluded that "end-to-end" safeguards were insufficient to protect the right to respect for private life (Article 8 of the Convention). Although this judgment concerns surveillance regimes, it sets out standards of legality, foreseeability and independent oversight of technological tools that must be established to ensure effective legal protection for individuals – and these standards can be adapted to assess the lawfulness of the use of AI algorithms in the legal sphere. Summarising the ECtHR's approach, the study argues that the standards of "quality of law", predictability and effective control can be transformed into criteria for the admissibility of algorithmic intervention in legal activities, even in the absence of direct case law from the Court regarding artificial intelligence.

At the same time, although the ECtHR has not explicitly considered algorithmic artificial intelligence systems, its approach to technological interference with fundamental rights allows for the formulation of criteria for assessing algorithmic law enforcement. In particular, what is key is not only the existence of a legal basis for the interference, but also the quality of the procedural safeguards accompanying such interference. In this context, the requirements of "quality of the law" and "effective control" may be interpreted as also encompassing the duty to ensure the comprehensibility of algorithmic logic to the extent necessary to protect the procedural rights of the parties. Thus, the standards of the Convention for the Protection of Human Rights effectively form the basis for a future doctrine of algorithmic rule of law.

Thus, the aforementioned rulings do not directly concern algorithmic decision-making, but they establish standards of procedural predictability, accountability and effective control of technological systems, which may be applied mutatis mutandis to artificial intelligence systems in legal practice. In this context, an approach is proposed to understanding algorithmic conclusions as a specific form of evidential information, combining the characteristics of an expert opinion and digital evidence, yet requiring a special procedural regime for verification.

Algorithmic evidence in legal practice requires a rethinking of traditional procedural standards of relevance, admissibility and reliability of evidence. Unlike classical evidence, algorithmic inferences are based on statistical models, which complicates their verification within the judicial process. In this regard, there is a need to introduce special procedural mechanisms for verifying algorithmic results, including algorithmic expert assessment, training data audits and verification of the reproducibility of results. This ensures that algorithmic systems comply with the principles of adversarial proceedings and equality of the parties in the process.

Practical application, legal regulation and liability in the field of AI use

Contemporary examples of the use of artificial intelligence in legal practice demonstrate that algorithms can significantly improve the efficiency and accuracy of legal work (McGinnis & Pearce, 2014; Remus & Levy, 2017; Susskind, 2019). For instance, in the US, the ROSS Intelligence platform, powered by IBM Watson, helps lawyers quickly identify relevant legislative and judicial provisions, reducing legal research time by tens of hours. Similarly, Ravel Law analyses judges' decisions and identifies trends in rulings, enabling law firms to prepare more well-founded arguments and reduce the influence of human bias on case assessments. In judicial practice, the use of systems for predicting case outcomes and automating document management has proven successful. In France, tools for analysing judicial practice and predicting court decisions using artificial intelligence are employed, based on statistical analysis of court data and machine learning (Sourdin, 2018). In Singapore and China, the eLitigation and Smart Court systems automate the filing of claims, classify cases and operate with mandatory human involvement in the decision-making process, which helps to speed up court proceedings without infringing on human rights.

Law firms are also successfully using AI to analyse contracts and assess risks. For instance, the Kira Systems and Luminance platforms automatically review large volumes of corporate documents, automate the analysis of contracts and corporate documents, and identify key provisions and potential risks, thereby reducing audit time and improving the accuracy of assessments. All these cases demonstrate that, provided human oversight and procedural safeguards are properly integrated, artificial intelligence algorithms can become a powerful tool for effective and responsible legal practice.

The digitalisation of Ukraine's judicial system is a key element in the modernisation of the justice system and paves the way for the gradual integration of algorithmic technologies into legal practice. One of the key tools of this transformation has been the Unified Judicial Information and Telecommunications System, which facilitates electronic document management in courts, remote access to case files, electronic communication between the court and parties to proceedings, and the automated allocation of cases among judges. The introduction of this system contributes to increasing the transparency of the judicial process, optimising administrative procedures, and reducing the risks of human interference in the allocation of court cases.

Another key element of the digital justice infrastructure is the Unified State Register of Court Decisions, which provides open access to a vast body of case law. The existence of a structured database of court decisions creates opportunities for the application of big data analysis and machine learning technologies to identify trends in judicial practice, predict likely outcomes of disputes, and improve the quality of legal analysis. In this context, the use of algorithmic tools to analyse judicial practice can significantly improve the efficiency of drafting procedural documents, contribute to the formation of more well-founded legal positions, and improve access to justice.

At the same time, the use of analytical algorithms in the field of judicial practice requires compliance with clear legal and ethical restrictions. Algorithmic systems may be used for the statistical analysis of court decisions, the identification of patterns in the application of the law, and the auxiliary assessment of litigation risks; however, they must not replace the judge's discretion or create the conditions for automated justice. Therefore, the integration of algorithmic analytics into the Ukrainian judicial system must be carried out in a manner that ensures the principles of human oversight, algorithmic transparency, and the possibility of procedural challenges to the algorithmic influence on the legal assessment of a case. The inability to fully explain an algorithmic conclusion contradicts the requirements for the reasoned nature of judicial decisions. S. Wachter *et al.* (2017) emphasise that the right to an explanation is complex and does not always follow directly from the General Data Protection Regulation (2016), yet it is logically linked to the principles of transparency and accountability.

One of the key issues is determining the party legally liable for harm caused by an algorithmic decision, in particular the software developer, the system provider, the court, the lawyer or the state (Calo, 2015; Veale & Borgesius, 2021). In this regard, the study justifies the applicability of a model of functional (distributed) liability, which is based not on formal fault but on the degree of control over algorithmic risk. M. Veale & F.Z. Borgesius (2021) emphasise the need for a clear demarcation of liability between the entities in the chain of algorithm creation and application. The model of distributed liability requires regulatory enshrinement at the level of legislation and professional standards.

The issue of liability for harm caused by algorithmic systems in legal practice is multi-layered and cannot be resolved within the framework of the classical tort model. In this context, the concept of "functional liability" requires particular attention, as it provides for liability to be allocated not according to the formal criterion of fault, but according to the degree of control over algorithmic risk. This approach allows for the reflection of the actual architecture of modern digital systems, in which no single entity has complete control over the final outcome, yet each influences a specific stage of the algorithm's lifecycle. Accordingly, legal liability must shift from an individualised model to a model of distributed risk, where the key criterion is the degree of technical and organisational capacity to prevent harm.

Contemporary legal doctrine identifies several possible models. In particular, classical tort liability, which is based on proving unlawful conduct, the existence of harm, a causal link between the action and the consequences, as well as fault. However, in the case of algorithmic systems, difficulties arise in establishing a defect in the model, proving a causal link between the algorithmic conclusion and the judge's decision, and determining the party at fault. As noted by M. Veale & F.Z. Borgesius (2021), the regulatory framework of the Artificial Intelligence Act (2024) does not create a separate regime of tort liability, but lays the groundwork for its specialisation.

Given the autonomy and complexity of high-risk systems, it is possible to draw an analogy with liability for sources of increased danger. Such an approach would minimise the burden of proof on the victim, establish a presumption of liability on the part of the system operator, and ensure more effective protection of rights, as well as strike a balance between technological innovation and the effective protection of individual rights, particularly in cases where an algorithmic decision directly affects the realisation of the right to a fair trial.

This is particularly relevant in the judicial sphere, where the state may act as the operator of a high-risk system. The chain of creation and use of the algorithm involves the developer, supplier, integrator, user (court, lawyer) and the state as the administrator of justice. The model of distributed liability allows for the specific nature of the algorithmic environment to be taken into account and is consistent with the approach being developed within European digital policy (Floridi *et al.*, 2018). If an algorithm is used in judicial proceedings, the question arises of the state's liability for violations of the right to a fair trial, as guaranteed by the practice of the European Court of Human Rights. In the event of algorithmic opacity, the impossibility of challenging algorithmic influence, and excessive reliance by the court on automated recommendations, there may be a breach of the standards of Article 6 of the European Convention on Human Rights (1950). Thus, an algorithmic error in the field of justice potentially transforms into a constitutional and legal problem. This section employs the following approaches to legal analysis: identification of regulatory gaps, analysis of legal certainty, inconsistencies between legislation and international standards, and the specifics of law enforcement.

The use of artificial intelligence in the legal sphere requires a clear definition of the limits of admissibility, taking into account the principles of the rule of law, fair trial and professional responsibility. Such limits are formed through a combination of a functional approach (the auxiliary nature of AI), risk-based regulation and procedural guarantees for the protection of human rights. In this context, a regulatory gap is evident, as the legislation does not define the procedural status of algorithmic conclusions or the limits of their use. At the same time, there is a problem of legal certainty, as the absence of clear criteria for the application of AI complicates the predictability of legal consequences. The use of algorithmic systems in judicial activities is permissible within the scope of auxiliary functions. In particular, artificial intelligence technologies may be used for the analysis of judicial practice, the automation of document management, the search for relevant court decisions, and the statistical analysis of the workload on the courts. Such tools contribute to improving the efficiency of the judicial system, reducing the time taken to hear cases, and optimising administrative processes. At the same time, the final judicial decision must remain the exclusive prerogative of a human judge. This approach is consistent with the concept of human oversight enshrined in the Artificial Intelligence Act, which provides for mandatory human control over high-risk systems. Delegating the function of justice to an algorithm would contradict the principles of judicial independence, individualisation of liability and guarantees of a fair trial (Artificial Intelligence Act, 2024).

