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de la Facultad de Ciencias Jurídicas y Políticas de la Universidad del Zulia
Maracaibo, Venezuela

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Cuestiones Políticas

La revista **Cuestiones Políticas,** es una publicación auspiciada por el Instituto de Estudios Políticos y Derecho Público "Dr. Humberto J. La Roche" (IEPDP) de la Facultad de Cienhcias Jurídicas y Políticas de la Universidad del Zulia.

Entre sus objetivos figuran: contribuir con el progreso científico de las Ciencias Humanas y Sociales, a través de la divulgación de los resultados logrados por sus investigadores; estimular la investigación en estas áreas del saber; y propiciar la presentación, discución y confrontación de las ideas y avances científicos con compromiso social.

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Cuestiones Políticas
Vol. 39 Nº 69 (Julio - Diciembre 2021)

Contenido

Cuestiones Políticas
Vol. 39 Nº 69 (Julio - Diciembre 2021)

Cuestiones Políticas
Vol. 39 Nº 69 (Julio - Diciembre 2021)

Cuestiones Políticas
Vol. 39 Nº 69 (Julio - Diciembre 2021)

Cuestiones Políticas
Vol. 39 Nº 69 (Julio - Diciembre 2021)

Cuestiones Políticas
Vol. 39 Nº 69 (Julio - Diciembre 2021)

Cuestiones Políticas
Vol. 39 Nº 69 (Julio - Diciembre 2021)

Cuestiones Políticas Vol. 39, Nº 69 (Julio - Diciembre) 2021, 16-18
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Transhumanismo: ¿fantasía o realidad que se aproxima?

DOI: https://doi.org/10.46398/cuestpol.3969.00

Jorge J. Villasmil Espinoza *

Resumen

El objetivo del texto es presentar la editorial del Volumen 39, número 69 de la edición de julio-diciembre de Cuestiones Políticas. En líneas generales el movimiento transhumanista se nos presenta como una propuesta filosófica y ontológica ganada a superar las limitaciones de la condición humano. De modo que más que una entidad acabada y estática se asume la condición humana o, la naturaleza humana, como un proceso siempre inacabado que debe ser mejorada esencialmente por medios naturales (evolución) o artificiales (tecnología) como condición de posibilidad para llevar a la humanidad a una etapa histórica superior de su existencia colectiva. Estos argumentos permiten concluir que, en el futuro próximo la integración voluntaria en el cuerpo y la mente de los avances científicos en materia de nanorrobótica, ingeniería genética, inteligencia artificial, realidad virtual y computación cuántica, entre otros, van a convertir a la persona humana en un ser diferente, en consecuencia, conviene preguntar ¿Qué aportes pueden efectuar el derecho, la ciencia política y las ciencias sociales en general para orientar estos procesos a un marco de justicia, dignidad y equidad en beneficio de la humanidad en su conjunto y no de proyectos políticos e ideológicos de cara la construcción de una hegemonía?

Palabras clave: transhumanismo; condición humana; naturaleza humana; derechos humanos; nuevo orden mundial.

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Transhumanism: fantasy or approaching reality?

Abstract

The objective of the text is to present the editorial of Volume 39, number 69 of the July-December issue of Political Issues. In general, the transhumanist movement is presented to us as a philosophical and ontological proposal won to overcome the limitations of the human condition. So that more than a finished and static entity, the human condition or, human nature, is assumed as an ever-unfinished process that must be improved essentially by natural (evolution) or artificial (technology) means as a condition of possibility to bring humanity to a higher historical stage of its collective existence. These arguments allow us to conclude that, in the near future, the voluntary integration into the body and mind of scientific advances in nanorobotics, genetic engineering, artificial intelligence, virtual reality and quantum computing, among others, will turn the human person into a different being, therefore, it is appropriate to ask What contributions can law, political science and social sciences in general make to orient these processes to a framework of justice, dignity and equity for the benefit of humanity as a whole and not of political and ideological projects in the face of the construction of a hegemony?

Keywords: transhumanism; human condition; human nature; human rights; new world order.

El movimiento humanista que resurge en el contexto del siglo de las luces en Europa y se traslada palatinamente a lo que hoy es latinoamericana tenía *grosso modo* tres ideas centrales que sirvieron de guía a sus distintos programas políticos y filosóficos, a saber: 1. Una fe exacerbada en la razón como fuerza intrínseca a la condición humana, capaz de superar todas las barreras que trancaban el desarrollo de la civilización; 2. La necesidad de obliterar las supersticiones religiosas en los imaginarios colectivos y apostar, en contraste, por la filosofía y la ciencia como conocimientos al servicio del perfeccionamiento las capacidades humanas; 3) edificar contratos sociales capaces de estructurar espacios de convivencias libres del autoritarismos históricos para redimir a la persona humana.

Por su parte, el movimiento transhumanista postula en su afamada Declaración transhumanista (versión 2013) que: "**La humanidad será profundamente afectada por la ciencia y la tecnología en el futuro**. Nuestra visión incluye la posibilidad de ampliar el potencial humano sobrepasando edad, adquisición lenta de conocimiento, sufrimiento involuntario, así como nuestra permanencia en el planeta Tierra" (2013: s/p). de hecho, en plena sintonía con los postulados del pensamiento liberal clásico los transhumanistas afirman categóricamente que:

> Favorecemos la visión que **los individuos deben ser los que decidan y elijan sobre su vida**. Esto incluye el uso de técnicas que pueden incrementar la memoria, la concentración y la energía mental; terapias para extender la vida; elección de tecnologías reproductivas; procedimientos criónicos; y cualquier posible modificación humana con tecnologías de mejoramiento (Declaración Transhumanista, 2013: s/p).

En perspectiva comparada tanto los humanistas de antaño como los transhumanistas del mundo de hoy tienen muchos aspectos en común en cuanto a la esencia de sus programas filosóficos, esto más allá de las marcadas diferencias contextuales. Si se tiene en cuenta que la máxima expresión de la razón instrumental esta en los vertiginosos avances científicos en términos de nanorrobótica, ingeniería genética, inteligencia artificial, realidad virtual, computación cuántica y medicina (Vidovic, 2021), no es descabellado aceptar que la integración voluntaria de estos dispositivos al cuerpo y la mente de la persona humana, son condición suficiente para superar los límites materiales y simbólicos de la humanidad y diseñar un una nueva entidad neo-humana o quizá posthumana que lleve a la civilización en su conjunto a una fase cualitativamente superior de su historia, con posibilidades y horizontes insospechados.

En consecuencia, conviene preguntar ¿Qué aportes pueden efectuar el derecho, la ciencia política y las ciencias sociales en general para orientar estos procesos a un marco de justicia, dignidad y equidad en beneficio de la humanidad en su conjunto y no de proyectos políticos e ideológicos de cara la construcción de una hegemonía? Con independencia de las preguntas que se puedan otorgar a este debate, queda claro que el transhumanismo es un fenómeno en pleno desarrollo independientemente que se este de acuerdo o no con lo que pueda significar este, de modo que se trata de una realidad palpable que puede llegar a superar a la ciencia ficción.

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Derecho Público

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IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Valores jurídicos en la Regulación Penal de la Competencia Desleal en Ecuador

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Resumen

En todos los ámbitos del mundo jurídico existen aspiraciones superiores que representan valores jurídicos a ser protegidos, de entre los cuales destacan la justicia, el bien común y la seguridad jurídica. El presente trabajo se propuso analizar si el Legislador Ecuatoriano, en su proceso de construcción y promulgación de la normativa penal reguladora de la competencia desleal, incorporó a la misma estos tres valores. De forma lamentable, los resultados muestran una aparente ausencia de los tres valores jurídicos en la ley penal, dejando a los operadores de justicia en desventaja ante la necesidad de controlar esta clase de delitos, y a la sociedad en espera de su cumplimiento. Mediante un ejercicio de hermenéutica jurídica, el estudio parte de un problema real en el sistema jurídico ecuatoriano regulatorio del delito de competencia desleal, el cual exige ser discutido en la búsqueda de que el Estado tome las medidas necesarias para solucionarlo.

Palabras clave: Competencia desleal en Ecuador; valores jurídicos; regulación penal de la competencia desleal; seguridad jurídica; hermenéutica jurídica.

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Legal Values in the Criminal Regulation of Unfair Competition in Ecuador

Abstract

In all areas of the legal world there are higher aspirations, which represent legal values to be protected, like the justice, the common good and legal security stand out. The present work was proposed to analyze if the Ecuadorian Legislator, in its process of construction and promulgation of the criminal law regulating against the unfair competition, incorporated these three values into it. Regrettably, the results show an apparent absence of the three legal values in criminal law, leaving legal operators at a disadvantage in view of the need to control this type of crime and society, awaiting compliance. Through an exercise of legal hermeneutics, the study starts from a real problem in the Ecuadorian legal system of the criminal law against of the unfair competition, which demands to be discussed in the search for the State to take the necessary measures to solve this problem.

Key words: Unfair competition in Ecuador; legal values; criminal regulation of unfair competition; legal security; legal hermeneutics.

1. Introducción

Como resultado de las relaciones de intercambio en los mercados, en ocasiones se presentan actos de competencia desleal que están reñidos con la ley, la lealtad y las buenas costumbres mercantiles, siendo por tanto factibles de ser procesados jurídicamente en las vías administrativa, civil y penal. En el ámbito penal, constituye un requisito *sine qua non* que el acto a ser procesado se encuentre previamente tipificado en el texto de la ley, ya que caso contrario los operadores de justicia no pueden actuar, quedando probablemente los delitos de competencia desleal en la impunidad. Sin embargo, el que todos (o la mayor parte) de los posibles tipos penales relacionados a la competencia desleal, estén contenidos en el texto de la ley penal, depende de que el Legislador, al momento de redactar la misma, haya considerado la importancia de la presencia de los valores jurídicos de la justicia, el bien común y la seguridad jurídica, como aquellas grandes aspiraciones que la sociedad quiere alcanzar a través de la aplicación efectiva en su sistema normativo y axiológico. En este propósito, el presente trabajo se propuso determinar si el Legislador Ecuatoriano, en su proceso de construcción y posterior promulgación de la normativa penal reguladora de la competencia desleal, ha incorporado estos tres valores jurídicos en el marco legal, o si tal vez, estos no han sido considerados al momento de

elaborar y expedir la Ley, dejando a los operadores jurídicos en desventaja ante la necesidad de controlar esta clase de delitos, y a la sociedad en espera de su cumplimiento.

Mediante una investigación de enfoque cualitativo, específicamente desarrollada en el marco de la hermenéutica jurídica se trataron los ángulos doctrinario y objetivo del problema planteado. Al decir de Bedoya (2011), esta postura interpretativa, critica las concepciones mecanicistas y acríticas en el campo de la aplicación del Derecho, en el ejercicio de la redacción de cuerpos normativos y en el ámbito de la investigación jurídica en general, bajo el supuesto de que en estos menesteres prevalecen o, deben prevalecer, los procedimientos propios de la racionalidad jurídica. Compartimos con Bedoya (2011), una idea de la hermenéutica en la cual no solo se sitúan los textos en los marcos de referencia de donde emergen y cobran significación; sino que también, revindicamos las subjetividades en todo el proceso de elaboración dogmática, aplicación e investigación del saber jurídico en tanto que factor protagónico de los procesos intelectivos del lenguaje y, en consecuencia, en toda la trama jurídica asumida como proceso social, del que emergen relaciones de poder, que en ningún caso son neutrales ni asépticas.

2. Libre mercado y competencia desleal

El mercado, escenario donde el presente estudio analiza la competencia desleal y su normativa reguladora en el ámbito penal, funciona tal y como lo dijo hace tres siglos Adam Smith: “No de la benevolencia del carnicero, del vinatero, del panadero, sino de sus miras al interés propio es de quien esperamos y debemos esperar nuestro alimento (1776:23).” Esta expresión desnuda la realidad de los intercambios comerciales, donde cada actor, “busca sólo su propio beneficio, pero en este caso como en otros una mano invisible lo conduce a promover un objetivo que no entraba en sus propósitos” (Smith, 1776:322), y de esta manera, sin quererlo, promueve a su vez el bienestar general. Con estas palabras, el autor pretendía explicar la ley de la oferta y la demanda, en la cual la libre competencia es el factor fundamental de la estructura económica de la sociedad, ya que significa la más clara manifestación de las libertades personales (Vidal, 2001: 64).

Como se colige, dentro del tema de estudio se puede decir que la competencia es algo connatural al mercado. Sin embargo, en ocasiones, esta competencia se realiza mediante la ejecución de actos que sobrepasan los límites permitidos por la “sana costumbre mercantil” y las leyes de un determinado lugar, lo cual la ubica dentro de la esfera de la competencia considerada desleal e ilegal, merecedora de ser procesada y sancionada por el sistema jurídico de un Estado determinado. A la luz de la historia

y sus resultados, es discutible si la liberalización de la economía generada mediante la globalización de mercados ha proporcionado prosperidad general y una vida feliz y plena a todas las personas, tal como en su momento lo cuestiona (Samuelson y Nordhaus, 1998:3), llegando más bien a convertirse en un problema de nuestro tiempo (Stiglitz, 2002: 314). Lo cierto es que este nuevo nivel de competencia global ha generado profundos cambios en las relaciones mercantiles, haciéndolas más propensas a la presencia de actos considerados de competencia desleal.

Para Otamendi, la competencia en un mercado representa la lucha por la clientela, y cuando esta competencia es desleal, pasa a convertirse en un acto ilícito que, de estar tipificado como tal en la legislación, "alcanza la categoría de delito (1998: 1)". De otra parte, para Tapia es común que en los sistemas comerciales se permita y favorezca la competencia, "incluso aquella fuerte o ruda" (2008: 181), la cual sin embargo en ningún caso puede llegar a ser sucia o desleal. De lo mencionado, la competencia desleal puede ser definida como el conjunto de acciones que, en su ejecución, no respetan las normas jurídicas y los usos y costumbres honestas y generalmente aceptadas en el ámbito comercial de una determinada sociedad.

Respecto a la regulación internacional de la competencia desleal, el (Convenio de París, 1979: Art. 10, num. 2)[2] determina que "constituye acto de competencia desleal todo acto de competencia contrario a los usos honestos en materia industrial o comercial," mientras que a nivel nacional, la (Ley Orgánica de Regulación y Control del Poder de Mercado, 2014: Art. 25) conceptualiza como desleal "todo hecho, acto o práctica contrarios a los usos o costumbres honestos en el desarrollo de actividades económicas, incluyendo aquellas conductas realizadas en o a través de la actividad publicitaria…". Respecto a lo que se entiende por usos y costumbres honestos en el ejercicio del comercio, la (Superintendencia de Industria y Comercio de Colombia-SIC, Concepto 01086015, núm. 2, 2001: 1), considera que estos podrían verse como aquellos "principios morales y éticos" que deben ser cumplidos por los comerciantes y demás participantes de la actividad competitiva en los mercados, teniendo presente en este contexto que su observancia constituye una práctica usual.

2.1 Principales actos de competencia desleal y su efecto

La Organización Mundial de Propiedad Intelectual (en adelante OMPI) ha analizado en profundidad el fenómeno de la competencia desleal. En uno de sus estudios, realizado por (OMPI, Protección contra la competencia desleal, análisis de la situación mundial actual, 1994: 29), se dice que un acto que se considere desleal, con frecuencia "surge en circunstancias complejas

2 El Convenio de París es la más antigua norma internacional de propiedad industrial, y de regulación de la competencia desleal. Fue creada en el año de 1883, y luego de varias actualizaciones (la última en 1979), se mantiene en vigencia bajo la administración de la OMPI.

que exigen de escrutinio y juicio basados en las normas establecidas o existentes (...)", ante lo cual también se debe considerar el hecho que toda categorización o clasificación que se haga en este tema posee un cierto grado de traslape entre todos los conceptos y categorías empleadas. De esta manera, el estudio de la OMPI establece dos categorías generales de los actos de competencia desleal: i) los actos que están tipificados en el Convenio de París; y, ii) otros actos no tipificados por este convenio.

En relación con la primera categoría, esta toma como base el (Convenio de París, 1979: Art. 10 bis, núm. 3), el cual dispone que, de manera particular, deberán prohibirse los siguientes actos:

> 1. cualquier acto capaz de crear una confusión, por cualquier medio que sea, respecto del establecimiento, los productos o la actividad industrial o comercial de un competidor; 2. las aseveraciones falsas, en el ejercicio del comercio, capaces de desacreditar el establecimiento, los productos o la actividad industrial o comercial de un competidor; 3. las indicaciones o aseveraciones cuyo empleo, en el ejercicio del comercio, pudieren inducir al público a error sobre la naturaleza, el modo de fabricación, las características, la aptitud en el empleo o la cantidad de los productos.

Respecto a la segunda categoría, con efecto general el estudio de la OMPI incluye otros actos adicionales, que a pesar de no estar tipificados en el supra citado Art. 10bis, núm. 3), han sido reconocidos por los diversos tribunales de justicia a nivel internacional como actos de competencia desleal, y que cada vez más, están siendo materia de regulaciones normativas nacionales. Estos actos son los siguientes: a) violación de los secretos empresariales; b) aprovechamiento injusto del esfuerzo ajeno; c) publicidad comparativa; d) otros actos diversos considerados de competencia desleal, como pueden ser: i) acoso publicitario, explotación del miedo, presión psicológica indebida; ii) promoción de ventas: primas, regalos, loterías, etc.; iii) obstrucción de las actividades de mercado; iv) incitación para alejar los clientes de los competidores; v) inducir al personal o agentes de los competidores a rescindir sus contratos de empleo o sus contratos comerciales.

Como efecto común ocasionado por los diversos actos de competencia desleal, en lo principal se genera la afectación a los derechos de todas las personas en general y, de manera particular, de los competidores y consumidores involucrados en los actos de intercambio en el mercado. Frente a esto, la teoría del abuso del derecho plantea la necesidad de proteger el equilibrio entre los derechos individuales y los derechos colectivos, de tal manera que la convergencia de ellos permita el restablecimiento de los derechos con la función social, ya que estos actos alteran el equilibrio y la libertad competitiva en el comercio, precisamente por el desborde de los límites personales (Negrete, 2016).

3. Marco jurídico penal vigente en Ecuador regulatorio de los actos de competencia desleal

El Código Orgánico Integral Penal ecuatoriano (en adelante COIP), tipifica como delito diversas prácticas que son susceptibles de asimilarse a los actos de competencia desleal contenidos en la normativa relativa al Derecho de Competencia. Al respecto, este código regula los actos de competencia desleal, dividiéndolos en tres ámbitos de posible infracción penal, a saber:

3.1En lo relativo a los delitos contra el derecho a la propiedad

El (COIP, 2014: Art. 208 A), tipifica el delito de falsificación de marcas y piratería lesiva contra los derechos de autor, disponiendo que la persona que, "fabrique o comercialice, a escala comercial, mercancías o su envoltorio que lleven puesta, sin la debida autorización, una marca idéntica a la válidamente registrada para tales mercancías o que esa marca no pueda distinguirse en sus aspectos esenciales", será sancionada pecuniariamente mediante la siguiente escala: i) cuando el valor de la mercadería incautada se encuentre en el rango de 142 a 424 salarios básicos unificados del trabajador en general (en adelante SBUTG[3]), se aplicará una multa de 55 a 85 SBUTG; ii) cuando el valor de la mercadería incautada sea mayor a 424 y menor a 847 SBUTG, se aplicará una multa de 86 a 175 SBUTG; y, iii) cuando el valor de la mercadería incautada sea mayor a 847 SBUTG, se aplicará una multa de 176 a 295 SBUTG.

Y continúa el mismo Art. 208 A, el cual en su segundo párrafo enfatiza que:

> La misma pena se aplicará a la persona que produzca, reproduzca o comercialice a escala comercial, mercancía pirata que lesione el derecho de autor para las obras registradas o no, entendiéndose estas como cualquier copia hecha sin consentimiento del titular del derecho de autor o de una persona debidamente autorizada por él. Las disposiciones precedentes no se aplicarán a bienes o productos que no tengan un fin comercial. En el caso de las marcas notorias, no se requerirá que el titular del derecho demuestre que la marca está válidamente registrada, sino únicamente su derecho como titular. Cuando una persona jurídica sea la responsable, será sancionada con las mismas multas y su extinción. No constituye delito la fabricación o comercialización de mercancías imitadas que tengan una marca con características propias que no conlleven a una confusión con la marca original, sin perjuicio de las responsabilidades civiles a que haya lugar.

3 A la fecha de redactar el artículo (diciembre de 2017), en Ecuador el Salario Básico Unificado del Trabajador en General, es de 375 dólares de los Estados Unidos de América. Al momento (agosto 2020), este valor es de 400 dólares.

Como se observa, el supra citado artículo solo tipifica como delitos contra el derecho a la propiedad, dos clases de actos de competencia desleal, relacionados a: i) la falsificación de marcas; y ii) los actos relacionados a la piratería lesiva contra los derechos de autor.

3.2 En lo relativo a los delitos contra los derechos de los consumidores, usuarios y otros agentes del mercado

El (COIP, 2014: Art. 235), tipifica el delito de engaño al comprador respecto a la identidad o calidad de las cosas o servicios vendidos, disponiendo que:

> La persona que provoque error al comprador o al usuario acerca de la identidad o calidad de la cosa o servicio vendido, entregando fraudulentamente un distinto objeto o servicio ofertado en la publicidad, información o contrato o acerca de la naturaleza u origen de la cosa o servicio vendido, entregando una semejante en apariencia a la que se ha comprado o creído comprar, será sancionada con pena privativa de libertad de seis meses a un año. Si se determina responsabilidad penal de una persona jurídica, será sancionada con multa de diez a quince salarios básicos unificados del trabajador en general.

En el supra citado artículo, se observa que el COIP incluye como tercer tipo penal regulado, la generación de confusión en el consumidor (respecto a la identidad o calidad de las cosas o servicios vendidos), lo cual a su vez podría conllevarlo a errar en el momento de tomar su decisión de compra. Como se ha observado, la norma penal tipifica solo tres actos de competencia desleal factibles de ser procesados penalmente, por lo que es notoria la existencia de insuficiencia normativa al respecto, ya que esta Ley no tipifica de manera completa la mayor parte de prácticas de esta clase contenidas en las normas nacionales o internacionales pertinentes, dejando al Estado y a los posibles particulares afectados, sin la posibilidad real de que estos últimos puedan llevar adelante el ejercicio de la acción penal en defensa de sus derechos, situación ciertamente compleja ya que como bien sabemos, si las infracciones a un determinado marco jurídico no pueden ser sancionadas adecuada y oportunamente, es posible que sobrevenga un clima de impunidad, el cual lastima el Estado de Derecho y a todos quienes habitan en él.

Con efecto ilustrativo de lo antes mencionado, la (Ley Orgánica de Regulación y Control del Poder del Mercado de Ecuador, 2011: Art. 27), tipifica 29 diversas acciones consideradas prácticas desleales, por lo que sería simplemente lógico que las dos normas ecuatorianas guardasen concordancia entre sí, y de esta forma el COIP tipifique las mismas 29 acciones de competencia desleal, permitiendo un tratamiento integral del tema y evitando el aparecimiento de la impunidad.

4. Axiología: marco de estudio de los valores jurídicos

En la búsqueda de una mejor comprensión de la importancia de los valores jurídicos en las diversas interacciones sociales, es necesario recordar que la Axiología es la disciplina filosófica que se encarga del estudio de los valores y su esencia. El desarrollo científico de la Axiología formal se debe principalmente al trabajo de (Hartman, 1973) quien desarrolló la ciencia de la Axiología entre 1930 y 1973, pretendiendo entender cómo piensan las personas e identificar ciertos patrones generales de pensamiento (y por lo tanto de comportamiento) de los seres humanos. En este sentido, desarrolló principalmente su trabajo filosófico, buscando responder a la pregunta fundamental "¿qué es el bien?", conceptuando al mismo de tal forma que, "pudiera ser organizado para ayudar a preservar y enriquecer el valor de la vida humana" (1973: s/p). De esta forma, este investigador encontró la respuesta a su modo de ver en el axioma sobre el que basó su ciencia de la Axiología, al decir que, "una cosa es buena cuando se ajusta al sentido de su concepto (Hartman, 1973: s/p)"

Es así que llegamos a la Axiología jurídica, dominio filosófico que estudia los valores jurídicos, descubriendo y explicando –al menos en teoría– cuáles deberían ser aquellos que tornarán correcto un modelo de Derecho, o que primarán a la hora de elaborar o aplicar el Derecho. Por lo demás, destaca la posición del filósofo norteamericano John Rawls, quien redefinió a la Axiología Jurídica como la Teoría de la Justicia, término con el que bautizó su obra cumbre, en la cual procura resolver el problema de la justicia distributiva mediante el uso de una variante del contrato social.

Para (Rawls, 1999:12), el más importante de los valores jurídicos es precisamente el de la justicia, dada su trascendencia e impacto en la vida social. Para este autor, la justicia como justicia comienza con una de las acciones más generales que puede hacer toda sociedad, esto es, "con la elección de los primeros principios de una concepción de justicia que regule todas las críticas posteriores y la reforma de las instituciones."[4] De esta forma, cuando la sociedad ha elegido su propia concepción de la justicia, está en posición para definir colectivamente una constitución y una legislatura para promulgar las diversas leyes que necesite, pero siempre observando los principios de justicia inicialmente acordados en los orígenes de su contrato social.

La sinopsis axiológica desarrollada hasta aquí, utilizando el valor jurídico de la justicia como ejemplo, cumple el propósito de remarcar la importancia que tienen los valores jurídicos para la vida de una sociedad. Por esta razón,

4 Texto original en inglés, tomado de RAWLS, John, 1999: p. 12: "Justice as fairness begins, as I have said, with one of the most general of all choices which persons might make together, namely, with the choice of the first principles of a conception of justice which is to regulate all subsequent criticism and reform of institutions" (traducción propia).

es de relevancia para el análisis jurídico el determinar si existe presencia (o ausencia) de los valores de la justicia, bien común y seguridad jurídica, en la normativa regulatoria del fenómeno de la competencia desleal en el país, en este caso en particular dentro del ámbito penal.

El propósito perseguido es el de generar criterios válidos que fortalezcan o incorporen la presencia de los mencionados valores jurídicos, en las normas positivas pertinentes. Por supuesto, esta incorporación debería implementarse a nivel general dentro del espíritu de la ley, ya que resultaría inadecuado (y hasta peligroso) que los valores jurídicos sean positivizados, es decir, reducidos al simple texto impreso de la ley, pretendiendo haber superado sus características de ser universales, abstractos, a históricos e inmutables, pasando simplemente a ser "objeto de estudio de la teoría del derecho encargada del derecho que es, cuando su análisis corresponde al derecho que debe ser" (Estrada, 2011: 49).

No se debe perder de vista que los valores jurídicos tratan de materializar el cumplimiento del valor justicia (como máximo valor del sistema jurídico), mostrando con claridad la importancia que la justicias tiene para una sociedad, la cual se materializa a través de la aplicación adecuada de la ley. Sin embargo, una vez positivizados los valores jurídicos habrán perdido en gran medida esa capacidad de guiar y orientar hacia la consecución de la justicia a todos quienes tienen contacto con la ley, desde el legislador que la crea hasta los ciudadanos sujetos a ella, pasando por los diversos operadores del sistema jurídico que la aplican.

5. Presencia de los valores jurídicos de la justicia, seguridad jurídica y bien común, en la normativa penal ecuatoriana regulatoria de la competencia desleal

Para Portela, los valores jurídicos son, "cualidades, finalidades que el Derecho ha de conseguir para ser considerado plenamente tal" (2008: 62), facilitando de esta manera su correcto funcionamiento dentro del orden social. Existen diversos valores jurídicos, algunos de ellos considerados tradicionales, como pueden ser el orden, la paz, la seguridad, la justicia, la libertad y el bien común. No obstante, en vista que los efectos dañosos de la competencia desleal son capaces de lesionar a toda la sociedad, el presente estudio toma para su análisis los valores de la justicia, el bien común y la seguridad jurídica, debido al amplio impacto que estos valores causan en la sociedad, sea con su presencia o ausencia, dentro de las normas positivas y la realidad social en sí.

5.1 La justicia

La justicia es considerada la virtud cardinal del Derecho, la que retribuye a cada uno lo que por derecho le corresponde. La justicia tiene carácter abstracto, debido a que es un ente ideal que causa satisfacción cuando creemos que la misma se ha cumplido y, nos causa molestia cuando creemos lo contrario; en otras palabras, es una regla de armonía, de igualdad proporcional, distributiva entre lo que se da y lo que se recibe en las relaciones entre individuos. El problema no está en la idea de justicia, sino en los criterios para su medición, en las pautas de valoración de las realidades que deben ser igualadas. Por supuesto, en este sentido es fundamental saber cuál es el criterio para establecer la verdadera equivalencia, una que sea precisamente ´justa´ y adecuada.

Respecto al vínculo de la justicia con el sistema normativo, en Moral a Nicómaco interpretado por (De Azcárate, 1873: 123), Aristóteles piensa que "la justicia de las acciones está de ordinario de acuerdo con su legalidad", lo cual se puede llevar a la práctica mediante dos posibles formas de concebir la justicia: como legalidad y como igualdad. En el primer caso, una acción es justa si se realiza conforme a las leyes; y en el segundo caso, una acción es justa cuando se establece y perdura una relación de trato igualitario.

Por su parte, la *Instituta*[5]creada por orden del emperador romano Justiniano I, inicia con la siguiente frase: "*iustitia est constans et perpetua voluntas ius hum cuique tribuendi,*"[6] la cual ilustra con total claridad la trascendental función que le ha sido asignada a la justicia en las antiguas normas romanas de Derecho. Además, colabora a entender la razón por la cual la Axiología la considera el valor jurídico más importante de todos, debido a que el resultado del accionar conjunto de todos los demás valores, en realidad, solo trata de materializar la real consecución de la justicia.

En la época contemporánea, siglos XX y XXI, diversos filósofos han aportado su contribución al mejor entendimiento de la justicia, como por ejemplo Kelsen, para quien la justicia es "aquello bajo cuya protección puede florecer la ciencia y, junto con la ciencia, la verdad y la sinceridad," (1991: 120), o como Rawls (1958), quien define su ya mencionada teoría de la justicia en términos de *justice as fairness*, ubicando a la equidad como el valor que debe presidir la justicia, donde Rawls mira a la equidad como la existencia de un acuerdo recíproco entre los seres humanos, particular visión que para Puyol representa el haber materializado un trato, en el que,

5 La *Instituta* (Instituciones) fue creada con el propósito de contar con un tratado elemental de Derecho, que permita la enseñanza de la disciplina a la juventud deseosa de estudiar las leyes. Formaba parte del *Corpus Iuris Civilis,* de Justiniano I, y fue promulgada el 21 de noviembre de 533, adquiriendo fuerza de ley el 30 de diciembre del mismo año. Consultar en las referencias biográficas Kriegel y Kriegel (1889).

6 En castellano: justicia es la constante y firme voluntad que dar a cada uno su derecho.

"todas las partes sientan que la diferencia entre lo que dan a los demás y que reciben de ellos es adecuada o justa" (2004: 124).

Cabe precisar que el valor de la justicia tiene diferente connotación dependiendo del paradigma de quien lo mire. De esta manera, para la corriente *iuspositivista* por ejemplo, el valor de la justicia se cumplirá en la medida que el texto de la ley sea respetado; mientras que por otro lado, para el *iusnaturalismo,* el valor de la justicia se materializará cuando en cada caso puntal sean respetados aquellos valores superiores. Es así que dentro del dilatado debate entre estas dos visiones filosóficas del Derecho y, a manera de una posición intermedia, ha tenido gran connotación el aporte de John Finnis, quien propone la existencia de un *iusnaturalismo* no enfrentado al positivismo jurídico.

Finnis, comentado por el español (Rodríguez – Toubez, 1993: 386-387), de manera ciertamente ecléctica, plantea una justicia enfocada en alcanzar el bien común, el cual una vez distribuido en toda la comunidad le permite a cada integrante alcanzar una vida plena y de bienestar, lo que tiene concordancia con la (Constitución de la República del Ecuador, 2008: Art. 3, núm. 5), la cual pretende que todos los ciudadanos puedan alcanzar el tan anhelado estado de bienestar denominado "buen vivir." La visión de este autor es comentada por Hart, para quien la interpretación flexible del *iusnaturalismo* de Finnis, "es en muchos aspectos complementaria más que rival de la teoría jurídica positivista" (1983: 10).

5.2 El bien común

Este valor es considerado otro de los fines del Derecho, ya que abarca el conjunto de las condiciones de la vida social, necesarias para que los seres humanos puedan vivir a plenitud. Es necesario recordar que el Derecho tiene como objeto regular la actividad individual y permitir la vida en sociedad, la que busca un fin que es común de todos los integrantes del grupo social. No es de menor importancia, decir que no se puede concebir norma alguna integrante del sistema jurídico que tenga como objeto el alcance de un fin individual, ya que todas deberían permitir alcanzar el bien de todos, es decir, el bien común en tanto que dispositivo básico para la edificación intersubjetiva de los espacios de convivencia ciudadana.

Esta percepción abiertamente humanista, originada en los antiguos pensadores griegos, principalmente en Platón y Aristóteles, fue fortalecida y arraigada gracias al trabajo filosófico de quien es considerado su más grande representante: Tomás de Aquino. Es así que Tomás de Aquino, abordó el tema en su obra "Suma Teológica", cuando al referirse a la esencia de la ley afirmaba que esta no es más que "una prescripción de la razón, en orden al bien común, promulgada por aquel que tiene el cuidado de la comunidad» (1225-1274: s/p). Esta posición generó gran impacto en la visión de la

Iglesia Católica respecto al bien común, generando consecuencias en su pensamiento que se evidenciaron, por ejemplo, en la encíclica *Rerum Novarum,*[7] mediante la cual se construyó la conocida Doctrina Social de la Iglesia, en cuyo Compendio se entiende al bien común como, "el conjunto de condiciones de la vida social que hacen posible a las asociaciones y a cada uno de sus miembros el logro más pleno y más fácil de la propia perfección" (Pontificio Consejo de Justicia y Paz, 2004 s/p).

Para esta concepción, el bien común no es la suma de los bienes de cada uno de los miembros de la sociedad, ya que ese bien es indivisible, y solo con la colaboración de todos puede ser alcanzado, aumentado y protegido. E incluso va más allá, exigiendo cuidado y prudencia por parte de cada uno y, de manera especial, de aquellos que ejercen la autoridad, en clara alusión a lo que hoy conocemos como los Estados nacionales y sus sistemas jurídicos y políticos.

Muchas de las posiciones de *Rerum Novarum* fueron completadas por encíclicas posteriores, entre ellas la *Mater et Magistra,* en la cual el (Papa Juan XXIII, 1961: s/p) señalaba que, "en la época actual se considera que el bien común consiste principalmente en la defensa de los deberes y derechos de la persona humana" (Pontificio Consejo de Justicia y Paz, 2004 s/p).[8]

Evidentemente con el paso del tiempo y el fin de la tradición escolástica, el concepto del bien común sufrió diversos cambios, en razón de la puesta en escena de nuevas realidades políticas, económicas y sociales. Al respecto, Michelini manifiesta que para no pocos pensadores, "el concepto de bien común recobra un nuevo sentido en el ámbito político y jurídico con la teoría del contrato social (Hobbes, Locke) (2007: s/p)", lo que configura el contexto actual en el cual el hombre, mediante su actividad cotidiana, procura ser el artífice de su propia superación; empero, dado que vive en sociedad, no puede alcanzar sus fines individuales si estos no se adecúan a

7 *Rerum Novarum* fue la primera encíclica social de la Iglesia Católica, promulgada por el Papa León XIII, el 15 de mayo de 1891. Consiste en una carta abierta dirigida a todos los obispos y catedráticos, relacionada a las condiciones de las clases trabajadoras, en la cual el Papa mostraba su apoyo a los derechos laborales y, al mismo tiempo, ratificaba el derecho que tienen las personas a la propiedad privada. Además, analizaba las relaciones existentes entre el gobierno, las empresas, los trabajadores y la Iglesia, proponiendo una nueva organización socioeconómica. *Rerum Novarum* fundó los principios para buscar la justicia social en la economía y la industria, siendo una piedra fundamental para la posterior construcción de la actualmente conocida Doctrina Social de la Iglesia. Fuente: Pontificio Consejo justicia y Paz, 2004. Compendio de la doctrina social de la Iglesia, núm. 164, El principio del bien común. Ciudad de El Vaticano. Disponible en línea. En: http://www.vatican.va/roman_curia/pontifical_councils/justpeace/documents/rc_pc_justpeace_doc_20060526_compendio-dott-soc_sp.html#Significado%20y%20aplicaciones%20principales. Fecha de consulta: 1 de julio de 2017.

8 La encíclica *Mater et Magistra* (madre y maestra), relativa al desarrollo de la cuestión social a la luz de la doctrina cristiana, fue publicada en Roma, el 15 de mayo del año 1961, por orden del Papa Juan XXIII y está presente en el compendio. Fuente: Pontificio Consejo justicia y Paz, 2004. Compendio de la doctrina social de la Iglesia, núm. 164, El principio del bien común. Ciudad de El Vaticano. Disponible en línea. En: http://www.vatican.va/roman_curia/pontifical_councils/justpeace/documents/rc_pc_justpeace_doc_20060526_compendio-dott-soc_sp.html#Significado%20y%20aplicaciones%20principales. Fecha de consulta: 1 de julio de 2017.

los esquemas que le impone la misma sociedad. De esta manera, el hombre no puede actuar en la búsqueda de su propio bien individual y del bien común, sin considerar (y acatar) la conducta que, a través del Derecho y su sistema normativo, se le pide observar de manera generalmente obligatoria.

5.3 La seguridad jurídica

Esta constituye una garantía que el Estado le otorga a cada ciudadano, de que su persona, bienes y derechos, no serán violentados; o de que, si esto llegara a producirse, el Estado y la sociedad aseguran la protección y reparación de estos. En otras palabras, la seguridad jurídica es una garantía de Derecho que tiene cada individuo, relativa a que su situación jurídica no será modificada más que por procedimientos regulares y conductos legales establecidos, previa y debidamente publicados y, respetando el debido proceso y el derecho a la defensa que tiene toda persona en un Estado de Derecho.

En el sistema constitucional ecuatoriano, la seguridad jurídica es considerada como un derecho público, subjetivo, reconocido por la Constitución de la República, cuando en su Art. 82 dispone taxativamente que, "el derecho a la seguridad jurídica se fundamenta en el respeto a la Constitución y en la existencia de normas jurídicas previas, claras, públicas y aplicadas por las autoridades competentes. "Al respecto del reconocimiento constitucional del derecho a la seguridad jurídica, para Zavala, tal reconocimiento no significa otra cosa que "calificar a la seguridad jurídica como un bien fundamental, esto es, necesario para satisfacer una necesidad vital del ser humano" (2011: 219). Siendo así, la seguridad es un bien jurídico que satisface una necesidad de la persona física, conceptualizando al bien jurídico como aquel ente que, debidamente tutelado, garantizado y protegido por el Derecho, es fundamental para la realización plena del ser humano al interior de la sociedad.

Por otra parte, la seguridad jurídica es un elemento polifacético que se relaciona con los ámbitos: racional, étnico, técnico, positivo y sociológico del Derecho. De esta forma, el Derecho debe aspirar a realizar otros valores adicionales a la justicia y el bien común, pero íntimamente relacionados entre sí, como por ejemplo la seguridad jurídica, mediante la cual recrea en la sociedad un ambiente favorable y las condiciones adecuadas para que una persona desarrolle normalmente sus actividades, en la convicción de que si estas cumplen con ser licitas, serán respetadas por el Estado.

De esta manera, la existencia del valor de la seguridad jurídica constituye una garantía otorgada por el Estado a los individuos de que cada persona puede ejercer su derechos individuales con libertad y responsabilidad, sin el riesgo de que abruptamente el marco jurídico cambie y establezca nuevas condiciones para ese ejercicio. En otras palabras, la seguridad jurídica

consiste en la realización plena del orden jurídico positivo y apropiado, para la sociedad que rige.

5.4 Presencia de los valores de la justicia y la seguridad jurídica, en la normativa penal ecuatoriana regulatoria de la competencia desleal

En el año 1998, el Congreso Nacional del Ecuador promulgó la Ley de Propiedad Intelectual, la cual posteriormente fue codificada y promulgada mediante el R.O. 426 del 28 de diciembre de 2006. Esta norma, en sus artículos del 319 al 331, tipificaba varios delitos contra la propiedad intelectual y sus diversas formas, considerados como actos de competencia desleal, aquellos tipificados y procesados mediante la aplicación del Código de Procedimiento Penal y, de ser el caso, sancionados aplicando la misma Codificación de la Ley de Propiedad Intelectual (en adelante, CLPI). La iniciativa procesal para perseguir de oficio estas infracciones, la tenía la Fiscalía General del Estado, según lo dispuesto en el Art. 328 de la CLPI, al ser las mismas consideradas infracciones "de acción pública y de instancia oficial."

Sin embargo, en el año 2014 se promulgó el nuevo COIP, el cual reemplazaba a los anteriores Código Penal y Código de Procedimiento Penal, y además mediante su Disposición Derogatoria Vigésimo Segunda, daba de baja los artículos del 319 al 331, y el segundo inciso del artículo 342 de la CLPI. De esta manera, el Legislador pretendía que el COIP abarcase de manera holística, el espectro general de todos los ámbitos de infracciones penales posibles y la tipificación de cada acto específico (delito o contravención) en el país, y además, las vías procesales para su tratamiento y sanción. Es decir, el legislador pretendía que la nueva ley, sea una norma sustantiva y adjetiva a la vez (integral).

No obstante, posiblemente por la prisa que tuvo la Asamblea Nacional en promulgar la nueva ley (en base a los intereses políticos del momento), el Legislador derogó el articulado supra mencionado relativo a los actos de competencia desleal contenidos en la CLPI, y aparentemente "se olvidó" de reemplazarlo por un articulado similar en el texto del nuevo COIP, dejando de esta forma un importante vacío legal en el país. En la práctica, este vacío normativo provocó que una vez en vigencia el nuevo COIP, no sea posible perseguir penalmente ninguna clase de delitos de competencia desleal, ya que como se conoce, no se puede seguir una acción penal contra delitos no tipificados en el texto de la norma pertinente.

Ante los reclamos generalizados provenientes sobre todo de los colegios de abogados de Ecuador y de los profesionales en libre ejercicio no agremiados, el Legislador ecuatoriano se vio presionado para reformar el recién promulgado COIP. Es así como con fecha 30 de septiembre de

2015, mediante el R.O. 598, se promulgó la Ley Orgánica Reformatoria del Código Orgánico Integral Penal, la cual procuraba enmendar las diversas omisiones y errores que había provocado la innecesaria prisa legislativa. En lo referente al combate contra los delitos de competencia desleal, esta ley reformatoria, mediante su Art. 3, incorporó en el texto del COIP, el Art. 208 A.

Sin embargo, cabría decir que en este caso "el remedio fue peor que la enfermedad", ya que nuevamente por la prisa en presentar la reforma solicitada, el Legislador incorporó al texto de la ley solo tres tipos penales relativos a la regulación de la competencia desleal, y se olvidó de hacerlo con el resto de prácticas de esta clase contenidas en las normas no penales, como por ejemplo la Ley Orgánica de Regulación y Control del Poder del Mercado, la cual como ya se mencionó regula desde el Derecho Económico a 29 clases diferentes de actos de competencia desleal, lo cual por supuesto se muestra como una situación jurídica totalmente adversa. Pero esto no es todo; la situación empeora cuando revisamos las acciones procesales para sancionar esta clase de delitos.

Así, el Art. 208 A del COIP contempla la posibilidad de sancionar pecuniariamente a la persona que fabrique o comercialice, mercancías que en su envoltorio contengan, sin la respectiva autorización, una marca idéntica a otra válidamente registrada para tales mercancías, disponiendo que el valor mínimo a considerar de la mercadería incautada, para considerarlo infracción penal sea el equivalente a 142 SBUTG, lo que a la fecha significaría USD 56.800[9]. En este caso, de comprobarse el delito luego de haberse aplicado el debido proceso judicial, se podría aplicar una multa de 155 a 185 SBUTG, es decir, a la fecha esta multa oscilaría entre USD 62.000 a USD 74.000. Sin embargo, en la práctica, ¿qué sucede con las infracciones de esta clase, que no alcancen los USD 56.800?

Al respecto, sucede que en estricta aplicación del principio de legalidad contenido en el Art. 226 de la Constitución de la República, y, dado que en el Derecho Penal no se permite la interpretación extensiva de las normas, en la práctica es usual que estos actos de competencia desleal no alcance a ser juzgados, quedando en la impunidad por insuficiencia normativa, ya que la Fiscalía General del Estado generalmente se inhibe de conocer los mismos cuando no llegan al valor mínimo tipificado por la Ley para procesarlos penalmente.

En base a la situación normativa antes descrita, y en lo relativo a la presencia de los valores jurídicos de justicia, bien común y seguridad jurídica, los operadores de justicia no podrán investigar ni procesar la mayor parte de las infracciones penales que se presenten por esta causa, quedando los hechos y sus autores en la impunidad, la cual como es evidente representa la antítesis de la justicia.

9 Ver nota 2.

De otra parte, el COIP y su Art. 208 A, tampoco les otorga a los operadores de justicia (fiscales y jueces penales) las herramientas procesales adecuadas y suficientes para combatir los delitos de competencia desleal, ya que al poner un piso mínimo en el monto de los perjuicios causados por estas infracciones, dejan fuera del alcance procesal penal a gran cantidad de actos de competencia desleal. Por lo expuesto, no se observa la real y efectiva presencia del valor jurídico de la justicia en la normativa penal ecuatoriana regulatoria de la competencia desleal.

Respecto al valor jurídico del bien común, de forma similar a lo ocurrido con el valor justicia, y en base a la falta de tipificación en el COIP de la mayor parte de actos de competencia desleal, y a la existencia de pisos mínimos de daños económicos para poder procesar estos delitos, tampoco se puede considerar que, en la práctica, exista presencia del valor del bien común en la normativa penal ecuatoriana relativa al combate contra la competencia desleal.

En lo referente al valor de la seguridad jurídica, la situación es peor, debido a que cuando el Legislador ecuatoriano derogó mediante el nuevo COIP, las normas que permitían el procesamiento penal de los actos de competencia desleal (contenidas en la anterior CLPI), y por descuido u olvido no las reemplazó oportunamente por un nuevo articulado equivalente, fácticamente envió a la comunidad nacional e internacional una imagen de descuido (por decir lo menos) respecto al tratamiento jurídico que el país le otorga a la regulación de la competencia desleal.

Evidentemente esta situación no puede seguir adelante, ya que desde la entrada en vigor del COIP ha disminuido notablemente la posibilidad de combatir penalmente los delitos de competencia desleal, que surjan como resultado de la cada vez más intensa dinamia de los mercados.

Además, ética y moralmente, la situación antes descrita deja en duda la presencia efectiva de los valores jurídicos, objeto de estudio, en la norma penal ecuatoriana, ya que, de aplicarse los principios generales del Derecho, como los de buena fe e igualdad ante la ley, toda persona que cometa esta clase de infracción debería ser imputada y de ser el caso procesada y sancionada.

Resulta de importancia resaltar que, el dejar sin sanción adecuada a los delitos de competencia desleal, por la no presencia de los valores jurídicos citados en la norma positiva penal, ciertamente genera un daño moral mayúsculo a la sociedad, anticipando la posibilidad de que esta le pierda confianza al sistema jurídico en sí mismo.

Para enmendar esta situación, sería deseable que se produzca en un tiempo razonable una nueva reforma (segunda) del COIP, que regrese las cosas a su estado normal y necesario. A manera de simples criterios orientadores, los cambios sugeridos podrían tener relación con:

a. El restablecimiento de la concordancia entre el Código Orgánico Integral Penal -COIP y la Ley Orgánica de Regulación y Control del Poder de Mercado -LORCPM, incorporando al COIP, todos los tipos de infracciones tipificadas como actos de competencia desleal en la LORCPM, para su control y procesamiento penal.

b. La supresión, en el Art. 208A del COIP del piso mínimo de 142 SBUTG, para poder procesar penalmente a quienes incurran en infracciones contra la competencia desleal.

Finalmente, y a manera de justificación de las posibles reformas propuestas para el COIP, es bienvenido el pensamiento de Roxin, quien a propósito del sistema normativo penal se preguntaba lo siguiente: "¿de qué sirve la solución de un problema jurídico, que a pesar de su hermosa claridad y uniformidad es, desde el punto de vista político criminal, erróneo?" (2000: 19); lo cual además se complementa con las ideas de Rawls, para quien la justicia es un tema preeminente en toda sociedad, y en el camino hacia su búsqueda "no importa que las leyes e instituciones están ordenadas y sean eficientes: si son injustas han de ser reformadas o abolidas" (1979: 19).

Conclusiones

Una renovada relectura hermenéutica de los cuerpos normativos a nuestra disposición, efectuada en la presente investigación, ha permitido identificar las limitaciones objetivas en términos de los "déficits axiológicos" existentes en los procesos de regulación penal de la competencia desleal en Ecuador, en base a lo cual se concluye que:

a. El Código Orgánico Integral Penal –COIP ecuatoriano, y sus posteriores reformas legislativas, no evidencian la presencia real de los valores cardinales de la justicia, el bien común y la seguridad jurídica, en las normas encargadas de la regulación y protección de los derechos fundamentales de las personas contra los diversos actos de competencia desleal.

b. La vigente legislación penal del país, no contempla la tipificación completa de todos los posibles actos de competencia desleal, situación claramente reñida con la necesidad jurídica - social de que, en un Estado con una Constitución garantista de derechos fundamentales, se alcancen los valores de justicia, bien común y seguridad jurídica.

c. Se hace necesaria una reforma al Código Orgánico Integral Penal ecuatoriano-COIP, la cual a través de incorporar al mismo los valores de la justicia, bien común y seguridad jurídica, permitan que el marco regulatorio nacional disponga de normas más efectivas para

la regulación y sanción de los diversos actos de competencia desleal que se presenten en la vida social del país.

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Utilización eficaz de las tecnologías de información y comunicación en procesos sancionatorios y responsabilidad fiscal

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Resumen

El objetivo del artículo fue discutir la relación entre las tecnologías de la información ante los procesos sancionatorios y responsabilidad fiscal, sucedidos en los órganos de control fiscal territorial, espacios en los cuales se requiere mayores recursos en tecnología con destinación específica para ello, aprovechando el momento de la vigencia del Acto Legislativo 04 de 2019 en Colombia. En lo metodológico se hizo uso del diseño documental de investigación próximo al ensayo crítico. Para ilustrar los argumentos y puntos de vista del equipo de investigación, se muestra situaciones en las cuales se podría mejorar el proceso administrativo sancionatorio y de responsabilidad fiscal, enfatizando en la hipótesis que la utilización de tecnologías de la información permite el afianzamiento al derecho fundamental del debido proceso de los investigados. Se concluye que, cuando se extienden las herramientas tecnológicas a la institucionalidad del Estado Colombiano se logra tener un mejor acercamiento con la ciudadanía, lo cual genera una expectativa positiva en la satisfacción de sus necesidades, siendo la esencia del Estado Social de Derecho construir en todo momento una democracia de resultados que transcienda a las formalidades procesales y amplia la justicia social.

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Palabras clave: derecho y TICS; debido proceso; proceso sancionatorio; responsabilidad Fiscal; tecnologías de la información en Colombia.

Effective use of information and communication technologies in sanctioning processes and fiscal responsibility

Abstract

The objective of the article was to discuss the relationship between information technologies in the face of the sanctioning processes and fiscal responsibility, which occurred in the territorial tax control bodies, spaces and which more resources are required in technology with specific purpose for this purpose, taking advantage of the moment of the validity of Legislative Act 04 of 2019 in Colombia. Methodologically, the documentary research design near the critical essay was used. To illustrate the arguments and views of the research team, it shows situations in which the administrative process of sanctioning and fiscal responsibility could be improved, emphasizing the hypothesis that the use of information technologies allows the strengthening of the fundamental right of due process of those investigated. It is concluded that, when technological tools are extended to the institutionality of the Colombian State, it is possible to have a better approach with citizenship, which generates a positive expectation in meeting their needs, being the essence of the Social State of Law to build at all times a democracy of results that transcends procedural formalities and expands social justice.

Keywords: law and ICT; due process; sanctioning process; Fiscal responsibility; information technologies in Colombia.

Introducción

La utilización de las tecnologías de la información (TIC) en el desarrollo de procesos administrativos sancionatorios y de responsabilidad fiscal constituye en elemento fundamental de garantías constitucionales en el debido proceso y publicidad, reflejando el compromiso del Estado colombiano en la búsqueda de acercamientos más agiles que permitan una mejor relación Estado-Ciudadanía. En este sentido, si el Estado tiene facultad sancionatoria y de responsabilidad a través de los entes nacionales

y territoriales de control fiscal, éstos últimos que se mantienen vigentes en virtud del Acto legislativo 04 de 2019, el cual plantea expresamente el fortalecimiento del control fiscal.

Este derecho es una manifestación de poder jurídico necesaria para la regulación de la vida en sociedad y para que la administración pueda cumplir adecuadamente sus funciones. Aunque se ejercita a partir de la vulneración o perturbación de reglas preestablecidas, tiene una cierta finalidad preventiva en el simple hecho de proponer un cuadro sancionador como consecuencia del incumplimiento de las prescripciones normativas. Se traduce normalmente en la sanción correctiva y disciplinaria para reprimir las acciones u omisiones antijurídicas y constituye además un complemento de la potestad de mando, pues contribuye al cumplimiento de las decisiones administrativas.

Es así como, al menos en teoría, el poder punitivo que se reconoce al Estado encuentra fundamento en la exigibilidad de las normas generales y no en una atribución de privilegio a favor de determinadas personas, sectores o partidos políticos. La unidad del derecho punitivo del Estado se vigoriza en el ejercicio de sus atribuciones de reparto funcional, jurisdiccional y administrativo. En consecuencia, es absolutamente imposible pretender un Estado intervencionista sin mecanismos sancionatorios. La vigilancia y la inspección se tornarían inoperantes, si faltara el elemento coercitivo con base a un poder vinculante.

El derecho al debido proceso como mecanismo efectivo de protección al derecho a la defensa y contradicción el cual debe permitir la generación de garantías para el ciudadano frente al poder del Estado, tomando como referencia la concepción del Estado Social de Derecho que la Constitución de 1991 consagra en el régimen colombiano, los objetivos proclamados en el preámbulo, así como la existencia de derechos económicos fundamentales, son elementos que tienen implicaciones sustantivas sobre la legitimidad constitucional de las políticas económicas.

Es así como en este artículo se busca determinar si la utilización de las tecnologías de la información permiten la garantía del derecho al debido proceso y, al mismo tiempo, posibilitan la mejora en las organización, teniendo en cuenta que: "La eficiencia interna se verá directamente impactada, puesto que los procesos de automatización de tareas mecánicas y el establecimiento de canales de comunicación vía web, permitirá liberar a trabajadores de tareas repetitivas y de poco valor añadido" (Aibar, 2001: s/p).

Por lo demás:

> El período de tiempo durante el cual tiene lugar una innovación en la tecnología de la información se convierte en la fuerza latente de la transformación social, capaz de acarrear una expansión en la calidad y en la cantidad de información y un aumento en gran escala del almacenamiento de la información (Masuda, 1984: 67).

Planteamiento del problema

Puede indicarse que la utilización de herramientas tecnológicas de la información es un deber de las autoridades para la generación de garantías constitucionales como el debido proceso, entendiendo que: "El conjunto de tecnologías permiten el acceso, producción, tratamiento y comunicación de información presentada en diferentes códigos (texto, imagen, sonido)" (Muñoz, 2016:11). Por regla general, estas herramientas permiten la generación de garantías a los implicados en una investigación, así como tiene efectos en el sistema de gestión ambiental, la adopción de buenas prácticas en el desarrollo de actividades para mejorar impactos ambientales generados en el uso del papel.

Por ello, la administración pública está en el deber de prestar sus servicios de forma que permita a cualquier ciudadano conocer la información, pues ésta "debe ofrecer una cierta flexibilidad tecnológica para que el mayor número de ciudadanos pueda relacionarse con ella" (Guillén, 2010: 52). Sin embargo, existen falencias en entidades públicas que desarrollan procesos administrativos sancionatorios en la utilización de herramientas tecnológicas de la información para la generación de garantías constitucionales como el debido proceso. De modo que es la ciudadanía requiere del esfuerzo de los representantes de la administración a efectos de soluciones los graves problemas de comunicación, ofreciendo ésta última las herramientas necesarias para lograr esa comunicación fluida, por los medios disponibles tecnológicos.

Muchas entidades no han podido generar alternativas de virtualidad en el desarrollo de sus procesos administrativos sancionatorios, muy a pesar de que el principio de necesidad de la prueba les exige acopiar todos los medios de convicción posibles, para luego, tomar la decisión que corresponda reconociendo el mérito probatorio de cada medio en particular, y de todos en conjunto, en la esfera del principio de la unidad de la prueba. Es por ello, que la tecnología facilita la asunción de garantías democráticas a la ciudadanía.

Ahora bien, se ha podido determinar que no existe una norma reglamentaria que permita a los conductores realizar sus descargos en cualquier lugar donde se encuentren, a través de las herramientas virtuales de información, que se han venido implementando en otras áreas jurídicas como el derecho penal. Esto necesario, en aras de la materialización del derecho al debido proceso.

Ello implica la aplicación de una forma de responsabilidad objetiva que, en el derecho sancionatorio está proscrita por la Constitución Política en su artículo 29. Es así como:

> Lo que se pretende con la implementación del procedimiento administrativo electrónico es el acercamiento de la administración hacia los ciudadanos, de manera que el principio de igualdad en el desarrollo de la administración electrónica será fundamental para concretar sus principales postulados (Muñoz, 2016: 21).

Es un deber de las autoridades velar porque la implementación de esos instrumentos en sus relaciones con los ciudadanos se haga de una manera equilibrada (Sánchez, 2014). En la actualidad las autoridades deben atender:

> La brecha digital como uno de los principales desafíos que deberá asumir la administración en el proceso de implementación y desarrollo de las TIC, pues se trata de un nuevo tipo de desigualdad para aquellos que no tienen o que tienen un acceso limitado a la red, así como para los que no son capaces de sacarle partido (Castells, 2001: 275).

El conocimiento del problema de investigación nos llevó a formular la pregunta siguiente ¿Con la implementación de herramientas de la información y las comunicaciones en las audiencias ante los órganos de control fiscal territorial, se permite el afianzamiento al derecho fundamental al debido proceso de los investigados?

Análisis y discusión de resultados

La nueva era de la información se ha generado desde el auge de las matemáticas como modelo de racionamiento que da lugar al surgimiento de la era industrial y científica basada en áreas como la estadística, que permitieron organizar los estados nación, para más adelante dar paso a la aparición de las máquinas informáticas y su estrecha relación con la investigación al servicio de las operaciones militares. Ya iniciados los años sesenta, y ante el advenimiento de la sociedad post-industrial, Matterlart (2001) refiere que el eje central de la sociedad radica en la expansión de los servicios humanos y, sobre todo, la inflación de servicios técnicos y profesionales

Con la Cumbre Mundial sobre la Sociedad de la Información (CMSI), realizada en dos fases, se concretan los fundamentos de la Sociedad de la Información con la intención de fomentar la utilización de las TIC en la construcción de una sociedad integradora y orientada al desarrollo equitativo de las naciones (Unión Internacional de Telecomunicaciones).

Como referentes teóricos a la implementación de estrategias probatorias de las Tecnologías de Información se remontan a la aparición del modelo de la Nueva Gestión Pública. Este modelo de gestión que surgió no se refiere a la forma del poder público; sino a la efectividad y transparencia de la gestión pública, estableciendo la primacía de ciertos principios y mecanismos

que garanticen ese cometido, entre los cuales, encontramos lo que reza taxativamente el Artículo 209 de la Constitución Política Colombiana:

> La Función administrativa está al servicio de los intereses generales y se desarrolla con fundamento en los principios de igualdad, moralidad, eficacia, economía, celeridad, imparcialidad y publicidad, mediante la descentralización, la delegación y la desconcentración de funciones. Las autoridades administrativas deben coordinar sus actuaciones para el adecuado cumplimiento de los fines del Estado. La administración pública, en todos sus órdenes, tendrá un control interno que se ejercerá en los términos que señale la ley (Constitución Pólitica Colombiana, 1991)

Al decir de Moyado (2011), la tradicion anglosajona que sirve de paradigma en estos temas presenta a la Nueva Gestión Pública como un enfoque de transición de la vieja administración pública poniendo ahora el acento en los resultados y en la responsabilidad, en organizaciones, recursos y condiciones contractuales más flexibles y en técnicas de evaluación del rendimiento de los recursos humanos.

La aplicabilidad del modelo de la Nueva Gestión Pública en los mecanismos de "reforma" del Estado Colombiano se ha implementado principalmente en el sistema de contratación pública, ya que sirve de soporte tanto en el mejoramiento de la gestión pública como en la prestación de servicios públicos. Para poder cumplir este cometido se deben mejorar los sistemas de información en materia de normativas vigentes y de publicidad de los procesos contractuales en curso, garantizando de este modo la transparencia en la gestión contractual.

Colombia ha dado un paso importante a la disposición de canales de acceso para la ciudadanía entre los que encontramos Gobierno digital, modelo de organización política que busca integrar las nuevas tecnologías en la administración pública para incrementar sustancialmente su eficacia y eficiencia. Se espera con esta estrategia que todas las entidades públicas dispongan de un canal web donde la ciudadanía pueda realizar trámites y consultas, para que la comunidad pueda participar activamente en la planeación, ejecución y control, de las diferentes actividades, entre ellas la de la contratación pública.

Señala Nieto (1994) que en el derecho sancionatorio administrativo juega un papel importante el principio de publicidad al decir que: Desde el punto de vista de la política sancionadora se exige, además su divulgación, más o menos larga y detallada según sea el grado de especialización o profesionalización de sus destinatarios. Señala el mismo autor que el auge de la teoría de la potestad administrativa sancionatoria busca generar mayor presencia administrativa del estado en el juzgamiento de una determinada conducta, contrario al lento y desgastante poder punitivo jurisdiccional del estado; es la reducción de la intervención judicial, bajo

razones de conveniencia y en aras de unos procedimientos más agiles y eficaces que consulten la buena marcha del complejo estatal, este es el reto de la administración pública.

La mayor presencia administrativa del Estado en el juzgamiento de una determinada conducta, en contraste con el severo poder punitivo jurisdiccional del mismo, hace resaltar el principio de la mínima intervención penal. La despenalización de conductas señaladas en el derecho penal, realiza modificaciones sustantivas y procesales, así el derecho de tránsito y transportes cuenta con sus propias normas sustantivas y procesales, alternando competencias, lo que obliga al Estado a establecer una reestructuración no solo del procedimiento sancionatorio y del proceso jurisdiccional, sino también de la delimitación jurídica de cada infracción y de la dosificación de la sanción respectiva, es decir de la tipificación de la ilicitud y la pena.

En los nuevos procedimientos legales de las ramas del derecho urge la implementación de las mínimas garantías penalistas que rodean el entorno procesal, por lo tanto, los aspectos modernos que impliquen mejorías en el procedimiento para imposición de sanciones fundamentales para el derecho administrativo sancionatorio se deben adoptar las mejores alternativas en aras de la protección y defensa a los derechos y garantías fundamentales.

Esta imposición de sanciones debe desarrollarse conforme a los fundamentos constitucionales, y al derecho a la defensa como elemento fundante del debido proceso en derechos como tránsito, sancionatorios ante entes de control, entidades que realicen cobro coactivo en cualquier orden nacional o territorial. Bajo esta perspectiva se puede hablar de un derecho administrativo sancionador en la medida en que la potestad punitiva del Estado se impulse dentro de un ordenamiento propio que clarifique las normas procesales, tipifique la falta, precise la dosificación punitiva, reserve legalmente la transgresión y de todas formas consagre u mínimo de garantías.

Para Garcia (2014), estas garantías pueden generarse a través de la administración electrónica, gobierno digital o gobierno abierto que son simplemente neologismos que describen el uso de las tecnologías digitales para mejorar el acceso y la divulgación de la información y los servicios públicos, así como la relación ciudadanos-gobiernos. Con el objeto de promover la transparencia, y como consecuencia, la colaboración y participación de ciudadanos y administraciones públicas de una manera más justa en la sociedad.

> La tecnología puede considerarse autónoma y determinista cuando las normas mediante las cuales progresa se eliminan del discurso político y ético y cuando los objetivos de la eficiencia o de la productividad se convierten en sustitutos de los debates sobre los métodos, las alternativas, los medios y los fines basados en valores (Habermas, 1970: 58).

En efecto, las nuevas tecnologías posicionaron a la información como el principal activo del siglo XXI, permitieron la interconexión de seres humanos, superando las barreras de tiempo y espacio y, simultáneamente, demostraron que el conocimiento y la inteligencia son las mayores riquezas de la humanidad; por ello la competitividad en el ser humano creador de organizaciones en la actualidad se basa en la correcta utilización de los recursos que tiene el entorno, de la cual las herramientas tecnológicas son vitales para su crecimiento y desarrollo, pues utilizadas en su debida forma repercuten en la productividad y desarrollo de la empresa. Por lo tanto:

> La tecnología ejerce una influencia causal en la práctica social, donde a la luz de la situación pasada y actual del desarrollo tecnológico y de las leyes de la naturaleza, el cambio social no puede seguir en el futuro más que un único curso posible, es decir, que las estructuras sociales evolucionan adaptándose al cambio tecnológico, independientemente de lo que pensaran o desearan los individuos (Bimber, 1994: 99-100).

Las tecnologías de la información y las comunicaciones juegan un papel determinante en el proceso de modernización del Estado:

> Tiene como objeto garantizar la efectividad de los principios de la función administrativa como son, la eficacia, la economía y la celeridad; de igual forma los referidos medios constituyen un instrumento razonable y justificado para el cumplimiento de los fines estatales y su uso por parte de la administración pública obedece a la necesidad de estar acorde con las exigencias actuales en torno a la inmersión del Estado en la sociedad de la información y el conocimiento (Consejo de Estado, 2011: 01).

De igual manera la masificación de la información es destacada por el legislador colombiano al reconocer la importancia del principio de igualdad en el acceso a las TIC para ejercer el derecho a relacionarse con la administración, reiterando en el artículo 53 de la Ley 1437 de 2011 que: "Para garantizar la igualdad de acceso a la administración, la autoridad deberá asegurar mecanismos suficientes y adecuados de acceso gratuito a los medios electrónicos, o permitir el uso alternativo de otros procedimientos" (Congreso de la República, 2011, Ley 1437, art. 53). Con base a este artículo 53 se permite que los procedimientos administrativos podrán realizarse a través de medios electrónicos, siempre y cuando se garantice la igualdad en el acceso a los mismos, reconoce las dificultades en materia de acceso y uso de TIC y la brecha social y cultural de nuestra sociedad.

La entidad pública incluido los organismos de control deben contar con un sistema de seguridad de información que permita la generación de garantía del derecho a la buena fe, pues la aplicación de este principio a los procedimientos administrativos se concreta en que la administración

tiene derecho recibir, de parte de los administrados, la información veraz y completa que sea necesaria para la adopción de la decisión; los sujetos del procedimiento deben actuar de tal manera que no se dilate innecesariamente la actuación administrativa; el administrado tiene derecho a confiar en que la administración adoptará una decisión que respeta el bloque de legalidad al cual se encuentra sometida, y el procedimiento debe adelantarse no sólo con plena sujeción a las reglas de trámite sino con especial esmero para que efectivamente se logre la garantía de los derechos de quienes actúan dentro del mismo.

En suma, la buena fe dentro del procedimiento administrativo se concreta en que el deber de los sujetos de guardar un comportamiento leal y honesto dentro de su trámite, en que la administración proferirá una decisión ajustada a derecho y en que los administrados no ocultarán informaciones ni entregarán informaciones falsas. En este sentido, el procedimiento administrativo electrónico:

> Se sustenta en un modelo que, basado en el uso de las tecnologías de la información y las comunicaciones, pretende mejorar la tramitación de los procedimientos administrativos, aumentando la eficiencia de la gestión interna, ganando en celeridad y transparencia, intentado obtener resultados más uniformes y económicos y, en último término, otorgando un mejor servicio a los ciudadanos. De esta forma, abarca distintos ámbitos de acción, de una parte, la atención al ciudadano e interesado, a través del uso de plataformas electrónicas para interactuar con las instituciones respectivas, y, de otra, aquellas asociadas al mejoramiento de la administración interna del procedimiento (Moya, 2008: 208).

Una de las maneras más nítidas para clarificar la importancia de la utilización de las tecnologías de la información se encuentra en el acto administrativo contenido en el formato documento electrónico, evidentes frente al acto tradicional de papel, por lo siguiente:

1. El soporte electrónico permite mayor durabilidad en el tiempo.
2. El soporte electrónico da mayor seguridad e inalterabilidad que el documento papel.
3. El soporte electrónico permite insertarlo en la Internet, dotándolo de mucha mayor publicidad que el papel.
4. El soporte electrónico permite imprimirle una firma electrónica, la cual es más segura que la firma autógrafa.
5. El soporte electrónico permite multicopiarlo tantas veces se quiera a menores costos y;
6. En general, el soporte electrónico no necesita de materialización alguna, pero sigue sirviendo de constancia, soporte y, en consecuencia,

es consultable, revisable, comunicable, inmodificable, autenticable (Laguado, 2003).

Es así como la notificación electrónica permite que:

> Las autoridades podrán notificar sus actos a través de medios electrónicos, siempre que el administrado haya aceptado este medio de notificación. Sin embargo, durante el desarrollo de la actuación el interesado podrá solicitar a la autoridad que las notificaciones sucesivas no se realicen por medios electrónicos (Congreso de la República, 2011, Ley 1437, art. 56).

Pues, en otras razones:

> El imponer la comunicación entre la administración y los administrados, solamente, a través de medios electrónicos puede resultar discriminatorio, por lo tanto, se reconoce en la norma en comento que "no todas las personas residentes en el territorio nacional cuentan con los medios materiales y, sobre todo, con el conocimiento tecnológico para que los procedimientos sean plenamente electrónicos; de aquí que se mantengan los escritos y se incorporen los orales, y con ellos simultáneamente juegue y actúe el aparato administrativo del Estado (Santofimio-Gamboa, 2011: 205).

Ahora conviene preguntar entonces ¿Qué puede hacerse la contraloría si no puede agotarse la notificación personal o por aviso y es devuelta la comunicación? En este caso es válida la comunicación electrónica en algún correo que se tenga de la persona o en la publicación en página web, teniendo presente que la entidad debe tener este procedimiento y algún manual, resolución y/o en su esquema de publicación, actuando conforme a lo establecido en la Ley 1712 de 2014, hecho éste que se encuentra amparado por la jurisprudencia constitucional.

Por ello, la (Corte Constitucional, 2013, Sentencia C-012) ha señalado que la publicación por aviso en la página web de la Dirección de Impuestos y Aduanas Nacionales (DIAN) y en un lugar de acceso al público de la misma entidad cuando son devueltas las notificaciones por correo, no desconoce el debido proceso, el orden justo ni el deber de garantizar los derechos de las personas, ya que la previsión legal de este mecanismo de notificación:

1. Es desarrollo de la potestad de configuración legislativa --en este caso, extraordinaria-- en materia de procedimientos administrativos y del deber constitucional de contribución a la financiación de los gastos del Estado y la sociedad y;
2. No significa un ejercicio arbitrario o desproporcionado de tal potestad de configuración de los procedimientos administrativos y de la notificación de las actuaciones de la administración, ya que solo se activa, como mecanismo subsidiario. (Corte Constitucional, 2013, Sentencia C-012)

Sin embargo, también debe tenerse en cuenta que se pueden dilatar los plazos, en cuyo caso la eficacia de los actos administrativos quedaría sujeta a disposición de los intereses del destinatario, máxime, cuando en el articulado no se exige una carga para el administrado teniendo en cuenta que su precedente aceptación de este medio de notificación no debe significar mayor controversia suponiendo:

> (…) el caso en el que el interesado invoque a su favor la no recepción del documento, pues para el efecto lo que se pone en duda es la confianza depositada en los proveedores de servicios que intermedian en el proceso de certificación de emisión y recepción del acto de la administración (Corte Constitucional, 2000: Sentencia C-662).

De igual manera, también se permite la interposición de:

> Recursos contra los actos administrativos, aún los de carácter disciplinario, pueden ser válidamente interpuestos a través del correo electrónico, siempre que se presenten de manera oportuna y se cumplan los demás requisitos previstos en las normas aplicables (Corte Constitucional, 2013: Sentencia C-286).

Por otro lado, la Sentencia T-145 de 1993 de la Corte Constitucional estableció que la imposición de sanciones o medidas correccionales, incluidos los procesos de responsabilidad fiscal debe sujetarse a las garantías procesales del derecho de defensa y contradicción; en consecuencia, carece de respaldo constitucional la imposición de sentencias administrativas de plano con fundamento en la comprobación objetiva de una conducta ilegal, en razón del desconocimiento que ello implica de los principios de contradicción y de presunción de inocencia, los cuales hacen parte del núcleo esencial del derecho al debido proceso.

Del mismo modo, en Sentencia T-582 de 1992 emanada de la Corte Constitucional esta señaló que: "Toda persona tiene derecho que antes de ser sancionada, se lleve a cabo un procedimiento mínimo que incluye la garantía de su defensa". Por lo tanto, conforme a las anteriores providencias, no es el culto a la forma ni reverencia a la estructura extrema lo que hace del procedimiento su justificación, sino la misma ética administrativa y lo que, es más, el respeto a los derechos fundamentales del individuo.

Con base a la pregunta problema se puede indicar que el proceso administrativo sancionatorio y, de responsabilidad fiscal, no pueden desconocer las garantías constitucionales en especial el debido proceso definido como la regulación jurídica que de manera previa limita los poderes del Estado y, establece las garantías de protección a los derechos de los administrados, de modo que ninguna de las actuaciones de las autoridades públicas depende de su propio arbitrio, sino que se encuentran –en todos los casos– sujetas a los procedimientos señalados en la ley.

Debe enfatizarse en que la utilización de herramientas tecnológicas en procesos administrativos sancionatorios permite la garantía del debido proceso al consentir herramientas para probar hechos y evitar el cumulo de papel, cuestión que está acorde a una realidad contemporánea donde la tecnología hace parte integral de la cotidianidad; a su vez, se posibilita la carga dinámica de las pruebas en el sentido de permitir probar hechos con medios tecnológicos, lo cual, con base a la equivalencia funcional es legal, tomando como referencia que la carga probatoria no es una obligación ni un deber, por no existir sujeto o entidad legitimada para exigir su cumplimiento. Tiene necesidad que aparezca probado el hecho la parte que soporta la carga, pero su prueba puede lograrse por la actividad oficiosa del juez o de la contraparte (Parra, 2004).

Según el Consejo de Estado (2012), La administración electrónica se desarrolla en tres dimensiones: primero, la prestación de servicios (e-administración), que se refiere a la gestión, información, tramitación de servicios y formulación de quejas y sugerencias; en segundo lugar, la promoción de la democracia (e-democracia), que implica el fortalecimiento de una nueva relación política gobierno-ciudadanía, la consulta y generación de reclamos, el logro de la participación, deliberación en la toma de decisiones públicas y la fiscalización de la labor pública por parte de los ciudadanos, a través de la exigencia de la transparencia y de rendición de cuentas y; por último, la motivación en la elaboración de políticas públicas (e-gobernanza), que se caracteriza por la participación activa en el diseño, gestión, implementación y evaluación de políticas públicas.

En efecto, la Ley 1341 de 2009 por medio de la cual se señala en su artículo No. 6 que las: "(…) Tecnologías de la Información y las Comunicaciones (en adelante TIC), son el conjunto de recursos, herramientas, equipos, programas informáticos, aplicaciones, redes y medios; que permiten la compilación, procesamiento, almacenamiento, transmisión de información como: voz, datos, texto, video e imágenes.

La implementación de las herramientas tecnológicas y virtuales de comunicación (TIC), constituyen medidas necesarias para el mejoramiento de las audiencias que se lleven a cabo, por ejemplo, ante las autoridades de tránsito, con el propósito de una mejor materialización al derecho a la defensa significa una propuesta que se considera viable para ser implementada en el marco jurídico colombiano. Por lo que "la eficiencia, en resumen, como motor interno de la innovación tecnológica, se interpreta como un factor puramente técnico (o científico), objetivo, indiscutible y al margen de cualquier consideración social o valorativa" (Aibar, 2001: 3), siendo una medida alternativa de eficiencia administrativa la búsqueda de soluciones tecnológicas para satisfacer las necesidades de la población, habida de soluciones, más allá de las formalidades.

Las tecnologías de la información además garantizan:

> La finalidad de la moralidad dirigida a dotar de transparencia y claridad los procedimientos a través de los cuales actúa la administración. Es en este aparte donde las TIC cobran importancia, como quiera que estas herramientas simplifican los trámites, aceleran los tiempos de respuesta, acercan al ciudadano con la administración, etc., aspectos todos que contribuyen a la legitimación del orden constitucional (Corte Constitucional, 1996: Sentencia C-319).

De esta manera se permite un acercamiento con el ciudadano, teniendo en cuenta que el poder soberano es delegado en varios de sus miembros para que lo representen y, es por el pueblo, al que deben garantizar sus derechos en virtud de ese poder delegado; por ello, se requieren de servidores públicos con competencias funcionales y vocación de servicio, que propicien niveles de acercamiento entre la sociedad y la administración estatal en las entidades territoriales que permiten prever mejoras en la legitimidad y el reconocimiento de las instituciones públicas.

De igual manera, fomentar la utilización general de las tecnologías de la información en la administración pública garantiza el principio de eficacia, por lo que:

> En desarrollo de este principio se busca que la administración mejore notablemente la gestión pública garantizando a los usuarios el derecho a un trámite o procedimiento sin dilaciones indebidas e injustificadas apoyando y facilitando la interacción del ciudadano y la administración a través de medios no presenciales, para lo cual las TIC serán la herramienta que permita optimizar y estandarizar los procesos y procedimientos internos de las entidades (Ministerio de Comunicaciones, 2000, Documento Conpes 3072).

Además "Resulta indispensable para el desarrollo efectivo del derecho a relacionase electrónicamente con la administración" (Muñoz, 2014: 46). Por tal razón, es fundamental que las autoridades administrativas presten mayor atención, no solo a la implementación de una sede electrónica, sino a garantizar las condiciones de calidad, seguridad, disponibilidad, accesibilidad, neutralidad e interoperabilidad, consagradas en el artículo 60 del CPACA En la administración electrónica, también se garantiza el principio de economía al coadyuvar con la racionalización de gastos en la administración pública, a lo cual se debe privilegiar el uso de las herramientas tecnológicas. Por lo tanto, el tiempo tomado por la administración de justicia en adoptar decisiones intermedias o definitivas, en los distintos procesos judiciales es determinante. En el artículo 29 de la Constitución Política se establece que las dilaciones injustificadas son violatorias del derecho al debido proceso y, el artículo 228 de la Carta Magna dispone que los términos procesales se observarán con diligencia y su incumplimiento

será sancionado, aunque la realidad es otra. La justicia como un principio moral que inclina a obrar y juzgar respetando la verdad y dando a cada uno lo que le corresponde, como pilar fundamental en el ordenamiento jurídico, debería ser aplicada con celeridad por el Estado, quien es el encargado de velar por los derechos e intereses de la sociedad.

Desde el punto de vista de las tecnologías de la información y las comunicaciones, estos dos mandatos constitucionales configuran la estrategia rectora del *e-government*, porque en cualquier etapa o nivel de presencia oficial en la red, la información que se publique se debe mantener veraz, íntegra, actualizada y completa; de lo contrario, la estrategia pierde credibilidad y los usuarios preferirán utilizar canales tradicionales de información.

Las tecnologías de la información permiten la generación de garantías en los principios de publicidad y transparencia, en la cual estos principios constituyen la esencia del procedimiento administrativo democrático. Al referirse a ellos se alude a la necesidad de que las actuaciones y decisiones de las autoridades sean públicas y abiertas a la totalidad de los asociados.

> El principio de transparencia implica que los administrados pueden, en ejercicio del derecho de acceso a la información, conocer la actividad de la administración, pues dicha prerrogativa "genera la obligación correlativa de divulgar de modo proactivo la información pública y responder de buena fe, de manera adecuada, veraz, oportuna y accesible a las solicitudes, lo que conlleva la obligación de producir o capturar información pública (Sánchez, 2014: 98).

En el mismo orden de ideas, debe enfatizarse que:

> Si bien resulta excesivo afirmar que la tecnología per se implica eficiencia en las actuaciones de la administración, es innegable que la racionalidad técnica está impactando notablemente las relaciones humanas y transformando la concepción tradicional de la Administración, por lo que invertir en las adecuaciones necesarias para lograr ese cambio de paradigma es imprescindible, de lo contrario estaría quedando rezagada (Muñoz, 2016: 26).

Todo lo cual crea las condiciones de posibilidad para una mejora en la concepción de la administración, tomando como referencia que el sistema democrático encuentra su fundamento en las instituciones y los acuerdos a que lleguen los gobernantes con los grupos de interés y la ciudadanía organizada, es decir, lo que se denomina la consensualidad política, evidenciada a través de audiencias públicas en las cuales esté presente la institucionalidad en cada parte del territorio nacional, en las cuales la comunidad interviene directamente, las instituciones muestran su potencialidad y se evita la congestión y el desgaste administrativo y judicial, por circunstancias tan efímeras como la incoación de peticiones, acciones constitucionales y legales.

Conclusiones

El Estado como garante de los deberes y derechos del ciudadano debe buscar la manera de satisfacer las necesidades de la población, quien espera en democracia que sus representantes delegados satisfagan sus necesidades. En este sentido, se busca que el Estado sea dinámico, ágil y eficaz en sus trámites de lo contrario se estarían afectan un conjunto de derecho; es por ello, que el legislador ha expedido normas como la Ley 1712 de 2014 que desarrollo el derecho fundamental al acceso a la información pública y el Modelo Integrado de Planeación y Gestión con sus dimensiones y componentes que buscan precisamente acercar más el Estado al ciudadano, que es su razón de ser en virtud de la teoría del contrato social.

Cuando se extienden las herramientas tecnológicas a la institucionalidad del Estado Colombiano se logra tener un mejor acercamiento con la ciudadanía, la cual podrá tener una expectativa positiva en la satisfacción de sus necesidades, siendo esta la esencia del Estado Social de Derecho. Por ello, los órganos de control fiscal territorial requieren mayor fortalecimiento, a través de recursos con destinación específica, en tecnología de la información aprovechando las oportunidades que se generaron a partir del Acto Legislativo 04 de 2019, del cual deben definirse medidas de fortalecimiento del control fiscal territorial a través de proyectos de ley que fomenten y masifiquen estas tecnologías de información, habida cuenta que se permita el ejercicio de una facultad administrativa (sancionatoria y de responsabilidad fiscal) que además de cumplir con los cometidos y finalidades de ejercicio de su objeto misional en los órganos de control, permita la satisfacción de necesidades a los ciudadanos en cumplimiento del Modelo Integrado de Planeación de Gestión.

En efecto, es importante que la administración pública se actualice a las herramientas tecnológicas, debido a que permite la eficiencia y efectividad administrativa en la generación de garantías a la ciudadanía, siendo importante que se coloque a todas las entidades públicas a tono con estas herramientas, no puede ser que haya entidades que no brinden dichas posibilidades, limitando de ésta forma el derecho a la publicidad y garantías ciudadanas, más aun cuando se habla de un Modelo Integrado de Gestión centrado en personas; por lo que en los procesos de responsabilidad fiscal y sancionatorios que llevan las contralorías territoriales deben utilizarse dichas herramientas en forma general, siempre que así lo haya solicitado o permitido tácitamente los involucrados o partes interesadas, esto sin duda colocará a tono dichas entidades públicas, que pareciera se hubiesen quedado en el tiempo, requiriendo de una inversión en materia de innovación tecnológica, tal como se le otorgó a la Contraloría General de la República.

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Conceptual problems of investigation and prevention of enforced disappearance of persons in the conditions of armed aggression

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Abstract

The article highlights the results of a study of the situation with official investigations into criminal offenses related to the enforced disappearance of persons in the context of armed aggression in eastern and southern Ukraine. The example of individual criminal proceedings presents some systemic problems that arise during the investigation of the facts of disappearance and suggests possible ways to solve them. There are several «blocks» of problems that lie in the field of criminal law, criminology, and criminal procedure. The points of view of scientists and practitioners on this problem are highlighted. It is concluded that Ukraine, in today's conditions, needs to take measures aimed at improving the legal mechanisms of observance and protection of the right of persons staying in its territory to freedom from enforced disappearance, as well as intensifying law enforcement agencies to prompt, complete and impartial investigation of such facts, their proper qualification, search for victims, identification of those responsible for their disappearance,

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ensuring that victims receive timely and adequate compensation. The methodological basis for writing the article was a dialectical-materialist method, as well as the set of general scientific and special methods and techniques of scientific knowledge.

Keywords: enforced disappearance; criminal liability; criminal proceedings; qualification; investigation.

Problemas conceptuales de investigación y prevención de la desaparición forzada de personas en condiciones de agresión armada

Resumen

El artículo destaca los resultados de un estudio de situación con investigaciones oficiales sobre crímenes relacionados con la desaparición forzada de personas en el contexto de agresión armada en el este y sur de Ucrania. El ejemplo de algunos procesos penales presenta algunos problemas sistémicos que surgen durante la investigación de desapariciones y sugiere posibles formas de solucionarlos. Hay varios «bloques» de problemas en el campo del derecho penal, la criminología y el procedimiento penal. Se destacan las opiniones de científicos y profesionales sobre este problema. Se concluye que, en las condiciones actuales, Ucrania debe tomar medidas destinadas a mejorar los mecanismos legales de observancia y protección del derecho de las personas que permanecen en su territorio a no desaparecer, así como activar las instituciones responsables de hacer cumplir la ley para investigar de manera imparcial tales hechos, calificación adecuada, búsqueda de víctimas, identificación de los responsables de su desaparición, asegurando una reparación oportuna y adecuada a las víctimas. La base metodológica para la redacción del artículo fue un método dialéctico-materialista, así como el conjunto de métodos y técnicas científicos generales y especiales del conocimiento científico.

Palabras clave: desaparición forzada; responsabilidad penal; proceso penal; calificación; investigación.

Introduction

The Constitution of Ukraine provides for the protection of the rights and freedoms of every citizen and declares that a person, his life, health, honor and dignity, inviolability, and security are determined by the highest social

value (Article 3) (Constitution of Ukraine, 1996). The success of this activity largely depends on the theoretical development of combating certain types of crime and the effective activities of law enforcement agencies in the fight against serious and especially serious crimes of selfish violence. Real enforcement of these rights is guaranteed by the rules of criminal law, which establish liability for encroachment on the liberty and inviolability of the person. These are, in particular, the criminal remedies provided for in Article 146[1] of the Criminal Code of Ukraine «Forced Disappearance» (Criminal Code of Ukraine, 2001). The act of enforced disappearance is one of the most brutal human rights violations, the absolute nature of which is enshrined in the International Convention of 2006 (Tsviki, 2017).

Enforced disappearances have become a global problem that is not limited to any region of the world. Being in the past mostly a product of military dictatorial regimes (Forced or involuntary disappearance of persons, 2019), now enforced disappearances can occur in difficult conditions of local and interstate-armed conflicts. After the transition of the armed conflict in the east to the south of Ukraine to the phase of low intensity, the number of disappearances decreased, but they remain widespread (Forced disappearances in Ukraine and disappearances during the military conflict in the east in 2014–2018).

The lack of a unified methodology for determining missing persons, as well as the lack of coordination between different government agencies, have led to different data on the number of disappearances in a zone of military conflict – from several hundred to several thousand people. States parties to the relevant treaties, in addition to the measures they provide for the prevention of enforced disappearances, are obliged to include such acts as criminal offenses in national law (Yeroshkin, 2019), to take all possible and necessary measures aimed at immediate and effective investigation of each case of the disappearance of a person, to establish the culprits, to ensure observance and restoration of the rights of victims of such facts and their relatives.

Criminal offenses, liability for which is provided by Art. 1461 of the Criminal Code of Ukraine, referred to the jurisdiction of the pre-trial investigation of the National Police of Ukraine, the proceedings are not carried out as for crimes committed during hostilities. At the same time, on September 3, 2015, a separate specialized Office for the Investigation of Crimes against the Peace and Security of Mankind and International Offenses was established within the Chief Military Prosecutor's Office of the Prosecutor General's Office of Ukraine. On the fact of military aggression on the territory of Ukraine. We can state that currently there are a number of conceptual problems of investigating and preventing enforced disappearances in the context of armed aggression in eastern and southern Ukraine, which necessitates a comprehensive scientific study

and development of scientifically sound proposals to improve existing legislation and practice. Application.

1. Methodology of the study

The methodological basis for writing the article was a dialectical-materialist method of scientific knowledge of socio-legal phenomena, as well as the set of general scientific and special methods and techniques of scientific knowledge that are currently used in legal literature, which made it possible to study raised problems in the unity of their social content and legal form. In particular, the authors used the following methods to achieve this goal and to provide science-based conclusions. One of the main methods for writing this scientific work was of analysis and synthesis, which allowed identifying the main criminal procedural and criminological problems of the enforced disappearance of persons in the context of armed conflict in some territories of Ukraine, to develop proposals and recommendations of organizational, tactical and legislative nature. Based on the synthesis, are formulated conclusions and proposals on the research topic.

The logical-semantic method made it possible to form, deepen and concretize the categorical apparatus of research, in particular, to establish the relationship between the concepts of «enforced disappearance», «imprisonment», «representative of the state» and «representatives of a foreign state» and more. The system-structural method used to identify typical shortcomings of qualifications, to conduct certain procedural actions in the investigation of crimes under Art. 149[1] of the Criminal Code of Ukraine. To study the problems of investigation and prevention of enforced disappearances, legal support for the effectiveness of such activities, a comparative legal method was used, which analyzed the current criminal, criminal procedure legislation.

2. Analysis of recent research

The works of such scientists as Andrushko A.V. (2019), Voitovich E.M. (2019), Guzeeva O.S. (2014), Kabanets L.V. (2019), Mazurok O.Ya. (2015), Shulga O.V. (2016), Chornous Yu.M. (2013), and others are devoted to the study of the issues under consideration. Without diminishing the role of these scientists, there are still many problematic issues related to the investigation and prevention of crimes under Art. 146[1] of the Criminal Code of Ukraine. Currently, there are significant gaps in the implementation of appropriate qualifications, rapid, complete, and effective investigation of enforced disappearances in Ukraine, which highlights the need to improve the methodology of investigation of these crimes, to develop an effective mechanism for their prevention.

The purpose of the article is a comprehensive theoretical and applied study of certain criminal procedural and criminological problems of the enforced disappearance of persons in an armed conflict in Ukraine, development of proposals and recommendations of organizational, tactical, and legislative nature aimed at improving the investigation and prevention of crimes under Art. 146[1] of the Criminal Code of Ukraine.

3. Results and discussion

One of the main tasks of every modern democratic and civil state is the protection and defense of human rights (Bondaruk *et al*., 2021). The Constitution of Ukraine in Section II enshrined a fairly broad, diverse in content list of natural and inalienable human, and civil rights. These include, in particular, the right of every person to respect for his or her dignity (Part 1, Article 28) and the right to liberty and security of person (Part 1, Article 29). In turn, the provisions of Section III of the Special Part of the Criminal Code of Ukraine are aimed at protecting these rights. In particular, Art. 146[1] of the Criminal Code of Ukraine defines criminal liability for enforced disappearance (Criminal Code of Ukraine, 2001). Enforced disappearances violate the full range of human rights enshrined in the Universal Declaration of Human Rights and enshrined in the International Covenants on Human Rights, as well as in other major international human rights instruments, such as the right to recognition of legal personality; the right to liberty and security of person; the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment; the right to life when a missing person is killed; the right to individuality; the right to a fair trial and judicial guarantees; the right to an effective remedy, including redress and compensation; the right to know the truth about the circumstances of the disappearance. Besides, the disappearance of people usually entails violations of various economic, social, and cultural rights, negatively affecting their realization by the victim's family members.

The disappearance of the main breadwinner, especially in less affluent communities, often puts the family at a standstill, in which many of the rights enshrined in the International Covenant on Economic, Social and Cultural Rights, in particular the right to protection of the family and providing her with assistance; the right to an adequate standard of living; the right to health; right to education (Forced or involuntary disappearance of persons, 2019).

Under conditions of physical and psychological restriction in the exercise of their rights, a person detained in a place not established by the investigation is vulnerable. Vulnerability is a condition in which a person is deprived or restricted in his/her ability to resist violent or other unlawful

acts due to physical or mental characteristics or other circumstances caused by the relevant characteristics (Matvieieva *et al*., 2021).

Ukrainian and international human rights organizations have repeatedly referred to the facts of enforced disappearances in the context of armed conflict in their reports. In particular, the Center for Civil Liberties in a joint report with the International Federation for Human Rights (FIDH) (Eastern Ukraine. Civilians caught in the crossfire) noted that violations of the rights of civilians in eastern Ukraine have signs of both crimes against humanity and, in some cases, military crimes. This means, among other things, that the investigative units of the National Police of Ukraine, the Security Service of Ukraine, and the Prosecutor General's Office of Ukraine have to deal with a category of crimes with which they have not encountered these events. The situation is complicated by legal contradictions caused by the lack of consistent assessment of the events in Donbas as an armed conflict and consistent recognition of all legal consequences of this fact (Odegov, Hrytsenko and Shcherbachenko, 2018).

We consider it expedient to single out in the article several «blocks» of problems that lie in the plane of criminal law, criminology, and criminal procedure. At one time, formulating the objective side of enforced disappearance in both parts of Article 146[1] of the Criminal Code of Ukraine, the legislator proceeded from the provisions of Art. Art. 2 and 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms. However, compared with international norms, Art. 146[1] of the Criminal Code of Ukraine did not provide for instructions on the construction of «leaving a person without the protection of the law» as a consequence of committing illegal acts; complicity in this act; circumstances that may mitigate (aggravate the return of the missing person alive, clarify the circumstances of the enforced disappearance or identify the perpetrators of the act of enforced disappearance) or aggravate (the death of the missing person, the act of enforced disappearance of pregnant women, minors, the disabled or others) persons) criminal liability (Enforced Disappearance: Problematic Issues of Criminal Liability).

Lawyers pay attention to other shortcomings. In particular, this norm contains only typical forms of imprisonment (arrest, detention, abduction), so their list is not exhaustive, and therefore the legal construction of «deprivation of liberty in any other form» means that similar illegal actions may be committed that will preclude a person from exercising his or her true will (for example, unreasonable pretext or detention). It emphasizes the lack of logic in the formulation of sanctions, disproportions in the definition of «representative of the state» and «representatives of a foreign state» in the note to Art. 146[1] of the Criminal Code of Ukraine, etc. (Enforced Disappearance: Problematic Issues of Criminal Liability).

We pay attention to other problems as well. In particular, when describing enforced disappearances in the context of armed conflict and occupation, law enforcement officers often do not take into account the provisions of Art. 438 of the Criminal Code of Ukraine, which established stricter liability for violations of the laws and customs of war, and, in contrast to Art. 146[1] of the Criminal Code of Ukraine has no statute of limitations. Also, current Ukrainian law allows for amnesty for those involved in enforced disappearances. This state of affairs, paradoxically, facilitates the prospects of kidnappers of Ukrainian citizens, especially if such kidnappers are the same officials. Thus, Ukraine does not guarantee the inevitability of punishment for enforced disappearances if the relevant representative of the Russian occupation administration appears before a Ukrainian court in the controlled territory (Report on the human rights situation in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, 2018).The above indicates the need for serious regulatory improvement of Art. 146[1] of the Criminal Code of Ukraine, which will undoubtedly contribute to the improvement of law enforcement practice in criminal proceedings for the forcible destruction of a person.

We consider it expedient to review organizational and practical problems that prevent the search for victims of enforced disappearances. First, it should be emphasized that the law enforcement agencies of the Russian Federation ignore the facts of the investigation of these criminal offenses committed in the occupied territories of Ukraine, and the initiated criminal proceedings are closed. Such passivity in these matters, the unwillingness to conduct a thorough investigation is apparently due to the involvement of FSB officers, members of the so-called Donbas self-defense, «Crimean self-defense» and other organizations loyal to the Russian occupation administration, to enforced disappearances in Crimea. Temporarily occupied the Autonomous Republic of Crimea and the city of Sevastopol (Ukraine, 2018). At the same time, Ukraine is limited in international legal means to bring Russia to justice for enforced disappearances in the occupied territories. In particular, Ukraine is deprived of the opportunity to use the mechanisms provided by the International Convention for the Protection of All Persons from Enforced Disappearance, including the right to sue the International Court of Justice, as Russia is not a party to this convention. of Crimea and the city of Sevastopol (Ukraine, 2018).

In our opinion, the effectiveness of the search for missing persons in the temporarily occupied territories of Ukraine and bringing the perpetrators to justice will be facilitated by a set of organizational, tactical, and legislative measures, in particular:

- synchronization of the sanctions list by Ukraine, the USA, and the countries of the European Union, which should include law

enforcement officers and organizations controlled by the Russian Federation that are involved in enforced disappearances in the occupied Crimea and obstruct thorough investigation (Enforced disappearances: problems of search and responsibility, 2020).

- developing a unified approach to the classification of crimes related to the violation of the enforced disappearance of a person.
- strengthening responsibility for enforced disappearances.
- search for missing persons following international standards.
- competent application by the plaintiffs of the case-law of the European Court of Human Rights.
- close coordination between relatives of missing persons, Ukrainian law enforcement agencies, human rights organizations and the UN Working Group on Enforced and Involuntary Disappearances. Special attention should be paid to the study of the conceptual provisions of the modern criminal process, as well as the peculiarities of their practical implementation in terms of solving the problem highlighted in the article. Determining territorial jurisdiction for pre-trial investigation of criminal offenses committed in the occupied territory by pre-trial investigation bodies located at a considerable distance from the crime scene (residence of most witnesses and victims) and having difficult transport accessibility (bad car and / combination). This situation creates unjustified difficulties in the investigation, as the investigator is not able to personally carry out most procedural, including investigative (search) actions. When determining territorial jurisdiction, preference should be given to those pre-trial investigation bodies that are located in the administrative centers of the respective regions and the settlements closest to them (Odegov *et al.*, 2018, p. 28).

It should be noted that as part of the administrative-territorial reform, the criminal bloc and pre-trial investigation bodies of the National Police in the territories where overload was recorded were strengthened (Ihor Klymenko presented a new model of organizing the activities of the National Police of Ukraine, 2021). Also, the Order of the Prosecutor General's Office № 54 of 02.03.2021 «On certain issues of ensuring the start of specialized prosecutor's offices in the military and defense sphere (district rights) » approved a list of specialized prosecutor's offices in the military and defense sphere (district rights) of the beginning of work of specialized prosecutors' offices in the military and defense sphere (on the rights of the district), 2021). It seems that such organizational innovations should have a positive impact on the provision of effective prosecutorial oversight, as well as on the level of professional training of law enforcement officers involved in the investigation of enforced disappearances.

Another problem in the investigation of enforced disappearances, which partly follows from the previous one, is the lack of promptness in the actions of law enforcement officers (prompt response to appeals of relatives of missing persons; lack of timely and formulated investigative versions in criminal proceedings); formal nature without taking into account the specifics of the criminal offense). Unjustified delays in conducting certain procedural, including investigative (search) actions, primarily with the appointment and conduct of examinations. Delays in recognizing the relatives of the missing victims and their interrogation in this status were revealed in the criminal proceedings № 12015230000000136 dated 06.04.2015 on the fact of the missing disappearance of E. Apselyamov (Criminal proceeding № 12015230000000136, 2015). At the same time, the materials of the pre-trial investigation do not contain information that would justify such delays in the appointment and conduct of examinations.

It is necessary to pay attention to the frequent absence in the materials of criminal proceedings of data on the state and results of the search for victims in the established ORS «Search». See, for example, criminal proceedings № 42015010000000124 of 04.09.2015, initiated on the fact of illegal imprisonment of M. Arislanov (Criminal proceedings № 42015010000000124, 2015). The investigator's instructions to the officers of the operational unit to conduct investigative (search) actions are sometimes formal and meaningless. Employees of the relevant operational unit also formally treated them. These shortcomings are characteristic of the criminal proceedings № 42014000000000468 dated 04.06.2014, initiated on the facts of missing disappearance and illegal imprisonment of activists of the public organization «Ukrainian House» T.D. Shaimardanova, S.S. Zinedinova and L.A. Korzha (Criminal proceedings № 42014000000000468, 2014).

A common problem for almost all criminal proceedings of the studied category is insufficient diligence during investigative (search) actions. In many criminal proceedings initiated on the grounds of missing persons, investigative (search) actions did not have a clearly defined purpose (were not aimed at verifying a certain investigative version), were superficial and inconsistent. Scholars and practitioners also draw attention to the insufficient use in the investigation of these criminal offenses of opportunities and modern achievements of forensic techniques, forensic methods (means and techniques) of fixing the appearance of criminals (in particular, verbal presentation of the appearance of criminals in procedural documents) (protocols of interrogation of victims, as a rule, do not contain the detailed description of the appearance of criminals); photo composite portrait/photo work). It is indicated to ignore the possibility of identification of victims (criminals) and objects by photographs, video materials (video files), reference / forensic records, etc. (Odegov *et al.*, 2018, p.).

It is also necessary to state the lack of proper departmental control and prosecutorial supervision in the form of procedural guidance of pre-trial investigation in criminal proceedings on the facts of the enforced disappearance of persons. Unfortunately, the lack of information about the state and progress of the pre-trial investigation also often characterizes such criminal proceedings. In the case of enforced disappearances, victims do not fully enjoy the right granted to them to review the materials of the pre-trial investigation.

Among other things, this is since during the transfer of materials to another body of pre-trial investigation, victims were often not informed about the new place of investigation. Such a shortcoming was revealed in the criminal proceeding № 12020010000000124 of 18.08.2020, initiated on the fact of disappearance in the area of the anti-terrorist operation in the Donetsk region Shugaeva O.L. (Criminal proceeding № 12020010000000124, 2020).

The analysis of the outlined problems in the field of application of the provisions of the criminal procedure law encourages the development of appropriate response measures, in particular, to strengthen departmental control and prosecutorial oversight of compliance with the law during pre-trial investigation in criminal proceedings on enforced disappearances. First of all, it is about: the need to provide investigators with the reasonable frequency of reasonable instructions to conduct specific investigative (investigative) and other procedural actions within the time limits clearly defined by law and/or the prosecutor, the head of the pre-trial investigation body, to ensure proper implementation of the relevant instructions; if necessary, initiate before the heads of the pre-trial investigation body the issue of removal of the investigator from the pre-trial investigation and appointment of another investigator in case of ineffective investigation of the disappearance of persons with signs of violence.

As for research institutions of the Ministry of Internal Affairs of Ukraine, it, together with the Prosecutor General's Office of Ukraine, should develop and bring to the attention of subordinate investigative units' certain forensic methods of investigating enforced disappearances. When developing appropriate methods should take into account international experience in documenting criminal offenses under Art. 146[1] of the Criminal Code of Ukraine and other crimes committed on the border and temporarily occupied territory of Ukraine. We should not ignore the recommendations of other scholars to increase the effectiveness of law enforcement in the fight against crimes related to an unlawful deprivation of liberty or kidnapping: improving methods of collecting intelligence to identify organized structures involved in crimes against personal liberty, nature their activities, relations between them (including transnational); research into the methods they use for self-defense; creation of specialized units in law enforcement agencies

that would allow «entry» into criminal organizations (Kabanets, 2019, p. 3 4). It should be noted that these proposals are general, intersectoral in nature.

Conclusions

In general, it should be summarized that Ukraine, like other countries in a situation of armed conflict caused by the occupation of their territories, needs to take measures to improve the legal mechanisms of observance and protection of the right of persons on its territory to freedom from violence. Disappearance, as well as the intensification of law enforcement agencies to prompt, complete and impartial investigation of such facts, their proper qualification, search for victims, identification of those responsible for their disappearance, ensuring that victims receive timely and adequate compensation.

It is necessary to improve the regulations of Art. 146-1 of the Criminal Code of Ukraine, which, no doubt, promotes the improvement of law enforcement practice in criminal proceedings for the forcible destruction of a person. The effectiveness of the search for missing persons in the temporarily occupied territories of Ukraine and bringing the perpetrators to justice will be facilitated by a set of organizational, tactical, and legislative measures, in particular: synchronization of the legislative list by Ukraine, the United States and the European Union; search for missing persons following international standards; developing a unified approach to the classification of crimes related to the violation of the enforced disappearance of a person; strengthening responsibility for enforced disappearances; competent application by the plaintiffs of the case-law of the European Court of Human Rights; close coordination between relatives of missing persons, Ukrainian law enforcement agencies, human rights organizations and the UN Working Group on Enforced and Involuntary Disappearances.

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Features of detection and obtaining evidence of war crimes committed in the context of international armed conflict

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Abstract

The scientific article is devoted to a comprehensive understanding of international legal, procedural, and organizational problems of investigation of war crimes committed during the military conflict in the south and east of Ukraine. It develops the author's concept of investigation of war crimes committed during the armed conflict, scientifically substantiated theoretical provisions and specific patterns that are manifested in the field of legal support, organization of investigation, collection of evidence, methods of investigation of crimes of this type. It is concluded that there is a need to specify the components of war crimes in national legislation. Recommendations for further improvement of criminal and criminal procedure legislation of Ukraine in order to fulfill the state's international obligations in the field of international humanitarian law are given.

Keywords: war crimes; investigation; international armed conflict: gathering of evidence; investigative (search) actions.

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Características de la detección y obtención de pruebas de crímenes de guerra cometidos en el contexto de un conflicto armado internacional

Resumen

El artículo científico está dedicado a una comprensión integral de los problemas legales, de procedimiento y organizativos internacionales de la investigación de los crímenes de guerra cometidos durante el conflicto militar en el sur y este de Ucrania. Desarrolla el concepto de investigación del autor de los crímenes de guerra cometidos durante el conflicto armado, disposiciones teóricas fundamentadas científicamente y patrones específicos que se manifiestan en el campo del sustento legal, organización de la investigación, recolección de pruebas, métodos de investigación de crímenes de este tipo. Se concluye que es necesario especificar los componentes de los crímenes de guerra en la legislación nacional de Ucrania. Se dan recomendaciones para seguir mejorando la legislación de procedimiento penal y penal de Ucrania con el fin de cumplir con las obligaciones internacionales del estado en el campo del derecho internacional humanitario.

Palabras clave: crímenes de guerra; investigación; conflicto armado internacional; recolección de pruebas; acciones de investigación (allanamiento).

Introduction

The priority in the use of military force to resolve disputed national-ethical, religious, political, territorial, economic, and other contradictions remains among the essential features of modern reality. In five and a half millennia of the history of human civilization, there have been about 15,000 wars and armed conflicts, in which more than 3.5 billion people have died. Throughout its history, people have lived in peace for only 292 years, less than one week every hundred years (Vakhrushev, 1999).

Despite the ratification by the international community of various conventions on international humanitarian law and the fight against their violations, as well as their partial implementation and nationally established criminal liability for war crimes, virtually all wars and armed conflicts are accompanied by the commission of the most serious war crimes.

Almost everywhere in areas of armed conflict, there is a violation of the laws and customs of war, the use of prohibited means and methods of warfare, related to the violation of the principles of selectivity,

proportionality allowed in the process of missile and artillery, and aviation missile strikes, recruitment, training, financing and (or) the use of mercenaries in hostilities, the destruction of settlements, executions in the form of premeditated killings for political, ideological, racial, national, religious hatred or enmity, torture and other inhuman treatment and other atrocities which are inherently cruel. All the crimes mentioned above cannot remain unpunished.

Unfortunately, a significant part of criminal offenses remains unpunished, and those responsible for them are not prosecuted using state sovereignty. At the same time, the legal prospects for punishing criminals are not entirely clear (Grigoryan, 2018). Personnel policy and gaps in the manning of the defense forces are also acute problems. A critical factor is the shortcomings in the fight against corruption in management and the executive branch, as evidenced by the resonant scandals in law enforcement agencies and the defense industry (Corruption in Defense – continuation – Argument, 2019).

The confrontation in Donbas is one of the key challenges to Ukraine's national security. Despite the declared ceasefire, the Ukrainian military suffers daily casualties. Thus, the problem of criminal prosecution of representatives of the military-political leadership and individual servicemen for committing war crimes during the armed conflict initiated and provoked by the aggressor is relevant for both Ukraine and other countries. Several organizational and tactical issues related to the investigation of crimes in this category also need to be addressed.

1. Methodology of the study

A comprehensive study of war crimes is possible only by combining different methodological studies. The general scientific methods used in the scientific article include a dialectical method, a deductive and a system method, methods of analysis and synthesis.

The dialectical method of scientific cognition is a general and universal method of forming legal concepts, it is a cognitive strategy that aims to identify the causes, origins, and consequences of the studied phenomena, their internal contradictions, connections, and relationships with other phenomena. With the help of this method, it became possible to learn the content of such categories as "war crimes", "armed conflict", "gathering evidence" and others. Methods of analysis and synthesis allowed to select and analyze information on the research topic.

The essence of the system method is that the process of investigating war crimes is considered as a certain system, which is included in the system of

a broader order, performs certain functions, and is associated with various connections. The systematic approach provided an opportunity to analyze investigative and judicial practice, criminal cases, decisions of the European Court of Human Rights in war crimes cases.

Special scientific methods used in writing a scientific article include a hermeneutic, a formal-legal method, modeling and forecasting, sociological and statistical methods.

The application of the hermeneutic method allowed to qualitatively analyze and clarify the content of legal documents, including the provisions of the Criminal Code of Ukraine and the Criminal Procedure Code of Ukraine, which regulate the relevant legal relations in the study area. The formal-legal method was used to formulate and interpret legal concepts and categories. Sociological and statistical methods are used in the process of studying the materials of criminal proceedings and generalization of scientific results, the study of law enforcement practice. Modeling and forecasting methods were used to formulate proposals for improving certain provisions of the Criminal Code, the Criminal Procedure Code of Ukraine.

Thus, the author's methodology of this study is a set of methods and techniques based on a dialectical analysis of legal documents, empirical data, as well as a critical understanding of the scientific literature on this issue.

2. Analysis of the recent research

Some theoretical and practical aspects of criminal liability, procedures for investigating war crimes committed in armed conflict were considered in the works of such scientists as Schwarzenberger G. (1968), Furkalo V.V. (1982), Raskaley S.B. (1985), Belyy I. Yu. (2004), Simpson G. (2007), Grigoryan G.M. (2009), Eliseev R.A. (2011), Skuratova A.Yu. (2012), Mokhonchuk S.M. (2014), Rusinova V.N (2015), Mykhaylenko V.S (2017), Koval D.O. and Avramenko R.A. (2019), Mazur M.V. (2020), Tkachenko P.I. (2020), Chervyakova, O.V. (2020), and other authors.

However, there are some issues that need comprehensive analysis and coverage. In particular, the issues of legislative regulation of legal relations in the context of international armed conflict, including the criminalization of certain illegal acts, need an additional solution. It is necessary to improve methodological approaches to the evaluation of legal programs and the entire legal system in Ukraine, interpretation of the decisions of the European Court of Human Rights, their use in investigative and judicial practice (Matvieieva *et al*., 2021). It is also indisputable that certain tactical and procedural "tools" for the investigation of war crimes committed in the

context of an international armed conflict must be properly disclosed from the standpoint of forensic science and criminal procedure.

3. Results and discussion

Given that war crimes can only be committed in the course of or in connection with an armed conflict, it would be logical to clarify its nature. Undoubtedly, armed conflict in all its manifestations is a deformation of social relations, accompanied by sharp contradictions, widespread use of weapons, the declining value of human life, rising levels of violence and other crime, which is the root cause of war crimes.

An international armed conflict occurs when an attack on the territory of a state is carried out by another state, or by non-governmental formations under the control of another state. In this case, the international armed conflict begins to be used after the first shot against the territory of a state or crossing the border by the armed forces of another state. The conflict will also be considered international if the third country has at least general control over non-governmental armed groups. An occupation of the territory of another state is equated to an armed conflict of an international character, even if such an occupation does not meet with armed resistance (Koval and Avramenko, 2019).

The investigation of war crimes committed by participants in an armed conflict is usually carried out in a combat situation caused by hostilities in areas of armed conflict (Grigoryan G., pp. 33-36). Influencing all aspects of life, the combat situation affects the investigation of war crimes, complicating a number of destructive factors in the process of detection, detection and investigation of war crimes, identifying specifically stable links, dependencies, relationships and trends in this area.

Based on this, it can be argued that there are specific patterns of investigation of war crimes committed in the eastern and southern territories of Ukraine in the context of international armed conflict.

According to S.V. Malikov, there are two directions of influence of negative factors caused by the armed conflict on the organization and methods of investigation of war crimes: direct influence on its organization and methods, as well as influence through the special nature of war crimes committed in armed conflict (Malikov, 1998).

The process of investigating war crimes is also affected by the negative factors caused by the international armed conflict:

- national, ethnic, religious, or territorial causes of armed conflict, as well as often rather “vague” definition of the parties to the conflict’s purpose;

- ignorance and unwillingness of political leaders and the command of the parties to the conflict to adhere to the norms of international law;
- Insufficient objective information about the armed conflict, mutual distrust of the opposing parties and the operation of a set of unproven and sometimes "senseless" accusations;
- the use of political means by political leaders, military command and media representatives of opposing parties with the use of euphemisms (liquidation, cleansing, action, operation, etc.), which mask the real goals and use of prohibited means and methods of hostilities by the parties;
- a pronounced division of society into supporters of the relevant side of the conflict;
- justification by the opposing parties of the criminal actions of their armed supporters or combatants by the circumstances and military necessity, by reference to the actions of the opponent's country;
- ignorance by combatants of the opposing parties of the norms of international law and national norms of the Criminal Code, confidence in impunity, lack of effective sanctions by the command to subordinates;
- Insufficient advocacy and information of the public, government agencies and officials, marginalization and stigmatization of victims;
- increasing the level of public danger of war crimes committed by the parties to an armed conflict, as well as their consequences;
- the emergence of crimes that encroach on specific legal relations arising in connection with an armed conflict (in a combat situation, on the battlefield, in the area of hostilities);
- committing serious violent crimes against representatives of the opponent's country out of revenge;
- the dependence of the level of a war crime on the duration, intensity, scale of the armed conflict, its economic and political consequences, as well as the number of dead; n) the number and scale of war crimes, as well as the steady increase in the level of war crime;
- the response of war crime to the military successes or failures of another party to the conflict, as well as the high level of artificially latent war crime;
- the response of war crime to the military successes or failures of another party to the conflict, as well as the high level of artificially latent war crime;

- a significant number of crimes directly or indirectly related to the presence of weapons in the warring parties, as well as the use of modern methods and means of remote control of hostilities;
- committing war crimes in a state of alcohol or drug intoxication.

Of course, in order to eliminate or minimize the consequences of the above negative factors for the investigation of war crimes committed in the context of international armed conflict, it is necessary to take measures to improve information policy to prevent violations of international law.

War crimes are one of the most serious and serious crimes known to mankind. Under international law, the state in which war crimes are committed (Nazarchuk, 2020) is the most active in conducting investigations and bringing perpetrators to justice. However, at present, Ukraine is not always able to adequately respond to hostilities in the temporarily occupied and adjacent territories. For example, in the Criminal Code of Ukraine, in addition to Art. 438, there are no detailed rules that determine the illegality of certain actions in a military conflict. There is also no explanation of what war crimes are, which are light, medium, severe, and the degree of responsibility. This problem needs a comprehensive solution. Some lawyers rightly consider the adoption of the law on transitional justice (Bida, 2021) to be a way out of this situation.

Objective principles of determining the grounds for the application (criminalization) or refusal to apply (decriminalization) of criminal law influence should be recognized as a constant problem of criminal law (Kozachenko *et al.*, 2021). It must be stated that those guilty of committing most war crimes today, unfortunately, manage to avoid criminal prosecution. One of the reasons is the imperfection of the legislation and its inconsistency with international norms. Current Art. 438 of the Criminal Code of Ukraine ("Violation of the laws and customs of war") is quite generalized, so there is an obvious need to specify the composition of war crimes in national law, defining all serious violations of international humanitarian law as war crimes. Thus, there is an obvious need to specify the components of war crimes in national legislation (Nazarchuk, 2020).

Thus, the realities of today in the East and South of Ukraine indicate the imperfection of certain provisions of the Criminal Code of Ukraine, in particular the lack of legal norms that would correspond to the socially dangerous act committed in the area of the anti-terrorist operation. Currently, there is an urgent need to revise the sections of sections XIX-XX of the Code in order to include in their composition the rules that would provide for criminal liability for all actions against the interests of the people of Ukraine.

In our opinion, for the effective work of the institutions of executive power in Ukraine in this direction, there are not enough legislative tools

that would promote more constructive work and increase responsibility and accountability for actions and measures taken that would be: expected signals for citizens of Ukraine in the occupation or were forced to leave the occupied territory; signals for collaborators and violators of the sanctions regime about the inevitability of liability for actions committed; the leadership of other countries and international organizations, as a confirmation of the sequence of actions of the Ukrainian authorities, in its pursuit of de-occupation and reintegration of temporarily lost territories.

When applying Art. 438 (Violation of the laws and customs of war) of the Criminal Code of Ukraine (Criminal Code of Ukraine, 2001) it is necessary to focus on the practice of international criminal courts, doctrine, authoritative comments on international economic law, and the provisions of international treaties. However, the list of acts that may be considered violations of the laws and customs of war does not necessarily coincide with the list of Art. 8 of the Rome Statute or a list of serious violations of international economic law. It can be extended, but not arbitrarily. In any case, the expansion of the list of these acts should find support in international practice. Otherwise, Ukraine will almost certainly face cases against itself in the European Court of Human Rights.

Due to the above-mentioned information, we propose to focus on the list of acts that can be classified as violations of the laws and customs of war, proposed in the bill "On Amendments to Certain Legislative Acts of Ukraine to Harmonize Criminal Law with International Law" № 9438 (DRAFT LAW OF UKRAINE, 2018). This list is in line with international standards and Ukraine's obligations under international treaties to criminalize violations of international humanitarian law.

One of the significant steps aimed at improving the efficiency of the investigation of war crimes, including those committed in the context of international armed conflict, is the signing by the Prosecutor General of Ukraine on October 21, 2019 of an order establishing the Department of Supervision of Criminal Proceedings. armed conflict, whose activities will focus on overseeing the investigation of crimes committed in the temporarily occupied territory of the Autonomous Republic of Crimea and the city of Sevastopol, in the temporarily occupied areas of Donetsk and Lugansk regions and in armed conflict (Department for war crimes has been established in the Prosecutor's Office of Ukraine). All this creates a vertical for coordinating the efforts of all law enforcement agencies in the investigation of war crimes and crimes against humanity, which will contribute to the systematic recording and systematization of evidence.

Concluding the consideration of the conceptual issues of improving the state of the fight against war crimes in the context of international armed conflict, we turn to the study of the peculiarities of detection and collection of evidence during the investigation of these crimes.

Procedural and organizational aspects of the investigation of war crimes committed in armed conflict currently remain one of the least developed problems in the theory of criminal procedure and international law (Vinokurov, 2011). In our view, unlike the criminal process in its usual sense, the implementation of the war crimes investigation procedure needs to be revised and improved.

We share the position of G.M. Grigoryan, who points out that the complexity and multifaceted problem of determining the procedural order of investigation of war crimes is due to the following features: a high degree of interference in the internal affairs of the state, which significantly affect the national interests of the other side of the armed conflict; the prosecution of persons who have committed war crimes in the territory of another country-participant to the armed conflict and fall within its jurisdiction in particular; one of the parties in whose territory the crime was committed, for some reason, does not provide an objective and qualified investigation, and in some cases opposes the investigation; limited ability to gather evidence in the territory of the opponent's country, when there are some witnesses, suspects, etc.; lack of legal regulation of the grounds and procedure for conducting investigative and other procedural actions on the territory of the other party to the conflict; the inevitable conflict of constitutional, procedural and substantive norms in force in the territory of the parties to the conflict; non-fulfillment by the parties of requests for international legal assistance, etc. (Grigoryan, 2018).

A fundamental feature of the procedural order of investigation of war crimes is that the perpetrators belong to the parties to the conflict, and to establish the involvement of specific servicemen (pilots, gunners, snipers, etc.) of the other party who gave and carried out airstrike orders, artillery shelling and destruction of civilians, other war crimes, proof of guilt, etc. It is believed that national investigative bodies, guided solely by the provisions of the Criminal Procedure Code of Ukraine, without effective international law and mechanisms for investigating such crimes, without investigative and procedural actions in the territory and with the participation of the other party to the armed conflict or lack of truce, will not be able to use the potential of criminal procedural means and to ensure the investigation and prosecution of other parties to the conflict responsible for war crimes unless military-violent scenarios are considered, which are purely hypothetical.

At the same time, after instituting criminal proceedings in this category under the principle of extraterritorial criminal jurisdiction, at the stage of investigation and presentation of evidence to representatives of the other party to the conflict, national law enforcement agencies face the problem of limiting their powers under the national Criminal Procedure Code. At the same time, the fact of instituting a criminal case against representatives of the other side of the conflict does not yet indicate that any of them will

be prosecuted. This problem goes beyond the capabilities of the national Criminal Procedure Code or giving international treaties legal force within the legal system of Ukraine.

Attention will be paid to some problems that arise in the qualification of war crimes committed in an international armed conflict. The qualification of war crimes and the full use of international humanitarian law should be based on an objective criterion, namely the existence of an international armed conflict, and not on the geographical element or status of the belligerents, as there is no reason why non-international victims of armed conflicts should be treated differently from victims of international armed conflicts, recognizing similar acts as war crimes in some cases and not in others. At the same time, there is a direct dependence of the qualification of war crimes committed by the parties to the armed confrontation on its nature. Based on the above, we analyze the nature of the armed conflict in the south and east of Ukraine, which, in our opinion, has all the characteristics of an armed conflict of an international nature, and qualifies as international.

Vinokurov A. Yu. rightly notes that the process of qualifying war crimes is three main successive stages. The first establishes the presence of material elements (acts, consequences and other circumstances specified in the definition of a war crime). Concerning war crimes and crimes against humanity, armed conflict or an attack on the civilian population are considered to be significant circumstances. The second establishes the presence of a mental element, which determines that the material elements were committed "intentionally and consciously." The third establishes the existence of circumstances that preclude criminal liability. Besides, it is necessary to establish which violations of international humanitarian law took place and under what conditions it will lead to the individual criminal liability of an individual (Vinokurov, 2011).

At the initial stage of the investigation, the investigator's extremely important task is to find out which unit involved in the conflict committed the crime. This requires proof of the link between the incident and the armed conflict, in particular: confirmation of the fact that the commanders of certain military structures organized, coordinated, or planned military operations of the unit, that they are funded, trained, equipped and directed by government officials. It should be noted that crimes committed by the military against its own army/unit cannot be qualified as war crimes (Koval and Avramenko, 2019).

The investigator also needs to find out whether the victim belongs to one of the categories of protected persons, which include: the wounded; prisoners of war; civilians. Intentional homicide, torture or inhuman treatment, intentional infliction of severe suffering or serious bodily injury or damage to health, large-scale destruction and misappropriation

of property not caused by military necessity, etc., committed against such persons are war crimes.

The organization of the work of the investigative group has certain peculiarities, which depend on the following circumstances: the initial investigative situation; the stage of the initial or subsequent investigation; investigators who are a part of the investigative team, their experience in investigating crimes of this type; how many witnesses need to be questioned; seizure and inspection of the amount of combat and operational documentation to be carried out.

A feature of the investigation of crimes committed by servicemen in the area of anti-terrorist operation / joint forces operation on the eastern and southern borders of Ukraine is the detection and investigation of crimes "in hot pursuit" and the use of group (brigade) investigation to improve the quality and efficiency of investigation.

Therefore, the need to establish an investigative team in the investigation of criminal cases of this category may arise both at the initial and subsequent stages of the investigation. In our opinion, only such a method of investigation is most acceptable in the temporarily occupied and adjacent territories of Ukraine and is the only one possible to improve the quality of the investigation of war crimes. The main task of the investigation "in hot pursuit" is to quickly identify the person who committed the crime, and in favorable cases, his detention as a result of immediate primary and urgent investigative actions and operational and investigative measures (Yablokov, 2003).

The possibility of applying the method of investigation "in hot pursuit" is due to the peculiarities of the investigative situations of the initial stage of the investigation and depends on the following factors: the insignificance of the time elapsed from its commitment to the beginning of the investigation; preservation of the material situation at the crime scene in full or without significant changes; the existence of unfavorable objective and subjective conditions that prevent the preservation of the material situation of the scene and its traces in the same form; the possibility of immediate search and search activities in a specific relatively localized area of the crime; availability of means of rapid notification and immediate arrival of the investigative task force to the crime scene; availability of technical and forensic means of working with traces in the mode of "express analysis"; appropriate professional level of investigators.

Based on the general plan of the investigation and taking into account the individual instructions of the head of the investigation team, each member of the investigation team draws up a detailed individual plan of their work. As for the peculiarities of the organization of the work of the investigative team, they depend on the following circumstances: the initial investigative

situation; the stage of the initial or subsequent investigation; investigators who are part of the investigative team, their experience in investigating crimes of this type; how many witnesses need to be questioned; seizure and inspection of the amount of combat and operational documentation to be carried out.

Particular attention needs to be paid to the study of the peculiarities of the collection of evidence of war crimes committed in the context of an international armed conflict by authorized participants in criminal proceedings. First of all, it is a question of carrying out such investigative (search) actions as inspection of a scene and interrogation.

Obtaining and recording evidence during the investigation of artillery attacks in the study of impact craters is an important step in determining the direction from which was fired. The fired areas must be inspected as soon as possible. Craters are quickly exposed to the elements and the intervention of military and civilians, losing their value as a source of information.

The main task of the investigator on arrival at the place of fire is to isolate and fence among other ditches those that will give the most information about the origin of the attack. The main thing is to clarify with witnesses and see for yourself that it was formed during the shelling, the fact of which is being investigated. At the scene, the investigator should: set the coordinates of the place of fire, make a panoramic video of the scene (Koval and Avramenko, 2019).

The procedure of interrogation during the pre-trial investigation has its characteristics due to the conditions of the combat situation. In the area of armed conflict, investigators must conduct this investigative (investigative) action most competently, fully and exhaustively, using control and detailed questions, because the conditions of the combat situation may not allow additional or repeated interrogation in connection with death, injury, captivity. or a business trip of the interrogated serviceman.

Analysis of the investigative practice of military investigative bodies shows that in most cases interrogations are conducted descriptively and in sufficient detail about all the circumstances directly related to the criminal case. However, investigators do not take sufficient measures to verify the testimony of the interrogated, do not ask control questions. As a result, a fairly complete and rich interrogation report is obtained, which contains important testimonies for the case, but it is impossible to judge how reliable these testimonies are by such an interrogation report. This error is always negatively reflected throughout the investigation, but it is especially negative for the practice of military investigative bodies in the area of armed conflict, where the opportunity to find any evidence other than the testimony of the interrogated person is extremely limited (Grigoryan, 2009).

In addition, in contrast to the interrogation conducted in peacetime,

the interrogation in a combat situation, in our opinion, is complicated by the situation of obtaining evidence (mobile forensic laboratory, dugout, tent, shell funnel, ruins, trench, shelter or other inconvenient premises or terrain). This situation often does not contribute to the establishment of psychological contact with the interrogated and does not create a favorable atmosphere for the investigative (search) action.

One of the main tactics of interrogation used in the investigation of war crimes in the area of anti-terrorist operation / joint force operation in Ukraine. Regardless of whether the investigator has doubts about the objectivity of the testimony of the interrogated, should be detailing these testimonies, as the formulation of detailed and control questions in order to clarify and verify the circumstances of the criminal offense is extremely important.

In a combat situation, the time for interrogation is limited, and therefore the list of interrogation tactics used is limited. Therefore, during the interrogation, the investigator must, in the shortest possible time, obtain the maximum amount of evidentiary "express information" necessary for the organization of the investigation, including on "hot leads". Hence the relative "brevity" of the interrogation protocols, which often reflect only the main circumstances of the investigated event and there are no answers to which are detailed and control questions to clarify and verify the testimony.

In areas of armed conflict, the investigator must take into account and assess the mental, emotional and psychological state of the interrogated, as well as the possible consequences of combat mental injuries received during hostilities or as a result of war crimes, and choose the most appropriate and procedural acceptable tactics for obtaining evidence.

Thus, the use of these methods of interrogation will allow the investigator to prepare for the interrogation, which, in our opinion, will allow him to establish with maximum completeness and accuracy the circumstances of the evidence in criminal proceedings, to determine in advance the choice of tactics, sequence of questions work out several versions. In addition, the use of a common standard interrogation program by investigators will help, rationally using time, to draw up an individual interrogation plan for the specific investigative situation of the initial or subsequent stage of the investigation, the specific circumstances of the criminal case and the individual.

The process of gathering evidence can be optimized only by adapting to the conditions of the armed conflict of the certifying party of this procedure. Strengthen the evidence side and at the same time provide a "shorter" and secure access to sources of evidence can be only done by using new technologies to capture information. However, not all investigative (search) actions held in peacetime can be carried out quickly and successfully in areas

of armed conflict. We believe that in order to adapt them, some changes in the procedure are needed to simplify certain investigative (search) actions, provided that formalism is avoided and the purpose and semantic essence of these methods of gathering evidence during the pre-trial investigation are taken into account.

Conclusions

Based on the results of the problems covered in the scientific article, we can draw some conclusions. In our opinion, the need to specify the components of war crimes in national legislation is obvious. Pre-trial investigation bodies, guided only by the provisions of the national Criminal Procedure Code, without taking into account international law and mechanisms for investigating war crimes, without conducting investigative and procedural actions on the territory and with the participation of the other party to the armed conflict or procedural means and to ensure the quality of the investigation and the possibility of prosecuting the representatives of the other side of the conflict responsible for such illegal actions. National law enforcement agencies should extend criminal law to perpetrators outside the state and exercise their criminal jurisdiction over representatives of the country initiating the armed conflict based on the principle of passive citizenship, which provides for the extension of criminal law depending on the nationality of the victim or the principle of protection, which provides for the spread of criminal law of the state depending on whether the interests and security of the state are violated.

Increasing the investigation of war crimes committed in the context of international armed conflict is the detection and investigation of crimes “in hot pursuit” and the use of group (brigade) method of investigation to improve the quality and efficiency of the investigation. Only such a method of investigation is most acceptable in an armed conflict and is the only one possible to improve the quality of the investigation of war crimes.

We consider it necessary to develop methodological recommendations for the investigation of certain types of war crimes and an algorithm for conducting some investigative (search) and other procedural actions, as the effectiveness and quality of investigation of war crimes, including those committed by armed parties, is achieved by effective investigation planning and rationalization. investigative (search) actions in order to neutralize or reduce the impact of destructive factors of armed conflict on the investigation of these illegal acts.

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Comparative legal analysis of the anti-corruption policy in Ukraine and Poland

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Abstract

Effective counteraction to corruption remains relevant in some countries of Eastern Europe and the former Soviet Union, given that manifestations of corruption are a real obstacle to the realization of human rights, social justice, economic development and jeopardizes the proper functioning of a market economy. However, if such countries of the region, such as Poland, succeeded in ensuring the implementation of an effective anti-corruption policy, a number of post-Soviet countries, in particular Ukraine, faced significant obstacles to overcoming corruption and effectively implementing national anti-corruption policies. Therefore, within this article, a comparative legal analysis of the anti-corruption legislation of these countries has been carried out. The state of implementation of national anti-corruption policies and the formulated conclusions, which provide answers to the questions of improving the implementation of national anti-corruption policy, in particular Ukraine, are considered. Thus, the existence of modern national anti-corruption legislation that best meets the requirements and recommendations on which the state relies on relevant international treaties can be the key to successful anti-corruption efforts.

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Análisis jurídico comparativo de la política anticorrupción en Ucrania y Polonia

Resumen

La lucha eficaz contra la corrupción sigue siendo pertinente en algunos países de Europa oriental y la ex Unión Soviética, dado que las manifestaciones de corrupción son un obstáculo real para la realización de los derechos humanos, la justicia social y el desarrollo económico y ponen en peligro el funcionamiento adecuado de una economía de mercado. Sin embargo, si esos países de la región, como Polonia, lograron garantizar la implicacion de una política anticorrupción eficaz, varios países postsoviéticos, en particular Ucrania, se enfrentaron a obstáculos importantes para superar la corrupción y aplicar eficazmente la lucha nacional contra políticas de corrupción. Por ello, dentro de este artículo se ha realizado un análisis jurídico comparativo de la legislación anticorrupción de estos países. Se considera el estado de implicacion de las políticas nacionales anticorrupción y las conclusiones formuladas, que brindan respuestas a las preguntas sobre la mejora de la implicacion de la política nacional anticorrupción, en Ucrania particularmente. Por lo tanto, la existencia de una legislación nacional anticorrupción moderna que cumpla mejor con los requisitos y recomendaciones en los que el estado se basa en los tratados internacionales relevantes puede ser la clave para el éxito de los esfuerzos anticorrupción.

Palabras clave: política anticorrupción; Europa del Este; análisis legal; prevención de la corrupción; organismo especializado en lucha contra la corrupción.

Introduction

After the fall of the communist regime in Eastern Europe and the former Soviet Union in the early 1990s, as a rule, representatives of other political parties came to power democratically in these countries. They eventually began to introduce a new economic, political, and social course there. The introduction of market relations, the sale of state-owned property to private companies, the creation of new forms of economic relations (for example, private-public partnership) in which the state participates through its

representatives have even more actualized the issues of combating and preventing corruption in new political, economic, social and legal conditions of existence. In the article, we will carry out a comparative legal analysis of modern anti-corruption programs (strategies) that are being implemented in Ukraine and Poland, as well as estimate their effectiveness and results of their implementation.

The World Bank determines that corruption is commonly defined as the abuse of public or corporate office for private gain. Instead, Christensen, Shaxon and Baker, point out the definition of corruption according to Transparency International (TI) as "the abuse of entrusted power for private gain". They rightly point out that this definition is better, as it could be used more broadly, but in practice, it is usually interpreted in a narrow way, notably by focusing on the public sector, particularly on bribery (Christensen *et al.*, 2008). Civil Law Convention on Corruption (1999), ratified, in particular by Poland (2002) and Ukraine (2005), states that corruption means 'requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behavior required of the recipient of the bribe, the undue advantage or the prospect thereof'. Corruption represents a major threat to the rule of law, democracy and human rights, fairness and social justice, hinders economic development and endangers the proper and fair functioning of market economies (Civil Law Convention on Corruption, 1999). Corruption is not only illegal but also not a completely moral act. In this view, morality and law are a supportive factor of each other, global morality is a criterion of standard behavior for the introduction of such norms of law (Obura, 2014). In a democratic system based on people's trust, the spread of injustice may become fatal, because it destroys the faith in the institutions of power (De Vel and Csonka, 2002, p. 361).

The criticality of corruption in modern Ukraine is due to the problem of the formation of civil society, the weakness of its structures, and the inability to withstand the pressure of the shadow economy. According to research, corruption was one of the reasons that led to the Revolution of Dignity in Ukraine in 2013-2014 (Bardachov, 2014). The high level of corruption in Ukraine confirms by the Corruption Perceptions Index (CPI). According to the CPI, Ukraine ranked 114th among the 180 countries surveyed in 2019 (Transparency International, 2020).

Vice versa, Poland, which in the early 1990's also lost its communist regime. According to the CPI, Poland ranked relatively high, which can be evidence of the effectiveness of anti-corruption programs by Polish state institutions. Although CPI has been subjected to sustained critique for distorting and manipulating the measurement and understanding of corruption (Poynting and Whyte, 2017). Johnston offered the argument

that four major syndromes of corruption can be observed in all countries. Following the proposed division, Poland suffers from 'Elite Cartels' syndrome, and Ukraine deals with 'Oligarchs and Clans' syndrome. It is due to the small number of contentious elites, very weak institutions, rapidly expanding opportunities, and pervasive insecurity. The existence of such a separation leads to successful reform or best practice in Country A may be impossible in Country B, irrelevant in Country C, and downright harmful in Country D (Johnston, 2011). Nonetheless, CPI results are used by both international and national organizations and corporations. These findings are confirmed, in particular, by statistical data, according to which only 15 % of Poles regard corruption as one of the most serious problems in the country (Banakhievich, 2017). 33 % of the Ukrainians consider corruption as an element of tradition (Polikovskaya, 2017).

The choice of Ukraine and Poland for this research is because, on the one hand, Ukraine (EU-Ukraine Association Agreement) and Poland (EU member state), having a close geographical position. They have similar socialist past, since the 1990s, started an active transformation of their legal institutions. On the other hand, these countries have so far achieved different results in the implementation of their anti-corruption policies. The purpose of this study is to get an answer: how the legislative process can influence the perception and success of national anti-corruption policy implementation of such similar countries. The conduct of comparative legal analysis of the anti-corruption policy in these countries allows, in particular, to identify and determine the degree of influence of individual elements of the anti-corruption policy on the success of anti-corruption policy implementation. The impact of international anti-corruption treaties on the results of national anti-corruption policy implementation was also evaluated.

We propose to conditionally divide this article of three main sections. The first outlines the main modern legislative principles of anti-corruption policy in such countries of Eastern Europe as Poland and Ukraine. In this section, the comparative analysis of the national anti-corruption legislation carries out. There examine its links with the main international agreements on preventing and combating corruption, which these countries have joined, as well as analyze the state of national anti-corruption policies implementation, factors, which affect it. The second section provides data on anti-corruption strategies, programs, and their implementation in these countries. In the final section, based on the results of the comparative legal analysis, the main findings of the research do formulate and summarized.

1. Methodology of the study

The methodological basis of this work is philosophical methods: dialectical (the basic principles of which are objectivity, comprehensiveness, concreteness and completeness of knowledge's etc.), logical (the main methods of which are analysis and synthesis, induction and deduction, analogy), etc.

Firstly, the dialectical method revealed general features, connections and regularities in the formation of anti-corruption measures taking into account the norms of international law. The hermeneutic method allowed to study the content of certain legal norms and theoretical provisions in the context of topical issues of anti-corruption measures on the basis of acquaintance with the texts of normative and doctrinal sources. The analysis and synthesis allowed to comprehensively describe and characterize the essence of the anti-corruption policy of Poland and Ukraine, to combine original ideas, principles and developments for further effective use of legal positions in anti-corruption policy at the level of individual countries.

Also, the use of the formal-legal method made it possible to determine the list of specific tasks, deadlines, bodies responsible for each task, efficiency indicators, sources of funding, providing clear indicators for assessing the success of the implementation of anti-corruption state strategy in Poland and Ukraine. Thanks to the comparative legal method, it has become possible to compare the main legal positions in the regulation of anti-corruption processes, taking into account the peculiarities of combating this phenomenon at the national and international levels. The logical-legal method helped formulate proposals for the use guiding anti-corruption principles applied at the Council of Europe level.

Furthermore, the special legal method was used in assessing the effectiveness of the an overview of anti-corruption strategies and programs, as well as the state of their implementation in Ukraine and Poland. Finally, generalization, as a method, allowed to identify the main problems and formulate the vectors of Ukraine's implementation of national anti-corruption policy, taking into account the experience of Poland and other developed countries.

2. Results and Discussion

Before moving directly to the comparative legal analysis of the national legislation of Ukraine and Poland, let us draw attention to the importance of the existence of legal mechanisms that provide an integrated approach to preventing and combating corruption both at the international and national levels.

2.1. International level

At the level of the Council of Europe (Ukraine and Poland is its members), the anti-corruption principles approved by Resolution (97) 24 on the Twenty Guiding Principles for the Fight Against Corruption. These include, among others, such as:

- to take effective measures for the prevention of corruption and, in this connection, to raise public awareness and promoting ethical behaviour;
- to ensure co-ordinated criminalisation of national and international corruption;
- to ensure that those in charge of the prevention, investigation, prosecution, and adjudication of corruption offences enjoy the independence and autonomy appropriate to their functions, are free from improper influence and have effective means for gathering evidence, protecting the persons who help the authorities in combating corruption and preserving the confidentiality of investigations;
- to provide appropriate measures for the seizure and deprivation of the proceeds of corruption offences;
- to promote the specialisation of persons or bodies in charge of fighting corruption and to provide them with appropriate means and training to perform their tasks.
- to ensure that the system of public liability or accountability takes account of the consequences of corrupt behaviour of public officials.
- to encourage the adoption, by elected representatives, of codes of conduct and promote rules for the financing of political parties and election campaigns which deter corruption.
- to encourage research on corruption.
- to develop to the widest extent possible international co-operation in all areas of the fight against corruption (Resolution (97) 24, 1997). Such anti-corruption principles must be implemented in the national legislation and the law enforcement practice of each party country. Further, the legislative acts of Ukraine and Poland, which introduce anti-corruption principles, are listed in the article.

Taking into account Resolution (97) 24, the Committee of Ministers of Council of Europe was resolved to establish the Group of States against Corruption (GRECO), governed by the Statute appended thereto (Resolution (99) 5, 1999). Currently, GRECO comprises 49 member States (48 European States and the United States of America). Poland (1999),

Ukraine (2006), RF (2007) also joined GRECO. The aim of the GRECO is to improve the capacity of its members to fight corruption by following up, through a dynamic process of mutual evaluation and peer pressure, compliance with their undertakings in this field. In order to achieve the aim, the GRECO shall monitor the observance of the Guiding Principles for the Fight against Corruption (Appendix to Resolution (99) 5, 1999). The next stage of implementation of the provisions of Resolution (97) 24 was the Criminal Law Convention on Corruption, 1999. The Criminal Law Convention on Corruption has recommended that the participating countries take measures to establish in their national legislation criminal liability for a certain list of corruption offenses. The control over its implementation was entrusted to GRECO.

The UN Convention against Corruption, adopted in 2003, involves 186 States Parties, including Ukraine and Poland (Signature and Ratification Status, 2018). In accordance with Articles 5, 6 of this Convention each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies. Each State Party shall grant bodies that prevent corruption the necessary independence, in accordance with the fundamental principles of its legal system, to enable bodies to carry out their functions effectively and free from any undue influence (UN Convention against Corruption, 2003). The mentioned provision of the UN Convention against Corruption as regards the establishment of conditions for the independence of anti-corruption bodies in its content corresponds to one of the principles previously stated, which were approved by Resolution (97) 24. This statement also applies to a number of other provisions set out in Resolution (97) 24 and UN Convention against Corruption.

Of course, there is an interdependence between international and national anti-corruption measures, since national anti-corruption policy must be constantly improved in line with international standards. However, despite the considerable potential of international legal instruments to fight corruption, national measures are the most efficient and effective methods of combating corruption (Conforty, 1993). Jeremy Pope highlights the need for a 'system of state integrity' using a holistic approach to addressing transparency and accountability issues. The approach embraces all key structures of democratic, legal, and civil society. In his view, the political struggle against corruption has several elements common to each country. It is the reform of key state programs, the change in the structure of the government and the improvement of its accountability, the change in moral and ethical attitude to corruption, and, most importantly, the involvement and support of the government, the private sector and civil society of anti-corruption policy (Pope, 2011). World Bank's expert Pierre Landell-Mills is convinced of the need to adopt anti-corruption legislation. This legislation formed by laws on combating corruption, extortion and bribery, funding of

political parties, and laws aimed at curbing corruption. In particular: the introduction of free access of citizens to public information, guaranteeing the protection of persons from criminal prosecution who report cases of corruption, about conflict of interests (Landell-Mills, 2013).

2.2. National level. Ukraine

For today, the adoption of the "Prevention of Corruption" Act 2014 (Ukr) is the latest stage in the implementation of the anti-corruption policies contained in the international treaties to which Ukraine joined. Article 4 of this Act specifies that the central body of executive power with a special status, which ensures the formation and implementation of state anti-corruption policy, is the National Agency for Corruption Prevention (NACP). The Cabinet of Ministers of Ukraine creates the NACP. His powers include:

- analysis of prevention and counteraction to corruption, activities of state bodies and local self-government bodies in the relevant sphere.
- development of anti-corruption strategy and state program implementation, monitoring, coordination, and evaluation of the effectiveness of the Anti-Corruption Strategy.
- formation and implementation of anti-corruption policy, drafting of normative legal acts.
- monitoring and control over the implementation of legislation on ethical conduct, prevention, and resolution conflict of interests.
- control, verification, storage, and disclosure of officials' declarations and monitoring their lifestyles.
- maintenance of the Unified State Register of officials' declarations (USROD) and the Unified State Register of persons who have committed corruption offenses.
- approval of anti-corruption programs of state authorities and local self-government bodies.
- informing the public about measures of preventing corruption, implementation of measures aimed at forming a negative attitude towards corruption in the minds of citizens.
- coordination of international obligations implementation, cooperation with state bodies, non-governmental organizations of foreign states and international organizations.

Instead, before the start of the work of this newly created anti-corruption body, in March 2016, MP V. Chumak, as a result of political pressure, refused to exercise the powers of a member of NACP. It led to

the lack of a quorum and the impossibility of NACP at that time to start work. (Ukrainian Pravda, 2016). During 2016-2018, NACP, with almost 2 million, was able to check only 164 electronic declarations of officials. The reason for this was the lack of a comprehensive information security system in the software product, which was supposed to ensure the maintenance of USROD. The launch of the electronic declaration system was postponed until September 2016. Falkner and Treib describe some Eastern European member states (Hungary, Slovakia, Slovenia) as 'the world of dead letters' because the stage of practical implementation of EU Directives has flawed enforcement (Falkner and Treib, 2008). With similar examples, in relation to the stage of practical implementation of international anti-corruption legislation, Ukraine can also be referred to as the world of dead letters.

In November 2017, the head of the NACP department publicly accused the head of NACP Natalia Korchak of distorting the results of checking declarations of certain officials, as well as the unlawful influence on the activities of the NACP by the administration of the President of Ukraine (Hromadske TV, 2018). GRECO also turned attention to these facts: 'for the NACP to work effectively, it must be independent and free of any political interference both in law and, principally, in practice' (GRECO, 2017). So far, the law enforcement agencies not given a public assessment of procedural results of verifying these allegations.

The anonymous interview conducted with 42 detectives of the National Anti-Corruption Bureau of Ukraine (NABU) and 36 judges of Kyiv's region. Informed consent obtained from participants. 81 % of detectives interviewed and 86% of judges interviewed think that the absence of non-procedural political influence is a prerequisite for the successful implementation of anti-corruption policies.

According to Art. 1 of "On the National Anti-Corruption Bureau of Ukraine" Act 2014 (Ukr), the National Anti-Corruption Bureau of Ukraine (NABU) is a state law enforcement agency charged with identifying, terminating, investigating, disclosing, and preventing corruption offenses. NABU is created by the President of Ukraine to counteract a criminal corruption offense committed by senior officials and endangering national security. According to Art. 16 of this Act, the duties of NABU include the use of operational-search activities, pre-trial investigation, search, seizure of funds, and other property that may be subject to confiscation or special confiscation. Cooperation, on terms of confidentiality, with persons reporting corruption offenses, informing society about the results of its work, international cooperation is also there. Article 216, paragraph 5, of Criminal Procedural Code 2012 (Ukr) defines substantive criminal offenses in which criminal investigations are carried out by NABU's detectives.

Appointment and recruitment procedures and budgetary independence are the most sensitive areas in which anti-corruption agencies can be

exposed to political pressure (Sousa, 2009). Some Ukrainian scholars point out that the procedure for appointing persons to the Contest Commission in practice leads to the "political immunity" of senior officials for committing corruption offenses. By the results of work, Contest Commission sends two or three candidates to the post of Director of NABU. At the same time, Contest Commission personnel depends on the President of Ukraine, the pro-presidential Cabinet of Ministers of Ukraine, and the Verkhovna Rada (Fedorko, 2019). Thus, the main flaw "On the National Anti-Corruption Bureau of Ukraine" Act 2014 (Ukr) is its inconsistency in Art. 106 Constitution of Ukraine 1996 (Ukr) on the procedure for NABU's creation. Appointment and dismissal of his director, approval of Competition Commission according to Art. 106 Constitution of Ukraine 1996 (Ukr) not assigned to the powers of the President of Ukraine. However, Art. 6, 7 "On the National Anti-Corruption Bureau of Ukraine" Act 2014 (Ukr), contrary to Art. 106 Constitution of Ukraine 1996 (Ukr) granted to the President such powers.

Despite this, the President, with his decrees, formed the NABU and appointed Artem Sitnik as its director (Decree of the President of Ukraine No. 217/2015 2015 (Ukr); Decree of the President of Ukraine No. 218/2015 2015 (Ukr)). According to the Constitutional Court of Ukraine, changes to Art. 106 of the Constitution of Ukraine 1996 (Ukr) concerning the extension of the President's powers in these matters is contrary to the provisions of Art. 157 of the Constitution of Ukraine. They may violate the balance of constitutional powers between the President of Ukraine and the Cabinet of Ministers of Ukraine, effectively creating a parallel executive power subordinate to the President of Ukraine.

The creation and work of NABU, as a specialized anti-corruption state body for the termination, investigation, disclosure of corruption offenses, fully complies with the provisions of Resolution (97) 24, the UN Convention against Corruption. However, the commencement of its work, which did carry out in violation of the provisions of the national constitution, created substantiated doubts about further institutional independence of this body from other bodies of state power, in particular, the President of Ukraine. Independence and autonomy, freedom from improper influence are principles defined by Resolution (97)24. Subsequently, the doubts of the Ukrainian public about the independence of NABU from the President of Ukraine received their confirmation when Radio Liberty announced the fact of the night informal meeting of the director of NABU Sitnik with President Poroshenko in a private residence (Radio Liberty, 2018). Journalist Boyko in his publication, based on documents from the register of rights to real estate, cited data that in 2010, the head of the department at the Prosecutor's Office, A. Sitnik received from the local charity fund a two-room apartment in the suburbs of Kyiv as a present. According to the journalist, funds for the purchase of this apartment by charity fund came

from the company of one of the suspects in a criminal case. At that time the criminal case has been investigated by the prosecutor's office headed by Sitnik (Boyko, 2018). According to the decision of the Rivne Court of Appeal, the Director of NABU Sytnyk has been brought to administrative responsibility for committing a corruption offense of violation of statutory restrictions on gifts (Kolomiets, 2019).

Starting from 2015, according to "On Amendments to Certain Legislative Acts of Ukraine to Ensure the Activities of the National Anti-Corruption Bureau of Ukraine and the National Agency for Corruption Prevention" Act 2015 (Ukr), General Prosecutor's Office of Ukraine (GPO) includes the Specialized Anti-Corruption Prosecutor's Office (SAP). SAP is an independent structural unit. SAP entrusts with the functions of overseeing the observance of laws during the conduct of operational-search activities, pre-trial investigation of NABU, maintenance of state prosecution in relevant proceedings. It represents the interests of a citizen and state in court in cases involving corruption.

Despite the creation of an autonomous anti-corruption body in GPO, the quality of procedural and out-of-procedure interaction between NABU and SAP is difficult to call acceptable. In this regard, an illustrative example is when in an aquarium stationed in the office of SAP's head Kholodnitskiy by NABU's officers had been installed a listening device within the framework of a pre-trial investigation. It concerned the extortion of a bribe of $2 million for the release of a person arrested on suspicion of a corruption offense. The results of the listening cabinet of the head of SAP were promulgated in the national media, after which the public began to accuse Kholodnitsky of disclosing the data of pre-trial investigation to outsiders. However, at the end of 2018, all official allegations against Kholodnitsky were withdrawn, and the relevant criminal proceedings were closed (Nikolaenko, 2019). Besides, in September 2018, there was a case of use of violent actions by the Special Forces of NABU to SAP's prosecutors, which resulted in SAP accusing NABU of "illegally installed means of secretly withdrawal information" (Radio Liberty 2, 2018).

Considering these examples in the context of the principal-agent model, where a high-ranking officer of the anti-corruption body may act as a corrupt principal, the conclusions of Ledeneva, Bratu, Köker on the impracticality of principal-agent framework could be applied (Ledeneva *et al.*, 2017). It is also confirmed by empirical data. Thus, 52 % of detectives interviewed think that publications and facts about possible corruption offenses committed by anti-corruption officials hurt the psychological status of other employees. It influences the level of public confidence in the activities of such bodies and affects the success of the implementation of the anti-corruption policies. It also confirmed by the statistics below.

According to the statistics of GPO in 2018, only 9 indictments (7 %) from 132 criminal proceedings investigated by the NABU sent to court in the category of crimes related to unlawful profit (bribery) (Art. 368-369 of the Criminal Code of Ukraine). More than half, namely, 56 criminal proceedings of this category were closed by NABU in the absence of crime (General Prosecutor's Office of Ukraine, 2019). With the number of NABUs staff in 700 people, in 6 months of 2018, NABU sent to court indictments concerning of 2 people who hold public service positions in category "A" (top officials) (NABU, 2018). Such performance indicators of NABU and SAP do not correspond to the level of corruption in Ukraine according to CPI ranking. Such an example of a discrepancy between perception and reality regarding the measurement of corruption may be an argument in favor of some scholars who argue against the use of corruption indices for political or social purposes (Galtung, 2005; Ledeneva *et al*., 2017). However, such indicators may show the improper performance of pre-trial investigation and the prosecutor's guidance in relevant criminal proceedings by anti-corruption law enforcement bodies. Therefore, an argument in favor of the creation of the High Anti-Corruption Court in Ukraine could be questionable. According to this argument, exclusively first-instance courts and not the low quality of work of anti-corruption bodies are the main obstacles in condemning top officials for corruption.

This confirms by the lack of practical implementation in 2018 of such an anti-corruption principle with Resolution (97) 24 as the seizure and deprivation of the proceeds of corruption offenses. Thus, according to the State Treasury Service of Ukraine in 2018 by court decisions on corruption-related cases confiscated only $ 5010 with planned $ 170 million (Ukrainian Pravda, 2019). A special item on the proceeds of confiscated funds and property for committing corruption-related offenses did withdraw by Government and Parliament. Applying Klitgaard's formula to this case in that the less accountability than the more corruption, the success of the work of anti-corruption bodies is called under reasonable doubt in 2019.

2.3. National level: Poland

Article 36 of the UN Convention against Corruption provides the existence of a body with the necessary independence, which specialized in combating corruption through law enforcement. In 2006, the Sejm (Polish Parliament) adopted "On the Central Anti-Corruption Bureau" Act, which provides the creation of an independent specialized anti-corruption body, the Central Anti-Corruption Bureau (CBA). Provisions of Art. 2 of this Act provides that CBA's tasks comprise in particular:

– recognition, prevention, and detection of criminal offences with the definite subject matter.

– disclosure and prevention of non-observance of the provisions of legislation about restrictions on the conduct of business activities by persons performing public functions.
– disclosure of cases of non-observance of procedures, defined by the provisions of the law on taking decisions and implementation thereof within the scope of privatization and commercialization, financial support, an award of public contracts.
– the accuracy and veracity verification of asset declarations or declarations on the conduct of business activities by persons performing public functions.

In pursuance of the function of recognition, prevention and detection of criminal offenses, under Art. 14 of this Act CBA officers have rights: apprehend persons and search persons, premises according to procedures and circumstances specified in the provisions of the Criminal Procedure Code; conduct a body search, examine the contents of the luggage, stop vehicles and other means of transport as well as check the cargo in land, air and water means of transport in the event of a reasonable suspicion of a criminal or fiscal offence; observe and register, with the use of technical measures, the picture of events in public places and the sound accompanying such events in the course of performing operational intelligence undertaken according to the Act.

During the creation of CBA in Poland, the public, lawyers, and politicians have raised reasonable doubts about compliance provisions of "On the Central Anti-corruption Bureau" Act 2006 (Pol) to provisions of the Polish Constitution. It was similar to NABU's creation case in Ukraine. But in the case of the CBA, these issues did not deal with the appointment of the head of the body, but about the legal definition of corruption and principles of collecting personal data and conducting control activities. In 2009, the Constitutional Court of Poland declared unconstitutional, which did not comply with the Convention for the Protection of Human Rights and Fundamental Freedoms, done at Rome on Nov. 4, 1950. It abolished provisions of Art. 1 of Act in the scope in which the corruption in the private sector recognizes the behavior of any person who does not have a public function, without restricting this term using socially harmful reciprocal premises. It also abolished provisions of Art. 22 of Act, to the extent that it enables the CBA to collect data on the protection of personal data and the use of such data and information obtained as a result of performing operational and intelligence activities without the knowledge and consent of the person concerned – without guaranteeing instruments to control the manner of data storage and verification and how to remove data unnecessary. Finally, it abolished the provisions of Art. 40 of Act, to the extent that it permits inspections of real estate or other assets without specifying the manner of using and storing data obtained in this way, in

particular regarding third parties not obliged to file asset declarations (Judgment K 54/07). As a result of this judgment, the institution of the proxy for personal data protection established. This institution acts as the administrator of information security in the service and consists of, among others, annual reports on the status of personal data protection in the CBA (Fundacją Panoptykon, 2015).

In 2016, 32 (52 %) of the 62 completed CBA criminal cases, materials with indictments were transferred to the court (CBA, 2016), indicating a more efficient work of this body, comparing with the corresponding indicator of NABU (7 %). At the same time, we also found critical publications about certain facts of CBA executives' inactivity over the past years. In particular, an officer of the Polish military counterintelligence Jarosław Pieczonka accused the former CBA head of Mariusz Kamiński in the absence of reaction to his reports about facts of influence by Russian intelligence agent on the head of CBA department in Gdansk (Pieczonka, 2016). Moreover, the inspection of GPO of Poland showed that since the creation of CBA until June 30, 2015, the prosecutors questioned 5 decisions of the CBA head. Decisions regarded the refusal to release CBA officers from the obligation not to disclose classified information for purposes of pre-trial investigation. 2 of them were considered correct (Seremet, 2016).

2.4. Anti-corruption strategies, programs. The state of their implementation in Ukraine and Poland

In order to implement the Guiding Principles for the Fight Against Corruption, taking into account the proposals made by GRECO to Ukraine, in particular, "On Principles of Prevention and Counteraction Corruption" Act adopted, and National Anti-Corruption Strategy (NAS) for 2011-2015 was approved by Decree of the President of Ukraine No.1001/2011. Following the provisions of NAS, the State Program for Prevention and Counteraction Corruption 2011-2015 was approved (Resolution of the Cabinet of Ministers No.1240 2011 (Ukr)). Its purpose was to introduce mechanisms for reducing corruption in Ukraine. For this ministries, other authorities obliged to submit to the Ministry of Justice annually information on the state of implementation of State Program for its generalization and inclusion into a report on the results of the implementation of measures on corruption prevention. However, despite all these measures, in 2013, TI identified the ineffectiveness of State Program implementation based on the results of public monitoring. Among the main reasons for the ineffectiveness of State Program were named:

– lack of adequate funding for most program measures and clear indicators for their implementation.

- lack of proper coordination of performers, the inconsistency of individual tasks with planned activities.
- the limited capacity of performers, low level of performance discipline.
- lack of a public request for reforms.
- putting responsibility for the implementation of anti-corruption measures on bodies that are affected by corruption (Khmara, 2013). Last reason in the context of the principal-agent model confirmed it's impracticality in Ukraine.

Next Act, which identified the priority measures to prevent and counteract corruption, which should form the basis for further reform in this area, is "On the Principles of State Anti-Corruption Policy in Ukraine (Anti-Corruption Strategy) for 2014-2017" Act 2014 (Ukr). Art. 18 "Prevention of Corruption" Act 2014 (Ukr) provides that the principles of anti-corruption policy (Anti-Corruption Strategy) determined by the parliament. Anti-Corruption Strategy implemented through the implementation of a state program developed by NACP and approved by the Cabinet of Ministers. In compliance with these provisions adopted Resolution of the Cabinet of Ministers No.265 2015 (Ukr).

The provisions of this Act stated that the previous NAS for 2011-2015 did not become an effective tool of anti-corruption policy. It is true primarily because of the absence of clear indicators of state and effectiveness of its implementation, the absence of a mechanism for monitoring and evaluation ('On the Principles of State Anti-Corruption Policy in Ukraine (Anti-Corruption Strategy) for 2014-2017' Act 2014 (Ukr)).

Anti-Corruption Strategy for 2014-2017 identified some problems and measures to address them. In particular, the following key issues identified: lack of legislative, institutional basis for the formation and implementation of anti-corruption policy based on cooperation between state bodies and the public; the democratic nature of the political system in general and the electoral process in particular; honest public service; corruption prevention in activities of executive authorities, in the field of public procurement, in the judiciary and criminal justice bodies, in the private sector; lack of access to information; formation of a negative attitude towards corruption among the population. The State Program on the implementation of the Anti-Corruption Strategy in Ukraine for 2015-2017, for each section of the State Anti-Corruption Policy framework, were approved tasks and measures for its implementation. Established deadlines, bodies responsible for each task, indicators for implementation, sources of funding provided.

According to NACP analytical report on the implementation of the Anti-Corruption Strategy for 2014-2017 and the State Program on Implementing

of Anti-Corruption Strategy, as of the second quarter of 2017, 112 measures of the State Program implemented, 38 partially implemented, and 23 completed in the course of implementation. Overall, the degree of implementation of measures assessed only 64 %, only 27 % of State Program measures implemented on time (NACP, 2017). Among the reasons for this low quality of its implementation, it may note, the passive attitude of the responsible authorities, the full launch of the newly created anti-corruption bodies (NACP, NABU, SAP) only at the end of 2015 - beginning of 2016.

The main problem of the present day in Ukraine concerning the legislative provision of the Anti-Corruption Strategy is that in 2019 the Ukrainian parliament did not adopt "On Anti-corruption Strategy for 2018-2020" Draft Act. We think that a part of the responsibility lies with the government, which only on April 26, 2018, submitted to the parliament this bill. Only 18.09.2018 it was included to parliament session agenda. Where the law has little credibility or serves the interests of corrupt figures and where legitimate alternatives to corrupt dealings are scarce, crime-and-punishment strategies may have little success (Johnston, 2011). Thus, in addition to the above-mentioned reasons for the ineffective implementation of the Anticorruption Strategy for 2014-2017, one can add the lack of political will on the issues of the formation and implementation of clear legislative measures aimed at reducing corruption and further promotion of anti-corruption initiatives in Ukraine.

Considering Poland's legislation in this area can be noted that art. 19 "On the principles of development policy" Act 2006 (Pol) states that the state development program, prepared by the relevant minister, is approved by the Council of Ministers. In pursuance of this provision, the Council of Ministers of Poland adopted the Anti-Corruption Program 2018-2020. It defines the main and special objectives of the program, the scale for measuring the success of the program objectives, the mechanisms for implementing the program, the action plan for each task, the implementation and evaluation of the program implementation division at the level of responsible subjects (program coordinators, a team appointed by the prime minister, the Council of Ministers). The main goals of the Polish Anti-Corruption Program include: strengthening preventive and educational activities; improvement of mechanisms for controlling corruption threats and monitoring of legal norms in the area of counteraction to corruption crimes; intensification of co-operation and coordination between law enforcement agencies in this area (p. 3.1 Anti-Corruption Program 2018-2020 2017 (Pol)).

One of the criteria for assessing the implementation of the Anti-Corruption Program, the Polish government has identified the need to implement at least 80% of planned activities in each task in the middle of the third year of Program's implementation (p.3.3 Anti-Corruption Program 2018-2020 2017 (Pol)). Comparing this indicator with the degree

(64%) of implementation of Ukrainian Anti-Corruption Strategy for 2014-2017, we can conclude that, according to Polish standards of evaluation, the implementation of the Anti-Corruption Strategy for 2014-2017 in Ukraine cannot be considered successful. Instead, it should note that the potential threats to the implementation of the Anti-Corruption Program 2018-2020 in Poland, as in Ukraine, include such a factor as the lack of political agreement and will to implement the legal provisions on prevention and counteraction corruption.

Conclusions

As a result of the comparative legal analysis of the anti-corruption policy of Ukraine and Poland, as well as the practice of its implementation, established that the mere fact of joining one or another country to international anti-corruption treaties (Civil Law Convention on Corruption, Criminal Law Convention on Corruption, Resolution (97) 24, Resolution (99) 5, UN Convention against Corruption, etc.) is not a guarantee of successful implementation of anti-corruption policy within the country. Indeed, we can agree that studied countries have different syndromes of corruption, which effects on results of the implementation of anti-corruption policies. However, identified individual elements of the anti-corruption policies are also affected on such results. The key to successful anti-corruption efforts is the existence of modern national anti-corruption legislation that is best suited to meet the requirements and recommendations relied on by the state in the relevant international treaties.

