

Case Note

PERSONAL NON-PECUNIARY RIGHTS
AND CRIMINAL JUSTICE COMMUNICATION:
A CIVIL LAW PERSPECTIVE
FROM UKRAINIAN CASE LAW

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ABSTRACT

Background: *The issues discussed in this article arise at the intersection of civil, constitutional, and criminal procedural law and are connected to determining the limits of permissible public communication during a pre-trial investigation by law enforcement bodies. Case no.761/1004/20 brings into focus a fundamental legal conflict between the presumption of innocence and the right to respect for honour, dignity, and private life, on the one hand, and freedom of expression and the public's right to receive information, on the other. The problem becomes particularly acute in cases involving the personalised disclosure of information about individuals who have not yet been found guilty by a court, potentially leading to their social stigmatisation through reputational damage. In this context, the interpretation of part four, Article 296 of the Civil Code of Ukraine is essential, particularly the catch-all phrase "in other cases provided by law," as well as the determination of the permissible limits of using civil-law*

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remedies in response to such actions by the state. The need for this study is determined by the lack of well-established case law, the existence of conflicting approaches within the Supreme Court, and the need to develop a doctrinally coherent model for balancing competing rights and freedoms.

Method: The methodological basis of the study combines doctrinal analysis of norms in civil, constitutional, and criminal procedural law with elements of comparative legal and practice-oriented approaches. The study applies systemic and teleological interpretation of part four of Article 296 of the Civil Code of Ukraine in conjunction with constitutional guarantees (in particular Articles 3, 8, 32, and 62 of the Constitution of Ukraine) as well as the standards of the Convention for the Protection of Human Rights and Fundamental Freedoms. Considerable attention is paid to the case law of the European Court of Human Rights concerning the criteria of the “quality of law,” the proportionality of interference, and the standards of caution in public statements by state authorities. The source base of the work consists of court decisions in case no. 761/1004/20, relevant Supreme Court practice, legal doctrine (in particular the works of L. Fuller, J. Raz, J. Waldron, R. Alexy, and A. Barak), and contemporary Ukrainian research in the field of criminal procedure and the protection of personal non-pecuniary rights.

Results and Conclusions: The study substantiates that part four, Article 296 of the Civil Code of Ukraine should be regarded as a private-law instrument for implementing the constitutional principle of the presumption of innocence in the field of the state’s public communication, aimed at preventing the individual’s premature reputational stigmatisation.

It is proven that the phrase “in other cases provided by law” does not create open discretion for state authorities, but requires the existence of a clear, specific, and foreseeable legislative basis (*lex specialis*), defining the purpose, limits, and the interference procedure. It is established that the general provisions of laws governing the activities of law enforcement bodies, which provide for informing the public, may not be regarded as a sufficient legal basis for disclosing suspects’ personal data. The paper substantiates the need to distinguish between standards applicable to state authorities and journalists, given the difference in the legal nature of their activities: the State is required to exercise heightened restraint and to act within the limits of the principle of legality, whereas the media operate within the paradigm of the freedom of speech.

The practical significance of the findings lies in formulating criteria for the lawfulness of public communication by law enforcement bodies, clarifying the limits on the application of civil-law remedies, and developing recommendations to improve legislation to ensure legal certainty and prevent human rights violations.

1 INTRODUCTION

This paper discusses the study of the legal nature and limits of applying part four of Article 296 of the Civil Code of Ukraine¹ in the context of public communication by law enforcement bodies regarding the course of a pre-trial investigation. The relevance of the topic is determined by the growing role of the state's public communication in criminal proceedings, as well as by the risks of violating the presumption of innocence and individuals' non-pecuniary rights due to the premature disclosure of their personal data. The study focuses on court case No. 761/1004/20,² which illustrates a systemic conflict between the public's right to receive information and an individual's right to respect for honour, dignity, and private life.

Particular attention is paid to analysing the normative content of the blanket formula "in other cases provided by law" and its correlation with constitutional guarantees and the standards of the Convention for the Protection of Human Rights and Fundamental Freedoms.³ The study reveals the problem of the absence of clear legislative criteria defining the permissible limits of disclosing personal data within criminal proceedings, and also demonstrates the risk of substituting the court procedure with the formation of a public perception of a person's guilt outside the legal proceedings framework. Yet, the research emphasises the difference in the legal nature of the state's public communication and mass media activities, which requires applying different standards of lawfulness to them.

The study substantiated that part four of Article 296 of the Civil Code of Ukraine serves as a private-law mechanism to uphold the presumption of innocence and protect the individual from premature reputational stigmatisation. It is established that departure from the general rule prohibiting the disclosure of a name is possible exclusively where there exists a direct and specific legislative basis meeting the requirements of legal certainty. It is established that general provisions of laws regulating the activities of law enforcement bodies do not create such authority. The article reveals the need for normative clarification of the limits of the state's public communication and for the development of uniform judicial approaches to ensure a balance between the right to information and the effective protection of human rights.

1 Civil Code of Ukraine no 435-IV of 16 January 2003 (amended 1 February 2026) <<https://zakon.rada.gov.ua/laws/show/435-15#Text>> accessed 21 March 2026.