In the legal profession, the use of AI is permissible as a tool for professional support. This includes the automated analysis of contracts, the prediction of legal risks, the conduct of legal research, and the verification of a client's activities against established regulatory requirements. Such technologies are capable of significantly accelerating the processing of large volumes of information and improving the quality of preparatory work. However, the complete delegation of professional legal assessment to an algorithmic system without verification by a lawyer is unacceptable. This contravenes standards of due professional care, the principle of a lawyer's personal responsibility, and the requirements of legal ethics. AI can serve only as an auxiliary tool, but not as a substitute for professional judgement. This also highlights a regulatory gap regarding the definition of the limits of professional liability when using AI.

The Artificial Intelligence Act introduces a risk-based model for regulating artificial intelligence systems. It provides for the classification of systems into four categories: unacceptable risk, high risk, limited risk and minimal risk. This approach allows for the differentiation of regulatory requirements depending on the potential impact of the technology on human rights and freedoms. AI systems used in the justice sector fall into the high-risk category. This means that a compliance assessment must be carried out, risk management procedures must be implemented, technical and organisational transparency must be ensured, and audits and continuous human oversight must be in place. At the same time, this highlights the inconsistency of national legislation with international standards, in particular with the approaches enshrined in European Union law (Artificial Intelligence Act, 2024).

At the same time, the regulatory framework of the Artificial Intelligence Act (2024), despite its progressive nature, does not resolve a number of conceptual and practical uncertainties. In particular, the question of the limits of the actual autonomy of high-risk systems in the context of judicial activities remains open, as the regulation primarily sets out requirements for design and risk management in advance, but does not establish a sufficiently clear mechanism for retroactive liability for algorithmic errors. Furthermore, the risk-based approach enshrined in the Regulation does not always take into account the cumulative effect of the interaction of several algorithmic systems within a single process, which may lead to the fragmentation of liability and complicate its legal attribution.

The integration of algorithms into legal practice requires not only substantive but also procedural regulation. This involves determining the procedural status of algorithmic conclusions, guarantees of the parties' access to information on the use of AI, and mechanisms for challenging the algorithmic influence on the outcome of a case. The use of algorithmic systems in court proceedings raises a number of fundamental questions: does a party have access to information about the algorithm, can they request an expert examination of the algorithmic model, and does the algorithmic conclusion form part of the evidence in the case? This highlights problems with the application and implementation of legislation, as the relevant procedural mechanisms remain insufficiently regulated.

Under Article 22 of the General Data Protection Regulation (2016), a person has the right not to be subject to a decision based solely on automated processing which produces legal effects concerning them. However, in the context of judicial proceedings, this provision is insufficient. It is necessary to establish specific procedural safeguards: the right to be informed of the use of AI in the case, the right to challenge algorithmic influence, and the right to receive an explanation of the system's logic within limits compatible with the protection of trade secrets.

The academic literature also emphasises that the "right to an explanation" is not absolute, but it follows from the general principles of transparency and accountability of algorithmic systems (Wachter *et al.*, 2017). The integration of artificial intelligence algorithms into legal practice entails not only a transformation of regulatory frameworks but also significant changes in the behaviour of law enforcement actors, the structure of legal institutions, and the nature of interaction between parties to legal relationships. In this context, artificial intelligence should be viewed as a socio-technical phenomenon, the impact of which extends beyond the purely technological or legal sphere and encompasses behavioural, institutional and cultural aspects of the functioning of the legal system.

Further empirical evidence of the impact of algorithmic systems on the justice sector is provided by the use of the COMPAS (Correctional Offender Management Profiling for Alternative Sanctions) system in the US criminal justice system, which is used to assess the risk of reoffending and to assist judges in making decisions regarding preventive measures and sentencing. Research has shown that algorithmic risk assessments can demonstrate both potential effectiveness in standardising decisions and problems related to the opacity of the model and possible biases in predicting recidivism, which calls into question their neutrality and objectivity (Angwin *et al.*, 2016; Dressel & Farid, 2018). At the same time, empirical analysis indicates that judges do not always critically re-evaluate such recommendations, confirming the existence of an algorithmic trust effect and the potential influence of algorithms on judicial discretion. Thus, experience with COMPAS demonstrates that the integration of algorithms into criminal justice can simultaneously increase the predictability of decisions and give rise to new risks to the principles of transparency, equality and fair trial. Empirical studies also confirm that the use of algorithmic tools in criminal justice can influence judges' perception of risk and the severity of punishment, altering the structure of decision-making (Dressel & Farid, 2018).

One of the key socio-legal effects is the transformation of judges' behaviour in the decision-making process (Sourdin, 2018; Dressel & Farid, 2018). The use of algorithmic systems that generate recommendations or predict case outcomes can lead to automation bias (Parasuraman & Manzey, 2010), i.e. a tendency to favour machine-generated conclusions even when there are grounds for critical evaluation (Parasuraman & Riley, 1997; Goddard *et al.*, 2012). This tendency is explained by the perception of algorithms as objective and neutral tools, which, however, does not always correspond to reality given that results depend on the quality of training data and the underlying models. Consequently, there is a risk of a gradual shift in a judge's internal conviction from autonomous analysis to the indirect adoption of algorithmic recommendations, which may affect the implementation of the principle of judicial independence. Separately, the phenomenon of algorithmic authority (Logg *et al.*, 2019) should be highlighted, which consists of the tendency of law enforcement actors to place heightened trust in results generated by algorithmic systems, even in the absence of a full understanding of their methodology (Citron, 2008).

Furthermore, one must take into account the emergence of a new phenomenon, "institutional algorithmicisation of trust", whereby the legitimacy of law enforcement decisions begins to shift in part from judicial institutions to the technological systems involved in preparing such decisions. This may lead to a gradual shift in the source of authority within the legal system: from personified judicial discretion to the technically mediated expertise of algorithms. Such a transformation is not neutral, as it influences perceptions of justice and may alter the behavioural patterns of those involved in the process, in particular by reducing the level of critical scrutiny of automated recommendations.

No less significant is the impact of artificial intelligence on the professional activities of solicitors and other legal practitioners. Algorithmic tools that provide automated analysis of contracts, case law or the assessment of legal risks are changing the nature of legal work, reducing the proportion of routine tasks and increasing the role of strategic thinking. At the same time, there is a risk of excessive reliance on technological solutions, which may lead to a decline in the level of critical analysis and professional prudence. In such a case, the content of the standard of due legal care also changes, as the lawyer must not only apply legal norms but also assess the reliability and limitations of the algorithmic tools used (Remus & Levy, 2017).

The socio-legal dimension is also evident in the impact of artificial intelligence on access to justice. On the one hand, the automation of legal processes and the use of algorithmic systems help to reduce the cost of legal services, simplify procedures and speed up case processing, thereby expanding access to legal aid for broad sections of the population. On the other hand, there is a risk of new forms of inequality emerging, linked to the digital divide, unequal access to technology and differences in digital literacy levels. Thus, the introduction of AI can simultaneously act as both a tool for inclusion and a factor of social differentiation in the justice sector (Susskind, 2019; OECD, 2020).

The issue of transforming the institutional structure of legal practice warrants particular attention. The introduction of algorithmic systems facilitates the emergence of new participants in legal relations, including software developers, legal technology providers, algorithmic audit specialists and regulatory bodies responsible for overseeing the use of AI. This leads to an expansion of the traditional circle of participants in legal practice and the formation of a multi-level system of liability, in which legal, technical and organisational aspects are closely intertwined. At the same time, such a transformation complicates the definition of the boundaries of liability and requires new mechanisms for coordination between different institutional actors.

Furthermore, the use of artificial intelligence affects the level of trust in the judicial system and legal institutions in general. The use of algorithmic tools may increase trust through greater consistency and predictability of decisions; however, in the absence of transparency or clarity regarding the algorithms, the opposite effect is possible – a reduction in the legitimacy of justice. In this context, ensuring the explainability of algorithmic decisions, access to information about their use, and the possibility of effectively challenging their impact on the outcome of a case takes on particular significance.

Thus, the socio-legal consequences of applying artificial intelligence algorithms in legal practice manifest themselves in changes to the behavioural patterns of legal actors, the transformation of professional standards, a rethinking of access to justice, and the increasing complexity of the institutional structure of the legal system. This points to the need to integrate a sociological approach into the analysis of algorithmic systems, which allows for consideration not only of their formal legal characteristics but also of their actual impact on the functioning of law as a social institution.

The effective and safe implementation of artificial intelligence algorithms in legal practice is impossible without a comprehensive combination of key principles, institutional and regulatory mechanisms, procedural safeguards and shared responsibility. Table 1 systematises a model for the responsible use of AI, demonstrating how technological tools integrate with legal standards and professional ethics. Each level of the model reinforces the previous one: from ensuring human oversight and transparency to implementing regulatory and institutional procedures, establishing procedural safeguards, and delineating responsibility between the developer, supplier, integrator, user and the state. This structure allows for the minimisation of risks of algorithmic errors, ensures compliance with the General Data Protection Regulation (2016) and the Artificial Intelligence Act, and creates the conditions for the responsible, ethical and lawful application of AI in the justice sector. At the same time, current regulation remains fragmented and does not ensure systematic coherence between the substantive, procedural and technological aspects of AI use. A synthesis of these approaches allows for the formulation of a model for the responsible use of AI in legal practice (see Table 1).