Table 1

Comparative characteristics on the presence / absence of individual elements of the anti-corruption policy of Ukraine and Poland

	Ukraine	**Poland**
(GRECO, Criminal Law Convention on Corruption, UN Convention against Corruption) Membership	+	+
The existence of national anti-corruption legislation	+	+
Existence of independent/autonomous specialized anti-corruption bodies	+	+
Availability of legislation on anti-corruption state strategy/program/plan	+	+
Presence of indicator for assessing the success of implementing an anti-corruption state strategy/ program/plan	-	+

Presence of an anti-corruption state strategy/ program/plan in force for 2019-2020	-	+
CPI Ranking (2020) (Transparency international, 2020**)**	**117**	**45**

Source: own elaboration

The system of legislative regulation of anti-corruption policy of Poland distinguishes vis-a-vis neighbouring countries of the East European region (Ukraine) by the list of its elements. These include the existence of independent specialized anti-corruption bodies that are not affected by corruption itself, the existence of an anti-corruption state strategy/program that is not interrupted and contains a list of specific tasks, terms, bodies responsible for each task, performance indicators, sources of funding, the existence of clear indicators of evaluating the success of the implementation of the anti-corruption state strategy / program (Table 1). In this context, also founded that the independence from external political influence, the effective use in the practice of respective powers provided to specialized anti-corruption bodies by national legislation, and the availability of effective cooperation between these bodies, is equally important. Unfortunately, these blemishes currently do not allow Ukraine to successfully implement its anti-corruption policy, as evidenced in particular by sociological data, CPI Ranking, as well as statistics about NACP and NABU activities in 2017-2020.

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Measures to combat cybercrime: analysis of international and Ukrainian experience

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Abstract

The article is dedicated to the study of the measures used to combat cybercrime in different countries. It is observed that the world's leading countries are actively expanding and creating units in the armed forces and intelligence services that should ensure the development of offensive capabilities in cyberspace. In particular, the operational cooperation of law enforcement agencies, such as Interpol, Europol and Eurojust, in the fight against cybercrime is being stepped up. Anti-cybercrime activities are carried out not only by individual states, but also by their blocs, including NATO. In Ukraine, unlike the developed countries of the world, measures to combat cybercrime are less developed. Despite the existence of special laws and strategies, in particular the Cyber Security Strategy of Ukraine, the fight against cybercrime is not effective due to the declarative nature of most of the provisions of this strategy. It is concluded that one of the problematic aspects of the phenomenon of cybercrime is the low level of education in information technologies of the population of Ukraine.

Keywords: cybercrime; cybersecurity countermeasures; cybercrime; information security; comparative law.

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Medidas para combatir la ciberdelincuencia: análisis de la experiencia internacional y ucraniana

Resumen

El artículo está dedicado al estudio de las medidas utilizadas para combatir el ciberdelito en diferentes países. Se observa que los países líderes del mundo se están expandiendo activamente y creando unidades en las fuerzas armadas y los servicios de inteligencia que deberían garantizar el desarrollo de capacidades ofensivas en el ciberespacio. En particular, se está intensificando la cooperación operativa de los organismos encargados de hacer cumplir la ley, como Interpol, Europol, Eurojust, en la lucha contra la ciberdelincuencia. Las actividades contra el delito cibernético las llevan a cabo no solo los estados individuales, sino también sus bloques, incluida la OTAN. En Ucrania, a diferencia de los países desarrollados del mundo, las medidas para combatir el ciberdelito están menos desarrolladas. A pesar de la existencia de leyes y estrategias especiales, en particular, la Estrategia de seguridad cibernética de Ucrania, la lucha contra el delito cibernético no es eficaz debido a la naturaleza declarativa de la mayoría de las disposiciones de esta estrategia. Se concluye que uno de los aspectos problemáticos del fenómeno de la ciberdelincuencia es el bajo nivel de educación en tecnologías de la información de la población de Ucrania.

Palabras clave: ciberdelito; contramedidas de ciberseguridad; delitos informáticos; seguridad de la información; derecho comparado.

Introduction

Each state constantly balances between the principles of respect for human rights and freedoms, integration into the international community and the need to ensure economic growth and national security, including by restricting human rights and freedoms, establishing administrative forms of restricting business activities, protecting its own interests in the international arena.

The choice is made by both the population and public authorities, but in the list of areas no internal reasons should outweigh the need for international cooperation in combating crime, which should be based on the principles of openness, mutual assistance, activity in developing new forms of cooperation. International cooperation in the fight against cybercrime must be carried out on the basis of the participation of all countries, which is determined by the nature of the information itself, both the object of encroachment and the nature of the crimes committed.

Indeed, in today's world, all spheres of life are directly dependent on the operation of computer and information networks. However, the widespread use for information processing of computer technology with software that allows to relatively easy modify, copy and destroy information, increases the vulnerability of the information space.

Most users of information systems do not believe in cyberattacks without sufficient grounds for such belief, that is why they use the information space with ignorance of the limitations and threats to system security, creating threats for cybersecurity.

In today's world, information is the most important component of society. The transformation of post-industrial society into an information society means that information becomes global and meaningful both for the individual and for the state and society as a whole, everyone can seek, receive, store, use and disseminate information in any legal way, there are no borders for its flow. At the moment, information is recognized as one of the most important values, respectively, its protection is no less important than its receipt and transmission, therefore, in a digitalized society of the early XXI century the scope of risk changes.

All this suggests the need to coordinate joint efforts in the fight against cybercrime. For Ukraine, taking into account the ongoing integration processes, it is especially important to consider the world experience in the fight against cybercrime and apply it to increase security in the country. Therefore, the study of foreign experience and demonstration of own achievements in the fight against cybercrime is especially important for each country.

1. World experience in combating cybercrime

It is very important to understand the global nature of the cybercrime issue. Thus, cyberattacks already paralyze the work not only of private structures but also of state bodies, there is no state in the world that would be protected from such attacks. Not only hackers or their groups, but also individual states, terrorist and criminal groups are considered as probable sources of cyber threats. When developing tools and methods to combat cybercrime it should kept in mind the latency of such type of crime. According to experts, the latency of "computer crimes" in the US reaches 80%, in the UK - 85%, in Germany - 75%, in Ukraine - more than 90% (Statista, 2020).

According to the international cybersecurity service Symantec Security, about 556 million cybercrimes are registered worldwide each year, with losses of more than $ 100 billion (Belsky, 2014).

Cybercrime can violate the interests of both the state and the individual. Undoubtedly, the peculiarities of the functioning of information systems, especially the Internet, require the joint efforts of various actors, both public and private, to be aimed at solving cybersecurity issues (Rogovets, 2015). However, it is only the state that can and is able to effectively combat full-scale cybercrime, create the conditions for those who are most vulnerable to cybercrime attacks, to build more reliable information security system.

Currently, the world's leading countries are actively expanding and creating units in the armed forces and intelligence services, which should ensure the development of offensive capabilities in cyberspace. For example, in the United States, along with the National Cyber Security Center, the Joint Cyber Command has been formed within the Armed Forces, which should coordinate the efforts of all Pentagon structures in the course of hostilities, provide appropriate support to civilian federal agencies, and interact with similar agencies in other countries (US Department of Defense, 2009).

At the same time, these organizations are partially controlled agencies, as the supreme controlling structure is the National Security Council with a special committee, whose responsibilities include the implementation of information strategy (Djerf-Pierre, 2018), including the fight against cybercrime.

In the UK, cyber weapons programs are being implemented that will enable the government to withstand growing threats from cyberspace (Kessel and Mozur, 2016).

An e-mail security coordination group (ESCG) has been set up in Australia. The main task of this group is to create a secure and reliable electronic operational space for both public and private sectors (Sanders *et al.*, 2017).

Anti-cybercrime activities are carried out not only by individual states, but also by their blocs, including NATO. Thus, the importance of this problem is reflected in all the governing documents of the bloc, adopted in recent years. For the first time, NATO's strategic concept includes cyberspace as a new area of military alliance.

In other words, in the fight against cross-border crimes, which include a significant part of cybercrime, a special role is given to states, and only with well-coordinated law enforcement agencies of different countries it is possible to reduce the number of crimes committed in this area. International cooperation is carried out in several areas and involves, first of all, the creation of regulations and the development of general recommendations, as well as the introduction of effective models of organizational interaction between states. It should be borne in mind that the traditional mechanisms of international cooperation, including requests, mutual assistance and other similar tools used in the XIX century are inappropriate in an era when

crimes can occur from anywhere in the world at the speed of light (Wang, 2021).

Legal regulation of the fight against cybercrime is the basis of the entire system of combating cybercrime. The complexity of drafting international acts in general in the situation under consideration is further complicated by the fact that existing laws are difficult to apply when it comes to non-localizable attacks on a planetary scale, the evidence of which is scattered and virtual (Pozhuyev, 2016).

The international community at various levels has developed a number of acts relevant to the fight against cybercrime, with regional acts playing a special role, as global documents are currently difficult to create. At the same time, it is important to note the attempts of states to extend the norms of global international treaties to combat cybercrime or to conclude new treaties. For example, since organized crime groups can operate alongside individuals in cyberspace, it is possible to apply to them international treaties aimed at combating organized crime, in particular "the UN Convention against Transnational Organized Crime of 15 November 2000" (Butunbaev, 2020: 102). Also, the concept of the UN Convention on International Information Security was developed (Butunbaev, 2020). The main part of the document consists of five sections, the content of which is in a single compositional integrity.

It is important that in Art. 4 of the Convention the main threats to international peace and security in the information space are identified, eleven of which are basic and four additional. Among the basic are named, for example, the use of information technology and tools for hostile acts and acts of aggression; purposeful destructive influence in the information space on critical structures of another state; cross-border dissemination of information that contradicts the principles and norms of international law, as well as national laws of states. Again, the document does not mention such real threats to international security as the commission of cybercrime, the distribution of narcotic drugs and psychotropic substances, their analogues, as well as pornography, including child pornography. In addition, Art. 5 of the Convention is devoted to the basic principles of international information security.

Analysis of the principles mentioned above allows us to conclude that they can be divided into four groups:

1) principles of state participation in the system of international information security as a member of the international community.

2) principles that allow the state to preserve its sovereignty in the process of international cooperation in the fight against cybercrime.

3) principles of ensuring free information exchange between countries

4) the fourth group of principles establishes the nature of the interaction of the state and private entities in the considered relations.

At the same time, it should be noted again that the concept of the Convention does not prescribe in detail the principles of international cooperation in the fight against cybercrime, except for targeted counterterrorism.

The inclusion of section 5 "International cooperation in the field of international information security" in the concept of the Convention should be recognized as positive, but measures of international cooperation in this area are insufficient for the effective functioning of the system of international economic security. Such measures involve only the exchange of national concepts of security in the information space, the operational exchange of information on crisis events and threats in the information space and measures taken to resolve and neutralize them, consultations on activities in the information space. However, these forms do not take into account the need for operational cooperation of law enforcement agencies on a wide range of issues. Thus, the provisions of the concept of the UN Convention on International Information Security are quite compromising and focused primarily on the prevention of information wars, terrorism.

2. European programs to combat cybercrime

It should be noted that most of the specialized acts to combat cybercrime are acts of the European Union, which has one of the most developed information security systems in the world. In 2001, the European Commission presented a special communication containing proposals of a legal and organizational nature to combat cybercrime in the European Union (Zaporozhets, 2009).

Interpol's programs are built around the preparation of operations to combat new computer threats. They are aimed at:

- facilitating the exchange of information between member states in the framework of regional working groups and conferences.
- preparation of training courses for the creation and maintenance of professional standards.
- coordination and facilitation of international operations.
- creating a global contact list to investigate cybercrime.
- assisting member states in the event of cyberattacks or cybercrime investigations through databases.

- development of strategic partnership with other international and private sector organizations.
- detection of new threats and transfer of intelligence to member countries.
- ensuring the functioning of a secure web portal for access to operational information and documents.

Following a feasibility study by the sociological company Rand Corporation, the European Commission decided to establish a European Cybercrime Center (EC3) within the European Police Organization (Europol). The center is designed to act as a coordinator in the EU's fight against cybercrime, facilitating a faster response to online crime. It supports Member States and institutions of the European Union in building operational and analytical capacity for research and cooperation with international partners (Dremliuga *et al*., 2020). EC-3 officially began operations in January 2013 with a mandate to address policing in the following areas of cybercrime:

- crimes committed by organized groups in order to seize large criminal proceeds, such as online fraud.
- crimes that cause serious harm to the victim, such as the sexual exploitation of children online.
- crimes affecting critical infrastructures and information systems in the countries of the European Union (United Nations, 2021).

EC-3 seeks to become a focal point in the EU's fight against cybercrime by building operational and analytical capacity for research and cooperation with international partners in creating an EU cybercrime-free space. The European Cybercrime Center is based in The Hague (Netherlands), so the EC-3 can build on Europol's existing infrastructure and law enforcement network. The EC-3 Program Board assists EU governments in managing the fight against cybercrime (Europol, 2018).

The members of the EU-3 Program Board are currently:

1. EUCTF (European Union Cybercrime Task Force).
2. CIRCAMP (COSPOL project on child pornography on the Internet).
3. ENISA (European Network and Information Security Agency).
4. ECTEG (European Cybercrime Training and Education Group).
5. CEPOL (European Police College).
6. EUROJUST (European Organization for Judicial Cooperation).
7. CERT-EU (European Computer Security Responsibility Team).

8. International Criminal Police Organization - Interpol.
9. European Commission.
10. EEAS (European External Action Service) (Europol, 2018).

Overcoming the consequences of cybercrime and its prevention is a very popular topic for public services. Today, not all Member States have reached the level of know-how needed to start an effective fight against cybercrime. Cyber police units in most EU countries often do not have the hardware and software needed to perform even simple forensic examinations.

EC-3 promotes the development of Member States' capacity by linking EU funding to EU law enforcement. The high level of training of specialists in the fight against cybercrime will be the cornerstone of the new project. EC-3 will actively coordinate technology development and training under Horizon 2020 (Council of Europe, 2001).

Investigations of online fraud, child abuse and other crimes regularly open up hundreds of new victims of crime in Europe. Operations of this magnitude cannot be successfully completed by the national police force alone. This is where the European Cybercrime Center is of significant value.

Europol is a community of professionals in Europe for operational support, coordination and expertise in the field of cybercrime. The European Cybercrime Center provides wider joint activities in cooperation with EU Member States and other key stakeholders; non-EU countries; with international organizations; with governing bodies and Internet service providers, with companies dealing with Internet security of the financial sector; with academic experts; with civil society organizations.

In other words, the current trend in the international fight against cybercrime is to expand the scope of cooperation between states. The reality is the operational cooperation of law enforcement agencies in the fight against cybercrime (Interpol, Europol, Eurojust), the creation and use of a single database on cybercriminals, on committed and planned cybercrimes (primarily works 24/7). Note that the work of Interpol in terms of efficiency of information processing is less effective than specialized organizations of smaller scale.

3. Measures to combat cybercrime in Ukraine

Threats to Ukraine's national security and relevant state policy priorities in the areas of national and public security are defined in the Law of Ukraine "On National Security of Ukraine", National Security Strategy of Ukraine, Military Security Strategy of Ukraine, Cyber Security Strategy of Ukraine and other documents related to national security and defense and

are determined by the National Security and Defense Council of Ukraine, as well as approved by decrees of the President of Ukraine.

It should be noted that in accordance with the goals of the Strategy for the Development of the System of the Ministry of Internal Affairs of Ukraine until 2020 (hereinafter - the Ministry of Internal Affairs) it was planned to create a safe environment for the existence and development of a free society. It was assumed that the achievement of this goal was possible through the implementation of the following measures:

- formation and implementation of state policy in the field of internal affairs.
- strengthening public confidence in the bodies of the Ministry of Internal Affairs.
- ensuring the development of Ukraine as a secure European state, the basis of which are the interests of its citizens and the high efficiency of all components of the system of the Ministry of Internal Affairs (Ryazantseva, 2014).

The implementation of these measures for Ukraine is a serious stage in its development, as this Strategy will contribute to the implementation of European integration policy in the field of internal affairs. Thus, Ukraine will achieve the indicators necessary for Ukraine's full membership in the North Atlantic Treaty Organization.

Analysis of the provisions of this Strategy reveals that the approaches, which will ensure the implementation of its objectives, require clarification in connection with the declarative principles that they include. The point is that service to society (indicated as one of the tasks of the system of bodies of the Ministry of Internal Affairs) is already enshrined in the Constitution of Ukraine, and in this Strategy is an a priori postulate. The provisions of this Strategy require refinement in the direction of bringing them in line with the provisions of the Law of Ukraine "On National Security of Ukraine" (Verkhovna Rada, 2018). Thus, this Law defines national security as a state of protection of national interests of the individual, society, and the state. At the same time, the Strategy for the Development of the System of the Ministry of Internal Affairs of Ukraine until 2020 envisages the creation of a safe environment and the elimination of the negative impact of modern challenges to personal and social security.

Modern management practices and information activities that will be implemented during the implementation of the Strategy will require significant financial investments.

According to its developers, the source of replenishment of costs for the implementation of measures in the field of creating a safe environment, ensuring a balanced migration policy etc., will be the state budget, as well as

international technical assistance and other sources not prohibited by law. In this case, it is necessary to pay more attention during the implementation of the Strategy to the approaches aimed at involving society in the process of creating a safe environment, increasing intolerance to corruption and the development of democratic civilian control. This should have a positive effect on funding the implementation of the above measures, as well as ensure their support from society, which, in turn, will strengthen confidence in the bodies of the Ministry of Internal Affairs as a whole (Kopotun, 2020).

In the Criminal code of Ukraine, as cybercrimes are recognized such crimes in the field of use of electronic computers, systems, computer, and telecommunication networks:

1) unauthorized interference in the work of electronic computers, automated systems, computer networks or telecommunication networks (Article 361).
2) creation for the purpose of use, distribution or sale of malicious software or hardware, as well as their distribution or sale (Article 361-1).
3) unauthorized sale or dissemination of information with limited access, which is stored in computers, automated systems, computer networks or on the media of such information (Article 361-2).
4) unauthorized actions with information that is processed in computers, automated systems, computer networks or stored on the media of such information, committed by a person who has the right to access it (Article 362).
5) violation of the rules of operation of electronic computers, automated systems, computer networks or telecommunication networks or the procedure or rules for the protection of information processed in them (Article 363).
6) interference with the work of electronic computers, automated systems, computer networks or telecommunication networks by mass distribution of telecommunication messages (Article 363-1).

Article 361-1 of the Criminal Code of Ukraine provides for the creation, distribution, or sale of malicious software - a particular program or set of programs that interferes with the functioning of the computer, damages the data on it or leads to other undesirable consequences in the computer system (Verkhovna Rada, 2019).

Malware can take many forms and can be used as an aid in hacking and other cybercrimes (Nekit *et al.*, 2020). According to Article 361-2 of the Criminal Code of Ukraine, an offense is the unauthorized sale or dissemination of restricted information stored on computers or other

media. However, the sale and dissemination of such information need not result from the commission of the offenses set forth above.

"Computer" information with limited access is divided into confidential and classified. Confidential information contains information that is in the possession, use or disposal of individuals, disseminated at their request in accordance with the conditions provided by them. Classified information includes information that constitutes a state and other secret provided by law, the disclosure of which harms the person, society, and the state.

According to Article 362 of the Criminal Code of Ukraine, cybercrime is the unauthorized alteration, destruction or blocking of computer information. This article also penalizes unauthorized interception or copying of computer information if it has led to its leakage. Moreover, the subject of this crime is only persons who have the right to access such information.

Article 363 of the Criminal Code of Ukraine provides for such criminal acts as violation of the rules of operation of computers (which may be expressed in non-fulfillment or improper fulfillment of obligations to comply with the rules of operation of computers, for example, rules of hardware or rules of operation of their software, and violations the order or rules of information protection (non-fulfillment or improper fulfillment of the requirements of information protection established by legal acts), if it has caused significant damage committed by persons responsible for such operation or protection.

Article 363-1 of the Criminal Code of Ukraine provides for liability for intentional mass distribution of messages, carried out without the prior consent of the recipients, which led to the violation or shutdown of the computer. The messages in question are so-called "spam", i.e. the mass distribution of unsolicited e-mails. Due to the mass nature of spam messages, the latter complicate the work of information systems and resources, creating unnecessary overload for them, which may be the cause of their failure. "Spam" can also be a carrier of the previously mentioned malware and viruses (Bogutsky, 2018).

Information crimes, according to Ukrainian law, can take various forms and methods of commission. In addition, we can say that the actions committed by cybercriminals can be complex, i.e. constitute a set of cybercrimes that accompany and provide each other.

The social danger of cybercrime and the urgency of this problem is illustrated by such a phenomenon as cyberattack. Cyberattack - targeted (intentional) actions in cyberspace, which are carried out by means of electronic communications and aimed at achieving the following goals:

- violation of confidentiality, integrity, availability of electronic information resources processed (transmitted, stored) in communication and/or technological systems, obtaining unauthorized access to such resources.
- violation of security, sustainable, reliable, and regular operation of communication and/or technological systems.
- use of the communication system, its resources and means of electronic communications for cyberattacks on other objects of cyber defense (Bogush *et al*., 2014).

Cyberattacks, due to their specificity, are often aimed at automated and information systems of national importance. Examples of this are the well-known cyberattacks on energy companies in Ukraine on December 23, 2015, when criminals successfully attacked the computer control systems of three energy companies in Ukraine, or the cyberattack on December 17-18, 2016, when the substation "Northern" of the energy company " Ukrenergo ", which resulted in leaving consumers of certain districts of Kyiv without electricity (Kokhanovska, 2011).

In view of all the above, it can be concluded that cybercrimes do have a high degree of public danger, because the actions that constitute such crimes are quite difficult to implement, as they require special knowledge in the field of computer technology. This means that the use of existing methods of protection against them also requires a certain level of awareness in this area. Thus, one of the problematic aspects of the phenomenon of cybercrime is the low level of IT education of the population of different countries, in particular, Ukraine. The difficulty is that computer technology is quite difficult to master, so it is very important for the average citizen to know at least the simplest methods of protection that do not require deep specific knowledge.

4. Practical recommendations for the prevention of cybercrime

The activity of the world's leading countries in cyberspace, profound changes in domestic information policy and the formation of powerful transnational criminal groups specializing in cybercrime necessitate the development of priorities for the transformation of the domestic cybersecurity sector, taking into account the above trends.

Since the information technologies that exist at the moment allow us to both hide the location and use the data of others, the next steps are needed at the national and international levels.

At the national level:

1. Participation in the development of an international strategy to combat cyber threats and the creation of unified international legal mechanisms for regulating cyberspace with such statements:

    1) the common goal and direction of the Cyber Security Strategy is to determine the virtual security of the individual, organization and state by defining a system of priorities, principles and measures in the field of domestic and foreign policy, which should reflect all components of cyberspace.

    2) specific / private areas of the strategy need to determine the standards of cooperation of the information society - individuals, organizations, and the state in the field of cybersecurity. Such standards include:

        - rules for maintaining a balance between establishing liability for non-compliance with cybersecurity requirements, on the one hand, and the introduction of excessive restrictions - on the other.

        - priority of cybersecurity risks in accordance with the possibilities of cyber threats and the size of the negative consequences of cybersecurity incidents.

        - updating the means and methods of cybersecurity in order to counter the ever-changing cyber threats (Yarema, 2016).

2. Development and implementation of a multi-level institutional system of cybersecurity, which would include:

    1) scientific and analytical level, which would study the risks of cybersecurity in accordance with the possibilities of implementing cyber threats and the size of the negative consequences, updated the means and methods of cybersecurity.

    As the problem lies in the complexity of classifying threats that go beyond the territory of the state, it is necessary to emphasize the need for any state to develop measures to identify cyber threats, as well as their timely detection, prevention, protection and minimization of consequences.

    2) the executive level, which would coordinate in two directions - internal (between national structures responsible for detecting and combating cyber threats) and external, when coordination is carried out between national structures and similar foreign regional / international institutions (Hancock, 2000).

3. Increase capacity in the information sphere to counter electronic attacks.

It is necessary to strengthen domestic policy measures to stimulate the development of the technological component of cybersecurity to maintain a balance of power and counterbalance other likely "adversaries" in the field of cybersecurity.

4. Act and implement regional and international cooperation in the field of cybersecurity, tracking the activities of criminal, terrorist groups and individual hackers operating in cyberspace.

5. Act and take an active part in the development of international cooperation in the field of cyber threat detection, timely detection, prevention, protection, and minimization of consequences (Downing, 2005).

At the international level:

1. Development and implementation of an international agreement in the field of prevention and investigation of cyber aggression, as well as updating of the existing regulations;

2. Creation an international body with regional offices. This body should be the equivalent of the UN in cyberspace - UN Cyberspace (hereinafter - UNC), it should have several structures. There should be a scientific-analytical level, where the same functions should be performed as at the national level. In addition, there should be an executive level and a regional level that will allow in case of cyber-aggression to join the fight in time. It is also required that the activities of the UNC be carried out by 12 administrators, elected annually from the members of the UNC. Unlike the UN, there should be no privileged members, vetoes or permanent members. In the event of cyber-aggression, the UNC should establish a commission of inquiry from international, regional, and national representatives. The conclusions of the commission with the relevant evidence should be sent to the international court.

Conclusions

For Ukraine, entering a new stage of social development means an unalterable situation in which only improving the use of the information base of the Ukrainian nation and state, as well as the development of information production and social information communication systems, can ensure a proper position in international cooperation.

The key to this development is the organization of security of national information sovereignty for Ukraine both as an object of global information influences and as a full-fledged subject of international activity, international information exchanges are extremely important. The guarantor of the existence and development of national information resources in the context of global influences is the effective information security of our society.

The processes of globalization, catalyzed in recent decades by informatization based on electronic technologies, in addition to their positive significance for the development of progress cause new challenges and threats to the information infrastructure, national information sovereignty, identity, self-awareness, and for civilization - many opportunities for further development. Therefore, work to neutralize cyber threats as an important component of information security is the key to the effective use and long-term development of sovereign for each state, nation information arrays.

The development of effective tools for ensuring information sovereignty is an important condition for social development and a priority today. Issues of cyber security are extremely important for the Ukrainian state at the present stage, which is primarily due to the need to resist illegal encroachment on the information space of Ukraine, preservation of information resources, protection of the population from negative information influence and more.

In addition, a strategically recognized priority of Ukraine's foreign policy is European integration, which requires improving the regulatory framework for cyber security of Ukraine, which would meet not only international standards, but primarily Ukrainian national interests in the information sphere.

Defeat in information warfare, including cyber warfare, can inevitably lead to the disintegration of any state. In modern conditions, many important systems of the industrial and defense sector of the economy, such as the air traffic management system, energy and nuclear enterprises and the grid, working on the basis of information and communication technologies, pose potential risks due to their vulnerabilities to outside intrusion.

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Unconstitutionality of criminal liability for filing inaccurate information in Ukraine: critical legal analyses

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Abstract

The investigation reveals shortcomings in the arguments of the Constitutional Court of Ukraine on the recognition of article 366-1 of the Criminal Code as not being in conformity with the Constitution, in terms of:(a) the court's lack of authority to criminalize socially dangerous acts; (b) lack of argumentation on the absence of social harm in the non-submission of a declaration and in the presentation of inaccurate information; (c) positive foreign experience; (d) conformity of article 366-1 of the Criminal Code of Ukraine with the principle of the rule of law. The article employs a set of legal research methods, including terminological, systemic-structural, formal-logical, and comparative-legal. It is stressed that:(a) the criminalization of a socially harmful act is a matter for the legislator, not the Constitutional Court of Ukraine, to decide; (b) the decision does not present or refute any argument on the element of social harmfulness relating to the non-submission of a declaration and the declaration of inaccurate information. On the basis of the investigation, it has been concluded that the decision of the Constitutional Court on the recognition of article 366-1 of the Criminal Code does not comply with the Constitution and has not been sufficiently substantiated.

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Keywords: declaration of unreliable information; public corruption; corruption-related criminal offense; unconstitutionality of the law; rule of law.

Inconstitucionalidad de la responsabilidad penal por presentar información inexacta en ucrania: análisis legales críticos

Resumen

La investigación revela deficiencias de los argumentos del Tribunal Constitucional de Ucrania sobre el reconocimiento del art. 366-1 del Código Penal como el hecho que no se ajusta a la Constitución, en términos de: a) falta de autoridad de este Tribunal para tipificar como delito actos socialmente peligrosos; b) falta de argumentación sobre la ausencia de perjuicio social en la no presentación de declaración y en la presentación de información inexacta; c) experiencia extranjera positiva; d) conformidad del art. 366-1 del Código Penal de Ucrania con el principio del estado de derecho. El artículo emplea un conjunto de métodos de investigación jurídica, entre los que se encuentran terminológicos, sistémicos-estructurales, formales-lógicos y comparativos-legales. Se destaca que: a) la criminalización de un acto socialmente dañino es un asunto que debe decidir el legislador, no el Tribunal Constitucional de Ucrania; b) la decisión no presenta ni refuta ningún argumento sobre el elemento de lesividad social relacionado con la no presentación de declaración y la declaración de información inexacta. Sobre la base de la investigación, se ha concluido que la decisión del Tribunal Constitucional sobre el reconocimiento del art. 366-1 del Código Penal no cumple con la Constitución y no se ha fundamentado suficientemente.

Palabras clave: declaración de información no confiable; corrupción pública; delito relacionado con la corrupción; inconstitucionalidad de la ley; Imperio de la ley.

Introduction

Corruption remains among the major threats to Ukraine. In terms of the nature of its danger, it can be compared to the war in Eastern Ukraine. While penetrating into all spheres of public life, it damages the most important social values of both state as a whole and its individual citizens. In particular, it negatively effects market economy relations, such as stock market and institutional investors (Kamensky *et al.*, 2020). Therefore, the

fight against corruption remains priority for both public authorities and members of civil society. In view of this, practices aimed at preventing and stopping any corruption offenses are being implemented in Ukraine. They include, in particular, creation of the mechanism for mandatory declaration of existing assets by persons covered by the Law of Ukraine "On Prevention of Corruption" (2014).

When talking about corruption on the specific national level, it should be also noted that critical study of relevant foreign experience in this area will facilitate transposition of relevant provisions of criminal law of various foreign countries in order to adapt, converge, harmonize, unify, etc. (Vozniuk *et al.*, 2020). Indeed, any given state should not be left legally isolated when searching for the appropriate solutions and remedies to fight corruption related offenses.

Criminal law provision previously included in Art. 366-1 of the Criminal code of Ukraine (2001), which established the grounds of criminal liability for declaring unreliable information, has been a vital component of the mechanism of electronic declaration in Ukraine. This norm has been rightly recognized as an important tool to deter persons authorized to perform functions of state or local self-government from committing corruption offenses (Cherniavskyi and Vozniuk, 2019).

However, a powerful strike was made against anti-corruption mechanism in Ukraine on October 27, 2020, when the Constitutional Court of Ukraine (hereinafter – CCU) issued a ruling, which has partially "paralyzed" the work of the National Agency for Prevention of Corruption and "destroyed" some of electronic declaration tools. The CCU ruling provided for the recognition of Art. 366-1 of the Criminal Code of Ukraine (Decision of the CCU, 2020) as the provision, which does not correspond to the Constitution. Such actions of the exclusive body of constitutional jurisdiction in Ukraine have been ambiguously perceived by members of civil society: some have supported the decision, while others have labeled it as the one with significant shortcomings. Therefore, it is important to thoroughly analyze Court arguments for striking down Art. 366-1 of the Criminal Code of Ukraine (2001) as unconstitutional.

1. Methodology

The article uses a set of research methods, namely: terminological, system-structural, formal-logical, comparative-legal. Theoretical basis of the study is constituted by the works of scientists, some opinions of CCU judges, provisions of the Criminal Code of Ukraine (2001) and the Law of Ukraine "On Prevention of Corruption" (2014), as well as their application practice.

The structural method has been employed to describe construction of the Criminal Code provisions related to liability for filing inaccurate information by public officials.

Also, using systemic method has allowed characterizing current limits of permissible behavior in the area of public service in their relationship with the norms of other legal bodies, including constitutional law.

Finally, the formal-legal method enabled the authors to analyze legal substance of the national Criminal Code provisions aimed at fighting corruption related offenses in general and filing inaccurate information in particular.

2. Recent research and findings

While ruling on the unconstitutionality of Art. 366-1 of the Criminal Code of Ukraine (2001), the CCU relied on two arguments:

1) non-compliance with the principles of justice and proportionality as elements of the rule of law principle primarily due to non-compliance with the criteria of criminalization of specific behavior as described in Art. 366-1 of the Criminal Code of Ukraine (2001);

2) violation of the rule of law principle, in particular elements of legal certainty and predictability of the law.

The first argument of unconstitutionality is based on non-compliance with the principles of justice and proportionality as elements of the rule of law principle, primarily due to non-compliance with the criteria of criminalization of the act described in Art. 366-1 of the Criminal Code of Ukraine (2001). "By their legal nature, such acts are not capable of causing significant harm to a natural or legal person, society, or state to the extent necessary to label them as socially dangerous ..." (Decision of the CCU, 2020).

> The establishment of criminal liability for such acts is an excessive punishment for committing such offenses. Negative consequences of a person prosecuted for committing crimes under Article 366-1 of the Criminal Code of Ukraine (2001) are disproportionate to the damage, which has occurred or may have occurred in the event of such acts commission (Decision of the CCU, 2020).

Of course, such opinion has its merits, and if it is embodied in the relevant decision by the judges of the constitutional review body, it becomes a requirement, which, from a legal point of view, is subject to mandatory implementation. At the same time, position of the CCU is not indisputable, and therefore counter-arguments can be provided to refute it.

First, criminalization of a socially harmful act is a matter for the legislator, not for the CCU, to decide.

Only the Parliament should determine an act as socially harmful, and therefore it decides which type of behavior should be recognized as a criminal offense, and which should not. This position was supported by the Presidents of GRECO and the Venice Commission (National Agency of Corruption Prevention, 2020), as well as by the CCU judge O. Pervomaisky (Pervomaisky, 2020).

Second, the decision does not present or refute any argument about the social harmfulness element related to not submitting declaration and declaring inaccurate information.

The CCU did not even make an effort to establish, what the public danger of this crime was, but limited itself to stating inconsistencies. This is a purely subjective opinion by some judges of the CCU. It is no coincidence that representatives of this body, such as S. Holovaty (Holovaty, 2020), V. Lemak (Lemak, 2020), (Voznyuk, 2019) V. Kolisnyk (Kolisnyk, 2020) and O. Pervomaisky (Pervomaisky, 2020) view the ruling as unfounded.

3. Results of the study

Criminalization of the act outlined in Art. 366-1 of the Criminal Code of Ukraine (2001), was necessary to ensure a mechanism for combating corruption offenses, the level, structure and dynamics of which remain of serious concern in Ukraine. Statistics demonstrate a significant number of recorded facts of crimes under Art. 366-1 of the Criminal Code of Ukraine (2001): in 2015, 25 of such criminal offenses were registered, in 2016 – 58, in 2017 – 1134, in 2018 – 1541, in 2019 – 1118, for 9 months of 2020 – 861 (Statistical reporting, 2016-2020).

Social conditionality of the establishment of relevant criminal law prohibitions (submission of knowingly inaccurate information in the declaration and intentional failure to submit declaration) is determined by the following circumstances.

1. Social harmfulness of such acts. Social harmfulness of corruption offenses has been repeatedly confirmed by academics (Dudorov *et al*., 2019; Cherniavskyi and Vozniuk, 2019; Nathanson, 2013). The CCU ruling has identified corruption among the major threats to the national security of Ukraine (Decision of the CCU, 2020).

Social harmfulness of the intentional failure to file a declaration means that such act: 1) creates conditions for the concealment of property owned, used or disposed of by the declarant, his other assets, expenses, financial

obligations, etc.; 2) complicates detection of corruption or other offenses; 3) prevents effective pre-trial investigation of illicit enrichment; 4) does not provide the opportunity to properly control observance of the principles of ethics, first of all requirements of integrity, by the persons authorized to perform state or local government functions.

Social harmfulness of filing knowingly inaccurate information in the declaration by the designated person means that such act: 1) serves as one of the means to conceal corruption- related or other illegal activities, helps such persons to avoid responsibility by for their wrongdoing; 2) encroaches on the constitutional right of citizens to vote (due to false information, citizens may be misled during election to public authorities and local governments); 3) violates requirements of transparency to candidates during competition procedure for their appointment to a certain position, and therefore there is a threat of electing a person, who does not meet the established requirements; 4) violates one's right to information on public activity of persons authorized to perform functions of state or local government, in particular on its objectivity, reliability, completeness and accuracy; 5) causes incorrect assessment of the activities of the state or local government representatives; 6) reveals illegal and unethical behavior of such persons.

2. The need to ensure the fulfillment of the obligation to declare persons authorized to perform functions of state or local government. The threat of criminal punishment encourages relevant entities to declare their income and expenses, to explain the origin of their assets in the declaration.

3. The need to create preconditions for proving illicit enrichment. Without a rule on criminal liability for declaration, establishing the fact of illicit enrichment becomes questionable.

4. The need to ensure transparency in the activities of persons authorized to perform functions of state or local self-government. Relevant provisions provide for an opportunity to objectively assess their work, as well as in certain cases to identify possible elements of illegal acts.

5. Availability of potential in the context of corruption offenses prevention. Criminal liability for declaring inaccurate information hinders the unimpeded use of illegally acquired assets and their unhindered concealment. Discussed provision encourages the offender to take action in order to legalize illegal assets, since he is not able to spend them at will.

6. The need to fulfill obligations enshrined in the Constitution of Ukraine. According to Art. 67 of the Constitution of Ukraine (1996), everyone is obliged to pay taxes and fees in the manner and amounts

prescribed by law. All citizens annually submit declarations of their property and income for the previous year to the tax offices at the place of residence and in the manner prescribed by law.

7. Ukraine's legal obligations before the international community to prevent and combat corruption offenses.

Third, experience of other countries testifies to the expediency of the existence of criminal liability for intentional non-submission of declarations and for filing knowingly inaccurate information.

Thus, it is no coincidence that the CCU Judge V. Lemak has stressed out: "I do not agree in principle with the denial of the idea of criminalizing the relevant act, as evidenced by the experience of the entire civilized world" (Lemak, 2020: 29). As S. Holovaty correctly noted, introduction of effective deterrent sanctions for providing knowingly inaccurate information in declarations is an international standard and an important element of the general system of reporting assets by public figures. For example, the OECD Anti-Corruption Network for Eastern Europe and Central Asia has repeatedly recommended that Ukraine ensures the effectiveness of sanctions for failure to provide or for providing false information in declarations (Holovaty, 2020).

Indeed, liability for intentional failure to file a declaration and file knowingly inaccurate information meets international standards for preventing and combating corruption. In accordance with Part 5 of Art. 8 of the United Nations Convention against Corruption (2003), each State Party shall endeavor, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.

In this regard, the world employs the following models of liability for such acts: 1) criminal liability (recognition of such acts as crimes or misdemeanors); 2) administrative liability (recognition of such acts as administrative offenses); 3) disciplinary liability (recognition of such acts as disciplinary offenses); 4) mixed liability (recognition of such acts as crimes, as well as administrative or disciplinary infractions).

Criminal law of foreign nations addresses issues of filing inaccurate information and intentional failure to submit a declaration differently: in some countries criminal liability is provided only for filing inaccurate information (Bulgaria, Italy, Latvia, Liechtenstein, Macedonia, Moldova, Croatia), while in others – for declaring inaccurate information and intentional failure to submit declaration (Albania, Georgia, Czech Republic).

Analysis of the sanctions provided for in these articles demonstrates that they are alternative in nature and include penalties in the form of fines, community service, deprivation of the right to hold a certain position or engage in certain activities, imprisonment for a certain period. This proves the fact that imprisonment not only in Ukraine but also in other countries is recognized as an adequate legal instrument designed to counteract intentional failure to submit a declaration or to declare knowingly inaccurate information.

The second argument of unconstitutionality is based on a violation of the rule of law principle, in particular of such its elements as legal certainty and predictability of law.

Having investigated elements of the crime under Art. 366-1 of the Criminal Code of Ukraine (2001), the CCU concluded that the use of legal structures, which do not have a clear list of laws, makes it impossible to unambiguously define the range of subjects of crime, and reference rules make it impossible to establish the range of their addressees. As a result, persons, who cannot be subjected to the declaratory requirements and therefore knowingly failed to do so, may be held liable for intentional failure to file a declaration. This is not consistent with the concept of the lawful state and the principle of the rule of law, enshrined in Part 1 of Art. 8 of the Constitution of Ukraine (1996), in particular with such elements as legal certainty and predictability of law (Decision of the CCU, 2020).

We do not agree with such approach. Firstly, grounds for criminal liability for declaring inaccurate information have appeared as a result of the adoption of the Law of Ukraine "On Prevention of Corruption" (2014), which has provided, in particular, for amendments to Article 366-1 of the Criminal Code of Ukraine (2001). Since then, the practice of declaring income, expenses and liabilities has developed. Therefore, in 2020 no doubt exists on the range of declaration subjects and, accordingly, the perpetrators of crime under Art. 366-1 of the Criminal Code of Ukraine (2001).

Secondly, the statement of the CCU that the lack of a clear list of laws makes it impossible to unambiguously define the range of subjects of crime is not true. In the note to Art. 366-1 of the Criminal Code of Ukraine (2001) offenders are clearly defined: the persons responsible for the declaration are persons who, in accordance with Part 1 and 2 of Art. 45 of the Law of Ukraine "On Prevention of Corruption" (2014) are obliged to submit a declaration of a person authorized to perform functions of state or local government.

Instead, two categories of persons are mentioned in parts 1 and 2 of Art. 45 of the Law of Ukraine "On Prevention of Corruption" (2014): 1) persons referred to in paragraph 1, subparagraphs "a" and "c" of paragraph 2 of the first part of Article 3 of this Law, who are required to submit a

declaration by April 1 for the last year; 2) persons referred to in paragraph 1, subparagraphs "a" and "c" of paragraph 2 of the first part of Article 3 of this Law, who terminate activities related to the performance of state or local government functions and file a declaration for a period not previously covered by submitted declarations.

At the same time, reference to paragraph 1, subparagraphs "a" and "c" of paragraph 2 of Part 1 of Art. 3 of this Law allows to clearly identify such persons. Among them are, for example, members of the Parliament of Ukraine, deputies of the Supreme Council of the Autonomous Republic of Crimea, deputies of local councils, village, city mayors, civil servants, local government officials, etc.

Thirdly, even assuming that there are doubts about the classification of certain categories of persons as declarants, they can seek clarification from the National Agency for the Prevention of Corruption. In addition, the law provides for appropriate mechanisms for notifying each person on the need to file a declaration, which also eliminates their reference to the ignorance of the obligation to file a declaration.

Other violations committed by the judges are also noteworthy:

1. The CCU also ruled on the provisions of the legislation on corruption prevention, which have not been challenged in the constitutional petition.
2. During the decision-making process, three CCU judges acted under the conflict of interest, as the procedure of bringing them to administrative and criminal responsibility has been underway. At the same time, withdrawal (self-withdrawal) has not been used.
3. Judges of the Constitutional Court of Ukraine could postpone expiration of certain provisions of the Law and the Code, which have been declared unconstitutional. However, they did not provide the Verkhovna Rada of Ukraine (the national Parliament) with enough time to rectify the situation with the prohibition on declaring inaccurate information. This can be explained, in particular, by the fact that the provision does not have defects, due to which it can be declared unconstitutional.

Given the unfoundedness of the relevant decision of the Constitutional Court of Ukraine, Verkhovna Rada of Ukraine restored the grounds for criminal liability for these acts, which are very similar to those declared unconstitutional. This is no surprise given that foreign experience reveals that criminal law recognizes mostly two acts: failure to file a declaration and filing inaccurate information.

The Criminal Code of Ukraine (2001) has been supplemented by Art. 366-2, which establishes liability for intentional entry by the subject of

declaration of knowingly unreliable information in the declaration of a person, who is authorized to perform functions of state or local government, provided by the Law of Ukraine "On Prevention of Corruption" (2014), if such information differs from the correct one in the amount of 500 to 4000 subsistence minimums for able-bodied persons and Art. 366-3, which establishes liability for intentional failure of the subject to declare the declaration of a person authorized to perform functions of state or local government, provided by the Law of Ukraine "On Prevention of Corruption" (2014).

Major differences of the new criminal law instruments include: 1) establishing liability for these actions in various articles of the Criminal Code of Ukraine (2001); 2) increasing the threshold of criminal liability for declaring inaccurate information (previously, liability occurred, if the information in the declaration differed from the correct one by the value of more than 250 subsistence minimums for able-to-work persons; in the new law it starts from 500 subsistence minimums for able-to-work persons); 3) changing sanctions applied for the offense (imprisonment for up to 2 years has been excluded, the amount of the fine has been increased and restraint of liberty for up to 2 years has been added).

Conclusion

Decision of the CCU on the recognition of Art. 366-1 of the Criminal Code of Ukraine (2001) as the one, which does not comply with the Constitution of Ukraine (1996), is insufficiently substantiated. Its main shortcomings include: 1) criminalization of a socially dangerous act is a matter for the legislator to decide, not for the CCU; 2) the CCU has not cited or refuted any argument about the social harmfulness of this act; 3) relevant foreign experience testifies to the expediency of criminal liability for intentional non-submission of declarations and declaration of knowingly inaccurate information; 4) the principle of rule of law has not been violated in Art. 366-1 of the Criminal Code of Ukraine (2001).

Other violations committed by CCU judges are evidenced by the following circumstances: 1) relevant decision also concerned provisions of the legislation on the prevention of corruption, which have not been challenged in the constitutional petition; 2) during its adoption, three CCU judges acted within a conflict of interest; 3) CCU judges did not postpone expiration of certain provisions of the Law "On Prevention of Corruption" (2014) and the Criminal Code (2001).

Circumstances, which determine the need to criminalize intentional failure to file a declaration and declare inaccurate information have been formulated: 1) social harmfulness of such acts; 2) the need to ensure

compliance with the obligation to declare; 3) the need to create preconditions for proving illegal enrichment; 4) the need to ensure transparency in the activities of persons authorized to perform functions of state or local government, objective assessment of their work; 5) availability of potential in the context of corruption offenses prevention; 6) the need to fulfill obligations enshrined in the Constitution of Ukraine; 7) international legal obligations of Ukraine to prevent and combat corruption-related offenses.

Given the absence of appropriate legal rationale for the relevant decision of the CCU, the national Parliament has restored grounds for criminal liability for such acts, which are similar to those declared as unconstitutional and also comply with the international standards.

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Present Innovation Policy: Russian Regions Data

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Abstract

Innovation policies are currently one of the main axes for improving the efficiency of national economies in developed and developing countries. The innovation policy includes a comprehensive system of activities. In Russia, increasing the specific weight of commercial entities engaged in innovative activities is among the most important objectives for the short term. The aim of our study was to evaluate the use of innovation based on taking into account the specific weight of organizations that perform innovations in the total number of organizations operating in the regions of Russia. Our study was based on official statistical information on the 82 regions of Russia for 2017-2019. Economic-mathematical models have been developed that describe the specific weight of the organizations that implement innovation. There are no significant changes in the indicators for the years indicated. It has been shown that, to date, almost one in five organizations in the Russian Federation has used innovation in their activities. In addition, they have identified the regions with maximum and minimum values of the specific weightings of innovative organizations for 2019.

Keywords: innovation policy; innovations; innovative organizations; regions of Russia; functions of normal distribution.

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Política de innovación moderna: datos de las regiones de Rusia

Resumen

Las políticas de innovación son actualmente uno de los principales ejes para mejorar la eficiencia de las economías nacionales en los países desarrollados y en desarrollo. La política de innovación incluye un sistema integral de actividades. En Rusia, el aumento del peso específico de las entidades comerciales que realizan actividades innovadoras se incluye entre los objetivos más importantes para el corto plazo. El objetivo de nuestro estudio fue evaluar el uso de la innovación sobre la base de tener en cuenta el peso específico de las organizaciones que realizan innovaciones en el número total de organizaciones que funcionan en las regiones de Rusia. Nuestro estudio se basó en información Estadística oficial sobre las 82 regiones de Rusia para 2017-2019. Se han desarrollado modelos económico-matemáticos que describen el peso específico de las organizaciones que implementan la innovación. No hay cambios significativos en los indicadores de los años indicados. Se ha demostrado que, hasta la fecha, casi una de cada cinco organizaciones de la federación rusa ha utilizado la innovación en sus actividades. Adicionalmente, se han identificado las regiones con valores máximos y mínimos de las ponderaciones específicas de las organizaciones innovadoras para 2019.

Palabras clave: política innovadora; innovación en Rusia; organizaciones innovadoras; regiones de Rusia; funciones de la distribución normal.

Introduction

Over the past three decades, there has been a strong view that politics can influence innovation (Schot and Steinmueller, 2018). Accordingly, the term “innovation policy” has become widely used to describe the actions of various governments that have a significant impact on increasing the role of innovation in economic performance and overcoming existing problems (Edquist, 2011). It should be noted that previously, innovation policy was described in research as a scientific, research, industrial or technological policy. Accordingly, innovation policy is a broader concept and includes a comprehensive holistic system of measures to influence the state on the economy in order to increase its efficiency (Choi, 2017). Significantly, in addition to economic goals, it seeks to link scientific and technical activities with political goals aimed at improving the well-being of people, the sustainability of firms, and solving social problems (Geels, 2004).

In most developed and developing countries, governments set specific goals to enhance and support innovation (Howlett, 2011; OECD, 2010). At the same time, the following goals are achieved:

- analysis of the impact of innovations on socio-economic development.
- identifying barriers that prevent the use of innovations, overcoming which will increase the chances modernization of success in production processes.
- measuring the effectiveness of different policy options in the field of innovation.
- comparative analysis of innovation activity in specific countries with indicators for other countries.

It is important for investment policy to take into account the characteristics characteristic of various types of economic activities (Mazzucato and Penna, 2016). Such an approach should take into account the exchange of technology between different industries and increase macroeconomic stability by stimulating firm activity (Hausman and Rodrik, 2003).

Policies that address the challenges of increasing innovation should involve a wide range of government and public organizations (Foray, 2018).

In recent years, Russia has formed high expectations for the growth of innovation in the economy. Based on the introduction of innovations, it is planned to move to more technological and efficient forms and methods of activity of enterprises and organizations. In Russia, innovation policy is currently determined by the provisions set out in Presidential Decree No. 204 (2018). This document provides for an increase in the number of organizations that have implemented innovations to fifty percent of their total number. The problem of increasing innovation activity is relevant in modern conditions. It seems logical to develop innovations in all regions of Russia. Next, our paper discusses the theoretical aspects of innovation policy, the review of the scientific research carried out on this issue, the methodology and design of our work and its results.

1. Theoretical frameworks

Innovation is now the main focus for addressing the pressing social and economic challenges posed by policy makers in most countries. At the same time, innovation policy requires governments to clearly formulate the tasks that can be solved in the near future with the use of innovations. A policy that ensures the trust of the majority of firms, which is valid for a long time and does not experience frequent changes, seems to be appropriate (Fagerberg

et al., 2016). An effective mechanism for transforming the economy through innovation is to increase subsidies for research and development. Such subsidies are particularly important for small businesses (Castellacci and Mee Lie, 2015). In addition, tax burden reduction can be used (Larédo *et al*., 2016). The right choice of policy mechanisms should be based on a deep understanding of the existing barriers to the use of innovation. The most difficult stage of using innovation is the survival of firms between two stages: the formation of innovative ideas and their implementation. Therefore, innovation policy should be based on supporting firms that experiment and innovate at an early stage (Lauber and Jacobsson, 2015).

It should be noted that innovation policy should include not only high-tech activities (for example, manufacturing), but also all other sectors of national economies (Martin, 2013), including trade, services (Benaim and Tether, 2016), as well as social activities (Van der Have and Rubalcaba, 2016). Innovation policy cannot rely solely on government support, but must rely on the coordination of all economic actors, including private enterprises (Kuhlmann and Rip, 2014).

The development of an effective innovation policy is a complex problem associated with the increased participation of public administration bodies and all interested sides in the formation of appropriate measures. Most of the innovations that had a great impact on the efficiency of the economic sector were based on such approaches (Mazzucato and Semieniuk, 2017; Edler and Fagerberg, 2017).

To date, three types of political instruments have emerged:

- support for basic research, the commercialization of which is difficult in the near future. Therefore, the government should allocate the necessary funds to universities and other research centers to ensure innovation based on such research.
- assisting corporations and firms that develop new technological and design work (Mohnen *et al*., 2017).
- increase of level of legal protection of property rights in developed and used innovation.

The implementation of public policy instruments can be carried out in regulatory, economic, and financial ways (Borrás and Edquist, 2013; Karakashian, 2015).

When forming an innovation policy, it is necessary to take into account five main elements (Fagerberg, 2017):

- knowledge that is formed by state research organizations and universities, as well as supplemented by their own developments of various firms.

- skills, both highly specialized and general, that are formed in educational processes, including professional training of people.
- availability of demand for innovative solutions by creating appropriate markets, as well as using public procurement.
- state financing of innovative initiatives of small enterprises and individual entrepreneurs, as well as reducing the tax burden on these categories of actors.
- improving the institutional support of economic processes based on the promotion of innovation in legislative and regulatory acts, based on the needs of the business community.

2. Literature review

Scientific research examines innovations related to changes in existing knowledge, technological processes, the use of new technology and other opportunities and resources in various types of economic activities (Fagerberg *et al.*, 2010), including low-tech and high-tech (Tunzelmann and Acha, 2004), in the service sector (Rubalcaba *et al.*, 2012).

The analysis of innovation policy is based on the assessment of national innovation systems that ensure the interaction of innovation actors (Bergek *et al.*, 2008; Hekkert and Negro, 2009; Weber and Truffer, 2017). In recent years, the study of the features of national innovation systems has become particularly relevant and has included an analysis of the factors that affect the effectiveness of such systems (Liu and White, 2001; Smits and Kuhlmann, 2004). Since 1991, the countries of the European Union have been collecting information describing not only the innovation activities of firms, but also the factors influencing them (Smith, 2004). It should be noted that the processes of mutual influence of elements of national innovation systems in most cases are stable, despite the changes occurring in the regions (Pierson, 2000). Therefore, regional innovations can vary greatly among themselves.

A number of scientific publications are devoted to the problem of innovation activity in Russia. We discuss the most interesting of them, which were published in 2019-2020. A brief description of these publications is given in table 1.

Authors	Studied questions	Period, years	Objects of innovation	Type of indicators
1	2	3	4	5
Petrikov (2019)	Analysis of the directions of innovation activity, priority for individual regions	2016-2017	Regions of the Central Federal District	indices
Podsolonko *et al.* (2019)	Analysis of the transfer of innovative technologies by type of economic activity	2010-2016	Russia	indices
Arkhipova *et al.* (2019)	Assessment of the volume of innovative goods produced and services rendered, and work performed by small businesses	2016	Russian regions	absolut
Zhuravlev (2020)	Assessment of the degree of readiness of the regional economic complex for innovation based on regression analysis	2007-2017	Regions of the Central and North-Western Federal Districts	absolute
Belemaeva and Kalimullin (2020)	Increase in the market capitalization of a company that regularly innovated	2001-2012	One company	absolute
Deputatova and Perelman (2020)	Analysis of innovative technologies and methods for attracting buyers	2015-2018	Trade sector in Russia	absolute
Yezhov (2020)	Dynamics of changes in innovative activity of enterprises. Business participation in scientific developments. Barriers to innovation	2014-2018	Russia	absolute, specific
Kudryavtseva (2020)	Institutional aspects of state support for innovations in production technologies	2012-2015	Countries	indices
Lipovka and Arnautova (2020)	Innovative development based on information technologies	2015-2018	Gypermarket	absolute

Smirnova (2020)	Dynamics of changes in the share of innovative enterprises. Factors that reduce the effectiveness of innovation implementation	2000-2014	Russia	specific

Table 1. Scientific publications on innovation in Russia

Note: Achieved by the authors

Based on the information given in Table 1, it can be stated that the problem of studying regional innovation activity is relevant in Russia. At the same time, in theoretical and applied research to date, unjustifiably little attention has been paid to the comparative analysis of the activities of organizations (enterprises) that carried out technological innovations in the regions of Russia. In the same works where such an analysis was available, the absolute values of innovation activity were compared, as a rule, which is not always logical, since regions differ significantly in the number of economic entities, population, size and location.

3. Methodology and design

The purpose of our study was to assess the levels of innovation use based on the share of innovative organizations in the total number of organizations operating in the regions of Russia.

The main aspects of evaluation innovation activities of organizations are presented in detail in the document (OECD, 2018). At the same time, innovations are understood as the release of new or improved products (goods and services) that are significantly different from previously produced products, as well as the introduction of new or more advanced production processes in organizations that are significantly different from those that were previously used. Accordingly, innovations can be of two types. The first type of innovation involves better products and services, and the second type is associated with changes in production processes. Both of these types of innovations are united by such a concept as technological innovation. It should be noted that innovations aimed at creating new or improving existing production processes, in turn, are divided into the following subspecies:

- changes in production technologies and the creation of new products (goods and services) in various industries.

- changes in logistics, transport, and distribution operations related to the supply of organizations and the sale of finished products.
- improving the technology and organization of information processes.
- use of more effective methods of conducting and managing production activities, including accounting and control issues.
- development of interaction of organizations with the external environment.
- improving the effectiveness of personnel policy.
- improvement of methods and forms of marketing and pricing.

An analysis of the previous studies, including those shown in Table 1, allowed us to conclude that it is advisable to use the share of innovative organizations in the total number of all organizations in each of the regions of Russia as an indicator of the level of innovation activity in the regions.

The research process included three stages. At the first stage, the initial empirical data describing the share of innovative organizations in the total number of organizations operating in the regions of Russia were formed. At the second stage, the distribution of specific values innovation organizations across the country's regions was evaluated. At the third stage, a comparative analysis was carried out, during which the regions of the country were established, in which the minimum and maximum values of specific innovations were noted.

As initial information, the study used official statistics for 2017-2019 on the share of innovative organizations in the total number of organizations in 82 regions of Russia (Federal State Statistics Service, 2021).

In the economic and mathematical modeling used to estimate the distribution of specific innovation values across the country's regions, the normal distribution function was used. The papers (Pinkovetskaia and Slepova, 2018; Pinkovetskaia *et al*., 2021) presents a methodological approach to the development and use of such a function to determine the average value of the indicator for the considered regions, as well as the range of its variation.

The study included testing the following three hypotheses:

- hypothesis 1 - the average values of indicators characterizing the share of Russian organizations that implemented technological innovations did not change significantly over the period from 2017 to 2019.
- hypothesis 2 - the values of the share of innovative organizations in the total number of organizations have a significant differentiation across different regions.

- hypothesis 3 - the territorial location of regions does not significantly affect the values of the share of innovative organizations in the total number of organizations.

4. Results of calculation experiment

During the computational experiment, economic and mathematical modeling was carried out on the basis of empirical data. The models that describe the distribution of the three indicators for different years across 82 regions of Russia are shown below:

- the share of innovative organizations in the total number of organizations by region in 2017, %

$$y_1(x_1) = \frac{585\ .71}{7.46 \times \sqrt{2\pi}} \cdot e^{-\frac{(x_1 - 18\ .87)^2}{2 \times 7.46 \times 7.46}}; \quad (1)$$

- the share of innovative organizations in the total number of organizations by region in 2018, %

$$y_2(x_2) = \frac{644\ .29}{7.67 \times \sqrt{2\pi}} \cdot e^{\frac{-(x_2 - 17\ .68)^2}{2 \times 7.67 \times 7.67}}; \quad (2)$$

- the share of innovative organizations in the total number of organizations by region in 2019, %

$$y_3(x_3) = \frac{644\ .29}{7.94 \times \sqrt{2\pi}} \cdot e^{-\frac{(x_3 - 18\ .50)^2}{2 \times 7.94 \times 7.94}}. \quad (3)$$

The high quality of functions (1)-(3) was confirmed in the testing process according to the Shapiro-Wilk, Pearson and Kolmogorov-Smirnov criteria.

5. Discussion

At the next stage of the study, patterns were identified that characterize the distribution of the considered indicators. Column 2 (Table 2) shows the data describing the average values of the indicators. The ranges in which the values of the indicators for most regions are located are shown in the third column of the table.

Year	Medium values	Values for most regions
1	2	3
2017	18.87	11.41-26.33
2018	17.68	10.01-25.35
2019	18.50	10.56-26.44

Table 2. Values of indicators that characterize the share of innovative organizations in the total number of organizations, %

Note: Achieved by the authors on the base of functions (1)-(3)

The data shown in Table 2 shows that the share of innovative organizations in the total number of organizations operating in the regions was in the range from 17.6% to 18.9% in 2017-2019. That is, on average, in the regions under consideration, every fifth organization participated in innovation activities. It should be noted that during this period, no significant changes were observed, both in the average values and in the values typical for most regions. That is, the first hypothesis was confirmed:

To test hypothesis 2, the data presented in column 3 of Table 2 were analyzed. The analysis showed a significant differentiation in the considered regions of the values of indicators for all years. Therefore, the second hypothesis was confirmed.

At the next stage, the regions where the maximum and minimum values of each of the indicators were noted in 2019 were identified. At the same time, the maximum and minimum values are those that correspondingly exceed the upper limits of the ranges shown in the third column of Table 1 and are smaller than the lower limits of the ranges. The results of this analysis are shown in Table 3. Along with the lists of regions, this table also shows the division of the identified regions by their geographical location and the specific weights of innovative organizations in the regions, which are given in parentheses.

Indicator	Maximum values	Minimum values
1	2	3
share of innovative organizations in the total number of organizations by region in 2019	Cities Moscow (45.1%), St. Petersburg (33.7%), Sevastopol (33.3%), the Republics of Mordovia (34.8%), Chuvash (33.6%), Tatarstan (26.5%), Rostov (32.0%), Ryazan (31.5%), Tomsk (27.8%), Moscow (27.5%), Belgorod (26.7%), Nizhny Novgorod (26.6%) regions. They are located in the Central (four regions), North-Western (one region), Volga (four regions), Southern (two regions), and Siberian (one region) federal districts.	The Republics of Karachay-Cherkessia (10.1%), Altai (9.7%), Tyva (8.8%), Kalmykia (6.1%), North Ossetia – Alania (4.8%), Dagestan (4%), Chechnya (1.5%), Chukotka Autonomous Okrug (9.4%), Kemerovo (10.3%), Sakhalin (10.0%), Orenburg (9.3%), Kostroma (8.6%), Krasnodar (10.3%) edge. They are located in the Central (one region), Volga (one region), Southern (two regions), North Caucasus (four regions), Siberian (three regions), and Far Eastern (two regions) federal districts.

Table 3. Regions with maximum and minimum values of indicators

Note: Achieved by the authors on the base of table 1

Table 3 provides information on the geographical location of regions with high (column 2) and low (column 3) values of the share of innovative organizations in 2019. The analysis of this information showed that there was no correlation between the values of the indicators for the regions and their territorial location. Thus, we can state the confirmation of the third hypothesis.

Conclusion

The purpose of the study, which was to assess the levels of innovation use based on the share of innovative organizations in the total number of organizations in the regions of Russia for 2017-2019, was achieved. The conclusions that have scientific novelty and originality include:

1. The methodology for estimating the share of innovative organizations in the total number of organizations in the regions of Russia is presented.

2. Modeling of the distribution of indicators based on data for 2017, 2018, and 2019 was carried out.
3. It is proved that the values of the share of innovative organizations in the total number of organizations have not changed significantly over the years considered.
4. It is shown that almost every fifth organization in Russia showed some innovative activity during the period under review.
5. It is shown that the values of the specific weights of innovative organizations were significantly differentiated by region.
6. The regions with the maximum and minimum values of the share of innovative organizations in their total number are identified.
7. It is proved that there is no influence of the territorial location of the regions on the minimum and maximum values of the considered indicators.
8. It is shown that even the regions with the largest share of innovative organizations (the cities of Moscow and St. Petersburg) have not yet reached the level defined in the Presidential Decree No. 204 (2018).

The results of our work have a certain theoretical and practical significance. The methodological approach presented in the article to estimate the share of innovative organizations in the total number of organizations in the regions of Russia can be used in further research. Namely, when monitoring the share of innovative organizations in the regions and municipalities of Russia. The results of the work can be applied in the current activities of state structures and public organizations, when justifying measures to support innovation activities in accordance with Presidential Decree No. 204 (2018).

In addition, the information obtained can be used to solve problems of increasing the share of innovative organizations in regions where such organizations are not widely developed. The results of the work are of interest to leasing companies that ensure the introduction of new equipment and advanced technologies. The new knowledge gained is of interest and can be used in the educational process at universities.

Further research can be conducted to assess the industry characteristics specific to innovative organizations. In the course of the study, there were no restrictions on empirical data, since information was considered for all 82 regions of Russia.

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The police competence to ensure the rights and freedoms of citizens in modern society

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Abstract

The aim of the study is to form a systematic approach to understanding and resolving a set of tasks of police activities that guarantee the rights and freedoms of citizens in modern society. It was concluded that the most typical negligence in this area includes violations of the rights and freedoms of citizens such as the installation of administrative actions against them without any sign of the crime, incorrect characterization of administrative infractions, the violation of the procedural order of administrative detention, cases of unjustified detention without preparation of reports, as well as exceeding the legal deadlines for administrative detention. Particular attention was paid to the set of means of appeal in proceedings concerning administrative offences, which may be referred to as the institution of the protection of citizens' rights and freedoms. Common European approaches to the legal regulation of policing and the influence of European Union law and decisions of the European Court of Human Rights on the guarantee of human rights and freedoms in policing were analyzed.

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Competencia de la policía para garantizar los derechos y libertades de los ciudadanos en la sociedad moderna

Resumen

El objetivo del estudio es formar un enfoque sistemático para comprender y resolver un conjunto de tareas de las actividades policiales que garantizan los derechos y libertades de los ciudadanos en la sociedad moderna. Se concluyó que las negligencias más típicas en esta área incluyen violaciones a los derechos y libertades de los ciudadanos como la instauración de acciones administrativas contra ellos sin ningún signo del delito, tipificación incorrecta de las infracciones administrativas, la violación del orden procesal de detención administrativa, casos de detención injustificada sin elaboración de informes, así como por sobrepasar los plazos legales de detención administrativa. Se prestó especial atención al conjunto de medios de apelación en los procedimientos sobre infracciones administrativas, que pueden denominarse la institución de la protección de los derechos y libertades de los ciudadanos. Se analizaron los enfoques europeos comunes a la regulación jurídica de la actividad policial y la influencia de la legislación de la Unión Europea y las decisiones del Tribunal Europeo de Derechos Humanos sobre la garantía de los derechos humanos y las libertades en las actividades policiales.

Palabras clave: derecho administrativo; derechos humanos; imperio de la ley; policía; protección de los derechos de los ciudadanos.

Introduction

Ensuring human rights and freedoms is a complex task of the state and all its agencies, the content of the public authorities and administration activities, which requires significant financial, material, organizational, legal, scientific, and human resources. This necessitates the scientific development not only of a general model of ensuring human rights and freedoms but also of modifying the activities of individual state structures. Therefore, special attention should be paid to the police activities, vested with broad opportunities and powers in the public sphere. Without maintaining the rights and freedoms of citizens, the activities of public

authorities and administration, in general, and the police, in particular, do not have any practical significance.

To date, the main legal documents defining the rights and freedoms have been adopted, the relevant standards, which are mainly universal, have been established. However, the compliance with the relevant principles and norms, in particular in law enforcement police activities, is partially reduced in almost all countries owing to some contradictions arising in the process of practical implementation. Thus, the application of legal norms is a legal practice. The validity of the legal decisions is checked by practice through the law requirements; therefore, the law, and ultimately, the practice are the criteria for the correctness of law enforcement acts.

Administrative and legal regulation of ensuring the citizens' rights and freedoms in the police activities are associated with many entities, each of which has its own competence. It must be established that the activities of all subjects involved in the mechanism of ensuring the citizens' rights and freedoms in the police administrative activities are important and the law enforcement process demonstrates their efficiency. The current problems of ensuring and maintaining the citizens' rights and freedoms in police activities are related to the law enforcement activities of the National Police.

An important problem of police activities in modern society is the trust of citizens, as well as their involvement in the field of public order and safety. Despite the fact that this problem has been the subject of scientific analysis, current realities and challenges make us re-evaluate the possibilities of police activities in terms of ensuring the citizens' rights and freedoms to formulate proposals concerning the improvement of its legal and organizational foundations on this basis.

1. Theoretical framework

The analysis of scientific publications shows that a significant contribution to the development of the theory of administrative and legal mechanism for ensuring the citizens' rights and freedoms, determining the police competence to ensure the rights and freedoms of citizens in administrative, jurisdictional and permit-based registration activities was presented by Dodin (1985), Gorbunova (2017),), Martynenko (2019), Shoptenko (2017).

The police aspect of ensuring the citizens' rights and freedoms and the legal regulation of police activities to ensure the rights and freedoms of citizens are also presented in the works of such scholars as Aleksandrov, Okhrimenko and Drozd (2017); Bondarenko and Yesimov (2019); Bondarenko (2020); Dorosh and Ivasechko (2017); Fedorenko (2020);

Kryvolapchuk (2020); Okhrimenko (2020); Shmidt-Assmann (2009); Shvets (2020); Yatsenko (2015).

The analysis of foreign scientific research, such as Birzu (2017); Breetzke, Polaschek and Curtis-Ham (2019); Bufkin (2004); Hoggett (2019); Jones *et al.* (2011); Mack (1969); Mendel *et al.* (2017); Schoeman (2002); Zeigler-Hill (2017) established that significant changes in modern approaches to police activities necessitate further research on the outlined issues, especially in the content of the police competence to ensure the citizens' rights and freedoms in major areas of professional activity.

Thus, the aim of the study is to form a systematic approach to understanding and solving a set of tasks of the police activities to ensure the rights and freedoms of citizens in modern society. The objectives of the research are to assess the state of modern police activities to ensure the rights and freedoms of citizens, as well as to identify areas for improvement.

2. Methodology

The methodological basis of the study was the involvement of systematic and activity approaches, which allowed determining the state of the administrative and legal protection of the citizens' rights and freedoms in the police activities, identifying patterns and relationships of its structural elements, as well as outlining the direction of administrative rules and institutions to achieve the expected results.

The methods of comparative jurisprudence (during the analysis of administrative and legal bases of law enforcement activity of various subjects in the field of ensuring rights and freedoms of citizens), the content analysis of documents, publications of scientists on this subject, formal and logical (for studying legislative and departmental regulations), structural and functional methods, as well as the elements of sociological, historical and axiological methods of cognition were used in the work. These methods allowed identifying the directions and limits of the study, as well as provided an opportunity to expose the problem, to develop the doctrine of administrative and legal rights and freedoms of citizens in the police activities.

The information base of the study consisted of administrative materials of police agencies, court decisions, statistical information, and the results of opinion polls, in particular,

- the assessment of the Ukrainian National Police through a public opinion poll in Kyiv and the regions of Ukraine, conducted from November to December 2018 by Kharkiv Institute for Social Research under the scope of a joint project with the Kharkiv Human Rights

Group "Fight against Tortures, Abusive Treatment, and Lawlessness in Ukraine", supported by the European Union (the total sample size accounted for 19500 respondents) (Summary of the National Report, 2019);

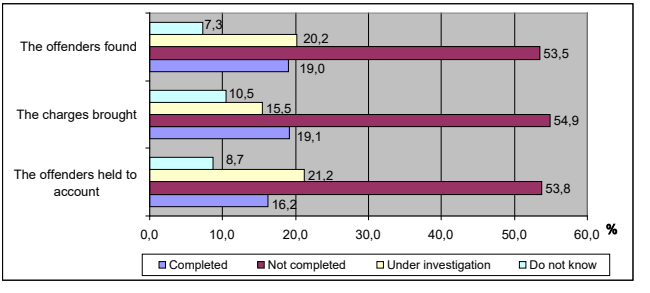
- the report on human rights in the activities of the Ukrainian National Police (Martynenko, 2019).

3. Results and discussion

The analysis of the current problems of ensuring the citizens' rights and freedoms suggests that some of them are conditioned by purely objective circumstances. Thus, in particular, normative legal documents in this area outline the ideal model of the citizens' behavior, as well as the standards of administrative activity of authorized state bodies (including the police). Instead, the actual situation happens in a different way, specifically when a particular law enforcer has to operate in unfavorable social and organizational conditions. Such a situation certainly reduces the quality of ensuring the rights and freedoms of citizens to some extent. In this regard, it should be noted that even the most important laws often remain a "dead letter" if there is no mechanism to enforce them.

There is also a problem of a subjective nature, specifically when ineffective protection of the rights and freedoms is directly related to the poor performance of public authorities and administration (Aleksandrov *et al.*, 2017; Kryvolapchuk, 2020). It concerns also the situations when officials do not use the full range of organizational and legal means to ensure the rights and freedoms of citizens for subjective reasons. This problem undermines citizens' confidence in state institutions, and reduces the efficiency of law enforcement activities significantly (Fig. 1).

Figure 1. The efficiency of the police in acting on the cases



Own elaboration.

To reduce such cases, it is necessary to improve the law enforcement process, the quality of the qualification subjects that implement relevant regulations, especially in cases where it concerns the rights and freedoms of citizens (Report of the Head of the National Police of Ukraine, 2020).

The bodies of the National Police of Ukraine implement law enforcement activities in a wide range of issues, each of which is directly related to ensuring the rights and freedoms of citizens. One of the most meaningful areas of police work is its administrative and jurisdictional activities, which ensure the solution of a range of tasks related to the application of measures of administrative influence, as well as the protection and defense of human and civil rights and freedoms. However, the administrative-jurisdictional activity cannot exist in isolation from other spheres of administrative work of the police. Moreover, it is logically interconnected with it, while performing a protective function in the respective mechanism.

Examining the content of administrative and jurisdictional activities of the police, it should be noted that its structure includes proceedings on administrative offenses, the application of the various measures of administrative coercion, and the complaints of citizens. These are the main administrative proceedings that determine the quality of the considered activity of the National Police. Thus, there is no doubt that one of the largest and most meaningful administrative proceedings in the police activities is administrative offenses.

Performing the set tasks of law enforcement activity, The National Police agencies implement the main functions: administrative, criminal-intelligence, criminally-remedial, executive, preventive, and security. Their legal forms of implementation are conditioned by their immediate purpose, specified in regulations. Analyzing certain administrative and legal norms, one should take account of the regulation of applying administrative penalties and measures to ensure the proceedings on administrative offenses. However, in our opinion, the potential of statutory and regulatory provisions of ensuring the citizens' rights and freedoms are yet to be fully implemented. The law enforcement practice of the police, in the process of which the relevant norms are implemented today, is far from optimal and requires corrective changes to ensure the protection of the rights and freedoms of both participants in administrative proceedings and other persons who are under the law directly or indirectly.

Thus, in particular, according to a survey conducted in November-December, 2018 by Kharkiv Institute for Social Research under the scope of a joint project with the Kharkiv Human Rights Group "Fight against Tortures, Abusive Treatment, and Lawlessness in Ukraine", supported by the European Union, according to a specially designed sample (a sample included 878 respondents), using the method of personal (face-to-face) interviews, it was found that police officers violated the rights of

4.6% respondents and their relatives or did not perform their work well enough during 2018. It should also be noted that 1.7% of the respondents (326 respondents in a separate sample) stated that they had been victims of beatings, suffering, or tortures by the police officers. At the same time, 90.7% of persons, who suffered violations of their rights or the rights of their relatives by the police or who noted that the police did not perform well enough, did not file formal complaints. The main reason for this behavior is the opinion that it will be a waste of time (51.4%) (Summary of the National Report, 2019).

According to the report on human rights in the activities of the National Police of Ukraine for 2019 (Martynenko, 2019), the number of complaints of violations of the citizens' rights and freedoms by police and detection of such violations during targeted activities accounted for 18995. Specifically, 14992 of them were not confirmed, 735 – partially confirmed, and 2093 – confirmed.

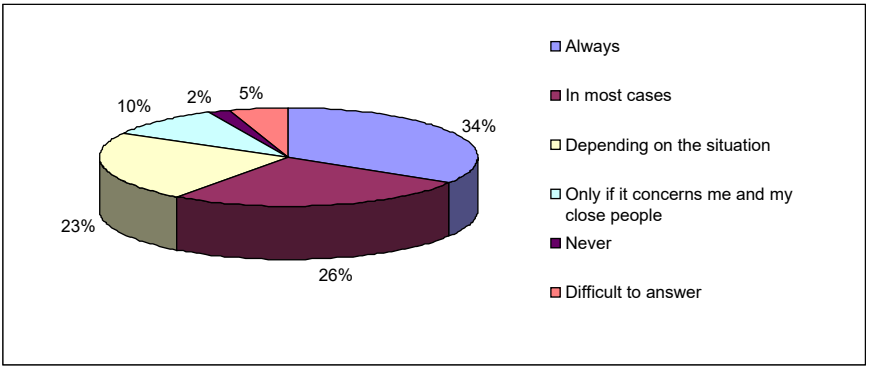
The analysis of official statistics (Martynenko, 2019) suggests that police officers engage in violation of the citizens' rights and freedoms. In particular, the most typical neglects in this area include such violations of the citizens' rights and freedoms as instituting administrative action against them without any signs of the offense. There are cases of violation of procedural order of administrative detention, drawing up protocols and issuing rulings on administrative offenses without specifying all the necessary information, in addition, there are cases when the procedural rights and obligations of the parties to the proceedings on an administrative offense are not explained, etc.

In addition, significant violations of the citizens' rights during proceedings on administrative offenses may also include incorrect classification of administrative offenses, the violation of the procedural order of administrative detention, cases of unjustified detention without drawing up reports, and exceeding the statutory terms of administrative detention. There are cases of quite a formal exercise of powers by police officers to prove the guilt of persons subjected to administrative liability, to clarify the circumstances that are fundamentally important for resolving a particular case. It is also noteworthy that the police often do not question witnesses, victims, or conduct medical examinations in a designated order (Fig. 2) (Report of the Head of the National Police of Ukraine, 2020).

All these facts mentioned objectively necessitate the need to improve the legal and organizational foundation of the administrative and jurisdictional activities of the police; in addition, the criteria for assessing its efficiency should be changed. In the context of reforming the law enforcement system on the way to European integration, there is a need to include the provisions that would provide citizens with additional guarantees to protect their rights, freedoms and legitimate interests in proceedings on administrative

offenses in administrative legislation, and to require officials to grant the necessary procedural rights to all the participants of these proceedings.

Figure 2. The respondents' opinion on the need to report on the offense to the police

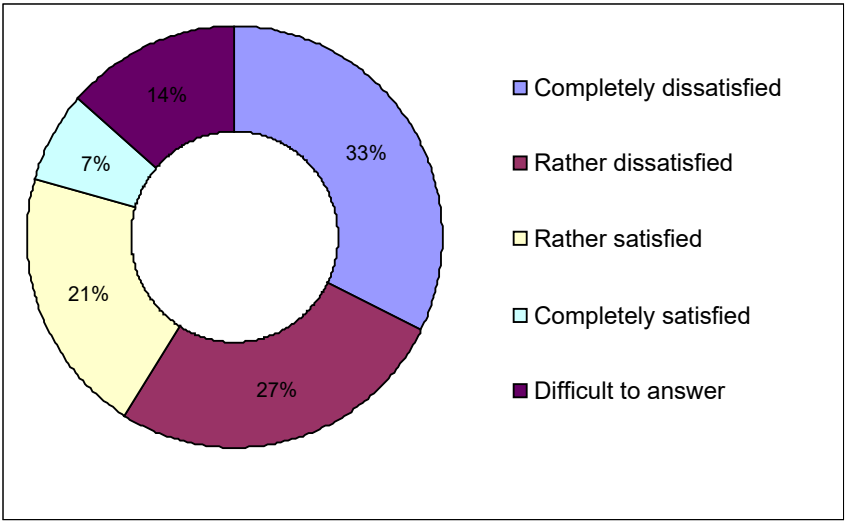


Own elaboration.

Modern legislation embraces not only the material and procedural means and grounds for the application of administrative coercion measures of but it also defines the means of protection that is the institution of appeal. It should be noted that the set of appeals means in proceedings on administrative offenses can be called an institution for the protection of the citizens' rights and freedoms.

The main laws and regulations, maintaining proceedings on citizens' complaints in the National Police agencies, have a number of shortcomings that need to be corrected. Thus, there is a need to review the provisions on the term for filing a complaint against the actions or inaction of a police officer. It results from the fact that after a considerable period of time, it will be very difficult for the officials, conducting the inspection, to investigate all the circumstances of the misconduct and make a sound decision. In addition, faster filing of a complaint will facilitate faster response to illegal actions or decisions, their termination and restoration of rights, freedoms or legitimate interests (Fig. 3) (Report of the Head of the National Police of Ukraine, 2020).

Figure 3. The respondents' opinion on the need to report on the offense to the police



Own elaboration.

The laws and regulations, maintaining proceedings on citizens' complaints in the National Police agencies establish quite clearly the main stages of work with citizens' appeals in general and with complaints in particular, however, there are often cases of formal appeals to certain areas of work. The citizens do not have their legal needs, set out in the complaint, satisfied for subjective reasons. There are still cases when the complaint is considered by a police official, whose action (inaction) is actually being appealed. This state of affairs reduces the law enforcement power of the legal framework that regulates proceedings on complaints and does not help protect the citizens' rights and freedoms.

It should be noted that one of the priorities facing the national law enforcement system today is the implementation of positive experience in ensuring the citizens' rights and freedoms by the police. This requires attention to the peculiarities of the functioning of the foreign police agencies, which have already reformed the legal regulation of their activities taking into account the requirements of the case law of the European Court of Human Rights, which helped increase the efficiency of ensuring the citizens' rights by the police.

The main task of European Union law is the protection of human rights, which is confirmed by a constituent act binding on all member states – the Charter of Fundamental Rights of the European Union of 7 December 2000 (European Union Charter of Fundamental Rights, 2000). In addition to the rights that become classic in science and practice, this document specifies in detail a number of human rights that are directly related to the activities of the police agencies. Among them, in particular, is the prohibition of tortures (Art. 4); the respect for private and family life (Art. 6), the protection of personal data (Art. 7); the right of access to documents (Art. 42), a number of rights in the field of justice that are partially exercised in administrative proceedings (the right to an effective appeal and access to an impartial trial (Art. 47), the presumption of innocence and the right to a defense) (Art. 48), the principles of proportionality in determining crimes and punishments (Art. 49), etc.

Today, the European legislative body is concerned about ensuring the rights and freedoms of citizens in police activities, as evidenced by the cooperation of the police of the European Union member states within the Schengen Information System, Europol, and other structures (Dorosh and Ivasechko, 2017).

The Convention on the Establishment of Europol of 26 July 1995 addresses the issue of ensuring the rights of citizens within the activities of this supranational body: the protection of personal data (Art. 14), access to personal information stored in the Europol information system (Art. 19), the person's right to correct one's personal information stored in the system (Art. 20), etc. (Reshenie, 2009).

European Union law contains general rules concerning the protection of the citizens' rights in the activities of public authorities and relevant acts concerning the protection of citizens' rights in the process of interaction between the police authorities of the member states. Nevertheless, the amount of normative material in the field of ensuring the citizens' rights in the police activities at the level of European Union law is insignificant, as the competence on these issues remains at the national level (Bondarenko and Yesimov, 2019).

The situation is different in terms of the law of the Council of Europe, which, owing to the binding jurisdiction of the European Court of Human Rights (ECtHR), made it possible to apply international legal obligations under the national legal system even in the field of police activities.

In addition to the case law of the ECtHR, which is one of the factors changing the national legal system in matters of ensuring the citizens' rights in the police activities, there is also the law of the Council of Europe, which concerns the protection of human rights in police activities. Moreover, it applies not only to the police activities of European countries but it is also important for Ukraine as a member of the Council of Europe.

Despite its recommendatory nature, the European Code of Police Ethics, developed by the Committee of Ministers of the Council of Europe, is a very substantial act of the Council of Europe. The act establishes the general principles of the police activities and ensuring the citizens' rights. This act defines the concept of the police activities (para. 1); the principle of legitimacy in the police activities (para. 2-6); the place of the police in the structure of public authorities (para. 7-11); the organizational bases of police activities, including training of personnel, the rights of police officers (para. 12-34); the guidelines for police activities related to searches, arrests, investigations (para. 35-58); the control over police actions (para. 59-63); the international legal cooperation of police bodies (para. 64-66) (European Code of Police Ethics. Recommendation, 2001).

It should be noted that the case law of the European Court of Human Rights is extremely important for the regulation of ensuring the citizens' rights and freedoms in the activities of the European Union police. The text of the Convention underwent some changes concerning case law. Thus, the interpretation of Art. 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms by the European Court of Human Rights made it possible to apply the requirements of a fair trial, which were initially used only in judicial proceedings, to the activities of police bodies. The application of the principles of justice in the administrative and law enforcement activities of the police uses modern trends in law-making of any member state of the European Union that allows ensuring the fundamental rights and freedoms of citizens in the activities of the police.

Certain administrative proceedings (in particular, the proceedings on administrative offenses) came to be considered by the European Court of Human Rights as criminal rather than administrative proceedings that led to the need to implement special judicial grants of the rights for persons involved in these proceedings. The European Court of Human Rights recognized confiscation of a driver's license as an administrative penalty; administrative penalties in the form of forfeits and fines imposed on citizens in the field of tax legislation; administrative penalties applied by the bodies responsible for enforcing the sentences of people deprived of their liberty; administrative sanctions imposed by customs authorities in terms of proceedings on offenses in the customs sphere as the administrative proceedings of national legal systems. The jurisdiction of the European Court of Human Rights (Case of "Gradinger v. Austria", 1995) shows that administrative proceedings (the proceedings on administrative offenses, the certain types of licensing activities of the European countries' police agencies) are types of court proceedings, applying the requirements of the Art. 6 of the Convention on the Protection of Human Rights and Fundamental Freedoms of 1950, therefore, they concern the basic rights and freedoms of citizens.

Concerning the autonomy and lateral interpretation of the Convention on the Protection of Human Rights and Fundamental Freedoms, the European Commission of Human Rights enabled the European Court of Human Rights to impose the liabilities for applying judicial procedural guarantees of human rights in administrative proceedings on the European Council member states. The specific examples can be found in the legislative acts regulating the interrelationships among the administration and citizens. For instance, familiarization with the duties of the French administration in terms of interaction with citizens defines clear signs of applying procedural mechanisms of the judiciary in the administrative law, in particular, the requirements of the transparency of the administrative proceedings, which simulate the analogic principle of the judiciary, the publicity principle.

It can be stated that the citizens' right to correct the information concerning them is the right of defense. The French legislature created the requirements for the data interchange among the administration and citizens within the administrative proceedings that is a copy of the judicial adversarial principle. The other examples of the French administrative proceedings also indicate that at the present stage of the administrative law development, following the principles of the foreign judiciary systems is a common phenomenon aimed at increasing the guarantees of citizens' rights in the activities of police bodies.

Germany has a similar experience. The criteria for performing public administration form "normative guidelines of public administrative activity", aimed at the correctness of the definition that goes beyond legitimacy: equality, responsibility, efficiency, transparency, acceptability, etc. They are the guarantees of the rationality of the public administration activity. Regarding the development history, they are enriched by the idea of law and the experience of general considerations of justice and practicality, which the practice of substantiation of other legal systems defines more clearly (Shmidt-Assmann, 2009).

Therefore, having implemented the requirements of the case law of the European Court of Human Rights for applying the basic jurisdictional principles within the administration activities into the administrative and legal regulation of the police activities, the legislation of some European countries contributed to the increase in the level of the citizens' rights in the police activities.

We cannot but agree with the professor Ye. Dodin (1985) that the administrative and jurisdictional activities are an integral part of the administrative activity of the internal affairs agencies and, correspondingly, they have the same features. Besides, administrative and jurisdictional activities have some peculiarities defining them as a separate kind of administrative activity.

If one classifies jurisdictional activity of the National Police of Ukraine by such criteria as character, peculiarities, and the complexity grade of the questions of fact of administrative offenses and the complexity of the jurisdictional procedure related to it (that is its volume and borders), the idea of O. Gorbunova (2017) should be taken into consideration to classify the administrative and jurisdictional proceedings in the National Police of Ukraine in the following way: a) general (complete) proceeding; b) summary (speedy) proceeding; c) complex (expanded) proceeding; d) proceedings of the authorities of the second instance (i. e. a higher-ranking official, in comparison to the employee who considered the materials of the administrative case initially).

The proceedings on the citizens' complaints are one of the major ways of protecting the citizens' rights, freedoms, and legal interests from any illegal actions by police officers. The basis for initiating such proceedings is filing a complaint of the rights violation and the requirement to restore them and punish the guilty employees to the head of the police agency or unit.

We cannot but agree with S. Shoptenko (2017) on the relevance of setting the standards concerning the fact that a complaint of the officials' actions or inaction violating the rights or freedoms of citizens, or limiting their realization, can be filed to the agency or a high-ranking official within a month from the date of their commission. At the same time, it is necessary to enshrine the right of the head of the police body to extend this period if there are significant reasons for missing it.

Besides, the provisions on responding to the complaint need to be supplemented. The law provides that a written or oral response is sent to a person (at his/her request). However, the person's preference for the form of the response is not specified anywhere. In effect, a written response is usually provided for written complaints, and an oral response – for oral complaints if the complaint does not require lengthy detailed consideration. In the latter case, the response can be given in both forms. Such an order should be enshrined in law. In addition, it is necessary to determine the procedure for responding to the electronic complaint and its form.

To remedy the situation, in our opinion, it is necessary to create public commissions to deal with citizens' complaints. These commissions could work with citizens' requests challenging the actions or inaction of police officials. The human rights activists could also be engaged in such commissions, as well as various civil society institutions that are interested in the relevant work. This approach will eliminate corporate solidarity in dealing with complaints; improve the quality of work with citizens' requests. All this will help protect the rights and freedoms of citizens in the field of police activities, it will also increase the responsibility of police officials, in addition, it can contribute to the level of legitimacy and discipline in the system of the National Police of Ukraine.

O. Yatsenko's (2015) remark about the imperfection of providing administrative services by police units, which arises on the basis of numerous gaps and legal conflicts in the legislation, is relevant. Thus, according to Art. 178 of the Civil Code of Ukraine, weapons and other items covered by the authorization system are classified as objects restricted in civil circulation. Instead, according to para.13, part 2, Art. 2 of the Law of Ukraine "On Administrative Services" of 06 September 2012, its effect does not extend to the relationship of rights acquisition in respect of the objects restricted in civil circulation.

Therefore, the shortcomings of the current regulations lead to the ambiguity in the firearms circulation that is a prerequisite for violations in this area and results in the increased rates of crimes with the use of weapons. In addition to the analyzed shortcomings, a number of questions about the legitimacy of the establishment of the list of documents required for providing these services, deadlines for re-registration of weapons, related costs, etc. by the departmental regulations of the Ministry of Internal Affairs of Ukraine. It is important to note that Ukraine remains the only European country where the issue of the firearms purchase, possession, employment, and the control of firearms circulation is not regulated by law. This fact is a significant shortcoming in the sphere of legal regulation of the authorization system, which leads to a violation of the rights and freedoms of citizens in the registration and permitting activities.

The development of legal regulation of police activities in terms of ensuring human and civil rights and freedoms in the European Union is a natural consequence of the competition of divergent interests of the state and civil society, expressed in the formation of a complex system, the elements of which along with state legal law act, supplement, correct, and sometimes actually replace its forms of non-state social law (primarily, customary, corporate and municipal law). The European legislation included the requirements of the case law of the European Court of Human Rights on applying basic principles of justice within the administration activities in the administrative and legal regulation of police activities, which helped to increase the protection of citizens' rights in the police activities. The interaction between the European Court of Human Rights and national judicial jurisdictions is conditioned by the essence of the process and its values developed by the historical development of the right to a fair trial, which, in turn, has not been granted by the European Convention on Human Rights, but has originated in national jurisdictions in an evolutionary way long before the adoption of the Convention. To date, it is enshrined as a universally recognized principle of international law, while remaining the national law at the law enforcement level.

Conclusions

The conducted analysis states that the administrative and jurisdictional activity of the police is performed by means of the material and procedural forms established by the law. Ensuring the rights of citizens by the police is carried out through the use of various methods. These methods relate to the quality of the administrative activities of the police, therefore, their improvement directly affects the efficiency of the administrative and jurisdictional activity of the police in the field of ensuring and protecting the rights of citizens.

The activities of the police, which are carried out in the administrative and legal sphere, are grounded on certain basic requirements that do not allow going beyond the established limits. The basic regulations also largely determine the quality of the public authorities' work that ensures the citizens' rights and freedoms. Such basic prescriptions are the principles of legal regulation, which determine the efficiency of the administrative and jurisdictional activities of the police in the field of ensuring the rights and freedoms of citizens. Thus, the administrative activity of the police is based on principles, each of which plays its role in its organization and in ensuring the rights and freedoms of citizens. Improving the efficiency of the administrative activities of the police is possible through the comprehensive implementation of these principles, which in the future will be reflected in positive results in the field of protection of the citizens' rights and freedoms.

On the basis of the results obtained, it should be noted that the national administrative legislation in the field of arms trafficking and private detective work is not established firmly that does not allow using the power of the National Police completely to ensure the rights and freedoms of citizens in these areas of public relations. The analysis of the foreign practice of administrative and legal regulation of this area gives grounds to argue that there is a need to enshrine such areas of human rights advocacy of the police as control over compliance with the authorization system and security activities, as well as the formation of appropriate functional, organizational, personnel and financial basics of exercising such powers.

It should be noted that improving the efficiency of the police activities in the field of ensuring the citizens' rights and freedoms is possible through the improvement of legislation and, in particular, through the implementation of the case law of the European Court of Human Rights.

The development of police interaction with public associations and other civil society institutions can be a promising way to improve the protection of citizens' rights and freedoms in the police activities. The highest priority should be the rejection of the established quantitative indicators in the work of the police. We should stop chasing the number of reports on administrative offenses, the number of detained for various offenses,

comparing the available indicators with the same period last year, etc. New criteria for the police evaluation are needed. It should be emphasized that such an approach generally contributes to the falsification of reporting, the substitution of facts, misleading both the country's leadership and citizens about the real level of law enforcement.

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Use of international legal assistance during the pre-trial investigation of corruption crimes in the sphere of official and professional activities

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Abstract

Based on the provisions of criminal procedure theory and criminology, the problems of international legal assistance are revealed during the pre-trial investigation for crimes of corruption in the field of official and professional activities. Special attention is paid to identifying the details of evidential activities in criminal proceedings for offences related to the provision of public services during a special pre-trial investigation (in absentia). The methodological basis of the article is a set of general and special scientific methods of legal cognition. In particular, the concept of pre-trial special investigation is formulated, its functional purpose is defined, characteristics of the carrying out of separate investigative actions (search) during the special pre-trial investigation for corruption offences. Attention is paid to issues of international cooperation to identify and search for assets in these criminal proceedings. Other problems are revealed in the use of international legal assistance to obtain evidence during the investigation of these crimes. It

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is concluded that a problem that arises during international cooperation during the preliminary investigation is the uncertainty in international rules on the provision of mutual legal assistance.

Keywords: corruption crimes; official and professional activities; pre-trial investigation; special pre-trial investigation; international legal assistance.

Utilización de la asistencia jurídica internacional durante la instrucción de los delitos de corrupción en el ámbito de las actividades oficiales y profesionales

Resumen

Con base en lo establecido en la teoría procesal penal y criminología se revelan los problemas de la asistencia jurídica internacional durante la investigación previa al juicio por delitos de corrupción en el ámbito de las actividades oficiales y profesionales. Se presta especial atención a identificar los detalles de las actividades probatorias en los procesos penales por delitos relacionados con la prestación de servicios públicos durante una instrucción especial previa al juicio (in absentia). La base metodológica del artículo es un conjunto de métodos científicos generales y especiales de cognición jurídica. En particular, se formula el concepto de instrucción especial previa al juicio, se define su propósito funcional, características de la realización de acciones de investigación (allanamiento) separadas durante la instrucción especial previa al juicio por delitos de corrupción. Se presta atención a los temas de cooperación internacional con el fin de identificar y buscar activos en estos procesos penales. Se revelan otros problemas de la utilización de la asistencia jurídica internacional para obtener pruebas durante la investigación de estos delitos. Se concluye que un problema que surge durante la cooperación internacional durante la investigación preliminar es la incertidumbre en las normas internacionales sobre la prestación de asistencia judicial recíproca.

Palabras clave: delitos de corrupción; actividades oficiales y profesionales; instrucción previa al juicio; instrucción especial previa al juicio; asistencia legal internacional.

Introduction

The development of civil society is impossible without the state performing its functions in the fight against crime (Larkin, 2020). In this case, the implementation of the tasks of criminal proceedings depends primarily on proving the facts and circumstances that are the subject of proof in a particular criminal proceeding, including corruption offenses in the sphere of official activity and professional activity (Sukhachova, 2020).

At the same time, the results of the material analysis of the practice of crimes investigation show that one of the main drawbacks that negatively affect the investigation of facts and circumstances of corruption, as well as the resolution of criminal cases of this category, is the inadequate organization of international legal assistance. Theoretical and practical nature. These circumstances indicate the relevance of this issue and the timeliness of recourse to its study.

It should be noted that in recent decades at the global, continental, and regional levels, the issue of establishing effective cooperation between law enforcement agencies in different countries in detecting, investigating and preventing the most socially dangerous crimes is given much attention (Shevchishen, 2017). The UN Convention against Corruption of 31.10.2001 (United Nations Convention against Corruption, 2003) is an international legal act that definitively establishes the status of corruption crimes that globally threaten the normal development of state and social institutions in all countries of the world.

A clear example of the reality of such a threat is the events of 2013-2014 in Ukraine when one of the key factors influencing the mass protests against the ex-government was large-scale corruption, which affected the highest levels of government, which undermined the defense capabilities of our state. Damage to national security and law enforcement agencies, which ultimately contributed to external aggression against Ukraine and the temporary occupation of a part of its territory. The adoption of this Convention is the result of the gradual realization and recognition that corruption among senior officials in the state is often a tool used by organized crime to achieve its goals, which in some cases becomes international and therefore requires coordinated action by all states to effectively fight it. Therefore, it is urgent to form a legal framework that will serve as an appropriate basis for effective counteraction to the expansion of scope and forms of organized crime through corruption, its impact on democratic institutions in each country, distortions in the economy, mistakes in public administration and harming the moral climate of society (Inter-American Convention against Corruption, 1996).

Ukraine is an active participant in the development of the system of international legal acts, which cover all areas of cooperation between law

enforcement agencies of different countries in the field of criminal justice, including the stage of pre-trial investigation. At the same time, society and the state must guarantee the protection of human and civil rights and compliance with the standards established by the Convention for the Protection of Human Rights and Fundamental Freedoms (Balobanova, 2020).

In fulfillment of international obligations, the Government and the Parliament of Ukraine have carried out a significant amount of work on the formation of the regulatory framework for international cooperation in criminal proceedings. In this context, special attention should be paid to the radical expansion of the normative provisions of Section IX of the Criminal Procedure Code of Ukraine in 2012 of the legal regulation of the procedure to be followed for international cooperation in criminal proceedings, extradition of persons who have committed criminal offenses, transfer of criminal proceedings (cases), recognition and execution of sentences of courts of foreign states and transfer of convicted persons. As rightly noted on this issue P.P. Minka and A.V. Khridochkin, in the Criminal Procedure Code of Ukraine of 1960 the provisions of Article 31 cannot be considered as providing proper and unambiguous regulation of international cooperation in criminal proceedings, so the novelties of Chapter IX of the Criminal Procedure Code of Ukraine in 2012 deserve only positive assessment (Minka and Khridochkin, 2013).

1. Methodology of the study

The methodological basis of the scientific article is a set of general scientific and special methods of cognition.

The dialectical method provided for the consideration of criminal procedural activities of pre-trial investigation bodies and other subjects during international legal assistance in the investigation of crimes in the sphere of official and professional activities.

The sociological method allowed to identify problematic issues that need to be addressed to improve the efficiency of the investigation of this category of crimes, and the statistical method provided a generalization of the results of the study of materials of criminal proceedings.

The system-structural method was used to determine the content of international cooperation, request for international legal assistance in criminal proceedings on corruption crimes, to clarify the specifics of obtaining evidence and their use in criminal proceedings on crimes of this category, and to clarify the procedure for obtaining evidence of corruption crimes during a special pre-trial investigation (in absentia).

Methods of analysis, synthesis, abstraction, forecasting, and formal-logical provided the formulation of intermediate conclusions in the article, practical recommendations for improving international legal assistance in these crimes, proposals to improve the productivity of criminal proceedings for evidence of corruption.

2. Analysis of recent research

Issues of international cooperation in criminal proceedings were the subject of active research by R.M. Valeeva (Valeev, 1976), O.G. Vinogradova (Vinogradova, 2000), S.M. Vykhryst (Vykhryst, 2003), T.S. Gavrysh (Gavrysh, 2004), V.V. Zueva (Zuev, 2015), A.G. Kalugina and V.D. Shinkevich (Kalugin and Shinkevich, 2006), O.I. Lezhenina (Lezhenina, 2004), I.V. Leshukova (Leshukova, 2004), M.I. Pashkovsky (Pashkovsky, 2003), O.I. Sukhachova (Sukhachova, 2020), O.M. Tolochka (Tolochko, 2003), and many other scientists. In particular, the issues of the concept, principles, forms and main directions of international cooperation in criminal proceedings, grounds and procedural order of international legal assistance, the order of resolving issues of different legal regulation of certain procedural actions in criminal procedural legislation of some states and its impact on recognition evidence obtained during international legal assistance is admissible in criminal proceedings, etc. It should be recognized that the work on these issues will significantly influence the formation of modern criminal procedure legislation of Ukraine and the practice of providing international legal assistance in criminal proceedings.

3. Results and discussion

First of all, it should be noted that the current scientific achievements contain almost no coverage of the use of international legal assistance in the pre-trial investigation of corruption crimes in the field of official and professional activities. Also, the relevance of these issues arises from the analysis of the state of international cooperation in criminal proceedings, set out in Conclusion № (2007) 1 of the Advisory Council of European Prosecutors "Ways to improve international cooperation in criminal justice", adopted by the European Commission on Justice Efficiency 07 Council of Europe.12. (Opinion № (2007) 1 of the Advisory Council of European Prosecutors), and the content of multilateral and bilateral agreements on international cooperation in criminal proceedings. In particular, paragraphs 15, 16, 18 of this Opinion emphasize the numerous obstacles that hinder the necessary development of mutual legal assistance in criminal proceedings and cause the excessive length of current procedures of international cooperation, in particular, it is stated that:

- European mechanisms of legal cooperation do not always meet modern challenges and requirements.
- the process of requesting assistance may be detrimental to the cooperation process (for example, they may be too concise or overloaded with unnecessary details, unsigned, unsubstantiated, incorrectly translated, inaccurate, inappropriate, etc.). This shortcoming is mainly due to lack of training, the complexity of procedures, and lack of allocated resources.
- requests are too often transmitted only through diplomatic channels, although the European Convention on Mutual Assistance in Criminal Matters (ETS № 30) (European Convention on Mutual Assistance in Criminal Matters, 1959) allows direct links between the competent judicial authorities for the submission and execution of requests, the lack of information (specific data on the competent authorities) often forces them to act through central authorities, moreover, the simultaneous use of different channels of communication hinders the smooth implementation of the cooperation procedure.
- the increase in the number of requests for mutual assistance is a factor that also paralyzes the current procedures because sometimes the requested authorities are overwhelmed by the execution of requests concerning minor cases.
- when fulfilling requests, the lack of a common European culture of cooperation in court cases and some resistance lead to the fact that the procedures of international cooperation are systematically replaced by internal procedures (Shevchishen, 2017).

It is also noted that, in addition to the above, much greater difficulties arise due to differences between legal systems. In particular, as a key issue, along with double criminal responsibility (ne bis in idem principle) and different powers of the requesting authority, there are different means of obtaining evidence and the existing system of judicial decisions in some states in absentia. They are key examples of concepts and procedures that depend on international coherence, which would facilitate cooperation between different systems. Last but not least is the delay in fulfilling the request for legal aid without any objective reasons due to improper performance of professional duties by the executors of the request without any expected legal consequences (Conclusion 2007 (2007) 1 of the Advisory Council of European Prosecutors, 2007).

In this regard, we note that despite the strong international support for the activities of the Specialized Anti-Corruption Prosecutor's Office and the National Anti-Corruption Bureau of Ukraine with delays in responding to requests for legal assistance in criminal proceedings for corruption in the field of official and professional activities, they also experienced problems.

N. Kholodnytsky notes that, for example, the pre-trial investigation into the report of suspicion to the People's Deputy of Ukraine M.V. Martynenko lasted more than a year since more than ten international orders were executed in eight countries in criminal proceedings. Some assignments sent in March 2016 were executed and received responses in January 2017. The last order was received on April 18, 2017. After that, the prosecutor agreed to report the suspicion of M.V. Martynenko (Kholodnytsky Told About The Procedure Of Martynenko's Case, 2016).

Similar long-term fulfillment of requests for international legal assistance during the pre-trial investigation in criminal proceedings on corruption offenses in the sphere of official and professional activity was established in 96% of investigated cases of such requests in criminal proceedings investigated by the pre-trial investigation bodies of the National Police of Ukraine (Shevchishen, 2019). And, unfortunately, the current international legal acts do not have clear instructions on the terms of execution of international requests for legal assistance in criminal proceedings. N. Kholodnytsky rightly emphasized this (Kholodnytsky Told About The Procedure Of Martynenko's Case, 2016).

Many years of experience in the execution of international orders show that it is insufficient to define in an international agreement that a request for international legal assistance is subject to immediate execution because such urgency is treated as the immediate beginning of international order and not as the fastest execution.

In this case, it should be noted that the indication of the urgency of the request is not a standard component of the normatively defined procedure for the execution of international orders in the relevant treaties concluded by Ukraine. Given the provisions of paragraph 3 part 1 of Article 280 of the Criminal Procedure Code of Ukraine, which provides the possibility of suspending the pre-trial investigation after notifying a person of suspicion if there is a need to perform procedural actions within international cooperation, the legislator may consider international warrants (Criminal Procedure Code Of Ukraine, 2012). In the context of maintaining the pre-trial investigation deadlines set out in Article 219 of the Criminal Procedure Code of Ukraine, this has indeed been done.

However, this has not happened in the aspect of evidence in criminal proceedings in which international legal assistance is sought. The implementation of procedural actions abroad is aimed at obtaining evidence, without which the further movement of the pre-trial investigation is problematic, and in some cases impossible. Due to this, the pre-trial investigation is suspended by paragraph 3 part 1 of Article 280 of the Criminal Procedure Code of Ukraine (Criminal Procedure Code Of Ukraine, 2012). The longer the period during which domestic investigators do not take legal action, the greater the risks of losing sources of evidence that

we do not know about but may learn from materials provided by foreign competent authorities. Therefore, the problem of delays in the execution of requests for international legal assistance is real and has a negative impact on the results of evidence in criminal proceedings, and in the case of a person identified as a suspect, as well as in cases where the suspicion was not announced.

At first glance, it seems optimal in this situation to amend the existing conventions and bilateral agreements in the context of setting deadlines for requests for international legal assistance in criminal proceedings. However, given the complex and lengthy procedure of initiating, preparing and approving, organizing the signing and ratification of international regulations, the entry into force of the relevant changes will take not just years but decades. For example, the signing and ratification of the Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters by 35 states took 23 years (List of signatures and ratifications of the Additional Protocol to the European Convention on Mutual Legal Assistance in Criminal Matters, 1978).

The problem with the terms of execution of international legal orders in criminal proceedings is complicated by the fact that there are no uniform approaches to the standardization of this issue in the criminal procedure legislation of foreign states. For example, paragraph 1 of §91g of the Law of the Federal Republic of Germany on International Legal Assistance in Criminal Matters (Gesetz über die internationale Rechtshilfe in Strafsachen, 1982) of 23 December 1982 (BGBL. 1982 IS.2071) stipulates that international legal assistance must be provided. Within 30 days of receipt of a request from the competent authority, and in paragraph 2 §91g, that such period shall not exceed 90 days. In this case, in accordance with the regulations of paragraph 3 §91g, the terms of international legal assistance provided for in paragraphs 1, 2 §91g of this Law of the Federal Republic of Germany may be reduced at the request of the competent authority of a foreign state, and in accordance with paragraph 4§91g, if this cannot be done, the competent authority of the requesting State must be notified (Gesetz über die internationale Rechtshilfe in Strafsachen BGBL, 1982).

A similar approach to determining the terms of execution of a request for international legal assistance is present in Part 2 of Article 558 of the Criminal Procedure Code of Ukraine (Criminal Procedure Code Of Ukraine, 2012). According to Part 2 of Article 495 of the Criminal Procedure Code of the Republic of Belarus, the term of execution of appeals within the framework of providing international legal assistance to the bodies conducting the proceedings is determined by the Prosecutor General of the Republic of Belarus or his deputies (Code Of Criminal Procedure Of The Republic Of Belarus, 1999).

These regulations generally reflect the typical approaches to the regulation in the criminal procedure legislation of foreign countries on the timing of international orders, namely, by clearly defining the timing of requests for international legal assistance in criminal matters with the possibility of adjusting them on request the competent authority of another state; - establishing the competence of the Prosecutor General or his deputy to determine in his decision the deadline for applying for international order (Shevchyshen, 2017).

The terms of execution of international orders may also be affected by the provisions of the criminal procedure legislation of certain countries, according to which the execution of certain procedural actions carried out at the request of the competent authority of another state may be challenged in court. seizure of property, bank accounts, etc. Domestic bodies of pre-trial investigation are aware of many delayed cases due to this the execution of international orders (Sytnyk, 2016).

Part 2 of Article 552 of the Criminal Procedure Code of Ukraine contains requirements for a request for international legal assistance, the elements of which are: 1) the name of the requesting authority and the competent authority of the requested party; 2) reference to the relevant international agreement or to the observance of the principle of reciprocity; 3) the name of the criminal proceedings in respect of which international legal assistance is requested; 4) a brief description of the criminal offense that is the subject of criminal proceedings and its legal qualification; 5) information on the reported suspicion, accusation with the full text of the relevant articles of the Criminal Code of Ukraine; 6) information about the person concerned, in particular his / her name, procedural status, place of residence or stay, citizenship, other information that may facilitate the execution of the request, as well as the connection of this person with the subject of criminal proceedings; 7) a clear list of requested procedural actions and justification of their connection with the subject of criminal proceedings; 8) information on persons whose presence is considered necessary during the performance of procedural actions, and substantiation of this necessity; 9) other information that may facilitate the execution of the request or provided by an international agreement or requirement of the competent authority of the requested party (Criminal Procedure Code Of Ukraine, 2012).

The Criminal Procedure Code of Ukraine does not provide for the possibility of requesting the execution of an international order within a certain period. However, does this mean its inadmissibility and inadmissibility? We believe not. First, the wording of the legislator in part 2 of Article 552 of the Criminal Procedure Code of Ukraine prescribing that the information contained therein must be in the request for international legal assistance does not mean that their list is exclusive, i.e. cannot be expanded and similar restrictive prescriptions are absent in international legal acts on

the issue under consideration (Criminal Procedure Code Of Ukraine, 2012). Secondly, the expansion of the content of the request for international legal assistance is permissible given the principles of reciprocity and courtesy, which are inherent in international relations (Uzunova, 2008). Therefore, we believe that it is not just permissible, but appropriate in requests for international legal assistance to prevent delays in fulfilling an international order to ask the requested party to provide such assistance within a certain timeframe. If such terms are defined in the criminal procedural legislation of the requested party, then the request must be guided by them, and if such terms are not specified, then - the practice of procedural actions by investigators in our state.

In addition to this problem, the in-absentia regime can significantly complicate the collection of evidence using international legal assistance measures during a special pre-trial investigation. This issue is not unreasonably addressed in the above-mentioned Opinion № (2007) 1 of the Advisory Council of European Prosecutors "Ways to Improve International Cooperation in Criminal Justice", adopted by the European Commission for the Efficiency of Justice of the Council of Europe on 07.12.2007 (Council Of European Prosecutors, 2007).

It should be noted that a special pre-trial investigation is designed to ensure a speedy, complete and impartial investigation and further trial by gathering evidence in criminal proceedings in the face of opposition to the investigation by the suspect in the form of evasion of criminal liability by the investigator a suspect for protection through the exercise of his procedural rights during such a pre-trial investigation by a defense counsel. Only in cases of impossibility to search for and extradite a suspect, in particular, due to the refusal to apply the procedure of search and extradition by the country where the suspect is, according to the pre-trial investigation, it is advisable to use a special pre-trial investigation (Shevchishen, 2019).

The problem of gathering evidence with the use of international legal assistance during the pre-trial investigation of corruption crimes in the field of official and professional activities is that not all states provide for the possibility of criminal proceedings in absentia. In the Romano-Germanic (continental) and Anglo-American (common law), systems historically formed a different vision of the peculiarities of implementation, the so-called right of confrontation. As noted by M.I. Pashkovsky, Article 6 § 3 (d) of the Convention for the Protection of Human Rights and Fundamental Freedoms provides for the right of a person accused of a criminal offense to question witnesses or to examine them, the same conditions as the witnesses who testify against it. This right of the accused (suspect, defendant) in the Western European legal tradition is defined as the right of confrontation. Close in meaning and content is the institution of cross-examination in the judiciary of common law countries. The right of confrontation is one of the

expressions of the principle of equality of arms, which follows from the principle of a fair trial (Pashkovsky, 2003).

Different understandings of the content and permissible forms of exercising this right in different states may lead to the refusal to comply with requests for international assistance through procedural actions. At one time, the United States denied Italy the execution of its consul's letter in Denver to the United States for questioning witnesses residing in the United States, Francesco and Elisabetta Macri, and Maria and Franco Macri in the case of the murder of an Italian citizen - Francesco Archina. Francesco Archina was charged with murder in Denver. A Denver court found that Francesco Archina was in a state of insanity at the time of the murder, so he was sent to Pueblo State Hospital for treatment. After some time, the American authorities deported Francesco Archina to his homeland - Italy. Based on the principle of nationality, Francesco Archina was prosecuted by an Italian investigating judge for a murder committed in the United States of America. An Italian investigation has called for the questioning of 25 witnesses in the United States. The reason for the refusal to provide legal aid was the contradiction of the Italian authorities' request for Amendment VI of the United States Bill of Rights, because the accused, who was already in Italy, was deprived of the right to confrontation, i.e. cross-examination of witnesses against him (Mueller GOW and Wise, 1965; Pashkovsky, 2003).

Analysis of foreign literature shows that the implementation of criminal proceedings in absentia has repeatedly influenced the decision to refuse the extradition of perpetrators (Ruggeri, 2017; Šepec, 2015). Although the domestic investigative practice is not aware of cases of refusal to provide international legal assistance in conducting procedural actions during a special pre-trial investigation, it should be borne in mind that the potential risks of obtaining such a refusal in states whose criminal procedure legislation does not provide for criminal proceedings in absentia.

This is especially true of requests for the extradition of persons who have committed a criminal offense. The probability of refusal is significantly increased in situations where such persons have been convicted using special court procedures. Therefore, we propose to consider the regime of special pre-trial investigation as an exclusive form of pre-trial investigation, the decision on the application of which should be made as a result of exhaustion of opportunities for interstate and/or international search of the suspect and his extradition.

In the context of the researched issues, the issue of international cooperation in order to identify and search for assets in the framework of criminal proceedings on corruption crimes in the field of official and professional activities needs special attention. In particular, in accordance with the Criminal Procedure Code of Ukraine (Article 568), based on a request for international legal assistance, the relevant bodies of Ukraine

carry out procedural actions provided by this Code, as well as other actions provided by special law to identify and seize property, money criminal means, as well as property belonging to suspects, accused or convicted persons (Criminal Procedure Code Of Ukraine, 2012).

A special law, in this case, is the Law of Ukraine "On the National Agency of Ukraine for Detection, Search and Management of Assets Obtained from Corruption and Other Crimes". In accordance with the international agreements of Ukraine, the National Agency, on the principle of reciprocity or its initiative, carries out international cooperation with the relevant authorities of foreign states in the exchange of information on issues related to detection, search and asset management.

It carries out international cooperation at the request of the relevant body of a foreign state. In order to perform its tasks, the national agency has the right to receive process and exchange information about individuals and legal entities in the manner prescribed by international treaties and legislation of Ukraine. The National Agency also accepts for consideration and executes the request received from the requesting party by electronic, facsimile, or other means of communication, if it is provided by international agreements of Ukraine or is carried out based on the principle of reciprocity. Refusal or postponement of the request for international cooperation in the field of detection and tracing of assets is carried out only based on international agreements to which Ukraine is a party (National Agency of Ukraine For Detection, 2015).

International cooperation in criminal proceedings on corruption offenses in the sphere of official and professional activities also takes place using Interpol's capabilities. In Ukraine, it is the main body for the registration of transnational crimes and those who committed them, and the main coordinator of the international search for persons who have committed criminal offenses. Among other things, pre-trial investigation bodies of Ukraine in the framework of international cooperation may use a database of persons, facts, objects, and documents accumulated based on information obtained in the process of international police cooperation.

When organizing an international search, Interpol channels should be guided by generally accepted principles and norms of international law, comprehensive and bilateral international treaties of Ukraine, the Constitution of Ukraine, laws, the Interpol Charter, binding decisions of the Interpol General Assembly, regulations of the Ministry of Internal Affairs of Ukraine, etc.

Conclusions

The problems investigated in the scientific article prompted them to comprehend and develop measures to avoid and minimize them during the pre-trial investigation of corruption crimes in the field of official and professional activities. Based on this, we made the following conclusions:

1. A problem that arises during international cooperation during the pre-trial investigation is the uncertainty in international regulations on the provision of mutual legal assistance in criminal proceedings, the timing of the execution of international order. This, according to investigative practice, negatively affects the effectiveness of pre-trial investigation of crimes in the field of official and professional activities, significantly reduces the pace of investigative (investigative), covert investigative (investigative), and other procedural actions. Because making changes and additions to set deadlines for international assignments is a long process, we recommend that such requests be sure to ask the requested party to execute it within a certain period based on reciprocity, justifying the importance of this.
2. When applying for international legal assistance during a special pre-trial investigation of corruption offenses, it should be borne in mind that in some countries the law does not provide for the conduct of criminal proceedings in absentia. There are risks of refusing to comply with a request for international legal assistance in criminal proceedings. Therefore, it is recommended to seek the assistance of law enforcement agencies of such states before making a procedural decision to conduct a special pre-trial investigation.
3. In international cooperation in criminal proceedings on corruption offenses in the field of official and professional activities, it is advisable to actively use the capabilities of Interpol, which in Ukraine is the main body for transnational crimes and criminals and the main coordinator of international investigations.

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Protection of property rights of citizens in the conditions of foreign military aggression: political and legal experience of Ukraine

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Abstract

The aim of the research is a comprehensive analysis of the problem of protecting property rights against a terrorist threat and finding ways to solve it. The article deals with the main problems of protection of property rights under conditions of external military aggression in Ukraine. The authors, with the example of a separate case, analyses the problematic aspects of renewing and granting property rights to citizens residing in the temporarily occupied territory of Ukraine. Methodologically, it is a documentary research. It is concluded that the law and judicial practice of the protection of property rights in the example of the right to compensation for damaged homes may prove insufficient on its own. The weaknesses of Ukrainian legislation in compensation for damage caused to citizens in conditions of armed conflict and terrorist activity are discussed in detail. Finally, it emphasizes the role of transitional justice in improving the law and practice of resolving disputes overcompensation for moral and material damage under the conditions of occupation of certain territories of Ukraine.

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Protección de los derechos de propiedad de los ciudadanos en condiciones de agresión militar extranjera: experiencia política y legal de Ucrania

Resumen

El objetivo de la investigación es un análisis integral del problema de la protección de los derechos de propiedad ante una amenaza terrorista y encontrar formas de solucionarlo. El artículo trata los principales problemas de protección de los derechos de propiedad en condiciones de agresión militar externa en Ucrania. Los autores, con el ejemplo de un caso separado, analizan los aspectos problemáticos de renovar y otorgar derechos de propiedad a los ciudadanos que residen en el territorio temporalmente ocupado de Ucrania. En lo metodológico se trata de una investigación documental. Se concluye que la ley y la práctica judicial de la protección de los derechos de propiedad en el ejemplo del derecho a indemnización por viviendas dañadas puede resultar insuficiente por si sola. Se discuten en detalle las debilidades de la legislación ucraniana en el ámbito de la indemnización por los daños causados a los ciudadanos en condiciones de conflictos armados y actividad terrorista. Por último, se hace hincapié en el papel de la justicia de transición en la mejora de la legislación y la práctica de resolver controversias sobre indemnización por daños morales y materiales en las condiciones de ocupación de determinados territorios de Ucrania.

Palabras clave: indemnización por daños; agresión militar externa en Ucrania; protección de los derechos de propiedad; ocupación de determinados territorios; justicia transicional.

Introduction

In early 2014, Ukraine faced a number of social upheavals, which brought about radical changes in public relations and forced the authorities to respond promptly to internal threats, and subsequently to external ones. If you look at Ukraine through the prism of transitional justice, then one should state the uniqueness of the state, because in a rather short time,

it has passed a post-authoritarian period and was in the face of foreign military aggression on the part of Russia. As a result, the state faced the so-called "post-conflict period", which brought about the necessity to revise the doctrine of national security as a whole. Over the past five years, Ukraine managed not only to take control of the situation, but also to modernize in an integrated manner the security sector and adapt national legislation to transitional justice. However, unfortunately, some aspects were neglected by the authorities, primarily because the practice of applying international humanitarian law was not implemented.

One of the key issues today is protecting the property rights of citizens in conditions of an armed conflict. First of all, it is about citizens whose property was damaged, demolished, destroyed in temporarily occupied territories or in settlements located on the line of collision. These are destroyed housing, lost business, damaged property, and the inability to use property in the temporarily occupied territory. The scale of this problem is very much significant, since almost every internally displaced person has suffered certain property losses.

At the present stage of development, more and more of such individuals turn to the European Court of Human Rights with claims to recognize such harm and its reimbursement. First of all, this is due to the lack of effective mechanisms for protecting citizens' property rights in Ukraine in the face of terrorist threats and external military aggression. For the most part, such appeals are possible with the participation of human rights organizations that implement projects in the field of protecting the rights of internally displaced persons at the expense of international financial contributors. Unfortunately, the state has not yet shown an active position in resolving this issue.

Therefore, the main purpose of this article is to systematize the main problematic aspects of protecting property rights of citizens in the context of external military aggression and to formulate proposals to resolve this problem in Ukrainian society. Therefore, it is proposed: to consider the essence of the problem on the example of a separate case from the practice of human rights defenders; identify on this basis the shortcomings and gaps in Ukrainian legislation; to propose clear solutions and recommendations that will create the proper mechanisms for restoring and ensuring the property rights of citizens in conditions of an armed conflict. The research should be conducted taking into account the principles and directions of transitional justice, at the stage of which the modern Ukrainian state is.

1. Literature review

Since the beginning of the conflict in eastern Ukraine, domestic scholars have begun to analyze issues of political and legal resistance to external military aggression by Russia. In particular, it should be noted the work of S. P. Kolisnyk, which reveals the formation of state policy against terrorism and separatism (Kolisnyk, 2019). It is also worth noting the work of O. I. Ostapenko, who conducts a comprehensive analysis of the problems of combating terrorism in the armed conflict in the Donbass (Ostapenko, 2017). These scholars have made a significant contribution to the development of theoretical principles of domestic legal science. Also in the process of writing this article, the authors used the regulations of current legislation and the practice of their application. These are legislative acts that were adopted after the beginning of the armed conflict. The practical case is presented by the materials of human rights non-governmental organizations involved in restoring the rights of victims of terrorist activities in Donbass.

2. Materials and methods

The analysis of the problems outlined above requires using a complex of general scientific and special legal methods of cognition. Thus, the dialectical method has been used to clarify the factors that led to the imperfection of Ukraine's legislation on the protection of property rights of citizens in the context of external military aggression, as well as the identification of trends in the development of such legislation. With the help of the system-structural method, the analysis of the main shortcomings of the judicial practice concerning the consideration of cases on the protection of property rights in the zone of armed conflict has been conducted.

Using the formal-logical method, the theoretical positions of the article, in particular its categorical apparatus, are formulated. Using the methods of analysis and synthesis allowed to propose the ways to resolve the problem of ineffectiveness of protecting property rights of citizens in the temporarily occupied territories and on the line of collision. Methods of synthesis and forecasting are used in the formulation of the conclusions to this article. In general, the above mentioned methodology contributed to the complex analysis of the problem and the formation of the results which have theoretical and practical significance.

3. Results and discussion

From the beginning of the conflict, it became clear that the problem of systematic violations of fundamental human rights in the area of hostilities

poses an enormous threat to the normal functioning of the authorities and public institutions. The neglect of pro-Russian mercenaries of elementary standards of treating people and their property in conditions of an armed conflict and the principle of humanism has once again demonstrated the whole threat to the situation (Ostapenko, 2017). As a result, at the legislative level, the state authorities begin to form the basis of the policy of protecting the rights of internally displaced persons and those who, due to certain circumstances, remained in the temporarily occupied territories of the Donbas and Crimea. At that time, the key legislative acts were:

- Law of Ukraine of April 15, 2014 "On ensuring the rights and freedoms of citizens and legal regime in the temporarily occupied territory" (On ensuring the rights and freedoms of citizens and legal regime in the temporarily occupied territory, 2014). This document became the main guarantee of the protection of the rights and freedoms of Ukrainian citizens who at the time of annexation lived in the Crimea, including property rights. Thus, this law consolidated the exclusive right of the state, individuals and legal entities to property, including land in the temporarily occupied territory, regardless of whether they left the territory or not. An additional guarantee was also the establishment of the principle of legitimacy of the acquisition and termination of ownership of this property, exclusively in accordance with the procedure established by the legislation of Ukraine. In other words, the state not only disapproved the annexation of territories, but also clearly outlined its priorities in temporarily occupied territories, including the protection of property rights;
- The Law of Ukraine of September 2, 2014 on "On Interim Measures for the Period of the Anti-Terrorist Operation" (On interim measures for the period of the anti-terrorist operation, 2014). Several important aspects are identified in this legal act. In particular, the authorized right of using by economic entities the property transferred to them in the course of movement from temporarily occupied territories. It should also be noted that there has been implemented the formalization of the right of an individual to open inheritance not at the place of the property, that is, in the occupied territory, but at the place of submission of the corresponding application on the controlled territory of Ukraine. This contributed to the removal of obstacles to the implementation of inherited property rights;
- Law of Ukraine of October 20, 2014 "On ensuring the rights and freedoms of internally displaced persons" (On ensuring the rights and freedoms of internally displaced persons, 2014). In essence, this law outlined the status of a new category of citizens of Ukraine – an internally displaced person. Among other norms, it is important to establish a moratorium on the repayment of the principal amount

of mortgage and accrued interest in the event the property is located on a temporarily occupied territory. It is quite fundamental that the stated law declares the principle of state participation in the process of restoration and further protection of the rights of settlers, in particular those owning the property;

- Statement of the Verkhovna Rada of Ukraine of April 21, 2015 "On the Resistance to the Armed Aggression of the Russian Federation and Overcoming Its Consequences" (On the Suppression of Armed Aggression of the Russian Federation and Overcoming its Consequences, 2015). This document was primarily of political and legal significance, since the Parliament of Ukraine condemned the foreign military aggression, paying attention to its negative consequences, in particular, of property character. Thus, they focused their attention on the problem of appropriating the property of the state and citizens, the destruction and theft of this property, its illegal nationalization, and large-scale damage. We believe that this is a rather important stage in the further resolution of the conflict and establishing guilty persons who must necessarily be held liable for the criminal acts;
- Law of Ukraine of June 12, 2015 "On the Legal Framework of Military Status" (On the Legal Regime of Military Status, 2015). The importance of this document was that the principle of full compensation of the value of forcibly alienated property was established. That is, in case of using the property of individuals for the needs of the Armed Forces of Ukraine, its value in the future should be compensated by the state. In addition, the law established the principle of compensation for property losses incurred during the military state. These are quite significant guarantees for citizens of Ukraine which indicate that the state does not relinquish responsibility for the property consequences of an armed conflict.

It should be emphasized that the protection of property rights of citizens in the conditions of external military aggression requires the activation of rule-making at the level of by-laws as well, because at this very level there is detailed elaboration of legislation norms. The executive power is also responsible for implementing the state policy in the human rights sphere. In view of this, the following sub-legal acts that were adopted as part of developing the system of guarantees of property rights protection can be cited:

- Resolution of the Cabinet of Ministers of Ukraine dated October 31, 2012 "Some issues of full compensation for property forcibly alienated under the legal regime of military or state of emergency" (Some issues of full compensation for property forcibly alienated under the conditions of the legal regime of martial law or the state

of emergency, 2012). The document contains the appropriate guarantees of compensation for the value of destroyed property, but only in a wartime situation. In Ukraine, such a situation was introduced only for a short time, and only when the active phase of armed confrontation ended. That is, the reimbursement mechanism was not an effective means of protecting property rights;

- Resolution of the Cabinet of Ministers of Ukraine dated October 1, 2014 "On Approval of the Procedure of Using the Funds Received from Individuals and Legal Persons to Provide One-Time Cash Assistance to Victims and Internally Displaced Persons" (On Approval of the Procedure for Using the Funds Received from Individuals and Legal Persons to Provide One-Time Cash Assistance to Victims and Internally Displaced Persons, 2014). The document contains certain guarantees for settlers, including one-time monetary compensation. Nevertheless, this is not enough to solve housing problems, since there is only money to meet the individual needs of everyday life;
- Resolution of the Cabinet of Ministers of Ukraine dated October 1, 2014 "On the provision of monthly targeted assistance to internally displaced persons to cover residential expenses, including housing and communal services" (About the provision of monthly targeted assistance to internally displaced persons to cover the cost of living, including for payment of housing and communal services, 2014). The funds that migrants receive under this decree are mainly directed towards the payment of utilities.

Moreover, there are many cases of refusal to pay such assistance which is mainly due to the unequal interpretation of the rules of law. For instance, a retired pensioner may be refused on the grounds that she lives in a son's home, and hence belongs to his family. Although, according to the Family Code of Ukraine, a single person is an independent family;

- Resolution of the Cabinet of Ministers of Ukraine dated November 7, 2014 "On approval of the list of settlements on the territory which the state authorities temporarily do not exercise their powers over and the list of settlements located on the line of collision" (On approval of the list of settlements on the territory of which the state authorities temporarily do not exercise their powers and the list of settlements located on the line of collision, 2014). This document is a prerequisite for establishing a causal link between the destroyed property and the armed conflict. However, in the absence of legal compensatory mechanisms, it is not able to promote the property rights protection of inhabitants of the occupied territories;
- The Resolution of the Cabinet of Ministers of Ukraine dated April 18, 2018, entitled "Providing housing for internally displaced persons

who defended Ukraine's independence, sovereignty and territorial integrity" (The issue of providing housing for internally displaced persons who defended the independence, sovereignty and territorial integrity of Ukraine, 2018). This decree is a sufficiently effective means of protecting property rights, in particular the right for housing, but only of those settlers who joined the Armed Forces of Ukraine and with arms in their hands defended Ukraine's independence. The document introduces a mechanism for allocating subventions from the state budget for estate purchase for such persons in the territory under the control of Ukraine.

It should be noted that at the subordinate level there are also no effective mechanisms for ensuring the protection of property rights of citizens in conditions of an armed conflict. It negatively affects not only the socio-political situation of internally displaced persons. The fact is that due to such a policy, the state increases the social alienation of migrants in Ukrainian society and their mistrust in the state power. One of the reasons for such a situation not long ago was the lack of a clear position of Ukraine regarding the position of the aggressor state at the legislative level. As a result, the responsibility for violated property rights of citizens in conditions of the armed conflict was not held, because the subject that should compensate harm caused to people was unknown.

A positive step in solving this problem was the Law of Ukraine dated January 18, 2018, "On the peculiarities of the state policy to ensure the state sovereignty of Ukraine in temporarily occupied territories in the Donetsk and Luhansk oblasts" (On the peculiarities of the state policy to ensure the state sovereignty of Ukraine in the temporarily occupied territories in the Donetsk and Luhansk oblasts, 2018). The document for the first time recognized Russia as an aggressor state. In addition, the law contains several norms related to the protection of property rights of citizens in the context of external military aggression. First, the exclusivity of the property rights of citizens and the state to the property located in the temporarily occupied territory is enshrined. This allows you to appeal to the disputing parties regarding the restoration of property rights.

On the other hand, the law contains a norm according to which the responsibility for material or non-pecuniary damage inflicted on Ukraine as a result of the armed aggression of the Russian Federation is held by Russia, as well as by self-proclaimed republics in accordance with the principles and norms of international law. In other words, Ukraine essentially relinquishes its obligation to compensate property damage caused by an armed conflict, imposing such obligations on the aggressor state. That is, there is a legal conflict. On the one hand, Ukraine recognizes the occupied territories as its territories, and the citizens who live on them - are citizens of Ukraine, and on the other hand, it shifts away from the obligation to guarantee the protection of the property rights of such citizens.

The situation is also complicated by the imperfection of legal acts of a strategic nature in the area of protection of migrants' rights. It should be noted that the policy aimed at the complex solution of the problems of the latter, in general, until recently, was situational in nature. That is, there were separate managerial decisions to overcome this or that problem, but there was no systematic vision of the situation as a whole. As a result, politics was ineffective, and misunderstandings were only deepening. Only at the end of 2017, several conceptual documents were adopted. First of all, we should emphasize the importance "Strategy of integration of internally displaced persons and implementation of long-term decisions on internal movement for the period until 2020" (On Approval of the Strategy for the Integration of Internally Displaced Persons and Implementation of Long-Term Decisions on Internal Movement for the Period up to 2020, 2017).

This document is quite important, because it contains a mechanism for protecting property rights of migrants which includes the following elements: documenting cases of property destruction by creating an appropriate state register of destroyed property; introducing criteria for assessing property damage and methods of compensation; restoration of lost documents confirming ownership; legal aid. Implementation of this mechanism in accordance with the rules of the strategy requires the application of a set of regulatory, financial, credit, tax and other measures. The result of implementing the planned measures should be the return of control over the lost property, or in the event of its destruction - the receipt of appropriate compensation. At present, the rules of this strategy are being implemented quite slowly and for the most part remain declarative.

It should be noted that the above-mentioned problems are accompanied by the lack of practical development of applying the norms of international humanitarian law in Ukraine. The state was not ready for external military aggression, and as a result, it did not ensure the ratification of key international legal instruments protecting the property rights of citizens in conditions of an armed conflict. In addition, the issue of status and guarantees for such persons very often become the subject of political speculation in the Ukrainian parliament. For example, for several years in the Verkhovna Rada of Ukraine there have been bills "On compensation for damage caused by a terrorist act" and "On compensation for damage caused to citizens by a terrorist act and as a result of an anti-terrorist operation". Adoption of these laws would enable to solve the problem of protecting property rights of citizens in conditions of external military aggression. This delay in the adoption is due to the reluctance of the state to bear the burden of compensation for property damage (Kolisnyk, 2019).

The problems of legislation described above are quite clearly disclosed at the level of practical cases. In this article, I would like to dwell on the case, which is tackled by lawyers of the Public organization Sich Human

Rights Group (Dnipro). It is related to the protection of property rights of an internally displaced person, in particular compensation for reduced accommodation during hostilities. The essence of the case is that the person who lived in the city of Shakhtarsk in the Donetsk oblast, with the help of human rights activists, appealed to the court with a claim for compensation for material damage caused by Ukraine. The plaintiff's house was destroyed during city bombings in August 2014. At that time, the city of Shahtarsk was in an uncontrolled territory of Ukraine. No rescue service has left the city on fire; so many homes have simply been burned down. In addition, the plaintiff does not have documents that confirm the fact of the destruction of housing. After these events, the person turned to the police which opened the criminal proceeding. The plaintiff believes that there was a crime, in particular a terrorist act that caused significant damage to the property of an individual.

Moreover, the state of Ukraine, in the person of the Cabinet of Ministers of Ukraine, should bear responsibility for this crime, because according to the legislation, the authorities are responsible for carrying out the antiterrorist operation. In her claims, the person demanded to reimburse her the cost of the lost housing. However, given the lack of mechanisms to compensate for damage caused by an armed conflict, as already mentioned above, the court of first instance refused the person to comply with her claim, referring to the fact that the cause-effect relationship between the anti-terrorist operation and the destruction of the plaintiff's home was not proved in court. This decision was also taken as a result of the retaliation for the consequences of the armed conflict (Leheza *et al*., 2020).

Subsequently, the Person decided to appeal this decision to the appellate court, but the court upheld the decision as it did not find a violation of the substantive law. The court also expressed its position on the ungrounded claims of the plaintiff in the part of the evidence provided, which confirms the fault of the state of Ukraine. This situation arose from the fact that the state of Ukraine on the legislative level has obligated to indemnify property damage to the aggressor state. Having withdrawn personal responsibility, Ukraine essentially put judicial practice at a standstill, because the court is not able to make a decision in favor of the victims.

It should be noted that the problem is also complicated by the non-recognition by Ukraine of documents issued by the authorities of self-proclaimed republics. For example, in similar situations in uncontrolled territories, such bodies compose acts of property destruction which in the future Ukrainian courts do not recognize as evidence. Moreover, the state has not developed an alternative system of fixing the consequences of an armed conflict.

Occasionally absolutely unique situations arise when an internally displaced person who defended the territorial integrity of Ukraine with

arms in the hands is asked to go to the temporarily occupied territory in order to obtain a documentary proof of ownership. For such a person, it means captivity and condemnation by militants. At present, human rights activists have sent a cassation appeal to the Supreme Court of Ukraine and demand the claim satisfaction and full compensation for the damage. In case of a negative decision, the next step will be to file a complaint with the European Court of Human Rights.

It can be noted that the imperfection of legislation in the area of the status of victims of armed conflicts actually makes it impossible to protect their property rights. The indicated case is just a separate example that demonstrates it. Due to the imperfection of the legislation, the development of the relevant judicial practice is also hindering, which negatively affects the reputation of the judicial system as a whole (Leheza *et al.,* 2018).

Conclusions

Having systematized theoretical and practical aspects of the problem of protection of citizens' property rights in the conditions of external military aggression, we can propose the following ways of its solution:

- implementation of international humanitarian law (will increase the effectiveness of legal regulation of the status of victims of an armed conflict).
- adoption of a separate legislative act on the status of displaced persons and persons who have suffered as a result of terrorist activity and military aggression (will contribute to the elaboration of methods and forms to restore property rights).
- the introduction of clear and understandable criteria for assessing the property damage caused by an armed conflict (on the basis of which it will be possible to develop a mechanism for establishing causal links between loss of property and an armed conflict and a mechanism for compensation for such damage).
- elaboration and approval of a clear action plan within the framework of the Strategy for the Integration of Internally Displaced Persons (will allow to organize and coordinate the activities of executive authorities in implementing the state policy in the sphere of immigrants),
- establishing constructive cooperation with victims of an armed conflict and social protection bodies of the population (will allow to hardwire the interests of society and government).

- depolarization of initiatives related to the status of victims of an armed conflict (will increase the authority of the authorities and weaken the social tension in Ukrainian society).

The problem of protecting property rights of citizens in the face of external military aggression is rather topical for the modern Ukrainian state. Since the beginning of the conflict in the east of Ukraine and the annexation of the Crimean peninsula, several years have passed, however, the state has not succeeded in building effective protection policies for the affected victims. This problem is relevant for the author of this article as well, since he is an internally displaced person himself and knows this situation perfectly. Today, several preconditions for the existence of this problem can be identified: political (the reluctance of the authorities to globally solve the problems of settlers); socio-economic (lack of financial resources to form a fund for compensation for property damage of the victims); organizational (lack of experience in the conditions of temporary occupation of territories); legal (imperfection of legislation and undeveloped legal practice); ideological (social alienation of immigrants which prevents defending their own rights and legitimate interests). Taken together, these preconditions led to a situation in which the affected person almost in most cases remains on their own with their problems, which is unacceptable in a social, legal state. However, recent government decisions and trends in practice provide grounds to assure that in the coming years this problem can be solved.

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Citizens 'participation in the fight against criminal offences: political and legal aspects

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Abstract

The aim of the research is to reveal political and legal aspects at international level in the field of citizens' participation in the fight against crime. Attention is paid to the most common forms of public participation: patrolling; provide information on criminals or criminal acts committed; participation in anti-corruption measures; assistance in the resocialization of offenders; aiding victims of crime; strengthening the security of one's own property; participation in information on anti-criminal measures. Methodologically it is a documentary research. In conclusion, the benefits of public participation in crime prevention, based on international crime prevention, can be divided into two groups: basic and additional. The main advantages are reduction of crime and delinquency; improve security in relevant areas of cities; reducing citizens' fear of crime; strengthening the service function of the police forces in relation to the inhabitants of territorial communities; improve police partnerships with the public.

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Keywords: crime prevention; citizen participation; international experience; forms of public participation in crime prevention; Ukraine.

Participación de los ciudadanos en la lucha contra los delitos penales: aspectos políticos y legales

Resumen

El objetivo de la investigación es revelar aspectos políticos y legales en el plano internacional en el campo de la participación de los ciudadanos en la lucha contra el delito. Se presta atención a las formas más comunes de participación pública: patrullaje; proporcionar información sobre criminales o hechos de delitos cometidos; participación en medidas anticorrupción; asistencia en la resocialización de delincuentes; brindar asistencia a las víctimas de delitos; fortalecer la seguridad de la propiedad propia; participación en la información sobre medidas anticriminales. Metodológicamente se trata de una investigación documental. A modo de conclusión, en cuanto a los beneficios de la participación pública en la prevención del delito, basada en la práctica internacional en este ámbito, se pueden dividir en dos grupos: básicos y adicionales. Las principales ventajas son: reducción del crimen y la delincuencia; mejorar la seguridad en áreas relevantes de las ciudades; reducir el miedo de los ciudadanos a la delincuencia; fortalecer la función de servicio de los cuerpos policiales en relación con los habitantes de las comunidades territoriales; mejorar las asociaciones de la policía con el público.

Palabras clave: prevención del delito; participación ciudadana; experiencia internacional; formas de participación pública en la prevención del delito; Ucrania.

Introduction

The purpose of most criminological research is to develop promising areas of crime prevention. The implementation of this scientific task is impossible without a study of foreign crime prevention practices, given the assessment of its effectiveness for possible implementation in Ukraine and even critical evaluation. Thus, the foreign practice of crime prevention with the participation of one of the many actors in this activity, which is the public, is of scientific interest.

The literature rightly points out that the most important part of the content of comparative law research is knowledge that has a functional nature, goes beyond national legal systems and is a universal theoretical and practical value (Bekhruz, 2003). This can be supplemented by the words of O. Yu. Shostko, who emphasized that taking into account the experience of other countries is always an additional positive factor that allows a more rational approach to the development of their own safety models (Shostko, 2012). Similar ideas of scientists are reflected in the regulations of law enforcement agencies, which define new approaches to crime prevention in Ukraine. In particular, the Development Strategy of the System of the Ministry of Internal Affairs of Ukraine for the period up to 2020, approved by the Cabinet of Ministers of Ukraine dated November 15, 2017 № 1023-r, emphasizes that the Strategy will be implemented taking into account the positive experience and best practices of leading countries (Development Strategy of the System of the Ministry of Internal Affairs of Ukraine for the period up to 2020, 2017).

In this regard, we believe that the study of other countries' practice on public use in crime prevention deserves attention and is justified from the standpoint of criminology for a number of reasons: a) the prevalence of comparative law research corresponds to a trend of modern criminology (Kolodiazhnyi, 2017); b) focus on the implementation of regulations that define modern approaches to crime prevention in Ukraine; c) consistency with the European integration vector of Ukraine's development, including in the law enforcement sphere; d) is the basis for the possible expansion of certain areas of public participation in crime prevention in our country.

1. Literature review

V. V. Holina, O. Dzhafarova,V. M. Dromin, M. H. Kolodiazhnyi, Ye. Leheza, Yu. Shostko, M. Savielieva, S. A. Zadorozhnyi and others paid attention to the study of foreign experience in crime prevention, including with the participation of the public. In the works of some scientists, the issue under consideration was highlighted through the presentation of opinions on the prevention of certain crimes. Others studied public involvement in law enforcement separately by country.

This form of public participation in crime prevention is the most common abroad. According to some scholars, patrolling can be attributed to a historically rooted type of law enforcement, which has subsequently improved, changed its forms and means of achieving the main goal of law enforcement (Kolodiazhnyi, 2018). In our opinion, such an improvement can be attributed to the expansion of police patrols, which include citizens. In general, patrolling is characteristic not only of the developed western

countries of the world, but also of less socially prosperous Latin American, African and Asian countries.

The main trends in preventing and combating corruption in democracies are, first, a clear correlation and relationship between the level of democratization of society and corruption (the more in a democracy, the less corruption there); secondly, civil society is seen as the main subject of influence on the government - and, accordingly, as the primary subject of anti-corruption (Zadorozhnyi, 2017).

2. Results and discussion

The central methodological component of criminological knowledge of modern foreign experience of public participation in crime prevention is the consideration of forms of such activities. Various foreign forms of public participation in crime prevention can be divided by their nature into the following: a) patrolling; b) providing information about criminals or facts of committed crimes; c) participation in anti-corruption measures; d) assistance in resocialization of offenders; e) providing assistance to victims of crime; f) strengthening the security of own property; g) participation in information anti-criminogenic measures; g) other forms.

Patrol. The practice of public patrol in the United States is quite powerful given the quantitative composition and variety of activities. This is facilitated by the presence of special organizations (volunteer councils, public commissions at municipalities), which deal with the issues of diversification of police patrols, increasing its effectiveness, funding. The most well-known public patrol organization in the United States and around the world is the Guardian Angels, which since 1979 have helped police maintain law and order not only in the United States but in many other parts of the world. Guardian Angels is a voluntary non-governmental organization that patrols subway stations, streets and other public places on a gratuitous basis (Leheza *et al.,* 2018). In general, different (both combined patrols and patrols consisting exclusively of civilians) operate in all US states. According to the US Department of Justice's Community Oriented Policing Services, the most effective crime prevention programs in the country to engage Americans in patrols are: "Volunteers to Help the Police" (Phoenix, Arizona); "Neighborhood Patrols" (Millersville, Maryland); "Street patrols counter thefts and carjacking" (Ardmore, Pennsylvania), etc.

The intensification of public patrols in Great Britain was facilitated by the adoption in the early 1990s of special programs, one of which was Street Patrol (Vedernykova, 2001), as well as the creation of a public patrol service (Community Support Officers) and special constables. The members of this organization protect public order as part of mixed patrols and have no right

to use force against offenders. Their main task is to reveal the facts of the committed crimes and to report various incidents by walkie-talkie. The efficiency of their activities is quite high, which is ensured by strengthening social control in public places.

The practice of public patrolling in China is quite widespread and widespread. In Beijing alone, up to 850,000 volunteers are involved in maintaining public order. The peculiarity of Chinese patrols is the age of the patrols, as most patrols are people of retirement age from 50 to 70 years. They help the police to detain criminals and report the facts of crimes and offenses on a gratuitous basis. Such patrols are intensifying in China on the eve of Chinese New Year, other national holidays and mass cultural and entertainment events (Connor, 2018).

Providing information about criminals or the facts of crimes committed. One of the world's best-known crime prevention programs, designed to encourage citizens to provide any anonymous information about crimes or criminals, is the Crime Stoppers program. This project was first introduced in the United States in 1976. As of 2018, the international platform "Crime Stoppers" involves 26 countries, including the United States, Britain, Canada, the Netherlands, Australia, South Africa, New Zealand, and other Latin American and African states. Sources of funding for anonymous information about criminal events are sponsorship of legal entities, donations from citizens, gifts, inheritance, etc. Since 2010, the project has maintained a strategic partnership with the International Criminal Police Organization (Interpol), and since 2016 – with the United Nations Office on Drugs and Crime (UNODC) (Leheza *et al*., 2018).

In some countries, in addition to the Crime Stoppers project, there are other additional prevention programs aimed at activating the public to provide information about the crimes committed, especially high-profile crimes. These include the United States, which has strong funding for this activity, as well as broad support for such initiatives by civil society. In particular, in Stafford, New Jersey, a program "Crime Alert". It is to persuade Americans to participate in the program. All persons who wish to report crimes and offenses anonymously, in order to secure them and enhance the anonymity of messages, are issued special identification numbers (QR-codes), which exclude the leakage of any information about the perpetrator.

It will be recalled that in Ukraine, in contrast to many Western countries, the practice of monetary and other incentives for conscious citizens who provide information about crimes and criminals is not widespread. There is no appropriate legal framework that would legally determine the conditions of anonymous reporting of the facts of crimes committed. The only exception is the Law of Ukraine "On Prevention of Corruption" of 2014, where in Art. 53 defines the conditions of state protection of persons who

provide assistance in preventing and combating corruption. At the same time, there is no norm on encouraging whistleblowers.

Participation in anti-corruption measures. Non-governmental organizations have a strong opportunity in this area, the main task of which is to expose corruption. Researchers of public involvement in the prevention of corruption crimes in foreign countries have identified a number of non-governmental organizations with international status. These are: Transparency International, International Anticorruption Resource Center, Corruption Watch, Transparify and others (Biletskyi, 2018). The analysis of the activities of these and other non-governmental organizations allowed us to conclude that their anti-corruption influence is embodied through the following measures: formation and implementation of anti-corruption policy; evaluation of anti-corruption mechanisms used by governments; collection and processing of information on corruption cases; detection of corruption risks; providing legal assistance; development and implementation of educational programs; formation of anti-corruption worldview of citizens.

Sweden is one of the countries least affected by corruption. In this country, there is effective public control over the activities of both the public and private sectors, the leading role in which is played by the media, the church and public opinion. However, the latter may create a negative image of businessmen or officials, as a result of which some will be forced to resign, while others will lose trust among business partners.

Similarly, public control over the activities of government agencies, as well as the cultivation of intolerance in society to any manifestations of corruption takes place in Switzerland, the Netherlands, the United States, France, Poland and others.

As for the United States, in this country the institution of public anti-corruption oversight is provided by the Freedom of Information Act of 1966, according to which all federal agencies must provide citizens with free access to all available declassified information. Thanks to this law, it has become more possible to expose corruption. Such activities are carried out by a number of non-governmental organizations in the United States: Judicial Watch, Project on Government Oversight, Government Accountability Project, and others.

For example, in Seoul in 1999, the anti-corruption program “OPEN” was developed, which allowed citizens to control the work of officials. This allows you to monitor at any time the process of reviewing documents for applications for permits in a particular case, especially when there is the highest likelihood of corruption.

Canada does not have special anti-corruption agencies, and its anti-corruption system is built on active public participation through the media, professional associations and organizations.

As you can see, the role of the public in preventing corruption in foreign countries is quite important, and most importantly has a practical focus, which is:

- supervision, ie the public closely monitors legislative and institutional changes, transparency in the formation and functioning of government, as well as corruption cases (from disclosure to investigation, prosecution and trial).
- developing viable experience and knowledge of viable alternatives through the development of bills, concepts of institutional reforms and educational campaigns.
- influence as one of the most important tools that can be used to exert public pressure on government and officials in making specific decisions.
- actions, namely the provision of services in the social sphere, the publication of information on cases of corruption and raising awareness of a wide range of citizens.

Assistance in resocialization of offenders. This form of public participation in crime prevention is especially common in the developed western countries of the world, which are characterized by a relatively humane criminal policy. It is characterized by a low percentage of convictions related to imprisonment, as well as the widespread use of the practice of release from probation (Dromin, 2007). Therefore, resocialization can be both penitentiary and post-penitentiary in nature.

For example, in France and the United Kingdom, public resocialization penitentiary practice is that a number of social, educational and other activities are carried out by representatives of non-governmental, public structures, and semi-state entities. Such measures include: development of specific social programs, their implementation, provision of social assistance, involvement in social work of the necessary specialists on a voluntary basis and assistance to convicts. In Finland, there is an Association for Probation and Further Supervision to help solve the social problems of parolees and released prisoners, which also includes some non-governmental organizations. A feature of penitentiary resocialization in Germany is the wide participation of the church and religious organizations (Barash, 2016).

Post-penitentiary resocialization is characterized by the fact that convicts who are at large after committing a crime are obliged to participate in mediation programs, probation, the practice of reconciliation with the victim, attend special rehabilitation psychological, pedagogical, and medical and social courses and trainings on taming aggression, treatment of alcoholism and drug addiction, changes in life attitudes and values, etc.

The main thing is that the public (parents of criminals, social workers, priests, socially active youth, volunteers, etc.) takes an active part in such a practice of assisting in the resocialization of criminals and offenders.

Often post-penitentiary resocialization of offenders in foreign countries is carried out within the framework of special prevention programs. Consider some of them. Thus, the "Volunteers to Help the Police" program in Phoenix, Arizona, USA, proved to be quite effective. Its purpose is to involve interested and qualified citizens-volunteers in the performance of certain functions of law enforcement agencies. In particular, the city police department involved more than 3,000 volunteers who had no criminal record, were specially checked by the police to carry out a number of resocialization measures with criminals and persons released from prisons (lectures, legal aid, psychological training, employment assistance).

In Belfast, the capital of Northern Ireland, a successful program called The RIO project (RIP) was launched in 2009 and is still ongoing. The aim of the program is the post-penitentiary resocialization of persons aged 17 to 21 who have been released from prisons or who have problems with the law. Under the program, a special police officer is the operator between young people who have received resocialization services and the providers of these services, who are often NGOs, volunteers and other interested NGOs. The latter provide legal, psychological, social, and other assistance to young people to prevent their recidivism (Williams, 2014).

Assistance to victims of crime is also considered a common area of public involvement in crime prevention in many countries around the world. The pioneers in this area are the most democratic and socially prosperous countries (USA, Central Europe), where the protection of the rights of victims of crime is given much attention. In many EU member states, special information booklets are developed and distributed by volunteers and representatives of human rights NGOs among victims of crime. They explain the rights of victims of crime and the algorithm for further action to restore the violated rights as a result of the crime (Victims Support Program, 2013). Many foreign countries also have both national and local assistance programs for victims of crime.

For example, in Fort Lauderdale (Florida, USA) a program was provided to provide a free lawyer for victims of crime. The local police department received a grant to raise funds for the training of highly qualified legal staff to defend the interests of poor victims of crime in court. A similar program is also being implemented in Aurora (Colorado, USA). 35 women volunteers have been invited to provide free assistance to victims of crime around the clock. These women go to crime scenes, provide psychological counseling, and provide psychological support to victims for several weeks after the crime.

European countries are also actively developing ways to support victims of crime. In many countries, such as Spain, special emphasis is placed on the protection of victims of domestic violence, as this problem is acute for the European community. To this end, in many cities in the province of Spain, for example, in Catalonia (Barcelona, Girona, Lerida, Tarragona), in 2011 the project "Program of security and support for victims of gender and domestic violence" was launched. This program is also designed for children and the elderly. Its separate block includes measures to involve individual citizens and NGOs in providing various types of assistance to victims of crime and delinquency (Williams, 2019).

Strengthening the security of own property. This form of public participation in crime prevention in foreign countries is associated with well-known in the criminological literature measures to prevent protection (Holina, 2011). It consists in the fact that citizens, on the recommendation of the police or on their own initiative, take various measures aimed at strengthening the technical security of their own property (apartment, private house, car, shop, utility room). As a result, such public activity contributes to the strengthening of technical security of property, which complicates and even prevents the implementation of certain criminal encroachments on theft, destruction, damage to property, car theft, hooliganism, robbery or burglary, including combined with burglary, etc.

In many foreign countries (USA, Great Britain, Germany, Canada, Australia) in police departments there is a position of the police officer responsible for carrying out check of protection of property of citizens. After the relevant inspection, the property owner is given advice by the employee to strengthen the technical protection: strengthening the door frame; installation of additional locking devices; installation of the alarm system; improving the lighting of the adjacent territory; additional glazing of windows; storage of cash and valuables only in a secure safe, etc. Similar advice is given, for example, by the London police to the population of this city. After taking the necessary technical measures at their own expense, the police provide citizens with special stickers that are pasted on the windows and all doors of the house and signal the participation of the property owner in the home security audit program (Thirteenth united nations congress on crime prevention and criminal justice, 2015).

Similar prevention programs called "Business Security Audit" exist in many Western countries for entrepreneurs and legal entities in the field of trade and services. In particular, business representatives are provided with advice on the procedure for technical arrangement of trade halls, utility rooms (installation of alarm buttons and video surveillance cameras), rules for placing goods on shelves and shop windows in order not to violate visibility, etc. (Official web-site of the gov.uk, 2020).

Participation in information anti-criminogenic activities. In many foreign countries, including Latin and North America, Europe, Africa, and Asia, the appropriate level of involvement of non-state actors in crime prevention is achieved through appropriate information campaigns. They provide a solid socio-psychological basis for activating civil society in the field of crime prevention and increasing the social responsibility of citizens for the results in this area.

In the United States, it is common practice to declare the so-called days without crime, when the march of the participants of such an action is carried out, citizens are given newsletters with advice to reduce victimization from various crimes. In some cities in the United States and Great Britain, residents of certain residential areas are involved in creating profiles of residential areas by the police to clarify possible patrol routes with the help of the population, people who lead a criminal lifestyle, use drugs, and others. In the Canadian province of Saskatchewan, the practice of establishing so-called social services departments has proved its worth. They also include volunteers and members of public organizations, who, moving in a special car equipped with a walkie-talkie, urgently go to the scene (crime, fire, accident, catastrophe), where they provide information and counseling to victims.

In African countries (Botswana, Zimbabwe, Lesotho, Nigeria, Kenya, Malawi, Uganda, Sierra Leone), the experience of providing free legal aid by lawyers on a voluntary basis to both criminals and victims of crime has recently become widespread (Holina and Kolodiazhnyi, 2015).

Other forms of public participation in crime prevention in foreign countries include: the involvement of residents of neighborhoods in the arrangement of living space within the theory of “broken windows” (USA, UK, Netherlands). As a result, the social responsibility of citizens increases, criminogenic conditions for committing many selfish and violent crimes by cutting down bushes and dry trees, dismantling dilapidated buildings that serve as shelters for drug addicts, etc .; Involvement of women-volunteers from neighborhood clubs and community groups to perform non-police registration functions in police departments (receiving applications and complaints from visitors; advising on non-legal issues) (New York, NY, USA); involvement of male volunteers in secondary unskilled policing (traffic regulation, response to reports of antisocial behavior) (Dayton, Ohio, USA), etc.

Conclusion

1. Thus, regarding the benefits of public involvement in crime prevention, based on foreign practice in this area, they can be divided into two

groups: basic and additional. The main advantages are reduction of crime and delinquency; improving security in relevant areas of cities; reducing citizens' fear of crime; strengthening the service function of police bodies in relation to residents of territorial communities; improving police partnerships with the public. Additional advantages of such activities are deepening the democratization of society; changing the psychology of local residents in the direction of strengthening the sense of unity, tolerance, courtesy and social responsibility; increasing citizens' trust in the police. By the way, according to the latest indicator, according to the Law of Ukraine "On the National Police" of 2015, it is proposed to assess the degree of efficiency of the police in our country.

2. Consideration of modern foreign practice of public participation in crime prevention provides grounds for possible borrowing of its individual components in order to improve the activities of law enforcement agencies of Ukraine, as well as the formation of the latest strategy to combat crime.

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Judicial Protection of a Human Dignity Right

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Abstract

Human dignity has become a central legal concept throughout the world and is increasingly used in judicial decisions in many countries that do not include it in their national legislation. However, due to the acknowledged vagueness of the concept, academics and judges have identified many difficulties in its implementation and the specific challenges it poses to the rule of law. Consequently, from a documentary methodology this article tries to develop and propose, from the analysis of different philosophical approaches to the definition of human dignity, a series of principles that can be applied in judicial decisions to achieve a deep common understanding of the usefulness of human dignity and, at the same time, tries to solve problems that are now widely recognized, both by supporters and critics of the judicial use of this concept. It is concluded that the concept of human dignity must have a decisive influence on the formation, not only of substantive law but also of procedural law. It must become a criterion for the need for measures to prevent the abuse of procedural rights, the distortion of justice and the deliberate evasion of its main task.

Keywords: rule of law; access to justice; abuse of procedural rights; human dignity; human rights.

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Protección judicial del derecho a la dignidad humana

Resumen

La dignidad humana se ha convertido en un concepto jurídico central en todo el mundo y se utiliza cada vez más en decisiones judiciales en muchos países que no la incluyen en su legislación nacional. Sin embargo, debido a la reconocida vaguedad del concepto, académicos y jueces han identificado muchas dificultades en su aplicación y los desafíos específicos que plantea al estado de derecho. En consecuencia, desde una metodología documental este artículo intenta desarrollar y proponer, a partir del análisis de diferentes enfoques filosóficos de la definición de la dignidad humana, una serie de principios que pueden ser aplicados en las decisiones judiciales para lograr un profundo entendimiento común de la utilidad de la dignidad humana y, al mismo tiempo, trata de resolver problemas que ahora son ampliamente reconocidos, tanto por los partidarios como por los críticos del uso judicial de este concepto. Se concluye que el concepto de dignidad humana debe tener una influencia decisiva en la formación, no sólo del derecho sustantivo sino también procesal. Debe convertirse en un criterio para la necesidad de medidas para prevenir el abuso de los derechos procesales, la distorsión de la justicia y la evasión deliberada de su tarea principal.

Palabras clave: estado de derecho; acceso a la justiciar; abuso de los derechos procesales; dignidad humana; derechos humanos.

Introduction

The main use of human dignity in court decisions is a phenomenon that has grown significantly in the second half of the twentieth century, after the terrible events of World War II and its inclusion in the UN Charter, the Universal Declaration of Human Rights and then in national legislation. The original function of the concept was declarative and not effective. Political philosopher Jaoques Maritain (1948) explained that the use of human dignity allows representatives of different ideological beliefs to agree on practical measures to protect human rights on a common basis, but without abandoning their philosophical worldviews.

This concept is defined neither in international regulations nor in the national legislation of most countries. Its vagueness, on the one hand, allows it to be included in international human rights instruments, and on the other hand, offers different interpretations of its meaning and possible regulatory requirements.

This article attempts to develop and propose, based on an analysis of different philosophical approaches to the definition of human dignity, a number of principles that can be applied in judicial decision making in order to achieve a deep common understanding of the usefulness of human dignity, tries to solve problems that are now widely recognized by both supporters and critics of the judicial use of this concept. Proposals have been made to take into account the criterion for determining decent human behavior while preventing the abuse of procedural rights.

1. Basic theoretical approaches to understanding the idea of human dignity

Ronald Dworking (1989) noted that human rights stem from human dignity, although he acknowledged that the concept was rather vague. One of the influential approaches to dignity is the Kantian secular rational approach, which considers dignity (value) in a person's ability to think rationally, and its violation as a violation of autonomy (Hill, 2014). Some scholars have emphasized the origins of this concept from the Latin word dignitas, which means honor and status, and calls for an understanding of human dignity in terms of honor (Weisstub, 2002). Another group of scholars stressed that human dignity should be used primarily to protect people from humiliation and other actions that offend human dignity (Shultziner and Rabinovici, 2012) On the other hand, some researchers have argued that this concept is ineffective, confusing and does not justify human rights or is even dangerous, and should therefore be replaced by more precise concepts. These discussions of the historical origins of the concept of human dignity and its religious and philosophical significance can be called not endowed with a legal form in the sense that they are separated from the legal application of this concept in a court decision (Rosen, 2013).

Most authors support the dual nature of human dignity: as a phenomenon objective and common to all people (value, principle, source of human rights, their purpose or content) and as a subjective right or interest of a particular person (human dignity). Sometimes researchers, when describing the essence of human dignity, use several of the above concepts simultaneously (Gryshchuk, 2018).

There are the following main theoretical approaches to understanding the idea of human dignity: theological, philosophical and legal. Representatives of the theological approach consider the idea of human dignity through the prism of Christianity, which radically changed the attitude to a person, proclaiming the equality of people before the one God, regardless of their social status, but not yet among themselves. Human

dignity is manifested in the fact that man was created in the image and likeness of God and endowed with the basic features, which are soul, mind and free will (Maxeiner, 2008).

One of the creators of the theological (Christian) concept of human dignity was Thomas Aquinas. It is widely known his ideas of human dignity: that each person has not only divine dignity in its original source, but also has an integral natural right to dignity; natural law commands respect for human dignity; the most obvious sign of the social status of the person through whom human dignity is manifested in freedom; freedom is most fully respected in civil society; the purpose of the state is to provide conditions for a dignified human life; recognize the people`s "right to disobey" the tyrannical government, which degrades their dignity.

The philosophical approach to the idea of human dignity is most prominently represented in the philosophy of I. Kant, J. Rawls and J. Habermas. In particular, Kant proposed a holistic concept of human dignity and in fact made it part of the European culture. One of the central elements of the modern concept of human dignity has been the recognition of the object of dignity as an end in itself and the recognition that the object of dignity cannot be considered in a purely instrumental way (Hennettee-Vauchez, 2014).