2 All materials of case no 761/1004/20 are available in the *Unified State Register of Court Decisions* <<https://reyestr.court.gov.ua>> accessed 21 March 2026.

3 Council of Europe, *European Convention on Human Rights: as amended by Protocols Nos 11, 14 and 15; supplemented by Protocols Nos 1, 4, 6, 7, 12, 13 and 16* (ECtHR 2013).

2 METHODOLOGY

Given the dispersed and fragmented nature of the legal regulation of personal non-pecuniary rights in national legislation, as well as the complex cross-sectoral nature of the issue under study, the methodological basis of this study is a systemic approach to interpreting legal norms. The method of systemic interpretation was chosen as the dominant one since it involves establishing the content of a legal norm by identifying its functional and structural connections with other legal norms and with the general principles of legal regulation. This approach is determined by the intrinsic coherence of law as a unified normative system, where an individual norm cannot be properly understood outside the context of the relevant body of law.

Within the framework of this study, systemic interpretation is applied not in isolation but as part of a consistent algorithm for interpreting legal norms that include linguistic, logical, systemic, and teleological interpretations. This sequence enables the shift from a formal-textual understanding of a legal norm to a clarification of its content in light of its place in the legal system and its purpose. In this context, systemic interpretation serves as the central link, ensuring the consistency of the meaning of part four, Article 296 of the Civil Code of Ukraine, with constitutional guarantees, the provisions of related branches of law, and international legal standards.

The application of the systemic method necessitates a comprehensive analysis of normative acts at different hierarchical levels, in particular, the provisions of the Constitution of Ukraine, the Civil Code of Ukraine, criminal procedural legislation, as well as special laws regulating the activities of law enforcement bodies. At the same time, the study is not limited to formal normative material but also encompasses case law, which serves to concretise and develop legal norms.

An important component of the methodology is the analysis of the factual circumstances of case No. 761/1004/20, which is treated as a practical case study to test the selected interpretative approach. The materials in this case make it possible to verify the relevance and practical effectiveness of the formulated theoretical conclusions and to ensure a connection between abstract legal constructions and their implementation in law enforcement practice.

Thus, the study methodology combines systemic interpretation as the dominant instrument with the comprehensive use of other interpretative approaches, thereby ensuring the integral and coherent disclosure of the meaning of the legal norm under consideration.

3 NORMATIVE FRAMEWORK OF THE STUDY

Given that the subject of this study is the interpretation of the general norm specified in part four, Article 296 of the Civil Code of Ukraine, it is appropriate to reproduce the provisions of this part four only in full:

“Article 296. Right to Use One’s Name

...4. The name of a natural person who has been detained, is suspected or accused of committing a criminal offence, or of a person who has committed an administrative offence, may be used (disclosed) only after a guilty verdict has become effective or a decision in a case concerning an administrative offence has been issued, as well as in other cases provided by law. ...”⁴

This approach is determined by the need to ensure a holistic understanding of the norm's content, structure, and internal logic, which is fundamental to correctly specifying the limits of applying the phrase “in other cases provided by law”. The reproduction of the norm in full enables the avoidance of fragmentary analysis and also creates an appropriate context for further examination of its normative content, functional purpose, and relationship with other provisions of national legislation and constitutional guarantees.

4 FACTS OF THE CASE

The facts of case No. 761/1004/20⁵ are even more interesting in light of the above-cited article of the Civil Code of Ukraine. The dispute, which became the subject of court consideration and, at the time of writing this paper, remains pending before the cassation instance, arose from a claim brought by natural persons against the Ministry of Internal Affairs of Ukraine and against broadcasting organisations as entities engaged in the mass dissemination of information. It constitutes a complex dispute concerning the protection of personal non-pecuniary rights, arising from the public disclosure by law enforcement bodies of information about the course of the pre-trial investigation in a high-profile criminal case and its subsequent retransmission by the mass media.

The factual background of the dispute is based on the fact that in December 2019, during an official briefing broadcast by nationwide television channels, officials of the Ministry of Internal Affairs of Ukraine disclosed information concerning the plaintiffs’ involvement in serious crimes, in particular, the murder of journalist Pavlo Sheremet and the attempted murder of another person. This information was accompanied by the display of the plaintiffs’ photographs and personal data, as well as visually and verbally framed messages

4 Civil Code of Ukraine (n 1) art 296, para 4.

5 Case no. 761/1004/20 (n 2).

that, by their content, created the impression that their participation in the relevant criminal offences had been established.

The said information was not only disseminated once during the briefing, but was also reproduced in subsequent television programmes, which significantly expanded the audience reached and extended the duration of its impact.

In substantiating their claim, the plaintiffs proceeded from the assumption that such form and content of dissemination effectively equated them with persons guilty of committing crimes, which, in their view, constituted a violation of the constitutional principle of the presumption of innocence, as well as damage to their honour, dignity, and business reputation.

