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Implementation of European legal standards into Ukraine's transitional justice system to ensure contextual legal certainty

Ruslana Havrylyuk^{1,*}

Yuriy Fedkovych Chernivtsi National University

Petro Patsurkivskyy²

Yuriy Fedkovych Chernivtsi National University

Summary: 1. Introduction. 2. Literature review. 3. Methods and materials. 4. Results. 4.1. Normative fragmentation of the implementation of European standards of legal certainty in Ukraine's transitional justice system. 4.2. The case law of the ECtHR and the CJEU on legal certainty as a benchmark for transitional justice. 4.3. Supreme Court practice under martial law: Trends and limitations of legal certainty. 5. Discussion. 6. Conclusions. 7. References.

Abstract: In the context of armed conflict and emergency legal regimes, legal certainty is a key safeguard against arbitrary law enforcement and excessive discretion. This article assesses whether Ukraine's regulatory framework and judicial practice ensure legal certainty in a manner compatible with the standards developed by the European Court of Human Rights and the Court of Justice of the European Union, while taking into account the exceptional conditions of martial law. The study was conducted in 2024-2025 using doctrinal, comparative legal and case law analysis. Ukrainian legislation, European Union law, international human rights instruments and selected judicial practice were examined through four markers: predictability of legal norms, stability of judicial practice, protection of legitimate expectations and limits of discretion. The results show that European standards are formally recognised in Ukraine, but their practical implementation remains fragmented. The article develops the concept of contextual legal certainty as a

¹ Doctor of Law Sciences, Professor, Yuriy Fedkovych Chernivtsi National University. ORCID: <https://orcid.org/0000-0001-6750-4340>; E-mail: r.havrylyuk@chnu.edu.ua or ruslanahrchnu@gmail.com (corresponding author).

² Doctor of Law Sciences, Professor, Yuriy Fedkovych Chernivtsi National University. ORCID: <https://orcid.org/0000-0001-5081-7842>; E-mail: p.patsurkivskyy@chnu.edu.ua.

framework for distinguishing justified wartime limitations from genuine legal uncertainty in transitional justice systems.

Keywords: Rule of Law, Judicial Practice, Legitimate Expectations, Normative Fragmentation, State Discretion

Resumo: En el contexto de un conflicto armado y la aplicación de regímenes jurídicos de emergencia, la seguridad jurídica cobra especial importancia como salvaguarda contra la aplicación arbitraria de la ley y la discrecionalidad excesiva. Este estudio tiene como objetivo evaluar si el marco regulatorio y la práctica judicial actuales de Ucrania garantizan la seguridad jurídica de manera compatible con los enfoques del Tribunal Europeo de Derechos Humanos (TEDH) y del Tribunal de Justicia de la Unión Europea (TJUE), teniendo en cuenta las condiciones excepcionales de la ley marcial. El estudio se realizó entre 2024 y 2025 utilizando métodos doctrinal-analíticos, jurídico-comparados y de análisis de jurisprudencia. Se analizó la legislación nacional ucraniana, el derecho de la Unión Europea, los instrumentos internacionales de derechos humanos y la práctica del TEDH, el TJUE y el Tribunal Supremo de Ucrania. Las decisiones judiciales se evaluaron mediante cuatro indicadores de seguridad jurídica: previsibilidad de las normas jurídicas, estabilidad de la práctica judicial, protección de las expectativas legítimas y límites de la discrecionalidad estatal y judicial. Los resultados muestran que la aplicación de las normas europeas en Ucrania sigue siendo fragmentada: el reconocimiento formal del principio del Estado de derecho no garantiza su aplicación operativa en los mecanismos de justicia transicional. La práctica europea demuestra un modelo estructurado de seguridad jurídica, mientras que la práctica ucraniana aplica estos estándares de forma selectiva, especialmente bajo la ley marcial. Al mismo tiempo, las limitaciones propias del tiempo de guerra no deben considerarse inseguridad jurídica por sí mismas; se vuelven problemáticas cuando su alcance, duración y garantías no están suficientemente definidos. El estudio contribuye al desarrollar el concepto de seguridad jurídica contextual como marco para distinguir las limitaciones justificadas en tiempo de guerra de la verdadera inseguridad jurídica en los sistemas de justicia transicional.

Palavras-Chave: Estado De Derecho, Práctica Judicial, Expectativas Legítimas, Fragmentación Normativa, Discrecionalidad Estatal

1. Introduction

Legal certainty becomes particularly vulnerable in transitional and post-conflict legal systems, where international obligations, national legislation and emergency legal regimes operate simultaneously. In such settings, uncertainty does not arise merely because several sources of law coexist. It emerges when these sources fail to produce coherent, foreseeable and stable legal consequences for individuals, courts and public authorities. Transitional justice mechanisms are expected to combine accountability for conflict-related violations, restoration of victims' rights, institutional renewal and compliance with the rule of law. However, if these mechanisms are introduced through fragmented legislation or applied through inconsistent judicial reasoning, transitional justice itself may become a source of legal uncertainty.

For Ukraine, this problem has become especially acute under the conditions of armed conflict and martial law. The national legal system must reconcile security-related restrictions, criminal prosecution, international cooperation, human rights protection and European integration obligations. These objectives are legitimate, yet they may create tension when wartime flexibility is not accompanied by clear normative limits. Therefore, the central issue is not whether legal certainty may be adjusted in extraordinary circumstances, but how to distinguish necessary wartime

limitations from genuine legal uncertainty caused by fragmented regulation, excessive discretion and unstable judicial practice.

Contemporary legal doctrine increasingly considers legal certainty as an autonomous operational element of the rule of law. It is not limited to a general requirement of “clarity” in legislation. For the purposes of this study, legal certainty is understood through four interrelated components: predictability of legal norms, stability of judicial practice, protection of legitimate expectations, and limits of state and judicial discretion. Chekhaniuk emphasises that legal certainty is closely connected with the rule of law, while also performing an independent function of protecting individuals from arbitrary or unpredictable legal consequences³. This approach is important for transitional justice because the formal proclamation of the rule of law does not itself guarantee a predictable legal order if the rules governing accountability, procedural guarantees and state discretion remain unstable.

The literature on transitional justice has made a significant contribution to understanding post-conflict legal reconstruction. Iyzhenko links transitional justice with post-conflict settlement and the restoration of the rule of law, while Cherviakova analyses transitional justice mechanisms as instruments for restoring Ukraine’s sovereignty and national security^{4,5}. These studies demonstrate the institutional and security relevance of transitional justice, but they do not fully explain how legal certainty should be operationalised when transitional justice functions under martial law. As a result, the internal structure of legal certainty remains insufficiently developed in relation to Ukraine’s current legal transformation.

The European dimension of the problem is equally important. European Union conditionality has become one of the key external drivers of rule-of-law reform in Ukraine. Rabinovych shows that the EU’s rule-of-law conditionality toward Ukraine has historical and comparative significance, as it links domestic legal reforms to broader European expectations⁶. Yet conditionality cannot ensure legal certainty automatically. Its stabilising effect depends on whether European standards are translated into precise legislative criteria, consistent judicial reasoning and institutional safeguards against excessive discretion. In the case law of the Court of Justice of the European Union, legal certainty has evolved from the requirement of foreseeability toward a broader standard based on trust and legitimate expectations⁷. This development is relevant for Ukraine because transitional justice cannot rely only on political necessity or emergency reasoning; it also requires predictable legal consequences and controlled limits of discretion.

Despite the growing body of research on transitional justice, European legal standards and the rule of law, a specific research gap remains. Existing studies

³ CHEKHANIUK, L. “The principle of the rule of law and legal certainty: Correlation and specific aspects”, *Philosophical and Methodological Problems of Law*, v. 1, n. 29, 2025, p. 85-95. <https://doi.org/10.33270/02252901.10>

⁴ IYZHENKO, D. “The principle of rule of law and the concept of transitional justice as key elements of post-conflict settlement”, *Yurydychnyi Visnyk*, v. 3, 2024, 350-358. <https://doi.org/10.32782/yuv.v3.2024.43>

⁵ CHERVIAKOVA, O. V. “Transitional justice mechanisms and processes: International experience for restoring Ukraine’s sovereignty and national security”, *Law and Safety*, v. 90, n. 3, 2023, p. 135-142. <https://doi.org/10.32631/pb.2023.3.11>

⁶ RABINOVYCH, M. “EU enlargement policy goes east: Historical and comparative takes on the EU’s rule of law conditionality vis-à-vis Ukraine”, *Hague Journal on the Rule of Law*, v. 16, n.3, 2024, p. 715-737. <https://doi.org/10.1007/s40803-024-00223-6>

⁷ VAN MEERBEECK, J. “The principle of legal certainty in the case law of the European Court of Justice: From certainty to trust”, *European Law Review*, v. 41, n. 2, 2016, p. 275-288. Available at: https://www.researchgate.net/publication/317211817_The_principle_of_legal_certainty_in_the_case_law_of_the_European_Court_of_justice_From_certainty_to_trust (accessed on 13 April 2026).

mainly examine transitional justice through institutional, political, criminal-law or human-rights perspectives, while legal certainty is often treated as a broad doctrinal principle rather than as a structured analytical criterion. The literature still insufficiently explains how predictability, stability, legitimate expectations and limits of discretion should be assessed together in a legal system affected by armed conflict, martial law and post-conflict transformation. This gap is particularly visible in Ukraine, where European standards are formally recognised, but their implementation remains uneven across legislation and Supreme Court practice.

This article addresses that gap by developing an analytical framework for assessing legal certainty in Ukraine's transitional justice system. The proposed framework is based on four criteria: first, predictability, which concerns the clarity and foreseeability of legal norms; second, stability, which concerns consistency in judicial and regulatory practice; third, legitimate expectations, which protect individuals from sudden and unjustified changes in legal treatment; and fourth, limits of discretion, which require state and judicial powers to remain normatively bounded. These criteria make it possible to evaluate not only the formal incorporation of European standards, but also their practical capacity to reduce arbitrariness, inconsistency and normative fragmentation.

The study also clarifies the concept of contextual legal certainty. This term does not denote a weakened or optional version of legal certainty. It refers to the minimum but normatively controlled level of foreseeability, consistency and protection against arbitrariness that must be preserved even under martial law. Contextual legal certainty therefore allows necessary wartime restrictions to be distinguished from genuine legal uncertainty. Wartime restrictions may be justified where they are lawful, proportionate, temporary and reasoned; legal uncertainty arises where legal consequences become unpredictable because of fragmented regulation, unstable judicial interpretation or insufficiently defined discretion.

The aim of the study is to assess whether Ukraine's current regulatory framework and judicial practice ensure legal certainty in a manner compatible with the approaches of the European Court of Human Rights and the Court of Justice of the European Union, while taking into account the exceptional conditions of martial law. To achieve this aim, the article pursues three objectives: first, to clarify the conceptual components of legal certainty relevant to transitional justice; second, to compare Ukrainian legislation and Supreme Court practice with selected ECtHR and CJEU standards; and third, to identify structural sources of legal uncertainty and formulate practical recommendations for reducing normative fragmentation in Ukraine's transitional justice system.