J. Rawls proved that self-esteem is an important primary good and includes two aspects: 1) it includes a person's sense of self-importance and the belief that their concept of self-worth, life plan deserves to be realized, and they are respected by other people; 2) self-esteem includes confidence in one's own abilities and fulfillment of one's own intentions. In addition, each person seeks to avoid social conditions that undermine his or her self-esteem (Rhoda, 1992).

According to the concept of J. Habermas, the normative source of modern human rights is the idea of human dignity. Human rights are seen as those that should serve to protect human dignity. This evokes human self-esteem and social recognition of the international status of a democratic state. Human dignity is seen as a realistic utopia, the necessary goal of which is the realization of social justice inherent in the institutions of a democratic state (Weisstub, 2002).

The legal approach considers human dignity in two ways: as an objective phenomenon (anthropic dignity, dignity as a value, principle, source of human rights, their purpose or content) and as a subjective phenomenon (human right).

Human dignity as an objective phenomenon (anthropic dignity, dignity as a value, principle, source of human rights, their purpose or content) is considered through the relationship with the system of human rights and freedoms. To explain the nature of this connection, it is appropriate to apply

the often-used comparison of human dignity with a tree, "the branches of which are human rights. Human dignity pulsates in human rights, which means that it is the deepest reason for their protection" (Granat, 2016). Such a metaphor helps to understand the absolute nature of human dignity, regardless of the peculiarities of the legal regulation of human rights and freedoms, and also emphasizes its supranational or suprapositive nature. Recognition of the innateness and integral nature of human dignity means the recognition of its natural law nature. Dignity is something given, objective, not created, but a recognized positive right. Recognition of dignity is the recognition of a legally significant certain property of a person, especially important for determining the conditions of human development (Piechowiak, 2012).

It should be agreed that human dignity is a common constitutional value, which is the source, basis and principle of the entire constitutional order. This is the basic norm in the logical, ontological and hermeneutic senses. Therefore, not only other principles of the system of human rights and freedoms, but also certain specific rights and freedoms should be interpreted through the prism of the principle of dignity and should be used to ensure its implementation (following the constitutional definition of dignity as a source of freedom and human and civil rights), but also all other norms, principles and values contained in the constitution must be interpreted and applied in accordance with the principle of dignity (Garkicki, 2015).

The constitutional significance of human dignity has a central normative role. Human dignity as a constitutional value is a factor that unites human rights into a single whole, which ensures their normative unity. This normative unity is expressed in three ways: first, the value of human dignity serves as the normative basis of the constitutional rights set forth in the constitution; second, it serves as an explanatory principle for determining the scope of constitutional rights, including the right to human dignity; third, the value of human dignity plays an important role in determining the proportionality of the statute that limits constitutional law (Barak, 2015).

In addition to scientific and philosophical views, judges are increasingly turning to the concept of human dignity in various areas of law. However, with the increase in its use, especially since the 1990s, there have also been difficulties in its application. Judges of different legal systems have recognized that this concept is difficult to define, and this creates problems for the interpretation of law, legal certainty and the principle of the rule of law. European Court of Human Rights in Vereinigung Bildender Ktlnstler v. Austria (2007) notes that an abstract or vague notion of human dignity can be dangerous in itself, as it can be used as an imposition of unacceptable restrictions on fundamental rights. The Supreme Court of Canada in R. v. Kapp (2008) acknowledged that "human dignity is an abstract and subjective concept that can not only be misleading but difficult to apply, it also confirms the additional burden on those who seek equality.

Indeed, increasing attention to human dignity seems to be created by problems in terms of its compliance with the rule of law. One of the main problems pointed out by critics is the lack of sufficient legal certainty about respect for human dignity. Legal certainty is a principle that stipulates that legislation should be clear and sufficiently predictable so that citizens can act confidently in their lives and without fear of breaking the law without knowing what it really means. As Joseph Ratz (1977) pointed out, in order for the law to be obeyed it must be able to guide the behavior of its citizens, it must be such that they can learn what it is and act accordingly. This principle is considered to be the international basis of the rule of law. It requires that laws and their application serve as a guide and "allow those to whom the law applies to plan their lives with less uncertainty," and protect them "from the arbitrary use of state power". Vague and open legal norms allow public authorities to prosecute people for breaking the law without clear criteria. Similarly, the US Supreme Court in City of Akron v. Akron Ctr. (1983) repealed the ban on abortion in the city of Akron. One of the provisions was that doctors should dispose of embryo residues "in a humane and sanitary manner." The court ruled that the term "humane", which is very close to human dignity, was used unconstitutionally and vaguely as "a definition of conduct to be prosecuted" because doctors could not understand from the law whether their actions were lawful or not.

The concept of human dignity is quite debatable due to the problem of legal certainty, its uncertain or unclear nature. The free use of this term in the preparation of draft laws and judicial decisions is the result of confusion and uncertainty about the basic meaning of the term "dignity"; this limits the scope for comparative constitutional analysis and leads to a lack of harmony between national and international human rights debates. French judge Christian Byk (2014), who advocates respect for dignity, recognizes that there is no doubt that the law requires certainty and predictability, and that an understanding of the concept of human dignity from a more precise legal point of view would contribute to the implementation of legal norms. Jack Donnelly (1986) also explains that human dignity cannot in fact form the basis of human rights in any sense, because there is no logical connection between human dignity and human rights, either theoretically or empirically. The main problem with Donelli's approach is that people around the world do not always view human rights with the notion of human dignity. In addition, vague references to any concept to achieve the desired goal are problematic from the point of view of the rule of law.

This concept has not been defined in international law, national constitutions, or doctrinal interpretations. The lack of a coherent working definition of human dignity in any country in the world has led to an uncontrolled variety of applications. The term is used inconsistently for the same issues, such as abortion, euthanasia, incitement and freedom of speech, obscenity, and social rights and free enterprise (Carozza, 2008).

Vague and inconsistent interpretations of human dignity are a more serious threat to the rule of law than other broad concepts such as equality, freedom, freedom of speech and privacy. First, broad rights such as equality and freedom have a clearer meaning in the enduring doctrines of application that have evolved over the centuries. On the other hand, human dignity was reflected in legal norms rather late in court decisions in the late 20th century. Second, human dignity has no clear boundaries. It is not limited to any particular right or branch of law, but it can be and is linked to almost all human rights; its vagueness performs a symbolic function that is usually not suitable for complex legal issues. This is probably why judges in most countries have failed to develop a doctrine of human dignity or a consensus on its meaning or limits (Brect, 1980). For example, an attempt to elevate human dignity to constitutional value in France has been rejected by legal experts precisely because of its ambiguity and its potential restrictions on individual freedoms. Third, despite the fact that judges increasingly refer to the principle of respect for human dignity, despite the lack of clear operational or effective legal rules governing this concept, it is often interpreted in different ways that do not necessarily comply with the law.

2. Principles of understanding and application of the concept of "human dignity"

Problems related to the use of human dignity in court decisions can be solved by developing certain principles that were proposed by Doron Shultziner (2017). This approach is worthy of support, as well as further improvement, which we tried to offer in this part of our study.

Thus, according to Doron Shultziner (2017), the purpose of these principles is to help achieve a deeper understanding of the usefulness of human dignity from theoretical and philosophical understandings to a more practical and legal framework. The development of common and agreed principles for the application of human dignity will allow us to address the question of how to constructively apply this concept and try to solve problems that are now widely recognized by both supporters and critics of the judicial use of this concept. The following principles are complementary, but each can be useful independently from the others:

Principle 1: The application of the principle of respect for human dignity in judicial decisions should be based on written law.

Principle 2: Judges should try to define what constitutes human dignity and clearly define its meaning.

Principle 3: Judges should strive to consistently use human dignity in the same court decisions and in subsequent enforcement.

Principle 4: Human dignity should promote human rights, not limit them.

These principles are formalized and quite narrow in terms of their regulatory requirements, they meet most basic concepts of dignity.

In general, supporting the proposed concept, we believe that of the four principles, principle 4 is the most normative or based on certain values. It requires that human dignity be used to promote human rights, not to restrict them. The original function of human dignity is revealed primarily in the European Convention for the Protection of Human Rights and Fundamental Freedoms and in most national laws. The purpose of this principle is to bring human dignity into line with human rights so that it is not tied to functions that restrict human rights.

3. Application of the concept of "human dignity" in the judicial practice of Ukraine

It is illogical to consider human dignity as a restriction of human rights. However, as we shall see, the open nature and function of the concept allows judges to refer to it also as an excuse to restrict rights or it may lead to such restrictions without intent.

Disrespect for human dignity through the use of offensive words towards the court or participants in the process, in accordance with the procedural legislation of Ukraine (Izarova, 2019), is a manifestation of abuse of procedural rights (Rozhnov, 2020). Thus, in the decision from 13.03.2019 (case № 199/6713/14-c), the Grand Chamber of the Supreme Court draws attention to the fact that the use of obscene language, abusive words or symbols by court participants and their representatives in documents submitted to the court and in communication with the court (judges), other participants in the process and their representatives, as well as the commission of similar actions is a manifestation of obvious disrespect for the honor, dignity of these persons by those who commit such acts. These actions contradict the basic guidelines (principles) of civil proceedings (paragraphs 2, 11, part 3 of Article 2 of the CPC of Ukraine), as well as its task, which prevails over any other considerations in the trial (parts one and two of this articles). In view of this, the court may recognize the commission of such actions as an abuse of procedural rights and apply the consequences provided for in part three of Article 44 of the CPC of Ukraine.

The consequences of disrespect for human dignity in civil cases are to leave the claim without consideration. As an example, we can cite the decision of the Kryvyi Rih District Court of Dnipropetrovsk Region (2020) in the case № 216/5339/14-c. Thus, leaving without consideration the

complaint of PERSON_1 on illegal actions of the state executor, cancellation of the decision to initiate enforcement proceedings, the court notes that in his statements in court, the applicant PERSON_1 systematically used abusive statements and baseless accusations against the presiding judge and other judges of the Kryvyi Rih District Court of the Dnipropetrovsk Region, made threats and provocative statements, which is unacceptable. Such procedural behavior of the applicant PERSON_1 indicates that he appealed to the court not to protect his violated rights. The mentioned regards as a ground for procedural rights abusing traditionally (Gajda – Roszczynialska, 2019).

The statements used by PERSON_1 go beyond normal, specific, and legitimate criticism, which, in particular, in the understanding of the European Court of Human Rights (hereinafter - ECtHR), is stated as an abuse of the right to file an application. Thus, the ECtHR, in application of Article 35 clause 3 subclause 'a' of the Convention for the Protection of Human Rights and Fundamental Freedoms, declares inadmissible any individual application submitted under Article 34 if it considers that the application is an abuse of the right to submit an application. For example, the ECtHR finds an abuse of the right to file an application when the applicant uses insulting, threatening or provocative statements against the respondent government, its representative, the respondent State authorities, the ECtHR, its judges, the ECtHR Secretariat or its staff (decisions on admissibility in Rehak v. the Czech Republic of 14 May 2004, application № 67208/01); of 4 February 2003 application № 61164/00 and № 18589/02).

Conclusions

The study shows that the concept of human dignity should have a decisive influence on the formation of not only substantive law but also procedural one, in particular, it must become a criterion for the necessity of measures to prevent procedural rights abuse, distortion of justice and deliberate evasion of its main task. Fourth, compared to other concepts, human dignity is more problematic because its understanding includes a worldview of what it means to be human and what a dignified existence and decent moral behavior is. This is evidenced by the decisions of national courts, in which religious and secular, social and liberal conceptions of human dignity contradict each other. The importance of human dignity is linked to ideology and, therefore, a higher risk of involving judges' personal beliefs in legal interpretation. The repeated use of the applicant's insulting statements and accusations, as well as threats and provocative statements against the court in the application on the merits and in court is considered by the court as disrespect to the court and other participants in the process and the court finds that the submission of such statements as behavior of

applicant in the process, is an abuse of his last procedural right, failure to comply with the task of civil proceedings.

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Gaps and analogies in the formation of registered capital of limited liability and joint-stock companies

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Abstract

The aim of the research is to analyses and, using analogy, to examine exhaustively the areas of legal uncertainty in the mechanism of social capital formation of commercial entities, while at the same time checking the coherence of the statutory analogy and the analogy in law as a universal means of protecting and combating gaps in the business sphere. A combination of general logical methods of analysis and synthesis, induction and deduction, comparison and generalization, characteristic of works dealing with civil law, were applied. At the same time, the analogy method was used as a research tool and as a research tool. The conclusions of the work include the identification of specific gaps in the legal regulation of the procedure, methods, and terms of payment of share capital, the identification of ways to overcome these gaps casually and the formulation of proposals for the legislative updating of the regulatory structure of the share capital of commercial companies.

Keywords: analogy in law; gaps in legislation; joint-stock company; limited liability company; registered capital.

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Brechas y analogías en la formación de capital registrado de responsabilidad limitada y sociedades anónimas

Resumen

El objetivo de la investigación es analizar y, utilizando la analogía, examinar exhaustivamente las áreas de incertidumbre jurídica en el mecanismo de formación del capital social de las entidades comerciales, al tiempo que se comprueba la coherencia de la analogía estatutaria y la analogía en el derecho como un medio universal de protección y lucha contra las lagunas en la esfera empresarial. Se aplicaron una combinación de métodos lógicos generales de análisis y síntesis, inducción y deducción, comparación y generalización, característicos de las obras que tratan del derecho civil. Al mismo tiempo, el método de la analogía se utilizó como instrumento de investigación y como objeto de investigación. Entre las conclusiones de la labor figuran la determinación de lagunas concretas en la reglamentación jurídica del procedimiento, los métodos y las condiciones de pago del capital social, la identificación de formas de superar casualmente esas lagunas y la formulación de propuestas para la actualización legislativa de la estructura reglamentaria del capital social de las sociedades comerciales.

Palabras clave: analogía en el derecho; lagunas en la legislación; sociedad anónima; sociedad de responsabilidad limitada; capital social.

Introduction

Establishing the need and the procedure for the formation of the registered capital when creating such business entities as a limited liability company (LLC) and a joint-stock company (JSC) is considered one of the bottlenecks of corporate law (Filippova, 2012). In the Russian and foreign doctrine, there are continued disputes about possible ways in civil law to protect the interests of investors and creditors which are associated with the use of the structure of a corporate legal entity (Galkova, 2015). Mechanisms are being discussed to upgrade the efficiency of investment schemes in corporate capital and to ensure corporate control adequate to the investments made (Hansmann and Kraakman, 2004). In most of the relevant discussions, the researchers focus on the structure of the registered capital anyway.

The lack of unity in the doctrinal assessments of this structure predetermines the imperfection of the current legislation in this area, which, in turn, entails a significant number of disputes related to the

performance, non-performance, or improper performance of such a key corporate obligation as the payment of the registered capital of LLC and JSC. The aforesaid indicates the need for a particular study to establish and, using analogy, overcome, and then wholly eliminate gaps in the mechanism of formation of registered capital of business entities.

The research helps achieve greater corporate legal certainty and simultaneously contributes to the additional development of the analogy method potential in the legal regulation of economic activity.

1. Literature Review

The registered capital for such organizational and legal forms of commercial business corporations as LLC and JSC is rightly defined in the literature as a systemically important structure (Glushetskiy, 2020). The particular significance of the complete and consistent regulatory consolidation of this legal structure is not only that the legal concepts of LLC and JSC are based on such a key feature as the division of the registered capital into shares (Cl. 1, Art. 87 of the Civil Code of the Russian Federation) and a certain number of equities (Cl. 1, Article 96 of the Civil Code of the Russian Federation), but also in the fact that the registered capital of these business entities provides a broad functionality (guarantees the interests of creditors (Povarov, 2010), ensures the formation and replenishment of the property base of the organization (Rubeko, 2016), identifies the size of participation in profits and losses (Dolinskaya, 2006), determines the volume of corporate and managerial capabilities of participants, indicates the degree of deepness of the corporation's commercial aspirations (Sukhanov, 2012), and therefore is reflected in almost all spheres of life of LLC and JSC.

Since LLC and JSC, created mainly as capital pooling, as business partnerships (Filippova, 2018), the key function (not highlighted and even ignored by the legislator (Sayapina, 2005), but at the same time actually working) is the property (starting, material and securing) function of the registered capital, and the property itself, transferred by the founders (participants) as contributions (installments) to the registered capital, occupies a special place in the system of legal entity's property relations (Dolinskaya, 2017) and becomes an element of corporate property (Laptev, 2017), in so far the detailed and gapless regulation of the procedure for the formation of the registered capital of LLC and JSC is seen as fundamental (as it is correctly highlighted in science, a vague law in most cases does not cope well with the task of guiding human behavior (Asgeirsson, 2015). Indeed, the further functioning of the company largely depends on the degree of effectiveness of actions carried out when paying in the registered

capital (Tarasenko, 2005).

However, it can be said that today there are some areas of regulatory uncertainty, generally considered in the doctrine as a negative factor, a defect of the legal system that undermines the ability of the law to achieve the necessary results (Davis, 2011) and complicates the private legal process of actual paying in the registered capital of LLC and JSC. In particular, the literature draws attention to the ambiguity of the legal nature (personal or impersonal) of the participants' (shareholders') obligation to pay the corporation's registered capital (Kozlova and Filippova, 2012), the uncertainty of the consequences of failure to perform or delay this obligation fulfillment (Dmitrieva, 2013). Based on these observations, it seems necessary to analyze the existing regulatory parameters of the mechanism more thoroughly and comprehensively for the formation of the LLC and JSC registered capital to identify and legalize legal gaps.

When faced with gaps, the question inevitably arises about the possibility and necessity of resorting to the statutory analogy (the application of legal norms to situations that do not directly fall under the classification of this norm) (Macagno and Walton, 2009) or to the analogy in law (the identification of the rights and obligations of the parties of the disputed relationship is not according to specific norms, but according to the so-called "general legal principles") (Damele, 2014). Therefore, using the example of how the analogy method manifests itself when it is used in the gap elements of the mechanism for forming the LLC and JSC registered capital, it seems necessary to check (confirm or clarify) the idea of the "central role" of analogy in any legal reasoning (Hunter, 2008), as well as theses expressed in science about the relevance and effectiveness of legal analogy as a "bridge between fact and rule" (Weinreb, 2005), a convenient mechanism for prompt overcoming regulatory gaps in law enforcement practice (Petrovsky, 2009), the usual means of legal argumentation and explanation of legal phenomena (Juthe, 2005).

2. Materials and Methods

The theoretical basis for the undertaken research was formed by scientific works of Russian and foreign civil scientists, specialists in corporate law and economic analysis of law.

The empirical material used was based on clarifying judicial acts of the supreme courts in Russia, as well as a significant number of decisions of lower courts on specific disputes related to the application of the rules on the procedure for forming the registered capital of business entities (LLC and JSC).

The methodological base of this work includes the logical methods of analysis and synthesis, induction and deduction, comparison and generalization, typology, and analogy, traditional for civil studies. A special place in the system of methods applied was performed by analogy, which was both a means and an object of study.

3. Results

As a result of the study, real gaps in the legal regulation of the procedure, methods, and timing forming the registered capital of business entities (LLC and JSC) have been found and legally qualified. The cited real practical incidents made it possible to visually illustrate and additionally confirm the "live" nature of analogy as an element of modern corporate legal technology, an actual means of exercising and protecting corporate rights, the stage of application of law and a factor in the legislation development.

It is argued that in a state of such legal uncertainty, when, from a formal point of view, there is no gap in the law, but the existing norms are not able to adequately respond to specific socio-economic realities and ensure the implementation of the key principles of corporate law, the most effective instrument of law enforcement is the analogy in law (Cl. 6 of the Civil Code of the Russian Federation), applying which the direct participants in the relevant corporate relations bring their behavior under the direct influence of the basic principles of civil legislation, and the courts receive an effective legal means of balancing the private interests of the corporation, its participants and counterparties.

Bearing in mind that the exact rules still more consistently regulate ordinary phenomena (to which all the issues discussed above can be attributed) than general principles (Braithwaite, 2002), and also considering that the mechanism of applying the analogy in law, although aims to achieve absolute legal certainty (and ensures its achievement) is itself associated with the chicanery-intensive discretion both on the part of the participants in the relevant legal relations and on the part of law officials, it is proposed to eliminate the detected gaps in a regulatory way.

4. Discussion

4.1. Paying in a contribution to the registered capital by a third party

There is no direct legislative decision and an unambiguous doctrinal answer to the question of whether it is permissible to make contributions

to the payment of the registered capital of a company not by a participant (shareholder) personally, but by a third party (by the legal entity, another participant or generally an outside entity that is not part of the corporate network of the organization) and, accordingly, should the formation of the registered capital be considered valid, and the participant (shareholder) having fulfilled one of the key (essential) duties to the corporation in case of the actual implementation of such payment.

On the one hand, the approach has gained considerable popularity in judicial practice, according to which the obligation of a participant (shareholder) to pay in a share in the registered capital of LLC (issued shares when establishing a JSC) can be performed for him by other persons. Thus, the courts specify that the Federal Law of February 8, 1998 No. 14-FZ "On Limited Liability Companies" (Federal Law "On LLC") does not require the obligation to pay in the registered capital of the company by its participants, depending on whether the participant personally paid in his share or payment was made by other persons for him (Resolution of the Arbitration Court of the East Siberian District of February 14, 2019, Case No. A78-17696/2017). The current legislation does not provide for a prohibition on making a contribution to the registered capital of a legal entity for a particular founder by another member of this organization or a third party (Resolution of the Arbitration Court of the Far Eastern Federal District of March 15, 2017, Case No. A59-1172/2016).

In the courts' opinion, the fact of the full formation of the corporation's registered capital or the payment of the share of the relevant person (participant, shareholder) is of legal significance, and in assessing this circumstance, the way (at whose expense), the registered capital was provided, or the share of the person concerned was paid in, does not play an independent legal role (Resolution of the Arbitration Court of the Volga District of May 20, 2020, Case No. A12-26686/2019). Concerning JSC, the courts proceed from the assumption that when finding the fact of full payment for all shares placed while establishing the organization, the shares that could pass to the company according to para. 4, Cl. 1, Art. 34 of the Federal Law of December 26, 1995, No. 208-FZ "On Joint-Stock Companies" (Federal Law "On JSC") are missing, therefore there are no grounds for depriving a shareholder who has personally failed to fulfill the relevant duty of the right to participate in the meeting and vote on agenda items (Resolution of the Federal Arbitration Court of the East Siberian District of July 15, 2008, Case No. A19-4509/05-53-6-4).

According to courts, it is also possible that the issuer himself will pay for the placed shares using borrowed funds (Resolution of the Federal Arbitration Court of the North Caucasian District of January 27, 2009, Case No. A32-11917/2007-55/274-2008-16/37). In science, the regulatory basis for this judicial position is seen in applying the provisions of Art. 313 of the

Civil Code of the Russian Federation established under a statutory analogy from para. 1, Art. 6 of the Civil Code of the Russian Federation (Dmitrieva, 2013).

Special instruction in Cl. 1 of Art. 15 of the Federal Law "On LLC" on the obligation of "each founder" of the LLC to pay in full its share in the company's registered capital, as well as the standard rules in Cl. 2 of Art. 90 and Cl. 2 of Art. 99 of the Civil Code of the Russian Federation on the inadmissibility of releasing an LLC participant (JSC shareholder) from the obligation to pay for a share in the registered capital (shares) of a company, lead to the conclusion that the obligation to pay the registered capital is strictly of personal nature, which excludes the possibility of imposing the performance of the duty on a third party according to Art. 313 of the Civil Code of the Russian Federation (Kozlova and Filippova, 2012). Relying on this conclusion, some courts consider the terms of the Agreement for the Establishment of an LLC on payment of a share in the registered capital of the company by one participant for another to be contrary to the law requirements (Resolution of the Federal Arbitration Court of the Central District of April 21, 2009, Case No. A54-1591/2008C9) and deny that the participant has the full scope of corporate rights if, although the information on the completion of the registered capital establishment is reflected in the corporation's balance sheet, there is an unresolved conflict about who exactly paid in this participant's contribution (Resolution of the Federal Arbitration Court of the West Siberian District of June 19, 2008, Case No. A03-3150/07-37).

Besides, while solving the issue mentioned above, the provisions of Art. 313 of the Civil Code of the Russian Federation on the conditions and consequences of the fulfillment of an obligation by a third party (including those obliging the creditor to accept the performance offered by a third party for the debtor, even if the debtor did not impose the fulfillment of the overdue obligation on the latter) are applied, it is possible to see a contradiction to the peremptory norms (para. 3, Art. 16 of the Federal Law on LLC and para. 4 Cl. 1 of Art. 34 of the Federal Law "On JSC"), establishing a notable consequence of non-payment of shares (stocks) upon the organization of LLC and JSC – such (unpaid) shares (stocks) upon the expiry of the established period for their payment are transferred to the company (the basis for the transition is the very fact of expiration of the period for payment (Resolution of the Arbitration Court of the Volga District of March 6, 2017, Case No. A06-4712/2016).

This particular consequence is perceived in court practice in such a way that a corporation has no right to compel its participants (shareholders) to fulfill the obligation to pay for shares (stocks) in kind (Definition of the Supreme Arbitration Court of the Russian Federation of January 16, 2014, Case No. A76-8250/2009-64-159; Definition of the Supreme Arbitration

Court of the Russian Federation of April 19, 2011, Case No. A46-2352/2010; Resolution of the Arbitration Court of the Far Eastern District of February 15, 2017, Case No. A04-3521/2016). Insofar as the participant (shareholder) avoids this obligation, it is regarded as a refusal of corporate participation. Its implementation by a third party or the corporation, which is not agreed with it, violates the principle of exclusively voluntary involvement of investors in the formation of the registered capital of companies, recognized in science and constitutional practice (Kuznetsov, 2011).

It appears that if we resort to the clarification of the proper legislative intentions that predetermined the adoption of this or that regulation, which is recognized as necessary for any law enforcer (Kyritsis, 2018), then it should be concluded that the legislator's intention to demand personal fulfillment of the obligation to make contributions to the registered capital does not arise. Such a requirement does not appear due to the essence of the non-personal property obligation under consideration. Simultaneously, the highlighted normative reference to the responsibility of "each" founder to pay their share can be characterized as one of the many terminological errors that, for some excused reasons, accompany any legislative area (Golubtsov, 2018). Therefore, taking into account the idea that both the participants (shareholders) and the corporation have the obligation to form the registered capital, since the registered capital is included in the organization's property characteristic (Dolinskaya and Kuznetsov, 2012), it is hardly correct to limit the imposing this obligation on third parties at the debtor's initiative. On this basis, the judicial practice confirming this possibility should be supported.

Another matter is that the aforementioned doctrinal doubts about the impersonal nature of the obligation to replenish the registered capital, the encountered judicial acts with the contrary position, and fears that the broad and unconditional application of the provisions of Art. 313 of the Civil Code of the Russian Federation for payment of contributions to the registered capital for participants (shareholders) by third parties may lead to bypassing the mandatory norms of Cl. 3 of Art. 16 of the Federal Law "On LLC" and par. 4, Cl. 1 of Art. 34 Federal Law "On JSC" and compulsory corporate investment. Taking into consideration that legal certainty, which is a hallmark of the rule of law, plays a fundamental role in law due to its economic optimality for market participants (Portuese *et al.,* 2013), it seems appropriate to fill the existing legal gap in a regulatory way and make legislative adjustments in para. 2 of Art. 90 and in para. 2 of Art. 99 of the Civil Code of the Russian Federation, namely: firstly, to establish that the participant's obligation to pay for its share in the registered capital of LLC (the duty of a shareholder to pay for the shares placed by the JSC and acquired by the shareholder) may be imposed by the participant (shareholder) on the organization, other participants (shareholders) of this company or other third party; secondly, to clarify that LLC and JSC are not entitled to

fulfill the corresponding obligation for the participant (shareholder) if the participant (shareholder) did not entrust the performance to the company; thirdly, the company is not entitled to accept the performance offered for the participant (shareholder) by other participants (shareholders) of this company or other third parties, if the participant (shareholder) did not entrust the performance to the persons concerned.

4.2. Late payment of contributions to the registered capital

Another gap in the legal regulation of the procedure for the formation of the registered capital of business entities (LLC and JSC) is that the consequences of violation of the term for payment by participants (shareholders) of shares (stocks) established by the Agreement for the Establishment of the Company following the limit regulatory values are not clearly and completely determined (para. 1, Cl. 1 of Article 16 of the Federal Law "On LLC", para. 1.2, Cl. 1 of Article 34 of the Federal Law "On JSC").

On the one hand, based on a literal reading of the provisions of para. 3 of Art. 16 of the Federal Law "On LLC" and para. 4, Cl. 1 of Art. 34 of the Federal Law "On LLC", in the event of non-payment or incomplete payment of the share (stocks) within the time limits established in accordance with the law, the unpaid part of the share (stocks, the placement price of which corresponds to the unpaid amount) is transferred to the company. Such a transfer and, accordingly, the loss of the status of a participant (shareholder) by the violator of the obligation to replenish the registered capital of the corporation occurs automatically. Sharing this letter of the law interpretation, scientists emphasize the automatism of the transition of unpaid shares (stocks) (Dmitrieva, 2013) and focus on the preclusive nature of the term for payment of contributions to the registered capital (Klinova, 2007).

The courts, when establishing the expiration of such a period, deny the corporate possibility of a faulty (not making a timely contribution to the registered capital) participant (shareholder) to participate in decision-making at general meetings (Resolution of the Federal Arbitration Court of the Central District of July 14, 2008, Case No. A68-5851/07-168/16) and challenge the decisions of the company's bodies (Definition of the Supreme Arbitration Court of the Russian Federation of December 09, 2009, Case No. A07-20700/2008). Besides, the Constitutional Court of the Russian Federation did not find a contradiction with the Constitution of the Russian Federation in the fact that these provisions do not require additional expressions of the will of the faulty participant to transfer unpaid shares (stocks) to the company (Definition of the Constitutional Court of the Russian Federation dated October 25, 2018, No. 2615-O).

Therefore, it is generally accepted in notarial practice that if at the time of the opening of the inheritance, the share in the registered capital of the LLC was not paid in full by the testator, and the deadline for full payment has not expired, the inheritance will include the total share in the registered capital of the company that belonged to the testator at the time of his death, while the obligation to pay the share in full passes to the heirs, and if the period established for the full payment of the share by the time of opening the inheritance has expired, only the paid part of the share in the registered capital is included in the mass of the succession, and the amount of the share not paid by the testator passes to the corporation (Cl. 2.5. Methodological recommendations on Inheritance of Shares in the Registered Capital of Limited Liability Companies (approved at a meeting of the Coordination and Methodological Council of notarial chambers of the Southern Federal District, North Caucasian Federal District, Central Federal District of the Russian Federation 28-29.05.2010).

Besides, it is the idea of automating the transfer of unpaid shares (stocks) that forms the basis for the conclusion worded by the courts (para.10 of the Information Letter of the Presidium of the Supreme Arbitration Court of the Russian Federation dated May 24, 2012 No. 151 Review of the Practice of Consideration by Arbitration Courts of Disputes Related to the Exclusion of a Participant from a Limited Liability Company) and approved in science (Gutnikov, 2015), that it is inadmissible to exclude a participant from the corporation membership for violation of the obligation to contribute to the registered capital.

In other words, there are reasonable grounds to believe that participants (shareholders) or their successors, in the event of a delay in fulfilling the obligation to pay shares in the registered capital of LLC (shares placed by JSC), are automatically deprived of corporate ties with the company. The payment made beyond the established period is an unjust enrichment of the company and must be returned. In practice, there are examples of assessing the overdue payment of a contribution to the registered capital as improper, having no corporate significance (Resolution of the Federal Arbitration Court of the Volga-Vyatka Region of February 19, 2008, Case No. A39-245/2007-9/14).

On the other hand, in some cases, the courts emphasize that only unpaid shares can be transferred to JSC (Resolution of the Federal Arbitration Court of the Ural District of July 21, 2009, Case No. A50-14459/2008-G14), and indicate (apparently, having in mind the analogy with the regulation of Art. 29 FZ of April 22, 1996 No. 39-FZ "On the Securities Market"), that until the unpaid shares are written off from the faulty owner's account and, accordingly, until they are returned to the issuer's account, formally being a shareholder, the person continues to have the corporate status of the company's shareholder (Resolution of the Federal Arbitration Court of the

North Caucasian District of January 27, 2009, Case No. A32-11917/2007-55/274-2008-16/37). Based on these judgments, the courts reject attempts to consider the payment for the placed shares, carried out beyond the established deadlines, being invalid (Resolution of the Arbitration Court of the Volga District of September 01, 2016, Case No. A57-27205/2015).

Concerning cases of late payment of a share in the LLC registered capital and interpreting the rules of Cl. 3 of Art. 16 of the Federal Law "On LLC," the courts come to the same conclusion that if the LLC is running smoothly and have not disposed of the share unpaid by the participant within the timeframe established by Art. 24 of the Federal Law "On LLC," implicative actions of the violator (participation in corporate governance), other participants (long-term non-contestation of the violator's right to the unpaid share) and the company (interaction with the violator as a proper participant in the company) may be the basis for recognizing the status of a corporation participant for the person who did not pay the share (Resolution of the Presidium of the Supreme Arbitration Court of the Russian Federation of February 26, 2013, Case No. A42-6169/2011; Resolution of the Arbitration Court of the Volga-Vyatka Region of March 17, 2016, Case No. A29-4606/2015; Resolution of the Arbitration Court of the Volga District of December 10, 2019, Case No. A57-12783/2018).

There is an analogy here with the regular practice of recognizing a person who, having retained the complex of corporate rights and obligations of an LLC participant, applied to leave the company, but having not received from the company the actual value of his share in the registered capital, continues to participate in the company's corporate life (vote at general meetings of the company and receive dividends). The company does not undertake the actions provided for in para. 2, Art. 24 of the Federal Law "On LLC" to determine the fate of the share of the participant withdrawn (Resolution of the Arbitration Court of the Volga-Vyatka District of December 30, 2014, Case No. A43-2058/2011; Resolution of the Arbitration Court of the North-Western District of July 4, 2017, Case No. A56 -39738/2015; Resolution of the Federal Arbitration Court of the Volga District of August 16, 2010, Case No. A57-22863/2009).

Since the severance of the corporate relationship of a participant (shareholder) with LLC and JSC is always a particularly significant event, so goodwill aimed at maintaining such a relationship (if there is a technical (formal) possibility of its implementation and the absence of obvious contraindications) should have regulatory grounds.

Thus, taking into account the need to improve corporate legislation to achieve a reasonable balance of interests of a particular (obliged and having an overdue payment of the contribution) participant (shareholder) with the interests of other shareholders, the corporation, and its counterparties, it should be statutorily determined that payment of a share in the registered

capital of LLC (payment for the shares placed by JSC) received by the company in violation of the established period, excludes the transfer of the share (stocks) to the company, and unless and until the corresponding payment was received by the company before the company applies to the registering authority (presentation of the transfer order to the registrar) about the transfer of the share (stocks) to the company, and if this condition is not met (with an even more significant delay), such payment is subject to refund as unjust enrichment.

4.3. Payment of the contribution to the registered capital by offsetting the founder's counterclaims

Another gap in the mechanism for the formation of the registered capital of business entities (LLC and JSC) appears in the lack of absolute clarity as to the possibility or inadmissibility of fulfilling the obligation of a participant (shareholder) to contribute to the registered capital by offsetting counterclaims against the company.

On the one hand, the abolition of the general prohibition on exemption of a limited liability company participant from the obligation to make a contribution to the registered capital by offsetting claims against the company (as it was established in Cl. 2 of Article 90 of the Civil Code of the Russian Federation as amended by the Federal Law of December 27, 2009 No. 352-FZ), exclusion of a similar prohibition on exemption of a shareholder from the obligation to pay for the company's shares by offsetting claims against the company (as it was worded in Cl. 2 of Art. 99 of the Civil Code of the Russian Federation as amended before the adoption of Federal Law of December 27, 2009 No. 352-FZ) and the simultaneous introduction of highly specialized clauses that in the cases provided for by the Federal Law "On LLC" and the Federal Law "On JSC," such offsets are possible with an increase in the registered capital of LLC and when paying for the JSC additional shares placed, can be regarded as a point approval of offsets, namely (only) in order to form a further part of the already created registered capital with its increase (Dolinskaya, 2010).

On the other hand, considering the admissibility of payment of the registered capital of a legal entity by promissory notes of its participants (Definition of the Supreme Arbitration Court of the Russian Federation of January 18, 2011, Case No. A56-59613/2009; Letter of the Ministry of Economic Development of Russia of December 29, 2018, No. OG-D22-12808), it becomes clear that the idea of preventing the formation of registered capital bubbles and guaranteeing the interest of the company's creditors in replenishing the registered capital with real property, and not "ephemeral rights of claims of participants" (Boyko, 2010), by prohibiting the offset of claims during the initial formation of the registered capital, obviously doesn't work.

It seems that fears of abuse, when individual participants, having the opportunity to influence the company's activities, begin to unfairly build up the company's debts to themselves to subsequently pay off the obligation by offsetting the registered capital payment, should not lead to a literal and rigid understanding of the prohibition under consideration (para. 2, Cl. 90, Art. 99 of the Civil Code of the Russian Federation) and prevent the provision of a convenient way for JSC and their participants to convert debts into corporate capital, because it is known that *abusus non tollit usum* (misuse of something is no argument against its proper use).

Given a legally permitted long period of existence of companies with an incompletely paid registered capital, a real (not bubble) debt of the company to a participant, whose share in the registered capital has not yet been paid, may arise, and, accordingly, a reasonable interest of the organization in good faith termination of counterclaims by offset, relieving both the corporation and its participant from the need to seek for current financial resources, may appear. It seems that corporate law, having as one of its most important tasks the promotion of the organization of investment in corporate capital and the provision of corporate control associated with the investment (Hansmann and Kraakman, 2004), should ensure the proper achievement of this interest. Accordingly, excessive rigidity of the rules on registered (authorized) capital increases transaction costs and hinders investment (Wei, 2014).

Therefore, taking into account the generally apparent negative effect of the lack of flexibility in the rule on the inadmissibility of payment of the registered capital by offsetting claims against the company (Telyukina, 2001), and considering that, strictly speaking, the termination of an obligation by offset is by no means debt forgiveness (as it is formulated in Art. 415 of the Civil Code of the Russian Federation) and the release of the debtor from the fulfillment of this obligation, it is advisable to move more actively towards further liberalization of the considered section of corporate legal regulation, excluding the general implied prohibition on payment of the registered capital of LLC and JSC (at its initial formation) by offsetting the founder's counterclaims (of course, subject to the rule of Cl. 2 of Art. 66.2 of the Civil Code of the Russian Federation on the required payment of the registered capital of LLC and JSC "alive" funds in an amount not lower than the minimum amount of the registered capital determined by special laws).

Significantly, that the corresponding change will be in line with the general trend noted in science and regularities in other jurisdictions (transition from a strict legal regime of capital to a more liberal and flexible control of registered capital) (Chen, 2015). Moreover, even before the relevant legislative amendments are made, it seems possible, without fear of reproaches in veiled imperfect judicial lawmaking (Schauer and Spellman,

2017), using the analogy in law (Cl. 2, Art. 6 of the Civil Code of the Russian Federation) "extra legem" (placed outside the law), but "intra ius" (within the law) to recognize the payment of the LLC and JSC registered capital under formation as valid through an offset, carried out reasonably and in good faith, taking into account the actual balanced interests of the business corporation and its participants (shareholders).

4.4. Payment of a contribution to the registered capital by the right relating to leasing property

Surprisingly, the current legislation does not answer unambiguously to the question that is very relevant for many commercial business corporations and their founders (shareholders): is it possible to pay the registered capital of LLC and JSC by making (assigning) to the company the right to lease any property? The increasing demand for a lease agreement in the economic turnover, due to the widely observed trend towards the recognition of the advantages of the "sharing economy" concept and the corresponding benefits from the temporary use of necessary facilities instead of acquiring things for individual ownership (Botsman and Rogers, 2010) makes this particular issue even more relevant.

Following the current edition of Cl. 1 of Art. 15 of the Federal Law "On LLC," payment of shares in the LLC registered capital may be carried out by participants in money, securities, other things or property rights or other rights that have a monetary value. Similar wording is enshrined in the current version of Cl. 2 of Art. 34 of the Federal Law "On JSC," according to which payment for shares distributed among the founders of a JSC upon its establishment, as well as pay for additional shares placed by subscription, can be carried out in money, securities, other things or property rights or other rights that have a monetary value. A similar wording is enshrined in the current version of Cl. 2 of Art. 34 of the Federal Law "On JSC", according to which payment for shares distributed among the founders of JSC upon its establishment, as well as payment for additional shares placed by subscription, can be carried out in money, securities, other things, or property rights or other rights that have a monetary value. These provisions allow us to conclude that there are no corporate legal obstacles to transfer ring rental ownership to the LLC and JSC registered capital. Currently, there is the norm of para. 2 of Art. 615 of the Civil Code of the Russian Federation on the existing right of the lessee (by default in the law otherwise), with the consent of the lessor, to give lease rights as a pledge and make them as a contribution to the registered capital of business partnerships, LLC and JSC, which confirms the legality of the considered method of payment for the contribution to the registered capital according to the civil-law nature of the lease.

At the same time, the emergence of the norm of para. 1 of Art. 66.1 of the Civil Code of the Russian Federation, introduced by the Federal Law of May 05, 2014 No. 99-FZ, subject to its priority until the legislative and other regulatory legal acts being in force in the Russian Federation under the provisions of the Civil Code of the Russian Federation as amended by this law, gave rise to serious doubts about the consistency of an affirmative answer to the question of the possibility of paying for the registered capital of a business corporation with the right to lease.

Since the specified norm established an exhaustive list of objects that can be invested in the LLC and JSC property (including, in addition to cash, things, shares (stocks) in the registered (joint) capitals of other business partnerships, LLC and JSC, state and municipal bonds, some exclusive intellectual rights and rights under license agreements subject to monetary assessment, though other property rights (claims) that could be of economic value were not included), insofar as the apprehension of contributions to the registered capital as a type of contributions to property (Melnikova, 2016) and recognition of the inadmissibility of expanding this list by laws and constituent documents in relation to the registered capital led to the denial of the possibility of making objects not named in the list as contributions to the registered capital, including the right to lease (Lomakin, 2020). Herewith, the general doctrinal criticism of allowing the functioning of legal entities that did not receive real money or corporeal objects of ownership (things) as payment for their registered capital (Emelkina, 2017) may further increase the corresponding doubts.

In this issue, based on a formal factor (after the adoption of the Federal Law of May 5, 2014 No. 99-FZ, both the Federal Law "On LLC" and the Federal Law "On JSC" that were repeatedly amended, which makes it possible to consider these laws under the Civil Code of the Russian Federation), it should be agreed that Art. 66.1 of the Civil Code of the Russian Federation works only in relation to business partnerships, as well as concerning operations for making contributions to the property of business companies that do not increase their registered capital (Kurbatov, 2018). At the same time, realizing the insufficiently robust nature of the formal argument (preservation of the wording of Cl. 1 of Article 15 of the Federal Law "On LLC" and Cl. 2 of Art. 34 of the Federal Law "On JSC" can equally be perceived that in terms of regulating the procedure for paying capital, these laws have not yet been cited following the Civil Code of the Russian Federation), it seems necessary to add that there is nothing a priori ephemeral in providing the opportunity to use leased property by the founder of the company (for example, a land plot for the construction of real estate or an office for representational purposes).

Therefore, in the context of continuing legal uncertainty, it is necessary to apply the general principles and meaning of civil legislation (analogy in

law) and, taking into account the requirements of good faith, reasonableness and fairness, support the approach implemented by some courts, according to which the payment of contributions to the registered capital of business companies (LLC and JSC) with rental rights is also permissible (Resolution of the Arbitration Court of the Ural District of May 29, 2019, Case No. A60-39078/2018; Resolution of the Arbitration Court of the North-Western District of August 8, 2018, Case No. A66-10750/2015).

This application of the analogy in law will correspond to the currently observed general increase in the importance of civil law principles in the regulation of public relations (Golubtsov, 2016) and act as an adequate response to the rightful appeals of scientists for their even more enormous impact on the law enforcement practice (Bondarenko, 2013). Thus, based on analogy, recognition of the admissibility of payment of the LLC and JSC registered capital by the right to lease allows us to think of an even more excellent (double) analogy, namely, the possibility of converting into corporate capital the rights to use "unnamed things" belonging to a participant (shareholder) (Suslova, 2020) and other "atypical rental objects" (Mikryukov, 2020), when directly (and not by analogy) applying rental rules to them may be questionable.

Conclusion

The study reveals a lot of gaps in the legal mechanism for the formation of the LLC and JSC registered capital both in general issues of methods and terms of payment, and in particular cases of determining the list of objects that are allowed to be contributed to the registered capital, which requires vigorous and scientifically substantiated legislative decisions.

Since the participants of the respective legal relations and law enforcement officers achieve legal certainty using an analogy in each of the obscure areas under study in the system of rules for the formation of the LLC and JSC registered capital, the need for a generally positive assessment of the role of statutory analogy and analogy in law in the legal regulation of economic activity has been again confirmed.

The importance of the statutory analogy and the analogy in law is highlighted in the context of the implementation of the harmonizing function of civil law regulation of public relations, developing, specifically, in the corporate sphere.

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Doublethink and Anomie: ethical and political context *

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Abstract

The objective of the study was the phenomenon of doublethinking as a special form of anomic thinking. Doublethinking leads to a distortion of the perception and appreciation of political reality, which is expressed in the inaccuracy of information about the surrounding world. In methodological terms, the ethical theory of Alasdair McIntyre and the idea of doublethinking of G. Orwell were used. This allows us to conclude that in our time there is a crisis of values, which consists in the simultaneous presence of two normative-value systems in the human mind. One of them is inherited by the idea of modern humanity from Christianity; the second, which is preferred by many, was created by utilitarianism. This makes it possible to formally recognize, in words, socially approved values, norms and objectives, while at the same time devaluing them in actions, replacing them with the principle of personal gain. As a result, a new political language is emerging newspeak. The desire for constructive public action, mutual help, respect, and altruism is replaced by corruption, hypocrisy, opportunism, the decline of professionalism and productivity, the negative selection of political elites.

Keywords: anomie; doublethink; Alasdair McIntyre; newspeak; ethical and political context.

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Doblepensar y anomia: contexto ético y político

Resumen

El objetivo del estudio fue el fenómeno del doblepensar como forma especial de pensamiento anómico. El doblepensar lleva a una distorsión de la percepción y valoración de la realidad política, que se expresa en la inexactitud de la información sobre el mundo circundante. En términos metodológicos, se utilizó la teoría ética de Alasdair McIntyre y la idea de doblepensar de G. Orwell. Esto nos permite llegar a la conclusión que en nuestro tiempo existe una crisis de valores, que consiste en la presencia simultánea de dos sistemas normativos-valor en la mente humana. Uno de ellos es heredado por la idea de humanidad moderna del cristianismo; el segundo, que es el preferido por muchos, fue creado por el utilitarismo. Esto permite reconocer formalmente, en palabras, valores, normas y objetivos socialmente aprobados, al mismo tiempo que se los devalúa en las acciones, reemplazándolos por el principio de beneficio personal. En consecuencia, está surgiendo un nuevo lenguaje político: neolengua. El deseo de acción pública constructiva, ayuda mutua, respeto y altruismo se reemplaza por la corrupción, la hipocresía, el oportunismo, el declive del profesionalismo y la productividad, la selección negativa de las élites políticas.

Palabras clave: anomia; doblepensar; Alasdair McIntyre; neolengua; contexto ético y político.

Introduction

The study of political reality is impossible without taking in to account the values of a person as a political subject. In recent decades, the study of values in political science has gained wide popularity (for example, the works of R. Inglehart, Ch. Welzel, Sh. Schwartz, and other authors). This is largely due to the fact that the political sphere in many countries of the world, including Russia and Ukraine, is affected by a number of crisis phenomena, which include the denormalization of the struggle for power, discrediting political rights, destruction of civil society, and the crisis of political culture, the rise of absenteeism, political alienation and more. Feelings of powerlessness and cynicism, emptiness and apathy towards the political system are often encountered, which indicates a loss of values.

In science, this phenomenon is called anomie or lawlessness, normlessness. Its study in a political context, among other things, is related to the research of authoritarianism. Thus, T. Adorno, E. Fromm, B. Altemeyer, and others came to the conclusion that reduced intelligence indicates adherence to ultra-conservative ideology and love for hierarchy.

Right-wing authoritarianism provides simple answers to people with low abstract thinking abilities (For example: Adorno, 2001; Altemeyer, 2006). The American psychologist L. Srole established that there is a statistically significant correlation of average strength between authoritarianism and anomie (+0.45), as well as between anomie and hostility towards social minorities (+0.43) (Srole, 1956).

Anomie in the political sphere is associated with the loss of development guidelines and political values and norms, expressed in the distortion or complete disintegration of communications between the government and society, the growing alienation of citizens from politics, the fictitiousness of official legislation, the real dominance of "unwritten" rules, the growth of authoritarian tendencies under the guise of democracy. This opens up prospects for qualitatively new totalitarian and authoritarian regimes.

In this article we will try to reveal the nature of anomie in the political sphere using the idea of doublethink proposed by the English writer J. Orwell. The object of the study is anomie as a political phenomenon, the subject is doublethink as a prerequisite for anomie.

1. Theoretical framework. Methodology.

Anomie as a philosophical, social, and political phenomenon has not yet been studied well enough. In the scientific literature, it is often defined as a value vacuum, spiritual sterility. For example, the American scientist R. MacIver notes:

> Anomy means a state of mind of a person who has undermined the roots of his morality, who no longer has any norms, but only incoherent motives, who no longer has any ideas about integrity, about the people, about duty. The anomalous person becomes spiritually sterile, responsible only to himself, not responsible to anyone. He scoffs at other people's values. His only faith is the philosophy of denial. He lives with a thin line of feelings that runs outside the future and outside the past (Merton, 2006: 283).

At the same time, the very expression "value vacuum" did not go beyond the beautiful, but indefinite metaphor, related, as it seems, to "value blindness" and "insensitivity to values" of M. Scheler and D. von Hildebrand. The question of what this phenomenon is so far remains unanswered and therefore should be considered in more detail.

In our opinion, the concept of "doublethink" proposed by the English writer J. Orwell (Orwell, 2006: 218) allows us to penetrate into the essence of both "value emptiness" and anomie. In our opinion, it is doublethink that is the value vacuum, the most important condition for anomie. J. Orwell himself was not, as is often the case, a pioneer, because about seventy years before him, M.E. Saltykov-Shchedrin in the novel "TheGolovlyov Family".

A very deep understanding of this phenomenon was given by I.A. Brodsky about his essay on I.V. Stalin (Brodsky, 2000).

Surprisingly, his idea, presented in one small essay, anticipates the thought of the English-speaking philosophers A. MacIntyre and E. Anscombe. Although they did not deal with the issue of anomie, their views will serve as a basis for analyzing the nature of doublethink. I.A. Brodsky wrote about Soviet society, but his idea is applicable to other social formations, while it needs broader argumentation and substantiation.

Modern culture can be defined as a "culture of doublethink", formed as a result of Christianity losing its positions. Christian morality cemented all aspects of human life, the departure from it caused the formation of value pluralism as a clash of opposing subjects (M. Weber and I. Burlin), leading rationally insoluble disputes. A. MacIntyre takes a rather radical point of view, saying: "in fact, we have only a semblance of morality, and we continue to use many of its key expressions. But we have lost – if not completely, then for the most part – understanding of morality, both theoretical and practical" (MacIntyre, 2000: 7). The reason for the crisis state of morality is emotivism, but not only as an academic direction in ethics, but as a system of modern man's worldview.

The Scottish American philosopher actually speaks of doublethink, although he does not use the term. The similarity of his argumentation with the theses of J. Orwell and I.A. Brodsky undoubtedly:

> I can accept any point of view, from the height of which everything can be criticized, including the choice of a point by myself ...To be a moral subject from this point of view means to stay away from any situation in which he is involved, to deviate from any characteristic that he may possess, and pass judgment from a purely universal and abstract point of view, from which all social concreteness disappears completely. Thus, everyone can be a moral subject, since moral subjectivity must be limited by the framework of the self, and not by social roles or practices (MacIntyre, 2000: 48-49).

The elimination of the idea of the goal of a person's moral development left many prohibitive norms (the same norms of the Decalogue or the Sermon on the Mount), consecrated by tradition and authority, but deprived them of their intended purpose. It became difficult to combine Christian commandments with the principles of liberal politics, economic utility, or scientific and technological progress. The French Revolution became the first most striking embodiment of this phenomenon. Therefore, the preconditions for doublethink began to form slowly: it is desirable to keep the Christian commandments, but still, it is impossible to give up modern the prizes of life. This idea is very accurately expressed by I.A. Brodsky:

> As a result of the secularization of consciousness, which took place on a global scale, a person inherited a dictionary from the rejected Christianity, which he does not know how to use and therefore improvises every time. Absolute concepts

> degenerated into mere words, which became the object of private interpretation, if not a question of pronunciation. That is, at best, by conventional categories. With the transformation of absolute concepts into conditional categories, the idea of the conditionality of our existence was gradually introduced into our consciousness. An idea that is very close to human nature, for it relieves everyone and everything from any responsibility (Brodsky, 2000: 152).

As A. MacIntyre notes, a gap arises between the meaning of moral principles and their use. Since each individual is autonomous and does not want to compromise his status, he has only one option for social relations – mutual manipulation and attempts to avoid it in the attitude to himself. So, starting from the ideas of two writers (J. Orwell and I. Brodsky) and two philosophers (A. MacIntyre and E. Anscombe), we will try to reveal the essence of doublethink and reveal its connection with anomie.

We use structural, functional, sociocultural and value approaches. Methods of comparison, analysis, deduction, induction, generalization, analogy, classification, abstraction were also used.

2. Results and discussion

Using A. MacIntyre's methodology, we can say that state and economic institutions are based on the manipulation of people and are guided in their activities by utility – this in itself is enough to, firstly, cause an acute confrontation between power structures and individuals, and secondly, to concentrate more and more forces on the top stage of the social pyramid and thirdly, to determine the critical importance of power for anomical society. If atomized individuals, devoid of an objective moral criterion in their lives, find it difficult to unite to achieve a common goal, then it is easier for groups to do this, if only because of the material and psychological interest in their domination. Totalitarian regimes became the highest embodiment of such domination, however, both they and the milder authoritarian and liberal-democratic regimes choose the usual scenery, expressed by time-honored formulas: "concern for the welfare of the people", "guarantee of citizens' rights", "general prosperity", "any power – from God", etc. Imitation of rationality and tradition masks will and power. Utilitarian state-power efficiency dominates individual humanistic rights.

In our estimation, doublethink can be multi-layered. J. Orwell exaggerated in a particular moment, considering the state machine as a single whole, while in practice there are different levels of subordination, which multiplies doublethink. Perfectly understanding the fictitiousness of political slogans, or the impracticability of assigned tasks, or wanting to hide violations (and most often all taken together), state officials of the middle and lower levels of government depict "unity with the people", not forgetting about the need to show unity with their leadership, endowed with

even more power. Here there is already multiple doublethink, reflected in statistical "sketches", meaningless meetings and conferences, false reports in the media, carried out only in final reports, plans, target programs, etc. Reality is distorted many times and it is already completely impossible to figure out where true, and where – a lie. Accordingly, values and morals become fictitious.

Another important conclusion follows from the recognition of the moral autonomy of the subject. In a healthy society, misdeeds are punished; a sick society, on the contrary, reacts sluggishly to them or ignores them altogether. The possibility of reacting to a violation and imposing a sanction for it means the presence of an objective moral and legislative criterion outside the individual consciousness. The offender is limited in rights or excluded from society altogether until the moment of atonement. If there is no objective criterion or is recognized as questionable, the offender often remains part of the social space, setting a negative example for other individuals and further multiplying anomie. Such an individual is undoubtedly an anomical personality and a moral relativist. For an anomalous personality, such a good exists only within oneself and manifests itself in disobedience to the law, which is usually characterized as legal nihilism.

Moral relativism, legal nihilism, anomie lead to the destruction of orderly social activity, primarily the organization of labor. In this sense, the concept of practice by A. MacIntyre is interesting (MacIntyre, 2000: 255-256). The main thing that follows from it is that the practitioners determine the objective external authority of a certain social standard and require obedience to it on the part of a particular person. The latter must admit his incompetence, lack of knowledge in order to learn from an external force. It is necessary to agree with the priority of internal benefits over external ones, i.e. honesty, responsibility, professionalism, etc., over external indicators – money, power, the number of completed projects and written works, etc. You need to be grateful to those who introduced you to the practice, taught new values. An anomical personality who denies the values of other people is incapable of this. He rejects the historical heritage and the memory of the past. In this regard, it becomes possible to interpret anomie as the loss of social standards of practice, professionalism, and conscientious attitude to work. Not surprisingly, this negatively affects labor productivity, disregard for its results and relationships with labor participants.

Social and political institutions in a state of anomie exist only for the sake of external benefits. The anomical person is interested in raising his status in the organization not for the common good (although he may be firmly convinced that he "knows how best"), but for personal gain, and also tries to acquire a new post by legislative or morally condemned means. Therefore, the acquisition of status is often divorced from the real merits of a person, and the title may not say anything about the merits of the individual. The

goal is not to improve the quality of practice, but to acquire material wealth. Careerism based on conformism is one of the leading principles of anomical society. It is not surprising that this greatly affects the quality of the social elite: it turns out to be unable to manage and predict the future. There is a deformation of the consciousness of the representative of power: he loses control over himself, lies and broadcasts his false ideals to all members of society.

In a situation where the acquisition of a certain social status becomes a goal that is not supported by the inner virtues of a person, the appearance of a role arises. The anomical person wants to have the appearance of a professional / honest person / conscientious family member, etc. in the eyes of other people, not to be one. He creates numerous decorations around himself that distract from the inner moral emptiness. This is a life focused on others, but it is realized not for their benefit, but to create a certain image of oneself. This pretense gradually penetrates into the self of man, becomes his "I". In medicine, this is called Munchausen syndrome:

> The purpose of such a simulation is to draw attention to your own person. A person with Munchausen's syndrome, creating another image of himself, gives birth to an alien world of subjectivity, introducing a certain disharmony. In the mode of his I, there is a lot of unreal that has no place in reality (Efimova, 2014: 14).

Doublethink is manifested in the fact that a person realizes (at least at first and in the depths of his soul) his moral inconsistency with the role, but gradually gets used to it.

If there is no single system of right and wrong, the normative field of human existence acquires new dimensions, which in fact mean the devaluation of old norms. An example would be the existence of several systems of morality, regulatory structures: religious, secular, political, corporate, etc. – each of which is perceived as mandatory. So, you have to be a Christian at the same time; when coming to work, observe organizational rules, even if they contradict Christian foundations; show loyalty to political hierarchs even to the detriment of religious and corporate norms; after all this, demonstrate their citizenship and respect for the law, etc. An individual in an anomical society should be able to change masks with the speed of a professional actor. There are many criteria for what is permissible and what is forbidden, and they themselves become conditional. Since it is impossible to comply with such a set of criteria, adaptation with simultaneous attempts to "find a loophole" and bypass the existing rules becomes the dominant model of behavior of the anomalous personality. This also gives rise to a situation of endless and universal deception, which is why there can be no trust in other individuals or public organizations. Social contracts are found to be impaired, except those based on personal gain. Unsurprisingly, this destroys both social capital and social communication, and forms loneliness, alienation, and meaninglessness in life.

Another sign of anomie is "newspeak" – a new language used in the information space, while it is not created only at the initiative of the political elite, as J. Orwell believed, but also appears in society itself. This question in itself can become the subject of a separate scientific work. We only note that the "newwords" carry a meaning strictly defined by the socio-cultural system, which is necessarily lost when translated into another language or in another culture. The most accurate translation will not convey all the sensory and emotional shades. The phrases from the Russian past and present can be the examples: "the fifth column", "enemy of the people", "disenfranchised", "from the former", "new Soviet man", "internal and external enemies", "I have not read, but I condemn", "battle for the harvest", "overfulfillment of the plan", "five-year plan in four years", "turn to the east", "conservative modernization", "managed democracy", "special path", etc. Many concepts arise suddenly in the lexicon of the mass media information and just as suddenly disappear from it when the political situation changes. This is not "newspeak" in the understanding of J. Orwell, but it is important to understand the function of these words: masking problems and forming goals to justify the existence of social institutions. However, these goals are defined within the moral codes of these same institutions, not society as a whole. The local is passed off as universal.

Moreover, individuals who think in "Newspeak" put their own meaning into it, while other meanings remained in the previously existing cultural forms. There is a confusion of ideas. When some political "newword" turns out to be unnecessary, it is replaced by another, so the mind of a double-thinker begins to resemble a vessel in which fluid is periodically renewed.

English writer E. Burgess quite rightly notes (Burgess, 2017) the fact of loss of the exact meaning of a number of words in the absence of a traditional system of moral values. This primarily refers to words that express spiritual concepts – "honor", "duty", "loyalty", "betrayal", etc. Political regimes can assign their own definitions to them. An example is the phrase "duty to the fatherland", used exclusively in the context of military service, as if observance of laws, respect for family and friends, caring for nature are not the duty of a person and a citizen. That is, any more or less logically coherent, "rationally similar" interpretation of moral concepts can serve as the basis for authoritarian control and substitution of meanings. The more utilitarian effective they are, the more likely such regimes will emerge. Improving living standards, foreign policy gains, or curbing crime can lay the foundation for such phenomena. It turns out that good will become identified with social efficiency regardless of the motives and ultimate goals of the activity. Such a utilitarian interpretation of good is, of course, evil from the point of view of moral absolutism.

According to J. Searle, multiple repetition of value judgments forms the norm and at the same time streamlines and expands social reality. If

you attach a strictly definite meaning to any word (remember Orwell's "Ignorance is power. War is peace. Freedom is slavery"), then, on the contrary, a narrowing and distortion of reality will occur, the significative function of speech will be disrupted. Vivid examples can be the words "democracy" or "capitalism", which in Russia periodically change their meaning from unambiguously positive to unambiguously negative. Also, the constant influx of foreign words and slang expressions complicates communication. Therefore, one of the domestic works rightly notes: "We call assasins "killers", stock dealers and speculators – "brokers", legalized robbery – "raiding", theft of ideas and technologies – "benchmarking", bribery and covetousness – "corruption tax"or"status rent", electoral foul language and profanity – "black PR"..." (Krivosheev, 2008: 50).

In our assessment, these terms are a formal reflection of essential doublethink, and they contribute to moral relativism. If the "old" words clearly conveyed a value-normative connotation (bad – good, worthy – unworthy, sacred – profane), then "new" words make the language seem "sterile", indefinite in relation to Good and Evil.

It is worth noting an interesting study of the definition of the power of metaphor in political language, conducted by linguists at the University of Amsterdam in 1998. The object of analysis was the speeches of more than seven hundred members of the European Parliament from 1981 to 1993. Having calculated the metaphorical coefficient using a certain method, scientists proved a direct relationship between in the country and the frequency of the use of metaphors in politicians' speeches.

> Scientists have found a direct relationship between the socio-economic situation of a country and the frequency of the use of metaphors in its political discourse. The more difficult the situation was in the state, which was represented by the Members of the European Parliament (MEPs), the more often they used metaphors in their speeches, and, as a rule, live metaphors of pessimistic or aggressive content. In other words, during economic crises, the metaphorical coefficient increases, thereby indicating "social stress". In this regard ... a political metaphor can be considered an indicator of social tension (Gavrilova, 2004: 131).

Doublethink in anomical society also acts as a defense mechanism, the ability not to go crazy in a multitude of impossible rules and a feeling of general distrust, which still does not make it normal. This function of doublethink seems to be one of the most important.

This implies one important rule: in an anomalous society, those individuals who are consistent in their values are socially unsuccessful (or at least less successful), while those who are constantly reevaluating values, i.e. nihilists, are socially successful. Professionals, in their doublethink, have more opportunities for conformal careerism than individuals with firm convictions and loyal to them.

In anomic society, this creates a negative consensus. If everyone seems uneducated, unprofessional, cheating, etc., then there is no need to be kind to them. Solidarity is paradoxically based on mistrust and fear, deep and hidden contempt for others, competitiveness and, as F. Nietzsche and M. Scheler showed, resentment. That is why anomalous personality is usually affirmed by belittling others, first of all, their ideals and moral dignity. Self-assertion occurs through insulting the values of other people. This is a reaction, on the one hand, to the primacy of power in a state of anomie, on the other hand, it is a cynical culture, a rejection of everything that is high and positive.

Doublethink does not lead to a bifurcation of reality: the social world is recognized by individual consciousness as devalued, unnecessary, and only subjective, inner being is genuine. In this regard, one cannot reliably know anything about the world outside oneself. The concept of truth is not applicable to the devalued world, because the line between good and evil is broken in it. Moreover, the other cannot be right in essence, from the point of view of "reality, in fact", his view can only be subjectively acceptable or not. The consequence of this dualism is, first, ethical solipsism, the denial of any moral criteria outside oneself; secondly, epistemological and, if I may say so, social skepticism, denial of the transformability of society to a qualitatively better state. (This attitude can be expressed by the phrase "society is incurably sick").

Solipsism, paradoxically, turns into a priority of collective perception of reality. Since an individual cannot live without knowledge, he needs information about the outside world, for example, about the economic situation in the country. To satisfy the information hunger, the solipsist performs an act of doublethink: for example, he takes an official position, deep down in his soul, being sure of its distortion. The individual is psychologically uncomfortable to be in the minority, so he tacitly identifies with the generally accepted point of view, thereby creating a collective perception. By virtue of doublethink, any value projects – political, religious, others – are doomed to failure.

Conclusions

Spiritual vacuum, value emptiness is doublethink, which has become the basic principle of thinking and behavior of a person. The fundamental sociocultural reason for its appearance was the processes of transformation of the value system. Modern ethics and axiology are post-Christian and post-Aristotelian, and the language of each of them continues to coexist with modern forms of worldview, finally confusing the situation. Many moral terms (good, evil, duty, honor, love, law, norm) were inherited from

Christian and ancient cultures, but due to certain processes they lost their meaning and began to acquire a new one, locally and voluntarily defined. This creates a fundamental split between classical ethics and modern, predominantly utilitarian, and pragmatic ethics. Cultural traditions prescribe the old interpretation, and the surrounding reality – a new one. Therefore, a person begins to think twice in order to remove the conflict.

A utilitarian understanding of values, in particular of goodness, generally leads to the displacement of truth by utility. The requirement to "do the right thing" and "understand rightly" becomes the basis of social morality. This leads to the assertion of moral and value relativism. Therefore, E. Anscombe notes:

> If it is psychologically possible, one should get rid of the concepts of obligation and duty – that is, moral obligation and moral duty, from the concepts of morally right and wrong, as well as the moral meaning of obligation. After all, these concepts are relics or consequences of relics of an earlier ethical concept, which as a whole no longer exists; and without it, they only harm (Anscombe, 2008: 70).

The purpose of doublethink and relativism seems to be to maintain impersonal political and economic domination. This is power, cleansed of any socio-cultural layers, subordinating to itself all objects of public space. The constant reassessment of values is actively supported by social institutions, and therefore anomie itself becomes a "structuring" factor of society in the sense that it allows creating instability, instability in order to maintain power. This is power in a very broad sense of the word; it is not associated with any specific political forces. Power, no matter how strange this definition may sound, is the ability to overestimate values, to impose certain models of behavior. It is no coincidence that all kinds of words with the prefix "post-" are widespread in modern times: postirony, post-punk, post-rock, postmodern, post-capitalism (P. Drucker), post-social society (K. Knorr-Cetina), post-secularism (J. Habermas) and so on, that is, a lot is immersed in a continuous process of revaluation of values. In this sense, technological progress opens up wide opportunities for the imposition of a certain will through utilization, deindividualization, dehumanization.

So, the highest form of human anomalous consciousness is doublethink – the simultaneous coexistence of two value-normative orders. Apparently, in order to overcome the situation of doublethink, it is necessary to search for an objective basis for values: in society, in religion and in the moral dignity of a person.

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Background of Achieving a Realistic Legislative Criminal Policy in Iranian Penal Laws

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Abstract

For a criminal policy, in the broadest sense, to be successful and compatible with a realistic view of the criminal phenomenon in the field of pragmatism judgment and to achieve its objectives, it needs a background which, in its absence, not only laws based on realistic criminal policy fail, but their application in such a situation will cause a double damage to society: legal and moral. Apply methods of social prevention in the economic and cultural dimension, observing the principle of minimum criminal law, the mandatory anticipation of the presentation of a personality profile in all crimes committed and finally, the establishment of a care administration to comply with the implementation of realistic laws in the best possible way. It is concluded that this path that combines criminal policy and pragmatic legal realism is one of the desired areas in question in the field of criminal investigation in Iran. This research, which is conducted using the content analysis method, identifies the background for the implementation and enforcement of a realistic legislative criminal policy in Iran to remove obstacles to this advanced scientific knowledge.

Keywords: realistic penal policy; crime prevention; personality profile; principle of individualization; principle of minimum criminal law.

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Antecedentes de la consecución de una política penal legislativa realista en las leyes penales iraníes

Resumen

Para que una política criminal, en el sentido más amplio, tenga éxito y sea compatible con una visión realista del fenómeno criminal en el ámbito del juicio de pragmatismo y logre sus objetivos, necesita un trasfondo que, en su ausencia, no solo leyes basadas en una política criminal realista fracasan, pero su aplicación en tal situación provocará un doble daño a la sociedad: jurídico y moral. Aplicar métodos de prevención social en la dimensión económica y cultural, observando el principio de ley penal mínima, la preceptiva anticipación de la presentación de un perfil de personalidad en todos los delitos cometidos y finalmente, el establecimiento de una administración de atención para cumplir con la implementación de leyes realistas en la mejor forma posible. Se concluye que este camino que conjuga política criminal y realismo jurídico pragmático es una de las áreas deseadas en cuestión en el ámbito de investigación penal en Irán. En esta investigación, que se realiza mediante el método de análisis de contenido, se identifica los antecedentes para la implementación y aplicación de una política penal legislativa realista en Irán con el fin de eliminar los obstáculos a este conocimiento científico avanzado.

Palabras clave: política penal realista; prevención del delito; perfil de personalidad; principio de individualización; principio de derecho penal mínimo.

Introduction

There are basically two views on the criminal phenomenon and how to react to it. The first view is the abstract legal view, which is also considered idealism in philosophical discussions. In an idealistic view, crimes are considered in the school of natural law or innate law school. In the school of innate law, on which part of Iran's criminal policy is based, the ideal laws or manifested in the criminal arsenal to build an ideal society. These laws are transcendental and have come to bring happiness and bliss to all human beings. In the abstract legal perspective, preventions appear as criminal and in the form of general and specific prevention, and in some cases have permanent exclusion function through extermination, and in some cases, punishments try to control and prevent delinquency occurrence by disabling criminals.

But in the present article, the criminal phenomenon in realistic criminal policy is examined in terms of the background and requirements for

achieving results. Criminal policy in the broadest sense includes all the stages affecting the criminal phenomenon from the pre-criminal stages, investigating the causes, and preventing them, whether state-based or social prevention, quality of reactions, type of punishments and security measures required to execute punishment and even pre-execution stages. The matter of fact is that in present-day Iran, we are facing traffic in the cases of the prosecutor's office and criminal courts and unbridled criminal inflations at the social level. Social prevention in the economic-cultural dimensions is not well illustrated and implemented.

In the field of economics, lack of fairy distribution of Labor and wealth has led the society towards an anomic society; and in the fields of culture, lack of growth-oriented and growth-centered programs, in the long run, has left its problems and difficulties. In the fields of legislative criminal policy, the legislature has followed a duel heterogenous policy, so that while in one part of the law it uses an abstract legal perspective and criminal policy in a narrow sense, it has a legislated with a realistic perspective, in another significant part of a criminal policy in the broad sense. But in this area, despite the application of the most advanced paradigms in criminal law in the field of a judicial and executive the criminal policy, it has faced systematic inefficiencies. What is certain is that it is not enough just to legislate and adopt advanced laws of derived from criminal policy data in line with modern science, but the necessary grounds must also be provided.

Applying community-based and status-based prevention, decriminalization, and the judgement as much as possible, establishing an institution for diagnosis in the company of courts, establishing a probation office, employing criminological the judges and specializing in judging, in-service training of former hired judges and such is one of the cases that prepares the ground for the implementation and operation of realistic criminal policy. The question is whether the criminal law, which originated from a realistic criminal policy, has been well received by the judicial authorities. Has realism led to pragmatism, or are we dealing with a series of beautiful laws that are on the on the pages of law booklets? And what item can the pragmatic solution of realistic laws depend on?

In the present article, and attempt will be made to explore Iran's criminal policy in the field of realistic law and pragmatic barriers in order to offer suggestions for merging realism with pragmatism.

1. Criminal policy and the concept of realism

In a historical course, criminal policy has started from its narrow concept and meaning and has reached its peak with progress in the broad concept based on realism towards the criminal phenomenon. for the first

time in 1803, the German professor Feuerbach uses the term *criminal policy* in his book on criminal law, and this is the first time that the term criminal policy has entered the real of criminal law. According to Feuerbach, criminal policy includes a set of repressive methods through which the government responds to Crime by resorting to them (Travis III, 2011). A narrow interpretation of criminal policy, which is also known as "Criminal policy"; It should be note that the only prevention considered in this definition is criminal prevention, which with its intimidating aspect in general and particular is effective on the offender and the surrounding community (Ristroph, 2020).

In France (in 1905), Mr. Cauchy, in his treatise "The science of a prisons' Administration and laws" distinguishing criminal policy from pure science, which he considered to include criminology, sociology, and criminal anthropology, sought to place criminal policy among other disciplines of criminal science. However, in his opinion, criminal policy means "an applied science whose goal is practical success in the rational effective organization of the fight against crime" (Travis III, 2011: 58).

According to this view of criminal policy and crime, which is a legal concept, deviation (deviance) is also considered a social concept. This viwe does not rely solely on reression and intimidation through punishment, but also includes prevention data, which, of course, includes social prevention in the form of social, cultural, moral systems and so on (Shaygan and Rahmani Klakuob, 2019).

With the above descriptions, it can be said that criminal policy is a science that, based on scientific and philosophical data and approaches, and taking into account historical conditions and facts, seeks appropriate response to the criminal phenomenon through criminal and preventive measures, solving the resulting problems as well as establishing security and normative calm in the criminal atmosphere of society. The occurrence crime and social deviation at all times and places are considered perfectly normal law and following the realities of human societies, which increasingly reflects the need for a realistic reaction to this phenomenon. Undoubtedly, resorting to an idealistic and slogan-based movement in dealing with a criminal phenomenon that has little to do with the facts and the law, is doomed to inefficiency and Failure from the very beginning.

2. Prevent one dimension of realistic politics with a background function

I think the highest level of realism in a criminal policy is the extent to which that policy approaches crime prevention, the success of which lies in knowing the members of the target community accurately. As we see

in criminology, crime is not caused by one cause and the emergence of a criminal phenomenon is the result of the convergence of different factors and the prevalence of underlying conditions.

The occurrence of delinquency can be due to involuntary individual causes with a subset of individuals' physical and intrinsic factors of delinquency, diseases and mental disorders and character and personality disorders. Also, general factors of delinquency include social factors, geographical environment, economy environment and political environment with their broad sub-branches, including the factors of formation and occurrence of criminal phenomenon (Brannigan, 2013).

What is certain is that prevention has always been simpler and less expensive than treatment. Realistic criminal policy in this dimension owes its facilitator approaches to the knowledge of criminology. Although criminal prevention is also white widespread in the types of prevention, as we will see, criminal prevention has not been very successful, and countries with low crime rates have spent most of their budgets on prevention of criminological origins instead of paying and spending in penal institutions. In the following, the realism of criminal policy in this field will be explained by describing the types of prevention methods.

a. Criminal prevention of idealistic institution

The founders of these theories their schools and followers, who believe in free will and conscious human choice, justify punishment on the basis of social benefit and its deterrent effects (Thorburn, 2011). For example, Jeremy Bentham, who himself is one of the founders of the school of social benefit, says "if you suspend and stop the punishment, then the word will become a sense of crime and social team will disappear" (Canter, 2008: 28). One of the most important features of this type of prevention is that according to this process, any crime committed by any criminal can be prevented in a way, while each crime has its own tools for prevention. Another feature is that in this type of prevention, the focus is on punishment and dealing with the perpetrator and the role of other factors in the emergence and occurrence of crime is ignored (Clarke, 1983). An issue that distances us from realism towards the criminal phenomenon is the abstract legal view of crime and delinquency, which in the present day has lost its justification with the development of science related to criminal law and their impact on criminal policy.

Let us now return to the fact above. Various underlying factors cause that crime or rather criminal phenomenon; Factors that have developed a particular personality over time, which in its dimensions include criminal capacity and dangerous state.

b. Prevention of juvenile delinquency and prevention of adult delinquency

Provision of delinquency, also known as growth-based prevention or early prevention, is done through early psychological-social interventions**.** The emergence and spread of developmental prevention is often attributed to David Farrington's research (Farrington, 1995). Farrington's starting point is the theory that delinquency is part of the larger syndrome of social behavior that begins in childhood and continues into adulthood. His theory is also based on the premise that the early onset of delinquency, for what Farrington calls "latent criminal potential", indicates subsequent criminal activities. Accordingly, and in the practice of positive criminology, Farrington believes that the roots of the antisocial personality traits found among professional and persistent offender can be the diagnosed and treated in adolescence. In this regard, Farrington defines growth-oriented or early preventions as "interactions designed to prevent the growth of the potential for committing crime in individual" (Crawford and Evans, 2017: 23).

The purpose of this type of prevention is to identify children at risk, deviant or delinquent children, and two intervene in their socialization process through the family institution, teaching social skills to children and adolescents, educating teachers and school officials. It seeks to prepare them for a better life by empowering them. This type of prevention has characteristics that are the most important of being early, multi-basis, and long-term (Vold, 1958). Attempts to connect social contexts and growth are faced with the determination of two types of growth description methods: one is developmental programs that cover the early years of life, and the other is a perspective that covers a long life (Ross and Polk, 2017).

In a macro perspective, the reality of Iranian society today is facing whispered corruption among the affluent ruling classes. Exploration and application of the theory of pressure on society (Darabi, 2018). Although it covers some of the inferior problems, it has not provided a plausible justification for crime of the white collars; people who have economic power, social status, and prosperous life, but do not feel any responsibility towards their compatriots, and despite enjoying all the amenities and power do not turn away from committing macroeconomic crimes. If we take a brief look at the last few decades, the disturbing lack of a growth-oriented program with long-term intergenerational the perspective has left us with many such problems today, problems that the application of Strict repressive laws cannot manage. With the above description, if the community board and special community manager did not formulate and implementing and efficient growth-oriented program, the penal institutions will not succeed in achieving their preventive goals by threatening and intimidating them.

c. Social crime prevention and realistic criminal policy

Social crime prevention is the strategy that prioritizes community members' participation in the active prevention of criminal behavior and other social harms and seeks the cause of crime in social structures (Homel *et al*., 2015). Among the various approaches to crime prevention, the type of social prevention done through the development of social characteristics and all improvement of the welfare and quality of life of people in society, has found a special place among criminological research and realistic criminal policies. The need to study the criminal social conditions, pre-criminal situations, joint efforts of society and its various pillars leads to a broad and guaranteed relationship between the criminal policy of democratic societies and social policies through social measures aimed at socializing individuals, promoting human security and social justice (Darabi, 2018).

Therefore, considering the functional explanation of prevention as an important tool on the path to sustainable development; and considering that in order to deal with the criminals phenomenon must go to the underlying factors and its social origins and through their neutralization, eliminate or at least reduce the possibility of crime; and by understanding the fact that the issue of criminal confrontation may be only transient and responsive in the short-term, but permanently and in the long run perpetrators behavior will change and will emerge in new forms of crime; and that based on scientific facts, relying on punishment and intensifying criminal reactions, without considering the causes and contexts of crime, is considered as a kind of the struggle against the effects and in the word of realism it cannot have a significant impact, and therefore, paying attention to the pre-criminal stages is considered as necessary and inevitable (Garcia-Yi, 2014).

Measures such as holding in formed free elections and democratic government, equitable distribution of wealth in society, eliminating injustice and economic inequality, providing employment opportunities for all those who have the talent and ability to work, providing marriage conditions and facilities for young people, poverty alleviation, developing and strengthening of institutions such as family, school, cooperation and interaction between various social organizations and institutions such as the legislature, the executive and the judiciary in approving and implementing various prevention programs and policies, including social preventive measures (Darabi, 2018).

Let's take a brief look at the criminal phenomenon in Iran. We will easily find the effect of pressure theory data in the economic cultural aspects in a realistic and experience-based way. At present, Iranian society's reality is the lack of fair equal division of labor and wealth and even culture. The bitter truth is that economic factors cover a large part of our crimes, and the other part goes back to the cultural context of issue.

Undoubtedly, the application of social prevention realism will significantly reduce many current crimes and lead to security and sustainable development.

d. Prevention in the face of realistic criminal policy

According to what was mentioned in the above paragraphs, the main basic element of a realistic criminal policy is its approach to prevent crime and in fact to prevent the formation of a criminal phenomenon in fact, prevention is an effective tool to prevent the occurrence of delinquency, to prevent the persistence in delinquency, as well as the elimination or modification of dangerous criminal situations and is one of the main components of a criminal policy in its broad effective meaning, which of course without considering its, the possibility of actually claiming an effective criminal policy would be nothing more than a false claim. However, realistic criminal policy in general, and significantly based on no-criminal prevention methods, focuses entirely on "multi-institutional or inter-institutional prevention" of crime, the scientific establishment of which, in the group of social context empowers and attracts the involvement of a various institutions, both formal and informal, of the social system, in order to remove the black spot of deviation and delinquency from Society (Warf and Grimes, 1997).

In democratic societies whose criminal policy model is libertarian, democratically based on realism items, structural crime prevention perspectives are predominant. In this regard, criminologists consider crime a product of natural characteristics and inadequacies of the social environment. They believe that the greatest possibility of prevention is to change the perpetrators of crime, potential offenders by eliminating deprivations, and improving their personality and training them. Besides, prohibited behaviors in the form of crime, through determining the enforcement guarantee, which represents the value of it in society, are specified following the principle of legality of crime and punishment, and any reaction such as criminal administrative, disciplinary, and so on is considered as one of the essential prevention tools to prevent any encroachment on the security and peace of the country and its citizens (Darabi, 2018).

What is certain is that prevention in a realistic criminal policy has a criminological, which has no place in the repressive law, since criminal law is based on the principle of legality of crimes and punishments. On the other hand, preventive criminology seeks predictive and active policies before the formation of the criminal phenomenon. As we can see, the occurrence of financial crimes with economic motives in both micro and macro models have their reasons. Undoubtedly, creating economic prosperity, efficient employment and fair distribution of work and wealth in a society will

significantly reduce the crime rate of financial and financial-related crimes, and in the macro dimension of meritocracy and time in hiring committed compassionate officials who have learned life is skills training in a growth-oriented system, will block the way for macroeconomic crimes. Creating an obstacle in the way of committing crimes and the difficulty of achieving results in an anomic society will undoubtedly make the path of delinquency difficult in the condition of criminal situations. What is certain is that in order to achieve the result and effectiveness of the criminal policy, the next step is to recognize the realities of the target community and not neglecting to use all the necessary methods for prevention

3. Dimensions of criminal realism

In an abstract legal perspective, a crime is a behavior that the legislature has labelled criminal for its own reasons.

Criminal law in countries is adorned with scientific data under the influence of criminological data and other science related to following a realistic criminal policy. Hence, a delinquent person is an individual with undeniable internal conflict who is influenced by various criminal capacity factors in his/hair personality dimensions. Determining punishments is not a primarily for humiliation, correcting black spots formed in inner personality in order to adapt to the surrounding society so that he will love others like law-abiding citizens and from positive attention to others do not exchange the feeling of being human and the resulting pleasure with any other a stimulus.

Every human being must react to his social environment's stimuli in harmony with the demands of the surrounding environment and the local community. Delinquency is the emergence of human reactions that creates more or less obvious problems for society, and one whose behavior is considered contrary to the interests of the social environment is called a criminal. Hence whenever and internal or external stimulus reaches the brain, there is a slight interruption in its balance. This interruption, in turn causes the emergence of a series of neural currents that vary in the position and structure of the brain. Some of its regulatory mechanisms attempt to direct brain phenomena one after the other, which is eventually restored by a specific final reaction.

In cases where this balance is not established, the final reaction is a new stimulus that in turn causes an imbalance. Therefore, inconsistencies and incompatibilities manifest themselves as a series of chain reactions. So, in compensation, ability is a phenomenon that occurs in the darkness of the relationship between the individual and the psycho-social environment. Of course, the individual's biological personality will affect this process and

the compatible individual will be spiritually approved and supported by his group. However, personal maladaptive behavior in most cases, causes rather hostile reactions from the external environment (Cohen *et al*., 1989).

In terms of realism, in the criminal phenomenon appears as the behavior of the human individual (human reality) against society (social reality) (Brown, 2004). From a real point of view, a criminal phenomenon is a disturbance in the social order (social reality) due to the behavior of a human individual who is the member of that society (human reality) (Shaygan and Rahmani Klakuob, 2019). As it can be seen criminal law today is far removed from criminal law in the past. According to the time and place requirements in the broadest sense, the abstract legal view based on a rationality and materials based on science and experience is doomed to regress so that legislators, adopting a realistic criminal policy in the broadest sense, can legislate in Criminal matters according to the time and place requirements an active dynamic state.

a. Crime, a human reality with biological dimensions

Criminal biology examines the physiological and biological factors of crime and, like criminal psychologist, is considered as one of the factors of realism, including science and knowledge in the service of criminal law. For the first time, Cesar Lembroso, an Italian military physician, established the science of criminal anthropology with the publication of a book entitled *The Criminal Man* and through introducing the story of congenital or instinctive killer or the principal of criminal inheritance, which aimed to study the physical condition of people with criminal behavior.

The scientific results of his knowledge, especially the role of chromosomal disorders in the individual's attraction to criminal behaviors, and in some people's belief, to the criminal relationship between individual's behavior and parents' behavior, can put the panel system in a different direction. The effect of intellectual transformation on modern positivists, who by transitioning from biological determination to bio-educational the determinism, have believed in a kind of dual physical and social criminal determinism, cannot be ignored in how to attribute criminal responsibility to perpetrators with effective biological and social problems. For this reason, in most penal systems, recognizing the offender's individual and family personality is effective in determining his criminal fate (Faqir, 2016).

Inheritance means conditions that cause the transfer of physical and behavioral characteristics from parents to children (Loeber, *et al*., 2009). Genetics is the science of transmitting biological information from one cell to another from parent to Infant, and then from one generation to the next. A phenotype is the sum of the physical traits of a living being. This word is opposite to the word genotype which means a set of genetic information of

a person. Genotype effects genotype for but it can be more or less effective under the influence of the environment. Previously, phenotype meant only traits that could be observed directly, but today it also includes biochemical traits such as the ability or inability to produce a particular enzyme, as well as behavioral traits (Beaver, 2015). Recent research suggests that there are between 20000 to 30000 human genes that scientists have sorted. Organizing the human genome is a first step in understanding exactly how genes is relating to human evolution and the normal function of his life.

For example, much of each gene's function and how different genetic variables are translated into phenotypic variables remains unknown. But regarding these ambiguities, there have been very good studies that link a specific gene to a wide range of disorders, such as ADHD, Attention Deficit Hyperactivity Disorder, alcoholism, and even anorexia or polyphasia, though perhaps the most interesting genetic finding are the results of the small number of the studies that have identify certain genes that are associated with delinquency, aggression and serious violence (Walsh and Beaver, 2009).

What is certain is that genus are more determinants than a complete factor in the occurrence of behaviors. No one is programmed to commit a specific behavior as a robot under the influence of genes. For example, a gene can have the potential for several different behaviors and change a person's function depending on the environment. Also, a gene can be turned off for the rest of a person's life, unless the conditions are right for it to be turned on. In fact, the environment and genes interact with each other, and the lack of one hinders the growth of living things. Undoubtedly, if human knowledge is fully able to surround and control genetics, it will have many positive effects on crime control and treatment. Control of genes after accurate, comprehensive knowledge of their functions can be an effective infallible factor in medical prevention.

Diagnosis of biological diseases affecting delinquency and inclusion of cases in the delinquent personality profile helps the criminal court judge in determining the type and amount of punishments needed for correction rehabilitation and social reintegration, and on the other hand, additional punishments with the nature of security and educational measures that can include a wide range of measures, including medical treatment, can be used and exploited. Since in many cases that offender needs a medical diagnosis and treatment rather than punishment, which the inclusion of criminal biological facts in a realistic criminal policy that leads to the formulation and adoption of dimensional scientific laws in considered a symbol of effective scientific rationality in how to deal with the criminal phenomenon.

b. Crime human reality with psychological dimensions

Criminal psychology is "studying and researching the psychological cases and nature of crime, as well as paying attention to the personality of the offender and studying the feelings, motives, as well as specific mental states that cause crime" (Thorburn, 2011: 30). The role of psychologists in explaining the phenomenon of crime has been highlighted and since they considered criminals not only from a judicial point of view but also from the point of view of human facts, and instead of judging crime as a separate act they examined personality dimensions. And they accepted that a complete examination of a human being, criminal or non-criminal is possible only by and in-depth examination of his personality. Regarding the application of the principle of individualization of punishments and more than the application of the principle in the judicial stage, which dates back to the time of the adoption of criminal policy, in the justice system as a goal that manifests itself in the legislative state in one dimension depends on applying criminal psychology to help the justice system in solving individual problems by targeting the individual and his direct role (Shaygan and Rahmani Klakuob, 2019).

Criminal psychology is one of the specialized of psychology and is considered a basic branch of criminology. The important missions of this science or recognizing the character of the criminal, recognizing the character the criminal, recognizing the tendencies of anti-social behavior in human beings and evaluating the institutional and acquired factors of such a tendency and its evolutionary course from potential to action, evaluating the level off responsibilities and self-awareness in crime and the role of unconsciousness in absense or decline of criminal responsibility, the treatment of the offender and his social adjustment and elimination of the danger of dangerous criminals and establishment of detention centers and offender, rehabilitation and mental improvement organization, developing and criminal health plan, developing insight and strengthening the sense of recognition and understanding of those in charge of criminal affairs (Cohen *et al.,* 1989).

Realism in the psychological dimension of the criminal phenomenon leads to research on how criminals' personality dimensions are formed and the search for the causes and factors leading to the emergence and prevention of crime and the correction of criminals. One of the criminal psychologies is data that plays an important role in adopting realistic criminal policy to predict legal mechanism under the influence of "legal psychology". Laws that make it possible to assess a defendant in terms of mental is status to determine a person's mental health and insanity at the time of committing the crime. Also, legal psychologists predict and suggest treatment methods for the offender in order to minimize the risk of crimes, especially violent crimes (Ristroph, 2020).

As we look at Iran's laws, the issue of criminal psychology in the two sub-issues of personality profile and the criminal development of the subject of Article 91 of the Islamic Penal Code can be considered prominently. The legal provisions in the most sever punishments has offered new balanced solutions based on criminal psychology in Iranian criminal law (Nayyeri, 2012). Legal provisions in the most severe punishments have provided new balanced solutions based on criminal psychology in Iranian criminal law. Although the legislative approach in this realism and relatively rudimentary, and without precise mechanisms and the use of full-time empirical experts alongside the courts, it is a good opening in the realism of Iran's legislative criminal policy.

c. Crime a social reality with a subset of cultural economic environment

In a division, social environments are divided into cultural environment and economic environment; In Durkheim anomie, part of the criminal phenomenon is formed is due to the unfair division of culture, which of course has a significant and relationship with growth at the social level, and the lack of fair distribution of labor and wealth and economic factors is one of the main causes of crime; And both factors among the fundamental factors of significant to delinquency in a realistic criminal policy in the science of criminal policy and especially in Iranian criminal law. Today, most of the micro-economy crimes in Iran that have financial of financially related roots can be considered related to economics issues.

Crimes such as theft, malversation, unpaid checks, forging, drug dealing, etc. On the other hand, many macroeconomy crimes, sexual crimes, murder, and assault, etc., are closely related to the issue of culture and culture development. In this part of the research, we will examine the facts that govern cultural economic environments and their impact on criminal policy.

d. Crime, is social reality with a cultural subset

In every society and in its cultural context, there are norms, rules, and values within which the people of that society mainly act and behave.

The legal system of any social or originates from its culture and basically culture should be considered as the soul and body of the criminal policy of that society (Garland, 2006). Suppose the laws of society are in conflict with the cultural values of its members. In that case, the issue of cultural conflict arises, which in itself leads to the confrontation of laws that become abandoned laws due to the lack of social origins.

Torsten Celine believes that cultural conflict represents a conflict between moral values and contrasting behavioral norms, or a lack of belief in

their conformity. The meaning of behavior criterion is a clear or sometimes implicit rule that a person follows situations where an action or response in necessary on his part (Vito and Maahs, 2015). The main assumption was that: penal law is an interpretation of the laws of culture that govern society. The very complex issue is that most people belong to many social groups, i.e. family, peer groups, and occupational and religious groups are very numerous. When a person lives in an environment where he or she sees somewhat with different rules, he or she should also expect to meet conflicting standards. According to Celine, cultural confrontation occurs when the laws codified in the panel code conflict with a particular group's behavioral criteria (Ristroph, 2020). Value and cultural conflict have been well invisible in Iranian society and law at time; For example, we can refer to the issue of laws regarding hijab and citizens' resistance in this regard, which in many cases there is no conformity in the culture of citizenship and the statute rules, and it has caused many problems in recent years.

The issue of growth is accompanied by a fair division of culture, which in long run brings with it term such as humanity, fairness, self-purification, shrewdness, and liberalism, to set the social free from embezzlement, economic corruption, bribery, and power abuse and so on. Although the issue of culture is associated with some violent street crimes, it can also be addressed in the case of white-collar crime potentials, which happened to be fully compatible with the surrounding Society despite the very high risk, an issue that has its roots in the lack of a growth-oriented and growth-centered program for decades.

Imam Ali (AS) has made to pleasant, thoughtful and wise word in this regard that are remarkable and thought provoking.

First: Mislaan lamp calling for reform.

The role of community officials is also very effective in eliminating the culture of delinquency.

Second: People with their leaders are more like their parents.

People are more like their rules than their fathers in morals and social traits.

Creating a culture is a spiritual environment free from illegitimate violence and crime and fighting those who commit crime is one of the Islamic government's primary duties (Zaffaroni and Oliveira, 2013).

In the words of Imam Ali (AS), one of the rules of the theory of imitation of Tord, which is the learning of the superiors' inferiors, can be clearly seen. People believe in the religion of their rules and learn the culture of altruism, patriotism, self-sacrifice and the key concepts of culture in a practical way from the great people of society overtime. On the other hand, when ordinary people observe that certain individuals easily ridicule law, justice,

and moral principles, their belief in the mentioned cultural principles disappears. They see the law as a haven for influential people and those in power. When people's belief in the principles and foundations of culture, justice, and law is destroyed and the collective is conscience and social piety necessary for life is declined, ordinary people also consider themselves entitled to commit oppression and crime.

e. Crime, a social reality with and economic subset

The economic environment plays a special role in the development of the criminal phenomenon. Changing the economic situation from one country to another or in the domestic territory of the country will have a very clear effect on the amount and various forms of crime creating new needs, in particular, will cause suffering for classes whose new development is not in accordance with the statues (Darabi, 2018).

Economic environments are considered as important factors in delinquency and this issue has been considered differently in opinions of various scientists. Among the theories of criminology, Emile Durkheim, Merton, and Cohen's theory of pressure have dealt with societies' realities struggling with economic problems arising from lack of fair distribution of labor and wealth. The theory of pressure is because people in a society have goals to achieve a happy prosperous life, and to achieve their goals, they first of all the resort to legal means.

Failure to do so ultimately leads to the pursuit of illegal means by a person who seeks to achieve their aspirations and even the minimum subsistence needs. Durkheim refers to an economic society and considers the lack of fair distribution of labor and wealth to cause anomie in a society. In fact, anomie is the state of a society in which the division of labor and wealth is disrupted in terms of the disappearance of collective conscience and the feedback of mismanagement of financial resources has not only plunged public culture and economy into the collapse but has pushed society to the point of disintegration (Tavajjohi, 2019).

The principle of individualization of punishments, labelling theory, and the restorative justice are among the criminological data that broadly cover a range of laws in order to enforce realistic criminal policy. Using theories and related data in the legislative issues, the legislator has tried to design laws that consider the personality dimensions of the offender and estimate how dangerous he is and make the best way to deal with this person available to the judicial authority. In fact by recognizing the dimensions of the offender's personality and considering the benefits related to the victim, in this approach, not only the social security of the local community but also the offender's attempted to control himself and compensate the material & and moral damage of the victim has been considered in many cases.

However, due to the need to react against delinquency, punishment has also been considered for correctional, educational, and social reintegration purpose.

4. The principal of individualization

The principle of individualization of punishments stems from criminal law's evolution towards paying attention to the perpetrator and his personality. Observance of the principle of proportionality of the Crime with punishment in personally provide only one of the purposes of punishment, which guarantees that the offenders deserve to be punished for their act (-Winick and Wexler, 2006). Punishment can play an important role in ensuring that a person is fully entitled to punishment and other utilitarian purposes. In this sense, individualization of punishment is the correction of punishment based on the offender's statues as an individual. In short, the individualization of punishments means that while observing the principle of legality and personal nature of punishment, the judge can impose different punishments for multiple offenders who have committed a single crime by observing the offender's social, physical & psychological circumstances (Canter, 2008).

Existence of minimum and maximum punishments, rules for amnesty, parole, mitigation and conversation of punishments, rules related to intensification of punishments are examples of the principle of individualization of punishments (Okon, 2014).

Success in applying the principle of individualization depends on accurate and wise estimation of the degree of criminal capability and the state of being dangerous. A state of being dangerous is a condition in which a person has the ability to commit a crime. Clinical criminology seeks to correct treat and prevent recurrence of a crime by multilateral examination of the offender as a physician. Dublino considers the dangerous state to be the potentially exciting and specially the obvious state of one who is actualized at the same time as the difficult social situation (Cohen *et al.*, 1989). From the positivists' point of view, the dangerous situation is the pillar of criminal responsibility or, in their words, social responsibility. Dangerous state replaces fault in classical system or unscientific criminology. Therefore, the dangerous condition of the person should be recognized, and he should be subjected to social measures, and by adopting appropriate measures, he should be corrected and treated so that he can return to society. Contrary to classical criminology, it also includes lunatics and children. Therefore, the crime and its severity are not a criterion for determining punishment, but the degree of the dangerousness of the offender is a measure of punishment and the offender and his criminal capacity should be considered; this view

has opened new horizons in criminal law (Delshad and Mazaheri, 2018).

The openings are a large part of our criminal law and one of the foundations of realistic criminal policy. Paying attention to the dimensions of personality in order to find out the degree of danger in each of the isolation cases considered by the legislator depends on scientific the specialized the research in biogenic psychogenic and sociogenic dimensions of the offender; therefore, the criminal court judge in this process should be a person specializing in related to sciences or the consulting body, together with the criminal courts, should from a case called the personality profile under the supervision of experienced and skilled experts. However, another effective component in the success of the principle of individualism depends on his specialized research on the dimensions of a person's personality, which experts do.

4.1. Personality profile, an important means of achieving realism Creating a personality profile to personalize the punishment and enforcing it to correct and treat offenders has long been considered

> In his profile, first of all, the physical biological bodily structure of the offenders, how the brain and endocrine glands work and his disease should be reflected; secondly, his psychological characteristics as well as his psychological reactions must be precisely determined; tiredly, his personal, social, cultural and educational situation, his background and his relation with relatives, etc. Should be determined (Jacobs, 1980: 21).

Thus, given that in criminology, etiology, crime, the effects of various social and individual factors include biological and physiological factors, in the individual's personality profile, all these factors that have led the perpetrator to commit the crime, should also be considered. Since this case is a is specialized support for the judicial authority to correctly diagnose the deterioration of the dangerous situation and criminal potential. Whether the offender needs medical treatment, or the maintenance and implementation of correctional programs depends on the personality profile's scientific professional formation.

In the criminal system of many countries today the examination of the offender's personality is an important factor in judicial decisions, and it can be said that the personality profile is the most important evidence that can change the procedure after criminal system from "establishing a balance between crime and punishment to "provide a treatment proportionate to the crime". In the next stage, after the conviction and sentence execution, the personality profile is used to apply the principle of individualization of the punishments and also to determine and their correctional, educational and treatment methods appropriate to the offender's personality; However, the use of personality profile is not limited to individualization of punishment,

but the content of this profile is useful and effective for applying many laws and implementing the institutions provided in them (Pinizzotto and Finkel, 1990).

According to article 203 of the Code of Criminal Procedure (Bennett, 1996: 18):

> In crimes for which the legal punishment is the deviation of life, amputation, life imprisonment or ta'zir of the fourth degree and above, as well as in intentional crimes against physical integrity for which the amount of blood Money is one third of the full atonement of the innocent or more, the investigator is obliged to issue an order to file a profile for the defendant do the social work unit during the investigation.

This case, which is separate from the criminal case file, contains the following:

A. Report of the social worker regarding the financial, family, and social situation of the defendant.

B. Medical and psychiatric Report.

Also according to clause C of the article 279 of the Code of Criminal procedure (Bennett, 1996), summary of the defendant's personality profile or mental condition is one of the items that must be mentioned in the indictment.

While the vast majority of the means of judicial individualization provided by the legislature cover great 5to8, therefore, a flaw in criminal policy is evident and their required facts have not been taken into account.

Nonetheless, it is practically impossible to make a scientific decision about the principle of individualization due to the lack of anticipation of the task to form personality profile.

As described above, the most important part of the criminal prosecution process is the preliminary investigation. Considering the criminological data, the necessity of forming a personality profile to use discriminatory means in case if we have considered realistic criminal policy in the broad sense, would be inevitable; however, the lack of anticipation of a task for investigative authorities to make personality profiles for low-level crimes has blocked the way to this criminal policy from the beginning. This is one of the reasons for the meaning of the use of means and in many cases the abandonment of relevant materials.

5. The need to establish care office

Examination of the means of judicial individualization in criminal law, such as suspension of prosecution, postponement of sentencing, semi-liberal system and suspension of punishment execution, always reminds us that although according to the data of these criminal law establishments there are effort to avoid imposing punishments for those who deserve them, but caution should be exercised in any case, and offenders should be constantly monitored and given psychological, medical, and his sociological counseling. Undoubtedly, leaving the issue of care to the execution of sentences and officers is doomed to failure from the beginning due to you to their workload; Inevitably, a separate department called the care office albeit under the supervision of the prosecutor's office, is needed to achieve the goals of realistic law, with the recruitment of specialist specializing in criminal psychology, criminal psychology, criminal law, and care forces.

The probation office in France works to carry out a probationary period under the supervision of a judge with a special care officer and supervise that proper execution of the probation period's orders.

At present, the institutions of the principle of individualization, which are considered as one of the most important manifestations of a realistic criminal policy in the broadest sense, in the vast majority of cases require the implementation of special instructions, the correct implementation of which depends on the presence of the Department of Care and the presence of expert. With the legislative vacancy and the unpredictability of such an institution, the grand for achieving the goals of criminal policy in the broad sense in practically unattainable, and this has led to minimizing the citation of legal materials originating from a realistic point of view on the criminal phenomenon. In addition, in some cases, the relevant materials appear in the form of paper and abandoned rules.

The principle of minimum criminal law is one of the causes of the emergence of criminal in inflation and criminal traffic in courts, which itself causes brief unscientific treatment of the criminal phenomenon is non-compliance with the principle of minimum criminal law.

Unregulated criminalization and the influence of criminal law on issues that can be controlled and managed by guaranteeing non-criminal executions or among the factors that waste enough time for scientific and professional investigation of real crimes.

Hence, the minimum principle of criminal law is the norm and regulator of criminal law and criminal interventions; criminal science intervention, as the most intense from of exercising official governmental power, always tends to conquer new territories and develop more than ever.

According to this principle, criminal moderation replaces criminal extremism, and as the results, not only will the ground for the abuse of criminal law, its concepts means and institutions be reduced but also the moderation of the use of idealistic concepts to achieve realism (Ashworth and Horder, 2013).

Conclusion

Although Iran's legislative criminal policy has not followed a single policy and can be considered in two dimensions, the broad concept and the narrow concept, but the subject of this article, as we have seen, was to examine the areas in which realistic laws in practice are successful, and in the absence of them, not only will they not be considered an opportunity to create security and comfort for the citizens, but they will themselves be the source of much harm in this regard. The realistic criminal policy is the crime policy in the general sense that covers and considers from pre-criminal to post-criminal situations to manage the criminal phenomenon.

One of the factors for the success of a realistic criminal policy lies in this policy's success and approach to crime prevention issues. The reality, in which success brings the formation of a criminal phenomenon to the minimum possible in society at the lowest cost, and neglecting it causes criminal inflation in society. In the meantime, although state-of-the-art prevention creates obstacles to committing a crime, what reduces criminal capacities and dangerous situations lies in growth-oriented prevention. Lack of prevention that can be designed and implemented in the short-term, mid-term, and long-term and intergenerational period, confront the society with a kind of cultural anomie and the success in designing and implementing the community in terms of life skills.

Undoubtedly, in such a society, legislation based on a realistic criminal policy that believes in human dignity, personality, and punishment in the form of a citizen's right to a criminal will be effective and fruitful. Because only in a society where the division of labor, wealth and culture is done fairly can we face minimal lawlessness and close enough opportunity for realism in criminal law and hope for its effectiveness. Another part of the background of realistic criminal policy should be sought in the ability to identify the occurrence of the criminal phenomenon and, better yet, in how the criminal character is formed. An issue that depends on accurate knowledge of personality dimension in the biogenic, psychologic and sociogenic sectors, and the achievement of which owes itself to the necessity of making a personality profile for crimes in which examples of realism are to be applied; Otherwise, without the need to make a personality profile, not only will s correct estimate of the dangerous is state and criminal potential

not be obtained, but the citation of realistic material will also be harmful.

As it turned out, realistic laws in the field of enforcement require a department called the probation or care office to be successful, which guarantees the acquisition of the goals of realism in order to achieve reform and self-control with a sufficient number of specialists in the field of forensic medicine, criminal psychology, criminal psychology and personal care forces. And by not anticipate such an institution, not only will the citation of realistic laws remain at a minimum, but if it in is invoked in the field of implementation, it will face a serious problem in achieving its goals, The two factors of crime prevention and observance of the principle of minimum criminal law also remind the background factors, the observance of which is an effective factor to achieve realism and reduce the costs of providing criminal justice in one sector and spending in the right place.

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The Franchise Agreement in International Trade: its Advantages and Disadvantages

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Abstract

The aim of the article is to analyze the implications of the franchise agreement in international trade. One of the contracts that is usually registered after the appearance and registration of property rights, and especially after the development of trademark rights, is the franchise agreement. A franchise agreement is a contract entered into between the franchisor and the franchisee as the owner of the intellectual property rights. In other words, the franchisee often uses trademark rights and intellectual property rights owned by the franchisor, which have a limited duration. It is concluded that, in franchise agreement, there is a right to enforce the franchisor's business method, which is implemented within the network (this method includes the use of intellectual property rights and know-how). This contract has detailed terms and is closely related to intellectual property rights and competition rights. The franchise must be distinguished from the distribution contract, the concessionaire, and the license. Under this agreement, the franchisee enters the franchise network and agrees to use the franchisor's method of negotiation and pay royalty-free payments instead.

Keywords: franchise agreement; franchisor; franchisee; franchise network; trademark.

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El contrato de franquicia en el comercio internacional: sus ventajas y desventajas

Resumen

El objetivo del artículo es analizar las implicaciones del contrato de franquicia en el comercio internacional. Uno de los contratos que se suele registrar después de la aparición y registro de los derechos de propiedad, y especialmente después del desarrollo de los derechos de marca, es el contrato de franquicia. Un acuerdo de franquicia es un contrato celebrado entre el franquiciador y el franquiciado como propietario de los derechos de propiedad intelectual. En otras palabras, el franquiciado suele utilizar derechos de marca y derechos de propiedad intelectual que pertenecen al franquiciador, que tienen una duración limitada. Se concluye que, en un contrato de franquicia, existe el derecho de hacer cumplir el método comercial del franquiciador, que se implementa dentro de la red (este método incluye el uso de derechos de propiedad intelectual y conocimientos técnicos). Este contrato tiene términos detallados y está estrechamente relacionado con los derechos de propiedad intelectual y los derechos de competencia. La franquicia debe distinguirse del contrato de distribución, el concesionario y la licencia. Según este acuerdo, el franquiciado ingresa a la red de franquicias y se compromete a utilizar el método de negociación del franquiciador y pagar en su lugar, pagos libres de regalías.

Palabras clave: acuerdo de franquicia; franquiciador; franquiciado; red de franquicias; marca registrada.

Introduction

International trade law is a set of rules and regulations that govern international trade relations, which are inherent in private law and relate to various countries (Carr and Stone, 2013). In general, business activities that can be done in the form of international trade relations are divided into six categories: First, the sale and purchase of goods, the second group the sale and purchase of services, (Carr and Stone, 2013) the third group the insurance transportation, the fourth group the financial activities, the fifth group the contracts related to the concession of the use of intellectual property and the sixth group the investment and partnerships. Intellectual property contracts either transfer ownership of these rights or, while retaining ownership, allow the holder to use these rights for the recipient's license, the second group of which is known as bachelor's contracts or operating licenses. The franchise usually includes a bachelor's degree, but the bachelor's degree in intellectual property law has been used and has been successful. One of the goals of the transferee of intellectual property rights,

from the conclusion of these contracts, can be the transfer of technology. Therefore, in this article, we will first study the relationship between franchise and intellectual property rights, then the transfer of technology with franchise, and finally the impact of franchise on competition law. This paper examines the advantages and disadvantages of a franchise agreement in international trade.

1. Speech 1: The relationship between franchise and intellectual property rights

Intellectual property rights refer to those privileges and powers that a person claims in respect of the results of his or her intellectual activities in various fields of industry, commerce, science, and literature and art. Intellectual property is divided into two categories; industrial and commercial property and liberty and artistic property. Liberty and artistic property create rights for the creator simply by creating the work, but industrial and commercial property is not created by the creation of the work, but by registration by public authorities and the issuance of a government certificate.

2. Clause 1: Rights arising from intellectual property

a) The exclusive right to exploitation and the right of prosecution

After creating two types of rights, intellectual property rights are granted to the holder, firstly, the spiritual or moral right that is non-transferable (Ginsburg, 2002), and secondly, the material right. Spiritual right is related to the character of the creator and supports the right he has. Material rights refer to material and economic benefits that are exclusive to the holder and are referred to as exclusive rights. Material rights can be negative rights, and positive, negative in the sense that it allows the owner to prohibit others from exploitation, which can be interpreted as the right to pursue those who violate these rights. Positive Rights means that it allows him to use it exclusively during the validity period and, for example, in the case of the owner's trademark, the exclusive right to insert the mark on the product and its packaging is used. It has a token for promoting products 5. Topics in the field of industrial and commercial property include Patents, industrial designs, trademarks, geographical indications, traditional knowledge, biotechnology, brand reputation, trade secrets. Liberty and artistic property is divided into two categories: copyright and related rights or related rights.

b) The right to transfer and grant permission to exploit intellectual property rights

Intellectual property has found its place in economic and legal life. The importance of intellectual property is so great that it is commonly referred to as the money of the modern economy, and as a financial right with economic value (Singer, 1982), it can be transferred under a contract according to the transferable financial rights. Contracts are usually concluded on the three axes of goods, services, and capital, and intellectual property can be considered as a commodity or capital, given its role in development. The expectations of intellectual property contracts are usually of four types:

3. Transfer of these rights

2. Providing the possibility of use while maintaining ownership (granting the license to exploit these rights)

3. Provide the possibility of use while maintaining ownership, provided that it has been used before and has been successful (franchise agreement). The establishment is represented by an authoritative connection between the franchisor (businessperson) and franchisee. Franchisees are answerable for spreading the franchisor's business thought all through the market (Calderon-Monge, 2018).

Article 141 of the Regulations of the Patent Law, Industrial Designs and Trademarks stipulates: "The owner of a mark may grant permission to another person to use the registered mark in any legal form" (Duffy, 2002: 682). In a competitive economy based on competition, having a monopoly backed by the law puts the firm in a special competitive position over other competitors, and it enables him to supply, produce and distribute better or more up-to-date goods or services that are desirable to the consumer. If these goods or services are offered with a mark or brand, the consumer will be able to check the quality of the product without difficulty and make the decision to buy based on the mark. That is why the use of a similar sign and misleading the buyer is considered illegal competition and the law has come to support it.

One of the things that creates a legal monopoly for an enterprise is having the industrial property right over the technology or design or sign on which the goods or services are offered. The unique situation may arise if there is no legal protection, with the secret and unknown technology to the public. The intellectual property owner to increase the benefits and business development and to meet the demand of consumers in accordance with the rights recognized by law for him, it can use its right to grant a license to operate a trading system, technical knowledge, trademark, and

give the license to others. On the other hand, third parties are encouraged to obtain permission to exploit the holder of this intellectual property by assessing their financial ability and considering the amount of demand for the goods or services of an enterprise that enjoys intellectual property, such as a mark or invention. A contract for the use of intellectual property licenses may be in the form of a bachelor's degree or a franchise agreement. In addition to granting an operating license, the holder can transfer his material rights to others, in which case the owner's relationship with the subject of intellectual property is severed and becomes the ownership of the transferee, and there are various motives that are beyond the scope of this study.

4. Clause 2: Franchise and technology transfer

a) The concept of technology

The use of new technologies and the introduction of new products is one of the measures that creates a high advantage for manufacturers. People who acquire certain technology before others can use it to offer a large share of the market by offering new products and simply surpassing competitors. Technology may take a new form and make it possible to do certain things that were impossible before technology was introduced. Technology often does not emerge as emerging technology, but has evolved and, by changing methods, increases the quality and quantity of products and reduces costs. Therefore, technology is known as the most expensive product, and activists in the fields of industry and services are looking to use new technologies to increase the quantity and quality of products and provide better services, and thus increase revenue, and the customer's desire to use high quality services and products made with modern technology. Technology is the equivalent of the word technology. Of course, technology will have a different definition in each field, but in the general definition and in the dictionary, technology means the scientific equipment and methods that are used in a certain field. In the field of production and supply of goods and services, a dynamic set of knowledge, skills and experience that is used to produce goods, use processes, provide services and research and development activities is called. Therefore, technology can be a method or a tool or a skill and a method of applying knowledge or doing something (Ameri, 2010). Hence, technology is not just knowledge, but also an aspect of that knowledge that is in the form of technical knowledge. In fact, technology is different from science because science examines and analyzes data. While technology uses scientific and experimental relationships. International trade organizations have also come up with definitions of technology that address the practical and applied nature of technology.

From the perspective of the United Nations Conference on Trade and Development, technology has defined the equivalent of organized methods and knowledge, specialized skills and technical knowledge that are used in the process of producing and improving the quality of products.

From the perspective of the United Nations Industrial Development Organization, technology is a system of technical knowledge, skills, expertise, and organization that is used to produce, commercialize, and use products and services that meet economic and social needs.

b) Technology transfer with franchise

The transfer of technology itself has a separate meaning that cannot be discussed. However, briefly, technology transfer is a process and not just a transfer of technology by its owner. Rather, part of the process is technology transfer and, in fact, prerequisites. Because the transfer may take place, but the technology has not been transferred. In other words, the transferee has not been able to absorb it. Therefore, when it comes to technology transfer, it means that the transferee can recognize the components of technology and their role in the whole (shaping technology). In such a way that to benefit from it, it does not have to use the same technology and has the ability to design and improve. In other words, it has localized technology

Technology transfer can take place at the enterprise level or at the country level or from one industry to another. The transfer of technology from one country to another in the last century has been one of the concerns of countries that, in spite of the adoption of international conventions of developed countries, are practically reluctant to transfer technology. Most of these technologies have been in the hands of a limited number of firms, and other firms tend to enter into contracts with technology owners to gain access to technology or to use the technology to improve their market position.

Technology transfer methods are divided into commercial and non-commercial methods. Non-commercial methods are mainly based on the exposure of the person to information. Non-commercial methods can be divided into formal and informal categories. For example, reverse engineering is one of the informal ways. Sending students or staff to study at technology-leading centers is the formal training of staff in the industries of developed countries, the creation of circles and scientific and technical associations through official channels. Non-commercial methods are often used to transfer technology across countries. The business method is done by concluding a contract, which is mainly divided into legal and commercial contracts. Legal contracts are contracts that transfer technology, and commercial use of technology is a top priority. In contrast, trade agreements are a priority, technology transfer may be a business issue, and a franchise

agreement falls into this category. The business method is used both at the corporate level and at the national level.

In one division, technology can be divided into upstream or downstream: Upstream technology is like the technology of using nuclear energy, building aircraft or building giant ships or advanced drilling rigs. The downstream technology is the same as the automotive and electronics manufacturing technology. The issue of franchising will not be advanced technology and is often done at the level of private enterprises. Of course, when it comes to technology transfer in the franchise, it will be more in line with the type of industry (industrial franchise), because the granting of manufacturing and production points will be accompanied by the granting of technology. For example, car manufacturing or electronics industries. Section B and H of Paragraph 1 of Article 1 of Regulation No. 2004/772 of April 2004 of the European Commission (Burns, 2004), in expressing the concept of technology, enumerated examples of it, including:

> Inventions, patent declarations, utility models, industrial designs, rights derived from new plant species, integrated circuit construction projects, supplementary protection rights for pharmaceutical products and other products that are subject to supplementary protection, copyright of software Computer and technical knowledge are part of the concept of technology (Burns, 2004: 11).

Therefore, the technology may be registered and supported in the form of industrial property or in the form of technical and experimental knowledge or trade secrets in secret with the holder. In franchising, the use of trademarks and trademarks is usually associated with technical knowledge, information, and assistance, which are examples of technology that link franchising to technology transfer. If the word technology includes any practical knowledge and techniques of execution, franchising will not be franchise without technology.

5. Second speech: franchise and competition law

In addition to complying with the general conditions governing contracts, licensing contracts for the exploitation of intellectual property rights must also comply with competition law (Kioussi, 2008). Competition law is a set of regulations aimed at increasing consumer welfare by increasing economic efficiency in trade and industry and combating the legal means of creating illegal monopolies and competitions that serve the interests of firms. Establishment arrangements depend on the standards of legally binding opportunity set out in Article 1338 of the Civil Code (Act, 1995). Nonetheless, the execution on this premise needs to focus on the prerequisites referenced in Article 1320 of the Civil Code, which is about the legitimate states of an understanding. One of the reasons for issues in the

Franchise Agreement is the presence of a standard agreement or standard agreement dependent on opportunity of agreement contained in the Civil Code (Triasih and Muryati, 2020)

Full competition has been a form of commercial competition. In full competition, the best products are provided to customers at the lowest prices. The existence of such a market is ideal, and in practice, there is no such thing as incomplete competition. In the case of imperfect competition, firms have some control over the price of the product. The most extreme is the monopoly, which is only the producer or supplier of goods or services, and it includes the highest profit, it is not possible to enter this market.

One of the factors that leads to the formation of a monopoly is the legal factor; this means that sometimes-legal privileges are granted to some firms that have exclusive power. One of these rights is intellectual property. Enforcing the interests of the technology owner and encouraging firms to invest in technology production and dissemination requires the imposition of certain restrictions. To this end, the legislature grants such a monopoly to the holder. So, at first glance, it seems that competition rights, which aim to control the business power of firms and monopolies in the public interest and increase economic efficiency and consumer welfare, there is a contradiction with intellectual property rights, which is the protection of the owner of the work against others through the granting of exclusive rights. However, the goal of competition law is not to completely deny monopoly, and in some cases, it is the monopoly control that is not exclusively abused.

The goods and services of enterprises are introduced by name or mark, which is a kind of intellectual property, and in economic relations, which are very diverse due to competition, goods, and services. The sign or name plays an important role in distinguishing the origin, originality of goods and services, facilitating the right choice, quality and efficiency, and price and other items, and facilitating competition. On the other hand, in order to increase its reputation (mark or name), the company tries to improve the quality and offer it at a low price. Obviously, because the use of the mark also carries the responsibility for the production defect, and in order to prevent fraud and create a healthy competitive environment, the use of the mark must be exclusive and supported.

The intellectual property rights holder has the right to delegate the use of the protected property to others. One of these contracts is the franchise. In the franchise agreement, due to the need of one party to the technology and entry into the franchise network and trade and the use of fame, the franchisor is in a superior position and has more bargaining power. As a result, use this situation to increase your profits and reduce your business risk by setting challenging restrictive conditions. Introducing and reviewing one of the most important conditions limiting competition.

6. Clause 1: Tie-in arrangement or condition of purchase of additional goods

Tie-in arrangement occurs when the franchisee is required to purchase the required goods or supplies or intermediate goods from the franchisor or the person designating him. One form of this condition, which is positive, is known as the Tie-in arrangement. However, this condition can have another side; in this case, the franchisee undertakes not to purchase the requirements that specify the franchisor firms (Anderman, 2007). This condition can be called a tie-out condition. Tie-in arrangement is one of the restrictive practices. This condition deals with several basic principles. First, one of the results of the principle of freedom of contract is that everyone is free to choose the party to their transaction (Katouzian, 1980).

On the other hand, with this condition, the franchisor may not have economic and competitive power over the goods that are determined. In this way, it can make its competitive power unrealistic based on the competitive power of the commercial concession that it assigns to the receiving franchise. On the other hand, as mentioned above, in most franchise agreements, due to the use of trademarks, it is a common practice of both parties because in the franchise agreement, the use of the mark will also be responsible for the production defect. In addition, in case of improper performance of the receiver franchise and the production and delivery of low-quality products and services, the franchisor's reputation will be damaged.

These commitments are justified by the fact that they intend to ensure that the goods distributed in the franchise network meet the quality standards of the franchisor network. In fact, controlling and guaranteeing quality depends on the use and purchase of certain franchisor requirements from the point of view of the concessionaire, the requested technology or technology cannot be used profitably without the above goods. In this case, it can be said that these arrangements are in favor of competition

The European Commission said in a statement on 24 December 1962 that the Tie-in arrangement was binding: The criteria relating to the quality or requirement of the consignee to procure certain goods from specific sources shall not be subject to paragraph 1 of Article 81 as long as they are technically and completely necessary for the exploitation of the invention (Burns, 2004).

Such a restriction has negative effects on the recipient's deductible. Especially when the franchisor or a third party designated by him refuses to comply with the order, or has a limited amount, or delays delivery without commercial justification. European regulations reduce such negative effects by the fact that the decision to provide or not to provide is not only at the discretion of the franchisee or a third party.

In some cases, these arrangements are detrimental to competition, and that is where the goal is to block other competitors from entering the market. Especially in the case of tie-out terms, which may be in the form of a vertical or horizontal agreement to eliminate competitors. Of course, it should be noted that the discussion is about a product that is related to the subject of the contract. Otherwise, in accordance with paragraph D of Article 82 of the Treaty of Rome, deferment of the conclusion of a contract is prohibited by the acceptance of the obligations of completion by business partners who are not related to the subject of the contract by nature or commercial custom (Bassiouni, 1999)

Answering these questions can be helpful. Is the product that the franchisee is required to purchase from the franchisor necessary to maintain the quality standards of the network? And in the absence of its use, will the quality or services be low and there is a possibility that the network credit will be damaged? In fact, does the franchisor impose such an obligation in good faith in order to control the quality? Does the franchisor or third party know about the specific quality of a particular quality competing with other manufacturers? In order for the Tie-in condition to be contrary to competition law, there must be three conditions and (at least) two separate products. The grafter has sufficient market power (to determine the price of the graft)

In Iranian law, Article 5 prohibits competition regulations and rules governing the control and prevention of the formation of related monopolies. Paragraphs 8 and 9 of this articles provide examples. 1 Subject to the sale of goods or the provision of one service to the purchase of another service (paragraph 8) two. Forcing the other party to a transaction with a third party in a way that relates to the supply or demand of another good or service (paragraph 9) (Entessar, 1988).

Article 4 obliges the franchisor to guarantee the supply of the goods and supplies required if the franchisee undertakes to purchase these products from the franchisor or a third party. Even in paragraph 2, the franchisor assumes this obligation if the recipient franchisee is not committed to the purchase and paragraph 3 does not allow the parties to agree otherwise. These principles implicitly consider the condition of purchasing necessities to be in favor of the correct franchisor. Section 1 of Article 81 of the Rome Convention considers co-sale as a condition contrary to competition, which is an additional obligation imposed on the party. According to commercial custom or nature, that obligation has nothing to do with the subject of the contract. Regulation on collective exemption No. 4087/88 regarding the granting of privileges in Article 3 in the list known as white constraints and their inclusion as an authorized condition and for the establishment of identity and reputation of the network is the subject of activity (Ahlstrand, 2000). In paragraphs 1 and 2, the sale or exclusive use of goods that have

the desired qualitative characteristics of the concessionaire, and the sale of goods produced by the concessionaire or the suppliers designated by him, in cases where the nature of the goods is used. Objective and impersonal qualitative characteristics are impractical, provided they are sold together. Establishment arrangements are contracts among districts and utilities that award the utility power to serve clients in the region (Cook, *et al.*, 2021).

7. Third speech: Institutions related to franchising and effective regulations

Clause 1: Institutions

In this section, we will be acquainted with national, regional, and international institutions and associations that are working on and developing regulations on franchising. The importance of this sector is because these institutions have a large share in the formation of standard contracts for franchising. In fact, customs and practices regarding the franchise have been compiled and often have a code of ethics about the franchise. Adapting to these procedures makes the franchise successful. Here are the most important ones:

a) European Franchise Federation

The European Federation of Franchises is a non-profit regional organization founded in 1972. Its members are national franchisees or federations established in Europe. According to the second part of the first part of the ethical code developed by this institute, the objectives of the institute are 12

1. Promoting franchising in Europe.
2. Support the industrial franchise by promoting a code of ethics.
3. Encourage the development of franchising in Europe.
4. Securing the interests of the industrial franchise in an international organization such as the European Commission and the European Parliament.
5. Promoting the European franchise industry and its members worldwide.
6. Exchange of information and documents between federations and national associations in Europe and the world.
7. Serving members of the association.

8. Members must include a franchise chain including franchisor and franchisees.

b) International Franchise Association (IFA)

The largest and most experienced franchise organization in the world is the International Franchise Association. (http://www.franchise.org/aboutifa.aspx/ last visited 2013/.)

Its members are the franchisors, the franchisees are the recipients and producers of the requirements that must declare their adherence to the rules of procedure of this association before joining, and if they violate it, the executive committee will determine the punishment in case of violation, which can be suspension of membership or deterioration of membership.

c) World Franchise Council's home on the World (WFC)

It is a non-profit, non-political organization for national franchisees, organized on April 26, 2005. In February 1994, during the annual meeting of the International Franchise Association in Las Vegas, a group of National Franchise Associations decided to form the Council with the initiative of the International Franchise Association and the European Federation of the United Franchise. Following the meeting, a team led by the British Franchise Association, with representatives from Canada, Brazil, and Mexico, prepared a more detailed draft, which was finally accepted on June 15, 1995 in Lisbon. The World Council of Franchises operates globally and has a distinct role from regional and national federations. The Council's mission is to develop and promote the franchise and to promote public understanding of the best fair and ethical practices of the franchise worldwide. In 2003, he adopted a set of ethical principles. In fact, these principles are a set of the best recommendations for the franchise procedure, with two internal and international descriptions that are collected from the common elements of each member's code about the franchise.

d) Asia-Pacific Franchise Confederation (APFC)

It is a non-political and friendly institution of the National Associations of Franchise in Asia and the Pacific. On September 24, 1998, it was formed between 15 national franchise associations, including Australia, Malaysia, China, India, Korea, and Japan, and was registered on March 30, 2005, in Malaysia. With the goal of being able to share the experiences, information, and technical knowledge of the franchise. Establish better network communication between members, encourage further development of national associations established in Asia and the Pacific to strengthen the regional network industry and present regional information in the franchise and the common views of the national franchise associations in the region

for international institutions Like the World Council of Franchise, it is another goal of the confederation. Membership is free for countries in the region. Meetings are held once a year. The Secretary-General is transferred from one country to other every four years. The official language association of this association is English.

e) International Institute for the Unification of Private Law (UNIDROIT)

The Intergovernmental Organization was first established on October 3, 1924, at the suggestion of the Italian government, as an institution affiliated with the League of Nations. Then, with the destruction of the latter institution in 1940, it was re-established based on an independent multilateral agreement with the accession of 58 countries. The purpose of this institute is to study the needs and methods of modernization and harmonization of private rights, especially commercial law between countries, which is through the formulation of documents, principles and rules of uniformity (Iran since 1343 according to the law of Iran's accession to the institute). Has been a member of this institute). As mentioned, the institute does not operate exclusively on franchising. However, one of the issues that the institute has studied and researched in this regard and then prepared a sample law and principles is the franchise. At the suggestion of Canada, he began studying, and in 1993, the Institute's Advisory Council decided to set up a franchise study group, which is still active.

f) World Intellectual Property Organization (WIPO)

The first and largest international community action to protect industrial property was the ratification of the Paris Convention (March 20, 1883), which led to the formation of the Paris International Union for the Protection of Industrial Property (Seckelmann, 2011). It provided support for industrial creation to citizens of member states of the alliance, and an international office was set up to manage the implementation of this convention. The office was merged in 1893 with the office of the Berne Union, established under the Berne Convention of 1886, and a single international office was established as the International Office for the Protection of Intellectual Property (Ricketson and Ginsburg, 2006). The World Intellectual Property Organization was established under the Stockholm Convention of 14 July 1967, which entered into force on 26 April 1970 (Wirtén, 2010). In addition, it was the responsibility of the United Nations Office for the Coordination of Humanitarian Affairs.

Due to the growth of franchise agreements, the Office of the World Intellectual Property Organization in 1994 developed guidelines using the theories and advice of several prominent jurists to introduce the franchise and its types, comparing it with other contracts and obligations of the parties. The following sections are referenced.

8. Clause 2: Regulations affecting the franchise

The provisions of the regulations adopted by the International and Domestic Authorities for the purpose of directing and regulating the franchise have been adopted. Domestic regulations are mandatory in every country and may be a model for inspiring other countries to pass legislation. International regulations may have a binding aspect or merely a moral one, such as the code of ethics developed by some institutions. These regulations may specifically address the franchise or the general rules that affect the franchise. We will only introduce specific international regulations.

A) International Institute for the Unification of Private Law Guide to International Master Franchise Arrangements. The institute has compiled the most important legal documents on franchising, which includes two documents: Guide to Contracts the main international franchise, developed in Rome in 1988 and revised in 2007. This document contains a high level of information on various issues of the process of concluding, implementing and enforcing franchise agreements and is not limited to mere legal issues. The second and most important document on the subject of sample law is the disclosure of information in the franchise. The franchise issue, along with an explanatory report, is clearly used by domestic lawmakers as a soft law and commercial custom. This sample law was proposed in 1985 by Canada. Preparations for the law began in January 1999. With the draft prepared in December of that year, it was accepted by the Franchise Studies Group. In December 2000, the Working Group completed its work, and an explanatory report was prepared and approved by the Committee of Government Experts, which was finalized in April 2002. In September 2002, a draft sample law and explanatory report were sent to the Institute Council.

a. European Code of Ethics for Franchising (ECE)

The code was developed in 1972 by the European Federation of Franchises and was revised on December 5, 2003 (The European Franchise Federation (EFF), 2016).

Member States may accept and interpret this code in their home country, and the proposed interpretation shall be added by the accepted Members as an amendment to the Code without modification. This code has five sections: In the first part, he explains the introduction, goals and conditions of membership. In the second part, after providing definitions to the guiding principles, which oversees the obligations of the parties to the franchise agreement and how to treat each other, which emphasizes fair behavior and goodwill and resolving disputes with goodwill and negotiation. The third section monitors the recruitment, advertising, and disclosure of information. The fourth section deals with the franchise

agreement and the terms and conditions it must have. The fifth section deals with the applicability of this code to the main franchise agreements, which stipulate that the franchisor and the franchisee do not apply to the main recipient.

b. European Commission collective exemption regulations

The first regulation was No. 240/96, which, due to non-compliance with the European Commission's competitive goals after several years of study, finally adopted Operation Directive 772/2004 in 2004, a guideline for the implementation of which was subsequently adopted (Cini, 1997).

These regulations govern the implementation of Articles 81 and 83 of the Rome Statute (Cassese *et al*., 2002), and the 100 and 102 Lisbon Conventions on collusion and the abuse of monopoly position (Craig, 2010), which may not apply to certain vertical and horizontal relations under certain conditions. If these conditions are met, exemptions, limited in space and time, apply, which can also be covered by the franchise. The most important of these conditions is the lack of control over a part of the market, more than the quorum set in the regulations.

c. Principles of European Law on Commercial Agency, Franchise and Distribution Contracts

These principles are the latest legal text on franchising, distribution of goods and trade representation agreements prepared by the European Civil Rights Study Group (Von Bar, 2002) at the request of the European Commission in 2006 (Nugent and Rhinard, 2015) These principles are not binding and will only be binding on them if the parties to the agreement agree. However, the purpose of these rules is to harmonize the laws of the EU countries in the field of these agreements. It is the result of a comparative study of the working group on the rules and regulations of EU member states and customs, and contains common progressive principles on franchise agreements and has been made available to legislators as a scientific model.

d. Disadvantages of franchise for franchisee

1. The high cost of starting a franchisee is an inconvenient situation for the franchisor. The franchisee must pay the franchisor fees such as franchise fees, license fees, a percentage of advertising revenue, as well as the cost of training human resources, whether monthly or weekly. The royalty paid to the franchisor may be an amount of the transaction volume. Therefore, franchisees who have a lot of activity have to pay more points by increasing their income, and this is more in favor of the franchisor. Because more effort is required, the receiver franchise goes to the franchisor's bag.

2. The restrictions imposed by the franchisor on the franchisee have been defective and restrict the freedom of the franchisee. Among other things, he is required to follow the instructions of the franchisor and even in the case of decorations and consumables, price determination, and so on.

3. The franchisor must operate within the framework set by the franchisor and does not have the freedom to operate a personal business. The franchise, on the other hand, is usually limited to five years. A successful franchisee who has become profitable is sometimes forced to accept the franchisor's demand for more royalties in order to maintain it. Of course, the franchisor can be given the right and option to extend the contract.

9. Disadvantages of franchising for franchisor

1. Continuous communication with customers plays an important role in recognizing the flow of market movement and innovation and quality improvement When a firm franchises its business to implement a business approach, it may lose touch with end customers who are the best source of competitive ideas, and customer feedback on the needs of deficiencies and defects of change should be conveyed to the franchisees and not to the franchisor.

2. In the franchise network, the franchisee of the recipients is engaged in the activity, supply, distribution and production of goods and services with the name and symbol that represents the network. Therefore, the improper performance of one of the franchisee has a negative effect on the franchisor and other franchisee due to the common interests and damages the network. Therefore, franchising with franchising increases the risk of system failure. In addition, disclosure of secrets by the franchisee is a risk to the business.

3. There is a special responsibility in consumer protection laws for the producer of goods, which may be due to the application of the franchisee's franchisee. In this way, because the franchisee offers the franchisor with the name and sign of the franchisor. Therefore, in case of damage caused by franchisor defects, it may be held accountable.18

10. The benefits of franchising for the franchisor

Assigning a franchise has several benefits for the franchisor. Here are some of the most important ones:

1. A business or industrial unit that seeks to expand its field of activity beyond its internal borders. In this way, it seeks to gain more credit and

profit. First, it must overcome barriers to entering the foreign market. Secondly, to have high liquidity for investment and labor supply. Using the franchise agreement avoids the above problems; this is because the franchisor does not enter the foreign market directly and faces relatively few obstacles. It may be possible to benefit from the facilities and incentives due to the investment and cooperation with the domestic industrial unit. Therefore, the development of trade with capital and the activity of the franchisee makes it possible to penetrate markets that could not be accessed without losing control of the system.

2. Franchisors provide goods and raw materials from a single franchisor, which in itself is of great benefit to the franchisor. In fact, uniformity in the quality and shape of the network product and maintaining the name and reputation makes. The franchisor requires the franchisee to purchase raw materials and supplies under certain conditions. In addition to personal activity, it also receives periodic and initial royalties from the franchisee, which is another source of income for the franchisor.

3. Creating an independent business has risks, including that the system is not responsive and does not function as expected. In fact, it is not a guarantee of success. In franchising, the franchisor develops its business with the franchisee's capital. The franchisee also starts with the backing of the franchisor. The result is not a partnership to share the risk, but the risk of business activity is borne by the franchisee, although starting a business with a franchisee greatly reduces the risk. The establishment understanding execution in agreement law viewpoint, and components hindering and supporting the establishment arrangement in the agreement law viewpoint were dissected (Maulidiana, 2017).

11. Advantages of franchising for franchisee

1. The franchisor is established by spending less capital and labor compared to creating an independent economic unit and in a short time to a commercial system. With the least risk of having a mark or name and getting your test back, this will allow for a quick return on investment. In addition, a brand that is valued and respected by the customer and is a primary support and continuous support for this system. The franchisee puts aside the freedom holder who owns an independent business to become a part of a group that will run a business together, and there is no need to worry about effective ways to do business. Because a pre-studied and tested system is provided to the franchisee by the donor.

2. One of the advantages of entering the franchise network is the reputation, receiving assistance, counseling, and training of employees, and it is possible for him to offer a product or service that is known and

trusted from the very beginning. The stipulation that the franchise is a well-established and successful system creates security for the franchisee in the market and reduces the risk. In addition, the franchisee will benefit from a proven successful business system that is the result of years of effort and continuous development by the franchisor and is a job security for the franchisee.

3. The franchisee benefits from a brand and a good image of a brand in the mind of the customer. This is a very significant advantage, because gaining popularity in the eyes of customers is a big challenge for a start-up business. A name or mark for good reputation requires time and money, but using a good, reputation mark has commercial benefits. In addition, the franchisee will have a loyal customer named after starting the activity of the network by starting the activity of the network anywhere, and in other places, the attracted customers will become famous and will go to the newly established enterprise.

4. When the business goes out of its way and becomes part of a larger collection.

In this way, marketing costs will be shared among the businesses covered, this multiplicity of branches has been a form of marketing, and as a result, business will take its place in the mind of the customer.

Conclusion

Fraud legis, such as the voluntary change of the elements of dependence and the specific application of the general theory of abuse of rights, are among the obstacles to the mandatory implementation of foreign law in private international law. It is sufficient that one of the claimants, in order to escape the competent law, fraudulently uses the rule of conflict resolution in order to create fraud in private international law. In most cases, fraud legis is accompanied by the fraudulent selection of a jurisdiction that uses it to enforce a more lucrative substantive law for one of the parties of dispute and is subject to disregard for the applicable law. In this regard, according to Lapradel's theory, one of the French jurists, fraud against the law is a change in the elements of dependence, in order to create an element of unrealistic and imaginary dependence. For example, in the case of Ms Bufferman, she was sentenced by a French court and remained a Frenchman in order to alter the fraudulent nature of her French citizenship along with her German citizenship. In cases where an element of dependence is related to the will of the parties, fraud legis may take place. These elements of dependence that can make it possible for individuals to cheat the law are accommodation and citizenship. The mechanism of fraud legis can raise other elements of dependence. For example, changing the place of

conclusion of a contract when the law of the place where the contract takes place is applicable will lead to the realization of fraud legis. But this legal theory does not agree on changing all the elements of dependence to make it possible to escape the law. According to Pierre Meyer, another French jurist, fraud legis arises as a result of behaviors that change the elements of dependence on the emerging age, and in order for fraud legis to be realized in the strict sense of the word, it is necessary to do it with the independent will of the people and according to their desire and consent; this is without the situation being able to maintain real relations with countries whose laws have been falsely ignored.

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National Security: Theoretical-Legal Research

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Abstract

The study is relevant as the category of «national security» is multilevel. The work reveals the characteristics and components of this system. The concept of national security exists all over the world. It is one of the most important types of security and is studied by academics from different countries. Furthermore, the concept of national security means a set of scientific and theoretical ideas, opinions and views that dominate in each society and is a subjective reflection of objective ties and national security relations in the public consciousness. From a documentary methodology the article aims to study the legal nature and essence of national security. It is concluded that the genesis of this concept tracks the dialectical interaction of objective and subjective factors. The legal regulation of national security is a comprehensive and multifaceted process based on a complex system of legal rules and regulations. The most significant ones are analyzed in this study. However, academics have not considered all the legal components of national security.

Keywords: economic security; information security; State and constitution; human rights; legal investigation.

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Seguridad Nacional: Investigación teórico-legal

Resumen

El estudio es relevante ya que la categoría de «seguridad nacional» es multinivel. El trabajo revela las características y componentes de este sistema. El concepto de seguridad nacional existe en todo el mundo. Es uno de los tipos de seguridad más importantes y es estudiado por académicos de diferentes países. Además, el concepto de seguridad nacional significa un conjunto de ideas, opiniones y puntos de vista científicos y teóricos que dominan en una sociedad determinada y es un reflejo subjetivo de los vínculos objetivos y las relaciones de seguridad nacional en la conciencia pública. Desde una metodología documental el artículo tiene como objetivo estudiar la naturaleza jurídica y la esencia de la seguridad nacional. Se concluye que la génesis de este concepto rastrea la interacción dialéctica de factores objetivos y subjetivos. La regulación legal de la seguridad nacional es un proceso integral y multifacético basado en un complejo sistema de normas y regulaciones legales. Los más significativos se analizan en este estudio. Sin embargo, los académicos no han considerado todos los componentes legales de la seguridad nacional.

Palabras clave: seguridad económica; seguridad de información; estado y constitución; derechos humanos; investigación legal.

Introduction

The analysis of the current Russian legislation (Federal Laws of the Russian Federation "On Security", "On the Government of the Russian Federation", "On the Federal Security Service", "On Operational Search Activities", etc.) demonstrates that the following concepts are used in the field security: "state security", "security of the Russian Federation", "personal security", "military security", "national security", "public safety", and "economic security" (Gutsenko and Kovalev, 2002). The concepts of "state security", "security of the Russian Federation", and "public safety" are not given a full and comprehensive interpretation in the above-mentioned legal acts (Gutsenko and Kovalev, 2002). The genesis of this concept traces the dialectical interaction of objective and subjective factors.

1. Subjective factors are represented by the following ideological foundations: elements of political and military ideology, religious consciousness, philosophical and political concepts, ethical ideas typical of a given society, as well as its national-historical and cultural traditions.

2. Objective factors are geopolitical conditions of the environment and a set of basic potentials that ensure the national power of any state: economic, social, political, scientific, and military.

Economic potential includes the power and quality of the industry, transport, and agriculture, the efficiency of an economic mechanism and its regulatory impact on the economy, and the modernization of the economy with due regard to scientific and technological innovations.

The social potential is the state and level of development of social structures, the nature of relations between social groups and ethnic communities, the quality of life of most citizens, their working conditions, and the ability of the state to protect society from destructive actions in these social conditions.

The political potential is the nature and state of a particular political system, as well as all its components (socio-political, institutional, constitutional-legal, communicative, functional and theoretical-psychological), and their ability to mobilize the power of all potentials to secure an individual, society, and state from any encroachment on their interests.

The scientific potential is the development of all branches of science, their ability to solve the current and future problems faced by a certain country, including ensuring its security.

The military potential is a complex of state material and spiritual capabilities to maintain and improve armed forces, increase their combat effectiveness, and ensure the effective use of national security in the process of military defense.

1. Methods

V.I. Dahl's Explanatory Dictionary of the Russian Language defines security as "the absence of danger, safety and reliability" (Dahl, 1996: 78). The Constitution of the Russian Federation of 1993 (as amended on July 1, 2020) uses the term "security" in a broad sense. Such terms as "state security", "national security", "public safety" and "security of citizens" are also applied. When the Constitution of the Russian Federation uses the concept of "security" in a broad sense, it should be borne in mind that this very concept is the source and basis for state security. It is necessary to dwell on the influence of "homeostasis" on the system of national security. The philosophical definition of homeostasis is as follows: homeostasis (from Greek *homoios* (similar) and *stasis* (state)) is the desire and ability of a system to maintain an equilibrium state that characterizes the stability, reliability, and conservatism of such a system. Since national security is a system, it is also characterized by stability.

The formation of the "national security" term in scientific literature is associated with the policy pursued by the United States of America. In

the first half of the 20th century, American scholars and political analysts filled it with meaningful content, i.e. they emphasized the main tasks of national security to which all political, economic, and social processes and phenomena should be oriented.

The category of "national security" was officially and widely used in the USA. Later the American concept of national security was introduced and developed into the doctrine of state security. The consideration of national security as a systemic object of legal research is of theoretical and practical relevance.

2. Results

The category of "national security" is multilevel. This article reveals the features and components of this system. The concept of national security exists all over the world since it is one of the most important types of security.

The beginning of the 21st century is characterized by much attention of public authorities and state structures to the issues of national security (Kudinov, 2010). The national economy has also entered a new stage of its development. Modern economy forms in a close connection with the development of national security. Under the current conditions, economic reforms are conditioned by the interests of national security. These changes occur in the context of globalization and in connection with the active involvement of Russia in international political and economic processes.

3. Discussion

In Russia, the issue of "science – national security" became especially relevant after the collapse of the USSR, when the once-great state with a powerful military and scientific potential suddenly reduced itself to the level of developing countries. To a large extent, these are the consequences of ill-considered and hasty reforms in political, economic, and social spheres that were implemented in the early 1990s. Due to these reforms, the active liberalization and denationalization of the economy, the latter was seriously deformed, re-oriented towards the export of raw materials and the curtailment of manufacturing industries. Under these conditions, science and high technology became practically useless and entered the state of a crisis.

However, the laws of social development show that all its components are closely interconnected and interdependent. This also applies to such spheres as science, economy, and defense. Strong science and technologies

developed on its basis ensure a high level of economic and national security, including defense. The needs of the national economy and security encourage the development of science. Regarding such tasks, we have not considered some scientific works that are of much importance for the full perception of national security in Russian legal science. Their authors are as follows: E.I. Balykova (2007), N.A. Boskhamdzhieva (2008), L.G. Gobedzhishvili (2005), V.V. Zhilinskii (2007), N.I. Zinchenko (2006), R.F. Idrisov (2002), V.A. Kalamanov (1999), I.B. Kardashova (2006), V.A. Kolokoltsev (2005), A.P. Kuznetsov (2007), A.A. Kukar (2004), A.O. Linde (2008), O.M. Kulakov (2007), A.V. Nazarenko (2008), and E.S. Palukhina (2006).

According to the concept of global insecurity, national legislation should fulfill its international obligations to maintain international security and strengthen cooperation with other states, indicating specific tools and aspects of its manifestation. This concept of unified national security was first formulated by E. Gareth in "Cooperation for Peace". He highlighted "a broader definition of national security in both internal and external aspects, where the policy of decision-making is encouraged rather than deterrence" (Gareth, 1993: 55).

Conclusion

The legal regulation of national security is a comprehensive and multifaceted process based on a complex system of legal norms and regulations. The most significant of them are analyzed in this study. However, scholars have not considered all the legal components of national security.

Due to regulatory uncertainty, it is difficult to properly understand and apply the law governing competences in the field of combating corruption. We have concluded that it should be legislatively indicated which type of security is in question and to which sphere of social relations it belongs since it is of vital importance for an individual, society, and state. Otherwise, there is not only competition of legal norms but also confusion of competences common to law enforcement subjects, including in the field of fighting against corruption. Within the framework of scientific studies, scholars and practitioners consider the existing approaches to ensuring national security. Then scientifically grounded methods are developed for their implementation in practice. In this regard, the current Federal Law "On Combating Corruption" does not mention that corruption poses a threat to the security of the Russian Federation.

The fundamental documents in the field of state security classify threats of corruption into internal and external. The main external threats are as follows:

a) The activities of foreign intelligence services and related foreign organizations aimed at finding, establishing, and using corrupt ties for subversive purposes.

b) The activities of transnational criminal communities that use corrupt officials to realize their criminal aspirations.

A serious internal threat to the security of the Russian Federation in the sphere of state power (legislative and executive) and state administration is the criminal activity of corrupt officials working in state bodies, especially at the federal level.

In this article, national security is defined as a system or set of elements that ensure the protection of an individual, society, and state. We consider the homeostasis of national security. This article also reveals the essence and features of national security and its subsystems. Being a systemic object of legal scientific research, national security comprises such concepts as a set of elements and features common to this system; the balance and influence of the environment on national security and its subsystems; types of national security. In our opinion, the urgent problem of modern time is the relationship between science and national security. For the first time, this issue is analyzed, on the one hand, as the impact of science on ensuring national security and, on the other hand, as the security of science itself, its protection from various threats and dangers. As a rule, the priority tasks of the state in the field of improving the protection of various objects from negative activities are the preservation of integral territory, the provision of necessary resources to different sectors of the national economy, the development of the ability of control structures to predict and prevent crises, overcome their consequences, etc. The implementation of these provisions should strengthen the security system (Olshevskii, 2010).

Recommendations

The homeostasis of national security has critical parameters in political, economic, and social spheres. The political sphere includes territorial integrity, sovereignty, and political independence. The economic sphere comprises foreign economic independence and stability of the domestic market. The social sphere represents the unity of society, guarantees of civil rights, and the continuity of power.

The disruption of homeostasis influences the system of national security in the following manner. If equilibrium (homeostasis) is violated, the environment has such a strong effect on a system that it weakens and worsens the critical parameters of national security.

The existing stability of the Russian economy and its independence from fluctuations in foreign markets is high. However, the low level of resource efficiency and the weak competitiveness of the Russian economy greatly weaken the economic security of Russia. To sum up, we need to emphasize the importance of homeostasis as the stability of national security because its violation undermines national security and hinders the development of the country in different areas.

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The Constitutional Court in the System of Public Authorities: A Doctrinal Approach

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Abstract

The article examines the place and role of the Constitutional Court in the system of public powers in the doctrinal understanding of the concept of human rights and constitutionalism. The Constitution of the Russian Federation establishes the basic constitutional and legal principles that are fundamental to substantive and procedural law. Judicial constitutional review, as the experience of European countries shows, is the most effective in protecting the Constitution. The principles of law applied to the doctrinal assessment of the place and role of the Constitutional Court in the system of public powers constitute a rather dynamic legal concept. The methodology is based on the legal system, public relations, and the political-state course, which, like all fundamental ideas, change, affect legal awareness and establish new requirements for legal regulation and the formation of an appropriate mechanism. The article concludes that the most important condition for the implementation of the prerogatives of the judiciary to administer justice in the consideration and resolution of specific cases, with emphasis on the study and evaluation of evidence. It is the evidence that serves as the basis of information for the court's findings in the case.

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Keywords: constitutional court; public authorities; procedural law; doctrinal approach; Russia federation.

El Tribunal Constitucional en el Sistema de Poderes Públicos: Un enfoque doctrinal

Resumen

El artículo examina el lugar y el papel del Tribunal Constitucional en el sistema de poderes públicos en la comprensión doctrinal del concepto de derechos humanos y constitucionalismo. La Constitución de la Federación de Rusia establece los principios constitucionales y legales básicos que son fundamentales para el derecho sustantivo y procesal. La revisión constitucional judicial, como muestra la experiencia de los países europeos, es la más eficaz en la protección de la Constitución. Los principios de derecho aplicados a la valoración doctrinal del lugar y papel del Tribunal Constitucional en el sistema de poderes públicos constituyen un concepto jurídico bastante dinámico. La metodología se basa en el ordenamiento jurídico, las relaciones públicas y el rumbo político-estatal, que, como todas las ideas fundamentales, cambian, afectan la conciencia jurídica y establecen nuevos requisitos para la regulación legal y la formación de un mecanismo adecuado. El artículo concluye que la condición más importante para la implementación de las prerrogativas del poder judicial para administrar justicia en la consideración y resolución de casos específicos, con énfasis en el estudio y valoración de las pruebas. Es la evidencia que sirve como base de información para las conclusiones del tribunal en el caso.

Palabras clave: tribunal constitucional; autoridades públicas; derecho procesal; enfoque doctrinal; federación rusa.

Introduction

The Constitution is the basic law (system of laws) of the state, which has the highest legal force. It establishes the foundations of social order and government, the relationship between the state and the individual, the rights and freedoms of man and citizen, and the fundamental principles of organization and activity of state authorities (Vitruk, 2013). The supreme legal force of the constitution means that all other laws, other acts, and law enforcement practices must comply with it, otherwise, they are invalid. If the norms of the constitution are not observed, then the basic law will remain a dead letter, its norms will only be declarative. To avoid

a contradiction between the legal and actual constitution, a special control over its observance is necessary, which is constitutional control (Kozlova and Kutafin, 2012).

The most important condition for the implementation of the prerogatives of the judiciary to administer justice in the consideration and resolution of specific cases is the study and assessment of the evidence. It is the evidence that serves as the information basis for the court's conclusions in the case. However, one of the means of obtaining evidence is expertise, which is generally understood as the study of any issues by experts, the solution of which requires special knowledge. Constitutional court proceedings are no exception in this sense, which, according to part 2 of Article 118 of the Constitution of the Russian Federation, is one of the forms of exercising judicial power. Since the Constitutional Court of the Russian Federation considers and resolves only questions of law, the knowledge that may potentially be required for the resolution of cases referred to its competence is primarily legal.

1. Methods

At present, there are ongoing discussions about the legal nature of the Constitutional Court, the future of constitutional legal proceedings, procedural legislation, and procedural law. Many modern Russian scholars are engaged in the theory of procedural law and the theory of constitutional proceedings: A. Pavlushina, O.E. Soldatova, V.N. Balandin, and others. Moreover, this legal category is interdisciplinary. However, it is treated ambiguously in the theory of state and law and is not recognized by all scholars. Each branch of substantive law must have its procedural continuation. Substantive and procedural law are legal communities in the system of law, despite all the differences that have a close relationship with each other. For example, S.S. Alekseev (1994), V.N. Balandin, A.V. Vasilev (2008), V.M. Gorshenev (1985), etc. wrote about the place and role of constitutionalism in the development of the state.

The doctrine of a normative legal act as a source of law is a kind of legal doctrine. It allows formulating the main legal concepts and categories, as well as focusing on the implementation of research tasks aimed at the theoretical and legal justification of the features of a normative legal act. The greatest attention in the modern theory of law and the theory of branches of law is paid to the relationship between the source and the form of law. Legal theorists and scholars in the field of constitutional law pay attention to the multiplicity of the concept of the source of constitutional law. The Constitution of the Russian Federation establishes the basic constitutional and legal principles that are fundamental for both substantive and procedural

law. The principle as the initial idea, the provision, should be uniform in its content for both substantive and procedural law. Consequently, the principle enshrined in the Constitution should be transferred to other legal acts without modification and have a uniform interpretation to exclude discrepancies. Principles are a dynamic legal phenomenon. Their formation takes quite a long time, they depend on the specific state-political situation, the requirements that establish the existing social relations and legal practice. The principles may not be clearly expressed in the legislation and may be found in various parts of it. Optimally, they should be enshrined in the constitution. The principles may change according to the requirements of the time, changes in the legal system, and legislation.

2. Results

Constitutions and charters of the subjects of the Russian Federation as a source and form of the constitutional law of the Russian Federation are based on the doctrine that reveals three main characteristics. The first main characteristic concerns the predetermination of the origin, objective necessity, and conditionality of the constitutions and charters of the subjects of the Russian Federation. It is this characteristic that reflects the qualities of the constitution, the charter of the subject of the Russian Federation as a source of law. In this context, it is important to substantiate the genesis of the origin, concept, and legal nature of the constitution, the charter of the subject of the Russian Federation as a source of law. The legal nature, in turn, is revealed through such key categories as the properties and functions of constitutions and charters of the subjects of the Russian Federation, reflecting the unique purpose of this type of normative legal acts (Ershov, 2018).

The second main characteristic reveals the features and place of constitutions and charters of the subjects of the Russian Federation as a form of law. In this context, it is important to determine the correlation of constitutions and charters of the subjects of the Russian Federation with other normative legal acts in a hierarchically organized legal system of the Russian Federation and the subjects of the Russian Federation.

The third main characteristic is related to the identification of the form, structure, and content of constitutions and charters of the subjects of the Russian Federation, those qualities that distinguish this form of law from other forms of law as legal regulators of constitutional, statutory public relations.

The subjects of constitutional proceedings are special bodies and persons participating in constitutional proceedings, possessing, by virtue of the law, subjective procedural rights and duties and exercising them in

the course of constitutional proceedings. The subject of constitutional legal proceedings is a state body, an official, an individual, or a legal entity. Each subject of constitutional legal proceedings has its procedural status, i.e. a set of procedural powers defined by law (Salikov, 2014).

The ultimate goal of doctrinal understanding of the constitutions and statutes of constituent entities of the Russian Federation is the definition of the concept, legal nature, main content, i.e. the subject of constitutional, statutory regulation, as well as identification of the patterns of the emergence, functioning, and development of constitutions and charters of the constituent entities of the Russian Federation as a source and form of constitutional law in the context of the concepts of socio-political, state-legal, and axiological conditionality and the implementation of the principle of federalism and the tasks of regional development. Legal theorists say that today the rule of law is not built in any country in the world, because this process requires a huge period of stable and systematic building up of relations between society and the state. In our opinion, Canada is the closest country to the rule of law today, as it is a country where they managed to create a legal system in which many subcultures of society are preserved to the maximum extent, including language, traditions, style, and way of life, as well as the quality of life itself.

3. Discussion

We will consider the legal process (related to the concept and understanding of the legal nature of constitutional proceedings and the legal status of the Constitutional Court) as a dynamic legal phenomenon, a form of legal activity within the framework of both a jurisdictional (judicial) process and a non-jurisdictional process that is not carried out within the framework of a court hearing. There are other classifications of the legal process, but we will not disclose them in this article. Since we are talking about the legal process as an activity in the aspect of explaining the legal nature of the Constitutional Court, it means that this activity must be organized in a certain way. The basis of this activity should be either substantive or procedural rules of law, as well as the principles of law.

> We are interested in the functional approach to the principles of law concerning the legal nature of the Constitutional Court, their practical significance related to the regulation of public relations. For example, V.M. Gorshenev, when defining the principles of procedural activity, writes that they serve as a kind of reference marks, pointers, the observance of which ensures the normal and uniform implementation of traditional and non-traditional legal processes. Since we are talking about the legal process as a theoretical category that combines various types of processes and has practical significance, it is necessary to identify the principles that will be basic for the legal process and will characterize it as a

specific legal phenomenon. According to A.V. Yurkovskii (2013), the system of representations about the general democratic, generally civilized political and legal values of an organized society, as well as the emergence of this category in Western civilization as a result of constitutional revolutions, should be attributed to the constituent elements of the concept of constitutionalism.

Conclusion

A special feature of the Federal Constitutional Law No. 1-FCL of July 21, 1994 "On the Constitutional Court of the Russian Federation" is that it combines both material and procedural regulation of the activities of the Constitutional Court of the Russian Federation. For this reason, as well as due to the absence of the Constitutional Court of the Russian Federation of instance relations with any other courts, the procedural part of the Law on the Constitutional Court has a relatively small volume and a simpler structure than the procedural codes. However, the issues of examination in constitutional proceedings remain poorly studied in comparison with similar problems of civil, criminal, and other types of proceedings (Luchin and Doronina, 1999: 111). In particular, the Law on the Constitutional Court of the Russian Federation regulates the issues of evidence and proof in constitutional proceedings in an extremely fragmentary manner. Several fundamental issues arising in connection with the examination are resolved in the Law on the Constitutional Court in a completely different way than in other laws regulating judicial activity. According to Article 52 of the Law on the Constitutional Court, experts are participants in the process – along with the parties, their representatives, witnesses, and interpreters (Grishina, 2006).

The fundamental principle of the legal process is the principle of legality – this principle speaks of the priority of the law and the norms of law applicable to a particular case, expressed in the equality of all under the law. Regardless of whether we are at the stage of the process – at the stage of negotiations, the conclusion of a contract, pre-trial settlement of a dispute, or directly in court, we are primarily guided by the current norms of law in our activities.

The principle of objectivity says that a specific legal case should be resolved based on the actual circumstances of the case, considering the rights and obligations assumed by the parties (rights, obligations, distribution of the burden of proof, presentation of evidence).

The principle of continuity – this principle says that as an activity, the legal process must be continuous and necessarily lead to a specific result.

The principle of accessibility – this principle says that the parties to a particular activity should be able to exercise their rights and apply to

the court or state bodies to resolve any legal issue or choose alternative methods.

Adversarial principle – this principle is mainly characteristic of the judicial process, but it is often used in resolving a dispute or legal conflict in the framework of an alternative mediation procedure when the parties can choose a mediator or choose a panel of arbitrators in the framework of arbitration proceedings.

The principle of procedural and commercial economy tells us that specific procedural actions should be carried out in a certain allotted period and covered by certain material costs. The principle of objective truth – this principle says that the truth is the main goal of the legal process, and its objectivity is achieved by paying close attention to the actual circumstances of the case, providing evidence of their correct legal assessment with registration in the relevant normative legal act with references to specific norms of law.

The doctrine of a normative legal act as a source of constitutional law is based on the postulate of the dominant position of this source as a form of law. Any state is characterized by a hierarchically structured system of normative legal acts, the supreme position in which is occupied by the constitution. A federal state is characterized by a constitutional system consisting of a federal constitution and constitutions of the constituent parts of the federation. Accordingly, the federal structure of modern Russia determines the existence of two types of constitutional acts – the federal constitution and constitutions and charters of the subjects of the Russian Federation.

Recommendations

Constitutional law and constitutional-legal regulation have evolved, but constitutional law has always regulated economic relations, although at present such regulation is becoming "more detailed and branched". This has affected not only the content of modern constitutions but also the content of constitutional law as a science, in particular, served as the basis for the emergence and development in legal science of the concepts of "economic constitution" and "constitutional economy". The first concept has a broader application and involves considering quantitative indicators. The second concept is widespread in Western European legal thought, including in Russia, and is based on the analysis of qualitative indicators. These concepts are not opposed to each other, they build scientific ideas "about the existence of several general principles and norms of a constitutional nature that regulate the foundations of economic relations".

The doctrine of normative legal acts that occupy a supreme position in the legal system is aimed at identifying a certain set of characteristics that reveal both common with other normative legal acts and their special significance. It seems that in the context of the doctrine of a normative legal act as a source and form of constitutional law, the study of the fundamental characteristics that reveal its features is of theoretical and scientific-practical importance. The first characteristic concerns the predestination of the occurrence, the objective necessity, and conditionality of a normative legal act. It is this characteristic that reflects the quality of a normative legal act as a source of law. In this context, it is important to substantiate the genesis of the origin, the concept, and essence, the legal nature of a normative legal act as a source and form of law. The legal nature, in turn, is revealed through such key categories as the properties and functions of a normative legal act. The second characteristic is aimed at revealing the distinctive features and place of a normative legal act in the system of other normative legal acts. In this sense, its characteristics as a form of law are revealed.

The constitutional and legal regulation of the relations under consideration is based on the balance of state, public, and personal interests since the construction of the legislative system should be based on the balance of interests of various subjects of the economic system of society. It is necessary to establish constitutional principles that, despite a certain binary nature, could be built into a logical system of economic relations. The analysis of the constitutional regulation evolution in various countries, including Russia, allows concluding that the constitutional regulation of economic relations is becoming more and more detailed over time. Thus, if attention was mainly paid to securing the right of property and guarantees of its protection in the first formal constitutions and to securing for the legislative body the right of exclusive rights to the emission of money and some other actions in the sphere of the economy, then later many constitutions began to contain special chapters on economic system or even more specific cases of manifestations of economic relations, for example, the chapter on public finance (Andreeva, 2008).

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The Inevitability of the USSR Collapse and the Emergence of New Russia in the Mass Media

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Abstract

From a documentary perspective the article addresses issues such as the collapse of the Soviet Union, separatism in the USSR and the existence of similar destructive processes in modern Russia. Special attention is paid to the role of the media in the collapse of the USSR. The goal was to find out whether the collapse of the Soviet Union and the rise of New Russia were inevitable. Consequently, the additional objectives of the article are to identify the main reasons for the collapse of the USSR, to draw an analogy with the situation in modern Russia, to analyze propaganda techniques by examining the Moscow News newspaper, and to study and generalize the main problems of inter-ethnic dialogue in the Soviet and post-Soviet space. The relevance of the topic is justified by the lack of a unified view in the community of experts on the causes and consequences of the collapse of the USSR, as well as by the lack of a unified assessment of the period of Perestroika and the inevitability of the transition from socialism to capitalism in Russia. It is concluded that in the geopolitical phenomenon of the collapse of the USSR occupies a special role the national and international media dimension.

Keywords: Russia; USA; mass media; autonomy; federalism.