A separate and independent section of arguments concerned the allegation of unlawfulness in disclosing their names and photographs in the absence of a guilty verdict, which, according to the plaintiffs, violated their personal non-pecuniary rights guaranteed by civil legislation, in particular the right to a name and the right to one's image. In this regard, they asked the court not only to declare the disseminated information false and hold that it violated their rights, but also to require the defendants to refute it in a manner analogous to its dissemination, and to cease further dissemination of the relevant materials by removing them from information resources.

By contrast, the defendants built their legal position on the argument that the contested information did not contain categorical assertions of the plaintiffs' guilt, but reflected exclusively interim results of the pre-trial investigation, which had been communicated to the public because of the significant public interest in the relevant criminal case. Thus, part two of Article 9 of the Law of Ukraine "On the National Police" provides that the police shall ensure the regular informing state authorities, local self-government bodies, and the public about their activities in the area of protection and defence of human rights and freedoms, combating crime, and ensuring public safety and order.⁶

Special emphasis was set on the fact that the information was disseminated within the powers of the law enforcement body, in compliance with the requirements of criminal procedural law, in particular, where permission had been granted to disclose pre-trial investigation data, and that statements made by officials could be regarded as value judgements, opinions or as communication of the investigative version of events, rather than as establishing the fact of guilt.

The courts of first and appellate instance, in dismissing the claim, proceeded on the basis that the disputed information had been disclosed in the context of informing the public about the course of the investigation and did not contain unequivocal statements regarding

6 Law of Ukraine no. 580-VIII 'On the National Police' of 2 July 2015 (amended 13 March 2026) <<https://zakon.rada.gov.ua/laws/show/580-19#Text>> accessed 21 March 2026.

the plaintiffs' guilt. Therefore, it did not violate the presumption of innocence. Yet, the appellate court acknowledged that the disclosure of the plaintiffs' names and photographs had occurred in breach of the requirements for the protection of personal data. However, it concluded that this violation could not be remedied by instituting a refutation of false information, since the latter applies exclusively to the spread of false factual information, whereas a violation of the right to privacy entails other civil-law remedies.

The cassation review of the case revealed significant issues with law enforcement regarding the proper classification of the information disseminated and the determination of the limits of permissible public communication by law enforcement bodies. The Supreme Court, setting aside the appellate decision in part and remitting the case for a new hearing, pointed to the need of examining whether the statements of the officials had the nature of factual assertions of guilt, whether they complied with the criteria of caution and restraint formulated in the case law of the European Court of Human Rights, and whether the disclosure of the plaintiffs' personal data in the absence of a guilty verdict had been lawful. However, following the new appellate review, the court again found no grounds to satisfy the claim, maintaining its approach of classifying the information as not containing assertions of guilt.

In the subsequent proceedings, the case took on special importance as the Supreme Court received a request regarding the possibility and limits of using civil-law remedies to refute information concerning a person's involvement in a criminal offence. The panel of the Civil Cassation Court raised the issue of the need to depart from the previously formulated legal position of the Supreme Court of Ukraine, according to which such statements may be recognised as false and violating person's honour and dignity, proposing instead an approach under which disputes aimed at denying the fact of involvement in a crime or a person's procedural status in criminal proceedings should not be examined within the framework of civil proceedings.

Therefore, the conceptual core of this case lies in determining the limits of permissible state interference in the area of a person's personal non-pecuniary rights through public communication about criminal proceedings, as well as in clarifying whether the institution of protection of honour, dignity, and business reputation may serve as a procedural mechanism to refute public statements on the involvement in a crime. In a broader context, the case reflects a collision between the principle of the presumption of innocence, the right to respect for private life and reputation, on the one hand, and the freedom of expression and the public's right to receive information, on the other. These require systemic reconciliation in light of the standards of the Convention for the Protection of Human Rights and Fundamental Freedoms.

In the context of the above-mentioned, the following issues of legal application were essentially put before the Supreme Court:

- 1) How should the phrase “and in other cases provided by law,” contained in part four of Article 296 of the Civil Code of Ukraine, be interpreted from the viewpoint of legislative drafting?
- 2) Does the phrase “and in other cases provided by law,” contained in part four of Article 296 of the Civil Code of Ukraine, permit the application to the disputed legal relations of the provisions of the Laws of Ukraine “On the National Police,” “On the National Anti-Corruption Bureau of Ukraine,” and “On the Security Service of Ukraine,” etc., and allow them to be regarded as special laws granting state authorities the right to use (disclose) the name of a natural person suspected or accused of committing a criminal offence to inform about their activities?
- 3) Is it permissible to distinguish between subjects that may use (disclose) the name of a natural person suspected or accused of committing a criminal offence by dividing them into certain groups, in particular, journalists and public bodies, and, depending on this, to assess the lawfulness of the actions carried out by the subject in relation to using (disclosing) the name of a natural person suspected or accused of committing a criminal offence?

It is the sequence of these questions that structures this article.

5 INTERPRETATION OF STATUTORY EXCEPTIONS

Part four, Article 296 of the Civil Code of Ukraine, from the standpoint of contemporary legal theory and human rights protection standards, should be regarded as a private-law mechanism for the preventive restraint of state power against the premature stigmatisation of an individual’s reputation, primarily in the field of criminal prosecution. That is, actually in the area where the risk of society prematurely convincing a person’s involvement in an offence through public communication by state authorities is the highest.