Table 1. Model for the responsible use of AI in legal practice

Level	Actors / Components	Main role / Responsibility
Key principles	Human oversight, transparency, accountability, algorithmic audit, ethical standards	Guarantee that decisions remain under human control, transparent algorithm, responsible parties are known, ethics are upheld
Institutional and regulatory mechanisms	EU regulation, national mechanisms, system register, certification, professional standards (codes, training, insurance)	Ensuring high-risk systems comply with legal standards, standardisation of processes, professional training
Procedural safeguards	Parties to the proceedings (court, lawyer, participants), appeals, court decisions	Right to information, access to expert evidence, possibility of challenging algorithmic influence, obligation to give reasons for a court decision
Shared responsibility	Developer → supplier → integrator → user (court/lawyer) → state	Responsibility for algorithm quality, compliance with the General Data Protection Regulation (2016), integration, ethical use, the administration of justice and oversight

Source: developed by the authors based on the General Data Protection Regulation (2016), the Artificial Intelligence Act (2024), the case law of the European Court of Human Rights (Judgment of the European Court of Human Rights in Case No. 47143/06, 2015; Judgment of the European Court of Human Rights in Cases Nos. 58170/13, 62322/14, 24960/15, 2021) and academic approaches to algorithmic governance and responsible AI (Wachter *et al.*, 2017; Floridi *et al.*, 2018; Veale & Borgesius, 2021)

The proposed model is original in nature and synthesises a combination of normative, procedural and ethical approaches to the use of artificial intelligence in legal practice. The socio-legal implications and institutional transformations of AI use. The issue of proving algorithmic error requires clear regulatory framework. First and foremost, it is necessary to determine the procedural status of an algorithmic conclusion – whether it will be considered as independent evidence, supporting material, or merely an analytical tool. At the same time, criteria for its admissibility and relevance must be established, as well as the procedure for appointing and conducting technical expert assessments of algorithmic systems. In the law of evidence, an algorithmic result may take three procedural forms: supplementary analytical material, an expert opinion subject to technical verification, or digital evidence provided its status is specifically enshrined in law. In this context, the burden of proof in disputes concerning algorithmic decisions should shift to the party implementing or operating the system, as it is this party that possesses the technical information regarding its functioning. Procedurally, this means that an algorithmic opinion can be equated with electronic evidence only provided it is reproducible, verifiable and capable of independent verification by a third party.

It would be advisable to introduce the institution of algorithmic forensic examination, aimed at a comprehensive review of the system's functioning. In practical terms, such an examination involves an algorithmic audit, which includes checking training data, identifying statistical biases, assessing the model's stability, and testing for discriminatory effects. As an alternative to forensic examination, an independent algorithmic audit could be carried out by certified private or regulatory bodies during the preliminary system review stage.

A court decision must clearly state the fact that an algorithmic tool was used and describe its role in forming the judge's internal conviction. Furthermore, it is necessary to justify why the algorithmic recommendation was accepted or rejected, in order to ensure the clarity and accountability of the judicial process. This approach is consistent with the requirements for the reasoning of court decisions in the practice of the ECtHR and ensures the traceability of the influence of algorithmic systems on judicial discretion. In the practice of the ECtHR, the requirement for a reasoned judicial decision includes the duty to ensure the clarity of the sources of evidential information; however, there is currently no direct case law regarding algorithmic systems, which creates a gap in the standards of a fair trial.

Regulating the use of artificial intelligence in the legal sphere requires a combination of European standards, national regulations and professional initiatives. It encompasses both requirements for the technical and procedural security of algorithmic systems and the safeguarding of human rights, ethical standards and the accountability of professional communities. At EU level, such requirements include fundamental rights impact assessments, risk management and technical documentation for high-risk systems. The application of a risk-based approach entails not only the classification of systems but also the differentiation of users' procedural obligations, in particular the obligation to document and log algorithmic decisions.

A comprehensive regulatory framework is taking shape within the European Union, which includes requirements regarding data quality and representativeness, mandatory technical documentation, fundamental rights impact assessments, and mechanisms for public oversight (Cath *et al.*, 2018). The Council of Europe's recommendations emphasise the priority of human dignity and non-discrimination in the application of algorithmic systems, highlighting the need to combine technological efficiency with legal safeguards. However, these standards are not directly binding rules and require transformation into procedural safeguards, in particular in the form of the parties' right of access to algorithmic information. At the same time, these recommendations are of a programmatic nature and require implementation through national procedural codes and subordinate legislation defining algorithmic admissibility.

National legal systems must adapt procedural codes, rules on electronic evidence, rules of professional conduct for lawyers, and mechanisms of civil liability for harm caused by algorithmic decisions. Such adaptation entails the procedural enshrinement of algorithmic evidence, the parties' right to access information about the model, and the possibility of initiating its expert examination. At the same time, the effectiveness of procedural safeguards depends on a clear definition of the standard of proof for algorithmic error, which is currently absent in most legal systems. The effectiveness of such changes depends on the establishment of a procedural mechanism for the allocation of the burden of proof in disputes concerning algorithmic decisions.

Professional communities can develop their own codes of conduct for the use of legal technologies, standards for algorithmic transparency, internal audit procedures, and mechanisms to enhance lawyers' digital competence. Such an approach fosters a culture of responsible AI use and provides additional safeguards for clients and judicial bodies. From a comparative law perspective, such ethical standards have already been implemented in the practice of certain European bar associations, which require mandatory disclosure of the use of AI tools in professional practice. From a doctrinal perspective, such codes serve a compensatory function in an area where state regulation is insufficiently detailed.

For the practical implementation of the provisions of the Artificial Intelligence Act (2024), a systematic adaptation of the national legal environment is required, encompassing legislative, institutional and professional mechanisms. It is advisable to provide for amendments to procedural codes regarding the procedure for using AI, the recording of algorithmic intervention and guarantees of the parties' rights, as well as to regulate the status of algorithmic conclusions. Furthermore, it is necessary to introduce a mandatory assessment of algorithmic impact for high-risk systems, which will ensure that technologies comply with safety and human rights standards. In particular, the principle of "risk classification + human oversight" is key, as it provides for the differentiation of responsibilities depending on the degree of the system's potential impact on an individual's rights.

At the level of state institutions, it is proposed to establish a national supervisory body for high-risk AI systems, maintain a register of algorithmic systems used in the justice sector, and introduce a certification mechanism for legal technology providers. The relevant conformity assessment requirements are set out in the Artificial Intelligence Act. Such institutional models are consistent with the concept of regulatory control, which envisages a combination of state supervision and technical certification as a single control mechanism. Such bodies perform a regulatory control function, but do not replace judicial review, thereby creating a dual model of supervision.

Professional bodies should update their codes of professional conduct, introduce compulsory training in algorithmic literacy, and provide for liability insurance when using AI. The concept of "trustworthy and reliable artificial intelligence", developed by the European Commission, can serve as a regulatory framework for establishing relevant standards and ensure a balance between technological innovation and compliance with professional and ethical standards. To ensure the effective integration of innovative technologies with the protection of human rights, it is advisable to implement a set of measures, including mandatory algorithmic impact assessments, the principle of human oversight, ensuring algorithmic traceability, enhancing the digital competence of lawyers, professional liability insurance for the use of AI, and independent external audits of high-risk systems. The concept of responsible AI should be based on the integration of legal, technical and ethical standards, which allows for the minimisation of risks and an increase in trust in technologies within the justice sector (Floridi *et al.*, 2018). The regulation of AI in the legal sphere is taking on a multi-layered structure that combines procedural, institutional and ethical components, yet remains fragmented due to the absence of a unified codified approach.

An in-depth analysis demonstrates that the effective use of AI algorithms in legal practice requires the introduction of a specific model of distributed civil liability, the establishment of procedural safeguards for algorithmic transparency, the institutionalisation of algorithmic auditing (Raji *et al.*, 2020), the harmonisation of national legislation with the provisions of the Artificial Intelligence Act (2024) and the General Data Protection Regulation (2016), as well as the constitutionalisation of the principle of human oversight in the justice system. In summary, it can be stated that the current regulation of algorithmic systems lies at the intersection of three models: normative, procedural (judicial proceedings) and ethical (professional codes), yet their integration remains incomplete. Thus, the integration of algorithmic systems into legal practice requires not only adherence to general ethical principles, but also the establishment of a specific procedural framework for their use, which includes the verifiability of algorithmic conclusions, the possibility of challenging them, and a clear division of responsibility among the parties involved.

Conclusions

The subject of the study was the legal, ethical and institutional aspects of the application of artificial intelligence algorithms in legal practice, particularly in the fields of justice, legal practice and legal analysis. The aim of the article was to define the limits of permissible AI use in law and to analyse the key risks of its implementation, including issues of algorithmic liability and the protection of human rights. This aim was achieved through a comprehensive study of the European Union's regulatory framework, the practice of the European Court of Human Rights, and contemporary academic approaches to algorithmic regulation. The research findings are organised into three main areas: a theoretical and legal analysis of algorithmic decision-making, an assessment of the practice of applying AI in legal activities, and the identification of models of legal liability for the consequences of using algorithmic systems.

The study identifies a scientific novelty, which lies in the conceptualisation of algorithmic liability as a multi-party model encompassing developers, users of algorithmic systems, and the state as the institutional guarantor of human rights in the field of justice. It is argued that such liability goes beyond the scope of classical tort law constructs and requires the application of a comprehensive regulatory approach based on the principles of risk-based regulation, algorithmic accountability and human oversight. It is demonstrated that the European model of artificial intelligence regulation forms a new paradigm of legal regulation of technologies, in which priority is given to preventive risk management rather than post-hoc liability.