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La inevitabilidad del colapso de la URSS y el surgimiento de una nueva Rusia en los medios de comunicación

Resumen

Desde una perspectiva documental el artículo aborda temas como el colapso de la Unión Soviética, el separatismo en la URSS y la existencia de procesos destructivos similares en la Rusia moderna. Se presta especial atención al papel de los medios de comunicación en el colapso de la URSS. El objetivo fue averiguar si el colapso de la Unión Soviética y el surgimiento de la Nueva Rusia fueron inevitables. En consecuencia, los objetivos adicionales del artículo son identificar las principales razones del colapso de la URSS, establecer una analogía con la situación en la Rusia moderna, analizar las técnicas de propaganda examinando el periódico Moscow News y estudiar y generalizar los principales problemas del diálogo interétnico en el espacio soviético y postsoviético. La relevancia del tema se justifica por la falta de un punto de vista unificado en la comunidad de expertos sobre las causas y consecuencias del colapso de la URSS, así como por la falta de una evaluación unificada del período de la Perestroika y la inevitabilidad de la transición desde del socialismo al capitalismo en Rusia. Se concluye que en el fenómeno geopolítico del colapso de la URRS ocupa un papel especial la dimensión mediática nacional e internacional.

Palabras clave: Rusia; EE. UU; medios de comunicación en masa; autonomía; federalismo.

Introduction

After 70 years of the fraternity of the Soviet peoples, as a result of the desire of some ethnic, sub-ethnic and regional groups for sovereignty or autonomy, the Russian Federation appeared in the 1990s. After the collapse of the USSR, separatist sentiments emerged in Russia. The most striking and aggressive separatist movement was in the Republic of Ichkeria (Chechnya) with the subsequent heavy fighting against federal troops. Separatism began to gradually emerge in Dagestan, Ingushetia, Tuva, Tatarstan, Bashkortostan, Yakutia, Buryatia and even in some regions inhabited mainly by Russians. Since the 2000s, separatism in Russia has been gradually declining, although its potential remains great. The collapse of the Russian Federation according to the scenario of the collapse of the USSR was a threat for a long time, and only the right policy of Moscow in the 2000s made it possible to stabilize the situation. Nevertheless, the threat of separatism in Russia remains relevant. Formally, the relevance of the threat

of separatism is confirmed by the existence of Article 280.1 of the Criminal Code of the Russian Federation, which provides deprivation of liberty for up to three years for public appeals to take actions aimed at violating the territorial integrity of the Russian Federation. For similar actions using the mass media and the Internet, the term of imprisonment is increased to 5 years. In the summer of 2014, these standards were tightened.

Despite this, today, the issue of the state structure of Russia remains one of the most controversial among scholars and politicians. Some of them insist on the status quo, while others are convinced that a federation, especially an "ethnic" one, is destructive for Russia. There are ongoing disputes in the expert community about the inevitability, as well as the consequences of the collapse of the USSR. To figure out who is right and to find the truth, it is necessary to analyse the key reasons for the collapse of the Soviet Union and to deepen the understanding of political and ideological contradictions in Russia, which remain relevant today.

1. Materials and methods

Defending the ideas of the unitarization of the country, one can appeal to the ideas of representatives of the Russian school such as F.F. Kokoshkin, I.A. Ilyin and others. At the very beginning of the formation of the Russian Soviet Federative Socialist Republic in the 1920s, after it, during the adoption of the Constitution of the USSR in 1936 and the Constitution of the Russian Federation in 1993 and even today, the issue of the need to transform the Russian Federation into the Russian Republic is insistently raised. According to the authors of the initiative, it would equalize the rights of the Russians with the peoples who have their national statehood in the Russian Federation. There are still many supporters of "gubernization" (division into provinces) and, on the contrary, the federalization of Russia (Konyukhova, 2006).

There is a certain concept, hence, a part of civil society, behind each of the positions. These concepts can either unite or divide society; therefore, a constant search for agreement and an exit to the legislatively enshrined state doctrine of national and federal politics are necessary. The 1996 concept of the state nationality policy of the Russian Federation is outdated; it no longer provides answers to the challenges of modern time (Konyukhova, 2006). Therefore, it is extremely important at a new stage in the country's development to identify and scientifically substantiate the priorities in nation-building, ethnocultural policy and interethnic relations, which would, at the same time, preserve and transfer the accumulated experience (Konyukhova, 2006). There was such an experience in Imperial Russia and the Soviet Union. Yet, the connection between the times was interrupted for

ideological reasons: first through the fault of the Communist Party of the Soviet Union and the Soviet regime, then through the fault of democratic Russia, not without external influence.

In this regard, the key factor is an objective interpretation of conceptual approaches to solving the examined problem in a historical retrospective (Stalin, 1949).

In Russian history, state integrity was destroyed twice, and the scenarios were similar. First, in 1917-1918, when the world revolution was broken out for the sake of victory over capitalism. Then, in the 1990s, when the national separatism was used under the slogan of self-determination of nations for the sake of an open society and victory over communism. The lessons of the past can help in strengthening the unity of the Russian peoples, as well as in choosing perfect forms and methods of the state structure of the country (Stalin, 1949).

2. Results

The collapse of the Soviet Union and the following threat of the collapse of the Russian Federation are mainly caused by subjective circumstances. Conceptually, the disintegration mechanism was programmed by the VII (April) All-Russian Conference of the Russian Social Democratic Workers' Party of 1917, which, following V.I. Lenin's suggestion, adopted resolution on the demand for the right to free secession and the formation of an independent state for all nations that are part of the USSR, which contradicted the guidelines of the Second International on national self-determination and world practice (Konyukhova, 2006). This mechanism of disintegration was no longer theoretical; it was put into action on December 30, 1922, with the adoption of the Declaration and Treaty on the Creation of the USSR, when each republic was assigned the right of free secession from the USSR. This right was exercised by the union republics in 1991 (Abdulatipov and Mikhailova, 2010).

However, it is not entirely correct to argue that the collapse of the USSR occurred only because there was a legal possibility for collapse. Today, it is possible to consider in more detail the reasons for it. After such consideration, it becomes obvious that several factors played an important role in this process (Baglai, 2009).

Even during the existence of the USSR, the press reflected fears about the possible collapse. Historians identify the degradation of the management system, the economic crisis, the crisis of communist ideology and the rapid growth of democratic sentiments in Soviet society as the main prerequisites (Popov, 1990). Among the main reasons for the collapse of the Soviet

system, experts consider the intraparty tensions, which were based on the personal ambitions of M.S. Gorbachev, the former General Secretary of the Communist Party of the Soviet Union (Chernyaev, 2011).

Since the late 1990s, theories of the collapse of the Soviet Union have begun to appear. In addition to internal reasons, external ones also began to be recognized. Namely, the United States and Western media's interference in these processes. Thus, Igor Panarin, political scientist, is confident that the victory of the USSR in the Second World War marked the beginning of the collapse of the Western colonial system and contributed to the integration of new subjects of geopolitics. The Soviet Union became a superpower, and the world order became bipolar, which resulted in the Cold War between the USA and the USSR (from 1946 until the collapse of the USSR in 1991) (Boltenkova, 2012). These factors caused an unprecedented anti-Soviet information campaign in the West. The project of globalization required justification and after the defeat of Hitler's Germany, the USSR became the main threat to the "open society" (Mikhailova, 2010).

Allen Welsh Dulles, Director of Central Intelligence, advocated the struggle against the Soviet regime. He formulated the key strategic goals of conducting information and ideological war against the Soviet Union, which are relevant up today.

It suggests that the version that includes all aspects is the closest to reality, since the problem of the collapse of the USSR appears to be a multifaceted and global process. Consequently, we can conclude that there were internal party tensions, as well as the impact of third forces: the information and psychological war waged by the United States (Mikhailova, 2002). According to V.A. Lisichkin, the Soviet and Russian economist, the main goal of the information confrontation was a large-scale impact on public opinion both in the Soviet Union and abroad. The key role belonged to the mass media. V.A. Lisichkin writes about three stages of the information and psychological war against the USSR: the introduction of citizens closely connected with the CIA to high positions under Gorbachev, the control of the key mass media and the destabilization of the economy (Mikhailova, 2002).

As for the methods of waging information war through the mass media, V.A. Lisichkin identifies the following techniques. Firstly, limiting the alternative point of view in the press. Secondly, the glut of the information space with topics that were atypical of the Soviet mass media: those related to the cult of money and consumption, the Western model of the development of society (including the family), as well as with unusual for Soviet people entertainment. Thirdly, the pursuit of a policy of historical revisionism in the mass media. Fourthly, total disinformation related to events taking place in both the USSR and abroad (Mikhailova, 2002).

Thus, Mikhail Gorbachev in his report in 1988 announced the need to restore historical justice concerning those who died as a result of mass repressions. It was the year when the print media published the largest number of materials on the topic of repression. The Soviet press was flooded with publications about the fault of the repressed Bolsheviks, as well as the memories of those who passed through the Main Directorate of Camps (GULAG) and their children. Articles about the tragic fate of the children of "enemies of the people" became extremely popular (Panarin, 2010).

The Perestroika period was unique, since, on the one hand, there was a request to discredit the Soviet communist system and, on the other hand, there was an opportunity to involve directly the victims of repression in this process, which at that time included many media workers. Thus, the role of the Moscow News newspaper ("MN") was especially remarkable in covering the topic of repression. It was believed that "MN" was the most popular newspaper and the most accurate in reflecting public sentiment. This statement is just as true as thy one that "MN" formed these sentiments, and it happened often with the help of crude propaganda techniques. Thus, in the 9 June 1991 issue of "MN", an article was published with the headline "President Yeltsin: For or Against? For! Why?". We are talking about an interview with Alexander Gelman, the People's Deputy of the USSR, where he urged Russians to vote for Yeltsin, calling him a man who sought the development of democracy and market relations, as well as the formation of a state of law (Lisichkin and Shelepin, 1999).

All these years, Yeltsin did not avoid but sought responsibility. Just think, what it means for the democrats, for their leader, to take full responsibility for the development of Russia, its cities and regions today, after the destructive decades of the domination of the totalitarian regime? Would not it be more profitable to remain the "invincible opposition" for a few more years? The economic recovery will not be rapid and triumphant. Adjusting interethnic relations will also require a lot of time and effort. What about the privatization processes, the fight against monopoly, the organization of the free market? How about attracting Western capital to help us? All these are problems that are difficult to solve, they can not only break one's career but also break one's head. Yet, we all, voters, will forget in six months that all these problems were not caused by the democrats, not by Yeltsin, and in six months we will be holding him accountable with all our impatience. Yeltsin is, of course, aware of all this. If he is nevertheless ready to take responsibility, then he does it not only because he is power-hungry. He believes in the power of his responsibility (Panarin, 2010: 153).

This is just one among hundreds and thousands of examples of systematic destructive work by the media during the period of the undermining of the Soviet system before the collapse of the Soviet Union. Similar mechanisms of destruction, although in a "narrowed" legal field, remain in the Russian Federation today (Panarin, 2010).

3. Discussion

Based on the analysed facts, it can be argued that throughout the history of Russia, regardless of its state and political regimes, such factors as the ethnic composition, features of life and religious beliefs of the population of a particular region of the country have always been taken into account. In other words, the interconnection of ethnic and territorial factors has always been a constant attribute of state policy both in Imperial Russia and in the Soviet Union. It remains the same in modern Russia (Baglai, 2009). The conceptual difference of this relationship is determined only by the differences in the state structure. The new conclusion is that the conceptual thesis of the "right of peoples to self-determinate up to division and formation of an independent state" was not dictated by the situation in Russia, but was given to the general public to radicalize the situation (Abdulatipov and Mikhailova, 2010: 98). Mass media, both foreign and Soviet, played a significant role in this.

Conclusion

The Russian Federation has a complex ethnic composition. The share of Russians in the population is less than 50% in 13 out of 85 federal subjects of the Russian Federation. The regions with the highest share of titular ethnic groups include the North Caucasian republics and Tuva. The separatist movement in the Russian North Caucasus has a long and rich history, including the existing states and those that tried to become independent, of both individual peoples and ethnic groups, and several peoples in certain periods: pre-Russian, tsarist, the period of civil war and the collapse of the USSR (Lisichkin and Shelepin, 1999).

In 1990, the Supreme Council of the Tatar Autonomous Soviet Socialist Republic adopted the Declaration on State Sovereignty of the Republic of Tatarstan. The declaration, unlike some of the union republics and almost all other autonomous Russian (except for Checheno-Ingushetia) republics, did not indicate the location of the republic either in the RSFSR or in the USSR. It was declared that Tatarstan, as a sovereign state and a subject of international law, concludes treaties and alliances with Russia and other states. During the collapse of the USSR and later, Tatarstan adopted declarations and resolutions on the act of independence and entry into the CIS with the same wording. A referendum was held, and a constitution was adopted (Yeltsincenter, 1991).

In 2020, Tatarstan celebrates 30 years since the adoption of the declaration of state sovereignty. According to Rustam Minnikhanov, the president of the republic, the document defined "the modern development of Tatarstan" and helped to build trusting relations with Moscow.

The fact that there is a threat of political disintegration in modern Russia is indirectly evidenced by the fact that the events of 1989-1991 are to some extent similar to the events of 1917. The tsarist empire, like the USSR, collapsed due to the loss of public confidence. That is why the external intervention in these processes became possible. According to Pavel Milyukov, a Russian historian, revolutions become inevitable when the government evoke mockery and contempt instead of fear.

Thus, given these and other problems, we can conclude that the collapse of the USSR was an inevitable historical process provoked by several factors, the most important of which can be considered the decline of ideology and, as a consequence, Westernization, imposed mainly through the mass media. All this became possible and was aggravated by the strongest social, economic and political crisis, as a result of which the Communist Party lost its power monopoly.

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Iran's criminal policy towards money laundering in the country's banking system

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Abstract

Using the documentary research methodology, the aim of the article was to study Iran's criminal policy towards money laundering in its banking system. A number of measures have been taken in the Iranian legal system to combat money-laundering, the most important of which is the adoption of the anti-money-laundering law in 2007 and its executive regulations in 2009. With the enactment of this law, the crime of money laundering officially entered the Iranian legal system with its own special and independent title. By way of conclusion, it is evident that various governmental and judicial institutions have made the fight against money-laundering one of their main objectives and tasks. Meanwhile, the role of the National Audit Office has also been prominent, and it has made numerous efforts, both nationally and internationally, to identify cases of money laundering, eliminate money laundering and ultimately combat it effectively and efficiently.

Keywords: money laundering; economic and financial crimes; elements of the offence of money-laundering; prevention of the crime; criminal policy.

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La política criminal de Irán hacia el blanqueo de dinero en el sistema bancario del país

Resumen

Mediante la metodología de investigación documental, el objetivo del artículo fue estudiar la política criminal de Irán hacia el blanqueo de dinero en su sistema bancario. En el ordenamiento jurídico iraní se han adoptado varias medidas para combatir el blanqueo de capitales, la más importante de las cuales es la aprobación de la ley contra el blanqueo de capitales en 2007 y su reglamento ejecutivo en 2009. Con la sanción de esta ley, el delito de El blanqueo de dinero entró oficialmente en el sistema jurídico iraní con su propio título especial e independiente. A modo de conclusión se evidencia que diversas instituciones gubernamentales y judiciales han hecho de la lucha contra el blanqueo de dinero uno de sus principales objetivos y tareas. Mientras tanto, el papel de la Oficina Nacional de Auditoría también ha sido prominente, y ha realizado numerosos esfuerzos, tanto a nivel nacional como internacional, para identificar casos de lavado de dinero, eliminar el lavado de dinero y, en última instancia, combatirlo de manera eficaz y eficiente.

Palabras clave: blanqueo de dinero; delitos económicos y financieros; elementos del delito de blanqueo de dinero; prevención del delito; política criminal.

Introduction

Money laundering is on top of other criminal activities in the financial sector. This phenomenon is a process during which criminal and illegal activities are placed in legal channels and purified in a seemingly process. Money laundering is a three-step process, the first of which is to sever any direct link between the crime and the proceeds of illicit origin.

The second stage is to hide the rejection of property by conducting transactions and the third stage is to give legal appearance to the property obtained from the crime. Banks are one of the main channels for money laundering for criminals; this is done through three ways of placing illegal income in the financial system and the Chinese layer and integrating it. Such activities are carried out through official banking services, deposits, transfers, and illegal schemes, using bank credits, and the bank's employees or managers may cooperate in some way.

Although banking supervisors around the world do not have the same responsibilities and goals to combat money laundering, the prohibition of abusing the banking system for illegal activities should be one of their

main responsibilities and goals. Such authorities are obliged to reform their activities, and the capacity of banks to ban operators from using their services must be strengthened. In this regard, training of employees and their familiarity with money-laundering methods and its identification methods and the banking system's policy in dealing with this financial crime have a great impact on the effective fight against this phenomenon.

Overall, It is essential to provide special training to bank employees who are more exposed to criminal money-laundering activities. These individuals must be familiar with the relevant laws and regulations and have the necessary ability to identify and detect suspicious transactions and activities.

1. The concept of money laundering

Given the nature of money laundering, which is multidimensional and wide-ranging, it is difficult to provide a precise definition of this crime (Najafi Abrandabadi and Hashembeigi, 1998; Abbasi, 2012) Jeffrey Robinson has interpreted the crime of money laundering as follows: This is like a stone being thrown into a pool; you see the moment the stone enters the water, because the water shakes at that point. When the rock falls, waves are seen for a moment and you can find the point where the rock fell into the water, but the more the stone sinks, the more the water wave disappears until the stone reaches the bottom of the pond and no traces of it remain, and it may be impossible to find the stone. This is exactly what happens with laundered money (Abbasi, 2012).

2. Legal pillar

The origins of the fight against illicit wealth must be sought in Article 49 of the Constitution of the Islamic Republic of Iran of course, this does not mean that this principle is considered a manifestation of the fight against money laundering, but this principle can be the basis of the fight against money laundering. In Iranian law, according to Article (2) of the Anti-Money Laundering Law approved by the Islamic Consultative Assembly in 2007, the crime of money laundering has been defined and legislated, which is (Tamanaha, 2014).

- Acquisition, possession, maintenance or use of proceeds of illegal activities with the knowledge that it was obtained directly or indirectly because of a crime.

Conversion, exchange, or transfer of income in order to conceal its illegal origin knowing that it is directly or indirectly caused by the commission of

the crime or to assist the perpetrator in such a way that he is not subject to the legal effects and consequences of the crime.

Concealment, concealment or concealment of the true nature, origin, source, location, transfer, transfer, or ownership of income obtained directly or indirectly as a result of a crime.

3. Penalty for money laundering

The proportion between crime and punishment is one of the principles governing punishments; that is, the legislature in criminalizing the act or intensifying the punishment should anticipate the most appropriate reactions to the crime to have the greatest effect and deterrence the time of execution and in practice. Whenever the purpose of punishment is to make it useful, the legislator must measure the punishment's effectiveness and formulate the reaction of the society in the form of criminal laws in proportion to the criminal behaviour and the damage it has caused to the public order.

The rational approval and execution of punishments and the observance of punishment's proportionality with the crime can be effective in reducing delinquency (Eslamian *et al.*, 2020). The type and amount of punishment is one of the factors that perpetrators usually consider and evaluate when deciding to commit a crime. The criminal is a human accountant, so if the study between profit and loss due to committing a crime is balanced and more in favor of losses and costs, he usually gives up committing a crime; unless he is a risk-taker (Soltanifard *et al.*, 2018).

This highlights the importance of the legislature's duty to ensure the usefulness and appropriateness of money-laundering criminalization. In the case of money laundering, the perpetrators' greatest goal and motivation is to achieve financial benefits. In this crime, the perpetrators usually have a clinical social status; Therefore, it is necessary to determine the punishments that seriously harm their interests (whether financial interests or social status).

The Iranian legislature, regardless of the principle of proportionality between crime and punishment in Article 9 of the Anti-Laundering Law (Siclari, 2016), has determined the punishment for money-laundering:

> The perpetrators of money-laundering are sentenced to a fine of a quarter of the proceeds of the crime, in addition to the recovery of the proceeds of crime and the proceeds of the crime, including the principal and benefits obtained and, if not available, the like or its price (Siclari, 2016: 25).

This article of the anti-money laundering law is criticized for not observing the balance between crime and punishment.

For, first, one of the purposes of punishment is its deterrent aspect, and intimidation has always had a special place in the legislature's choice of punishment. The intimidating aspect of punishment means that future crimes are prevented by imposing punishments on the perpetrators. On the other hand, non-criminals and those who intend to commit a crime are intimidated and do not commit any more crimes, and the perpetrator himself refuses to commit the crime again (Bohoslavsky and Cernic, 2014).

However, it seems that the punishment imposed for the crime of money laundering is not a deterrent and, on the contrary, the imposition of a fine is a great incentive for violators. Because if the payment of this amount is not high for the criminals, and as long as the utility of corruption is higher than the crime, the corrupters will continue to be stronger (Maleki and Rahimi, 2014).

According to the note of the mentioned article, if the proceeds of crime are converted or changed into another property, the same property will be confiscated, and according to Note 2 of the same article, the issuance and execution of a confiscation order and the benefits derived from it are allowed if the accused has not been subject to this sentence in terms of the crime of origin. In fact, these regulations point to the impossibility of enforcing the seizure regulations in cases where the proceeds of crime have been imposed due to the commission of the original crime. Therefore, it cannot be re-recorded. Also, according to Note 3 of Article 9 of the Anti-Money Laundering Law, the perpetrators of the crime of origin will be sentenced to the punishments provided in this law in addition to the prescribed punishments related to the crime if they commit the crime of money-laundering (Siclari, 2016).

Since, according to the fundamental principles of domestic law, the imposition of punishment for the principal offense is not in conflict with the imposition of a penalty for the offense of money laundering; both punishments are imposed if one person commits these two offenses. Whereas part (e) of paragraph 2 of Article 23 of the Convention states: "If the fundamental principles of the domestic law of a Member State so provide, that State may specify that the offenses set forth in paragraph 1 of this article shall not apply to persons who have committed the principal offense" (Born, 1994: 19).

4. Identify criminal liability for legal entities

The fact is that today many crimes such as fraud, crimes and violations of corporate law are often committed by individuals and under the auspices of legal entities or a company. Therefore, it is expedient that in addition to the criminal responsibility of the representatives of these persons, at least

for the execution of financial penalties, especially if the representatives of the company are poor, there should be criminal liability of legal persons.

Thus, under the influence of judicial considerations and criminological facts, the contemporary doctrine agrees with legal persons' criminal liability. Recognizing that groups are always involved in transnational organized crime, these groups can be registered in the government or even as public law entities. Legal entities are a good cover for criminal groups. Mafia gangs formally establish some companies and legal entities to help commit organized crime and launder the proceeds. The need to combat these crimes requires the acceptance of criminal liability by legal persons. This issue is accepted in the mentioned international documents. Considering that in the past, in all international documents and international criminal courts, the procedure has always been to prosecute natural persons and not to accept the criminal responsibility of legal persons, this is a significant and innovative development.

However, in Iranian criminal law, the criminal liability of legal entities has not been accepted yet, and even in cases where the legislator has been in a position to express him, he has not wanted to impose criminal liability on legal entities. For example, in Article 568 of the Islamic Penal Code, the legislator, although in the position of expressing crimes committed by legal entities, has accepted only the criminal responsibility of natural persons (Sadeghi *et al.,* 2012; Iran: Islamic Penal Code, 1991). For this reason, the money-laundering law criminalizes legal entities that commit money-laundering, regardless of international recommendations in this area. Note 3 of Article 4 of the said law stipulate:

> All executive by-laws of the above-mentioned council shall be binding on all relevant natural and legal persons after the approval of the Council of Ministers. The violator will be sentenced to two to five years of dismissal from the relevant service, as the case may be, at the discretion of the administrative and judicial authorities.

5. Judicial solutions

The legal solutions that can be enforced in dealing with money laundering are as follows:

5.1 Facilitate crime detection and proof

a. Acceptance of criminal records

One of the most important and innovative solutions supported in international documents to combat money-laundering, overturning the principle of criminal innocence. The principle of innocence is one of the

basic principles governing the course of criminal proceedings, according to which every innocent person is presumed, and if he is charged with presumption of innocence, the prosecutor's office must prove his guilt. Despite the place that this principle has in criminal matters and governs other principles and rules of criminal law, however, in certain cases of application of this principle of transgression, and despite the fact that the principle is innocence, and the prosecuting authority must prove the material and spiritual elements of the crime, and the accused is not obliged to prove his innocence, the task of presenting the reason is shifted and falls on the accused.

The basis for deviating from the principle of innocence is, in many cases, the very basis that justifies the rule of the principle of innocence in criminal matters.in other words , Just as legal justice requires that the accused be acquitted in the absence of evidence, innocence and innocence, In special cases, where the existence of evidence strengthens the suspicion of committing a crime by the accused, the requirement of legal justice and public interests is the precedence of the principle of guilt over the principle of innocence (Eslamian, *et al*., 2020).

b. **Using informants and special research techniques**

One of the methods proposed in the Palermo Convention to detect and prove organized crime, including money laundering, is the use of informants. Money-laundering research is based on the development of information, including intelligence (Standing, 2010). Educating and training informants is very important in pursuing money laundering. Informants may be airport employees who become aware of the unusual transfer of money in and out of the country. Alternatively, are secret members of the police who gather news in the course of their mission; for example, undercover agents in search of money-laundering services or money launderers who want to exchange illicit money for criminals are replaced as criminals? Alternatively, he may be a criminal himself who has repented and is trying to give his information to the legal authorities.

Given the difficulties in infiltrating criminal gangs and detecting and arresting them, these remorseful criminals' information is very important. Of course, these informants can sometimes report false information as well, in order to mislead the police in finding the trust in the reports. In any case, these criminals have expectations for any cooperation with law enforcement officers. For this reason, Article 26 of the Palermo Convention, entitled "Measures to increase cooperation with law enforcement agencies" was adopted. It also urges member states to take action , to encourage individuals and members of organized crime groups to provide useful information about the details, The nature, composition, structure, location, activities of these groups and their relationships with other groups, crimes committed or may be committed by these groups as well as to provide

concrete and documented assistance to law enforcement agencies that could deprive criminal groups of material resources or proceeds of crime.

c. Confiscation and confiscation of property

As mentioned earlier, confiscation has been emphasized in all international instruments as a guarantee of effective performance in money-laundering , and countries have been asked to consider this in their domestic law in response to money-laundering , as a result, it is the duty of the judiciary to sentence the offender to this punishment in order to implement these laws , and in order to carry out this punishment, they should use all the necessary facilities to provide a good financial source while punishing the criminals, which can be spent on fighting crimes. Confiscated property includes property that is directly derived from the commission of a crime or we in return for it.

That is, if this income is consumed or lost in any way, the equivalent will be confiscated from the property of the offender , and if it has been converted or altered into another property, the property shall be confiscated instead of the proceeds (paragraph 3 of Article 12 of the Palermo Convention).This provision ensures that, first, the concealment or replacement or destruction of the same property resulting from the crime does not interfere with the confiscation operation , and secondly, it makes it possible to seize legal property, that is, the offender is liable for the equivalent of property resulting from the crime, even if he has lost the original illegal property.

Appropriable property also includes indirect proceeds of crime. That is, income or other benefits derived from the proceeds of crime or from property to which the proceeds of crime have been converted shall be confiscated in the same way as direct proceeds of crime. The rules also include the confiscation of property, equipment or other items that have been or will be used to commit a crime, and if this income is mixed with the property obtained through legal means, the said property will be confiscated up to the approximate amount of the mixed income.

Therefore, contrary to Iranian domestic law, other perpetrators' property that has nothing to do with the crime cannot be confiscated. Therefore, if a vehicle is dedicated to smuggling, it can be confiscated However, the house or other property of the perpetrator that has nothing to do with the crime and is legally acquired and not used for the crime can't be confiscated (Salimi, 2007).

6. Methods of Prevention of crime, money laundering

Prevention is a general concept and refers to a set of actions that are taken to prevent and prevent harmful interactions suffered by the

individual and the group, such as prevention of work accidents, prevention of youth delinquency and prevention of accidents on the roads, etc. Najafi abrandabadi writes about the word prevention:

> The word prevention today in its current and common sense has two dimensions. To prevent means to overtake, to overtake, and to move forward, and to warn, to warn, and to warn. But in preventive criminology, prevention is used in its first sense, that is, the use of various techniques in order to prevent the occurrence of delinquency, the goal is to prevent crime and surpass delinquency (Najafi and Hakimipour, 2018).

In this section, the important strategies of Prevention of crime, money-laundering are examined:

6.1 Customer identification

Customer identification is the identification and verification of customer identity using independent, credible, and reliable information sources, documents and data. Customer identification is divided into two groups of actions including "initial identification" and "complete identification". The purpose of initial identification is to match and confirm the specifications stated by the client with the identification documents and in case of action by the representative or lawyer, in addition to registering the details of the lawyer or representative, the original registration. Full identification also refers to the accurate identification of the customer, including the initial identification items in addition to the recognition of the job status, Field of activity and managers of legal entities, income, education, exact address of residence and work and estimation of the level of financial relations of the client and .... When providing basic services (Aluko and Bagheri, 2012).

6.2. Maintaining information and records

Financial institutions should keep records of their domestic and international transactions in such a way that they could respond to requests for information from competent authorities in the shortest possible time. Record keeping as a solution to crime prevention, money laundering is also envisaged in Iranian law. In paragraph (d) of Article 7 of the Anti-Money Laundering Law (2007) (Siclari, 2016). The legislator has obliged the persons, institutions, and bodies subject to this law, according to their type of activity and organizational structure, to keep records related to the identification of the client, records of accounts and operations and transactions for the period specified in the executive regulations.

6.3. Report suspicious transactions

Suspicious operations and transactions are transactions and operations in which individuals suspect that they have money-laundering operations in the possession of information or logical evidence, and logical evidence refers to the conditions and requirements that compel a normal human being to investigate the origin of property and deposits or other related operations (Aluko and Bagheri, 2012). Reporting suspicious transactions as a Prevention of crime, money-laundering solution is also included in the laws of many other countries.

In April 1999, for example, a new anti-money laundering law was enacted in Switzerland, which required banks to report suspicious accounts to the government and then block those accounts. This law also includes non-banking institutions, such as insurance, law firms.

In Iranian law, in paragraph (c) of Article 7 of the Law on Combating Money-laundering, the legislator is obliged to report the persons, institutions and bodies subject to this law (subject to Articles 5 and 6) according to the type of activity and organizational structure, which includes suspicious transactions and operations to a competent authority designed by the High Council for Combating Money-Laundering. Article 25 (Chapter 4) of the Executive Regulations of the Anti-Money Laundering Law also states: "All employees under the authority of the persons involved are obliged to report suspicious transactions and operations (subject to paragraphs" and "Article 1) without informing the client to the units responsible for combating money-laundering in each device. In the absence of this unit, the highest authority of the person involved will be responsible for receiving reports and taking appropriate action (Eslamian *et al.*, 2020).

Reporting suspicious transactions as a Prevention of crime, money-laundering solution is also included in the laws of many other countries. In April 1999, for example, a new anti-money laundering law was enacted in Switzerland, which required banks to report suspicious accounts to the government and then block those accounts. This law also includes non-banking institutions, such as insurance, law firms (Najafi and Hakimipour, 2018). In Iranian law, in paragraph (c) of Article 7 of the Law on Combating Money-laundering, the legislator is obliged to report suspicious transactions and operations to the persons, institutions and agencies covered by this law (subject to Articles 5 and 6) according to their type of activity and organizational structure.

The competent authority designated by the High Council for Combating Money-Laundering. Article 25 (Chapter 4) of the Executive Regulations of the Anti-Money Laundering Law also states: Refer to the units responsible for combating money laundering in each device. In the absence of this unit, the highest authority of the person involved will be responsible for receiving reports and taking appropriate action (Eslamian *et al.*, 2020).

6.3. Adopting supervisory measures on financial and banking operations

Because criminals often launder the proceeds of their criminal activities by using the services and facilities of banks and financial institutions, therefore, one of the most important measures to prevent money-laundering is the establishment of a comprehensive system of internal supervision and control for banks and non-bank financial organizations that provide services for the transfer of money and valuables, which within its competence to prevent and detect all Money-laundering forms will try to maintain records, report suspicious transactions and identify customers, etc.

Adoption of supervisory measures on financial and banking operations has also been considered as one of the solutions for the prevention of crime, money-laundering in Iranian law. Article 18 of the Anti-Money Laundering Law states: Persons subject to the law and the board of directors of non-financial trade unions are required to nominate a unit to the Secretariat responsible for combating money laundering, given the size of their organization.

The head of the unit must be selected from the managers of the persons involved. The Secretariat may, if necessary, review the qualifications of the members of the said unit, based on the importance of the unit. Note 1: All eligible persons are obliged to make the necessary arrangements in accordance with the scope of their organization in such a way as to ensure the necessary implementation of the laws and regulations related to the fight against money laundering. Persons covered by paragraph 1 of a regulation are all natural and legal persons subject to Articles 5 and 6 of the law, including the Central Bank of the Islamic Republic of Iran, banks, financial and credit institutions, stock exchanges, insurance companies, central insurance, loan funds. Al-Hasna, charities and municipalities, as well as notaries, lawyers, auditors, accountants, forensic experts, and statutory inspectors (Abbasi, 2012).

6.4. Training the staff of the institution to identify and deal with money laundering

Training staff to identify and combat money-laundering Staff training and familiarity with money-laundering methods and methods of identifying it, as well as the institution's policy in dealing with this financial crime, has a great impact on the effective fight against this phenomenon. It is essential to provide special training to those employees of the organization who are more exposed to criminal money-laundering activities. These individuals should be familiar with the relevant laws and regulations and have the necessary ability to identify and detect suspicious transactions and activities. In other words, the officials of an institution should teach the

methods of dealing with money laundering to the employees of the parts of the institution that are exposed to this phenomenon. These trainings should include methods for identifying suspicious transactions, related rules and regulations, and reporting requirements.

The institution's policy in the fight against money laundering should be in the form of staff waste. In general, financial institutions need to ensure that their employees are aware of their role in combating money laundering. In addition, the institution should identify those staff that need more periodic training. Apart from the group of employees who are particularly engaged in the fight against money-laundering, the other units of the institution that need training are: administrative and financial units, accounting and auditing units, credit department, security, inspection and complaints department and department Legal. Staff training may be done through a variety of executive activities, including lectures, training videos, network and computer training, or other methods. In addition, the distribution of reports and training booklets is very effective in training all employees or a specific group of them. The development of the training program of the institute can be entrusted to the legal, auditing and human resources departments, and the institutes are obliged to keep the documents related to their educational activities.

Financial institutions should tailor anti-money laundering chapters and training materials to their activities. To this end, topics such as customer identification methods, suspicious activity criteria, reporting principles and regulations, especially in foreign exchange transactions, how to move financial documents and money-laundering criminal and civil penalties, should be included in the chapters and training materials. Article 35 of the By-Laws of the Anti-Money-Laundering Law of Iran states: All eligible persons are obliged, in cooperation with the Secretariat, to make the necessary arrangements for the establishment of training courses at the beginning of the service and during the service of their subordinate staff. These courses should be in order to get acquainted with the law, regulations and related instructions, how money launderers operate and especially the latest tricks of money launderers in using the services of persons involved and how to eliminate the criminal origin. It is necessary to complete the mentioned courses in order to continue the service of the employees of the persons involved in the relevant jobs, and the records of the mentioned courses must be recorded in the personnel file.

6.5. Control and supervision over foreign currencies

Currency control policies should be used with sufficient caution to combat money-laundering, because this policy is like a double-edged sword, which on the one hand makes it difficult for money launderers to transfer money, and on the other hand, the implementation of this policy leads to

the creation of parallel markets and a black market, can easily be exploited by money launderers. Therefore, instead of retreating and restricting their financial and currency systems, governments need to take measures to be at the forefront of financial markets and to monitor foreign exchange transactions. One of these methods is the use of regulatory methods to prevent money laundering by government officials. Another way is to give anti-money laundering training to bank and exchange staff. The technical assistance of the International Monetary Fund can also be used for this purpose.

6.6. International cooperation to combat money laundering and use the experiences of other countries

As we know, Iran is at the beginning of the fight against money laundering, and it is necessary to gain enough experience in this regard. That is why it is necessary to use the experiences of countries that have fought this crime for many years and have achieved useful results. In Iranian law, in Article 37 of the Anti-Money-Laundering Law, the legislator has made the exchange of information to international organizations and institutions, as well as the collection and acquisition of international experiences, the duties of the Secretariat in the Ministry of Economic Affairs and Finance (Aluko and Bagheri, 2012).

The signatories of the Merida Convention state in Article 14, paragraph 4, of the Merida Convention that States Parties are required to use initiatives of regional, international, and multilateral organizations against money laundering (Ayyoub, 2019). Article 5 also states that Member States shall endeavour to expand global, regional, sub-regional and bilateral co-operation between judicial, law enforcement and financial regulators to combat money laundering. As can be seen, international cooperation to combat money laundering is enshrined in both Iranian law and the Merida Convention as a preventive measure against money laundering.

6.7. Supervising the property and assets of government officials and officials

Another effective way to prevent crime, money laundering, is to monitor the property and assets of government officials. Supervision of property and assets means monitoring the legitimacy of their property. This means that the means of owning property must be based on legal and sharia rules and criteria, and individuals must not have acquired their property illegally or illegally according to the situations and opportunities provided to them due to their tenure. This indirect approach to money laundering requires that high-ranking government officials and officials, in accordance with the law, submit a list of their property and assets to the agency or institution that is required by law to deal with these matters within specified times (Fakher *et al.*, 2018).

6.8. Preventing the creation of virtual banks

Since financial and monetary exchanges are an integral part of commercial exchanges, in today's world, and especially in developed countries, along with the expansion of the volume of electronics due to extensive developments in ICT, monetary and financial institutions have also found to support, and E-commerce facilitation should make extensive use of ICT. That is why electronic payment and exchange systems have been evolving over the last few decades. Meanwhile, banks, as monetary intermediaries, have to move to e banking and offer new financial services in all new areas, including e-commerce, and this attitude is the basis for the formation of virtual banks. The purpose of virtual banking is to use advanced software and hardware technologies based on network and telecommunications to exchange resources and financial information of customers electronically, which can eliminate the need for physical presence of customers in bank branches.

The use of centralized computer systems, no time and space constraints for banking operations, high security and the ability to track banking operations and increase speed and efficiency, are features that make the necessity of establishing virtual banks in today's world inevitable (Aluko and Bagheri, 2012).

Conclusion

In general, money laundering is any act or attempt to conceal or alter the identity of illicit income in such a way that it appears to have originated from legal sources. In other words, money laundering is the process by which the shape, origin, characteristics, type, beneficiaries or final destination of contaminated money changes. Measures taken in advanced financial markets to identify and prosecute money-laundering cases have shifted criminal activity to less developed markets (in terms of the financial system). money-laundering generally consists of three basic steps: placement; Injecting dirty money into the monetary and financial system of the second stage of the porcelain layer; Isolation of the relationship between illicit income and their source or existing activities and the third stage of integration; Giving legal appearance to the wealth from illegal income. Two different perspectives on money laundering, the European perspective, and the American perspective, can be identified.

The European approach leaves banks and other financial institutions free to assess suspicious cases, if such matters relating to money-laundering operations are notified to the competent authorities. On the other hand, the American attitude forces these institutions to disclose information about

any transfer or trade of more than ten thousand dollars. In general, in Iran, providing the necessary legal, regulatory and executive framework to identify and block the channels of infiltration of dirty money into the official financial network of the national economy is of fundamental importance.

In an intelligent anti-money laundering system, there are several independent agents, each of which acts on its own duty and interacts with other agents to identify suspicious money-laundering activity, so that they can carry out the activity that has Detect money-laundering risk and automatically generate a suspicious activity report on money-laundering.

Now, considering that Bank Melli Iran has a large volume of banking transactions in the country and considering the benefits of intelligent anti-money laundering system, by providing suggestions for localization of this system, tracking, and detecting the activities of money launderers in all transactions. Financial transfers, its use in the National Bank of Iran and the country's banking system were suggested. However, the Iranian legislature in the law against money-laundering and its executive regulations have provided solutions in accordance with the Palermo Convention for the prevention of crime, money-laundering and combating it, including customer identification, record keeping and information , Reporting suspicious transactions, establishing a financial information unit, adopting regulatory measures on financial and banking operations, training the staff of the institution to identify and deal with money-laundering, and so on.

However, as expected, the new preventive measures specific to this emerging criminal phenomenon and envisaged in the Merida Convention, such as the prohibition of the establishment of virtual banks, have not been adopted in the anti-laundering law and it is appropriate that the legislature Take action to fill this gap.

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Information Security in E-Government: Legal Aspects

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Abstract

The article examines the characteristics of the functioning of information security in the e-government system, a phenomenon that is only possible based on the development of the information security infrastructure. The authors analyze information security as a key element of the concept of e-government, as well as various interpretations and ways of explaining the concept of information security. The research team's approach to the definition of the concept of information security is formed from the deep understanding of this concept, in terms of general theoretical analysis. Topics, objects, functions, types, principles, forms, levels of provision and structural elements of information security are studied. It is concluded that the organization of modern computer security of the State is undoubtedly a complex, systemic and multilevel phenomenon, whose state, dynamics, and perspectives are directly influenced by many external and internal factors, the most important being the political situation. In the world the presence of possible external and internal threats; state and level of development of information and communication of the country and internal political situation, among other aspects.

Keywords: Information security; e-government; information and communication technologies; digital democracy; contemporary politics.

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Seguridad de la información en el gobierno electrónico: aspectos legales

Resumen

El artículo examina las características del funcionamiento de la seguridad de la información en el sistema de gobierno electrónico, fenómeno que solo es posible con base en el desarrollo de la infraestructura de seguridad de la información. Los autores analizan la seguridad de la información como un elemento clave del concepto de gobierno electrónico, así como diversas interpretaciones y formas de explicación del concepto de seguridad de la información. La aproximación del equipo de investigación a la definición del concepto de seguridad de la información se forma a partir de la comprensión profunda de este concepto, en términos de análisis teórico general. Se estudian temas, objetos, funciones, tipos, principios, formas, niveles de provisión y elementos estructurales de la seguridad de la información. Se concluye que la organización de la seguridad informática moderna del Estado es, sin duda, un fenómeno complejo, sistémico y multinivel, cuyo estado, dinámica y perspectivas están directamente influenciadas por muchos factores externos e internos, siendo los más importantes la situación política. En el mundo la presencia de posibles amenazas externas e internas; estado y nivel de desarrollo de la información y la comunicación del país y; situación política interna, entre otros aspectos.

Palabras clave: Seguridad de la información; gobierno electrónico; tecnologías de la información y la comunicación; democracia digital; política contemporánea.

1. Problem statement

The rapid growth of information technology has triggered the redistribution of real power in society from traditional structures to information flow control centers. Information technology is finding ever-widening applications in such areas as financial circulation and securities market, communications, transport, high-tech industries (especially nuclear, chemical, etc.), government management systems, etc. Today, the dissatisfaction with the state of Ukrainian information legislation and the need for urgent measures to improve it are obvious. However, there is no unity in the ways of qualitative transformation of information legislation of Ukraine among researchers of this issue, which is logical, given the complexity, dynamics, and scale of modern information processes that occur in the formation of the national legal system. That is why this issue is poorly studied in domestic science, and a large number of scientists still do not agree on many key points of the presented issues (Kormych *et al.,* 2020).

2. Relevance

The formation of e-government entails not only undoubted positive consequences but also certain risks. On the one hand, the transfer of a significant amount of information has accelerated; its processing and implementation have accelerated. On the other hand, the spread of illegal collection and use of information, unauthorized access to information resources, illegal copying of the information in electronic systems, violation of information processing technologies, the launch of virus programs, destruction, and modification of data in information systems, manipulation of public and individual consciousness, etc., are of serious concern (Fedorenko *et al.,* 2020).

In addition, the current scientific and practical challenge in information security of Ukraine is to achieve a unified approach to determining the optimal models and ways to ensure the information security of the state by identifying the most important qualitative and quantitative properties and parameters of this phenomenon as a key element (Kharytonov *et al*., 2019).

3. Analysis of recent research and publications

The study of the functioning aspects of information security in e-government and the generalization of the existing array of developments on this issue is quite difficult, which explains its little scientific research. Some aspects of this issue have been somewhat studied by such foreign and domestic scientists as Ashenden (2008), Kudryavtsev (2014), Fedorenko *et al*., (2020), and others.

4. Objective

The objective of the article is to study the features of information security in e-government, analyze various interpretations of and ways of explaining the concept and formulation of the author's definition of information security, study subjects, objects, functions, types, principles, forms, levels, and structural elements of information security, and provide author's conclusions.

5. Main part

Protecting its interests, each state must take care of its information security. The strengthening of Ukrainian statehood requires the same. Thus, Kharytonov, et al consider information security as a component of

the national security of Ukraine (Kharytonov *et al.,* 2019). Balanced state information policy of our state develops as an integral part of its socio-economic policy, based on the priority of national interests and threats to national security. From the legal point of view, it is based on the principles of a democratic state governed by the rule of law and is implemented through the development and implementation of relevant national doctrines, strategies, concepts, and programs under current legislation. Also, the state information security policy is determined by the priority of national interests, the system of dangers and threats, and is carried out through relevant doctrines, strategies, concepts, and programs in the information sphere under applicable law.

The efficiency of government agencies is determined by three factors: the effectiveness of interaction with citizens and entrepreneurs, the effectiveness of the internal work of each institution, and the effectiveness of interaction between public authorities. Thus, the successful overcoming of these factors in e-government is possible through the development of information security infrastructure using confidential information exchange systems (Okot-Uma and London, 2000).

Considering any e-government project, one should realize that its implementation could cause a number of serious problems, the main of which, according to experts, is information security. Statistics show that citizens use government websites more as sources of information rather than online transactions. This may be due to the fears of citizens and entrepreneurs about unauthorized access to their data.

Information security had initially considered, first, as information security of the state. Subsequently, the intensification of informatization processes in all areas, and especially the growing importance of technical protection of information has led to the formation of legal support for information protection as an integral part of the security of enterprises, institutions, and organizations, as well as individual industries. At the turn of the millennium, the issue of international information security has become acute, so has the issue of cybersecurity as part of information security. However, at each of these stages, human information security remained a minor matter. This is what the analysis of scientific research on information security has shown (Ashenden, 2008).

According to O.Yu. Kudryavtsev, the analysis of the conceptual foundations of information security and their impact on the level of legitimacy of political power remains an important issue. The conceptual framework of e-government is to provide open access to public services anywhere at any time. This can potentially lead to huge problems of security and confidentiality in the field of information society management, especially given the fact that management processes in the public sector are significantly different from similar processes in private partnership and

production (Kudryavtsev, 2014).

Information security, on the one hand, is part of the concept of e-government, and on the other hand, it is a much broader concept that appeared well before the phenomenon under consideration. Information security issues that somehow relate to the legitimation of political power can be divided into four major groups. E-government, as has been repeatedly emphasized, acts in its instrumentalist manifestations as a model of the organization of interaction between the state, citizens, and business based on the use of information and communication technologies (Bryan *et al.*, 2002).

Information security as a scientific category is interpreted in different ways. It has both doctrinal, encyclopedic, and legal definitions. At the same time, methodological approaches, logical ways of their formation and consolidation, spheres of existence, and applied use differ significantly. This is also because the category of safety itself is ambiguous and is determined based on the scientific field it is studied in.

According to the encyclopedic definition, "information security" should be understood to mean: 1) legislative formation of state information policy; 2) provision in accordance with the laws of Ukraine of opportunities for information sufficiency for decision-making by public authorities, citizens, and associations of citizens, other legal entities in Ukraine; 3) guarantee of freedom of information activities and the right of access to information in the national information space of Ukraine; 4) comprehensive development of the information structure; 5) support for the development of national information resources of Ukraine, considering the achievements of science and technology and the peculiarities of the spiritual and cultural life of the people of Ukraine; 6) creation and implementation of secure information technologies; 7) protection of the property rights of all participants in information activities in the national space of Ukraine; 8) preservation of the state ownership right to strategic objects of information infrastructure of Ukraine; 9) protection of state secrets, as well as information with limited access, which is the object of property rights or the object of only possession, use or disposal of the state; 10) creation of a general system of information protection, in particular protection of state secrets, as well as other limited-access information; 11) protection of the national information space of Ukraine from the dissemination of distorted or prohibited for distribution by the legislation of Ukraine information products; 12) legal establishment of the regime of access of foreign states or their representatives to the national information resources of Ukraine and the procedure for the use of these resources on the basis of agreements with foreign states; and 13) legislative definition of the distribution procedure of foreign information products on the territory of Ukraine (Kharytonov *et al.*, 2019).

Kormych defines information security as a state of protection of parameters of information processes, relations, and norms established by the legislation. This provides the necessary conditions for the existence of society, state, and a person as subjects of such processes and relations (Kormych *et al.,* 2020).

Information security is a state of balanced protection of vital interests of the state, society, and a person, namely the national interests of the country, from internal and external threats in the information sphere (Mishra *et al.,* 2021).

This concept is quite similar to that enshrined in paragraph 13 of the Law of Ukraine "On Basic Principles of Information Society Development in Ukraine for 2007-2015" of 09.01.2007 No. 537 (Zhavoronkova and Zhavoronkov, 2016). Fedorenko understands information security as a set of means to ensure the information sovereignty of Ukraine, protection of the information sphere from external and internal information threats. This security should include effective counteraction to a set of information threats (Fedorenko *et al.,* 2020).

During the development of the draft Law of Ukraine "On the principles of information security of Ukraine" by the staff of the Research Institute of Informatics and Law of the National Academy of Legal Sciences of Ukraine V.H. Pylypchyk, I.F. Korzh, N.A. Savinova, M.P. Stelbytskyi, and V.M. Furashev proposed the following definition: information security is a state of protection of the vital interests of man and citizen, society and state, which prevents harm due to incompleteness, timeliness, and inaccuracy of information disseminated, violation of the integrity and availability of information, unauthorized circulation of limited-access information, as well as due to the negative information and psychological impact and intentional infliction of negative consequences of the use of information technology (Sopilnyk *et al.,* 2020).

As for the definition of information security, researchers still do not have any holistic approach to its definition. However, despite the author's variety of interpretations of the concept of information security, it still requires a slightly different interpretation. That is why information security is a state of protection of conditions, opportunities, and processes of safe and unhindered functioning of subjects of society and realization of state interests in the information sphere connected with the free acquisition, creation, and distribution of information, from threats, through a set of measures guaranteed by the Constitution of Ukraine, which ensures the prevention, detection, and neutralization of internal and external information dangers, protection of information resources, realization of human and civil rights and freedoms, preservation of state information sovereignty and safe development of international information cooperation.

Objectively, the category of information security arose with the advent of information communication between people, as well as with the recognition by a human of the presence of interests of people and their communities that can get compromised by acting on information communication, the presence and development of which provides and sets information exchange between all elements of society.

In the time of growing interconnections and interdependence of the states and the preservation of many global dangers and threats information security becomes a component of the general world safety, efforts of all people in the preservation of the world, democracy, humanization of modern relations.

Information security, on the one hand, provides quality and comprehensive information to citizens and open access to various sources of information, and on the other, controls the spread of misinformation, promotes the integrity of society, preserves information sovereignty, counters negative information and psychological influences and protects national information space from manipulation, information wars and operations. Solving the complex problem of information security will protect the interests of society and the state, as well as guarantee the rights of citizens to receive comprehensive, objective, and high-quality information.

The subjects of information security are citizens of Ukraine, associations of citizens, public organizations and other civil society institutions, the President of Ukraine, the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine, other central executive bodies and bodies of the security and defense sector of Ukraine, mass media and communications of various forms of ownership, enterprises, institutions, and organizations of various forms of ownership that carry out information activities, scientific institutions, educational and training institutions of Ukraine, which, in particular, carry out research and training in various areas of information activities in information security.

In our opinion, the objects of information security are the information infrastructure of all spheres of society, state information resources, as well as human rights and freedoms such as the right to access information, the right to education, the right to access cultural values and the intellectual property right; moral and cultural values of society; constitutional order, democracy, and territorial integrity of the state.

According to V.V. Ostroukhov, the regulatory framework of information security should perform primarily three main functions: 1. Regulate the relationship between the subjects of information security, determine their rights, duties, and responsibilities. 2. Legally ensure the actions of the subjects of information security at all levels, namely people, society, and the state. 3. Establish the application procedure of various means of information security (Mishra *et al.,* 2021).

As for the types of information security, the most correct is to distinguish between its two main types, namely: 1) information security of the individual - the protection of human psyche and consciousness from dangerous information influences: manipulation of consciousness, misinformation, incitement to insult, suicide, etc.; and 2) information security of the state - characterized by the degree of protection of the state (society) and the stability of the main spheres of life (economy, science, technosphere, management, military affairs, etc.) against dangerous (destabilizing) information influences, both for the provision and acquisition of information. The information security of the state is determined by the ability to neutralize such influences.

We share the view of L.S. Liubokhinets, who identifies the following forms of information security: 1) information patronage; 2) information cooperation; 3) information confrontation (Sopilnyk *et al.,* 2020). This gave the impression that the forms and methods of information security form a tool through which the information security forces address the whole set of tasks to protect the vital interests of the individual, society, and the state. Therefore, it is necessary to have a clear legal formulation in the development of regulations governing the activities of information security agencies.

The researchers distinguish between three levels of information security: the level of the individual (the formation of rational, critical thinking based on the principles of freedom of choice); the social level (formation of high-quality information-analytical space, pluralism, multichannel information retrieval, independent powerful mass media owned by domestic owners); and the state level (information-analytical support for state bodies, information support for domestic and foreign policy at the interstate level, limited-access information protection system, counteraction to offenses in the information sphere, computer crimes) (Tsimbalyuk, 2001).

Ensuring information security of e-government is a complex phenomenon, which includes: 1) a set of information needs of public administration in the process of functioning of state power and activities to ensure these needs; 2) external and internal threats to the information technology space of e-government - hardware and software (threats to the integrity of information and hardware and software, the use of uncertified domestic and foreign technologies in the creation and development of information infrastructure), and public information (illegal restriction of access to citizens to open information resources of public authorities, unsatisfactory quality characteristics of information messages, etc.); and 3) a set of regulatory, organizational-technical, and methodical means of counteracting information security threats (Alshehri and Drew, 2010).

The Concept of the National Informatization Program made the first attempt to legally define information security (Sopilnyk *et al.,* 2020). This

legal act defines information security as a set of regulatory documents on all aspects of the use of computer equipment for processing and storage of restricted information; a set of state standards for documentation, maintenance, use, certification testing of information security software; bank of means of diagnostics, localization, and prevention of computer viruses, new technologies of information protection with the use of spectral methods, highly reliable cryptographic methods of information protection, etc.

The Constitution of Ukraine is the basis of the system of regulatory and legal provision of information security. Article 17 of the Constitution of Ukraine states that "Protection of the sovereignty and territorial integrity of Ukraine, ensuring it is economic and information security are the most important functions of the state, the cause of the Ukrainian people" (Pritsak, 1998: 35).

The structural elements of Ukraine's information security are information and psychological security, namely the management of potential or real dangers and threats that can harm the psyche of a person or society, as well as the state or civil servants. Such threats include attempts to manipulate the consciousness of society, which can be carried out by disseminating biased, incomplete, unreliable information, spreading through the media the cult of cruelty, pornography, violence, etc. The threat to information security in the field of human and civil rights and freedoms is manifested in efforts to restrict citizens' access to information and manifestations of restriction of freedom of speech, disclosure of information defined by law as confidential or state secret, dissemination of confidential and state-owned information meeting the national interests and needs of the state and society. Information and technical security - management of actual or potential threats to protect the information and telecommunication infrastructure, which can be threatened by computer terrorism and computer crime.

In our opinion, the legal provision of information security of Ukraine should be based primarily on compliance with the principles of legality, the balance of interests of citizens, society, and the state in the information sphere.

Compliance with these principles requires following several rules. First, the observance of the principle of legality requires the subjects of state authorities of Ukraine to be strictly guided by legislative and other normative legal acts regulating relations in this sphere when solving problems arising in the information sphere.

Also, compliance with the principle of balance of interests of citizens, society, and the state in the information sphere provides for legislative consolidation of the priority of these interests in various spheres of society, as well as the use of forms of public control over the activities of federal

and state authorities. Implementation of guarantees of constitutional rights and freedoms of human and citizen related to activities in the information sphere is the most important task of the state in information security.

One of the main tasks for Ukraine, in our opinion, is to guarantee the information security of the individual, which is characterized by the protection of his psyche and consciousness from dangerous information influences: manipulation, misinformation, incitement to insult, etc. It is believed that the main purpose of information security is to create a branched and secure information space; protect national interests of the state in the formation of world information networks; protect the country's economic potential from illegal use of information resources; exercise the rights of citizens, institutions, and the state to receive, disseminate, and use information.

We are broadly sympathetic to Hassan and Khalifa that the e-government system and the information security system are interrelated elements of the general system of public administration. In particular, according to the author, there are obvious groups of information and technical dangers common to both systems: 1) a new class of social crimes based on the use of modern information technologies (electronic money fraud, computer hooliganism, etc.); electronic control over the life, moods, plans of citizens and political organizations; 2) use of new information technologies for political purposes; and 3) the impact of information weapons on the psyche, consciousness of people (Hassan and Khalifa, 2016).

Proceeding from such understanding of the problem, the author believes that information security in the implementation of e-government is a complex phenomenon, which includes: 1) a set of information needs of public administration in the process of functioning of state power and activities to ensure these needs; 2) external and internal threats to the information technology space of e-government - hardware and software (threats to the integrity of information and hardware and software, the use of uncertified domestic and foreign technologies in the creation and development of information infrastructure), and public information (illegal restriction of access to citizens to open information resources of public authorities, unsatisfactory quality characteristics of information messages, etc.); and 3) a set of regulatory, organizational-technical, and methodical means of counteracting information security threats (Hassan and Khalifa, 2016).

Conclusion

Thus, the organization of modern information security of the state is concluded to be undoubtedly a complex, systemic, multilevel phenomenon, the state, dynamics, and prospects of which are directly influenced by many external and internal factors, the most important of which are the political situation in the world; the presence of potential external and internal threats; state and level of information and communication development of the country; and domestic political situation. Having said that, the progressive development of Ukraine as a sovereign, democratic, legal, and economically stable state is possible only if ensure the most appropriate level of information security, which in our opinion is also possible through the use of the methodological potential of information security, which will contribute to the creation and development of a modern regulatory and legal framework for regulating public relations in the information sphere in general and in information security in particular.

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Current Directions of Legal Ensuring National Security

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Abstract

The article reveals the problematic issues for ensuring financial security in the context of globalization in global financial systems. The modern stage of development of state financial systems is characterized by difficulties in ensuring national financial security. Despite the urgency of this problem, the international community is focusing on ensuring economic security during the formation of universal and regional legal instruments, leaving out of sight issues of legal and practice-oriented guidance in financial security. The article examines the main directions of implementation of state policy aimed at improving the effectiveness of legal and national and international means to ensure financial security in the context of the globalization of growing threats to economic security. The focus is on the modernization of legal instruments to regulate public relations related to financial security. Particular attention was paid to the correlation of international legal bases, national legislation, and regional laws. It is concluded that the development of state financial policy that guarantees the security of the budgetary system is fundamental.

Keywords: international legal acts; financial security; legal policy; financial policy; financial systems.

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Directrices actuales para garantizar la seguridad nacional

Resumen

El artículo revela las cuestiones problemáticas para garantizar la seguridad financiera en el contexto de la globalización en los sistemas financieros mundiales. La etapa moderna de desarrollo de los sistemas financieros estatales se caracteriza por las dificultades para garantizar la seguridad financiera nacional. A pesar de la urgencia de este problema, la comunidad internacional se centra en garantizar la seguridad económica durante la formación de instrumentos jurídicos de carácter universal y regional, dejando fuera de la vista las cuestiones relativas a la orientación jurídica y orientada a la práctica en la esfera de la seguridad financiera. El artículo examina las principales direcciones de implementación de la política estatal destinada a mejorar la eficacia de los medios legales y nacionales e internacionales para garantizar la seguridad financiera en el contexto de la globalización de las crecientes amenazas a la seguridad económica. La atención se centra en la modernización de los instrumentos jurídicos para regular las relaciones públicas relacionadas con la seguridad financiera. Se prestó especial atención a la correlación de los fundamentos jurídicos internacionales, la legislación nacional y las leyes regionales. Se concluye que el desarrollo de la política financiera estatal que garantice la seguridad del sistema presupuestario es fundamental.

Palabras clave: actos jurídicos internacionales; seguridad financiera; política jurídica; política financiera; sistemas financieros.

Introduction

The relevance of the task to ensure financial security of states is predetermined by the current conditions for globalization in the world economy, formalization of state borders in the international system of capital movement. It is external threats and challenges that have a negative impact on national economies. The conditions for strengthening economic imbalance at present are formed by the preservation of financial and trade restrictions and unfavorable external economic conditions. The problems of low level in the legal culture and financial literacy among the population create the necessary basis for the implementation of fraudulent activities that undermine people's confidence in the public authorities predetermining the increase of social tension and anxiety in society. In this connection, the state of international, interstate and national financial security deserves attention and assessment, taking into account development trends of the

world economy in a polycentric world and constantly changing international life (Avdeev *et al*., 2020).

Consideration for financial security from the perspective of international financial relations shows the interrelation and interaction among the following elements: 1) financial and external economic security of national economies; 2) financial security of large economic and legal unions and groups (Customs Union of Belarus, Kazakhstan and Russia, European Union); 3) financial security as counteraction to key modern threats, challenges and negative trends at the global world level. The assessment of global financial stability is done from the standpoint of stable performance in the international financial system, which ensures effective resource allocation, financial risk management and price flow for financial and real assets, and the maintenance of natural employment. This approach ensures that destabilization of real and financial markets are excluded. Insufficient level of international financial security causes formation of capital outflow, reduction of investment volumes and increase of distrust of population to the national financial system which forms conditions for stagnation of state economy (Afanasyeva, 2006).

The system of international financial security, having a complex structure, includes spheres of international financial relations. The main components of this system are the following types of international security: debt, currency, investment and monetary. International financial security also includes budget security of the participants, security of the international banking sector, stock market security and international insurance market security.

International financial security has a direct impact on the security in this area of each state in the world. Financial security of the country is recognized as an integral part of its economic security. Financial security is primarily the security of all sectors in the state economy.

Threats to international financial security are factors that hinder or pose a threat to the realization of international financial and economic interests. The main threats are considered to be: a) deterioration of the conditions for the development of the world economy; b) unfavorable consequences of making financial decisions without international coordination; c) aggression in the financial and economic sphere in one of the countries.

The key modern threats to international financial security are the following: the probable emergence of the global financial crisis; uncontrolled growth of sovereign debts; deepening of financial problems within the European Union; high volatility of financial markets; uncertainty regarding the state of some areas in the global financial system; dynamics of prices on stocks, metals and oil; problematic issues of credit contraction in the banking systems for some countries; deteriorating credit ratings of countries; lack

of liquidity in the dynamism of the modern world order is characterized by the polycentric character of developing financial relations in the context of globalization. A new stage of development in the world economy that determined the influence of world financial systems on the state of financial system for each state caused changes in their qualitative level. In this connection, the problem of negative reflection in the mentioned process, first of all, on financial systems of insufficiently economically developed countries is brought up to date. Accordingly, the issues of ensuring financial independence for the most vulnerable states, characterized by a low level of economic development and difficulties in entering the world market as a full-fledged partner, should be addressed.

However, it should be borne in mind that the emerging financial relations are proprietary and powerful. It is the financial system that determines the welfare and well-being of society, the level of confidence for the country's population in the actions of this system (Avdeev, 2013b). As a consequence, it becomes necessary and expedient to adequately protect the financial system and create favorable conditions for its functioning. Efficient functioning of financial markets and accumulation of financial resources within a budgetary system that would ensure functioning of the mechanism for social and economic policy should be taken into account.

It should be said that financial security has a special place in the system of economic security of the country. This is confirmed, in particular, by the high level of influence for economic phenomena and processes on the financial system and financial activities of the state. This impact gets the most vivid expression in conditions of formation for contradictions and crisis phenomena in economy. The fact is that every economic initiative and every economic project implemented by the state requires financing.

Large-scale economic crises have made it necessary to protect the financial security of countries. As a consequence, each state forms its own normative-legal base of financial security. As a rule, new or updated strategic directions of ensuring national security, an integral element of which is recognized as an independent type - financial security, are subject to implementation.

1. Financial security in the system of national security

Financial security is characterized by the state of the state's financial system, characterized by a high level of stability, integrity, competitiveness, development which guarantees an obligatory basis for the implementation of socio-economic policies to ensure national security. Financial security is expressed in the prevention of: a) the direction of financial flows outside the country; b) conflicts and confrontations between state bodies regarding

the allocation of resources in the country's budget system; c) minimizing the impact of global crises. Financial security guarantees the stability of economic and financial parameters (Ivanov *et al.*, 2016). The prevention, suppression and prevention of crimes in the financial sphere is of no small importance.

Understanding financial security implies understanding the financial system interacting with this type of security. The financial system should be considered in the context of: 1) a set of target funds; 2) related to their functioning public relations; 3) structures providing the implementation of state financial relations. Consequently, it seems logical to conclude that the understanding of financial security cannot be limited to the activities of special services and law enforcement agencies. On this basis, it is worth noting that financial security is an integral qualitative characteristic of the state financial system, reflecting its ability to maintain the necessary conditions for the life of society, the population, etc.

Financial security from the point of view for state authorities is the ability to perform assigned duties and functions including the prevention of financial crimes and offenses. The prevention and prevention of money laundering and other property obtained by criminal means deserves close attention in this connection.

It should be noted the special role of financial security in the implementation in the state financial policy corresponding to the national interests. Financial security contributes to the formation of the necessary and sufficient amount of funds to be distributed in the performance of tasks and functions that ensure the goals set by the state. On this basis, it should be concluded that financial security is an integral part of economic security, based on the competitiveness, independence and efficiency of the financial system (Levina *et al.*, 2017). The criteria for the state in the financial system indicators are the availability of the necessary resources, the balance of the finances of private and public entities. Among modern threats to financial security, threats of internal and external nature deserve close attention. Internal threats are: a) insufficiently effective economic and financial policy; b) incorrect determination of strategies and tactics for ensuring economic and financial security; c) miscalculations of governing bodies; d) abuse of power in the management of the country's financial system. External threats are recognized as: 1) global growth on a global scale of the modern financial system; 2) inclusion in the world economy of developing states; 3) the rapid increase in the mass of capital.

Modern problems of national financial security have a negative impact on state economic growth and ongoing transformations in the economy, negatively affecting the further development of foreign economic and trade activities, acting as an obstacle to the modernization and development of insurance, financial and budgetary spheres.

Domestic financial security is complemented by the financial security of enterprises, revealing the conditions for the effective use of financial resources to prevent the threat and stabilize their functioning. Financial security implies the state of the firm which provides protection from the adverse effects of competitors. In this regard, the following segments of the financial security system should be distinguished - fiscal, credit-banking and monetary-currency.

2. Mechanism of legal support for financial security

The mechanism for implementing the financial security of states is complex and multifaceted. The purpose of financial security is the ability of financial institutions to create mechanisms for the protection and implementation of public funds, the formation of the necessary and sufficient economic potential and financial conditions to preserve the integrity and unity of the national financial system including under negative internal and external influences.

The key task in ensuring financial security is to control the distributed state financial flows, understood as the movement of objects with state property rights or elements of state property, including the sources of their formation, estimated in value terms. A prerequisite for ensuring financial security is the formation of a single information system that controls various stages of the budget process, provides the detection and prediction of external and internal threats and risks. Given the suggested informational basis, a set of measures to protect the state financial sphere, ensuring effective legal regulation of financial flows, is subject to development (Levina *et al*., 2017). The required level of control involves the implementation for the principle of information disclosure, providing for strict reporting on the use of public financial resources. It is the proper control and accounting in the regulation for financial flows that predetermines the basis of financial security.

Updating the content in modern conditions of financial flows determines the development in the formation of a new economic situation associated with the renewal to regulate the function of global cash flows. The complexity of control is characterized by financial transnational transactions. In this regard, the problem of turning a financial organization into a link in the implementation of criminal activities becomes urgent. As a consequence, it is logical to propose the internationalization for the activities of law enforcement agencies in different countries as a measure to counteract the globalization of financial crimes. An exchange of received information about forthcoming and committed crimes between financial security and financial intelligence units looks promising (Goldfrank, 2000). The main direction of law-enforcement activity should be: 1) unification in the system

of standards for the bank's customer survey, primarily in the direction to identify individuals; 2) archiving of identified customer data and completed banking transactions; 3) focus on large transactions which cause suspicion; 4) informing financial security units about suspicious banking operations performed.

International legal support of financial security of the states is based on the normative legal acts, which generally provide economic security. Economic and social rights are guaranteed by the international community in the framework of international normative legal acts, ratified by the states. Among international documents of universal character, the following deserve attention: the Convention on Employment Policy in 1964, the Declaration on Social Progress and Development in 1969, the Declaration on the Rights of Mentally Retarded Persons in 1971, the Universal Declaration on the Eradication of Hunger and Malnutrition in 1974, the Charter of Economic Rights and Duties of States in 1974, the Declaration on the New International Economic Order in 1974, Program of Action on the Establishment of a New International Economic Order, 1975 Declaration on the Use of Scientific and Technological Progress for Peace and the Benefit of Mankind, 1975 Declaration on the Rights of Persons with Disabilities, 1979 UN General Assembly Resolution "Consolidation and Progressive Development of the Principles and Rules of International Law Relating to the Legal Aspects of the New International Economic Order", UNCTAD Resolution on "Non-coercive Economic Measures" 1983, UN General Assembly Resolution on "Economic Measures as a means of political and economic coercion against developing countries" 1983, UN General Assembly Resolution on "Confidence Building Measures in International Economic Relations" 1984, UN General Assembly Resolution on "International Economic Security" 1985, UN General Assembly Resolution on "International Economic Security" 1987, Convention on the Promotion of Employment and Protection against Unemployment 1988, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990.

The national economies of states are an integral part of the modern world economy. Ensuring the economic security of countries is recognized as a complex and multilevel problem. Achievement of the goal to ensure economic security implies a complex solution of tasks for economic and legal nature using the means of international law and national legislation.

Despite the international community's resolution to a number of complex issues regarding economic security and other types of security that are part of its content, the complexity in international legal guarantees of the financial security for states remains. The problem is that the international legal provision of financial security for the status represents obvious difficulties caused by the lack of the necessary provision for the

budgetary sovereignty for countries. In the modern period, there is no effective mechanism to prevent the adverse effects for updated forms of international financial activity.

Interconnection and interaction of the world community indicate a certain degree of dependence in the global financial system on the stability in the state financial systems. Currently, the key direction of the transformation in the global financial system is recognized as financial stabilization, which determines the balance of all sources for financial development without exception (Avdeev and Avdeeva, 2014). Each state, seeking to deepen international cooperation, should take into account both positive changes in the national financial system and negative consequences caused by new challenges and threats.

The BRICS countries, seeking to enhance interconnectivity, cooperation and coordination in their activities, pay special attention to financial security issues, with a focus on countering terrorism and money laundering. One of the goals for BRICS is to promote development, prosperity and security in an interconnected and cooperating multipolar world. Projects in the field of information exchange on ensuring information and financial security should be implemented. Attention should be given to modernizing the international mechanism for the recovery and confiscation of criminal assets.

International legal support of financial security presupposes the formation of an appropriate legal and regulatory framework. In this connection, the establishment of the International Financial Stability Forum on the basis of the Financial Stability Forum on 02.04.2009 deserves a positive assessment. The International Financial Stability Board that adopted a number of documents important for financial and legal regulation should be commended. Noteworthy among these documents are Program Measures of Regulating Systemically Important Financial Institutions. Within the framework of these measures, the financial-credit institutions are to be defined as financial companies, the bankruptcy of which leads to a decline in economic activity and the financial system.

To prevent the negative consequences of bankruptcy, it is advisable to directly finance financial and monetary organizations, which negatively affects public finances. On this basis, the following recommendations of the Council on the Regulation of Credit and Monetary Institutions are actualized: 1) establishing requirements for planning rehabilitation in the event of bankruptcy and preliminary assessment for the probability of bankruptcy in this organization; 2) establishing conditions on the increased capital of these organizations; 3) introducing and ensuring a more thorough supervision of organizations; 4) giving regulators the necessary and sufficient powers and resources to streamline the liquidation of credit institutions.

However, the regulation of interstate financial relations provides for a somewhat different status of the Financial Stability Board. The proposed format of discussing complex issues and making decisions excludes the possibility of developing and implementing general recommendations in the area of financial security (Kartashkin and Lukasheva, 2002). Without the status of an international intergovernmental organization, the Council does not allow each state to influence its decisions by exercising control over its activities.

Crisis phenomena in the economy, sanctions from various states cause the following list of threats to financial security: a) high level of dependence on a number of countries; b) inability of the state financial system to respond timely and adequately to emerging risks and threats. The observed negative trends in the financial sphere complicate the implementation of necessary economic domestic transformations, precluding stable growth of the economy, affecting the economic activity of the country in a negative way.

Establishment and functioning of banks in advanced economies envisage a developed and effective supervising system which guarantees stability of their activities for a relatively long period of time. Of special importance in this case is a regular control over financial activities of banks.

Policies to assure national security and socio-economic development are conducive to realization of strategic national priorities and effective protection of national interests. In modern conditions a sustainable basis for further building of economic, political and spiritual potentials is to be created increasing the role of countries in the emerging polycentric world.

Each state should be aimed at demonstrating its ability to ensure independence, sovereignty, state and territorial integrity, the rights protection of compatriots abroad. The increasing role of countries in solving complex international problems, ensuring strategic stability and the rule of international law in inter-state relations, resolving military conflicts deserves attention. The domestic economy should demonstrate the ability to strengthen and preserve national potential under conditions of instability in the global economy and the application of restrictive economic measures imposed by a number of countries. The implementation by a number of countries for independent domestic and foreign policy is often accompanied by opposition from the superpowers, members of various political and economic blocs and their allies, seeking to maintain their dominance in world affairs (Avdeev *et al*., 2016). The result is a policy of containment which includes economic, political, informational and military pressure.

Regional and global instability is a negative consequence of the formation and development of a new polycentric model in the world order. The contradictions associated with the unevenness of the world development,

the struggle for resources, the deepening gap between the levels of welfare for states, control over the transport arteries and access to markets are exacerbated. The world's demographic situation is becoming more complex, food security and environmental problems are becoming more acute. The consequences of climate change are evident in the growing scarcity of fresh water. Epidemics and pandemics are spreading, in particular due to new, previously unknown viruses.

Increasing interstate competition largely encompasses models and values of societal development and technological, scientific and human potentials. The struggle for leadership in the development of Arctic and ocean resources deserves close attention. In this case, the whole range of financial, economic, political and informational tools is to be used including a high probability for using the potential of special services.

The increasing influence of political factors on economic processes, as well as the desire of some countries to use economic methods, tools of trade, financial, technological and investment policy to solve their own geopolitical tasks have a negative impact on the stability of the system in international economic relations (Avdeev, 2013a). Considering the structural imbalances in the financial system and world economy, increasing sovereign debts, volatility of the energy resources market, the risk of new large-scale financial and economic crises remains high. As a response to growing international instability, states become responsible for affairs in their own regions. Regional and subregional trade and other economic agreements serve as the most important safeguards against crises. Interest in the use of regional currencies is growing. To prevent threats to national security, countries focus on efforts to strengthen the internal unity of society, interethnic harmony and religious tolerance, ensure social stability, eliminate structural imbalances in the economy and its modernization, and improve national defense capabilities.

Protecting national interests requires a pragmatic, rational and open foreign policy that rules out economically unjustified and quite costly interstate confrontation. International relations must be based on the principles of international law, equal and reliable security of countries, mutual respect of peoples, preservation of the diversity for their cultures, traditions and interests. Each state should be interested in the development of equal and mutually beneficial trade and economic cooperation with foreign countries, acting as a responsible member of the multilateral trading system. The goal is to acquire a significant number of equal partners in different parts of the world (Sergevnin *et al.*, 2015). Among the national interests within the framework of the implemented social and legal policy the following directions deserve close attention, related to the improvement of the life quality, competitiveness of the national economy, consolidation of the status of countries, whose activities are aimed at maintaining mutually

beneficial partnership relations and strategic stability in a polycentric world. Improving the life quality of people provides for the development of human potential, satisfaction of spiritual, material and social needs, reducing the level of property and social inequality of the population primarily through the growth of their income.

Conclusions

The analysis of the international and national foundations for ensuring financial security indicates the feasibility of further scientific developments with an interdisciplinary nature, expanding and deepening the traditional methodology. The obtained scientific results seem to be consistently used in the formation for scientific foundations of financial security which should be placed in the basis of international, interstate and national legal regulation of financial relations. It is logical to use doctrinal inter-branch achievements for the legislative registration of the legal framework for ensuring financial security of each state, taking into account the inherent socio-economic, political and legal, cultural, religious and other characteristics.

The development and implementation of state financial policy that ensures the safe development of the budget system, banks, national currency, foreign investment and etc. is of fundamental importance. Scientifically substantiated proposals for the implementation of the state-legal financial policy to counter external and internal threats are of practical importance. In this regard, the activities of state and local authorities should be consolidated to achieve the established objectives, issues and tasks in the field of economic and financial security of the state. Attention should be paid to maintaining the real sector of the economy, maintaining the stability and stability of the macroeconomic situation, improving the quality of economic management, neutralizing the impact of global financial crises, and ensuring the stability of the financial system.

The efficiency of state asset management should be improved. Inefficient budget expenditures and related costs should be reduced. The activity of law enforcement bodies in the sphere of combating financial crime including corruption, embezzlement and misuse of public funds should be intensified.

Special attention should be paid to strengthening the financial system, ensuring its sovereignty, stability of the national currency, optimization of currency regulation and control, reducing inflation, development of the national financial market infrastructure, reducing bank rates, increasing the level of direct investment, access to credit, attracting domestic savings, deoffshorization of the economy, the return of national capital and reducing the volume of its export abroad. A balanced budget system and modernization of inter-budgetary intra-state relations are of no small importance. Among

the components of ensuring stability in the financial system, the following deserve close attention: normalization of settlement relations and financial flows, maintaining the proper level of budget deficit, stability of the national currency and banking system, reducing the balance of payments deficit, internal and external public debt, providing the necessary conditions for the intensification of investment activity, the degree of protection for the securities market and the interests of depositors.

Every state counts on financial independence and sovereignty taking into account international normative and legal acts. In order to solve this task, measures in the sphere of foreign and domestic policy, aimed at strengthening financial security, are being developed and implemented. To ensure financial security contribute: a) reduction of costs and inefficient budget expenditures, combating corruption, theft and misuse of public funds; b) increasing the efficiency of management with state-owned financial and other assets; c) ensuring sovereignty, strengthening the national currency and state financial system; d) optimization of control and currency regulation, reduction of inflation, development of financial regulation measures. Ensuring budgetary and monetary security of the EAEU member states requires a focus on the protection and security of national budgetary and monetary sovereignty, based on current trends of external aggression in the monetary and credit plan by the U.S. Federal Reserve System.

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Signs of a Legal Entity of Public Law under the Legislation of Ukraine

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Abstract

The article examines the legal status of legal entities of public law as participants in civil circulation. Both general and special research methods were used, which were determined by the purpose of the article, taking into account the object and subject of the research. To study the above-mentioned civil law relations in their interconnection and development, the dialectical method was used. The comparative legal method was used to analyze the world experience of legal regulation of the status of legal entities of public law in foreign legislation and the doctrine of law, in particular, in the legislation of the CIS countries. Results showed that legal entities of public law are organizations; as legal entities; have the characteristics of a legal entity: organizational unity, the presence of separate property, acting in circulation on their own behalf, independent civil liability. In addition to the general features of a legal entity, legal entities of public law also have special features that characterize them as participants in civil turnover. It was concluded that legal entities of public law are a type of legal entity, are created in the administrative order by the state and have targeted legal capacity.

Keywords: legal person under public law; organization; public interest; legal capacity; legislation of Ukraine.

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Signos de una entidad jurídica de derecho público en virtud de la legislación de Ucrania

Resumen

El artículo examina la situación jurídica de las personas jurídicas de derecho público como participantes en la vida civil. Se utilizaron métodos de investigación, tanto generales como especiales, los cuales fueron determinados por el propósito del artículo, tomando en cuenta el objeto y tema de la investigación. Para estudiar las relaciones de derecho civil antes mencionadas en su interconexión y desarrollo, se utilizó el método dialéctico. El método jurídico comparado se utilizó para analizar la experiencia mundial de regulación jurídica del estatus de las personas jurídicas de derecho público en la legislación internacional y la doctrina del derecho, en particular, en la legislación de los países de la CEI. Los resultados mostraron que las personas jurídicas de derecho público se identifican por: ser personas jurídicas; tener las características de una persona jurídica: unidad organizativa, presencia de propiedad separada, actuar por cuenta propia, responsabilidad civil independiente. Además de las características generales de una persona jurídica, las personas jurídicas de derecho público también tienen características especiales como ser participantes en la facturación civil. Se concluyó que las personas jurídicas de derecho público son un tipo de persona jurídica, son creadas en el orden administrativo por el Estado y tienen capacidad jurídica focalizada.

Palabras clave: persona jurídica de derecho público; organización; interés público; capacidad jurídica; legislación de Ucrania.

Introduction

Today, legal entities of public law are participants in civil circulation in Ukraine. The construction of a “legal entity of public law” was enshrined in the 2003 Civil Code of Ukraine (Haliantych, 2013). The introduction of this construction into the legislation was because the legislator adopted the traditions of the continental system of law in which legal entities are divided into legal entities of private law and legal entities of public law. In addition, the factors that influenced the consolidation of this classification of legal entities were the need to reform the public sector of the economy, the establishment of legal equality of participants in property relations.

It was meant to determine the legal status of subjects of public law, in particular, the state, local government bodies, state-owned enterprises. In the science of civil law, there are no theoretical developments of the concept

of "legal entity of public law". Most scholars oppose the consolidation of this classification at the legislative level, in particular in Russia, Kazakhstan it was refused to specify the division of legal entities into legal entities of private law and legal entities of public law. Therefore, there are legal problems of determining the legal capacity of legal entities under public law, their types, property independence, and civil liability for their obligations. The question of the criterion for legal entities differentiation into private and public remains debatable in the doctrine. All these problems require a study of the legal status of legal entities of public law as participants in civil legal relations.

The term "legal entity of public law" originated over 200 years in France during the construction of an administrative state. Gradually, from the end of the 19th century, this term began to be used in many European countries, and already in 1990, it was fixed in the Civil Code of Germany. In the doctrine of German law, legal entities of public law are legal entities that are established by virtue of law or administrative act as executors of tasks of a public nature (Ennektserus, 1949). From this concept, two criteria of differentiation of legal entities of public law and private law can be identified. The first criterion: the procedure for the establishment of a legal entity of public law (administrative), a legal entity of private law is created in a regulatory-declarative order; the second criterion: the purpose of the functioning of a legal entity of public law is the performance of public tasks, whereas a legal entity of private law is created to satisfy private interests.

The legal status of legal entities under public law in Germany is determined at the level of public law or the law of individual states (lands). The types of legal entities under public law include the following: legal entities that hold public power in a certain territory – a federation, federal lands, communities; state universities; professional associations (chambers of lawyers, chambers of commerce and industry); federal radio; public law institutions: land radio stations, savings banks, public law funds. Legal entities of public law carry out activities for serving the state and public interests (Adarchenko, 2012).

In France, legal entities of public law include a public institution. The legal status of the latter is characterized by the following features: 1) is a legal entity; 2) is classified as a legal entity of public law; 3) manages the public service. A public institution has property that belongs to it by right of ownership, operates on the principle of specialization, i.e., it has powers and competence only in the area that belongs to its type of activity and is determined by law and regulations. Public institutions are endowed with power and the ability to make decisions and carry out official actions. In French doctrine, public institutions are classified according to different criteria. Therefore, state, and non-state public institutions are distinguished. The state ones include those that act with the aim of

realizing the state interest, non-state ones – those that operate in a certain territory, in particular communal institutions. Depending on the nature of their activities, the following types are distinguished: public educational institutions (faculties, lyceums, and schools), social institutions (hospitals, charitable institutions), financial institutions (savings banks) (Vatel, 2012).

Thus, an analysis of the legislation of Western countries shows that the concept of "legal entity of public law" is applied to a wide range of different subjects, and there are no criteria for distinguishing between legal entities of public law and legal entities of private law. Unlike Ukrainian legislation, the state and other subjects of public law are recognized as legal entities of public law. According to the Civil Code of Ukraine, the state, the Autonomous Republic of Crimea, territorial communities are not legal entities; they are called subjects of public law and are participants in civil relations (Haliantych, 2013). The main features of a legal entity of public law in Western countries include the following: 1) established by subjects of public law; 2) are created in an administrative order; 3) act for performing public tasks; 4) have the powers of authority and the ability to issue regulations.

The concept of "legal entity of public law" is enshrined in the legislation of the former Soviet republics, in particular, in the civil codes of Georgia, Azerbaijan, Moldova, and the Baltic countries. So, for example, in accordance with Art. 1509 of the Civil Code of Georgia, legal entities of public law include: the state, local self-government, legal entities created by the state on the basis of a legislative or administrative act, which are not created in the organizational and legal forms defined by the Civil Code or the Law of Georgia "On Entrepreneurs", state institutions and foundations, non-state organizations (political parties, religious associations) (Gvelesiani, 2011: 234).

A special law "On Legal Entities of Public Law" is in force in Georgia, according to which a legal entity of public law can be created based on a law, a decree of the President of the country, an administrative act of a public administration body in cases expressly provided by law (Baade, 1995). A legal entity has the right to carry out entrepreneurial activity, but only in the form of an additional one. Legal entities of public law in Georgia can act based on membership, that is, have a corporate structure. There is no specific list of legal entities under public law in Georgian legislation. In the Republic of Moldova, the Civil Code (hereinafter referred to as the "CC RM") establishes the division of legal entities into public and private, which act in civil legal relations on an equal footing (Cazac, 2020).

The Civil Code of the Republic of Azerbaijan (hereinafter referred to as the CC RA) provides for the differentiation of legal entities into types, among which there are legal entities that carry out activities of state or public importance (public legal entities) (Dadashov, 2020). A legal entity

of public law can be created by the state, by a municipality body, acquire legal capacity from the moment of state registration, which has a targeted character, acts on the basis of the charter, bankruptcy proceedings cannot be applied to these legal entities. The property of a legal entity of public law can be formed by contributing to the statutory fund, which is created at the expense of the property transferred by the founders, at the expense of funds allocated from the state and local budgets, donations, grants and other sources (Vandenbergh, 2005). The state and municipalities in Azerbaijan are legal entities, but do not belong to legal entities of public law (Mamedov, 2011).

Thus, the general features of legal entities of public law under the legislation of the considered CIS countries are as follows: 1) are created in the administrative order by the state or local government; 2) have a targeted legal capacity – the implementation of state or public interests. In modern law, there is no consensus among scholars about the effectiveness and usefulness of the structure of a legal entity of public law. There are both supporters of consolidation of the "legal entity of public law" concept in doctrine and legislation, and opponents.

In the doctrine of law, there are several approaches to determining the legal nature of a legal entity. So, for example, Bobkova and Ryabchenko (2015), considers the combination of administrative and economic functions in the activities of a given legal entity, the presence of special legal capacity, the impossibility of realizing their public interest with an exclusively commercial nature of activity as the main elements of the legal capacity of legal entities of public law (Wilson, 2002). In the legal literature, a definition of a legal entity of public law is given, which is understood as an organization that is created as a legal entity by the state through the adoption of a public law act, has legal capacity, is endowed with public law powers and property (Vandenbergh, 2005). The special features of a legal entity of public law include the public nature of goals, the presence of power, and the special nature of membership (Tarasov, 2010). All the characteristics of a legal entity are inherent in legal entities of public law: organizational unity, property isolation, civil liability, acting in circulation on its own behalf.

In the science of civil law, organizational unity is understood as a certain hierarchy, subordination of governing bodies (individual and collegial), which make up its structure and in a clear regulation of relations between its participants (Puniyani, 2020). Legal entities of public law have their own structure of bodies that exercise the dispositive capacity (legal capacity to act) of these entities. They carry out their activities based on constituent documents, which are usually adopted by the founder of a legal entity of public law – a subject of public law (Vandenbergh, 2005). So, for example, in accordance with Part 1 of Art. 4 of the Law "On Central Executive Bodies"

dated March 17, 2011 No. 3166-VI, ministries and other central executive bodies are legal entities of public law (Hood and James, 1997; 188). One of the central executive bodies with a special status is the State Property Fund of Ukraine. The legal status of the State Property Fund of Ukraine is fixed at the level of the special Law of Ukraine "On the State Property Fund of Ukraine" dated 09.12.2011 No. 4107-VI (Maksymenko and Melikhova, 2017: 64).

The State Property Fund of Ukraine is a legal entity of public law that implements state policy in the field of privatization, lease, use and alienation of state property, management of state property, including the corporate rights of the state regarding state property that belong to the sphere of its management, as well as in the field of public administration of property appraisal, property rights and professional appraisal activities. Financing, material and technical support of the State Property Fund of Ukraine is carried out at the expense of the State Budget of Ukraine. The State Property Fund of Ukraine issues orders that are binding on central executive bodies, institutions, enterprises, organizations of all forms of ownership and citizens.

Results and Discussion

The presence a legal entity's separate property means that this property is separate from the property of the owners who created this organization, from the state, from other subjects of civil law (Puniyani, 2020). As a rule, legal entities of public law are not the owners of the property they have. So, in accordance with Art. Art. 167-169 of the Civil Code of Ukraine, legal entities established on the state or communal form of ownership are legal entities of public law (Haliantych, 2013, 244). Legal entities of public law have their property on limited property rights: the right of operational management, the right of full economic management, which are enshrined at the level of the Economic Code of Ukraine. Today we need to look for an effective alternative to limited property rights, since with the transition of the domestic legal order from outdated structures of unitary enterprises and institutions that do not own their property to normal market relations (the structure of a legal entity – the owner), limitation of the liability of autonomous and budgetary institutions as subjects of civil turnover, as well as the possibility of the founder's interference in the transactions of his own independent legal entity should be gradually eliminated (Ulbashev, 2019).

One of the signs of a legal entity is its ability to take part in civil legal relations, which is expressed in the ability to have, exercise property and non-property rights and perform duties. Legal entities of public law are participants in civil relations. Legal entities of public law in civil relations

are subject to the provisions of the Civil Code of Ukraine, unless otherwise provided by law (Haliantych, 2013).

The sign of independent property liability is important, since the creation of legal entities has long pursued the goal of maximum elimination of founders (participants, shareholders) from liability based on the results of the use of their invested capital. In accordance with Art. Ninety-six of the Civil Code of Ukraine, a legal entity is independently responsible for its obligations (Haliantych, 2013: 43). A legal entity is liable for its obligations with all of its property. A participant (founder) of a legal entity is not liable for the obligations of its participant (founder), except for cases established by the constituent documents and the law. The liability of legal entities under public law has certain specific features. Therefore, in the Civil Code of Ukraine (Art. 167), among the types of legal entities of public law, state enterprises are called (Haliantych, 2013).

Can all state-owned enterprises act as legal entities of public law? In the opinion of most scientists, state and utility companies can be classified as legal entities of private law, since their activities are not related to the functions of state administration and local self-government but are aimed at a more traditional civil law goal – making a profit, thus most of the state enterprises seek to satisfy private and not public interest. Signs of public interest in the doctrine of law are: 1) compliance with the needs, goals of the whole society and the state, protection by specialized entities (state, public associations); 2) legality, public interest is enshrined in legislation and complies with it; 3) the inadmissibility of restricting public interest, but at the same time, public interest may restrict private one. Therefore, the classification of these entities as legal entities of public law may be based because these participants in civil legal relations depend on their founder, which is the state or local self-government, and the property of these enterprises is state or communal property.

Conclusions

An analysis of the experience of legal regulation of legal entities of public law in Western countries and the CIS countries shows that legal entities of public law have common characteristics of a legal entity, such as organizational unity, the presence of separate property, independent civil liability, acting in circulation on its own behalf. In addition, these entities also have special features that characterize them as legal entities of public law: first, they are created by subjects of public law (state, local self-government); secondly, they are created in an administrative order; thirdly, the activities of legal entities of public law are aimed at satisfying the state (public) interest; fourthly, legal entities of public law are not the

owners of the property, the property belongs to the said entities on limited property rights (the right of operational management, the right of full economic management); fifthly, subsidiary responsibility for the actions of a legal entity of public law is borne by the subject of public law, which created the specified entity. Thus, on the basis of the above, it is possible to formulate the concept of a legal entity of public law, which is understood as an organization that is created by a subject of public law, acts on the basis of an administrative act, has legal capacity, which is determined by certain public law purposes, has public law powers, has property, which has a targeted nature for the implementation of these powers.

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Criminal Prosecution of Persons Who Have Committed Crimes in The Banking Sector

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Abstract

The objective of the article was to analyze the process of criminal prosecution of people accused of committing crimes against the banking sector in the Russian Federation. Detecting such crimes, identifying the people who committed them in and compensating for the damages caused by such acts is the most difficult task for law enforcement officials in Russia. The most important part of these activities are procedural questions about the timing of the commencement of criminal proceedings and the procedure for their implementation in pre-trial proceedings. The methodological basis of this research is formed by the processing of the results of criminal cases, the results of surveys of researchers and detectives, members of the educational and methodological group of the Ministry of Internal Affairs of the Russian Federation. The authors have proposed the drafting of article 5, paragraph 55, of the Code of Criminal Procedure of the Russian Federation and its corresponding amendments to article 11. It is concluded that these contributions will make it possible to carry out the procedural work on compensation for damages caused by a crime in a much more effective manner.

Keywords: bank offences; criminal prosecution; pre-trial proceedings; termination of criminal proceedings; Russian Federation.

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Enjuiciamiento penal de personas que han cometido delitos en el sector bancario

Resumen

El objetivo del artículo fue analizar el proceso de enjuiciamiento penal de personas sindicadas de cometer de delitos contra el sector bancario en la federación rusa. La detección de tales delitos, la identificación de las personas que los cometen y la compensación por los daños causados, por tales actos, es la tarea más difícil para los agentes del orden en Rusia. La parte más importante de estas actividades son las cuestiones procesales sobre el momento en que comienza el proceso penal y el procedimiento para su implementación en las diligencias previas al juicio. La base metodológica de esta investigación está formada por el procesamiento de los resultados de las causas penales; los resultados de encuestas a investigadores y detectives, miembros del grupo educativo y metodológico del Ministerio del Interior de la Federación de Rusia. Los autores han propuesto la redacción del párrafo 55 del artículo 5 del Código de Procedimiento Penal de la Federación de Rusia y sus correspondientes enmiendas al artículo 11. Se concluye que estos aportes permiten llevar a cabo la labor procesal sobre la indemnización por daños causados por un delito de manera mucho más eficaz.

Palabras clave: delitos bancarios; enjuiciamiento penal; procedimientos previos al juicio; terminación del proceso penal; federación rusa.

Introduction

The necessity of criminal prosecution or refusal from it are predetermined by the purpose of criminal proceedings. Without including criminal prosecution in the purpose of criminal proceedings, the latter loses its significance, social value and efficiency in the legal and law enforcement sense. That is why achieving the purpose of criminal proceedings is possible only when criminal prosecution is carried out or when it is refused. Thus, criminal prosecution is a semantic concept for determining the purpose of criminal proceedings, solving the tasks arising from it, contributing to its achievement.

1. Materials and methods

The empirical basis consists of the results of 47 criminal cases; questionnaire results among 25 investigators and detectives, 60 members of the teaching group of the Ministry of Internal Affairs of the Russian Federation, Moscow University of the Ministry of Internal Affairs. Based on the study of the law enforcement practice of investigators of territorial internal affairs bodies investigating crimes in the sphere of banking, expressed in the materials of specific criminal cases; obtained and processed data from a sociological study on the state of practice in investigating crimes in the banking sector; corrective data from the Investigative Department of the Ministry of internal Affairs of Russia was received and studied. The analytical research method has enabled us to draw several essential conclusions that resolve the question which serves as the hypothesis for this study.

2. Results analysis

The interpretation of the notion "criminal prosecution" allows to define it as accusatory procedural activity of the competent officers and authorities, directed against a specific person, which can be confirmed by issuing the procedural decision on initiation of criminal case, the conduct in respect of his investigative and legal proceedings as proof of his involvement in the crime by establishing the circumstances referred to in article 73 of the Criminal Procedure Code (Criminal Procedure Code of the Russian Federation No. 174-FZ, 2001b) of the Russian Federation, other measures undertaken for the purposes of proof or evidence that there is a suspicion against him (in particular, explanation in accordance with part 1 of article 51 of the Constitution of the Russian Federation the right not to testify against oneself) (Constitutional Court of the Russian Federation, 2000).

This approach demonstrates a broad view 5 of the Criminal Procedure Code (Criminal Procedure Code of the Russian Federation No. 174-FZ, 2001d) of the Russian Federation, when to determine the initial moment of criminal prosecution, the actual position of the person against whom the criminal prosecution is being carried out must be taken into account.

Defining the specific moment of the beginning of criminal prosecution, the respondents of the conducted sociological survey (84% of investigators) also indicated that it can begin at the stage of initiation of criminal proceedings in the course of investigative and procedural actions in accordance with article 144 of the Criminal Procedure Code of the Russian Federation (Criminal Procedure Code of the Russian Federation No. 174-FZ, 2001a), which affects the rights and freedoms of a person in respect of whom a report of a crime is being verified.

Stated arguments lead to the reasonable conclusion that the beginning of criminal prosecution needs to find its normative expression in paragraph 55 of article 5 of the Code of Criminal Procedure, which is proposed to be amended as follows: "55) criminal prosecution the indictment procedural activity carried out by the prosecution in order to expose a specific person of committing a crime, seriously and directly affecting his position."

The adoption of this regulatory innovation will solve a number of significant tasks of criminal proceedings, which will be considered on the example of crimes committed in the credit and banking sector, the first of which is compensation for criminally caused harm, otherwise this task becomes potentially unattainable.

So, for example, unidentified persons from among the heads of CB "Universaltrast "(JSC) committed theft of the Bank's funds by lending to one-day firms, causing damage in the amount of 122 million rubles, but the property subject to arrest was not identified and the damage was not compensated.

Koval Yu. N., being the chairman of the board of the bank CB "SOTSECONOMBANK" (LLC) and Rombakh O. V., in the period from 23.03.2010 to 26.10.2010, acting in collusion with Rombakh O. V., committed theft of the Bank's property in a particularly large amount. The damage equal to 1.3 billion rubles has not been reimbursed, and the property subject to seizure has not been established.

The accused Monkhey M. I. and Kazakova N. V. stole funds of JSC "Miraf-Bank " in the amount of 100 million rubles under the guise of issuing a loan to LLC "Grizar", the damage was not compensated, the property was not established.

In another criminal case on the commission of a crime by Timonium A. V. jointly with the Zavertyaev M. I. of misappropriation of funds belonging to JSC "PV-Bank", represented by GK "ASV" in the amount of 120 million rubles, initiated in 2012, the petition for seizure of property was prepared only in 2019 and 24.05.2019 the case was directed to the Meshchansky district court.

The examples listed above and other indicate the symptoms of imperfect criminal procedure legislation and practice of its application in the investigation of economic crimes, which concern mostly the issues of the beginning and implementation of criminal prosecution of persons who have committed them.

The most common reason for initiating a criminal case is a statement of a crime received from a credit and financial institution. The application can also be submitted from the Central Bank of the Russian Federation (Bank of Russia) or the State Corporation "Deposit Insurance Agency"

(hereinafter referred to as the "DIA" group). Another reason for conducting an inspection may also be a report on the discovery of signs of a crime, but it is necessary to take into account the provisions of part 3 article 20 of the Criminal Procedure Code of the Russian Federation.

Verification of a crime report is carried out using a set of investigative and other procedural actions specified in part 1 of article 144 of the Criminal Procedure Code of the Russian Federation (Criminal Code of the Russian Federation No. 174-FZ, 2001a), as well as with the conduct by the body of inquiry of operational-search measures on behalf of the investigator.

At the stage of criminal proceedings initiation, not all circumstances are subject to determination, but only those data that are of key importance in the commission of a crime. At the same time, the investigator needs to conduct certain procedural and investigative actions in order to collect enough factual data, which in the future, when initiating a criminal case, can become evidence and be attached to the materials a criminal case.

When verifying received materials the investigators have to consider the fact that according to the statements of the Central Bank and GK "ASV" there are problems in locating the original documents and establishing the whereabouts of persons whose registration is not the same as place of residence. In order to avoid violating the terms of pre-investigation checks, it is necessary to immediately clarify these issues.

The actual data that are the basis for initiating a criminal case may be established by removing and further studying by the person performing the preliminary check, those documents submitted by the borrower to a bank or other credit institution for obtaining a credit supply, as well as bank documents accompanying the procedure for registration and obtaining credit funds.

Receiving an application from the Civil Code "DIA" does not mean that the preliminary investigation authorities unconditionally accept the received materials and the formality of the upcoming verification of the report of a crime.

For example, the investigator repeatedly made decisions to refuse initiating criminal proceedings, which were subsequently canceled and sent for additional verification. However, as a result of the audit bodies of preliminary investigation came to the conclusion, that in determining the value of shares of JSC "UK ORF" it is incorrect to use the method of net assets, as these shares were actively traded on MICEX at a cost of 6.8 RUB not just by affiliates, but also by persons not affiliated with the Bank and the beneficiary (from 10-16% share of the total number of shares). Therefore, the applicant's conclusion that they are illiquid is premature and unfounded. Shares of JSC "UK ORF" acquired by the Bank upon the exchange of assets between the Bank's shareholders in 2013 held by the beneficiary at a price

of 0,10 rubles in order to increase the value of assets, as confirmed by the requirements of the Central Bank of the Russian Federation to the Bank and were sold for a high price, which confirms the testimony of a number of check individuals on the pursuit of their goal of making profit from deals of these securities and increase the amount of cash in circulation the Bank. Thus, the investigator decided to refuse to initiate criminal proceedings against specific individuals under part 4 of article 160, part 2 of article 201 of the Criminal Code, on the grounds established by clause 2 part 1 article 24 of the Criminal Code of the Russian Federation, that is, because of absence in their actions of the above mentioned crimes.

> Decisions to initiate criminal proceedings for crimes in the credit and financial sphere are taken if there is sufficient data indicating the signs of a crime, and if there are signs indicated in the order of the Deputy Minister-head of the Investigative Department Internal Affairs No. 55 of the Russian Federation dated October 26, 2011 "On the organization of departmental control when reviewing audit materials in accordance with article 144-145 of the Criminal Code of the Russian Federation (Criminal Procedure Code of the Russian Federation No. 174-FZ, 2001a) on economic crimes and corruption" and of the Ministry of Internal Affairs Order of 1 December 2016 No. 785 "On the organization of communications on certain types of economic crimes", only after consultation with the head of the preliminary investigation bodies territorial bodies of the MIA of Russia.

When checking reports of encroachments on bank credit facilities, the investigator closely interacts with the employees of the inquiry body who accompany the material. The circle of persons with information relevant to the case is determined and worked out, as well as the circle of persons involved in the commission of the crime.

In accordance with paragraph 4 of part 2 of article 38 of the Criminal Code the investigator submits written assignments to operational staff on the conduct of investigative activities aimed at locating stolen property, verification of information about the movement of stolen funds in bank accounts; and other events, depending on the circumstances of the theft.

The staff of the investigative units inquiring criminal cases of this category, focus should be oriented towards validation at the initial stage of investigation into signs of crimes specified in articles 172.1, 173.1, 173.2, 174, 174.1, 187, 193.1, 210 of the Criminal Code of the Russian Federation (henceforth, The Criminal Code), and if identified, the decision-making of additional qualification according to the articles.

For example, 18.01.2019 the senior investigator for ATS SU AMIA Russia's Orenburg region during the pre-investigation (KUSP No. 3308 from 15.06.2018) against the directors of the JSK "BSL" was detected the fact of committing a crime under article 172.1 of the Criminal Code of Russian Federation, as the leaders of JSK "BSL", making transactions with securities affiliates, overstated the financial result on transactions with

securities and provided false information in statements for the Central Bank of the Russian Federation, in order to conceal stipulated by the legislation of the Russian Federation grounds for mandatory revocation of license organization and destination organization of the interim administration.

To establish the property status of the defendants, pre-screening, the availability of real estate, vehicles, cash in their accounts, the availability of shares in the authorized capital of legal entities, establishment of affiliated organizations and individuals, involved in the commission of crimes in credit-financial sphere, identify the possible legalization of proceeds of crime, employees of internal affairs bodies according to the materials of checks and criminal cases sent relevant inquiries to the state bodies, financial organizations, banks, Interregional Directorate of the Federal Service for financial monitoring (Rosfinmonitoring).

At the same time, the investigator should take into account the specifics of interaction with the FSFM, accounting for which can have a positive impact on detecting the legalization of criminal income.

The FSFM sends materials about suspicious transactions to law enforcement agencies not promptly enough.

Financial intelligence materials are of an orientation nature and require additional verification, which is why they are used for planning operational and investigative activities and further procedural actions. A problem that arises in the course of interaction of Internal Affairs Investigators with Rosfinmonitoring units is the presence of a security label on the received information, which is why it cannot be included in the criminal case file, and additional requests must be sent to the relevant authorities and institutions.

In the vast majority of cases, Rosfinmonitoring information is not used in criminal investigations, due to the length of execution of requests for financial audits and the related lack of relevance of information at the time of receipt of the results, since this information has already been independently obtained by investigators from registration authorities and credit organizations during the preliminary investigation, by sending appropriate requests (in some cases, the criminal case has already been sent to the court).

Information gathering is also performed using the information systems of subjects of the financial-economic activities, databases of the MIA, as well as confidential personnel and the capabilities of the Search and Rescue Units and the Bureau of Special Technical Activities of the MIA.

In pursuance of the investigator's order, instructions are sent to the territorial MIA, the Office of Economic Security and Anti-Corruption, and CID of the relevant subjects of the Russian Federation for conducting operational search measures to establish the location of stolen property,

objects of investment of stolen funds, and the circumstances of the criminal origin of funds, real estate and other material values are established.

The property status of relatives of the person who committed the crime, acquired during his criminal activity, must also be established. An important role at this stage of the work of investigators is provided by interaction with operational units, which is carried out by obtaining information about the connections of suspects, their relatives; the frequency of their trips abroad, as well as movement within the country, the purpose of travel; their income obtained legally, which is compared with expenses and the availability of property, is established. In case of non-compliance, additional verification measures are organized.

When conducting interviews and interrogations of relatives and friends of a suspected person, among other issues, objects of property owned are established. Investigators send inquiries to various organizations (traffic police, GIMS, the Rostekhnadzor, the Federal service for state registration, BTI, the Federal service for state registration, cadastre and cartography, FNS (participation in legal entities), pension Fund, credit institution, etc.) with the aim of establishing the presence of suspects (accused) movable and immovable property, availability of funds in the accounts, deposits or deposited in banks and other credit organizations.

When establishing the facts of legalization (laundering) of property obtained by criminal means, the investigator should take into account the fact that the direction of funds of an illegally obtained loan to ensure the normal financial and economic activities of the enterprise, expressed, for example, in the purchase of materials and fixed assets, payment for services of suppliers, etc., is mistakenly recognized as legalization (laundering) and leads to a verdict of acquittal in terms of unlawfully imputed.

Special attention should be paid to the measures taken by the body of inquiry aimed at compensating for the damage caused by the crime. Shortcomings lead to significant omissions in this work (Ivanov *et al*., 2020: Ivanov and Kruglikov, 2020).

So, the help on criminal cases about the crimes in credit-financial sphere in 2019 at Department of the Ministry of Internal Affairs of Russia across the Sakhalin region (2020) shows that the damage on the ended criminal cases has made 4 860 585 rubles, voluntarily refunded in the amount of 969 704 rubles, or 19, 95 %, the lien on the property in order to recover damages did not overlap.

Joint discussions of inspection materials with operational divisions are necessary prior to their registration, in order to collect complete and high-quality materials. All verification materials, and subsequently for each criminal case, should be subject to security measures aimed at compensating damages, identifying assets that can be seized, as well as property obtained

by criminal means. If necessary, actions should be taken to identify, seize and return from abroad assets obtained as a result of a crime commission, by sending requests for legal assistance to the competent authorities of foreign States.

The highest performance is achieved when the organization of interdepartmental interaction of law enforcement bodies on counteraction to crimes in credit-financial sphere in the form of a permanent interdepartmental group, comprised of staff from the Office of Economic Security and Anti-Corruption, prosecutors, the IRS and others, as well as representatives of the Bank of Russia and GK "ASV".

Thus, after receiving and evaluating the information, the investigator, in accordance with article 115 of the Code of Criminal Procedure (Criminal Procedure Code of the Russian Federation No. 174-FZ, 2001c), with the consent of the head of the investigative body shall immediately apply to the court a reasoned petition for seizure of property of suspects (accused) to ensure execution of civil action, recover a fine, other property collectings or possible confiscation of property, specified in part 1 of article 104.1 of the Criminal Code.

In accordance with article 115 of the Criminal Procedure Code of the Russian Federation (Criminal Procedure Code of the Russian Federation No. 174-FZ, 2001c), it is possible to impose an arrest on the property of only a suspect or accused. This leads to the fact that when performing preliminary verification of a report of a crime (up to 30 days) in relation to a particular person, it is impossible to perform actions to compensate for damage caused by this crime.

In such circumstances, it is necessary to orient investigators and heads of investigative bodies on the earliest possible granting of the status of a suspect (accused), a person who has committed a crime. This fact leads to errors of prosecution and difficulties of proof caused by artificial acceleration of pre-trial criminal proceedings.

More reasonable is the situation in which priority attention is paid to preventing the initiation of criminal cases for crimes in the credit and financial sphere upon the crime commission, if there is data on specific persons subject to criminal prosecution. However, in such cases, the issue of compensation for damages is "technically" postponed until criminal proceedings are initiated. Conditions are created for further concealment and legalization of stolen goods.

In this regard, the proposed wording of paragraph 55 of article 5 of the Criminal Procedure Code of the Russian Federation and its corresponding amendments to article 115 of the Criminal Procedure Code of the Russian Federation (Criminal Procedure Code of the Russian Federation No. 174-FZ, 2001c) would allow to conduct procedural work on compensation for

damage caused by a crime much more effectively. Initial giving the status of the accused to an individual as described in the first situation entails a much more serious procedural consequences in case of the fallacy of hasty decision, unlike the action for the seizure of property which must take place under review of a crime report if it is against a specific person, the involvement of which to act is fairly reflected in the materials of the internal and external, including means operative-investigative activities, inspections.

Conclusions

The proposed innovation will not only correctly determine the moment when criminal prosecution of a particular person begins, but will also fully ensure their right to defense and give it a criminal procedural status, and extend the possibility of lawful and justified seizure of their property, prevent the possibility of continuing its criminal use and achieve the goal of compensating for damage caused by a crime, ensuring the achievement of the purpose of criminal proceedings.

Undoubtedly, such an innovation will require the development of a normative consolidation of the criminal procedural status of persons in respect of whom the report of a crime is verified, since they are directly mentioned in part 1 of article 144 of the Code of Criminal Procedure of the Russian Federation (Criminal Procedure Code of the Russian Federation No. 174-FZ, 2001a), however, has so far been unreasonably restricted in significant rights and legitimate interests in the sphere of criminal proceedings, the subjects of which they undoubtedly are. The need to expand the rights of participants of criminal procedure relations at the stage of verification of a crime report and the extension system of safeguards compliance confirms not only the emerging law enforcement practice, but 91 % of investigators who believe that the beginning of criminal prosecution should not be possible without giving the criminal-procedural status to participants of these relations.

To improve the performance for compensation of harm caused as a result of the crime, the investigator should draw up a protocol of examination of the person in respect of whom they check the message on the receipt, the suspect or the accused with the relevant articles of the Criminal Code, according to which voluntary compensation for property damage, other actions directed on compensation of harm, caused to the victim of crime, are treated, in accordance with part 1 of article 61 of the Criminal Code (Criminal Procedure Code of the Russian Federation No. 63-FZ, 1996), as the circumstances mitigating the punishment.

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Post-Soviet Russian Identity Building and Politics of Memory: Scientific and Public Discourse

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Abstract

The aim of the study was to examine the positions of various social groups, reflecting the controversial and contradictory aspects of the process of identity construction in post-Soviet Russia and the factor of memory politics. The article reveals the characteristics of the post-Soviet identity-building process and the related politics of memory under the century-end systemic transformation that has launched a new existential project in Russia. Collective identity is formed in a new social space: the global dichotomy of globalization and localization. Methodologically, it is a documentary research close to the analysis of discourse. The process of transition from the Soviet Union to post-Soviet space and the construction of the new state on the ruins of the socialist empire will keep the problems of a new identity and the politics of memory relevant soon. It is concluded that thirty years after the liquidation of the socialist project, the crisis of collective identity in Russia and the «battle for history» and a new Russian national unity are not over. However, persistent social atomization and conflict-triggering narratives of various socio-cultural communities and ideological groups persist.

Keywords: post-Soviet identity; instrumentalism; constructivism; historical narrative; World War II.

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Construcción de la identidad rusa postsoviética y política de la memoria: discurso científico y público

Resumen

El objetivo del estudio fue examinar las posiciones de varios grupos sociales, reflejando los aspectos controvertidos y contradictorios del proceso de construcción de identidad en la Rusia postsoviética y el factor de la política de la memoria. El artículo revela las características del proceso de construcción de identidad postsoviética y las políticas relacionadas de la memoria bajo la transformación sistémica de fin de siglo que ha lanzado un nuevo proyecto existencial en Rusia. La identidad colectiva se forma en un nuevo espacio social: la dicotomía global de globalización y localización. En lo metodológico se trata de una investigación documental próxima al análisis del discurso. El proceso de transición de la Unión Soviética al espacio postsoviético y la construcción del nuevo estado sobre las ruinas del imperio socialista mantendrá la relevancia de los problemas de una nueva identidad y la política de memoria en un futuro próximo. Se concluye que treinta años después de la liquidación del proyecto socialista, la crisis de identidad colectiva en Rusia y la "batalla por la historia" y una nueva unidad nacional rusa no han terminado. Sin embargo, la atomización social persistente y las narrativas desencadenantes de conflictos de diversas comunidades socioculturales y grupos ideológicos persisten.

Palabras clave: identidad postsoviética; instrumentalismo; constructivismo; narrativa histórica; segunda Guerra Mundial.

Introduction

The collective self-identification of a nation is a multidimensional phenomenon, the study of which requires an interdisciplinary approach, without which it is impossible to come to empirically significant conclusions. An important element in the formation of national identity is historical politics, which we understand as the purposeful construction of images of the past by state and near state institutions. Globalization as a "new type of sociality" (Albrow, 1996) did not lead to the establishment of a universal historical metanarrative. "Wars of memory" accompany the formation of new states and the development of old ones, and the more clearly the prematurity of conclusions about the "death of an ethnos and nations" and the inevitability of political and cultural unification in the 21st century is highlighted.

In this context, a researcher should consider the problem of collective self-identification of a nation taking into account such an essential feature of modern international relations as a combination of two opposite trends of globalization and localization, i.e., taking into account "globalization", in terms of R. Robertson (1992).

The issue of building national identity, as expected, acquired special relevance in Russia at the turn of the 20th and 21st centuries under the influence of those tectonic shifts that took place in the country, which until 1917 constituted the core of the Russian Empire, and then, until 1991, the Soviet Union. As V. Yadov (1994), one of the founders of Russian and Soviet sociology, wrote, post-Soviet Russia had to rethink its national identity and find in its historical past new "places of memory" capable of uniting a multiethnic society undergoing socio-political transformations and the loss of ideological orientations.

The purpose of this article is to preserve the "spirit of liberated independent research" (Goffman, 1959: 17), to highlight the key ideas of Russian academic discourse on the problem of the formation of a new post-Soviet Russian identity, and also to analyze the specifics of state historical policy during the reign of V. Putin, as the longest-ruling leader of modern Russia.

1. Materials and methods

The source base of the study consists of articles by Russian experts on the issues of national identity, speeches by President V. Putin and certain normative legal acts of the Russian Federation.

The theoretical framework of the article is based on the works of domestic and foreign scientists who have made the greatest contribution to the development of the issue of identity and memory. Since the introduction of the concept of "identification" into science by S. Freud (1993) to explain the mechanism of emotional self-identification of an individual with a group, the problem field of identity research has significantly expanded and now has a stable interdisciplinary nature. This was facilitated by the development of the social psychologist E. Erikson (1968), the founder of the theory of small social groups C. Cooley, the American anthropologists R. Benedict, M. Mead and many others.

A significant element of the research toolkit was the concept of "collective representations" – collective feelings and ideas that ensure the unity and cohesion of the group – by the founder of structural functionalism, E. Durkheim. For the classicist of French sociology, who saw the defining trend in the development of society in the movement towards social solidarity,

the unity of collective ideas and normative attitudes was the basis of a new structural independence (Durkheim, 1991). This idea is extremely relevant in the conditions of post-Soviet Russia, fragmented, highly stratified, where, as paradoxical as it may sound, the westernized power elite is trying to convince citizens separated from decision-making that they need to preserve their traditional spiritual and moral values.

Another semantic category of research is the concept of the "frame" by E. Goffman (1974: 40-43) as a kind of framework, an instrument for cognizing social reality, which helps individuals to gain social experience. The social environment forms social roles and social statuses, which E. Goffman calls masks. Frames, masks, symbolic interactions are extremely important for "closed" societies. E. Goffman (1963) is also the author of the theory of stigmatization, from which we borrow the idea of considering the relationship between virtual and real identity, taking into account the role of stigma in the process of socialization of an individual, and the connection between personal and social identity.

In fact, relying on E. Durkheim and following E. Goffman, the authors of the article avoid excessive psychologism, which is counterproductive for the purposes of this study. At the same time, the question of the role of "total institutions" in building social identity is raised tangentially.

"Total institutions" are represented as closed spaces, within which there is an individual with imposed social roles, belonging to certain reference groups. This "depersonalized man", as in the concept of M. Heidegger (1967) "das "Man" in everyday life, in the process of the formation of a person and society, acts and thinks "as it is accepted" – he is involved in this anonymous collective identity ... "A depersonalized man" is an object of influence of "total institutions", he is in the focus of state policy, including historical politics. It is included in the "participation" of Lucien Levy-Bruhl (1999: 20), who describes this process as "the imposition of collective identities of individuals," as a result of which they become "the product not of reasoning, but of faith".

Studies of Russian authors in all their ideological diversity seem to be relevant for this work. The traditions of Russian public discourse on the problem of identity were laid down by the Russian thinkers P. Chaadayev, N. Danilevsky, N. Berdyaev back in the tsarist period of history. On the basis of the dichotomous analysis West-East, Europe-Russia, the foundations of the concept of a special, almost super-original Russian identity and Eurasianism were formed (Danilevsky, 2008).

In Soviet historiography, the prevailing ideas and theories substantiated the formation of a new Soviet socialist identity, common for all peoples of the Soviet Union. The research methodology was firmly based on the ideas of the class approach in the spirit of K. Marx, V. Lenin and I. Stalin,

therefore the identity could be either "proletarian" or "bourgeois".

Throughout the Soviet period, this methodology was rigorously observed in scientific literature. At the same time, the overwhelming majority of authors, when considering the problems of national identity, adhered to either sociobiological or cultural-historical primordialism (Bromley, 1977).

A significant break in the methodology of Russian research was noted at the end of the 1980s and the beginning of the 1990s, when fundamental changes took place in the country and the Soviet Union collapsed. The opportunities of Russian scientists to get acquainted with the achievements of science in the field of studying the problems of identity and the politics of memory in Western countries have expanded. Despite the fact that Russian researchers have ceased to bypass the problems of conflicts, contradictions in relations between various ethnic and cultural groups, in the theoretical and methodological context, Russian science has not been enriched by heuristic achievements over many decades, and, in general, these developments are secondary (in relation to the results of Western scientists).

The analysis of the main body of post-Soviet scientific literature allows us to conclude that the majority of authors of the old Soviet school are committed to the cultural and historical direction of primordialism. It is gratifying that the works, sustained in the spirit of sociobiological primordialism, occupy a marginal position in Russian science. More and more authors share the constructivist concepts of identity and historical memory developed in Western science. The works of such Russian authors as I.S. Semenenko, L.M. Drobizheva, V.A. Tishkov, A.R. Dyukov, S.V. Akopov, V.I. Pantin, K.G. Kholodkovsky, A.A. Fadeeva are of particular interest. The results of research conducted by the Russian academic centers, such as the Institute of World Economy and International Relations, the Institute of Sociology of the Russian Academy of Sciences (Semenenko, 2017), are significant for achieving the goals of the article.

The research methodology is based on a polyparadigmatic approach to the development of this issue, which allows us to comprehensively cover the diversity of identity politics and historical memory in the context of post-Soviet Russia, both in the academic field and in the public consciousness. Based on the phenomenological ideas of E. Husserl (1913), the connection between the present of post-Soviet Russia and its past in various models of discourse is shown.

2. Research results

"Third Rome" or "province"

The range of assessments when discussing the problem of the collective identity of post-Soviet Russia is so wide that a comprehensive coverage of the topic within the framework of one article seems difficult. The research focused on academic discourse, including its comparison with public discourse, since they can be in opposition to each other.

At one pole of the discourse space, there is the thesis that in the modern world "Russia is a second echelon country. It is the last frontier that turns into a province" (Pigrov, 2018: 44). On the other, there is the idea, formed back in the era of Tsar Ivan IV the Terrible (16th century): "Russia is the third Rome, there *will not* be a *fourth* one," i.e. the savior of the whole world, the spiritual center of humanity.

Some, for the purpose of national consolidation, talk about the need to enforce the rationalism, characteristic of Western society, and criticism of the past. Others want self-identification based on tradition and sacred values.

It is noteworthy that for a part of society it is important to feel like heirs of Orthodox traditions, for others – Islamic ones. And these positions are trying to reconcile the supporters of the idea of Eurasianism.

3. Permanent transformation of collective identity

An attempt to present national identity as something objective, tangible and static is counterproductive. Changes occur in all dimensions of identity: narrative, cultural, religious, political and geographical. They have their own history and specificity of transformations.

Russia has repeatedly experienced stages of a crisis of collective identity, and the 20th century is especially rich in this experience. At the end of the twentieth century representatives of the party and state apparatus declared themselves liberals and democrats and rushed to implement the project of a new Russia. Millions of people accepted the ideas of perestroika and democracy, but became disillusioned with reformers, who turned into oligarchs and businessmen with large accounts in offshore zones and found themselves in a state of social disorientation. In some regions of the country, social ties and structures have been so disrupted that this has led to the spread of ethnocentrism, racism and xenophobia. At the center of the ideological struggle there were the questions: "Who are we? Russians, Tatars, Christians, Muslims, former Soviet people?"

The intensity and goal-setting of the manifestation of collective identity have changed if we compare the post-Soviet and Soviet periods.

In some regions of Russia, followers of Islam (both representatives of autochthonous peoples and labor immigrants from Muslim countries) explicate and deliberately emphasize their cultural and confessional specifics. Increasingly, as a result of re-Islamization (after decades of atheistic Soviet propaganda), religious rituals and traditions of these groups (Tatars, Bashkirs, Azerbaijanis and Uzbeks from among labor immigrants) are perceived as integral elements of culture, family history and clan. The scale of re-Islamization is such that in 2013, at the anniversary of the Central Spiritual Administration of Muslims of Russia, President V. Putin declared that "Islam is a bright element of the Russian cultural code" (NEWS.ru, 2013).

The national identity and the politics of memory (based on a negative attitude towards the Soviet past and designed by the elites in the 1990s) did not lead to the strengthening of social cohesion. Those citizens who in the last decades of the existence of the USSR demanded "changes" and "new turns" came to existential horror, faced with socio-economic reforms that accompanied political transformations. The process of transition from "homo post-Sovieticus" to a new collective identity lasted for decades; it was accompanied by manifestations of centrifugal processes in national republics, armed conflicts, social chaos and exacerbation of local "wars of memory".

4. Who Constructs Identity?

Speaking at the Valdai Discussion Club in 2013, President V. Putin acknowledged that the state and society are still in search of a new formula for post-Soviet identity, very productive for overcoming the Soviet past and remembering this experience, as was hoped for in the 1990s. Neither free elections, nor democracy, nor progress have freed society from the old structures of consciousness. The concept of post-Soviet identity is not articulated by the state, and the modern Russian nation is postulated as a "multiracial people" in the preamble to the Constitution of the Russian Federation, adopted in 1993 and edited in 2020 (Constitution of the Russian Federation, 2020: 2). The constituent parts of a large palette of sub-identities – ethnic, regional, religious, and we understand that "identity, a national idea cannot be imposed from above" (Speech by Vladimir Putin, 2013).

It is obvious that the emancipating possibilities of the new bourgeois economic system were not sufficient – the once "united Soviet people" in the new Russia are still in a state of differentiation and fragmentation, which shows the incompleteness of the country's transit.

So far, the political field of constructing a new collective identity is dominated only by the authorities, which are increasingly using commemorative practices as a tool for uniting society, exploiting the narrative nature of memory.

In the context of the still confrontational dichotomy of "ethnic – national identity", deep socio-economic polarization of society, wars of memory and social atomization, the state in the process of its self-identification faces a whole continuum of obstacles.

5. Discussion

With all the abundance of approaches to defining belonging to the "collective body" of a nation, the academic community proceeds from the idea that self-identification 'is a matter of personal choice" – the thesis enshrined in the 32 Copenhagen Document of the Council on Security and Cooperation in Europe of 1990 (OSCE Copenhagen Commission, 1990: 20). This interpretation allows us not to fall into the sin of vulgar primordialism when discussing the problems of national identity.

An important mechanism for ensuring this self-identification, available to the power elites, is working with historical memory. The discourse of identity and memory in the Russian Federation has a high degree of emotional tension and reflects the state of the national dialogue between society and the state.

Following the concept of the social framework of memory by M. Halbwachs (2007), the authors believe that the "memorial boom" in post-Soviet Russia was determined by the crisis of national identity due to the trauma of the collapse of the Soviet Union. Reconstruction of the past and working with memory occur in the country in the most plural modes.

Despite the fact that the article by E. Pain (2013), the head of the Center for the Study of Xenophobia and Extremism Prevention at the Institute of Sociology of the Russian Academy of Sciences, dedicated to historical fatalism in an era of timelessness (published in 2013), the author recorded the infection of Russian society with "*déjà vu* disease", which is expressed in the explanation of modern problems of the Fatherland mainly through the prism of the theory of "path dependency", has not disappeared to this day. The idea of a cultural predetermination of the Russian path is defended by two groups with fundamentally opposite ideological attitudes – the "guardians" and the "desperate". If the former substantiates the inadmissibility of political modernization as threatening the true national values, the latter would readily break out of the "Russian bureaucratic matrix", but consider this a priori impossible.

The substantive aspects of the confrontation between the "guardians" and the "desperate" have remained unchanged over the past centuries. It is noteworthy that, guided by fundamentally opposite motives, both ideological groups ultimately contribute to the preservation of the existing political regime.

The authors can agree with E. Pain that when explaining the stability of elements of authoritarianism in Russia, Russian experts clearly exaggerate the role of traditions. Modern comparative studies show low rates of almost all forms of traditional group self-identification. We are not dealing with a continuous "social relay race" of values and norms, but with innovations disguised as traditions, i.e., with a phenomenon that the British theorist of nationalism Eric Hobsbawm (1992) called invented traditions. The influence of historical culture in Russia "is determined not so much by traditions as by their absence". At the same time, the importance of the resource economy factor (in which some scholars see the main source of cyclicality in the history of Russia) is secondary in relation to political factors and, above all, to the construction of the political system (Pain, 2013: 9-12).

Research facility of E. Pain is close to the position of A. Akhiezer, I. Klyamkin and I. Yakovenko. These experts explain the fluctuations between reforms and counter-reforms characteristic of Russia not by the specifics of the resource economy or the peculiarities of the national mentality, but by the direct and purposeful efforts of the political establishment to preserve itself.

E. Pain (2013: 13) criticizes the Russian ruling forces for their methods of cleaning up the information space in order to stabilize their own political monopoly. Accusing the Russian authorities of "spreading anti-Western hysteria", he represents what is happening as a kind of official Moscow initiative. However, today, as we observe an even greater increase in tensions in the same Russian-American relations, it becomes obvious that the restrictive measures taken by both sides reflect the complex opposition of rivalry and interdependence of the two powers. It seems that the consideration of the legislative and administrative initiatives of the Kremlin criticized by E. Pain without involving a broad foreign policy context turns into one-sided interpretations.

Recognizing the fact that Russian society is divided into ideological groups as accomplished and quite positive (in terms of avoiding the domination of the "amorphous mass of Soviet people"), E. Pain states the "poverty" of the set of political identifications that have been manifested. A team of experts, led by E. Pain, has compiled a political and ideological portrait of modern Russia in the course of analyzing the Runet. There were four recognizable "faces": liberal, leftist, nationalist and pro-government. Despite all the differences between these "faces", there are several signs that are common to all four currents: the prevalence of negative consolidation

according to the principle "we are not them"; dissatisfaction with the current state of affairs; skepticism about the possibility of changing the situation for the better (Pain, 2013: 19). And the authors of the article find it extremely alarming that, in practice, xenophobia is the only platform for the potential unification of the mass audience of each of the four groups.

It should be noted that, given the increasing risk of new radical non-systemic forces exploiting mass stereotypes on the political field, those in power should realize the depth of their personal responsibility for the decisions they make and stop blaming imperfections of the system of regulating socio-economic development on historically inherent structural restrictions.

Ethnopolitical scientist V. Achkasov (2015) states the lack of a positive program for the formation of national identity in the Russian Federation. Following the logic of the German historian of religion and culture Jan Assman (2004), he denotes the rootedness of identity, both ethnic and national, in historical memory, emphasizing that "manipulation of historical memory for political purposes, which is the essence of historical politics, is at the same time manipulations with group identity" (Achkasov, 2015: 182). However, the historical policy of the modern Russian state is defensive and reactive, and the power elites reveal a complete unpreparedness for a critical study of the past from the position of recognizing common responsibility for the tragic episodes of history.

The desire to avoid certainty in the assessments of historical figures and processes that cause heated debates in society, limits the repertoire of the "politically suitable" past available to state structures. Criticizing the instrumental approach of the authorities to the "collective past," V. Achkasov (2015: 189) points out that in the Russian Federation it is not a raw material for conducting a purposeful and methodical historical policy, but an object of situational use serving the purposes of legitimizing current decisions and actions of the elites. The total dependence on the current political environment explains the internal contradiction and eclecticism of the historical concept of modern Russian power, in which statism and nationalism are fancifully combined with elements of liberalism, and restoration pathos – with the idea of modernization.

Consolidation of the nation is carried out mainly on a negative basis, through the use of the image of the enemy, which, in principle, seems to be typical for all states of the post-Soviet space. V. Achkasov argues that more than twenty years after the collapse of the USSR, Russia still has not succeeded in forming a concept of national history that would meet the challenges of constructing its new collective identity. The key to a successful solution is not in an apophatic approach to defining the essence of the national, not in a strategy of silence, but in the formation of an environment in which discussions on controversial issues of common history and

competing interpretations of historical events and facts would be allowed. As noted by the American economist P. Katzenstein:

> (..). while we adhere only to national nationalist history and until we succeed in combining different types of history, we remain prisoners of the past. After all, only a common understanding of the past can create the basis for a common sense of the future (Dutkevich and Sakwa, 2014: 285, 284).

In view of the above, V. Titov's analysis of the key theoretical and practical aspects of the implementation of the "policy of memory" in Russia in relation to solving the problem of forming a cohesive nation deserves detailed consideration (Titov, 2017). Using the potential of constructivist and macro-political approaches, V. Titov formulates his own vision of national-state identity, presenting it as a political phenomenon that reveals itself in the synthesis of cognitive, temporal, emotional, and symbolic fields. The effectiveness of the state "policy of memory" in the context of national-state identity is determined through an assessment of its elasticity: the ability to rely on ideas and stereotypes already established in society and to take into account the existing emotional climate. It is especially emphasized that the policy of modern states, aimed at the formation of national-state identity, is carried out in the context of global information and sociocultural competition, in a situation of the large-scale political "market of identities", within which a wide range of alternative social and political identities of local, regional, and transnational level (Titov, 2017: 12–41).

V. Titov identifies four stages of the institutional evolution of the state policy of memory in the period from 1990 to 2010s: "anti-Soviet" (1992–1994); "Late Yeltsin" (1995–2000); "Early Putin" (2001–2008); "Medvedev–Putin" (since 2009), as the passage of which increases the intensity of turning to history in order to build the geopolitical and sociocultural foundations of the all-Russian national and state identity. Nevertheless, his demarcation is nothing more than a methodological technique and it does not negate the need to build continuity of the memory policy in post-Soviet Russia, including in the context of assessments of the Soviet experience (Titov, 2017: 59–105).

V.V. Titov attributes the disadvantages of the memory policy implemented in the country today to the cognitive weakness of the image of the past in the "matrix" of the Russian national and state identity; amorphousness of mass perceptions of the past; attempts to build them "like a chessboard", mechanically combining "black" and "white". This approach avoids conflicts, but a priori dooms the image of Russian history to fragmentation.

However, the modern historical policy of the Russian authorities from outside is seen as much more rational and thoughtful. It would

be appropriate to compare V. Titov's conclusion with observations of the German historian M. Edele, who analyzed the "wars of memory" of President V. Putin. He drew attention to the fact that the cornerstone of state historical policy under Putin was the work with the narrative about World War II (Edele, 2017).

This conclusion is also confirmed by domestic experts. As I. Kurilla noted, in the Russian Federation:

> (…) the history of the Great Patriotic War has become ... a universal language of conversation about politics and the only effective "bond"... It is the narrative of the war that the Kremlin seeks to control first and foremost from the point of view of the interests of the regime (Kurilla, 2018: 39).

The World War II narrative in the modern Russian Federation is based on several strong points. First, the USSR seems to be the unambiguous victim in this story. Secondly, the "Patriotic war of liberation against the fascist enslavers" is positioned as a battle for the liberation of the entire world from National Socialism.

It is important to emphasize that for the citizens of the USSR, as well as for Russia, this Second World War has always been, first of all, the Great Patriotic War. It determines the discrepancy between Russian and foreign historiography in determining the starting date of World War II. For most Russians, this is June 22, 1941, when the troops of Nazi Germany "without a declaration of war, suddenly attacked the entire western border of the Soviet Union and inflicted bombing air strikes on Soviet cities and military formations". Few people remember the Japanese invasion of Central China in 1937. The date of September 1, 1939, which has become established in European social science, is widely regarded by many as imposed from the outside by those who seek to prove that the USSR is guilty of inciting war to the same extent as Nazi Germany.

Working with collective memory helps the authorities in the confrontation with opponents both at home and abroad. The "Russian" version of World War II has been turned into the cornerstone of a positive national narrative. In this context, the toughening of memorial legislation should be viewed as an element of immunization of Russian society against the virus of "velvet revolutions".

The Western media did not immediately realize the full political significance of the law signed by the President of the Russian Federation on May 5, 2014, criminalizing the rehabilitation of Nazism. Namely: for public denial of the facts established by the verdict of the International Military Tribunal for the trial and punishment of the main war criminals of the European Axis countries; approval of the crimes established by

the verdict, as well as the dissemination of deliberately false information about the activities of the USSR during the Second World War, committed publicly. For these acts, a fine of up to 300 thousand rubles is provided or in the amount of the convicted person's income for a period of up to two years, or forced labor for up to three years, or imprisonment for the same period (Federal Law of the Russian Federation, 2014). With the adoption of this law, a kind of criminalization of freedom of expression occurred in the Russian Federation, which does not coincide with the state ideological narrative.

During his second presidential term, V. Putin spoke out on a number of controversial and potentially divisive issues of history that he had previously deliberately avoided addressing. He admitted that the apparent cruelty of the Stalinist system can be considered historically justified, because the defeat of the USSR in World War II (possible under a more liberal regime) would lead to catastrophic consequences for the whole world (Edele, 2017).

By 2015, V. Putin had developed a clear scenario for presenting the Great Patriotic War as part of the heroic history of modern Russia. The key components of this "myth" were the following statements: the USSR victoriously ended the war against fascism; Russia played a key role in World War II; all negative "moments" were due to historical necessity, normal in the context of that time and insignificant in comparison with the cruelty of other states; Russia can be proud of its past, and anyone who does not share this opinion is a foreign agent or an accomplice of foreign agents.

Armed with this basic narrative, Russia began a series of commemorative events dedicated to the 70th anniversary of the end of World War II and the victory over Nazi Germany.

The interpretation of World War II, chosen by V. Putin, is in many ways more complex and complex than the one that the former leaders of the state adhered to. The current President of the Russian Federation does not deny the obvious facts, but emphasizes the speculative and incorrect unambiguous division into "black" and "white". So, for example, having subjected the Molotov-Ribbentrop Pact to moderate criticism, V. Putin called on the international community not to consider it the only trigger of World War II, pointing out that the Munich Agreement of 1938 played a similar role. As I. Torbakov (2014) noted, the prevalence of a certain attitude to history in the Russian Federation cannot be inscribed in the primitive formula "The Kremlin is washing the brain of a defenseless population". Rather, we find "a convergence of the vision of the managers and the governed in Eurasia".

V. Putin's initiatives can be considered as a counterattack in the space of the international "battle for the past", where in recent years Russia has been always assigned the role of a defending side. In 2009, such a step was

the establishment of the Commission under the President of the Russian Federation to counteract attempts to falsify history to the detriment of Russia's interests, which existed until 2012. But this Institute remained rather "toothless": its functions were limited to the synthesis and analysis of relevant information, as well as the development of recommendations. The 2014 Memorial Law certainly has great potential for impact.

V. Putin and his team believe that for a better future, the country needs a monolithic, heroic narrative. In the space of historical memory, democratic and authoritarian political projects collide, and society is polarized.

Conclusion

Summing up, we note that in the historical series of ontological issues that torment the minds of Russians for at least two centuries, to the textbook – "What is to be done?" and "Who is to blame?" – added the question "Who are we?" If in the definition of the Great Patriotic War as the most important "assemblage point" of the nation, there is a consensus of the power elites, then there is no such agreement regarding the ideological foundations and the vector of the future development of the state. Citizens in their attempts at self-determination sometimes slip into confrontational modes. The scientific community is split in its assessments of the past and the future. All this testifies to the crisis state of the collective identities of post-Soviet Russia, to the fact that a way out of the ideological impasse has not yet been found. The civic self-identification of Russians has a shaky cognitive basis in terms of the ability to rely on a set of consistent ideas about the country's identity and past.

Despite the fact that the academic community of this or that platform raises the question of the need for a holistic structuring of the narrative about the past, while the authorities interpret this task in a utilitarian instrumental key: more as a measure of counteraction to attempts to falsify Russian history, both from domestic and foreign opponents. How long this symbolic resource will be sufficient for the construction of a solidary national identity in the long term, only time will give the answer.

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Perspectivas temporales en las actividades profesionales de especialistas en el área económica

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Resumen

El propósito de la investigación es estudiar las perspectivas temporales en las actividades profesionales de los especialistas en el área económica. Es sabido que los especialistas con más de veinte años de experiencia se centran principalmente en el pasado y el presente, y los que acumulan menos de diez años, en el futuro. La base metodológica de la investigación fue el concepto de perspectiva temporal. Esta metodología ha sido aprobada por investigadores en el estudio de los trastornos de adaptación, ansiedad, innovación. Está demostrado que los representantes del grupo profesional de especialistas que acumulan menos de diez años de experiencia están más inclinados a la planificación estratégica y a la busca del apoyo emocional en situaciones difíciles, y que los especialistas con 10-20 años de experiencia, a la superación proactiva y reflexiva. Se ha descubierto también que los hombres tienen una orientación temporal más pronunciada para el "Futuro", y las mujeres, para el "Futuro trascendental" ($p \leq .05$). Las mujeres son más propensas a la inmersión emocional en los eventos actuales, mientras que los hombres son más

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propensos a estructurar los eventos actuales y planificar eventos futuros. (p≤.05). Es aconsejable utilizar los resultados obtenidos en asesoramiento psicológico y evaluación del personal.

Palabras clave: tiempo; comportamiento; género; futuro trascendental; economista.

Time perspective in the professional activity of specialists of economic sphere

Abstract

The aim of the article is the research of time perspectives in the professional activity of specialists of economic sphere. It is established that specialists with experience more than twenty years have largely focused on past and present, and specialists with experience of up to ten years on the future. The methodological basis of the research was the concept of time perspective. This methodology has been approved by researchers in the study of adaptation disorders, anxiety, innovation. The representatives of the professional group of specialists with experience up to ten years may be more tend to strategic planning and the search for emotional support in difficult situations; and specialists with experience of 10-20 years – to a proactive and reflexive overcome. It is found that men are more express for temporal focus of the "Future," and women – for "Transcendent future" (p≤.05). Women have a more expressed tendency to emotional immersion in the events of the present, and men – structuring of current events and planning future events (p≤.05). The received results should be used in psychological counseling and estimation of staff.

Key words: time; behavior; gender; transcendent future; economist.

Introducción

La dinámica negativa de los principales indicadores financieros y económicos del país, la desestabilización del mercado laboral, la creciente tensión social y la disminución de los niveles de vida no podían sino afectar al individuo. La alteración de un sistema económico estable ha llevado a cambios en el espacio mental del individuo, y también en el sistema de autoconciencia del individuo.

Un componente extremadamente importante del bienestar psicológico de una persona es la capacidad de determinar independientemente los

objetivos de su vida (Blynova y Kruglov, 2019; Blynova *et al*., 2020b; 2020c). Esto se debe a la presencia en la imagen del mundo del individuo de una perspectiva temporal del futuro larga y rica en contenido. El tiempo es uno de los factores importantes, pero rara vez se utiliza para las reservas de organización mental del individuo, para su autorrealización en la sociedad. Las perspectivas de tiempo del individuo pueden verse como manifestaciones que regulan las posibilidades y la elección de estrategias del comportamiento en situaciones difíciles. La formación de una perspectiva temporal se convierte en un medio de autorregulación, una forma de desarrollo de las estrategias de comportamiento en situaciones difíciles de la vida.

1. Revisión de la literatura

En la psicología moderna, todavía no existe una comprensión única del término "perspectiva de tiempo o perspectiva temporal": varios científicos al estudiar este fenómeno enfatizan uno de los tres aspectos. El primer aspecto es según Nuttin (2004): "La perspectiva de tiempo en el sentido propio de la palabra se caracteriza principalmente por la longitud, profundidad, saturación, grado de estructuración y nivel del realismo" (2004: 354). Esta opinión es sostenida por J. Nuttin (2004). Él dice que los actos de comportamiento obviamente están sucediendo hoy bajo la influencia de las circunstancias actuales, pero no debemos olvidar que el comportamiento también está determinado por eventos pasados y futuros (Arbeláez-Campillo *et al*., 2018; Blynova *et al*., 2020a; 2020d). Los psicólogos hablan constantemente de la influencia del pasado, en particular de la formación, la experiencia, pero no ignoran tampoco la importancia de los eventos futuros: expectativas, predicciones, anticipación (Kobets y Poltoratskiy, 2014; Kobets y Yatsenko, 2016; Plokhikh, 2006).

Hay disputas acerca de que las expectativas y las predicciones se basan de una u otra manera en la experiencia previa del sujeto (Kononenko *et al*., 2020; Pinkovetskaia *et al*., 2020). En consecuencia, J. Nuttin (2004) en su concepto enfatiza lo siguiente: "El pasado no tiene nada que ver con el futuro. <…> la orientación hacia el futuro es un fenómeno nuevo y peculiar que surge en presencia de un estado motivacional" (2004: 358).

En el ser humano, como en un ser que tiene funciones cognitivas más altas y una transformación cognitiva de las necesidades en objetivos, la predicción se aleja de la situación actual, formando una perspectiva temporal cada vez más profunda. En la descripción de la perspectiva temporal se enfatiza (Nuttin, 2004): "Su componente "material" ("objetivo") son los objetos del pasado y del futuro", lo que constituye su contenido" (2004; 359). El segundo aspecto destaca según Prokonich (2014): "El entorno

temporal, es decir, el estado de ánimo más o menos positivo o negativo del sujeto hacia el pasado, presente o futuro" (2014: 118).

La idea principal de este enfoque es que la actitud del sujeto hacia la perspectiva temporal del pasado, presente o futuro está influenciada por sus características personales, así como por la experiencia de interacción con diferentes objetos en diferentes situaciones, lo que afecta su evaluación del entorno en su conjunto y en algunos de sus aspectos (Prokonich, 2014).

Por su parte, El tercer aspecto según Nuttin:

> La orientación temporal caracteriza el comportamiento del sujeto y, por lo tanto, se considera como el enfoque predominante de este comportamiento en objetos y eventos del pasado, presente o futuro. Por ejemplo, se cree que los jóvenes están más orientados hacia el futuro y las personas mayores están más centradas en el pasado (2004: 360).

Basándonos en este criterio, hemos estudiado las características de la perspectiva de tiempo y la estructura de su relación con los indicadores de autorregulación del comportamiento de las personas en diferentes períodos de la edad adulta. Los investigadores de este problema afirman que diferentes perspectivas de tiempo tienen diferentes significados a diferentes edades. En particular, al final de la edad adulta, a la edad avanzada, el futuro es incierto e incluye el miedo al cambio para peor y a la muerte próxima (Shul'c y Shul'c, 2002). En cuanto al pasado, se puede notar que la madurez se caracteriza por contar los eventos desde la infancia, luego en la vejez este punto ya está al comienzo de la actividad profesional (Shul'c y Shul'c, 2002).

Uno de los puntos de vista más modernos sobre la perspectiva temporal del individuo, perteneciente a F. Zimbardo y D. Bojd, es atractivo. Definen la perspectiva temporal del individuo de la siguiente manera: "A menudo, la actitud inconsciente de una persona hacia el tiempo es un proceso mediante el cual el largo flujo de existencia se combina en categorías de tiempo, lo que ayuda a organizar nuestra vida, estructurarla y darle significado" (2010: 12).

Esta concepción es interesante desde el punto de vista de combinar el segundo y el tercer aspecto del concepto de perspectiva temporal: los tipos seleccionados de perspectiva temporal reflejan claramente la actitud positiva o negativa de la persona hacia lo más importante para ella: tiempo pasado, presente o futuro; así como la descripción de los tipos de perspectivas temporales se presenta directamente a través de la descripción del comportamiento de la persona. En este sentido, F. Zimbardo y D. Bojd (2010) consideran la perspectiva temporal de los profesionales económicos en términos del segundo y tercer aspecto.

La investigación organizada está dirigida al estudio de las características de la perspectiva temporal de los indicadores de actividad profesional en especialistas de la esfera económica. Los especialistas en la esfera económica son oficinistas, cuyo trabajo se acompaña en parte de una gran multifuncionalidad y varias sobrecargas psicoemocionales (Allen, 2002; Bolotova, 2012; Kalenchuk, 2019; Khmiliar *et al.,* 2020; Krupnyk y Tkalenko, 2019). La hipótesis principal de nuestro estudio es la suposición de que los indicadores de la perspectiva de tiempo están interrelacionados con los indicadores de actividad profesional de los especialistas económicos. El propósito de nuestro estudio es establecer perspectivas temporales en las actividades profesionales de los especialistas económicos.

2. Metodología

La base metodológica de la investigación organizada en el contexto del establecimiento de perspectivas temporales en la actividad profesional de especialistas en la esfera económica es el complejo metodológico aprobado con el uso de los instrumentos de psicodiagnóstico (Blynova *et al*., 2020b; Fernández-Rivas y Espada-Mateos, 2019; Moya *et al*., 2018; Popovych *et al*., 2020a; Shevchenko *et al.,* 2020). Esta metodología ha sido aprobada por investigadores en el estudio de los trastornos de adaptación, ansiedad, innovación (Acevedo-Duque *et al*., 2020; Halian *et al*., 2020a; 2020b; 2020c; Varguillas y Bravo, 2020), así como en el estudio de las expectativas mentales en diversas actividades de los encuestados (Cruz, 2019; Nosov *et al*., 2020a; 2020b; Romero-Argueta *et al*., 2020; Tsiuniak *et al.,* 2020; Zinchenko *et al.,* 2019; 2020). Todas estas mediciones experimentales y empíricas son relevantes para las perspectivas temporales en las actividades profesionales de los especialistas económicos.

Participantes. La muestra ha estado compuesta por 112 futuros especialistas en la esfera económica, que recibían la formación profesional en las facultades de economía, economía y finanzas, economía internacional, gestión de personal y economía laboral. También 126 especialistas en la esfera económica, a saber, empleados bancarios, analistas financieros, economistas de negocios, gerentes de proyectos y programas de inversión, gerentes con diferente experiencia profesional. La edad promedio de los sujetos fue de 31.5 años (SD = 6.11). El grupo profesional de empleados que trabajan con clientes internos estaba formado por administradores, asistentes, gerentes, en total 48 personas de las cuales 26 hombres y 22 mujeres. El grupo profesional de empleados que trabajan con clientes externos estaba formado por gerentes de ventas, gerentes de servicio al cliente, consultores, en total 44 personas de las cuales 25 hombres y 19 mujeres. En el grupo profesional de gerentes, desde el jefe del departamento hasta el CEO de una empresa mediana, había 34 participantes: 18 hombres

y 16 mujeres. La investigación fue realizada de acuerdo con las normas éticas del comité sobre los derechos de los experimentos de Declaración de Helsinki (JAMA Network 2013).

Procedimiento y instrumentos. Siguiendo el concepto de perspectiva temporal de F. Zimbardo y D. Bojd (2010), utilizamos los métodos "Zimbardo Time Perspective Inventory" ("ZTPI") (Zimbardo y Bojd, 2010). "Transcendental-future Time Perspective Inventory" ("TFTPI") (Zimbardo y Bojd, 2010). También usamos el "Método Diferencial Semántico del Tiempo" ("SDT") (Vasserman *et al.,* 2009).

"Zimbardo Time Perspective Inventory" ("ZTPI") se publicó en 1997, y "Transcendental-future Time Perspective Inventory" ("TFTPI") – en 1999. Más tarde ellos fueron adaptados por eminentes científicos. Estos cuestionarios consisten en 56 y 10 ítems, respectivamente, y están destinados a establecer perspectivas temporales del individuo tales como: pasado negativo, pasado positivo, presente fatalista, presente hedonista, futuro y futuro trascendente. Se usó una escala de cinco puntos. Los puntos en cada escala se suman y se dividen por el número de declaraciones relacionadas con una perspectiva temporal dada. Entonces, para cada perspectiva de tiempo, el "puntaje promedio" se calcula en el intervalo de 1.00 a 5.00 (Zimbardo y Bojd, 2010). Por lo tanto: en los indicadores de 1.00 a 2.50, la perspectiva de tiempo dada no se expresa; de 2.50 a 3.75 es el grado promedio de la perspectiva temporal; los puntajes de 3.75 a 5.00 indican que esta perspectiva de tiempo es más pronunciada, y con mayor frecuencia es principal en el encuestado. El método "Diferencial semántico del tiempo" ("SDT") se compone de tres impresos idénticos (con instrucciones para el presente, pasado y futuro). Sobre la base de veinticinco pares de adjetivos, se identifican cinco factores: actividad del tiempo (AT), coloración emocional del tiempo (CET), magnitud del tiempo (MT), estructura del tiempo (ET) y sentido del tiempo (ST). Es aconsejable determinar el valor promedio de la evaluación (VPE) de cada momento: pasado, presente y futuro (Vasserman *et al.*, 2009).

Análisis estadístico. El procesamiento de datos estadísticos y la presentación gráfica de los resultados de la investigación se llevaron a cabo utilizando un paquete de programas estadísticos "Statistical Package for the Social Sciences" v. 21.0 y "Microsoft Office Excel 2007". Para sistematizar los datos obtenidos y amplificar las variables se utilizó el análisis factorial. Esto nos permitió identificar estructuras de investigación más globales las que se encuentran fuera de las dimensiones empíricas de estas técnicas.

3. Resultados

Vamos a considerar las características de las perspectivas temporales de acuerdo con "Zimbardo Time Perspective Inventory" ("ZTPI") y "Transcendental-future Time Perspective Inventory" ("TFTPI") en los representantes de diversos grupos profesionales de especialistas en la esfera económica (Tabla 1).

Tabla 1. Indicadores de perspectivas temporales en diversos grupos profesionales de especialistas en el área económica de acuerdo con "ZTPI" y "TFTPI"

Escala		Parámetros					
		Presente	Presente (fatalista)	Pasado (positivo)	Pasado (negativo)	Futuro	futuro (trascende)
Desarrollo de la conciencia profesional	M	3.20	2.38	3.71	2.42	3.68	3.51
	SD	.43	.53	.47	.50	.45	.71
Especialistas con menos de 10 años de experiencia	M	3.07	2.44	3.79	2.57	3.91	3.37
	SD	.32	.56	.49	.53	.48	.78
Especialistas con 10-20 años de experiencia	M	3.22	2.39	3.70	2.47	3.62	3.53
	SD	.49	.59	.47	.47	.45	.74
Especialistas con más de 20 años de experiencia	M	3.28	2.29	3.66	2.17	3.61	3.60
	SD	.33	.33	.44	.46	.37	.57
Diferencias significativas entre grupos: Especialistas con menos de 10 años de experiencia y Especialistas con 10-20 años de experiencia	F	-	-	-	-	**.29**	-
	φ	-	-	-	-	**.023**	-
Diferencias significativas entre grupos: Especialistas con menos de 10 años de experiencia y Especialistas con más de 20 años de experiencia	F	-	-	-	**.4**	**.3**	-
	φ	-	-	-	**.014**	**.049**	-

Diferencias significativas entre grupos:Especialistas con 10-20 años de experiencia y Especialistas con más de 20 años de experiencia	F	-	-	-	**.3**	-	-
	φ	-	-	-	**.027**	-	-

Fuente: Elaboración propia, 2021.

Nota: M – media aritmética; SD – desviación de la media cuadrada; F – la diferencia promedio; φ – valor; destacamos diferencias significativas en negrita y diferencias a nivel de la tendencia estadística en cursiva.

Se ha establecido que los indicadores de las perspectivas de tiempo en los especialistas que se encuentran en la etapa de desarrollo de la conciencia profesional de nuestra muestra están en el intervalo de valor promedio. Las puntuaciones más altas se observan en las escalas de las perspectivas temporales del pasado y futuro positivo, y las más bajas, en las escalas del pasado fatalista verdadero y pasado negativo. En el grupo profesional de encuestados "Especialistas con menos de 10 años de experiencia", las orientaciones temporales más pronunciadas son para el futuro, el pasado positivo y el futuro trascendente. En los grupos profesionales "Especialistas con 10-20 años de experiencia" y "Especialistas con más de 20 años de experiencia", la atención se centra en el pasado positivo, así como en el futuro más pronunciado y el futuro trascendente. Entonces, de acuerdo con la estructura de las perspectivas temporales, los grupos profesionales de encuestados no tienen diferencias significativas.

Se han encontrado también diferencias significativas ($p<.05$) entre los representantes de grupos profesionales de encuestados "Especialistas con menos de 10 años de experiencia" y "Especialistas con más de 20 años de experiencia", así como "Especialistas con experiencia de 10 a 20 años" y "Especialistas con experiencia de más de 20 años" en la escala de "Pasado negativo": en ambos casos, los indicadores son inferiores en los especialistas con más de 20 años de experiencia. Es decir, los encuestados con más de 20 años de experiencia son menos propensos que aquellos con menos de 20 años de experiencia a ser pesimistas sobre su pasado. Los resultados de la escala "Futuro" son más altos para los especialistas con menos de 10 años de experiencia. Por lo tanto, los representantes de este grupo profesional son más propensos a planificar su futuro que los representantes de los otros tres grupos.

Conviene considerar además las características de las perspectivas temporales de acuerdo con "Zimbardo Time Perspective Inventory" ("ZTPI") y "Transcendental-future Time Perspective Inventory" ("TFTPI") para representantes de varios grupos profesionales de especialistas económicos, teniendo en cuenta el género de los encuestados (Tabla 2).

Tabla 2. Indicadores de perspectivas temporales en diversos grupos profesionales de especialistas en el área económica, teniendo en cuenta el factor de género de acuerdo con "ZTPI" y "TFTPI"

Escala	Hombres		Mujeres		Valores de las diferencias	
	M	SD	M	SD	F	**φ**
Presente	3.27	.42	3.14	.44	-	-
Presente (fatalista)	2.28	.56	2.47	.50	-	-
Pasado (positivo)	3.61	.50	3.79	.42	-	-
Pasado (negativo)	2.39	.42	2.44	.56	-	-
Futuro	3.82	.42	3.55	.44	**7.69**	**.007**
Futuro (trascendente)	3.27	.76	3.73	.58	**11.64**	***.001***

Fuente: Elaboración propia, 2021.

Nota: M – media aritmética; SD – desviación de la media cuadrada; F – la diferencia promedio; φ – valor; destacamos diferencias significativas en negrita y diferencias a nivel de la tendencia estadística en cursiva.

El análisis de varianza ha revelado diferencias significativas ($p<.01$) entre hombres y mujeres en las escalas: "Futuro" (más pronunciado en hombres) y "Futuro trascendente" (más pronunciado en mujeres). Los hombres están más inclinados que las mujeres a planificar cuidadosamente su futuro, a establecer metas y planes para alcanzar. Al mismo tiempo, las mujeres son más religiosas que los hombres, creen en la vida después de la muerte.

Percepción subjetiva del tiempo en diferentes grupos profesionales de especialistas en el área económico, teniendo en cuenta el factor de género por el método de DST. Vamos a considerar las características de la percepción subjetiva del pasado en representantes de diferentes grupos profesionales por el método del "Diferencial Semántico del Tiempo" ("DST") (ver Tabla 3).

Tabla 3. Indicadores de percepción subjetiva del pasado en diversos grupos profesionales de especialistas en el área económica de acuerdo con "SDT"

Escala		Parámetros					
		Magnitud del pasado	Actividad del pasado	Coloración emocional del pasado	Estructura del pasado	Sentido del pasado	Estimación promedio del pasado
Desarrollo de la conciencia profesional	M	6.35	3.87	7.70	1.42	1.70	4.21
	SD	5.25	5.27	5.09	5.09	4.81	3.75
Especialistas con menos de 10 años de experiencia	M	5.39	3.87	7.91	1.70	.91	3.96
	SD	5.84	6.06	3.09	4.74	4.30	3.04
Especialistas con 10-20 años de experiencia	M	5.63	2.92	6.63	.94	1.87	3.60
	SD	5.33	5.54	5.15	4.71	4.69	3.81
Especialistas con más de 20 años de experiencia	M	8.75	5.96	9.89	2.29	1.96	5.77
	SD	3.79	3.09	5.67	6.13	5.53	3.83
Diferencias significativas entre grupos: Especialistas con menos de 10 años de experiencia y Especialistas con 10-20 años de experiencia	F	-	-	-	-	-	-
	φ	-	-	-	-	-	-
Diferencias significativas entre grupos: Especialistas con menos de 10 años de experiencia y Especialistas con más de 20 años de experiencia	F	**-3.36**	-	-	-	-	-
	φ	**.045**	-	-	-	-	-
Diferencias significativas entre grupos: Especialistas con 10-20 años de experiencia y Especialistas con más de 20 años de experiencia	F	**-3.12**	**-3.04**	**-3.26**	-	-	**-2.17**
	φ	**.017**	**.033**	**.017**	-	-	**.035**

Fuente: Elaboración propia, 2021.

Nota: M – media aritmética; SD – desviación de la media cuadrada; F – la diferencia promedio; φ – valor; destacamos diferencias significativas en negrita y diferencias a nivel de la tendencia estadística en cursiva.

En general, en la muestra, los indicadores de percepción subjetiva del pasado de los especialistas que se encuentran en la etapa de desarrollo de la conciencia profesional, están dentro del intervalo característico para la muestra normativa, acercándose al límite superior. Las puntuaciones más

altas se han registrado en las escalas: "Coloración emocional del pasado" y "Magnitud del pasado", y las más bajas, en las escalas: "Estructura del pasado" y "Sentido del pasado". Se observa una tendencia similar en cada grupo profesional por separado.

Se han encontrado diferencias significativas ($p<.05$) entre los representantes de grupos profesionales de encuestados "Especialistas con menos de 10 años de experiencia" y "Especialistas con más de 20 años de experiencia", así como "Especialistas con experiencia de 10 a 20 años" y "Especialistas con experiencia de más de 20 años" en la escala de "Magnitud del pasado": en ambos casos los indicadores son superiores en los especialistas con más de 20 años de experiencia. Es decir, con mayor frecuencia que los otros, los encuestados con más de 20 años de experiencia evalúan su pasado como lleno de significado y experiencias (en su mayoría positivas), lo que da espacio para la autorrealización y generalmente coincide con los datos obtenidos a través de cuestionarios "ZTPI" y "TFTPI" (Zimbardo y Bojd, 2010).

Se han encontrado diferencias significativas ($p<.05$) entre los representantes de grupos profesionales "Especialistas con 10-20 años de experiencia" y "Especialistas con más de 20 años de experiencia" en los indicadores de las escalas "Actividad del pasado", "Coloración emocional del pasado" y evaluación promedio de factores pasados: son superiores en especialistas con más de 20 años de experiencia. Es decir, los encuestados con más de 20 años de experiencia tienden a percibir su pasado como enérgico, posiblemente debido a un cierto estrés emocional y una alta tasa de eventos, así como a evaluar sus emociones pasadas como positivas. Pueden estar más satisfechos con la situación actual de la vida en el pasado.

Vamos a examinar las características de la percepción subjetiva del presente en representantes de diferentes grupos profesionales por el método del "Diferencial Semántico del Tiempo" ("DST") (Tabla 4).

Tabla 4. Indicadores de percepción subjetiva del presente en diversos grupos profesionales de especialistas en el área económica de acuerdo con "SDT"

Escala		Parámetros					
		Magnitud del presente	Actividad del presente	Coloración emocional del presente	Estructura del presente	Sentido del presente	Eestimación promedio del presente
Desarrollo de la conciencia profesional	M	7.75	5.81	8.04	4.89	4.60	6.22
	SD	4.67	4.56	4.76	4.87	3.82	3.03
Especialistas con menos de 10 años de experiencia	M	6.00	3.83	5.39	5.39	2.43	4.60
	SD	7.19	4.57	5.53	5.81	3.69	3.58
Especialistas con 10-20 años de experiencia	M	8.00	5.63	8.34	4.34	4.85	6.24
	SD	3.68	4.83	4.33	4.80	3.92	2.90
Especialistas con más de 20 años de experiencia	M	8.64	7.82	9.57	5.71	5.82	7.51
	SD	3.78	3.02	4.26	4.14	3.03	2.19
Diferencias significativas entre grupos: Especialistas con menos de 10 años de experiencia y Especialistas con 10-20 años de experiencia	F	-	-	**-2.95**	-	**-2.42**	-1.64
	φ	-	-	**.027**	-	**.021**	.059
Diferencias significativas entre grupos: Especialistas con menos de 10 años de experiencia y Especialistas con más de 20 años de experiencia	F	-	**-3.99**	**-4.18**	-	**-3.39**	**-2.91**
	φ	-	**.004**	**.005**	-	**.004**	**.001**
Diferencias significativas entre grupos: Especialistas con 10-20 años de experiencia y Especialistas con más de 20 años de experiencia	F	-	-2.19	-	-	-	-
	φ	-	.076	-	-	-	-

Fuente: Elaboración propia, 2021.

Nota: M – media aritmética; SD – desviación de la media cuadrada; F – la diferencia promedio; φ – valor; destacamos diferencias significativas en negrita y diferencias a nivel de la tendencia estadística en cursiva.

En una muestra de profesionales que se encuentran en la etapa de desarrollo de la conciencia profesional, los indicadores de percepción subjetiva del presente están dentro de la norma, acercándose a su límite superior, a excepción del indicador "Coloración emocional del presente".

En esta escala se registran las puntuaciones sobreestimadas. En general, las puntuaciones más altas son observadas en las escalas: "Coloración emocional del presente" y "La magnitud del presente", así como las puntuaciones más bajas, en las escalas: "Sentido del presente" y "Estructura del presente". Una tendencia similar se observa en los grupos "Especialistas con 10-20 años de experiencia" y "Especialistas con más de 20 años de experiencia". Sin embargo, en el grupo "Especialistas con menos de 10 años de experiencia" predomina "Magnitud del presente", y las puntuaciones más bajas se observan en las escalas "Sentido del tiempo presente" y "Actividad del presente".

Se han encontrado diferencias significativas ($p<.05$) entre los representantes de grupos profesionales de encuestados "Especialistas con menos de 10 años de experiencia" y "Especialistas con más de 20 años de experiencia", así como diferencias a nivel de tendencia estadística ($p<.01$) entre los representantes de grupos profesionales "Especialistas con 10-20 años de experiencia" y "Especialistas con más de 20 años de experiencia" en los indicadores de las escalas "Actividad del presente". En todos los casos, son superiores en los especialistas con más de 20 años de experiencia. Es decir, los profesionales que tienen más de 20 años de experiencia, más que otros profesionales, tienden a considerar sus vidas como enérgicas, con una alta tasa de eventos.