The normative construction of this provision, which permits the use of the name of a detained, suspected, or accused person only after a guilty verdict has become effective or after a ruling in a case on an administrative offence has been issued, and in other cases provided by law, should be interpreted as an exception to the general rule based on constitutional guarantees: the presumption of innocence (Article 62 of the Constitution of Ukraine), respect for a person’s honour, dignity, and reputation (Articles 3, 28, 34, and 68 of the Constitution of Ukraine), and the right to non-interference in personal and family life (Article 32 of the Constitution of Ukraine), as components of the principle of the rule

of law envisaged in Article 8 of the Constitution of Ukraine.⁷ This exception is narrow in content and may be applied only if there is a clear legislative basis.

In other words, the point here is the balance between two legitimate interests. On the one hand, there is the protection of personal and family life, honour, and dignity. On the other hand, there is a need for the state to inform society, ensure public safety, and guarantee the effectiveness of the criminal justice system. In a state governed by the rule of law, this balance cannot be established by administrative expediency or an expansive interpretation of the general powers of public authorities. It is achieved exclusively by law, which defines the limits of interference according to the criteria of accessibility, foreseeability, and legal certainty.⁸

It is this requirement that constitutes the substance of the rule of law.

As Lon L. Fuller emphasised, law presupposes congruence between the proclaimed rule and the practice of its application by officials, which excludes arbitrary deviations from established procedures.⁹ Similarly, Joseph Raz noted that the rule of law requires accessibility, foreseeability, and clarity of legal norms as a precondition for the autonomous planning of an individual's conduct.¹⁰ Jeremy Waldron, in turn, argues that it is the procedural form of law and its definiteness that ensures respect for human dignity as the status of an equal participant in the legal order.¹¹

Therefore, the provisions of part four of Article 296 of the Civil Code of Ukraine should be understood as an instrument for ensuring legality and legal certainty at a level that does not permit the substitution of the court procedure by public condemnation prior to establishing the guilt as prescribed by law.

As regards the legislative significance of the phrase "in other cases provided by law," which constitutes a general blanket norm, legislative technique does not endow it with the properties of a free zone of discretion for the law-applying subject. On the contrary.

7 Constitution of Ukraine No 254 k/96-BP of 28 June 1996 (amended 1 January 2020) <<https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>> accessed 21 March 2026.

8 The established case-law of the European Court of Human Rights requires that any interference with an individual's rights be prescribed by law, necessary in a democratic society, and accompanied by adequate procedural safeguards. See, *Sunday Times v the United Kingdom* (No. 1) App no 6538/74 (ECtHR, 26 April 1979) paras 49–51 <<https://hudoc.echr.coe.int/eng?i=001-57584>> accessed 21 March 2026; *Malone v the United Kingdom* App no. 8691/79 (ECtHR, 2 August 1984) para 67 <<https://hudoc.echr.coe.int/fre?i=001-57533>> accessed 21 March 2026.

9 Lon L Fuller, *The Morality of Law* (Yale UP 1969) 41-3, 81-91.

10 Joseph Raz, 'The Rule of Law and Its Virtue' in Joseph Raz, *The Authority of Law: Essays on Law and Morality* (OUP 1979) 214-8, doi:10.1093/acprof:oso/9780198253457.003.0011.

11 Jeremy Waldron, 'The Concept and the Rule of Law' (2008) 43(1) *Georgia Law Review* 28-30.

This reference signals that departure from the general rule is possible only where there is direct and specific legislative regulation¹², where the legislature has clearly defined the grounds, limits, and manner of such interference.¹³ This concerns, in particular:

- the establishment of a legitimate purpose of disclosure (for example, searching for a person, preventing danger, or protecting victims);
- proof of the need for personalised identification rather than anonymised information;
- determination of the competent subject and the procedure for adopting the relevant decision; and
- the introduction of safeguards preventing the formation of a public perception of a person's guilt prior to any court decision.

In constitutional doctrine, such requirements may be designated as the criterion of the "quality of law."¹⁴

In general, where exceptions are to be established in spheres involving intense interference with human rights, the law, according to Aharon Barak,¹⁵ must delineate the limits of the state's discretion with sufficient clarity so as to exclude arbitrary exercise of power. Robert Alexy demonstrates that the more intensive the interference, the more convincing the justification it requires.¹⁶

For this very reason, the phrase "in other cases provided by law" should be interpreted as permitting the application of *lex specialis* exclusively where there is a direct legislative provision. It cannot be regarded as an unconditional general authorisation to disclose the

12 *Sunday Times v the United Kingdom* (n 8) para 49: "In the Court's opinion, the words 'prescribed by law' imply two requirements. First, the law must be adequately accessible: the citizen must be able to have an indication that is adequate in the circumstances of the legal rules applicable to a given case. Secondly, a norm cannot be regarded as 'law' unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail ..."