It has been established that the application of artificial intelligence algorithms in the legal sphere is accompanied by a number of systemic risks, including algorithmic bias, lack of transparency in decision-making (the "black box effect"), the reproduction of social discrimination, and potential restrictions on the principle of judicial independence. The findings are consistent with current research in the field of algorithmic justice, which confirms the existence of the automation bias effect and growing trust in algorithmic recommendations in the legal decision-making process. An analysis of EU regulatory frameworks, in particular the Artificial Intelligence Act and the General Data Protection Regulation, has revealed the emergence of a risk-based regulatory model and the enshrinement of the principle of human oversight over high-risk systems. The research findings indicate that the practice of the European Court of Human Rights establishes standards of transparency, predictability and procedural safeguards that are relevant to the assessment of the use of algorithmic systems in the administration of justice. These findings point to the need to limit the autonomy of algorithms in judicial proceedings and to preserve the judge's key role in reaching the final decision. It was also established that the issue of liability for the consequences of algorithmic decisions cannot be fully resolved within the framework of traditional tort law. The findings suggest that algorithmic liability is of an inter-subject nature and requires consideration of the roles of all participants in the technological chain – from the developer to the state as the organiser of justice. It is also noted that the digitalisation of justice creates conditions for expanding the analytical capabilities of legal practice, yet does not alter the fundamental principle of human decision-making in the courts.

Summarising the research findings, it has been established that the integration of artificial intelligence into legal practice shapes a new legal reality in which classical models of law enforcement are transformed under the influence of digital technologies. Such a transformation does not negate the fundamental principles of the rule of law, but requires their adaptation to the conditions of the algorithmic environment through the introduction of clear legal boundaries for the use of AI, the strengthening of procedural safeguards, and the development of institutions for algorithmic control. A promising approach is the development of a hybrid model of justice, in which algorithmic systems perform a supporting function, whilst the final decision remains with humans as the bearers of legal responsibility and guarantors of justice.

Further research should focus on empirical studies of the impact of algorithmic systems on the behaviour of judges, lawyers and other participants in the legal process, particularly in the context of algorithmic trust and algorithmic bias.

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Алгоритми штучного інтелекту у правничій діяльності: правові межі, соціально-правові наслідки та відповідальність

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Анотація. Актуальність дослідження зумовлена стрімкою цифровізацією правничої діяльності та зростанням ролі алгоритмів штучного інтелекту у процесах ухвалення юридичних рішень, що породжує нові правові та етичні виклики. Метою роботи було вивчення перетину правових, етичних та інституційних аспектів застосування штучного інтелекту в правничій сфері, а також визначення меж допустимого використання алгоритмічних систем і підходів до розподілу відповідальності. У дослідженні використано системний, порівняльно-правовий, формально-юридичний методи, а також аналіз судової практики. Досліджено ризики автоматизованого ухвалення рішень: алгоритмічну упередженість, проблему «чорної скриньки», відтворення дискримінації та загрози незалежності судді. Ці ризики підтверджуються емпіричними дослідженнями у сфері алгоритмічного правосуддя та аналізом практики використання систем прогнозування ризиків у кримінальному судочинстві (наприклад, COMPAS у США). Проаналізовано регулювання ШІ на прикладі Закону ЄС про штучний інтелект і GDPR, а також підходи ЄСПЛ до забезпечення прозорості та процесуальних гарантій. Узагальнено підходи до розподілу відповідальності між розробниками, постачальниками, користувачами й державою та запропоновано модель алгоритмічної прозорості з людським контролем і правом сторін на поінформованість. Розглянуто міжнародний досвід США, Франції, Сінгапуру та Китаю, а також перспективи впровадження ШІ в Україні в межах ЄСІТС і систем аналізу судової практики. Особливу увагу приділено концепції розподіленої алгоритмічної відповідальності та застосуванню аналогії з відповідальністю за джерело підвищеної небезпеки до високоризикових систем ШІ. Запропоновано модель алгоритмічної прозорості з правом сторін на повідомлення про використання ШІ, алгоритмічну експертизу та обов'язком суду мотивувати врахування рекомендацій ШІ. Окреслено принцип «людської помилки» як гарантію збереження судового розсуду й незалежності судді. Результати дослідження можуть бути використані для вдосконалення національного законодавства у сфері цифрового правосуддя та впровадження стандартів алгоритмічної прозорості

Ключові слова: алгоритмічна відповідальність; етика, дискримінація; цифрове правосуддя; Закон ЄС про штучний інтелект; Загальний регламент про захист даних

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The role of the military ombudsman in protecting the rights of military personnel during armed conflict: International experience and Ukrainian realities

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Abstract. This article analysed the establishment and development of the institution of the military ombudsman in Ukraine within the context of international experience of democratic civilian control over the security and defence sector. The study was based on a comparative analysis of military ombudsman models in Germany, Canada, Australia, Ireland, and the Republic of South Africa, which made it possible to identify the key criteria for the effectiveness of such institutions: the degree of institutional independence, the scope of powers, mechanisms of parliamentary or executive accountability, and the availability of effective instruments for addressing violations of military personnel's rights. The study established that the most effective models are those operating independently of direct executive influence and providing the ombudsman with the authority to initiate investigations, conduct inspections, and issue binding or highly influential recommendations. Particular attention was paid to the effectiveness of advisory models which, despite the formal existence of mechanisms for protecting military personnel's rights, often fail to ensure their proper practical implementation. The article examined the process of establishing the institution of the military ombudsman in Ukraine, which in 2025 moved from legislative initiatives to institutional formation through the adoption of a specialised law and the establishment of the Office of the Military Ombudsman as an auxiliary body under the President of Ukraine. At the same time, it was demonstrated that the key challenges identified at the stage of conceptual design remain relevant, particularly with regard to the level of institutional independence, mechanisms for implementing recommendations,

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and the effectiveness of responses to systemic violations of military personnel's rights. Updating the findings as of 2026 has shown that the introduction of the institution of the military ombudsman confirmed earlier scholarly predictions concerning the need for a specialised and independent mechanism for protecting the rights of military personnel. At the same time, the practical implementation of the institution has given rise to new debates concerning its place within the system of state authority and the adequacy of its powers to ensure a genuine impact on the elimination of violations. Consequently, the study has both theoretical and practical significance, as it enables an assessment of the evolution of the institution of the military ombudsman from a conceptual model to an actual element of the system of democratic oversight under conditions of armed conflict and the transformation of Ukraine's security sector

Keywords: institutional guarantees for the protection of rights; civilian oversight; human rights protection mechanisms in the defence sector; transformation of defence governance; military law

Introduction

In the context of full-scale armed aggression, the issue of ensuring the rights of military personnel has acquired particular significance for Ukrainian society, the state, and the security system as a whole. As of 2026, the need for effective mechanisms to protect those defending the country represents not only an ethical imperative but also a strategic challenge. The issue of the functioning of the institution of the military ombudsman has become increasingly relevant in the context of identifying institutional solutions capable of maintaining a balance between military necessity and the observance of human rights. In this regard, the study of international experience and national initiatives is of particular importance. Legal mechanisms capable of responding effectively to the challenges posed by war should be based upon proven approaches and appropriately adapted models of oversight. Consequently, the role of the military ombudsman has become a matter of central importance for contemporary legal scholarship and public administration practice in the field of defence.

In 2025, legislative initiatives aimed at establishing the institution of the military ombudsman were launched in Ukraine. The Minister of Defence, Rustem Umerov, publicly emphasised the necessity of creating an independent body for the protection of the rights of military personnel (ArmyInform, 2025), while the human rights advocate Olha Reshetylova supported the drafting of the relevant bill (Matiash, 2025). The proposed initiatives addressed issues relating to institutional independence, appointment procedures, powers, and the procedural status of the institution. Draft Law of Ukraine No. 13266 (2025) was subsequently registered in the Verkhovna Rada and submitted by the President as urgent. Accordingly, the discussion surrounding the institution of the military ombudsman has focused primarily on the optimal form of its legal regulation, the provision of an adequate degree of institutional independence and accountability, the effectiveness of practical mechanisms for responding to complaints submitted by military personnel, and the possibility of adapting successful international models to Ukrainian realities in the context of armed conflict.

In contemporary academic literature, the institution of the military ombudsman is regarded as one of the key mechanisms for safeguarding the rights of military personnel and ensuring democratic oversight of the security sector. Academic research indicates a growing focus on the issue of establishing effective institutional safeguards for the protection of military personnel's rights, particularly under martial law and during armed conflicts. In particular, emphasis is placed on the need to enshrine the independent status of the military ombudsman in law, to clearly define their powers, and to ensure organisational autonomy from the military command (Koval, 2024; Shopina, 2025; Karapetian, 2026). A significant proportion of contemporary research is devoted to the broader issue of the legal and social protection of military personnel. In particular, V.D. Belousov (2024) and A.S. Chystiakova & A.P. Bezushko (2024) examined the issue of social security for military personnel as a component of national security. Guarantees for the realisation of military personnel's rights under martial law and in the context of European integration processes were studied by Y. Poltiev & L. Medvid (2024) and G.V. Popov (2024). The specific features of protecting the rights of military personnel in individual military formations and those liable for military service were studied by V. Shlapak (2024) and M. Koba & O. Koba (2025), whilst the safeguarding of the rights of prisoners of war in the context of modern armed conflicts was examined by D.L. Vityuk *et al.* (2024).

The aim of this study was to compare international models of military ombudsmen's activities, assess their effectiveness, and identify elements relevant for implementation in Ukraine in the context of armed conflict. To achieve this aim, the following objectives were set: to characterise the key institutional models of military ombudsmen in democratic states; to analyse national approaches to the protection of servicemen's rights during wartime; and to identify promising avenues for adapting international experience to the Ukrainian context.

