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WRIT PROCEEDINGS IN CRIMINAL CASES: A COMPARATIVE LEGAL STUDY OF KAZAKH LEGISLATION

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ABSTRACT

Background: *Over the past decade, the criminal process of Kazakhstan has undergone significant modernisation, during which many new institutions have been implemented, prescribed, and introduced into national legislation, one of which is writ proceedings in criminal cases.*

The institution of writ proceedings in the criminal process of Kazakhstan is a type of simplified proceedings that can be applied to criminal offences and criminal cases of minor gravity. One of the main characteristics of writ proceedings is the possibility of considering a criminal case in court without the participation of the accused.

Methods: *The article uses system-structural, formal-logical, comparative-legal, and dialectical research methods. Currently, law enforcement officers have a number of questions regarding the effectiveness of writs in criminal proceedings. In response, the authors of the article offer a constructive and critical approach to solving problems and reject the untenable, irrational, and radical methods presented by some Kazakhstani scientists and practitioners. Moreover, the analysis of successfully tested foreign legislation, in which institutions similar to writ production are actively used, has shown the effectiveness of their application. A comparative legal study of the legislation of Switzerland and Japan was also conducted.*

Results and Conclusions: *In the article, the authors propose to consider a set of measures to improve the institution of writ proceedings in the criminal process of the Republic of Kazakhstan.*

1 INTRODUCTION

The development of Kazakhstan's legislation, including criminal procedure, has been carried out in accordance with the values, industry objectives, and needs of law enforcement as determined by state program documents and international standards and principles, which include: the Concept of Legal Policy of the Republic of Kazakhstan until 2030 and the National Development Plan of the Republic of Kazakhstan until 2025, approved by the Decree of the President of the Republic of Kazakhstan from 15 February 2018, No. 636. The priority directions of these documents containing the vectors of development of Kazakhstan for the coming years are defined as: ensuring the rule of law and the fairness of the law; high-quality national legislation; improving mechanisms for protecting the rights and freedoms of citizens; focusing on the result and the interests of citizens and society; maximum approximation of the legal system and practice of personal protection to international standards.

Since the beginning of 2018, a previously unknown institution of writ proceedings has been introduced into the criminal process of the Republic of Kazakhstan as a type of special proceeding.[1] Writ proceedings in criminal cases are one of the types of simplified proceedings, along with protocol proceedings on criminal offences, procedural agreements (transactions), cases of private prosecution, the trial of the case in a shortened order, and confiscation before sentencing (*in rem*). It should be noted that in the Kazakh civil process, there is a similar institution of writ proceedings. Writ proceedings are simplified types of proceedings that also affects the timing and process of investigating the circumstances in a civil case.

In accordance with Art. 134 of the Civil Procedure Code of the Republic of Kazakhstan, a court order is issued on indisputable claims for the recovery of money or the recovery of movable

1 Criminal Procedure Code of the Republic of Kazakhstan No 231-V of 4 July 2014 <https://adilet.zan.kz/eng/docs/K1400000231> accessed 28 November 2022.

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property from the debtor. A court order is an act of a judge, issued and announced by the judge alone based on the filed application of the recoverer. The peculiarity is that the debtor and the recoverer are not invited to the courtroom, and the trial as such is not conducted.[2]

At the same time, writ proceedings in criminal matters have their own characteristics and grounds for the application. In accordance with the norms of the Criminal Procedure Code of the Republic of Kazakhstan (hereinafter referred to as the CPC of the Republic of Kazakhstan), the grounds for consideration of a criminal case in the order of writ proceedings are:

1) the offence must have signs of an act of minor public danger (criminal offences and crimes of minor gravity);
2) the collected evidence must establish the fact of a criminal offence and the person who committed it;
3) the suspect does not dispute the collected evidence of his guilt in committing a criminal offence, agrees with the qualification of his act and the amount of damage (harm);
4) the sanction of the committed offence is one of the types of the main punishment is a fine, including mandatory additional punishment in the form of deprivation of the right to hold a certain position or engage in a certain activity if the sanction establishes the exact term of deprivation of this right;
5) the participants in the process have agreed to the consideration of the case in the order of writ proceedings without examining the evidence, summoning them, and participating in the judicial review (at the stage of the main trial).