13 At the same time, attention should be drawn to one of the case no. 1-135/2018(5846/17) decisions no 1-r/2019 (Constitutional Court of Ukraine, 26 February 2019) [2019] Official Gazette of Ukraine 36/1291, which, inter alia, states as follows: "The Constitution of Ukraine contains no exceptions either to the principle of the presumption of innocence or to the right of a person not to testify or provide explanations regarding himself or herself, members of his or her family, or close relatives. Moreover, Part Two of Article 64 of the Constitution of Ukraine emphasizes the inadmissibility of restricting a number of rights and freedoms, in particular those provided for in Articles 62 and 63 of the Constitution of Ukraine."

14 Svitlana K Dudar, 'Quality of the Law Criteria: Problem the Aspect of Legal Integration of Ukraine and EU' (2015) 1 Law Review of Kyiv University of Law 23.

15 Aharon Barak, *Proportionality: Constitutional Rights and Their Limitations* (CUP 2012) 103-10 (limitation by law), 330-6 (necessity), doi:10.1017/CBO9781139035293.

16 Robert Alexy, *A Theory of Constitutional Rights* (OUP 2002) 47-55, 102-4.

name of a natural person for reasons of informing the public or for the reporting purposes of state authorities. Otherwise, the blanket formula would effectively serve to circumvent the restriction established by Article 296 of the Civil Code of Ukraine, which is incompatible with the requirements of legal certainty and the prohibition of arbitrary state interference, as components of the principle of the rule of law.

6 SPECIFIC STATUTORY BASIS

In light of the above considerations, a negative answer to the second question follows naturally.

The provisions of the Laws of Ukraine “On the National Police,” “On the National Anti-Corruption Bureau of Ukraine,” and “On the Security Service of Ukraine,” which provide for informing the public about the activities of these bodies, are organisational in nature and aim at ensuring openness, accountability, and public trust in state power.¹⁷ They only define the general principles of communication policies concerning the activities of the authority, but do not establish special rules on using (disclosing) personal data of the participants in criminal proceedings. Hence, such provisions may not be regarded as legal grounds for disclosing the name of a suspect or an accused person, contrary to the limitations set out in Article 296 of the Civil Code of Ukraine.

The domestic legal doctrine consistently emphasises that the competence of a subject vested with public authority must be directly, clearly, and unambiguously defined by law. General functions, tasks, or areas of activity of a public authority cannot in themselves create a specific power to interfere with the domain of human rights or restrict them, because the legal certainty of the limits of state power, enshrined, inter alia, in the provisions of Article 19 of the Constitution of Ukraine, constitutes a key requirement of the principle of the rule of law.¹⁸

The foregoing demonstrates that entrusting a law enforcement body with the duty to inform the public does not in itself mean granting it the right to disclose personal data in a manner capable of shaping a public perception of a person’s guilt prior to rendering a guilty verdict.

From the criminal procedural perspective, the requirements of caution are even stricter, since information relating to the pre-trial investigation falls within the field of special safeguards aimed at ensuring a balance between the effectiveness of the investigation, the rights of the suspect, and the interests of victims. As emphasised in the contemporary Ukrainian procedural studies, the disclosure of such information is permissible only within

17 See, for example, Petro A Trachuk (ed), *Administrative Activity of the Police Authorities of Ukraine: Academic Course* (RIK-U 2024).

18 Mykola I Koziubra, ‘The Rule of Law and Ukraine’ (2012) 1-2 Law of Ukraine 30.

the limits expressly established by law, taking into account the presumption of innocence and the inadmissibility of causing harm to a person's reputation.¹⁹

It is obvious that public communication by law enforcement bodies concerning criminal proceedings is a high-risk area for violating the presumption of innocence, since it can influence public perception of a person outside the court procedure.²⁰ Accordingly, information may not be disclosed unless there is a special legal basis, with the purpose, limits, and procedural safeguards clearly defined,²¹ in order to prevent institutional temptations of the state to influence public perception of a particular criminal proceeding.

7 DIFFERENTIATION OF LEGAL STANDARDS

The third issue, concerning the permissibility of distinguishing between the subjects disseminating information, in particular, journalists and state authorities, is relatively easily resolved from the theoretical and legal perspective. This differentiation is not only permissible but conceptually necessary, since the freedom of expression of private media and official communication by the state have different legal natures.

Journalistic activity operates within the paradigm of freedom of speech, public interest and public scrutiny of government, whereas the activities of state authorities are governed by the principles of legality, institutional neutrality and positive obligations to secure and protect human rights. In the case law of the European Court of Human Rights, this distinction is articulated through the concept of the press as a “public watchdog”. In *Bladet Tromsø and Stensaas v. Norway*,²² *Pedersen and Baadsgaard v. Denmark*,²³ *Stoll v. Switzerland*,²⁴ *Magyar*

19 Oleg M Fedoriv, ‘European Standards of Effectiveness of Pre-trial Investigation’ (Ph.D (Law) thesis, Lviv State University of Internal Affairs 2023) 95; Iryna V Hloviuk, *Theoretical and Practical Problems of Pre-trial Investigation* (ODUVS 2017) 198-201; Iryna V Hloviuk, ‘The Case “Mamaladze v. Georgia” and the Presumption of Innocence: Experience for Ukraine’ (The Right to a Fair Trial in Criminal Proceedings: Round table, Lviv, 24 May 2024) 107; Olha O Varchenko, ‘Problematic Issues of Compliance with the Principle of Respect for Human Dignity in Connection with the Disclosure of Criminal Proceedings Information’ (Science and Social Life of Ukraine in the Era of Global Challenges of Humanity in the Digital Age: International scientific and practical conference, Odesa, 21 May 2021) vol 2, 247.