The original contribution of this article lies in shifting the analysis from a general discussion of European standards to an operational model for evaluating legal certainty in wartime transitional justice. Unlike studies that consider transitional justice and European integration separately, this article connects them through the criteria of predictability, stability, legitimate expectations and limits of discretion. This approach makes it possible to determine whether European standards function in Ukraine not only as formal legal references, but also as practical safeguards against arbitrariness, excessive discretion and instability of judicial practice during post-conflict legal transformation.

2. Literature review

The literature on transitional justice increasingly moves beyond a narrow understanding of post-conflict accountability and compensation. Transitional justice is now more often interpreted as a complex legal and institutional process aimed at restoring public trust, ensuring accountability and rebuilding the normative foundations of the state after armed conflict. Naumkina, Kokoriev, and Yavtetska conceptualise transitional justice as an efficient mechanism for

overcoming the consequences of armed conflicts, emphasising its institutional and restorative potential⁸. However, this approach remains focused mainly on the functional value of transitional justice and pays less attention to the internal quality of the legal order within which such mechanisms operate. For the purposes of this article, this limitation is important because transitional justice cannot be assessed only by the existence of accountability mechanisms; it must also be evaluated through the predictability, stability and coherence of the legal framework that supports them.

A different perspective is offered by Clark who argues that the Russia-Ukraine war requires a broader reflection on transitional justice, including dimensions that exceed the classical human-centred model of responsibility and recovery⁹. This contribution is valuable because it shows that transitional justice is not a closed doctrinal field. At the same time, such an expansion of the concept may increase analytical uncertainty if it is not accompanied by clear criteria for legal responsibility, institutional competence and procedural foreseeability. In this sense, the widening of transitional justice discourse strengthens the need for legal certainty rather than reducing it.

The problem of institutional novelty is also visible in scholarship on international criminal justice. Burma considers the special tribunal for the crime of aggression against Ukraine as a new frontier of international justice. This proposal is significant for accountability and the restoration of the rule of law¹⁰. Yet it also raises a legal certainty problem: the legitimacy of a new tribunal depends not only on political necessity, but also on the clarity of its mandate, jurisdiction, applicable law and procedural guarantees. If these elements are defined ambiguously, institutional innovation may unintentionally deepen normative fragmentation. Therefore, the literature on transitional justice and international criminal responsibility reveals a first unresolved tension: the need for flexible post-conflict mechanisms must be balanced against the requirement of foreseeable and stable legal procedures.

A second group of studies examines legal certainty through the broader European rule-of-law framework. Fromont analyses EU conditionality as a mechanism that links financial and institutional pressure with compliance with rule-of-law standards¹¹. Hoxhaj discussing the CJEU's validation of the conditionality regime in cases C-156/21 and C-157/21, shows that the protection of the EU budget is inseparable from the legality, competence and procedural clarity of rule-of-law mechanisms¹². These studies are relevant to Ukraine because European conditionality increasingly shapes domestic legal reform. Still, they also reveal a limitation: conditionality can discipline states externally, but it does not automatically create internal legal certainty unless European standards are translated into clear national rules and consistent judicial practice.

Hilpold adds an institutional dimension to this debate by analysing the

⁸ NAUMKINA, S., KOKORIEV, O., YAVTETSKA, H. "Transitional justice as an efficient mechanism for overcoming the consequences of armed conflicts: World experience", *Evropský Politický a Právní Diskurz*, v. 11, n. 3, 2024, p. 13-23. <https://doi.org/10.46340/eppd.2024.11.3.2>

⁹ CLARK, J. N. "Transitional justice and the significance of more-than-human worlds: Some reflections from the Russia-Ukraine war", *Journal of Human Rights Practice*, v. 17, n. 3, 2025, p. 1-24. <https://doi.org/10.1093/jhuman/huaf040>

¹⁰ BURMA, S. "The special tribunal for the crime of aggression against Ukraine: New frontiers of international justice", *Ehrlich's Journal*, v. 14, 2025, p. 11-20. <https://doi.org/10.32782/ehrlchsjournal-2025-14.02>

¹¹ FROMONT, L. "What EU conditionality says about the rule of law", *European Journal of Risk Regulation*, v. 16, n. 3, 2025, p. 839-852. <https://doi.org/10.1017/err.2024.40>

¹² HOXHAI, A. "The CJEU validates in C-156/21 and C-157/21 the rule of law conditionality regulation regime to protect the EU budget", *Nordic Journal of European Law*, v. 5, n. 1, 2022, p. 131-144. <https://doi.org/10.36969/njel.v5i1.24501>

transformation of the Court of Justice of the European Union into a more constitutional court-like institution¹³. This argument is important because it demonstrates that legal certainty in the EU is not only a matter of legislative wording; it also depends on the structure, authority and accessibility of judicial institutions. However, the EU model cannot be mechanically transferred to Ukraine's transitional justice system. Under martial law, courts face exceptional security-related pressures, while the regulatory environment changes more rapidly than in ordinary constitutional conditions. Consequently, the European model should be treated as a benchmark, not as a ready-made template.

The cultural dimension of legal certainty further complicates the picture. Garcia Blesa argues that legal certainty is influenced by legal culture and by the ways in which courts and legal actors interpret predictability, trust and discretion¹⁴. This approach is useful for avoiding an overly formal understanding of legal certainty. It suggests that the same European standard may function differently depending on institutional traditions, judicial reasoning and the level of trust in public authority. For Ukraine, however, cultural and contextual sensitivity should not be used to justify unlimited discretion. The core issue is to determine which deviations from classical legal certainty are contextually justified and which create genuine legal uncertainty.

Ukrainian scholarship has increasingly addressed legal certainty under martial law. Havryliuk and Patsurkivskyi analyse debatable issues of legal certainty in Ukrainian tax law during martial law and show how rapid regulatory change may affect foreseeability and trust in legal consequences¹⁵. Ostapenko links legal certainty with access to justice in wartime, stressing the role of procedural guarantees and consistent judicial practice¹⁶. Together, these studies demonstrate that legal uncertainty in Ukraine is not confined to transitional justice in a narrow sense; it appears across different branches of law where emergency regulation changes the balance between public interest and individual protection. At the same time, these works usually focus on specific legal sectors and do not offer an integrated framework for assessing legal certainty across transitional justice mechanisms.

A more theoretical perspective is provided by Patsurkivskyi and Havryliuk who interpret the rule of law as an ontological structure of the human legal world¹⁷. Although this approach is broader and more philosophical than the applied focus of the present article, it is relevant because it treats legal order as a condition of social

¹³ HILPOLD, T. "The 2024 reform of the EU judicial system and the transformation of the Court of Justice into a constitutional court", *European Papers – A Journal on Law and Integration*. European Papers, 2024. Available at: <https://www.europeanpapers.eu/e-journal/2024-reform-eu-judicial-system-transformation-court-justice-constitutional-court> (accessed on 13 April 2026).

¹⁴ GARCIA BLESA, J. J. "The cultural dimensions of legal certainty: A study on the use of intercultural knowledge in European law-application", *European Papers – A Journal on Law and Integration*, v. 10, n. 2, 2025, p. 405–434. Available at: https://www.europeanpapers.eu/system/files/pdf_version/EP_eJ_2025_2_1_Juan_Garcia_Blesa_00838.pdf (accessed on 12 April 2026).

¹⁵ HAVRYLIUK, R. O., PATSURKIVSKYI, P. S. "Debatable issues of legal certainty of Ukrainian tax law under martial law", *Yurydychna Ukraina*, n. 10, 2023, p. 22–30. Available at: <https://yur-ukraine.com/diskusijni-pytannya-yurydychnoyi-vyznachenosti-podatkovogo-prava-ukrayiny-v-umovah-voyennogo-stanu/> (accessed on 11 April 2026).

¹⁶ OSTAPENKO, H. "The role of legal certainty principle in provision of access to justice in Ukraine in wartime", *Access to Justice in Eastern Europe*, v. 6, n. 3, 2023, p. 1–13. <https://doi.org/10.33327/AJEE-18-6.3-a000306>

¹⁷ PATSURKIVSKYI, P., HAVRYLIUK, R. "Algebra of the rule of law, or the ontological structure of the human world", *Pravo Ukrainy*, n. 3, 2017, p. 112–125. Available at: <https://ekmair.ukma.edu.ua/server/api/core/bitstreams/cc16468d-434a-4cdb-af07-e1c4e9fe4625/content> (accessed on 11 April 2026).

orientation. From this standpoint, legal uncertainty is not merely a technical defect of legislation; it affects the ability of individuals to understand, anticipate and rely on law. This reinforces the need to distinguish legal certainty from a general reference to the rule of law and to operationalise it through more concrete criteria.

The implementation of European human rights and justice standards in Ukraine is discussed by Matat who analyses the EU Charter of Fundamental Rights as a normative reference point for domestic legal development¹⁸. Moskalenko and Mykytiuk identify challenges in implementing European justice standards in Ukraine, especially the gap between formal norm-setting and practical application¹⁹. These studies are directly relevant to the present research because they show that implementation is not completed at the level of legislative recognition. The decisive question is whether European standards influence actual judicial reasoning, institutional behaviour and the predictability of legal consequences. This point connects the literature review with the results section of the article, where Ukrainian practice is assessed not only by the presence of European references, but also by their functional use.

Further insight comes from studies of institutional consistency in EU member states. Melnyk et al. show, through anti-corruption regulatory practice, that the effectiveness of legal standards depends on stable regulatory decisions and consistent application²⁰. Lytvyn et al. examine enforcement of court decisions as a social guarantee of rights protection, demonstrating that formal judicial recognition of rights has limited value without practical implementation²¹. Both studies support the argument that legal certainty must be understood as a practical standard. It includes not only the clarity of norms, but also the enforceability of decisions, institutional reliability and continuity of legal expectations.

Finally, Kortukova et al. analyse the legal regulation of temporary protection in the European Union in the context of the aggressive war against Ukraine²². Their findings show that crisis regulation may require flexibility, but this flexibility should remain legally structured. This is one of the most important points for the present article. It allows the distinction between necessary wartime adaptation and genuine legal uncertainty. A temporary restriction may be compatible with legal certainty if it is lawful, proportionate, time-limited and reasoned. By contrast, uncertainty arises when emergency regulation lacks clear boundaries or when courts apply exceptional rules inconsistently.