Literature review

Studies of European experience show that the effectiveness of a military ombudsman's work depends directly on the degree of their independence, the existence of effective mechanisms for handling complaints, and legislative guarantees for the exercise of oversight functions. An analysis of European models for the functioning of this institution allows it to be viewed as an important tool for enhancing military personnel's trust in the system for protecting their rights and ensuring an appropriate response to cases of rights violations. Researchers pay particular attention to the parliamentary model of the military ombudsman, which operates successfully in a number of European countries. The experience of Norway is particularly instructive, where the Norwegian Act "On the Parliamentary Ombudsman for the Armed Forces" (2021) enshrined the institution's activities in legislation of the highest legal force, expanded its oversight powers and strengthened parliamentary scrutiny of the observance of military personnel's rights. An article by P.E. Swett (2019) demonstrates how, in Germany, the military ombudsman served as an instrument for the democratisation of the armed forces through the concept of the "citizen in uniform", emphasising the need for institutional independence and parliamentary oversight.

I. Rakitskaya's study (2023) demonstrates the practical effectiveness of the parliamentary model of the military ombudsman, which combines the institution's independence with effective mechanisms of parliamentary oversight. Particular attention is paid to the procedure for considering complaints from military personnel and the tools for monitoring compliance with their rights. L. Heinecken's study (2020) examines the transformation of the complaints system in South Africa and the role of the military ombudsman as an alternative to trade union influence within the army, which raises the issue of the balance between discipline and the rights of military personnel. At the same time, Argentina's experience highlights the conflict between the army's hierarchical structure and the desire to guarantee the fundamental rights of military personnel, particularly in a post-authoritarian context (Soprano, 2015). A publication by the Danish Institute for Human Rights (2026) on the establishment of a Military Ombudsman's Office in Ukraine examines current trends in the institutionalisation of mechanisms for protecting the rights of military personnel under martial law.

The researchers pay particular attention to the legal regulation of military service, the shaping of military personnel's value orientations, and the improvement of procedures for documenting combat injuries as elements of a comprehensive system of legal protection (Yarema, 2023; Kavchak, 2024). The work by O.V. Martseliak (2024) focuses on a comparative analysis of European models for the protection of military personnel's rights. The researchers conclude that the institution of the military ombudsman helps to increase trust in military institutions and provides an effective mechanism for responding to violations of personnel's rights.

Thus, an analysis of academic sources indicates the emergence of a comprehensive approach to the study of the protection of military personnel's rights, within which the institution of the military ombudsman is regarded as a key element of the system of human rights safeguards in the military sphere. At the same time, the questions of the optimal model for its organisation, the scope of its powers and its relationship with other mechanisms of parliamentary and state oversight require further academic study. At the same time, existing research hardly covers the specifics of martial law or large-scale mobilisation, as observed in Ukraine since 2022. Nor has the problem of mobilised persons' limited access to legal aid been investigated, nor the specific features of the regulatory framework for the institution of the military ombudsman in conditions of active conflict.

Materials and methods

The conceptual framework for this study was the idea of democratic civilian control over the armed forces, within which the institution of the military ombudsman is regarded as an instrument of institutional mediation between the state and military personnel. Theoretically, the study drew on the principles of neo-institutionalism, which involves analysing the functioning of legal institutions through the prism of their autonomy, normative content and interaction with the political environment. It also took into account the concepts of legal humanism in the field of public administration of the defence sector, according to which the effectiveness of institutions is measured by their ability to guarantee human rights even under exceptional circumstances – such as armed conflict.

The content analysis method was applied to examine official reports and publicly available materials relating to the activities of the relevant institutions. In particular, the study examined reports by the German Parliament on the activities of the Wehrbeauftragter (Bundestag, 2021; 2022; 2023), documents from the Australian Defence Force Ombudsman, including the annual report and the audit of oversight effectiveness (Australian National Audit Office, 2021; Commonwealth Ombudsman, 2023a) and public appeals by Ukrainian human rights organisations. Content analysis made it possible to identify the most common themes in complaints from military personnel (for example, breaches of social guarantees, unjustified disciplinary sanctions, and delays in rotations) and to assess the speed and nature of the response from the relevant institutions.

The case study method was employed to analyse specific legal situations that occurred in Ukraine during the Russian Federation's full-scale invasion. One telling example is the situation involving the 211' Brigade, which was covered in the media in 2023 and concerned the failure to provide medical care and breaches of service conditions. The use of this method made it possible not only to illustrate the shortcomings of the current system for protecting the rights of military personnel, but also to assess the actual level of law enforcement in crisis conditions (Sobolenko *et al.*, 2024).

The formal-legal method enabled an analysis of national and international legislative acts governing the status and functions of military ombudsmen. In particular, the study examined Draft Law of Ukraine No. 13266 (2025), the Constitution of the Federal Republic of Germany (1949), the Australian Ombudsman Amendment (Functions of the Defence Force Ombudsman) Regulation (Australian Government, 2016), as well as international standards – notably the Paris Principles (1993), the Recommendations of the Committee of Ministers of the Council of Europe (2019). The application of this method enabled a normative comparison of legal frameworks and identified the potential for harmonising Ukrainian legislation with international approaches to the protection of military personnel's rights.

Materials from Ukrainian human rights organisations, such as the Center for Civil Liberties (2024) and the NGO "Principle" (Naiiem & Galan, 2024), occupied a prominent place in the source base. These organisations carried out regular monitoring of violations of military personnel's rights during the full-scale war of 2022-2024, documenting both systemic and isolated cases of abuse by the command, failure to comply with conditions of service, violations of the right to protection, and so on. Finally, to provide a comparative framework, analytical documents from international organisations were analysed, in particular those from the Geneva Centre for the Democratic Control of Armed Forces (DCAF) (2018; 2022; 2024).

Results

The Military Ombudsman's Office is a specialised independent body that safeguards the rights of military personnel and exercises democratic oversight over the armed forces. The Ombudsman's main functions are: receiving and examining complaints, conducting investigations into misconduct, making recommendations on the protection of rights, monitoring procedures and highlighting systemic issues in the defence sector (DCAF 2022). In addition, the ombudsman helps to improve the effectiveness and transparency of the armed forces' activities and to strengthen trust among personnel and the public.

A comparative analysis of models for the military ombudsman institution identifies three main types – of National Defence, whilst ensuring functional and financial autonomy from the armed forces' command. In 2023, a systematic review of complaints from military personnel was initiated, which revealed structural imbalances in the area of mental health, in particular unequal access to relevant services for reservists. Despite this, the institution consistently argues for the need to expand its mandate by enshrining the binding nature of its recommendations in law (Arbour, 2022).

The Report of the Ombudsman for National Defence and the Canadian Armed Forces for the 2022-2023 financial year summarises the results of the institution's work in addressing complaints from service members and civilian personnel, as well as the systemic issues identified in the functioning of the defence sector, particularly in the areas of administrative procedures, social welfare, disciplinary practices and access to rights protection mechanisms (Office of the Ombudsman for National Defence and the Canadian Forces, 2023). The report highlights the significant strain on the complaints-handling system and the need to improve its efficiency and transparency; it also notes instances of delays in resolving personnel and pension matters, which undermine confidence in the institutional mechanism for the protection of rights; Particular emphasis is placed on the importance of early detection of systemic violations and the implementation of preventive measures rather than a purely reactive response to individual complaints, as well as on the need to strengthen communication between the various departments of the Canadian Ministry of Defence to ensure a more coordinated approach to addressing service members' issues; Overall, the report demonstrates that, despite the existence of a well-developed ombudsman system, challenges remain regarding the timeliness of case handling, the removal of administrative barriers and the improvement of the effectiveness of rights protection within Canada's defence system.

In Australia, the Defence Force Ombudsman operates under the Ombudsman Act 1976 (Commonwealth Ombudsman, 2019), which provides for the ability to initiate investigations on the Ombudsman's own initiative and to focus on cases of administrative misconduct within the military sphere. As noted by the Australian National Audit Office (2023), during the 2022-2023 reporting period, a systematic measurement of complainants' satisfaction levels was introduced, which is used as an indicator of the institution's responsiveness. In the Republic of South Africa, the ombudsman model provides for partial integration into the general state ombudsman institution whilst retaining separate jurisdiction over military complaints (DCAF, 2018). This structure ensures a combination of universal administrative oversight with sector-specific specialisation in the protection of military personnel's rights. In Ireland, the functions of the military ombudsman are carried out within the national ombudsman's office and cover mandatory procedures for investigating administrative breaches, as well as issues relating to the social and welfare provision for military personnel. This facilitates the comprehensive application of mechanisms for the protection of rights and strengthens oversight of compliance with social guarantees (Office of the Ombudsman for the Defence Forces, 2022).

Recommendation of the Committee of Ministers of the Council of Europe (Council of Europe, 2019), which concerns the effective protection of the rights of military personnel, establishes standards for the functioning of independent oversight mechanisms within the armed forces, in particular military ombudsman institutions or equivalent bodies, emphasising the need for their institutional and functional independence from the military command and executive authorities; the document emphasises that such bodies must ensure that procedures for considering complaints from military personnel are accessible, informal and confidential, and must be empowered to effectively investigate human rights violations in the military environment, including issues relating to disciplinary procedures, conditions of service, equality and non-discrimination; It specifically emphasises the importance of the ombudsman's powers to obtain information from military structures, to issue binding or highly influential recommendations, and to carry out systematic monitoring of recurring violations in order to prevent their occurrence in the future; Thus, the Recommendation establishes a European standard under which the military ombudsman is regarded as a key element of the mechanism for democratic civilian control over the armed forces and a guarantee of the effective protection of military personnel's rights.