20 See also, Andrew Ashworth and Jeremy Horder, *Principles of Criminal Law* (7th edn, OUP 2013) 66-7, 78-80, 96-102, doi:10.1093/he/9780199672684.001.0001; Varchenko (n 19).

21 In this context, the following is also relevant: Volodymyr H Uvarov, ‘The Principle of Proportionality in Criminal Proceedings’ (2014) 6-2 Law and Society 210.

22 *Bladet Tromsø and Stensaas v Norway* App no. 21980/93 (ECtHR, 20 May 1999) paras 59, 62–65, 68 <<https://hudoc.echr.coe.int/eng?i=001-58369>> accessed 21 March 2026.

23 *Pedersen and Baadsgaard v Denmark* App no. 49017/99 (ECtHR, 17 December 2004) paras 71–78 <<https://hudoc.echr.coe.int/eng?i=001-67818>> accessed 21 March 2026.

24 *Stoll v Switzerland* App no. 69698/01 (ECtHR, 10 December 2007) paras 101–110, 126–141 <<https://hudoc.echr.coe.int/eng?i=001-83870>> accessed 21 March 2026.

*Helsinki Bizottság v. Hungary*²⁵ and *Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina*,²⁶ the Court consistently referred to the fact that the press, journalists and other actors involved in information dissemination on matters of public interest perform a special democratic function, and that State interference with such activity, therefore, requires truly convincing justification.

In the liberal legal tradition, freedom of speech is regarded as a key instrument of democratic control over public power.²⁷ Objectively, it is believed that public authorities, by using information resources and the authority of the State, are capable of creating an asymmetric impact on an individual's legal position. Accordingly, freedom of public debate should be understood as primarily seeking to restrain State power, rather than to enable its informational dominance. This approach is consistent with the position of the ECtHR in *Castells v. Spain*,²⁸ where the Court emphasised that the limits of permissible criticism are wider with regard to the Government than in relation to a private individual or even a politician, since in a democratic society the actions or omissions of the Government must be subject to close scrutiny not only by Parliament and the courts, but also by the public. The same logic is reflected in *Vides Aizsardzības Klubs v. Latvia*,²⁹ *Dyuldin and Kislov v. Russia*,³⁰ *Radio Twist a.s. v. Slovakia*,³¹ *Romanenko and Others v. Russia*,³² *Toranzo Gomez v. Spain*³³ and *Lombardo and Others v. Malta*,³⁴ where the Court confirmed that State authorities, public officials and institutions performing public functions must accept wider limits of acceptable criticism.

25 *Magyar Helsinki Bizottság v Hungary* App no. 18030/11 (ECtHR, 8 November 2016) paras 165–170 <<https://hudoc.echr.coe.int/fre?i=001-167828>> accessed 21 March 2026.

26 *Medžlis Islamske Zajednice Brčko and Others v Bosnia and Herzegovina* App no. 17224/11 (ECtHR, 27 June 2017) paras 75–88 <<https://hudoc.echr.coe.int/eng?i=001-175180>> accessed 21 March 2026.

27 This conclusion may be made based on the role assigned by the ECtHR to the press – a public watchdog for democracy. See, *Barthold v Germany* App no 8734/79 (ECtHR, 25 March 1985) para 58 <<https://hudoc.echr.coe.int/eng?i=001-57432>> accessed 21 March 2026; *Lingens v Austria* App no. 9815/82 (ECtHR, 8 July 1986) para 44 <<https://hudoc.echr.coe.int/eng?i=001-57523>> accessed 21 March 2026.

28 *Castells v Spain* App no. 11798/85 (ECtHR, 23 April 1992) series A no. 236, paras 42–46 <<https://hudoc.echr.coe.int/eng?i=001-57772>> accessed 21 March 2026.

29 *Vides Aizsardzibas Klubs v Latvia* App no. 57829/00 (ECtHR, 27 May 2004) paras 40–46 <<https://hudoc.echr.coe.int/eng?i=001-66349>> accessed 21 March 2026.

30 *Dyuldin and Kislov v Russia* App no. 25968/02 (ECtHR, 31 July 2007) paras 43–48 <<https://hudoc.echr.coe.int/eng?i=001-82038>> accessed 21 March 2026.

31 *Radio Twist as v Slovakia* (App no. 62202/00 (ECtHR, 19 December 2006) paras 53–65 <<https://hudoc.echr.coe.int/eng?i=001-78603>> accessed 21 March 2026.

32 *Romanenko and Others v Russia* App no. 11751/03 (ECtHR, 8 October 2009) paras 39–43 <<https://hudoc.echr.coe.int/eng?i=001-94843>> accessed 21 March 2026.