Overall, the reviewed literature demonstrates three main debates. First, transitional justice scholarship emphasises accountability and institutional reconstruction but insufficiently explains how the quality of the legal order should

¹⁸ MATAT, A. V. "European human rights standards and their implementation in Ukraine: Analysis of the EU Charter of Fundamental Rights", *Uzhhorod National University Herald. Series: Law*, v. 1, n. 89, 2025, p. 235–239. <https://doi.org/10.24144/2307-3322.2025.89.1.32>

¹⁹ MOSKALENKO, O., MYKYTIUK, V. "European justice standards and challenges in their implementation in Ukraine", *Actual Problems of Innovative Economy*, v. 4, n. 9, 2025, p. 9–12. <https://doi.org/10.36887/2524-0455-2025-4-2>

²⁰ MELNYK, D. S., PARFYLO, O. A., BUTENKO, O. V., TYKHONOVA, O. V., ZAROSYLO, V. O. "Practice of the member states of the European Union in the field of anti-corruption regulation" *Journal of Financial Crime*, v. 29, n. 3, 2022, p. 853–863. <https://doi.org/10.1108/JFC-03-2021-0050>

²¹ LYTVYN, N., ANDRUSHCHENKO, H., ZOZULYA, Y. V., NIKANOROVA, O. V., RUSAL, L. M. "Enforcement of court decisions as a social guarantee of protection of citizens rights and freedoms", *Prawo i Więż*, v. 39, 2022, p. 80–102. <https://doi.org/10.36128/priw.vi39.351>

²² KORTUKOVA, T., KOLOSOVSKYI, Y., KOROLCHUK, O. L., SHCHOKIN, R., VOLKOV, A. S. "Peculiarities of the legal regulation of temporary protection in the european union in the context of the aggressive war of the russian federation against Ukraine", *International Journal for the Semiotics of Law*, v. 36, n. 2, 2023, p. 667–678. <https://doi.org/10.1007/s11196-022-09945-y>

be measured. Second, European rule-of-law scholarship develops strong standards of predictability, legitimate expectations and institutional consistency, but these standards require careful contextualisation before being applied to a legal system operating under martial law. Third, Ukrainian wartime legal scholarship identifies important sectoral problems of uncertainty but still lacks an integrated analytical framework for evaluating legal certainty in transitional justice.

This article responds to these gaps by using legal certainty as a structured analytical concept rather than a broad doctrinal label. The literature review supports the selection of four criteria for further analysis: predictability of legal norms, stability of judicial practice, protection of legitimate expectations, and limits of state and judicial discretion. These criteria are then applied in the results section to assess whether European standards are merely formally incorporated into Ukrainian law or whether they operate as practical safeguards against normative fragmentation, excessive discretion and inconsistent judicial practice.

3. Methods and materials

The study was conducted as a doctrinal, analytical and comparative legal research. Its methodological design was selected because the article examines not the statistical distribution of legal phenomena, but the normative coherence, judicial interpretation and practical implementation of European standards of legal certainty in Ukraine's transitional justice system. The methodological logic follows the understanding of transitional justice as a rule-of-law process that requires legality, institutional accountability and safeguards against arbitrariness in conflict and post-conflict societies^{23,24}. The Rule of Law Checklist of the Venice Commission was also used as a general methodological reference point, since it identifies legality, legal certainty, prevention of abuse of powers, equality before the law and access to justice as core components of the rule of law²⁵.

The analytical procedure consisted of three interconnected stages. At the first stage, the study applied doctrinal and dogmatic interpretation to identify how legal certainty is normatively expressed in Ukrainian legislation, European Union law and international legal instruments. At this stage, special attention was paid to the clarity of legal formulations, the consistency of regulation, and the existence of normative limits on state discretion. At the second stage, the study applied case law analysis to assess how legal certainty is interpreted and used in judicial reasoning. At the third stage, the comparative legal method was used to compare Ukrainian approaches with selected standards developed by the ECtHR and the CJEU. This design made it possible to connect legal doctrine, normative texts and judicial practice within a single analytical framework.

Legal certainty was operationalised through four analytical markers. The first marker was predictability, understood as the clarity, accessibility and foreseeability of legal norms and legal consequences. The second marker was stability, understood as the consistency of judicial practice and the avoidance of arbitrary departures from established legal positions. The third marker was the protection of legitimate expectations, understood as protection against sudden, unjustified and retroactive changes in legal treatment. The fourth marker was the limitation of discretion, understood as the requirement that state and judicial powers remain normatively bounded and procedurally controlled. These

²³ UNITED NATIONS. The rule of law and transitional justice in conflict and post-conflict societies (Report of the Secretary-General, S/2004/616). United Nations, 2004. Available at: <https://undocs.org/S/2004/616> (accessed on 12 April 2026).

²⁴ UNITED NATIONS. The rule of law and transitional justice in conflict and post-conflict societies (Report of the Secretary-General, S/2011/634). United Nations, 2011. Available at: <https://undocs.org/S/2011/634> (accessed on 11 April 2026).

²⁵ EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION). Rule of law checklist (CDL-AD(2016)007). Council of Europe, 2016. Available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)007-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)007-e) (accessed on 2 April 2026).

markers were derived from the general rule-of-law approach of the Venice Commission and from the case law of the ECtHR and the CJEU, where legal certainty is connected with foreseeability, finality of judgments, legitimate expectations and safeguards against excessive discretion^{26,27,28,29}.

The case law analysis focused on higher court decisions because such decisions have a normative and interpretative influence on the development of legal standards. The study did not aim to measure the behaviour of the entire judicial system. Rather, it examined those decisions that shape the doctrinal and practical understanding of legal certainty. The ECtHR cases were selected from the HUDOC database, the CJEU cases from the CURIA database, and the Supreme Court of Ukraine decisions from the Unified State Register of Court Decisions^{30,31,32}. The use of official databases ensures transparency and allows the analysed corpus to be externally verified.

The judicial sample was purposive and non-random. This choice was justified by the qualitative nature of the research and by the need to include decisions that are doctrinally relevant to legal certainty rather than statistically representative of all judicial practice. The search markers included "legal certainty", "foreseeability", "legitimate expectations", "margin of discretion", "stability of judicial practice", as well as their Ukrainian equivalents. A decision was included in the sample if it met at least one of the following criteria: it formulated or clarified a legal position on legal certainty; it concerned the limits of state or judicial discretion; it addressed the stability of judicial practice or the finality of judgments; it dealt with legitimate expectations; or it was repeatedly cited in later judicial practice. Landmark ECtHR and CJEU decisions were included where they had a clear doctrinal connection with the selected markers of legal certainty, for example foreseeability of law, *res judicata*, legitimate expectations or proportional limitation of discretion^{33,34,35}.

The international judicial sample consisted of 40 decisions, including 25 ECtHR decisions and 15 CJEU decisions. This proportion reflects the dual European dimension of the study: the ECtHR was analysed as the main source of human-rights-based legal certainty, while the CJEU was analysed as the main source of EU rule-of-law and

²⁶ EUROPEAN COMMISSION. "What is the rule of law?" European Commission, n.d. Available at: https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/what-rule-law_en (accessed on 13 April 2026).

²⁷ EUROPEAN COURT OF HUMAN RIGHTS. Case of the Sunday Times v. the United Kingdom (Application No. 6538/74). HUDOC, 1979. Available at: <https://hudoc.echr.coe.int/eng?i=001-57584> (accessed on 14 April 2026).

²⁸ EUROPEAN COURT OF HUMAN RIGHTS. Case of Brumărescu v. Romania (Application No. 28342/95). HUDOC, 1999. Available at: <https://hudoc.echr.coe.int/eng?i=001-58337> (accessed on 4 April 2026).

²⁹ COURT OF JUSTICE OF THE EUROPEAN UNION. Hungary v. European Parliament and Council (Joined Cases C-156/21 and C-157/21, ECLI:EU:C:2022:97). CURIA. Court of Justice of the European Union, 2022. Available at: <https://curia.europa.eu/juris/liste.jsf?num=C-156/21> (accessed on 4 April 2026).

³⁰ EUROPEAN COURT OF HUMAN RIGHTS. HUDOC database. HUDOC, n.d. Available at: <https://hudoc.echr.coe.int/> (accessed on 9 April 2026).

³¹ COURT OF JUSTICE OF THE EUROPEAN UNION. Racke v. Hauptzollamt Mainz (Case 98/78, ECLI:EU:C:1979:14). CURIA. Court Of Justice Of The European Union, 1979. Available at: <https://curia.europa.eu/juris/liste.jsf?num=98/78> (accessed on 9 April 2026).

³² JUDICIAL POWER OF UKRAINE. Unified State Register of Court Decisions. Judicial Power of Ukraine, n.d. Available at: <https://reyestr.court.gov.ua/> (accessed on 14 April 2026).

³³ EUROPEAN COURT OF HUMAN RIGHTS. Case of Tolstoy Miloslavsky v. the United Kingdom (Application No. 18139/91). HUDOC, 1995. Available at: <https://hudoc.echr.coe.int/eng?i=001-57947> (accessed on 13 April 2026).

³⁴ EUROPEAN COURT OF HUMAN RIGHTS. Case of Broniowski v. Poland (Application No. 31443/96). HUDOC, 2004. Available at: <https://hudoc.echr.coe.int/eng?i=001-61828> (accessed on 14 April 2026).

³⁵ COURT OF JUSTICE OF THE EUROPEAN UNION. VEMW and Others (Case C-17/03, ECLI:EU:C:2005:362). CURIA. Court of Justice of the European Union, 2005. Available at: <https://curia.europa.eu/juris/liste.jsf?num=C-17/03> (accessed on 5 April 2026).

legitimate-expectations standards. Decisions were considered precedent-setting if they were adopted by the Grand Chamber, introduced a significant legal position on legal certainty, or were repeatedly relied upon in later case law.

The national judicial sample included 20 Supreme Court decisions adopted between 2022 and 2024. This timeframe was selected because it corresponds to the period of martial law and allows the study to examine how legal certainty operates under exceptional security conditions rather than in ordinary peacetime adjudication. The research itself was conducted in 2024–2025 and therefore has a retrospective character. The selected Supreme Court decisions were not treated as statistically representative of all Ukrainian case law. They were used to identify interpretative tendencies in areas where legal certainty is most exposed to wartime pressure, particularly criminal procedure, access to justice, procedural time limits, admissibility of evidence, restrictions on rights and the balance between public interest and individual protection.

The normative sample comprised 30 official acts: 15 Ukrainian normative legal acts, 10 acts of European Union law and 5 international treaties or international legal instruments in the field of human rights, criminal justice and transitional justice. The Ukrainian sources included the Constitution of Ukraine, the Criminal Procedure Code of Ukraine and other legislation relevant to martial law and judicial practice^{36,37,38}. The European and international sources included the European Convention on Human Rights, EU primary and secondary law, the Charter of Fundamental Rights of the European Union, United Nations documents on transitional justice and mutual legal assistance instruments^{39,40,41}.

To make the analysis more systematic, the selected legal materials were assessed through a qualitative analytical matrix. Each source was examined according to four criteria: predictability of legal norms, stability of judicial practice, protection of legitimate expectations and limits of discretion. For each criterion, the analysis identified whether the source provided a clear standard, an implicit standard, a fragmented standard or no relevant standard. This procedure did not constitute quantitative statistical processing, but it introduced a structured qualitative comparison and reduced the risk of purely impressionistic interpretation. Where appropriate, the study also recorded recurring patterns of divergence between Ukrainian practice and European standards, especially where wartime reasoning was used to justify departures from ordinary procedural guarantees.

The study has several limitations. First, the sample is purposive and qualitative, not statistically representative. Therefore, the findings should be interpreted as analytical generalisations rather than as quantitative measurements of all Ukrainian judicial practice. Second, the study focuses on higher courts and does not examine the full range of first-instance and appellate decisions. Third, the research does not include interviews with judges, lawyers or litigants and therefore does not assess the empirical perception of legal certainty by legal actors. Fourth, the comparison with European standards is used as a

³⁶ VERKHOVNA RADA OF UKRAINE. Constitution of Ukraine. Verkhovna Rada of Ukraine, 1996. Available at: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80> (accessed on 11 April 2026).