Se han encontrado diferencias significativas ($p<.05$) entre los representantes de grupos profesionales de encuestados "Especialistas con menos de 10 años de experiencia" y "Especialistas con 10-20 años de experiencia", diferencias significativas ($p<.01$) entre los grupos estudiados en los indicadores de las escalas: "Coloración emocional del presente" y "Sentido del presente". Así como diferencias a nivel de tendencia estadística ($p<.01$) entre los grupos "Especialistas con menos de 10 años de experiencia" y "Especialistas con experiencia de10 a 20 años" y diferencias significativas ($p<.01$) entre los grupos "Especialistas con menos de 10 años de experiencia" y "Especialistas con más de 20 años de experiencia". Según la evaluación promedio de los factores del presente: todos estos indicadores son más bajos en los encuestados con menos de 10 años de experiencia. Están menos inclinados a evaluar su situación de vida actual como algo agradable para ellos, a sentir experiencias, emociones y sentimientos vívidos sobre su presente; sentir la propia implicación emocional en los acontecimientos de la vida; sentirse un participante activo en lo que está sucediendo.

Vamos a examinar las características de la percepción subjetiva del futuro en representantes de diferentes grupos profesionales por el método del "Diferencial Semántico del Tiempo" ("DST") (ver Tabla 5).

Tabla 5. Indicadores de percepción subjetiva del futuro en diversos grupos profesionales de especialistas en el área económica de acuerdo con "SDT"

Escala		Parámetros					
		Magnitud del futuro	Actividad del futuro	Coloración emocional del futuro	Estructura del futuro	Sentido del futuro	Estimación promedio del futuro
Desarrollo de la conciencia profesional	M	10.81	4.88	11.68	6.19	4.73	7.65
	SD	3.50	3.84	2.54	5.43	5.19	2.58
Especialistas con menos de 10 años de experiencia	M	11.52	5.74	11.26	7.00	5.26	8.14
	SD	3.03	4.28	2.28	4.44	4.54	2.37
Especialistas con 10-20 años de experiencia	M	10.32	5.21	12.00	5.32	5.08	7.59
	SD	3.88	3.64	2.54	6.21	5.41	2.74
Especialistas con más de 20 años de experiencia	M	11.29	3.46	11.32	7.43	3.50	7.40
	SD	2.81	3.65	2.74	3.90	5.18	2.43
Diferencias significativas entre grupos: Especialistas con menos de 10 años de experiencia y Especialistas con 10-20 años de experiencia	F	-	-	-	-	-	-
	φ	-	-	-	-	-	-
Diferencias significativas entre grupos: Especialistas con menos de 10 años de experiencia y Especialistas con más de 20 años de experiencia	F	-	2.28	-	-	-	-
	φ	-	.095	-	-	-	-
Diferencias significativas entre grupos: Especialistas con 10-20 años de experiencia y Especialistas con más de 20 años de experiencia	F	-	-	-	-	-	-
	φ	-	-	-	-	-	-

Fuente: Elaboración propia, 2021.

Nota: M – media aritmética; SD – desviación de la media cuadrada; F – la diferencia promedio; φ – valor; destacamos diferencias significativas en negrita y diferencias a nivel de la tendencia estadística en cursiva.

Se establece que en los especialistas que se encuentran en la etapa de desarrollo de la conciencia profesional, los indicadores de percepción subjetiva del futuro se encuentran dentro del intervalo normativo, acercándose a su límite superior, excepto los indicadores "Coloración emocional del futuro", "Magnitud del futuro" y "Estimación promedio del futuro": las puntuaciones de estas características están sobreestimados.

En general, las puntuaciones más altas en la muestra se observan en las escalas: "Coloración emocional del futuro" y "Magnitud del futuro", así como las puntuaciones más bajas, en las escalas: "Sentido del futuro" y "Actividad del futuro". Se observa una tendencia similar en todos los grupos por separado.

Se han encontrado diferencias a nivel de tendencia estadística ($p<.01$) entre los representantes de los grupos profesionales "Especialistas con menos de 10 años de experiencia" y "Especialistas con más de 20 años de experiencia" en la escala "Actividad futura": estas diferencias son más altas en los encuestados con menos de 10 años de experiencia. Son más propensos que los especialistas con más de 20 años de experiencia a percibir su futuro como enérgico, pasando a un ritmo alto y lleno de acontecimientos. Se debe notar que estos datos coinciden con los datos obtenidos a través de cuestionarios "ZTPI" y "TFTPI" (Zimbardo y Bojd, 2010).

Vamos a considerar las características de la percepción subjetiva del en diferentes grupos profesionales de especialistas en el área económico, teniendo en cuenta el factor de género por el método del "Diferencial Semántico del Tiempo" ("DST") (Tabla 6).

Tabla 6. Indicadores de percepción subjetiva del tiempo por los especialistas en el área económica teniendo en cuenta el género de los encuestados de acuerdo con "SDT"

Escala	Hombres		Mujeres		Valores de las diferencias	
	M	SD	**M**	SD	F	**φ**
Magnitud del presente	7.72	4.73	7.78	4.67	-	-
Actividad del presente	4.91	4.36	6.60	4.62	-	-
Coloración emocional del presente	7.85	4.88	8.22	4.69	-	-
Estructura del presente	5.45	4.75	4.40	4.96	3.33	.071
Sentido del presente	3.38	3.58	5.68	3.74	**7.56**	**.007**
Estimación promedio del presente	5.86	2.99	6.53	3.06	-	-
Magnitud del pasado	5.58	5.66	7.03	4.80	-	-
Actividad del pasado	3.70	4.68	4.02	5.78	-	-
Coloración emocional del pasado	8.21	4.36	7.25	5.66	-	-

Estructura del pasado	.79	5.17	1.98	5.00	-	-
Sentido del pasado	1.87	3.92	1.55	5.51	-	-
Estimación promedio del pasado	4.03	3.48	4.37	4.00	-	-
Magnitud del futuro	10.36	3.49	11.20	3.48	-	-
Actividad del futuro	4.51	4.41	5.22	3.25	-	-
Coloración emocional del futuro	11.11	2.33	12.18	2.64	-	-
Estructura del futuro	5.47	5.84	6.82	50.00	-	-
Sentido del futuro	5.66	4.59	3.90	5.58	**4.12**	**.045**
Estimación promedio del futuro	7.42	2.71	7.86	2.47	-	-

Fuente: Elaboración propia, 2021.

Nota: M – media aritmética; SD – desviación de la media cuadrada; F – la diferencia promedio; φ – valor; destacamos diferencias significativas en negrita y diferencias a nivel de la tendencia estadística en cursiva.

Los resultados del análisis de varianza mostraron diferencias significativas ($p<.01$) entre hombres y mujeres en la escala: "Sentido del presente" (más pronunciado en las mujeres); diferencias significativas ($p<.05$) en la escala "Sentido del futuro" (más pronunciado en hombres); y diferencias a nivel de tendencia estadística en el indicador "Estructura del presente" (más pronunciado en hombres).

4. Discusión

Se ha determinado que los especialistas con más de 20 años de experiencia están más enfocados en el pasado y el presente, y los que tienen menos de 10 años de experiencia están enfocados en el futuro ($p\leq.01$). En la mayoría de los casos, los especialistas con más de 20 años de trabajo tienen una rica experiencia de vida, una carrera exitosa que recuerdan con orgullo; su posición implica una participación activa en la vida de su organización, en la toma de decisiones; el futuro les preocupa menos que a otros profesionales que solo pueden prever una carrera exitosa en el futuro.

Los profesionales con 10-20 años de experiencia a menudo entran en contacto con nuevas personas, tienen que resolver situaciones de conflicto, trabajar en un entorno en constante cambio y, si es posible, buscan evaluar de antemano los posibles riesgos y posibles problemas; los profesionales con menos de 10 años de experiencia a menudo planean su futuro y buscan el apoyo de personas más experimentadas y relevantes.

Los resultados del estudio muestran que los hombres son más propensos que las mujeres a ocupar puestos de liderazgo y tienen el tiempo y los recursos para desarrollar sus actividades profesionales. Ellos prestan menos atención a las manifestaciones de enfermedades y diversas dolencias y por eso en el cuestionario de autoevaluación ponen puntuaciones altas en el estado de salud y otros indicadores. Se ha descubierto que los hombres tienen una orientación temporal más pronunciada para el "Futuro" y las mujeres, para el "Futuro Trascendente" ($p \leq .05$). Las mujeres son más propensas a la inmersión emocional en los eventos actuales, mientras que los hombres son más propensos a estructurar los eventos actuales y planificar eventos futuros ($p \leq .05$). Creemos que esto está en línea con ciertos hechos y estereotipos de género: los hombres están más centrados y son capaces de estructurar los eventos, y las mujeres están más inclinadas a los ritos religiosos, más a menudo recurren a astrólogos, horóscopos, buscan ciertos "signos" dados por el universo, etc. Los hombres son más propensos a la planificación estratégica, la reflexión y la superación preventiva que las mujeres ($p \leq .05$). Quizás esto esté en línea con la opinión pública: los hombres son considerados los mejores estrategas, capaces de evaluar todos los riesgos de antemano y tomar las medidas preventivas necesarias, y las mujeres prefieren actuar en función de la situación.

Conclusiones

Se ha establecido que las personas que ocupan puestos de liderazgo tienen más tiempo, oportunidades y recursos para desarrollar sus actividades profesionales. Tienen menos tareas que los deprimen y los irritan, pues éstas pueden delegarse, posponerse o cancelarse, lo que tiene un efecto positivo en su estado psicológico. Los especialistas con más de 20 años de experiencia tienen un cierto estatus social, lo que les otorga privilegios especiales que reflejan su autoridad, competencia profesional, importancia para los demás y afecta también a las condiciones de trabajo y los salarios.

Es decir, las mujeres son más propensas a sentir su propia participación emocional e intelectual en los acontecimientos del presente que los hombres. Al mismo tiempo, los hombres son más propensos que las mujeres a presentarse como participantes activos en los eventos futuros, a sentir su propia importancia para los acontecimientos del futuro; y con mayor frecuencia evalúan su presente como estructurado, predecible y comprensible. Por lo tanto, ellos entienden la relación entre los eventos actuales y perciben el mundo como más estable y seguro que las mujeres.

El problema de estudiar el tiempo psicológico del individuo es uno de los menos desarrollados en la psicología mundial. Creemos que los resultados

obtenidos pueden utilizarse en asesoramiento psicológico, evaluación del personal (orientación profesional, selección del personal, reclutamiento). Y también servirán como base para la creación de mantenimiento metódico para una estimación de posibles problemas de actividad de los especialistas en el área económica en puestos concretos y el desarrollo de formas de resolver estos problemas.

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Legal regulation of payment systems in Ukraine: current situation and the prospects for development

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Abstract

The purpose of the article is to consider the main international regulations on the introduction and operation of payment systems in Europe, as well as national legislation providing for the development of payment systems in Ukraine. The research methodology includes the following general and special legal methods: axiological, historical and legal, formal and logical, comparative and legal, as well as the methods of analysis and synthesis, induction and deduction, summarization. Results of the research. The main international regulations on the formation and functioning of payment systems in the European countries, which became the basis for the development of relevant legislation of Ukraine in this area, are analyzed. The legal acts that currently regulate this issue in our country are considered, as well as Draft Laws aimed at resolving existing problematic issues in the payment systems market are examined. Practical meaning. The positive dynamics of the development of the Ukrainian payment legislation in accordance with the needs of the market and changes in the payment habits of the population are established. Value / originality. Emphasis is placed

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on the need for the further measures by the National Bank of Ukraine in order to harmonize national legislation with the European regulations in this area.

Keywords: payment systems; payment services; payment legislation; payment directives; non-cash payments.

Regulación legal de los sistemas de pago en Ucrania: situación actual y perspectivas de desarrollo

Resumen

El propósito del artículo es considerar las principales regulaciones internacionales sobre la introducción y operación de sistemas de pago en Europa, así como la legislación nacional que prevé el desarrollo de sistemas de pago en Ucrania. La metodología de investigación incluye los siguientes métodos legales generales y especiales: axiológico, histórico y legal, formal y lógico, comparativo y legal, así como los métodos de análisis y síntesis, inducción y deducción, resumen. Se analizan las principales regulaciones internacionales sobre la formación y funcionamiento de sistemas de pago en los países europeos, que se convirtieron en la base para el desarrollo de la legislación pertinente de Ucrania en esta área. Se consideran los actos jurídicos que actualmente regulan este tema así como se examinan los Anteproyectos de Ley dirigidos a resolver las problemáticas existentes en el mercado de los sistemas de pago. Se establece la dinámica positiva del desarrollo de la legislación de pagos de Ucrania de acuerdo con las necesidades del mercado y los cambios en los hábitos de pago de la población. A modo de conclusión se hace hincapié en la necesidad de que el Banco Nacional de Ucrania adopte nuevas medidas para armonizar la legislación nacional con la normativa europea.

Palabras clave: sistemas de pago; servicios de pago; legislación de pagos; directivas de pago; pagos no monetarios.

Introduction

Payment systems are an important component of the stable functioning of the State's financial system and its economy as a whole. The development of payment systems around the world has been characterized by a rapid reduction in the use of cash and paper payment documents, the transition to new payment instruments and modern payment technologies in recent

years. Besides, payment systems are an element of the e-commerce infrastructure, which has been developing rapidly both around the world and in Ukraine. Thus, electronic payments using payment systems are becoming more common in Ukraine and are steadily increasing their share in the payments segment.

Dynamic development of payment systems plays an important role in the formation of new mechanisms for the functioning of the country's payment infrastructure, the emergence of new types of payment instruments, as well as the forms of settlements execution, significantly affects all spheres of society, while contributing to or inhibiting stable economic growth. Given this, it is important to consider the current development of payment systems in our country, to conduct the analysis of their reliability, which can ensure financial security of the customers and economic security of Ukraine's economy as a whole, as well as the prospects for the further operation taking into account the challenges of our time (Dzhusov and Piliak, 2020: 196).

At present, Ukraine is gradually moving to the non-cash form of payment, although it still has a high ratio of cash to GDP in most developed countries, which is influenced by a number of negative factors such as high level of underground economy and low confidence in financial institutions. There is also a lack of public awareness of the benefits of non-cash payments, accompanied by a still high level of distrust in their use. Therefore, the low level of use of non-cash payments, underdeveloped financial infrastructure, the habits of the population that hinder the development of payment systems are among the key problems of Ukraine's payment systems nowadays.

The purpose of the article is to consider the main international regulations on the introduction and operation of payment systems in Europe, as well as national legislation providing for the development of payment systems in Ukraine.

1. Methodology

The methodology of the article is based on general and special methods of scientific knowledge, the use of which is determined by the purpose, object and subject of research. In particular, the axiological method was used to substantiate the importance of international and domestic regulations in the formation and development of the payment systems in Ukraine. The method of hermeneutics was applied in the process of studying international and domestic legal acts (as well as their drafts), governing the issue, with their further interpretation. Historical and legal method allows to trace the historical development of the studied phenomena. Formal and logical (dogmatic) method allowed to outline the range of circumstances that affect the formation of the existing payment systems in Ukraine.

The method of analysis and synthesis helped to clarify the content of the legal mechanism of functioning of payment systems. The method of induction and deduction allowed to determine the directions of improvement of the payment legislation of Ukraine taking into account the challenges of the time and its harmonization with European legislation. The legal and comparative method was used to compare the state of development of payment systems in Ukraine and some countries of the European Union. With the help of the method of summarization the relevant conclusions and suggestions were drawn.

2. Literature Review

The formation and development of modern payment systems have been the subject of research by many foreign and domestic scholars.

Thus, Santiago Carbó-Valverde and Charles M. Kahn (2016) studied the current state and prospects of payment systems in Europe and the United States. They pointed out that the existing differences in the regulation of payment systems are the result of different initial conditions and, consequently, they need different solutions to overcome technological challenges. Thus, if the way to unify the payment market and payment instruments in Europe was the introduction of a single payment zone of the European Union in euros (SEPA), the United States did not have a single comprehensive system program to regulate payment systems. In the course of the study, the authors found that the formation and development of payment systems is significantly influenced by the relevant legal acts. However, while European countries have developed unified regulatory framework in order to establish uniform standards for the development of payment systems, the United States is still having problems with the application of unified solutions to control the payment services market.

Inna Oliinyk and William Echikson (2018) conducted a thorough study of the so-called “payment revolution” in Europe resulting from the adoption of the payment directives. They analyzed payment innovations in the process of protecting the privacy of consumers of payment services. In particular, the latter drew attention to the fact that in order to comply with these directives, the banks need to upgrade the existing systems of security measures through the introduction of new IT technologies. Although the Directive provides easy and secure access to a wide range of payment services for the consumers, a number of issues remain unresolved (the problems with the access to the Application Programming Interface (API), whether individuals and small businesses will receive appropriate protection, etc.).

Inna Romanova, Simon Grima, Jonathan Spiteri, and Marina Kudinska (2018), having studied the importance of the payment directives noted that their implementation in payment legislation will promote competitiveness in the payment services market, innovation and its development in general. Thus, despite the possible risks associated with the implementation of their provisions, the high speed of payment transactions and security and confidentiality remain a priority. Providing access to the payment services market to non-financial companies will make adjustments and promote competitiveness among traditional financial service providers and banks.

Raynor de Best (2021) studied common payment methods in different European countries, determining that each country of the Eurozone has its own most popular payment systems, which are evolving in line with market trends and demands of the population. It is also noted that such powerful payment systems as Visa and Mastercard were not leading in all countries of the continent. For example, in 2018, MasterCard had a 95% market share in the Netherlands, but was 12% of the German market. In Belgium, an internal solution called Bancontact was much more popular than Visa or Mastercard. In short, the European payment market is fragmented and heterogeneous.

However, these works do not pay enough attention to the study of the dynamics of the main indicators of development of this part of the financial system and its impact on other areas of activity, as well as the consideration of existing problems and prospects for payment systems in Ukraine resulting in the relevance of this study.

3. Results and Discussion

Article 1 of the Law "On Payment Systems and Money Transfer in Ukraine" (Law No. 2346-III, 2001) defines the payment system as the payment organization, participants in the payment system and the set of relations that arise between them during the money transfer. It is enshrined that the money transfer is a mandatory function to be performed by the payment system. The legislator divides payment systems into domestic (in which the payment organization is resident and which carries out its activities and ensures the transfer of funds exclusively within Ukraine) and international ones (payment system in which the payment organization can be both resident and non-resident and which carries out its activities in two or more countries and ensures the transfer of funds within this payment system, including from one country to another).

The purpose of creating payment systems is obvious – to reduce the cash supply and, accordingly, to minimize the cost of issuing cash and reduce the cost of its maintenance, collection, and re-calculation. Besides, the payment

systems guarantee the smooth operation of all elements of the system itself, ensure the security of transactions, insure against any disruption of financial transactions. Given the intensification of globalization and the implementation of European integration measures, in particular for Ukraine, the issue of acquiring an internal market regime with the European Union in the area of financial services, including payment ones, is relevant.

In view of the above, it will be appropriate to determine the most important stages in the formation of legal regulation of payment service providers and the functioning of payment systems in the EU Member States. The process of unification began with the creation of the Single Euro Payments Area (SEPA) in 2007, which is characterized by the complete elimination of the difference between internal and external payments in euros, which speeds up monetary transactions. The SEPA implementation process was completed in 2014 (Deloitte, 2017).

The next significant step was the adoption in 2007 the Payment Services Directive 1 – PSD1 (Directive of the European Parliament and of the Council, 2007) on payment services in the internal market. This Directive laid down the principles for the provision of payment services, the procedure for supervision and special payment instruments, etc. Following the adoption of the Payment Services Directive 1, the process of digitalization of the European economy was launched, which gave impetus to the creation of new products and accelerated online payments. However, most new companies did not control the implementation of this Directive, which hindered the further development of the payment services market.

Thus, in 2009 the Directive № 2009/110 / EC (Directive of the European Parliament and of the Council, 2009) was fully adopted. It was this Directive that included the rules for the conversion of electronic money, as well as the requirements for the establishment, implementation and prudential supervision of the activities of electronic money institutions.

Particular attention should be paid to the Second Payment Services Directive 2015/2366 / EC (Payment Services Directive 2 – PSD2) (Directive of the European Parliament and of the Council, 2015), which was developed and adopted in 2015 to improve the protection of both customers and payment services in general, to promote competitive environment and develop innovation in this area. PSD 2 introduced two new forms of payment agents to the payment services market, namely the payment service providers (PISPs) and payment organizations (AISPs). This Directive also made adjustments to the procedure for ensuring the security of users during payment transactions empowered the European Banking Association (EBA) to develop requirements for security of transactions and the methods of correct authentication of the users. The Directive further applies the rules for the provision of SEPA Direct Debit and SEPA Credit Transfer technologies, within the rulebooks, which are based on the XML

protocol (messaging) ISO 20022 (Husiev and Kim, 2017). Besides, the Directive guarantees free access to the European market to various payment systems, including non-bank payment services, which can perform money transfers not only through banks but also through various paying agents, telecommunications networks and information technology operators. All this promotes competition and development of innovations in the area of financial technologies, as well as the free exercise by the client (user, consumer) of their right to choose the most acceptable payment service, which will generally affect the competitiveness of European banks and payment companies in the global electronic payment network.

It is worth noting that the Payment Services Directive 2, which regulates payment systems in Europe, is considered much more effective than similar initiatives in the US, and therefore the global impact of the SEPA legal framework on regulating the payment services market (Valverde & Kahn 2016).

Although, Romanova *et al.*, (2018) note that based on the analysis of the latest trends in FinTech, Payment Services Directive 2 creates additional risks and security responsibilities for the financial services and banking sectors, consumer data protection, and does not exclude certain reputational risks connected with the opening of the market for non-financial institutions. Another risk of the Directive is a potential security risk in data exchange with the Third Party Payment Providers, as well as the associated reputational risks and "grey areas" of liability for any data breaches by the third party.

However, the above-mentioned changes in European legislation have not bypassed our State. The borrowing of European experience in regulating the payment sector and the desire to meet European standards for further integration into the EU is reflected in the activities of the National Bank of Ukraine, which implements measures to harmonize national payment legislation with the European one in accordance with the Association Agreement with the EU. As Avdeev *et al.* (2019) correctly pointed out in the context of the globalization of international life, one of the key areas for the progressive and fruitful development of international relations is the integration of the legislation of States to ensure economic security.

The key factor influencing the development of payment systems in Ukraine is the activity of the National Bank of Ukraine, focused on effective and continuous operation of the payment mechanism – oversight of payment systems. Such activities are regulated by the relevant Regulation on the supervision (oversight) of payment systems and settlement systems in Ukraine, which is based on the European standard on the supervision (oversight) of payment systems and settlement systems (The Eurosystem's oversight) (Resolution of the Board of the National Bank of Ukraine, 2014).

The supervisory function is defined in the Treaty on the Functioning of the European Union and the Statute of the European System of Central Banks (ESCB) and the European Central Bank (ECB) as facilitating the smooth operation of payment systems and ensuring their efficiency and security. In turn, the National Bank of Ukraine developed "Guidelines for risk management in payment systems" (National Bank of Ukraine, 2018), which provides a clear delineation of payment system risks (legal risk, operational risk, credit risk, liquidity risk, systemic risk), and developed a so-called profile for each of them (source, location, form of implementation, assessment of the possibility and consequences of relevant risks).

Characterizing the current state of payment systems in Ukraine, it is necessary to analyze the data of the annual Report on the oversight of payment systems, which is formed by the National Bank of Ukraine. According to the Report of 2019 (National Bank of Ukraine, 2019), the structure of the payment systems market in Ukraine includes public payment systems (created by the National Bank of Ukraine) and private ones (created by residents and non-residents). As of the end of 2019, 46 domestic and international payment systems created by the residents and non-residents were registered in Ukraine, as well as two systems created by the National Bank (Electronic Payment System of the National Bank (EPS) and National Payment System "PROSTIR"). The total number of participants in payment systems (excluding EPS) was 128 financial institutions, including 69 banks and 59 non-bank financial institutions. According to the results of 2019, EPS remained the only systemically important payment system in Ukraine.

The category of socially important payment systems includes five payment systems – "MasterCard" (MasterCard International Incorporated, USA); Visa (Visa International Service Association, USA); Western Union (Western Union Financial Services Inc. USA / Western Union Network, SAS, France); NovaPay (Post Finance LLC); "Postal transfer" (PJSC "Ukrposhta").

The category of important payment systems includes six more payment systems – "Financial World" (LLC "Ukrainian Payment System"); MoneyGram (Money Gram Payment Systems Inc. USA); City 24 (Phoenix Financial Company LLC); "FLASHPAY" (PJSC "Family Bank"); RIA (Continental Exchange Solutions Inc, USA); "INTELEXPRESS" (JSC Microfinance Organization "Intellexpress", Georgia) (National Bank of Ukraine, 2019).

If we characterize the market of payment systems in some European countries, we can note that one of the most common payment systems is also "MasterCard" (MasterCard International Incorporated, USA) and Visa (Visa International Service Association, USA). However, the market for payment services is heterogeneous and each country has its own features, which determines the introduction and operation of different

payment systems. For example, the most popular way to make payments in Belgium is Bancontact, SEPA and Sofort are also popular. Cartes Bancaires dominates the payment environment in France, and most French cards are Cartes Bancaires, together with Visa or Mastercard. Germany is one of the most fragmented markets when it comes to payment methods. Most online payments use payment methods such as SEPA Direct Debit, SOFORT and Giropay. Popular method of payment in retail is an invoice; the third party pays for goods and services, and then charges the buyer after delivery. Popular payment methods in Italy are American Express; Ewallets; Mastercard; Visa; Klarna Pay Over time. In Poland, internet banking known as Pay-by-links is the most popular payment method and accounts for 75% of all electronic payments.

MultiBanco, which accounted for about 85% of total sales, is the most popular payment system in Portugal. This is a post-pay option, when the link is generated at the time of payment and is paid later through an ATM using a debit card or through Internet banking. Cash is still the most popular payment method in Spain, and the number of ATMs per million inhabitants is one of the highest in Europe. Cards are also popular as more than 85% of the population have at least one Visa or Mastercard debit or credit card. Buyers in the UK are the world leaders in terms of online shopping, and debit cards for non-cash payments are popular (the average buyer owns 2-3 bank cards). Cards account for about 90% of all online payments, another popular option is digital wallets, and online banking is virtually non-existent. Popular payment methods in the UK: Visa; Mastercard; BACS Direct Debit; Digital wallets; American Express; Klarna Pay Later) (National Bank of Ukraine, 2020a).

According to the results of monitoring in 2019, the important operators of payment infrastructure services in Ukraine are PJSC "Ukrainian Processing Center" and LLC "TAS LINK". The National Bank of Ukraine has established strict requirements for ensuring the continuity of activities based on international oversight standards for such significant operators of payment infrastructure services. The Resolution "On Approval of Amendments to the Regulations on Supervision (Oversight) of Payment and Payment Systems in Ukraine" (Resolution of the National Bank of Ukraine, 2020) further established the procedure and criteria for determining important operators of payment infrastructure services.

It is worth noting that at the end of 2018, the world's largest (by the number of issued payment cards) international payment system UnionPay International entered the Ukrainian market. Besides, such giants as GooglePay and ApplePay have also shown interest in Ukraine due to the active development of contactless payment technology. PayPal payment systems are among the available payment systems in Ukraine (however, only one of the payment system's options is available to Ukrainians – to

spend money from your account but not receive it) and AVERS №1 (Uteka, 2018).

The introduction of the IBAN was also an important step in Ukraine, which is the result of the implementation of the Payment Services Directive 2 in the national legislation. The Resolution no. 118 (National Bank of Ukraine 2018) enshrined that the international bank account number is mandatory for customers of all Ukrainian banks when money transferring in both national and foreign currency. This made it easier to identify the payer and the recipient of the funds, as well as provide information about the IBAN using a QR code. This number is 29 letters and numbers for Ukraine (includes the country code, control digit, bank code and account number).

A positive trend for Ukraine is the increase in the share of non-cash transactions over the past 5 years. Modern payment systems allow consumers to make money transfers, make settlements in the payment terminals of trade and service enterprises by using the Internet access and bankcard number to buy goods, pay for services; the sellers, in turn, can safely check and receive payments instantly.

Now let us turn to the experience of European countries on this issue. The study conducted in 2019 indicates that Iceland, Sweden, Norway, Denmark and the United Kingdom were the countries with the lowest levels of cash use (payments were made, in particular, by using debit cards). Digital wallets, such as Apple Pay or Google Pay, were the least popular payment option in 2019 in such countries as France, Germany, Italy, Poland, Sweden and the United Kingdom. This is a marked difference from, for example, China or the United States. One reason for this may be that some countries have adopted contactless options on debit cards. The market share of contactless payments in various European countries was, for example, 83% in Poland and 50% in Italy. There is also a significant impact of services provided on the Internet on the development of cashless payments in the future (Raynor de Best, 2021).

Recent events (such as the pandemic and quarantine restrictions) have made adjustments to the payment habits of Ukrainian citizens towards non-cash payments, including on the Internet. The total number of transactions (non-cash and cash) using payment cards issued by Ukrainian banks in the first nine months of 2020 amounted to 4310.2 million items, and their amount was UAH 2,807.9 billion. The number of these transactions increased by 18.0%, and the amount – by 8.7% compared to the same period in 2019. This is primarily due to the increase in the amount and number of non-cash transactions – their share predominates in the total amount of payment card transactions. Thus, the amount of non-cash transactions amounted to UAH 1,550.1 billion or 55.2% of the sum of all card transactions in 2020, compared to 49.7% in 2019 (for the first 9

months). At the same time, the number of transactions for withdrawal from payment cards decreased by 11.3%, and the amount – by 3.3% compared to the first 9 months of 2019. The total number of issued payment cards in Ukraine as of October 1, 2020 amounted to 73.4 million units. This is 7.4% more than in January 2020. The payment infrastructure continued to expand steadily during the first 9 months of 2020. The number of business entities accepting payment cards increased by a third (by 31.7%) during this period – to almost 316.4 thousand (National Bank of Ukraine, 2020b). Thus, the increase in the number of non-cash payments, including using payment cards, necessitates further improvement in the area of payment services.

To this end, the National Bank of Ukraine in 2020 began work aimed at updating the payment legislation, which will ensure the process of market recovery and increase public confidence in payment systems. Thus, based on the need for regulation of innovative payment services and the implementation of European regulations, in particular Payment Services Directive 2, Electronic Money Directive (EMD), the Verkhovna Rada of Ukraine registered the Draft Law 64 4364 on payment services (Draft law of Ukraine No. 4364, 2020). It envisages a number of key changes in the payment services market, in particular: defining the range of payment service providers; establishing requirements for the authorization of payment service providers and introducing the possibility of creating and operating small payment institutions with simplified requirements for them; granting permission to non-banking financial institutions to carry out payment transactions without mandatory participation in payment systems; granting the right to issue electronic money and payment cards not only to banks, but also to other payment service providers that have received the appropriate license; creating the basis for the introduction of "open banking" in the payment infrastructure of Ukraine; ensuring the possibility of opening and maintaining payment accounts by non-bank payment service providers; strengthening measures to protect the customers' rights, in particular in order to minimize cyber fraud, increase liability for illegal actions with payment instruments and means of access to bank and / or payment accounts, etc.; increasing the requirements for the security of payment transactions, in particular regarding the need for payment service providers to use enhanced user authentication in certain cases.

As already mentioned, strengthening measures aimed at protecting the rights of payment system users is one of the areas in the process of updating national payment legislation. Given the latest global trends related to the development of Internet services, as well as the mass transition of users of payment services online, the National Bank of Ukraine plans to increase information security and cyber security in the area of money transfer. In particular, the regulator intends to set clear requirements for

payment market participants to build a system of information protection and cybersecurity, as well as regulation of the procedure for detecting cyber-attacks that reduce the reliability of payment systems. The relevant innovations are outlined in the Resolution of the National Bank of Ukraine on the Approval of the Regulation "On information protection and cyber protection in payment systems" (Resolution of the Board National Bank of Ukraine, 2021).

It is worth noting that according to the provisions of the Payment Services Directive 2, there are two options for data protection of the customers of payment services: 1) to allow third parties to identify themselves; or 2) to provide access through a separate interface, for example through the application programming interface ("Application Programming Interface – API"). Otherwise, a fall-back mechanism should be used. Such an interface should be standardized and include a set of requirements that the software of one company can be used to communicate with the software of another one. Banks will use the APIs and customer authentication will remain mandatory. The proponents of the API insist on the effectiveness of this security system for users of the payment services market. For example, as part of the implementation of the Directive, it is planned to provide a common API platform for access and protection of payment data. The Berlin Group, as an independent coalition of 25 players in the payment services market from 10 Eurozone countries, has developed common API standards. Some other similar European initiatives in this area exist in other countries – the Polish API and STET in France. Probably the most important and influential is the API initiative in the UK, called Open Banking. It provides joint APIs for the country's nine largest banks (Oliinyk and Echikson, 2018).

In view of the above, transforming the national payment legislation in order to comply with the Payment Services Directive 2 should also take into account the experience of other European countries in implementing measures to ensure the protection of confidentiality and security of payment market participants.

Besides, the National Bank of Ukraine continues to modernize the Electronic Payment System of the National Bank (hereinafter – EPS) and the payment infrastructure of Ukraine in accordance with global trends, as well as the requirements of the time and business. In particular, in 2021 the regulator plans to work on the transition of banks to the international standard ISO20022, which will ensure further automation of payment transactions at a qualitatively new level. Among the main advantages of using the international standard ISO 20022 in the payment infrastructure of Ukraine are: harmonization of the Ukrainian payment market with the world one; emergence and operation of new payment market players and payment instruments in accordance with the Second EU Payment

Directive (PSD2); introduction of new and expansion of the functional content of existing payment instruments for the benefit of banks and their customers; implementation of new automated processes that cover the full life cycle of payments; increasing the level of providing services, efficiency and transparency of payments; expansion of payment details due to the necessary additional information; strengthening information security (National Bank of Ukraine, 2021).

Conclusion

Given the above, we can summarize that at the present stage of development of the payment systems market in Ukraine there is a positive trend due to the expansion of services provided, integration of payment system infrastructure of various types, the spread of modern security technologies for payment system users (including biometric user authentication technologies). Besides, systematic measures are being taken to improve the legal regulation of relations in the area of payment systems and harmonize national legislation with European legislation in order to ensure further effective cooperation in this area.

However, despite the generally stable development of payment systems in Ukraine, there are a number of problems that need to be addressed. Thus, international payment systems have an advantages in the domestic market, with which it is difficult for national agents to compete. Therefore, it is necessary to stimulate and support national enterprises in the creation of domestic payment systems and related services by providing benefits (tax or credit) for residents who wish to open their business in this area.

Payment systems play one of the most important roles in the modern economy – they are a guarantee of stable operation of both the banking system and the economy as a whole. In addition, significant money amounts are transferred with the help of individual payment systems, so violations in their work can cause systemic risks and negatively affect not only financial stability but also the overall economic security of the State. That is why the rational organization of their work will contribute to the smooth functioning of the financial sector of the country as a whole and accelerate the implementation of payments in international and national directions.

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Establishment of the institution of covert investigation in the criminal justice system of Ukraine

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Abstract

The purpose of the article is to study the formation of the covert investigation institution in the criminal justice system of Ukraine. The subject of research is the prerequisites for the establishment of this institution in Ukraine. Research methods are chosen considering the stated purpose and tasks, object, and topic of the study. Consequently, the article uses general and specific scientific methods. Among the results of the research, the realization of an analysis of the international experience of operation of similar institutions in developed countries stands out. Problematic issues of the formation of the covert investigation institution in Ukraine are identified. In conclusion, it is noted that Ukraine has opted for a covert investigation system, the mechanism of which is more geared towards solving crimes - "incidents", when it is not necessary to hide the fact of the investigation. In terms of the practical implications, the peculiarities of the operation of the covert investigation institution in the criminal justice system of Ukraine are highlighted and, based on the investigation carried out, the definition of the perpetrators of the mentioned legal category is offered.

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Establecimiento de la institución de investigación encubierta en el sistema de justicia penal de Ucrania

Resumen

El propósito del artículo es estudiar la formación de la institución de investigación encubierta en el sistema de justicia penal de Ucrania. El tema de la investigación son los requisitos previos para el establecimiento de esta institución en Ucrania. Los métodos de investigación se eligen teniendo en cuenta el propósito y las tareas declaradas, el objeto y el tema del estudio. En consecuencia, el artículo utiliza métodos científicos generales y específicos. Entre los resultados de la investigación destaca la realización de un análisis de la experiencia internacional de funcionamiento de instituciones similares en los países desarrollados. Se identifican cuestiones problemáticas de la formación de la institución de investigación encubierta en Ucrania. Como conclusión se observa que Ucrania ha optado por un sistema de investigación encubierta, cuyo mecanismo está más orientado a resolver los crímenes - "incidentes", cuando no es necesario ocultar el hecho de la investigación. En términos de las implicaciones prácticas se destacan las peculiaridades del funcionamiento de la institución de investigación encubierta en el sistema de justicia penal de Ucrania y, sobre la base de la investigación realizada, se ofrece la definición de los autores de la categoría legal mencionada.

Palabras clave: formación de conceptos; sistema de justicia penal; investigación encubierta; acciones de investigación encubierta (allanamiento); justiciar penal en Ucrania.

Introduction

Crime is characterized by rapid adaptation to the protective mechanisms of the State. Therefore, the effectiveness of detection and investigation of criminal offenses is possible only in the case of the use of adequate means of obtaining evidence, which leads to the use of appropriate tools, the use of covert measures, means and methods of law enforcement. Until 2012 the existing system of criminal justice was largely based on a significant (in some cases) restriction of the rights and freedoms of citizens; the State, not

having adequate threats of levers of influence, tried to solve the problem of combating crime by not procedural measures (including search operations). But the development of interstate relations, internationalization of crime, and extraterritorial nature of criminal groups forced law enforcement agencies of different countries to search for the most effective mechanisms of cooperation in law enforcement, which necessitated the unification of relevant legislation (Denysenko, 2017). Democratic transformations, the State's course towards European integration have forced to reconsider the doctrinal approach and change the criminal procedure legislation, and the legislation regulating operational and investigative activities. The reform of the criminal justice system in Ukraine and the adoption of the Criminal Procedure Code of Ukraine have established a number of new institutions in the domestic criminal procedure legislation. Modern criminal procedure legislation has undergone significant changes, in particular to ensure the rights of participants in criminal proceedings, the introduction of adversarial proceedings, improving the collection of evidence, increasing guarantees of privacy, expanding judicial control over restrictions on constitutional human rights and freedoms at the stage of pre-trial investigation (Cherniavskyi *et al*., 2013). There has been a transformation of the institutions of criminal justice – operational and investigative activities and pre-trial investigation, the functional association of which has been consolidated in criminal proceedings as an institution of covert investigations. Nowadays, the current criminal procedure legislation of Ukraine is largely integrated into the European legal space of regulation of criminal procedural legal relations. The introduction of covert investigative (search) actions in the legal area testifies to the evolution of current criminal procedure legislation, the existence of democratic changes in the criminal justice system of Ukraine, but the formation and development of covert investigations remains one of the most controversial issues of the criminal justice system.

So, the purpose of the article is to determine the peculiarities of the formation and concept of the institution of covert investigations in the system of criminal justice of Ukraine.

1. Methodology

Research methods are chosen taking into account the stated purpose and tasks, object and subject matter of the study. Dialectical method as a general method of scientific cognition helps to consider all the issues in the dynamics, reveal their relationship and interdependence, examine the state of scientific development of the institution of covert investigation in the system of criminal justice of Ukraine. Historical and legal method is applied to study establishment of the institution of covert investigation in

the criminal justice system of Ukraine. System analyses method, as well as formal and logical method make it possible to analyze the legal support for the institution of covert investigation in our State. Formal and legal method allows to reveal the powers of the actors of this activity (prosecutor, investigator and detective). System and structural method is helpful in identifying the types of criminal justice systems of different countries. Comparative and legal method is used to compare the procedures for the application of covert measures within criminal justice systems of some States of the world.

2. Literature Review

The adoption of the Criminal Procedure Code of Ukraine (Law No. 4651-VI, 2010) has provoked some discussions on the introduction of the mechanisms of operational and investigative activities (regarding the receipt of evidentiary information in a tacit manner) in the criminal process. Therefore, the study of the institution of covert investigations has attracted the attention of a number of scholars, who devoted both monographic studies and individual scientific publications to this issue. In particular, Hahach (2017) determined the functions of procedural guidance in the process of covert investigations. Omelianenko (2015) singled out the aspects of the interaction between the investigators and authorized operational units in the course of covert investigations. Pohoretskyi (2012) investigated the introduction of the institute of covert investigations in law enforcement practice. Salo (2018) considered the peculiarities of the powers of the head of the pre-trial investigation agency when conducting covert investigative (search) actions. Serhieieva (2014) defined the principles of using materials obtained in the course of covert investigation in criminal proceedings. Shcherbakovskyi, Stepaniuk, Kikinchuk, Oderiy and Svyrydova (2020) studied the significance of such measures in combating corruption offences and came to the conclusion that quite often information that records the circumstances of corruption acts can only be collected by interfering with private communication, using confidential cooperation, and other covert investigative actions. Tahiiev (2015) defined the mechanism of realization of the institution of covert investigations in the criminal process of Ukraine. Tatarov (2016) highlighted the number of problems that may occur when performing covert investigative (search) actions.

Different aspects of covert investigation were also examined by a number of foreign scientists. For example, Shabde and Craft (1999) studied the problem of covert video surveillance in cases of suspected child abuse and came to the conclusion that it is justified when if it is necessary to protect the interests of a child and if the child is at serious risk of abuse. However, this measure can be applied only using local child protection procedures, which will include medical, nursing, social work, and police staff.

Harfield (2010) stressed that the wide use of covert actions necessitates the dialogue about their direction and governance. That is due to the fact that nowadays it is not the only effective means to prevent crime, as the data obtained with its help cannot be proved by witness testimony at trial.

Loftus and Goold (2012) investigated covert surveillance conducted by the police and try to highlight some peculiarities of this activity. In particular, the authors demonstrated how exactly police officers manage to be invisible in order to infiltrate into suspect's daily routine.

Loftus (2019) proved that today covert surveillance is a normal activity in Britain, which is legally regulated and having a lot of tools in its arsenal. As policing has become public business lately, covert measures are increasingly important.

Thus, having studied various aspects of the use of the institution of covert investigations, we can state that most of the scientific developments are related to the implementation of its sample provisions; many of them contain controversial provisions; some views are insufficiently substantiated. As a result, a conceptual model for the implementation of the institution of covert investigations in the criminal justice system of Ukraine has not yet been developed.

3. Results and Discussion

The introduction of the institution of covert investigations into the criminal process was preceded by the analysis of foreign experience in relation to the similar institutions envisaged by criminal procedure legislation of foreign countries. Thus, such procedure was due to the fact that enshrining the possibility of inspection and seizure of correspondence, control of telephone conversations in certain rules of the Criminal Procedural Code of Ukraine of 1960 (Law No. 1001-05, 1960) was insufficient to rehabilitate Soviet methods of obtaining information by using covert measures and use them in evidence (Salo, 2018). Operational and investigative activities, which were carried out mainly before the pre-trial investigation, did not fully allow the application of due process, as they were based on departmental regulations, and in most cases their results were not considered a procedural source of evidence. The gradual democratization of society required the changes in the criminal justice system. The Criminal Procedural Code of Ukraine of 1960 (Law No. 1001-05, 1960) has already provided for the use of operational and investigative activities in the interests of criminal justice by imposing the obligation on the criminal inquiry to take necessary operational and investigative measures in order to identify the signs of a crime and their perpetrators (Part 1, Article 103). Although the said Criminal Procedural Code (Law

No. 1001-05, 1960) did not directly indicated the possibility of using the materials of operational and investigative activities as reasons and grounds for initiating a criminal case, conducting certain investigative actions and making other procedural decisions, as well as for obtaining factual data that may be evidence in a criminal case, the content of a number of its norms (Articles 65, 66, 78, 83, 94, 103, 104, 106, 177, 178, etc.) provided for such a possibility (Serhieieva 2014, p.153). Later, the Law of Ukraine of June 21, 2001 (Law 2670-III, 2001) amended and supplemented Art. 187, 187-1 of the Criminal Procedural Code of Ukraine of 1960 (Law No. 1001-05, 1960); the list of investigative actions was expanded by withdrawal of information from communication channels, seizure of correspondence, which created the legal basis for the application of this covert method for obtaining information about a crime in criminal proceedings. Part 2, Art. 65 of the CPC of Ukraine was supplemented by the provision stating that the actual data constituting the content of the evidence is established, including protocols with relevant annexes, drawn up by the authorized bodies as a result of operational and investigative activities.

However, this did not change the basic approach to the fact that covert measures were carried out exclusively by operational within operational and investigative activities; covert pre-trial investigation was aimed primarily at ensuring the interests of the State and created a duplication, which the Council of Europe experts considered to be as “a cumbersome, with numerous replications, a three-stage criminal process of the Soviet type” in the conclusion of November 2, 2011 (Council of Europe, 2011). Besides, the institution of operational and investigative activities required a certain reformation, transition from Soviet, secret methods of obtaining information about the crime, as the established procedure for obtaining information about illegal activities of individuals was increasingly recognized by the court as inadmissible evidence (Salo, 2018).

The historical retrospective of the development of Ukrainian society required finding a compromise between the need to effectively combat crime and the principle of justice, ensuring the realization of constitutional rights and freedoms of an individual and citizen, saving forces, means, funds, etc. In fact, Ukraine faces a dilemma – on the one hand, totalitarianism is capable to overcome the criminalization of society, but its consequences can be compared with the consequences of crime for most people; on the other hand democratic society is more focused on individual rights and freedoms, but it does not help to reduce crime rate. Thus, the question of introduction and consolidation of «secret activities» directly into the criminal process, which would make it possible to obtain evidence in a procedural (albeit tacit) way and use the information obtained in evidence, has come up to the legislators. At the same time, the introduction of the institution of covert investigations provided that it was the pre-trial investigation body that would obtain evidence at the stage of pre-trial investigation by both overt and covert methods and techniques (Salo, 2018).

The institution of covert investigations is widely used in a number of foreign countries, where the functions of operational and investigative activities and pre-trial investigation are performed by the same official (police officer, agent, detective, etc.), who directly uses both public and covert means of crime (Serhieieva 2014, p. 214), except for those that require special knowledge and skills, and which, in this regard, are conducted by special entities. The result is the right of the investigator (detective) as a subject of pre-trial investigation to receive, verify, and use the evidence by public and covert actions.

The criminal procedure legislation of developed countries has in its arsenal the means of covert investigations, the legal justification of the use of which allows to fully ensure the observance of human and civil rights and freedoms. At the same time, the formation of the institution of covert investigations is significantly influenced by the criminal justice system.

For example, covert measures in the United States are recognized as legal methods of investigation, which is called proactive investigation. According to the proactive investigation, all means of obtaining procedurally relevant information are endowed with equal legal force, and their results acquire the status of full-fledged arguments in court, although the right to recognize the latter as judicial evidence remains with the court. That is, operational and investigative information in American justice does not pass through the filter of pre-trial investigation, but comes directly to court, where the question of its admissibility is resolved (including the results of special police operations and secret investigations conducted by prosecutors (Nechai, 2018).

Another system is operating in the countries where covert investigations are conducted exclusively within criminal proceedings and the grounds for conducting them are defined directly in the Criminal Procedural Codes. Analyzing the practice of their application, it can be noted that in this case the criminal justice system is aimed at solving crimes (incidents), when it is not necessary to conceal the fact that an investigation has been conducted (but only to hide interest in a particular person).

The third system is functioning in the countries, where the legislator does not draw a clear line between the actual search and investigative action; for example, the design of the legal provision (Par. 100a “wiretapping” to the Criminal Procedural Code of Germany) allows for covert investigations both in the investigation of a particular criminal case and beyond these limits. Formally, this is not a fact established during the trial, but only the possibility of such a fact - the German legislator intentionally gave the enforcer some room for manoeuvre (to obtain operationally relevant information, which may be transformed into evidence, but at the time it was received there was none (Nechai, 2018).

Sadly, Ukraine has chosen the second system, although the simplification of the procedural form of investigative actions by transferring evidentiary and relevant consequences to the trial stage, ensuring the process of proving effective guarantees of admissibility of evidence and effective judicial control could have been achieved by legal regulation of admissibility of evidence obtained in the course of performing operational and investigative activities prior to the commencement of pre-trial investigation. The path to the implementation of such a mechanism was indicated by a specialist in the theory of evidence, Professor Mikhieienko (1984), who proposed to separate the notions of proof (factual) and their «procedural sources». Further development of this idea in modern socio-legal realities might lead to the conclusion that it is necessary to use the materials of operational and investigative activities in proving.

But the situation was different and the country's course on European integration forced to choose a different path. The change in the criminal justice system modified the process of gathering evidence in the pre-trial investigation, in particular by granting the prosecution the right to obtain evidence by conducting covert investigative (search) actions, which are regulated by the Chapter 21 of the Criminal Procedural Code of Ukraine (Law No. 4651-VI, 2010) and by Interdepartmental Instruction "On the organization of covert investigative (search) actions and the use of their results in criminal proceedings" (ORDER No. 114/1042/516/1199/936/1687/5, 2012). The modern concept of criminal justice is aimed at substantiating and ensuring the effective functioning of the new institution of the domestic criminal process – covert investigations. Although it seems that the basis for the institution of covert investigations is the interpenetration of operational and investigative and criminal procedural activities, but that's not exactly true. Serhieieva (2014) states that covert investigative (search) actions are operational and investigative measures in their essence, but only those that are carried out after the registration of information about the crime in the Unified Register of Pre-trial Investigations.

Tahiiev (2015) believes that the legislator enshrined in the Criminal Procedural Code of Ukraine (Law No. 4651-VI, 2010) the implementation of covert investigative (search) actions by the prosecutor, investigator and detective, and transformed operational and investigative activities performed by operational units into covert investigative (search) actions. In our opinion, this is not entirely in line with the amendments to the Law of Ukraine "On operational and investigative activities" did not lead to the so-called "proceduralization" of operational and investigative measures, namely to limitation of the use of operational and investigative activities in criminal proceedings, but to maintaining the possibility of the use of investigative activities pending the commencement of criminal proceedings. We can agree with the opinion of scientists who believe that the covert activities by the investigator does not mean the regulation of

procedural activities by operational and investigative rules; on the contrary, technical, and legal techniques, legal categories that were previously used just in operational and investigative activities, acquire certain special, distinctive features, which allows them to be used in criminal proceedings by investigators (Spilnyk and Komarnytska, 2015).

However, in our opinion, the approach to the regulation of covert investigations by analogy with the overt measures of pre-trial investigation causes a number of problems of the basic nature. For example, the Criminal Procedural Code of Ukraine (Law No. 4651-VI, 2010) does not regulate the procedure of using the results of covert investigations. Part 1, Art. 256 of this act states that protocols for covert investigative (search) actions, audio or video recordings, photographs, other results obtained through the use of technical means, seized things and documents or their copies may be used in evidence on the same grounds as the results of other investigative (search) actions during pre-trial investigation.

However, the covert nature of these actions, the need to keep the actors of their conduct in secret, the very fact of their conduct, lack of possibility to prepare protocols under the general procedure (for example, the issue of involving witnesses who should certify the protocol) is the evidence of the impossibility of transposing the rules on the conduct of overt investigative (search) actions to the procedure for conducting covert investigations. Some procedures of covert investigations, in particular the use of materials of covert investigative (search) actions, their declassification are enshrined in by-laws, which ignore a number of important issues such as the access of defense counsel to the materials of covert investigative (search) actions, providing magnetic media (which contains evidence obtained as a result of their conduct) for independent examination, etc. That is, on the one hand, the use of the results of covert investigations in criminal proceedings differs from the similar application of the results of operational and investigative activities by a simplified mechanism that eliminates the need for additional legalization and promotes the speed of use of documents, but on the other hand, the lack of clear regulation of these procedures directly in the Criminal Procedural Code of Ukraine (Law No. 4651-VI, 2010) significantly reduces the effectiveness of covert investigations. Another problematic issue is the regulation of document circulation in the case of the involvement of specialized operational units in the implementation of covert investigations (including the conduct of individual operational and investigative activities), the tactics of which, as well as the identities of the officers and confidants should remain secret.

In our opinion, it is necessary to clearly define the criteria for distinguishing the concept of the institution of covert investigations from the institution of pre-trial investigation and their relationship.

The term "covert investigation" is used in a number of countries for the measures to obtain "covert" information. This term provides for "hidden", "covert", "secret" criminal proceedings within the investigation of crimes by authorized bodies on the basis of a reasoned decision, and the results will be used in proof as well as overt (transparent) ones (Salo, 2018).

Conclusion

The institution of covert investigations in the criminal justice system of Ukraine has certain features that distinguish it from the similar institutions in other countries, namely:

- authorization of the investigator with equal possibility of conducting both investigative (search) actions and covert investigative (search) actions;
- determination of the legal status of operational units in criminal proceedings;
- unification of the actors of covert investigations, including the introduction of the institution of detectives instead of investigative and operational units;
- multi-subjectivity of the covert investigation, which provides for the possibility of its conduct by investigators, operational officers (who, while carrying out the instructions of the investigator, have the authority of the investigator) and detectives;
- transformation of investigative actions and operative and search measures into investigative (search) actions and covert investigative (search) actions, respectively;
- covert investigative (search) actions as a component of covert investigation, the feature of which is covertness, is a kind of investigative (search) actions;
- logical construction of the mechanism of covert investigation depending on the gravity of the criminal offense (conducting covert investigation in criminal proceedings on serious or especially serious criminal offenses) and the need to intervene in private communication;
- special procedure for recording the progress and results of covert investigations, which establishes both general rules for recording investigative actions (Articles 103 – 107 of the Criminal Procedural Code of Ukraine) (Law No. 4651-VI, 2010) and special rules for recording covert investigative (search) actions (Article 252, Article 265 of the Criminal Procedural Code of Ukraine) (Law No. 4651-VI, 2010).

The grounds for conducting covert investigation are:

- expediency and sufficiency of one or another covert investigative (search) action;
- compliance with the goal to be achieved;
- conducting only in cases, in which it is impossible to obtain the information on the offense and the perpetrator in another way (Part 2, Article 246 of the Criminal Procedural Code of Ukraine) (Law No. 4651-VI, 2010);
- peculiarities of conducting in terms of ensuring conspiracy, security of actors, etc.;
- compliance with the law in the course of covert investigation;
- legal support of each covert investigative (search) action, which is carried out during the covert investigation;
- observance of the rules of document circulation of the covert investigation (request of the investigator, decision of the prosecutor, decision of the investigating judge, instructions to the authorized operational units).

Thus, the institution of covert investigation in the criminal justice system of Ukraine is the system of legal norms that regulate a particular type of law enforcement (which is specific to the criminal process), determine the procedure for covert investigative (search) actions and the use of covert means for obtaining evidence by specially authorized actors with the court's permission.

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Correlation of civil legal principles and civil procedural in Ukrainian legislation

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Abstract

Civil legal and civil-procedural legal relations are one of the most significant categories in the science of civil and civil-procedural law, the relationship of which is not fully studied in science, so it is necessary to reveal the essence of their correlation and find differences between them. In the legal doctrine, there is a small number of works that would reveal the content of the relationship of such legal relations, the algorithm and criteria for their comparison are not fully developed, the scientific approaches to the separation of the criterion of their comparison are not revealed. In this regard, it is necessary to fulfil the doctrinal study of civil legal and civil procedural legal relations, both separately and jointly, using a particular criterion. The following methods were used in the study of the relationship between civil legal and civil-procedural legal relations: formal-legal, generalization, method of analysis of normative documents, articles and monographs, comparative legal method. As a result of the research, the connections between such categories as civil legal relations and civil procedural legal relations were clarified, and the criteria for their comparison were singled out.

Keywords: Civil legal relations; civil-procedural legal relations; relation of concepts; characteristics of legal relations; scientific approaches.

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Correlación de principios legales civiles y procesales civiles en la legislación de Ucrania

Resumen

Las relaciones jurídicas civil y procesal civil son una de las categorías más significativas en la ciencia del derecho civil y procesal civil, cuya relación no está completamente estudiada en la ciencia, por lo que es necesario revelar la esencia de su correlación y encontrar diferencias entre ellos. En la doctrina jurídica, existe una pequeña cantidad de trabajos que revelarían el contenido de la relación de tales relaciones jurídicas, el algoritmo y los criterios para su comparación no están completamente desarrollados, los enfoques científicos para la separación del criterio de su comparación no se han revelado por completo. En este sentido, se realiza el estudio doctrinal de las relaciones jurídicas civil y procesal civil, tanto de forma separada como conjunta, utilizando un criterio particular. Los siguientes métodos fueron utilizados en el estudio de la relación entre las relaciones civil-legal y civil-procesal legal: formal-legal, generalización, método de análisis de documentos normativos, artículos y monografías, método legal comparado. Como resultado de la investigación, se aclararon las conexiones entre categorías tales como relaciones legales civiles y relaciones legales procesales civiles, y se destacaron los criterios para su comparación.

Palabras clave: relaciones jurídicas civiles; relaciones jurídicas civil-procesales; relación de conceptos; características de las relaciones jurídicas; enfoques científicos.

Introduction

Firstly, it is worth noting, that law, as a system of mandatory rules of conduct introduced or sanctioned by the state, is the most effective regulator of public relations (Tkalych *et al.,* 2020). The most thorough question about the essence of legal relations was investigated by Ioffe (2000). In particular, he noted that legal relations are a way of transformation or a condition for the existence of social relations. If social relations exist first in themselves, then turn into legal relations, and then – if they lose their legal character – are preserved as public relations. In this case, legal relations act as a way to transform social relations. If social relations periodically arise and terminate in the presence of a certain set of external circumstances, but always arise as a legal relationship, terminating at the same time as they lose their legal character, legal relations act as a condition for the existence of social relations.

The question of the relationship between civil law and civil procedure is new to domestic legal science because today civilizes and proceduralists mostly do not consider these issues in this context.

Simultaneously, many scholars compared the categories of civil and civil-procedure law, civil law, and civil-procedure rules, as well as established the concept of civil law and civil-procedure legal relations, the essence of which allows to correlate both categories. Such researchers include, first of all, such as Yefimov (2016), Kilichava (2007), Chervonyi (2006), Zhornokuyi and Krasitska (2017), Komarov (2001), Golubeva (2017), Mazur (2006), and Borysova (2011).

Civil law and civil-procedural legal relations are the subjects of regulation of civil and, accordingly, civil procedural law. Given this, it is necessary to find out their content and justify their legal regulation.

Civil-procedural legal relations are a large-scale institution because their existence implies the existence, not of a specific type of legal relationship, which can be defined by a certain framework, but a set of legal relations, united by a common object, but different in a subject composition, content and legal facts. cause their occurrence, change, or termination (Kovalenko, 2017). In turn, civil relations can be defined as public relations governed by civil law (Yanovytska and Kuchera, 2011).

In view of the above, the analysis of the relationship between civil law and civil-procedural legal relations in the science of civil-procedural law is quite relevant.

1. Methodology of the study

The use of appropriate methods in scientific research contributes to a reliable scientific result, determines the logic of the study, the correct construction of the structure of work.

To reveal the research topic, the following methods were used: formal-legal, generalization, method of analysis of normative documents, articles and monographs, and comparative-legal method.

Thus, the formal-legal method was applied to define the main concepts of the study, such as civil-legal legal relations, civil-procedural legal relations, procedural law, civil procedural law, etc. The method is also utilized to justify the use of a system of criteria used to analyze the relationships between the objects of study.

The method of abstraction is a separation from specific properties and relations of the object and, at the same time, focusing on those properties and relations that are the direct object of scientific research. Thus, based

on a small number of scholars who have studied the relationship between civil law and civil procedure, the authors analyzed works that contain a theoretical description of the concepts that fall within the scope of the subject.

Further, abstraction exists in organic unity with the method of generalization. Generalization is the logical completion of abstraction, the spread of general features of objects to all objects of a given set. The method of generalization allowed to group information about subjects, objects of civil law, and civil procedure legal relations. Also, with the help of this method, the results of the research were summed up.

Moreover, it should be emphasized, that the comparative-legal method is a way to achieve the desired result through a comprehensive study of known facts, from which it is possible to distinguish the characteristics of the subject of study. Thus, with the help of the method of comparison, the ratio of civil law relations with civil procedure and related concepts were investigated, which allowed to characterize and structure a consistent presentation of the material.

The system-structural method as a method allows studying the phenomenon in all the variety of connections, value systems, priorities. It makes it possible to establish internal connections between the investigated phenomena. Thus, during this research, the criteria for distinguishing between civil law and civil procedural relations were systematized, elements were identified from which a logical possibility for their comparison can be traced.

In the end, the analytical method allowed us to consider in detail the regulations governing relations in the field of civil and civil procedural law. This method has also been used to analyze many scientific papers that have explored legal categories that are integral elements of the subject matter.

2. Analysis of recent research

The works of the following scholars were used to reveal the research topic: Domuschi (2008), Ioffe (2000), Didenko (2018), Yanovytska and Kuchera (2014), Kovalenko (2017), Kilichava (2007), Mazur (2006), Golubeva (2017), Chervonyi (2006), Yasynok (2014; 2016), Stefan (2005), Zhornokuyi and Krasytska (2017).

The theoretical basis of this study is used from the materials of works on the civil and civil procedural law of Ukraine. Their authors are the following scientists: Yanovytska and Kuchera (2014), Kovalenko (2017), Kilichava (2007), Mazur (2006), Stefan (2005), Yasynok (2014; 2016).

Scientific works in the form of articles and publications were used to compare and reveal the views of scientists on the topic of research and its derivatives.

Thus, Didenko (2018), in the article "Types of civil procedural legal relations", explored the types of civil procedural legal relations; worked out the approaches of scientists to determine the types of civil procedural relations; and singled out general and specific criteria for classifying types of civil procedural relations. Further, Domuschi (2008), who is the author of "The essence of civil relations", revealed the concept of civil relations, their features, and elements. Besides, Yefimov (2015) in his work "Civil procedural legal relations and prerequisites for their emergence" identifies three groups of prerequisites for the emergence of civil procedural legal relations: the rules of civil procedural law, civil procedural legal personality, legal procedural facts. Additionally, Golubeva (2017) investigated the relationship between binding and property relations.

3. Results and discussion

3.1. Theoretical aspects of the study of civil law and civil procedure relations

The specificity of civil law lies in its vital conditionality and natural obligation: from the moment of birth until death, a person needs to exercise his rights in the private sphere, is under the influence of its norms. These participants enter into these legal relations mostly independently to meet their needs and legally protected interests. This is due to objective economic and social needs and can be adjusted by subjective factors.

The interests protected by law are satisfied by the person, proceeding from its internal law, internal culture, education. These interests can be far-sighted (strategic) and immediate (tactical). Tactical interests may change at historical, especially critical stages of society, which is manifested in the law and the original ideas of legal regulation (in favor of society, in favor of business, in favor of the elite, in favor of ideas, in favor of man, including the average). However, they are stable, which serves as the stability of the legislation. If we need self-sufficiency of participants in legal relations, disclosure of human potential, providing both opportunities to express themselves and their intellectual abilities, and opportunities for self-realization of property self-sufficiency, the priorities of regulation change in favor of non-property rights (Kovalenko, 2017).

Civil law and civil procedural legal relations are regulated by norms, which, in turn, form the basis of the legal framework of civil and free procedural law.

Civil law is a branch of law that regulates property and personal non-property relations on a private law basis (Panchenko, 2005).

Civil procedural law is a system of civil procedural norms that regulate public relations between the court and the participants in the process of litigation in civil cases by considering and resolving civil cases in court (Kovalenko, 2017).

Stefan (2005) notes the connection between civil procedural law and civil law in the existence of the apparatus of coercion, able to enforce the rules of civil law - the court, the procedure for which the consideration and resolution of civil cases are governed by procedural law; as well as in certain norms and institutions of civil law – in particular those, that determine the circumstances, the set of legal facts that form the basis of the claim, and the subject of proof and are subject to clarification in civil proceedings in specific cases.

The relationship between civil and civil procedural law is that civil procedural law is a form that ensures the life of civil law, protection, and enforcement implementation. Furthermore, the researcher notes that civil procedural law without civil (or other substantive) would become meaningless and lose its social and legal significance (Yasynok, 2016). This position is close to the previous one, but it should be emphasized, that the connection between civil and civil procedural law lies in the interdependence of individual provisions of the institutions of civil law and civil procedural law.

Given the above, it is possible to formulate the concept and content of civil legal and civil procedural legal relations.

Following Part 1 of Art. 1 of the Civil Code of Ukraine of January 16, 2003, civil legal relations are non-property and property relations (civil relations), based on legal equality, free expression of will, and property independence of their participants. These relations are the most common, developing based on the idea of adaptation to EU law.

In the literature, the following features are distinguished (Panchenko, 2005):

- free expression of will, property separation, and legal equality of participants in these relations;
- legal rights and obligations of the subjects of civil legal relations arise, change or terminate based on legal facts, and;
- non-fulfillment by any of the participants of legal relations of the assumed obligations or violation of another's rights entails the application of means of state coercion to the violator.

Civil law relations consist of three main elements: subject, object, and content. The subjects of civil relations are their participants: individuals and legal entities, as well as the state of Ukraine, territorial communities, foreign states, and other subjects of public law. The subjects of civil law relations are characterized by the socio-legal quality of civil legal personality, which consists of civil capacity and civil capacity. Objects of civil law relations – this is the subjective right and subjective obligation to meet the interests of the subjects. Depending on the content, we can say that the emergence of civil law relations is associated with the need to purchase, transport things, provide services, publish works of science and literature, protect honor and business reputation, etc. That is, the objects of civil relations are:

a) Personal intangible goods.

b) Things.

c) Actions, including services, and.

d) the results of spiritual and intellectual creativity.

The content of civil relations forms a subjective right and a subjective obligation. Subjective civil law is a type and measure of possible (permitted) behavior of an authorized person, which is ensured by the performance of duties by other entities and the possibility of applying state coercion to them.

As for civil procedural legal relations, in the literature, there is a fairly wide range of scholars who have studied their essence. Thus, according to Chervonyi (2006), civil procedural relations are governed by the rules of civil procedural law that arise between the court, persons involved in the case, and other participants in the civil proceedings in connection with their activities to ensure justice in civil cases.

Kilichava (2007) (in determining the procedural legal relations) gives the central role to the rights and responsibilities of participants in civil proceedings. Thus, the scholar considers civil procedural relations to be social relations, the participants of which are bound by rights and obligations based on civil procedural law.

According to Komarov (2001), civil procedural legal relations have features, which include:

- the identity of civil procedural legal relations to individualized social relations;
- civil procedural relations arise based on the rules of civil procedural law;
- the subjects of civil procedural legal relations are the court and the participants in the trial. In this case, a sign of the court in

these relations is the administration of justice, participants in civil proceedings – the presence of legal rights and responsibilities, and;

- the purpose of civil procedural legal relations is a fair and prompt consideration and resolution of civil cases.

Given the above, civil and civil procedural legal relations are integral elements of social relations, which are based on the norms of civil and, accordingly, civil procedural law. Much attention is paid to their study in the scientific literature, which indicates their interest for the theoretical validity of substantive and procedural law.

4. Correlation of civil legal and civil procedural legal relations: scientific approaches

The ratio of civil law and civil procedure legal relations is a process of clarifying the relationship between the selected concepts, their dependence on each other.

In the scientific literature, there is a fairly small number of works that would reveal the content of different and similar features of civil law and civil procedure.

Given the preliminary clarification of the essence of civil law and civil procedure relations, it is possible to distinguish their similar elements:

- civil procedural legal relations arise in the presence of a disputed nature in civil legal relations;
- in the case when the subject of civil legal relations becomes a court, such relations become civil-procedural. In this case, the court in resolving disputes is guided by the rules of civil law, and;
- norms of civil law are also relevant to the civil procedure because they determine the circumstances, the set of legal facts that form the basis of the claim, the subject of proof, and are subject to clarification in civil proceedings in specific cases.

Based on the analysis of the above elements, it is possible to conclude that civil law and civil procedure relations are correlated as a prerequisite and consequence.

To provide a detailed description of the ratio of civil and civil procedural legal relations, it is necessary to identify the criteria based on which they will be compared. To this end, it is required to turn to the opinion of Golubeva (2017), who, examining the relationship between binding and property relations, identified the following criteria by which they differ from each other:

1. by the circle of persons connected with them;
2. by object;
3. on the grounds of occurrence;
4. in a specific form in which the rights and respective obligations of the parties are expressed;
5. according to the peculiarities of subjective law;
6. by the nature of implementation;
7. according to the peculiarities of legal regulation;
8. by value for civil turnover;
9. by time of existence;
10. if necessary, the interaction of the parties, and;
11. by property or non-property nature.

It is recommended to correlate civil law and civil procedural legal relations according to the following criteria:

Firstly, according to Mazur, at least two people are always present in civil legal relations (Mazur, 2006). Persons, who are participants in civil law relations, are called subjects. The subject of civil law relations, to which the law belongs, is called an active subject, or a subject of law. The subject of civil relations, which is obliged, is called a passive subject, or subject of duty. In civil law, each of the participants has subjective rights and subjective responsibilities. For example, in legal relations arising from the contract of sale, contract, transportation, commission, each of the subjects of legal relations has rights and obligations.

Subjects of civil legal relations can be: citizens of Ukraine, foreign citizens, stateless persons, legal entities (state enterprises and institutions, cooperatives, public organizations, joint-stock companies, leased enterprises), the Ukrainian state, other organizations (for example, religious organizations, joint enterprises with the participation of Ukrainian and foreign legal entities, foreign enterprises and organizations).

Given the above, it should be noted, that there are no specific participants in civil relations.

As for the subjects who are participants in civil procedural relations, following Chapter 4 of the Civil Procedure Code of Ukraine of March 18, 2004, they are participants in the case and other participants in the trial. The subjects of civil procedure are considered appropriate to include the court because (based on the constitutional provisions on justice and the general principles of justice) the court has a leading, decisive role in the

trial. Thus, following Art. 124 of the Constitution of Ukraine of June 28, 1996, only courts are authorized to administer justice in Ukraine.

The analysis of the norms of Chapter 3 of the Civil Procedure Code of Ukraine (2004) shows that this group of subjects includes:

1. a judge alone, who is the presiding judge and acts on behalf of the court;
2. the collegial composition of the court consisting of one judge and two jurors;
3. a panel of judges of the court of appellate instance consisting of three judges;
4. a panel of judges of a court of cassation consisting of three or more odd-numbered judges, and;
5. the Judicial Chamber of the Civil Court of Cassation (Chamber), the Joint Chamber of the Civil Court of Cassation (Joint Chamber), or the Grand Chamber of the Supreme Court (Grand Chamber).

The participants in the case are individuals and legal entities, the state of Ukraine, territorial communities, foreign states, public authorities (central and local), local governments, government agencies (foundations and institutions), utilities (foundations and institutions), state enterprises, and communal enterprises. This conclusion can be made taking into account the subjects of civil law. Any subject of civil legal relations may become a subject of civil proceedings in the event of the need to protect violated, unrecognized or disputed rights, freedoms, or legitimate interests.

At the same time, the subjects of civil procedural relations can be a much wider range of people. Thus, following Art. 56 of the Civil Procedure Code of Ukraine (2004) to the subjects should include bodies and persons who by law have the right to go to court in the interests of others (public authorities, local governments, individuals and legal entities, the Verkhovna Rada Commissioner for Human Rights, etc.), as well as representatives. Other participants, according to §3 of Chapter 4 of the Civil Procedure Code of Ukraine, are an assistant judge, court clerk, court administrator, witness, expert, legal expert, translator, and specialist.

Therefore, based on the above, the range of subjects of civil procedure is much wider than in civil law. It should also be noted the presence of a special participant in civil proceedings – the court.

Secondly, Borysova (2011) believes that the issue of defining the object of civil law relations is extremely difficult. Since all civil legal relations arising in connection with a certain property or non-property good, the Civil Procedure Code of Ukraine distinguishes between the property object

of civil legal relations and the non-property object. Property objects of civil legal relations are:

1. things;
2. money;
3. securities, and;
4. property rights, the results of certain human activities (works and services – for example, a house built, a repaired thing, a tailored suit, etc.).

Non-property objects of civil legal relations include:

1. the results of intellectual, creative human activity or objects of intellectual property rights (works of science, literature, art, discoveries, inventions, etc.);
2. information, and;
3. personal intangible assets (honor, dignity, business reputation, name, image, private life, etc.).

Accordingly, in the general sense, civil procedural legal relations arising in connection with the same benefits, but in this case, they are not the object of legal relations. As determined by Kilichava (2007), the object of civil procedural legal relations is public relations for the protection in a court of violated substantive law or legally protected interest - thus, property and personal non-property rights or legally protected interests. In turn, the basis for the emergence of civil procedural legal relations is a violation of such a right.

Under the criterion of the object of legal relations, civil legal and civil procedural legal relations are correlated as a prerequisite and as a consequence.

Thirdly, according to the theory of law, the basis for the emergence, change, or termination of social relations is a legal fact, which is a circumstance or fact of reality.

Art. 11 of the Civil Code of Ukraine (2003) contains an inexhaustible list of grounds on which civil legal relations may arise, change or terminate.

The preconditions for the emergence of civil procedural legal relations are much more complex in comparison with civil legal relations. Yefimov (2015) identifies three groups of prerequisites for the emergence of civil procedural legal relations:

I. norms of civil procedural law – the norm of civil procedural law determines the normative prerequisite for the emergence of civil

procedural legal relations because there is no legal norm that provides for the possibility of exercising a person's right to acquire the status of a participant in civil procedural legal relations. In this case, we must agree with the opinion of Kovalenko (2017) that the rule of civil procedural law is the most significant prerequisite for the emergence of civil procedural legal relations;

II. civil procedural legal personality – should be considered as civil procedural legal capacity of a person, which means the ability to be a subject of civil procedural legal relations, which citizens acquire from birth, and, to actively participate in the process, a person must be capable, including personally to perform procedural actions that generate legal consequences for other subjects;

III. legal procedural facts – have a procedural nature, are actions committed by the parties to a civil dispute.

Thus, the range of preconditions for the emergence of civil procedural legal relations is much wider than civil law, the grounds for which are only a legal fact.

Fourthly, in the context of civil law, the form in which the rights and respective obligations of the parties are revealed is a transaction, i.e. an action of a person aimed at acquiring, changing, or terminating civil rights and obligations.

The form in which the rights and respective obligations of the parties in civil procedural relations are expressed is a court decision. According to Article 258 of the Civil Procedure Code of Ukraine, court decisions are rulings, decisions, resolutions, court orders. Accordingly, in cases specified by law, the trial may end with a ruling or the issuance of a court order. Court decisions is in the form in which the rights and corresponding obligations of the parties to civil procedural legal relations are expressed, given that their content establishes the rights and obligations of the parties to the relevant proceedings (legal relations), which each party is obliged to comply with and adhere to. The court decision is also the basis for the restoration of the violated rights of the subject of civil law.

Fifthly, the peculiarities of the subjective right of participants in civil legal relations are enshrined in Article 13 of the Civil Code of Ukraine, according to which a person exercises civil rights within the limits provided by the contract or acts of civil legislation. In exercising his rights, a person is obliged to refrain from actions that could violate the rights of others, harm the environment or cultural heritage. The actions of a person committed with intent to harm another person, as well as abuse of rights in other forms are not allowed. In exercising civil rights, a person must adhere to the moral principles of society. Consequently, in civil law, the essence of subjective law is reduced primarily to the right to conduct themselves. A person receives

a range of rights limited by certain limit requirements, according to which he controls his behavior.

According to Article 4 of the Civil Procedure Code of Ukraine, a person applies to the court for protection of his violated, unrecognized or disputed rights, freedoms, or legitimate interests. That is, the subjective right of a person in civil procedural legal relations arises as a result of the formulation of the requirement of specific behavior from other persons to stop the violation of the rights and interests of the person and restore it to the violated rights.

Following to the nature of the exercise of subjective rights by the parties, civil and civil procedural legal relations differ significantly. If civil legal relations are characterized by the relationship between the realization of a person's right and the fulfillment of obligations by another person, then in civil procedural legal relations any person exercises his rights at his discretion, but the result does not depend on his will, because the decision in civil proceedings takes the court.

Finally, Yanovytska and Kucher (2011) to the central legal regulators of civil law include civil contract, the constituent document of a legal entity, custom, international treaty, and in cases provided by law, and judicial precedent. Researchers, first of all, emphasize the role of agreements in civil law self-regulation (parts 1-3 of Article 6 of the Civil Code of Ukraine) and constituent documents of legal entities (Article 87 of the Civil Code of Ukraine).

Regarding civil procedural relations, all the procedures they provide are clearly regulated and subject to unquestionable implementation by the parties, as the legal regulation of civil procedural legal relations is carried out by the Civil Procedure Code of Ukraine (2004). It should be noted that if the legal regulation of civil relations is carried out by the rules of civil law and in other ways provided by law, the civil procedural relations are regulated exclusively by law.

Based on the characteristics of civil legal and civil procedural legal relations, it is possible to summarize their relationship, citing the Table 1.

Table 1. The correlation of civil legal and civil procedural legal relations.

Correlation criteria	Civil legal relations	Civil procedural legal relations

By circle of subjects	Citizens of Ukraine, foreign citizens, stateless persons, legal entities, the state of Ukraine, other organizations	Participants in the case, other participants in the trial, the court
By object	Property and non-property objects	Civil rights violated
On the grounds	Contracts and other transactions, creation of literary, artistic works, inventions and other results of intellectual, creative activity, tasks of material and moral damage, etc.	Norms of civil procedural law, civil procedural legal personality, legal procedural facts
In the form of expression of rights and responsibilities	Transactions	Judgments
By the nature of the exercise of the subjects of their rights	The relationship between the exercise of a person's right and the fulfillment of another person's obligations	The person exercises his rights at his own discretion
According to the peculiarities of legal regulation	Law, civil law agreement, constituent documents of a legal entity, customs, international agreements, court precedents	Law

Own (authorship)

Conclusions

Thus, according to the peculiarities of legal regulation, civil legal and civil procedural legal relations differ. Legal regulation of civil procedural legal relations is carried out exclusively by the law. As for the civil legal relations – they are regulated by the law, a civil contract, constituent documents of the legal entity, customs, international treaties, court precedents.

Civil legal and civil procedural legal relations are closely interacting, but they are characterized by a number of significant differences. Their relationship can be described as bilateral, as the emergence of civil procedural legal relations is associated with the controversial nature of civil legal relations. In turn, the existence of civil procedural legal relations is a guarantee of ensuring the functioning of civil legal relations. Therefore, in general, these legal relationships are correlated as those that constantly and closely interact with each other.

Civil legal and civil procedural legal relations differ in terms of the subject composition, the object of legal regulation, the grounds of origin, forms of expression, and the nature of implementation. This indicates that despite the closeness and a number of close ties, civil legal and civil procedural legal relations are not subject to identification and coexist as two full-fledged and independent legal institutions.

Also, despite the lack of study of the relationship between civil legal and civil procedural legal relations, this study addresses a number of practical issues, which include:

- detailed characteristics of civil legal and civil procedural legal relations;
- sources for further study and improvement of theoretical aspects of civil legal and civil procedural legal relations, and;
- application of the conceptual apparatus for the practical realization of rights and performance of duties in civil and civil procedural law.

Regarding further research, it is remarkable to note that in modern conditions, civil legal and civil procedural legal relations are transformed in the context of Covid-19. Thus, in the context of the Covid-19 pandemic, the visibility and procedural rights of the parties are changing, new opportunities are emerging, such as participation in court hearings through special services and restrictions on rights due to established measures to combat the spread of coronavirus disease. These topics will remain relevant in the near future.

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Criminal Liability for Provoking Bribery

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Abstract

In modern conditions of development of public relations complication of activity of law enforcement agencies is observed. This is due to new challenges in the law enforcement system, including the fight against high levels of the organization and the criminal professionalism of corrupt individuals. Because of this, it is challenging for operational units to identify specific facts of illegal actions with the help of operational and investigative measures. At the same time, the fight against crime by establishing high quantitative indicators of disclosure remains one of the principles of law enforcement in Ukraine, including sometimes deviating from those means established by law. Therefore, the problem of provoking bribery is relevant for scholars of the legislator and law enforcement. The object of the study is criminal liability for provoking bribery. The research methodology consists of such methods as the dialectical method, analytical method, historical method, method of analysis of legal documents, articles, and monographs, method of generalization, comparison, synthesis, and modeling method. The authors identified the features of such liability to clarify the problematic issues of qualification of provoking bribery, and to distinguish the distinctive features of prosecution from other types of crimes.

Keywords: criminal liability; provocation of bribery; public relations; illicit gain; provoked person.

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Responsabilidad penal por provocar soborno

Resumen

En las condiciones modernas del desarrollo de las relaciones públicas se observa la dificultad de la actividad de los organismos encargados de hacer cumplir la ley. Esto se debe a los nuevos desafíos en el sistema de aplicación de la ley, incluida la lucha contra los altos niveles de la organización y el profesionalismo criminal de las personas corruptas. Al mismo tiempo, la lucha contra la delincuencia mediante el establecimiento de altos indicadores cuantitativos de divulgación sigue siendo uno de los principios de la aplicación de la ley en Ucrania. Por lo tanto, el problema de provocar el soborno es relevante para los estudiosos del legislador y las fuerzas del orden. El objeto del estudio es analizar la responsabilidad penal por provocar el soborno. La metodología de investigación consiste en métodos tales como el dialéctico, analítico, histórico, análisis de documentos legales, artículos y monografías, método de generalización, comparación, síntesis y método de modelado. Como resultado del estudio de la responsabilidad penal por provocar el soborno, fue posible identificar una serie de características de dicha responsabilidad, aclarar las cuestiones problemáticas de calificación de este delito y distinguir las características distintivas del enjuiciamiento de otros tipos de delitos.

Palabras clave: responsabilidad penal; provocación de sobornos; relaciones públicas; ganancia ilícita; persona provocada.

Introduction

One of the key directions of the legal policy of our state is the prevention and counteraction of corruption. The solution to this problem depends on how effectively and successfully the law enforcement system will work. Given this, it is urgent to pay attention to the study of criminal liability for provoking bribery.

In general, bribery is already a traditional concept for criminal science, in which it was positioned either as a way to incite to commit a crime or as a way of committing an act under the Special Part of the Criminal Code of Ukraine (Law 2341-III, 2001), no agreement was reached on an understanding of the nature of bribery offenses.

Thus, the Criminal Code of Ukraine (Law 2341-III, 2001) reflects a legal norm that establishes liability for provoking bribery – Article 370 of the Criminal Code of Ukraine. In the original version of 2001, it was called "Bribery Provocation", but later underwent many changes. Thus, in 2011, after the criminalization of the concept of "commercial bribery", the article

was entitled "Provocation of bribery and commercial bribery." And it was then that a new concept was introduced – "illegal gain". In 2013, since national legislation was brought in line with the standards of the Criminal Convention on Corruption (United Nations, 1999), the legislator changed the title of the article to "Provocation of bribery", and even then the concept of "bribery" was expanded. It began to apply to all types of bribery, including bribery of an employee of an enterprise, institution, or organization. The provocation of bribery was also attributed to corruption crimes. Therefore, over time and the intensive legislative activity of the national legislator, the meaning of such a concept as bribery has significantly expanded.

Now bribery has begun to be considered not only as a unilateral criminal act, but also as an independent criminal offense, the perpetrators of which are both the subject and the addressee of bribery, and, at the same time, there is corruption bribery, the specific features of which are the subject, means, and criminal consequences of the commission.

Given the above, it is important to analyze and investigate criminal liability for provoking bribery, pay attention to problematic issues of regulation of this crime, summarize problematic issues in a criminal prosecution for this crime and compare the legislation of Ukraine and foreign countries in this area.

1. Theoretical framework

Criminal liability for provocation of bribery was investigated by the following scientists: Aldanova (2017) Alyoshina (2007), Bantishev and Kuzmin (2008), Batrachenko (2016), Grudzur (2010), Veretyannikov (2013), Drozdov (2016), Dudorov (2016), Egorova (1997), Zagodirenko (2013), Kartavtsev, Tomchuk, and Prytula (2020), Komar (2020), Tatsii *et al.* (2015), Melnyk and Khavroniuk (2008), Yaremenko and Slipushko (1998), Perelygina and Mirko (2018), Radachinsky (1999), Ryzhova (2004), Savchenko (2007), Us (2015), Stern (2017).

Thus, Aldanova (2017) reviewed the case-law of the European Court of Human Rights on the provocation of bribery and drew attention to how the European Court of Human Rights interprets the provocation of bribery. Thus, the researcher draws attention to the fact that according to the position of the European Court of Human Rights, the existence of state interest cannot be used as a justification for the use of evidence obtained as a result of police provocation, whereas the use of such evidence exposes the accused to the risk of being permanently deprived of a fair trial from the outset; domestic law should not allow the use of evidence obtained as a result of incitement by public agents. This position should be agreed, because if the police provocation is justified, then such legislation does not

comply with the principle of "fair trial". Besides, the author's opinion that the European Court has developed a concept of provocation which violates Article 6 § 1 of the Convention and is different from the use of lawful operational methods of the preliminary investigation is noteworthy. The paragraph states that, while the use of special methods of investigation, in particular covert, cannot in itself infringe the right to a fair trial, the danger of police provocation as a result of such measures implies that their use should be limited to a clear framework.

Alyoshina (2007) and Dudorov (2016) conducted a criminal law investigation into the provocation of bribery, considered the positions of various scholars, and drew attention to the international experience in regulating this issue. Thus, Alyoshina (2007) understands the provocation of a crime as a person knowingly creating a situation that causes another person to commit a crime, or complicity in such a crime to expose, blackmail, or cause other material or non-material damage to such a person.

Bantishev and Kuzmin (2008) investigated the provocation of bribes as a special kind of complicity in the crime. Thus, the scholar analyzed the provisions of the Polish legislator and, by analogy with the neighboring country, decided that the provocation of bribery is a form of complicity in the crime. Therefore, the author proposes to consider this type of criminal activity as a special type of incitement (in the context of the use of the institution of complicity in crimes of giving or receiving bribes) when addressing issues related to the qualification of actions of officials linked to bribery provocation. Moreover, the provisions of the institution of complicity should be applied only in case of commission of this crime by a group of officials, dividing them according to role participation by types of accomplices and perpetrators, organizers, instigators, and accomplices. This position deserves attention, and therefore the issue of distinguishing between incitement and complicity is examined separately in the article.

Batrachenko (2016) conducted a comparative legal analysis of criminal liability for provoking bribery of the legislation of Ukraine and foreign countries, which was taken as a basis for the study of international regulation of this crime in the international arena. Thus, the author pointed out that crimes related to illicit gain are the most dangerous among crimes in the sphere of official activity. Their social threat is revealed in the fact that they undermine the authority of the state, harm the democratic development of society, significantly restrict the rights and freedoms of man and citizen, violate the principle of equality before the law, hinder the reform of the criminal justice system, and hinder market relations in Ukraine. Examining the provisions of the criminal law of foreign countries on the responsibility for provoking bribery, the author notes that the concept of "provocation" is enshrined in the criminal law of only some foreign countries and is interpreted differently. Provocation is defined as a public incitement to

commit a crime, and as a kind of complicity; as a synonym for the concept of "extortion" in receiving bribes; as a method of combating crime; as a circumstance that excludes the criminality of the act, etc.

However, some approaches to the legal assessment of provocation, such as its differentiation into lawful and unlawful and recognition of the latter as a circumstance that excludes the criminality of the act (US criminal law) and attribution of provocation to the institution of complicity (Penal Code of the Republic of Poland (1997)) or establishing responsibility for provocation norm of the Special Part of the Criminal Code (Law of Georgia No. 2287, 1999), are appropriate and could be taken into account in domestic law. Unlike the Criminal Code of Ukraine, where the subject of the crime (Article 370 of the Criminal Code of Ukraine (Law 2341-III, 2001)) is exclusively an official, the subject of provocation of bribery under the criminal law of foreign countries is the general subject of the crime. Besides, the purpose of this crime is somewhat different, which according to the domestic Criminal Code is understood as exposing the person who gave or received a bribe, and therefore is not reduced to the artificial creation of evidence of a crime (bribery), or blackmail, or harm who gave or received a bribe. On this, the author came to the fair conclusion that the experience of legislators of foreign countries can be quite useful for developing optimal approaches to improve the content of Art. 370 of the Criminal Code of Ukraine. In particular, this applies to the development of theoretical provisions for determining the object of bribery provocation and proposals for recognizing the general subject of the crime as the subject of bribery provocation.

Grudzur (2010) considered the objective side of bribery provocation and what it is caused by, as well as suggested further ways to study this issue in his work. Thus, the author came to the following conclusions. In particular, these are the conclusions that the provocation of a bribe from the objective point of view consists in the creation of a circumstance that determines the giving or receiving of a bribe. In turn, the creation of such a circumstance can be done not only by action but also by inaction. The circumstance itself is defined as a phenomenon, event, fact, feature of reality, which determines (is the reason) the formation of the provoked person's intent to give or receive a bribe. Quite similar in meaning, in this context, is the concept of "condition", which is used in the disposition of Part 1 of Art. 370 of the Criminal Code of Ukraine and, in fact, means the same as the concept of "circumstance". Therefore, the use of the word "conditions" in the text of this rule seems superfluous. Provocation of a bribe is a crime with a formal composition and is considered to be over from the moment of creation of the circumstance, which determines the giving or receiving of a bribe. In this case, it does not matter whether the bribery itself was committed or received.

Veretyannikov (2013), Egorova (1997), and Radachinsky (1999) analyzed some aspects of the expediency of criminal liability for provoking bribery or commercial bribery. Thus, criminal liability under Art. 370 of the Criminal Code of Ukraine is due to the need for a legal mechanism to protect the legitimate rights and interests of citizens, as well as the separation of legal actions of officials, including law enforcement agencies, in the fight against corruption from criminal acts. According to the author, and in our opinion, this mechanism should promote the implementation of lawful actions rather than expanding the list of criminally punishable illegal acts for officials. Moreover, Drozdov (2016) drew attention to topical issues of protection against provocation (incitement) of a person to commit a crime in the light of the case-law of the European Court of Human Rights in his work. The author concluded that the institution of provocation (incitement) of a person to commit a crime is by nature cross-sectoral. The author also rightly points out that among the main problems in recent years in practice the issue of the need to prove in criminal proceedings the fact of the reality of those legal relations, in connection with which it was proposed, demanded, received illegal benefits. As a result, there was a need to ascertain how the fact of failure to prove such circumstances affected the existence of a corpus delicti in the actions of the person who had obtained the unlawful benefit (in the absence of signs of provocation on the part of the applicant). Also, given the latency of corruption crimes, it is necessary to determine the nature of the actions of the prosecutor and other law enforcement agencies aimed at detecting them, taking into account the decisions of the ECtHR on the "need to investigate passively." Research Drozdov served as a basic study to analyze the practice of the ECtHR in this work.

Zagodirenko (2013) conducted a criminal law analysis to improve the current legislation on crime provocation. Thus, the researcher drew attention to the proposed bills and proposed additions to them, which will qualitatively change the regulation of bribery provocation.

Kartavtsev, Tomchuk, Prytula carried out a criminal analysis of bribery under the laws of Ukraine and foreign countries. As a result of the study, it was concluded that only in the Criminal Code of the Republic of Bulgaria (Law 26/1968, 1986) and the Criminal Code of the Republic of Tajikistan (Law 574, 1998) provocation of bribery belongs to crimes against state power and the interests of civil service, while in others – to crimes against justice. Concerning the subject of this crime, in all the codes we study, it can be any natural sane person who has reached the age of criminal responsibility, and not just an official, as specified in national law. The objective signs of provocation of bribery in the Criminal Code of foreign countries are quite similar to each other and, in fact, provide for punishment for staging a bribe. The authors also believe that the provocation of bribery should be attributed to crimes against justice, linking it with the process of proving (i.e. identifying and consolidating evidence) of receiving or giving bribes,

and, therefore, the direct object of provocation of bribery should be defined as public relations time of detection and consolidation of evidence of the bribery. The hypothesis stated in the position of the authors is further investigated in our article and receives further substantiation.

Komar (2020) researched the concepts and types of bribery under the criminal law of Ukraine. Thus, the researcher analyzed the criminal law on bribery in historical retrospect shows that it has traditionally been used by domestic legislators as a way to incite to commit a crime, and later as a way to commit an act under the Special Part of the Criminal Code of Ukraine. At the same time, receiving a material reward by the addressee of the bribe was not recognized as a crime, and giving him such a reward after committing certain actions could not be considered as a bribe. Comparative-legal analysis of bribery under the criminal law of Ukraine and some foreign countries of the author allowed us to conclude that the concept of bribery in the codes of foreign countries is understood more broadly and covers both the provision and receipt of certain benefits. Although this approach is not generally accepted even in the European Union, it has been introduced by the national legislator. This step has significantly exacerbated the problem of distinguishing between different types of bribery, as according to national traditions, the actions of its addressee in inciting or obstructing the acceptance of the proposal are still not recognized as a crime. As the researcher rightly points out, the solution to this problem is possible by scientifically substantiated classification of bribery provided by the Criminal Code of Ukraine, which will avoid attempts to unify this concept and attempts to use the signs of corruption bribery, which are quite common in modern Ukrainian criminal legal doctrine, in characterizing incitement or inclination to actions that are not criminal.

Perelygina and Mirko (2018) analyzed some aspects of criminal liability for provoking bribery in their work. The researchers decided to pay attention to the qualitative differences between bribery provocation and other crimes and the peculiarities of prosecution for these crimes. The researchers decided to pay attention to the qualitative differences between bribery provocation and other crimes and the peculiarities of prosecution for these crimes. Also, researchers drew attention to the fact that there are features of provocation of bribery in the actions of a person who, following Art. 272 of the Criminal Procedure Code of Ukraine, taking into account the provisions of Art. 43 of the Criminal Code of Ukraine (Law 2341-III, 2001) performed a special task to disclose the criminal activities of an organized group or criminal organization, both through certain regulatory requirements for such covert investigative (search) action and in connection with the tactical features of its implementation. Indeed, in this case, a necessary criterion for correctly determining the grounds and limits of criminal liability for provoking bribery is to establish clear definitions for the application of the law on criminal liability, which would be deprived of the possibility for their

double interpretation and in general contribute to the establishment at the legislative level of the principle of legal certainty as one of the elements of the rule of law.

Ryzhova (2004) studied the improvement of criminal law, which provides for liability for provoking a bribe or commercial bribery or commercial bribery and supplementing the legislation of the Russian Federation with the relevant provisions.

Savchenko (2007) conducted a comprehensive criminal law study of the criminal law of Ukraine and the federal law of the United States. In his work, the author stressed that US criminal law contains many rules that can be adequately compared with the relevant rules of Ukrainian law and appear to be effective and efficient in combating crime, and therefore need to be studied and implemented in the national legal system. In conclusion, the author noted that the criminal law of Ukraine should be reformed following the strategy of European and Euro-Atlantic integration, taking into account the best international and foreign standards, therefore the model of comparison of the Ukrainian and American criminal legislation offered by the dissertation can be taken as a basis at carrying out further comparative legal researches. Under modern conditions, without recourse to positive foreign (including American) experience, it is impossible to develop and improve their criminal law, implement the provisions of international conventions, exchange legal information and scientific ideas, to build the national legal system and bring it closer to the legal systems of developed countries. We unequivocally agree with this position of the author.

Us (2015) examined the composition of the crime of provocation of bribery and investigated the problematic issues of qualification of this crime. The author concluded that the provocation of bribery is a special kind of incitement to crime. That is why the act of the provocateur of bribery must correspond to the signs of the act of instigator of the crime. Besides, to provoke bribery, it is necessary to establish the use of the subject (official of both public and private law) in the commission of an act of his official position or official authority. Qualifying feature provided for in Part 2 of Art. 370 of the Criminal Code of Ukraine, requires terminological coordination with other provisions of the Criminal Code of Ukraine and appropriate definition or explanation (interpretation) at the legislative or law enforcement levels.

Stern (2017) explains in detail the issue of responsibility for provoking a crime in Ukraine and as a result of the analysis came to the following opinions. The author does not agree with the statement that it is impossible to single out as a separate criminal act provocation of crime, because provocation of crime contains a characteristic feature that distinguishes this institution from the institution of incitement to crime – a special purpose of the provocateur, which is to expose the victim, blackmail or other material or

non-material damage to such a person. Therefore, the author believes that provocation is a broader concept than an incitement to agree with. Another distinctive feature of provocation is the implementation of certain active actions in a situation where there were no sufficient grounds to believe that the crime would have been committed without provocative actions. Since Part 4 of Art. 27 of the Criminal Code of Ukraine, which defines the actions of the instigator, does not fully characterize the actions of the provocateur, given foreign experience in solving the problem, according to the author, with which we agree, the legislator should consider supplementing Section VI of the General Part of the Criminal Code of Ukraine "Complicity in crime" Article "Provocation of a crime" in the following wording: the provocation of a crime is the deliberate creation by a person of a situation that causes another person to commit a crime or complicity in it, to expose, blackmail or cause other material or non-material damage to such person.

The provocateur is subject to criminal liability under the relevant part of the article of the General Part of this Code and the article (part of the article) of the Special Part of this Code, which provides for a crime committed by the perpetrator. Also, the author believes that it would be appropriate to supplement Section XVIII of the Special Part "Crimes against Justice" with a special article, which would provide for liability for provocation of crime by law enforcement officials and contain the following content: Provocation of a crime by a law enforcement officer: an official of law enforcement agencies of the situation that causes another person to commit a crime or complicity in it, in order to bring such a person to justice; 2. The same actions, if they caused serious consequences.

For a better understanding of the theoretical foundations and significance of bribery, the book "Criminal Law of Ukraine" edited by Tatsii *et al.* (2015), scientific and practical commentary on the Criminal Code of Ukraine edited by Melnyk and Khavroniuk (2008) and a new explanatory dictionary of the Ukrainian language (Yaremenko and Slipushko, 1998).

Besides, during the study of the object of this article, the analytical article describing several decisions of the ECtHR to provoke a crime was analyzed (Kyiv Region Bar Council, 2017).

Also, when writing the article, the statistical information of the General Prosecutor's Office of Ukraine on registered criminal offenses based on the results of their pre-trial investigation for 2018-2020 was analyzed.

Given the above works, we can conclude that criminal liability for provoking bribery has been studied among Ukrainian and foreign scholars, but there is no single comprehensive study on this issue. Therefore, it is necessary to conduct research on this topic.

2. Methodology

Using the dialectical method, the criminal liability for provoking bribery at different times and in different conditions was analyzed. Thus, attention was drawn to the fact that after the introduction of anti-corruption policy at the state level in Ukraine, considerable attention is paid to the detection, effective investigation, and timely prosecution for bribery provocation.

Moreover, the analytical method helped to highlight their main provisions. This method was used to analyze the statistics of law enforcement and judicial authorities on prosecution for bribery provocation, the provisions of the Criminal Code of Ukraine, National Anti-Corruption Programs, Supreme Court judgements. Thanks to this method, it was possible to comprehensively study the work of many researchers and highlight the main features of criminal liability for provoking bribery in different countries and the views of domestic and foreign scholars on this issue.

Further, the historical method allowed to study the problem comprehensively and to pay attention to how different historical conditions influenced the interpretation of the crime "bribery provocation".

The generalization method advised to unite the provisions of foreign laws (Bulgaria, Tajikistan, Belarus, Armenia, the Russian Federation). This helped to study the foreign experience and summarize how those prosecuted for provoking bribery.

What is more, the method of comparison helped to distinguish criminal liability in Ukraine and in the world, which allowed carrying out a comprehensive analysis of the research question.

Finally, the application of the modeling method was useful for design how Ukraine's policy on prosecuting bribery provocation will be implemented in the future so that it meets the requirements of the time and social development.

3. Results and discussion

a) International experience in regulating the issue of bribery provocation

It's known, that law, as a system of mandatory rules of conduct introduced or sanctioned by the state, is the most effective regulator of public relations. No other social norms, such as traditions, customs, norms of morality, etc., are able to regulate and ensure the protection of various social relations as the rules of law do (Tkalych *et al.*, 2020).

The legislation of foreign countries, in most of them, such an act as intentional incitement to commit a crime is not recognized as criminally punishable. But criminal liability for provoking bribery is provided for in the Criminal Codes of the Kyrgyz Republic (Law 19, 1997), the Republic of Belarus (Law 420, 1999), the Republic of Bulgaria (Law 26/1968, 1968), the Republic of Armenia (Law ZR-7, 2003), the Republic of Kazakhstan (Law 226-V, 2014), the Republic of Tajikistan (Law 574, 1998) and the Russian Federation (Law 63-F3, 1996), and, eventually, not all have the same meaning.

It is important to consider the international experience in more detail.

1. Belarus. Article 396 of Chapter 34 "Crimes against Justice" of the Penal Code of the Republic of Belarus (Law 420, 1999) provides liability not for provoking bribery, but for staging a bribe, illegal reward or commercial bribery, namely provides liability for "transfer to an official, public official or other state organization is not an official, or an employee of a sole proprietor or a legal entity of money, securities, other property or the provision of property services to artificially create evidence of a crime or blackmail."

2. Bulgaria. Article 307 of Chapter 8 of Section IV of the Criminal Code of the Republic of Bulgaria (Law 26/1968, 1968) stipulates, "A person who with premeditation creates a situation or conditions conducive to the offering, giving or receiving of a bribe for the purpose of causing harm to a person who gives or receives the bribe, shall be punished for provocation to give or take bribe by imprisonment for up to three years."

3. Republic of Tajikistan. Chapter XIII "Crimes against State Power" Part 30 "Crimes against State Power, the Interests of the Civil Service" of the Criminal Code of the Republic of Tajikistan (Law 574, 1998) contains Article 321 "Provocation of Bribery", which establishes liability for attempting to transfer to an official, official of a foreign state or official of an international organization without their consent money, securities, other property or the provision of property services to him to create artificial evidence of bribery. In turn, the Criminal Code of the Republic of Tajikistan (Law 574, 1998) links the provocation of bribery with crimes against state power and the interests of the civil service, which also include giving and receiving bribes. "The object of bribery provocation is public relations of the order of payment of officials and public relations that arise during the detection and consolidation of evidence of bribery."

4. Russian Federation. Chapter 31 "Crimes against Justice" of the Criminal Code of the Russian Federation (Law 63-F3, 1996) contains Article 304 "Provocation of a Bribe, or Commercial

Graft", which provides for liability for " Provocation of a bribe or commercial graft, that is, attempts to transfer money, securities, or other assets, or to render property-related services to a functionary or a person fulfilling managerial functions in profit-making and other organisations, for the purpose of artificially manufacturing evidence of a crime of blackmail."

5. The Republic of Kazakhstan. Article 253 "Commercial bribery" of Chapter 9 "Criminal offenses against the interests of service in commercial and other organizations" of the Criminal Code of the Republic of Kazakhstan (Law 226-V, 2014) provides for liability for "illegal transfer of money, securities or other property to the person, exercising management functions in commercial or other organization, as well as illegal rendering of services of property nature for the use by him (her) of his (her) official position, as well as for general protection or connivance in the service in the interests of person, performing the bribe".

6. The Kyrgyz Republic. Article 224 "Commercial bribery" of Chapter 34 "Crimes against the interests of service in commercial and other organizations" of Chapter VII "Crimes against property and economic activity" of the Criminal Code of the Kyrgyz Republic (Law 19, 1997) provides for liability for " illegal transfer of money, securities, or any other assets to a person who discharges the managerial functions in a commercial organization, and likewise the unlawful rendering of property-related services to him for the commission of actions (inaction) in the interests of the giver, in connection with the official position held by this person".

7. The Republic of Armenia. The Criminal Code of the Republic of Armenia (Law ZR-7, 2003) establishes criminal liability in Art. 350 "Entrapment for bribe or commercial bribe ", which belongs to the Section "Crimes against Justice" (Chapter 35). By provoking a bribe or commercial bribery, the Armenian legislator understands an attempt to impose on them money, securities, other property or property services. The penalty for such actions is a fine in the amount of 300-500 minimal salaries, or imprisonment for up to 5 years, with or without deprivation of the right to hold certain posts or practice certain activities for up to 3 years.

8. Georgia. Criminal Code of Georgia (Law of Georgia No. 2287, 1999) in Art. 145 "Provocation of a crime" defines this concept as the incitement of a person to commit a crime to bring him to justice. Specifically, the criminal liability for provocation of a crime in the mentioned code is covered by ch. XXIII "Crimes against human rights and freedoms", and the punishment for provocation is provided in the form of restriction of liberty for up to three years, arrest for up to six months, or imprisonment for up to four years.

9. The Kingdom of Spain. Article 18 of the Criminal Code of the Kingdom of Spain (Organic act 10/1995, 1995) defines provocation as inciting a crime in the face of a mass gathering or directly inciting a person to commit a crime under the influence of the press, radio, or a similar means of promoting information. That is, provocation under the Criminal Code of the Kingdom of Spain is seen as inciting a significant number of people. However, such incitement to commit a crime is not connected at all to further expose the person who is provoked (incited) to commit a crime.
10. The Republic of Lithuania. Part 1 of Art. 225 of the Criminal Code of the Republic of Lithuania (Law VIII-1968/2000, 2000) establishes the liability of civil servants or persons equated to them who for their benefit or the benefit of others directly or through intermediaries accepted, promised or agreed to receive bribes, demanded or provoked bribery for lawful acts or omissions in the performance of official duties. Based on this, it can be assumed that the provocation covers the actions of civil servants and persons equated to them, aimed at creating conditions under which a person is forced to give a bribe. The provocation under the criminal law of the Republic of Lithuania is not related to the purpose of exposing the provoked person, so its content is fundamentally different from the content of the provocation of bribery under domestic law.

It should be noted that most foreign legislators (for example, Australia, the Republic of Austria, the Republic of Azerbaijan, the Republic of Argentina, the Republic of Estonia, the State of Israel, the People's Republic of China, the Kingdom of the Netherlands, the Kingdom of Sweden, Latvia, the Republic of The Republics of Uzbekistan, the Republic of Turkey, the Federal Republic of Germany, the Swiss Confederation, Israel, Japan) do not distinguish the concept of "provocation" at all and do not establish responsibility for provoking bribery.

According to statistics, in Ukraine, there are currently no convictions in criminal proceedings under Art. 370 of the Criminal Code of Ukraine, and there is a small number of registered offenses. For example, in 2018 – 26 cases, in 2019 – 22 cases, in 2020 – 2 cases (Statistical information of the Prosecutor General's Office of Ukraine on registered criminal offenses based on the results of their pre-trial investigation for 2018-2020, 2020). Nevertheless, this is not a reason to decriminalize this crime.

b) General provisions on criminal liability for provocation of bribery under the Criminal Code of Ukraine

Following Part 1 of Art. 370 of the Criminal Code of Ukraine under the provocation of bribery means "actions of an official to incite a person to

offer, promise or provide an improper benefit or accept an offer, promise or receive such benefit, to then expose the person who offered, promised, improperly benefited or accepted the offer, promise whether he/she received such a benefit."

Such actions are punishable by restriction of liberty for up to five years or imprisonment for a term of two to five years with a fine of two hundred and fifty to five hundred non-taxable minimum incomes (hereinafter – n.t.m.i.), and for the commission of a crime by a law enforcement officer – from three to seven years in prison with a fine of five hundred to seven hundred and fifty n.t.m.i.

At the same time, if analyzed in retrospect, the criminal liability for provoking bribery has become more severe. So, according to the Criminal Code of 1960, namely article 171 of the Criminal Code of Ukraine punishment for such actions was provided in the form of imprisonment for a period of up to two years.

At present, it is unclear the interpretation of incitement in this article, because given Part 4 of Art. 27 of the Criminal Code of Ukraine, it should be understood as persuasion, bribery, threat, coercion, other inclination to commit a criminal offense. It is unlikely that provocation of bribery is possible by threat, bribery, and coercion.

If we analyze the case-law of the European Court of Human Rights, it is worth noting that there is a very fine line between provoking bribery and lawful actions of law enforcement agencies. Thus, the ECtHR states that it is not a violation and is not prohibited by the Convention for the Protection of Human Rights and Fundamental Freedoms (United Nations, 1950) to use secret agents in their activities if justified by a crime.

The ECtHR determines that the actions of a law enforcement agency are lawful and legal if the law enforcement authority is involved in the work when there is information that the illegal activity is already taking place, and it wants to stop it and detain the person concerned. At the same time, the European Court notes that all procedures must be clear and transparent, and the investigation itself must be conducted passively. That is, no simulation of the situation is created because it must be a passive action.

However, at this time, from the point of view of many scholars, the question of the need to amend Art. 370 of the Criminal Code of Ukraine, namely in terms of determining the subject of the crime not only an official but also other persons who have reached the age of criminal responsibility. Supporting this position, it should be noted that at present, in case of provocation of bribery by a non-official, liability is provided for such actions under the article of the Special Part of the Criminal Code of Ukraine, which provides for punishment for the provoked crime.

Therefore, the terms used in the text of the law on criminal liability should have the same meaning, especially when such a concept becomes legal, and on the other - the legislator establishes several features that are unique to corrupt bribery, which makes it impossible to consider it as universal concept. Unfortunately, in modern Ukrainian criminal-legal science, these circumstances are mostly ignored. Bribery is still seen either as a way of committing a crime or, conversely, signs of corrupt bribery are used to describe acts of a non-corrupt nature, which may well disorient law enforcement practice.

c) Features of criminal prosecution for provoking bribery

Prosecution for provoking bribery has its own peculiarities. Consider them in more detail.

Firstly, the provocation of bribery is often seen as complicity in a crime. In accordance with the position of the Main Legal Department of the Verkhovna Rada of Ukraine on amendments to the Criminal Code of Ukraine article on criminal liability for provocation, which was expressed before the draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine to Ensure the National Anti-Corruption Bureau of Ukraine and the National Agency for the Prevention of Corruption" (Law 198-VIII, 2015). The essence of the above position was that according to current legislation, a person who incites another person to commit an act that is a crime, including corruption, is an accomplice to such a crime and is liable under the same article of the Code, which provides for a crime committed by the perpetrator. Given the existence in the criminal legislation of Ukraine of responsibility for incitement to crime, the specialists of the Main Legal Department disagreed with the possible "allocation" as a separate criminal act of provocation.

But it is difficult to agree with this position because the provocation of a crime contains a characteristic feature that distinguishes this institution from the institution of incitement to crime – a special purpose of the provocateur, which is to expose the victim, blackmail him or cause other material or non-material damage to such person. Thus, provocation is a broader notion than incitement.

Secondly, provocation is the commission of certain active actions in a situation when there were no sufficient grounds to believe that the crime would have been committed without provocative actions.

Thirdly, the feature is part of the crime under investigation. The immediate object of this crime is public relations, which ensure the sustainable operation of public authorities, local governments, their staff, and legal entities as a public. The subject of the crime under Art. 370 of the Criminal Code of Ukraine (Law 2341-III, 2001), there is an illegal benefit.

The objective side of the provocation of bribery is its manifestation in the act of inciting a person to offer, promise or provide an improper benefit or to accept an offer, promise, or receive such benefit. Ways to provoke bribery include advice, suggestions, requests, coercion, recommendations, threats, etc. This corpus delicti is characterized by the presence of guilt in the form of direct intent and purpose aimed at exposing the person who offered, promised, illegally benefited, or accepted the offer, promise to provide or received such benefit from the subjective point of view. The subject of the crime is special – an official of both public and private law, and under Part 2 of this article, the subject of the crime can only be a law enforcement officer. However, special attention should be paid to the qualification of actions of persons who are not officials and commit provocative actions aimed at artificially creating conditions for a person and/or persons to obtain illegal benefits, as well as criminal liability for obtaining illegal benefits by the provoked person. Thus, paragraph 3, item 3 of the Resolution of the Plenum of the Supreme Court of Ukraine "On Judicial Practice in Cases of Bribery" of April 26, 2002, No. 5 states that in case the giving or receiving of a bribe took place in connection with a provocation, it does not exclude the responsibility of those who gave or received it.

Finally, some important issues that are subject to comprehensive investigation in terms of signs of provocation of bribery in the actions of a person who performed a special task to disclose the criminal activities of an organized group or criminal organization, as due to certain regulatory requirements for such covert investigative action, and in connection with the tactical features of its implementation. It seems that in this case, an important criterion for correctly defining the grounds and limits of criminal liability for provoking bribery is to establish clear definitions for law enforcement in the provisions of the law on criminal liability, which would be deprived of opportunities for their double interpretation and in general contribute to the establishment at the legislative level of the principle of legal certainty as one of the elements of the rule of law.

Thus, the investigated crime has its features, which are manifested in the composition of the crime, the peculiarities of its disclosure, and prosecution.

Conclusions

As a result of the study, the criminal liability for provoking bribery was analyzed, namely:

1. Bribery is considered an independent criminal offense, the perpetrators of which are both the subject and the recipient of the bribe.

2. Provoking bribery is often seen as complicity in a crime. But we believe that this position does not deserve attention, because the special purpose of the provocateur is to expose the victim, blackmail him or cause other material or non-material damage to such a person. Therefore, provocation is a broader notion than incitement.
3. Provocation is an active action in a situation where there were no sufficient grounds to believe that the crime would have been committed without provocative actions.
4. The crime of "provocation of bribery" has a special composition and methods of its commission.
5. International experience confirms that foreign states regulate the issue of prosecution for committing crimes of bribery differently. Thus, some states have generally decriminalized such an act, while other post-state states are actively enforcing responsibility for the provocation of bribery.

Regarding further scientific research, it is necessary to pay attention to the possibility of amending the articles of the Criminal Code of Ukraine on the provocation of bribery of a judge, as well as provocation of bribery of an individual, not just an official. It is also necessary to pay attention to what served as a basis for the decriminalization of bribery provocations in foreign countries.

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Features of the investigation of hooliganism committed by football fans

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Abstract

The article is devoted to the analysis of some features of the investigation of football hooliganism. The current state and trends of football hooliganism are considered (including during the COVID-19 pandemic). The main problems faced by the investigation authorities during the detection and investigation of football hooliganism have been identified. In the process of working on the article, the scientific literature on informal youth groups, the fight against extremism, the investigation of group crimes of football fans was analyzed. The purpose of the study is to identify and study the features of the investigation of hooliganism committed by football fans. The object of research is the peculiarities of the investigation of hooliganism committed by football fans. During the writing of the article, the following methods were used: observation, analysis, synthesis, comparison, generalization, extrapolation, modeling, and information approach. As a result of the conducted research, the modern tendencies of football hooliganism are defined. Emphasis is placed on the peculiarities of the transformation of football fans. The principal problems of detection and investigation of football hooliganism are outlined, recommendations for prevention and counteraction to crimes committed by football fans are developed.

Keywords: football, football fans, hooliganism, investigations, methodical recommendations.

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Características de la investigación del vandalismo cometido por aficionados al fútbol

Resumen

El artículo está dedicado al análisis de algunas características de la investigación del vandalismo en el fútbol. Se consideran el estado actual y las tendencias del vandalismo en el fútbol (incluso durante la pandemia de COVID-19). Se han identificado los principales problemas a los que se enfrentan las autoridades investigadoras durante la detección e investigación del vandalismo en el fútbol. En el proceso de elaboración del artículo se analizó la literatura científica sobre los grupos juveniles informales, la lucha contra el extremismo, la investigación de delitos colectivos de los aficionados al fútbol. El propósito del estudio es identificar y estudiar las características de la investigación del vandalismo cometido por los aficionados al fútbol. El objeto de investigación son las peculiaridades de la investigación del vandalismo cometido por los aficionados al fútbol. Durante la redacción del artículo se utilizaron los siguientes métodos: observación, análisis, síntesis, comparación, generalización, extrapolación, modelado y enfoque de la información. Como resultado de la investigación realizada, se definen las tendencias modernas del vandalismo en el fútbol. Se hace hincapié en las peculiaridades de la transformación de los aficionados al fútbol. Se describen los principales problemas de detección e investigación del vandalismo en el fútbol, se desarrollan recomendaciones para la prevención y contrarrestar los delitos cometidos por los aficionados al fútbol.

Palabras clave: fútbol, aficionados al fútbol, vandalismo, investigaciones, recomendaciones metódicas.

Introduction

Sport is a special area of public relations (Kharytonov *et al.*, 2021). This type of human activity has long been characterized by a set of virtues that required a great deal of effort, perseverance, adherence to high moral principles and ethical standards (Kolomoiets *et al.*, 2021). Currently, the legal support for professional sports remains at a very low level (Tkalych *et al.*, 2020). Considering the transformational changes in modern football, which is gradually becoming a larger business platform (Kolomoets *et al.*, 2017), we can not ignore those, who consider themselves the most loyal fans of the "game of millions" - football fans. Football admiration has become a way of life, a subculture of recreation, and, sometimes, the ideology of life for a long time.

The psychological basis of the behavior of sports fans, in contrast to criminal groups, is the need to show emotions that arose under the influence of football events. A gradual increase in emotional arousal leads to manifestations of aggression that cannot be controlled. In this case, the mechanisms are due to the essence of crowd psychology work.

Among the most typical manifestations of illegal behavior are brutal beatings of fans of the opposite team, hooliganism in stadiums, and after the competition – group acts of vandalism.

Hooliganism as a type of crime committed by football hooligans is one of the most common criminal offenses against public order. It violates public peace, norms of public morality, despises the results of human labor, encroaches on the physical and moral integrity of citizens, harms the health of victims and their property. More serious crimes are often committed based on hooliganism.

Today, the "fan movement" has become an integral part of football life. This phenomenon can be treated in different ways: to love or hate, to support or despise, but not to notice the fans every year becomes more difficult. There are incidents around the world involving football matches, affecting spectators, football clubs and teams, individual players, referees, and coaches. This results in mass riots, group disturbances, acts of vandalism, and other acts committed by football fans before, during, and after football matches. Analysis of this problem shows that some fans come to the stadiums specifically to cause riots, to exert psychological pressure on the course of the match, to provoke clashes between the opposing sides of the fans, or to direct their aggression at law enforcement officers (Golovchenko, 2004).

Before the COVID-19 pandemic, the growing number of football fans regularly attended both home and away matches of their favorite club, the national football team, and considered it a "matter of honor" to arrange fights with fans of the rival team, representatives of law enforcement agencies or to commit other illegal (criminal) encroachments, for the sake of expression of emotional excitement, own beliefs, etc.

Today, quarantine and matches without fans have removed the stands from football, but this does not mean that the environment of fans has decreased, especially those who belong to the "football hooligans". Online cheering (in bars, pubs, houses, apartments, parks, streets) is a reality of 2020-2021, which, unfortunately, is also not free from committing criminal offenses, including hooliganism.

Moreover, the issue of sanctions, or liability in sport, is not given enough attention by the legal environment to be considered as having an institutional framework for legal regulation (Bolokan *et al.*, 2021).

In this regard, I would like to dwell on the analysis of certain features of the investigation of crimes committed by football fans.

The object of research is the peculiarities of the investigation of hooliganism committed by football fans. The subject of the study is the features of hooliganism committed by football fans, the specific characteristics of the investigation of crimes committed by football fans.

1. Methodology of the study

During the writing of the article, such scientific methods were used as observation, analysis, synthesis, comparison, generalization, extrapolation, modeling, and information approach.

The observation method provides a general description of such a phenomenon as football hooliganism, an overview of its current state, the state of investigation of violations that occur during football matches, and in connection with the very fact of commitment to a particular football club.

Additionally, an investigation of trends in football hooliganism, highlighting the positive experience of foreign countries in the prevention of football hooliganism, found that criminal fan groups have now departed from traditional actions (hooliganism) and become criminal groups of extremist nature, having a certain ideological role. These actions are the result of using such a method as analysis.

Accompanying the method of analysis, the method of synthesis is applied, which is to combine the individual aspects of the study into a single whole. In particular, based on the use of types of groups of football fans, their role in shaping the system of prevention and investigation of crimes committed by football fans was highlighted. It should be noted that the use of such types of synthesis as direct and reverse at different stages of the study acquainted with the general features of the object under study and to understand its essence.

Further, the method of comparison was used to highlight the characteristics of certain groups of football fans, which in turn allowed to development of guidelines for improving the legal regulation of relations arising during the investigation of crimes committed by football fans.

Besides, extrapolation method, which consists of spreading the conclusions about one part of the object under study to another part as a result of observation. Thus, the actions of the investigator in conducting a pre-trial investigation of crimes committed by football fans, with the investigation of hooliganism as such, were interrelated.

The method of generalization helped to recognize the main proposals for maintaining public order during football matches, to identify the feasibility of expanding existing methods of combating violations by football fans.

The application of the historical method made it possible to consider the object of research from the point of view of the peculiarities of development, which significantly enriches scientific research, testifies to the reliability of its results and conclusions, and confirms scientific objectivity.

A relatively new general scientific method is the information approach, according to which the study of any object or phenomenon reveals the most characteristic aspects of data. Thus, among a large number of scientific papers on the characteristics of football fans, the information was used that corresponds to the stated topic and is of practical value for the investigation of crimes committed by football fans.

The method of modeling was expediently utilized in the formulation of methods of counteracting and preventing crimes committed by football fans. Thus, modeling the proposed proposals, it is considered useful to use them in practice, having previously analyzed the theoretical aspects of such crime and international experience.

2. Analysis of recent research

During the writing of the article, international legal acts, works of domestic and foreign scholars were analyzed.

Among the international documents relevant in the context of this study is the European Convention on Spectator Violence and Misconduct during Sports Events and, in particular, Football Matches of August 19, 1985 (Council of Europe, 1985), and the Law of Ukraine "On Ratification of the European Convention on Spectator Violence and Misconduct". during sports events, and in particular football matches" No. 2791-III of November 15, 2001.

The BBC News (Parkinson,2016) also drew attention to the problem of the spread of crimes committed by football fans. According to BBC News methods of preventive nature in the field of public order during football matches are proposed. In particular, the position on the ban on the sale of alcohol on the day and before the match is relevant.

International experience in combating violations of the law by relatively new actors, such as football fans, draws attention, in particular, in the works of such scholars as Tkachenko (2015) and Borodavko (2011). Thus, these scholars have studied the European experience in combating crimes committed by football hooligans. On the example of Great Britain, Germany,

and Italy, it can be stated, that the creation of specialized police (detectives), video surveillance of football fans during matches, and studying the database of potential violators, etc. is considered quite an effective action by the state.

The following scientists were engaged in the theoretical basis of studying the peculiarities of the behavior of football fans: Aristarkhova (2016), Granik (2014), Ille (1999), Trofimov (2015), Vayle (2012), Meitin (2003), Larkin (2018, 2019abc), Golovchenko (2004) and Rudik (2019).

In their works, the beginning of the formation of groups of football fans and the character of their development is investigated (Ille (1999), Meitin (2003), and Vayle (2012)). Thus, with the emergence of such a sport as football in the XIX century, there were also its fans, who later began to be called football fans. In the scientific literature, more and more attention was paid to the division of fans into types, which allowed to formulate the specifics of their activities and to develop appropriate ways to combat illegal activities in this area (Rudik (2019).

Due to the spread of violations of the law by football fans, there were proposals to prevent them and punish the perpetrators. This topic was actively studied by such scientists as Boiarov (2017ab), Larkin (2018, 2019abc), Rudik (2019), and Masalitin (2019ab).

Primary, Boiarov (2017ab) considered some issues of tactics of interrogation of suspects (football fans). In particular, theoretical preparation for interrogation is essential for the investigator, as the subject of suspicion is characterized by specific behavioral characteristics, such as enjoyment of the game and its expression in the aggressive actions, various mental health disorders, etc.

Further, Larkin (2018, 2019abc) and Masalitin (2019ab) have contributed to the development of scientific thought on the structure of forensic characteristics of hooliganism committed by football fans, the personality of a football hooligan, the practical significance of studying this topic.

Also, Rudik (2019) directly investigated the prevention of crimes committed by football fans.

A promising area of research and applied research of our stated problems is the development of guidelines for the investigation of football hooliganism, in particular, the basic methodology. The tactics of conducting an inspection of the scene, interrogation, search, taking into account the latest trends in practice, are to be studied. The use of special knowledge in the investigation of football hooliganism is subject to detailed analysis. Also, many significant issues related to the legal features of this criminal offense, the criminal law qualification of the relevant actions remain unexplored.

Given the wide range of issues related to the activities of football fans around the world, it is advisable to further explore the relationship of football club management with football fans, to create a theoretical basis for the legal regulation of liability of all legal entities involved in football matches, etc.

3. Results and discussion

3.1. Football hooliganism: current status and trends

Football fans appeared almost simultaneously with the emergence of football – in the XIX century in England, after which mass fights between fans of rival teams is a traditional phenomenon that accompanies football matches.

In the following years, typical manifestations of illegal behavior of football fans are fights with fans of the opposing team; hooliganism in stadiums and places where fans spend their leisure time; intentional infliction of bodily harm, resistance to law enforcement officers, vandalism, etc.

It should be noted that unlike members of traditional youth criminal groups, the behavior of football fans has a completely different psychological component. In the initial stage, it is associated with the need to obtain certain emotions (strong emotional feelings), and only later, as a result of radicalization and politicization, aggression is added to this need, as a result of which the behavior becomes uncontrollable. In particular, crimes may be committed based on racial, national, or religious hatred or discord.

At the same time, the motivation of football fans is, sometimes, seen as a kind of motive for committing a crime against the rights and legitimate interests of man and citizen - hatred (prejudice) or hostility towards members of a competing sports team or society (football fans). These crimes are especially dangerous because of their mass character (Aristarkhova, 2016).

The subculture of football fans can be seen as a youth subculture of teenagers who live a normal life and “return” to this subculture during matches. It is a subculture of leisure that sets a pattern for behavior only concerning a football match and / or relationships with other football fans. It has developed special standards of appearance and behavior (they are conditional and optional) (Granik, 2014).

Fan groups are formed mainly of teenagers, for whom being among the fans, including in the fan groups, is an attempt to enter adult life, to get rid of the lack of attention to themselves. It is this environment with the help of social practices mandatory for fans (marches, speeches, flash mobs, making

banners, etc.), and common to a group of specific slang, symbols, and attributes is the socialization of adolescents who thus enter into adulthood.

In criminology, fans are divided into several groups (Rudik, 2019). The most active and aggressive are members of the fan movement, which is part of the so-called fighting wing. They are in a group of 20-30 and up to 100-200. These are football hooligans (who are already an integral part of the world's fan culture), who often claim the status of the elite of the fan movement, and therefore have to take part in many fights. To maintain their status, these groups are obliged to make a significant number of trips each year with the team to other settlements (cities), where the movement of local fans is hostile to them.

Other groups of fans include:

- "football fans", which are characterized by a pronounced subculture;
- "football fans", who enjoy the game;
- Ordinary spectators who consider watching football matches as a form of leisure.

The politicization of the football fans' movement in the 1960s significantly changed the nature of social ties in the environment, turning them into a public organization, with the choice of an ideology (for example, for "ultras" (fan style, which appeared in Germany after 1990) – left, right or far-right views). To identify them as fans, they have a uniform, and since the mid-70's the concept of "fan" was replaced by the concept of "football fan". It should be emphasized, football fanaticism, designed to unload the fan emotionally, is often used for extremist purposes.

Former UEFA head Michel Platini once tried to assess the current situation in modern football, in particular, he stated that"... in the stadiums, there is a growing trend of nationalist and extremist sentiments..." (Sports. ru, 2015).

In recent years, there has been a significant transformation of the fan movement. Researchers of this phenomenon suggest considering it either as a social movement, or as a social group, or as carriers of a specific subculture, believing that the fan (youth) subculture is characterized by a tendency and willingness to violence, made them an ideal actor in the mechanism of unconstitutional change of power (Ille, 1999).

Consider this phenomenon also as an element of the extremist environment (Trofimov, 2015); as a kind of street gangs (Vayle, 2012), or as a "protest group", or a youth group (in which the business component is of great importance) (Kolomoets *et al.*, 2017).

Researchers of illegal activities of football fans note the presence in the environment of such negative trends as increasing the number of serious and especially serious crimes committed in conditions of increased organization and politicization of football fans from among young people who are "mass extremist" (Vayle, 2012) with the perception of race and nationalist ideology (Meitin, 2003); their business component is becoming increasingly important in the activities of fan groups, although such groups were created as protest groups (Kolomoets *et al.*, 2017).

Recently, among some football hooligans, the stratagem movement has become widespread – voluntary abstinence from alcohol, cigarettes, drugs, casual sex, for the most consistent – vegetarianism (Negodchenko, 2010).

3.2. Problems of football hooliganism investigation

The presence of a sufficiently structured and self-organizing group (group) of football fans requires the investigator during the investigation to establish the features of the functioning, organization, financing of the structure and particular persons (including persons suspected of committing crimes), who are members of the group of football fans, and about their place, and role in the group.

The most powerful European football fan organizations have direct contact with the top management of their football clubs and, as has happened many times, have influenced the club's policy. It even happened that the ultras decided issues in favor or against some players and so on. In Italy, almost all major clubs consult with the leaders of their ultras on all issues that can cause some resonance in the stands. In addition, nearly all European ultras have some kind of commercial relationship with the club. The club helps financially or gives the ultras to earn on the same paraphernalia, tickets (Negodchenko, 2010). Therefore, quite often the leadership (management) of football clubs does not help to identify and punish hooligan fans from the fan environment.

If earlier the investigation was faced mainly with hooliganism of fan groups before, during, and after a football match; then an effective mechanism was created to combat this phenomenon - conditions were created to record the illegal actions of fans and identify the culprits among them, in particular, by installing the necessary number of outdoor surveillance cameras (under Article 3 of the European Convention on the part of spectators during sporting events and, in particular, football matches (adopted in August 1985) (Council of Europe, 1985), the state is obliged "..to ensure the involvement of sufficient resources to protect public order and combat outbreaks of violence and misconduct, both on the areas and stadiums directly adjacent to the stadiums, and on the paths used by the spectators..".

In other words, criminal fan groups have now moved away from traditional actions (hooliganism) and are turning into criminal groups of an extremist nature, having an ideological component in their activities. This raises many issues related to the restructuring of the fight against this phenomenon, and, hence, the need to use other means that will help law enforcement agencies to more effectively conducting public and covert investigative, investigative, and other procedural actions) to overcome the problems of preventing crimes committed by youth football groups in Ukraine.

Among the ways of committing illegal acts, it is possible to single out the following (Trofimov, 2015; Yakuba, 2015; Sundiev, 2012):

- visual (production of brochures, graffiti, etc. of an extremist nature);
- verbal (proclamation of "strings" that affect human dignity, for example, concerning race, skin color);
- special (prepared with the use of items that are allowed to carry to the sports arena and which have a narrow purpose, such as bananas), and;
- combat actions (active violence against opponents).

Special attention should be paid to the development of guidelines for the detection and investigation of hooliganism committed by football fans. In particular, the information basis of the investigation (Larkin, 2018).

In order to create a methodology for investigating crimes committed by football fans (basic methodology), it is necessary to move away from traditional methods used to investigate mass (group) hooliganism of young people. First of all, we must proceed from the fact that in modern realities, football fanfare is qualitatively changing and transforming. Thus, all crimes committed by football groups are divided into four groups: "pre-match" (committed before a football match); "stadium" (during a football match); "post-match" (after the football match), and initiative (not related in time to the football match, but basically have a "football" motivation), and this should affect the structure of the investigation methodology.

The tactics of the inspection of the scene, interrogation, taking into account the latest trends in practice (Boiarov *et al.*, 2020; Larkin, 2019c; Larkin, 2019b, Masalitin, 2019b) are subject to study. The use of special knowledge in the investigation of football hooliganism is subject to detailed analysis (Larkin, 2019a; Boiarov, 2017a; Larkin *et al.*, 2020).

The interrogation of an informal suspect is a theoretical training of the investigator, which includes a comprehensive study of the criminal case, which is to systematize the facts about the event, the suspect's identity, identify inconsistencies and gaps in the investigated materials. There may

also be a need to consult a specialist who studies the activities of various youth informal organizations.

As for the tactics of interrogation, the tactics of interrogation can be based on the use of personal data of the suspect with the activation of his positive qualities (in particular, when the suspect is a minor); explaining to him the positive consequences of cooperation with the investigation, the available compromise procedures. To establish psychological contact, the investigator uses the help of psychologists, etc. (Boiarov, 2017b).

The place of the crime can be (Kononenko, 2006):

- stadiums (49%);
- stands (sectors) of stadiums (44%);
- sports complexes (5%);
- educational institutions (schools, universities, vocational schools) (9%);
- adjacent territories (streets, squares, squares near stadiums, sports complexes, schools) (27%);
- venues for sports events (7%), and;
- other places (1%).

This classification makes it possible to focus law enforcement officers on the most probable places of hooliganism in connection with sports events.

To prevent the commission of crimes related to the activities of football fans, it is necessary to know the preconditions for their occurrence. Based on the study of the behavior of football fans, it is possible to identify the following situations that precede the commission of relevant crimes: the emergence of provocative situations (these include: mistakes of players, referees, actions of enemy fans, etc.); conditions, in which there are no reasons for conflict (in this case, fans provoke spectators, other fans, law enforcement officials to commit acts of violence; the reason for these actions may be the defeat of a favorite team) (Larkin, 2019c).

Given the awareness of the possible causes of illegal behavior of football fans, it is possible to find mechanisms to prevent it. For example, these could be:

- additional check of things that spectators can bring with them to the stadium. It is seen, that such an inspection can be carried out not only by the staff of the organizer of the matches but also by the police;
- placement of spectators depending on their commitment to a particular team. This proposal is reflected in Art. 4 (b) of the

Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches (Council of Europe, 1985), which provides for the need to effectively separate groups of fans of rival teams and to place groups of fans arriving from other places in separate stands when they attend matches.

To regulate the behavior of football fans and, accordingly, public order during football matches, ideas were put forward to ban the sale of alcohol on match days and the day before. This approach has a rational basis, but in practice, does not eliminate the problem. Thus, this idea was first tested in 1990 during the World Cup. The introduction of a ban on the sale of alcohol has led to clashes between football fans and the police. We agree with Jeff Pearson, a professor of criminal law at the University of Manchester, that the ban on the sale of alcoholic beverages could provoke a violent reaction from fans and the search for alternative sources of drinking. Another positive aspect of such a ban may be the impossibility of using bottles as weapons (Parkinson, 2016).

Law enforcement agencies play a significant role in stopping football hooliganism. It is possible to distinguish the following methods of prevention of public order violations during football matches on the example of Great Britain and Germany (Tkachenko, 2015):

- creation of a separate police unit that specializes in law enforcement during football matches. It is advisable to authorize such units to conduct video surveillance of approaches to the stadium before the match; using the appropriate database to detect known hooligans. The very presence of such police officers in the environment of matches stimulates law-abiding behavior of fans;
- to avoid provocations, disputes, and mass riots, law enforcement agencies should detain violators of the order only during breaks or after football matches, and;
- theoretical training of police officers before football matches, in particular, on the methods of communication with football hooligans, the study of tactics to combat resistance from violators.

In addition, in Italy, to facilitate the identification of persons who violate public order during football matches, the sale of registered tickets has been introduced. Thus, you must provide proof of identity when purchasing tickets. Also, the responsibility of football clubs for the behavior of football fans in the form of fines was introduced. The amount of fines differs depending on the nature of the offense (Borodavko, 2011).

Conclusions

Thus, based on the above, it is possible to conclude that the study of such a phenomenon as football fans, allowed us to find mechanisms for investigating crimes and preventing them.

The methods of prevention:

1. Sale of registered tickets and prediction of seating of spectators depending on commitment to playing teams.
2. Special training of law enforcement officers on the methods of communication with football hooligans.
3. Increasing the responsibility for committing crimes not only by fans, but also by the owners of football teams. And,
4. Prohibition of the sale of alcoholic beverages on the eve and on the day of a football match and strengthening the level of control over the presence of prohibited items that can be transferred to the stadium.

The methods of investigation:

1. Raising the level of special knowledge of people who investigate crimes by football fans.
2. Study of the specifics of the crime scene.
3. Isolation of typical traces of crime and mechanisms of their formation (footprints, hands, various biological substances – blood, human life results, instruments of crime, etc.). And,
4. Establishment of specialized police departments, which are empowered to investigate such crimes, giving them the right to cooperate with local governments in terms of video surveillance at the venues of matches, declassification of confidential information about the organizers of matches, their connections with football fans.

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Intellectual property law in the field of sports: specifics of manifestations and features of legal regulation

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Abstract

The article aims to explore the relationships that arise with respect to intellectual property rights in sports. The objectives of the article are to establish points of contact between intellectual property law and sports, as well as a detailed analysis of relevant public relations in terms of intellectual property law and sports law. To achieve the objectives of the article, the authors used a number of scientific methods, among which the main methods are analysis, synthesis and comparative-legal method. The authors of the study concluded that modern sport is developing in close intertwining with intellectual property rights, because only in this way can a sports spectacle be conveyed to a wide range of spectators and consumers in a broad sense. In addition, the range of points of contact between intellectual property and sports law is constantly growing and such can now be called not only patents and trademarks in sports, but also copyright, "image" rights, know-how in sports and the like.

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Keywords: WIPO (World Intellectual Property Organization), Intellectual Property, Trademark, Design, Image Rights.

Derecho de propiedad intelectual en el campo de los deportes: detalles de las manifestaciones y características de la regulación legal

Resumen

Este artículo tiene como objetivo explorar las relaciones que surgen con respecto a los derechos de propiedad intelectual en el ámbito del deporte. En particular, los objetivos del artículo son establecer puntos de contacto entre el derecho de propiedad intelectual y el deporte, así como propiciar un análisis detallado de las relaciones públicas relevantes en términos de derecho de propiedad intelectual y derecho deportivo. Para lograr los objetivos del artículo, los autores utilizaron una serie de métodos científicos, entre los cuales los métodos principales son el análisis, la síntesis y el método de derecho comparado. Los atores concluyeron que el deporte moderno se está desarrollando en estrecha relación con los derechos de propiedad intelectual, porque solo de esta manera se puede transmitir un espectáculo deportivo a una amplia gama de espectadores y consumidores en un sentido amplio. Además, la gama de puntos de contacto entre la propiedad intelectual y el derecho deportivo está en constante crecimiento y ahora pueden llamarse no solo patentes y marcas comerciales en los deportes, sino también, derechos de autor, derechos de «imagen», conocimientos técnicos en los deportes y similares.

Palabras clave: OMPI (Organización Mundial de la Propiedad Intelectual); propiedad intelectual; marca registrada; diseño; derechos de imagen.

Introduction

> "Intellectual property rights underlie and empower the financial model of all sporting events worldwide. IP rights lie at the heart of the global sports ecosystem and all the commercial relationships that make sports happen and that allow us to tune in to sporting action whenever, wherever, and however we want" (WIPO, 2020: s/p.

These words were said by WIPO Director General Francis Gurry for World Intellectual Property Day 2019 – Reach for Gold: IP and Sports. This quote surprisingly successfully reveals the role of intellectual property

rights in the development of modern sports, the main feature of which is commercialization. Accordingly, modern sport is a spectacle, and it is the institution of intellectual property law that acts as a kind of link between a sports spectacle and its consumers.

In the context of the above said, the issues of legal regulation of relations related to the protection of intellectual property rights in sports are of great scientific and practical interest. In fact, the study of the peculiarities of the legal regulation of these relations is the main purpose of this article.

As social relations in the field of sports became more complicated, there was an increasing need for their proper legal regulation (Kharytonov *et al.,* 2021). Ukrainian legislation provides for the state to care for the development of physical culture and sports (Bolokan *et al.,* 2021). Modern sport needs private legal mechanisms of regulation, because they provide the best way to protect the rights of individuals and legal entities – participants in relations in the field of sports (Tkalych *et al.,* 2020). At the same time, both national and transnational legal systems and the "sports law and order" are gradually improving the legal and quasi-legal mechanisms of the regulation (Kolomoiets *et al*., 2021).

In addition, considering the concept of this article, the authors aimed to propose an adequate model of legal and quasi-legal regulation of relations arising in relation to intellectual property in sports. After all, relations in the field of sports have their own specifics, respectively, such relations cannot always be qualitatively regulated by general legal norms. In this case, it is necessary to adopt special regulations that would contain legal norms adapted to the specifics of the relevant area of legal regulation, in this case – the field of sports.

1. Methodology of the study

To achieve the objectives of the article, the authors used several scientific methods, among which the main methods are analysis, synthesis, and comparative-legal method.

Firstly, it should be noted that, the method of analysis was used to study the current national and foreign legislation in the field of intellectual property and sports.

Additionally, it is worth mentioned that the method of synthesis, in turn, allowed us to identify the main trends in the development of social relations, which are formed at the junction of intellectual property rights and sports.

Finally, using the comparative-legal method, respectively, the norms of the legislation in the field of sports and intellectual property were analyzed and possible ways of its improvement were suggested.

2. Analysis of recent research

About research on intellectual property rights in the field of sports, it should be noted that traditionally the greatest attention is paid to the problems of the sports brand. Therefore, even a sports brand is not enough researched topic in jurisprudence. The question of defining the concept brand, its components, as well as the features of providing legal protection to structural components as part of a single object of intellectual property is considered in the works of Androschuk (2008; 2011a; 2011b); Kodynets (2006); Kulinich (2016); Rassomakhina (2008); Romanadze (2008); Sadovnyk (2015), and Pihurets (2005).

Among foreign authors, the subject of problems of protection of intellectual property rights in sports was dealt with Anderson (2017) and Sharma (2017); as well as different organizations, for example, Sandvine (2017) and Nielsen (2016).

Kharytonova (2018) examines the objects of intellectual property rights, noting that, as in any activity where there is an element of creativity, in the field of sports there are intellectual property rights to various objects: the right to a name, the right to a brand, a logo, etc.

Recent research has covered specific intellectual property rights, such as image rights in sport. The right to use the name of a celebrity, his/her image, manner, recognizability, reputation today is classified as image rights.

The most complete and detailed study of the rights of an individual to his own image (including in the field of sports) is the monograph of Kulinich (2016) "The right of an individual to his own image: the current state and prospects for development". However, separately the problem of using the image of the athlete and the type of such use is still little studied. The issues of protection of intellectual property rights in the field of sports are not better researched and covered in the scientific literature. Even a cursory review of the achievements in the field of protection of intellectual property rights in the field of sports shows the practical complete absence of relevant research. Therefore, clarifying the concept of sports and intellectual property rights related to it is appropriate and very relevant.

3. Results and discussion

It is first necessary to determine which objects of intellectual property rights are inherent in the field of sports, and what is the mechanism of legal regulation of public relations arising in connection with such objects.

Up until the 1960s, running shoes featured flat soles. The University of Oregon's running coach Bill Bowerman took on the task to improve traction and shock absorption in training shoes. He experimented by using his wife's waffle maker to mold rubber spikes on the soles and created a superior running shoe he named the Waffle Trainer. The design revolutionized the sneaker industry. Bowerman and one of his students, Phil Knight, founded Blue Ribbon Sports, which eventually became Nike. Today, Nike has obtained thousands of patents worldwide and now has a patent portfolio that rivals that of many leading companies in the pharmaceutical, automotive, and defense sectors, all traditionally research and development- and technology-intensive industries (Low, 2016).

This example clearly demonstrates the first direction of interaction between intellectual property rights and sports, which is the legal design and protection of rights to inventions, utility models and industrial designs (Design). Relevant public relations belong to the subject of legal regulation of patent law as a sub-institution of intellectual property law.

To fully understand the scope of patenting in sports, it is necessary to provide statistics. So, as can be seen from Table 1, hundreds of thousands of patents are in force in sports, which is commensurate with traditional sectors of the world economy.

Table 1. The number of patents is in force in sports (Global Innovation Policy Centre, 2020).

Kitesurfing	14,224
Hockey	17,668
Polo	19,793
Soccer	28,779
Boxing	32,694
Baseball	44,468
Tennis	52,526
Skiing	110,501
Golf	112,256

Branding also plays an essential role in creating value, interest, and vitality in sports. It drives consumer loyalty and confidence in the quality and features of sporting goods. It also generates allegiance to sports teams and sportswear styles. Trademarks work differently for goods and for services in the sports sector depending on the product or asset being protected, but the common denominator is the distinctiveness of the mark. Importantly, trademarks provide protection against confusion about the source of a given product.

A trademark is a designation or any combination of designations that are suitable for distinguishing goods (services) produced (provided) by one person from goods (services) produced (provided) by other persons. These can be, for example: words, letters, numbers, pictorial elements, color combinations (Law 435-IV, 2003).

Depending on the form of expression, verbal, pictorial, three-dimensional, combined symbols, etc. are distinguished. Verbal symbols can be words, including proper names, combinations of letters, combinations of words, etc. Graphical execution of verbal symbols can be done using a regular or original font. Pictorial symbols include graphic compositions of any shape on the plane: drawings, symbols, etc.

Famous individuals famous athletes, cause increased public attention, encourage the purchase of souvenirs with their image, goods or products that they advertise. Photographs decorate various everyday objects, clothes, utensils, illustrate texts in online publications, print media, advertising products (Subota and Nechiporenko, 2006).

The image of a famous athlete can also be used in the appearance of goods and packaging. Unauthorized imaging is prohibited by law. For example, in Australia, the image on a T-shirt without the permission of the name and image of surfer Terry Fitzgerald, led to a lawsuit for infringement of intellectual property rights of the athlete. The court ruled that the company would refrain from reproducing or granting permission to reproduce all or any part of the surfer's photograph, awarding damages and costs for violating the right to insult. Using a photo of a famous person can be misleading, for example, when it gives the impression that the person in the photo approves of your product, if in fact they do not (Kravets, 2000).

Thus, in particular, in the EU jurisdiction the most famous is the case of Irvine v. Talksport Ltd (England and Wales Court of Appeal, 2003). The radio station bought the rights to the photo with Formula I driver Eddie Irvine, edited the photo a bit (replacing the mobile phone with a radio) and released an advertising poster. The plaintiff believed that the poster created in the audience a false impression of his approval of the defendant's brand. The appeal agreed with the plaintiff and recovered from the radio station damages in the amount of £ 25,000.

It should be noted that today the market of well-known names of sports clubs (brands) has actually been formed. The names of sports arenas are for sale. The first classic sale of the name of the sports arena is considered to be the agreement between the New England Patriots (American football) team in 1971: the new stadium in Foxboro was named after the beer brand Schaefer. The advertiser then paid $ 150,000 for a 10-year contract. In the early 1990s, the business developed rapidly, spreading to Japan, Australia, and the United Kingdom.

Companies are willing to pay for naming because they are actually buying a place on the city map and attracting not only fans but also a potentially much larger audience, insuring themselves against price changes, booking a place that is attractive for a long time. This phenomenon is called sports naming (Vasiliev and Shamonaev, 2012).

Most often, the colors of the uniforms of national teams repeat the colors of national flags. So professional sport is aimed to unite the nation under the auspices of national symbols, to create a sense of unity with the people. Fans of sports clubs or national teams wear clothes with the colors of the appropriate accessories, decorate themselves with national symbols, paint their faces in the colors of national flags. The combination of colors of the club sports uniform, its specific design, is an important element of visual distinction, which allows an outside observer to immediately distinguish one club from another (Galkin, 2011).

Thus, club colors create a stable associative connection between fans and a football or other sports club.

For example, the information of Prague's Slavia, which was addressed to the club's fans, is indicative in this sense. The club posted information on its official website for fans (who were going to support their team in the return match of the third qualifying round of the Champions League against Dynamo (Kyiv), which would take place on August 14, 2020 in Kyiv), in which they offered fans to avoid possible provocations, to exclude the appearance in the capital of Ukraine in club clothes and with the official symbols of "Slavia", including scarves and flags.

This is due to the similarity of the club colors of Prague with the symbols of the Moscow "Spartak", because the Czech club was afraid of physical attacks on fans given the "sensitivity of Ukrainians to any expression of pro-Russian sentiment" (LB.ua, 2018).

One of the most valuable assets that a sports team has is: "its name, logo and other defining characteristics with which this team is associated in public. In order to be able to protect their rights to these marks, professional sports teams register them accordingly (most often as marks for goods and services) and create a team brand (mark for goods and services with a stable image). This is due to the fact that the economic activity of sports

organizations is diverse and includes not only sports services but also others, including trade in relevant sports accessories. Thus, clubs have to protect their IP in order to preserve commercial and financial interests. The market price of such goods is determined not so much by their cost as by the reputation of the sports team. As a rule, each professional club has registered marks for goods and services. Brands of football clubs are well-known all over the world in Ukraine as well" (State Enterprise "Ukrainian Institute of Intellectual Property", 2019).

Logos are varieties of a trademark, its graphic images. There are both team, corporate logos and individual logos that are associated with a famous athlete.

For example, Kawhi, the main player of the NBA playoffs, was suing Nike because of his logo Klaw ("claw") – a large palm in the form of letters K and L and the number 2 (game number of the basketball player). The striker is known to have one of the biggest palms in the league. According to Kawhi, Nike has appropriated his "claw". Kawhi insisted, that he came up with and drew the logo while still studying at San Diego State University. Later, after signing a contract with Nike, he allowed the company to use the image with the placement on Jordan Brand products, but according to the lawsuit "never transferred the right to the logo", and the agreement on the logo expired after the expiration of the contract with the company.

In 2018, Leonard did not renew the Jordan Brand contract, giving up $ 22 million for 4 years, and signed a contract with New Balance. But Nike did not allow the basketball player to use the logo – the company claims that the copyright to Klaw now belongs to them. In the lawsuit, Kawhi asked the court to recognize him as the author of the logo and rule that Nike "cheated" him when registering the copyright for the logo (Sports.ru, 2019).

But most often, companies that produce sports products, try not to use the entire composition of the brand, but only part of it – mainly the label. For example, a major manufacturer of sporting goods and equipment, such as Nike, usually does not advertise the entire brand, but only the so-called Swoosh, i.e., the world-famous graphic element, made in 1971 by American artist Caroline Davids – a tick.

Anthems or musical identifiers of clubs can also be elements of a brand, as the musical environment is one of the forms of recognition of a team. Over time, it is clearly associated with the name of the club or company.

Mottoes and slogans, which are the objects of intellectual property rights, are used by well-known brands, in particular, in the field of sports. It is a means of individualization, which is a short expression (motto, slogan), which in a concise concentrated form expresses the philosophy of the club or company. "Just do it" is a slogan that is easy to remember and in a short poetic embodiment conveys to the consumer the direction of goals and the meaning of the activities of a participant in the sports industry.

The next point of contact between intellectual property rights and sports is the sphere of so-called "Image" rights.

Based on the analysis of image rights, it can be argued that this is a combined concept that includes rights to such objects of civil rights as intangible benefits and results of intellectual activity. The results of intellectual activity include, first of all, photographic works depicting athletes, as well as video recordings or works of visual art on which they are depicted. Intangible benefits within the framework of image rights include the right to privacy, the right to a name and the right to protect the image of a citizen (Vostrikova and Polukhina, 2017).

Image rights can also be defined as follows: Access to the services of the personality for the purpose of filming, television (both live and recorded), broadcasting (both live and recorded), audio recording; motion pictures, video and electronic pictures (including but not limited to the production of computer-generated images; still photographs; personal appearances; product endorsement and advertising in all media; as well as the right to use the personality's name, likeness, autograph, story and accomplishments (including copyright and other intellectual property rights), for promotional or commercial purposes including, but without limitation, the personality's actual or simulated likeness, voice, photograph, performances, personal characteristics and other personal identification (Blackshaw, 2020).

Interesting from the point of view of image rights is the story with one of the photos of Michael Jordan. In 1984, photographer Jacobus Rentmeester took a photo of Michael Jordan (a student at the University of North Carolina). At the time, NIKE was negotiating an advertising contract with Jordan (beginning with the commercialization of athletes' image rights). For $ 150, NIKE bought a license to use the photo in the presentation. A few months later, NIKE hired another photographer for the photo shoot and chose a photo that shows Jordan in the same pose as in the Rentmeester photo, but against the backdrop of a panorama of Chicago. After Rentmeester had found out about this he threatened to sue, and the company bought a two-year license for posters and billboards in the United States. Later, based on the photo of the second photographer, NIKE created a silhouette of "Jumpman", which depicts a player jumping in front of a slam dunk. This silhouette has become a symbol not only of Michael, but also of NIKE, which receives huge profits from the sale of goods with this logo.

Only in 2015 did Rentmeester file a lawsuit alleging copyright infringement. The trial court refused, but the photographer appealed. Rentmeester claimed that he came up with the pose for the basketball player – a classic ballet pose "grand jetés", not typical of basketball players. "Jordan, trying to make a ballet jump, may seem awkward. But if you creatively adapt the composition, the player pulls his left hand forward,

triumphantly holds the basketball and creates a frame when Jordan seems to fly from the ground to the basketball hoop, creating a powerful and unique effect, "the photographer described the composition. NIKE pointed to a large number of differences in the details of the composition of the photograph. This is the evaluation criterion used by the court: the "ordinary observer" test.

The conceptual similarity of the two photos is that they are taken from the same angle: the viewer looks at the figure of a basketball player against the sky. In other respects, they differ significantly in detail. Each of the photographers made several "creative choices" when choosing the elements of the composition. In March 2018, an appeal was denied to the photographer. The photographer then appealed to the US Supreme Court. Rentmeester noted that the decision of the appeal contradicts the approaches of other courts of appeal in similar decisions: how much protection do individual elements of photography receive? What parts of the works are significant in comparison? Is there enough similarity in one element or in a combination of such elements (Brachmann, 2019).

It should be noted that the concept of "image" rights, which combines elements of the institution of intellectual property law and the institution of personal non-property rights, is also closely related to copyright. Copyright, as a system of legal norms aimed at the legal protection of objects of creative activity, is another manifestation of the institution of intellectual property law in sports.

Kuznetsova (2013) identifies four types of results of creative activity in the field of sports: 1. sports performance [show] or its part as a work of art or as a work of choreography in the sports industry: choreographic composition in figure skating; speed skating sport, which is a complex coordination type; performing with the author's composition in synchronized swimming, etc.; 2. sports-theatrical and sports-circus shows: 2.1 sports-theatrical and sports-circus shows as ceremonies and as part of the opening and / or closing ceremony of major international and national sports events [Olympic Games, Universiades, etc.]; 2.2 ordinary or complex thematic or universal sports-theatrical and sports-circus shows [ice dancing shows, sports and entertainment auto shows and motorcycle shows, etc.]; 3. some original tactical schemes and combinations in some game sports and in some tabletop intellectual sports games; 4. choreographic mini-performances, which in the strict sense are not sports, but consistently and recognizably preceding each sports performance [show] of a sports team or athlete.

Based on the foregoing, sports performance and its individual elements, sports movements and methods, as well as their compositions, sports events, specific schemes of a sports game, scenarios and broadcasts of a sports event can be identified as specific objects of copyright and related rights in the sports industry.

Indeed, more and more often the field of sports is becoming a theatrical phenomenon. The theatricalization of sports is manifested in the fact that sports events are becoming more and more spectacular, and this, in turn, objectively requires the involvement and active use of theatrical elements. "If before the spectacular sports services were a duel, in which the intrigue of finding a winner remained until the end of the competition, in postmodern culture more and more often a sporting event is theatrical. An example of a sports entertainment show is wrestling, in which all the basic elements of a sports competition are present, except for one: here the development of the event depends on a pre-written scenario, where the result of the match and its climaxes are pre-written. Wrestling combines elements of sports, plays, etc." (Lukaschuk, 2010).

In addition to the fact that some sports contain elements of a production show as a stand-alone work, music and other works belonging to other persons are often used in the organization of sports competitions. In particular, during important football matches or, for example, boxing matches (the Klitschko brothers), domestic and foreign musicians often perform the national anthem of Ukraine.

With regard to television broadcasts, the issue of legal regulation of the relevant relations does not seem easy.

As for the objects of related rights in the sports industry, in addition to the considered performance by an athlete of a copyrightable sports work, these also include the rights to broadcast a sports event. As a rule, the organizers of physical culture events and sporting events own the rights to their coverage by broadcasting the image and sound of the events by any means and using any technology, as well as by recording the said broadcast and photographing the events; such rights can be used by third parties only on the basis of the permission of the organizers of physical culture events and (or) sports events or agreements in writing on the acquisition of these rights by third parties from the organizers of such events. In addition to national legislation, many relations regarding the coverage of sports events are governed by the regulations of sports organizations, including the rules of the Olympic Charter, FIFA and UEFA regulations, as well as other documents of the international sports movement, which, as a rule, enshrine the exclusive rights of such organizations to broadcast.

At the same time, as a protected object of intellectual property, a broadcesting on the air or by cable of radio or television transmissions that belong to the broadcasting or cable broadcasting organization is considered. That is, legal protection extends to the process by which programs are broadcast on air or by cable, which, as an object of law, arises from the moment the broadcast begins. Sports broadcasts can "be, for example, reports from the scene, broadcasting competitions, thematic discussions," films "about famous athletes or events in the world of sports" (Buzova, 2019).

Some of these categories of broadcasts, if there is a creative contribution to their creation, may be recognized as audiovisual works, which are also subject to independent copyright protection. For example, such as films about sports, talk shows and interviews with athletes, which are created by broadcasting organizations on purpose, have a script or plot scheme, suggest the selection of a studio or location for shooting, possibly with the use of scenery and musical accompaniment, the use of makeup and costumes, an invitation special guests and (or) spectators, and sometimes a production director, as well as fixation on a material or digital medium. Discussion is the issue of the legal status of broadcasting sports events and news reports from the place of sports events. Undoubtedly, their broadcasting is subject to protection by related law (Dorofeeva, 2020). However, per se, news reports that are purely informational in nature are not subject to copyright protection. In fact, broadcasts of sports events are also material broadcast from a football field or other sporting event that is not subject to copyright protection.

An absolutely innovative field of modern sport, which uses a unique model of legal regulation of intellectual property relations in sports, is e-sports. This sport is already recognized by many countries around the world and may soon be recognized as an Olympic sport. WIPO has described the complexity of video game Intellectual Property rights by stating that video games are complex works of authorship – containning multiple art forms, such as music, scripts, plots, video, paintings, and characters – that involve human interaction while executing the game with a computer program on a specific hardware. Therefore, video games are not created as a single, simple works, but are an amalgamation of individual elements that can each individually be copyrighted (Ramos *et al.,* 2013).

Also, a unique feature of e-sports is that the exclusive rights to e-sports games belong to their developers, which allows them, unlike traditional sports, to control all processes related to the organization and conduct of e-sports competitions.

Conclusions

As a result of the study, the authors of the article came to two key conclusions:

1. A modern system of sports cannot exist without a developed system of intellectual property rights.

Sport has long been more than just one way to stay fit. Instead, sport has long been an entertainment industry that has become an important sector of the world economy. Accordingly, like any other branch of the

sports economy, it requires a number of legal instruments to protect the intellectual property rights of products produced by the industry and are the objects of intellectual property rights of athletes and / or other participants in a wide range of sports relations. The focus of modern sports on the consumer, the commercialization of relations in the field of sports would be limited without innovation, the determinants of which are television and the Internet. It is innovative technologies that allow millions of spectators to watch sporting events that take place anywhere on the planet with direct visitors. And if until recently for exclusive broadcasts had to pay a lot of money, because this opportunity was provided only by television as a monopolist, today access to sports broadcasts has become much easier, and they can be watched even on a smartphone through any streaming service. In addition, a completely innovative field of sport is e-sports, as a unique direction of modern sports.

2. World sport has many points of contact with intellectual property rights, which is manifested in the relevant relations through a number of its sub-institutions.

Traditional intellectual property rights in sports have been trademarks and inventions. At the same time, today they were joined by a number of other objects, including utility models, industrial designs, objects of copyright and related rights, as well as the latest objects of "image" rights, combining elements of the institute of intellectual property law. property and the institution of personal non-property rights.

Thus, the emergence of new intellectual property in sports, the search for new innovative tools to bring the sporting product to the consumer determine the relevance of further research in the context of interaction of intellectual property and sport, developing a global model of legal and quasi-legal regulation of relevant relations. for the purpose of sustainable development of sports and ensuring the protection of the rights and legitimate interests of all participants in relations in the field of sports.

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Digitization in Law: International-Legal Aspect

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Abstract

Due to the development of the information society, countries face the task of effectively regulating the relevant social relations. The mechanisms of such regulation should correspond to the specifics of such relations. Digitization is one of the modern methods of legal regulation, which is the use of information technology at the state level. The existing scientific achievements on digitalization processes need constant improvement, which corresponds to the specifics of this field. The object of research is digitalization in law in the light of international experience. The article aims to study and analyze digitalization in law in the international legal aspect. The following methods were used during the study: systemic, systemic-functional, comparative, sociological, analysis, synthesis, analogy, observation, classification, and statistical analysis. The article analyzes the phenomenon of digitalization, identifies the main approaches to understanding it. On the example of international experience (such countries as France, Germany, Italy, Georgia, Greece, and Great Britain), the mechanisms of using digitalization in public administration are determined, the legal regulation of informatization is analyzed. Also, based on the study and analysis of doctrinal teachings of international information experience, it is proposed to improve the domestic legal mechanism to ensure the effective functioning of public relations.

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Digitalización en el derecho: aspecto jurídico internacional

Resumen

La digitalización es uno de los métodos modernos de regulación legal, que es el uso de tecnología de la información a nivel estatal. Los logros científicos existentes en los procesos de digitalización necesitan una mejora constante, que corresponde a las especificidades de este campo. El tema de la investigación es la digitalización del derecho a la luz de la experiencia internacional. El artículo tiene como objetivo estudiar y analizar la digitalización en el derecho en el aspecto jurídico internacional. Durante el estudio se utilizaron los siguientes métodos: sistémico, sistémico-funcional, comparativo, sociológico, análisis, síntesis, analogía, observación, clasificación y análisis estadístico. El artículo analiza el fenómeno de la digitalización, identifica los principales enfoques para comprenderlo. En el ejemplo de la experiencia internacional (países como Francia, Alemania, Italia, Georgia, Grecia y Gran Bretaña), se determinan los mecanismos de uso de la digitalización en la administración pública, se analiza la regulación legal de la informatización. Asimismo, con base en el estudio y análisis de las enseñanzas doctrinales de la experiencia de la información internacional, se propone mejorar el mecanismo jurídico interno para asegurar el funcionamiento efectivo de las relaciones públicas.

Palabras clave: digitalización; regulación legal; sociedad de la información; administración pública; relaciones públicas.

Introduction

In today's conditions, the priority of state activity is the digitalization of the spheres of life of the population. This direction is due to the development of the innovative society, digital technologies. The main trends in the development of modern foreign informatization are the steady growth of the information technology market, the growth of investments in informatization and the growth of profits from innovative technology products. The development of the information industry is associated with the use of the Internet. According to IDS experts, in 2020 the annual growth rate of Internet costs will reach 50%. (Kolesnikov, 2012).

International experience in implementing digitalization systems as a tool to ensure the realization of citizens' rights to effective, mobile, and unhindered communication with the system of providing, in particular, public services, protection of their interests, shows that the information policy depends on communication, from historical factors, political and economic development, and financial and material resources.

Thus, the activities of the British government to improve the conditions of competition in the data market, increase the efficiency of innovative services, and the introduction of IT in public administration. The goal of France's national information policy is to establish an information society, develop electronic market, and banking, liberalize communications, update its legislation, stimulate research in the field of IT business, create information security systems, and prevent computer crimes. For Italy, the characteristic features of information policy are monitoring of the sphere of online services, improvement of intra-network quality, evaluation of intellectual resources, the introduction of e-government, etc. (Ryabokon, 2016).

For the Scandinavian countries, the introduction of information technology is seen in the provision of the social sphere with computer technology, access to information in networks and systems for socially vulnerable groups, and attention is paid to support national producers of information products (Stepanov, 2010).

The Prime Minister of Estonia Kaya Kallas spoke at the All-Ukrainian Forum "Ukraine 30. Digitalization" about the benefits of digitalization. "Currently in Estonia, there are about 5,000 e-services in the public and private sectors, including e-voting, e-schools, e-hubs, we have digital signatures. All this saves Estonia a lot of time and money, "said the Prime Minister (Ukrinform, 2021).

Researchers have developed a strategy for the transformation of public services through digitalization (HiTech Office, 2016).:

- providing a system of recruitment of civil servants and lawyers based on skills in digital technologies.
- the use of social networks and communications to actively involve citizens in political processes.
- empowering citizens to participate in their own use of the concept of open data, according to which particular data should be free for use and dissemination by any person (subject to compliance with the relevant rules).
- the introduction of electronic identification to create a secure space that provides citizens with access to necessary resources or services.

It is also considered useful to manage smart machines and tools as an improvement of existing methods of doing business and creating new public services. Such new services should include, for example, automatic emergency notification systems, voice services of public contact centers,

various intellectual applications to facilitate bureaucratic interaction with government agencies.