A positive aspect of Kazakhstan's experience is the consideration of a criminal case in a fairly short time, without the summons and participation of the defendant, the victim, and other participants in court. Some foreign sources also mention that one of the advantages of simplified forms of pre-trial criminal proceedings is the possibility of access to simplified judicial proceedings, in which, even in small cases, the likelihood of judicial errors is prevented, even excluded, the correction of which would otherwise result in proceedings taking an unreasonably long time to complete. [3]

Yet, there are still doubts among Kazakhstani lawyers about the necessity of this type of simplified production. Their arguments fall into two groups. The first is that the non-participation in the writ proceedings of the defendant, the victim, and other persons during the consideration of a criminal case in court is regarded by them as a deviation from para. 1 of Art. 14 of the International Covenant on Civil and Political Rights of 1966, which obliges everyone to ensure access to justice and public consideration by the court of a criminal case.[4] The arguments of the supporters of this position are justified by the fact that during the writ proceedings, a trial *in absentia* is conducted, and the fundamental principles of the criminal process are not respected – the defendant's right to defence, the presumption of innocence, access to justice, and others.

2 Civil Procedural Code of the Republic of Kazakhstan No 377-V of 31 October 2015 <https://adilet.zan.kz/eng/docs/K1500000377> accessed 28 November 2022.

3 Soni Parul, 'Summary Trials' (Law Times Journal (LTJ), 20 November 2018) <https://lawtimesjournal.in/summary-trials> accessed 28 November 2022.

4 International Covenant on Economic, International Covenant on Civil and Political Rights (adopted 16 December 1966 UNGA Res 2200 (XXI) A) (ICCPR) <https://undocs.org/en/A/RES/2200(XXI)> accessed 28 November 2022; Abaj Rahmetulin, 'Modernizing law, approaching standards' *Kazahstanskaya pravda* (Nur-Sultan, 22 September 2017) <https://kazpravda.kz/n/moderniziruem-pravo-priblizhaemsya-k-standartam> accessed 1 October 2022.

> We believe that the arguments are not sound since the criminal procedural mechanism of writ proceedings guarantees its cancellation and unconditional return to the standard main trial with certain objections of the convicted person, in particular, his disagreement on any ground except for the amount of the fine imposed by the court. At the same time, all the rights of the defendant in the face-to-face trial are fully respected.

The results of our research provide the basis for a proposal to the legislator on the transition from writ proceedings to the main trial, bypassing the intermediate stage of pre-trial investigation. In addition, correspondence proceedings are possible only with the consent of the suspect and the victim and the clarification of their rights, obligations, and legal consequences of the application of writ proceedings. Further, the scope of writ proceedings is narrowed by the minimum penalty in the form of a fine. No one disputes the fate of the institution of writ production in Germany, Switzerland, Estonia, or other European countries.

The second group is determined by the departmental interests of the investigative bodies and the court. For the investigating authorities, they are associated with the formation of favourable statistical indicators, and for the court – the installation of mandatory execution of punishment in the form of a fine. We regard this approach of state bodies as radical, where the guillotine is recognised as the best remedy for headaches. It seems that the solution to the problem lies in moving away from the policy of artificial performance indicators and repressive criminal proceedings.

> As shown by a scientific study we conducted in 2018-2021 when preparing a dissertation for the degree of Doctor of Philosophy (PhD), the use of the institute of writ proceedings in investigative and judicial practice revealed several problems requiring legislative regulation and adjustment of law enforcement activities.