³⁷ VERKHOVNA RADA OF UKRAINE. Criminal Procedure Code of Ukraine. Verkhovna Rada of Ukraine, 2013. Available at: <https://zakon.rada.gov.ua/laws/show/4651-17> (accessed on 6 April 2026).

³⁸ VERKHOVNA RADA OF UKRAINE. Legislation of Ukraine. Verkhovna Rada of Ukraine, n.d. Available at: <https://zakon.rada.gov.ua/> (accessed on 12 April 2026).

³⁹ COUNCIL OF EUROPE. Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights). Council of Europe, 1950. Available at: https://www.echr.coe.int/documents/d/echr/convention_ENG (accessed on 7 April 2026).

⁴⁰ EUROPEAN UNION. Charter of Fundamental Rights of the European Union. EUR-Lex, 2012. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT> (accessed on 8 April 2026).

⁴¹ UNITED NATIONS. The rule of law and transitional justice in conflict and post-conflict societies (Report of the Secretary-General, S/2011/634). 2011. Ibid.

normative benchmark, but the article does not assume that peacetime European standards can be transferred mechanically to the Ukrainian wartime context.

Accordingly, the methodology provides a basis for assessing how European standards of legal certainty are incorporated and applied in Ukraine's transitional justice system. The conclusions may offer conceptual and comparative insights relevant to other post-conflict or transitional legal systems, but they should not be understood as directly generalisable to all such jurisdictions. Their broader relevance lies in the proposed analytical framework rather than in statistical representativeness.

4. Results

4.1. Normative fragmentation of the implementation of European standards of legal certainty in Ukraine's transitional justice system

The results of the doctrinal, analytical and comparative legal research show that regulatory fragmentation remains a key structural obstacle to the implementation of European standards of legal certainty in Ukraine's transitional justice system. The problem is not the complete absence of relevant legal standards. Rather, it lies in their dispersed, unsynchronised and uneven incorporation into different branches of national law. This fragmentation appears at the legislative, institutional and judicial levels and affects all four analytical components of legal certainty identified in this study: predictability, stability, legitimate expectations and limits of discretion.

At the regulatory level, European benchmarks of legal certainty are formally present in the Ukrainian legal system. The Constitution of Ukraine recognises the rule of law as a fundamental constitutional principle, while criminal, procedural and special legislation contain separate guarantees relevant to foreseeability, procedural protection and the limitation of state power^{42,43,44,45}. However, these guarantees are not integrated into a single transitional justice framework. As a result, predictability is weakened because legal consequences are regulated through separate legal regimes rather than through a coherent model of post-conflict justice. Stability is also affected, since rapid wartime amendments may alter procedural and substantive expectations without a unified doctrinal standard.

A comparison with European Union law demonstrates a different regulatory logic. In the EU legal order, legal certainty functions as a systemic component of the rule of law. It is supported by primary law, judicial protection and institutional safeguards. The Treaty on European Union, the Treaty on the Functioning of the European Union and the Charter of Fundamental Rights provide a framework in which legality, effective judicial protection and institutional accountability are mutually connected^{46,47,48}. Regulation 2020/2092 further links compliance with the rule of law to legal and

⁴² VERKHOVNA RADA OF UKRAINE. Constitution of Ukraine. 1996. Ibid.

⁴³ VERKHOVNA RADA OF UKRAINE. Criminal Code of Ukraine. Verkhovna Rada of Ukraine, 2001. Available at: <https://zakon.rada.gov.ua/laws/show/2341-14> (accessed on 8 April 2026).

⁴⁴ VERKHOVNA RADA OF UKRAINE. Law of Ukraine "On Advocacy and Legal Practice". Verkhovna Rada of Ukraine, 2013. Available at: <https://zakon.rada.gov.ua/laws/show/5076-17> (accessed on 4 April 2026).

⁴⁵ VERKHOVNA RADA OF UKRAINE. Law of Ukraine "On the Legal Regime of Martial Law". Verkhovna Rada of Ukraine, 2015. Available at: <https://zakon.rada.gov.ua/laws/show/389-19> (accessed on 7 April 2026).

⁴⁶ EUROPEAN UNION. Charter of Fundamental Rights of the European Union. 2012. Ibid.

⁴⁷ EUROPEAN UNION. Consolidated version of the Treaty on European Union (TEU). EUR-Lex, 2012. Available at: https://eur-lex.europa.eu/eli/treaty/teu_2012/oj/eng (accessed on 14 April 2026).

⁴⁸ EUROPEAN UNION. Consolidated version of the Treaty on the Functioning of the European Union (TFEU). EUR-Lex, 2012. Available at: https://eur-lex.europa.eu/eli/treaty/tfeu_2012/oj/eng (accessed on 12 April 2026).

institutional certainty, while the CJEU confirmed in *Hungary v. European Parliament and Council* that rule-of-law mechanisms must themselves remain normatively clear and institutionally consistent^{49,50}. Thus, the European model does not reduce legal certainty to the clarity of isolated norms. It treats legal certainty as a system-wide requirement that connects legislation, institutional discretion and judicial protection.

By contrast, Ukraine's transitional justice system still lacks a coordinated normative act or consolidated legislative framework that would define the aims, principles, institutional responsibilities and legal certainty safeguards of transitional justice. This gap is especially important under martial law. Wartime regulation may legitimately require flexibility, but such flexibility must remain legally bounded, proportionate and reasoned. Where the limits of permissible deviation are not defined, necessary wartime restrictions may gradually transform into genuine legal uncertainty. This distinction is central for assessing Ukraine's current model: not every deviation from ordinary legal stability is problematic, but deviation becomes legally risky when its scope, duration and safeguards are unclear.

Fragmentation is particularly visible in the sphere of criminal justice and international legal cooperation. Council of Europe instruments and United Nations documents establish requirements relevant to procedural certainty, jurisdiction, mutual assistance and the legal status of persons in cross-border criminal matters^{51,52,53,54,55,56}. Ukrainian legislation incorporates many of these standards, but often through sectoral and technical amendments rather than through a coherent transitional justice architecture. This segmented implementation reduces the protection of legitimate expectations because individuals and institutions cannot always foresee how international obligations, national criminal procedure and martial law rules interact in concrete legal situations.

In accordance with the editorial recommendation to minimise the use of describable images, the structural manifestations of normative fragmentation are presented below in textual table format rather than as a figure. The main levels of normative fragmentation identified in Ukraine's transitional justice system are systematised in Table 1, which shows how constitutional, criminal-law, procedural, international, institutional and judicial inconsistencies affect predictability, stability, legitimate expectations and limits of discretion.

⁴⁹ EUROPEAN PARLIAMENT & COUNCIL OF THE EUROPEAN UNION. Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget. EUR-Lex, 2020. Available at: <https://eur-lex.europa.eu/eli/reg/2020/2092/oj/eng> (accessed on 12 April 2026).

⁵⁰ COURT OF JUSTICE OF THE EUROPEAN UNION. *Hungary v. European Parliament and Council* (Joined Cases C-156/21 and C-157/21, ECLI:EU:C:2022:97). 2022. Ibid.

⁵¹ COUNCIL OF EUROPE. Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights). 1950. Ibid.

⁵² COUNCIL OF EUROPE. European Convention on Mutual Assistance in Criminal Matters (ETS No. 030). Council of Europe, 1959. Available at: <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=030> (accessed on 8 April 2026).

⁵³ COUNCIL OF EUROPE. European Convention on the International Validity of Criminal Judgments (ETS No. 070). Council of Europe, 1970. Available at: <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=070> (accessed on 11 April 2026).

⁵⁴ UNITED NATIONS. Model Treaty on Mutual Assistance in Criminal Matters. 1990. Ibid.

⁵⁵ UNITED NATIONS. The rule of law and transitional justice in conflict and post-conflict societies (Report of the Secretary-General, S/2004/616). 2004. Ibid.

⁵⁶ UNITED NATIONS. The rule of law and transitional justice in conflict and post-conflict societies (Report of the Secretary-General, S/2011/634). 2011. Ibid.

Table 1. Analytical levels of normative fragmentation of legal certainty in Ukraine's transitional justice system.

Level of fragmentation	Main manifestation	Affected component of legal certainty	Legal significance
Constitutional level	Rule of law is recognised, but transitional justice is not constitutionally operationalised	Predictability; stability	The constitutional principle requires further legislative specification
Criminal law level	Accountability mechanisms operate without a unified transitional justice logic	Predictability; limits of discretion	The boundaries of liability may become less foreseeable in conflict-related cases
Criminal procedure level	Procedural guarantees are adjusted under martial law	Stability; legitimate expectations	Wartime procedural flexibility requires clearer safeguards
International cooperation level	Council of Europe and UN standards are implemented through separate mechanisms	Predictability; legitimate expectations	Cross-border proceedings may lack a coherent legal framework
Institutional level	Different bodies apply overlapping legal regimes	Limits of discretion; stability	Institutional discretion may increase without unified coordination
Judicial level	European standards are invoked unevenly in national reasoning	Stability; legitimate expectations	The protective function of ECtHR and CJEU standards remains partial

Source: developed by the authors based on Ukrainian legislation, Council of Europe instruments, United Nations documents and European Union law^{57,58,59,60,61,62,63,64,65,66,67,68,69,70}.

Judicial practice may either reduce normative fragmentation or reproduce it. The ECtHR has repeatedly linked legal certainty with the foreseeability of state interference, the stability of final judgments and the protection of legitimate expectations. In *The Sunday Times v. the United Kingdom*, the Court developed the foreseeability criterion as part of the "quality of law" requirement; in *Brumărescu v. Romania*, it connected legal certainty with the finality of judicial decisions; and in *Case of Broniowski v. Poland*

⁵⁷ COUNCIL OF EUROPE. Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights). 1950. Ibid.

⁵⁸ COUNCIL OF EUROPE. European Convention on Mutual Assistance in Criminal Matters (ETS No. 030). 1959. Ibid.

⁵⁹ COUNCIL OF EUROPE. European Convention on the International Validity of Criminal Judgments (ETS No. 070). 1970. Ibid.

⁶⁰ EUROPEAN UNION. Charter of Fundamental Rights of the European Union. 2012. Ibid.

⁶¹ EUROPEAN UNION. Consolidated version of the Treaty on European Union (TEU). 2012. Ibid.

⁶² EUROPEAN UNION. Consolidated version of the Treaty on the Functioning of the European Union (TFEU). 2012. Ibid.

⁶³ EUROPEAN PARLIAMENT & COUNCIL OF THE EUROPEAN UNION. Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget. 2020. Ibid.

⁶⁴ UNITED NATIONS. Model Treaty on Mutual Assistance in Criminal Matters. 1990. Ibid.

⁶⁵ UNITED NATIONS. The rule of law and transitional justice in conflict and post-conflict societies (Report of the Secretary-General, S/2004/616). 2004. Ibid.

⁶⁶ UNITED NATIONS. The rule of law and transitional justice in conflict and post-conflict societies (Report of the Secretary-General, S/2011/634). 2011. Ibid.

⁶⁷ VERKHOVNA RADA OF UKRAINE. Constitution of Ukraine. 1996. Ibid.