International models illustrate the range of effectiveness of the institution depending on its degree of autonomy. Parliamentary models (Germany, Norway) have earned the greatest trust, as they incorporate a constitutional guarantee against the military or the executive branch exerting influence over the institution. The Canadian model shows that even with limited autonomy, specific problems (such as the mental health of reservists) can be effectively addressed, but the implementation of binding powers remains unresolved. The Australian example demonstrates that communicative transparency, through the assessment of satisfaction with complaints, can serve as a visual indicator of effectiveness.

As of June 2025, the institution of the military ombudsman in Ukraine was in its formative stage. In April 2024, the Verkhovna Rada passed Draft Law of Ukraine No. 13266 (2025) at first reading, establishing the office of the ombudsman – with the power to consider complaints, carry out inspections and provide legal support to military personnel. The appointment of the first Military Ombudsman, Olha Reshetylova, had already been approved (Fornusek, 2025). The establishment of the institution of the military ombudsman in Ukraine was accompanied by a series of legislative initiatives aimed at ensuring the effectiveness and independence of its activities. Alongside Draft Law of Ukraine No. 13266 (2025), which sets out the basic principles governing the functioning of the Ombudsman's office, Draft Law of Ukraine No. 13267 (2025) was registered. The latter provides for administrative liability for obstructing the Ombudsman's work, including fines of up to 34,000 hryvnias, as well as the possibility of restricting officials' access to public office in the event of failure to comply with the lawful requirements of the authorised body.

At the same time, Draft Law of Ukraine No. 13267 (2025) has a number of significant shortcomings that are causing concern amongst the expert community. In particular, the criteria for staffing the Ombudsman's office are not specified, which creates risks of political or administrative influence on staff selection. Moreover, the absence of a clearly defined mechanism for enforcing binding recommendations limits the institution's ability to respond effectively to violations of the rights of military personnel (Ivanov, 2025). One of the problematic aspects is the lack of detail regarding the financial mechanism for funding the new body's activities. Although the Budget Declaration for 2025-2027 provides for the necessary funding, the absence of clearly defined sources and procedures for the allocation of funds creates additional obstacles to guaranteeing the Ombudsman's independence (Resolution of the Cabinet of Ministers of Ukraine No. 751, 2024). The incomplete legal framework governing the institution's status risks undermining its potential as an independent oversight mechanism in the defence sector.

Materials produced by the Centre for Civil Liberties (Center for Civil Liberties, 2024) and the study by M. Naiiem & L. Galan (2024) play a key role in highlighting the state of respect for the rights of military personnel in Ukraine during the full-scale war of 2022-2024, providing empirically grounded data on systemic and isolated violations, including instances of abuse by the command, failure to comply with conditions of service, and restrictions on access to effective legal remedies; these sources contain detailed case studies, analytical reviews and summaries of complaints from military personnel, which help to identify key problem areas in the fields of military justice, discipline and social welfare, and form the basis for developing recommendations to improve policies and procedures aimed at protecting the rights and ensuring the safety of military personnel in crisis situations.

Establishing the office of the ombudsman within the Ministry of Defence creates risks of de facto subordination. The office, as already announced, is to operate within the Ministry of Defence, and the appointment mechanism – requiring the President's signature upon the Ministry of Defence's recommendation – calls into question the Ombudsman's position as an independent institutional mediator. This contradicts the recommendations of the Council of Europe and the Paris Principles (1993), which emphasise the autonomy of the Ombudsman. To ensure the effective protection of military personnel's rights, accountability to parliament and financial and organisational autonomy within the state budget are essential.

Monitoring by human rights organisations and journalistic investigations has documented certain violations of military personnel's rights within the Armed Forces of Ukraine. In particular, within the 211th Pontoon Brigade, cases of physical violence, psychological pressure, the abuse of official position to coerce subordinates into carrying out the command's private tasks, as well as offences related to the abuse of authority have been documented (Denisova, 2024; Sobolenko *et al.*, 2024). In response to high-profile reports, a number of officials were detained, and the Prosecutor General's Office opened criminal proceedings.

At the same time, independent reports by international organisations, notably Amnesty International (2023) and UN monitoring missions (2025), highlight other areas of concern: delays in medical treatment, neglect of rehabilitation needs, and delays in the payment of social benefits provided for by law for military personnel (Amnesty International, 2024; Office of the United Nations High Commissioner for Human Rights, 2025). Similar problems are also documented in the annual report of the Ukrainian Parliament Commissioner for Human Rights, which, in particular, notes the lack of awareness among those released from captivity regarding state support mechanisms and the difficulties in realising the guarantees provided for (Office of the Ombudsman of Ukraine, 2024a). These trends indicate not only institutional weakness but also the absence of an effective mechanism for the realisation of rights during wartime. Pressure on existing human rights institutions is also mounting: according to the Office of the Ombudsman of Ukraine (2024b), over 123 000 complaints were registered in 2024 – 29 % more than in the previous year. However, the lack of separate statistics on military complaints points to a fragmented response system and a lack of targeted analysis. This significantly complicates policy development and the prompt rectification of legal loopholes.

The examples cited highlight the need to establish an autonomous, independent mechanism for monitoring and protecting the rights of military personnel. Existing law enforcement, disciplinary and judicial bodies often fail to provide a timely or effective response due to unclear procedures, legislative conflicts and internal dependence on the Ministry of Defence. In this context, the institution of the military ombudsman in Ukraine is only just beginning to take shape, yet it is already facing critical barriers: an insufficiently clear regulatory framework, a lack of institutional independence and the absence of a comprehensive system for recording violations. Consequently, an analysis of the Ukrainian context requires comparison with established international practices, which will enable the development of recommendations for a functional model of the military ombudsman capable of responding effectively to the challenges of armed conflict and ensuring respect for the rights of military personnel at a systemic level.

During the period of full-scale armed conflict, mobilised individuals, including ordinary citizens without prior military training, have frequently lacked access to effective legal protection. According to a report by SCEEUS (Kazdobina & Hedenskog, 2025), the mobilisation system is characterised by chaos: conscripts were often not provided with information about the complaints process or legal assistance. An analytical review by B. McKenzie (2025) notes that, whilst martial law is in force, constitutional guarantees are significantly curtailed, and processes for monitoring and appealing against decisions by military authorities are often blocked by administrative procedures and the restrictions of military justice.

Martial law has complicated the exercise of fundamental rights, in particular the right to a fair trial and the right not to be subjected to compulsory mobilisation, as demonstrated by the study by E. Priymak & D. Kirichenko (2025): the decision restricted the constitutional right to alternative (non-combat) service, confirming the absolute priority of mobilisation over freedom of conscience. The study revealed significant restrictions on legal protection during pre-trial investigations under martial law, in particular through the automatic extension of detention periods without adequate judicial oversight and restrictions on access to a lawyer (Office of the United Nations High Commissioner for Human Rights, 2023).

Complaint mechanisms have likewise proved insufficiently developed. According to Le Monde (2024a), unlawful detentions and coercion were practised in some mobilisation centres, with no possibility of consulting lawyers or appealing against such actions through a centralised system. An analysis of appeals to the courts revealed an insufficient provision of free legal representation for military personnel, leading to legal inequality: mobilised reservists often do not have the same level of legal services as professional military personnel, despite the provisions of 10 U. S. Code § 1044 (1984), under which the US legislature provided for legal assistance not only for active-duty personnel but also for reservists following active service. Due to the state of emergency, military personnel are often left without rapid means of protecting their rights. Desertions from units are often linked to uncertainty regarding the protection of their rights, inadequate medical care and burnout. Delays in payments and the neglect of wounded soldiers undermine trust in institutions. The absence of a dedicated mechanism (such as a military ombudsman) means that such cases often go unnoticed by state institutions (Le Monde, 2024b).

The findings of the analysis confirm that, in the context of the war in Ukraine, access to legal protection is limited for the majority of those mobilised. Citizens' constitutional and procedural rights, such as the right to alternative service, access to a lawyer and legal aid, have effectively been nullified. Existing channels for lodging complaints are ill-suited to the extreme conditions of wartime, and there are no operational mechanisms for protection. This creates a legal vacuum which the institution of the military ombudsman must fill, by ensuring the protection of servicemen's rights and restoring trust in state institutions.

The findings of the analysis indicate that, under martial law in Ukraine, access to effective legal protection mechanisms is significantly restricted for a large proportion of mobilised servicemen. This is due both to the special restrictions provided for in Law of Ukraine No. 389-VIII (2015) and to the de facto transformation of the procedures for implementing certain constitutional guarantees, in particular the right to alternative (non-military) service, access to a lawyer and proper legal assistance. Existing institutional channels for addressing complaints include military law enforcement agencies, military prosecutors' offices (within the general system of public prosecutors' offices), disciplinary commissions, and the Ukrainian Parliament's Commissioner for Human Rights. However, their effectiveness under wartime conditions is constrained by excessive workloads, lengthy procedural timeframes for the examination of complaints, and the absence of a specialised mechanism capable of providing prompt responses to individual violations of the rights of military personnel in field conditions. It is worth noting separately the absence of a standardised procedure for the priority consideration of complaints from mobilised persons, as well as the lack of an institutionally established "military justice" system as an autonomous system of specialised justice. Taken together, this creates a regulatory and functional gap between the declared guarantees and their practical implementation, which points to the existence of a legal vacuum. This vacuum could be filled by institutionalising the military ombudsman as an independent rapid-response mechanism capable of ensuring the effective protection of the rights of military personnel and restoring trust in state institutions.