Firstly, there is the late execution by the convicted person of the criminal penalty imposed by the court in the form of a fine. In most cases, as evidenced by our survey of 117 criminal cases considered by the courts, a person does not have a real opportunity to pay their fine on time and in full due to low levels of income and increasing inflation.

Secondly, a lengthy investigation was carried out to improve the belated decision-making by the body carrying out pre-trial proceedings on the application of writ proceedings after a number of investigative actions when the guilt of the suspect and other circumstances of the case were actually proved.

Our analysis of investigative and judicial practice revealed similar cases. For example, after registering the reason in the Unified Register of Pre-Trial Investigations, the criminal case was initially considered in the order of a standard inquiry, within which:

- a separate instruction has been sent to establish the location of a potential suspect;
- there is a restriction on travel outside Kazakhstan on the basis of the Unified automated system 'Berkut';
- a subscriber number has been established for the affiliation and places of operation of the based stations.

The bodies of inquiry took measures to establish the location of the person involved in the criminal offence and used additional resources. The request stated that if the location is established, there is a need to take him to the police for investigative actions. Thus, the body conducting the inquiry carried out a complex of investigative and other procedural actions, the totality of which indicates the absence of such parameters of writ proceedings as the procedural economy and the evidence of a criminal offence. At the end of the initial stage of the inquiry, the suspect's petition for consideration of the case in the order of writ proceedings was accepted.

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This practice directly contradicts the original idea of the adoption by the Kazakh legislator of the institution of writ proceedings since its main goals are, first of all, to accelerate the timing of the pre-trial investigation, simplify the procedural form of production, and minimise the number of investigative and procedural actions, as well as the maximum convergence of the moments of committing a criminal offence, and the imposition of criminal punishment. In this case, there can be no question of any procedural economy; more likely, procedural excesses take place.

Thirdly, there is the absence of many other acceptable benefits for the offender when deciding on the application of writ proceedings. At the moment, criminal cases within the framework of writ proceedings provide only one privilege for the guilty person – *in absentia* – while saving the time of the participants in the process (the case is considered in court without the direct participation of the defendant, victim, and other persons).

> Fourth, there is an incomplete and unclear procedure for explaining the rights and obligations of the suspect and the legal consequences of the application of writ proceedings by the bodies conducting pre-trial proceedings.

The purpose of the research conducted by the authors is to formulate scientific recommendations that are in demand in practice, on the basis of which it is possible to increase the effectiveness of the institution of writ proceedings in criminal cases, as well as to develop appropriate proposals for further improvement of criminal procedural legislation.

2 METHODOLOGY OF THE STUDY

In this article, the authors have studied and summarised the experience of countries in which there is an analogue of the Kazakhstan institute of writ production. The article uses system-structural, formal-logical, comparative-legal, and dialectical research methods. In determining the subject of this work, the authors considered it necessary to conduct a comparative legal study of the institute of writ proceedings in criminal cases.

The Swiss Experience.[5] The main justification for the differentiation of legislation, including in the direction of simplification, is that not every preliminary investigation is carried out with the same degree of effort, costs, and expenses, and the execution of punishments must meet the requirements of effective law enforcement, including the need for fast and efficient methods of proceeding, which should also be economical.

Art. 352 (1) of the Swiss Code of Criminal Procedure requires recognition or other sufficient establishment of facts for a summary punishment order to be appropriate.[6] If the subject of the offence does not agree with this procedural procedure, **he has the right to bring his objection (or 'rejection' of the act)** to the decision within ten days. Nevertheless, in judicial practice, the accused rarely bring their objections, often due to insufficient awareness of their right to do so.[7]

At the same time, all these problems can lead to errors in decisions on summary punishment (analogous to writ proceedings). This was confirmed by a study of judicial errors, although it should be noted that most of the decisions on the imposition of penalties in a simplified manner relate to minor offences with minor sanctions.

5 Swiss Criminal Procedure Code of 5 October 2007 <https://www.fedlex.admin.ch/eli/cc/2010/267/en> accessed 28 November 2022.