⁶⁸ VERKHOVNA RADA OF UKRAINE. Criminal Code of Ukraine. 2001. Ibid.

⁶⁹ VERKHOVNA RADA OF UKRAINE. Criminal Procedure Code of Ukraine. Ukraine, 2013. Ibid.

⁷⁰ VERKHOVNA RADA OF UKRAINE. Law of Ukraine "On the Legal Regime of Martial Law". 2015. Ibid.

and *Vegotex International S.A. v. Belgium*, it addressed broader problems of systemic implementation and legitimate expectations^{71,72,73} The CJEU follows a related but more institutionally oriented logic. In *Racke, VEMW and Hungary v. European Parliament and Council*, legal certainty is connected with legitimate expectations, the definition of regulatory discretion and institutional consistency^{74,75,76}.

The comparison shows that European standards are not merely external references for Ukraine. They provide an analytical benchmark for identifying where Ukrainian regulation remains fragmented. From this perspective, the main weakness of the Ukrainian model is the absence of a legal mechanism that would connect separate guarantees of predictability, stability, legitimate expectations and limits of discretion into one transitional justice framework. The results therefore confirm that normative fragmentation should be understood not as a technical defect of drafting, but as a structural problem affecting the practical operation of legal certainty.

The legal significance of this finding is twofold. First, it explains why the formal recognition of European standards does not automatically produce a predictable transitional justice system. Second, it shows that future reform should focus not only on adopting additional norms, but on coordinating already existing constitutional, criminal, procedural, international and institutional standards. Without such coordination, the Ukrainian model may continue to rely on fragmented legal references, while failing to provide individuals and institutions with sufficiently foreseeable legal consequences.

4.2. The case law of the ECtHR and the CJEU on legal certainty as a benchmark for transitional justice

The analysis of ECtHR and CJEU case law shows that legal certainty is not a single abstract requirement, but a multi-component standard that includes predictability, stability of judicial practice, protection of legitimate expectations and limits of discretion. For the purposes of transitional justice, these components are significant because they help distinguish lawful transformation of the legal order from unpredictable or arbitrary legal change. In both jurisdictions, legal certainty functions as a safeguard against regulatory fragmentation and excessive state discretion, although the functional emphasis differs.

The ECtHR develops legal certainty mainly as an individual-protective standard. Its case law focuses on the ability of individuals to foresee legal consequences, rely on final judicial decisions and remain protected from retrospective or arbitrary changes in legal treatment. A key element of this approach is the requirement of the "quality of law". In *The Sunday Times v. the United Kingdom*, the Court formulated the foreseeability criterion, according to which legal norms must be sufficiently accessible and predictable for individuals to regulate their conduct⁷⁷. This approach was further developed in *Kruslin v. France* and *Kokkinakis v. Greece*, where the Court linked broad

⁷¹ EUROPEAN COURT OF HUMAN RIGHTS. *Case of the Sunday Times v. the United Kingdom* (Application No. 6538/74). 1979. Ibid.

⁷² EUROPEAN COURT OF HUMAN RIGHTS. *Case of Brumărescu v. Romania* (Application No. 28342/95). 1999. Ibid.

⁷³ EUROPEAN COURT OF HUMAN RIGHTS. *Case of Broniowski v. Poland* (Application No. 31443/96). 2004. Ibid.

⁷⁴ COURT OF JUSTICE OF THE EUROPEAN UNION. *Racke v. Hauptzollamt Mainz* (Case 98/78, ECLI:EU:C:1979:14). 1979. Ibid.

⁷⁵ COURT OF JUSTICE OF THE EUROPEAN UNION. *VEMW and Others* (Case C-17/03, ECLI:EU:C:2005:362). 2005. Ibid.

⁷⁶ COURT OF JUSTICE OF THE EUROPEAN UNION. *Hungary v. European Parliament and Council* (Joined Cases C-156/21 and C-157/21, ECLI:EU:C:2022:97). 2022. Ibid.

⁷⁷ EUROPEAN COURT OF HUMAN RIGHTS. *Case of the Sunday Times v. the United Kingdom* (Application No. 6538/74). 1979. Ibid.

and insufficiently limited public powers with risks of arbitrariness^{78,79}. For transitional justice, this means that even exceptional post-conflict or wartime measures must remain based on clear legal rules rather than open-ended discretion.

A second ECtHR line concerns stability of judicial practice and the finality of judgments. In *Brumărescu v. Romania*, the Court connected legal certainty with the principle of *res judicata* and held that final judicial decisions should not be reopened without exceptional and properly justified grounds⁸⁰. Similar reasoning appears in *Beian v. Romania* and *Ștefănică and Others v. Romania*, where inconsistent judicial practice was treated as a serious threat to legal certainty^{81,82}. This is directly relevant to transitional justice systems, where the need to correct past injustices may create pressure to revisit earlier decisions. The ECtHR approach does not exclude review, but it requires clear procedural safeguards, reasoned justification and consistency.

The third ECtHR component concerns the prohibition of unforeseeable retroactive interpretation, especially in criminal matters. In *Del Río Prada v. Spain*, the Court emphasised that even strong public or moral reasons cannot justify an unpredictable increase in criminal-law consequences⁸³. The protection of legitimate expectations was further confirmed in *Vegotex International S.A. v. Belgium*, where the Court addressed the problem of sudden changes in established legal practice without adequate transitional arrangements⁸⁴. These cases show that transitional justice cannot be reduced to substantive fairness alone. It must also preserve procedural foreseeability, non-retroactivity and reasonable reliance on existing legal positions.

The CJEU, by contrast, develops legal certainty primarily as a systemic and institutional standard. Its case law is less focused on individual criminal-law guarantees and more concerned with the stability, coherence and trustworthiness of the legal order. In *Racke v. Hauptzollamt Mainz*, the Court treated legal certainty as closely connected with legitimate expectations, even in politically unstable conditions⁸⁵. In *Dürbeck*, the CJEU stressed that EU rules must be precise enough to allow their addressees to foresee legal consequences without excessive interpretative burden⁸⁶. This reasoning is important for transitional justice because complex legal reforms must still remain understandable and institutionally reliable.

The CJEU also links legal certainty with limits of regulatory discretion. In *VEMW and Others*, the Court accepted that regulatory authorities may have broad powers, but

⁷⁸ EUROPEAN COURT OF HUMAN RIGHTS. Case of *Kruslin v. France* (Application No. 11801/85). HUDOC, 1990. Available at: <https://hudoc.echr.coe.int/eng?i=001-57626> (accessed on 12 April 2026).

⁷⁹ EUROPEAN COURT OF HUMAN RIGHTS. Case of *Kokkinakis v. Greece* (Application No. 14307/88). HUDOC, 1993. Available at: <https://hudoc.echr.coe.int/eng?i=001-57827> (accessed on 10 April 2026).

⁸⁰ EUROPEAN COURT OF HUMAN RIGHTS. Case of *Brumărescu v. Romania* (Application No. 28342/95). 1999. *Ibid.*

⁸¹ EUROPEAN COURT OF HUMAN RIGHTS. Case of *Beian v. Romania* (No. 1) (Application No. 30658/05). HUDOC, 2008. Available at: <https://hudoc.echr.coe.int/eng?i=001-83822> (accessed on 10 April 2026).

⁸² EUROPEAN COURT OF HUMAN RIGHTS. Case of *Ștefănică and Others v. Romania* (Application No. 38155/02). HUDOC, 2010. Available at: <https://hudoc.echr.coe.int/eng?i=001-101491> (accessed on 15 April 2026).

⁸³ EUROPEAN COURT OF HUMAN RIGHTS. Case of *Del Río Prada v. Spain* (Application No. 42750/09). HUDOC, 2013. Available at: <https://hudoc.echr.coe.int/eng?i=001-127697> (accessed on 11 April 2026).

⁸⁴ EUROPEAN COURT OF HUMAN RIGHTS. *Vegotex International S.A. v. Belgium* (Application No. 49812/09). 2021. *Ibid.*

⁸⁵ COURT OF JUSTICE OF THE EUROPEAN UNION. *Racke v. Hauptzollamt Mainz* (Case 98/78, ECLI:EU:C:1979:14). 1979. *Ibid.*

⁸⁶ COURT OF JUSTICE OF THE EUROPEAN UNION. *Dürbeck* (Case 112/80, ECLI:EU:C:1981:94). CURIA. Court of Justice of the European Union, 1981. Available at: <https://curia.europa.eu/juris/liste.jsf?num=112/80> (accessed on 4 April 2026).

only where the boundaries of such powers and procedural safeguards against arbitrariness are sufficiently clear⁸⁷. In *Hungary v. European Parliament and Council*, the Court confirmed that rule-of-law protection mechanisms are compatible with legal certainty when they are normatively clear, institutionally consistent and procedurally controlled⁸⁸. This is especially relevant to Ukraine's transitional justice system, since wartime governance may require flexible instruments, but their legitimacy depends on whether discretion remains legally bounded.

The comparison therefore reveals two complementary models of legal certainty. The ECtHR model is primarily protective: it safeguards individuals against unforeseeable interference, unstable judicial practice and retroactive legal consequences. The CJEU model is primarily systemic: it protects the coherence of the legal order, the reliability of institutions and the bounded nature of regulatory discretion. For Ukraine, both models are necessary. The ECtHR approach helps assess the protection of individuals under martial law, while the CJEU approach helps evaluate whether European rule-of-law standards are implemented through coherent institutional mechanisms rather than fragmented references.

Table 2 systematises the ECtHR and CJEU approaches to legal certainty by linking key judicial decisions with the four analytical components relevant to transitional justice: predictability, stability of judicial practice, legitimate expectations and limits of discretion.

Table 2. ECtHR and CJEU approaches to legal certainty relevant to transitional justice.

Judicial body	Key cases	Component of legal certainty	Relevance for transitional justice
ECtHR	<i>The Sunday Times v. the United Kingdom</i> ; <i>Kruslin v. France</i> ; <i>Kokkinakis v. Greece</i>	Predictability and quality of law	Requires clear legal grounds for state interference, including in emergency contexts
ECtHR	<i>Brumărescu v. Romania</i> ; <i>Beian v. Romania</i> ; <i>Ștefănică and Others v. Romania</i>	Stability of judicial practice and res judicata	Limits chaotic reopening of cases and inconsistent judicial reasoning
ECtHR	<i>Del Río Prada v. Spain</i> ; <i>Vegotex International S.A. v. Belgium</i>	Non-retroactivity and legitimate expectations	Protects individuals from unforeseeable changes in legal consequences
CJEU	<i>Racke v. Hauptzollamt Mainz</i> ; <i>Dürbeck</i>	Legitimate expectations and precision of law	Requires stable and foreseeable regulatory standards
CJEU	<i>VEMW and Others</i> ; <i>Hungary v. European Parliament and Council</i>	Limits of discretion and institutional consistency	Allows flexibility only where discretion is normatively bounded and procedurally controlled

Source: developed by the authors based on ECtHR and CJEU case law^{89,90,91,92,93,94,95,96,97,98,99,100}.

⁸⁷ COURT OF JUSTICE OF THE EUROPEAN UNION. *VEMW and Others* (Case C-17/03, ECLI:EU:C:2005:362). 2005. Ibid.