One of the achievements of the digitalization process in the legal and state spheres is the blockchain, which is considered effective in such areas as notaries, stock exchanges, justice, personal identification, etc. Blockchain is a technology of a distributed peer-to-peer public network that can store information about transactions permanently and without the possibility of its change and which is protected by cryptographic means. Blockchain networks can provide many options for different purposes, especially in the public sector: electronic referendums, e-petitions, e-voting, and e-government. Blockchain provides an unprecedented level of information protection and allows you to create fully decentralized systems. The high resistance of the system to attacks allows its use in such sensitive areas as e-finance, public procurement, and e-budgets (Lopushytsky, 2018).

1. Theoretical framework

To comprehensively study the digitization of law, taking into account international experience, some regulations, scientific articles, monographs and statistics were studied and analyzed.

The works by the following scientists are devoted to the study of digitalization: Kolesnikov (2012), Tronko (2017), Lopushytsky (2018), Cherednichenko and Baranovska (2021), Kolyadenko (2016), Golovko and Dubenets (2020), Kartsikhia (2018), Chukut and Poliarna (2016), Melnyk (2012), and Verlos (2020).

The definition of the essence of digitalization is examined in the articles of Cherednichenko and Baranovska (2021) “Digitalization of public administration”; Petrenko and Mashkovska (2020) “ Digitalization of state administrative services in Ukraine: regulatory aspects”; Kolyadenko (2016) “Digital Economy: Prerequisites and Stages of Formation in Ukraine and the World”; Lopushytsky (2018) “Digitalization as a basis for public administration on the path of transformation and reform of Ukrainian society”; Golovko and Dubenets (2020) “The role of digitalization of state services in legal relations with a foreign element”. Thus, the definition of digitalization is reduced to the use of digital technologies in most spheres of public life.

The study of international experience in the implementation of information technology in the legal system has become possible through the study of the digitalization process in countries such as Britain, France, Germany, Italy, Georgia, Greece, and Estonia. The following works are devoted to this area: “State policy in the field of the information society

in France: prospects for Ukraine" by Melnyk (2012); "Selected decisions of the Federal Constitutional Court of Germany" by Crawford (2018). In addition, in this direction was normative documents regulating digital rights, mechanisms of public administration with the use of information technologies were applied. In particular, such documents are the Policy Recommendations of the European Commission 2019-2024 (Leyen, 2019) (the use of artificial intelligence), the United Nations E-Government Survey (United Nations, 2021) (UN study on the level of e-government development in different countries), the Constitution of Greece, Georgia, Germany, France, and Italy (consolidation of digital rights), etc.

Statistical data on the level of implementation of digital technologies in the different countries is done by examining the work of Egorov and Hryha (2019). Comparative analysis of digitalization indicators in Ukraine and other countries of the Eastern Partnership of the EU.

The phenomenon of digitalization is a constantly evolving mechanism for convenient and effective functioning of public life, which requires further study in the following areas:

- digital rights of citizens in the general system of rights, their regulation and protection.
- collection of statistical data on digitization processes.
- methods of professional training for work in the digital state, and.
- modernization of legal mechanisms for the introduction of information technology in various spheres of society.

2. Methodology

The authors carried out their research with the help of such methods: the systemic method, the comparative method, the method of observation, and the methods of analysis and synthesis.

Thus, the systemic method as a general scientific method was used in the consistent study of structural links between the achievements of foreign countries in the field of digitalization of public relations and public administration. Also using the specified method, the available digital rights were defined and systematized.

Furthermore, the comparative method helped to compare foreign experience in the implementation of digitalization and highlight its positive features, which are considered appropriate to use in building a domestic system of legal services.

Moreover, the method of observation was used to determine the dynamics of the object of study. Thus, gradual diversification of information processes that took place due to the development of the Internet was revealed. In this regard, a necessary element in the process of digitalization was the development of regulations in this area, programs, and strategies for the development of digital technologies at the state level.

The method of analysis was useful for the study of digitalization, gradually dividing the research of the theoretical part of the object and the practical part, which consists of the analysis of international experience in the use of information technology. Analytical assessment of the processes of implementation of information technologies made it possible to identify patterns, according to which it became possible to identify certain features of digitalization as a mechanism for ensuring effective public administration.

The method of synthesis also allowed to gather the studied theoretical and practical aspects into a single whole to find the most effective mechanisms for the introduction of digitalization.

3. Results and discussion

The modern legal literature focuses on the understanding of law as a general social phenomenon. The law is based not only on knowledge but also on some cultural, legal values - justice, freedom, equality, etc. (Lutsky, 2013). Rule of law states (i.e. those, in which the rule of law is recognized in all spheres of public life) the inviolability of a person's freedom, his/her rights, and interests, their protection and guarantee, create effective mechanisms for regulating legal relations.

The development of technology leads to the emergence of new social relations, and therefore there is a need for their legal regulation. At the present stage of the development of rule of law, digitalization is a new phenomenon. In the scientific literature, a small number of works are devoted to this issue. In most scientific papers, digitization is considered in the context of public administration and relates to economic activity.

Regarding the notion of the concept of digitalization, there is no single definition. It is advisable to consider the most common interpretations. Thus, digitalization is a multifaceted process of society's transition to digital technologies, which applies to all spheres of public life (Cherednichenko, & Baranovska, 2021). It is the introduction of digital technologies in all spheres of life:

- from the interaction between people to industrial production, and.

- from household items to children's toys, clothes, etc. It is the transition of biological and physical systems into cyberbiological and cyberphysical (combination of physical and computational components), the transformation of activities from the real world to the virtual world (online) (Petrenko, & Mashkovska, 2020). In the broadest sense, digitization is a synthetic category, which means all socio-economic processes, which are based on the use of digital technologies (Kolyadenko, 2016).

Stepanov identifies the following advantages of using information technology in public administration:

- increasing the efficiency of interdepartmental interaction.
- improving the quality of public services to the population and organizations, and;
- coordinated personal and collective work of government officials.

European Commission President Ursula von der Leyen (2019) (in the European Commission's Policy Recommendations 2019-2024) emphasizes that "digital technologies, especially artificial intelligence, are changing the world at an unprecedented rate, and their use will help find solutions to societal problems from health to agriculture, from security to production".

According to United Nations research presented in the "United Nations E-Government Survey 2018", there is a positive trend among 193 countries surveyed to increase the level of e-government development. The group with a very high index of e-government development in 2018 includes 40 countries; 71 countries – to the group with a high index of e-government development; 66 countries – with a medium index and 16 countries – to the group with a low (United Nations, 2021).

To assess the digitization process in the EU, a special Digital Economy and Society Index (DESI) has been developed, which provides information for analysis on the following main factors (European Commission, 2019; Pilinsky, & Veretyuk, 2015): efficiency assessment, improvement, dynamics assessment, and comparative analysis.

The level of functioning and development of digital technologies in the countries of the Eastern Partnership of the EU can be demonstrated using the data of the Table 1 made based on the analysis of sources (HiQStep, 2019).

Branches of DESI	Ukraine	Azerbaijan	Armenia	Belarus	Moldova	Georgia
Use of the Internet	44 %	63 %	41 %	70 %	41 %	70 %
Providing digital control	17 %	17 %	17 %	100 %	17 %	50 %
Digital government services	50 %	100 %	0 %	50 %	100 %	100 %
Integration of digital technologies	50 %	7 %	7 %	43 %	21 %	29 %

Table 1. The level of functioning and development of digital technologies in the countries of the Eastern Partnership of the EU. (HiQStep, 2019).

The above statistics indicate the gradual introduction of information technology in public policy.

Trends in the development of e-government can be traced at three levels (Golovko, & Dubenets, 2020):

- interdepartmental – in the interaction of public authorities with each other to optimize the functioning of the administrative apparatus.
- private – in partnership with the government and business entities to reduce government spending through the use of outsourcing technology and the creation of a transparent system of public procurement.
- public – in cooperation with the public and public authorities to involve citizens in decision-making by the authorities, overcoming the bureaucracy of administrative activities, and building e-democracy.

In the legal doctrine, in connection with the use of information technology, a new type of characteristic of the provision of public services – the digital democracy of the state. According to Chukut, e-democracy is an important component of e-government, because its main goal is to meet the needs of citizens, achieve social values by using the benefits of the information society, overcoming such negative phenomena as corruption, formalization of modern governance (Chukut and Poliarna, 2016).

Since legal relations are characterized by external expression, such relations are manifested in the actions or inaction of legal entities. In turn, the subjects of law are individuals and legal entities that are the bearers of rights and obligations enshrined in law.

Given the above, when analyzing the process of digitization of law from an international perspective, we should pay attention to the activities of

legal entities in economic activities that use information technology, as the regulatory nature is not unique to law.

Digitization in the public economic policy of Great Britain consists in:

- building a world-class digital infrastructure, investing in the development of the digital economy, accelerating the development and use of next-generation digital infrastructure.
- giving everyone access to the necessary digital skills.
- developing digital business by financing research, creating conditions for the prosperity of the artificial intelligence industry, cooperation with research centers in other countries and with a network of technical centers created by the UK in developing countries, and;
- ensuring a high level of protection of British cyberspace, using the potential of innovation in cybersecurity (Heeks, 2018).

Awareness of the importance of comprehensive regulation of digitization in the UK is evidenced by the existence in this country of the Digital Economy Act, which provides, in particular, the registration of domain names on the Internet and how media content contributes to public service goals, obligations to suppliers Internet services aimed at reducing copyright infringement on the Internet, the power of the Secretary of State to obtain a court order to block the Internet location used in connection with copyright infringement (GOV.UK, 2017).

Relevant in the process of legal digitization is the normative consolidation of digital rights, which will regulate the relationships that arise in the process of human interaction during the use of information technology.

Digital rights are a separate type of human rights, which covers the specifics of the implementation and guarantees of the protection of fundamental human rights on the Internet, including freedom of expression and the right to privacy online. The following definitions of digital rights can also be found in the scientific literature:

- the right of citizens to access, use, create and publish digital works, and;
- the right to free access to the Internet (other communication networks) using computers and other electronic devices (Kartsikhia, 2018).

The literature identifies two ways of legislative consolidation of digital rights: constitutional consolidation and constitutional interpretation of existing rights given modern information development (Verlos, 2020).

At the constitutional level, digital rights have been enshrined in countries such as Greece and Georgia. For the legislative consolidation of such rights by interpreting certain constitutional norms in the light of digital reality, either body of constitutional jurisdiction are used, or separate laws regulating certain digital rights are adopted. Such countries include Germany, France, and Italy.

According to the legislation of the above-mentioned states, the following digital rights can be distinguished (Table 2):

Country	Digital rights
Greece	the right of all persons to participate in the information society and to facilitate access to information transmitted in electronic form (Part 2 of Article 5A of the Greek Constitution (2008))
Georgia	the right of everyone to access and use the Internet freely (paragraph 4 of Article 17 of the Constitution of Georgia (Law No. 786/1995, 1995))
France	the right to access the Internet (the Constitutional Council of France has made amendments to the legislation on the protection of intellectual property: the rules on the possible automatic and extrajudicial disconnection of infringers to the Internet are considered illegal (Decision No. 2009-580, 2009))
Germany	the right to information self-determination, to ensure the integrity and confidentiality of information technology systems, to the secrecy of correspondence, postal items and telecommunications (Crawford, 2018)
Italy	access to the Internet is a fundamental human right and a condition of its full individual and social development, everyone has an equal right to access the Internet on equal terms with technologically adequate and modern methods that eliminate any economic and social barriers (Article 2 of the Declaration of Rights in Internet (Internet Rights and Duties Commission, 2015))

Table 2. The digital rights in Greece, Georgia, France, Germany, and Italy.

For Ukraine, the creation of specialized legislation in the field of digital technologies and the consolidation of digital rights at the constitutional level is considered a promising direction. In addition, the literature has an opinion on the feasibility of developing international acts that would regulate the field of information technology (Shvidka, 2020).

A striking example of legal digitalization is France, where since 1998, the Program of governmental actions of France's entry into the information society (Roche, 2005). France as a country with a developed digital environment is characterized by (Melnyk, 2012):

- the use of information technology in government.
- professional training for the effective implementation of public policy based on the use of digital technologies.
- ensuring easy access of citizens to the government via the Internet.
- technical and legal definition of electronic signatures in the government-citizen relationship.
- encouraging the development of administrative telework, and;
- modernization of state computer systems.

The development of e-government in France is to ensure interoperability between management services and the availability of management sites, expanding access to electronic payment systems, access to justice via the Internet.

Given the experience of France, it is expedient for Ukraine to implement measures to train officials in the field of information technology, take into account knowledge in the digital sphere when enrolling in the civil service, appropriate modernization of public computer systems, and rationalization of public funding in the information society.

The development of information technology has led to the emergence of means of payment on the Internet, which requires constant improvement of legislation in this area. At the level of the European Union, the issue of payment systems is regulated by many directives, in particular, the Directive of the European Parliament and the Union of 2007 No. 2007/64/EC (on payment services in the internal market), Directive of the European Parliament and the Union No. 2009/110/E (on the taking up, pursuit and prudential supervision of the business of electronic money institutions) (Deloitte, 2017).

Regarding the Ukrainian system of legal regulation of payment systems, it is regulated by some Laws of Ukraine "On Payment Systems and Funds Transfer in Ukraine" (Law No. 2346-III, 2001), "On Banks and Banking" (Law No. 2121-III, 2000), as well as in the Law of Ukraine "On the National Bank of Ukraine" (Law No. 679-XIV, 1999) and some other bylaws regulations of the National Bank of Ukraine and the Cabinet of Ministers of Ukraine. The main objectives of the legal regulation of payment systems are to limit systemic and other risks, the protection against fraud, support the development of effective methods of providing payment services (Institute for Economic Research and Policy Consulting, 2010).

The main problems in the system of legal regulation of payment systems are:

- underdeveloped legal regulation of mechanisms for the protection of consumers of payment systems and the companies themselves that provide these services.
- insufficient payment and financial literacy of some categories of the population, especially pensioners. To overcome this problem, it is necessary to develop and publish information leaflets with step-by-step instructions on how citizens can use payment systems in their daily calculations, and;
- international payment systems are gradually displacing domestic ones. In this regard, it is advisable to support national enterprises in the creation of domestic payment systems and related services through benefits for residents who wish to open their business in this area (Dzhusov, & Pilyak, 2020).

Thus, based on the analysis of international experience in the field of digitalization of law, we can conclude that the system of gradual improvement of relations arising from the use of digital rights of citizens (France, Italy, Germany, Greece, and Georgia). For effective public administration, digital technologies are an effective tool that requires comprehensive study and practical testing.

Conclusions

As a result of the study of the international legal aspect of digitalization, the following has been established in law.

1. International experience in the introduction of digitalization systems as a tool for effective communication with the system of provision, including and not exclusively public services, protection of interests, shows that depending on the level of interest of a country in integration into the global communication system, the direction of digital state policy.
2. In the process of legal digitalization, an important role is played by the normative consolidation of digital rights, which allows regulating the relations that arise in the process of human interaction during the use of information technology.
3. The main problems in the system of legal regulation of payment systems are:
    - underdeveloped legal regulation of mechanisms for the protection of consumers of payment systems and the companies themselves that provide these services.

- insufficient payment and financial literacy of some categories of the population, especially pensioners. To overcome this problem, it is necessary to develop and publish information leaflets with step-by-step instructions on how citizens can use payment systems in their daily calculations.
- international payment systems are gradually displacing domestic ones. In this regard, it is advisable to support national enterprises in the creation of domestic payment systems and related services through benefits for residents who wish to open their business in this area.

Thus, based on the analysis of international experience in the field of digitalization of law, we can conclude that the system of gradual improvement of relations arising from the use of digital rights of citizens (France, Italy, Germany, Greece, and Georgia). For effective public administration, digital technologies are an effective tool that requires comprehensive study and practical testing.

Regarding further scientific research, it is essential to investigate both Ukrainian and international bills on the regulation of the digital transformation of our country and to develop proposals for the possible implementation of the positive experience of foreign countries in Ukrainian legislation.

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Systemic approach to the choice of optical methods of forensic examination of micro-objects

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Abstract

The aim of the article is to analyze theoretical and methodological provisions related to the definition of directions and principles of implementation of a systematic approach to the use of optical research methods, in particular micro-objects. Subject of research is substantiation and formulation of the classification characteristics of such systematic approach, considering the requirements of forensic techniques. Methodology: The study applies such methods of scientific knowledge as dialectical method, system and structural method, logic and legal method, methods of systematic analysis, logical method. Research results: The article studies the problematic issues of a systematic approach to the choice of scientific and technical methods and means for micro-object examination. Practical consequences: The authors argue that optical methods of the micro-object examination require classifying and systematizing to provide a holistic view of their potentials, as well as the nature of the information that can be obtained about the object being examined. Value / originality: The analysis of clarified classification characteristics and requirements for examination methods in

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forensic science enables to propose the algorithm of the systemic approach to the creation of the open system classification of methods of micro-object examination and to make justified conclusions.

Keywords: criminal proceeding; micro-objects; criminological examinations; forensic examination; optical methods.

Un enfoque sistemático para la elección de métodos ópticos. investigación forense de microobjetos

Resumen

El objetivo del artículo es analizar las disposiciones teóricas y metodológicas relacionadas con la definición de direcciones y principios de implementación de un enfoque sistemático para el uso de métodos de investigación óptica, en particular micro objetos. El estudio aplica métodos de conocimiento científico tales como método dialéctico, método de sistema y estructural, método lógico y legal, métodos de análisis sistemático, método lógico. El artículo estudia las cuestiones problemáticas de un enfoque sistemático de la elección de métodos y medios científicos y técnicos para el examen de micro objetos. Los autores argumentan que los métodos ópticos del examen de micro objetos requieren una clasificación y sistematización con el fin de proporcionar una visión holística de sus potenciales, así como de la naturaleza de la información que se puede obtener sobre el objeto examinado. Se concluye que el análisis de las características de clasificación aclaradas y los requisitos para los métodos de examen en la ciencia forense permite proponer el algoritmo del enfoque sistémico para la creación de la clasificación de sistema abierto de métodos de examen de micro objetos y sacar conclusiones justificadas.

Palabras clave: proceso penal; micro objetos; exámenes criminológicos; examen forense; métodos ópticos.

Introduction

Ukraine is on the path of significant changes at the current stage of its development: the structure of economic relations is changing, new subjects of property and political activity are being formed, basic values, living arrangements are being transformed, the way of life and traditions are changing (Kyslyi *et al.,* 2020). Therefore, the knowledge of criminals, for example how to conceal the traces of the crime, requires more up-to-date

approaches and techniques to obtain tracing and evidentiary information. Therefore, it is increasingly important to use micro-objects to obtain forensic information that, because of their size, is difficult to destroy, falsify, to prevent their formation and remain at the scene of a criminal offence.

The main factor in improving the efficiency and effectiveness of the work with micro-objects, as well as the objectivity of the results obtained, is the knowledge of criminologists, in particular forensic examiners, regarding the existing examination methods, their potentials, as well as making the right choice of examination method.

The advance of science and technology constantly increases the possibilities of micro-object examination, thanks to the occurrence and introduction of new means and methods, in particular optical, which in comparison with other physical and chemical techniques have the advantage of non-destructive effect of optical radiation on the object being examined, highly informative and accurate.

The task of choosing a method of examination from the diversity of existing and new ones is quite complex, even based on the experience, logic, knowledge, and intuition of examiners, and it requires a scientific system approach.

The analysis of scientific sources suggests that the issue of the classification and systematization of methods of optical examination, of micro-objects, is not well studied. Some scientists, including forensic scientists, have identified specific groups of examination methods related to specific tasks and research areas.

The relevance of the topic under study is the need to define a criterion (classification characteristic) and a systematic mechanism for the establishment of an open system classification of existing optical methods for micro-object examination, which will ensure greater effectiveness of examiner's performance.

Thus, the aim of the article is the study of the areas and principles of implementing a systematic approach to the application of optical methods of examination, of micro-objects, with a view to extending the potentials of expert examinations, increasing their efficiency and objectivity.

1. Methodology

The methodological basis of this study is the system of general and special methods of scientific knowledge. The application of these methods is due to a systemic approach, which has enabled the study of the issues involved.

The dialectic method enables to analyses the optical methods of micro-object examination in a comprehensive manner, which objectively meets the requirements of examiner's performance and a comprehensive and impartial investigation of the circumstances of criminal proceedings. The systematic and structural method enables to consider optical methods of examination, of micro-objects, as a structured link in the system of sources of evidentiary information, to analyses their potentials and to propose their systematization. The logical and legal method enables to determine the place and role of micro-objects in criminal proceedings, in the system of evidence. The method of the systematic legal provision analysis is applied to analyze the legal provisions governing the use of specialized knowledge and technical means (including optical means) in criminal proceedings based on evidence and the needs of practice. The logical method of scientific knowledge is a basis for determining criteria for the choice of micro-object examination optical methods and their classification mechanism.

2. Literature Review

The use of micro-objects to solve the problems of criminal proceedings, which constitute evidence, is under focus by Klymenko (2008) (with regard to the use of micro-objects in the investigation of criminal offences); Kyrychenko (1994) (with regard to the fundamentals of forensic micrology); Saltevskyi (1980) (with regard to micro-objects and scent traces as sources of information in criminal proceedings), as well as the authors' team Korostashova *et al.*, (2012) (with regard to the theoretical and practical basis of the use of micro-objects for criminal proceedings).

The use of scientific and technical methods for the investigation of physical evidence, including optical methods, as well as the legal basis and admissibility of their use, is under study in the works by Honcharenko (2011) (with regard to the requirements of forensic methods); Lisichenko (1979) (with regard to the use of methods of natural and technical sciences in crime investigation and forensics); Nenia (2010) (with regard to the legal and regulatory framework for the use of scientific and technological means and methods in forensic science).

The classification of examination methods, those based on the laws of optics, has been under focus of physicists, chemists, biologists, etc., and forensic scientists. To some extent, systematization of scientific and technical methods for the use in certain areas of forensic examination or in criminal proceedings have been made by scholars and practitioners such as: Davydova (2008) (with regard to the use of optical methods in forensic examination of materials, substances and items); Saltevskyi (1980) (with regard to the collection of forensic information by technical means during

pre-trial investigations); Skrypko (2012) (with regard to micro-object examination of fibrous nature by means of polarization microscopy).

Prystupa and Zhuk (2005) have studied the issue of examination of soil elemental composition by methods of spectral analysis, including X-ray fluorescence analysis. Linch and Prahlow (2008) have investigated the use of optical methods for micro-object examination. Clarke and Eberhardt (2002) have provided an overview of and practical guide to the various computer-aided microscopical techniques used in materials science. The work by Lacey (1999) begins with the explanation of the basic techniques and goes on to describe current methods in chromosome microscopy, immunohistochemistry, fluorescence microscopy, image building and video microscopy.

The relevance of the topic under study is in the development of the issues of creating an open system classification of optical methods, forensic one, since micro-object examination has been out of the focus of scientists. This is due to several factors, first, the group of optical methods is numerous and with the development of science constantly increasing; second, the potentials and areas of the use of optical methods of examination are also wide and are considered in many technical, natural sciences and criminology; third, there is a lack of appropriate classification mechanism to be determined by criteria for optical methods of examination can be classified.

3. Results and Discussion

Any investigation, any evidence findings are based primarily on the investigation of the trace evidence of the crime.

The modern awareness of criminals of the potentials of traditional types of forensic examinations, such as identification of a person by fingerprints, firearms by traces on bullets and cartridges, an executor of a written text by handwriting, as well as the achievements in the portrait examination, makes the use of micro-objects for criminal proceedings increasingly relevant and promising.

This is primarily because of their small size, which generally makes it impossible for criminals to destroy them, to falsify, to prevent their occurrence at the scene of a criminal offence.

Despite their size, micro-objects are considered to be material evidence, as any other material traces of crime, if they contain the characteristics specified in article 98 of the Criminal Procedure Code of Ukraine (Law No. 1001-05, 1960).

The size of the micro-objects, their multivariate nature (including the various aggregated states, that is, solid, liquid, gaseous) and their multifaceted links to the event of a criminal offence give rise to certain difficulties and limitations in their detection, seizing, recording, storing, and examining in order to obtain information for forensic purposes. Therefore, in almost all phases of pre-trial investigation (search operations and investigative actions, collection and preservation of evidence and expert examination), the use and application of scientific and technical methods and tools are important for operating with micro-objects (Klymenko, 2008).

While the use of scientific and technical methods and means is important at all stages of pre-trial investigation, it is expert examination, which is a crucial stage in the use of micro-objects in criminal proceedings, that constitutes evidence and requires the widest range of expertise, methods, and tools.

Moreover, most expert examinations of micro-objects involve optical methods.

Optical methods are methods based on the laws of optics concerning the nature of the propagation and interaction of the electromagnetic radiation of the optical range with the substance, and which enable to obtain comprehensive information concerning the properties and characteristics of the object(s) (Nenia, 2010).

The optical range encompasses electromagnetic radiation with wavelengths in the range from 10 nm to 1 μm (Kruger *et al.,* 1967). Optical methods have advantages over other physical methods of examination. The advantages of most of them are non-destructive effects of optical radiation on the object under examination, informativeness and high accuracy, the possibility to examine the physical and chemical properties with optical radiation of the object and so on.

The choice of scientific and technical forensic methods and means of examination, particularly optical ones, depends directly on the type of forensic expertise in which they are used. Therefore, from a methodological perspective, the question arises first of all with regard to the definition of forensic examinations that examine micro-objects, which is not only of theoretical but even more of practical importance.

It should be noted that micro-object examination is usually performed within forensic and engineering expertise, mainly the examination of materials, substances, and articles, biological, firearm and tool mark examinations (Order No. 53/5, 1998).

For example, the potential of optical methods is their use in expert examinations of firearms and ammunition, as well as explosive devices and explosives, to address identification, classification, diagnostic,

situational issues, in particular methods of: observation, including optical microscopy, analysis – optical spectroscopy (emission spectral analysis; absorption spectral analysis; reflection spectroscopy, etc.) and methods of optical analysis, based on the measurement of the optical properties of the substance.

This is particularly relevant in view of the relentless military conflict in the Donbas, which is a major factor for increasing market in illegal firearms and the consequent increase in serious crimes, committed with firearms and explosive devices, including improvised explosive devices. This situation leads to a constant expansion of examination objects, most of which are specific and problematic for their examination. This in turn requires the development of new types of expertise and thereby new examination methods and the systematization of existing ones (Korotaiev, 2018).

In Ukraine and many countries of the world, one of the recent challenges in firearms examination is the extension of the scientific basis for comparing the marks on bullets and cartridges to determine their objectivity and subjectivity. The International Association of the Firearm and Tool Mark Examiners (AFTE) considered this issue as the key one, including not only the search for a scientific basis for potential errors identification, but also for the search and potential development of methods, that will improve the quality of expert examination. The United States President's Council of Advisors on Science and Technology (2016) addressed these issues in its report on forensics, in particular the forensic firearms examination.

Forensic (in particular expert) examination is a process of creativity, and this connects it to any scientific research. However, contrasting scientific research, forensic examination is formalised by the framework of criminal proceedings, making it orientated; the request to preserve and maintain the properties of the objects being examined and their features in the course of the examination. At the same time, the examiner should provide an objective, complete, reliable conclusion from the results of the examination, which requires the use of reliable methods and high-precision instruments ensuring the objectivity and reliability of the examination.

Considering that every year new examination methods are emerging, thanks to the integration and differentiation of scientific knowledge, the interpenetration of sciences and their methods, the combination of methods both homogeneous in nature, scientific bases and sources, as well as heterogeneous, arising and formulated in various fields of science, and thanks to the widespread introduction of nanotechnology, the examiner is faced with the corresponding task of constantly updating personal knowledge in this area and, thereby the constant need to choose the best method of examination.

Since examination tasks can be solved by several different scientific and technical methods, the rational choice of a method usually takes into account the requirements for the final results of examinations, their accuracy and reliability, time limits, completeness of information and the like.

Moreover, the requirements for criminological (forensic) methods can be divided into two groups. The first group of requirements that are common to research in other scientific fields, including: validity, reliability, accuracy, safety, efficiency, cost-effectiveness, accessibility. The second group consists of the requirements related to the procedural status of the object examined, the method itself and the conclusion derived from the examination results: admissibility and ethics (Averianova *et al*., 2001).

According to Honcharenko (2011), only scientifically based means and methods can be used in investigative and expert work, provided the compliance with the principle of legality and conformity with generally acceptable ethical standards in our society.

Since examiner's report is one of the most important types of evidence, the assessment of its reliability is a very important element for all participants in criminal proceedings. For this purpose, along with the professional competence of the examiner, inter alia, the expediency and admissibility of applying specific examination methods should be verified.

An instrument for ensuring quality of work in all spheres of life is a system of universal methods, which are quality tools that constitute a quality management system for the respective field of activity, followed by accreditation by an independent accreditation body, validating the real level of technical competence, of forensic laboratories, and creating conditions for peer review of the results of their activities in different countries.

Active implementation of international quality standards, such as ISO/IEC 17025:2017 General requirements for the competence of testing and calibration laboratories (ISO, 2017) and ISO/IEC 17020 (2012) "Conformity assessment – Requirements for the operation of various types of bodies performing inspection" (ISO, 2012) in domestic forensic science institutions, in particular the MIA of Ukraine, began in 2010 when the State Scientific Research Forensic Centre (SSRFC) of the MIA of Ukraine in 2002 had acquired a membership of the European Network of Forensic Science Institutions (ENFSI). Since then, about 30 State specialized forensic science institutions in Ukraine have been accredited by these standards in various examination areas, including the MIA and the Ministry of Justice.

According to the ISO/IEC 17025 standard, laboratories examine the methods used to confirm their operability in laboratory conditions. Furthermore, the standard enables the application of methods developed by laboratories of an individual forensic science institution through a validation procedure for such method (Tatarnikova, 2017).

For example, in 2018, the National Bureau of Expertise of the Republic of Armenia revealed the results of experimental studies and validation procedures for gas chromatography-mass spectrometry and UV spectrometric methods for quantification of buprenorphine. As a result, the Department of Physical, Technical and Chemical Research of the National Bureau of Expertise of the Republic of Armenia applied in the forensic practice two methods (including optical one) providing, respectively, a reliable quantification of buprenorphine (Tovmasian *et al*., 2005).

Therefore, the choice of the examination method is a difficult task, even based on the experience, logic, knowledge, and intuition of examiners. In our opinion, a scientific systems approach can help. In order to provide a holistic perspective on optical methods of examination, as well as to make the right choice, they should be systematized and classified.

This implies both methods already applied by examiners and those used in different fields of science and technology that can be used and adapted to effectively address examiner's tasks (Saltevskyi and Lukashevych, 1987). Literature review has not revealed any work related to summarizing optical methods of examination and to their fairly complete system classifying.

Scientists from various fields of expertise, including forensic scientists, inter alia, identify specific groups of examination methods, the systematization thereof is generally limited to classes, types, and sub-types of forensic examinations, taking into account the material and technical base of the institutions, where these examinations are carried out, as well as the nature of the information about the object being examined. A clear example of this is provided by the forensic examinations of materials, substances and products, where individual scientists have identified separate scientific methods, such as optical ones, in terms of the nature of the information obtained by methods: morphological analysis, material and substance composition analysis, substance structure analysis; the study of individual properties (Davydova, 2008; Levshin and Saletskyi, 1994; Mitrichev, 2003; Palenik, 2013; Pentin and Vilkov, 2003).

The use of examination methods may be regulated by the forms and types of examinations depending on the stage of the criminal proceedings (for example, in the collection of evidence, preliminary (extra-expert) examinations relating to non-processing, only non-destructive methods of optical microscopy are applied) and expert (procedural) methods which include optical methods of both observation and various analysis) (Davydova, 2008; Saltevskyi, 1980). The choice of method may also depend on the nature of the information to be obtained from the object being examined.

Therefore, the issue of increasing the potentials for expert examination is within the framework of the classification mechanism and in the

identification of the criteria for the choice of method.

As noted above, examiners and criminologists consider that the main criterion (classification characteristics) for the selection of the examination method is the nature of the information to be obtained from the object being examined (Davydova, 2008; Mitrichev, 2003). In other words, what exists is the task, the method and a device that can solve this task. That is, a certain forensic science institution will use the scientific and technical means and methods with which it is equipped to examine a certain object (micro-object), considering the requirements of forensic science methods. We agree that this approach, especially from a practical perspective, is quite effective. However, this approach, in our view, is one-sided and limits the creative and search component of examiner's performance, and consequently limits the further development and expansion of forensic examination.

In order to improve existing examination methods and introduce new ones into expert practice, their potentials, advantages and disadvantages in comparison with other methods, as well as limitations in their application should be known in depth.

Such full knowledge of methods, particularly optical ones, as well as their comparison is impossible without a classification based on criteria by which these methods can be systematized (separated).

The physical phenomena that underlie them (for example, absorption, reflection, refraction, scattering, etc.) can be identified as the main criterion for the classification of optical methods (Nenia, 2010).

Moreover, it is this criterion that individual scientists use to systematize methods in analytical chemistry, biology, non-destructive testing (Clarke and Eberhardt 2002; Lacey, 1999).

However, an examiner does not always find the practical value of such classification appropriate. Not the last factor in the examiner's choice of examination method is questions put to the examiner, that is, we return to the information about the object being examined (micro-objects).

It should be noted that the highlighted criteria cannot, in our opinion, exist one without the other, as they are connected as communicating vessels.

Therefore, a systematization of optical methods for forensic examinations (of micro-objects in particular) should be based on comprehensive and harmonious combination of criteria, such as the essence of the physical process underlying the method; the nature of the information about the micro-object under examination (nature of the properties of the objects under examination) derived from the questions assigned to the forensic expert.

Moreover, this system classification should be open and able to constantly adapt to the changes in science and technology, which implies its continual updating with new examination methods. To sum up, we propose to use a hierarchical method to systematize and classify optical methods of examination, which will further enable to establish a hierarchical relationship between different groups of optical methods of forensic examination of micro-objects.

Next, we consider the consistent approach to this tiered classification.

On the basis of the characteristic (criteria) of classification such as the physical phenomena underlying them, at the first level, the initial set of optical methods should be grouped into three subsets: light microscopy, based on the laws of geometric optics and wave theory of image formation, optical spectroscopy based on the absorption effect of electromagnetic radiation by atoms or molecules of the substance under examination, optical analysis methods based on the properties of light waves, such as polarization, absorption, coherence, refraction, etc. (Landsberg, 2000; Hel *et al.*, 1998).

Moreover, this grouping of methods according to the first criterion simultaneously guides, although not yet detailed, but already in general terms, concerning the nature of the information that can be obtained from the object being examined (micro-object), that is, concerning the nature of the properties to be examined. For example, we know that optical microscopy techniques can determine the morphology of micro-object, its aggregate state, the degree of possible contamination and interaction with the material of the carrier, assess the natural color and luminescence, may establish its nature etc.

From our perspective, that is where the proposed criteria are harmoniously combined. At the second level of grouping of each of the proposed subsets, either this criterion (classification characteristic) or another can be chosen.

In our classification, we again choose the first criterion (classification characteristic) to group all three subsets of methods, in addition, the second-level grouping into the methods according to the physical phenomena underlying them, as at the first level, only in more detail, gives an idea of the nature of the properties, which can be examined.

Therefore, each subset of methods, grouping into a totality of subsets of methods, enables to describe in more details both the potentials of the respective method and the nature of the properties, which can be examined.

For example, further consideration of the first group of "Optical Spectroscopy" methods can group these methods at the second level into subsets: brightfield methods, darkfield methods, polarized light microscopy,

interference contrast methods (interference microscopy) and others. Complete classification schemes are in the work (Nenia, 2016). Considering from this set of methods, for example, brightfield methods based on the fact that different parts of the object being examined reflect the light falling on them differently, while reflected rays have different intensity, this set of methods can be further divided into three ones: transmitted-light brightfield methods, reflected-light brightfield methods, and oblique illumination methods. Moreover, the title of each method describes it according to its potentials.

Therefore, grouping methods at each level simultaneously details the potentials of each of them, and therefore increases the guidance value for the examiner regarding the nature of the information that can be obtained from the object being examined (micro-objects) by a specific method of examination, as well as enables to identify other suitable examination methods.

This method systematization enables to choose not one but some methods to examine the same properties of the object being examined, to expand potentials of an examiner, moreover, enables to validate methods and techniques within the framework of ISO quality standards. This includes new examination methods applied to test the relevance of new methods' potentials declared.

Another factor in favour of such a systemic approach is the need for a forensic examiner to justify during the criminal proceeding, including the judicial one that the examination results are reliable and therefore constitute evidence. However, this is not possible without using methods with similar potentials that have already been validated.

Conclusion

Criminal law policy is a component of State policy in the area of crime control. The implementation of such policy and its effectiveness, role, place and significance depends on many factors, among which is application of up-to-date approaches and techniques to obtain tracing and evidentiary information (Vorobey *et al.*, 2021).

Considering the increasing role of micro-objects in the detection and investigation of criminal offences and, at the same time, the specificity of their discovery, recording, seizure and preservation, examination and use as carriers of search and evidence information, it is relevant to improve the scientific and technical, as well as methodological, basis of work with them.

In particular, this applies to optical methods and micro-object examination means, used in both the extra-expert and expert stages of examination.

Initial and further understanding of the potentials of optical methods, in particular the degree of full potentials of micro-object examination, requires their systematization.

Any systematization is carried out for different purposes, specific to each branch, classification characteristics thereof are corresponding specific individual features or their complex.

In view of the determined and formalized aim of the study, a comprehensive and harmonious, in our opinion, combination of classification characteristics, such as the essence of the physical process underlying the method; the nature of the information about the micro-object being examined (nature of the properties of the objects being examined).

This approach to methods systematization has a great informational capacity, which will allow identifying a range of existing methods, providing a holistic view of their potentials, as well as revealing the nature of the information that can be obtained about the object being examined.

Such a systematization of methods can guide the examiner on the availability of other methods acceptable for examination, both those already used by examiners and new ones that can be borrowed or adapted from natural sciences.

This will allow the expansion of potentials of examiners' performance and at the same time increase the objectivity of examinations due to confirmation or disproval of the reliability of the examination results by another method with similar potentials.

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Current Trends in the Development of International Terrorism: A Current Understanding of the Problem

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Abstract

The study examines the development of international terrorism and the problem of its definition. Consequently, the objective of the study was to generate a systemic view of international terrorism and to identify current trends in its development. A structural and functional analysis of international terrorism as a political phenomenon was used. Based on the analytical model provided, the development of international terrorism was divided into periods based on political and geographical zoning. Three consistent principles determine the key characteristics of international terrorism as a rational strategy of unconventional political struggle: the transition to asymmetrical actions, attacks on symbolic objects, and influencing public opinion as the main objective. This triality of characteristics linked to a model of the political process defines the existence of international terrorism as a phenomenon and provides a key to understanding its dynamics. It is concluded that there are four periods in the development of international terrorism, divided into two cycles with breaking points, ascending, and descending phases. The proposed periodization of the development of international terrorism is

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based on the identification of the centers as political-geographical areas, where contradictions are configured and the political struggle that is part of the logic of the terrorist strategy.

Keywords: international terrorism; political extremism; periodisation; civil conflicts; asymmetric actions

Tendencias actuales en el desarrollo del terrorismo internacional: una comprensión actual del problema

Resumen

El estudio examina el desarrollo del terrorismo internacional y el problema de su definición. En consecuencia, el objetivo del estudio fue generar una visión sistémica del terrorismo internacional e identificar las tendencias actuales en su desarrollo. Se utilizó un análisis estructural y funcional del terrorismo internacional como fenómeno político. Sobre la base del modelo analítico proporcionado, el desarrollo del terrorismo internacional se dividió en períodos sobre la base de la zonificación política y geográfica. Tres principios consistentes determinan las características clave del terrorismo internacional como estrategia racional de lucha política no convencional: la transición a acciones asimétricas, ataques a objetos simbólicos, e influir en la opinión pública como objetivo principal. Esta tríada de características vinculadas a un modelo del proceso político define la existencia del terrorismo internacional como un fenómeno y proporciona una clave para comprender su dinámica. Se concluye que hay cuatro períodos en el desarrollo del terrorismo internacional, divididos en dos ciclos con puntos de ruptura, fases ascendentes y descendentes. La periodización propuesta del desarrollo del terrorismo internacional se basa en la identificación de los centros como zonas político-geográficas, donde se configuran las contradicciones y la lucha política que es parte de la lógica de la estrategia terrorista.

Palabras clave: terrorismo internacional; extremismo político; periodización; conflictos civiles; acciones asimétricas.

Introduction

Topicality

It was believed that a number of reasons contributed to the spread of international terrorism: the defeat of the Arab countries in the Six-Day War of 1967, which revealed their military inability to resist Israeli claims to the Palestinian territory, which encouraged Arab militants to seek asymmetrical responses to military superiority; the spread of guerrilla movements that chose the terror tactics in Latin America; spread of anti-government and radical movements in the United States and Western Europe against the background of anti-war sentiments (Jenkins, 1978). During the decades of the 1970's and 2020's, international terrorism, as a phenomenon of world politics, underwent changes and transformations associated with changes in the international situation and world society as a whole.

These changes took place in several directions. The driving forces of international terrorism have changed; new conflict zones emerged, where conditions arose for the transition to asymmetric actions characteristic of terrorism; as world politics changed, so did the policies of countries in support of international terrorism; there were changes in the organization, forms and methods of conducting terrorist activity by its actors. International terrorism is a rapidly changing dynamic phenomenon, remaining one of the leading factors and threats to world politics.

1. Literature review

In modern academic research on the problem of international terrorism, one can identify both the waves caused by the growth and decline of interest in this phenomenon, and the conceptual division into the so-called traditional and critical studies of terrorism. The root of academic controversy is in the very definition of terrorism in general, and international terrorism in particular, which constitutes a "definition dilemma" (Scremin, 2020). According to. Scremin's apt definition, this dilemma manifests itself at the academic, political and operational levels, which, accordingly, hinders the creation of a single conceptual framework for the study of terrorism; distorts the political discourse on terrorism and delegitimises the means of combating it; and, ultimately, negatively affects international cooperation efforts in the fight against terrorism. The inconsistency of the basic understanding of the definition, which is a reflection of the lack of a stable consensus on the essence of the phenomenon, affects the whole understanding of the problems of its structure and dynamics.

The modern academic paradigm regarding the phenomenon of international terrorism began to take shape after the terrorist attack of September 11, 2001, and the ensuing War on Terror. Despite the extensive experience of understanding international terrorism in previous decades, it is characterised by three theoretical forces, which, in fact, create a definition dilemma. Impressive analysis of current legal framework for the definition of terrorism in (Margariti, 2017). First, terrorist activity can be equated with the phenomena of mass political violence with a wide range of historical and contemporary examples (Monaghan *et al.,* 2011; Sysoev, 2017; Tilly, 2004).

Second, there may be confusion in the phenomena of "insurgency — guerrilla warfare — (international) terrorism" (Garrison, 2004), or "revolution — terrorism" (Anderson, 2015). This version of a broad approach allows discussing the role of even the ISIS movement as an international terrorist group (Kane, 2018). Third, in the context of so-called critical research on terrorism, this concept can be "deconstructed" as a discursive phantom created by states to legitimise their own repressive policies against certain discriminated sections of the population. This trend is rightly associated with the approach of the Frankfurt School and the work of Chomsky (2013), who accuses the US authorities of forming a discourse on terrorism against the liberation movements.

Critical studies have numerous specific and general theoretical reports, in particular on the isolation and stigmatisation of the Islamic community by the British government (Norris, 2015), on the use of terrorism discourse in international politics as a "weapon of power" (Lorenzana del Villar, 2018), using the concept of combating violent extremism to ensure US foreign policy (Ambrozik, 2018), etc. Alternative theoretical directions are represented by the study of the role of gender in international terrorism (Pearson and Zenn, 2021; White, 2020), or the interpretation of the role of Islamophobia in the perception of the problem of international terrorism by Western societies (Karipek, 2020).

More productive are the specific studies of modern international terrorism as regards its most common movements or tactics. Ibrahim's (2020) typical report on such research provides a thorough overview of the activities of ISIS in Libya, including an analysis of the social and political aspects of the development of this movement and its political dynamics. Stenersen (2017) examines the current state of the al-Qaeda movement, concluding that it is moving towards a state of global franchise, which embodies the Salafi jihadist ideology and relies on the support of local insurgent movements. An assumption is made about the possibility of a new intensification of international terror if it is possible to rebuild its international capacity. Auger (2020) analyses the development, rather expected than real, of far-right terrorism and extremism. In general, we can

note a wide variety of approaches and methods to the study of international terrorism in the modern literature (Sandler, 2011). Some aspects of the study of international terrorism are attempts to identify the role of radical ideology in its genesis and to find the background for its theoretical analysis.

Holbrook and Hordan (2019) use the model of "cognition, causation and influence" pointing to the non-binary nature of ideological conceptualisation and emphasising the role of social identity in the emergence of ideological foundations of terrorism. The influence of social media on the spread of terrorist movements is a promising area of analysis of the current dynamics of international terror, as Miller (2019) reflected in the study. In the latest research on the problem, the scholar's manifest interest in a range of theoretical areas. The research line on attempts to analyse international terrorist activity through the interaction of two groups of actors — states and terrorist groups through game theory is continued, in particular, in the studies of Hanley (2017), Mumford (2018), Zahedzadeh (2017), etc.

Hawcroft J. — Intelligence Officer and current Head of Anti-Terrorist Programmes of George C. Marshall European Center for Security Studies, provides an overview of the future development of international terrorism in three main areas: motivation, tactics, goals and technologies. The forecast points to the predominant role of social motives in the genesis of terrorist activity of the future, predicting increased violence, attacks on "faceless" corporations as a personification of inequality and the possibility of impulsive, public-driven response of state institutions (Howcroft, 2018). The reverse trend —the reverse shifts from terrorism to legal political activity— is considered, for example, in the report of Ashour (2020).

A separate aspect of the problem is the policy of countries on international terrorism. Murphy's (2017) study of China's policy should be noted here, which is a turning, somewhat new, point. After all, China is moving from its traditional support for radical left-wing Maoism to ensuring stability within its borders, where it faces ethno-national and religious challenges. It should be noted that research on the problem of international terrorism is widely empirically supported. Bowie (2017) provides an overview of 60 key databases on international terrorism.

Thus, in view of academic interest and numerous studies on the problem of international terrorism, the existing drawback is the lack of a stable consensus on the definition of this phenomenon itself. The vast majority of research is determined by unclear methodology and the vagueness of their theoretical provisions (Bakker, 2012), which is true today. Many empirical studies do not have a systemic generalization that would link understanding of international terrorism as a phenomenon in the more or less stable theoretical scheme and provide theoretical grounds for identifying its current trends.

The objectives of this study are to form a systemic view of international terrorism, which must overcome a certain diversity of understanding of the phenomenon in modern academic literature and identify current trends in its development relying on a stable framework for understanding the nature of this phenomenon, as well as internal and external factors for its dynamics.

2. Methods (research design)

The research methodology is reduced to four main ideas. Central to the study is the provision of an effective definition of international terrorism, based on a structural and functional approach to the definition of this social phenomenon. We rely on the organisational concept of terrorism provided by Comas *et al.* (2014) as a polymorphic structural form that combines the features of formal organization, network and social movement. Accordingly, the main actor in international terrorism, which is connected with the direct development of terrorist activity, can be defined as "organisation", "network" or "movement".

The objective of identifying current trends involves the analysis of the dynamics of international terrorism, which is possible through the periodisation of international terrorism and its consistent transformation in accordance with changes in society. This aspect is often overlooked by researchers in constructing generalized concepts of the phenomenon, despite the availability of special intelligence on the connection of international terrorism tactics with certain modern technologies (cyberterrorism) or features of modern society (use of electronic networks by terrorist groups).

Periodisation in the analysis of the dynamics of international terrorism is associated with the method of concentres. It is obvious that research on the problem of international terrorism is often based on the materials of a separate geographical or cultural-geographical centre of the spread of terrorist activity. For example, these are the Middle East, Northern Ireland (British), European centres of the spread of terrorism, which have their own logic of activation and a specific combination of goals and tactics that guide international terrorist groups.

Such centres have a complex cross-border structure that reflects both the interaction within the terrorist movement and its organisational or indirect interaction through informational, cultural, political influences with countries that are so-called "sponsors of terrorism". That is, they are interested in the spread of international terrorist activity as an instrument of their own foreign policy. Such politico-geographical, or geopolitical, in the same sense of the term, zones in which international terrorist activity is formed are defined as "concentres". By the nature of international terrorism,

the very acts of terrorist activity can take place outside the concentres, being only inspired by the existing political, ideological, and socio-cultural conditions.

The existence of political conditions and interests as organisational structures of international terrorist movements and states — "sponsors of terrorism" requires consideration of their relationship. That is, international terrorist activity must be considered in the context of regional and international policy. The basic assumption of this study is the impact on world (regional) public opinion as the main goal of international terrorist activity in its modern forms, which is achieved by means specific to modern society, and has a political effect set by terrorists.

In general, the hypothesis of current trends in the development of international terrorism takes the form of successive changes within the political and geographical concentres considered in the context of international (regional) policy and general trends in the development of concentre's societies. This structure of the study allows avoiding "monism", which is inherent in a number of studies in determining the decisive cause of terrorist activity, such as religious one, in the definition of "international Islamic terrorism". International terrorism is seen as something that involves: the cross-border scale of the spread of terrorist activity, and the impact on the international (regional) political process.

The data of the Global Terrorism Database (GTD) (n.d.) were used in order to test the hypothesis regarding the periodisation of the dynamics of international terrorism. The database includes information on more than 200,000 terrorist acts (events) since 1970 worldwide. The database is structured according to 135 variables, which allow classifying terrorist acts by time, place of events, actor, scale, content, and a number of other characteristics. The data on the events of the 2000's are the most complete. This fact is a limitation on the study.

3. Results

In order to determine the dynamics of global terrorism, the smoothing of a number of data by a polynomial trend line according to the 6th degree equation was used, which most fully reflects the existing trend (Figure 1).

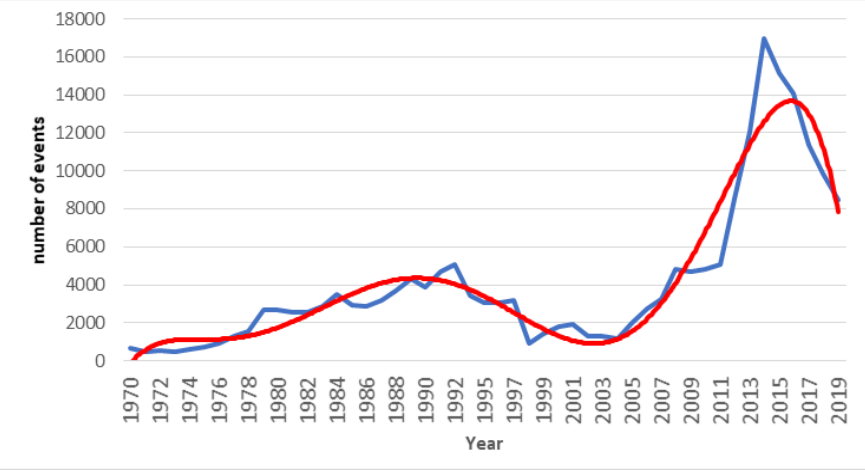

Figure 1. Dynamics of the total number of cases of terrorism in the world, 1970 – 2019 (Global Terrorism Database, n.d).

The trend line reveals two waves of dynamics, which are represented by cycles of rise, peak and decline of terrorist activity worldwide. Detection of peaks allows dividing a series into certain periods. This is done at the breaking points of the trend in its upper and lower peaks. Accordingly, these are the periods: rise (1970 — 1990), decline (1991 — 2002), rise (2003 — 2016), decline (since 2017). The last cycle is not complete, its downward wave has emerged in the last three years of the study period.

The waves are characterized by increasing intensity (Table 1). This is, respectively, the average of 2,140 cases per year for the period of rise of 1970-1990, 2,722 cases per year for the period of decline in 1991-2002, 6,899 cases per year for the period of rise in 2003-2016, and 9,898 events per year in the period of 2017-2019.

Table 1. Number of cases related to terrorist activity by regions of the world

Years	Australia and Oceania	Central America	Central Asia	East Asia	Eastern Europe	Middle East
1970-1990	112	8,724	0	287	127	4,467
1991-2002	107	1,556	380	359	1,602	5,886

2003-2016	47	60	176	149	3,309	36,995
2017-2019	39	34	18	30	228	9,066
Years	North America	South America	South Asia	Southeast Asia	South Africa	Western Europe
1970-1990	2,190	11,783	3,522	1,628	2,268	9,848
1991-2002	758	5,228	5,313	1,847	2,712	4,194
2003-2016	435	1,807	32,712	7,992	10,612	2,298
2017-2019	315	754	9,754	2,612	6,150	693

Source: Global Terrorism Database (n.d.)

The first period: 1970 — 1990 (rise). In absolute terms, Central and South America dominated by the number of terrorist acts in this period. This structure corresponds to the active concentres of international terrorism. At the time, they corresponded to an active "left wave" in South and Central America, where confrontation between governments and left-wing (or right-wing, as in the case of Nicaragua) guerrilla movements reached the scale of a civil war. Terrorist tactics were part of this war, and widespread external intervention by the Soviet Union and the United States contributed to the internationalization of terrorism. In Western Europe and North America, terrorist activity has also been linked to left-wing movements that have had outside contacts and support from Soviet intelligence. The situation in South Africa was somewhat similar in nature to external intervention, where local anti-government liberation movements also had Soviet support. The development of terrorist activity was connected with the activities of the Soviet special services, and, consequently, with the bloc confrontation. Cross-contacts between terrorist groups, related political movements and Soviet special services have been a factor in the integration of international terrorism.

According to the relative number of terrorist acts per 10 thousand population according to the Global Terrorism Database, the largest terrorist activity for the period was observed in El Salvador (10.5 cases), Lebanon (5.5), Nicaragua (5.5), Rhodesia 3, 1, Peru (2.7), the West Bank and the Gaza Strip (2.5).

Figure 2 presents data on the dynamics and distribution of terrorist acts in El Salvador. The data reflect the dynamics of terrorist acts characteristic of active civil conflict, with periods of escalation and attenuation of the conflict. Attenuation is possible after retreat of the parties, or the party to the conflict from the tactics of terror. In the case of El Salvador, this happened after finding a political solution to the conflict.

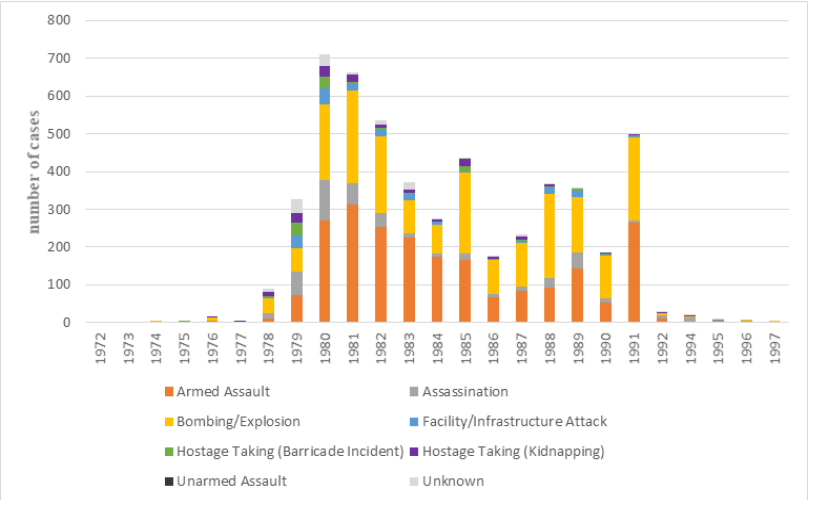

Figure 2. Dynamics and structure of terrorist acts in El Salvador, 1972 – 1997 (Global Terrorism Database, n.d).

The dynamics is characterized by a high proportion of armed attacks. Murders and bombings accounted for 47.0% of cases. The structure and dynamics of the El Salvador conflict were typical of the ended conflicts of the period. The events in Bolivia, Peru, Chile, Guatemala, and Nicaragua were similar.

The period is associated with the expanded Middle East concentre of international terrorist activity. The turning point was the events of the Islamic Revolution in Iran in 1979. The events in Iran inspired the radicalisation of extreme Shiite political movements, giving them a powerful ideological impetus to build an Islamic republic. The leaders of the revolution came out with radical anti-Israel rhetoric without entering into direct military confrontation with this country. Subsequent events have destroyed political stability in Lebanon, creating a political base for regional military-political movements in the country that relied on terrorism, especially the Hezbollah movement.

At the same time, this stage was characterized by a more explicit and active participation of countries in supporting terrorist movements and terrorist tactics. These countries were the Islamic Republic of Iran itself and the countries of the "Iranian axis" — Syria and Libya, the latter was indirectly supported by the USSR. The structure and nature of the struggle at that time gave grounds for US diplomacy to talk about the phenomenon

of "state terrorism" (Finn and Momani, 2017). Its apotheosis was the 1988 terrorist attack on Lockerbie, which was blamed on Libyan intelligence. The Soviet invasion in Afghanistan in 1979 complicated the confrontation by weakening its position. The terrorist activity of the 1980's took place against the background of the progressive ideological weakening of socialist movements in the Arab world and the growing rise of their radical Islamic alternative, such as the ideology of the revolution in Iran.

The second period: 1991 — 2002 (decline). During this period, there has been a significant decline or cessation of terrorist activity in the concentres of Central and South America — with the exception of Colombia. In Western Europe, in South Africa this is clearly linked to the achievement of a political settlement and the cessation of the situation of bloc confrontation.

In this period, there is no clear focus on any of the regions. There is some aggravation in some regions, where the parties to the civil conflict are turning to tactics of terror. The share of terrorist activity cases in the Middle East, South and Central Asia is increasing. This was due to the active phase of the conflicts in Algeria, Pakistan, and the continuing confrontation in Lebanon.

The structure of terrorist activity cases in Lebanon (Figure 3) shows a slightly different situation from the guerrilla war of the previous period. Bombings and killings play a predominant role, which account for 79.4% of terrorist acts. In Pakistan it is 56.5%, in Algeria — 50.0%, in Colombia — 53.8%, in the Palestinian Authority and the Gaza Strip — 48.9%.

In the 1990's, there was a steady downward trend in the number of international terrorist acts (Tilly, 2004:7). Despite the emergence of global satellite news channels in the early 1990's, which objectively multiplied the effects of terrorist acts, international terrorism was experiencing a decline caused by some deadlocks of the struggle in its leading concentres. As a result of the Iran-Iraq war, the First Gulf War, and the collapse of the military bloc system, a combination of circumstances led to the temporary deradicalization of the leading motive for terrorist activity in the Middle East, the Arab-Israeli confrontation in Palestine. The "sponsors of terrorism" states were losing their political motives to actively support anti-Israel movements; in the social realities of the 1990's, symbolic acts of terror on a global scale could not find a resonance, and Israel itself was involved in a compromise-oriented dialogue. In European and South Asian concentres, terrorist activity has been declining since the early 1980's due to political changes that discredited radical communist ideology.

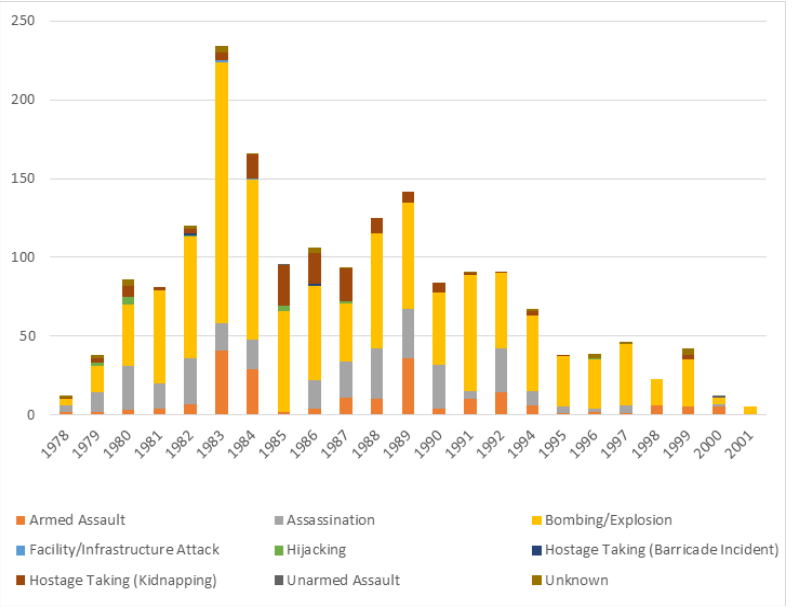

Figure 3. Dynamics and structure of terrorist acts in Lebanon, 1978 – 2001 (Global Terrorism Database, n. d.)

Third period: 2003 — 2016 (rise), the beginning of the upward wave of 2017 — 2019. During this period, the role of political events related to the War on Terror, the leading events of which were the US invasion in Iraq and Afghanistan, and with the Arab Spring in the early 2010's, is unconditional. At the beginning of the period, three countries in the Middle East and South Asia — Iraq, Afghanistan, and Pakistan — accounted for more than half of the total number of terrorist attacks. The structure of cases in Iraq is similar to that in Lebanon, with an even higher proportion of bombings of 73.4%. In 2013-2019, the number of terrorist attacks in Syria, Egypt and Libya became noticeable. Since 2015, suicide bomber attacks as the basis of ISIS terrorist tactics have become a significant phenomenon. A number of countries, where there was a decline in terrorist activity in the previous period, experienced a new cycle of confrontation. In particular, Colombia, Turkey, Lebanon, Sri Lanka, and the Philippines experienced the second wave of terrorist activity.

Figures 4 and 5 show the structure of terrorist attacks in Lebanon during the active phase of the conflict in 1979-1989, and in Afghanistan in 2003-2019.

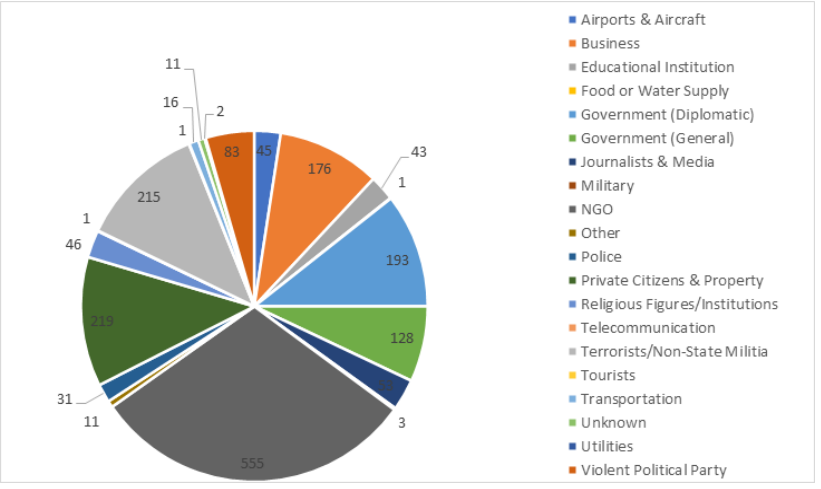

Figure 4. Targets of the terrorist attacks in Lebanon during the active phase of the 1979-1989 conflict (Global Terrorism Database, n.d.)

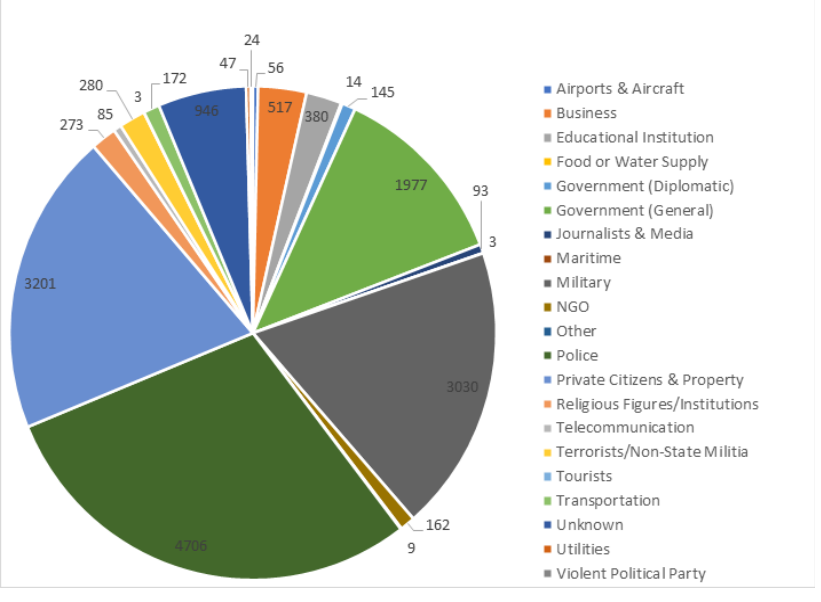

Figure 5. Targets of terrorist attacks in Afghanistan during the active phase of the 2003-2019 conflict (Global Terrorism Database, n.d.)

As we can see, they are typically similar, with the difference that the targets of terrorist attacks in Lebanon were more often private individuals, non-governmental military units and diplomatic missions. This reflects the peculiarities of the political confrontation in the country.

The identification of concentres of terrorist activity indicates the following sequence of stages in the development of global terrorism. International terrorism is a changing problem in modern international relations. According to Google Books Ngram Viewer, interest in it arose after World War II and began to grow rapidly from the early 1970's, when the resonant acts were made, and 2004 with a significant decline in the mid-1990's and in present.

The first stage covers the end of the 1960's — 1970's. This stage in the development of international terrorism is associated with the Middle East (Israel and Palestine) and European centres of terrorist activity. The transition to international terrorist activity in the Middle East was obviously due to a set of circumstances — the loss of confidence of the societies of Arab countries in the possibility of achieving a military victory over Israel, the radicalisation of the Palestinian diaspora, political changes in Western societies. The Doomsday War of 1973 finally revealed Israel's military superiority over its immediate opponents — Egypt and Syria, which had the opposite effect. The beginning of the Camp David process and the search for peaceful coexistence by Egypt, and the transition of Palestinian groups, including the Palestine Liberation Organization, to asymmetric action tactics. Resonant terrorist acts of the 1970's: the terrorist attacks in Munich (1972), at the airport in Lod (1972) and in Harturm (1973) were striking examples of attacks on symbolic objects to demoralise society of Israel and an attempt to achieve changes in public opinion in the West. On the one hand, such acts created the image of terrorists for the Palestinian movement, on the other hand, they urged the theme of the struggle in the Middle East in public opinion, providing an information pretext and a platform for pro-Palestinian intellectuals.

The shifts in Western societies have made this tactic quite rational for many reasons. The 1970's were a turning point in the end of the "Glorious Thirty Years" — the military and pre-war generations departed from active participation in public life, the active post-war generation of intellectuals at that time was formed in the conditions of the anti-war campaigns of the 1960's and suffered the consequences of the economic shocks of the early 1970's, which ended the period of continuous post-war rise. The spread of colour television for the first time allowed broadcasting "real-time terrorist attacks" to an international audience. A set of complex influences on public opinion led to the emergence of the intellectual movement represented by N. Chomsky. The anti-war and radical sentiments created during the Vietnam War were transferred to the realities of the Middle East and to the political

support for Israel by the governments of the United States and other Western countries. Palestinian terrorism has received direct or indirect support from other political forces interested in destabilising Israel and Western societies, most notably the Soviet Union, its satellites, and its allies.

At the same time, the actual European concentre of international terrorism, represented by radical left-wing terrorist organisations, was being formed. Red Brigades, the Red Army Faction, and others deployed at the turn of the 1960's and 1970's amid destroyed hopes of radical change during the events of the May 1968 Revolution in France, the political isolation of the Communist Party in Italy, and the limited political capabilities of Europe's radical left-wing movements in a military bloc confrontation.

The concentre of terrorist activity in Southeast Asia has been linked to the spread of Maoist ideology and the support of the Chinese Communist Party, which has inspired and influenced Chinese ethnic minorities in the region.

Thus, the stage includes the Middle East concentre being associated with shifts in the societies of the region. It is based on the emergence of radical fundamentalist ideologies, embodied by the al-Qaeda movement, and the largest symbolic act — the attack on the Twin Towers in New York on September 11, 2001. We consider the political impasse in the modernisation of societies in the region achieved at the beginning of the 21st century to be the root cause of the transition to asymmetric actions and symbolic attacks at this stage. Authoritarian regimes with exhausted opportunities to develop their own ideology (that is authoritarian regimes in crisis of legitimacy), demographic collapse, culture shock from modernisation combined with insufficient economic growth and a high degree of social inequality — this set of circumstances is extremely favourable for the development of radical ideologies and radical movements, the suppression of which leads them to the practice of asymmetric actions.

While the acquisition of a regional scale by terrorism in the Middle East can be explained by the region's Arab and Islamic unity, its international and anti-Western, anti-American orientation will need to be further explained. The United States also act as the embodiment of modernization shifts opposed by the radical ideology of Islamic fundamentalism; and as a political partner of authoritarian regimes against which radical movements are directed; and as the object of traditional criticism by these regimes, which often base their ideology on anti-Americanism. In this sense, the terrorist struggle of the 2000's is seen as a direct response to the process and ideology of globalisation.

Thus, the current trends of modern international terrorism should be seen in the development of the logic of the development of terrorist activity of its leading centres in modern social and political conditions. We consider

the events of the Arab Spring of 2010 to be the driving force behind this process. The Arab Spring of 2010 has to some extent covered most of the countries of the large (including North Africa) Middle East region. But not in all cases has it led to the establishment of a regular competitive political process, which creates risks of a shift to asymmetric action and political violence. As it turned out, this mainly applies to countries where there has been a collapse of societies and state power — Libya, Syria, northern Iraq.

The emergence of the ISIS movement and its rapid military-political successes, the promotion of an effective radical fundamentalist ideology that combines the features of Islamic Reformation and fascism is "a truly modern totalitarian project", as defined by Lohlker (2017), put the region the threat of a global collapse, the political consequences of which and their unacceptability for the international community are obvious. Joining forces for the confrontation of ISIS, which by the middle of the decade acquired the features of a state and conducted "almost" conventional military confrontation with the region (embodying the so-called "fifth wave" of international terrorism — the emergence of "semi-states" formed by terrorist movements (Honig and Yahel, 2019), inevitably put this movement before the alternative of using asymmetric actions, which was the case on a large scale.

The international terrorist movement personified by the ISIS has acquired a number of innovative features. They include the widespread use of the media and tactics of network terror. ISIS distinguished by the systemic creation of directed acts of symbolic terror actively using electronic media and social networks for the broadcast. Even acts of military cruelty, such as mass executions and the extremely widespread use of suicide bombers, were given the form of acts of symbolic terror and broadcasted to a wide audience. The tactics of network terror are the involvement of random supporters in terrorist acts, who are not organisationally connected with the movement, but organise terrorist acts in accordance with the campaign materials created by the movement and terrorist campaigns launched by the movement. Terror initiated in this way acquires the features of spontaneity, unpredictability, mass, promotes the emotional involvement of entire ethnic or social categories of people and the accelerated formation of appropriate stereotypes of public opinion. The mass migrations of refugees that accompanied the events of the mid-2010's exacerbated this trend.

An effective fundamentalist ideology, a network structure that brings this terrorist wave closer to defining the movement than to the organization, along with the practice of network terror contributes to the further spread of the Middle East concentre and its reach of the territorial borders of Central Africa (including existing Muslim communities, including where the Boko Haram movement operates), and to Europe, where migration results in the formation of Islamic communities in which activists of radical movements operate.

4. Discussion

The given understanding of the dynamics and current state of international terrorism, as noted, is based on the understanding of its content as a triad: asymmetric actions, attacks on symbolic objects, the focus on public opinion. This is different from Crenshaw's (1981) traditional model, which structures individual motives for terrorist behaviour, group decision-making and strategy development, and the broad socio-political context in which terrorist activity develops, and which is too broad and schematic to understand the root of the phenomenon.

In the modern literature, the discussion around terrorism has focused on the content of the radicalisation process with analytical models of political terrorism, which are developed on modern materials, aimed at building models of involvement in terrorist activity being close to socio-psychological models. Thus, Moghaddam's (2005) "steps" model considers involvement in terrorism as an evolution in the views of an individual who joins a terrorist organisation. Today, a group of concepts has been developed on its basis, including the concept of two pyramids — views and actions (McCauley and Moskalenko, 2008). The attitudes-behaviours corrective (ABC) model also focuses on mechanisms to justify violence in the organisation of terror campaigns (Khalil *et al.,* 2019).

The focus on such models ultimately theoretically equates terrorism and international terrorism with acts of political violence, conceptually reducing them to individual nature. That can reduce the problem even to definitions of "mental disorder", which can sometimes be found even in recent works (Kruglanski *et al.,* 2017; Kunst *et al.,* 2018). Even political models of terrorism are based on the understanding of terrorism as the beginning of a closed autonomous group (Kudinov *et al.,* 2020; Wilkinson, 2011).

The proposed approach is rationalistic in the sense that international terrorism is seen as a rational political strategy that has its own logic of application and is embedded in a sequence of other, including conventional, means of political confrontation. It is obvious that such an approach on the basis of modern materials can solve the dilemma of definitions and reach a lasting consensus on the framework structure of the academic definition of terrorism and international terrorism. The distinction between international terrorism and other forms of radical political struggle, which is not reduced to political violence (Sysoev, 2017), can be identified and clearly traced, and identifications with revolutionary movements are avoided (Anderson, 2015).

The given understanding of modern terrorism in the context of its development allows removing the characteristic of the critical approach "deconstructive" interpretations of international terrorism in the spirit

of the Chomsky's (2013) school. A clear understanding of terrorism as a rational strategy is determined by the frequency of stages of development and its own political logic, which eliminates the uncertainty of definitions, removes the problem of "constructed" discourses and "stigmatisation" (Lorenzana del Villar, 2018; Norris, 2015).

The results of the study raise a number of theoretical issues that require further research. In particular, on the mechanisms of influence of terrorist acts ("symbolic attacks") on modern society. The expected result of terrorist attacks in Europe was the growth of right-wing terrorism (Bjørgo and Ravndal, 2019) (which is not justified). However, the motives of the terrorist movements themselves, which in the situation of network terror become less predictable and stable, are poorly studied.

Today, a wide range of definitions of the concept of terrorism and international terrorism is used, which distinguish its individual essential features. Consistently, these include the interpretation of terrorism as: politically motivated violence by organised groups against non-combatants, which usually has the purpose of influencing the audience, means of intimidation the use of fear for political, religious or ideological purposes (Lykhova *et al.,* 2021; Schmid, 2004) directed activities against civilian targets by a non-state actor (Ganor, 2018), violent activities aimed at psychological influence (Wang and Zhuang, 2017), a certain culture of terror (Aran, 2019).

Analysis of the definitions of terrorism in the context of its political dynamics points to the key objectives of international terrorist activity and its differences from other types of conventional and unconventional actions in armed conflicts. First, international terrorism develops as a means of asymmetric action — it is an asymmetric response in a confrontation of a terrorist movement with a party to the conflict (almost always it is the political regime of a country or group of countries) when this confrontation cannot be reduced to a certain, possibly negative balance of power. That is, when the opposing party has a sufficient advantage in conventional forces and means to obtain a complete victory. Therefore, the transition to terrorist activity is dictated by the forced need for asymmetric unconventional confrontation. Second, such activity does not have the power structures of the opposite side as its direct addressee. Although they may be the target of individual terrorist acts, directing terrorist activity at them in certain conditions of confrontation does not make sense, because due to the fundamental difference in force potentials, it cannot lead to victory in the military confrontation.

The targets of terrorist attacks are symbolic objects, and the addressee is national, regional or world public opinion. Thus, thirdly, the victory in the asymmetric confrontation waged by terrorist means is achieved through the influence on public opinion and the initiation of negative processes for

the policy of the ruling regime. The desired result of terrorist attacks is the discrediting of the ruling political forces and their leaders, the initiation of civil disobedience campaigns, the destabilisation of the political situation and the formation of a political crisis, the deepest demoralisation of society. The third consequence follows from this — international terrorism is a struggle for public opinion, terrorist acts are symbolic acts. The struggle, which in the conditions of a more favourable balance of power turns into a sabotage against government officials and law enforcement agencies in order to gain direct political control over the territory is no longer terrorism in the modern sense of the word. Here is the divide between terrorism and other forms of unconventional confrontation — guerrilla warfare, insurrection, political revolution. It is clear from this understanding where terrorism and other types of unconventional confrontation can intersect and intertwine (for example, according to the spectrum of non-state combatants provided in the classification of Zohar (2016).

The ability to provide a symmetrical force response and to wage a symmetrical struggle, such as a military one, encourages the retreat from terrorist means, as they are less advantageous in terms of resources and benefits, and the struggle for territory — gaining political power — is the ultimate goal of political struggle. Acts of symmetrical confrontation which resemble terrorism are diversions in nature.

The difference between international and national (domestic) terrorism is the difference in the scale of public opinion on which the influence achieved by means of terrorist activity is directed. In the case of domestic terrorism, it is national public opinion, and the confrontation takes place in a national symbolic and informational context. In the case of international terrorism, the confrontation takes place in a more complex context, which includes global public opinion and national one, for example, within the region. The terrorist struggle presupposes the availability of effective mass media for the transmission of a symbolic act to public opinion. In case of international terrorism, it is the international media, and with the advent of electronic sources — cross-border media.

Conclusions

The study of current trends in the development of international terrorism is topical due to the acute political urgency and variability of this phenomenon. The study of international terrorism, as well as terrorism in general, despite the long history and rootedness of the phenomenon in modern politics, has a problem of lack of academic consensus on the fundamental problems of defining this phenomenon, which indicates problems with understanding its nature, thus complicating the understanding of its current state and

dynamics of development. The dilemma of definitions inherent in the study of international terrorism allows us to even form concepts for the deconstructive refutation of this phenomenon as existing only as a phantom concept in the imposed repressive discursive practices.

The study proposed a clear model for understanding international terrorism as a rational strategy for unconventional political struggle. This model is based on three successive principles: the transition to asymmetric actions, attacks on symbolic targets, influencing public opinion as the main goal. Such a triad of features, linked to a model of the political process, defines the existence of international terrorism as a phenomenon and provides a key to understanding its dynamics.

The proposed periodisation of the development of international terrorism is based on the identification of concentres as political and geographical zones in which contradictions are formed and the political struggle that they inspire, which is part of the logic of terrorist strategy. We distinguish five stages in the development of international terrorism (late 1960's — 1970's, 1980's, "pause" of the 1990's; 2000's and 2010's), which have a single internal logic, but differ in external circumstances due to the participation of external actors and changes in the development of societies.

Prospects for future research include an analysis of the mechanisms of the impact of symbolic attacks on targeted public opinion, the role of modern online media and the level of perception of international terrorism by modern societies.

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The modern law-making process: structure and main problems

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Abstract

Through the dialectical method the objective of the article was to analyze the process of the elaboration of modern laws, considering their structure and main problems. There is a major structure and problems inherent in the modern law-making process described in the article. The structure of law-making comprises four parts: 1. Cognitive-analytical part; 2. Theoretical foundations of the legal norms and acts they dictate; 3. Validation of legal act or norm; 4. Monitoring of relevant rules and legal acts. The main legislative task is to draft legal norms that stimulate the active development of all parts of the State and society through a deep perception of all related processes, including those involving standard-setting. It is concluded that the main factor affecting the quality of legislation is the lack of a uniform legislative basis for the issuance of legal acts. There seems to be a real need to develop a uniform legislative act on the law-making process. The Code containing general and specific parts of each law must be developed.

Keywords: legislative process; legal norm; structure of the law; problems of legislation; modern laws.

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El proceso moderno de elaboración de leyes: estructura y principales problemas

Resumen

Mediante el método dialéctico el objetivo del artículo fue analizar el proceso de la elaboración de leyes modernas, considerando su estructura y principales problemáticas. Hay una estructura y problemas principales inherentes al proceso moderno de elaboración de leyes que se describen en el artículo. La estructura de la elaboración de leyes comprende cuatro partes: 1. Parte cognitiva-analítica; 2. Fundamentos teóricos de las normas jurídicas y actos que dictan; 3. Validación de acto o norma jurídica; 4. Seguimiento de las normas y actos legales pertinentes. La principal tarea legislativa es redactar las normas legales que estimulen un desarrollo activo de todas las partes del Estado y de la sociedad a través de una percepción profunda de todos los procesos relacionados, incluidos los que presentan el establecimiento de normas. Se concluye que el principal factor que afecta la calidad de la legislación es la falta de un fundamento legislativo uniforme que determine la emisión de actos jurídicos. Parece surgir la necesidad real de desarrollar un acto legislativo uniforme sobre el proceso de elaboración de leyes. Se debe desarrollar el Código que contiene partes generales y específicas de cada ley.

Palabras clave: proceso legislativo; norma jurídica; estructura de la ley; problemas de la legislación; leyes modernas.

Introduction

The public relationships are mainly formed in unregulated fashion as affected by social, economic, political and other processes continuously changing in state. The precondition for legal norms issuing is perception of the situations, factors and enactments promoting the development of the public relationships legally regulated for the convenience of social progress. The law-making activity to regulate public relationships is firstly associated with relationships ordering via law norms which requires providing certain forms and patterns – it means the relationships should be formally defined and expressed via language of the terms, categories and institutions which are well-known and familiar to the law sciences (Besson and Martí, 2018; Kozenkova *et al.*, 2021). It should be taken into account that legal normative acts are issued by different law-making bodies differing form each other via rank and competence as well as varied properties. This state of things has a strong influence on available laws and by-laws nature which can often contradict each other (Widiati, 2018; Bobrovnyk *et al.*, 2020). All listed above determines the introduction of the new science with its structure

and main problems of scientific concerning's. The structure of law-making as new science is closely related to the legal act ranking. Ranking of the statutory acts assumes a subsequence for their location from inferior acts to the superior ones taking into account their power as well as their intersubordination related to other statutory acts (Nemirova and Savelyeva, 2020; Gava *et al*., 2021).

1. Methods

To describe the legal events and facts, the general scientific dialectic method is used. When classifying four parts of law-making as science, different techniques and methods are used. Those are analyses and synthesis, inductive and deductive methods, comparing, formal method. Formal logical approach is used when analyzing the mechanism of creation of the new legal terms dealing with main law-making tasks. Using of techniques and methods from above could add and slightly modify the general dialectic methods to make it to serve the new researching needs and objectives. The new modifications of the method would fill the research objectives they are charged with.

2. Discussion and Results

Currently, the legal science mainly considers the law-making process as authorized state bodies' activities aimed to production as well as change and cancels of legal norms (Besson and Martí, 2018; Magradze, 2020). Such approach to understand the law-making addresses pertinently to one of its parties which is legal norm drafting when the legal norm is produced by authorized body and then enforced in acting.

However, the law-making should not be deduced to understand it only as the activity for legal act issuing as far as it solves the broader tasks. In a fair try that the law-making covers even more significant range of activities: 1) Preparation of legal act concept and project; 2) Detection of the need to regulate legally some or other public relationships; 3) Determination of regulative character and power direction (Gava *et al*., 2021).

The law-making subject also uses other demands to their content: 1) An agreement between public relationships progressively developing, social interests, needs and legal norms; 2) Correctly determined need to regulate legally some or other relationships; 3) Legitimacy of legal acts themselves, their accordance to international, constitutional and other superior norms; 4) An agreement between legal norms and commonly received moral, habit norms, big-hearted, human and fairy ideas, universal values;

5) Clarity, apprehensibility, lucidity of the legal provisions; 6) Correct determination of legal regulation level; 7) Non-contradictive legal norms, their systematization; 8) Presence of necessary duty norms, the character of the legal sanctions (Bobrovnyk *et al*., 2020).

In other words, when creating the legal norms, the law-making subjects have to take into account many factors associated not only with standard setting but with solving the tasks of the larger scale: promoting the further development of whole state legal system and public relationships established therein, striking their modernization, preventing of social conflicts and establishing of legal mechanisms for their annihilation, etc (Konasinghe, 2020; Nemirova and Savelyeva, 2020).

The main law-making task is to write the legal norms stimulating an active development of all state and society parts via profound perception of all processes related including those presenting the standard setting. When drafting the legal acts, the law-making subject should resolve the task consisting of three main components: noesis, activity and result, which form relatively complete cycle when their dialectic mutual transition takes place (Konasinghe, 2020). Writing the legal norm outside of this cycle seems not to be possible because its writing must be drawn from the needs that may have been indicated via noesis and procedures of authorized bodies for norm issuing succeeding thereafter.

However, the legal acts developed are not practically science-backgrounded, are written topically of the day and do not consider the main trends of social, economic, and political development of state and society. This causes their rapid obsoleting. The legal acts issued do not encourage the public relationships participants to observe them. The law-making subjects formulate the legal provisions mainly via conventional way when behavior rule and sanction for its break-up are provided. In contemporary legal reality, the law-making solution should maximally contain the indorsements for active willful observations of the normative provisions promoted by all parties of relationships via inclusion of all interests in the modification of legal norm. It is understood that legal norms must regulate the public relationships as well as spur their development in the direction and in the interests of all state and society rather than for individual interested group. The law-making subjects give the go-by a stage of perception of the needs for public relationships regulation and so that make the law-making solutions without necessary background, executability, controllability. A durability of such legal acts are also neglected (Umedov, 2021; Gava *et al*., 2021).

Moreover, the most important factor influencing the whole quality of law-making is the absence of uniform legislative procedures determining an order for drafting and issuing of Russian acts.

All of these problems and other find out by the scientists are also caused by the fact that legal science describing the law-making process, as uniform law-making activity background had not been yet formed.

So that, the law-making subjects must assume that elaborating the law-making solution is a unified whole process that covers also the noesis or investigation of given public relationships and then the elaborating of legal norms aimed at regulation of the relationships. Without a stage of perception of the nature, content of public relationships, without definition of the grounds causing the objective need to enforce legally the public relationships, it is untenable to include them into the only possible legal form. This is due to the fact that at the first stage the law-making subject investigates the public relationships for the objective need and real possibility to regulate them via legal norms, i.e. percepts their legal content, while at the second stage it creates a project of suitable norm which is capable to provide the qualitative functioning of the relationships, i.e. the form by which the indicated content could be expressed is then determined (Bobrovnyk *et al*., 2020).

The modern state-of-art of law-making theory as whole systematized legal science constituting the grounds for law-making activity is insufficient (Mcnamara *et al*., 2019). The law-making sciences and procedures for legal solutions develop without significant interaction. An evident contradiction has raised: the recent needs for scientific comprehension and theoretical background of law-making activity are not firstly taken into considerations by law-making bodies, which continue to issue the legal acts following trials and feedback, and secondly, they are poorly considered in law-making theory that is formed without scientific concept and system in the vagarious way (Nemirova and Savelyeva, 2020).

Numerous papers of Russian scientists concern this problem; a need to create the scientific backgrounds for law-making process is highlighted. The modern legal reform sets out a recent task to modify radically the jurisprudence followed by the setting apart individual norms with legal nature for general state and law theory among which the science dealing with rulemaking and legal workmanship called “nomography” must take rightful place (Magradze, 2020).

“Normographiya” i.e., science dealing with legal workmanships which was presented to the scientific community well qualifies its objective declared because it contains mainly the methodology to product one or others law-making solutions. Nevertheless, law-making theory as individual legal science should not handle such narrow task. As law books note, the law-making theory interest range should include all diversity of law-making activities. It begins with the pre-project study of legal regulation scope, scientific background of the need and necessity to enforce legally the relevant public relationships and finishes with standard norm setting carried out during law-making process at all levels.

Moreover, the law-making theory being individual legal science must have own definitions, idealized theoretical models of solutions for typical social events. Therefore, the law-making theory must produce the scientific criteria of feasibility, quality and effectiveness for such of the solutions, to create own approaches to resolve the law-making tasks, to produce uniform, simple and readable legal terms, categories, institutions etc., that should be friendly to the setting bodies.

Generally, it is necessary to proceed from assumption that law-making as legal science is the law branch determining the public relationships to be regulated via legal norms, establishing the causes for the legal enforcing, proving an objective need to realize the legal provisions in the point of view of legal workmanship and presence of physical, human and other assets to do this well, and in the same way, it is the science studying the methods and procedures to issue the legal acts, ways to change, add and cancel them when considering the social, political and economic processes developing in the state.

As it happens, the law-making theory should be a scientific background of all legal act issuing process rather than standard setting because quality and effectiveness of legal regulation is firstly reached through the foundation of its necessity and subsequently perfectiveness of legal norms issued.

Disregard of appeared needs for theoretical providing of the legal acts intensively issued at all law-making levels is to sidetrack a problem of necessity to transfer the law-making process from empirical field into the hemisphere where the solutions are made based on the scientific knowledge.

Due to this, law-making science should introduce in its subject matter all aspects of the law-making solution elaboration. Therefore, the law-making science must include the following sufficiently separate but then logically bracketed structural elements.

1. Cognitive-analytical part. It is a primary stage allowing the law-making subject to find out and justify the need to regulate certain public relationships in normative manner. The law-making science has to create the procedures to find out such of relationships; to justify the objective needs making the legislator to their normative consolidation; to indicate the criteria by which a possibility to enforce legally the public relationships in view of rule-making procedures, physical assets and form of incorporation for realization of legal norms issued, is assessed; to provide for the determination ways of the consequences which could be appeared due to the legal norm acting; to elaborate the mechanism allowing to resolve the problem about possibility or impossibility to control the legal norm realization.

At presence, it is the most difficult part of the law-making theory because it remains mostly outside of the Russian scientists' eyesight.

2. Theoretical basics of the legal norms and acts issuing. This is a part concerning directly the issuing of legal norms due to their textual formulating.

The law-making theory has to break new scientific ground for all cycle of legal enforcement of public relationships regulated:

1. Choice of law branch for public relationships to be regulated.
2. Specification of legal norm kind (imperative, dispositive) (Konasinghe, 2020).
3. Scientific background for legal norm content.
4. Proving of use of the modificateur giving the peculiarities to the legal norm realization.
5. Issuing a variation of the legal norm elaborated in accordance to the creative law-making principles etc.
6. Organizational culture is also shown to be an important factor in explaining compliance with the law (Gava *et al.*, 2021).

3. Validation of legal act or norm. This part concerns the process of issuing the legal acts carried out by each of law-making subject.

The law-making theory must produce the most important scientific traits to transfer the scientifically formulated text of the coming legal norms into the range of authorized state provisions mandatory for all persons addressed (Besson and Martí, 2018; Umedov, 2021).

As a rule, it comprises a long-term stage legislatively enforced as certain process regulations. For the present purpose, the law-making task is to create user-friendly and effective mechanism for issuing of qualitative legal norms and acts.

These standards and rules may also stem from other environmental conventions with differing contracting parties. To which kind of standards and rules the reference is made is a question of interpretation and involves the risk of future disputes among the contracting parties and the organization if the reference does not relate to specific instruments (Romanovskaya *et al.*, 2020).

It should be born in mind that law-making process against political parties' competition provides issuing uneasily poor legal acts different by their social, economic, and political content; as a rule, there are the acts voted by the ruling party dominating the parliament. The same phenomenon can be observed in medicine field, where society has chosen to use the concept of the profession as a means of organizing the services of the healer, professionalism has come to serve as the basis of this social

contract (Magradze, 2020). The law-making theory task is to find out the better decision to solve this problem.

4. Monitoring of relevant legal norms and acts. This part deals with the control over legal norms issued depending on their objectives and tasks.

This is the prime part of the law-making science because law-making solution monitoring is not systematic now. This leads the collisions between some of legal acts of different levels as well as contradiction of some legal norms against each other. The legal norms are often not geared to perspective and long-term applications, many legal acts are inopportunely changed and added that leads to their slackness, so those acts require to be cancelled (Leino and Curtin, 2017; Mcnamara *et al.*, 2019).

The normative legal background of the law-making legal science is constituted by numerous legislative acts of Russian Federation and its subjects which raises certain difficulties for development of law-making theory terms, categories and institutions, puts back the production of sufficient definitions to percept profoundly the processes associated with production and adoption of the law-making solutions.

As we suppose, clamant necessity to develop the uniform legislative act concerning the law-making process in form of Law-making Code containing the General and Specific Parts has raised. Tolbert P & Stern R promoted the same idea in their paper (Konasinghe, 2020; Umedov, 2021).

Conclusions

Thus, as Russian law papers analysis shows, structure of the law-making science must include all processes of issuing legal norms and acts rather than standard setting process only including validation of legal norm. The quality and effectiveness of legal regulation are provided by its groundings and necessity arisen from objective development of the public relationships in the first instance.

The quality of legal norms and acts issued should be surely provided by the law-making subjects. However, if public relationships regulation would not be scientifically grounded i.e. would not resulted from the objective needs then legal act issued, even issued in the best manner from rule-making point of view, would never be effective and so deems to be cancelled. Therefore, the law-making science should comprise all of four structural elements listed above.

Conflict of Interest

The authors confirm that the information provided in the article does not contain a conflict of interest.

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The Role of Information Technologies in Improving Efficiency of Russian Customs Administration (Based on Results of Sociological Survey)

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Abstract

As a research objective, the digital paradigm of economic and social development, in general, which defines the information strategy for the development of the Russian customs service and administration as necessary and priority, is analyzed. The methodological basis is based on the ideas and principles of an integrated information approach to the study of the customs service and the concept of «customs service», which treats the customs administration as service oriented. We also use additional theoretical approaches (socio-cultural and neo-institutional) as an explanatory model of the developmental characteristics of the Russian customs service. The empirical verification of conceptual attitudes in this study was conducted based on our 2020 expert sociological survey. In the survey, there were 269 employees of Rostov customs, which is structurally included in the Southern Customs Administration. The study concludes that the greater efficiency in the positive dynamics of the work of the Russian customs authorities is associated with the introduction of information technologies (especially electronic declaration). Consequently, the results of this study can be used to develop a strategy to overcome certain barriers in service.

Keywords: information technology; customs administration; customs system; customs authorities; digitization of computerization.

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El papel de las tecnologías de la información en la mejora de la eficiencia de la administración aduanera rusa (según los resultados de la encuesta sociológica)

Resumen

A modo de objetivo de investigación se analiza el paradigma digital del desarrollo económico y social, en general, que define la estrategia de información para el desarrollo del servicio y la administración aduanera de Rusia como necesaria y prioritaria. La base metodológica se basa en las ideas y principios de un enfoque integrado de información para el estudio del servicio aduanero y el concepto de «servicio aduanero», que trata a la administración aduanera como orientada al servicio. También utilizamos enfoques teóricos adicionales (socioculturales y neoinstitucionales) como modelo explicativo de las características de desarrollo del servicio de aduanas ruso. La verificación empírica de las actitudes conceptuales de este estudio se llevó a cabo sobre la base de nuestra encuesta sociológica de tipo experto de 2020. En la encuesta, había 269 empleados de la Aduana de Rostov, que está estructuralmente incluida en la Administración de Aduanas del Sur. El estudio concluye que la mayor eficiencia en la dinámica positiva del trabajo de las autoridades aduaneras rusas está asociada con la introducción de tecnologías de la información (especialmente con la declaración electrónica). En consecuencia, los resultados de este estudio se pueden utilizar para desarrollar una estrategia para superar ciertas barreras en el servicio.

Palabras clave: tecnologías de la información; administración aduanera; sistema aduanero; autoridades aduaneras; digitalización de la informatización.

Introduction

Strategically important areas of development of the Russian Federation include creation of favorable conditions for foreign economic activity, increasing competitiveness and improving the investment climate of the country (Anisina and Pavlova, 2021). In this regard, customs administration naturally falls into the focus of public and scientific attention. It should be noted that over the past decade a lot has been done to improve its efficiency, which has yielded positive results, especially in the field of digitalization of customs procedures (Balandina *et al.*, 2018). Experts state that Russia is even ahead of other countries in terms of efficiency and timeliness of publishing information on classification and origin of goods, possibility and conditions for appealing administrative decisions by the regulatory authorities (Solehzoda, 2017; Dmitrieva *et al.*, 2020).

Nevertheless, experts state, that it has not yet been possible to overcome the significant gap between Russia and other countries in the field of customs administration, which determines the low position of Russian customs service in international rating (Koroleva *et al*., 2019; Kiyanova *et al*., 2020). The problems associated with customs clearance procedure and the significant time spent on processing documents (the number of documents being disproportionately large), have a painful impact on functioning of Russian customs system. This system has some other problems: the growth of business costs, the lack of sustainable partnership with business actors; disjointed work of customs and tax services and, as a result, the reproduction of shadow schemes and strategies, in customs payment and taxes. (Vorotyntseva *et al*., 2020; Dmitrieva *et al*., 2021).

The solution of these and other problems that determine the lag of Russian customs system from other states is directly related to high quality of customs administration. Approved by the Government of the Russian Federation in May 2020 (No. 1388-r), the "Customs Service Development Strategy until 2030" involves overcoming barriers to improve competitiveness of customs system by creating favorable conditions for all of the participants in foreign economic activity. Taking into account the world practice of customs administration (primarily related to the digital paradigm transition of customs services), it is focused on automation of business processes related to customs administration; interaction of customs authorities with other government agencies and business through electronic technologies; reducing time and financial costs for participants in foreign economic activities while improving the effectiveness of customs control (Romanovskaya *et al*., 2020).

Thus, although the period of Russian customs service reform has brought some positive results, the remaining problems in the system of customs administration do not yet allow us to assess it as one meeting international standards and tasks of economic development of Russia, ensuring its economic security.

This determines social significance of the study, while its scientific relevance is associated with a wide range of opinions and positions regarding the concept of customs administration, methodological models of its study and strategies for improving efficiency of Russian customs system and administration in the context of modern Russian realities and risks (Dmitrieva *et al*., 2020).

Many Russian scientists turn to the study of foreign experience in organizing management of the customs service. That seems justified in view of the earlier transition of some countries to advanced information technologies, awareness of the prospects of service work of customs authorities, understanding the need of a dialogue between customs services and business (Balandina *et al*., 2018). For Russian scientists, the

factor of customs service proximity to business (in terms of understanding its problems and trying to solve them optimally) is also an important effectiveness indicator of the customs administration system (Solehzoda, 2017; Anisina and Pavlova, 2021).

Research shows that abroad they also discuss interaction of tax and customs departments and validity of their separate existence (Kahn *et al.*, 2001). These aspects are included in Russian customs discourse, and in most cases, experts treat the inconsistency of tax and customs services as one of the serious reasons for the low efficiency of Russian customs administration.

At the same time, despite some discussions in the study of Russian customs administration, it is obvious to most scientists that transition to the digital paradigm of economic and social development in general determines (as necessary and priority) the information strategy for development of Russian customs service and its organizational and managerial component, i.e., customs administration. Many studies have been devoted to this aspect (Dmitrieva *et al.*, 2021). However, there is a clear shortage of sociological works in this direction. At the same time, sociological reflection on the problems of management and managerial efficiency can lead us to a new level of understanding and solving problems related to improving efficiency of Russian customs administration.

1. Materials and Methods

A deep examination of the problematic background of Russian customs authorities and customs administration involves an appeal not only to statistical data, positions of scientists and analysts but the opinion of customs system employees themselves. This will allow us to look "from the inside", through the eyes of the main actors in organization of customs process and functioning of this sphere.

In this regard, sociological study of the role of information technologies in improving efficiency of Russian customs administration (which is the key goal of this work) is based on the array of our sociological survey empirical results. The full-time employees of Rostov customs presented their expert opinion on the key areas of reforming Russian customs service and meeting the international standards.

Our study was conducted in the period from April to June 2020 according to the type of expert survey based on a standardized questionnaire. In total, 269 employees of the Rostov Customs, structurally included in the Southern Customs Administration (among other 7 customs offices) took part in our expert study. The selection of experts was carried out on the

basis of data on the total number of employees (879 people) of the Rostov Customs for the survey period, i.e., April 2020, in the ratio of management and inspection staff. The study involved 26 employees of management staff and 243 employees of inspection staff. The selection of respondents also took into account their work experience, gender and age. Among the experts there were 144 men and 125 women aged 18 to 65 years. 59 people had less than 5 years of work experience, 46 - from 5 to 10 years, 93 - from 10 to 20 years, 68 - from 20 to 30 years and 3 - over 30 years.

Methodological foundations of this study are based on a number of concepts and theoretical paradigms that are most adequate to the current trends in development of customs administration on a global scale and in the Russian state, following international standards and trends.

One of these approaches, which reflects the needs and realities of development in a modern way, is the information-integrated approach. Anisina and Pavlova (2021) state that this approach does not contradict the traditional administrative paradigm of studying the customs service, but, on the contrary, complements and forms it in a synergistic form. Within the framework of this approach, customs (as the main core of customs services formation) integrate various elements of customs service sphere and projects a kind of "informational and legal image of the service" (Anisina and Pavlova, 2021). In this conceptual design, customs appear as a "service customs", and customs administration - as a service-oriented one.

The advanced countries have recognized the advantages of the "service concept" in customs affairs and management. In fact, the world customs system can be called a system of customs service (Balandina *et al.*, 2018), focused primarily on effective interaction with business to increase its effectiveness and ensure a high level of economic security.

This, of course, involves minimizing bureaucratic procedures of customs process and various types of costs (financial, time) for participants in foreign economic activity (FEA). Within the framework of the "service customs" concept, control, and promotion of trade (business) are considered as components of a single mechanism aimed at positivizing attitudes of business to the customs service; improving the quality of services; simplification of customs procedures for law-abiding participants of foreign trade, etc. All that determines the evolutionary trajectory of customs system development to the "service customs".

This service nature of customs, which is still quite new for the entire world community and for Russia in particular, defines provision of state (customs) services as its most important function, which does not contradict the structural and functional component of Russian customs system as a state structure designed to promote effective development of foreign trade activities in control and law enforcement activities within certain functional powers (Krasulina *et al.*, 2019; Dmitrieva *et al.*, 2020).

In the outlined methodological priorities, customs administration should be considered as a management activity of customs authorities, designed to promote the development of foreign trade, and provide services to persons moving goods and vehicles across the customs border, as well as perform tax, law enforcement and control functions (Solehzoda, 2017; Dmitrieva *et al.*, 2021).

2. Results

One of the problems in functioning of Russian customs service is traditionally called "administrative barriers" (Kiyanova *et al.*, 2020) which hinder the customs formalities. The results of our expert survey have generally confirmed this well-established point of view: 54.6% of Rostov Customs employees we surveyed believe that administrative barriers, albeit slightly, hinder the customs control, 22.3% of experts are convinced that this factor has a significant impact. At the same time, 50.2% of experts state, that it is impossible to completely overcome administrative barriers, but it does not negate the need to fight this vice, which, from the point of view of only 12% of the experts surveyed, can be completely eradicated in customs control system. A fairly large number of experts (22.7%) think that without administrative barriers the customs control system cannot function in principle, i.e., the barriers are generated by the very system of state administration.

Most of the customs officials still see the need to overcome administrative barriers, and, as our research has shown, the most effective way to treat them is the effective use of new information and communication technologies in activities of Russian customs authorities, such as electronic declaration, interdepartmental interaction, auto-registration of declarations for goods, auto-release of goods, etc. Among the information technologies that have been developed in administrative activities of customs authorities, electronic declaration was named the first in terms of effectiveness (4.25 points on a 5-grade scale).

It was followed by the procedure of preliminary information (3.95 points), automatic registration of declarations for goods (3.76 points), automatic release of goods in accordance with the declared customs procedure (3.63 points). The lowest number of points (3,59) in the rating table of the types of information technology used in administration of customs authorities scored a system of interdepartmental electronic cooperation (SIEC). It corresponds to the experts' opinion on measures for the most effective development of e-Declaration mechanism in Russian customs system. The majority of respondents (17.9 per cent) believes that it is necessary to establish the mechanism of interdepartmental interaction in practice of

electronic communication, interaction of foreign trade participants and regulatory authorities (tax and customs) within the framework of a single information system, standardized forms of electronic communication and data exchange.

Among the significant measures there were also those related to introduction of more effective mechanisms of interaction between electronic customs and customs of control (17.7%); maximum simplification of electronic declaration technologies (17.0%); improvement of the mechanism for providing information to the customs authority, without the need to duplicate it (14.9%), as well as regulatory legislation in the field of implementing the electronic declaration system in activities of Russian customs (9.6%).

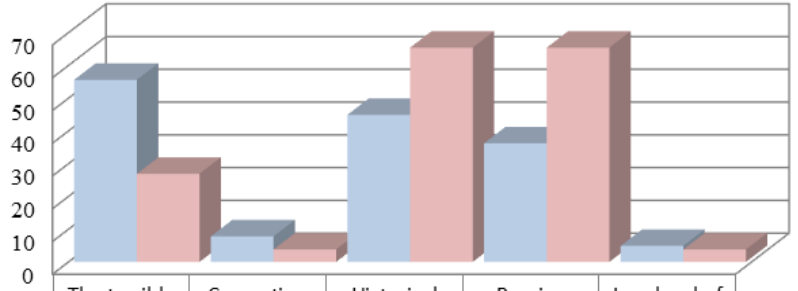
Experts also noted the importance of studying the world experience in implementation of information technologies and electronic declarations in the system of customs authorities, creation of special centers for implementation of this task (8.1%). At the same level of significance there was the measure associated with reduction of information volume provided in declaration for goods (8.0%), in contrast to the measures related to ensuring confidentiality and protection of information, primarily in the process of interdepartmental interaction (4.4%), as well as the use of sociological diagnostics and forecasting methods (2.2%). Without them it is difficult to count on effectiveness of innovations and ongoing reforms, since they should be based on real assessments of the emerging interaction system for participants in foreign economic activity and customs authorities.

Assessing the overall positive implementation of information technologies in the work of customs authorities in terms of reducing the time for customs operations (61%), primarily due to introduction of electronic declaration mechanisms and the "single window", experts pointed to a number of factors that reduce effectiveness of this process. The most significant among them there are: imperfection of electronic technologies themselves: their complexity, bulkiness, inaccessibility for understanding and use (22,2%); the lack of a unified information system for interactions, traders and regulatory authorities as a necessary condition of effective inter-agency cooperation in electronic communications (15,6%); problems of funding (13,6%); the lack of qualified personnel (12,3%); imperfection of the legal framework for Russian customs system as a system focused on new information (e-digital) technology (10,1%).

The introduction of information technologies in organizational and managerial activities of Russian customs bodies can help to solve another problem – the lack of trust of Russian participants in foreign economic activity to the customs authorities.

Experts named the terrible bureaucratic red tape (35%) as the main reason for this situation. Informatization of the customs system is designed to fight it. The solution can have a positive impact on other crisis factors of confidence in customs authorities of the Russian Federation, related to the negative image of Russian customs system (31.0%), formed in the logic of historical trajectory of Russian state development.

The opinions of experts holding different positions on the scale of "head / inspector" are somewhat divided on this issue: managers (as the key reasons for distrust of the customs authorities of modern Russia) highlight the image of the customs service that has formed over the history of the Russian state (65.4%) and the current economic policy of the state (65.4%), while the inspection staff of experts put the factor of excessive bureaucratic red tape in the first place among the reasons for distrust of Russian customs system (55.6%), and the image factor – in the second place (44.9%) (see Figure 1).



	The terrible red tape	Corruption of customs authorities	Historical image of Russian customs system	Russian economic policy (sanctions effect)	Low level of competence of customs officials
Inspector	55,6	7,8	44,9	36,2	4,9
Manager	26,9	3,8	65,4	65,4	3,8

Figure 1. The Reasons for the Lack of Confidence of Foreign Trade Participants in Customs Authorities of the Russian Federation (as %) (Kiyanova *et al*., 2020; Dmitrieva *et al*, 2021).

Figure 1 shows that experts do not associate distrust of Russian customs authorities with the low level of professionalism and corruption of customs structures. And this does not contradict positions of the experts, who do not include corruption factor in the list of key vices of Russian customs

system. Most of the experts estimate the level of professionalism of customs employees as quite high (43.9%), but if you look at the data on official cross-section, the situation is somewhat different: the vast majority of expert managers (50%) rated the level of professionalism of employees as "above average" and only 23.1% of them gave the highest rating, which allows us to conclude that managers have a less high opinion of professional training and competence of their subordinates than the subordinates themselves (see Figure 2).

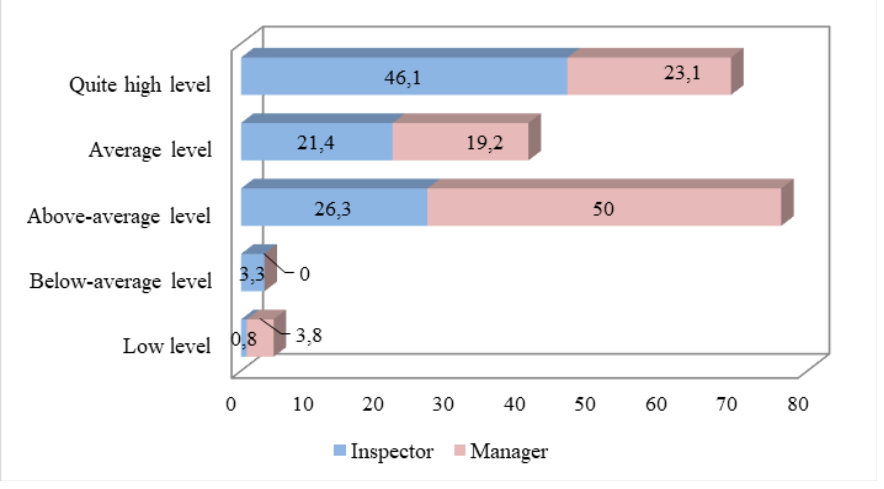


Figure 2. Assessment of Professional Level of Customs Officials, Depending on their Position (as %) (Kiyanova *et al.*, 2020; Dmitrieva *et al*, 2021).

However, we note that the managers were critical when assessing professional level of the senior staff of Russian customs authorities: 38.5% of them rated it as "above average" and only 23.1% - as "quite high". Even in this case, inspectors highly appreciated the work of customs authorities, considering in their majority (39.5%) that professional level of managers is quite high. Although there were also quite a few who consider it to be "average" - 27.6% (see Figure 3).

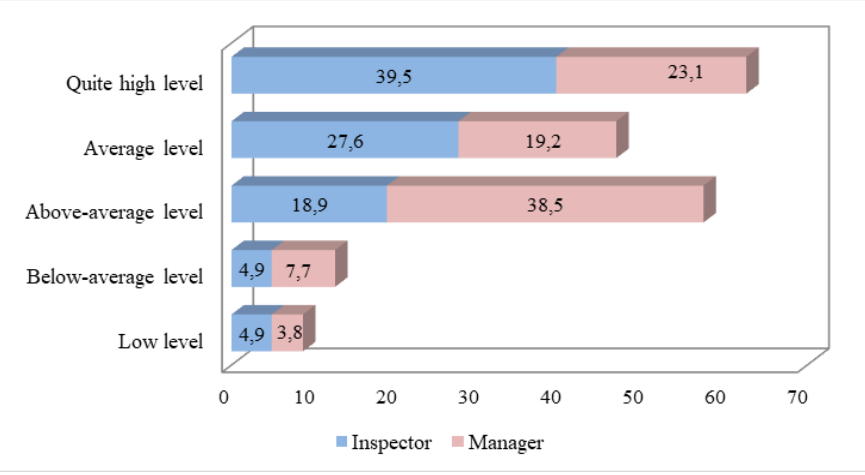


Figure 3. Assessment of Professional Level of Employees of the Customs Service Management Bodies, Depending on their Position (as %) (Kiyanova *et al.*, 2020; Dmitrieva *et al*, 2021).

With introduction of information technologies in every sphere of activities traditionally associated with changes in the structure of organization, dynamics, productivity and quality of work, they do not bind the results of ongoing Russian customs service activities aimed at computerization of customs procedures (concentration of customs clearance in the centers of electronic declaration, differentiation of customs authorities on the powers of electronic customs and customs of actual control) with optimization of customs officials while maintaining productivity of the staff (only 11.3% of experts believe so).

Experts associate the main prospects of the measures carried out in this direction with reduction of material and time costs for customs operations prior to release of goods and reduction of the period of release of goods (29.6%); with transition to contactless (Internet) mode of interaction between the customs authority and the citizens in the process of customs operations, making them transparent, reducing the level of corruption in Russian customs bodies (24,4%); with the possibilities of importation of goods in a convenient location and on any temporary storage without charge to the customs authority responsible for declaring to deliver the goods from the border to the receiver, reducing the time and costs of delivery (23,5%).

There are relatively few experts who do not associate introduction of electronic declaration mechanisms with these prospects – 11.1%, but this

percentage is not insignificant as only 32.7% of experts gave a satisfactory assessment of introducing new information technologies in their customs division, i.e. in the Rostov customs (44.6% rated this process as "good" and only 11.2% – as "excellent").

The national nature of the problems in development of Russian customs system and customs administration has its roots in the history of Russian customs, so it is impossible not to take into account the regional peculiarities of customs authorities and services. These features also have their historical and socio-cultural conditionality, but informatization of the customs system is precisely focused on standardization, universalization of customs procedures automation and minimization of the negative impact of human factor in terms of bureaucratic effect of customs administration (a vice of Russian customs system).

3. Discussion

The large-scale, world-wide process of informatization of the customs (with varying intensity and efficiency in different countries) is based on the principles of the integrative (sometimes called "synergetic" or "information-integrative") concept, which puts forward security and effective development of trade in the field of foreign economic activity as a strategic task and goal of customs administration (Dmitrieva *et al.*, 2021). The international community has been actively using the "single window" system on the principles of this concept and in the most effective way (Balandina *et al.*, 2018) In Russia, it has also become widespread, including in the customs sphere. The principles and mechanisms of electronic declaration are being actively implemented, but the key problem that hinders customs control and reduces effectiveness of information technologies implementation remains unaffected: the "single window" mechanism cannot ensure harmonious, holistic interaction of customs structures, services, departments and other state services and bodies. There is still a significant gap between the customs authorities and business. The partnership system of relations between them is just a projected model, transition to which is not yet possible in the current paradigm of public administration and the social order itself, which faintly resembles a democratic and socially fair one with a high culture of civic values and relations (Dmitrieva *et al.*, 2020).

Of course, customs administration (as embedded in the system of state management of historical, political, economic, and other subjects) cannot be considered outside the socio-cultural context, even taking into account the fact that the modern digital era is rapidly changing appearance of Russian customs. In this regard, the strategy of transition of Russian customs administration to a new - digital form of work due to

introduction of information technologies is actively discussed in scientific and public discourse (Kiyanova *et al.*, 2020). The high expectations and prospects associated with this transition are justified, since, as experts note, Russia has managed to make quite serious progress in improving customs administration in the course of digitalization, and this has allowed us to approach the best world examples and practices of organization and management in the field of customs relations (Balandina *et al.,* 2018). At the same time, the remaining problems in the field of customs administration: administrative barriers, bureaucratization, corruption, etc. (Vorotyntseva *et al.*, 2020) can be explained by the fact that modernization of Russian customs system is not systematic and comprehensive. It is one-sided, and therefore insufficiently effective, unable to resist destructive phenomena and trends of customs processes. That is why there is not solved the problem of disunity in various functions of control between the customs and tax service bodies, as well as other state bodies that also take part in customs control.

The integrative concept of customs administration suggests that transformation of the customs service institution should be determined by a complex of modernist ideas (paradigms), among which the idea of digitalization, informatization, transition to electronic mechanisms of development, artificial intelligence, hybrid systems of administration is only one of the key ones, inscribed in the logic of others, such as the idea of a process-oriented model of customs administration; the idea of managing digital (electronic) customs administration on the cognitive paradigm based on knowledge or the idea of a "service customer" (Romanovskaya *et al.*, 2020). In Russia, such a systematic and holistic model of customs modernization is unreal, and experts see the most important cause of distrust to the customs authorities and, accordingly, the low efficiency of their activities, in he modern system of public administration. A conservative, inflexible, inherently authoritarian system of public administration, which automatically determines all the clusters of administration in the same form, determines the point nature of innovations in the field of management as well (including the customs). The system allows something, but all the other processes develop along an inertial trajectory, inscribed in institutional logic of Russian social development (Krasulina *et al.*, 2019).

In this regard, it is understandable and predictable that development of customs administration through transition to information and digital technologies is realized in the space of many barriers: technological, administrative, economic, political, and socio-cultural (the most important ones). The latter are the most complex, because they are the most stable, weakly susceptible to rapid changes and impacts. These behavioral models are rooted in mentality of society, in its archetypes, attitudes and stereotypes.

Conclusion

At the present stage, there is an urgent need to form a system of customs administration (adequate to international practice and international standards), which determines both the effectiveness of relations in the system of foreign economic activity, and economic well-being of Russian people, the state, and its security. The extensive customs issues discursive field of various scientific branches basically contains no disagreements about assessment of Russian customs system effectiveness and its most problematic areas. The course taken as a basis for informatization and digitalization of the customs service, implementation of measures, programs and projects related to transition to electronic mechanisms of customs services is also clearly positive, without much disagreement. This course has brought a lot of positive results, but, as the expert survey showed, many "birthmarks" of Russian customs system (bureaucratization, corruption, distrust of customs authorities, etc.) persist and are reproduced in modern social order and public administration.

In this regard, expectations for formation of Russian customs compliant with international standards as a necessary condition for reaching a competitive level of foreign economic relations with an appropriate image and level of trust may remain expectations. Implementation of this strategic task involves implementation of integrative model of modernization (reform) of Russian customs system with clear conceptual and methodological foundations of the customs administration model. The customs is a part of state administration, so its modernization should fit into the logic of state administration system modernization.

So, the customs authorities, primarily the management cluster, still face many problems, which at the present stage are mainly solved by introduction of information technologies in practice of customs control and procedures. Their effectiveness is noted by many Russian scientists, as well as by the interviewed experts (employees of the Rostov Customs). However, while we appreciate information and digital technologies in improving efficiency of customs administration, we are convinced that this strategy needs support in the form of a synergy of ideas, principles, mechanisms, and resources. In other words, they need a conceptual model of modernization (reform) of Russian customs service.

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International experience in preventing intentional homicide by criminal police units

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Abstract

The objective of the article is to analyze the international experience of the operational and investigative prevention of intentional homicides by criminal police units, as well as the legislation that provides for the development of an effective system for the prevention of intentional homicides in Ukraine. The subject of the investigation is the foreign experience of operational prevention and the search for intentional homicides by criminal police units. The research methodology includes general and specific methods of legal science: dialectic, scientific abstraction, methods of systems analysis, formal and dogmatic, systemic, and structural, historical, and comparative, logical. Various intentional homicide prevention programs are considered, which are currently operating in different countries of the world. It analyzes the positive international experience of operational and investigative prevention of intentional homicides, which can become the basis for the development of the relevant legislation of Ukraine in this area. It is concluded that the conduct of a comparative analysis of the prevention of intentional homicides and various countries is the basis for the development of the most promising areas to improve domestic legislation in this area.

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Keywords: prevention of homicide; premeditated murder; criminal police units; international experience; criminal sciences.

Experiencia internacional en la prevención del homicidio intencional por parte de unidades policiales criminales

Resumen

El objetivo del artículo es analizar la experiencia internacional de la prevención operativa e investigativa de los homicidios intencionales por parte de las unidades de la policía criminal, así como la legislación que prevé el desarrollo de un sistema eficaz para la prevención de los homicidios intencionales en Ucrania. El tema de la investigación es la experiencia extranjera de prevención operativa y de búsqueda de homicidios intencionales por parte de unidades policiales criminales. La metodología de investigación incluye métodos generales y específicos de la ciencia jurídica: dialéctica, abstracción científica, métodos de análisis de sistemas, formales y dogmáticos, sistémicos y estructurales, históricos y comparativos, lógicos. Se consideran diversos programas de prevención de homicidios intencionales, que actualmente se encuentran operando en diferentes países del mundo. Se analiza la experiencia internacional positiva de prevención operativa e investigativa de homicidios intencionales, que puede convertirse en la base para el desarrollo de la legislación pertinente de Ucrania en esta área. Se concluye que la realización de un análisis comparativo de la prevención de homicidios intencionales y diversos países es la base para el desarrollo de las áreas más prometedoras para mejorar la legislación interna en esta materia.

Keywords: prevención de homicidio; asesinato premeditado; unidades de policía criminal; experiencia internacional; ciencias penales.

Introduction

The experience of foreign countries in implementing the strategy of crime control is valuable not only for the theory, but also for the practice of crime prevention in Ukraine. Our state is currently in a state of deep political, economic, and social crisis. The activity of criminal justice bodies is unbalanced. The judiciary and law enforcement agencies are being reforming and therefore qualitative organizational and managerial

transformations are taking place. Several new criminal prosecution bodies are being established, namely: the National Police of Ukraine, the National Anti-Corruption Bureau of Ukraine, the State Bureau of Investigation, the National Agency for Corruption Prevention, the Specialized Anti-Corruption Prosecutor's Office, etc. In this regard, the study of modern progressive foreign experience in crime prevention with the participation of specialized State institutions deserves special attention.

Accordingly, criminal activity is progressing faster than science, which is designed to counter it. Murders disguised as missing are widespread now. Many of these crimes are linked to the activities of organized criminal groups, which increasingly result in the disappearance of businessmen, bankers, commercial workers, children, the elderly, homeowners, and others (Pavlenko *et al.*, 2015).

The general methods and typical algorithm of actions of the operational officer should be well-established for application in day-to-day performance. In particular, the Instruction on the organization of interaction of pre-trial investigation bodies with other bodies and divisions of the National Police of Ukraine in prevention of criminal offenses, their detection and investigation define typical actions of the members of the investigative task force in case of complaints or reports of criminal offences and responses thereto (Order No. 575).

The institution of development of intelligence and the technology of exposing criminal groups that commit intentional homicides is important at the stage of documenting and ensuring pre-trial investigation. Documentation means a set of operational and investigative actions aimed at identifying and recording factual data that are important for the prevention of crimes and their detection. Documentation in operational and investigative activities is defined as the process of reflecting the factual data obtained as a result of operational and investigative measures (ARI) in official documents. It is a way of reproducing the true picture of the criminal act, finding out the circumstances of criminal events in order to make the correct decision to collect factual data that will help establish the truth.

The content of documentation is achieved through the implementation of operational and investigative measures aimed at identifying crimes that are being prepared or committed, obtaining information about those involved in such activity, circumstances of the offense, as well as specific measures to prevent and detect crimes (Hrebeniuk *et al.,* 2018). Successful process of exposing suspects of the thoroughly prepared crime is carried out thanks to the correctly chosen investigative and operational tactics. The methodology of forensic, operational and investigative tactics is based, among other elements, on the active use of data from psychology, logic, pedagogy, criminal analysis, scientific organization of labor and management science. Operational officers apply the operational combinations when carrying out

covert actions instructions; for example, the ordered set of interconnected and interdependent tactics. The achievement of the planned outputs is possible only under terms of the professionalism of the operational officer, his (her) personal qualities and impeccable mastery of the psychology of communication with the population.

The urgency of the problem and insufficient development of organizational and legal framework for the prevention of violent crimes have determined the purpose of this study. The increase in the scale of such crimes is the real threat to the security of the State and society, as it strengthens its position in view of the monopolization of many types of illegal activities, the lack of reliable mechanisms to counter it (Sevruk, 2015). In this regard, it is necessary to analyze the existing legal framework of Ukraine, which regulates innovation, in detail, as well as to examine the implementation of effective proposals to change such a base, considering the tasks of modernization of law enforcement and judicial authorities (Yunin *et al.*, 2018). Improving national legislation in the area of criminal liability for violent crimes requires the study of modern foreign criminal legislation, which will help to develop and implement the necessary changes and amendments to the Criminal Code of Ukraine.

1. Methodology

Research methods are chosen based on the subject matter and the purpose of the study. The article used general and special methods of legal science, in particular: dialectical method, method of scientific abstraction, methods of system analysis, formal and dogmatic, system and structural, historical and comparative and logical methods.

2. Literature Review

The term “crime prevention by operational units of the police” was first introduced into scientific circulation by Samoilov in 1982. Not considering this type of activity of operational units of internal affairs bodies an independent form, he defined it as being regulated at the time by departmental regulation activity to carry out individual preventive measures against persons who can be expected to commit crimes. Subsequently, Samoilov (1982, pp. 14-15) adjusted his approach to the definition of such prevention and stated that it is carried out by operatives not only for individual purposes, as it follows from its definition, but also for general crime prevention.

Horiaynov *et al.*, (2004) defines such prevention as a set of measures carried out using the means and methods inherent in the operational units of the police to achieve the goals of prevention. Kozachenko (1992) considers the concept of crime prevention in a slightly different way. In his opinion, prevention is a specialized part of the work of law enforcement agencies with the use of covert forces, means and methods of identifying the causes of crimes and conditions that contribute to their commission, persons who can be expected to commit crimes.

These ideas were later developed by Kondratiev (2004), who noted that in a broad sense, crime prevention is a comprehensive use of operational and investigative forces and means, and in a narrow sense it is the activity of operational units to counteract criminal activity by specific individuals clearly regulated by law and relevant regulations.

According to Moiseiev *et al.,* (2009), crime prevention is a regulated activity of the police, which lies in conducting systematic monitoring of the operational situation to eliminate the causes and prevent the conditions conducive to their commission, to identify persons prone to committing offenses, and exercising preventive influence on them in order to prevent the commission of the planned crimes or those that are being prepared.

Ferguson (2017) believes that criminal analytics currently plays the most important role in the prevention of crimes, including violent ones. Using the analytical product "Palantir", the analysts at Los Angeles Police Department's Real-time Analysis Critical Response (RACR) Division processes information, which is in the police records, from the automated system for reading data, messages received on the line "911", video from public surveillance cameras, etc. Based on this information, the analyst uses mathematical algorithms to make a prediction about the high possibility of committing crimes in particular areas by compiling maps indicating the most criminogenic places. As a rule, such maps are provided to the operational police units and patrol police.

International Association of Criminal Analysts (or IACA, 2014) considers criminal analysis to be a process that uses quantitative and qualitative methods to analyze data that are important to the police units in the field of crime prevention, identification of the offenders, determination of the reasons for the crimes, etc.

Professor Ratcliffe in his work "Intelligence-Led Policing" (2016) proves that preventive policing based on operational data and information should be an approach aimed at ceasing "all crimes, risks and all the damage that can be caused by these crimes".

White *et al.,* (2003) state that homicide prevention is a critical police responsibility and that by employing problem-oriented strategies and garnering citizen involvement, police may be able to effectively reduce the prevalence of such violence.

3. Results and Discussion

The urgency of the study is due to the great importance of solving the problems of cessation of intentional homicides in Ukraine. There has been an increase in crime in general and in particularly serious crimes against the person such as intentional homicide in particular in recent years. Thus, the number of registered homicides in Ukraine has increased by almost 10% over the last 10 years.

With regard to intentional homicides, the statistics provided by Eurostat indicate that during 2007–2012, the dynamics of this most serious type of crime were positive in the vast majority of European countries. As Maksymovych (2008) correctly pointed out, the criminal legislation of most foreign countries has features due to the specifics of the legal system, the importance of relevant relations to the State, the traditions of establishing mandatory rules of conduct, etc. Thus, it is necessary to generalize foreign experience of operative and search counteraction to murders and to provide offers on its introduction in practical activity of law enforcement agencies of Ukraine.

Some foreign countries advocate the most severe sanctions in the form of the death penalty. But humanity has no right to forget that we live in a civilized society, where depriving a person of the right to life is totally inhumane; besides, the death penalty for serious crimes against humanity and the State can be considered a proven historical means of protecting society against violations of the conditions of its normal existence (Zavorina, 2017).

The United States not only has the most powerful economy or the most powerful army in the world, but also has a high prevalence of serious crimes against life and health. Proof of this is the ranking of the most criminogenic cities in the world, which includes New Orleans and Detroit, in which there are 67 and 46 murders per 100,000 populations, respectively. Despite the fact that the population of this country is about 5% of the world's population, the number of people sentenced to imprisonment is a quarter of this figure worldwide, not counting the 5 million Americans who are released from probation.

The current crime rates in the United States can be supplemented by official statistics from the Federal Bureau of Investigation (FBI) on so-called index crime (UCR – Uniform Crime Reports), which includes murder, rape, aggravated assault, robbery, burglary, burglary (amount over $ 50), car theft, arson (Lunieiev, 2011; Dzhuzha, 2012).

Among the 72 programs with a high level of effectiveness, there is a project called the Adolescent Transitions Program, which is designed for adolescents aged 11 – 17 with delinquent behavior who abuse alcohol

and drugs. The key to the success of this program is that not only the fact that psychologists and psychiatrists take part in its implementation, but also parents and family members of troubled adolescents, as well as their teachers. The aim of the project is to eliminate the shortcomings of juveniles' communication with their parents, teachers and immediate environment, change social orientations, values and misconceptions formed under the influence of criminogenic marginal microenvironment. The means to achieve the goals of the program are family therapy, multilevel psychological courses consisting of motivational interviews, group and individual classes and conversations, during which the behavior of minors is corrected, including by teaching their parents the rules of education, basic approaches encouraging children. The effectiveness of this program has been proven in its repeated study by specialists, so it is implemented in some cities to this day.

Thus, in the United States, the program implementation of scientific ideas of modern American criminologist D. Kennedy, who heads the Center for Crime Prevention and Control, and teaches at the John Jay College of Criminal Justice (New York), is now widespread. The essence of his precautionary criminological theory is embodied in the programs "Operation Ceasefire" and "Drug-market Intervention". They are based on the persuasion of members and leaders of street gangs specializing in violent and drug crime to stop their criminal activities (Kolodiazhnyi, 2017).

The aim of the program is to collect the evidence of the facts of committing various crimes by specific individuals by the police. After the police demonstrate to the criminals all the evidence that proves their guilt, the latter are invited to take part in preventive talks with the representatives of the local community (neighbors, friends, teachers, parents, social workers) in exchange for a guarantee not to arrest them. The implementation of these projects has shown high efficiency, as the murder rate was reduced by 60%, and the overall crime rate almost halved in those cities where they were carried out. These programs were first implemented in 2003 in High Point, North Carolina. After encouraging results, this practice is widespread in almost 100 cities in the United States and even other countries (UK, Australia, Brazil, Colombia, Mexico, some Caribbean countries) (Kolodiazhnyi, 2017).

The theory of Papacristos, a sociologist at Yale University in New Haven, Connecticut, is the well-tested theory of US citizens being more victimized to murder. Based on the study of statistics on crimes related to the use of firearms in Chicago, the scientist substantiated the hypothesis that the potential and increased chances of intentional homicide do not depend on such traditional socio-demographic indicators as age, gender, or level of income, and mostly – the social environment, the fact of communication with a certain category of people. The scientist states that violence can be

compared to a hem contact pathogen. Like the disease, it spreads according to certain laws. The members of the same social network are more likely to commit the same risky things (carry weapons or commit various crimes), which increases their risk of violent death. The researcher studied police files and data on murders that took place in Chicago during 2006 – 2011 in an area of 6 square miles, as it has the highest number of murders. The results of the study showed that 6% of the population was involved in 70% of homicides in one way or another, and almost all of the actors involved in one way, or another dealt with the police or the State health care system. Besides, for this most vulnerable group the probability of homicide is nine times higher than the national average (Kolodiazhnyi, 2017).

At present, the theory of Papacristos is widely used by the Chicago police. According to the crime prevention program, law enforcement officers use the so-called network analysis to identify the 20 residents of the neighborhood who have the highest potential to be the killer or victim of this crime. As part of this program, assistant police officers from the local Chicago population are widely involved, who, instead of the usual arrests and criminal proceedings on suspicion of committing crimes, conduct appropriate preventive talks with the representatives of the risk group. This experience is spreading to other US cities as well (McDonald, 2013).

Crime prevention in the UK is carried out in three main forms: situational, social, prevention with the help of the public. Special prevention is carried out at three levels:

- the primary level of prevention, aimed at eliminating external environmental factors that contribute to the commission of offenses.
- secondary level of prevention, which is aimed to prevent criminalization of potential offenders and related to the impact on vulnerable persons, including children at risk.
- tertiary level of prevention, aimed at preventing recidivism by persons who have already committed offenses.

The secondary level of prevention is called upon to prevent the criminalization of those whose behavior and lifestyle indicate the possibility of committing offenses. In contrast to primary prevention measures, which are general in nature and aimed at eliminating the causes and conditions of offenses, secondary prevention measures are individual in nature and involve the impact on the person, his (her) negative traits that determine illegal behavior. Secondary prevention measures are based on predicting the individual behavior of a person, which lies in studying persons prone to delinquency and the sources of negative impact on them. Specific measures of individual prevention are various school programs of education and control over the behavior of minors “at risk”, as well as programs designed to work preventively with their parents. Such programs are implemented

by the joint efforts of the police units, educational institutions, and social services.

The tertiary level of crime prevention aims to prevent recidivism by those who have already committed offenses. Prevention of recidivism is associated with the work of police, judicial, penitentiary measures aimed at the timely identification of perpetrators, bringing them to justice, as well as the use of effective means while serving their sentences. Special role in the prevention of recidivism is given to criminal law measures of influence. In order to prevent recidivism, the measures of increased control over the behavior of convicts are also widely used, as well as programs for their individual rehabilitation (Dzhuzha *et al*., 2011).

In 2006 in Germany the project called "Jet" was introduced, which is still operating nowadays. The essence of this program lies in the reactive, rapid response of various actors of preventive activity to violent crime in the juvenile environment. In particular, the Heilbronn Police Department decided to change the local law enforcement concept to limit the exclusive response to juvenile violence already committed, while increasing the presence of police officers and volunteers in public places, especially on weekends and holidays.

The "reactivity" of this project is due to the speed of the criminal prosecution of violent criminals, as well as a broad information campaign of local media, which informs the public about the constant presence of police and volunteers on the streets not only during mass entertainment events, but also in other days. Besides, the key to the effectiveness of this program is to apply preventive measures to the leaders of informal groups of adolescents, who are most often involved in mass riots (European Crime Prevention Network, 2014).

Major crimes in Japan have shown a steady downward trend in recent years. Thus, the number of intentional homicides detected by the police decreased by 88%, burglary – by 310%, robbery – by 219%, theft of vehicles – by 254%, rape – by 175%. The decrease in the registration of the main types of general criminal offenses by the Japanese police indicates a general decrease in the crime rate in this country.

The high efficiency of the Japanese police can also be attributed to the fact that in most cases, police officers live in booths (posts) in their separate rooms with their families. Due to the constant presence of the police officer at his (her) place of work, which coincides with the place of actual residence, close cooperation is achieved with the residents of the local community. The latter do not treat the policeman as the representative of the authorities, but, first of all, as a neighbor. In addition, high confidence in the police in this country is also achieved through the performance of their duties without firearms. The main function of the Japanese police at the local

level is not law enforcement, but social services. This means that Japanese law enforcement officers are in constant contact with the residents of a particular locality, and the police help to solve social, domestic and other problems that citizens face every day. For the modern policeman of this State, it is the norm to treat the visitors of the police booth (post) with tea or to provide the neighbors with an umbrella. It should be noted that the Japanese model of an extensive system of police stations at the local level has found support in many countries: Singapore, Indonesia, Costa Rica, Guatemala, Honduras, El Salvador, Nicaragua. For example, more than 200 police stations were created in the Brazilian metropolis of Sao Paulo before the final of the 2014 FIFA World Cup in 2014, following the example of Japanese police booths. This measure, along with other crime prevention measures, has significantly reduced homicide rates in Sao Paulo (Wood, 2015).

Conclusion

At first glance, the detection and investigation of intentional homicides should not pose a problem. This type of crime, unfortunately, has been committed and continues to be committed throughout human history. However, new ways of committing and masking murders are emerging, which requires updated techniques and tactics to solve them (Khyzhniak *et al.,* 2021). Having analyzed foreign experience in the area of crime prevention, Zavorina (2017) proposed to apply the following measures in the activities of the National Police of Ukraine: 1) creation of a Standard Model for Combating Crime at the Regional Level, which will include both general methodological issues and the list of necessary measures classified into sections and subdivisions for certain areas of police prevention ; 2) creation of the coordinating body (council) for crime prevention at the level of regional departments of the National Police. It should be entrusted with the functions of developing policies in the area of regional crime prevention; planning activities in this area; informing the population on the measures of crime prevention, etc.; 3) adoption of short-term regional programs (for 1 – 2 years) to prevent crime. This program should reflect the goals, nature, means, methods and general direction of crime prevention activities at the regional level. The system of measures in this area should also be fixed, the basic levels and directions of activity in the area of crime prevention should be specified.

Operational and preventive measures as the main direction in the fight against premeditated murder should not be limited just to identifying the causes of these crimes and their elimination, but also provide for such measures as creating an atmosphere of intolerance to the violations of the norms and rules of public life, involvement of the population in

combating crimes, the imposition of equitable punishment for the crime committed, the proper organization of its serving. It should be noted that the implementation of these measures in the practice of criminal police units will undoubtedly positively contribute to the fight against intentional homicides. State and legal mechanisms should guarantee the safety of each member of the society, as the safety of the individual depends on the mutual social well-being, which determines the main task of the law enforcement system.

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Judicial Control over the Observance of Human Rights and Freedoms during the Detention of a Person

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Abstract

The purpose of this study was to identify problems in performing the functions of the investigating judge related to the protection of human rights and freedoms during detention and to offer solutions to them. The study is based on the use of methods of sampling and prognosis; system approach; descriptive statistics; comparison and collation; descriptive analysis method. We found out that the restriction of certain rights and freedoms of a person, detained on suspicion of having committed a crime, is quite legitimate, but some rights are violated due to abuse of police authority. The right to liberty and the right to security of person, the right to effective remedy and fair trial, and the right to respect for private and family life are most often violated during detention. Judicial control should be carried out in compliance with the following principles: immediacy, automaticity, conducting trial proceedings within a reasonable time. In order to universalize judicial control over the protection of human rights and freedoms during detention, we propose to develop an international legal document, regulating the conduct of judicial control.

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Keywords: judicial control; investigating judge; pre-trial investigation; human right; detention of a person.

Control judicial sobre la observancia de los derechos humanos y las libertades durante la detención de una persona

Resumen

El objetivo de este estudio fue identificar problemas en el desempeño de las funciones del juez de instrucción relacionadas con la protección de los derechos humanos y las libertades durante la detención para ofrecerles soluciones. El estudio se basa en el uso de métodos de muestreo y pronóstico: aproximación del sistema; estadísticas descriptivas; comparación y colación; método de análisis descriptivo. Descubrimos que la restricción de ciertos derechos y libertades de una persona, detenida por sospecha de haber cometido un delito, es bastante legítima, pero algunos derechos son violados por abuso de autoridad policial. El derecho a la libertad y el derecho a la seguridad de la persona, el derecho a un recurso efectivo y a un juicio justo y el derecho al respeto de la vida privada y familiar se violan con mayor frecuencia durante la detención. Se concluye que el control judicial debe realizarse de acuerdo con los siguientes principios: inmediatez, automaticidad, desarrollo del proceso judicial en un plazo razonable. Con el fin de universalizar el control judicial sobre la protección de los derechos humanos y las libertades durante la detención, proponemos además desarrollar un documento legal internacional que regule la conducción del control judicial.

Palabras clave: control judicial; juez de instrucción; instrucción preliminar; derechos humanos; detención de una persona.

Introduction

Human rights and freedoms are recognized as the highest value at both national and international levels (Ren, 2017). That is why fundamental rights and freedoms are the main object of protection of any democratic constitutional state. Therefore, the development of new, more effective means of ensuring these rights, is still relevant in the studies of various branches of jurisprudence.

As stated in the Convention for the Protection of Human Rights and Fundamental Freedoms (thereinafter – the Convention) (Wikipedia, 2021) and in The Universal Declaration of Human Rights (thereinafter – the Declaration) (United Nations, 2021), all people have equal rights, that is to say, the law equally protects fundamental human rights and freedoms of people, regardless of their personal and social characteristics. In light of this, it ought to be noted that both victims of crime and the persons, suspected of having committed a crime, have equal rights. Following this line of reasoning, the main task of the entire system of criminal proceedings is, should the need arise, to provide each person, subjected to the criminal proceeding, with a real opportunity to protect his/her rights and freedoms, at any procedural stage (Jackson and Summers, 2018).

But in reality, we often face with the fact that the rights and freedoms of the offenders (especially those, who have already committed a crime) may be secured somewhat worse than the rights of other participants of criminal proceedings, such as victims, witnesses, etc., because the offender is credited with negative characteristics, associated with his anti-social and criminal behaviour (Landina, 2017). For this reason, national legislation enshrines not only the rights of everyone without exception, but also guarantees to ensure the rights of certain categories of persons, in particular the ones, who have been detained on suspicion of having committed a crime. In addition, it is necessary that authorised persons should be appointed at the legislative level in order to perform the function of supervising the observance of human rights during detention as a stage of pre-trial investigation.

The paper puts emphasis on the fact that some rights may be violated during the detention of a person, namely the right to counsel (the right to defence in pre-trial proceedings) (Soo, 2016), the right to privacy during searches and taking of evidence in the pre-trial stage (Đurđević, 2016), the right to information (if, at the time of arrest, the person is not informed of his/her rights and the reasons for his/her arrest), the right to silence , etc (Nastiuk *et al*., 2020; Allegrezza and Covolo, 2013).

At the same time, the detention of a person, suspected of committing a crime, requires certain coercive measures, which provide for administration of restrictions on human rights and freedoms on legal grounds. Current trends in the development of national legislation, including criminal procedure legislation, tend to implement basic international legal principles ensuring the protection of human rights and freedoms (Billing, 2016). Therefore, considerable attention is currently paid to judicial control over the observance of human rights in pre-trial proceedings, including during the detention of a person.

In order to exercise control over the provision of fundamental rights and freedoms of a person during detention, procedural legislation of

certain countries provides for the institution of an investigating judge, who carries out this judicial control (Rossinskiy, 2017). The institution of an investigating judge provides additional guarantees for the observance of fundamental human rights in criminal proceedings, which ensures due course of law in legal suits (Sharenko, 2020). In general, attention is focused on the problems of legislative control of the activities of the investigating judge in the performance of his procedural obligations to ensure the rights and freedoms of a person, detained on suspicion of having committed a crime (Brants and Franken, 2009).

The practical significance of studying the problem of judicial control over the observance of human rights and freedoms during the detention of a person is also accentuated by the fact that we have found very few works, dedicated to this issue, most of which deal with it only cursorily in the analysis of judicial control at the stage of pre-trial investigation. Thus the functions of the investigating judge are considered through the prism of the analysis of human rights and their violation during detention or notification of suspicion of committing a crime (Bakyt, 2016); in the analysis of certain human rights that are violated at different stages of criminal proceedings (Yednak *et al.*, 2020). Special attention is paid to the protection of children's rights in criminal proceedings in cases of suspicion of a wrongdoing or detention (Mitsilegas, 2019), but with no particular focus on the role of the investigating judge in these proceedings.

The research papers have not given consideration to the risks of introducing the institution of an investigating judge (Radić, 2018), as malpractice may occur in this sphere of activities, which shall be taken into account when investigating the facts of misconduct by the investigating judge (Nagy, 2016), in particular regarding restrictions on the right of property (Muzychenko, 2017). Attention is given to the weaknesses of the activities of the investigating judge in the protection of human rights in pre-trial investigations (Kostin, 2015).

Instead, despite the importance of carrying out judicial control at the national level, the main problems under investigation are almost complete lack of rigorous research of the institution of judicial control and the role of investigating judges, which they taken on with the purpose of enforcement of human rights and freedoms during detention. And, since the detention of a person limits such fundamental rights as the right to liberty and the right to privacy, it is necessary to develop a clear and explicit mechanism for the implementation of the task of the investigating judge to exercise judicial control.

The purpose of the article. Given the above, the purpose of this study is to identify problems in performing the functions of the investigating judge related to the protection of human rights and freedoms during detention and to develop ways to solve them. To that end, we will carry out the analysis

of theoretical provisions and criminal procedural legislation of individual states concerning carrying out judicial control.

1. Methodology and methods

This study was carried out by stages, based on the logic of presentation of the material, in order to achieve the goals and objectives set in the article. These stages included: the search and selection of literary source base; analysis of the material, presented in the selected literary sources and evaluation of the results of these studies; identification of unsolved problems in the field of judicial control over the observance of rights and freedoms during the detention of a person; determination of the purpose of the article; formulation of conclusions and practical recommendations for solving the issues under study; outlining prospects for further research in this area.

This study used statistics on the level of legal recourses to the European Court of Human Rights (thereinafter – ECtHR) regarding violations of human rights and freedoms during detention in individual countries; the data on fundamental human rights and freedoms that may be violated during the detention of a person; the decisions of the ECtHR on violations of human rights and freedoms during detention, enshrined in the Convention; the analysis of criminal procedural norms of criminal procedure legislation of different countries regulating the work of investigative judges. We have taken into account the data on the number of judicial recourses to the ECtHR by the citizens of different countries (the countries with the lowest and the highest rates were selected), since the analysis of these data makes it possible to assess the effectiveness of criminal procedure legislation of individual countries on the enforcement of the rights and freedoms of the persons, detained on suspicion of having committed a crime.

The empirical basis of the study were the decisions of the ECtHR on violations of the provisions of Articles 5, 6 and 13 of the Convention, which may be violated in cases of arbitrary detention or detention of a person in violation of existing law (27 cases were analyzed). We have examined the norms of the criminal law enforcement codes of 38 countries for analysis of the provisions of the national criminal procedure legislation, which determine the procedure for exercising judicial control over the observance of human rights during the detention of a person, suspected of committing a crime.

To reach the goal, the following methods were used in this study: the method of systematic approach was used to study judicial control over the observance of human rights and freedoms of people in detention as the system of interrelated and interdependent procedural mechanisms and

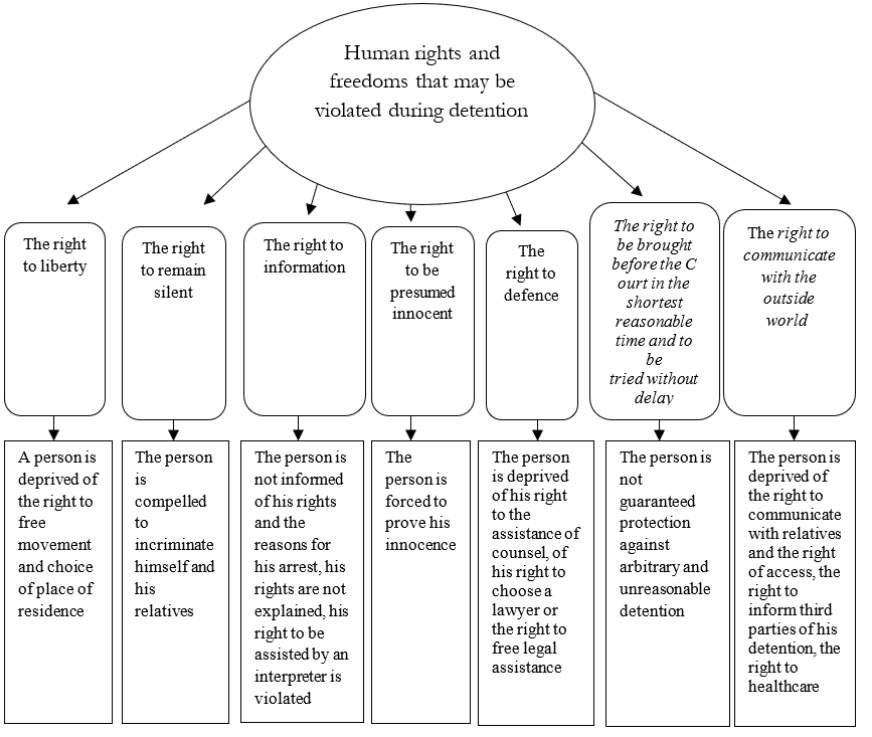
to develop suggestions for improving statutory regulation of the work of the investigating judge; the method of descriptive statistics, which was used for processing, systematization and visual demonstration in the form of tables of basic statistical indicators on violations of human rights and freedoms in pre-trial proceedings; the method of comparison and matching was used in order to establish logical patterns affecting the quantitative indicators of violations of human rights and freedoms during detention; the method of descriptive analysis was used to systematize, classify and synthesize information on possible offenses, risks and weaknesses of the activities of the investigating judge aimed at the protection of human rights in prejudicial inquiries; the sampling method was used to select the decisions of the ECtHR on violations of human rights and freedoms during detention as the stage of prejudicial inquiry; the prognosis method was used to develop suggestions and recommendations for improving statutory regulation of procedural activities of the investigating judge.

2. Results of the research

Detention of a person suspected of committing a crime is, in essence, depriving him/her of his/her right to freedom of movement and to commit certain actions, primarily aimed at fleeing the scene of a crime. That is, it is certain restriction of the rights of such a person in connection with his/her illegal (criminal) behavior.

A detainee, alleged to have committed a crime, is entitled, like any other person, to all the rights and freedoms clearly set forth in national and international laws and regulations, as was mentioned above. At the same time, application of certain repressive measures by the authorized state agencies as the occasion requires (for example, detention, arrest, keeping in custody, etc.) is associated with the violation of a number of fundamental human rights and freedoms, aimed primarily at disciplinary and correctional treatment of the offender. Herewith, the restriction of certain rights and freedoms is quite legitimate (as it is carried out for the benefit of society and in the public interest as a whole), and some rights are violated due to abuse of police authority. Based on the analysis of legislation and the court practice of the European Court of Human Rights, it was found that a number of human rights and freedoms are quite often violated during detention (see Figure 1), although their list is not exhaustive.

Figure 1. Human rights and freedoms that may be violated during the detention of a person



Source: own elaboration

All the afore-referenced rights and freedoms are clearly set forth in the Convention. During detention of a person first of all the provisions, enshrined in Article 5 of the Convention "Right to liberty and security", which guarantees that no one has the right to detain a person, to limit his rights, except the cases provided for by law, are violated . Along with this, the following rights are very often violated: the right, provided under Article 13 of the Convention "Right to an effective remedy" , which guarantees the person the possibility of defending his rights and freedoms in case of their violation; provisions of Part 2 of Article 6 of the Convention, according to which a person accused of any crime shall be presumed innocent until proven guilty as prescribed by law and is not obliged to prove his innocence; the right to respect for private and family life, the right to housing and the right to correspondence, violation of which is permitted only in cases prescribed by law (Article 8 of the Convention) (Wikipedia, 2021). And

these provisions have been violated and, unfortunately, continue to be violated in many countries (see Tables 1-3).

Table 1. Number of appeals to the ECtHR (by articles of the Convention and by states) for 2018 (Violations by Article and by State, 2018)

Country	Number of Article of the Convention			
	5	6	8	13
Albania	1	0	0	0
Andorra	0	0	0	0
Denmark	0	0	0	0
Estonia	0	0	1	0
Finland	0	0	0	0
Iceland	0	0	0	0
Ireland	0	1	0	0
Liechtenstein	0	0	0	0
Luxembourg	1	1	0	0
Monaco	0	0	0	0
Norway	0	0	1	0
San Marino	0	0	0	0
Sweden	0	0	0	0
Armenia	8	7	0	1
Bulgaria	0	10	3	6
Greece	6	11	1	12
Hungary	2	11	2	6
Moldova	14	5	2	6
Romania	1	21	6	3
the Russian Federation	99	68	26	67
Turkey	29	53	8	7
Ukraine	45	63	12	37

Table 2. Number of appeals to the ECtHR (by articles of the Convention and by states) for 2019 (Violations by Article and by State, 2019)

Country	Number of Article of the Convention			
	5	6	8	13
Albania	0	0	0	0
Andorra	0	0	0	0
Czech Republic	0	0	0	0
Denmark	1	0	0	0
Estonia	0	0	1	1
Finland	0	0	0	0
Germany	0	0	0	0
Ireland	0	1	0	0
Liechtenstein	0	0	0	0
Luxembourg	0	0	0	0
Monaco	0	0	0	0
Netherlands	0	1	0	0
San Marino	0	1	0	0
Sweden	0	0	0	0
Armenia	0	5	2	3
Bulgaria	0	4	2	5
France	0	7	1	1
Greece	5	10	0	7
Hungary	5	27	1	16
Moldova	9	27	4	3
Romania	2	11	4	0
Russian Federation	90	76	22	43
Turkey	16	17	11	2
Ukraine	54	58	9	38

Table 3. Number of appeals to the ECtHR (by articles of the Convention and by states) for 2020 (Violations by Article and by State, 2020)

Country	Number of Article of the Convention			
	5	6	8	13
Austria	0	0	0	0
Andorra	0	0	0	0
Cyprus	0	1	0	0
Denmark	0	0	0	0
Estonia	0	0	0	0
Finland	0	0	0	0
Ireland	0	1	0	0
Liechtenstein	0	0	0	0
Luxembourg	0	0	0	0
Netherlands	0	0	0	0
San Marino	0	1	0	0
Sweden	0	0	0	0
Armenia	11	7	0	0
Azerbaijan	17	21	10	1
Bulgaria	6	4	7	3
Greece	0	9	1	7
Hungary	8	7	3	2
Moldova	2	15	2	2
Romania	1	14	10	3
Russian Federation	82	63	24	27
Turkey	16	24	11	0
Ukraine	49	28	3	18

These data show that the number of appeals to the ECtHR for individual countries remains stable (with minor changes). The number of human rights violations depends not so much on the socio-economic standard of living of people as on the level of democracy and ensuring the protection of the human rights in the country: the higher the effective protection of

fundamental democratic principles, the fewer the number of appeals to the ECtHR is according to the specified norms. This shows that the number of violations of fundamental human rights and freedoms during the detention of a person is lower in such countries.

Without reference to the number of cases of violation of the provisions of the Convention, in the vast majority of states there is a special mechanism to ensure the protection of the rights of persons, detained on suspicion of having committed a crime. In much of the world, the investigating judge is the person, who monitors observance of human rights during detention. As a rule, the institution of judicial control itself, the investigating judge, his duties, as well as the grounds and mechanism of their performance are defined at the legislative level and enshrined in the form of norms in the national criminal procedure legislation (see Table 4).

Table 4. Norms of the criminal procedure legislation regulating the institute of the investigating judge (by states) (Cornell Law School, 2021)

Country	Article regulating the exercise of judicial control
USA	the Fourth Amendment of "The Bill of Rights"
France	Article 137 of the Penal Code
England	Article 38 (4) of the Magistrates' Courts Act
Germany	§ 115 of the Penal Code
Ukraine	Article 206 of the Penal Code
the Russian Federation	Article 165 of the Penal Code
Kazakhstan	Article 54 of the Penal Code
Moldova	Chapter VIII Article 300 of the Penal Code
the Republic of Macedonia	Article 289-290 of the Penal Code
the Republic of Bulgaria	Article 65 of the Penal Code
Romania	Section 3 Article 214 of the Penal Code
Turkey	Article 103, Article 109 of the Penal Code

Instead, it should be noted that judicial control over the observance of human rights and freedoms during detention (as well as during other stages of the pre-trial investigation) is not provided for in the criminal legislation of Albania, Ireland, Liechtenstein, Croatia, the Czech Republic, Mongolia, and

Saudi Arabia. In some countries, the function of control over the observance of human rights and freedoms during detention is entrusted to other penal procedure bodies: the prosecutor Netherlands (Criminal Procedure Code of the Kingdom of Netherlands, 2012), (Criminal Procedure Code of the Kingdom of Norway, 2013), the judicial police Bosnia and Herzegovina (Criminal Procedure Code of the Federation of Bosnia and Herzegovina, 2014).

Having regard to the number of appeals to the ECtHR, the rulings of the court, delivered by the ECtHR regarding human rights violations during the pre-trial investigations, including during detention, as well as control over the observance of human rights and freedoms in criminal proceedings, is the necessary step and an important function for ensuring person-centered administration of justice. Therefore, it has obviously become necessary to regulate statutorily judicial control in the national criminal procedural codes of as many countries as possible.

The need for judicial control over the observance of human rights during the detention of a person suspected of committing a crime is evidenced by the existing judgements of the ECtHR, delivered in cases of violation of human rights and freedoms under Articles 5, 6 and 13 of the Convention, which concern precisely the violation of the right to liberty and security, the right to a fair trial and the right to an effective remedy (see Table 5).

Table 5. Judicial decision of ECtHR on violations of human rights and freedoms provided for under Articles 5, 6 and 13 of the Convention (Hudoc, 2021)

Article of the Convention	**Decision of the European Court of Human Rights**
Article 5 "Right to liberty and security"	"Medvedev and others v France", ECtHR 29 March 2010; "Fox, Campbell and Hartley v The United Kingdom", ECtHR 30 August 1990; "Amuur v. France", ECtHR 25 June 1996; "Fedotov v. Russia", ECtHR25 October, 2005; "Khudobin v. Russia", ECtHR 26 October 2006; "Gusinsky v. Russia", ECtHR 19 May 2004; "Yagci and Sargin v. Turkey", ECtHR 8 June 1995; "Jabłoński v. Poland", ECtHR 21 December 2000; "I.A. v. France", ECtHR 23 September 1998; "Ilowiecki v. Poland", ECtHR 4 October 2001; "Vrencev v. Serbia", ECtHR 23 September 2008; "Korneykova v. Ukraine",ECtHR of January 19, 2012; "Gal v. Ukraine", ECtHR 16 April 2015; "Navalnyy v. Russia", ECtHR April 9, 2019.

Article 6 "The right to a fair trial"	"Šubinski v. Slovenia", ECtHR 18 January 2007; "Nakhmanovich v. Russia",ECtHR 2March, 2006; "Ivanov v. Ukraine", ECtHR 7 December 2006; "Kiryakov v. Ukraine", ECtHR 12 January 2012; "Nakonechnyy v. Ukraine",ECtHR January 26, 2012; "Yurtayev v. Ukraine, ECtHR 31 January 2006; "Korneykova v. Ukraine", ECtHR 19January, 2012; "Vera Fernández-Huidobro v.Spain", ECtHR 6 January 2010; "Correia de Matos v. Portugal", ECtHR 4 April 2018; "Lagerblom v. Sweden", ECtHR 14 January 2003
Article 13 "The right to an effective remedy"	"Panteleyenko v. Ukraine", ECtHR 29 June 2006; "Smith and Grady v. United Kingdom", ECtHR 27 September 1999; "Aksoy v. Turkey", ECtHR 18 December 1996

Judicial control is a special type of procedural activities at the stage of pre-trial investigation, which in international law is called «Habeas Corpus Act» (Sereda, 2016). In essence, judicial control at the stage of detention of a person is a specific criminal procedure, aimed at ensuring respect for the fundamental rights and freedoms of a person, detained on suspicion of committing a crime, as well as ensuring redress for the violation of human rights and freedoms in case of their violation by authorized government bodies. The essence of judicial control is that it is the exercise of judicial power at the stages of pre-trial investigation, aimed at ensuring the lawfulness and compliance with the international legal principles of human rights protection during certain procedural actions. The ultimate purpose of judicial control is to ensure the principle of the rule of law, in particular at the stage of detention of a person.

Based on the provisions of the criminal procedure legislation, the function of judicial control over the observance of the rights of persons, detained on suspicion of committing a crime, is performed by various subjects– the investigating judge, the judicial police, the prosecutor. It would appear that the subject of this function should be the investigating judge, as conducting control over the observance of human rights and freedoms during pre-trial investigations reveals the legal nature of his activities. Instead, the legal nature of the prosecutor's work is the prosecution on behalf of the state or government, while the police, even the judicial police, are intended to perform law enforcement functions.

This position is confirmed by the fact that in the criminal procedure legislation of those countries, where the function of judicial control is provided, it is clearly defined that the investigating judge is the judge of the first-instance court, whose procedural duty, in accordance with the criminal procedure legislation, is to exercise judicial control over the

observance of fundamental human rights and freedoms at all stages of criminal proceedings (Liga360, 2012).

The institution of the investigating judge is relatively new in many countries, and therefore the attitude to the existence of such a specially authorized person, whose duty is to exercise judicial control over the observance of human rights and freedoms during his detention, is quite ambiguous. The reason for this is that, on the one hand, performing by the investigative judge of his procedural function of the observance of human rights and freedoms of the detainee in pre-trial investigations is in some cases excessively idealized and overemphasized.

Due to such inaccurate statements, judicial control is considered to be an absolutely impeccable guarantee of the legitimacy of criminal proceedings, especially with regard to certain investigative actions, such as the detention of a person on suspicion of committing a crime. In fact, it is not consistent with the reality, as judicial control is only an additional guarantee of respect for human rights and freedoms during detention, along with other subjects of criminal proceedings (the prosecutor, the judge, the defense counsel).

Judicial control, exercised by the investigating judge, takes place in the manner prescribed by law. According to the general provisions of international law, a detainee must be taken to court to verify the validity and lawfulness of his detention within 24hours of his detention. But a person must be brought before the court without undue delay so that the investigating judge would conduct control over the observance of human rights and freedoms of the detainee, which is emphasized in the criminal procedure laws of some countries (in particular, of Ukraine – Article 209 of the Penal Code of Ukraine). However, national criminal procedure laws rarely specify how the immediacy of taking a detainee to court should be understood. Therefore, it is appropriate to oblige national criminal procedure laws to regulate the period, during which a detainee should be brought before an investigating judge by stating "immediately, that is not later than 24 hours from the moment of detention". Such explicitation will reduce the risk of illegal administration of restrictions on persons who have been detained illegally, as well as will reduce the likelihood of further violation of their rights and freedoms.

Thus, in practice, there are often some difficulties with the implementation of this function, as judicial control over the observance of rights and freedoms during the detention of a person is conducted not in all cases. In particular, if a person is released without the prosecution appealing to the investigating judge in order to establish the lawfulness of detention, the released person will not be able to lodge a complaint of unlawful detention. Similarly, if judicial control is not exercised, even if the detention of a person is unlawful, the prejudicial inquiry of the case will be continued and the authorized bodies will proceed to the next stage –

applying a measure of restraint. And in judicial proceedings on applying a measure of such restraint, the investigating judge will not always assess the lawfulness or unlawfulness of the person's detention. In order to avoid such a situation, that is, to ensure the restoration of the violated rights and freedoms of a person during detention, judicial control should be carried out automatically, without the necessity for a representative of any of the parties of the criminal proceedings to make appropriate submissions before the judge.

Disadvantages of carrying out judicial control may also be manifested in judicial malfeasances by the investigating judge and in certain risks on the part of a person detained on suspicion of committing a crime, which was discovered in the study after examining theoretical and empirical sources (see Figure 2).

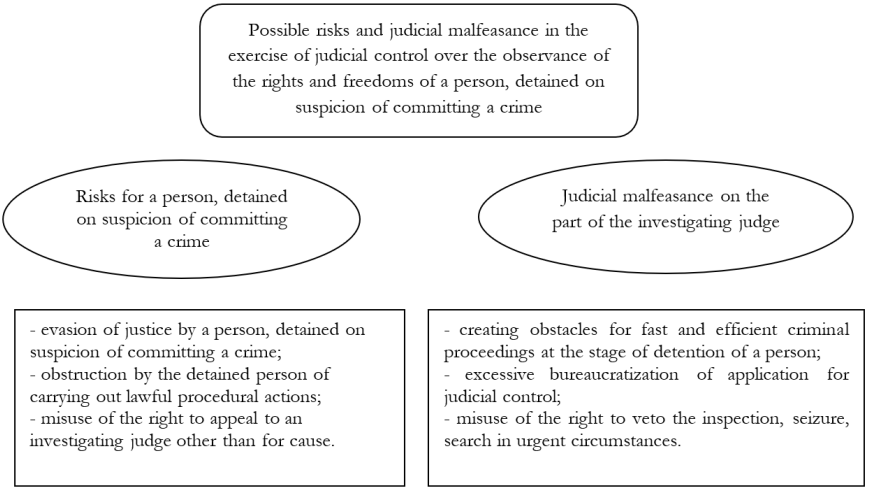


Figure 2. Risks of judicial malfeasance

Provision on the automatic exercise of judicial control over the observance of the rights and freedoms of a person, detained on suspicion of committing a crime, may help to avoid judicial malfeasance on the part of the investigating judge and the risks of illegal obstruction of justice by the detainee. It is also necessary to establish timelines after which the investigating judge must deliver informed judgement on the lawfulness/unlawfulness of the person's detention. This period may be up to 72 hours (3 days), during which the investigating judge, having studied the circumstances of the case, must make an informed judgement on lawfulness/unlawfulness of the detention of a person, suspected of committing a crime.

Thus, the above mentioned indicates that the activities of the investigating judge on the control over the observance of rights and freedoms during the detention of a person are not devoid of difficulties and shortcomings. This is explained, first of all, by insufficient elaboration of the problem of improving statutorily regulation of the functioning of such a procedural institution. In order to eliminate the specified shortcomings and to universalize judicial control over the protection of human rights and freedoms during detention, it is necessary to develop an international normative legal document, which will be binding on all State Parties to this future document. It should regulate the concept, essence and principles of exercising judicial control and determine the parties to criminal proceedings that will exercise criminal justice.