6 Laura Macula, 'The Potential to Secure a Fair Trial Through Evidence Exclusion: A Swiss Perspective' in S Gless and T Richter (eds), *Do Exclusionary Rules Ensure a Fair Trial? A Comparative Perspective on Evidentiary Rules* (Springer Nature 2019) 15, doi: 10.1007/978-3-030-12520-2.

7 Gwladys Gillieron, 'Wrongful Convictions in Switzerland: A Problem of Summary Proceedings' (2013) 80 (4) University of Cincinnati Law Review 1145.

Art. 161 of the Swiss Code of Criminal Procedure establishes the norm according to which the public prosecutor, at the stage of the investigation, must interrogate the accused about his **personal circumstances** if it is expected that the accused will be charged or an order to impose a simplified punishment is issued or if it is necessary for other reasons.

In Switzerland, punishment can be imposed in the form of a fine, a monetary fine in the amount of no more than 180-day penalty units, or imprisonment for a period of no more than six months. A fine can always be imposed in conjunction with other types of punishments. The decision to issue an order on summary punishment (writ proceedings) is made directly by the prosecutor. If the prosecutor considers that the investigation is over, he must approve a simplified punishment order or send a written notification to the participants of the process about the prosecution or the termination of the criminal case. In accordance with Swiss law, the parties are given a period during which they can file petitions for additional evidence.

The decision not to apply the punishment order is not subject to appeal and cancellation. It should be noted that the approach of the Kazakh legislator is similar in this part. Thus, in accordance with part 2 of Art. 629-4 of the CPC of the Republic of Kazakhstan, the court's decision to return the case to the prosecutor is not subject to appeal or review.

If the accused agreed with the victim's civil claim, this fact is recorded in the order on summary punishment (writ proceedings). **Claims that are not accepted by the accused must be submitted for civil consideration.**

A written refusal of the decision on summary punishment may be submitted to the prosecutor within ten days. If a reasoned refusal is not filed, the ruling becomes the final decision on the case. Then the prosecutor sends the case to the court of first instance.

The court decides on the legality of the order or its rejection. If a refusal is filed, the public prosecutor **must collect additional evidence necessary** to assess the refusal.

If the decision on a simplified punishment is invalid, **the court must cancel it** and return the case to the state prosecutor for a new pre-trial trial.

A person who has been negatively affected by a legally binding court decision has the right to request a review in cases determined by law.

A petition for reconsideration of the case in favour of the convicted person **may also be filed after the expiration of the statute of limitations for consideration of the case.**

Thus, the Swiss experience rationally establishes a balance of private and public interests and ensures the right of the accused to a criminal trial and access to justice by securing a sufficiently flexible procedural mechanism for appealing a punishment order.

The possibility of considering the amount of damage caused to the injured party in the framework of civil proceedings is very interesting for Kazakh legislation, which significantly differs from the Swiss approach. Today, in accordance with the CPC of Kazakhstan, the suspect himself must file a petition for consideration of his case in writ proceedings and is obliged to compensate the damage caused to the person.

The Japanese Experience. The main investigative body is the police (criminal police officers). At the same time, there are accelerated judicial proceedings and simplified pre-trial proceedings. In each of the above-mentioned proceedings, the key decisions are made by the judge.

Moreover, in the case of the application of simplified proceedings, the provisions of the law reasonably provide for a mechanism for the transfer of the case to ordinary proceedings. So, within 14 days, a person who has committed a crime and has received a notification about

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the consideration of a criminal case in a simplified manner has the right to file a petition for the consideration of a criminal case in the usual manner.[8]

Table 1

Swiss experience	The decision on the application of writ proceedings is made by the prosecutor	Personal circumstances are being clarified	May challenge the amount of damage in a civil order	When filing a complaint, the court may return the case to the prosecutor for pre-trial proceedings	The penalty is a fine and six months of imprisonment
Kazakh experience	The accused petitions the investigative body for the application of writ proceedings	The pre-trial investigation body explains to the suspect the right to consider the case in court in the order of writ proceedings	Is obliged to compensate for the damage	When submitting a petition for disagreement with the decision, in addition to the amount of the fine, the court directs the case to pre-trial proceedings	The penalty is a fine and deprivation of holding certain positions or engaging in certain activities

If the accused has not been notified of the simplified procedure of criminal proceedings, then within four months from the date of the application, the prosecution is terminated, and an appeal may be filed against this court decision.