⁸⁸ COURT OF JUSTICE OF THE EUROPEAN UNION. *Hungary v. European Parliament and Council* (Joined Cases C-156/21 and C-157/21, ECLI:EU:C:2022:97). 2022. Ibid.

⁸⁹ COURT OF JUSTICE OF THE EUROPEAN UNION. *Racke v. Hauptzollamt Mainz* (Case 98/78, ECLI:EU:C:1979:14). 1979. Ibid.

⁹⁰ COURT OF JUSTICE OF THE EUROPEAN UNION. *Dürbeck* (Case 112/80, ECLI:EU:C:1981:94). 1981. Ibid.

⁹¹ COURT OF JUSTICE OF THE EUROPEAN UNION. *VEMW and Others* (Case C-17/03, ECLI:EU:C:2005:362). 2005. Ibid.

⁹² COURT OF JUSTICE OF THE EUROPEAN UNION. *Hungary v. European Parliament and Council* (Joined Cases C-156/21 and C-157/21, ECLI:EU:C:2022:97). 2022. Ibid.

⁹³ EUROPEAN COURT OF HUMAN RIGHTS. *Case of the Sunday Times v. the United Kingdom* (Application No. 6538/74). 1979. Ibid.

⁹⁴ EUROPEAN COURT OF HUMAN RIGHTS. *Case of Kruslin v. France* (Application No.

The results show that ECtHR and CJEU jurisprudence forms a structured European benchmark for assessing legal certainty in transitional justice systems. Its value for Ukraine lies not in mechanical transplantation of European standards, but in providing criteria for evaluating whether wartime and post-conflict legal measures remain predictable, stable, non-retroactive and protected against excessive discretion. This benchmark can reduce normative fragmentation only if it is incorporated into national legislation and judicial reasoning as a coherent analytical standard rather than as separate references to European case law.

4.3. Supreme Court practice under martial law: Trends and limitations of legal certainty

An analysis of the Supreme Court of Ukraine's practice for 2022–2024 shows that legal certainty under martial law has acquired a contextual and functionally limited character. The Court formally proceeds from the constitutional recognition of the rule of law, while the legal regime of martial law creates exceptional conditions for the interpretation and application of substantive and procedural norms^{101,102}. This does not mean that wartime judicial flexibility is inherently incompatible with legal certainty. Rather, the key issue is whether such flexibility remains lawful, reasoned, proportionate and normatively bounded.

In criminal law and criminal procedure, the Supreme Court's reasoning reflects the need to preserve the functional stability of justice in conditions of armed conflict. This includes the adaptation of procedural time limits, the assessment of evidentiary issues and the balancing of individual guarantees with public security needs^{103,104}. Such adaptation may be justified where it responds to objective wartime constraints. However, it creates a risk for predictability when the scope and limits of permissible deviation are not clearly explained in judicial reasoning. From the perspective of the ECtHR, legal certainty requires that interference with individual rights be based on accessible and foreseeable law, as reflected in *The Sunday Times v. the United Kingdom*¹⁰⁵. It also requires respect for the stability of final judicial decisions, as emphasised in *Brumărescu v. Romania*¹⁰⁶.

The comparison with European standards therefore reveals not a simple contradiction, but a tension between wartime necessity and the classical requirements of legal certainty. Necessary wartime restrictions may be compatible

11801/85). 1990. Ibid.

⁹⁵ EUROPEAN COURT OF HUMAN RIGHTS. Case of Kokkinakis v. Greece (Application No. 14307/88). 1993. Ibid.

⁹⁶ EUROPEAN COURT OF HUMAN RIGHTS. Case of Brumărescu v. Romania (Application No. 28342/95). 1999. Ibid.

⁹⁷ EUROPEAN COURT OF HUMAN RIGHTS. Case of Beian v. Romania (No. 1) (Application No. 30658/05). 2008. Ibid.

⁹⁸ EUROPEAN COURT OF HUMAN RIGHTS. Case of Ștefănică and Others v. Romania (Application No. 38155/02). 2010. Ibid.

⁹⁹ EUROPEAN COURT OF HUMAN RIGHTS. Case of Del Río Prada v. Spain (Application No. 42750/09). 2013. Ibid.

¹⁰⁰ EUROPEAN COURT OF HUMAN RIGHTS. *Vegotex International S.A. v. Belgium* (Application No. 49812/09). 2021. Ibid.

¹⁰¹ VERKHOVNA RADA OF UKRAINE. Constitution of Ukraine. 1996. Ibid.

¹⁰² VERKHOVNA RADA OF UKRAINE. Law of Ukraine "On the Legal Regime of Martial Law". 2015. Ibid.

¹⁰³ VERKHOVNA RADA OF UKRAINE. Criminal Code of Ukraine. 2001. Ibid.

¹⁰⁴ VERKHOVNA RADA OF UKRAINE. Criminal Procedure Code of Ukraine. Ukraine, 2013. Ibid.

¹⁰⁵ EUROPEAN COURT OF HUMAN RIGHTS. Case of the Sunday Times v. the United Kingdom (Application No. 6538/74). 1979. Ibid.

¹⁰⁶ EUROPEAN COURT OF HUMAN RIGHTS. Case of Brumărescu v. Romania (Application No. 28342/95). 1999. Ibid.

with legal certainty if they are temporary, proportionate, clearly justified and subject to judicial control. Genuine legal uncertainty arises where similar procedural or substantive issues are resolved inconsistently, where the reasoning does not define the limits of discretion, or where legal consequences become difficult to foresee. This distinction is important because the application of peacetime standards without contextualisation would be methodologically incomplete, while excessive reliance on emergency reasoning may weaken the protective function of law.

The Supreme Court's approach also raises questions concerning legitimate expectations and limits of discretion. In the CJEU's case law, legal certainty is closely connected with the protection of legitimate expectations and with the requirement that public authority discretion remain clearly bounded. *Racke v. Hauptzollamt Mainz and VEMW and Others* show that even broad regulatory powers are acceptable only when their limits and procedural safeguards are sufficiently defined^{107,108}. Applied to Ukraine, this means that references to martial law should not operate as a general justification for unstable or insufficiently reasoned departures from ordinary procedural standards. They should instead be connected with concrete legal grounds, proportionality assessment and a clear explanation of why ordinary guarantees cannot be applied in the same form.

A separate problem concerns retrospective strengthening of legal consequences. The ECtHR's judgment in *Del Río Prada v. Spain* demonstrates that legal certainty is particularly sensitive in criminal matters, where individuals must be able to foresee the consequences of legal interpretation¹⁰⁹. For Ukraine's transitional justice system, this standard is relevant because conflict-related accountability may create pressure for stricter interpretation of substantive and procedural rules. Such interpretation should not become unpredictable or retroactive. Otherwise, the legitimate aim of accountability may be undermined by uncertainty regarding the boundaries of liability. Table 3 summarises the main trends and limitations identified in the Supreme Court of Ukraine's practice under martial law, showing how wartime adjudication affects criminal liability, procedural guarantees, constitutional rights, judicial discretion and the use of European legal standards.

Based on Table 3, the Supreme Court's practice under martial law should be interpreted as an attempt to preserve the operability of the justice system in extraordinary circumstances. Its main feature is not the rejection of legal certainty, but the transformation of legal certainty into a contextual standard. This standard permits certain wartime adaptations, provided that they remain legally defined, proportionate and justified. At the same time, the analysis shows that insufficiently systematic integration of ECtHR and CJEU standards may reduce predictability, weaken legitimate expectations and expand judicial discretion beyond clearly defined limits.

Therefore, the main challenge for Ukraine's transitional justice system is to develop a more stable doctrinal and procedural framework for wartime adjudication. Such a framework should distinguish justified emergency limitations from legal uncertainty, require explicit proportionality reasoning in cases involving deviations from ordinary guarantees, and ensure more consistent use of ECtHR and CJEU standards. This would allow the Supreme Court to maintain the necessary flexibility of wartime justice without undermining the core requirements of legal certainty.

¹⁰⁷ COURT OF JUSTICE OF THE EUROPEAN UNION. *Racke v. Hauptzollamt Mainz* (Case 98/78, ECLI:EU:C:1979:14). 1979. *Ibid.*

¹⁰⁸ COURT OF JUSTICE OF THE EUROPEAN UNION. *VEMW and Others* (Case C-17/03, ECLI:EU:C:2005:362). 2005. *Ibid.*

¹⁰⁹ EUROPEAN COURT OF HUMAN RIGHTS. *Case of Del Río Prada v. Spain* (Application No. 42750/09). 2013. *Ibid.*

Table 3. Trends and limitations of legal certainty in the practice of the Supreme Court of Ukraine under martial law.

Field	Observed judicial tendency	Regulatory framework	Implications for legal certainty
Criminal law	Contextual interpretation of offences and liability under wartime conditions	Criminal Code of Ukraine	May increase uncertainty regarding liability boundaries if reasoning is not sufficiently precise
Criminal procedure	Adaptation of procedural guarantees, time limits and evidentiary assessment	Criminal Procedure Code of Ukraine; Law on Martial Law	May be justified by wartime necessity, but requires clear proportionality reasoning
Constitutional rights	Recognition of temporary restrictions on rights and freedoms	Constitution of Ukraine; Law on Martial Law	Compatible with legal certainty only if restrictions are lawful, temporary and reasoned
Judicial discretion	Greater reliance on contextual balancing between public interest and individual guarantees	National legislation and judicial practice	Requires clearer limits to prevent excessive discretion
Use of ECtHR and CJEU standards	Selective reference to European approaches	ECHR standards; EU rule-of-law standards	Indicates partial convergence, but not yet systematic integration

Source: summarized by the authors based on Ukrainian legislation and selected European standards^{110,111,112,113,114,115,116,117,118,119,120,121}.

5. Discussion

The results of the study show that legal certainty in Ukraine's transitional justice system should not be understood only as a formal requirement of legislative clarity. It operates as a practical condition for the legitimacy of post-conflict legal transformation, because transitional justice requires not only accountability and institutional renewal, but also foreseeable legal consequences, stable judicial reasoning and controlled discretion. The analysis demonstrates that the central

¹¹⁰ COUNCIL OF EUROPE. Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights). 1950. Ibid.

¹¹¹ COURT OF JUSTICE OF THE EUROPEAN UNION. Racke v. Hauptzollamt Mainz (Case 98/78, ECLI:EU:C:1979:14). 1979. Ibid.

¹¹² COURT OF JUSTICE OF THE EUROPEAN UNION. VEMW and Others (Case C-17/03, ECLI:EU:C:2005:362). 2005. Ibid.

¹¹³ COURT OF JUSTICE OF THE EUROPEAN UNION. Hungary v. European Parliament and Council (Joined Cases C-156/21 and C-157/21, ECLI:EU:C:2022:97). 2022. Ibid.

¹¹⁴ EUROPEAN COURT OF HUMAN RIGHTS. Case of the Sunday Times v. the United Kingdom (Application No. 6538/74). 1979. Ibid.

¹¹⁵ EUROPEAN COURT OF HUMAN RIGHTS. Case of Brumărescu v. Romania (Application No. 28342/95). 1999. Ibid.