The proposed document should include the following provisions:

- The concept of judicial control as specific criminal procedure, aimed at ensuring respect for the fundamental rights and freedoms of a person, detained on suspicion of committing a crime, as well as ensuring redress for the violation of human rights and freedoms in case of their violation by authorized government bodies.
- The subject of judicial control is the investigating judge.
- The principles of judicial control over the observance of human rights and freedoms during detention are immediacy (the detainee should be delivered to court within 24 hours of detention) and automaticity (judicial control over the lawfulness of detention of a person, suspected of committing a crime, should be carried out through making appropriate submissions before the judge by a representative of any of the parties to the criminal proceedings).
- Terms of judicial control and making an informed decision by the investigating judge should be defined as 72 hours (3 days), during which the investigating judge, having studied the circumstances of the case, has to make an informed judgement on lawfulness/unlawfulness of the detention of a person suspected of committing a crime.

3. Discussion

The institution of an investigating judge is one of the guarantors of the observance of human rights and freedoms during detention of a person, which can at the same time be viewed as manifestation of the interaction between the court and the bodies of pre-trial investigation. That is why this institution is important and necessary in criminal proceedings. This view is confirmed by the exceptional importance of the rights and freedoms of a

person (Nastiuk *et al.,* 2020), which are ensured in the process of judicial control during the detention of a person. Moreover, it is noted that judicial control is the main guarantee of respect for the rights (Aljinovic, 2019) of persons detained on suspicion of committing a crime, as a separate type of defendants, as well as excessive interference with their rights. However, this is only one of the guarantees of observance of the rights of persons, detained on suspicion of committing crimes.

Although there is an opinion that the exercise of judicial control (Rossinskiy, 2017) in criminal proceedings is needless, as no special functional responsibilities are performed when carrying out judicial control. But it is difficult to agree with such a position, which is emphasized in the study of the role of the investigating judge in ensuring human rights in pre-trial proceedings (Kostin, 2015). In particular, this study underlines the effectiveness of judicial control over the observance of the rights and freedoms of detainees in the pre-trial investigation, in particular control over the actions of the prosecuting official (the prosecutor) (Nowak, 2014).

In some studies, the rights, and freedoms of a person, guaranteed by an investigating judge, include only the right to due process of law, the right to liberty and the right to property, which are considered to be the key rights in exercising judicial control (Bielousov *et al.*, 2020). Although, in fact, during the detention of a person, and at other stages of the pre-trial investigation, other human rights (the right to information, the right to remain silent, etc.) are violated as well, as mentioned above.

The concept of judicial control is also defined in different ways. Thus, some studies state that pre-trial control consists exclusively in verifying the legality and validity of decisions on detention (arrest or keeping in custody) and in the elimination of wrongful incarceration of persons suspected of committing a crime (Khanov, 2017). However, most scholars yet recognize that judicial control is aimed precisely at protecting the fundamental human rights and freedoms of a person in criminal proceedings and ensuring their observance (Hinarejos, 2009).

The shortcomings, identified in the exercise by the investigating judge of judicial control over the observance of human rights and freedoms during detention indicate deficiencies in the mechanism for exercising judicial control. Therefore, it is impossible to consider this institution effective in the form in which it exists in some countries (Soo, 2018). Consequently, one cannot agree with excessive idealization and absolutization of judicial control in accordance with the current legislation in individual countries (Zinets, 2005).

Scientists have conducted very few researches in the criminal procedure law doctrine, dedicated to the improvement of the activities of the investigating judge in monitoring the observance of human rights and

freedoms in the pre-trial investigation. But even those few ones, that have been conducted, rarely offer specific means of increase of efficiency and improvement, but only identify shortcomings and problems in the exercise of judicial control by the investigating judge (Trukšāne, 2020). And the few studies that contain practical recommendations, as a rule, relate only to national legislation and do not go beyond the native country of the researcher (Bortun, 2018). Instead, international law contains a number of normative legal acts that elaborate on the procedure for ensuring human rights and freedoms during the detention of a person (Pivaty and Soo, 2019), which indicates the importance of eliminating shortcomings in the exercise of judicial control in this area at the international level. Improving the conduct of judicial control over the observance of rights and freedoms during the detention of a person may become a prospect of further research in this field of study.

Conclusions

The institution of an investigating judge is one of the guarantors of respect for human rights and freedoms during detention of a person, which at the same time can be seen as manifestation of the interaction between the bodies of pre-trial investigation and the court. Consequently, this institution is important and necessary in criminal proceedings.

Judicial control at the stage of detention of a person is a specific criminal procedure, aimed at ensuring respect for the fundamental rights and freedoms of a person detained on suspicion of committing a crime, as well as ensuring redress for the violation of human rights and freedoms in case of their violation by authorized government bodies.

The subject of this function should be an investigating judge – a judge of the first-instance court, whose procedural duty, in accordance with the criminal procedure legislation, is to exercise judicial control over the observance of fundamental human rights and freedoms at all stages of criminal proceedings.

Judicial control must be exercised in accordance with the following principles: the detainee should be delivered to the investigating judge immediately, not later than 24 hours from the moment of detention; judicial control should be exercised automatically, without the obligatory request of a representative of any of the parties to the criminal proceedings; the investigating judge, having studied the circumstances of the case, must within 72 hours (3 days) deliver informed judgement on the lawfulness/unlawfulness of the detention of a person suspected of committing a crime.

In order to eliminate shortcomings and universalize judicial control over the protection of human rights and freedoms during detention, it is necessary to develop an international normative legal document, which will be binding on all State Parties to this future document and will regulate the concept, essence and principles of exercising judicial control and determine the parties to criminal proceedings that will exercise criminal justice.

This study opens the prospects of developing the most effective model of procedural activity of an investigating judge and implementation of the function of judicial control over the observance of human rights and freedoms of a person detained on suspicion of committing a crime in criminal proceedings in general on the basis of further collection of statistics on individual countries on the number of violations of human rights and freedoms during detention and on the number of appeals to the European Court of Human Rights.

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Benefits of preserving cultural heritage and its impact on providing national security in Islamic countries

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Abstract

One way to expand social, cultural, and religious communication and interaction in Islamic societies is to preserve cultural heritage and expand the tourism industry. Considering the emphasis of religious sources on the necessity of objective and theoretical study in history and the role that this heritage plays in preserving the identity and civilization of Islamic societies, its preservation is obligatory. Therefore, one of the essential programs that should be considered in this regard is the development of laws derived from books and traditions to preserve cultural heritage. In this article, the author examines the meaning of cultural heritage, national security, the effects of preserving cultural heritage, and methods of preserving this heritage in Islamic societies, takfiri groups to destroy cultural heritage, and their study based on religious sources. One of the critical research findings is the obligation to preserve the past's cultural heritage in light of military, cultural, and economic security. The development of the tourism industry is not possible without preserving cultural heritage.

Keywords: cultural heritage; national security; tourism; takfiri groups

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Beneficios de preservar el patrimonio cultural y su impacto en la provisión de seguridad nacional en los países islámicos

Resume

Una forma de expandir la comunicación e interacción social, cultural y religiosa en las sociedades islámicas es preservar el patrimonio cultural y expandir la industria del turismo. Considerando el énfasis de las fuentes religiosas en la necesidad de un estudio objetivo y teórico de la historia y el papel que juega este patrimonio en la preservación de la identidad y civilización de las sociedades islámicas, su preservación es obligatoria. Por lo tanto, uno de los programas esenciales que debe considerarse en este sentido es el desarrollo de leyes derivadas de los libros y las tradiciones para preservar el patrimonio cultural. En este artículo, los autores examinan el significado del patrimonio cultural, la seguridad nacional, los efectos de preservar el patrimonio cultural y los métodos para preservar este patrimonio en las sociedades islámicas, los grupos takfiri para destruir el patrimonio cultural y su estudio basado en fuentes religiosas. Uno de los hallazgos críticos de la investigación es la obligación de preservar el patrimonio cultural del pasado a la luz de la seguridad militar, cultural y económica. El desarrollo de la industria del turismo no es posible sin preservar el patrimonio cultural.

Palabras clave: grupos takfiri, patrimonio cultural, seguridad nacional, turismo

Introduction

Overall, Heritage incorporates tangible and intangible, natural and cultural, mobile and immobile, and documentary assets inherited from the past and conveyed to forthcoming generations under their priceless value. The term 'heritage' has developed substantially over time. Initially referring mainly to the impressive remains of cultures, heritage has continuously grown to adopt living and contemporary expressions.As a source of identity, heritage is a worthwhile factor in empowering local communities and permitting vulnerable societies to be involved fully in social and cultural life. Moreover, It is able to grant time-tested solutions for conflict prevention and reconciliation.

Given the rising number of international crimes associated with the looting and trafficking of cultural heritage, the initial international response was the Convention on the Means of Preventing and banning the illegal Import, Export, and Transfer of Possession of Cultural Property established by UNESCO in 197 (UNESCO, 2018).

- **Security**

The word security is one of the words that, in terms of some similarities, have a fluid, diverse and variable meaning that includes a very wide range in individual and social dimensions. Security is defined as "being safe, secure, and fearless.

Security comes from the word "safe", which crystallizes the words to calm down, not to be afraid, and not to be afraid, and in the Egyptian sense, "Security" is referred to as the attainment of security and tranquility after liberation from fear. (AL-JABARI, 2008; Crone, 2007). Safe and secure means peace of mind and eliminating fear.

With the development of human society, the concept of security went beyond the requirement of physical guarantee and, in a broader sense, was considered in political, economic, social, cultural, and even psychological dimensions (Ünver, 2016). Pourjavady has defined the word safe as the calmness of the soul to the matter and the opposite point as fear means "the soul's disgust with the matter" (Pourjavady. 2011; Farrin. 2010; Heidari, And Ghaemi, 2018). Many things have been said about the importance and necessity of security from the infallible (PBUH).

As the definition of national security implies, national security includes components of national authority, and the heritage of each country is one of the components of that country's national authority; therefore, the necessary efforts should be made to identify and transfer this heritage and protect it.

- **Heritage**

Shahid second says in this regard: Inheritance is based on the weight of the passive and was originally inherited because the preposition "V" was preceded by a broken heart (Sharifi Pour & Shouri. 2019). Inheritance in legal terms is "the transfer of ownership of the deceased's property, after his death to his heir."

Inheritance in legal terms is "the transfer of ownership of the deceased's property, after his death to his heir." (Timothy. 2011; Borhani Kakhki, *et al*., 2021). In the present discussion, inheritance does not have the meaning used in jurisprudence and law, that is, inheritance, but this word is always inherited and often associated with the word culture, and its equivalent word in Arabic is the word "inheritance".

The inheritance includes all instances and manifestations of material, spiritual, tangible, and intangible; cultural heritage means cultural heritage; that is, a culture that with all its manifestations is inherited from previous generations to later generations and forms the social elements of the new generation (Stylianou *et al.,* 2015; Rohmansyah, 2019).

- **Culture**

In a comprehensive definition, culture is a collection of human creations and ideas created by man and his separation from nature and the means of his superiority over other creatures. Thus, culture includes all material tools and what is made by man from natural matter, Methods and processes of their construction (material culture) All values, views and beliefs, ideas, knowledge, techniques, religion, customs and traditions, science, philosophy, literature, art and all the mental products of man (spiritual culture). In other words, culture includes the material and spiritual elements of social life in which human beings are born and raised in this way, something called cultural identity is given to the individual or human group; This identity provides the means of distinguishing man from other races and tribes. (Ünver, 2016).

> Historical and cultural property is a mirror of a nation's past. These works, especially the works of distant eras that lacked the traditional means of transmitting culture and message, such as books and calligraphy, are considered to be the revealing document of the life of that time. "And perhaps a seemingly worthless broken pottery, or a dying inscription, ignites a corner of the social behavior or science and civilization of its predecessors (Schmallegger and Carson, 2010: 59).

Human societies today are faced with the term cultural security; the protection of individual culture and society from any attack and threat is called cultural security. In other words, cultural security includes creating a safe, calm, and free from any threat that human beings have prepared to religion and thoughts, ethics, customs, beliefs and values, cultural heritage, literary works, and so on. Due to the role and position of culture in human identity and existence and the development of human societies, and also because of the widespread and effective influence of culture on all aspects of human life, both individual and collective, material and spiritual, spiritual and physical, as well as the impact that cultural issues have on other sectors providing cultural security is more sensitive. Accordingly, cultural promotion increases social security and, consequently, economic and political security, Therefore, the first step in ensuring the security of individuals is to ensure cultural and psychological security (Hawkins & Mann. 2007).

2. Cultural heritage in domestic and international law

At first glance, cultural heritage means all the works that have been passed down from generation to generation. In this definition, cultural heritage refers to the material works leftover from the past, and in fact, includes only tangible and objective works. In addition, it is limited to historical monuments, while we also have an intangible part, such as beliefs, traditions, local languages and dialects, and religious traditions and rituals.

Cultural heritage is used in two general and specific meanings. In the general sense, it refers to what has been the result of the thoughts, beliefs, and efforts of previous generations of society and nation, which have crystallized in the form of beliefs and customs or traditions or handicrafts and have been passed on to future generations. Which may include material works, such as buildings and objects, or immaterial works, such as customs, traditions, and beliefs.(Sharp & Leiboff. 2015).

In a special sense, material works are called cultural heritage. This is a special concept that is discussed in jurisprudential and legal issues, so they are also called cultural-historical works. Here are two definitions of cultural heritage in domestic law: "Article 1 of the Law on the Preservation of National Monuments and Article 1 of the Statute of the Cultural Heritage Organization.

a) Article 1 of the Law on Preservation of National Monuments: All industrial monuments, buildings, and places that were built in Iran until the end of the Zandiyeh dynasty, both movable and immovable, can be considered as national monuments of Iran and placed under the protection and supervision of the government (Frigo, 2004).

b) Article 1 of the Statute of the Cultural Heritage Organization of the country: cultural heritage includes remnants of the past that represent human movement throughout history, and by identifying it, the ground for recognizing his identity and preserving his cultural movement is made possible, and through this, the grounds for learning are provided for human beings (Frigo. 2004). We follow the definitions of cultural heritage by looking at international law; the most comprehensive definition of cultural heritage was presented at the Seventeenth Session of the General Conference of the United Nations Educational, Scientific and Cultural Organization, adopted on 16 November 1972 in Paris. It is limited to some examples of cultural heritage. Article (1) of this contract states:

Article 1: For the purposes of this Convention, the following shall be deemed cultural heritage:

- Effects:

Architectural, sculptural, or painting works on buildings, elements, and buildings that have an ancient aspect, inscriptions, caves, and a combination of factors that have exceptional universal value in terms of history, art, and science;

- Collections:

A collection of separate buildings or complexes that are of exceptional historical, artistic, and scientific historical value in terms of architecture, uniqueness, or their dependence and time in a natural landscape;

- Areas:

Human works or works created by man and nature together as well as areas including archeological sites that have a unique global value in terms of history, aesthetics, ethnography or anthropology in Iran; This definition, in turn, is a complete and comprehensive definition, but the disadvantage of this definition is that it does not state a specific criterion for recognizing the existence of exceptional value in a particular work, and this is left to the discretion of the International Cultural Heritage International Committee (Frigo. 2004).

3. Cultural heritage interests in Islamic countries

3.1. Development of tourism industry

One of the issues related to the protection of cultural heritage and the existence of security is the development of a tourism development strategy. The prosperity and development of tourism depend on security. Lack of comprehensive planning and development in the tourism industry in all dimensions depends on the existence of an effective factor of security; tourism development is not possible without preserving cultural heritage from destruction.

The United Nations defines a tourist as follows: Who is to entertain tourists visited scenic spots, medical, business, sports, or pilgrimage, to a place other than the place where it resides travels, Provided that the minimum length of stay less than 24 hours and not more than six months, and tourism is: "Optionally spending some of his leisure time in a place other than a permanent residence in order to enjoy the pleasures of tourism" (Quoted by: Norouzi. 2010: 154).

3.2. The role of cultural heritage in attracting religious tourists in Islamic countries

Religious tourism has been one of the most prosperous and ancient tourism in the past and now around the world. Ancient Greek holy ceremonies in the temples of Apollo, Egyptian expeditions to visit the pharaohs, and Iranian religious rites in the temple of Anahita in Kangavar all indicate the antiquity of religious tourism among various nations (Heydari *et al*., 2018). In recent decades, on the one hand, due to machine life and the need for spirituality in life, and on the other hand, facilitating travel by expanding means of transportation, travel to meet spiritual needs has expanded rapidly in the world. In 2000, two hundred and forty million people traveled for this purpose, and 29% of the world's travel was religious.

In 1979, the first conference was held on how to manage sacred places and maintain religious shrines in the face of globalization.

The existence of holy shrines in Islamic countries and the diversity of geographical environment and social, economic, and cultural conditions create religious tourism. However, studies show that the 57 Islamic member states of the Organization of the Islamic Conference, with a population of about 1.5 billion (23% of the world's population), have only 12% of the world tourism market. Among these countries, 82.5% of tourist attraction is in possession of 10 Islamic countries and about 10% of global tourism revenue (Heydari *et al*., 2018).

Due to its special cultural situation and the existence of 9,000 historical religious shops, Iran can be a destination for Muslim tourists in Islamic countries, as well as the existence of antiquities of other religions, for non-Muslims, one of the world's tourist destinations. The need to learn from the works of the past the lesson on the weight of the verb is from the root "abar" which has various meanings Such as it comes down to interpreting, measuring, passing and surprising.

In fact, a lesson is a state that arises for human beings because of dealing with outward matters and leads to esoteric knowledge. The similarity of human beings' lives and different ethnic groups with each other and the current traditions in human life make this educational method effective. Gaining insight, benefiting from the experiences of others, being relatively immune to error, and understanding that human beings are mortal and that what they provide in this world is transferable.

One of the most famous jurisprudential rules that document many jurisprudential issues. It is a harmless rule that can be used in the discussion of protection and non-destruction of cultural heritage, because the provisions of this rule are general and include material and spiritual losses. Therefore, in the present era, when we are witnessing countless benefits of cultural heritage from different scientific, economic, and spiritual perspectives, etc., explaining this rule and using it can determine many aspects of the importance of these works for us. According to this rule, the damage is prohibited. In most contemporary legal systems, this issue is referred to as "not being licensed to abuse the right." and it can be said that apart from the numerous Shari'ah rulings that can be considered as evidence of this rule, the ugliness of harm and the good of preventing it, and consequently the prohibition of harms, are rational rulings and rational documents (Harstad & Selten, 2013).

An examination of the cases of use, loss and damage in Islamic sources shows that the loss includes all material and spiritual losses and damages, just as this word has been used in the case of lack of respect and reputation.

The meaning of intellect and nature on preserving the cultural heritage of the past Humans, regardless of their customs and rituals, do not consider it permissible to insult the dead, and this is disgusting to all people, and they are not even willing to insult ordinary graves and always express their protest in different ways. Therefore, insulting the dead is against human nature. Now the sensitivity of this issue about the graves of elders and scholars is multiplied; the rulings of the dead in Islamic jurisprudence show the same bow and respect that Islam gives to the dead. The rules of ablution, shrouding, embalmment, prayer, funeral, burial, and much other admirable show the respect that Islam has for human beings. This is not for Muslims; Relatives who burn their dead in religious ceremonies also consider it a form of respect for the dead. Those who bury a corpse after hundreds of years do not allow disrespect to its grave.

The graves of the prophets, saints, and righteous servants of God have always been of interest to the people, and their obstinacy towards them was prevented in any way. One of the ways to maintain the respect of the tombs of the elders has been to build buildings, courtyards, and minarets on their holy tombs throughout history. In fact, building on graves is one of the ways to attract people's attention to these places and use them for divine nearness.

4. Methods of preserving tangible and intangible cultural heritage

One of the most important activities for the preservation of antiquities in their care measures in order to prevent their deterioration and destruction; in fact, care includes all activities that preserve cultural and natural life. With the aim of presenting the basic and artistic messages that cultural heritage offers to those who use them or look at them with amazement. (Hendijani *et al*., 2014).

Conservation and maintenance have two aspects, positive and negative aspects. The meaning of protection of positive aspects is to be able to provide the conditions for the survival of cultural monuments in society today and in the future. Negative maintenance is concerned with combating erosive factors.

The two are different in not only cognition; among other things, the fight against erosion factors of continuity also provides an effective, and this issue is important here from this perspective. That cultural heritage has a physical and external aspect and has a value and message, and in fact has a kind of social life (Stylianou *et al.,* 2015).

In fact, the emphasis is on preserving the spirit and meaning of cultural heritage along with its objectively visible body. Our religious sources mention several ways to protect material works. Repair of an ancient building Long-term preservation and preservation of antiquities in the true and scientific sense is much more expensive than the construction of monuments. One of these ways is the restoration of historical monuments, which is very important to conduct basic and applicable research in this area to protect the monuments.

Restoration means performing all the actions done to modify the existing materials and the structure of cultural work to return it to its original known position. The purpose of restoration is to preserve and reveal the artistic and historical values of the work and is based on attention to the remaining original parts and evidence of the original condition of the work.

5. The importance of the museum in preserving antiquities

A museum is a place where related objects and materials are collected, studied, and stored, then exposed to the public for the purpose of education, dissemination of information and entertainment. The museum is in fact a reflection of all human activities from their natural, cultural, and social environment.

Due to the growing importance of preserving Persian historical monuments - Iran also needs to create modern museums that can display the nation's history, culture, and identity with the culture and civilization of Iran to achieve international standards for the protection of antiquities. In this regard, it is necessary for the Cultural Heritage and Tourism Organization to make more efforts and create a central museum in each city, equipped with valuable works of historical periods.

In fact, the purpose of museums is to research the relics and evidence left by man and his environment. Collecting these works and spiritual productivity and creating a connection between these works and especially displaying them in order to study and spiritual benefit. Creating and preserving a museum means paying attention to the history and civilization of your nation and country. Of course, it is not possible to keep all the works in the museum; Like the historic houses, we have more than one million historic houses in the country, of which only thirty-two thousand have been identified, and the rest of the buildings are kept in non-standard conditions.

Zakaria in Halab, Yahya in sham, Shoaib in Jordan, sheyth in Lebanon, and the tombs of other Islamic lands' prophets, on which strong buildings have been built (Barasheed et al., 2014). Here are some narrations about

the Muslim way of life in building tombs to preserve the status of the tomb owner and protect cultural heritage:

1. It is narrated that when Prophet Ibrahim (AS) completed the rites of Hajj, God commanded him to go, in the meantime, the mother of Ishmael (AS) passed away. Ishmael buried him next to the house of the Ka'bah and built a Hajar wall around it so that his grave would not be insulted.
2. Mu'awiyah Ibn Ammar quotes Imam Sadegh (AS) as saying: Seventy prophets have been buried between the pillar of Yemen and the hajar_all _aswad, who have died of severe hunger and hardship.

Conclution

According to these narrations and the numerous narrations that have been narrated in the books of the narrations of the two sects, we reach a conclusion that:

1. The ancients and Islamic scholars' tradition to the tombs and the construction of tombs to honor the owner of the tomb and honor him.
2. Protecting graves from destruction is possible only in the shadow of building them and developing the tradition of pilgrimage and regular visits to these religious and spiritual monuments.

What has been repeatedly stated in the narrations is meeting and attending the holy observation due to the continuation of the tradition of learning and awakening of the human heart.

3. Registering a work in the list of national works

Given the abundance of works in a community and the lack of facilities to maintain and maintain all of them, prioritizing works can be the most important way to register a work in the list of national works. Prioritization should be in accordance with the various values of historical monuments in society, including cultural-religious-economic, social, and scientific values.

In this regard, according to the Holy Quran's goals in preserving and protecting cultural heritage and the values, lessons, and awakening of conscience and feelings of human beings, should also be considered. In addition to these environmental conditions, the effects and factors that cause premature destruction of the work, including natural disasters, must also be considered.

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Socio-Economic Foundations of Trump's Domestic Policy and The Globalist Project in The United States (2016-2020)

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Abstract

The article considers the socio-economic dimension of former President Donald John Trump's domestic policy concept in the United States during his presidency from 2016 to 2020. The contradictions between D. Trump's policies and the concept of globalism stand out. During his domestic policy course, D. Trump sought to regain the ability of U.S. leadership to rebuild the country's big industry to achieve the independence of transnational financial capital. His policies had been partially successful and had created the conditions for a redefinition

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of the concept of globalism. Methodologically, the research, in reviewing Trump's globalist strategy and economic strategy, adopted a socio-economic approach to politics that simultaneously explored geoeconomics and geopolitical issues in their dialectical interactions, including on the socio-economic dimension itself. It concludes that the U.S. elite faced the need to accommodate the interests of the American population, whether Republican or Democrat. Moreover, as asocial phenomenon, Trumpism has shown that the politics of globalism has entered a period of conceptual and resource crisis characterized by its inability to consider the interests of the American population.

Keywords: U.S. policy; socio-economic relations; globalism; regionalization, multipolar world.

Fundamentos socioeconómicos de la política interna de Trump y el proyecto globalista en Estados Unidos (2016-2020)

Resumen

El artículo considera la dimensión socioeconómica del concepto de política interna del expresidente Donald John Trump en los Estados Unidos durante su presidencia de 2016 a 2020. Se destacan las contradicciones entre las políticas de D. Trump y el concepto de globalismo. Durante su curso de política interna, D. Trump buscó recuperar la capacidad del liderazgo estadounidense para reconstruir la gran industria del país a fin de lograr la independencia del capital financiero transnacional. Sus políticas habían tenido un éxito parcial y habían creado las condiciones para una redefinición del concepto de globalismo. En lo metodológico la investigación, al revisar la estrategia globalista y la estrategia económica de Trump, adoptó un enfoque socioeconómico de la política que exploró simultáneamente cuestiones geoeconómicas y geopolíticas en sus interacciones dialécticas, incluso sobre la dimensión socioeconómica propiamente dicha. Se concluye que la élite de Estados Unidos se enfrentó a la necesidad de acomodar los intereses de la población estadounidense, ya sean republicanos o demócratas. Además, como fenómeno social, el trumpismo ha demostrado que la política de globalismo ha entrado en un período de crisis conceptual y de recursos caracterizado por su incapacidad para tener en cuenta los intereses de la población estadounidense.

Palabras clave: política estadounidense; relaciones socioeconómicas; globalismo; regionalización, mundo multipolar.

Introduction

When it comes to elections in the United States, it means, first of all, clarifying who the country is economic and financial elite will stand for. The common view on this issue is that economic elites do not « put all one's eggs in one basket », that is, they share their interests between democratic and republican party. It is just a matter of greater or lesser preferences (Baltz, 2021). With regard to the 2020 elections, the issue of the value choice of voters was added. But there is another question for elections: the political choice of voters based on socio-economic preferences, that is, the impact of class preferences on political choices (Biegon, 2019).

When discussing the contradictions between Republican and Democratic Party supporters in the United States, the media focus on the contradictions in the world view. This can be explained by the fact that with the predominance of services in the economy, industrial policy becomes less visible (Gusterson, 2017; Farzanegan *et al.*, 2021).

As a result, the interests of the North American community in the production of goods and productive entrepreneurship are on the periphery of media discussion, analysis and attention. But it is precisely the contradictions between the industrial and post-industrial parts of North American society that constitute one of the main contradictions between the Trumpist Republicans and the Democrats. It is known that Trump was in favor of the country's industrial revival, and that the Democrats were in favor of a post-industrial strategy. Some aspects of this policy and its outcomes from 2016 to 2020 are discussed in this article.

1. Materials and Methods

The article, in reviewing the globalist strategy and President Trump's economic strategy, adopted a socio-economic approach that explored geo-economic and geopolitical issues in their dialectical interactions, including about the socio-economic dimension. A problem-solving approach has been taken when considering the policies of President Trump himself, as well as the objectives of his political opponents by globalists. This method examined Trump's actions in overcoming US economic de-industrialization in the face of opposition from the globalist elite. An analytical method was also used when Trump's policies were studied in the fields of migration, employment, finance, and industry. The sociological method was used to examine voters' political preferences in the United States from 2012 to 2020. The statistical method was used in the framework of the sociological method and the involvement of economic statistics.

2. Results

By 2016, many in the United States had come to realize that the most powerful American TNCs and banks did not solve the problems of US citizens or North American domestic businesses. The mortgage crisis of 2007-2008 in the United States showed that all the wealth of the world that was supposed to be in the territory of that state was not really there. The money of the globalists flows past the U.S. and does not enrich the state. In the so-called « "Great Stratification": for the period 1979-2007. The combined income of the richest 1% grew by 275%, while the poorest 20% of American households grew by only 18%» (Clarke and Ricketts, 2017; Biegon, 2019).

Trump needed domestic support to achieve his goals. It was therefore vital for him to keep his promises. In his statement, he blamed the immigrants and the foreign campaigns. Thus, with one proposal, he solved four issues: the development of national capitalism, the maintenance of the nation-State, the prevention of unemployment, and the fight against crime.

According to many analysts, Trump's policies had their effects. In the Rust Belt, stretches of riverway are crowded again with coal barges. And local business leaders believe in the Trump Bump because they see it in their order books and balance sheets. In the Coal Belt, there's been delight at the rescinding of Obama's Clean Power Plan. According to a report by the United States Department of Labor's Bureau of Labor Statistics in September 2019, the United States' unemployment rate «reached a record low since December 1969 and amounted to 3.5%» is 5.8 million men (Guliyev, 2020). As early as 2018 in Davos, Trump announced: Since my election, we've created 2.4 million jobs and that number is going up very, very substantially. It is noteworthy that he said, continuing his talk: African-American unemployment reached the lowest rate ever recorded in the United States and so has unemployment among Hispanic-Americans (Nelson, 2019). The success of Trump's policy was also recognized by the opposition. It is acknowledged that the successes at the end of 2019 can be considered as the «strong stock market, record low unemployment, low inflation», «petrol prices below average, tax cuts, deregulation campaign...» (Regilme, 2019) In doing so, Trump articulated a commitment to the philosophy of North American imperialism, stating; There has never been a better time to hire, to build, to invest, and to grow in the United States. America is open for business and we are competitive once again (Farzanegan *et al.*, 2021).

The Republicans' tax stance under Trump remained the same: the drive to cut taxes. During Trump's presidency, taxes were reduced on so-called C corp, one of the most common types of private enterprises in the United States, including large ones, as well as on individual business firms and

partnerships with various flexible organization schemes (Lacatus, 2020). Moreover, Trump proposed lower-wage taxes. As a result, 40% of small businesses considered themselves Republicans in 2020, compared to 29% who considered themselves Democrats, while the number of undecided people decreased to 40% (Guliyev, 2020). Small and medium-sized businesses' views of Trump's presidency were strongly influenced by the announced COVID 19 pandemic. It particularly affected those who were unable to compensate for losses despite State aid or health insurance, and who chose to deny Trump support (Hall, 2020). While others who had successfully survived the pandemic by the end of 2020 have maintained confidence in the incumbent President. In general, during his presidency, Trump managed to secure the support of the business.

Trump's policy of limiting migration from Latin America proved successful. Already by the beginning of 2020 so-called «caravans of migrants» from Mexico disappeared. The reason for this was the agreement that Trump made with Mexican President Andrés Manuel López Obrador, whereby the Mexicans unilaterally closed the border with Guatemala and the United States, and the remaining migrants either stayed in Mexico or returned to their countries. The number of migrants in July 2019 was 87,000 and the month before that was 144,000 (Nelson, 2019). At the same time, in April 2019, 16,100 illegal migrants were detained on the border with Mexico; in June - 30,700 in July - 38,400; in August - 46,800 (Biegon, 2019; Restad, 2020).

Overall, by the end of 2019, the number of migrants detained at the southern border of the United States had fallen by 75 percent compared to May of the same year. Mexico stopped about 150,000 migrants from going to northern Mexico. Besides, in 2019, 64,000 illegal border crossings were transferred from the United States to Mexico (Mulich, 2020). Evidence suggests that irregular migration has not stopped, and several illegal immigrants have entered the United States, but it has declined significantly. Trump's other action was to build a wall on the border with Mexico, which was not completed but remained an important part of his anti-migrant policy.

The persecution of Trump personally unleashed by the democratic globalist elite led to the concentration of its so-called «nuclear electorate» around Republicans and Democrats: Protestants, whites, farmers, African Americans, Hispanics, LGBT community, gun owners, etc. «In the «Bible belt» Protestants see Trump as their own, just like them, a victim of bullying by the liberal elite. In the «solar belt» along the Mexican border, his plans to combat illegal immigration are strongly supported». The struggle to implement the new policy towards migrants has spread to the US courts (Regilme, 2019). At the same time, the Latin-speakers themselves oppose the influx of migrants across the border, realizing that

this leads to an increase in crime and unemployment. The important thing here is that Trump continued to fulfill his promises, thereby retaining support among those of his supporters who considered illegal migration a big problem for the United States.

Likewise, Conservative Trumpists associate achievements in domestic politics with achievements in foreign policy. In an interview with The Wall Street Journal, US Trade Representative Robert Lighthizer said, «the tariffs are helping to bring industrial jobs back to the US» and «the number of jobs in the sector has grown by 400,000» between November 2016 and early March 2020 (Guliyev, 2020). As his victory, he announced that «out of 200 billion dollars, China will spend half (50 billion dollars a year) on the purchase of agricultural products from American farmers who unanimously vote for him in the elections» (Restad, 2020). China was forced to make concessions on other issues as well.

The economic goal is expressed something like this: we will get rich, and everyone will come to us for technology, loans, money. It is believed that the goal of Trump's policy is «to level the playing field in his giant domestic market and to resist theft of intellectual property» (Biegon, 2019). Trumpists managed to solve the ideological task of creating an «image of China as an enemy», which «became entrenched in the minds of Americans» and «the abolition of duties on Chinese goods» is no longer being discussed (Nelson, 2019). His opponents from the liberal camp accuse him only of hypocrisy, since it was in China that Trump placed some of his orders. They also say that further all the projects of the President of the United States will not be successful. Nevertheless, these are weak arguments (Mulich, 2020).

However, the political confrontation noticeably turns into falsifications and the creation of false facts. For example, Wall Street Journal experts «note that this two-thirds increase occurred even before the United States introduced the first round of duties on Chinese goods in July 2018. By the beginning of 2020, even before the States faced the pandemic, the growth in industrial employment had stopped (Interfax.ru, 2020). In fact, the decrease in unemployment was hardly noticeable in 2018 (by 0.1-0.3%), but the increase in unemployment still turned out to be directly dependent on the outbreak of the COVID-19 epidemic - it was in March that there was a sharp jump in unemployment by 11.3% (Lacatus, 2020).

The deep internal contradictions among the population of the United States should be considered. A country that declared but did not become a "melting pot" of nations, did not create a true "American nation." And the growth of ideological contradictions, up to the "idiosyncrasy" and "incapacity for constructive cooperation" of the opposing forces, at least "by the Republicans already in 1994", further and further led people away to the political flanks (Restad, 2020).

With Trump, a strange feature in the political life of the United States was revealed in that the President's course is personal, and is named Trump's course and "Trumpian", and the «globalists» and «democrats» acting against him are anonymized. Based on this, one gets the impression that Trump is a loner opposing the US Democratic Party. It is backed by major US campaigns, the military-industrial complex, and most of the US's population.

Trump opposed the Fed, which, according to Trump, raised rates and continued to print extra money (Mulich, 2020). The decision of the US Federal Reserve to cut the refinancing rate for the first time in the last decade by only 0.25 percentage points should be considered a minor victory for Trump (Wojczewski, 2020). There is another opinion that Trump could not resist the Fed, that wolves of Wall Street showed Trump who was the boss and who would determine the level of interest rates in the economy. But we observed a certain confrontation between the President of the United States and the Fed (Hall, 2020).

A feature of the political choice of voters in the United States is value. In the United States, as a state with a significant share of services in the economy, which means a fairly high level of income for a large part of the population, political choices rarely regard the income directly. Many people vote based on value and ideological preferences, which are especially advantageously highlighted in the media, showing the confrontation of some groups against others. The 2020 presidential election did not add consensus to North American society (Lacatus, 2020). Brexit and then Trump's election is a reflection of a deep crisis in Western society that no one wanted to notice. And the example of "yellow vests" in France, the League in Italy, and "Alternatives for Germany" in Germany" shows that "in Western societies there was a rebellion of a significant part of the population, a populist rebellion" (Regilme, 2019; Wojczewski, 2020). After the crisis in 2008, "millions of Americans were left homeless" plus "a deep economic split in American society": job cuts due to technological development affect both workers and employees (Nelson, 2019).

In the liberal-minded part of Canada, Trumpism is assessed as an extreme right-wing movement, inspired by Trump in its racism and xenophobia, which will increase the pressure on society (Mulich, 2020). Regionalization as a global trend has captured the United States as well. Trump only strengthened and sped up the US advance towards isolationism, which became noticeable even under Barack Obama (Restad, 2020).

Since there were no significant changes in demographic, economic, and social relations from 2015 to 2020, the state voting only confirmed the development of the existing patterns (Guliyev, 2020) (Figure 1, Figure 2).

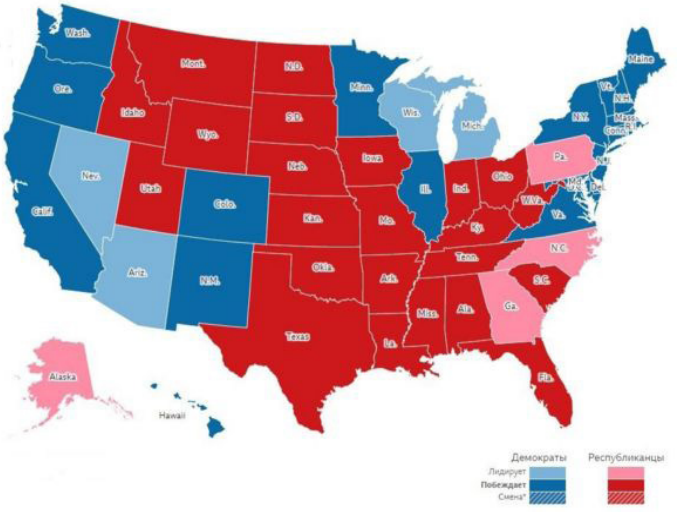

Figure 1. Source: The United States Elections 2016: all results 9.11.2016 (Steff and Tidwell, 2020; Wojczewski, 2020).

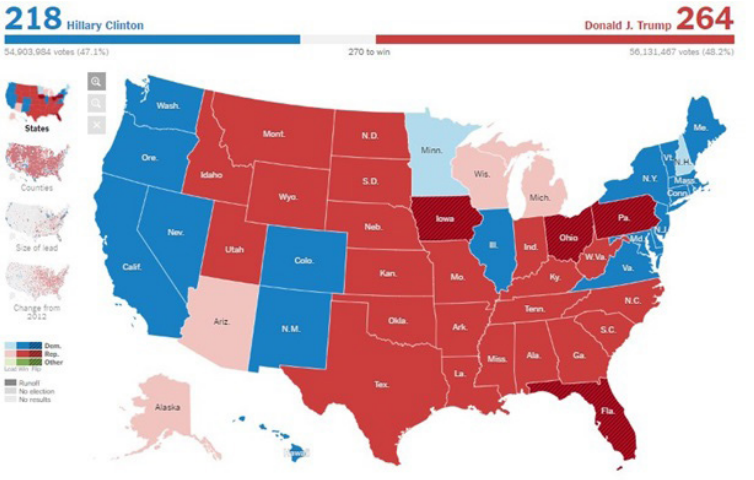

Figure 2. Results of the US presidential election: How Biden and Trump can win (Steff and Tidwell, 2020; Wojczewski, 2020).

3. Discussion and Conclusion

In the United States, the polarization of the electorate in relation to Republicans and Democrats continued: the number of undecideds has fallen by about 2 times since 1992. Moreover, Trump eventually received 73.8 million votes and 62.9 million in 2016 (Gruszczynski and Lawrence, 2018; Restad, 2020). By 10 million more votes in 2020. That means that support for his course has increased. Financiers, industrialists, representatives of the construction industry, property owners and hired production laborers supported Trump in 2020 (Hall, 2020). The Latin Americans' choice of Trump was based by his economic policies in favor of the poor, and the choice of women was based on his policy against street violence (Lacatus, 2020; Wojczewski, 2020).

Consequently, the United States elite was faced with the need to accommodate the interests of the self-determined US population in 2020, whether they are Republican or Democratic. As a social phenomenon, Trumpism has shown that pursued primarily by the US Transnational Corporations, the policy of globalism has entered a period of conceptual and resource crisis that is unlikely to emerge without consideration of the interests of the US population.

The aspiration of the globalist elite to «forget» Trumpism «as a terrible dream» is groundless, which clearly reads in the speeches of supporters of the Democrats. Trump's supporters can't abandon their values and desire to defend their socio-economic rights connected to the US state, but they don't care about the globalist project. Obviously, that the situation inside the United States has taken on the features of a long-term crisis, connected to economic, social and value contradictions.

Acknowledgments

Estimates when considering the electorate of Republican-Trumpists and Democrats mainly revolve around the ideological and value preferences of voters, but differences between parties are also socio-economic. Conservative supporters seek to preserve the nation-state of North America with all the consequences that follow national industry, financial independence and the values of the first settlers based on religious Protestant ethics. And all three components contradict the globalist project. There was a growing phenomenon of voting for Trump and hired laborers, and representatives of small, middle, and big capital. Under these circumstances, the increased electoral support for Trump showed that the internal crisis in the United States became systemic and tended to deepen in 2020.

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Regulation of advocacy profession: global trends

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Abstract

The objective of the article is to analyze the regulation of the legal profession and its global trends. There are many different types of regulators globally, and many different sources and methods of regulation. There is no simple approach to setting goals for regulating the legal profession in different legal systems. Although self-regulation of the legal profession is considered the basis for adhering to the standard of its independence, at the same time, academics recognize the existence of the theory of the management of the legal profession. To study these problems, the authors conducted a comparative study of the regulatory models of the legal profession in the world in terms of compliance with international standards of legal independence in different legal jurisdictions and made some suggestions to improve the legal regulation of the legal profession in Ukraine. Empirical sources for scientific research were international documents, court decisions, national legislation of Great Britain, Canada, the United States, Ireland, Scotland, Australia and others, and the work of scientists. The article uses general scientific methods - dialectic, analysis, synthesis, analogy, etc., and special methods, particularly legal, historical, and formal comparative law.

Keywords: association of defenders; regulation of the defense; independence of defense; autonomous associations of defenders; regulation of the legal profession.

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Regulación de la profesión de abogacía: tendencias globales

Resumen

El objetivo del articulo consiste en analizar la regulación de la profesión de abogado y sus tendencias globales. Hay muchos tipos diferentes de reguladores a nivel mundial, y muchas fuentes y métodos diferentes de regulación. No existe un enfoque sencillo para establecer metas para regular la profesión de abogacía en diferentes sistemas legales. Aunque la autorregulación de la profesión de abogacía se considera la base para adherirse al estándar de su independencia, al mismo tiempo, los académicos reconocen la existencia de la teoría de la gestión de la abogacía. Para estudiar estos problemas, los autores realizaron un estudio comparativo de los modelos de regulación de la profesión de abogacía en el mundo en términos del cumplimiento de los estándares internacionales de independencia de la abogacía en diferentes jurisdicciones legales e hicieron algunas sugerencias para mejorar la regulación legal de la abogacía en Ucrania. Las fuentes empíricas para la investigación científica fueron documentos internacionales, decisiones judiciales, legislación nacional de Gran Bretaña, Canadá, Estados Unidos, Irlanda, Escocia, Australia y otros, y el trabajo de científicos. El artículo utiliza métodos científicos generales - dialéctica, análisis, síntesis, analogía, etc., y métodos especiales, particularmente el derecho comparado legal, histórico legal y formal.

Palabras clave: asociación de defensores; regulación de la defensa; independencia de la defensa; asociaciones autónomas de defensores; regulación de la abogacía.

Introduction

The independence and self-regulation of advocates are essential in ensuring the rule of law in any jurisdiction. Although advocacy in the modern world is based on the principle of self-organization of advocates and bar associations, there are few countries in the world where advocates are entirely self-regulated without any supervision, guidance, or restrictions from other sources, such as the executive, legislature, or judiciary (Bakaianova *et al.*, 2019). In recent years, there has been increased interest in regulating the advocacy profession. The motivation of scholars and practitioners to discuss the independence of the bar and its ability to self-regulation is, to some extent is the result of regulatory changes in the legislation of countries such as England, Wales, Australia, New Zealand, in which governments have increased the involvement of non-lawyers in the regulation of advocacy profession and have adopted significant changes

aimed at consumers of legal services (Djaburia, 2019; Gregory and Austin, 2019). Thus, at this time, it has become commonplace to talk about the relatively recent trend of transition from self-regulation of the advocacy profession to co-regulation. Based on the above, it is important to conduct a comparative legal study of the legislation governing the activities of bar associations in the world, as well as to make specific proposals to improve the legislation governing the activities of these bodies in Ukraine, which is the purpose of this work.

1. The main functions of professional associations of advocates

Bar associations are a unique form of public organization, officially recognized by law as a structure of civil society involved in law enforcement (Moiseeva, 2017). In most countries, governments have delegated reasonably broad powers to self-governing bar associations. They can control access to the profession (for example, by stipulating such access by membership in the organization, as well as by imposing requirements on such membership); have quasi-judicial powers (for example, disciplinary proceedings against their members); establish rules that sometimes have to be applied not only by their members but also by the courts and the public (e.g., professors of law in Croatia, provide legal advice and write legal opinions and are not allowed to become members of the Bar if they do not leave teaching and will not start a private practice). The most essential functions of a professional association include «corporate court» over those members of the community who have violated professional ethics. Many professions have a formal code of ethics, but relatively few have real mechanisms for tracking violations and applying sanctions. Thus, to some extent, advocacy association may have legislative, executive, and judicial prerogatives — and the more they exist, the more accountable they must be to society for the proper use of such prerogatives. The professional community of advocates' main functions includes social control (ethical norms and disciplinary practice) and socialization (exams and training) of members (Bakaianova *et al.,* 2019; Zaborovskyy *et al.,* 2020).

The solidarity between members of the profession is possible only in the presence of an association that provides, sometimes forcibly, commitment to the ideals of the profession. Any professional association, to have the right to speak on behalf of the whole profession, must get into its ranks all potential members who meet the criteria for admission to it. Not every association succeeds, but it must at least strive for completeness (Djaburia, 2019). The term "completeness" Merton means the ratio of current and potential members of the association. This indicator determines the authority of the association in a particular area of activity. If we turn to the advocacy profession in Ukraine, the whole history of its development

is characterized by the struggle to achieve the full completeness of the professional association. For a long time, advocates did not have a single corporate organization. Although pre-revolutionary and Soviet times had councils of juries and Bar associations, they operated only at the regional level, were more formal, and were under state control. Only with the creation of bar self-government bodies in 2012, with the mandatory membership of each advocate, it became possible to talk about the introduction of a full-fledged professional association. However, advocates did not get a complete victory in the struggle for completeness because there were and continue to be groups of lawyers who are potentially able to enter the Bar but do not want to do so.

2. Self-regulation of the advocacy profession based on the principle of independence

The term "independence" of the advocacy profession is quite adequately defined in Recommendation (2000) 21 as "the freedom to pursue a profession without undue interference". Bar associations must have institutional independence, both legal and practical, from all external parties, including the government, other executive bodies, parliaments and external private interests. In particular, "the executive body of professional associations of advocates must be elected by its members and perform its functions without external interference" (principle 24). An advocate must be free — politically, economically, and intellectually — in their counseling and representation activities (Guess *et al.,* 2018). It means that a lawyer must be independent of state and other government interests; he must not allow his independence to be undermined due to undue pressure from business partners (Moiseeva, 2017).

In its decision, the Supreme Court of Canada recognized the constitutional importance of the bar's independence for the functioning of the legal system and the protection of the rule of law. The court stated that "the bar's independence from the state in all its comprehensive manifestations is one of the characteristic features of the free profession." "Advocates should be free to represent citizens without fear or advantage in protecting their personal rights and civil freedoms from interference from any source, including public authorities."

Speaking about the self-regulation of the advocacy profession based on the principle of independence, one of the provisions underlying the rule of law is the right of advocates to be free from any influence that may interfere them from fulfilling their duties. Thus, according to the author, the rule of law is the basis of the independence of advocates (Moiseeva, 2017). Advocates' independence should include more than just freedom

from state intervention. The formulation of the independence of the bar, in her opinion, is based on a special concept of ethical and legal unique duties of an advocate, which are quite contradictory. The dispute between pro-independence advocates and critics of such independence is essentially a dispute about the nature of advocates' professional and ethical responsibilities and not about the independence of bar associations (Zaborovskyy *et al.,* 2020).

Since lawyers perform a public-law function of providing professional legal assistance, there is a need to ensure some control (i.e., change or cancellation of the result of an act) over advocates' activities and bodies of the bar and bar associations, which does not undermine the principle of independence of the bar (Gregory and Austin, 2019). The narrowing of state dictation sphere is a clear and undoubted trend in the development of democratic public institutions, including the bar. However, this trend cannot be unlimited. Even during the judicial reform in Russia in 1893, the state, by transferring disciplinary power to the state itself and not retaining the right to control its activities, would have no guarantee that advocates' misconduct would be prosecuted with due energy and impartiality; on the other hand, individuals entrusted with the protection of their rights to advocates will not be sure of the objectivity of the assessment of the abuse of the latter by their comrades (Zaborovskyy *et al.,* 2020).

Furthermore, the advocates will find themselves in a difficult situation because their fate will be in colleagues' hands, burdened with personal likes and dislikes. A scholar proposes to recognize the existence of the theory of advocacy management, with which one cannot disagree. Thus, studying the problems of interaction between the bar and the state determines the dual nature of such management - corporate (self-government) and state. It should be added that the volume of implementation of such an element of the principle of independence of the bar as independence from the state increases proportionally to the expansion of self-government of the bar (Bakaianova *et al.,* 2019).

3. Regulation of the advocacy profession: concept

The requirement of independence places responsibility not only on the bar association itself, but also on the executive and the legislature, which must respect that independence, refrain from inappropriate interference, adopt appropriate legislative and institutional guarantees and not violate them in practice (Gregory and Austin, 2019).

The concept of "regulation" (from the Latin regulo - rule) means ordering, adjusting, bringing something in line with something. To regulate is to determine the behavior of people and their teams, to direct its functioning

and development, to give it certain limits, to purposefully organize it. The term "regulate" means to set boundaries, the scale of people's behavior, to bring stability, system, order to social relations and thus direct them in a certain direction. An important aspect in the formation of understanding of the essence of regulation are the traditions of a particular state, as well as scientific and theoretical traditions that set boundaries and determine the direction of legal regulation (Guess *et al.,* 2018).

The regulatory process as a purposeful process that has one or more goals designed to change activities or behaviors ... often by limiting such behavior, encouraging its participants, or facilitating their activities from time to time, without which this activity or behavior would be impossible. As for the regulation of bar associations, it can be carried out not only in a general way (for example, by adopting legislation on their organization and activities), but also by resort to more detailed regulated actions, such as interaction of advocates with the clients, the court, the legal system. And while some of these actions may be regulated by additional normative provisions, which must also be followed, they must be assessed by the regulator also in terms of compliance with the law (Bakaianova *et al.,* 2019).

4. Methods of regulating the advocacy profession

Provisions on advocates' legal regulations are contained in many different types of regulations. Examining this issue from a global perspective, some scholars classify these acts as follows: 1) legislation that may be specific to a particular profession (e.g., the legislation on advocacy in Canada, Australia or Germany legislation that is more widely used, (for example, the provisions of the US Bankruptcy Act applicable to advocates advising debtors, the British rules on money laundering, similar laws adopted in other jurisdictions 3) regulations adopted by bar associations (For example, in Germany the bar association has adopted mandatory regulations (Berufsordnung) concerning the advocacy profession (Rechstanwälte) on the basis of powers granted to it by federal law) (Dubal, 2017; Hatcher, 2019). It is necessary to add rules of conduct for advocates, which are called ethical rules or rules of professional conduct (Rules of conduct in U.S. states).

In some jurisdictions, primary regulators, such as the US Supreme Court, adopt these rules. In other cases, several regulation levels may be involved before these documents reach the organization that adopts the rules of conduct of the advocate. For example, the UK Legal Services Act 2007 established the Legal Services Council, which approved the Solicitors Regulatory Authority (SRA) as the primary regulator for advocates in England and Wales Professional and ethical standards for advocates in

British Columbia, for instance, contained in the Law on Advocacy, the Rules of the Law Society and the Code of Professional Conduct, which determine the behavior of lawyers not only in legal practice but also in other areas, and also in court decisions and disciplinary decisions of the advocates association (Terry, 1997).

5. Joint or supervisory regulation

The simple equation that we would like to present is as follows: the less power the bar has, the higher its chances of being "independent"; the more prerogative and power it possesses, the stronger the need to apply specific external control mechanisms (i.e., supervision by state bodies - courts, ministries of justice) (Dodek and Alderson, 2017). Some alternative to self-regulation is joint regulation or supervisory regulation. The co-regulatory model provides that the right to complain about lawyers' actions may be shared between different regulators. In contrast, the oversight model may allow decisions taken by corporate bodies of bar associations to be appealed to an independent body. (Australia, England and Wales are examples of joint regulation of the advocacy profession, where two or more bodies share lawyers' supervision). This provision is not in conflict with international standards, which stipulate that bar associations may not act as a final instance in resolving certain issues of their activities. For example, decisions on disciplinary action against its members, the granting of permission to advocacy practice, "should be reviewed by an independent and impartial judicial body". In any case, such a doctrine of "subsidiarity" remains a potential obstacle to claims to the ideal "independence" and "autonomy" of corporate bodies of professional bar associations.

6. Regulating the advocates profession in different jurisdictions

The UK Legal Services Act of 2007 radically changed some aspects of advocacy regulation in this country. The most significant aspect of the structural changes is related to the creation of a regulatory body - the Legal Services Council, which is responsible for managing all legal entities that regulate the activities of English lawyers, providers, including barristers and solicitors (Cone III, 2007). The Legal Services Council has approved the Solicitors Regulatory Authority (SRA) as the primary regulator for advocates in England and Wales, the Bar Council and the Ombudsman's Legal Service. The Legal Services Council sets standards that govern the conduct of advocates, carries out "targeted regulation" that involves not only responding to specific breaches of advocates' professional obligations but also trying to avoid, detect, and correct circumstances that create a high

risk of professional breaches. In particular, the Legal Services Council has the power to set requirements for approved regulators: to set targets for them and to take specific measures if such indicators are not met, and to act if the "act or omission" of an approved regulator has a negative impact on the achievement of the goals of the regulator (Dodek and Alderson, 2017).

At present, the Legal Services Council's efforts are focused on protecting the rights of consumers of these services. For example, in its annual report, the Legal Services Council includes a separate section "Regulation in the consumers' interest". Describing the activities of the regulatory authorities of England and Wales, it should be noted that the Board of the Bar Council includes not only advocates but also lawyers who are appointed rather than elected. At the same time, the number of non-lawyers tends to increase (Hatcher, 2019).

Although the American system protects the profession's independence, in the United States, constitutional requirements for the separation of powers have allowed state courts to establish inalienable power over professional regulation. The independent character of the Irish Bar is a fundamental value underlying the profession and has served the cause of justice for hundreds of years. The only limitation on the barrister's ability to act independently is The Code of Conduct for the Bar of Ireland. However, under the Legal Services Regulation Act 2015 in Ireland, the Legal Services Regulatory Authority consists of eleven members appointed by the Government of Ireland, and, following Part 2 of the Act, most of them should be non-professionals. (The exception is, in particular, that one candidate is appointed by the Bar Council and two by the Bar Association of Ireland). The body regulates the provision of legal services by practicing lawyers and provides support and improvement of standards for the provision of such services in the state. Its powers include, in particular, the consideration of complaints about the actions of advocates, the adoption of professional codes, the movement of practicing lawyers between the professions of solicitor and barrister (Hatcher, 2019).

As for the regulation of the legal profession in other countries, for example, in two Canadian provinces - British Columbia and Quebec, the activities of the bar - a provincial law organization - are controlled by certain government agencies and officials. For example, in British Columbia, the Office of the Ombudsman has the right to receive and deal with complaints regarding advocates, to deal with regulatory issues, and to issue recommendations "to address injustices." In Quebec, the legal profession's governing body is the Tribunal, which can review the decisions of provincial bar associations. However, this oversight is limited and does not include guidance on the internal management or policies of such organizations (Maharramli, 2020).

At the same time, there are countries in the world that have generally departed from legal society's self-government model. For example, Australia did this in the late '90s. The Australian Bar Association is the national representative body of Australian lawyers. It does not take any part in the admission of advocates or their professional practice. And the bodies that allow admission to the profession are the admissions offices of lawyers (for example, in New Wales, Northern Territory), the Council of Legal Practice of Western Australia, other admissions bodies in the state or territory in which the candidate intends to practice (Parker, 2002).

Analyzing the differences between the regulation of advocates' activities in England and Wales and in Canada, it can be identified the following: 1) the regulatory bodies governing lawyers in England and Wales, that subordinate to the Legal Services Council, while in Quebec and British Columbia in most jurisdictions the bar is subject to oversight only through judicial review or amendment of legislation; 2) The Board of the Bar Council in England and Wales includes not only advocates but also non-lawyers who are appointed rather than elected. Furthermore, the number of non-lawyers is increasing. In Canada, the governing bodies of advocates association are elected and overwhelmingly consist of lawyers; 3) The Code of Conduct for Lawyers in England and Wales emphasizes customer service as a priority for an advocate's responsibilities. Although there have been a number of regulatory changes in Canada, the general emphasis has remained on the set of ethical obligations of the advocate rather than on consumer issues (Bromwich, 2018; Maharramli, 2020).

Besides, the misconduct of advocates in England and Wales is dealt with and authorized by a separate, well-paid regulatory body appointed by a judge of the Court of Appeal. In Canada, disciplinary cases are heard by advocacy associations in unpaid colleges in most provinces. In both jurisdictions, the regulatory structure is not subject to direct executive or legislative control, and the basics of regulation in these countries are based on similar principles.

7. Objectives of the advocacy profession regulating

The concept of "regulatory goals" has a growing interest in the theory of regulation. As for the Bar, this trend has emerged against the backdrop of global government interest in regulatory theory. Regulatory goals serve as a guide both for those who regulate the legal profession and those subject to a specific rule, goal. For example, the UK Legal Services Council is committed to achieving a variety of regulatory objectives, including: protecting and promoting the public interest, upholding the constitutional principle of the rule of law, improving access to justice, protecting and promoting consumer

interests, and promoting competition in legal services, encouraging an independent, strong, diverse and effective advocacy profession, promotion, adherence and support of professional principles (Domberger and Sherr, 1989). These professional principles are defined as:

- independence and integrity of the advocate,
- maintaining appropriate standards of work,
- adequate protection of the client's interests,
- independence in the interests of justice,
- confidentiality.

The United Kingdom is not the only jurisdiction that has defined regulatory objectives. A number of jurisdictions have adopted regulatory targets for lawyers, and interest in this issue is growing: regulatory targets have been proposed among other countries for Australia, Ireland and India. Normative legal acts regulating the advocacy in the world usually do not define or clearly formulate this regulation's purposes. Although the lack of clear regulatory objectives is recognized as a global rule, there are some exceptions. For example, in several Canadian provinces, some provisions can be equated with regulatory objectives. In Ireland, the Legal Services Regulatory Authority must take into account the objectives of: (a) protecting and promoting the public interest, (b) supporting the proper and effective administration of justice, (c) protecting and promoting the interests of consumers concerning the provision of justice, (d) promoting competition in the provision of legal services in the state, (e) promoting an independent, strong and efficient legal profession, (f) adherence to professional principles. In 2010, Scotland passed a new law that includes regulatory objectives (Terry, 2013; Bodrunova, 2021). Canada is another example of a jurisdiction that has clearly articulated the goals of regulating advocacy. Interestingly, the British Columbia Law Society must protect the public interests, not the lawyers' interests it regulates.

As for the independence of the Bar, the United Kingdom speaks of the need to ensure "an independent, strong, diverse and effective legal profession". The British Columbia Bar Association states on its website that self-regulation is part of ensuring the independence of advocates. Many other Canadian provinces are calling for "the decency and honor of an advocate" as the basis of his independence. The purpose for which the Danish Bar and Law Society was established is, in particular, to protect the independence and integrity of advocates, ensuring the fulfillment of their responsibilities (Terry, 2013).

Thus, the requirement of independence of the Bar is reduced to individual protection of advocates in the exercise of their professional functions, and to collectively ensure that advocates have self-governing associations

to protect their interests, which includes, inter alia, maintaining and strengthening of professional standards and independence of advocates. But this general rule has some exceptions.

Independence of the bar vs independence of advocates

As was noted, the bar's regulatory powers to address the rights and responsibilities of its members are quite significant in most jurisdictions. Thus, at least in some instances, the bar's independence can be seen as possible danger of uncontrolled and illegal decisions that may restrict or violate its members' rights and freedoms. In any case, even the legal decisions of the independent bar are, in fact, a restriction on the independence of advocates - their behavior, their personal and professional position depend on the decisions of the professional organization. Thus, the independence of the bar as an organization, to some extent, contradicts the independence of advocates (at least those who are members of the association).

In our opinion, the bar's internal norms should also be subject to review for their constitutionality and legality. The reference to the "independence of the bar" cannot grant immunity to the bar in case of violation of the legal rights of its members and third parties. This position is in line with the case-law of the European Court of Human Rights. Thus, the European Court of Human Rights has noted that the state is responsible for the actions and decisions of bar associations, as these entities are established by law and have a public function of monitoring advocates' compliance with the rules (Mowbray, 2005).

Lastly, in jurisdictions where there is no absolute advocacy monopoly (and most are), the functioning of corporate bar associations may affect the independence of other legal practitioners, who may, for example, claim to have more rights to decide matters of common interest.

Who is the main beneficiary of advocates independence?

The independence of the bar is not an end. This privilege is given to advocates to successfully perform the functions assigned to them by the state. The question arises: "Who is the main beneficiary of professional "independence" – the bar, advocates, the legal system, or society as a whole"? Commonly used terms - "independence of advocates" and "independence of the bar" – may indicate that those who are primarily entitled to "independence" are either private advocates or bar associations. However, as in the case of judicial independence, the very reason for the existence of such a "privilege" is the performance of a specific function. In the case of the judiciary's independence, such a function provides the conditions for a fair and impartial resolution of specific cases. In the case of the advocacy profession's independence, such a function should be the need to provide an environment in which everyone has the right to the best legal representation possible in any kind of legal proceedings.

We noted in us researches that, based on the legal nature of the bar, the status of an advocate as a party to the proceedings and an integral part of the administration of justice, the primary duty of an advocate is to assist in the administration of justice. To carry out its functions, the bar must have the same independence as the judiciary, which is vital for the fair administration of justice, strengthening democracy, and the rule of law. "The advocacy profession is genetically related to the judiciary and cannot but be transformed after it". The ultimate goal of the independence of the bar is to achieve a system of justice that would properly promote the observance and protection of the rights of every person. Thus, the primary beneficiary of any professional "independence" is each individual citizen, as such "independence" is established and maintained in order to guarantee everyone an impartial, prompt, and accessible legal protection of appropriate quality. As stated in the Conclusions of the Multilateral Meeting on Judicial Public Policy of the Council of Europe, independence should not be seen as a privilege granted to judges but as a guarantee for citizens. Thus, the independence and responsibility of judges do not contradict each other (Greer and Williams, 2009; Maharramli, 2020). Only such criteria can be used to assess individual situations of "dependent" or "independent" associations of advocates, and only such changes of national legislation make sense.

8. Opportunities of advocates associations to influence social processes

There is an idea that the ruling elite in any society is faced with the need to control the means of violence. Due to the specifics of their professional functions, advocates on a daily basis in specific cases oppose (often alone) the state machine of criminal prosecution and must address the rule of law and limit the misuse of violence by law enforcement agencies. In authoritarian states, advocates can represent and defend the interests of the ruling elite and, in this regard, be an extension of the law enforcement system. However, in most cases, advocates, on the contrary, are opposing (Kazun and Yakovlev, 2017; Bodrunova, 2021).

The ability of advocates associations in any country to influence social processes is directly related to the professional community's level of development, the presence of strong bar associations, the level of their independence from law enforcement and government, the demand for legal services from the public and business. According to many studies, advocates, due to the importance of their social status and their professional competencies related to law enforcement, are often key actors in social reform (e.g., public administration reform in Israel, legal reform in China, regular political initiatives in the United States. The position of the

advocates' community can be emphasized apolitical, but even in this case, it is able to have a significant impact on society through its professional activities (for example, by helping vulnerable groups) (Greer and Williams, 2009; Maharramli, 2020).

9. Problems of bar self-government bodies functioning in Ukraine

Turning back to the prospects for the evolution of the advocates' community in Ukraine, it should be noted that today the Ukrainian National Bar Association (UNBA) is the largest non-profit organization in Ukraine, which operates on the basis of a special law and the Statute, has an extensive regional network and a high degree of autonomy. In particular, the UNBA Charter stipulates that UNBA is an apolitical, autonomous, and independent organization (Hatcher, 2019; Maharramli, 2020), which has financial and organizational independence. The Ministry of Justice of Ukraine has no control over UNBA, or the authority to issue certificates to advocates, its functions in relation to UNBA are limited to issues related to free legal aid (Kazun and Yakovlev, 2017). At the same time, Ukraine has not yet got rid of the problem common throughout the post-Soviet space — the existence of good laws and poor practice of their application, which usually leads to a dysfunctional justice system and undermines reforms. Now, the legislation on advocacy in Ukraine, although it mostly meets international standards for the organization and activities of the bar, at the same time widely violated (with a tendency to increase) the rights of advocates and guarantees of their independence (Kazun and Yakovlev, 2017; Bodrunova, 2021).

The market for services provided by lawyers in Ukraine is decentralized and is not subject to control either by the state or by advocates' corporate governance. This way, the state cannot guarantee everyone the right to professional legal assistance established by Ukraine's Constitution. In the case of the adoption of the Law № 1013 of 29.09.2019 "On Amendments to the Constitution of Ukraine (concerning the abolition of the lawyer's monopoly)" there will be a need to change a large number of laws governing lawyers who are not advocates, in order for them to have the same status, same standards of conduct as advocates. Although, in our opinion, such a need exists regardless of the adoption or non-adoption of this draft law. According to the Special Rapporteur report on the Independence of Judges and Advocates of the United Nations, to ensure the integrity of the whole profession and the quality of legal services, it is desirable to create a single professional association governing the legal profession. (The "completeness" of the advocates' profession was discussed above) (Hatcher, 2019; Maharramli, 2020).

In this regard, it should be added that in countries where there is no "advocates's monopoly" at all, there is a very effective mechanism for exercising the right of citizens to qualified legal aid, as the latter is provided by an appropriate set of measures related to the supervision of legal aid by advocates or the regulation of control mechanisms over the activities of lawyers who do not have an advocate's license (for example, in Finland). In Canada, there are 14 territorial and provincial law associations responsible for overseeing more than 120,000 lawyers (as of 2019). The national coordinating body of Canadian lawyers is the Federation of Legal Societies of Canada (FLSC) (Federation of Law Societies of Canada), responsible for developing national regulatory standards for the legal profession.

In Ukraine, advocates are not always able to fully participate in the process of discussing the legislation on advocacy. At the same time, as the Special Rapporteur noted in his communication on the independence of judges and lawyers addressed to the President of Ukraine, "legislation on the advocacy should be developed directly by the advocacy representatives. If Law establishes advocates' self-government, it is necessary to consult with it at all stages of the legislative process " (Bakaianova *et al.,* 2019; Bodrunova, 2021). Although UNBA has a well-developed institutional structure that is functional and effective, the qualification and disciplinary process needs to be significantly refined to ensure that the bar, its institutions, and individual advocates can operate in accordance with international standards on the role of advocates. The admission process to the profession remains weak, somewhat outdated, and, as it turns out, is not free from deep-rooted corrupt practices, which undermines trust in the profession and weakens its independence. Besides, the inherited internal split in 2012 within the bar was not fully resolved (Bakaianova *et al.*, 2019).

The problem of the advocates' associations functioning, and, above all, their independence is not entirely solved either in theoretical or practical layers. There is no theoretical consensus on absolute or partial independence of the bar and, accordingly, the development of criteria according to which state intervention in the bar's activities can be considered acceptable. The bar's principle of independence does not have an unambiguous understanding in the Law of Ukraine "On Advocacy and Advocacy activity" in terms of delimitation of powers to manage the bar between the state and the bar, which creates opportunities for arbitrary application of the Law. And lastly, since the most critical mission of advocates associations is to protect the interests of their members, there is a need to amend the Law of Ukraine "On Advocacy and Advocacy activity" to reflect the crucial role of corporate bar associations in achieving this goal.

Conclusions

In most countries, states have delegated relatively broad powers to self-governing advocates' associations. They can have legislative, executive, and judicial prerogatives - and the more they have, the more accountable they must be to society for the proper use of such prerogatives. The narrowing of the state dictation sphere is a clear and undoubted trend in the development of democratic public institutions, including the bar. However, this trend cannot be unlimited. Since the bar performs a public law function of providing legal assistance, there is a need to ensure some control over its activities, which does not undermine the bar's principle of independence.

The concept of "regulatory goals" has a growing interest in the theory of regulation. Regulatory objectives serve as a guide for both those who regulate the legal profession and those covered by a particular rule. The bar activities are "regulated" by many different structures and different sources of law, including those that are directly related to the advocacy profession and those that have a broader application. Both different methods and different levels of regulation can be used. A specific alternative to self-regulation is joint regulation or supervisory regulation.

In recent times, the governments of some countries, on the one hand, have increased the participation of non-lawyers in the regulation of the advocacy profession and adopted significant changes aimed at consumers of legal services. On the other hand, there are countries in the world that have generally departed from the legal society's self-government model.

The independence of the bar as an organization, to some extent, contradicts the independence of advocates (at least those who are members of the association). The reference to the "independence of the bar" cannot grant immunity to the bar in case of violation of the legal rights of its members and third parties.

The ability of advocates associations in a country to influence social processes is directly related to the level of development of the professional community, the presence of strong bar associations in the country, the level of their independence from government, the development of professional communication. However, even in cases where the position of the legal community is apolitical, it can have a significant impact on society through its professional activities.

The market for services provided by lawyers in Ukraine is decentralized and is not subject to control either by the state or by advocates' corporate governance. In this way, the state cannot guarantee everyone the right to professional legal assistance established by the Constitution of Ukraine. Amendments proposed by the draft Law №1013 of September 29, 2019 (on the abolition of the advocate's monopoly), aimed at repealing the

provisions of Article 131-2 of the Constitution of Ukraine on the exclusive representation of another person in court by an advocate will lead to a restriction of the constitutional right to professional legal assistance and, as a consequence, a violation of the essence of the fundamental right of everyone to judicial protection and a fair trial.

The legislative bodies of Ukraine should not only stand down from advocates participating in the process of discussing and adopting legislation on advocacy and advocacy activity but also be obliged to involve advocates in all stages of the legislative process. This provision should be implemented.

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Rule of law in the context of judicial reform as a direction of ensuring the accessibility of administrative proceedings

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Abstract

The objective of the study is to analyze the rule of law in the context of the implementation of reforms of the judiciary, the judiciary, and related legal institutions as a direction to ensure the accessibility of administrative justice in Ukraine, revealing its relationship and interdependence. The study found that the availability of administrative procedures is provided by the requirements of all these generic subsystems of the principles that determine modern standards of activity in European countries. The methodology includes a comprehensive analysis and generalization of the available scientific and theoretical material, as well as the formulation of relevant conclusions. During the research, scientific cognition methods were used: terminological, logical-semantic, functional, system-structural, logical-normative, comparative. They highlight in the conclusions that the study found that the amendments to the Constitution of Ukraine in the context of judicial reform made it possible to revise the classical principles of the judiciary, but there are still important unresolved aspects to ensure full compliance with the rule of law, its specification in the constitutional provisions and legislative acts of Ukraine of substantive and procedural content, among other aspects.

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Keywords: rule of law; human rights; access to administrative justice; judicial reform; administrative procedures.

El estado de derecho en el contexto de la reforma judicial como una dirección para garantizar la accesibilidad de los procedimientos administrativos

Resumen

El objetivo del estudio es analizar el estado de derecho en el contexto de la implementación de reformas del poder judicial, el poder judicial y las instituciones legales relacionadas como una dirección para garantizar la accesibilidad de la justicia administrativa en Ucrania, revelando su relación e interdependencia. El estudio encontró que la disponibilidad de los procedimientos administrativos es proporcionada por los requisitos de todos estos subsistemas genéricos de los principios que determinan los estándares modernos de actividad en los países europeos. La metodología incluye un análisis integral y generalización del material científico y teórico disponible, así como la formulación de conclusiones relevantes. Durante la investigación se utilizaron los métodos de cognición científica: terminológico, lógico-semántico, funcional, sistema-estructural, lógico-normativo, comparativo. Destacan en las conclusiones que el estudio encontró que las enmiendas a la Constitución de Ucrania en el contexto de la reforma judicial permitieron revisar los principios clásicos del poder judicial, pero aún quedan aspectos importantes sin resolver para garantizar el pleno cumplimiento del estado de derecho, su especificación en las disposiciones constitucionales y actos legislativos de Ucrania de contenido sustantivo y procesal, entre otros aspectos.

Palabras clave: estado de derecho; derechos humanos; acceso a la justicia administrativa; reforma judicial; procedimientos administrativos.

Introduction

The urgency of the research is due to objective political, social, legal issues of judicial reform in Ukraine and ensuring access to justice, establishing adequate criteria for payment and gratuitous payment of court fees, court costs in general, which will improve the efficiency and effectiveness of good governance, implementation and protection of human and civil rights and freedoms in the sphere of executive power, formation of European standards of administrative justice.

The term "rule of law" is used frequently in reference to a wide variety of desired end states. Neither scholars nor practitioners have settled upon an accepted definition. However, the term usually refers to a state in which citizens, corporations and the state itself obey the law, and the laws are derived from a democratic consensus. This is captured in a definition proposed by the United Nations (United Nations Security Council, 2004) The report containing this definition then suggests certain characteristics of the rule of law, including adherence to the principles of supremacy of law, equality before the law, fairness in application, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency. The U.S. State Department's website similarly describes rule of law as protecting "fundamental political, social, and economic rights" and distinguishes between rule of law versus rule by law in more authoritarian societies.

1. Literature review

In the context of judicial reform, the content, and features of the introduction of the rule of law have been the subject of research by such scholars, politicians, judges, ideologues of judicial reform as Holovatyy (2019), Leheza *et al.*, (2020), Pukhtetska (2010), Tylchyk Vyacheslav (2021), Tylchyk and Tylchyk (2021) and some others. A study and an analysis of evolutionary trends in interpretation are important from the point of view of increasing the efficiency and effectiveness of legal interpretation of the ECtHR and national authorities applying the ECHR, what is extremely important for parties recently acceded to the Convention. In legal systems of such member-states mainly technical-dogmatic methods of interpretation still prevail and judges don`t have the necessary skills to use international jurisprudence in the national legal system. The application of ECtHR`s decisions in national practice allows solving not only problems of justice, but ones of a political, economic and social settlement (Karvatska *et al.,* 2021).

Peculiarities of the ECtHR's interpretation are the special nature of international human rights treaties and of the ECHR in particular, what determines the actualisation of their interpretation in the context of the object and the purpose of treaties, in other words paying attention to the protection of individual rights, but not to the intentions of the member states in concluding the ECHR. There are also peculiarities of interpretation of institutional nature, which created certain differences at different stages of organizational transformation of the ECtHR (Karvatska *et al.*, 2021).

An interpretational methodology developed by the ECtHR involves the use of its own methods, among which the methods of consensus, efficiency, judicial activism, comparison, innovative interpretation, autonomous method, and the method of "balancing" are becoming more and more exploited. The functioning of the ECtHR as a court, its interpretive method of building a holistic system through informal practice and setting standards by comparing the legal rules of member states, seem legitimate enough to define identifying evolutionary standards, and maximally contribute to their establishment and consolidation. The binding nature of ECtHR`s decisions only for parties to the dispute does not preclude, rather even affirms the need for the legislation of the Member States to comply with these standards, which must be sufficiently broad. Otherwise, the Court may be charged with "legislative" decisions. However, too broad standards make it incredibly difficult for the Court to operate (Karvatska *et al*., 2021).

A consensual examination allows the ECtHR to tie its decisions to the pace of changes in national law, recognising the political sovereignty of the respondent States and, at the same time, legitimising its own decisions against them, adhering to the principles of a democratic state governed by the rule of law (Karvatska *et al*., 2021).

2. Results and discussion

The current version of the Code of Administrative Procedure of Ukraine enshrines an approach developed based on anthropocentrism, developed in the context of constitutional and administrative reform, but its content needs to be improved to take into account modern requirements for the rule of law, in particular the accessibility of administrative proceedings. a set of financial, administrative, organizational, and technical guarantees, norms, regulations that provide not only formal but also real ability to provide judicial protection of violated rights in the system of administrative courts. For a long time, domestic legal thought was based on the principles of compliance with the rule of law, so the principle of legality occupied a central place in doctrinal and special legal research. Only a part of domestic scholars in the last ten years have begun to recognize the fundamental importance of the principle of the rule of law and its essential elements, the expediency of their introduction in the national doctrine and legal system.

The content and place of the rule of law are currently enshrined in the Constitution of Ukraine, special laws governing the activities of central government, in particular, the judiciary, but formal consolidation is not enough to implement the rule of law, it is necessary to develop an effective administrative mechanism and protection of human rights, which includes the development of criteria for the availability of administrative proceedings

in Ukraine, taking into account the experience of leading European countries. It is necessary to trace national approaches to enshrining the requirements of the rule of law in national legislation on the judiciary, the status of judges, codified procedural acts in order to formulate proposals to update and detail the requirements of the rule of law in general and in particular – accessibility of administrative proceedings as a component of the rule of law in court administrative proceedings. According to the results of the analysis of the system of acts of legislation of Ukraine, the principle of the rule of law is mentioned in more than 300 acts of legislation.

The conducted quantitative analysis allows to testify that for the last twenty years there has been a significant implementation of the requirements of the rule of law in the current legislation of Ukraine, but the problems of interpretation of the content, the requirements of the rule of law, the grounds for appealing against non-compliance. various state institutions, primarily – the judiciary, because it is thanks to them is the counteraction to illegal actions, inaction of the subjects of power (Ivanenko, 2020). In this regard, the aspects of ensuring compliance with the requirements of accessibility of administrative proceedings, which should be a central component of domestic administrative procedural legislation, need a new solution. After all, by ensuring the availability of administrative justice, trust in the government and the state increases, and the rate of corruption and arbitrariness in society decreases. Comprehensive implementation of the requirements of the rule of law in its modern European sense will bring the domestic substantive and procedural legislation in line with the requirements of adaptation of Ukrainian legislation to the legislation of the European Union.

For the first time in Ukrainian legislation, the principle of the rule of law was enshrined at the level of the proposal of the National's Deputy Serhii Holovatyy to amend the article of the Constitution of Ukraine on the night before its adoption. Few people paid attention to this at that time, because mostly deputies were not acquainted with European and international acts, recommendations, and mostly relied on the high authority of the deputy, who dealt with this issue for more than twenty years. The definition of the rule of law enshrined in the Constitution of Ukraine has become epoch-making, as its definition has been disseminated in many other pieces of legislation, including by-laws. In all versions of the constitutions of independent Ukraine, the content of the rule of law has not changed, although aspects of its observance and the practice of judicial protection have developed significantly (Holovatyy, 2019).

Legislation on the status of judges, the judiciary, and the judiciary in Ukraine is one of the most reformed segments of national legislation, which reflects the key ideas of judicial and constitutional reform. Unfortunately, many other segments of domestic law are inferior in implementing the

ideas of the rule of law in various types of proceedings. The advantage of introducing the requirements of the rule of law in the legislation on the status of judges, the judiciary, the judiciary in Ukraine is: the presence of a clear formula, fixed in the procedural legislation; the existence of clearly defined grounds for the application of the case law of the European Court of Human Rights to review cases of violation of the principles of the rule of law by various actors; the existence of clearly defined principles of administrative proceedings, which directly fix the content and basic characteristics of the principle of the rule of law. In contrast, in several segments of the system of legislation of Ukraine still remain undefined content, meaning of the rule of law, as well as grounds for review of certain decisions, actions, inaction of authorized bodies due to non-compliance with the rule of law.

For example, this applies to legislation on civil service and reform of the responsibility of civil servants, legislation on the protection of citizens' rights, education, culture, social protection, which is dominated by previous positivist traditions of understanding the content of legal relations and their legal regulation. Turning to the analysis of legislative acts, we should first consider the provisions of the current Law of Ukraine: "On the Judiciary and the Status of Judges" of 02.06.2016 № 1402-VIII (On the Judiciary and the Status of Judges, 2016: 129), in which the principle of the rule of law is enshrined in the law as integral element, ambush, principle of justice. In particular, the direct fixation of the rule of law is enshrined in this law in Article 2, which states that: "The court, administering justice on the basis of the rule of law, guarantees everyone the right to a fair trial and respect for other rights and freedoms guaranteed by the Constitution and laws. Ukraine, as well as international treaties, the consent of which is given by the Verkhovna Rada of Ukraine" (On the Judiciary and the Status of Judges, 2016).

It is necessary to point out separately the provisions of Article 7 of the said law, in which in Part 3 of Art. 7 stipulates that: "Access to justice for every person is ensured in accordance with the Constitution of Ukraine and in the manner prescribed by the laws of Ukraine" (On the Judiciary and the Status of Judges, 2016: 130).

This is an important guarantee that contributes to the creation of statutory guarantees, the limits of possible behavior of subjects in the protection of violated rights in the courts. Unfortunately, the declared provisions are complex in their content and forms of implementation, so it is necessary to improve the administrative and legal provision of access to justice in general and sectoral manifestations.

Among the proposals aimed at developing the provisions of the analyzed law, it should be noted, first, the feasibility of creating legally defined, detailed requirements for compliance with the requirements of access to justice, dividing these aspects into the most important groups related to current

issues of access to justice in general. in industrial aspects – pay attention to the expediency of special, high requirements to ensure accessibility, including administrative proceedings, as also in this area there are the most important human relationships and the state on behalf of government agencies and review their decisions in court. According to the results of the study, the content of the rule of law is still not sufficiently specified both among the key functional sections of the competence of central executive bodies and in bylaws, which leaves a large scope of research in both positive and controversial administrative proceedings.

In particular, in administrative proceedings, all illegal decisions made on the basis of and within the powers granted by law to executive authorities and local governments may be appealed. However, in the special laws governing their activities, the relevant requirements for compliance with the criteria of the rule of law are still not detailed, so in direct activities, interaction of executive bodies, local governments with citizens can often not clearly establish the legal basis for the rule of law. Therefore, the only effective way to protect violated requirements of the rule of law in positive administrative proceedings is to appeal to the administrative courts of Ukraine, and in most cases – outside the national jurisdiction, and appeal to the European Court of Human Rights due to lack of relevant legislation. provisions, state-building practices, etc (Leheza *et al.,* 2018).

In our opinion, it is more expedient to analyze domestic legislation not only by normative assessment, verification of the formula for enshrining the rule of law in specific legislation, but also by their comprehensive analysis and relationship with the fundamental provisions of international and domestic legislation, which gradually implement the relevant requirements (Leheza *et al.,* 2020).

The development of the rule of law is covered in several well-known documents of international and regional European organizations - the United Nations, the European Union, the Council of Europe, the Organization for Security and Cooperation in Europe and many others, which reproduce the complex process of developing a global theoretical and legal approach. formation of unified fundamental principles of national legal systems (Leschynsky and Leschynsky, 2021).

In the European legal system, based on this principle, the principles of good governance and the principles of good administration have been developed. “The principles of good governance are one of the most important elements of the principle of the rule of law, are in direct connection with the fundamental principles of public administration. The difficulty of implementing the principles of good governance in Ukraine is due not only to the terminological and cognitive aspects, but also to a number of objectively existing factors that hinder this process: high levels of corruption, resistance to democratic reforms, including administrative and

legal direction within the apparatus of public administration, obsolescence of views and approaches to management both among civil servants and among scientists, researchers; biased attitude to the proposed models of reforms" (Tylchyk and Leschynsky, 2021).

The case law of the European Court of Human Rights is an important guideline for modern approaches to understanding the rule of law and its essential elements. Generalization of the practice of interpreting the content and elements of the principle of the rule of law was carried out in the scientific works of A. A. Pukhtetska, where it was determined that "as a result of systematization of decisions of the European Court of Human Rights, which contain provisions on the rule of law, to the main groups of decisions, which specify the content of the rule of law (given that in one case or decision may contain two or more features, essential elements of the principle of the rule of law in accordance with their understanding, formed by the case law of the European Court of Human Rights)" (Pukhtetska, 2010).

In particular, the cited study identified the following groups of cases of the European Court of Human Rights that are important for the implementation of the rule of law in Ukraine: "1) decisions of the European Court of Human Rights decisions containing references to the content, legal significance of the concept and / or the principle of the rule of law in the generalized sense; 2) the decision of the European Court of Human Rights, which contains requirements for the quality of law, including legal restrictions on the exercise of human rights and freedoms; 3) judgments of the European Court of Human Rights, which address various aspects of access to justice and a fair trial, which ensures a special mechanism of the Convention and compliance with the rule of law; 4) decisions of the European Court of Human Rights, which establish the limits of discretionary powers and requirements for limiting the arbitrariness of public authorities in accordance with the principle of the rule of law; 5) decisions of the European Court of Human Rights, which contain requirements for effective control over the exercise of human rights and fundamental freedoms guaranteed by the Convention, and are related to the implementation of the rule of law. This list of judgments of the European Court of Human Rights is not exhaustive but allows us to see the most typical aspects of the application of the rule of law and to help judges make a decision (Pukhtetska, 2009).

Conclusion

Amendments to the Constitution of Ukraine in the context of judicial reform have revised the classical principles of the judiciary of Ukraine, but still remain unresolved important aspects of ensuring full compliance with

the rule of law, its specification in constitutional provisions and current legislation of Ukraine substantive and procedural content.

Interpretation of the concept, features, criteria of the rule of law in Ukrainian legislation is superficial, without proper specification of components and properties, the interdependence of these requirements with related concepts of good governance, proper administration, which are at the heart of modern European legislation and is a guideline for legal reforms.

In 2005, the content of the rule of law was enshrined in the context of key requirements in the Code of Administrative Procedure of Ukraine, however, the proposed approach to the interpretation of its content and essential features, in our opinion, remains quite limited, does not directly enshrine such essential elements as: accessibility judicial proceedings, proper legislation, quality of law, execution of court decisions, efficiency of decision-making, responsibility to private persons of public authorities.

It should be clarified that the availability of administrative proceedings is provided by the requirements of all these generic subsystems of the principles that determine modern standards of activity in European countries. In particular, they are combined with the requirements of appealing administrative decisions of all administrative bodies, as well as, in fact, the properties of administrative acts defined by law - require appeal all administrative acts that are contrary to the goals, objectives, competence of the administrative body, in violation of substantive or procedural law, as well as in case of fraud, etc.

Thus, the implementation of the requirements of accessibility of administrative proceedings is an integral part of the system of European standards of public administration.

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Yemen Crisis after 2015: The Attitudes of Saudi Arabia and the United Arab Emirates

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Abstract

In this study, using the descriptive-analytical method, we discuss the main factors in the formation of the Yemen crisis, as well as the attitudes of the two Arab states and of the two neighboring countries, Saudi Arabia, and the United Arab Emirates, in the Yemen crisis. It is concluded that this crisis stems not only from the role of local actors, but also from the role of regional and global actors, who played a decisive role in shaping and exacerbating the Yemen crisis. Regional players in the post-2015 crisis include the United Arab Emirates and Saudi Arabia, which showed contradictory behavior. Saudi Arabia's targets in its attack on Yemen have a greater military and security dimension. The political and economic objectives of the United Arab Emirates, which is Riyadh's most important ally in this war, have been at a different level from those of Saudi Arabia. This can be seen in Abu Dubai Crown Prince Mohammed bin Zayed's aspirations to expand his country's influence, to become a major player in the region.

Keyword: conflicts in the Middle East; Saudi Arabia; United Arab Emirates; crisis in Yemen; geopolitical analysis.

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Crisis de Yemen después de 2015: las actitudes de Arabia Saudita y los Emiratos Árabes Unidos

Resumen

En este estudio, utilizando el método descriptivo-analítico, se discuten los principales factores en la formación de la crisis de Yemen, así como las Actitudes de los dos estados árabes y también de los dos países vecinos, Arabia Saudita y Emiratos Árabes Unidos, en la crisis de Yemen. Se concluye que esta crisis se deriva no solo del papel de los actores locales, sino también del papel de actores regionales y globales, que jugaron un papel decisivo en la configuración y exacerbación de la crisis de Yemen. Entre los actores regionales de la crisis después de 2015 se encuentran los Emiratos Árabes Unidos y Arabia Saudita, que mostraron un comportamiento contradictorio. Los objetivos de Arabia Saudita en su ataque a Yemen tienen una mayor dimensión militar y de seguridad. Los objetivos políticos y económicos de los Emiratos Árabes Unidos, que es el aliado más importante de Riad en esta guerra, han estado a un nivel diferente de los de Arabia Saudita. Esto se puede ver en las aspiraciones del príncipe heredero de Abu Dubai, Mohammed bin Zayed, de expandir la influencia de su país, para convertirse en un actor importante en la región.

Palabras clave: conflictos en Medio Oriente; Arabia Saudita; Emiratos Árabes Unidos; crisis en Yemen; análisis geopolítico.

Introduction

The Republic of Yemen faces a variety of political challenges that consistently endanger unity and stability of the country. Its political landscape is deeply divided between tribal confederations, Islamist movements, and economic and military interest groups. Former President Ali Abdullah Salih skillfully applied a division and rule policy for most of his administration. This policy involved patronage to incite the well-being of individual tribes, or the effective manipulation of tribal traditions to turn them against each other if necessary. Salih once described his management style as: "dancing on the head of the snakes" (Berger *et al*., 2012: 2).

The Yemeni regime ruled the country with an iron fist during its long years of power (1978-2011), but the country was not devoid of political opposition, which enjoyed a great reputation among the masses. This opposition was represented by political parties gathered under the name of "Joint Meeting Parties". Although there were other opposition parties that came to the point of arming against the regime; their goals, orientations and visions were different. For example, it is seen that it is spread throughout the

country with the Houthis in the north and northwest, but in Al Qaeda, which is active in the south and southwest. This undoubtedly demonstrated the lack of affection for the southern opposition, the bloody events of 1994, the Yemeni regime that used various methods to stop the southern movement, as well as the southern opposition that aimed to revive the democratic and popular Yemeni state that disappeared with the declaration of union with the north in 1990. This incident had a negative effect on the relations of the southerners with the regime. The Southern Movement does not hide the opposition activities not only to the regime but also to the union (Nabeel, 2012).

Protests in Yemen began on January 15 2011, with a student demonstration marching towards the Tunisian embassy to support the Tunisian uprising. The demonstration called for cheers in support of former President Ali Abdullah Saleh's departure from the government and the Tunisian uprising. The actions lasted five days, then stopped for two days, and people took to the streets again. It seems that the overthrow of the Zine El Abidine Ben Ali regime on January 14 encouraged the people of Yemen to protest and demand Saleh's departure. The measures taken by the Yemeni government did not prevent the protesters from demonstration on the streets, not even the government's condemnations. While Saudi Arabia and Iran are among the main foreign actors of the conflict, there are also Oman, Qatar and the United Arab Emirates (UAE). Often they follow their own strategic and security agenda, independent of conflict. Each of these countries supports at least one faction.

Iranian Houthis sponsor the Yemen government of Saudi Arabia, Qatar Islah, and the UAE STC and Joint Forces. According to a 2018 report by the UN Panel of Experts, forces loyal to the STC are trained and funded by the UAE, but operating largely outside the Yemeni military command and control structure, "undermining the authority of the legitimate government." Oman supports local tribes on the western border, and since 2016 trying to be an important mediator in the conflict by bringing the Houthis together with the Saudis (Palik and Jalal, 2020). By far the most significant conflict area with Iran was in Yemen, where Saudi Arabia and the United Arab Emirates jointly intervened in the Iranian-backed Houthi rebels since March 2015. For the Emirates, however, the goal of pushing back Iran has always been secondary to the struggle. Islamists in the (Sunni) Arab World: The Yemen war has repeatedly highlighted differences of opinion between Riyadh and Abu Dhabi, with the UAE finally breaking up and withdrawing from its union in July 2019 (Steinberg, 2020).

1. Yemen

Yemen is a country divided into north and south for centuries. The northern part has mountainous and impassable areas and the southern part has a flat area. This made northern Yemen less vulnerable from the start due to its mountainous and impenetrable terrain. Especially since the rule of the Zaydi Imams in this region was established in 818, its cultural and social context has been relatively stable and has been shaped differently from the rest of the country. Rather, it is a hilly area of the southern part and little natural because it faces the Strait of Bab al-Mendep on the shores of the Red Sea and the Gulf of Aden.

It has been influenced by different cultures and communications and has always been attacked by different governments. As example, before Islam, the Romans and later the Ismailis, the Ayyubids and finally England dominated the region, especially the port of Eden (Nourmohammadi *et al.,* 2013). While the coastal regions of the country, especially in the south, were under the rule of the British, the northern regions dominated by Zaydis remained under the control of Imam Yahya. Imam Yahya continued to manage the bureaucracy with them by not sending the Ottoman officials who stayed in Yemen.

In this period, although the principles of the Zeydi sect were the dominant in social life, the administrative mechanism operated in the way that the Turks established. The country, which was officially accepted as Ottoman land until 1923, continued to be dominated by Turkish bureaucrats until 1926 (Yıldırım, 2015). When Imam Yahya was assassinated in the uprising in 1948, his son Imam Ahmet took over. Ahmed suppressed the uprising in a very bloody way with the help of Saudi Arabia and ruled the country until 1962, neutralizing his rivals who announced that they would end the feudal regime in Northern Yemen (Arslan, 2015). The Arab Republic of Yemen, established after the overthrow of Ahmet in 1962, received a nationalist VIEW during successive civil and military regimes. There were social inequalities in the social and mostly tribal structure in Yemen and the expulsion of some groups.

The uneven distribution of government resources has corrupted the Yemeni government, known as the government of thieves, who had serious political and economic problems. The existence of different tribes and numerous denominational and religious divisions practically transformed Yemen into a fragmented society (Amiri and kyani, 2017). In the northern part of Yemen where Zaydi Imams were dominant, clashes took place between the supporters of the Republican Jamal Abdul Nasser and the supporters of the Imam government, known as the monarchists. Finally, in 1962, the Republicans triumphed and led to the formation of the Yemen Arab Republic in the north (Mokhtari and Shams, 2017).

Although the negotiations between Egypt and Saudi Arabia started as of 1964, the fact that they did not get any results before the 1967 War created a great weakness for the Arab states. Negotiations between the two states accelerated after the 1967 War and withdrew Egyptian troops, while Saudi Arabia agreed not to help the royalists. However, the real determinant was a development within Yemen. In Yemen, where there was a wide opposition in the society as well as the internal party opposition, Sallal was removed from power in a coup on 5 November 1967, less than a week after Egypt withdrew its troops (Arı, 2012).

At the same time, the predominantly Sunni southern region of Yemen gained its independence under the name of the People's Democratic Republic of South Yemen, which was taken over by a Soviet-backed Marxist government. After this move in Yemen conflicts upraised from 1971 to 1972. With the passage of time and rapid political developments in both northern and southern Yemen, the first summit for the unification of the two countries was held in August 1983. In November 1988, the two countries signed an agreement to unite the two countries. Finally, on May 22, 1990, with the approval of the deputies, the two countries united to form the Republic of Yemen (Fozi, 2012).

The United Republic of Yemen, which was founded in 1990 with the unification of North and South Yemen, was ruled by Ali Abdullah Salih until 2011. In addition to the 2004 conflict, there were six wars between the Yemeni government and the Houthis between 2005 and 2009. One of the most important of these conflicts was the 2007 war, in which the government and the Houthi signed a ceasefire under the mediation of Qatar. This treaty was violated a few months later and led to the Fourth War. Another important war was the 2009 war in which the USA, Jordan and Saudi Arabia also intervened (Dehshiri and Hosseini, 2017).

In late 2010 and early 2011, President Salih was enjoying an overwhelming vision of political domination. He portrayed himself successfully while hosting the GCC Cup football tournament in Aden in December 2010 as proof that his control over the South was undisputable. In the Far North, Salih was convinced that he had overcome the Houthi threat and that the stagnation in the war would continue. However, Salih's sense of trust turned out to be unfounded. When the streets exploded in February 2011, the government was taken by surprise (Feierstein, 2019). The protests have been seen to be organized and led by a coalition of Yemeni opposition parties (Joint Meeting Parties or JMP). Salih was forced to make various economic concessions and political promises, but his moves failed to appease the protests. Numerous casualties were reported as the security forces' reaction to the protests was heavy (Arraf, 2017).

After the popular uprisings that swept the Arab world in 2011, including Yemen, the Gulf Cooperation Council (GCC) mediated a transition plan for

Yemen. As part of Yemen's long-standing former President Ali Abdullah Saleh's transition to President Hadi, all of Yemen's various political groups (565 individual delegates) attended the National Dialogue Conference (NDC).) It was launched in 2013-2014. This conference aimed to resolve all of Yemen's prominent political issues, including addressing calls for greater autonomy in the south (Sharp, 2019).

Despite the differences, the NDC managed to agree on fundamental principles to continue the transition process, including extending Hadi's term for another year. The crucial point of contention in this context was the future federal structure of the state. A commission specifically tasked with finding a compromise suggested dividing Yemen into six main regions. However, both the Houthis and the southern separatist movement rejected this proposal. Military conflicts escalated some problems such as the future constitution and power-sharing arrangements remained unresolved. The Houthi movement, which previously operated only locally in the far north, managed to expand its area of control afterwards. In a tactical alliance between Saleh's supporters and the security forces, they managed to defeat their main rival in the north and in September 2014 became the de facto rulers of the capital Sana'a (Popp, 2015).

Four main streams in Yemen actively play a political role in the developments of Yemen;

1. Congress movement is attributed to former President Ali Abdullah Salih;
2. The Wahhabi-leaning Reform Party, also supported by Saudi Arabia;
3. South Stream covers most of Yemen. Which has three approaches of independence, pro-federalism and minimalism
4. The Zaydis and Houthis in various parts of the country, especially in the Saada region, are said to make up about 40 percent of the population of Yemen (Eltyaminia *et al.,* 2017).

2. Yemen: Saudi Arabia

The importance of Saudi Arabia in terms of Yemen policy stems from the different geopolitical situation which is beyond geography and neighborhood values. It is one of the most important vital and safe areas that cannot be ignored or neglected. Every time this country became an arena for regional competition, Saudi Arabia drew direct military intervention in Yemen with aim to prevent rival countries in the region from falling into the hands (Symposium Report, 2015).

The United Arab Emirates (UAE) is particularly aware of Saudi Arabia's sensitivity towards its leadership role in the region with respect to Yemen, even one analyst observed that Saudi Arabia has not changed since the 1930s. This does not mean that the UAE is indifferent to its neighbor's problems. The UAE federal government has consistently pledged large amounts of development assistance to Yemen but acknowledged significant problems in paying such aid due to corruption and other issues (Burke, 2012).

"Keep Yemen weak" is a phrase that King Abdul-Aziz allegedly recommended to his sons on his deathbed in 1953 (Stenslie, 2013). Since the establishment of Saudi Arabia in 1932, it has clashed with Yemen on political, border and ideological issues, and this conflict led to the 1934 war and the victory of Ibn Saud. In the 23-point Taif Treaty, King Abdulaziz included the disputed territories (Najran, Jizan and Asar) in addition to bringing war compensation to Imam Yahya. However, there was an article in the agreement extending the agreement for twenty years. Successive Yemeni governments, after signing this treaty, did not formally see this as the basis for resolving territorial disputes with Saudi Arabia and insisted on the right of appeal. On the other hand, Saudi Arabia has always tried to win the Yemen agreement to finalize this agreement and determine the borders of the two countries accordingly, but this agreement did not end the territorial dispute (Ahmadi and Khosravi, 2017).

In the 1970s, the Saudis used their economic strength and contacts with prominent Yemeni politicians to disband the Yemen Alliance and prevent the expansion of the former Soviet-backed South Yemen government. Part of this link was in the form of monthly salaries to statesmen and tribes. Indeed, during these two decades the biggest threat to the Saudis in general and to Yemen in particular has been leftist groups. Saudi Arabia has directly and simultaneously supported the Yemeni government and its military and political leaders to counter this threat (Sardar and Mousavi, 2015).

Conservative Saudi Arabia, fearing President Salih's support for Saddam Hussein during the 1991 Gulf War, reversed its historical support for the North and intervened on behalf of the secular socialist South. President Salih described the civil war as a struggle between Islam and atheist socialism, a measure aimed at reviving the Yemeni Islamists and recruiting veterans who recently returned from the Soviet-Afghan war. "The aim was to bring together Arab nationalist, Islamist and socialist actors, each with different ideologies, different goals, and different perspectives on the conflict in which they were involved" (Swift, 2012: 3).

With the signing of the Jeddah Border Agreement between the two countries in 2000, which was based on the acceptance of the Taif Agreement, the long-standing dispute and demarcation of the borders between the two parties on disputed areas came to an end. Relations between the two

countries have shifted from conflict to constructive engagement to improve the security situation in border areas (Hemati and Ebrahimi, 2018).

In early November 2009, Saudi Arabia entered into military operations against the Houthis. The action came after constant rumors about covert Saudi military operations at the border against Houthi rebels. The Saudi attack came after the Houthi attacks on Saudi soil that killed several Saudi border guards. In the days before the Saudi attack, the Yemeni army was allowed to cross Saudi territory to encircle the Houthi rebel positions (Boucek, 2010).

The Houthis' significant influence in Yemen has raised concerns in its northern neighbors, which share the 1,400-kilometer border. According to some experts, the Yemen issue is basically not a foreign issue for Saudi Arabia; this is a matter of national security for the Saudis. Therefore, on March 16, 2015, Saudi Arabia launched an air strike against Ansarullah in Yemen, claiming to support President Hadid. In the operation called "The Storm of Determination" and then "Return of Hope" in the first month, Qatar, Kuwait, UAE and Bahrain formed Saudi allies. Countries such as Sudan, Morocco, Egypt, and Jordan cooperate with Riyadh on the delivery of military weapons (Shahgholian and Jamali, 2017).

Saudi Arabia and the UAE were key elements in the Arab League that intervened in 2015 to support the legitimate Yemeni government in Yemen. Their main goal is to prevent the complete fall of President Hadi's government while not allowing the Houthi group, which overthrew the government in September 2014, to expand its reach and consolidate its control throughout the country. From the beginning, intervention by Saudi Arabia and the UAE was considered necessary and not optional. In their view, they cannot allow an ideological group such as the Houthis to occupy Yemen where it could threaten the strategic interests of both countries (Blumberg, 2019). From their point of view, they could not allow an ideological group like the Houthis to take over Yemen, where it could threaten the strategic interests of both countries. In this case, the Saudis launched a comprehensive war against Yemen and announced the following three goals from this war:

1. To enable Hadid to return to that country legally.

2. Destruction of Houthi resources or facilities as rebel groups in Yemen.

3. Reducing Iran's influence (Amiri, 2019: 130).

In September 2016, the Houthi regime in Sana'a introduced a new 800 km ballistic missile called Burkan. Shortly after, such missiles were launched in Taif, the summer capital of Saudi Arabia, and in Jeddah, the kingdom's largest port, 680 km from the border with Yemen. In February 2017, the Houthis introduced a longer-range missile called the Burkan 2, which claimed to have a range of 1000 km (or 1400 km, according to one

source, but this seems highly unlikely). This newly acquired missile was used in three attacks against targets near the Saudi capital Riyadh (Rubin, 2017).

Saudi-led forces launched an operation called Operation Golden Victory against Houthi rebels for the liberation of Hudaydah in 2018. Due to its strategic and geographical importance, many groups were struggling to take control of the port city. The port city is of great importance in terms of food and commercial supply, especially for the Houthis, who control the northern parts. The port is also a sea control point for the Bab ul-Mendep strait. The port also provides income for the Houthis, who collect taxes on goods and import fuel from the port. In the given context, Operation Golden Victory was seen as the most harmonious opportunity to change the balance of power in Yemen (Al Dosari and George, 2020).

3. Yemen: UAE

The United Arab Emirates, which has political influence in South Yemen, imposes itself as one of the leading countries of the Arab coalition in Yemen and an important actor in the field. This issue has sparked a wide debate, especially after President Abd-Rabbu Mansour Hadi declared the role of the UAE "stupid colonialism". Between this statement and the role of the UAE in Yemen, questions arise about the goals of Abu Dhabi where wants to achieve through its military presence and political influence. The cities in Southern Yemen, which the UAE wants to control, contain natural resources such as oil, gas, minerals and fish wealth, and Aden is one of the most important Yemen coastal cities, containing important ports for the UAE and aiming to expand its influence over the strategic Bab al-Mandab Strait (Arabi21, 2021).

In addition to the goals of the joint intervention of the coalition forces led by Saudi Arabia and the UAE against Yemen, they have their own great goals. Common motives with the countries of the Saudi-led coalition are: to overthrow the coup, rebuild Yemen state institutions, fight the Houthis, secure international shipping lines, and encircle Iran's influence. The specific goals of the UAE in Yemen include economic, political and security issues, each of which threatens its national security. Over the past three decades, the UAE has emerged as an international hub for shipping and has sought to maximize its economic relations with countries to stay at the forefront of the countries of the region.

The United Arab Emirates sees the Bab al-Mandab corridor as a natural extension of its national security that has developed at the expense of weakening other corridors in the region. As result, it tried more than once to get port management in Aden, but failed, except for a few rounds

in November 2008 when former Yemeni President Ali Abdullah Saleh agreed to sign what they called "port development". With Saudi Arabia declaring the formation of a "Decisive Storm" as a military alliance with the participation of the UAE and other Gulf countries, the eyes of the UAE are on Aden, and especially on the ports, to expand its influence to restore and control it and restore the victory of the British occupation. Therefore, even after the US refused requested aid from American Special Forces, it was the first country to send military forces to Aden and to direct the amphibious attack in the summer of 2015 (Al-Taher, 2017). Another economic goal is to find an alternative to the Strait of Hormuz by extending an oil pipeline to the shores of the El Mahra Governorate in the Arabian Sea that could export oil if the strait is closed by Iran. The UAE is working to consolidate and sustain its influence by influencing decision-makers in Yemen to ensure that its economic goals are achieved.

The leadership of the UAE regards what it sees as political, security and existential threats in the medium term. The Arab Spring sees the detachments as a threat to the regime. This is why the UAE tries to deal with these results according to its vision and foreign policy. The UAE aims to present its experience as a new model for the logistics state, whose role in the regional arena goes beyond its geographic boundaries and limited capabilities. To play a larger role, its economic partnership with international powers, the deployment of military forces at bases outside their borders, and the training and support of armed entities in these countries differ in politics and security. The UAE has increased its military weight and political cover with its air, naval and ground forces. Moreover, military leaders who JOINED to him after his defeat in the 1994 war (from the Southern Movement forces, some Salafi groups and supporters of former President Ali Abdullah Salih's nephew Tarık Salih) He formed the 2nd major groups.

To facilitate his mission, he supported some groups of the Southern Movement (separatist) in regional formations in the southern provinces. He also supported the General People's Congress Party, working for the rebuilding of military forces under their leadership, loyal to former President Ali Abdullah Saleh, who was not subjected to the authority of President Abd Rabbu Mansour Hadi government. The UAE's policy of expanding its influence in Yemen depends on Saudi Arabia's status and employment of foreign affairs, as well as its relations with President Abd Rabbu Mansour Hadi government. Additionally, the UAE put political pressure on President Abd Rabbu Mansour Hadi during his acceptance and support of international plans to end the presidency as part of its political settlement efforts. On the other hand, the president of Yemen has managed many times to get rid of what made him a target and tried to curb the influence of the UAE by removing some of his allies in the government.

Before 2011, the UAE had a relatively traditional relationship with the Ali Abdullah Salih regime, which is seen as an ally, although it is not always reliable. One of Zayed's first overseas initiatives was his project to rebuild the Mareb dam in Yemen, which is said to be the ancestral home of the Al-Nahyan. Salih came to power with the acceleration of the project in 1978. South Yemeni merchants, especially those from the eastern province of Hadramawt, had long established business contacts in Dubai and Abu Dhabi, and after the fall of the socialists in South Yemen in the 1960s, many more southerners, who went to the emirates, took part in the trade with the police and armies of the emirates. Since the early 2000s, the UAE has become more involved in the debates on security sector reform in Yemen, with the emergence of a new military and security elite gathered around members of Saleh's family (Salisbury, 2020).

Saudi Arabia and the UAE are the two strongest countries of the GCC that feature the highest population numbers, the most extensive armies and political clouds. In the past decade, they have worked together frequently in political and military coalitions, especially since the Arab Spring protests began in 2011. The two "accomplices" have joined forces in, Syria, Libya, and Egypt, and the latest example is military cooperation against revolutionary Houthi forces in Yemen (Van Slooten, 2019).

Since the start of the intervention, Saudi Arabia and the UAE have agreed to share operational responsibilities. The Saudis would focus on the northern border and air campaign with Saudi Arabia, and the UAE would focus on land operations in the south. As the conflict unfolded, the two allies found themselves pursuing different strategies: Saudi Arabia prioritizes federal but united Yemen, with its support of the renowned government led by President Abdu Rabu Mansur Hadi and now moving from the capital Sana to Aden. The UAE supports the unnecessary aspirations of southerners.

Unlike the Saudi-backed Islah party, the UAE cooperates mainly with southern separatist groups (such as the STC) and pro-autonomous Salafists. The UAE, the backbone of Islah, the Muslim Brotherhood of Yemen (MB) is seen as a national threat to the UAE and is working to exclude them. Since its founding in May 2017, the UAE-backed STC has banned all MB-related movements and activities (Ardemagni, 2017). An important element of the Yemen crisis is the separatist movement trying to re-establish an independent regime in Aden. Since the reunification of Yemen in 1990, there is a common narrative in southern Yemen of indigenous people suffering under the rule of the authorities in Sanaa. Many southern Yemenis felt economically and politically marginalized by the northerners.

By 2007, the Southern Movement (al-Hirakal-Janoubi) was formed to represent the South Yemeni struggle. The Southern Transitional Council (STC) was formed 10 years later, at a time of civil war (Karasik and Cafiero,

2019). This divergence was seen in the Taizz war, which UAE troops avoided largely because of Islah's reputation. The tension between the two emerged when the UAE Foreign Minister, Anwar Gargash, tweeted in November that "Taizz would have already been saved had it not been for al-Islah and the Muslim Brotherhood not to act" (International Crisis Group, 2016).

In August 2019, the conflicting agendas and conflicting interests of the Saudi-backed Yemeni government and UAE-backed fighters loyal to the STC peaked. Violence between Hadi's supporters and the armed separatists broke out in Aden. The great tension between the Hadi-led government and the STC fighters increased on 1 August 2019, when a ballistic missile and drone targeted a parade in western Aden. The hit killed several people, including Munir al-Yafei, also known as Abu al-Yafei, who served as a commander of the Security Belt Force, a UAE-backed separatist and anti-Islamist paramilitary group that encompasses multiple factions in southern Yemen. This paramilitary faction received support from Abu Dhabi while fighting the loyalists of Hadi, and the group operates under the umbrella of STC (Karasik and Cafiero, 2019).

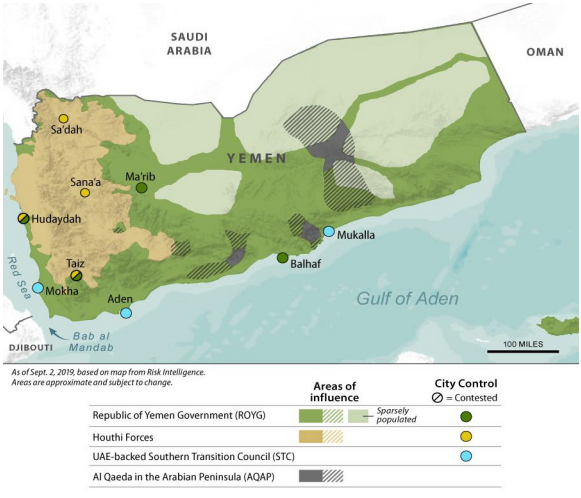
The UAE's rationale for building a political base in South Yemen is multifaceted. UAE's participation in the Saudi-led coalition allowed the Emirates to cooperate more openly with the United States in combating terrorist groups such as AQAP in southern Yemen. It also allowed Emirati forces to gain influence in various Yemeni port cities that could complement the UAE's commercial and energy interests in the Red Sea and the Gulf of Aden. From 2015 to 2019, the UAE made an impact in Aden with its own troops or the presence of STC-affiliated tribal militias (known as the Southern Belt / Safety Belt or Al Hizam al Amni in Arabic) The only personally loyal military force of President Hadi in Aden was the Presidential Protection Force (under his son Nasser), which was relatively small compared to the UAE allied forces. Periodic clashes occurred between ROYG forces and the UAE-backed forces, and in January 2018 the STC took control of most of the ROYG troops Aden in just three days.

The UAE and Saudi Arabia intervened to keep the STC committed to the greater fight against the Houthis. After the conflict settled, the STC announced that it would continue to participate in the coalition's military operations against the Houthis and returned the military facilities to the ROYG forces. However, it turned out that Hadi only had an Aden-based government in name, and STC had power in the field (Sharp, 2019: 6-7).

Hani ibni Berik, vice president of the South Yemen Provisional Assembly, who is currently defending the separation, left Abdurabbu Mansur, while he was a minister in the government of Hadi, leaving him to the side of the separatists. It gained political and military ground by forming a militia unit of 12 thousand people acting outside the control of the government of Hadi in Eden. It was reflected in the media that there were conflicts and mutual

threats between the troops affiliated to Berik and the military institutions affiliated to Hadi (Kekilli, 2019). Even after most of the UAE troops withdrawal from Yemen in 2019, this situation remained unchanged, as the Emirate retained control of several ports and islands and left a small unit in Aden for now. Moreover, where the UAE troops withdrew, the militias allied with remained behind. These militias are heavily dependent on UAE support, so Abu Dhabi seems to assume the consistence of their loyalty in the future. The purpose of this Emirati expansion will likely be military and economic. The UAE, which maintains its presence in the ports around the Gulf of Aden, can intervene in Yemen at any time (Steinberg, 2020: 23).

One of the UAE's most important strategic goals in Yemen is to strengthen its geopolitical influence beyond the Arabian Sea, including the Gulf of Aden and the West Indian Ocean. Furthermore it wants to strengthen its military and economic position in the region and Iran, Saudi Arabia and Turkey are competing with. It tries to strengthen its position in the Gulf Cooperation Council and the Arab League. It also aims to expand counter-terrorism cooperation to use it globally to remove charges of supporting terrorism (https://www.irna.ir/news/83545138). Due to these features, the city has become an armed struggle area for separatist groups al-Qaeda, pro-Hadi army units and UAE-backed groups. Since January 2018, violent conflicts have been taking place in many parts of Aden, especially at the airport (Domazeti, 2019). The divisive activities of the United Arab Emirates in South Yemen and Yemen's efforts to dehumanize the islands suitable for tourism such as Socotra in the Arabian Sea have brought the Abu Dhabi administration and Riyadh administration against each other (Bursa, 2018).



(Source ;Sharp. 2019: 4)

Conclusions

The most important and influential issue regarding Yemen's strategic location is that it dominates the strategic and deep Babü'l-Mandeb Strait, which connects the three continents of Asia, Europe and Africa. Religiously speaking, Yemen is one of the Shia castles in Islamic history. Zaydi and Ismaili Shiites have a relatively large following in these lands. Although the Shiites are a minority in the country, they have many strategic areas.

Saudi Arabia, a powerful country in Western Asia, especially in the Persian Gulf region, is trying to increase its power to become a regional hegemonic power. The reason why Saudi Arabia attacks Yemen is to increase the power of Saudi Arabia by achieving some geopolitical goals in Yemen with ideological tools.

Unlike the Saudis, which limit Yemen's northern regions and border conflicts, ABE's presence and growing influence and role in South Yemen and the region are of great importance for the ABE. On this basis, some believe that the UAE and Saudi Arabia are dividing their sphere of influence in Yemen, and this division is based on the special interests and interests of each of these actors.

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Legal regulation of practices of the police as an entity in charge of preventing and combating corruption in Ukraine

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Abstract

This article deals with the legal regulation of the practices of the police as an entity responsible for preventing and combating corruption. The study shows that corruption is becoming increasingly widespread, creating major obstacles to the comprehensive development of the economy and national security of any state. The objectives of this study were to clarify the problematic aspects of the legal regulation of police practices as an entity responsible for preventing corruption, to identify positive international experience in this area and to clarify its implementability in Ukraine. The corruption perceptions index regression analysis method was applied in 12 different countries around the world for 2018 and 2019. On the basis of the analysis, the authors propose to amend Ukrainian legislation with regard to the definition of the legal status of police practices as an entity responsible for preventing and combating corruption at the level of Ukrainian legislation, detailing the powers of the National Police as a specially authorized entity in the field of preventing and combating corruption in the Ukrainian Law "On the National Police".

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Regulación legal de las prácticas de la policía como entidad encargada de prevenir y combatir la corrupción en Ucrania

Resumen

Este artículo trata sobre la regulación legal de las prácticas de la policía como entidad encargada de prevenir y combatir la corrupción. El estudio muestra que la corrupción se está generalizando cada vez más, creando importantes obstáculos para el desarrollo integral de la economía y la seguridad nacional de cualquier estado. Los objetivos de este estudio fueron aclarar los aspectos problemáticos de la regulación legal de las prácticas de la policía como entidad encargada de prevenir la corrupción, identificar la experiencia internacional positiva en esta área y aclarar su implementabilidad en Ucrania. Se aplicó el método de análisis de regresión del Índice de Percepción de la Corrupción en 12 países diferentes del mundo para 2018 y 2019. Sobre la base del análisis, los autores proponen modificar la legislación de Ucrania con respecto a: la definición de la condición jurídica de las prácticas de la policía como entidad encargada de prevenir y combatir la corrupción a nivel de la legislación ucraniana; detallando los poderes de la Policía Nacional como entidad especialmente autorizada en el campo de la prevención y lucha contra la corrupción en la Ley de Ucrania «Sobre la Policía Nacional".

Palabras clave: regulación legal; prácticas policiales; sujeto de prevención; sujeto de combate; corrupción.

Introduction

Today, society needs protection from corruption more than ever (Søreide, 2019). The problem of combating corruption effectively is one of the most acute and difficult challenges (Rybak, 2011). Corruption is recognized by the world community as a threat to development as a whole (Kohler and Bowra, 2020). It largely affects the vast majority of countries and has a negative socio-economic impact (Tacconi and Williams, 2020). Corruption hinders economic growth and distorts government efforts to promote development (Lodge, 2019).

All countries without exception are concerned about the existence and spread of a destructive phenomenon of corruption, which harms the activities of public authorities, slows down economic development and distorts the consciousness of society. As a result, each country implements its own anti-corruption program, strategy or policy (Khabarova, 2019). It is worth noting that some countries, in particular Croatia, have some achievements in this area (Norton Rose Fulbright, 2017). Progress is especially noticeable in Denmark, Poland and Lithuania.

Corruption, being one of the strong words, carries a striking power. Various ways to eradicate it — from changing the Constitution to establishing extrajudicial institutions — have not been fully successful. Corruption continues to strengthen its position (Raharjo, 2017). Combating is not easy (Holmes, 2020). There is, however, power that strengthens anti-corruption regulations in conjunction with regulations aimed at addressing this issue indirectly, such as competition supervision, financial supervision and anti-money laundering instruments. In particular, an appropriate system of law enforcement agencies has been introduced for the implementation of legal instruments to combat corruption. The police have an important place among those law enforcement agencies. Preventing and combating corruption is one of the police's functions.

At the same time, it should be noted that the spread of corruption among police officers is no exception. Of all offenses committed by police 44% are corruption-based. Moreover, statistics from the Department of the Interior also show that more than 50% of officers who committed a crime had served less than 10 years. This further raises the issue of finding effective mechanisms to prevent and combat corruption, which primarily determines the need to develop appropriate legal support.

This issue is especially relevant for Ukraine. After all, despite the fact that corruption is a stable and objective phenomenon for many countries, in Ukraine it has reached the level that threatens the very existence of statehood. A web of corruption is, in fact, becoming a parallel system of governance, where various issues are resolved on the basis of the business interests of the most powerful oligarchs instead of being resolved by law (Durdynets *et al*., 2020). At the same time, Ukraine's integration into the world economy forces it to adhere to international standards and rules (Lutsenko, 2019). Overcoming the phenomenon of corruption is an integral condition of our country's European integration policy.

In accordance with the above issues, the research objective is to clarify the problematic aspects of the legal regulation of practices of the police as an entity in charge of preventing and combating corruption, identify positive foreign experience in this area and ascertain its implementability in Ukraine. Fulfilling these objectives will allow making proposals to improve the quality of legal regulation of the said public relations, as well as identifying shortcomings of the police powers execution in this area.

The scope of the article is to improve the legal regulation of practices of the police as an entity in charge of preventing and combating corruption.

1. Literature review

The public danger of corruption is too high. It is well known that corruption threatens the rule of law, democracy, and human rights, undermines the foundations of good governance, violates the principles of equality and social justice, distorts competition, hinders economic development, threatens the stability of democratic institutions and public morals (Lobazova, 2019).

The EU citizens recognize the gravity of corruption as a social and political pathology: 72% of EU residents agree that corruption is a serious problem in their country. More than 9 out of 10 Greek (94%), Czech (93%), Hungarian (93%), Portuguese (91%) and Slovenian (91%) citizens share this concern about corruption. Similarly, 88% of Poles agree that corruption is a serious problem, while 76% believe that preventing and combating international corruption will be more effective if it is adopted at the system level of the European Union rather than at the level of independent states (Gadowska, 2010).

Transparency International's largest Global Corruption Barometer survey, with about 114,000 respondents in 107 countries, confirms that bribery is a serious global problem. Moreover, one in four respondents reported paying a bribe in the last twelve months. At the same time, most respondents consider their governments' efforts in combating the problem ineffective, and in most countries citizens report that there are now more cases of corruption than before (Edelman, 2016).

The situation has worsened in recent years, which has been reflected in the deterioration of the Corruption Perceptions Index (Siddiquee and Zafarullah, 2020). Corruption has become a systemic problem that harms the most resilient public institutions, forcing the government to stop fulfilling its obligations to society and to fulfil only paid obligations to various influence groups and elites. This situation rejects and hinders the transparency of the state machinery, the decision-making process, the predictability of the investment climate and economic development. In turn, this leads to inevitable economic and social losses (Durdynets *et al.*, 2020).

The main causes of corruption are: lack of any anti-corruption policy and awareness of the importance of such issues as professional ethics, conflict of interest; low wages in certain social spheres, high corporatism, especially in the police (Truntsevskiy and Olliv'en, 2017).

Researchers identify several models of institutional prevention and combating corruption in the world. At the same time, it should be noted that the positions of foreign and Ukrainian scholars on this issue differ. While foreign scholars distinguish three models, Ukrainian researchers decide on only two. Ukrainian scholars identify two fundamentally different options for building anti-corruption mechanism:

1) Separation of an entity outside the law enforcement system, which is responsible for the development, implementation of anti-corruption policy and its coordination with anti-corruption strategies. The latter were dictated by international requirements for combating and preventing corruption (Lithuania, Latvia);

2) Assignment of these functions to law enforcement agencies (Romania) (Halkina, 2019).

Foreign scholars attribute the establishment of a large number of various anti-corruption bodies (Germany) to the first model, while the inclusion of combating corruption in the competence of law enforcement bodies (Romania), the creation of a single specially authorized anti-corruption body (Lithuania, Latvia) — to the second one (Kanan, 2019).

One of the entities in charge of preventing and combating corruption in Ukraine is the National Police. Stable and effective functioning of the National Police of Ukraine, as one of the entities in charge of combating corruption, is a necessary condition for the protection of the constitutionalism, law and order, respect for human and civil rights and freedoms, and the effectiveness of the police stability of social development. Successful realization of national interests and social development stability largely depend on the effectiveness of the policing practices (Titunina and Kirilenko, 2017).

In order to ensure the protection of human rights and freedoms, the National Police diverts its efforts to counteract this phenomenon both in the internal organizational activities of the central governing body of the National Police, in territorial bodies, enterprises, institutions and organizations belonging to its sphere of administration, and outside this area (Shatrava, 2016).

In order to reduce the crime rate and create an effective prevention system in the context of reforming the law enforcement system, it is necessary, first of all, to create an effective legal framework in this area, as well as improve existing forms, methods and measures of preventive activities, in particular, the police (Kovalenko, 2016). The legal status of the police as an entity in charge of preventing and combating corruption remains unclear at the level of national legislation, which determines the legal background for both anti-corruption activities and policing practices in general.

The problem of inadequate and imperfect legal regulation of practices of the police as a subject of preventing and combating corruption through the Law of Ukraine "On the National Police of Ukraine" is worth noting. In particular, in terms of clearly determining the powers at the legislative level of each entity specially authorized for combating corruption in Ukraine in accordance with assigned functions (Zhukovska, 2018).

Interaction between anti-corruption bodies in Ukraine remains insufficiently regulated, which complicates the implementation of anti-corruption policy. In particular, these problems are due to insufficient regulation of the activities of new bodies (Muliar and Khovpun, 2019).

We cannot disregard inadequate planning of investigations, inadequate use of electronic surveillance, inability to question key witnesses, breaches of confidentiality and lack of timeliness. Undoubtedly, the problem is now smaller than in the past, thanks to, for example, widespread introduction of more effective verification practices, better education, greater use of modern covert investigations, much more competent and dedicated internal investigators and professionalization in general. However, the problem has not disappeared in any case (Miller, 2014).

Besides, the fact that the police are one of the entities in charge of combating corruption does not mean that corruption cannot exist among the police. Despite the general increase in trust in the police and their staff, public opinion polls over the past few years suggest that anti-corruption efforts today need to be not only external, but also internal (within the police units). It is obvious that corrupt law enforcement agencies are not able to perform their tasks effectively, and this quickly poses a real threat to the state, society and the individual (Pechegin and Prokhorova, 2017).

Accordingly, the education system, and the police officer training system in our case, is the most important social institution in combating corruption. The younger generation has weakness associated with the development of anti-corruption culture itself, so we can conclude that anti-corruption education is needed for the younger generation to help them form a legal consciousness to behave in line with anti-corruption provisions (Sabila, 2020).

Professional education is the most important part of modern education, as it forms the future specialist's need to take into account not only personal but also public and state interests. The existing anti-corruption legislative framework does not allow to overcome the manifestations of corruption without a set of activities, which include the implementation of a psychological program of building anti-corruption culture (Klymenko, 2019).

In addition, reducing the incentives and opportunities for corruption in the police is possible by improving their low wages and miserable working

conditions, as well as the public punishment of corrupt police officers (Quah, 2019).

The most effective approach to organizational and legal support of combating corruption is one that includes criminal prosecution, transparency of information about civil servants and individuals, as well as the interaction of law enforcement agencies with fiscal authorities to identify sources and flows of illegal support. All this requires the active participation of civil society institutions, as only the public is able to ensure the necessary level of transparency in the implementation of anti-corruption practices (Durdynets *et al*., 2020). Anti-corruption activists, which include NGOs, public organizations, student activists, and social media are important in this area.

Openness of the power entities, moral and psychological rejection of corruption by citizens, strengthening transparency and promoting the involvement of the population in the implementation of anti-corruption activities, that is a number of ethical (for employees) and moral (for society) principles that prevent citizens from committing acts of corruption, cause a decrease in corruption rates (Khabarova, 2019).

Only a comprehensive approach to tackling corruption will eradicate negative trends and manifestations. It is reasonable to solve the problems that have arisen both at the level of legislation, and at the level of organization of law enforcement activities. Special attention should be paid to the education and personality development of future law enforcement officers (Sebeleva, 2020).

Review of Ukrainian and foreign literature shows that scholars have limited coverage of the legal regulation of practices of the police as an entity in charge with preventing and combating corruption. In particular, researchers focus mainly on the aspect of preventing and combating corruption in general.

2. Methods and materials

Most research on preventing and combating involved methods of statistical processing of the results. Statistical research allows revealing the picture of corruption indicators in Ukraine and the world. More effective models for preventing and combating corruption can be found by comparing statistics from different countries and years.

Our research involved the method of regression analysis. In the first stage of the study, we built statistical distributions through the method of regression analysis and developed two charts of Corruption Perception Index (CPI) in different countries based on the data obtained using the

dialectical method, which reflected the number of points for 2018 (Figure 1) and 2019 (Figure 2). In particular, we selected statistics on the CPI of 12 countries, including Ukraine, from a list of 180 countries providing published data of the global ranking of corruption indices of Transparency International for 2018 and 2019. Subsequently, the selected data were analysed and displayed by placing on charts in alphabetical order by country name for further comparison. The comparison revealed some differences in the ratings with the same list of countries but different years. In the second stage of the study, the countries selected for comparison were grouped according to the anti-corruption model and shown in Table 1. In the third stage of the study, conclusions were drawn based on the obtained data using the observation method, which later became the basis for the proposals.

Corruption Perceptions Index (CPI) is an indicator that has been calculated by Transparency International since 1995. The organization itself does not conduct its own surveys. The index is calculated on the basis of 13 studies of reputable international institutions and research centres. Ukraine's figures we calculated on the basis of 9 sources. The Corruption Perceptions Index is based on independent research and surveys involving international financial and human rights experts, including the World Bank, Freedom House, the World Economic Forum, the Asian and African Development Banks, etc.

Unit of measurement is a point. The key indicator of the Index is the number of points, not the place in the ranking. The minimum score (0 points) means that corruption actually replaces the state, the maximum (100 points) indicates that there is almost no corruption in society.

3. Results and discussion

As initial descriptive evidence, Figure 1 and Figure 2 show that the Corruption Perception Index varies from country to country. In particular, this is illustrated by the example of 12 countries such as: Bulgaria, Armenia, Denmark, Latvia, Lithuania, Germany, Poland, Russia, Romania, Slovakia, Hungary, Ukraine. At the same time, the picture of the Corruption Perceptions Index in the same countries for different years also differs, although not significantly. The results obtained are shown in Figure 1 and Figure 2.

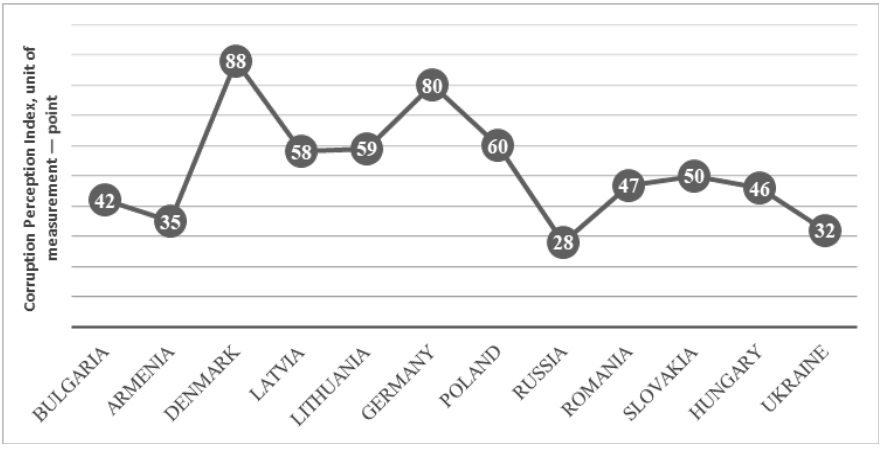
The source data for comparison were taken from Transparency International's Global Corruption Index for 2018 and 2019.

30 points out of 100 possible is the result of the 2019 Corruption Perceptions Index for Ukraine. In 2018, the indicators were equal to 32

points. This indicates that the situation with preventing and combating corruption in Ukraine has deteriorated compared to 2018.

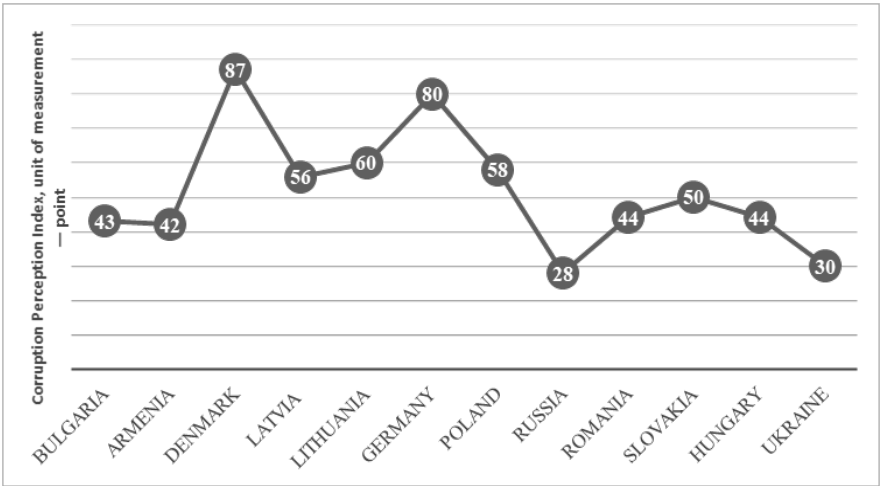
Russia is next to Ukraine in the ranking. However, the indicators of the Corruption Perceptions Index in Russia have remained unchanged. Among its neighbours, Ukraine is ahead of Russia, which has maintained its position (28 points). Poland (58 points) and Slovakia (50 points) are in the lead among the neighbours. While Poland has minus 2 points, Slovakia is stable in its indicators compared to 2018. We also see a slight decrease in the index in Denmark — minus 1 point, Latvia, Hungary and Poland — minus 2. At the same time, CPI leaders have not changed significantly. Denmark and Germany rank first with 87 and 80 points, respectively. Bulgaria and Lithuania scored + 1 in the ranking. At the same time, Armenia added the most points (+7) (42 in total) compared to the previous year.

Figure 1. Corruption Perceptions Index 2018



Source: Transparency International Ukraine (2018).

Figure 2. Corruption Perceptions Index for 2019



Source: Transparency International Ukraine (2019)

The charts above show that some countries are severely affected by corruption, while others are less affected by it, but none is impervious to the problem.

At the same time, according to the anti-corruption models (Kanan, 2019), the countries can be grouped as follows on the Table 1.

Table 1. The types of anti-corruption models and the countries that use them

Model	Country
1. The function of combating corruption is entrusted to a large number of various anti-corruption bodies	Germany, Ukraine, Poland, Slovakia
2. There is a separate entity outside the law enforcement system	Lithuania, Latvia, Armenia, the Russian Federation
3. Anti-corruption is attributed to the competence of the law enforcement body	Romania, Hungary, Bulgaria, Denmark

Source: Own elaborate

The considered results allow assuming that the model where the anti-corruption function is entrusted to a large number of various anti-corruption bodies is the most effective in terms of combating corruption. After all, while Lithuania and Latvia have a separate entity outside the law enforcement system, which is responsible for the development, implementation of anti-corruption policy and its coordination with anti-corruption strategies, Germany created a large number of various anti-corruption bodies, in Romania anti-corruption is attributed to the competence of the law enforcement agency. At the same time, in Latvia the indicators of the Corruption Perception Index in 2019 decreased by only two points compared to 2018, in Lithuania — increased by one point, in Germany - remained unchanged, in Romania the indicators decreased by three points. Leading countries in the fight against corruption have institutions to combat corruption of all types, but there are also countries that do not have specialized bodies to combat this phenomenon. However, in Ukraine, which has various anti-corruption bodies as Germany, the situation is getting worse, as the Corruption Perception Index fell by two points. At the same time, the general nature of the indicator does not allow recording various manifestations of corruption and give detailed advice on how to combat this phenomenon. Thus, one cannot speak of the advantages of one type of specialized anti-corruption institution over others.

As for Ukraine, in our opinion, this situation is due to the fact that today a number of legal and organizational tasks of the police as one of the subjects of anti-corruption remain unresolved in Ukraine. In particular, the powers of the police are regulated by Section IV of the Law of Ukraine No. 580-VIII "On the National Police" dated July 2, 2015 (Verkhovna Rada of Ukraine, 2015). The first part of Article 23 of this Law, which includes 28 paragraphs, determines the main powers of the police in accordance with functions assigned. They include: preventive activities aimed at preventing offenses (paragraph 1); pre-trial investigation of criminal offenses within the relevant jurisdiction (paragraph 6); in cases provided by law — proceedings in cases of administrative offenses, making decisions on the penalties under administrative law and ensuring their enforcement (paragraph 8), etc.

Given the above, we can state that the powers listed above are general in nature. Of course, when it comes to preventing offenses, offenses are interpreted as both corruption and corruption-related offenses. Pre-trial investigation of criminal offenses within the relevant jurisdiction also provides for investigation into corruption offenses. Accordingly, administrative proceedings include corruption-related administrative proceedings.

Thus, no specific powers of the National Police as a specially authorized anti-corruption entity are established at the legislative level, the Law of Ukraine "On the National Police" does not determine the units that can be assigned special anti-corruption powers (Zhukovska, 2018).

The legal status of the police as an entity in charge of preventing and combating corruption should be clarified at the level of national legislation, which provides the legal framework for both anti-corruption activities and policing practices in general. In particular, the provisions of the Law of Ukraine "On Prevention of Corruption" (Verkhovna Rada of Ukraine, 2014) should define the police as a specially authorized entity in charge of preventing and combating corruption (Section 1 of Article 1). In turn, the provisions of the Law of Ukraine "On the National Police" shall have broader definition of the police's function to combat crime as the task of preventing and combating crime.

A significant gap relates to the lack of an established mechanism for protecting those who disclosed or reported information about corrupt practices of officials. Article 53 of the Law of Ukraine "On Prevention of Corruption" stipulates for state protection of persons providing assistance in preventing and combating corruption. But in practice, the Law of Ukraine "On Ensuring Security of the Persons who Participate in Criminal Legal Proceedings", which provides for the state protection of those who help in combating corruption is implemented at a rather low level. First of all, this is due to financial problems and the workload of law enforcement agencies. Therefore, the mechanism of protection of persons who disclose information about corruption offenses needs both legislative and organizational improvement (Luhovyi, 2019).

In order to effectively fulfil the main crime prevention tasks and functions of the police, it is necessary not only to improve the legal framework of practices of the police in accordance with international standards, but also to increase the efficiency of the National Police of Ukraine. It is necessary to look for qualitatively new approaches to the implementation of preventive activities that will correspond to the realities of today, and take into account current trends in society and the state. The performance of crime prevention functions by police units depends not only on a clear legal definition of the functions, rights and responsibilities of each structural unit, but also on their actual implementation in practice, as well as the coordination of actions of these entities in prevention activities. The work of all police units to prevent crime should be coordinated both internally (coordination of actions of the National Police of Ukraine), and externally (police units must coordinate their actions with other government agencies, NGOs, individual citizens engaged in preventive activities) (Kovalenko, 2016).

The key to successful performance of the task of minimizing the manifestations of corruption is to ensure the appropriate level of knowledge of anti-corruption legislation as representatives of public administration and society as a whole. On the one hand, it contributes to the effective operation of statutory preventive anti-corruption mechanisms, and, on the other — increases the level of legal awareness of citizens, which reduces the

risk of violation of their fundamental rights and freedoms in everyday life, and also contributes to the formation of intolerance of the population to the manifestations of corruption (Shatrava, 2016). In particular, training of officials, especially those in direct contact with perpetrators (police officers in this case), is an important component of preventing corruption (Truntsevskiy and Olliv'en, 2017).

In addition, the problem of corruption in the police themselves needs to be addressed. Corruption in the police is a widespread serious problem for many reasons. One is that the police, as opposed to other civil servants, are often armed and can therefore pose a physical threat to citizens. Second, citizens usually expect the police to support the law and become the "last destination" in combating crime, including with other government officials: if there is no trust in law enforcement officers, most citizens have nowhere else to go in search of justice (Holmes, 2020).

The anti-corruption culture development in future police officers, taking into account the anti-corruption component, should be a purposeful process of training and education for the benefit of both society and the individual, which provides for achieving the following objectives: acquaintance with corruption and its manifestations in various spheres of life, their causes and consequences; development of the basics of legal culture and skills of adequate analysis and personal assessment of this social phenomenon; teaching cadets that corruption is multifaceted, it is associated not only with illegal actions in the field of economic and political relations, but also is a specific element of culture and consciousness of society; give knowledge that provides behaviour complying with legal and moral and ethical norms in corrupt genic situations; overcoming legal nihilism; stimulating motivation for anti-corruption behaviour; formation of a clear and consistent attitude to corruption, active negative attitude to this phenomenon; formation of behavioural mechanisms to combat corruption, etc. Thus, anti-corruption culture development programs should be systemic, and should include anti-corruption components, which will be aimed at developing cadets' anti-corruption worldview, raising the level of their legal awareness and legal culture (Klymenko, 2019).

It is advisable to use anti-corruption education at different stages of professional activity with the use of a comprehensive approach to the formation of anti-corruption behaviour, which allows the use of various forms of training of police officers. After all, it is a comprehensive approach that allows paying attention to the needs and difficulties in the field of corruption prevention in the learning process, without spending time for basic educational information (Mironkina, 2020). It is necessary to take into account the anti-corruption component in professional training of future police officers as a set of these components of the individual's anti-corruption culture: cognitive, emotional-motivational, behavioural (Klymenko, 2019).

The experience of foreign countries in the studied field also deserves attention, in particular, the experience of countries with the best indicators of the Corruption Perceptions Index. Currently, we can benefit from more than 10 years of experience in other European countries (Hac, 2016). The anti-corruption strategy at the national level in Lithuania shows progress over the last ten years (Norton Rose Fulbright, 2017).

An effective system for preventing corruption offenses in the German police is based on detailed legal regulation at both the federal and state levels, and includes not only organizational but also social measures (Pechegin and Prokhorova, 2017). Germany also provides quite fruitful cooperation between fiscal and law enforcement agencies in combating corruption, where the concept of "unfair enrichment", which is widely used in tax and civil law, is enshrined in law (Huzovatyi, 2016).

Expanding the system of combating corruption crimes in the field of regulatory impact of tax legislation significantly increases the ability of law enforcement agencies to track the origin and legality of the use of income and financial resources of citizens. The instruments of fiscal authorities not only expand the possibilities of supervision and monitoring of criminal investigation bodies, but also perform a preventive function, as this significantly complicates the commission of the relevant type of crime (Durdynets *et al.*, 2020).

The Polish police have developed anti-corruption solutions that, as an institution and, indirectly, as the environment of police officers, have gone through many different stages, reaching the current state of affairs (Hac, 2016).

The policy of preventing and combating corruption in Poland implements a wide range of disciplinary and criminal measures (strengthening criminal and administrative legislation to combat corruption; establishment of specialized institutions; establishment of special mechanisms of external and internal control over public administration; effective judicial system), preventive (mechanisms that facilitate various procedures, where the subjects are citizens on the one part and public authorities on the other; elimination of gaps in legislation that gave way to corruption abuse; clear detailed codes of conduct for public officials and specific steps to act in certain situations; providing access to public information and e-government; instruction of the population and officials; support for non-governmental organizations, etc.). Taken together, all these measures yield adequate results, which allows eradicating corruption from the public sector in Poland year to year, and brings the country closer to states with a minimum level of corruption (Rybak, 2011).

Using a unique survey of Polish central government civil servants, it was found that, where applied in practice, disciplinary and ethical codes

reinforce each other in order to restrain bribery as a form of corruption in the civil service. Anti-corruption activities are the most effective when managers have several consistently implemented tools (Meyer-Sahling and Mikkelsen, 2020).

Analysing the experience of Denmark, we can conclude that the corruption prevention activities implemented in European countries coincide with the anti-corruption measures applied in Ukraine for the most part. Those activities include, in particular: adoption of anti-corruption legislation, ratification of international treaties, introduction of public control, establishment of stricter responsibility for committing acts of corruption, etc. However, there is a certain feature that reduces the corruption level — it is the openness of the authorities, moral and psychological rejection of corruption by citizens, increasing transparency and promoting public involvement in anti-corruption activities. That is, a number of ethical (for employees) and moral (for the whole society) principles are applied that do not allow citizens to commit acts of corruption. On this basis, we can also conclude that one of the priority principles that can reduce the corruption level is the moral and ethical education of citizens — this is what Ukraine should actually strive for (Khabarova, 2019).

To combat offenses in the public institutions, methods selected in such a way as to be both preventive (including by raising awareness of the dangers and avoiding situations of corruption) among employees, and to act as a deterrent to potential offenders, should be used. Focusing on just one of these areas will not be that much effective. Over the last decade, a little-known but noteworthy method of combating offences in public institutions has been adopted and remains in use in Europe, including in the countries of the so-called post-Soviet bloc. This is called integrity testing — a solution that was initially widely used by public safety groups in the Anglo-Saxon countries and the United States and has been successfully implemented in some countries on our continent (Hac, 2016).

Methods that can significantly reduce corruption also include reducing discretionary decision-making, radical restructuring, risk assessment, greater use of psychological testing, improved working conditions, lifestyle monitoring, the creation of anti-corruption agencies that are completely independent of the police (Holmes, 2020).

In connection with the emergence and large-scale development of information systems and technologies, humanity has got a new way of life — information, which has become increasingly important and integral phenomenon of the world. The opportunities of informational impact on people has increased enormously, making higher adaptive requirements to them and society as a whole. The modern world is characterized by the rapid development of information technology (Yakhontova and Yakhontov, 2020). Therefore, it would be reasonable to introduce active media

monitoring. After all, given the insecurity of those who make information about corruption offenses public, we should not expect a significant increase in the number of reports.

In general, a systemic approach must also be introduced for the effective implementation of anti-corruption policy in Ukraine. After all, the phenomenon of corruption is systemic, and, accordingly, it can be overcome only by joint efforts. Prevention of corruption, as a strategic direction of state policy, should be carried out in a combination of targeted actions of persons authorized to perform state functions within the implementation of a single state anti-corruption system (Boboshko, 2018). Only effective cooperation may help to restore human rights and freedoms, the state in criminal proceedings, and bring the perpetrators to justice (Muliar and Khovpun, 2019). After all, although there are several different law enforcement agencies in different countries authorized to prevent corruption, the lack of coordination between them makes their total value less than the value of the parts. For the most part, law enforcement agencies with narrow powers to detect and act on issues other than corruption rarely exercise their potential in practice when it comes to combating the symptoms of corruption, as their law enforcement actions are not enough coordinated (Søreide, 2019).

Conclusions

Based on the above, we can conclude that it is appropriate to clarify the legal status of the police as an entity in charge of preventing and combating corruption at the level of national legislation, which provides the legal framework for both anti-corruption activities and policing practices in general.

In addition, the powers of the National Police as a specially authorized entity in the field of preventing and combating corruption provided in the Law of Ukraine “On the National Police” need to be specified in detail. It is advisable to identify the units that may be entrusted with special powers in the field of preventing and combating corruption.

The gap related to the lack of an established mechanism to protect those persons who have disclosed or reported information about corrupt practices of officials needs to be addressed at the legislative level.

The legal regulation of practices of the police as an entity in charge of preventing and combating corruption is not perfect both in Ukraine and in the world. However, the experience in regulating the practices of the police as an entity in charge of preventing and combating corruption in some European countries undoubtedly shows some progress in comparison with Ukraine.

Ukraine is currently not entirely on the right track. Therefore, it would be appropriate to make appropriate changes to the legislation of Ukraine, considering foreign experience in this area. Regarding the cooperation of the police with other law enforcement agencies, with the public, education and training of police officers, their public awareness activities. At the same time, we must not forget that there is no universal model in the world that would meet all the necessary criteria for our state.

It is necessary to look for qualitatively new approaches to the preventive activities that will correspond to the realities of today and take into account current trends in society and the state.

Finally, it should be noted that the issue of legal regulation of practices of the police as a subject of preventing and combating corruption requires further research. Given the current situation in Ukraine, it is advisable to consider the experience of anti-corruption activities of the police of countries with ongoing armed conflicts.

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National security policy: Changing priorities in the face of the COVID-19 threat

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Abstract

This article analyzes institutional, procedural, and behavioral attributes, principles, and indicators of typology of challenges and threats caused by the coronavirus pandemic in the world. The analysis shows that most countries faced external shocks caused by COVID-19 in the absence of a universal social protection system, a reliable health system, a plan to achieve carbon neutrality by 2050, or a stable real economy with quality jobs. Economic security has become an important priority, although this is not about social protection, but also about supporting strategic sectors of the economy. Balancing on the brink of the needfor socialprotection, on the one hand, and the rise of austerity, on the other, governments opted for severe economic restrictions. Thus, through the naaliticos method the authors describen the main geopolitical trends that will be the basis for the construction of a new world order that awaits us on the other side of the pandemic, including deglobalization, the geopolitical rise of China, the severe restrictions on human and civil rights, the intensification of the interstate armed forces, in context of growing conflicts and local protests.

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Política de Seguridad Nacional: Cambiar las prioridades frente a la amenaza del COVID-19

Resumen

Este artículo analiza atributos, principios e indicadores institucionales, procedimentales y de comportamiento de tipología de desafíos y amenazas provocados por la pandemia de coronavirus en el mundo. El análisis muestra que la mayoría de los países enfrentaron choques externos causados por COVID-19 en ausencia de un sistema de protección social universal, un sistema de salud confiable, un plan para lograr la neutralidad de carbono para 2050 o una economía real estable con empleos de calidad. La seguridad económica se ha convertido en una prioridad importante, aunque no se trata de protección social, sino ademas de apoyar sectores estratégicos de la economía. Al equilibrarse al borde de la necesidad de protección social, por un lado, y el surgimiento de la austeridad, por el otro, los gobiernos optaron por severas restricciones económicas. Así, mediante el metodo naaliticos los autores describen las principales tendencias geopolíticas que serán la base para la construcción de un nuevo orden mundial que nos espera al otro lado de la pandemia, incluida la desglobalización, el ascenso geopolítico de China, las severas restricciones a los derechos humanos y civiles, la intensificación de las fuerzas armadas interestatales, en context de creciente conflictos y protestas locales.

Palabras clave: seguridad nacional; intereses nacionales; COVID-19; amenazas pandémicas; transformaciones globales.

Introduction

The research topicality is due to awareness of the nature of threats, i.e., their origin, occurrence, and development. The fact is that we can talk about threats only when national interests are clearly determined. Threats are certain factors that arise in the environment of the object, and their occurrence is directly related to the realization of national interests. Thus, threats hinder both the creation of conditions for the realization of interests, and national interests directly. On this basis we can conclude that the threat appears where and when there are clearly determined national interests and real steps are being undertaken to implement them.

In our earnest conviction, national security is, first of all, the protection of the vital interests of the nation. And any detail about objects, subjects, principles of provision, priorities and threats to national interests, national security policy, etc. is an extremely complex professional intellectual process, which should be carried out not by situationally selected politicians, but by experienced applied scholars through constant consultations with all stakeholders.

The research objective is to carry out the typology of risks to national security caused by the growing degree of pandemic threats; outline the key geopolitical trends which will be the basis for building the new world order. Another objective was to analyse the structural problems that have led to the vulnerability of the national security system.

The following targets were set to achieve these objectives:

- substantiate fundamentally new theoretical approaches to ensuring national security at the present stage.
- study the world practice of global rating assessment of the stability of society and the state in the period of pandemic threats.
- develop an algorithm for the implementation of a modern system of comprehensive assessment of the state of national security based on the analysis of the best international practices in the field of monitoring of key international indices.

1. Literature review

A fundamental issue in the study of security problems is the distinction between such important and fundamental categories as national security and national interests. Without realizing the fundamental differences between them, we are doomed to constant hopeless scientific search.

According to Becker, Mölling and Schütz (2020) there are the results of understanding the values of the existence of a nation. A nation does not exist without national interests, it becomes a population, the people are an "open society" living in a certain area and meeting their basic needs. National interests indicate that the nation identifies itself as such, it separates itself from other nationalities or ethnic groups, and most importantly — it proclaims the intention to continue to exist and gradual develop in its own way based on its own historical traditions and way of life (Barno and Bensahel, 2020).

According to Hegel (2001), only historical nations have the opportunity to further develop and preserve a holistic identity in the context of global transformations of worldviews and configurations of pandemic threats.

In turn, the representatives of the public administration science (Finley *et al.*, 2020) define national security as a type of social activity, the main purpose of which is to create favourable conditions for the realization of these interests. Therefore, national security can be seen as a national interest.

As Sussman (2019) points out, there is every reason to believe that the lack of clearly determined national interests that are inseparable from the goals of the nation and do not express the will of the ruling political force undermines the idea of national security and real sustainable development. The scientific approach that involves levelling the process of self-reflection of the state's interests is conceptually erroneous. This quasi-scientific discussion arises where and when there is no methodology for considering and researching the issue.

In this case, state interests are an ambivalent category: 1) on the one hand, they express the interests of the state apparatus itself (any official is interested in retaining the position of his immediate superior, because in this case he will also remain in office, etc.); 2) on the other hand, they accumulate the needs of society and the individual, because the state is the most effective organization of civil society and has a mechanism that can guarantee the realization of human rights and freedoms. In this permanent conflict, many researchers ignore security issues, especially in the field of state security, where the latter is unacceptable and identified with the security of the state.

In March 2020 Susskind called the catastrophe caused by the COVID-19 coronavirus infection "the closest thing to revelation from the point of view of atheists" (Susskind, 2020: 320). It reflects the biblical feeling of shock that many people felt during the sudden, deep, rapidly growing crisis. "We have been going with the stream for more than half a century," the rabbi said, "and suddenly we faced with a fragile and vulnerable humanitarian situation" (Susskind, 2020: 320). The current crisis caused by coronavirus infection poses a threat to national security, as it has a number of new, unfamiliar properties. The rapid spread of the virus, which is still unexplored, is leading to a global humanitarian crisis.

After the end of the COVID-19 pandemic, the world is unlikely to become the same (Lund *et al.*, 2020). Under the influence of the pandemic, many threats to the stability of the world order, which have already emerged, continue to grow. This is especially true of the development of the digital economy against the background of increasing the use of digital technologies, including for distance work and distance learning. Moreover, other structural changes, such as regionalization of supply chains and further growth of cross-border data flows, may accelerate. The future has come too quickly, bringing, and possibly multiplying, a number of problems such as income polarization, workers' vulnerability, an increase

in the number of short-term contracts and the need for workers to adapt to changing activities. These accelerated processes are the result not only of scientific and technological progress, but also of new circumstances that have arisen in connection with the threat to public health and safety, so the economy of the countries and labour markets need time to recover, and there is a high probability that they undergo a number of changes as a result.

As the impact of these trends grows, the realities of the current crisis have led to a revision of a number of existing beliefs that can influence long-term decisions in the field of national security (Sussman, 2019). This applies to views on the relationship between efficiency and sustainability of increasing concentration of economic activity and life, industrial policy, approaches to problems that affect all countries and require collective action on a global scale (e.g. armed conflicts, pandemics and climate change), as well as changes in the role of governments and different governance institutions. Over the last two decades, in developed economies, responsibility has generally shifted from institutions to citizens. However, inspections of health systems often reveal their ineffectiveness, and such concepts of social benefits as paid sick leave or the required subsistence level are drawing attention again.

According to Fleming (2020), there is a possibility of long-term changes in the formation of approaches to providing civil society institutions with a more inclusive form of common agreement through social protection systems. As history has shown, the decisions made during the crisis can determine the situation in the world for decades to come. At the same time, the need to take collective measures for the development of the state security system, which will ensure comprehensive economic growth, prosperity, and general security, remains fundamentally important.

Bietti *et al.* (2020: 39) wrote: "Historically, the situation was such that pandemics forced people to say goodbye to the past and look at the world in a new way. It is a portal, or a gate between one world and another." The existing multilateral system has to undergo a number of changes in order to bring it into line with this completely new world.

According to Philips (2020), the COVID-19 pandemic continues to test the limits of global cooperation opportunities. In particular, the level of support of developing countries remains very low. They suffered from the global economic downturn in the early stages of the pandemic, including due to record capital outflows and deteriorating financial conditions. In the context of a severe humanitarian crisis, the extremely limited budgetary capacity of these countries is under unprecedented pressure due to the necessity to meet the needs of health and social protection systems. The decisions taken now will have far-reaching consequences. Maintaining the line of policy unchanged would be unjustified and would ignore the scale of the human suffering caused by the pandemic.

As part of an appropriate UN-led reform program, the IMF must be involved in addressing the structural problems that have led to the vulnerability of developing countries in terms of debt. Such a reform agenda should provide for the gradual abandoning of the use of funds allocated for the development in order to carry out reforms aimed at improving the market and creating incentives to attract private investment. It is also necessary to abandon the dogmas of austerity. Besides, rich countries must finally begin to meet their official development assistance commitments. The imbalance of power within international institutions also needs to be corrected to ensure fair recognition of the needs and rights of two-thirds of the world's population living in third world countries. If the international community fails to respond immediately and decisively to the situation, the implementation of the 2030 Agenda and the Paris Agreement will inevitably be disrupted. A new multilateral system in which the reform of the Bretton Woods Institutions will play a key role is needed now and must be based on an approach to development that gives priority to human rights, gender equality and climate issues.

Fukuyama (2020) notes that after the end of the first wave of COVID-19 the world must become more inclusive, sustainable and viable. Today we live in a world, where inequality between countries and regions within countries within countries has increased as a result of competition for legislative concessions in the field of business regulation, as well as in connection with poverty among a large part of the world's labour force. Many countries have faced external shocks caused by COVID-19 coronavirus infection in the absence of a universal social protection system, a robust health care system, a plan to achieve carbon neutrality by 2050 or a sustainable real economy with quality jobs. The Bretton Woods Conference, held at a time when the war was still ongoing, helped lay the groundwork for a post-war common agreement. Similarly, the author proposes to develop an ambitious reconstruction plan, while we continue to take steps to stop the pandemic.

According to Slaughter (2020), international assistance is a matter of collective survival and investment in the future of health care, the global economy and multilateralism. The choice is ours, while the actions of the IMF and the multilateral system will be crucial. Our goal must be to achieve full employment and a new common agreement to restore global economic security. Public investment in social care services, education and low-carbon infrastructure can provide an incentive to reduce inequality.

The COVID-19 pandemic, which has caused lasting change and gave the world a number of important lessons, will have lasting consequences for the world order. Screening for the virus is likely to be a part of our lives, just as increased security measures have become commonplace since the terrorist attacks of September 11, 2001. Countries need to invest in infrastructure designed to detect future outbreaks of the virus, Shevchuk and Mentuh

(2020) believe. Such investment will protect the economy if the population's immunity to COVID-19 is temporary.

Variants of the German part-time employment program (Verordnung über die Bezugsdauer für das Kurzarbeitergeld) were adopted in many countries during the pandemic. This program ensures the preservation of jobs by reducing working hours and wages, while the government compensates for the loss of wages. The grounds for the implementation of the precautionary measures provided for in the Verordnung über die Bezugsdauer für das Kurzarbeitergeld program are the following:

- If a job loss is accompanied by a loss of earnings, a job loss is significant if it is based on economic reasons and is temporary and inevitable.
- Job loss can be avoided if it is mainly seasonal, common to the company or industry, based solely on organizational reasons, and can be fully or partially retained with leave.
- In the relevant calendar month (entitlement period), at least one third of the company's employees suffer loss of earnings in excess of 10% of their gross monthly earnings.
- The employer's notice must be accompanied by a statement from the trade union, if any.

By maintaining labour relations between companies and employees, the economy will be better prepared for a rapid recovery. Mechanisms for implementing such programs should be improved and become part of the existing set of tools for economic recovery. Distance work is likely to become more widespread. Evidence that working from home is at least as effective as working in the office has existed before, Friedrich-Vache and Endres-Reich (2020) say. However, many companies opposed the transition to distance work. Now, when many companies have successfully tested this model, distance work may become standard practice. The crisis of the pandemic has accelerated the process of transition to digital technologies, which is reflected in the further spread of e-commerce and increasing pace of implementation of telemedicine, video conferencing, distance learning and financial technology. Companies accustomed to relying on international supply systems have faced supply shortages and other difficulties. It is likely that many of these companies will soon return some of their production previously moved overseas to their home countries. Unfortunately, this trend will not create many jobs, as a major part of production is likely to be automated. Governments, which became the insurers and investors of last resort during the crisis, now play a more important role. Public debt will grow rapidly, creating financial problems around the world.

2. Methods and Materials

As the focus of the study is changing priorities in the face of the Covid-19 threat, national security policy, the main elements of the mechanism of ensuring national security are studied through conceptual analysis.

The basic material of the theoretical research included regulatory documents and scientific publications. The research uses general scientific methods of empirical research, logical methods and research techniques: analysis of regulations and trends in national security indicators. Cross-national analysis allowed distinguishing such important and fundamental categories as national security and national interests, cross-temporal analysis of the interwar, post-war and modern period of formation of mechanisms for protection of national security in the period of pandemic threats. The institutional and political attributes, types and consequences of establishing key priorities in joint actions to overcome the crisis caused by the new coronavirus pandemic have been identified and analysed.

In addition, the research used transitological theories, which allowed to comprehensively, from different angles, consider the peculiarities of legal relations that arise between government agencies in order to ensure national security. Besides, the work is also reach in specific research tools of modern political science, especially in the form of comprehensive qualitative and quantitative methods of analysis.

2.1. Research Design

The study was carried out in several stages, each stage aimed at achieving the relevant analytical target. Upon achieving the targets at each stage of the study the intermediate results were systematized, and in the final phase of the study the overall results were tested using empirical data processing methods.

According to the scheme of scientific research, at the first stage (May - June 2020), we analysed the philosophical, psychological, political, medical, international and legal results of scientific research to study existing scientific approaches to the concept of "national security policy", as well as systematized threats, risks and restrictions of human rights during the pandemic, as the problem of national security is on the border of many scientific fields. At the next stage (July - August 2020), the authors formed their own vision of foreign policy priorities for the protection of national security and the foundations of the world order. The final stage (September 2020) was marked by the preparation of reasoned conclusions, which were the result of long scientific research.

3. Results

While the world's population is anxiously watching the rapid spread of the SARS-CoV-2 coronavirus, which has killed about 131,000 people worldwide, we are witnessing another dangerous trend that will cause many social unrest, riots and even armed conflicts in the future. It is the destruction of the world order from the inside — a violation of human and civil rights. According to Amnesty International, governments in many countries, including Eastern Europe, use the pandemic as an excuse to restrict the rights of their own citizens, as well as migrants seeking to cross EU borders.

On April 15, 2020, Amnesty International's analytical report on the human rights situation in Europe and Central Asia in 2019 was presented. According to Amnesty International, in many Eastern European countries, the actions of the authorities in recent months have contributed to the loss of credibility of regional and international human rights institutions, while the governments of these countries have consistently violated citizens' rights to freedom of expression and assembly, as well as their social and economic rights.

According to Amnesty International, one example of such human rights violations was the right of the Prime Minister of Hungary, Viktor Orbán, to rule the country by decrees, bypassing parliament, amid the COVID-19 pandemic. As for Poland, human rights activists have strongly condemned the implementation, amid a pandemic, of plans to strengthen the law on abortion and amendments to the law on sex education in schools, which equate the concepts of "homosexuality" and "pedophilia." Today, "political and economic players in Central Asia, as well as in Eastern Europe, Russia and China, are using every means to shake up the international human rights system and the institutions designed to protect it," the Amnesty International's experts said.

However, given that the SARS-CoV-2 coronavirus was first detected in China in December 2019, many of the human rights violations mentioned in Amnesty International's 2019 report were recorded before the pandemic. At the same time, according to human rights activists, the right to freedom of expression in 2019 was not observed one hundred percent in any country in Eastern Europe and Central Asia. According to an Amnesty International's report, even in Ukraine, where there is a wide range of media, there have been regular attacks on journalists, which have been almost never thoroughly investigated.

In addition to restrictions on freedom of expression in Eastern European and Central Asian countries, human rights activists have been concerned about corruption, women's rights, environmental protection, and the right to free and fair elections.

Minor refugees from camps on the Turkish-Greek border are sent by bus to Luxembourg and Germany. Refugees and members of certain marginalized groups, such as the homeless or Gypsies, have been most vulnerable to the COVID-19 pandemic.

Speaking about refugee camps on the Turkish-Greek border, experts emphacize on a catastrophic outbreak, due to the crisis caused by the coronavirus pandemic, the policy of protecting national borders from refugees in the European Union has only intensified.

As for Germany, in an effort to limit the spread of COVID-19, Germany closed the borders to all foreigners, with rare exceptions on March 16. Today, only doctors and foreigners traveling for professional reasons can enter Germany from neighbouring EU member states. The refugees who do not show obvious signs of coronavirus infection at the time of crossing the German border can also enter the country without hindrance. Even in a pandemic, people who have left their homes in search of protection should be able to apply for asylum in the EU. However, subject to the conditions that are now necessary in terms of health policy.

Migrants with symptoms of the disease should be subject to the same quarantine measures as the country's population, the expert said. Under these measures, refugees who are now being evacuated from Greece by Germany (Germany has agreed to accept 50 children and adolescents from refugee camps on the Turkish-Greek border) must first be quarantined for 14 days.

Severe restrictions on human rights, as well as restrictions on social support for citizens, have led to internal unrest as well as interstate armed conflicts (Figure 1).