It would be fair to note that 80% of all criminal cases in Japan are dealt with in a simplified manner.[9]

3 INSTITUTE OF WRIT PROCEEDINGS IN THE CRIMINAL PROCEDURE LEGISLATION OF THE REPUBLIC OF KAZAKHSTAN

Based on the analysis above, it should be noted that from 1 January 2018 to the present, the institute of writ production in the Republic of Kazakhstan has not yet realised its universally recognised potential[10] in European countries. One of the key problems, it seems to us, is the legislative imperfection, as well as the lack of understanding of the law enforcement officer of the possibilities of applying the new institution in practice.

3.1 Procedure for Imposing and Enforcing Punishments in Criminal Cases Considered in Writ Proceedings

> One of the practical problems referred to by Kazakhstani lawyers is the non–fulfilment or untimely execution of criminal punishment by convicts. We believe that it is in this direction that it is necessary to significantly change conceptual approaches, changing not only the procedure and increasing the methods of execution of criminal punishment in the form of a fine but also the types of punishments that could be imposed by the court against the subject of the offence in cases of writ proceedings.

8 Penal Code of Japan (Act No 45 of 1907) <https://www.japaneselawtranslation.go.jp/en/laws/view/3581/en> accessed 28 November 2022.

9 Hiroshi Oda, *Japanese Law* (4th edn, OUP 2021).

10 German Code of Criminal Procedure 'Strafprozeßordnung – StPO' (as published on 7 April 1987) <https://www.gesetze-im-internet.de/englisch_stpo/englisch_stpo.html> accessed 28 November 2022.

According to the current CPC of the Republic of Kazakhstan, the procedure for paying a fine can be appealed by a convicted person only at the stage of execution of the sentence. To implement such a right in special norms, appropriate additions should be made to the articles of Chapter 51 of the CPC of the Republic of Kazakhstan, as well as flexible mechanisms for the payment of fines (deferral and instalments) or, if it is impossible to pay a fine, the appointment of an alternative type of punishment – community service.

In writ proceedings, a sanction for committing a criminal offence is applicable – as the main penalty, a fine, including mandatory additional punishment – deprivation of the right to hold a certain position or engage in a certain activity (for the period of deprivation of this right precisely established by the CPC of the Republic of Kazakhstan).

To remove obstacles to a more active application of writ proceedings, it is advisable to study the issue of the reception of the German legislative regulation of cases of postponement and instalment payment of a fine imposed by the court. On the basis of Section 360 (2) of the Code of Criminal Procedure of the Federal Republic of Germany, **a postponement or interruption of the execution of this type of punishment** is allowed by court order.[11]

Art. 475 of the CPC of the Republic of Kazakhstan contains the universal right of the court to instalments and delay of the fine applicable to all types of proceedings. But this rule is applicable **only at the stage of execution of the sentence**. In the framework of writ proceedings in criminal cases, this general rule is not effective. To do this, the court needs to start proceedings at the stage of execution of the sentence. For timely response to the facts of non–payment of a fine or their prevention, we propose to **introduce a similar rule of a special nature** in the chapter on writ proceedings (as, for example, for conciliation proceedings when concluding a procedural agreement in the form of a plea bargain – Part 5 of Art. 625 of the CPC of the Republic of Kazakhstan). It is recommended to introduce this rule at the stage of clarifying the rights of the suspect when applying writ proceedings. At the same time, the suspect is obliged to submit documents confirming his difficult financial situation (salary, property loan agreement, guardianship, availability of dependents, certificate of the amount of deductions to the pension fund, taxes, etc.).