33 *Toranzo Gomez v Spain* App no. 26922/14 (ECtHR, 20 November 2018) paras 58–66 <<https://hudoc.echr.coe.int/eng?i=001-187736>> accessed 21 March 2026.

34 *Lombardo and Others v Malta* App no. 7333/06 (ECtHR, 24 April 2007) paras 50–61 <<https://hudoc.echr.coe.int/eng?i=001-80217>> accessed 21 March 2026.

Consequently, the State cannot be regarded as an ordinary speaker, since its statements have a different legitimating force and different legal consequences for their addressees. Provided that a journalist, even when mistaken in certain details, acts in good faith, on a sufficient factual basis and aiming at informing the public of a matter of public interest, the State, by contrast, does not enjoy an analogous freedom of editorial discretion. Its communications are not an expression of private autonomy, but a form of exercising public power. Accordingly, State communication must be assessed not only against the criteria governing the permissibility of expression under Article 10 of the Convention, but also against the requirements of legality, proportionality, institutional restraint, accuracy and the prevention of arbitrary interference with individual rights.

In the context of these considerations, Jeremy Waldron's position is apposite: he noted that law, as a form of governance, addresses the human being not as an object of administrative influence, but as a rational participant in the legal order, capable of understanding the grounds for State decisions, responding to them with reasoned argument, and relating individual legal prescriptions to the coherent and systemic logic of legal regulation as a whole; this constitutes one of the ways the law shows respect for human dignity.³⁵

It follows that, where a journalist informs the public in good faith about an event of public interest, the State is required to act according to different standards. Its communications must be limited to the purpose that directly derives from law, for example, the search for a person, the prevention of danger, informing the population of risks, or ensuring the proper functioning of justice. They must be neutral, factually accurate, minimally necessary for both content and form, and adopted through a procedure that provides for internal control and the accountability of public officials. In this respect, the Court's approaches in *Bédát v. Switzerland*,³⁶ *Brisic v. Romania*,³⁷ *Tourancheau and July v. France*³⁸ and *Dupuis and Others v. France*³⁹ are particularly illustrative: in those cases, the Court highlighted the risks of violating the secrecy of the investigation, the presumption of innocence, the private life of participants in criminal proceedings, and the proper administration of justice.

It is especially important that the ECtHR case law does not identify the status of a person subject to criminal proceedings with that of a public figure. The very fact of a criminal investigation does not deprive a person of the right to respect for private life, reputation and the presumption of innocence. In *Bédát v. Switzerland*, the ECtHR emphasised that

35 Jeremy Waldron, 'How Law Protects Dignity' (2012) 71(1) *The Cambridge Law Journal* 210.

36 *Bédát v. Switzerland* App no. 56925/08 (ECtHR, 29 March 2016) paras 48–81 <<https://hudoc.echr.coe.int/eng?i=001-161898>> accessed 21 March 2026.

37 *Brisic v. Romania* App no. 26238/10 (ECtHR, 11 December 2018) paras 99–124 <<https://hudoc.echr.coe.int/eng?i=001-188274>> accessed 21 March 2026.

38 *Tourancheau and July v. France* App no. 53886/00 (ECtHR, 24 November 2005) paras 65–79 <<https://hudoc.echr.coe.int/eng?i=001-71307>> accessed 21 March 2026.

39 *Dupuis and Others v. France* App no. 1914/02 (ECtHR, 7 June 2007) paras 35–46 <<https://hudoc.echr.coe.int/eng?i=001-80903>> accessed 21 March 2026.

information from the case file in criminal proceedings may require the highest level of protection, and that the State is required not only to refrain from its unlawful disclosure but also to ensure the effective protection of the accused person's rights. Therefore, an official communication by a state authority, which virtually shapes the public perception of a person's guilt before a court judgement, or which excessively personalises negative information, may acquire the features of a *de facto* punishment without trial, which is incompatible with the presumption of innocence and the right to respect for private and family life.

At the same time, this logic does not mean that journalists are released from their professional duties. The ECtHR has consistently emphasised that freedom of the press entails "duties and responsibilities". However, these duties are of a different nature from those incumbent on the State. For a journalist, the key requirements are good faith, the availability of sufficient facts, the distinction between facts and value judgements, the proper use of sources, and a contribution to debate on matters of public interest. By contrast, for a state authority, the determining criteria include competence, a lawful aim, procedural discipline, neutrality, and the prevention of abuse of State authority.

Thus, the differentiation of standards applicable to journalists and to state authorities is not a manifestation of inequality or double standards; on the contrary, it is a necessary condition for ensuring the rule of law. Freedom of speech serves to control public power, whereas public power itself, when engaging in public communication, must act with heightened restraint, procedural discipline, and respect for human dignity. It is for this reason that the standards developed by the ECtHR for the protection of journalistic activity cannot be mechanically transposed to the official communication of State authorities: private media exercise freedom of expression, while the State exercises public competence.

8 CONCLUSIONS

The phrase "in other cases provided by law" should be interpreted as permitting the application of *lex specialis* exclusively where there is a direct legislative provision.