Thus, the Libyan National Army (LNA) stops fighting against the forces of the Government of National Accord (GNA) for humanitarian reasons against the background of the pandemic of COVID-19 coronavirus infection. Martial law and mobilization have been declared in Azerbaijan and the NKR. Artillery, tanks, and air force are used in battles, McInnis (2020) says.

So far, Syria, which is also active in hostilities, have been able to avoid COVID-19 infection. However, the Syrian authorities continue to take measures to prevent the penetration of the dangerous virus into the country, in particular, they are preparing places to quarantine people entering the country. No cases of infection have been reported in Yemen, where hostilities are taking place between the rebels and a military coalition led by Saudi Arabia. However, the world's largest humanitarian catastrophe began against the background of hostilities in the country. According to the UN, about 80% of Yemen's population will not be able to survive in such conditions without humanitarian aid (Mintz, 2020).

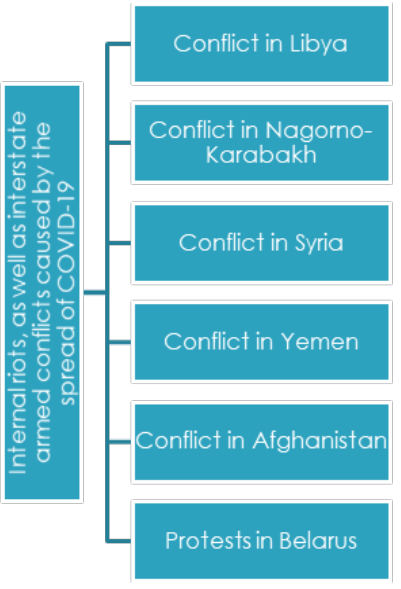

Figure 1. Internal riots, as well as interstate armed conflicts caused by the spread of COVID-19. Developed by the author on the basis of the scientific literature review.

Even the impending danger of COVID-19 did not force most of the warring parties to cease hostilities. In early March, the Riyadh-led coalition said it had prevented an attack by the Hussites on an oil tanker in the Arabian Sea. A few days after the statement, the Arab coalition struck a number of targets in the Yemeni port of Salif, according to representatives of the coalition forces.

The number of COVID-19 carriers is growing in Afghanistan as well, while the country will continue the war – the Afghan government announced the resumption of hostilities against the Taliban on March 19.

The protests began in May 2020 in Belarus on the eve of the next presidential election. On election day, August 9, 2020, immediately after the vote, mass protests began throughout Belarus. During the protests, violence was used against the protesters, dead and missing people appeared. Strikes took place at some enterprises.

4. Discussion

The obvious threats of social and humanitarian catastrophes have become the basis for integration processes in Europe – EU leaders have agreed on five key priorities in joint action to overcome the crisis caused by the new coronavirus pandemic.

The first concerns the continuation of measures and the coordination of Member States' efforts to limit the spread of the virus. It is first necessary to strengthen the health care system. The World Health Organization's (2020) Regional Office for Europe Technical Recommendations were developed for this purpose (Figure 2).

Figure 2. WHO Regional Office for Europe recommendations

The Technical Recommendations provide 10 strategic steps focused on practical solutions that will help healthcare service planners and healthcare system administrators in the region to ensure service continuity in mobilizing healthcare workers to combat with a pandemic, as well as adequate provision of resources.

The list of basic health services includes: scheduled vaccination; reproductive healthcare services, including during pregnancy and childbirth; assistance to infants and the elderly; management of mental disorders, non-communicable diseases and infectious diseases such as HIV, malaria and tuberculosis; critical surgical interventions in the hospital; emergency care; palliative and hospice care; ancillary services such as basic diagnostic imaging, laboratory services and blood bank services.

To implement global measures to disseminate COVID-19, WHO has also updated practical planning guidelines, with an emphasis on supporting the reorganization and maintenance of universal access to quality basic healthcare services. The guidelines emphasize the importance of timely information support. Such information support requires regular and open communication, as well as active interaction with the public, to maintain people's trust in a system that can safely meet their basic needs and provide infection control in healthcare facilities – in which case people will continue to seek help and follow the recommendations of healthcare facilities.

The second priority is to coordinate efforts at the level of both the international community and national governments to provide the necessary medical equipment that countries need to fight the virus (Figure 3).

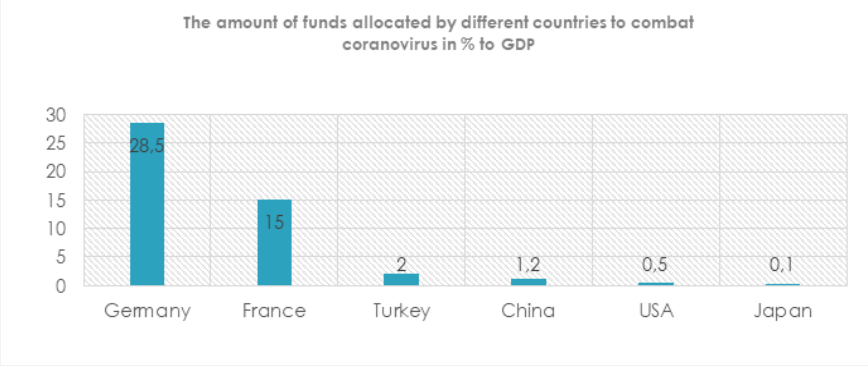

Figure 3. Coronavirus bailouts: Which country has the most generous deal? (BBC News, 2020)

The third priority is to coordinate efforts to support research to accelerate the development of a coronavirus vaccine.

G. F. Foundation limited provides financial and organizational support to COVID-19 vaccine developers. The Coalition for Epidemic Preparedness Innovations (CEPI) is organizing a $ 2 billion global fund for the rapid development and testing of candidate vaccines, and predicts that the first clinical trial data will be available by the end of 2020. On May 4, 2020, the WHO organized a telethon to raise $ 8.1 billion in contributions from forty countries to support the development of vaccines to prevent COVID-19. At the same time, the WHO has also announced the deployment of an international "solidarity trial" to simultaneously evaluate several candidate vaccines reaching Phase II to III clinical trials.

In September, CEPI researchers reported that 9 different technology platforms had conducted research and development during 2020 to create an effective vaccine against COVID-19. According to CEPI, most vaccine development platforms undergoing clinical trials as of September target the coronavirus spike protein. The platforms being developed in 2020 include nucleic acid (RNA and DNA) technologies. Many vaccines being developed for COVID-19 are not similar to those already used to prevent influenza, but use "next-generation" strategies to pinpoint the mechanisms of COVID-19 infection. Samples of vaccines being developed may increase the flexibility of antigen manipulation and increase the effectiveness of COVID-19 infection control mechanisms in vulnerable subgroups of the population, such as healthcare workers, the elderly, children, pregnant women, and people with weakened immune systems.

The fourth area of joint efforts is to address economic issues, as the crisis that has hit Europe and the world has economic and social consequences. As part of the EU Recovery Plan, the European Commission (2020) has made adjustments to its Work Program for this year in response to the unprecedented reality of the coronavirus. The revised Work Program provides the financial, social and information basis for the recovery of Europe (Figure 4). The fifth key priority is the repatriation of European citizens who are currently in third countries and want to return home.

Figure 4. Stages of implementation of the Work Program for 2020

Conclusions

The most important lesson that the COVID-19 pandemic has taught the world is the need to work together to address the problems that affect all of humanity. Working together, we are capable of more than acting alone. The world order began to change long before the crisis of the COVID-19 pandemic. The coronavirus has only accelerated the key geopolitical trends on which the new world order that awaits us on the other side of the pandemic will be built, including deglobalization, China's geopolitical rise, severe restrictions on human and civil rights, intensified interstate armed conflict and domestic protests.

Based on the study, we identify the main geopolitical trends which will be the basis for building the new world order:

The first trend is deglobalization: material and technical difficulties that arose during the current crisis already indicate the gradual abandonment of the use of global production and sales ties, which ensure timely delivery.

Moreover, as economic problems grow, the growing influence of nationalism and politics under the slogan "my country above all" will inevitably push companies to localize their business and give preference to national and regional cooperation.

The second trend is China's geopolitical rise, despite the fact that China has successfully secured the status of an economic and technological superpower, none expected the country to become a "soft" superpower. The current crisis could change this situation if China's crisis diplomacy continues and supports the position that measures taken by Beijing in response to the pandemic outbreak have been more effective than those taken in other countries. Of course, China's success alone does not mean that the situation in the country is slightly better than abroad. Statistics published by China raise reasonable doubts about the world community. The general distrust is due to China's attempt to hide information about the coronavirus outbreak, which contributed to its spread around the world. Donald Trump and his administration use this information as an election campaign strategy, as well as to divert attention from the results of their fight against the pandemic. However, China will not leave it at that, so there is a high probability that a new Cold War will break out after the current pandemic, this time between the United States and China. Regardless of whether a new world order is formed, there are things in the world that do not change.

Limitations

The complexity of scientific research is due to the fact that, on the one hand, it is impossible to conduct a comparative analysis without theoretical data, on the other — it is impossible to form an integrated concept without the empirical results of the analysis. In addition, there are many problems of theoretical and methodological nature, in particular, the problem of comparative analysis: "many cases – few variables", the bias of selection, Galton's analytical neutrality, which must be solved to ensure quality comparative research.

In turn, the diversity of research is explained by the fact that there are different comparative forms of research (case studies, binary studies, cross-temporal and cross-regional studies (Halytskyh, 2020), as well as various research strategies – with a focus on theoretical data and with a focus on empirical data (Muggah and Steven, 2020), which differ in both methodological and empirical efficiency, and are used in the comparative analysis of forms of government.

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The role of the factors determining national character in building civil society

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Abstract

The article deals with the mechanism of impact of sociopsychological phenomena such as the national character and the political mentality in the construction and functioning of civil society. It aims to show the impact of climate, religion, and the perception of happiness on the state of civil society through details of a national nature. The main research method is to compare data from global research on the state of civil society with data from climatic conditions, dominant religions, and happiness indices. The article proves coincidently that these factors are reflected in such essential characteristics of civil society as «openness» and «closed-mindedness». The interaction between the national character and the construction of civil society has two stages. It is concluded that the results obtained are important to evaluate the prospects for the construction and development of civil society in different countries and regions of the world. Further research in this direction involves the study of other aspects of the impact of national character and political mindset on the functioning of civil society.

Keywords: civil society; national character; political mentality; climatic factor; religious factor.

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El papel de los factores que determinan el carácter nacional en la construcción de la sociedad civil

Resumen

El artículo trata sobre el mecanismo de impacto de fenómenos sociopsicológicos como el carácter nacional y la mentalidad política en la construcción y funcionamiento de la sociedad civil. Su objetivo es mostrar el impacto del clima, la religión y la percepción de la felicidad en el estado de la sociedad civil a través de detalles de carácter nacional. El principal método de investigación es la comparación de los datos de la investigación global sobre el estado de la sociedad civil con los datos de las condiciones climáticas, las religiones dominantes y los índices de felicidad. El artículo prueba fehacientemente que estos factores se reflejan en características tan esenciales de la sociedad civil como la "apertura" y la "cerrazón". La interacción entre el carácter nacional y la construcción de la sociedad civil tiene dos etapas. Se concluye que los resultados obtenidos son importantes para evaluar las perspectivas de construcción y desarrollo de la sociedad civil en diferentes países y regiones del mundo. La investigación adicional en esta dirección implica el estudio de otros aspectos del impacto del carácter nacional y la mentalidad política en el funcionamiento de la sociedad civil.

Palabras clave: sociedad civil; carácter nacional; mentalidad política; factor climático; factor religioso.

Introduction

The problem of civil society is one of the most acute in modern socio-political discourse. In the euphoria of the 1990's, civil society was seen as a universal means of establishing a global liberal-democratic order that would finally ensure peace and happiness throughout the world. But this ideal began to fail after the crisis of 2008. In the middle of the first decade of the 21st century, it became clear that this recipe is not a kind of panacea to finding solutions to different kinds of problems faced by not only developing countries, but also the democratic world as a whole. Biden (2020) states that democracies –paralyzed by hyper partisanship, hobbled by corruption, weighed down by extreme inequality –are having a harder time delivering for their people.

It should be emphasized that disappointment with civil society projects is due to a superficial understanding of its essence, incorrect assessment of the driving forces of its development, and attempts to build it according to a single unified pattern around the world. The creation of a new alliance of democratic forces announced by the new US President

requires a revision of these views. Therefore, the identification of factors that influence the process of building civil society in different socio-political conditions has appeared on the agenda of political sciences. The study of socio-psychological aspects that underlie the genesis and functioning of civil society as an anthropocentric system helps to establish an objective scientific position on its prospects in different countries and prevent errors in socio-political forecasting.

Civil society issues are the subject of many social and political studies. The most famous studies were included in The Oxford Handbook of Civil Society edited by Edwards (2013). Kenny (2020) presents an extended analysis of current political discourse about civil society. But no studies cover anthropological, in particular, socio-psychological aspects of civil society.

Some researchers explore how such a socio-psychological phenomenon as national character manifests itself in modern political systems (Inkeles, 2017). But these scholars do not focus on national character and mentality in the context of building and functioning of civil society, and do not use the data on underlying factors.

- The aim of the article is to identify the role of external factors and internal determinants of national character and political mentality in building and functioning of civil society.
- This aim involves the fulfilment of the following research objectives:
- compare the state of civil society in different countries with the climatic conditions of their location.
- correlate such characteristics of civil society as ‘openness’ and ‘closedness’ with the dominant religion.
- analyze the dependence of the state of civil society on the factors that determine the feeling of happiness inherent in a certain type of national character.

1. Literature Review

For contemporary scholars, social activists and development professionals, civil society is a collection of diverse interest groups and social organizations. Most cited dictionaries propose to interpret civil society as the ‘third sector’ of society, “the set of intermediate associations which are neither the state nor the (extended) family; civil society, therefore, includes voluntary associations and firms, as well as other corporate bodies” (McLean and McMillan, 2009), or more teleologically as “the organizations within a society that works to promote the common good, usually taken to include

state-run institutions, families, charities, and community groups" (Collins Online English Dictionary, 2021).

Those interpretations of this term are based on the positions of institutionalism. They are linked to the rationalism of the Renaissance and the Enlightenment and are rooted in the works of Machiavelli, Moore, Hobbes, Locke, de Saint-Simon. But these main current usages are derived from Hegel's liberal theory adapted by de Tocqueville, Marx, and Tönnies. Edwards (2013) points out to the shortcomings of this interpretation, which caused a mimicry of the essence of civil society concept:

> "First, a conversation about democracy and self-expression has become increasingly technocratic, dominated by elites who seek to shape civil society for their ends and increasingly mimicking the language and practices of businesses and market-based investment. Second, much current civil society research, funding, and policymaking are highly ethnocentric, informed by a partial reading of work dating back to the writings of Alexis de Tocqueville in mid-nineteenth-century America which placed voluntary associations of various kinds at the centre of thinking and action of civil society, but later translated to settings with completely different cultures of collective action, histories, and contemporary conditions. It is this sense of mimicry that has stimulated the export of models developed in North America and Western Europe to other parts of the world with unsurprisingly disappointing results" (Edwards, 2013: 7).

The analysis of these failures leads to the assumption that "perhaps there is something written into the genetic code of human beings that resists attempts to bureaucratize the self-organizing principles of civil society or reduce citizen action to a subset of the market" (ibid). This assumption is not further developed by Edwards (2013) or other authors, but it is the first element in the structure of our hypothesis because the common genetic code is the factor that forms the basis of the ethnos.

We make an ascent from ethnos as a genetic community to ethos as a moral community for further theoretical substantiation of the hypothesis about predetermined establishment of civil society. It should be noted that the term "civil society" goes back to Aristotle's phrase koinōnía politik□ (κοινωνία πολιτική) in his Politics, where it refers to a "political community, commensurate with the Greek city-state (polis) characterized by a shared ethos (Lord, 2013). Ethos is a Greek word meaning "character" that is used to describe the guiding beliefs or ideals that characterize a community, nation, or ideology. In modern usage, ethos denotes the disposition, character, or fundamental values peculiar to a specific person or group (national ethos) (Cambridge Dictionary, 2021). So, the ethos is a moral core of a national character and political mentality, it is the so-called "spirit of people". According to Aristotle, it defines the forms of civil society.

It is necessary to consider the factors that determine the specifics of the ethos of different peoples to show how the national character influences

the building of civil society. Thus, the logic of the development of the theoretical substantiation of our hypothesis leads the focus of the study to Montesquieu's meteorological climate theory, outlined in The Spirit of Law (1748). This concept holds that climate may substantially influence the nature of man and his society. Initially, Montesquieu showed how climate affects the peculiarities of individual character and national ethos. He argued that the feebleness of peoples of warm climates almost always made slaves of them, and the courage of peoples of cold climates kept them free. That is an effect that derives from its natural cause (Stewart, 2018). Then he proved the dependence of social order and social norms on these determinants:

> If it is true that the character of the mind and the passions of the heart are extremely different in the various climates, laws must be relative both to the difference of those passions and the difference of those characters... Laws have a very great relationship to how various peoples procure their subsistence (Stewart, 2018: 32).

Modern researchers confirmed those findings. McCrae *et al.,* (2007), that warmth and wealth are common determinants of national stereotypes, but that there are also idiosyncratic influences on the perceptions of individual nations.

Religion is the next key factor determining the formation of ethos, and hence – civil society. Thinkers have pointed to this factor since ancient times. Stewart (2018) argued the same as well. The Christian religion commands men to love each other, so there is no doubt that every people should have the best political laws and the best civil laws, because they are, next to themselves, the greatest good that men can give and receive. That moderate government is more compatible with the Christian religion, and despotic government — with the Mohammedan religion.

The "spirit of the nations" from Weber (2002) The Protestant Ethic and the Spirit of Capitalism cannot be ignored in this context. After defining the "spirit of capitalism" in Germany, Weber argued that there are many reasons to find its origins in the religious ideas of the Reformation. Then he attributed this relationship between capitalism and Protestantism to certain accidental psychological consequences of the notions of predestination and calling in Puritan theology. It is important how Weber revealed its role in building certain forms of civil society:

> So that a manner of a life well adapted to the peculiarities of the capitalism... could come to dominate others, it had to originate somewhere, and not in isolated individuals alone, but as a way of life common to the whole groups of man (Weber, 2002: 78).

Current researchers confirm the influence of religious ethical norms enshrined in the mentality on the formation of such components of civil

society as truth and social distance. In particular, Dingley (2009) argues that national identity is closely linked to the religion, which in turn is closely linked to the ideas of truth. Different religions will form and transmit different ideas of truth, both moral and cognitive, and transmit them and socialize their members into holding them. The findings of Bilali *et al.*, (2018) the importance of considering religious identity and meaning attached to social categories in making predictions about the influence of identification with different social categories on social distance.

It should be noted that, thinkers considered civility as an orientation toward the common good and happiness from the time of classical Greece. Edwards (2013) emphasizes: "How do the structures of associational life and the dynamics of the public sphere help or hinder the achievement of "good society" goals? This is the most important question in the civil society debate". This question comes from the lifelong problem of the existence of a free individual in a society. Although each person has a sense of happiness, individuals must reach a public agreement on interaction to achieve "the greatest happiness for the greatest number of people" in the process of communication. Helliwell *et al.*, (2020) help to formulate the answer.

The primary result from their empirical analysis of the social environment is that several kinds of individual and social trust, as well as social connections have large direct and indirect impacts on life evaluation. The indirect impacts, which are measured by allowing the effects of trust to buffer the estimated well-being effects of bad times, show that both social trust and institutional trust reduce the inequality of well-being by increasing the resilience of individual well-being to various types of adversity, including perceived discrimination, ill-health, unemployment, low income, and fear when walking the streets at night. Average life satisfaction is estimated to be almost one point higher (0.96 points) in a high-trust environment as compared to a low-trust environment. These researches also argue that the social environment is dealt with in detail, they consider happiness in the Nordic countries and find that higher personal and institutional trust are key factors in explaining why life evaluations are so high in those countries. Together the changes in trust and social connections explain 60% of the happiness gap between the Nordic countries and Europe as a whole (Helliwell *et al.*, 2020).

Social origins theory helps us to discover the meaning of the national "happiness formula" as well. This theory is used to analyse results of the national survey on civic participation in Sweden. The results show that such civic virtue as charitable giving is a component of the Swedish national character, and has a significant impact on civil society functioning. From this point of view, we can agree with Mahajan (2021) interpretation of civil society as a sphere where the collective "we" emerges and acts to affirm the Kantian ideals of human dignity and equal respect.

2. Methods

A critical analysis of modern concepts of civil society and consideration of scientific approaches to understanding deep predetermination of national character and mentality as the driving forces of building civil society is the background for substantiating the research methodology. This methodology is designed to reveal the anthropocentric but not always rationalistic essence of building civil society. Therefore, we take climatic conditions as the first variable in our research. Then, religion acts as the second variable in our research. And we chose the feeling of happiness as the third variable in our research, which comprehensively reflects the influence of national character on building civil society.

The methods are consistent with the aim and objectives of this research and include:

- the comparative analysis of the state of civil society in different countries and their climatic conditions.
- the search for correlation between such characteristics of civil society as "openness" and "closedness" with the dominant religion.
- the analysis of the statistical data of happiness index in different countries and the calculation of its average value in "open society" and "closed society" countries.
- summarizing the data from these analyses and drawing a conclusion about the role of the factors determining national character in building civil society.

The research materials are based on:

- the data from global studies on the state of civil society in different countries, published by international civil society organization CIVICUS (2019): World Alliance for Citizen Participation.
- the data on climatic conditions (Provisional Report on the State of the Global Climate 2020, Climate Zone Shiny Map 2020 and World Climate Maps 2020 demonstrated by World Meteorological Organization (2020a; 2020b; 2021).
- the data about religion in the world (The Global Religious Landscape 2020: A Report on the Size and Distribution of the World's Major Religious Groups presented by CIA World Factbook (2020), and Pew Research Center (2020).
- the data on happiness indexes in different countries (World Happiness Report 2020 prepared by UN Sustainable Development Solutions Network, and Center for Sustainable Development Columbia University (Helliwell et al. 2020)).

For clarity of research results, the research sample includes countries that belong to the two ultimate categories: "open society" – 19 countries, and "closed society" – 18 countries, by CIVICUS (2019): The State of Civil Society.

3. Results

The research results are presented in the tables prepared by the author using the materials mentioned above and subsequent data analysis.

The first block (Tables 1 and 2) shows the dependence of the level of openness of civil society on climatic indicators of temperature and humidity.

Table 1. Climatic factor in "open society" countries

#	Country	Climate zone	Winter t (C°) - zone	Summer t (C°) - zone	Wet zone (mm per year)
1	Canada (main part)	Temperate / Subpolar	-24 -8	+8 +16	500-1000
2	Iceland	Temperate / Subpolar	-8	+8	500-1000
3	Norway	Temperate / Subpolar	0	+12	500-1000
4	Sweden	Temperate / Subpolar	0	+12	500-1000
5	Finland	Temperate / Subpolar	0	+12	500-1000
6	Denmark	Temperate	0	+16	500-1000
7	Estonia	Temperate	0	+16	500-1000
8	Lithuania	Temperate	0	+16	500-1000
9	Germany	Temperate	0	+16	500-1000
10	Netherland	Temperate	0	+16	500-1000
11	Belgium	Temperate	0	+16	500-1000
12	Czech Rep.	Temperate	0	+20	500-1000
13	Austria	Temperate	0	+20	500-1000
14	Switzerland	Temperate	0	+20	500-1000
15	Ireland	Temperate	+8	+16	1000-2000
16	Portugal	Subtropical	+8	+22	500-1000
17	New Zeeland	Temperate / Subtropical	+8	+16	1000-2000
18	Uruguay	Subtropical	+8	+16	500-1000
19	Surinam	Tropical	+24	+24	2000-3000

Source: Based on World Meteorological Organization (2020a; 2020b 2021).

Out of the 19 'open society' countries, 16 countries (84%) are located in the temperate zone (including 5 that combine the temperate and subpolar zones, and 1 (New Zeeland) with the temperate and subtropical zones). 2 countries are located in subtropics and 1 (Surinam) in tropics. Moreover, all countries are located in more or less humid zones. None of these countries are located in a hot arid climate. Only in Canada, due to its vast territory, there are areas of continental climate, but cold.

Table 2. Climatic factor in 'closed-society' countries

#	Country	Climate zone	Winter t (C°) - zone	Summer t (C°) - zone	Wet zone (mm per year)
1	China (main part)	Temperate / Subtropical	-24 +8	+16 +24	250-1000
2	Lao People Democratic Rep.	Tropical	+24	+24	1000-2000
3	Viet Nam	Tropical	+24	+24	2000-3000
4	Uzbekistan	Subtropical	+8	+24	≤100
5	Turkmenistan	Subtropical	+8	+24	≤100
6	Iran Islamic Rep.	Subtropical	+8	+24	100-250
7	Azerbaijan	Subtropical	+8	+24	100-250
8	Iraq	Subtropical	+12	+24	≤100
9	Syrian Arab Rep.	Subtropical	+12	+24	≤100
10	Saudi Arabia	Subtropical / Tropical	+16	+32	≤100
11	Yemen	Tropical	+24	+32	≤100
12	Eritrea	Tropical	+24	+32	250-500-
13	Egypt	Subtropical	+16	+32	≤100
14	Libya	Subtropical	+16	+32	≤100
15	South Sudan	Tropical	+24	+32	1000-2000
16	Central African Rep.	Tropical	+24	+24	1000-2000
17	Equatorial Guinea	Tropical	+24	+24	2000-3000
18	Cuba	Tropical	+24	+24	1000-2000

Source: Based on World Meteorological Organization (2020a; 2020b 2021).

Out of the 18 "closed society" countries, 17 countries (94.4%) are located in hot climates. A significant part of the territory of China is also located

there. There are 8 countries located in tropical climates, the same number — in subtropical, and Saudi Arabia –in both. There are 11 countries (61%) located in arid climates, and 6 countries (33%) – in humid climates. None of these countries are located in the temperate zone. But there are different temperature and humidity conditions in China.

The second block (Tables 3 and 4) demonstrates the correlation between such characteristics of society as "openness" and "closedness" with the dominant religion.

Table 3. Religious factor in "open-society" countries

#	Country	Religious denominations
1	Canada	**Christian** Roman Catholic 43%, Protestant 23% (including United Church 10%, Anglican 7%, Baptist 2%, Lutheran 2%), other Christian 4%, Muslim 2%, none 16%
2	Iceland	**Christian** Lutheran Church of Iceland 85.5%, Reykjavik Free Church 2.1%, Roman Catholic Church 2%, Hafnarfjorour Free Church 1.5%, other Christian 2.7%, other or unspecified 3.8%, unaffiliated 2.4%
3	Norway	**Christian** Evangelical Lutheran 86% (state church), Pentecostal 1%, Roman Catholic 1%, other Christian 2%
4	Sweden	**Christian** Lutheran 87%, Roman Catholic, Orthodox, Baptist, Muslim, Jewish, Buddhist
5	Finland	**Christian** Evangelical Lutheran 84%, Greek Orthodox 1%, other Christian 1%, none 14%
6	Denmark	**Christian** Evangelical Lutheran 95%, other Protestant and Roman Catholic 3%, Muslim 2%
7	Estonia	**Christian** Evangelical Lutheran 14%, Russian Orthodox 13%, other Christian (including Methodist, Seventh-Day Adventist, Roman Catholic, Pentecostal) 1%, unaffiliated 34%, none 6%
8	Lithuania	**Christian** Roman Catholic 79%, Russian Orthodox 4%, Protestant (including Lutheran, evangelical Christian Baptist) 2%, none 10%
9	Germany	**Christian** Protestant 34%, Roman Catholic 34%, Islam 4%, Unaffiliated or other 28%
10	Netherland	**Christian** Roman Catholic 31%, Dutch Reformed 13%, Calvinist 7%, Islam 6%, none 41%
11	Belgium	**Christian** Roman Catholic 75%, Protestant or other 25%
12	Czech Rep.	**Christian** Roman Catholic 27%, Protestant 2%, unaffiliated 59%
13	Austria	**Christian** Roman Catholic 74%, Protestant 5%, Islam 4%, none 12%
14	Switzerland	**Christian** Zionist (a blend of Christianity and indigenous ancestral worship) 40%; Roman Catholic 20%; Muslim 10%; Anglican, Bahai, Methodist, Mormon, Jewish, and other 30%

15	Ireland	**Christian** Roman Catholic 88%, Church of Ireland 3%, other Christian 2%, none 4%
16	Portugal	**Christian** Roman Catholic 94%
17	New Zeeland	**Christian** Anglican 15%, Presbyterian 11%, Methodist 3%, Pentecostal 2%, Baptist 1%, Roman Catholic 12%, other Christian 9%, none 26%
18	Uruguay	**Christian** Roman Catholic 66%, Protestant 2%, Jewish 1%
19	Surinam	**Christian** Protestant 25.2% (predominantly Moravian), Roman Catholic 22.8%, Hindu 27.4%, Islam 19.6%, indigenous 5%

Source: Based on Pew Research Center (2020).

Table 4. Religious factor in "closed-society" countries

#	Country	Religious denominations
1	China	**Officially atheist** Daoist (Taoist) 22%, Buddhist 18%, Christian 5%, Muslim 2%, none 52%
2	Lao People Democratic Rep.	**Buddhist** 60%, animist and other 40% (including Christian 2%)
3	Viet Nam	**Officially atheist** Folk religion 45%, Buddhist 16,5%, Catholic 7%, Protestant 1%,
4	Uzbekistan	**Muslim** (mostly Sunnis) 88%, Eastern Orthodox 9%
5	Turkmenistan	**Muslim** 89%, Eastern Orthodox 9%, unknown 2%
6	Iran Islamic Rep.	**Muslim** 98% (Shi'a 89%, Sunni 9%); Zoroastrian, Jewish, Christian, and Baha'i 2%
7	Azerbaijan	**Muslim** 93%, Russian Orthodox 3%, Armenian Orthodox 2%, other 2%
8	Iraq	**Muslim** 97% (Shiite 60%?65%, Sunni 32%?37%), Christian or other 3%
9	Syrian Arab Rep.	**Muslim** (Sunni) 74%; Alawite, Druze, and other Islamic sects 16%; Christian (various sects) 10%; Jewish (tiny communities in Damascus, Al Qamishli, and Aleppo)
10	Saudi Arabia	**Muslim** 100%
11	Yemen	**Muslim** (including Sunni and Shiite), small numbers of Jewish, Christian, and Hindu
12	Eritrea	**Christian** (Eritrean Orthodox Christianity, Roman Catholic, Protestant) 50%, **Muslim** 48%
13	Egypt	**Muslim** (mostly Sunni) 90%, Coptic 9%, Christian 1%, other 6%
14	Libya	**Muslim** (Sunni) 97%
15	South Sudan	**Christian** 60,5% Muslim 20%

16	Central African Rep.	**Christian** 50% (Protestant and Roman Catholic - both with animist influence - 25% each), Muslim 15% indigenous beliefs 35%,
17	Equatorial Guinea	**Muslim** 85%, Christian 8%, indigenous 7%
18	Cuba	**Christian** predominantly Roman Catholic and Santera (Afro-Cuban syncretic religion)

Source: Based on Pew Research Center (2020).

The Table 3 demonstrates that 100% of "open-society" countries are Christian. Roman Catholics have the majority in 9 countries, Protestants have a clear majority in 7 countries, and 3 countries have some balance. The orthodox denomination has some impact in Estonia. Such Orthodox countries as Greece, Bulgaria, Romania, and Northern Macedonia are categorized by CIVICUS (2019) as "narrowed".

Out of the 18 "closed-society" countries, 11 countries (61%) are predominantly Islamic, 3 countries (16.7%) are predominantly Christian, and 1 (Eritrea) is divided almost equally. East religions (Daoism, Buddhism, and others) have a traditional impact in 3 countries (16.7%).

The third block (Tables 5 and 6) reveals the influence of the happiness index on the state of civil society.

Table 5. Religious factor in "closed-society" countries

#	Country	Place in WHR 2020	Index
1	Finland	1	7.809
2	Denmark	2	7.646
3	Switzerland	3	7.560
4	Iceland	4	7.504
5	Norway	5	7.488
6	Netherland	6	7.449
7	Sweden	7	7.353
8	New Zeeland	8	7.300
9	Austria	9	7.294
10	Canada	11	7.232
11	Ireland	16	7.094
12	Germany	17	7.076

13	Czech Rep.	19	6.911
14	Belgium	20	6.864
15	Uruguay	26	6.440
16	Lithuania	41	6.215
17	Estonia	51	6.022
18	Portugal	59	5.911
19	Surinam	-	no data

Source: Based on Pew Research Center (2020).

Table 6. Happiness factor in "closed-society" countries

#	**Country**	**Place in WHR 2020**	**Index**
1	Saudi Arabia	27	6.406
2	Uzbekistan	38	6.258
3	Viet Nam	83	5.353
4	Azerbaijan	89	5.165
5	China	94	5.124
6	Turkmenistan	96	5.119
7	Equatorial Guinea	102	4.949
8	Lao People Democratic Rep.	104	4.889
9	Iraq	110	4.785
10	Iran Islamic Rep.	118	4.672
11	Egypt	138	4.151
12	Yemen	146	3.527
13	Central African Rep.	149	3.476
14	Syrian Arab Rep.	150	3.462
15	South Sudan	152	2.817
16	Eritrea	-	no data
17	Libya	-	no data
18	Cuba	-	no data

Source: Based on *Pew Research Center (2020).*

All "open society" countries, in which the World Happiness Report Research-2020 (Helliwell *et al*., 2020) was conducted, occupy positions in the top half of the ranking, which includes 153 countries. There are 14 countries (77.8%) in the top twenty. However, 3 countries from the list of "open society" are inferior to the top countries from the list of "closed society". In "open society" countries the average happiness index is 7.065.

Only 2 of the 15 "closed-society" countries, in which the WHR research was conducted, occupy positions in the top half of the ranking. There are 13 countries (86.6%) in the bottom half of the rating, of which 5 (33.3%) are among the unhappiest 10% of the world. The average happiness index in "closed-society" countries is 4.677.

4. Discussion

The presented results take the interpretation of civil society beyond the narrow frameworks of institutionalism. After all, these frameworks limit the subject of research by the actual existence of institutions and organizations of civil society in all spheres of life. They involve the use of a predominantly statistical method. This method shows the state but does not reveal the driving forces of the process of building civil society as in some political systems either on regional or on the global level (Feenstra, 2017). Institutionalism does not answer the fundamental questions: Why in some countries stable and influential entities of civil society were formed independently, while in other countries public organizations, even created by external forces, are disintegrated, or work inefficiently? Why in some countries the low assessment of the state of civil society development due to the absence or a small number of formal institutions and organizations of civil society was inadequate, given the real impact of civil society on socio-political processes? The forecasts that were made based on institutionalism fell through and problems seem insurmountable.

The limitation of the institutional approach is especially evident when assessing the influence of religion on building civil society. This approach leads to superficial conclusions. Omelicheva and Ahmed (2018) emphasize: "Religiosity, by itself, often serves as a deterrent rather than mobilizing force for political engagement, regardless the denominational differences. It is the membership in religious organizations and other voluntary associations of a secular nature that make individuals more likely to engage in political activity". It is obvious that these researchers habitually regard religion as a set of social institutions in isolation from its moral influence on the formation of a national ethos. And there has been too little investigation of how individual religious beliefs and practices affect interactions and outcomes within organizations, including educational, legal, political, and occupational (Glass, 2019).

Vamstad (2020) argues that structural barriers to the formation of a community, Muslims in the present case, are neither fixed nor immutable. Mclean and Mcmillan (2009) argue that civil society can actively foster anti-democratic agendas that propel young democracies on an autocratic path. But they did not reveal the root causes of these strong autocratic features.

Similarly, institutionalists consider the inherently moral problems of civil society in isolation from understanding the specifics of national character. In particular, researchers are exploring such issues as the effect of generalized trust on political participation, the translating individual-level explanations of differences in political participation to an organizational level, and citizens' initiatives (Inkeles, 2017; Kenny, 2020) only at the organizational level. They do not correlate these issues with natural, social and psychological factors.

On the contrary, our research proves that these factors with a high degree of correlation are reflected in the essential characteristics of civil society, which CIVICUS summarizes in the categories of "open", "narrowed", "repressed" and "closed". The influence of climatic and religious factors on building civil society is due to the particularly stable archetypes of human relations, which they predetermine. Thus, the research confirms the identification of national character not only with the innate characteristics of a group, but involves the identification of people, ethnicity, and races according to specific indomitable cultural characteristics (Wiarda, 2016).

Our research shows that it is not the institutions themselves that are important, but the "spirit of the people", which is expressed in the national character and mentality. Such factors as: (a) climatic conditions; (b) the religious precepts that determine its ethos are often subconscious; (c) the national "happiness formula", which determines a certain goal in the process of social interaction, reflect the different levels of national character.

But issues concerning large countries that are located in several climatic zones, as well as countries that do not have a dominant religion or denomination, remain controversial. These issues need to be considered in separate studies. For example, Sun (2016) goes this way exploring the Chinese national character. However, these studies cannot replace a global generalized view on the problem, where certain exceptions only confirm the general rule.

Issues of the so-called "split countries", such as Korea, also remain controversial and show cultural-historic contentious system. Such examples show that the national character formed under the influence of climate and religion has different manifestations and building of civil society also depends on the course of historical events. So, the issue must be addressed as to whether political institutions shape national character more or less than they are shaped by it (Charlesworth, 1967).

The criterion of the national "happiness formula" proposed in this study helps to solve this long-standing dilemma. If the linearity of the influence of climatic and religious actors is obvious, the influence of the happiness factor found in the study through the use of World Happiness Report 2020 (Helliwell *et al.*, 2020) data is not so unambiguous. The definition of Helliwell *et al.*, (2020), — "several kinds of individual and social trust and social connections" — should be seen as components of national "happiness formula", which determines the national character. After all, the question of whether the national "happiness formula" affects building civil society in the country, or, conversely, the state of civil society affects the feeling of happiness is really debatable. Values that collectively determine the perception of happiness within a particular social group are the basis of ethos. Thus, the image of happiness that dominates a certain nation both on a conscious and unconscious level determines its mentality. On the one hand, happiness is an essential goal of civil society, and, on the other hand, the specifics of the happy feeling, the so-called "happiness formula", as a determinant of national character, affects the formation of civil society space.

Thus, based on WHR data, which we compared with the state of civil society in different countries around the world, we concluded that building civil society is two-stage. Initially, the inherent features of the national character (ethos, national "happiness formula") form a civil society through social communication. Then, the specifics of the established institutions of civil society affect the individual and group mentality through public opinion, trust, and sanctions.

So, the results of our study develop the provisions of the system functional approach, which gained popularity in the second decade of the 21st century. The authors of this approach focus on the analysis of the processes of functioning, connections, and interaction of various elements, institutions and organizations of civil society. For example, Kenny (2020) interprets civil society as a dense network of groups, communities, networks, and ties that stand between the individual and the modern state.

In general, this approach can be agreed upon. But the results show that to understand the patterns of building civil society, it is necessary to go beyond the study of its forms, norms and spaces, which is presented in the fundamental collective work The Oxford Handbook of Civil Society edited by Edwards (2013). In contrast to the materials presented in this book, the results of our research show that the emphasis on anthropological aspects of the geometry of human relations makes the system-functional approach more effective. On the one hand, it becomes deeper, because it is immersed in the depths of the human subconscious, where archetypes of national character are hidden. And, on the other hand, it becomes broader, because it brings a research from the case-study of one country to the global level.

The results of the research of the impact of national peculiarities on building civil society as a whole are in line with modern studies. According to the latter, civil society is still invoked by many of its advocates as a synonym for the values of authenticity and belonging, neither of which, as assumed, can be achieved in politics or economic life (Kenny, 2020). But these results reject institutionalism, which is entrenched in the interpretation of the national character as well.

Conclusion

The research expands and deepens the system functional approach to the evaluation of building civil society. It overcomes the flaws of instrumentalism and presents a view of civil society through the prism of an anthropologist.

The author compared the following factors that affect the type of national character: (a) the climatic conditions; (b) the dominant religion; c) understanding of happiness.

The comparison shows that:

- the correlation of a location in a temperate climate zone with the inclusion of a country in an "open-society" group is 84%, and a location in a hot climate zone with the inclusion of a country in a "closed-society" group is 94.4%.
- the correlation of Christianity as dominant religion with the inclusion of a country in an "open-society" group is 100%, and of Islam as predominant religion with the inclusion of a country in a "closed-society" group is 61%.
- 77.8% "open-society" countries are in the top twenty of the World Happiness Report rating, in "open-society" countries the average index of happiness is 7.065, and 86.6% "closed-society" countries are in the bottom half of the rating, of which 33.3% are among the unhappiest 10% of the world; the average index of happiness in "closed-society" countries is 4.677.

Thus, the research reliably proves that the factors which determine the specifics of national character and political mentality are reflected with a high degree of correlation in the essential characteristics of civil society through certain stable recurring stereotypes of human relations.

The hot climate, which affects 'hot' temperament as a physiological background of southern character, combined with harsh sanctions that ensure the observance of moral norms in Islam, shapes the geometry of human relations according to the patriarchal-paternalistic formula

"domination – submission". These factors form the type of national character that determines the specifics of closed societies.

On the contrary, there are three interrelated components of Nordic national character, which forms an open civil society: (a) the temperament inherent in the inhabitants of temperate countries, (b) combined with the Christian ethos of love and charity, (c) which forms a specific cooperative "happiness formula", as "several kinds of individual and social trust and social connections".

Civil society is built in two stages. Initially, the peculiarities of the national character (temperament, ethos, national "happiness formula") form a civil society through social communication. The specifics of the established institutions of civil society affect the individual and group mentality through public opinion, trust, reputation, and sanctions.

The research results are important for the evaluation of building civil society and its development prospects in different countries and regions of the world.

Further research in this area is related to the study of other aspects of the impact of national character and political mentality on civil society, in particular in the field of social media.

The calculations carried out by the author make it possible to solve the assigned tasks and achieve the set research goal.

The comparison of different countries civil society's state with the climatic conditions of their location shows that the correlation of a location in a temperate climate zone with the inclusion of a country in an "open-society" group is 84%, and a location in a hot climate zone with the inclusion of a country in a "closed-society" group is 94.4%.;

The collation of such key characteristics of civil society as 'openness' and 'closedness' with the dominant religion demonstrates that the correlation of Christianity as dominant religion with the inclusion of a country in an "open-society" group is 100%, and of Islam as predominant religion with the inclusion of a country in a "closed-society" group is 61%.

The analysis of the dependence of civil society's state on the factors that determine the feeling of happiness inherent in a certain type of national character reveals that 77.8% "open-society" countries are in the top twenty of the World Happiness Report rating, in "open-society" countries the average index of happiness is 7.065, and 86.6% "closed-society" countries are in the bottom half of the rating, of which 33.3% are among the unhappiest 10% of the world; the average index of happiness in "closed-society" countries is 4.677.

Thus, our research of the role of external factors and internal determinants of national character and political mentality in building and functioning of civil society reliably proves that such factors and determinants as: (a) the climatic conditions; (b) the dominant religion; c) understanding of happiness are reflected with a high degree of correlation in the essential characteristics of civil society through certain stable recurring stereotypes of human relations.

The hot climate, which affects 'hot' temperament as a physiological background of a southern character, combined with harsh sanctions that ensure the observance of moral norms in Islam, shapes the geometry of human relations according to the patriarchal-paternalistic formula "domination – submission". These factors form the type of national character that determines the specifics of closed societies.

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Means for control over the activities of public authorities by civic democratic institutions: the conceptual framework analysis

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Abstract

The purpose of the article is to develop the bases of citizen participation in the management of state affairs. The theme of the research is the participation of civil society in the process of integration in its different stages, as well as the conditions and processes of institutionalization of civil society. The objective is to study the forms of participation of civil society in the integration process and the dynamics of institutionalization of the latter. Comparative analysis was a key method. The results show that democratic civic institutions in countries with a high level of socio-economic development show a higher level of political activity than democratic institutions with a low level of socio-economic development. The effectiveness of control over the activities of public authorities is greater in the institutional agents of civil society than in the individual ones. In conclusion, the list of forms of interaction between civic and public institutions was expanded. Moreover, the article identifies new elements of the legislative machine for the control of public authorities by democratic civic institutions that seek to increase social control in thepoliticalsystem.

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Keywords: judicial power; public opinion; public organizations; public administration; public authority.

Medios de control sobre las actividades de las autoridades públicas por parte de las instituciones cívicas democráticas: el análisis del marco conceptual

Resumen

El propósito del artículo es desarrollar las bases de la participación ciudadana en la gestión de los asuntos estatales. El tema de la investigación es la participación de la sociedad civil en el proceso de integración en sus diferentes etapas, así como las condiciones y procesos de institucionalización de la sociedad civil. El objetivo es estudiar las formas de participación de la sociedad civil en el proceso de integración y las dinámicas de institucionalización de la esta. El análisis comparativo fue un método clave. Los resultados evidencian que las instituciones cívicas democráticas en países con un alto nivel de desarrollo socioeconómico muestran un mayor nivel de actividad política que las instituciones democráticas con un bajo nivel de desarrollo socioeconómico. La efectividad del control sobre las actividades de los poderes públicos es mayor en los agentes institucionales de la sociedad civil que en los individuales. A modo de conclusión se amplió la lista de formas de interacción entre instituciones cívicas y públicas. Por lo demás, el artículo identifica nuevos elementos de la máquina legislativa para el control de las autoridades públicas por parte de las instituciones cívicas democráticas que buscan incrementar la contraloria social en el sistema político.

Palabras clave: poder judicial; opinión pública; organismos públicos; administración pública; autoridad pública.

Introduction

An analysis of different scientific positions allows us to conclude that civic society is considered an intermediary sphere in which market participants act, and which significantly stands out from public authorities. Scientists interpret the term “civic institution” comprehensively, considering as such not only public organizations, but also funds, municipalities and communal associations of citizens, research and educational institutions, trade unions, employers associations and industry associations, non-profit media and other parties concerned (Ardag *et al*., 2019).

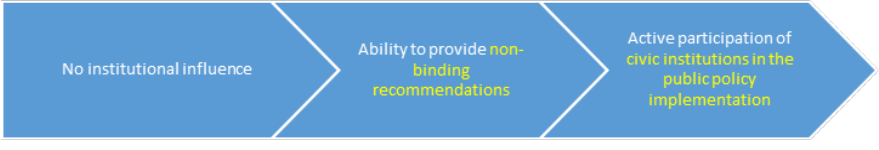
Strengthening the role of EU civic institutions in Eastern Europe is often accompanied by the provision of equal financial and technical support to local civic institutions. The EU also uses a cooperation model based on partnerships between public authorities and civic institutions (McGregor, 2019).

This is mostly due to the willingness of local civic institutions to cooperate with external actors such as the EU, as well as with other civic society actors in Eastern Europe. In addition, civic institutions in Eastern European structurally weak democratic states require information, material and technical support. Therefore, as a rule, they need to have the necessary organizational structure or professional potential.

For the EU, civic institutions are advantageous as cooperation partners due to their social orientation. This makes it much easier for EU institutions to find a suitable social protection partner.

If we consider the positions of scientists who study the influence of civic institutions on the public policymaking in various spheres of public life (Abou-Chadi and Krause, 2020), they come down to the following scheme (Figure 1):

Figure 1: Evolution of civic institutions' influence on the activities of public authorities



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Supporters of the position that there is no civic institutions' influence on the state policy implementation, as well as control over its implementation, exclude the need for a "public and state sovereignty war", which destructively affects the state and society development (Denedo *et al*., 2019). There are researchers who emphasize the negative potential of civic institutions – the spread of separatist, chauvinistic, racist appeals, which prevents them from becoming a state power tool actor (Howell, 2019).

Supporters of the position regarding the participation of civic institutions in the activities of government entities having an advisory vote right believe that the scope of powers of public authorities significantly prevails the scope of powers of civic institutions. This is necessary to ensure the law and order in the state and society. Therefore, civic institutions should not strive to become "unofficial government" (Han *et al*., 2020).

The active participation of civic institutions in the state policy implementation is a minority position in the scientific field. After all, the means of contol and balance does not provide for the participation of civic institutions in the executive authority's system. The research complexity also depends on difficulty to track and evaluate the activities of civic institutions using technical or sociological methods. In addition, the legislation of the studied countries defines the scope of rights and obligations, the procedure for establishment and activities of civic institutions in different ways. However, it was possible to develop a number of scientific indicators to analyse the activities of civic institutions (Chatain and Plaksenkova, 2017; Liinason, 2020).

Here are two examples of proposed systems for civil society evaluation – first was developed thanks to the efforts of like-minded activists, second – thanks to scientists:

- The Civil Society Index (CSI) was developed by the Civicus international organization, which positions itself as the global alliance of civil society organisations and activists. The center of this organization is headquartered in Johannesburg, South Africa.
- The Global Civil Society Index (GCSI) was developed by the John Hopkins' Center for Civil Society Studies, USA.

However, assessing the general level of civic institutions development, we can talk about their active development in Western Europe and North America countries. At the same time, most researchers note the weakness of civic institutions in Central and Eastern Europe. Therefore, the need to develop effective powers to control of civic institutions predetermines the relevance of this research.

Underlying Hypothesis

Our research is based on three hypotheses:

1. The first hypothesis is that the civic democratic institutions' participation in the process of control over the activities of public authorities is irregular: civic democratic institutions in countries with a high level of socio-economic development show a higher level of social activity than democratic institutions with low level of socio-economic development. This is because the process of the

legal framework development for the civic institutions' activities and the institutionalization of the interaction for civil society with the European Union institutions proceeded consistently from the establishment of the integration association.

2. The second hypothesis is that the effectiveness of control over the activities of public authorities is higher in institutional actors of civil society than in individual ones.

1. Literature Review

Civic institutions are the research basis for many scholars, but Bolleyer (2018) deserves special attention, as the first attempt too examine these issues across a wide range of western democratic traditions. The reasearcher writes a second book that studies the various ways of civic institutions to develop civil society participation and advocacy. In short, Bolleyer experience and research can help civil society to accept it changing role and provide information on upcoming legal decisions. The author explained:

> There is a democratic crisis across Europe and many people are turning their backs on politics, making civic institutions more important than ever for linking citizens and government entities. Therefore, there is a question as to how the state itself, through certain legislative decisions, intentionally or unintentionally governs these opportunities (Bolleyer, 2018: 125).

From European point of view, for some time, there have been trends towards strengthening government regulation of civil society. These events have accelerated in recent years. Actions to overcome the terrorism have contributed to the development of a so-called "diminishing field of maneuver for civil society", leaving civil society less and less opportunities for effective self-expression and influence on decision-making – a phenomenon recognized by the EU, the Council of Europe and various non-governmental organizations. COVID-19 has also contributed to this alarming trend (Goncharenko, 2019).

In the work by Greenberg and Rubinstein (2013) the civic institutions are considered as an effective tool for protecting citizens from the public authorities' arbitrariness. A real opportunity for citizens to use democratic governance powers. If we consider the civic institutions influence from the standpoint of research, then it is worth highlighting several basic directions (Jia, 2019).

Representatives of the first direction carried out comparisons of various democratic regimes. The focus of the study was the statement that the increased dependence of civil society on government funding and regulation will have negative consequences for the society internal functioning and

activities. The legislation was studied and its impact on parties, interest groups and civic institutions was assessed (Bolleyer, 2018).

The research results can be divided into two categories: many scholars believe that there is a general tendency towards the adoption of more or less restrictive regulations, depending on the traditions of law and state, as well as the corresponding democratic history. This means that different democracies, more or less resistant to the civil society space erosion, when faced with exceptional circumstances (such as terrorism or the current pandemic), foster more restrictive legislation (Jones and Malis, 2020).

Other scholars have noticed different consequences of different relationships between state and society. For example, members of organizations that rely heavily on paid staff, which often becomes possible and is enhanced by government funding, tend to have less influence over internal decisions. In other words, they are less democratic within the country (Denedo *et al*., 2019).

McGregor (2019) studies the civil society contribution to democracy in more detail. "Essentially, the study shows the complex consequences of central organizational properties, such as qualification level or dependence on government funding. In particular, the study examines the participation of community members in the organization and whether the political interest group can respond to social demands and concerns".

The second direction is aimed at the typology and classification of democratic institutions, as well as their control measures (Han *et al*., 2020).

Representatives of the third direction consider the prospects for a radical change in the civil society development vector, its transition to the political level, which provides real management capabilities. We find this position in the work of White (1975).

Studying the forms of civil society in Europe, foreign researchers note, first of all, differences between the structure and level of participation Western Europe, Central and Eastern Europe citizens in the civic institution's activities (Wang *et al*., 2020). This is the fourth direction related to research on social and volunteer activities of civic institutions.

The fifth direction is the relationship between the public authorities and civic institutions, through the provision of social and public services. In this case, we are talking about the real empowerment of some civic institutions to implement social protection and provide public services (Rochlitz *et al*., 2020).

However, despite the difference in legislation, the difficulties of legal implementation, the opposite views of scientists, we come to a general conclusion: the civic institutions are important. At the primary level, they contribute to the self-organization of people. They transform the population

of the country into the nation – the real possessors of public, control and regulatory powers. The development of effective means for civic institutions' participation in management and control is the way to preserve peace and the state territorial integrity (Snellen, 2002).

2. Methods and Materials

The research includes neofunctionalism studies, which have a significant impact on the civil society development. The research also studies the liberal intergovernmental approach, which substantiates the European integration process solely by the actions and interests of the member states, which directly concerns the civic institutions activities. According to the liberal intergovernmental approach, while maintaining state "diversity", control over the society life processes should remain in hands of states, within which civil societies exist and develop. Thus, decisions concerning the civic institutions activities are the result of mutual compromises of the member states.

The author also used the method of comparative analysis for data obtained by research centers through a sociological survey, involved observation, questionnaires, interviews, and an expert survey.

The comparative study was carried out between August 2020 and January 2021. The study was carried out in three stages (Figure 2).

Figure 2: Study stages

Source: Author's development.

At the first stage of the study, using special scientific methods (comparative analysis, analysis of experts' positions, online sociological survey), the collection and processing of information on the means of control over the activities of public authorities by civic democratic institutions was carried out.

The method of conceptual analysis requires detailed study in the context of the indicated political research, since it is used to disclose the existing means for control over the activities of public authorities by civic democratic institutions.

2.1. Research Design

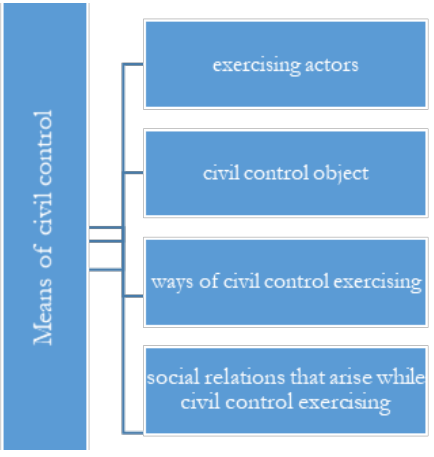
A sociological experimental procedure is the empirical basis of analytical research *at the third stage of the study*. The sociological experimental procedure includes 5 stages: preparation; organization; implementation; analytical data analysis; research results presentation. We used data from a survey conducted in 15 countries from May to October 2020, with 30.000 respondents. The data are included in the Democratic Rights Popular Globally but Commitment to Them Not Always Strong analytical report.

The correlation analysis carried out by the author is the empirical basis of the research *at the third stage of the study*. The aim of correlation analysis is to calculate the correlation coefficients. Correlation coefficients can take, as a rule, positive and negative values. The correlation coefficient sign makes it possible to interpret the connection direction, and the absolute value – the connection strength.

3. Results

From the author's point of view, the means for civil control include exercising actors, civil control object; ways of civil control exercising; social relations that arise while civil control exercising (Figure 3).

Figure 3: Means of civil control



Source: own elaboration

Let us consider the means for civil control in more detail:

Exercising actors: undoubtedly, these are public authorities and civic institutions. We consider various kinds of civic institutions, both in terms of their activity range (international, national and local) and in terms of their activity field (economic, social, volunteer, youth). In order to enforce their legal personality in "state-society" relations, civic institutions should have a sufficient number of rights in the social control field. For example, the right to individual requests, to participate in community councils or public hearings. It is also necessary to establish the responsibility of public authorities for ignoring and creating obstacles in the activities of civic institutions at the legislative level.

Civil control object is the activity of state and municipal bodies regarding the budget distribution and use, the implementation of social and economic development programs, social facilities construction, human and civil rights protection.

Ways of civil control exercising are the activities of civic institutions, which include the possibility of conducting control measures, checks, inspections, studying reporting, conducting sociological and scientific research.

Social relations that arise while civil control exercising. As a rule, relations arising from interaction with public authorities and local self-government authorities are imperative, but if we are talking about the

control exercising, it is obvious that relations should be based on the principles of equality. According to the sector-specific criterion, legal relations between the state and civil society can be divided into: legal relations in the economic development field, legal relations between civic institutions cooperating with universities in order to increase the efficiency and transparency of the public sector in key spheres of society; legal relations between public authorities and youth organizations to promote sports; legal relations of civic institutions (associations of employers, manufecturers, trade unions, creative unions) that interact with the state in the social and labor relations field – protection of labor and social rights of citizens, coordination of enterprises' activities, upholding the interests of professional groups; legal relations between the state and civic institutions regarding the development of youth patriotic education system; legal relations with lawyers associations in order to develop citizens' awareness of their rights and freedoms; legal relations with public organizations in social and volunteer spheres regarding the provision of social services to indigent categories of citizens; legal relations between civic institutions (non-state media, journalists associations) that interact with the state in the social information space field – distribution of information, receipt of information, protection and analysis of information and rights; relations between the state and educational public organizations to ensure high quality of educational services, as well as the human right to education; legal relations between civic institutions (youth and children's public organizations, women's movements) that interact with citizens, including the unconstrained exercising of youth and gender policies by citizens; legal relations of civic institutions (all types of religious organizations) that interact with the state on the constitutional rights of citizens and freedom of religion – protect the unconstrained use of all prohibited forms.

Sociological research analysis is necessary in order to make a comparative analysis of the effectiveness of control over the activities of public authorities among institutional actors and individual ones. The research was carried out in two directions:

1. A comparative analysis of the analytical report data by Wike and Schumacher (2020) was carried out (Table 1).
2. Author's online sociological surveys (5000 respondents (N = 5000)) were conducted, the sample scope is 7% (Table 2).

The analysis of the data represented in Table 1 confirms the Hypothesis No. 2 that the effectiveness of control over the activities of public authorities is higher among institutional actors than among individual ones.

Table 1. Democratic rights popular globally but commitment to them not always is strong

Countries	Percentage of civic institutions participating in control measures %	Percentage of socially active citizens who are not members of civic democratic institutions %
France	72	28
UK	72	31
Sweden	68	31
Germany	66	36
Hungary	66	36
Netherlands	63	39
Bulgaria	60	45
Poland	57	50
Greece	57	32
Lithuania	55	31
Slovakia	55	27
Czech Rep	49	26
Italy	46	34
Ukraine	35	30
Russia	41	30

Source: Wike and Schumacher (2020).

Table 2. Results of sociological research conducted by the author

Questions and answers	Countries								
	France	UK	Sweden	Germany	Hungary	Greece	Italy	Ukraine	Russia
Do you take part in public events held in your region?									
Yes	37%	45%	49%	22%	26%	34%	56%	87%	55%
No	63%	55%	51%	78%	74%	66%	44%	13%	45%
Are you a member of a public organization?									

Yes	45%	34%	45%	47%	37%	56%	58%	69%	45%
No	55%	66%	55%	53%	63%	44%	42%	31%	55%
In your opinion, do the citizens of your state influence the activities of state authorities?									
Yes	80%	82%	78%	57%	67%	56%	45%	22%	30%
No	20%	18%	22%	43%	33%	44%	55%	78%	
In your opinion, do the public organizations of your state influence the activities of state authorities?									
Yes	82%	90%	87%	83%	79%	59%	65%	36%	33%
No	18%	10%	13%	17%	21%	41%	35%	64%	67%
Have you ever appealed against actions or inactions of state authorities?									
Yes	34%	25%	34%	24%	36%	35%	45%	65%	40%
No	66%	75%	66%	76%	64%	65%	55%	35%	60%
In your opinion, are public institutions a real alternative to state institutions in your country?									
Yes	65%	76%	56%	76%	75%	83%	78%	25%	30%
No	35%	24%	44%	24%	25%	17%	22%	75%	70%

Source: own elaboration

To confirm the Hypothesis No.1 that civic democratic institutions in countries with a high level of socio-economic development show a higher level of social activity than democratic institutions with a low level of socio-economic development, we used the method of correlative analysis.

We have determined the correlation between the Sustainability Index for Central and Eastern Europe and Eurasia and GDP (PPP) per capita data as of 2019 (Table 3).

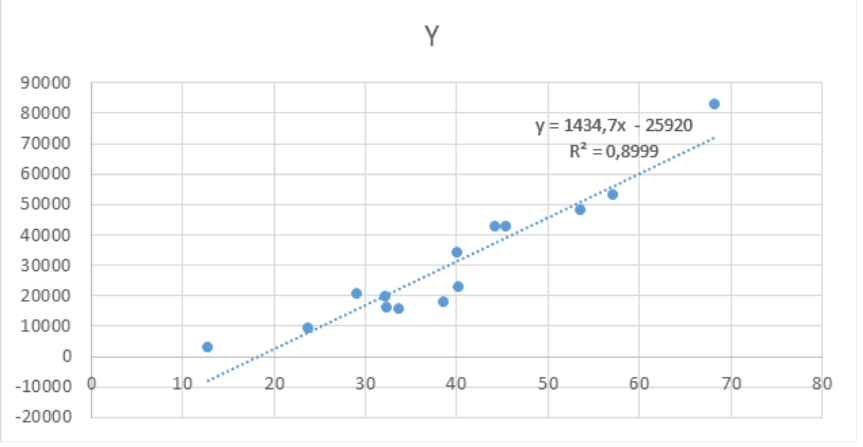
Table 3. The 2019 CSO Sustainability Index for Central and Eastern Europe and Eurasia GDP (PPP) per capita 2019

Country	Sustainability Index for Central and Eastern Europe and Eurasia	Eastern Europe and Eurasia ta GDP (PPP) per capita
France	45.454	42878
UK	44.288	42558
Sweden	68.340	82950
Germany	53.571	48264
Hungary	32.434	15924
Netherlands	57.101	53106
Bulgaria	23.741	9267
Poland	33.739	15431
Greece	29.045	20408
Lithuania	38.605	18032
Slovakia	32.184	19582
Czech Rep	40.293	22850
Italy	40.066	34260
Ukraine	12.710	2963

Source: Civil Society Organization (2020); Wikipedia (n.d.).

According to Figure 4, the Pearson correlation coefficient is 0.96971526 for the sanple size 20, regarding that zL lower 95% limit is 1.61213911 and zU upper 95% limit is 2.56286129, which confirms the Hypothesis No.1.

Figure 4: *Pearson correlation coefficient*



Source: own elaboration

4. Discussion

The interaction of civic institutions and public authorities became the object for scientific research for many scientists, in particular Mizrahi *et al*., (2021) defined a meaningful concept of intersectoral social partnership, which is based on non-political nature of public authorities and civic institutions interaction. There are discussions about the apolitical, only social nature of civic institutions activities (Leach, 2018). Scientists increasingly deny the participation of citizens and civic institutions in legal relations of a peremptory nature (Germino, 1990). They are considered a social-volunteer auxiliary institutions, which are deprived of managerial and control powers in general (Ernazarov, 2020). Representatives of many civic institutions consider participation in political struggle, the exercise of control and supervisory powers destructive for their activities (Adloff and Neckel, 2019).

In the "Cross-Country Comparisons of Civil Institutions Societies: an Empirical Analysis" article, the Russian scientist Liebman (2010) identifies three main approaches to assessing civil society presented in modern literature. The first scientific approach involves a mathematical assessment of civic institutions activities using a system of integral indices. Among them are: Civil Society Index – CSI; Civil Society Strength Index – CSSI; Global Civil Society Index – GCSI (Bryhinets *et al*., 2020).

The opposite is the second approach, its representatives propose to completely move away from the index assessment of the civic institutions activities and return to the assessment of the qualitative component of their activities (Howlett, 2020).

The third approach involves the study of more specific issues regarding the civic institutions activities. This analysis can be carried out using indicators that, although they do not define the civic institutions activities, but characterize the civil society development at various stages and in various areas: the index of non-governmental organizations sustainability – NGOS. DD – direct democracy index – refers to freedom index, anti-corruption perception index, world press freedom index. Of course, all of them, to one degree or another, partially describe the level of civic institutions development, however, they are not comprehensive (Liebman, 2010).

Conclusion

Summing up, the results of our sociological, empirical and comparative studies, as well as world experience show that the powers to control of civic institutions today are only a model of public relations, which we strive to implement. As a result of this research, the author proposed to develop effective means for civil control exercising, which includes exercising actors, civil control object; ways of civil control exercising; social relations that arise while civil control exercising.

The authors of this research concluded that civic democratic institutions in countries with a high level of socio-economic development show a higher level of social activity than democratic institutions with a low level of socio-economic development. The effectiveness of control over the activities of public authorities is higher among institutional actors than among individual ones.

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Administrative reforms in Eastern Europe: A comparative legal analysis

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Abstract

The objective of the article was to analyze the legal regulation of the decentralization reform in Eastern Europe and its impact on the unemployment rate. Methodologically, statistical analysis, hypothetical-deductive method and correlation were used. It was found that the first stage of the reform of the New Civil Service in Poland, Ukraine, Romania, the Czech Republic, Slovenia, Latvia, and Bulgaria began in 1990, but can be called an informal preparatory stage. It is determined that the process of implementation of administrative reforms is influenced by a series of factors: historical, economic, geographical. It is concluded that there is no positive correlation between the effectiveness of public administration and the effectiveness of local self-government in all the countries studied. The reform of decentralization has been shown to have a negative impact on employment. In addition, it found that Poland is the most stable country among those studied, with a high level of efficiency of local self-government. La more negative correlation between the efficiency index of local self-government and employment, and the most positive correlation between local and unemployment rate.

Keywords: public administration; decentralization; new public administration; employment; unemployment.

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Reformas Administrativas en Europa del Este: un Análisis Jurídico Comparado

Resumen

El objetivo del artículo fue analizar la regulación legal de la reforma de descentralización en Europa del Este y su impacto en la tasa de empleo. En lo metodológico se utilizó análisis estadístico, método hipotético-deductivo y correlación. Se encontró que la primera etapa de la reforma de la Nueva Administración Pública en Polonia, Ucrania, Rumania, la República Checa, Eslovenia, Letonia y Bulgaria comenzó en 1990, pero se puede llamar una etapa preparatoria informal. Se determina que el proceso de implementación de las reformas administrativas está influenciado por una serie de factores: históricos, económicos, geográficos. Se concluye que no existe una correlación positiva entre la efectividad de la administración pública y la efectividad del autogobierno local en todos los países estudiados. Está demostrado que la reforma de la descentralización tiene un impacto negativo en el empleo. Además, se encontró que Polonia es el país más estable entre los estudiados, con un alto nivel de eficiencia del autogobierno local. La correlación más negativa entre el índice de eficiencia del autogobierno local y el empleo, y la correlación más positiva entre los locales y la tasa de desempleo.

Palabras clave: administración pública; descentralización; nueva administración pública; empleo; desempleo.

Introduction

Administrative reforms are part of everyday life of modern countries, which are looking for new ways to manage the public sector under the influence of external and internal factors. Public sector reforms are actions of the government to reengineer the provision of public services in order to increase the efficiency and effectiveness of the civil service (Chand and Naidu, 2020).

The impetus for administrative reforms in public administration was fiscal stress caused by global changes in the economic system and the need to improve the work of the civil service (Aucoin, 1990). Governments have had to cut spending, staff, investment, and services, demand higher productivity and better performance from public authority. In order to obtain higher places for their countries in the world economic rankings, governments have been forced to rethink their role in governance and design country development strategies (Caiden, 2001).

The issue of implementing administrative reforms is especially urgent in the new democracies of Central and Eastern Europe. The first wave of new public administration reform around the world began in the mid-1970's to increase government efficiency and effectiveness (Suzuki and Avellaneda, 2018). The second wave of the new administrative reform coincides with the beginning of European integration and accession to the EU.

The implementation of administrative reforms is a long-term process, which is due to the object of reform being unchanged throughout the period, while the ways of reform change according to the state of public administration.

1. Literature Review

Across Europe, there are three main paradigms of reform: the first paradigm concerns the introduction of Weberian style structures and processes, transforming tribal systems into modern administrations that are guided by the rule of law, operate transparently within a reasonable timeframe; the second reform paradigm, often referred to as New Public Administration, mainly concerns the introduction of a market-type mechanism; the third paradigm of reform combines elements of Weberianism with aspects of New Public Management (Hammerschmid *et al.*, 2016).

The main administrative reforms were aimed at: relations between the central, regional, and local levels of government; organisation of public services; principles of financial management; development of state policy and evaluation of management results. The basis of administrative reform is the relationship between the state and society or between local self-government and citizens (Nikos, 2001).

Decentralization is an open-ended concept that goes beyond the traditional categories of unitary and federal states (Harguindéguy *et al.*, 2019). There are four main types of decentralisations: political, administrative, fiscal and market. Financial responsibility is a key component of decentralisation. Subnational governments and private organisations can effectively perform decentralised functions when they have the appropriate level of revenue that is collected locally or transferred from the national government — as well as the power to decide on expenditures (World Health Organization, n. d.).

The results of fiscal and administrative decentralisation are often analysed together with the consequences of the political and economic situation. The level of decentralisation reform has a positive and significant impact on the level of economic development of municipalities. The

political subdivisions, which are the highest level in the structure of fiscal decentralisation, usually have a higher level of local employment. This suggests that fiscal decentralisation can be an important policy tool to stimulate local economic development and local employment (Bartlett *et al*., 2020). So, an effective policy to improve the labour market as part of decentralisation reform is possible only with the financial support of local governments (Churski, 2002). Levels of decentralisation can be seen as long-term effective responses to demands of investors and voters. Economic integration strengthens the requirements for fiscal decentralisation; however, economic integration is even more likely to have the opposite effect under certain conditions (Garrett and Rodden, 2000).

Fiscal decentralisation should improve the efficiency of local self-governments and stimulate production growth. However, empirical evidence is mixed. Fiscal decentralisation can affect economic growth in two ways: labour productivity and employment (Bartolini *et al*., 2019).

Employment is important for people's well-being, as it is crucial for financial well-being. There are many ways to increase employment rates: an effective unemployment benefit system, a social safety net in general, or a balanced labour market policy. Municipalities are more informed about local working conditions, the labour market and the unemployed who are looking for work. Decentralisation of public employment services would make them more effective in organising work and providing services (Nieminen, 2020).

Municipalities can organise and finance employment services more effectively, as local employment services have more information on employment issues and labour needs (Mergele and Weber, 2020). However, decentralisation is not an unequivocally effective tool. Boockmann *et al.* (2015) found that decentralisation had negative consequences for male employment and ineffective for women. The implementation of administrative reforms is critically dependent on a strong institutional foundation (Lapuente and Van de Walle, 2020).

Local branches of centralised public employment services are subject to the directives of the central institution. This allows monitoring their work more effectively, which facilitates the implementation of common standards and best practices. In a more decentralised environment, local branches of the public employment service are more flexible. They can develop independent strategies according to the specific conditions of their local labour market (Weber, 2016).

2. Research Objectives

The aim of the scientific article was to establish the legal regulation of the New Public Administration (decentralisation) reform in Eastern Europe and the impact of this reform of the New Public Administration on the employment rate.

Research objectives of the article:

1. Review the legal regulation of the New Public Administration (decentralisation) reform in the countries of Eastern Europe and the countries that last joined the EU.
2. Analyse statistical indicators that reflect the state of the New Public Administration (decentralisation) reform and employment.
3. Study the impact of the New Public Administration (decentralisation) reform and employment.
4. Provide a comparative legal description of the impact of the New Public Administration (decentralisation) reform and employment in the countries of Eastern Europe and the countries that have recently joined the EU.

3. Materials and Methods of Research

The main approach in the study of administrative reforms in Eastern Europe and the most recent EU member states was to establish the impact of NPA (decentralisation) reform on employment. This position is due to the construction of a logical chain consisting of the following components: administrative and fiscal decentralisation, policies aimed at economic growth of political subdivisions by attracting investors, expanding the private sector, and increasing jobs, which will reduce unemployment and improve the welfare of local people. The study was conducted based on statistics in Eastern Europe and the most recent EU member states. This approach was chosen to carry out a complete study of the impact of decentralisation on employment in countries that have actively pursued European integration with a view to joining the EU.

The study involved statistical analysis to compare data on the effectiveness of public and local government, employment and unemployment in Eastern Europe and the most recent EU member states.

The hypothetical-deductive method was conductive in determining the direction of the research, that is determining the impact of the NPA (decentralisation) reform on the employment rate in Eastern Europe and the most recent EU member states.

The study also involved the method of correlation analysis to establish the correlation: between the local government efficiency index during 2005—2017 and the public administration efficiency index 2007-2016 in Poland, Ukraine, Slovenia, Bulgaria, the Czech Republic, Latvia, Romania; between the local government efficiency index during 2005—2017 and employment in relation to the population aged 15+ during 2005—2017 in the studied countries; between the local government efficiency index during 2005—2017 and the unemployment rate during 2005—2017 in the studied countries.

The research used the most significant studies that reflect the development of scientific thought in the field of administrative reforms for the period from 1990 to 2021. This period of analysis was chosen as the one that most clearly reflects the state of implementation of administrative reforms at the present stage.

The paper analyses the following indicators:

- Local Government Index 2005—2017 reflected by The World Bank.
- Government Efficiency Index 2007—2016 reflected by The World Bank.
- Employment to population ratio, 15+, total (%) (modelled ILO estimate) for 2005—2017 reflected by The World Bank.
- Unemployment, total (% of total labour force) (modelled ILO estimate) 2005—2017 reflected by The World Bank.

4. Results

Historically, the process of the New Public Administration (decentralisation) reform in Poland, Slovenia, Latvia, Bulgaria, Ukraine, the Czech Republic, and Romania has begun since 1990. There were no clearly defined reform strategies in any of the studied countries, so the first stages of NPA reform can be called a stage of preparation for the official start of this reform (Table 1).

Table 1. Legal regulation of the New Public Administration (decentralization) reform since 1990

Countries	The period of the New Public Administration (decentralisation) reform	Legal regulation
Poland	First stage – 1990-1999 Second stage – 1999+	Territorial Self-Government Act (1990), County Self-Government Act (1998), Voivodeship Self-Government Act (1998), Voivodeship Government Administration Act (1998).
Slovenia	First stage – 1991-1997 Second stage – 1997 – 2010 Third stage - 2010+	Strategy for EU Accession (1997–1999), Strategy on Further Development of the Public Sector (2003-2005), Slovenia's Development Strategy (2005–2013) the Exit Strategy (2010–2013)
Latvia	First stage – 1990-1998 Second stage – 1998-2009 Third stage – 2009+	Law on Administrative Territorial Reform, (1998) The Optimisation Plan, (2009)
Bulgaria	First stage – 1991 – 2000 Second stage – 2000 - 2006 Third stage – 2006+	Administration Act (1991), Strategy for Decentralization (2016).
Ukraine	First stage – 1991-2014 Second stage – 2014-2019 Third stage – 2020-2021	The Concept of Reforming Local Self-Government and Territorial Organisation of Power (2014), the Law "On the Principles of State Regional Policy" (2015), the Law "On Civil Service" (2015), the Law "On Cooperation of Territorial Communities" (2020)
Czech Republic	First stage - 1991-2006 Second stage - 2007-2013 Third stage – 2014+	Concept of Public Administration Reform. Strategy of Implementation of Smart Administration in the Period of 2007 – 2015 (2007), Strategic Framework of the Development of Public Administration in the Czech Republic for 2014 – 2020, (2014).
Romania	First stage – 1991-2001 Second stage – 2001-2006 Third stage – 2006+	Law of local public administration (1991), Strategy for public administration reform for 2004–2007 (2004), Law No. 195/2006 on decentralisation (2006).

Source: developed by the author.

The process of public administration reform is long (Table 1) due to its variability to any changes taking place in the state. Accordingly, the global and national economic crises suspended the implementation of the NPU reform and partially returned to more centralised public administration (the global crisis of 2007-2008). The impetus for the NPA reform in the studied countries was European integration to join the EU (Bulgaria, Romania — 2007, Poland, Slovenia, Lithuania, the Czech Republic — 2004, Ukraine — in the process of European integration).

Local government indices are shown from 0 to 1 for 2005 to 2017 (Table 2). Poland has the highest local government index of for the studied years, which is stable at 0.99, Latvia, which is 0.99 during 2005-2015, Slovenia's index during the studied years was not lower than 0.98.

Table 2. Local Government Index.

	2005	2007	2009	2011	2013	2015	2017
Poland	0.99	0.99	0.99	0.99	0.99	0.99	0.99
Slovenia	0.98	0.98	0.98	0.98	0.98	0.98	0.99
Latvia	0.99	0.99	0.99	0.99	0.99	0.99	0.98
Bulgaria	0.92	0.82	0.82	0.93	0.97	0.96	0.96
Ukraine	0.92	0.95	0.84	0.84	0.95	0.95	0.96
Czech Republic	0.93	0.93	0.93	0.93	0.90	0.90	0.90
Romania	0.76	0.76	0.76	0.76	0.76	0.76	0.62

Source: World Bank (2019a).

The highest government efficiency index from 2007 to 2016 (Table 3) was 3.84 recorded in Slovenia in 2009, the lowest government efficiency index was 2.59recorded in Ukraine in 2011.

Table 3. Government Efficiency, Index.

	2007	2009	2011	2013	2015	2016
Poland	3.15	2.71	3.15	3.11	3.01	3.20
Slovenia	3.53	3.84	3.65	3.11	2.74	2.95
Latvia	3.60	3.39	3.07	3.40	3.37	3.46

Bulgaria	2.71	2.96	3.03	3.08	2.84	2.98
Ukraine	2.75	3	2.59	2.68	2.68	2.87
Czech Republic	3.20	3.03	3.18	3.03	3.45	3.68
Romania	2.81	3.11	2.83	2.75	3.15	3.22

Source: World Bank (2019b).

In order to establish the correlation between the effectiveness of local government and the effectiveness of public administration, it is necessary to conduct a correlation analysis of the indicators of Tables 2 and 3. In carrying out the analysis, we use the formula:

$$r = \frac{\sum(x_2 - \overline{x}_1) \times (x_2 - \overline{x}_2)}{\sqrt{\sum(x_1 - \overline{x}_2)^2} \times \sqrt{\sum(x_2 - \overline{x}_2)^2}} \qquad (1)$$

where x1 — local government efficiency index and x2 – public administration efficiency index, r – linear correlation coefficient.

The linear correlation between the local government efficiency index and the public administration efficiency index in the studied countries during 2007-2017 (including the local government efficiency index in 2017 and the public administration efficiency index in 2016) was the following: Poland — -1.34, Slovenia — - 0.39, Latvia — -0.22, Bulgaria — 0.54, Ukraine — -0.14, the Czech Republic — -0.53, Romania — -0.58.

Thus, a negative correlation was established between the local government efficiency index and the public administration efficiency index, except for Bulgaria, where the linear correlation index is 0.54, which indicates the average level of correlation between the studied indicators.

The correlation between the local government efficiency index and the public administration efficiency index of the studied countries in 2007 is 0.699, which indicates a high level of correlation of indicators, and in 2015 this linear correlation index of these indicators is -0.274. Employment during 2005—2017 in the studied countries fluctuated slightly between 45.3%—61.67%. The lowest employment rate (45.3%) was recorded in Bulgaria in 2005, and the highest (61.67%) — in Ukraine in 2013 (Table 4).

Table 4. Employment to population ratio, 15+, total (%) (modelled ILO estimate).

	2005	2007	2009	2011	2013	2015	2017
Poland	45.31	48.84	50.74	50.66	50.6	52.37	54.27
Slovenia	55.36	56.89	55.95	53.33	51.66	52.27	54.68
Latvia	51.52	56.56	49.57	49.11	52.31	54.13	55.88
Bulgaria	45.3	50.09	50.62	46.62	46.89	49.22	52.04
Ukraine	51.16	51.42	50.1	50.95	61.67	49.76	49.33
Czech Republic	54.78	55.73	54.7	54.32	55.23	56.61	58.71
Romania	49.63	50.72	50.04	50.24	50.61	50.74	52.29

Source: World Bank (2021).

The impact of the NPA (decentralization) reform on employment can be determined by conducting a correlation analysis between the local government efficiency index and employment to the population aged 15+ during 2005—2017. The linear correlation index between these indicators in the studied countries is: Poland — -2.72, Slovenia — 0.084, Latvia — -0.475, Bulgaria — -0.301, Ukraine — 0.244, Czech Republic — -0.692, Romania — -0.877.

Thus, the negative correlation between the local government efficiency index and employment is recorded in Poland, where the most stable local government efficiency index is established. The greatest correlation between these indicators of the studied countries is established in Ukraine, but the correlation coefficient indicates a low level of interdependence. It should be noted that Ukraine is not a EU member, decentralisation reform was launched in 2014.

The general correlation index between the local government efficiency index and employment in the studied countries in 2005 was 0.094, and in 2017 — 0.135, which indicates a low level of interdependence.

The lowest unemployment rates in the surveyed countries during 2007-2017 were observed in Slovenia, Latvia, Ukraine in 2007, Poland, Bulgaria, the Czech Republic, and Romania in 2017 (Table 5).

Table 5. Unemployment, total (% of total labour force) (modelled ILO estimate).

	2005	2007	2009	2011	2013	2015	2017
Poland	17.75	9.6	8.17	9.63	10.33	7.5	4.89
Slovenia	6.51	4.82	5.86	8.17	10.1	8.96	6.56
Latvia	10.03	6.05	17.52	16.21	11.87	9.87	8.72
Bulgaria	10.08	6.88	6.82	11.26	12.94	9.14	6.16
Ukraine	7.18	6.35	8.84	7.85	7.17	9.14	9.51
Czech Republic	7.93	5.32	6.66	6.71	6.95	5.05	2.89
Romania	7.17	6.41	6.86	7.18	7.1	6.81	4.93

Source: World Bank (2021).

By conducting a correlation analysis between the local government efficiency index and the number of unemployed (in%) during 2005—2017, a linear correlation index was established between these indicators in the studied countries, which is: Poland — 2.404, Slovenia — -0.171, Latvia — 0.295, Bulgaria — 0.546, Ukraine — -0.092, the Czech Republic — 0.544, Romania — -0.918.

The highest interdependence between the local government efficiency index and the number of unemployed (in%) is found in Poland, the medium level of interdependence is recorded in the Czech Republic and Bulgaria, the lowest level — in Latvia. Negative interdependence was established in Slovenia and Ukraine. The general correlation index between the local government efficiency index and the number of unemployed (in%) in the studied countries in 2005 was 0.421, and in 2017 — 0.360, which indicates a low level of interdependence.

5. Discussion

Over the past few decades, many unitary countries have sought decentralisation as a means of finding more efficient and optimal governance. Other countries were dissatisfied with the results of previous governance and centralised policies. Socio-economic problems have become more acute, causing the need to address them through poverty reduction, improving efficiency of the public sector and governance, greater macroeconomic stability, and fiscal sustainability (Martinez-Vazquez *et al.*, 2016).

Rethinking the results of centralised public administration and the tools for its implementation marked the launch of the third wave of administrative reforms — the New Public Administration, which was designed to expand the powers of local self-government with the possibility of self-financing. The central subjects of the New Public Administration reform are citizens who previously held a passive position in governance, and are now considered full social actors, which are the centre of the administrative reform policy (Nikos, 2001).

Decentralisation improves resource allocation, accountability, and cost recovery, while subnational governments are assumed to have better information than the central government on the problems and needs of the local population. It is also believed that the population is more aware of the actions of subnational governments than the central government. However, subnational governments do not automatically receive additional information about the local population, unlike the central government (Azfar *et al.*, 2004). It is established that the interdependence between the efficiency of state power and the efficiency of local self-government is negative in the studied countries, except Bulgaria. Therefore, it is erroneous to claim that NPA (decentralisation) clearly has a positive effect on the effectiveness of public administration and local self-government.

Thus, we fully agree with the statements that: fiscal and administrative decentralisation improve perceptions of government performance; federalism is perceived negatively; the overall result of decentralisation is ambiguous; decentralisation affects the service sector more favourably than others; large companies perceive decentralisation less favourably than other companies; the effect of the same form of decentralisation differs within all public spheres; the form of decentralisation and its contextualisation in terms of defining the objectives of public activity, requires careful consideration and detailing (Goel *et al.*, 2017).

Administrative and fiscal decentralisation are complementary reforms. Their effectiveness and efficiency cannot be unambiguous and the same for everyone. One of the important factors that must be taken into account when implementing decentralisation reform is geographical. Geography is an important factor that determines the reasonability of financial autonomy of local self-government. Mountain areas have limited financial resources and are more dependent on funding from the central government. The islands enjoy greater income autonomy than their continental counterparts (Abouelfarag and Qutb, 2020).

The explanation is that the island's economy is tourism-based, which serves as a local source of income growth through local fees and taxation. The most urbanised municipalities show a higher revenue autonomy and a lower dependence on public funding. Besides, education, unemployment and well-being of the population also depend on the finances of local self-

government. Unemployment increases (hinders) local financial autonomy and makes local government less (more) dependent on the central government (Psycharis *et al*., 2015).

The factors are especially important for understanding the results of reforms, especially in comparison with other countries. These include: the administrative system and culture of the country or region, which is determined by its history (Kurilov, 2019); the initial status of the territory before the reform, especially the size, number of participating municipalities, type of amalgamation (merger against association) and reforms that have taken place in the past; reform process, implementation strategy; local government and the dynamics of consensus; political incentives and political leadership in the reform process; existing resources and the level of efficiency of individual local authorities (Ebinger *et al*, 2018).

Most local communities are currently unable to provide adequate services to the local population. It is established that in the context of local self-government reform the issue of employment and implementation of the state employment policy becomes the main task of the amalgamated territorial communities. At the same time, each amalgamated territorial community attaches great importance to the preservation and development of its human resources, which, in turn, effectively influences the state employment policy (Serohina, 2020).

It was found that decentralisation, which aimed at improving the efficiency of local self-government, which would increase the welfare of the population and best meet the needs of the community, had a negative impact on the employment rate. Poland has the highest local self-government efficiency index, while a negative correlation between the local self-government efficiency index and employment was revealed. In Ukraine, where the decentralisation reform started in 2014, the greatest interdependence between these indicators was found among the studied countries.

Evidence of the negative impact of decentralisation on employment is the greatest interdependence between the local government efficiency index and the number of unemployed (in %) in Poland.

Therefore, we agree that decentralisation reform should not be seen as a tool to increase employment (Nieminen, 2020) and taken as an end in itself — it is implemented in order to better provide services, manage resources more efficiently or support other overall results. Internally, decentralisation increases the need for qualified staff in the civil service and in the field (World Bank Group, n. d.). Decentralisation reforms require a careful assessment of the causes of possible problems and economic opportunities in order to avoid unintended consequences (Mergele and Weber, 2020).

Local self-governments need to develop strategies to attract investors in order to expand the private sector, which will increase the number of jobs and involve local people in work. As a result of consistent and effective local government policies, unemployment will decrease, the well-being of the population will improve and economic growth will be ensured (Nepram *et al*., 2021).

Conclusion

The study of administrative reforms in Eastern Europe is relevant, as in Eastern Europe for a long time there was centralised management. The wave of economic crisis and democratisation led to a wave of administrative reform aimed at decentralising governance by empowering local communities, as well as increasing the efficiency of local self-government. It was envisaged that such a policy would boost economic growth, redistribute funds effectively, improve the well-being of the local population and meet all the needs of the local community. However, the global economic crises have made their adjustments not in favour of administrative reforms. Public administration is a changing institution that responds to any changes taking place in the state, especially economic changes.

However, the global economic crises have made their adjustments not in favour of administrative reforms. Public administration is a changing institution that responds to any changes taking place in the state, especially economic changes. Accordingly, the implementation of administrative reforms is a rather long process, which includes the development of strategies, adoption of relevant legislation, adjustment and change of ways of reform in accordance with the needs of society. The study found that the current administrative reform in Eastern Europe is the New Public Administration reform. The study is based on the idea of the impact of decentralisation on employment, which is variable to the economic situation and governance policy and reflects the level of welfare of the population.

It was determined that the decentralisation reform did not have a positive effect on the public administration efficiency and the local government efficiency in the studied countries, except Bulgaria. There is a negative correlation between the local self-government efficiency and the employment rate, except in Slovenia and Ukraine, where there is a weak correlation. Regarding the impact of local governance on unemployment, the negative impact is recorded in Ukraine, Romania and Slovenia.

Evidence of the negative impact of decentralisation reform on employment is the analysis of data from Poland, which has a consistently high level of local government efficiency, the most negative correlation with employment and the largest correlation with unemployment during

2005-2017, indicating ineffective policies of public and local government regarding the employment of citizens. At the same time, the study showed that in Ukraine, which has recently launched the decentralisation reform (since 2014), the policy of providing the population with jobs is more effective.

However, the results of administrative reforms are ambiguous, as their effectiveness is influenced by various factors, such as historical, geographical, economic.

The prospect of further research is to cover the organisational and economic aspects of the implementation of administrative reforms and their impact on sustainable development.

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The role of the constitutional complaint in the legislative process: Comparative legal aspect

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Abstract

The article deals with the role of constitutional complaint in the system of quality assurance of the state legislation, for protection of the rights and freedoms. Constitutional complaints, as well as their optimal models, require detailed research. Comparative analysis and survey are the main methods. The subject of a constitutional complaint in the model proposed by the authors may be laws or their individual provisions, regulations of heads of state, government, other statutes and regulations, individual administrative acts, judgements in specific cases. Citizens, foreigners, stateless persons, and legal entities are subjects who have the right to file a constitutional complaint. The authors attribute the following conditions of admissibility of a constitutional complaint: the presence and proof of violation of his/its constitutional rights and freedoms, the use of all other remedies to protect violated rights and freedoms, compliance with deadlines for filing a constitutional complaint in some countries, and payment of state duty. The model proposed by the authors is, however, universal, and further needs to be detailed for countries of interest.

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El papel de la denuncia constitucional en el proceso legislativo: aspecto jurídico comparado

Resumen

El artículo estudia el papel de la denuncia constitucional en el sistema de aseguramiento de la calidad de la legislación estatal, para la protección de los derechos y libertades. Las quejas constitucionales, así como sus modelos óptimos, requieren una investigación detallada. El análisis comparativo y la encuesta son los métodos principales de esta investigación. El objeto de una denuncia constitucional en el modelo propuesto por los autores pueden ser leyes o sus disposiciones individuales, reglamentos de jefes de estado, de gobierno, otros estatutos y reglamentos, actos administrativos individuales, sentencias en casos específicos. Los ciudadanos, los extranjeros, los apátridas y las personas jurídicas son sujetos que tienen derecho a presentar una denuncia constitucional. A modo de conclusión los autores atribuyen las siguientes condiciones de admisibilidad de una denuncia constitucional: la presencia y prueba de la violación de sus derechos y libertades constitucionales, el uso de todos los demás recursos para proteger los derechos y libertades violados, el cumplimiento de los plazos para la presentación de una denuncia constitucional en algunos países y pago de impuestos estatales. Sin embargo, el modelo propuesto por los autores es universal y debe detallarse más para los países de interés.

Palabras clave: denuncia constitucional; justicia constitucional; proceso constitucional; sistema legislativo; tribunal constitucional.

Introduction

Respect for human rights is the foundation of a democratic society. The institution of the constitutional complaint as one of the most important means of protection of human rights and freedoms is becoming increasingly important. Sinclair (2015: 215) rightly notes that “the existence of such a procedure largely determines the purpose of the Constitutional Court, while its absence significantly devalues constitutional justice”. The idea exists in one form or another in many states in which there is a specialized judicial review of constitutionality. In analysing the types of constitutional

complaint in the European Commission for Democracy through Law Report of January 27, 2011, which summarizes the international experience of direct access to constitutional justice, complaints of abstract and concrete review were distinguished.

The first group consists of models that determine the exercise of abstract review by the constitutional justice. Abstract review is a form of control not related to a specific case. *Actio popularis* provides for the possibility of a person to file a constitutional complaint on the constitutionality of a legislative act after its official promulgation in the absence of individual interest in the case, quasi *actio popularis* and individual proposal.

According to Petriv (2020), the second group – models of direct access to constitutional justice – are complaints, which determine the specific constitutional review associated with the consideration of a particular case – "individual complaints". In contrast to other forms of judicial protection of human rights, the specifics of the institution of constitutional complaint is manifested in the fact that the subject of appeal may be a statute or regulation, including the law, not just an individual act of law enforcement. Moreover, the constitutional review exercised in the litigation under citizens' complaints is to verify the compliance of the legal act with the Basic Law of the state, which, as Kysela (2014) notes is characterized by stability and forms the basis of national law, which allows the applicant of a constitutional complaint to challenge, among other things, (and mainly) statutes and regulations up to the level of law, relying more on the principles of law and being less dependent on the literal interpretation of the legal norm.

Concrete constitutional review involves a model of a partial constitutional complaint, which can appeal only statutes and regulations, and a model of a full complaint, which provides for the possibility of appealing statutes and regulations, as well as law enforcement acts. Aydın *Çakır* and *Şekercioğlu* (2016) distinguish two types of constitutional complaints: individual constitutional complaint (for example, in Slovakia, Slovenia). It is directly aimed at verifying the constitutionality of law enforcement acts of public authorities and indirectly – to ensure the constitutionality of law enforcement practice; mixed complaint. This type of constitutional complaint combines the features of a "public complaint" aimed at the exercise of abstract constitutional review, and "individual complaint" – in order to protect the rights of a particular person (such an institution of constitutional complaint exists in Poland, Russia, Czech Republic).

Let us consider the most popular models of individual constitutional complaints. 1. *Actio popularis*. In Roman law, *actio popularis* was seen as the person's activity in the interests of society. For example, *actio de positis et suspensis* could be brought by any citizen against the owner of a house with any object that could cause harm to third parties; there are cases when

actio popularis was used in the case of burial of the deceased in someone else's grave. In the legal literature, this action is called a civil lawsuit "in defence of everyone" (Inshyn *et al.*, 2018).

2. *Quasi actio popularis* (need to prove a legitimate interest). The institution of *quasi actio popularis* occupies an intermediate place between abstract *actio popularis* and normative constitutional complaint (Albert *et al.*, 2018). The procedure for filing *quasi actio popularis* requires proof of the applicant's specific legitimate interest in the application of the general norm. The difference from a normative constitutional complaint is the fact that the applicant does not necessarily have to be harmed.

3. Normative constitutional complaint. Any person has the right to file a complaint of violation of his basic subjective rights by an individual act adopted on the basis of a normative act. Normative constitutional complaint can be: a) full – in this case, each person can apply to the constitutional court to determine the constitutionality of any legal act adopted against him provided exhaustion of other possibilities to protect his rights (Ukraine, Germany, France); b) partial – a characteristic feature of this type of complaint is the limited range of objects of the constitutional complaint. This institution operates in Poland, the Russian Federation, Latvia, Armenia and some other countries (Aydın Çakır and Şekercioğlu, 2016).

Our research is based on three hypotheses:

Hypothesis 1. Full normative complaint provides a higher level of protection of the rights and freedoms of citizens compared to a partial one. To confirm the provisions of this hypothesis, we compared statistics on the constitutional complaint procedure in post-Soviet countries (Ukraine), as well as Poland, where the institution of constitutional complaint is only developing, and countries with a high level of democratic constitutional institutions (Germany), where the possibility of filing a constitutional complaint has been provided at the legislative level since 1951.

Hypothesis 2. The level of satisfaction of constitutional complaints of citizens is much higher in developed democracies with established traditions of constitutionalism. To confirm the provisions of this hypothesis, we conducted a comparative analysis of the legislation governing the procedure for handling constitutional complaints.

Hypothesis 3. The high level of satisfaction of constitutional complaints contributes to improving the quality of the state legislation system. To confirm the hypothesis, we conducted a social online survey of citizens aged 25 to 65 – practicing lawyers, political scientists, and parliamentarians from the studied countries.

The purpose of the research is a comparative analysis of the legal regulation of constitutional complaints in Poland, Germany, and Ukraine, aimed at identifying problems related to the choice of constitutional complaint model, and justifying possible solutions, taking into account the experience of forming and developing the constitutional complaint as the most important element of the human rights mechanism of these states.

The purpose of the study provided for the following objectives:

- defining the concept and structure of an effective model of constitutional complaint, which will help improve the quality of national legislation.
- identification of specific features of judicial proceedings on constitutional complaints in comparison with other forms of judicial protection of human rights.
- comparative legal analysis of the model of the constitutional complaint in accordance with the legislation of the studied states.
- analysis of different options for determining the range of entities authorized to file a constitutional complaint, and consideration of related issues of law enforcement activities.

1. Literature Review

We base our research on the belief that it is impossible to build a democratic society without a proper constitutional protection mechanism. In the substantive sense, a constitutional complaint is considered by scholars (Kosař and Vyhnánek, 2020) as a direct appeal of a private law entity to a constitutional review body with a requirement to verify the constitutionality of a legal act. According to Halmai (2018), a private law entity can be an individual and a legal entity. In some cases, local self-governments can also act as the subject of a constitutional complaint, but such cases are quite rare. Most scientific research, however, study appeals of individuals.

As a rule, the subject of a constitutional complaint is statutes and regulations of higher legal force after the Basic Law of the state. As Zupančič (2020) rightly noted, the process of development of constitutional review poses a number of common problems to the constitutional review bodies of young democracies, which requires mutual exchange of experience in this field. Garoupa (2020) emphasizes that all states to some extent follow a unique, self-determined way of building constitutional justice in general and the institution of constitutional complaint in particular. This is manifested primarily in the various models of organization of constitutional review in

the states and the various models of constitutional complaint incorporated into national law (Navarrete and Castillo-Ortiz, 2020).

In these conditions, the comparative legal study of the institution of constitutional complaint becomes relevant, which allows exchanging experience in solving general problems of constitutional development (Bentsen *et al*., 2019). Given the growing importance of human rights protection, the tendency to exercise constitutional review of individual administrative acts and court judgments on the basis of individual complaints becomes apparent, because human rights violations are often the result of unconstitutional individual acts, as Bielen *et al.* (2018) note.

Thus, the European Commission for Democracy through Law, in its opinion on constitutional justice, concludes that human rights violations often arise through individual acts based on constitutional regulations, and the extension of the subject of a constitutional appeal to any statutes and regulations.

2. Methods and Materials

2.1. Materials for Empirical Research

We selected three countries, Ukraine, Germany, and Poland, to conduct comparative research. Let us briefly dwell on the peculiarities of the legislation on the constitutional complaint of these countries.

In June 2016, the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Amendments to the Constitution of Ukraine (Regarding Justice)", which provides for a new constitutional mechanism for protecting the rights and freedoms of citizens through the introduction of the constitutional complaint institution. Amendments to the Constitution came into force on September 30, 2016. Developing the relevant constitutional provisions, the Verkhovna Rada of Ukraine adopted a new Law of Ukraine "On the Constitutional Court of Ukraine", which establishes the procedure for filing and handling constitutional complaints, requirements for the form and content of constitutional complaints, powers of boards, senate and Grand Chamber to handle constitutional complaints, requirements for disclosure of reporting information on constitutional complaints, subjects of constitutional complaints, procedure of preliminary examination of constitutional complaint by the Secretariat of the Constitutional Court of Ukraine, list of grounds for refusal to initiate constitutional proceedings under the constitutional complaint. Certain provisions of the Law "On the Constitutional Court of Ukraine" introduced a special adviser institution (for a period up to January 1, 2020) in order to provide expert legal assistance in constitutional proceedings under a constitutional complaint.

At the constitutional level, the procedure for the establishment and operation of the Constitutional Court of the Federal Republic of Germany is regulated in detail in the Basic Law (Article 93) and in Articles 90 and 94 the Law "On the Federal Constitutional Court of Germany" (Gesetz *über* das Bundesverfassungsgericht Deutschland). In Germany, there are two types of constitutional complaints that correspond to the federal system: 1) a constitutional complaint (Verfassungsbeschwerde) to the Land Constitutional Court (Verfassungsgericht) of a separate federal land, which is the basis for consideration of the violation of the constitution of this land; 2) a federal constitutional complaint filed with the Federal Constitutional Court (Bundesverfassungsgericht, FCC), which considers violations of the provisions of the Basic Law of Germany. The law governing the review by the Federal Constitutional Court of Germany is the Basic Law, or rather its provisions on the fundamental rights stipulated in Articles 1-19, and the rights equated to the fundamental (equivalent) stipulated in Articles 20.4, 33, 38, 101, 103 and 104. At the same time, human rights (for example, to human dignity) and the rights of a citizen (for example, to free movement across all territory of the country) do not coincide. According to this division, not only citizens of Germany have the right to appeal to the Federal Constitutional Court, but also foreign citizens — to the extent that they deny the act encroaching universal values (Kommers and Miller, 2012:12).

In the Republic of Poland, the procedure for handling constitutional complaints is established by the Constitution (Internetowy System Aktów Prawnych, 1997). In particular, Article 79 provides:

> Everyone whose constitutional rights or freedoms have been violated shall have the right to file a complaint to the Constitutional Court in a case on reviewing the constitutionality of a law or other normative act underlying a final resolution on his rights, freedoms or obligations provided for in the Constitution adopted by a court or state administration body.

The Law "On the Constitutional Tribunal" (Ustawa o Trybunale Konstytucyjnym) provides:

> Participants in the proceedings of the Tribunal are bodies or persons who has submitted an appeal or filed a complaint regarding a constitutional violation. A constitutional complaint (hereinafter referred to as "the complaint") may be filed after the exhaustion of all remedies provided within 3 months from the date of sending the legally effective court judgement, final decision or other final judicial act to the applicant. The court considers a complaint on the basis of the principles and in accordance with the procedural rules provided for the consideration of appeals to establish the conformity of laws and other normative acts with the Constitution (Mavčič, 2000, p. 315).

2.2. Proceeding of the Research

The comparative study was conducted for 39 weeks using the methods of conceptual analysis, sociological analysis, comparative legal and statistical research methods. The analysis of the results was conducted at each stage in accordance with the objectives.

The study was carried out in three stages (Figure 1).

The first stage of the research involved collection and processing information about the role of the constitutional complaint in the formation of a high-quality legal system of the studied countries through specific sociological methods (analysis of expert positions, online public opinion polls). The comparative legal method allowed studying international standards and foreign experience in protecting the rights and freedoms of citizens through the constitutional complaint.

In the second stage of the study, we selected countries with different degrees of development of democratic constitutional institutions and different forms of constitutional complaints provided by law and conducted a comparative analysis of the effectiveness of impact of the chosen model of constitutional complaint on the protection of legitimate rights and interests of citizens and the quality of legislation in general. The authors chose the following countries for the comparative analysis: Germany — a country with a high level of constitutionalism and significant experience in the application of a full normative constitutional complaint, Poland — a country where the tradition of a partial normative constitutional complaint is being developed, and Ukraine, which is a synthesis of the above features (although it is a young democracy but introduces the use of a full normative constitutional complaint).

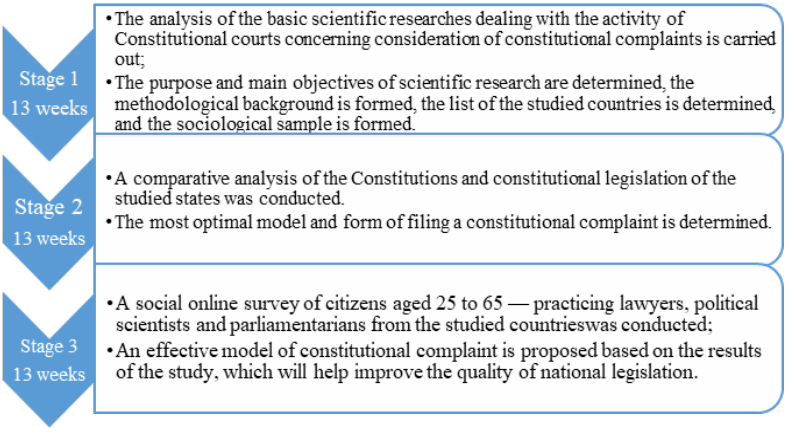

Figure 1: Stages of the study (Own creation)

2.3. Research Design

The empirical background of this study is a sociological experiment conducted by the author in the third stage of research. The experiment involves 4 stages: preparatory and organizational; realization; analysis of the data obtained; registration of research results.

At the preparatory stage, we selected 200 people aged 25 to 65 — practicing lawyers, political scientists, and parliamentarians from the studied countries. We prepared questionnaires containing 6 questions:

Do you think that the constitutional justice body of your country has a sufficient power to consider constitutional complaints?

Do you consider the process of reviewing a constitutional complaint in your country to be in line with international principles?

Have you ever had to file a constitutional complaint with the Constitutional Court?

Did your colleagues have to file a constitutional complaint with the Constitutional Court?

Do you think that the legislation regulating the procedure for considering constitutional complaints is declarative?

Do you follow the improvement of the quality of statutes and regulations after the introduction of the institution of constitutional complaint in your country?

We used STATA software to analyse the data obtained during the sociological experiment and to take into account the dynamics of the effectiveness of the constitutional complaint in the studied countries. Number of respondents N = 200, the sample size is 200 reporting units. Measurement error 7% (Table 1).

Table 1. Analysis of the effectiveness of the constitutional complaint (Own creation)

	Years			
Countries	2016	1017	2018	2019
The total number of constitutional complaints filed				
Ukraine	39	356	690	375
Germany	5,754	5,982	5,959	5,446

Poland	303	243	59	72
The number of rejected constitutional complaints				
Ukraine	32 (82.05%)	273(76.69)	426 (61.74%)	125 (33.33%)
Germany	5,729 (99.57%)	5,268 (88.06%)	5,740 (96.32%)	4,793 (88.01%)
Poland	283 (93.40%)	234 (96.30%)	29 (49.15%)	62 (86.11%)
The number of constitutional complaints on which a positive decision was adopted				
Ukraine	0 (0%)	83 (23.31%)	37 (5.36%)	7 (1.87%)
Germany	42 (0.73%)	28 (0.47%)	44 (0.74%)	26 (0.48%)
Poland	19 (6.27%)	9 (3.70%)	15 (25.42%).	10 (13.89%)

3. Results

Comparative legal analysis of the main models of constitutional complaint allows us to conclude that with the growing importance of human rights protection there is a clear tendency to exercise constitutional review over individual administrative acts and court judgements on the basis of full normative constitutional complaints, as "human rights violations are often the result of unconstitutional individual acts based on constitutional normative acts" (Mavčič, 2000: 32). The authors of this study support the institution of a full constitutional complaint not only because the remedies in the European Court of Human Rights and thriving to address human rights issues at the national level, taking into account overloaded Strasbourg court, are currently institutionally limited. A full normative constitutional complaint undoubtedly provides an opportunity for comprehensive individual access to constitutional justice and, consequently, for the full protection of individual rights. A person may appeal against any act of public authorities that directly currently violates his fundamental rights in a subsidiary manner. That is, a person may appeal a general act, if the latter is directly applicable in his case, or an individual act addressed to him. There are various grounds and forms of constitutional complaints. The main of the above is the "constitutional review", when a person "is given a remedy against the final decisions of ordinary courts, but not against individual administrative acts" (Mavčič, 2000:78). This type is

found in Poland, Bosnia and Herzegovina, Chile and Albania. In contrast, in Austria only individual administrative acts can be considered and not final decisions in civil or criminal cases. In case of consideration of a case on the basis of a full constitutional complaint, the Constitutional Court usually does not make a decision on the merits (Ukraine, Germany). It considers constitutional issues in the case only. Besides, the Court does not review compliance with the whole hierarchy of rules (Table 2). The main function of a full constitutional complaint is to protect human rights.

Table 2. Analysis of the constitutional complaint models

Characteristics of the Constitutional complaint	Germany	Poland	Ukraine
Name of the constitutional justice body	Federal Constitutional Court	Constitutional Tribunal	Constitutional Court of Ukraine
Formation procedure	Elected by the Bundestag and the Bundesrat	The Prime Minister approved by the Seimas	6 – selected by the President 6 - selected by the Parliament 6 - selected by the Congress of Judges
Form of constitutional complaint	full normative constitutional complaint	partial normative constitutional complaint	full normative constitutional complaint
Subjects of appeal	Citizens of the country and foreigners, legal entities	Citizens of the country	Citizens of the country and foreigners, legal entities, except for legal entities under public law
The subject of the constitutional complaint	Concerning a sentence in a criminal case based on a rule found to be inconsistent with the Basic Law or invalid under Article 78, or on an interpretation of a rule recognized by the Federal Constitutional Court to be not compliant with the Basic Law, it is allowed to resume proceedings in accordance with the provisions of the Criminal Procedure Code.	The decision of the Constitutional Tribunal on the inconsistency of a normative act of the Constitution, international treaty or law which was the basis for a legally valid court decision, final administrative decision or decision on other cases, is grounds for resumption	If non-compliance with the Constitution of Ukraine of other legal acts (their separate provisions), except for those in respect of which proceedings are opened and which influence decision-making or conclusion in the case, is revealed in the course of consideration of a case on a constitutional petition or constitutional appeal,

	2. This rule shall not apply to other final judgments which are based on a norm which has been declared invalid in accordance with Article 78, provided that provisions of Article 95(2) or special statutory provisions are applied. Such a decision shall not be enforced. Where enforcement is required under the provisions of the Code of Civil Procedure, the provisions of Article 767 shall apply accordingly. Code of Civil Procedure. Complaints about unjust enrichment are excluded.	of proceedings or for cancellation of administrative decision or other judgement in accordance with the principles and in the manner prescribed by the rules applicable in this process	the Constitutional Court of Ukraine declares such legal acts (their separate provisions) unconstitutional
Term	30 days from the moment when a person learns that his right has been violated	60 days from the moment when the person learned that his right was violated	120 days from the moment when the person learned that his right was violated
Conditions for accepting a constitutional complaint	if a lawsuit for violation is admissible, a constitutional complaint may be filed after all remedies have been exhausted	The complaint, in addition to the requirements for procedural documents, must indicate: 1) a law or other normative act which was the basis for the court or other public authority to make a final decision on the rights, freedoms or obligations provided for in the Constitution, and which is denied by the person who filed the complaint for confirmation of unconstitutionality	A constitutional complaint is considered admissible if it meets the following requirements: 1) all national remedies have been exhausted (provided a court decision adopted as an appellate review of judgement, which has entered into force, and in case of the possibility provided by law for a cassation appeal - a court decision rendered in a cassation review); 2) from the date of entry into force of the final court decision in which the law of Ukraine (its separate provisions) is applied, if no more than three months have elapsed.

We used STATA software to analyze the data obtained during the sociological experiment and take into account the dynamics of the effectiveness of the constitutional complaint in the studied countries (Table 3).

Table 3. The results of sociological surveys conducted by the author

Questions and answer options	Countries		
	Germany	Poland	Ukraine
Do you think that the constitutional justice body of your country has a sufficient power to consider constitutional complaints?			
Yes	75%	42%	31%
No	25%	58%	69%
Do you consider the process of reviewing a constitutional complaint in your country to be in line with international principles?			
Yes	57%	48%	34%
No	43%	52%	66%
Have you ever had to file a constitutional complaint with the Constitutional Court?			
Yes	14%		
No	86%	100%	100%
Did your colleagues have to file a constitutional complaint with the Constitutional Court?			
Yes	10%		
No	90%	100%	100%
Do you think that the legislation regulating the procedure for considering constitutional complaints is declarative?			
Yes	12%	75%	82%
No	88%	25%	18%
Do you follow the improvement of the quality of statutes and regulations after the introduction of the institution of constitutional complaint in your country?			
Yes	76%	33%	30%
No	24%	67%	70%

According to opinion polls, experts have not recognized the effectiveness of the constitutional complaint model of any country. However, the support of certain elements of the proposed models allows forming a single effective model of constitutional complaint that effectively affects the quality of the legal system of individual countries (Figure 2).

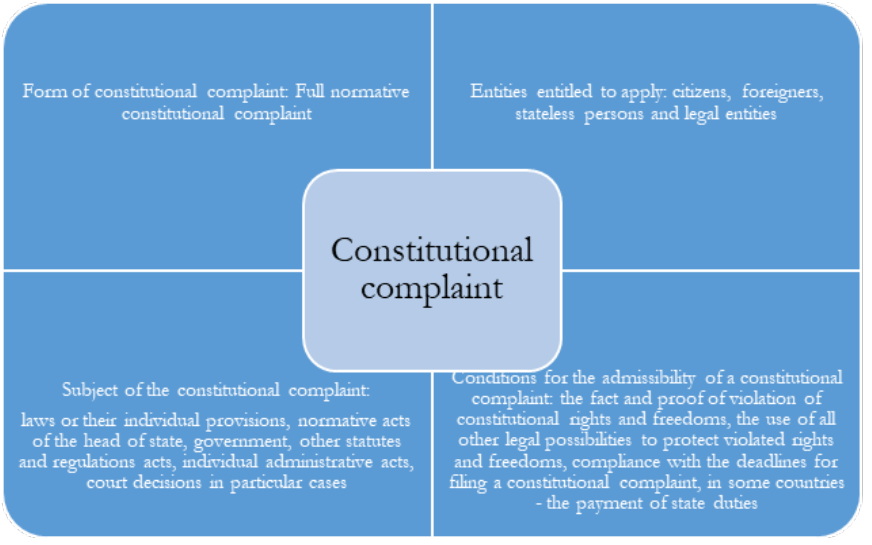

Figure 2: Constitutional complaint consideration model

4. Discussion

The debate on the role and importance of a constitutional complaint in improving the quality of legislation in international scientific circles has been going on for a long time, with many supporters and many critics (González-Ocantos, 2016). Bricker and Wondreys (2018) support the position that anyone can file a complaint against a normative act after its promulgation, without being obliged to prove that the relevant norm directly and currently affects his rights and freedoms. Lübbe-Wolff (2016) also defined the *actio popularis* as the main guarantee of comprehensive constitutional review, since anyone can apply to the Constitutional Court. In this case, the citizen simply fulfills his duty to protect the Constitution. It is not necessary that the applicant's fundamental rights be violated. According to the case of Goldstein v. Sec'y Commonwealth, *actio popularis* plays a minor role in Liechtenstein (where several conditions must be met for *actio popularis*), Malta, Peru and Chile, while it promotes law and order in Hungary and Georgia (Casetext, 2020; Pellegrina *et al.*, 2017). In South Africa, a party to justice may go to court in the public interest. However, Wendel *et al.* (2020) exclude *actio popularis* from the number of effective solutions, because abuse is inevitable in this case. In Croatia, the *actio popularis* has led to an overload of the Constitutional Court, a problem that the Venice Commission is also critical of.

An individual proposal is a type of abstract control initiated by a natural or legal person and leaves much room for judgment to the Constitutional Court (Reutter, 2020). In this case, a natural or legal person may apply to the Constitutional Court with a proposal to consider the constitutionality of a normative act, but it may not demand consideration of the case. He also notes that the dismissal of review must be motivated. A natural or legal person may file "a complaint against the violation of his basic subjective rights by an individual act adopted on the basis of a normative act. In this case, the initiative to exercise review is related to a specific case" (Meyer, 2020:483).

However, an "individual act applying a normative act cannot be challenged, and the review exercised by the Constitutional Court does not concern the application of a normative act" (Meyer, 2020:480). In support of its position Meyer (2020) notes that there is a regulatory complaint in Armenia, Belgium, Georgia, Hungary, Kyrgyzstan, Latvia, and Monaco, among others.

The restricted form has been introduced in Estonia, where some decisions of the Parliament and the President can be appealed. According to Article 96 of the Federal Constitutional Law of the Russian Federation "On the Constitutional Court", citizens "whose rights and freedoms are violated by the law applicable in a particular case" may apply directly to the Constitutional Court. An individual complaint may be filed directly with the Constitutional Court and referred to an administrative decision.

It should be noted that an individual complaint differs from an abstract review, as the applicant must prove that there is a certain probability that the law is applicable in his case. According to Pildes (2020), the effectiveness of a normative constitutional complaint as a means of protecting human rights depends more on the decisions of ordinary courts that apply the decisions of the Constitutional Court, especially when there is no mandatory legal requirement for ordinary courts to comply with the Constitutional Court. When ordinary courts do not take into account the legal positions expressed in the decisions of the Constitutional Court, and formally satisfy only their final part, the normative constitutional complaint becomes an end in itself and an ineffective means of protecting the constitutional rights of the person concerned. Decisions of the Constitutional Court are sources of constitutional law that give a final interpretation of constitutional provisions, and all public authorities, including ordinary courts, must abide by them (Sadurski, 2015).

In countries where there is a specialized Constitutional Court, an individual complaint to this Court is a logical choice as such a remedy, since the complaint is also, as a rule, subsidiary at the national level and is applied only after exhaustion of remedies in ordinary courts at the last possible stage at the national level, until there is an opportunity to appeal to the European Court of Human Rights.

It is obvious that some other types of individual access to the Constitutional Court covered in this study cannot be considered in this sense as an effective "domestic remedy": for example, *actio popularis* aims at the norm from an abstract point of view and usually cannot be an appropriate remedy against certain violations of human rights (Rezende Oliveira, 2020). "Normative" individual complaint is aimed only at the normative act and not at its application in a particular case. It is an appropriate national "filter", as in practice violation of human rights is often not the result of "technically correct" application of unconstitutional law. A large number of human rights violations thus do not fall within the scope of the normative complaint, and the effectiveness of this institution becomes insignificant.

Conclusions

Summing up the above, we note that the results of our sociological, empirical and comparative studies, as well as world experience show that it is impossible to systemically ensure the supremacy of the Constitution and ensure sustainable development of constitutionalism without the introduction of an effective institution of full (rather than partial) constitutional complaint. On the basis of analytical and statistical research, we can say that the most effective form of human rights protection is the consideration of a constitutional complaint directly in the Constitutional Court without intermediaries (courts of general jurisdiction, for example). Based on the results of the study, we propose an effective model of a constitutional complaint: a full normative constitutional complaint.

Subject of the constitutional complaint: laws or their separate provisions, normative acts of the head of state, government, other statutes and regulations, individual administrative acts, court decisions in particular cases. Subjects that have the right of appeal: citizens, foreigners, stateless persons, and legal entities. Conditions for the admissibility of a constitutional complaint: the fact and proof of violation of constitutional rights and freedoms, the use of all other legal possibilities to protect violated rights and freedoms, compliance with deadlines for filing a constitutional complaint in some countries, as well as payment of state duty.

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To Study the Formation and Increase of Social Capital in Islamic Republic of Iran

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Abstract

In the era of the Islamic Revolution and later the traditional networks and connections available in Iran that were generally religious, such as: mosques, tekyehs (place of Shia mourning for Imam Hussein), religious boards and seminaries, along with also religious values and norms in society a particular form of social capital was created. The main objective of the study is to analyze the formation and increase of social capital in the Islamic Republic of Iran. To achieve this objective, descriptive and documentary data collection methods are used. The collected materials are then categorized and used using the tab technique to obtain considered results. Based on the results obtained, it can be concluded that the existing traditional networks in Iran that continued to the farthest reaches of Iran, religious norms are mentioned as effective factors in the creation and increase of social capital and a factor of confidence-building between social and religious leaders.

Keywords: social capital; social norm; social network; collective identity; stability and security.

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Formación y aumento del capital social en la República Islámica de Irán

Resumen

En la era de la Revolución Islámica y posteriormente las redes y conexiones tradicionales disponibles en Irán que eran generalmente religiosas, como: mezquitas, tekyehs (lugar de luto chiíta para el Imam Hussein), juntas religiosas y seminarios, junto también a valores y normas religiosas en la sociedad se creó una forma particular de capital social. El objetivo principal del estudio es analizar la formación y el aumento del capital social en la República Islámica de Irán. Para alcanzar ese objetivo, se utilizan métodos descriptivos y de recopilación de datos documentales. A continuación, los materiales recopilados se categorizan y utilizan mediante la técnica de ficha para obtener resultados considerados. Con base en los resultados obtenidos, se puede concluir que las redes tradicionales existentes en Irán que continuaron hasta los lugares más lejanos de Irán, se mencionan las normas religiosas como factores efectivos en la creación y aumento del capital social y factor de creación de confianza entre líderes sociales y religiosos. Podría suponerse que la revolución islámica fue producto del capital social y ayudó a formar este capital. Este capital apareció en forma de dedicación, apoyo sentimental y colectivismo.

Palabras clave: capital social; norma social; red social; identidad colectiva; estabilidad y seguridad.

Introduction

In Islamic Revolution formation era and, a special form of social relationships has been formed among Iranian based on trust that simplified their social actions for achieving their goals and ideals in that restless era. By passing crises of early revolution, trustworthy values faded out in all different levels of society. Governments that have an appropriate social capital and sympathy and trust run among their different levels (Micro, Middle and Macro) are able to deal with problems. For this reason, sympathy, trust, and social consistency in society is one of current needs of Iran society.

Nonetheless, there are still several challenges and issues in our society which should be addressed urgently. Take, for instance, internarial challenges, including the globalization of politics, economy, culture, communications, environmental crises, the crisis of spirituality and morality, expansion of the World Trade Organization, and global energy crisis. And Internal challenges, such as young population issues, employment crisis

and inflation, investment crisis, oil-dependent economy, drugs and AIDS, migration of talents abroad and so forth.

This study aims at finding answers to following questions: what are effective factors on increasing social Capital in Iran? Existing traditional norms and networks in Iran are basis of social participation of Iranian, their coherent presence in defending the country. Leadership and its coherence role in different social levels and groups solidarity, existence of justice, stability, and security in society, providing a basis for individuals and groups participation and supporting social networks, investment in social relationships resources are effective factors on social capital.

1. Theoretical framework and research literature

Social Capital refers to symbolic and material resources that is obtained via social connections and is used for purposive actions (Chan, 2003). It is a meta-disciplinary concept in human sciences that is about the role of social forces in communities' development. This approach shows the importance of social connections and structures roles in economic, social, and political variables. Promoting social capital indicators causes human capital; material and economic capital interact with each other, grow, and become dynamic.

Social Capital was used in its modern meaning in 1916 in Hanifan's writings the school supervisor of Western Virginia in the U.S.A. Wolkak and Narayan differentiated four fundamental approaches about social capital: socialism approach, network approach, institutional approach, and synergistic approach.

In another classification related to social capital, two kinds of social capital have been separated: in-group social Capital or bonding social capital and outgroup social capital or bridging social capital. In-group social capital refers to social links that is based on similarity and intimacy. In this dimension of social capital is emphasized on personal resources such as family, neighborhood links and friendship links. In contrast, outgroup social capital refers to connections that rely on common interests instead of relying on personal familiarity and shared identity.

James Coleman for defining social capital used its role and function and presented a functional definition of social capital. Accordingly, social capital is not a single object, but it has different things that have two common features. All of them have a social structure and facilitate individual certain actions into structure, He believes that social capital in turn is made when relations among individuals is changed in a way that facilitates action (Coleman, 1988).

Fukuyama believes that social capital is a tangible sample of an informal norm that promotes collaboration between two or among several individuals. He believes that trust, networks, civil society that relate to social capital are production of it not its constituent elements. Fukuyama has recognized transaction expenditure as expenditure that are imposed on all organizations and cultures in the lack of social Capital (Fukuyama,1995).

Glen Loury in his criticism of income racial inequality neoclassic theories and their political consequences has reached to social capital concept. Loury argues that orthodox economic theories are individualistic, and they have only considered individual human capital and creating a field for competition based on individual skills (Loury, 1976).

Nun Lin by presenting social resources theory (1982) discussed that access to social resources and using them can lead to better economic-social conditions. From Lin's viewpoint in most of societies valuable resources are wealth, power and social basis thus individual social capital is measurable in terms of the amount or variety of people whom an individual has direct or indirect connection with them (Tavasoli and Mousavi, 1995).

2. Methodology

In this study for defining concepts, indicators, and variables and to compile research theoretical literature, related resources to topic, books and articles, journals, quarterlies and authentic internet websites in Persian, English and Arabic have been collected. Then collected materials have been categorized and have been used by fiche technique and finally data were analyzed to obtain considered results.

3. The Formation of Social Capital

3.1. Islamic Revolution

Most people who were members of mosques networks informally also participated in religious boards. Some people besides having membership in these two informal networks (mosques and religious boards) were members of formal network of Islamic schools. Wideness (and compaction) of networks on one side and membership in different networks on other side provided conditions for establishing stronger connection and simplified cooperation for a common collective action like participating in March and demonstration.

Social traditional networks have similar functions in most Islamic countries. For instance, at the same time with revolutions known as The

Arabic Spring (Arab Revolution) in Egypt, mosques were usually practical replacement for traditional political tools such as parties, organizations and social movements that were suppressed over the past decades and did not have any power to mobilize and organize demonstrators in face of sovereignty (Bardici, 2012).

In Islamic countries that do not have freedom of speech and their press, media and political parties do not have any effective roles in society, mosques would be able to have important roles as the most coherent social network independent of government (Esposito, 1999; Sadeghi Rad and Mousavi, 2020). In the Islamic Republic, isolated institutions and social traditions got into community again and reconstructed Iranian lost identity in a crucial and sensitive period in the Western modernity era. Iranian sought development in return to Islamic and Iranian root.

3.2. Increase of Social Capital in Islamic Republic of Iran

- **Leadership**

Imam Ali in Nahj al-Balagheh in explaining the role and position of leader in society said: "leader is like a firm rope that unifies pieces and connected them. If this rope is torn all pieces will scatter and each piece will go to one side and can never be collected" (Sayed Razi, 2005: 445). In another saying he pointed to pivotal ruler and said: "leader or ruler of a society is like a mill axis that individuals circulate around him regularly" (Fakhar *et al.,* 2016: 127).

Mir Mohammad Sadeghi utilizes Between Centrality concept for explaining active connector role in analyzing connectors' network. In this model, social capital is formed for pyramid head. Other connected heads benefit of this relation, too. Between Centrality concept shows that players who establish relation among structural holes in a network have more centrality. A player with high Between Centrality is an actor that has been able to connect two different parts of network. In normal situation this is not possible. That is, lack of actor causes lack of connection between two parts of network (Mir Mohammad Sadeghi, 2012).

Leader symbolic capital not only creates social capital for leader and causes confidence and trust to different strata of society but also this capital spreads in different social layers and it produces social capital for society and keeps different social groups together and ties their destiny to each other around leadership entity.

"Velayat-e Faghih[4]" is religious democracy in political system. It guarantees "political institutes continuity" and in social dimensions it

4 Shiites believe that after the prophet of Islam and Shiite imams, jurists as the deputies of the twelfth imam have the exclusive right to rule

guarantees “social network continuity” and is an important part of social Capital in Iran, it injects “certainty” “trust” and “hope” to social strata.

4. Investment in social relationships resources

Social resources theory is one of theories that is used for conceptualization of social capital (along with two other theories of weak tie’s theory and structural split). This theory roots in Lin and Coauthor studies in 1981, it does not consider current connections in network useful without resources inside it. Based on this theory only current resources inside network can be considered as capital. From Lin’s viewpoint, valuable resources in most societies are wealth, power, and social basis. Thus, individuals’ social capital is measurable according to the rate or variety of others’ features that an individual has direct or indirect connections with them (Tavasoli and Mousavi, 1995).

Briefly, according to this theory members of network have valuable resources that can help them to achieve their goals (Fafchamps, 2006). When without any expectations to mutual action we help others then mutual action will take place, that is, mutual action is a process that is created by social capital via helping others. When a person helps someone, a ring is added to endless chain. Whenever and wherever that person needs to be helped this investment will help him (Fafchamps, 2006). The amount of social capital owned by an individual depends on the size of connections network that can mobilize effectively.

Additionally, it depends on capital volume (economic, cultural, or symbolic) is owned by people who are in relationship with him. Someone who has wider relationships has more social capital. These relationships should have significant trust, intimacy, and depth. Leana and Pil (2006) justified that the value of individual connections or the amount of his social capital depends on the number of connections he establishes and the amount of relationships capital (cultural, social, and economic). Thus, investment in more communicational networks, paying attention to networks quality and the amount of capital (cultural, social, and economic) that these networks give a person or group are important in the kind of investment in social relationships and it can lead to social capital increase.

In the weakest and the most general formation, fundamental claim is that social capital is a resource that actors can use to achieve their goals (Leana and Pil, 2006). Individuals, organizations, or institutes should increase the quality and volume of their communicational networks and relationships for achieving and saving more volume of this capital. This capital has been generalized in all social levels not only in a special level (individual, group, society) it has been created and acts among these levels.

It is widely believed that social communications need work. Correlation inside networks is possible only because it increases material and symbolic benefits of members. Thus, preserving them needs collective or individual investment strategies to change accidental relations such as neighboring, kinship and cooperation relations to social relations that can be used directly in short term or long term. Accordingly, investment changes to an endless effort for collectivism (Leana and Pil, 2006).

From social capital viewpoint, success depends on social position of individuals in organization rather than their features. Thus, individual position in social relations network determines individual's social capital limit (Hajikarimi and Farajian, 2009).

When we can invest in our relations, we also would be able to invest in associations, groups and organizations that we depend on them. For instance, most of nonprofit institutes have an emergent need to financial, service, time, and help. To reinforce personal resources such as voluntary participation in an event or serving in a committee are considered an investment in our social Capital (Fafchamps, 2006).

For cooperating among different micro, middle and macro levels in society, being a sense of trust is necessary. The enemy of social coherent is something that John Platt calls it social traps. To achieve to goals is subject to cooperation of all people. Thus, in situations that people cannot trust others' cooperation lack of cooperation is considered as a kind of logical behavior. Effective cooperation for achieving common goals happens when people trust others 'cooperation (Rothstein, 2005). According to social trap logic even individuals who want to play fairly, continue their treacherous behavior because they believe that almost all other people betray (Rothstein, 2005).

Rothstein believes that social trust is not produced from bottom it is produced from above. More precisely there is a special kind of political institutions that produce trust. Governmental institutional and policies that produce political, legal, and social equality and have been formed based on justice, honesty and impartiality produce trust (Rothstein, 2005). The existence of trustworthy public political institutions produces social capital. Conversely, the existence of discriminatory or corrupt political institutions causes social capital erosion in society (Rothstein, 2005).

Promoting social capital is time consuming and long term. Promoting it is impossible or difficult in short term. Intervention policies in social capital should be stable that is, conditions and tools of its performance should be considered in wider time interval. Social capital resources have been distributed unfairly and unevenly and individual communicational networks and social groups do not have the same power and quality. Government intervention for eliminating these inequalities by approving

appropriate rules for simplifying the poor access to social capital resources and no hoarding by influential groups is very vital.

There are different ways to increase social capital. The first strategy is to invest in micro level. In this strategy development projects are made by social networks, exchange equipment, norms, traditional authority systems, kinship structures, local systems values, and beliefs. Another strategy is to invest in middle level units of organization such as villages, towns, and cities and in organization units that act inside these space units. The third strategy is to invest in macro level. This kind of investment is expensive and more comprehensive that it can be implemented. Thus, investment in this level is difficult despite this fact that it can have wide effects on economic development. Thus, more practical strategy is to invest in special organizational units inside economic, political, and lawful systems (Serageldin and Dasgupta, 2001).

For increasing social capital, it should be tried to reinforce social relations. In addition, an appropriate environment for individuals' social activities and movements and social groups should be developed. Government should be aware not to harm individual social capital savings unless they use their social capital for achieving their misconduct goals (Leana and Pil, 2006). Destruction of social Capital is simpler than its renewal so a cost of repairing should be considered for social capital that is usually in form of time. Time is main cost of formation and reinforcement of social Capital (Bueno *et al.,* 2004).

5. The effect of stability and security on social capital

Lack of security in society causes individual leave public domain and continue their lives and activities in fear and isolation. Feeling of security causes individual not to be concern about interaction with others in social environment and peace will flow in society and will lead to train social healthy characters who have collectivism spirit.

Whether individual or collective, social capital is formed and accumulated during time. Accumulation such capital needs to be sure of future, trust is a kind of investment in relationships among people based on expectations and time.

Crises sometimes promote social coherence and make society members turn to collective energies. They sometimes have a privative effect on social trust level in mentioned society and dominates distrust atmosphere on society. Thus, crises, social and political conditions of country can also have effect on increasing or decreasing social trust level.

Stability of political, social, and economic structures is one another factor of increasing social capital in society. Breakdown of social relations or social organization can be very devastating for social capital. It does not mean for creating trust society should be static. Changes also have comparability with trust. But on the condition that social changes happen regular, gradually and in a certain and coordinated route. Ambiguous future causes security loss and makes long term planning impossible because long-term investment needs a safe and stable environment and insecurity wastes capital.

Some studies emphasize on social capital role in increasing social stability and security. Social Capital is basis of cooperation, trust, and active participation in social life, and it is formed in the context of social mutual relationships can originate from feeling of security and peace (Lindström *et al.,* 2003). Political instability is in direct relation with the amount of social capital in political system. For this reason, Fine talks about the necessity to pay attention to social capital. He claims that without understanding and measuring social capital, we cannot reach an appropriate model for managing society (Fine, 2001). With this approach, it is determined that social capital can be influential in instability discussion on several ways (Holladay, 2009).

Society that does not have security, mental and physical existence of its members will be in danger, all current capital will be lost, what happened for Iranian in borders during imposed war[5]. An unwanted and imposed war that followed by internal coherence in Iran but from another angle it destroyed stability and security in some regions and consequently it destroyed social capital. To provide security for citizens for voluntary presence in social institution is one of state inherent duties in modern societies.

Requirements for political security, political freedom and institutional requirements should be reinforced for motivation actors for productive activities. So that networking among productive activities reinforced in next stages because security is prerequisite for relations networks formation. To encourage and reinforce civil institutions formation citizen security for voluntary presence in social institutions, avoiding taking responsibility of social, cultural, and economic different parts depend on the existence of stability and security (De Carolis and Saparito, 2006).

6. Justice

We encounter deep inequalities in the field of political power, social basis and having economic resources. Social justice means reducing these

5 The war between Iran and Iraq which lasted from 1980 to 1988.

inequalities so that this process leads to equalities (Pasipanodya, 2008). Andrew Heywood believes that social justice supports ethical distribution of profits and rewards in society that are analyzed according to wage, profit, health care, welfare benefits and the like (Heywood, 2015).

We do not intend to consider increasing the amount of social capital subject to observe justice in resources distribution, but it is believed that there are several factors that have role in creating and promoting social capital. Respect people rights is one of these factors. Social Capital has a close relation with people rights. Granting rights to people makes them satisfaction and trust level increase, finally social coherence will be increased and presence of people in important political, social, cultural, and economic domains will increase, it provides more people participation in national plans.

Government can increase trust among citizens by creating equal societies and providing context for opportunities equality, it helps better economic improvement. The relation between government procedures in distributing opportunities and increasing trust as the core of social capital theory is observable. Government powerful and efficient institutions (such as three forces of executive, legislative and judiciary and all related organizations and institutions) can produce and promote social capital by taking a set of measures. It seems spreading and developing authority of citizens and consequently active participation in society require government commitment and obligation (Slaughter, 2009).

Preventing the formation of Intergraph and exclusive relations networks in government structures and creating equal opportunities for all groups to take advantage of facilities and present potential and actual abilities is necessary (Newton, 1997). Favorable institutional conditions for the formation of social capital should have features that guarantee equal opportunities for actors to use stable participation and collective interest produce (Hawe and Shiell, 2000). Suppose people know that government is benevolent of all citizens and does not take measures in favor of a certain group and knows all positive or negative outputs and consequences. In that case, it will help to improve public trust in society (Evans, 1996).

By presenting different approaches about trust, Trifunovic suggest different variables as effective factors on trust. Among suggested factors in their study, there is a meaningful relationship between ethical values and feeling. Their study showed that social trust would be increased by increasing ethical values and justice for respondents (Trifunovic *et al.,* 2010).

Sociologists believe that public goals such as democracy, social security and social justice should be improved for promoting outcrop social capital so that, individuals would be able to trust each other more (Papagapitos

and Riley, 2009). For improving social trust and moving toward justice, vertical links among groups should be decreased and horizontal links would be increased. In other words, having stable deep and rich networks of relations, self-confidence and trust would be simplified (Kajbaf and Rahimi, 2011).

7. To promote and support social networks

In the valuable book's introduction, "social capital," the social capital concept is comprehensively and briefly stated: the basis of the social capital theory is obvious. Its central theorem can be summarized in a phrase: the importance of relationships. People can make effort to obtain things that cannot achieve them by their own by communicating with others and maintaining it. People are connected to each other via a set of networks, they tend to join in common values with other members. Whereas these networks compose a resource they can be considered as maker of capital. When reserving capital is useful it can be useful in other fields. Generally, when you know more people and have more common perspectives you can earn more social Capital (Leana and Pil, 2006).

Each individual has a social network. This network can include different kinds of relations such as friendship or emotional links, neighboring or spatial proximity in office, relatives' relations...every relation has implications on whole social capital reserving of an individual. All tribes, nomads and rural assemblies and religious sects are based on common norms, these norms can be used for realization of common goals (Fafchamps, 2006). Some viewpoints about networks formation believe that people who have same intellectual line can make friend and then share common activities.

- **Common values 》 networks 》 common activities**

It is better to say networks are formed around common activities and places. This is a principle of focused organization of social network (Feld, 1981). In this case, physical proximity concentrated social networks. We make friends with those who we work with them not with those who are like us. We do not seek to find people to make friends, but we make friends with people who share a common physical environment (Fafchamps, 2006).

- **Proximity 》 networks 》 similar function and common information**

Physical architecture expresses a special kind of architecture that involves in creating social capital. Individual physical separation increases functional distances. Important thing in civil engineering in social capital is designing and making a special architecture of civil spaces that within them togetherness and physical connection of people and having collective

spirit is important such architecture has been in Iran traditional houses. Several families lived in a common house, families communicated daily and continuously, and they had intimacy. Religious places and shrines besides their religious function, were places to collect people and decrease negative individualism feeling and promote collective spirit. This function of physical environment has been considered by social capital ideologists.

Public places can provide neighboring, face to face communications and showing informal norms in neighborhoods, strengthen these relationships and increase social capital. Thus, appropriate civil designs can prevent many social harms by providing appropriate places for social communications, creating social feeling toward place, and promoting collective identity. Urban space with symbolic architecture elements and mass formation zone acts like a container of constituent's factors of social Capital (Brondizio *et al.,* 2009).

Generally, the number of social participation networks in each group, organization or society represents the rate of their social capital. Thus, the wider participation networks in a group, organization or society, the richer social Capital (Hooghe and Stolle, 2003). Successful group activity leads to promote trust networks.

By the advent of the internet, type and amount of change that is created in individual social capital means individual social capital cannot be measured only by measuring his real-world events, but his social capital is a collective of his real-world actions and virtual world actions. Virtual world offers many facilities to people and groups. Some of these facilities can increase individual social capital in real world and others decrease it (Vaezi, 2007; Ewing, 2009). The internet usage causes the lack of communication in family, friends' relationships but it can create a chance to interact with more people by joining in new networks. These networks have different economic, political, cultural, social, and communicational functions and decrease face to face interactions.

Electronic media are effective communicational tools that can connect isolated people to others. These media can help to create associations and enable face-to-face conversations (Fafchamps, 2006). The most important feature of internet in social capital issue is loss of body incarnation. Klotz organized his all criticism based on it. Objective and face-to-face relations are important factors in social capital formation. Non-incarnation, lack of certain norms that are respectful to everyone, lack of social coercion and strong organization are if the most important limitations of virtual communities in social Capital (Klotz, 2004). Uncertainty of individuals' identity in virtual social relations and fake identities destroys trust among members of virtual networks.

8. To provide participation field for all people in the community

To encourage and promote guild, professional and social institutions and to encourage to create and promote social institutions are structural solutions for increasing social participation. Individuals gain common identity in social institutions. It makes them spread group cooperation. Successful group activities lead to trust networks.

Interactions of social participation networks members are based on oral communications and other participation form when there are not any stutter or fear of telling the latent problem. Social participation networks are healthy. Understanding and communication principle should exist, and problems should be solved by strong reasoning and logic. Having social participation networks represents the rate of society social capital. The wider participation networks, the richer social capital in society. But social network expansion is not criteria of social capital richness and its usefulness. Participation should be consciously and for social legal goals. (Leana and Pil, 2006).

Governments that encourage people to present in social activities and devolve most of society affairs to social groups provide individual participation and improve cooperation among different social groups. In contrast, centered governments dominate on institutions and domains presence of state is felt in all cases. It decreases social participation and consequently social capital would be decreased. Having favorable conditions for different social groups' activities leads to more participation. Positive social development is obtained when social coherence is reinforced, and society would be less vulnerable against social breakdown (Galtung, 1996).

When social and mental effects of participation are internalized in society, social capital is formed. Social Capital has several fundamental functions: it improves society ability to present government function. It increases possibility of action and mutual cooperation. It simplifies relations between citizens and government. It decreases information disadvantages and increases information effectiveness. It increases informal society. It decreases controlling costs and improves self-control force. It improves quality of decisions. Government monitoring is decreased consequently controlling costs are decreased. Social Capital affects political and social participation, hope, exhilaration, and social correlation.

Society should be convinced that has power to influence political, economic, and social decisions. Thus, decreasing participation costs, promoting and encourage social groups to participate by granting authority and submitting social duties to them and sharing power with them will increase social participation and social trust.

Conclusion

At first social capital formation during two periods of Islamic revolution and the sacred defense was studied. Existing traditional networks in Iran that continued to the farthest parts of Iran, religious norms are mentioned as effective factors in creating and increasing social capital and trust creation factor between society and religious leaders.

The sacred defense was formed in line with revolution. Iran society faced an enemy that wanted to destroy new values of society. Correlation process, social coherence and deep changes happened in the fronts. It almost covered all society. It could fade away religious and ethnic gaps that were forming. It put the nation in a line. Warriors' sacrifices in the fronts were beyond usual level of social capital theories.

Imam had a determining and coherent role in both eras of revolution and sacred defense. All ethnic, religious and social groups trusted him completely and obeyed him in different social-political scenes. Imam excluded Islamic thoughts, religion and society from historical isolation. Imam Khomeini organized social capital and coherent and strong communicational networks by connecting all social groups around velayat-e faghih and created social coherence. Leader considers as a symbolic capital, sign and axis of society, hearts connectors. Society can be a coherent and united unit in the shadow of leadership that trust is in all its parts.

Religion as a part of Iran society identity has a determining role in creating and increasing social capital. Preserving society religious identity leads to social coherence and sympathy. National identity forms another dimension of Iran collective identity that includes language, history, customs, and national celebrations.

Investment on more communicational networks and paying attention to networks quality and the amount of capital (cultural social economic) is important in type of investment in social relations and it can lead to social capital increase. To preserve this capital needs individual or collective investment strategies having a sense of trust among micro, middle and macro levels of society is prerequisite of cooperation among these levels. Social Capital because of its nature needs a stable and safe environment for growing and improving.

Social Capital has close relationship with justice and nation rights. Granting rights to nation increases trust and people satisfaction level and finally increases union and social coherence and provides situations for people presence in important political, social, cultural, and economic scenes and more participation in national programs. There is a clear relation between government procedures in distributing opportunities and increasing trust as the heart of social capital theory.

Encouraging to create and promote social, professional institutions is one of structural solutions for increasing social capital. Successful group activity leads to improve trust networks. Individual social capital is a set of actions in real and virtual worlds. Most of researchers refer to the role of virtual networks in increasing social capital. Having a positive look to this phenomenon and providing conditions for spreading it can lead to social coherence.

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The ecological component of agrotourism development under the COVID-19 pandemic

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Abstract

The study was conducted to identify the environmental component in the development of agrotourism and its impact on the psychological state of society in the COVID-19 pandemic. The experience of European countries shows the environmental, economic, and social benefits of agrotourism. The methodological basis of the study is the general scientific methods of cognition and social processes (analysis, synthesis, generalization, classification) together with sociological methods of obtaining empirical data. The National Tourism Organization of Ukraine has declared 2020 as the year of green rural tourism, an important component from which agrotourism arises. It is concluded that, la peculiarity of the development of agrotourism in Ukraine at the current stage is the acquisition of innovative forms of organization according to the growing needs of consumers, the efficient use of the natural, ecological, socioeconomic, and historical-cultural potential of the territory and the achievement of the required level of profitability. The situation of crisis and instability is accompanied by the presence of uncertainty associated with the COVID-19 pandemic; the need to form the concept of tourism development 4.0; introduction of ICT and development of innovative technologies in agrotourism in rural areas; training of professionals in the field of agrotourism.

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El componente ecológico del desarrollo del agroturismo bajo la pandemia de COVID-19

Resumen

El estudio se realizó para identificar el componente ambiental en el desarrollo del agroturismo y su impacto en el estado psicológico de la sociedad en la pandemia COVID-19. La experiencia de los países europeos muestra los beneficios ambientales, económicos y sociales del agroturismo. La base metodológica del estudio son los métodos científicos generales de cognición y procesos sociales (análisis, síntesis, generalización, clasificación) junto a métodos sociológicos de obtención de datos empíricos. La Organización Nacional de Turismo de Ucrania ha declarado 2020 como el año del turismo rural verde, un componente importante del cual surge el agroturismo. Se concluye que, la peculiaridad del desarrollo del agroturismo en Ucrania en la etapa actual es la adquisición de formas innovadoras de organización de acuerdo con las crecientes necesidades de los consumidores, el uso eficiente del potencial natural, ecológico, socioeconómico e histórico-cultural del territorio y el logro del nivel requerido de rentabilidad. La situación de crisis e inestabilidad se acompaña de la presencia de incertidumbre asociada a la pandemia de COVID-19; la necesidad de formar el concepto de desarrollo turístico 4.0; introducción de TIC y desarrollo de tecnologías innovadoras en agroturismo en áreas rurales; formación de profesionales en el campo del agroturismo.

Palabras clave: ecología; turismo verde rural; comunidad sostenible; politicas de desarrollo; COVID -19.

Introduction

With the development of economic activity and agritourism sphere the role and importance of ecological assessment and environmental control, which can have a negative impact on the state of the natural environment and public health, is increasing. That is why the great importance is to create a system of ecologically-oriented monitoring and management of human and natural resources, where the tourists' needs will be satisfied and taken into account to the maximum extent and the existing natural and tourist potential of specific regions will be fully used, created economically

favorable conditions for the local population and minimize negative processes in natural ecosystems, caused by both tourist and economic activities.

An important means of environmental assessment and environmental control is an environmental audit, which in modern conditions is included in all procedures (Bukanov *et al.,* 2020). Because of the coronavirus pandemic, many countries, including Ukraine, were forced to close their borders for the first time in history. While now the world has emerged from the strict quarantine and is gradually beginning to open border crossings, Ukraine is advised to stay away from unnecessary travel and flights around the world. In such a reality, domestic tourism, including agrotourism, takes precedence among the recreation types. There is now a chance for farmers to provide a comfortable vacation for city dwellers, giving them the opportunity to spend their vacation within their area. Given this, agri-tourism can be a growth engine for the local economy. The positive impact of agrotourism in solving the socio-economic problems of rural areas lies in the expansion of rural employment not only in the production sector, but also in the service sector, in promoting the rural development, as well as stimulating the service sector development: transport, communication, trade, household services, recreation and entertainment and other establishments in rural areas.

1. Objectives

The main purpose of this study is to analyze the experience of agro-tourism development models in European countries, as there is no clear program for the agro-tourism development, its importance for the economy, especially the regional one, has not been formed and justified. Therefore, the features of domestic agro-tourism were revealed, the impact of agro-tourism on the environment was evaluated, we considered the prospects of agro-tourism development in conditions of coronavirus and post-coronavirus challenges justified the prospects of agro-tourism in Ukraine based on theoretical and analytical research. Methods - anthropological, axiological, phenomenological, ontological, systemic, structural-functional, phenomenological. Approaches - humanistic, cross-cultural, civilizational.

2.Materials and methods

The research methodology was based on the systematic approach and the dialectical method of cognition, monographic method, methods of analysis and synthesis. Synergetic approach, contributes to the analysis of the crisis moments COVID -19 and countries emerging from the crisis. The

lack of concerted policies in the tourism sphere within regional formats can be a barrier to achieving synergistic effects in the development of digital tourism economy and achieving digital well-being and digital comfort of the tourism industry of agritourism, agroculture, agribusiness. Nonlinear complexity methodology plays a significant role in the implementation of digital management thinking and digital worldview of agritourism as an environmental development factor of economically depressed regions under the COVID-19 pandemic.

3. Results and discussion

As the analysis showed, the tourism industry around the world suffers losses on a global scale as a result of measures to counteract the COVID-19 pandemic and the uncertainty of future developments: 96% of tourist destinations around the world have received restrictions. According to the different data in 2020. There was a 58-78% drop in international tourist revenues compared to last year. According to experts, the recovery of demand to the level of 2019 will last at least two years, while at the same time airlines will have to increase the travel cost by an average of 43-54%. Domestic tourism also suffered significant losses: the loss of the tourism industry in Ukraine is estimated at more than 1,500,000,000 dollars. The late start of the resort and recreational season, as a result of the introduction of restrictive measures had a cumulative effect that has affected both the leisure and travel industry, and related industries - the hotel and restaurant business, transport (passenger transport), retail, entertainment industry and cultural institutions. In addition to current and projected losses, the Ukrainian Carpathian tourism sector this year also suffered from low demand for ski holidays as a result of abnormally warm winter.

At the same time, the situation should be seen not only as a problem, but also as an opportunity to bring the tourism sector in Ukraine to a qualitatively new level, primarily through domestic tourism. On the other hand, the leading tourist countries of the Black Sea region (Romania, Bulgaria, Turkey) have made an emphasis in 2020 precisely on the domestic tourism development, not only calling on citizens to rest at domestic resorts, but also implementing incentive measures. This experience is certainly worthy of emulation, the more so that travel restrictions imposed by states to prevent the spread of COVID-19, the drop in incomes of citizens due to the economic crisis and recession have the potential to increase demand for holidays within Ukraine. And if we also take into account the need to minimize contacts in order to keep away from the disease and the possibility of rapid self-isolation in case of a threat, then the main driver of the preservation and revival of the industry is tourism in rural areas.

It is also worth taking into account that the outbreak of the COVID-19 coronavirus disease had a negative impact on people's psychological state and mental balance - research on the pandemic and quarantine psychological impact on human life is ongoing. Obviously, each personality has individual characteristics of reacting to crisis situations, which depend on both the level of socio-economic development and the personal maturity itself (Okoro *et al.*, 2020), (Durodié, 2020).

The results of a study by domestic scientists show a wide range of psychological consequences that the COVID-19 outbreak can lead to, including the appearance of new psychiatric symptoms in those who do not have mental illness and the deterioration of those who already suffer from such illnesses (Stepanov, 2018). An outbreak of coronavirus disease causes societal psychological reactions such as tension, anxiety and fear, loss of reference points and plans for the future, can also lead to post-traumatic stress disorder, depression, exacerbation of psychopathological symptoms and psychological problems. As a result of the pandemic, city dwellers have become isolated from nature and society through daily changes in living and working conditions. In their daily lives there is a growing psychological burden and the number of stressful situations.

Parks and squares cannot satisfy the need for relaxation with the opportunity to stay one-on-one with nature, especially since they have been closed due to the spread of the virus. That is why it is quite normal to want to get out of the city. The countryside attracts people in different ways: a special experience of life, sightseeing, buying unique local goods and organic products, immersion in pristine nature, recreation and just the peace and quiet that is so much missing in modern metropolitan areas. Therefore, agrotourism (as well as rural green tourism in general) is a way out of the situation, and because there is no need to cross the border, it is also materially more profitable (Musina *et al.,* 2012).

A characteristic feature of agro-tourism is its environmental friendliness, soft impact on the environment. That is why the terms «rural ecotourism», « Agro-ecotourism», «rural green tourism», «green tourism» are used. On the other hand, tourists are most attracted to nature and the possibility of life in it through the countryside and agricultural production. We have to admit that the development of agrotourism in our country is still quite spontaneous and to some extent spontaneous. Terminological uncertainty complicates the situation (agritourism, green tourism, rural, ecological tourism are often used as synonyms), then - and legal. Even government leaders and business managers who support this direction of tourist activity, sometimes differently understand these terms, giving them a different meaning. It is quite natural that such terminological and legal uncertainty impedes creation of full-fledged economic development strategy of this tourism type, restrains programs of support and assistance (Pinchuk, 2009).

In general, this situation hinders the development of tourism activities in rural areas. Without the purpose of this study to solve this problem, we clarify only that we understand agrotourism as a kind of rural green tourism (a generalized name for tourism in rural areas), which is part of green tourism (which also includes recreation in special recreational territories - in national parks, forest areas, etc.). As d.-Gr. ἀγρός is not only «village», but also «a field», «arable land», «agrotourism» should be understood as a kind of rural tourism with farming elements (see «farm tourism» in German and Spanish models - tab. 1) (Kravets, 2007)

Table 1. Models for the development of green tourism

French model	1) Various forms of classic rural green tourism, which varies depending on the closeness to the sea; 2) considerable attention is paid to the development of gastronomic and wine tourism; 3) Tourist accommodation forms are less about living on farms, tourists are accommodated in cottages.
German model	1) Accommodation and meals in farmhouses; 2) Rural green tourism is intertwined with farm and event tourism; 3) Working on the land is allowed.
Italian model	1) Rural green tourism combined with health restoration, learning about gastronomy and local products, sports; 2) accommodation of tourists in apartments; 3) Tent camps are widespread.
Czech model	1) Oriented to industrial regions and border regions with conservation areas; 2) is a budget recreation; 3) Accommodation in farmhouses with elements of authentic rural life.
Spanish model	1) Recreation in the countryside, on the farm is widespread; 2) familiarity with farming, gastronomy, caring for animals.
Polish model	1) is characterized by a clear distinction of «tourist» farms: for some it is the main and only business, for others it is an additional income; 2) accommodation facilities differ in cost and service quality.
Latvian model	1) Recreation with elements of traditions and customs on farms.

Source: own elaboration.

In general, green tourism in Ukraine appeared as a concept 15-20 years ago, but now to this direction more attention, because of COVID-19 According to the project «Green Tourism» («Green Tourism» -2020: sometimes - as an option for «quarantine» solitude. Of this year, this direction of tourism has become more popular than in the past, but people also consider this recreation option as self-isolation in nature. The owners of the estates tell us that there are significantly more calls, including from former clients, and in general most estates are doing better than last year. Traditionally, the greatest influx of visitors is on weekends. Among the consumer priorities - the opportunity to stay by the water, recreation space, bath houses, a list of «activities» - archery, horseback riding, fishing, master classes in traditional crafts (painting, embroidery, pottery), etc. The Union of Rural Green Tourism (Ukrainian hospitable mansions, 2021), created in Ukraine in 1996, conducts information work and in every way helps in its promotion to the tourist services market.

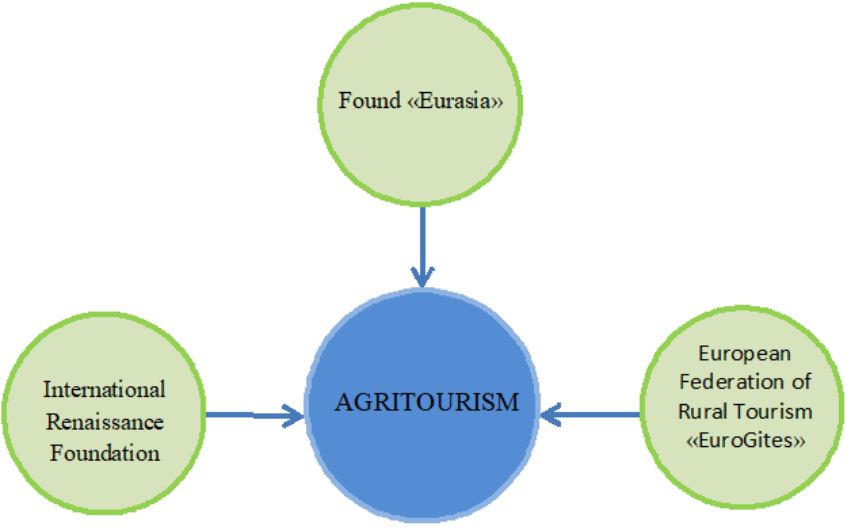
The most active regions for the development of agrotourism are Zakarpattya, Ivano-Frankivsk, Vinnitsa, Kiev, Lviv and Poltava. The main agro-tourism centers in Ukraine gravitate to the recreational areas: clean rivers, forests, sea coast, lakes and reservoirs, as well as the architectural complexes of towns and villages. The leader in the development of rural green tourism in general is traditionally the Carpathian region (Ivano-Frankivsk, Transcarpathian and Lviv region), but because of the high incidence of disease in the western regions, as well as inclement weather and flooding, Ukrainians discover other regions. Recently, the number of estates in Chernivtsi, Volyn, Kiev, Cherkasy and Vinnytsia regions is increasing. More and more popular is agritourism in Eastern Ukraine, especially in Zaporizhzhia, Kirovograd, Dnipropetrovsk and Donetsk regions. However, if the European market, according to estimates of the European Federation of Farmers and Rural Tourism (EuroGites), there are about 2 million beds, in Ukraine it is about 150 thousand potential participants of green tourism. Officially invite to stay in the countryside only 37 farmsteads in seven regions of the country. The Union of Rural Tourism Promotion believes that this figure for Ukraine is quite successful (Ministry of Ecology and Natural Resources)

In order to assess the environmental condition of the territory, it is necessary to conduct an environmental audit, which will help to assess the impact on certain land areas or a particular territory to identify priorities for their further development, development of programs, specific actions for environmental rehabilitation of contaminated areas, as well as to justify the ways of rational economic activity.

The result of ecological audit of agro-tourism objects is to find the ways of their ecological development. Such ways can include: minimization of anthropogenic impacts, waste utilization, the use of energy- and resource-

saving technologies and alternative energy sources, the introduction of water reuse and clean-up systems, reducing noise and chemical pollution from tourist transport, the development of new tourism types, which are aimed at a high environmental security.

Figure 1. Actions of the international projects and programs in Ukraine



Source: own elaboration.

Figure 1 shows the agrotourism support due to the action of international projects and programs. Today's realities of agrotourism is a side practice in rural areas and more often is an additional form of farming or private subsidiary farming activities. Note that in many European countries agrotourism also initially formed as an auxiliary sub-sector of agriculture and only over time began to turn into an independent and competitive service sector, acting today as the main activity of the rural population. Therefore, the extreme conditions of coronavirus infection spreading can be a prerequisite for the rapid development and establishment of agrotourism, which contributes to the restoration of the Ukrainian tourism sector as a whole. In general, the agrotourism development as a catalyst for economic development and rapid tourist routes recovery, the use of creative digital economy and digital management as factors of tourism business sustainable development. The territorial tourist potential covers the whole set of natural, ethno-cultural and socio-historical resources, as well as the

available economic and communication infrastructure of the territories, which can be a prerequisite for the development of agrotourism, influence the dynamics of tourism business development as a basis for sustainable development.

Quite original, in our opinion, within the framework of ecological development of agrotourism, is the proposal for tourists to plant trees or on a separate plot of land with the possibility of partial or complete care of them, with the consumer can be offered a lease agreement of a certain plot for an agreed period, at the end of which he could receive an agreed part of the harvest or products in ready (canned) form. This would allow the tourist to stay in the countryside for a long period of time, and for the owner of the farmstead to guarantee the demand for the tourist product. To increase the interest of tourists in the product of agritourism, it is possible to offer planting coniferous trees in the forest, forest plantations, which will increase the level of environmental awareness of tourists, improve the ecological condition of the area, reduce soil erosion, and for communities will be an opportunity to generate income from the sale of planting material.

This approach is widespread in many European countries. A special OECD project «Going Digital: Transformation for Growth and Prosperity» (2017) includes 7 vectors of digitalization 1. Increase without significant costs. 2. Customization with the needs of the consumer. 3. Speed and momentum challenges. 4. Intangible capital and new sources of value creation. 5. Transformation of space. 6. Empowerment. 7. Platforms and ecosystems of digitalization. Activities to shape the concept of sustainable tourism development goals in the EU and Ukraine: 1) the restoration of agrotourism tourism activity opens the prospect of transformation through innovation, digitalization, sustainability, partnerships, restoration of consumer confidence, mitigation of socio-economic impacts; 2) implementation of sustainable development goals for reducing inequalities between and within countries due to loss of tourism income;

3) Ensuring a more stable, inclusive, resource-efficient development of agritourism, ensuring women's employment and strengthening trust and partnerships in all tourism activities primarily ensuring inclusiveness and reducing inequalities; 4) increasing the competitive capacity of the tourism sector, promoting innovation and digitalization of the tourism ecosystem, promoting inclusive green tourism; 5) strengthening coordination and partnerships to transform tourism and achieve the Sustainable Goals 6) providing jobs directly to the agritourism sector as a result of the Covid-19 pandemic, developing the hotel and transport sector (air and sea travel crisis), cruise tourism sector, developing all types of green, rural agritourism; 6) protecting women, youth and creative industries workers most affected by the Covid-19 pandemic in rural areas; 8) forming a road map for making agritourism environmentally safe and inclusive.

Conclusion

On the basis of the study and analysis of agrotourism development models, the features of domestic agrotourism are revealed. Taking into account the results of the conceptual approaches analysis to the definition of agritourism as a significant component of rural green tourism and its characteristics, the paper proves that it is one of the most promising directions to bring domestic tourism out of crisis. Besides, agritourism is an effective tool to help the local population to leave the fields without leaving the village, because it provides commercial and employment opportunities for communities that face the growing problem of local livelihoods. In the absence of these rural business opportunities, migration to urban areas will continue to grow, which will further strain Ukrainian urban infrastructure and social services. The basic meanings of agrotourism ecologization lies in the preservation and restoration of natural areas that are vulnerable and environmentally unsustainable to negative impacts; prevention and elimination of potential and existing sources of negative impacts on the environment in the tourism and economic activities; coordinated planning of tourist activity with other economic activities; introduction of environmentally soft technologies in the tourism industry; To avoid negative impacts on the environment by evenly distributing tourists (in time and space) and the creation of alternative recreational areas.

The implementation of the proposed recommendations will promote mutually beneficial cooperation between the rural green tourism market actors in the region and local authorities, the preservation of the environment and the national natural parks' uniqueness and sustainable rural development. Environmental component of agrotourism development in the COVID-19 pandemic: focus on nature; people; sustainable and safe rural environment formation; balance of interests, development principles and opportunities; accessibility and profitability of services and rural services; integration, openness and interaction; continuous improvement of management quality; emphasis on economic efficiency; long-term solutions priority over short-term; application of creative digital technologies in rural areas.

The formation of the creative village space - human capital development through the development of agrotourism, which is based on improving digital literacy of the rural population, skills development of specialists in the field of information and communication creative technologies and creative thinking development. Rural tourism market is one of the largest and most dynamic markets in the world, based on the development of the ecological component of agrotourism. That is why it is necessary to diversify the creative digital technologies in the tourism business in rural areas, as tourism is a sufficiently stable and significant item for state economic income. The World Travel and Tourism Council (WTTC) predicts that in

2024 tourism revenues will be about 298,000,000, and the official analysts forecast that tourism revenues will grow by 3.3% in the next decade.

According to the World Travel and Tourism Council (WTTC), tourism in the EU will occupy 23% of the nation's leading industries. For further development of agrotourism, creative digital technologies in the tourism business should be updated and reformatted to be competitive even after COVID-19. For this purpose, it is necessary to: mitigate the socio-economic impact of the crisis on rural employment in the COVID-19 pandemic; support the development of domestic and regional agritourism; diversify the use of creative technologies in agritourism to improve competitiveness and its resource efficiency; strengthen coordination and partnerships to make agritourism a sustainable development factor; promote employment preservation in the agritourism sector as a result of the economic and social impacts of COVID-19; promote confidence building through protection and safety in all types of tourism activities; promote social partnership between the state, business and civil society.

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7. Calidad del resumen: el artículo debe poseer un resumen y suministrar palabras clave que puedan dar cuenta de una manera sintética

del contenido del mismo conforme a las indicaciones para los colaboradores.

8. Bibliografía y fuentes: deben ser suministradas con claridad. El evaluador tomará en cuenta su pertinencia, actualidad y coherencia con el tema desarrollado.

La evaluación de cada uno de esos criterios se hará en una escala que va desde excelente hasta deficiente. El árbitro concluirá con una Evaluación de acuerdo al instrumento: publicable, publicable con ligeras modificaciones, publicable con sustanciales modificaciones y no publicable. Los árbitros deberán explicar cuáles son las modificaciones sugeridas de una manera explícita y razonada cuando este fuera el caso. La revista no está obligada a explicar a los colaboradores las razones del rechazo de sus manuscritos, ni a suministrar copias de los arbitrajes dado el carácter confidencial que ellos poseen.

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