The prosecutor, in his decision on the consideration of a criminal case in the order of writ proceedings, may also **indicate 'personal circumstances'**, including:

- marital status;
- financial situation;
- whether the suspect has dependents;
- the proposed schedule for the repayment of the fine within a reasonable time, acceptable both from the standpoint of the defendant and the convicted person and from the point of view of the court;
- legal consequences of non–payment or late payment of the fine – multiple increases in its size and replacement of the fine by the court in the order of execution of the sentence for criminal punishment in the form of community service (free of charge).

Also, if the prosecutor has reasonable doubt about the solvency of the suspect, then this is indicated in the decision for the court to apply a delay or instalment payment of a fine or the application of an alternative penalty to a fine in the form of community service.

The court examines these documents together with the materials of the criminal case and makes an appropriate decision on the case in this part.

11 Lyazzat Nurlumbayeva, 'Writ Proceedings in Criminal Proceedings in Germany' (2020) 5 Bulletin of the Institute of Legislation and Legal Information of the Republic of Kazakhstan 207.

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If, during the granted period of deferral or instalment payment of the fine, the facts of systematic delay or non-payment of part of the amount are recorded, then appropriate measures may be applied for evasion of punishment. One of them at the stage of execution of the sentence may be multiple increases in the amount of the fine by the court or the replacement of the fine by the court for community service.

It is also proposed to introduce **other benefits for those convicts who are willing to pay the amount of the fine** within a short time after receiving the relevant court decision.

The above-mentioned proposal is currently actively used in other branches of law. The payment of a fine 'at a discount' is considered in the form of reduced proceedings for certain types of administrative offences. Thus, the right to pay an administrative fine in the amount of 50% of the total amount can be used within seven days from the date of notification of the person about the offense committed.

This option is applicable if the person who committed a criminal offence complies with the following conditions: recognition of the fact that he committed the act; consent to the suspicion (accusation) put forward against him; non-contesting the evidence collected in the case and the qualification of the act; consent to pay a fine of 50%.

We believe that the introduction of flexible and rational alternative solutions in the application of writ proceedings will solve the problem of evasion of convicts from the execution of punishment and will ensure compliance with the principle of the inevitability of criminal punishment.

3.2 Conditions for the allocation of elements of criminal offences to be considered in the order of writ proceedings

In Kazakhstan, the grounds for consideration of a criminal offence in the order of writ proceedings are: the presence of the main penalty in the form of a fine; the establishment of the fact of the commission of the act by the suspect; the suspect does not dispute the available evidence of his guilt; agrees with the nature and amount of damage (harm); petitions for consideration of the case by order.

At the same time, it should be noted that there are several obvious inconsistencies with the European experience of using similar institutions. For example, a punishment order in Switzerland is applied for minor offences, but the existence of additional punishment is not provided for by the Criminal Procedure Code of this country. In this context, Kazakhstan's experience raises more questions than answers.

According to the authors of the article, the universal criteria for the introduction of less complex forms of pre-trial criminal proceedings are the following signs of the circumstances of a criminal case: evidence of the actual side of the act; clarity of the legal qualification of a criminal offence; ease of establishing its circumstances. In earlier studies, the authors justified the need to introduce such definitions as 'evidence of a criminal offence' and 'beyond a reasonable doubt'[12] into the criminal procedure legislation.

12 Arstan Akhpanov and Lyazzat Nurlumbayeva, 'Criteria for the Definition of "Obviousness" of Criminal Offenses' (2019) 4 Bulletin of the Institute of Legislation and Legal Information of the Republic of Kazakhstan 65.