The phrase "and in other cases provided by law," contained in part four, Article 296 of the Civil Code of Ukraine, does not enable to apply it to the disputed legal relations among the provisions of the Laws of Ukraine "On the National Police," "On the National Anti-Corruption Bureau of Ukraine," and "On the Security Service of Ukraine," etc., and to regard them as special laws granting state authorities the right to use (disclose) the name of a natural person suspected or accused of committing a criminal offence for the purpose of informing about their activities, due to the absence of direct legislative regulation.

The differentiation of the subjects entitled to use (disclose) the name of a natural person suspected or accused of committing a criminal offence into certain groups, in particular journalists and state bodies, is not only permissible, but also necessary.

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АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Тематичне дослідження

ОСОБИСТІ НЕМАЙНОВІ ПРАВА ТА КОМУНІКАЦІЯ У КРИМІНАЛЬНОМУ ПРАВОСУДДІ: ЦИВІЛЬНО-ПРАВОВИЙ ВИМІР КРИЗЬ ПРИЗМУ УКРАЇНСЬКОЇ СУДОВОЇ ПРАКТИКИ

Сергій Глотов

АНОТАЦІЯ

Вступ. Питання, що розглядаються у цій статті, виникають на перетині цивільного, конституційного та кримінального процесуального права і пов'язані з визначенням меж допустимої публічної комунікації правоохоронних органів під час досудового розслідування. Судова справа №761/1004/20 актуалізує фундаментальний правовий конфлікт між презумпцією невинуватості та правом на повагу до честі, гідності й приватного життя, з одного боку, та свободою вираження поглядів і правом громадськості на отримання інформації — з іншого. Проблема набуває особливої гостроти у справах, пов'язаних із персоналізованим розголошенням інформації про осіб, яких суд ще не визнав винними, що потенційно може призвести до їхньої соціальної стигматизації через завдання шкоди їхній репутації. У цьому контексті суттєве значення має тлумачення частини четвертої статті 296 Цивільного кодексу України, зокрема формулювання «в інших випадках, встановлених законом», а також визначення допустимих меж використання цивільно-правових способів захисту у відповідь на такі дії держави. Необхідність цього дослідження зумовлена відсутністю усталеної судової практики, наявністю суперечливих підходів у практиці Верховного Суду та потребою в розробленні доктринально обґрунтованої моделі забезпечення балансу між правами і свободами.

Методи. Методологічну основу дослідження становить поєднання доктринального аналізу норм цивільного, конституційного та кримінального процесуального права з елементами порівняльно-правового та практико-орієнтованого підходів. У дослідженні застосовано системне та телеологічне тлумачення частини четвертої статті 296 Цивільного кодексу України у взаємозв'язку з конституційними гарантіями (зокрема статтями 3, 8, 32 та 62 Конституції України), а також стандартами Конвенції про захист прав людини і основоположних свобод. Значну увагу приділено практиці Європейського суду з прав людини щодо критеріїв «якості закону», пропорційності втручання та стандартів належної обережності у публічних висловлюваннях органів державної влади. Джерельну основу роботи становлять судові рішення у справі № 761/1004/20, відповідна практика Верховного Суду, правова доктрина (зокрема праці Л. Фуллера, Дж. Раза, Дж. Волдрона, Р. Алексі та А. Барака), а також сучасні українські дослідження у сфері кримінального процесу та захисту особистих немайнових прав.

Результати та висновки. У дослідженні обґрунтовано, що частину четверту статті 296 Цивільного кодексу України слід розглядати як приватноправовий

інструмент реалізації конституційного принципу презумпції невинуватості у сфері публічної комунікації держави, спрямований на запобігання передчасній репутаційній стигматизації особи.

*Доведено, що формулювання «в інших випадках, встановлених законом» не створює відкритої дискреції для органів державної влади, а вимагає наявності чіткої, конкретної та передбачуваної законодавчої підстави у вигляді спеціальної правової норми (*lex specialis*), яка визначає мету, межі та порядок втручання. Встановлено, що загальні положення законів, які регулюють діяльність правоохоронних органів і передбачають інформування громадськості, не можуть розглядатися як достатня правова підстава для розголошення персональних даних підозрюваних. У роботі обґрунтовано необхідність розмежування стандартів, що застосовуються до органів державної влади та журналістів, з огляду на відмінність правової природи їхньої діяльності: держава зобов'язана виявляти підвищену стриманість та діяти в межах принципу законності, тоді як медіа здійснюють діяльність у межах свободи слова.*

Практичне значення отриманих результатів полягає у формулюванні критеріїв правомірності публічної комунікації правоохоронних органів, уточненні меж застосування цивільно-правових способів захисту та розробленні рекомендацій щодо вдосконалення законодавства для забезпечення правової визначеності та запобігання порушенням прав людини

Ключові слова. Презумпція невинуватості; захист честі та гідності; право на ім'я; персональні дані; публічні заяви органів державної влади; частина четверта статті 296 Цивільного кодексу України; свобода вираження поглядів; верховенство права; баланс прав.