¹¹⁶ EUROPEAN COURT OF HUMAN RIGHTS. Case of Del Río Prada v. Spain (Application No. 42750/09). 2013. Ibid.

¹¹⁷ VERKHOVNA RADA OF UKRAINE. Constitution of Ukraine. 1996. Ibid.

¹¹⁸ VERKHOVNA RADA OF UKRAINE. Criminal Code of Ukraine. 2001. Ibid.

¹¹⁹ VERKHOVNA RADA OF UKRAINE. Law of Ukraine "On Advocacy and Legal Practice". 2013. Ibid.

¹²⁰ VERKHOVNA RADA OF UKRAINE. Law of Ukraine "On the Legal Regime of Martial Law". 2015. Ibid.

¹²¹ VERKHOVNA RADA OF UKRAINE. Law of Ukraine "On the Judiciary and the Status of Judges". Verkhovna Rada of Ukraine, 2016. Available at: <https://zakon.rada.gov.ua/laws/show/1402-19> (accessed on 6 April 2026).

problem is not the complete absence of legal norms. Rather, it lies in the gap between constitutional principles, sectoral legislation and law enforcement models. This finding is consistent with Romanova's conclusion that the tension between security needs and human rights obligations directly affects the functioning of transitional justice in Ukraine¹²². However, the present study shifts the discussion further by showing that this tension becomes especially problematic when European standards are implemented fragmentarily across criminal law, criminal procedure and wartime regulation.

The findings should not be interpreted as suggesting that every wartime departure from ordinary legal standards constitutes legal uncertainty. This distinction is essential. Necessary wartime limitations may be compatible with legal certainty where they are lawful, proportionate, temporary and supported by reasoned judicial control. Genuine legal uncertainty arises where the scope of such limitations is unclear, where similar cases are treated inconsistently, or where judicial discretion is not bounded by stable criteria. In this respect, the study partly corresponds to Stratonov and Astasheva's argument that transitional justice may require exceptions to ordinary constitutional arrangements¹²³. Yet the present analysis adds that such exceptions must not become an open-ended justification for the erosion of predictability and legitimate expectations.

The comparison with European standards also reveals a methodological tension. The ECtHR model gives priority to the protection of individuals from unforeseeable interference and unstable judicial practice, while the CJEU model emphasises institutional coherence, legitimate expectations and limits of discretion. Ukraine's legal system needs both dimensions, but neither can be transferred mechanically into the wartime context. Peacetime European standards should function as benchmarks rather than rigid templates. Selejan-Guțan notes the growing role of judicial guarantees as independent rule-of-law standards in Europe¹²⁴. For Ukraine, this means that judicial guarantees should be adapted to wartime realities without losing their core protective function.

The concept of contextual legal certainty helps explain this balance. It does not mean a reduced or optional version of legal certainty. It means a minimum but normatively controlled level of predictability, stability and protection against arbitrariness that must be preserved even during martial law. Under this model, courts may adapt procedures to security conditions, but they should clearly explain the legal basis, proportionality and temporal limits of such adaptation. If contextual legal certainty is not bounded in this way, it may gradually become institutionalised uncertainty. This risk is especially serious where emergency reasoning becomes routine and where European standards are cited selectively rather than integrated systematically.

The practical implications of these findings are threefold. First, Ukraine needs a clearer legislative framework that would connect transitional justice mechanisms with the four components of legal certainty. Second, Supreme Court reasoning in wartime cases should more explicitly distinguish justified emergency limitations from genuine legal uncertainty. Third, references to ECtHR and CJEU standards should be used not as isolated citations, but as part of a stable analytical test based on predictability, stability, legitimate expectations and limits of discretion. These

¹²² ROMANOVA, A. "Transitional justice and human rights in Ukraine", *Bulletin of Lviv Polytechnic National University. Series: Legal Sciences*, v. 3, n. 47, 2025, p. 218–225. <https://doi.org/10.23939/law2025.47.214>

¹²³ STRATONOV, V. M., ASTASHEVA, O. S. "Lustration in transitional justice: Constitutional principles and international standards", *Journal of the National Academy of Legal Sciences of Ukraine*, v. 32, 4, 2025, p. 184–200. <https://doi.org/10.31359/1993-0909-2025-32-4-184>

¹²⁴ SELEJAN-GUȚAN, B. "Are rights of judges becoming rule of law standards in Europe?" *Max Planck Institute for Comparative Public Law & International Law Research Paper Series*, No. n. 2024-05, 2024. <https://doi.org/10.2139/ssrn.4726426>

measures would not eliminate the need for wartime flexibility, but they would reduce the risk of arbitrary or inconsistent legal outcomes.

The study has several limitations. It focuses mainly on higher-court practice and does not cover the full range of first-instance and appellate decisions. It also does not include interviews with judges, lawyers, prosecutors or litigants, so it cannot assess how legal certainty is perceived by participants in proceedings. In addition, the study offers a qualitative legal analysis rather than a statistical measurement of all departures from European standards. Future research should therefore expand the empirical basis, examine lower-court practice and compare Ukraine with other transitional or post-conflict jurisdictions, particularly Bosnia and Herzegovina and Kosovo. Such comparison would help determine whether normative fragmentation is a specifically Ukrainian problem or a broader feature of transitional justice systems under conditions of institutional instability.

6. Conclusions

As a result of the study, the implementation of European standards of legal certainty in Ukraine's transitional justice system was systematically analysed. It was established that the key problem is not the absence of formal references to the rule of law, but the fragmented and insufficiently coordinated incorporation of legal certainty standards into constitutional, criminal, criminal procedural and wartime legislation. At these levels, the principle of legal certainty often remains declarative rather than operational, which leads to divergent interpretations of norms and reduces the predictability of legal consequences.

An analysis of the practice of the ECtHR and the CJEU confirmed that legal certainty in the European model is an operational standard of the rule of law. It includes four interrelated components: predictability of legal norms, stability of judicial practice, protection of legitimate expectations and limits of state and judicial discretion. Ukrainian practice, especially under martial law, applies these standards partially and unevenly, which increases the risk of institutionalising legal uncertainty. The Supreme Court performs an important stabilising function in the legal order. At the same time, wartime necessity may justify certain deviations from ordinary procedural guarantees only where such deviations are lawful, proportionate, temporary and clearly reasoned. Otherwise, they may weaken legal certainty for participants in legal relations.

The scientific value of the study lies in substantiating the concept of contextual legal certainty for transitional justice. This concept makes it possible to distinguish necessary wartime limitations from genuine legal uncertainty. The proposed analytical markers are predictability, stability, legitimate expectations and limits of discretion. Further reforms should focus on a consolidated transitional justice framework, clearer criteria for permissible wartime deviations, more explicit proportionality reasoning in judicial practice and systematic integration of ECtHR and CJEU standards into national legal argumentation.

The study is limited by its focus on higher-court practice and selected legal sources. It does not provide a statistical assessment of all Ukrainian judicial decisions or examine how legal certainty is perceived by judges, lawyers and litigants. Future research should expand the empirical basis, include lower-court practice and compare Ukraine with other post-conflict jurisdictions, particularly Bosnia and Herzegovina and Kosovo.

7. References

- BURMA, S. "The special tribunal for the crime of aggression against Ukraine: New frontiers of international justice", *Ehrlich's Journal*, v. 14, 2025, p. 11-20. <https://doi.org/10.32782/ehrlchsjournal-2025-14.02>
- CHEKHANIUK, L. "The principle of the rule of law and legal certainty: Correlation and specific

- aspects”, *Philosophical and Methodological Problems of Law*, v. 1, n. 29, 2025, p. 85-95. <https://doi.org/10.33270/02252901.10>
- CHERVIKOVA, O. V. “Transitional justice mechanisms and processes: International experience for restoring Ukraine’s sovereignty and national security”, *Law and Safety*, v. 90, n. 3, 2023, p. 135-142. <https://doi.org/10.32631/pb.2023.3.11>
- CLARK, J. N. “Transitional justice and the significance of more-than-human worlds: Some reflections from the Russia–Ukraine war”, *Journal of Human Rights Practice*, v. 17, n. 3, 2025, p. 1-24. <https://doi.org/10.1093/jhuman/huaf040>
- COUNCIL OF EUROPE. Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights). Council of Europe, 1950. Available at: https://www.echr.coe.int/documents/d/echr/convention_ENG (accessed on 7 April 2026).
- COUNCIL OF EUROPE. European Convention on Mutual Assistance in Criminal Matters (ETS No. 030). Council of Europe, 1959. Available at: <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treaty-num=030> (accessed on 8 April 2026).
- COUNCIL OF EUROPE. European Convention on the International Validity of Criminal Judgments (ETS No. 070). Council of Europe, 1970. Available at: <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treaty-num=070> (accessed on 11 April 2026).
- COURT OF JUSTICE OF THE EUROPEAN UNION. Dürbeck (Case 112/80, ECLI:EU:C:1981:94). CURIA. Court of Justice of the European Union, 1981. Available at: <https://curia.europa.eu/juris/liste.jsf?num=112/80> (accessed on 4 April 2026).
- COURT OF JUSTICE OF THE EUROPEAN UNION. Hungary v. European Parliament and Council (Joined Cases C-156/21 and C-157/21, ECLI:EU:C:2022:97). CURIA. Court of Justice of the European Union, 2022. Available at: <https://curia.europa.eu/juris/liste.jsf?num=C-156/21> (accessed on 4 April 2026).
- COURT OF JUSTICE OF THE EUROPEAN UNION. Racke v. Hauptzollamt Mainz (Case 98/78, ECLI:EU:C:1979:14). CURIA. Court of Justice of the European Union, 1979. Available at: <https://curia.europa.eu/juris/liste.jsf?num=98/78> (accessed on 9 April 2026).
- COURT OF JUSTICE OF THE EUROPEAN UNION. VEMW and Others (Case C-17/03, ECLI:EU:C:2005:362). CURIA. Court of Justice of the European Union, 2005. Available at: <https://curia.europa.eu/juris/liste.jsf?num=C-17/03> (accessed on 5 April 2026).
- EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION). Rule of law checklist (CDL-AD(2016)007). Council of Europe, 2016. Available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)007-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)007-e) (accessed on 2 April 2026).
- EUROPEAN COMMISSION. “What is the rule of law?” European Commission, n.d. Available at: https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/what-rule-law_en (accessed on 13 April 2026).
- EUROPEAN COURT OF HUMAN RIGHTS. Case of Beian v. Romania (No. 1) (Application No. 30658/05). HUDOC, 2008. Available at: <https://hudoc.echr.coe.int/eng?i=001-83822> (accessed on 10 April 2026).
- EUROPEAN COURT OF HUMAN RIGHTS. Case of Broniowski v. Poland (Application No. 31443/96). HUDOC, 2004. Available at: <https://hudoc.echr.coe.int/eng?i=001-61828> (accessed on 14 April 2026).
- EUROPEAN COURT OF HUMAN RIGHTS. Case of Brumărescu v. Romania (Application No. 28342/95). HUDOC, 1999. Available at: <https://hudoc.echr.coe.int/eng?i=001-58337> (accessed on 4 April 2026).
- EUROPEAN COURT OF HUMAN RIGHTS. Case of Del Río Prada v. Spain (Application No. 42750/09). HUDOC, 2013. Available at: <https://hudoc.echr.coe.int/eng?i=001-127697> (accessed on 11 April 2026).
- EUROPEAN COURT OF HUMAN RIGHTS. Case of Kokkinakis v. Greece (Application No. 14307/88). HUDOC, 1993. Available at: <https://hudoc.echr.coe.int/eng?i=001-57827> (accessed on 10 April 2026).
- EUROPEAN COURT OF HUMAN RIGHTS. Case of Kruslin v. France (Application No. 11801/85). HUDOC, 1990. Available at: <https://hudoc.echr.coe.int/eng?i=001-57626> (accessed on 12 April 2026).
- EUROPEAN COURT OF HUMAN RIGHTS. Case of Ștefănică and Others v. Romania (Application No. 38155/02). HUDOC, 2010. Available at: <https://hudoc.echr.coe.int/eng?i=001-101491> (accessed on 15 April 2026).