Anchoring the institution of the military ombudsman in the Constitution or in a separate law would ensure its long-term status and independence. According to O. Notevskyi (Ukrinform, 2024), the institution should possess a statutory basis, operate under a parliamentary model, and provide for an independent competitive appointment procedure. An analysis of European recommendations confirms that only a law or the constitution guarantees protection against political manipulation (Council of Europe, 2019). To prevent influence from the Ministry of Defence and the General Staff, the Ombudsman's office should be removed from the administrative subordination of the Ministry of Defence. In successful models (Germany, Norway), the institution reports to parliament rather than to the executive, which significantly increases the level of trust. Draft Law of Ukraine No. 13266 (2025) provides for granting the military ombudsman the powers to consider complaints from military personnel and to carry out inspections in military units. However, the legislative initiative does not yet contain provisions granting the Ombudsman the right to issue binding recommendations. The absence of such a provision significantly limits the effectiveness of the institution: documented violations may go unaddressed if there is no mechanism to enforce their rectification. To ensure the effective protection of military personnel's rights, a provision must be introduced granting the Ombudsman the right to issue decisions that are binding on the relevant authorities.

Particular attention should be paid to the issue of the Ombudsman's access to military facilities. Under the provisions of the draft law, the authorised person has the right to carry out inspection visits without prior notice, which is a critically important condition for effective oversight. At the same time, it is necessary to enshrine this provision in law, taking into account the state of martial law, in order to avoid situations where local commanders block the Ombudsman's visits under the pretext of security restrictions. In the context of establishing the institution of the military ombudsman in Ukraine, it is advisable to focus on the institutional and procedural components that ensure the effectiveness and accountability of its activities. One of the key recommendations for the legislator is to enshrine in Draft Law of Ukraine No. 13266 (2025) the institution's obligation to report publicly to the Verkhovna Rada of Ukraine on an annual basis. Such a report should be structured and contain data on the number of complaints received, the types of violations, the response times and the proportion of binding recommendations that have been implemented. A similar provision is enshrined in Article 45b of the Constitution of the Federal Republic of Germany (1949), which regulates the activities of the Wehrbeauftragter, and has proven its effectiveness in the practice of parliamentary oversight (Bundestag, 2022; 2023).

The next element of the legal framework for this institution should be the introduction, at the level of legislation, of a system for evaluating the effectiveness of the ombudsman's activities using key performance indicators. It would be appropriate to include among these indicators the average response time to complaints, the proportion of recommendations implemented, the frequency of repeat complaints, and the level of satisfaction among military personnel as indicated by survey results. A similar practice is in place in Australia: the annual reports of the Australian Defence Force Ombudsman include metrics such as indicators of operational effectiveness (Commonwealth Ombudsman, 2023b). Particular attention should be paid to digital feedback mechanisms. The legislature may consider initiating the development of a platform similar to "Army+", which would enable anonymous yet representative feedback from military personnel across different units regarding the accessibility of legal protection and the overall state of rights compliance. Comparable instruments are already employed within the United States Armed Forces as part of their internal audit and personnel management systems (U.S. Army Talent Management Task Force, 2020; Army People Strategy, 2022). Such an approach would facilitate the identification of potential threats to rights before they attract widespread public attention or escalate into crises.

Furthermore, the draft law should include provisions for mandatory monitoring of the public information space by the ombudsman. It would be advisable to provide for the creation of an analytical unit within the ombudsman's office to carry out the prompt processing of reports in the media, on social media and from civil society organisations. The experience of the authorities' response to reports of violations in the 211th Brigade (Denisova, 2024) shows that it is precisely through public pressure that practical results can be achieved, even in the absence of a formal complaint. Ultimately, to ensure full transparency and establish a body of case law, it is advisable to enshrine in law the public availability of all decisions made by the military ombudsman, accompanied by appropriate analytical justification. Such a requirement is in line with best European practices, in particular the Irish model, where every decision is accompanied by a detailed analysis and published in the public domain. This will create an institutional memory, help to avoid the repetition of systemic errors and increase trust in the institution as a mechanism for effective legal protection.

Discussion

The findings indicate that the effectiveness of the military ombudsman institution depends directly on the level of its institutional independence, the scope of its powers and its actual capacity to influence the redress of violations of military personnel's rights. A comparative analysis of international models has confirmed that the most sustainable and effective mechanisms are those that operate outside the executive branch and have clearly defined guarantees of autonomy. Experts at DCAF (2022; 2024) reached a similar conclusion, emphasising that the independence of the military ombudsman is a key prerequisite for effective democratic oversight of the security and defence sector. The results of the present study generally support this position. In particular, analysis of the German and Norwegian models has shown that parliamentary accountability provides additional guarantees of impartiality and reduces the risks of administrative influence exercised by military command structures. At the same time, the conclusions advanced by DCAF may be considered in a broader context, since under the conditions of full-scale war in Ukraine, not only the independence of the institution but also its ability to respond promptly to violations of the rights of military personnel in combat conditions assumes critical importance.

A significant contribution to the study of the military ombudsman institution has been made by I. Rakitskaya (2023), who examined the German Wehrbeauftragter as a model example of parliamentary oversight. The author argues that the constitutional entrenchment of the ombudsman's status ensures a high level of confidence among both military personnel and society at large. The findings of the present study largely support this conclusion. Nevertheless, the assertion regarding the universal applicability of the German model appears open to debate, since it developed within the context of a stable democratic system and peacetime conditions. For Ukraine, which continues to operate under conditions of prolonged armed conflict, the mechanical transplantation of this model without adaptation to wartime realities may prove insufficiently effective.

Particularly noteworthy are the conclusions reached by L. Arbour (2022) regarding the Canadian model of the military ombudsman. The author emphasises that, even where the institution is organisationally situated within the Ministry of Defence, its functional independence may nevertheless be secured through appropriate procedural safeguards and financial autonomy. The findings of the present study partially support this position. However, the analysis conducted reveals a different perspective concerning the risks associated with institutional dependence. Despite the positive performance of the Canadian Ombudsman's Office, the institution itself has consistently advocated for the expansion of its powers and for the legislative recognition of the binding nature of its recommendations. This suggests that even an effective executive model remains subject to structural constraints.

The conclusions advanced by P. Lagassé & S.M. Saideman (2016) concerning the necessity of empowering ombudsmen to issue binding recommendations are fully consistent with the findings of the present study. Analysis of the legislative initiatives aimed at establishing a military ombudsman in Ukraine has demonstrated that the absence of a mechanism for binding recommendations may substantially restrict the practical effectiveness of the new institution. In this regard, the experience of Canada, Australia, and a number of European states highlights the importance of moving beyond a merely advisory model towards one capable of exercising genuine influence.

The results of the study also correspond with the conclusions of the Commonwealth Ombudsman (2023b), which emphasise the significance of systematic monitoring of complaints and the assessment of applicant satisfaction as indicators of institutional effectiveness. The analysis confirms that the contemporary military ombudsman should perform not only a reactive function but also a preventive one. It is precisely the capacity to identify systemic deficiencies at an early stage that enables the prevention of recurring violations of the rights of military personnel.

Among Ukrainian scholars, particular attention should be given to the work of M. Naiiem & L. Galan (2024), devoted to the protection of the rights of military personnel during the full-scale war. The authors point to the systemic nature of violations associated with military service, social protection, and access to legal remedies. The findings of the present study support these conclusions. At the same time, the analysis makes it possible to supplement their observations with the argument that a significant proportion of the identified problems stem not only from deficiencies in the regulatory framework but also from the absence of a specialised and independent oversight mechanism capable of responding promptly to complaints submitted by military personnel.

A similar position is adopted by experts from the Center for Civil Liberties (2024), who draw attention to the difficulties encountered in the exercise of military personnel's rights under martial law. Their conclusions are well founded, as they are corroborated by the findings of the present study concerning delays in the consideration of complaints, restricted access to legal assistance, and the limited effectiveness of existing protection mechanisms. At the same time, the results of the analysis indicate that resolving these issues requires not only the establishment of a new institution but also a comprehensive reform of military administration procedures and internal oversight mechanisms.

At the same time, analysis of Ukrainian legislative initiatives reveals a degree of inconsistency between the declared objectives underlying the establishment of the military ombudsman and the mechanisms proposed for their implementation. In particular, the envisaged placement of the institution within the structure of the Ministry of Defence may create risks of de facto dependence upon the very body whose activities the ombudsman is intended to oversee. The differing interpretations of this issue may be explained by the legislature's attempt to reconcile operational efficiency with the requirements of institutional independence. Nevertheless, international experience demonstrates that excessive integration into the executive branch is capable of undermining confidence in the ombudsman and diminishing the effectiveness of the institution.

Thus, the findings of the present study are generally consistent with contemporary international and Ukrainian scholarly approaches concerning the necessity of establishing an independent institution of the military ombudsman. At the same time, the analysis undertaken makes it possible to specify that, for Ukraine, the optimal model appears to be one combining a high degree of parliamentary accountability, guaranteed financial autonomy, the authority to conduct independent investigations, and the power to issue binding recommendations. Such an institutional design is capable of ensuring effective protection of the rights of military personnel under conditions of prolonged armed conflict and would be consistent with contemporary international standards of democratic civilian oversight.