3.3 The problem of clarifying the rights and obligations of the subject of criminal offences in cases of writ proceedings

An analysis of judicial practice in the Republic of Kazakhstan showed that police officers, in accordance with para. 3 of the regulatory decree of the Supreme Court of the Republic of Kazakhstan 'On consideration of criminal cases by writ of procedure' dated 29 November 2018 No. 17, developed a standard form of explaining the rights of a suspect when considering a criminal case by order. This is set out in a document entitled 'Protocol of clarification of the conditions for consideration of a criminal case in the order of writ proceedings'.

One of the significant drawbacks of this document is its unsystematic design, cluttered with complex legal turns and direct copying of the legislative text. For example:

> A fine is a monetary penalty imposed within the limits provided for by this Code, in an amount corresponding to a certain number of monthly calculation indices established by the legislation of the Republic of Kazakhstan and in force at the time of committing a criminal offense, or in an amount multiple of the amount or value of a bribe, the amount of money transferred or the value of transferred property, the value of stolen property, the amount of income received or the amount of payments not received to the budget. Compulsory payment to the victims' compensation fund provided for in Articles 98-1, 98-2 of the Criminal Code of the Republic of Kazakhstan, procedural costs, as well as the possibility of exemption in whole or in part from payment of procedural costs, on the imposition of a fine when a court passes a guilty verdict, the amount of the fine, established by part three of Article 55 of the Criminal Code of the Republic of Kazakhstan and the sanction of the incriminated article of the criminal law, the order of execution of the fine, recognition of a convicted person under a sentence in writ proceedings who does not have a criminal record on the grounds provided for in parts two and paragraph 2) Part three of Article 79 of the Criminal Code of the Republic of Kazakhstan, the procedure for reviewing the verdict and other issues of importance in the writ proceedings.

It seems that the wording clearly makes it difficult for suspects to understand their rights when deciding on the transition from ordinary investigation to writ proceedings. We propose to consolidate in practice a clearer formulation of the key aspects of the conditions, grounds, procedure, and consequences of the application of writ proceedings.

4 CONCLUSIONS

1. According to the results of the study, the authors of the article propose to introduce a set of rules to provide an accessible explanation to the suspect about the possibility and grounds for the use of the institution of writ proceedings: 'You have the right to refuse to participate in court when considering a criminal case in the order of writ proceedings. You retain the right to access justice and the right to be heard in court'.

2. When investigating a criminal case in the usual (ordinary) manner and proving guilt due to the conduct of all urgent and subsequent investigative actions by the body conducting the pre-trial investigation, it is unacceptable to use the institution of writ proceedings. Otherwise, prerequisites are created for the appearance of corruption risks caused by the transition to the regime of writ proceedings with a simplified procedural form and minimal legal consequences in those cases for which there were no criteria of **evidence, simplicity, and clarity**.

3. It is proposed to adopt a set of legislative measures in terms of improving the institution of writ proceedings, as well as the possibility of presenting preferences to the convicted person in case they send a petition for consideration of a criminal case by order:

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- introduce an alternative type of punishment in cases considered by order in the form of community service. Thus, if it is impossible to pay the fine, the subject of the offence can execute the punishment;
- by analogy with the experience of Switzerland, it is necessary to fix the norm according to which the body conducting the criminal process, at the stage of pre-trial investigation, is obliged to interrogate the suspect and collect information concerning his 'personal circumstances' (characteristics from the place of work, information about the financial situation, the presence of dependents in the custody of the suspect and other information);
- to fix the possibility of paying the suspect a halved fine if he voluntarily makes the payment within seven days from the date of receipt of the court order;
- to establish the possibility of payment of a fine with a delay or by instalments for up to one year if the convicted person at the stage of pre-trial investigation filed a corresponding request for a delay or instalment of the execution of the sentence;
- to provide for a norm according to which the payment of a fine cannot be deferred or instalment for convicts who are in arrears in other criminal cases with the application of a fine, as well as in case of systematic delay or non-payment of part of the amount at the stage of execution of a sentence in a criminal case, the replacement of a fine for community service may be applied to the convicted person.

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