- EUROPEAN COURT OF HUMAN RIGHTS. Case of the Sunday Times v. the United Kingdom (Application No. 6538/74). HUDOC, 1979. Available at: <https://hudoc.echr.coe.int/eng?i=001-57584> (accessed on 14 April 2026).
- EUROPEAN COURT OF HUMAN RIGHTS. Case of Tolstoy Miloslavsky v. the United Kingdom (Application No. 18139/91). HUDOC, 1995. Available at: <https://hudoc.echr.coe.int/eng?i=001-57947> (accessed on 13 April 2026).
- EUROPEAN COURT OF HUMAN RIGHTS. HUDOC database. HUDOC, n.d. Available at: <https://hudoc.echr.coe.int/> (accessed on 9 April 2026).
- EUROPEAN PARLIAMENT & COUNCIL OF THE EUROPEAN UNION. Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget. EUR-Lex, 2020. Available at: <https://eur-lex.europa.eu/eli/reg/2020/2092/oj/eng> (accessed on 12 April 2026).
- EUROPEAN UNION. Charter of Fundamental Rights of the European Union. EUR-Lex, 2012. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT> (accessed on 8 April 2026).
- EUROPEAN UNION. Consolidated version of the Treaty on European Union (TEU). EUR-Lex, 2012. Available at: https://eur-lex.europa.eu/eli/treaty/teu_2012/oj/eng (accessed on 14 April 2026).
- EUROPEAN UNION. Consolidated version of the Treaty on the Functioning of the European Union (TFEU). EUR-Lex, 2012. Available at: https://eur-lex.europa.eu/eli/treaty/tfeu_2012/oj/eng (accessed on 12 April 2026).
- FROMONT, L. "What EU conditionality says about the rule of law", *European Journal of Risk Regulation*, v. 16, n. 3, 2025, p. 839-852. <https://doi.org/10.1017/err.2024.40>
- GARCIA BLESA, J. J. "The cultural dimensions of legal certainty: A study on the use of intercultural knowledge in European law-application", *European Papers – A Journal on Law and Integration*, v. 10, n. 2, 2025, p. 405-434. Available at: https://www.europeanpapers.eu/system/files/pdf_version/EP_eJ_2025_2_1_Juan_Garcia_Blesa_00838.pdf (accessed on 12 April 2026).
- HAVRYLIUK, R. O., PATSURKIVSKYI, P. S. "Debatable issues of legal certainty of Ukrainian tax law under martial law", *Yurydychna Ukraina*, n. 10, 2023, p. 22-30. Available at: <https://yur-ukraine.com/diskusijni-pytannya-yurydychnoyi-vyznachenosti-podatkovogo-prava-ukrayiny-v-umovah-voyennogo-stanu/> (accessed on 11 April 2026).
- HILPOLD, T. "The 2024 reform of the EU judicial system and the transformation of the Court of Justice into a constitutional court", *European Papers – A Journal on Law and Integration*. *European Papers*, 2024. Available at: <https://www.europeanpapers.eu/e-journal/2024-reform-eu-judicial-system-transformation-court-justice-constitutional-court> (accessed on 13 April 2026).
- HOXHAI, A. "The CJEU validates in C-156/21 and C-157/21 the rule of law conditionality regulation regime to protect the EU budget", *Nordic Journal of European Law*, v. 5, n. 1, 2022, p. 131-144. <https://doi.org/10.36969/njel.v5i1.24501>
- IYZHENKO, D. "The principle of rule of law and the concept of transitional justice as key elements of post-conflict settlement", *Yurydychnyi Visnyk*, v. 3, 2024, 350-358. <https://doi.org/10.32782/yuv.v3.2024.43>
- JUDICIAL POWER OF UKRAINE. Unified State Register of Court Decisions. *Judicial Power of Ukraine*, n.d. Available at: <https://reyestr.court.gov.ua/> (accessed on 14 April 2026).
- KORTUKOVA, T., KOLOSOVSKYI, Y., KOROLCHUK, O. L., SHCHOKIN, R., VOLKOV, A. S. "Peculiarities of the legal regulation of temporary protection in the European Union in the context of the aggressive war of the Russian Federation against Ukraine", *International Journal for the Semiotics of Law*, v. 36, n. 2, 2023, p. 667-678. <https://doi.org/10.1007/s11196-022-09945-y>
- LYTVYN, N., ANDRUSHCHENKO, H., ZOZULYA, Y. V., NIKANOROVA, O. V., RUSAL, L. M. "Enforcement of court decisions as a social guarantee of protection of citizens rights and freedoms", *Prawo i Więż*, v. 39, 2022, p. 80-102. <https://doi.org/10.36128/priw.vi39.351>
- MATAT, A. V. "European human rights standards and their implementation in Ukraine: Analysis of the EU Charter of Fundamental Rights", *Uzhhorod National University Herald*. Series: Law, v. 1, n. 89, 2025, p. 235-239. <https://doi.org/10.24144/2307-3322.2025.89.1.32>
- MELNYK, D. S., PARFYLO, O. A., BUTENKO, O. V., TYKHONOVA, O. V., ZAROSYLO, V. O. "Practice of the member states of the European Union in the field of anti-corruption

- regulation" *Journal of Financial Crime*, v. 29, n. 3, 2022, p. 853–863. <https://doi.org/10.1108/JFC-03-2021-0050>
- MOSKALENKO, O., MYKYTIUK, V. "European justice standards and challenges in their implementation in Ukraine", *Actual Problems of Innovative Economy*, v. 4, n. 9, 2025, p. 9–12. <https://doi.org/10.36887/2524-0455-2025-4-2>
- NAUMKINA, S., KOKORIEV, O., YAVTETSKA, H. "Transitional justice as an efficient mechanism for overcoming the consequences of armed conflicts: World experience", *Evropský Politický a Právní Diskurz*, v. 11, n. 3, 2024, p. 13–23. <https://doi.org/10.46340/eppd.2024.11.3.2>
- OSTAPENKO, H. "The role of legal certainty principle in provision of access to justice in Ukraine in wartime", *Access to Justice in Eastern Europe*, v. 6, n. 3, 2023, p. 1–13. <https://doi.org/10.33327/AJEE-18-6.3-a000306>
- PATSURKIVSKYI, P., HAVRYLIUK, R. "Algebra of the rule of law, or the ontological structure of the human world", *Pravo Ukrainy*, n. 3, 2017, p. 112–125. Available at: <https://ekmair.ukma.edu.ua/server/api/core/bitstreams/cc16468d-434a-4cdb-af07-e1c4e9fe4625/content> (accessed on 11 April 2026).
- RABINOVYCH, M. "EU enlargement policy goes east: Historical and comparative takes on the EU's rule of law conditionality vis-à-vis Ukraine", *Hague Journal on the Rule of Law*, v. 16, n.3, 2024, p. 715–737. <https://doi.org/10.1007/s40803-024-00223-6>
- ROMANOVA, A. "Transitional justice and human rights in Ukraine", *Bulletin of Lviv Polytechnic National University. Series: Legal Sciences*, v. 3, n. 47, 2025, p. 218–225. <https://doi.org/10.23939/law2025.47.214>
- SELEJAN-GUŢAN, B. "Are rights of judges becoming rule of law standards in Europe?" *Max Planck Institute for Comparative Public Law & International Law Research Paper Series*, No. n. 2024-05, 2024. <https://doi.org/10.2139/ssrn.4726426>
- STRATONOV, V. M., ASTASHEVA, O. S. "Lustration in transitional justice: Constitutional principles and international standards", *Journal of the National Academy of Legal Sciences of Ukraine*, v. 32, 4, 2025, p. 184–200. <https://doi.org/10.31359/1993-0909-2025-32-4-184>
- UNITED NATIONS. The rule of law and transitional justice in conflict and post-conflict societies (Report of the Secretary-General, S/2004/616). United Nations, 2004. Available at: <https://undocs.org/S/2004/616> (accessed on 12 April 2026).
- UNITED NATIONS. The rule of law and transitional justice in conflict and post-conflict societies (Report of the Secretary-General, S/2011/634). United Nations, 2011. Available at: <https://undocs.org/S/2011/634> (accessed on 11 April 2026).
- VAN MEERBEECK, J. "The principle of legal certainty in the case law of the European Court of Justice: From certainty to trust", *European Law Review*, v. 41, n. 2, 2016, p. 275–288. Available at: https://www.researchgate.net/publication/317211817_The_principle_of_legal_certainty_in_the_case_law_of_the_European_Court_of_justice_From_certainty_to_trust (accessed on 13 April 2026).
- VERKHOVNA RADA OF UKRAINE. Constitution of Ukraine. Verkhovna Rada of Ukraine, 1996. Available at: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80> (accessed on 11 April 2026).
- VERKHOVNA RADA OF UKRAINE. Criminal Code of Ukraine. Verkhovna Rada of Ukraine, 2001. Available at: <https://zakon.rada.gov.ua/laws/show/2341-14> (accessed on 8 April 2026).
- VERKHOVNA RADA OF UKRAINE. Criminal Procedure Code of Ukraine. Verkhovna Rada of Ukraine, 2013. Available at: <https://zakon.rada.gov.ua/laws/show/4651-17> (accessed on 6 April 2026).
- VERKHOVNA RADA OF UKRAINE. Law of Ukraine "On Advocacy and Legal Practice". Verkhovna Rada of Ukraine, 2013. Available at: <https://zakon.rada.gov.ua/laws/show/5076-17> (accessed on 4 April 2026).
- VERKHOVNA RADA OF UKRAINE. Law of Ukraine "On the Judiciary and the Status of Judges". Verkhovna Rada of Ukraine, 2016. Available at: <https://zakon.rada.gov.ua/laws/show/1402-19> (accessed on 6 April 2026).
- VERKHOVNA RADA OF UKRAINE. Law of Ukraine "On the Legal Regime of Martial Law". Verkhovna Rada of Ukraine, 2015. Available at: <https://zakon.rada.gov.ua/laws/show/389-19> (accessed on 7 April 2026).
- VERKHOVNA RADA OF UKRAINE. Legislation of Ukraine. Verkhovna Rada of Ukraine, n.d. Available at: <https://zakon.rada.gov.ua/> (accessed on 12 April 2026).