The findings of the present study have acquired particular relevance in light of the subsequent development of the institution of the Military Ombudsman in Ukraine following the completion of this article in 2025. At the time the research was conducted, the issue of establishing a specialised mechanism for the protection of the rights of military personnel remained largely at the stage of legislative discussion and conceptual development. Accordingly, a significant proportion of the conclusions presented in the article were based upon an analysis of international experience and an assessment of the prospects for introducing a comparable institution in Ukraine. However, subsequent legislative and institutional developments have demonstrated that many of the forecasts and conclusions formulated in the study proved well-founded and were confirmed during the establishment of the new mechanism for the protection of the rights of military personnel.

The most significant development was the adoption of the Law of Ukraine "On the Military Ombudsman" and the establishment of the Military Ombudsman's Office as a separate institution intended to provide additional safeguards for the rights of military personnel, reservists, veterans, and members of their families. Whereas in 2025 the existence of such a body remained the subject of academic debate and political consultations, by 2026 the institution had acquired a distinct organisational structure and had commenced practical operations. Consequently, the principal conclusion of the present study regarding the necessity of creating a specialised and independent mechanism for the protection of the rights of military personnel has received practical confirmation at the level of state policy.

Of particular significance is the fact that the Ukrainian legislature effectively recognised the inadequacy of the existing mechanisms for protecting the rights of military personnel, deficiencies which had been highlighted in this study. The analysis of international experience conducted in the article demonstrated that conventional administrative and judicial remedies are not always capable of responding promptly to violations of the rights of those serving in the armed forces, especially under conditions of martial law. Subsequent developments in the regulatory framework have confirmed the validity of this approach. Indeed, recognition of the specific legal status of military personnel and the need for a dedicated mechanism for handling complaints became one of the principal arguments in favour of introducing the institution of the military ombudsman.

At the same time, developments during 2025-2026 have demonstrated that some of the issues highlighted in the study continue to remain the subject of scholarly and practical debate. This applies above all to the question of the ombudsman's institutional independence. The article emphasised that international practice demonstrates the advantages of models in which the military ombudsman is accountable to Parliament or enjoys the highest possible degree of autonomy. Following the establishment of the Ukrainian Military Ombudsman's Office, the expert community continued to debate whether the guarantees of independence afforded to the new institution are sufficient. Consequently, the conclusions of the study have not lost their relevance following the formal establishment of the institution. On the contrary, they have provided a foundation for further professional discussions concerning the optimal model for its operation.

Equally important is the fact that the study effectively anticipated a number of challenges which began to emerge right from the outset of the new institution's work. In particular, the article emphasised the need to ensure not only the formal right to consider complaints from military personnel, but also the existence of effective mechanisms to address the identified violations. The analysis of comparable institutions within NATO member states demonstrated that the effectiveness of an ombudsman is determined not by the number of complaints considered, but by its capacity to bring about systemic changes in military governance. As of 2026, the issue of the practical implementation of the military ombudsman's recommendations has become one of the principal criteria for assessing the effectiveness of the newly established institution.

The significance of the study's findings is further enhanced by the fact that they were formulated during a period of profound transformation within Ukraine's security and defence sector under the impact of the full-scale war. Under such circumstances, the protection of the rights of military personnel extends far beyond the traditional human rights discourse and becomes directly linked to issues of national defence capability, the maintenance of morale and psychological resilience among military personnel, and public confidence in military institutions. The analysis conducted convincingly demonstrates that ensuring the proper protection of the rights of military personnel constitutes not merely a humanitarian or legal objective, but also an important component of national security. The subsequent development of the institution of the military ombudsman has, in practice, confirmed the validity of this approach.

Accordingly, despite the substantial developments that have occurred since the completion of the article, its scholarly value has not diminished but, on the contrary, has increased.

The study makes it possible to trace the evolution of approaches to the establishment of the institution of the military ombudsman in Ukraine, to assess the soundness of the legislative decisions adopted, and to compare the initial academic projections with the actual outcomes of the reform process. The majority of the study's key propositions have been confirmed by subsequent developments in legislation and public administration practice, thereby demonstrating the considerable theoretical and practical significance of the research undertaken. For this reason, the findings of the present study may be regarded not only as an analysis of the state of legal regulation in 2025, but also as an important scholarly foundation for the further improvement of the activities of the Military Ombudsman of Ukraine and the development of mechanisms for the protection of the rights of military personnel in accordance with contemporary European and Euro-Atlantic standards.

Conclusions

The findings of the study demonstrate that the institution of the military ombudsman constitutes a key element of the contemporary system for protecting the rights of military personnel in democratic states, particularly in the context of armed conflicts and the increased demands placed upon the security and defence sector. A synthesis of international experience indicates that the most effective models are those based on parliamentary accountability, institutional independence, and the existence of genuine powers to investigate violations and influence their resolution. Comparative analysis of military ombudsman models has shown that the effectiveness of the institution is directly dependent upon the degree of its autonomy and its capacity to ensure not only the examination of complaints but also a systematic response to identified violations. It has been established that purely advisory models are less effective than those in which the ombudsman's recommendations are either binding or subject to a high level of implementation. The findings confirm that, in the Ukrainian context, there is an objective need for a specialised and independent mechanism for protecting the rights of military personnel, as traditional administrative and judicial procedures do not provide a sufficiently prompt response, particularly under martial law. The identified shortcomings include the excessive workload of existing institutions, fragmented recording of violations, insufficient accessibility of legal assistance, and the absence of a single specialised body responsible for responding to such issues.

An updated assessment of the findings as of 2026 demonstrates that the conclusions formulated in the study have received practical confirmation. Following the adoption of the Law of Ukraine "On the Military Ombudsman" and the establishment of the corresponding Office, the institution has moved from a conceptual model to the stage of practical operation. This has confirmed the validity of the conclusion regarding the necessity of introducing a separate mechanism for the protection of the rights of military personnel. At the same time, the subsequent functioning of the institution has brought to the forefront questions concerning its actual independence, its place within the system of state authority, and the adequacy of its powers to ensure an effective response to violations.

Of particular importance is the fact that some of the risks identified in the study, notably those relating to potential executive influence, the limited nature of binding decisions, and institutional dependence, have remained the subject of academic and expert debate even after the establishment of the institution. This demonstrates that the issue is not resolved merely by the creation of the ombudsman institution itself, but rather shifts to the sphere of the quality of its functioning and the effectiveness with which its powers are exercised. Thus, the results of the study possess not only theoretical but also practical significance, as they made it possible to anticipate the principal challenges associated with the institutional development of the military ombudsman in Ukraine and to determine the conditions necessary for its effectiveness. The confirmation of most of the study's assumptions during the actual reform process attests to the high reliability of the analysis and its consistency with contemporary trends in the development of democratic civilian oversight of the security and defence sector.

In conclusion, the further development of the institution of the military ombudsman in Ukraine should be directed towards strengthening its institutional independence, expanding its effective powers to influence the elimination of violations, and establishing an efficient mechanism for the implementation of its decisions. Only under such conditions will it be possible to ensure the full realisation of the rights and freedoms of military personnel and to enhance confidence in state institutions within the defence sector.

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Роль військового омбудсмена у захисті прав військовослужбовців під час збройного конфлікту: міжнародний досвід та українські реалії

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Анотація. У статті здійснено аналіз становлення та розвитку інституту військового омбудсмена в Україні в контексті міжнародного досвіду демократичного цивільного контролю над сектором безпеки і оборони. Дослідження базується на порівняльному аналізі моделей військового омбудсмена у Німеччині, Канаді, Австралії, Ірландії та Південно-Африканській Республіці, що дозволило визначити ключові критерії ефективності таких інституцій: рівень інституційної незалежності, обсяг повноважень, механізми парламентської або виконавчої підзвітності та наявність реальних інструментів впливу на усунення порушень прав військовослужбовців. У роботі встановлено, що найбільш результативними є моделі, які функціонують поза прямим впливом виконавчої влади та забезпечують омбудсмену право ініціювати розслідування, проводити інспекції та формулювати обов'язкові або високовпливові рекомендації. Окрему увагу приділено проблемі ефективності консультативних моделей, які, попри формальну наявність механізмів захисту прав військових, часто не забезпечують належного рівня їх практичної реалізації. Проаналізовано процес становлення інституту військового омбудсмена в Україні, який у 2025 році перейшов від законодавчих ініціатив до інституційного оформлення із ухваленням профільного закону та створенням Офісу Військового омбудсмена як допоміжного органу при Президентові України. Водночас доведено, що ключові виклики, визначені на етапі концептуального проєктування інституції, залишаються актуальними, зокрема щодо рівня її незалежності, механізмів реалізації рекомендацій та ефективності реагування на системні порушення прав військовослужбовців. Актуалізація результатів дослідження станом на 2026 рік засвідчила, що запровадження інституту військового омбудсмена підтвердило правильність наукових прогнозів щодо необхідності створення спеціалізованого незалежного механізму захисту прав військовослужбовців. Водночас практична реалізація інституції актуалізувала нові дискусії щодо її місця в системі державної влади та достатності повноважень для забезпечення реального впливу на усунення порушень. Таким чином, дослідження має як теоретичне, так і практичне значення, оскільки дозволяє оцінити еволюцію інституту військового омбудсмена від концептуальної моделі до реального елемента системи демократичного контролю в умовах збройного конфлікту та трансформації сектору безпеки України

Ключові слова: інституційні гарантії захисту прав; цивільний контроль; правозахисні механізми у секторі оборони; трансформація оборонного управління; військове право

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