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de la Facultad de Ciencias Jurídicas y Políticas de la Universidad del Zulia
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Cuestiones Políticas

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Significados políticos y jurídicos del uso global de las criptomonedas

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Jorge J. Villasmil Espinoza *

Resumen

El uso global de los criptoactivos es una práctica generalizada en el año 2021 entre personas y empresas que están interesadas en participar en nuevas formas de negocios que, pudieran ser muy lucrativos en el mediano plazo, además de representar una nueva concepción monetaria de carácter digital que no está controlada por ningún banco central, ni emitida por ningún estado. El propósito de este breve ensayo es presentar el volumen 39, número 71 de Cuestiones Políticas, mediante el desarrollo de un conjunto de reflexiones sobre el alcance y significado de las criptomonedas en el mundo de hoy. Se concluye que, la sola idea de acuñar una moneda en formato digital del sujeto ficticio Satoshi Nakamoto creador del Bitcoins, resulta vanguardista para todas las personas que quieren realizar intercambios de valores sin ninguna mediación centralizada de instituciones financieras privadas o públicas, mediante una red anomia de acceso abierto conformada por sujetos libres e iguales, que puede dar al traste con el control monetario de las economías por parte de los gobiernos, al tiempo que crea alternativas para las monedas Fiat. Entre los aspectos negativos destacan el uso creciente de enérgica eléctrica que requieren las criptos para poder desarrollar sus operaciones.

Palabras clave: criptomonedas; criptoactivos; anarquismo digital; economía global; nueva política económica.

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Political and legal meanings of the global use of cryptocurrencies

Abstract

The global use of crypto assets is a widespread practice in 2021 among people and companies that are interested in participating in new forms of business that could be very lucrative in the medium term, in addition to representing a new monetary conception of a digital nature that is not controlled by any central bank, nor issued by any state. The purpose of this short essay is to present volume 39, number 71 of Political Issues, by developing a set of reflections on the scope and meaning of cryptocurrencies in today's world. It is concluded that, the mere idea of minting a currency in digital format of the fictitious subject Satoshi Nakamoto creator of Bitcoins, is avant-garde for all people who want to carry out exchanges of values without any centralized mediation of private or public financial institutions, through an open access anomie network made up of free and equal subjects, that can death rate the monetary control of economies by governments, while creating alternatives for Fiat currencies. Among the negative aspects are the growing use of energetic electricity that cryptos require to be able to develop their operations.

Keywords: cryptocurrencies; crypto assets; digital anarchism; global economy; new economic policy.

Finalizando el 2021 el uso de las criptomonedas es un fenómeno global entre personas y empresas que están interesadas en participar en nuevas formas de negocios, sin el control restrictivo de los gobiernos que normalmente hacen un uso político e ideológico de las economías en funcionar de beneficiar particulares intereses en detrimento de otro. Desde la emergencia del Bitcoins en 2008, han surgido cientos o quizás miles de criptoactivos con diferentes usos y valores, pero en líneas generales:

> Las criptomonedas son monedas digitales que se usan para el intercambio de bienes o servicios. Nacieron a partir de la crisis financiera en el año 2008, y se comenzaron a usar en transacciones por Internet.
>
> No obstante, en la actualidad no solo las empresas electrónicas las están aceptando como formas de pago, sino que algunas compañías de renombre también se sumaron debido a los beneficios que brindan (Telesur.net, 2021: s/p).

Este creciente interés por las criptomonedas también conocidas como criptoactivos es el que permite indagar científicamente desde los dominios de la ciencia política, cual es el significado político y jurídico de estas. Obviamente es difícil tratar de reflexionar sobre estas cuestiones en abstracto, esto es, sin analizar lo sucedido en ciertos contextos nacionales

específicos, pero, de cualquier modo, es posible efectuar algunas presiones al respecto con algún alcance internacional.

Conviene recordar que la capacidad para producir monedas validas como unidades de cambio en los mercados más allá del trueque, es, desde la antigüedad, un signo distintivo del poder del estado para intervenir en las realidades económicas de las sociedades sometidas a su autoridad. Incluso si se piensa en el estado como una estructura ficcional al servicio de ciertos sectores de poder, habría que reconocer de igual modo que el fenómeno monetario es un dispositivo de poder y control social de las diversas formas de gobierno históricamente existente.

Este este orden de ideas, más allá de ciertas experiencias particulares con algún alcance local o regional, el monopolio de producción de las monedas y la política monetaria de los estados en general, nunca había sido tan amenazada desde el surgimiento del Bitcoins, moneda digital que demuestra que en la práctica es posible estructurar mancomunadamente dinero legítimo con alcance global y alto valor en el mercado --de hecho para el momento que se escriben estas líneas, noviembre de 2021 su costo esta próximo a los 60.000 dólares americanos--, sin la regulación del estado, ni la intermediación de ninguna institución financiera publica o privada.

En consecuencia, el todo indica que el principal significado político de este fenómeno esta vinculado a la creación de espacios virtuales intersubjetivos menos regulados y mas libres que permiten a las personas ahorra e intercambiar bienes y servicios de forma autónoma, ante lo cual hay al menos dos posibles alternativas por parte de los gobiernos: por un lado, tratar de regular todos lo concerniente al uso, distribución e intercambio de los criptoactivos cosa sumamente difícil y que contraviene la filosofía anarco-libertaria de la mayoría de las criptos o, incluso, impedir las transacciones con las mismas como parece ser el caso de India, China y Rusia o; por el contrario, auspiciar su producción y reproducción en la economía como han hecho países como el Salvador o Brasil, con un resultado aún incierto en términos de bienestar social o incremento de la riqueza colectiva.

En los dominios jurídicos, todo indica que la mayoría de los estados nacionales tienen que adecuar sus cuerpos normativos al impacto de este fenómeno relativamente reciente, ante lo cual hay también al menos dos opciones claras: primero, avalar legalmente el uso y disfrute de las criptomonedas, aunque con algunas reservas y regulaciones en función del verdadero interés de la ciudadanía o; por el contrario, segundo, plegarse acríticamente a la agenda legislativa internacional que diseñen los estados y corporaciones hegemónicas para seguir perpetuando el dominio de ciertas divisas como el dólar o el euro en las economías de los países periféricos.

¿Cuál será el futuro de las criptomonedas? ¿se trata de un fenómeno irreversible que marca un antes y un después en la historia económica de la humanidad? Muy seguramente en las próximas décadas tendremos respuestas claras para este tipo de preguntas, no obstante, la sola idea de acuñar una moneda en formato digital del sujeto ficticio Satoshi Nakamoto creador del Bitcoins, resulta vanguardista para todas las personas que quieren realizar intercambios de valores sin ninguna mediación centralizada, mediante una red anomia de acceso abierto conformada por sujetos libres e iguales, que, llegado el caso, puede dar al traste con el control monetario de las economías por parte de los gobiernos, al tiempo que crea alternativas para el uso de las monedas Fiat. Sin embrago, no todo es bueno con la criptos, entre los aspectos negativos destacan el uso creciente de enérgica eléctrica que requieren las granjas de minería digital para garantizar la cadena de bloques que hacen posible las tracciones cotidianas con estos instrumentos de pago.

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Deuda pública en México: dinámica e implicaciones de política

DOI: https://doi.org/10.46398/cuestpol.3971.01

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Jorge Eduardo Salazar Castillo **
Saul Roberto Quispe Aruquipa ***

Resumen

El propósito de este trabajo es analizar los factores que han impulsado la deuda pública en México y sus consecuencias sobre la economía. La hipótesis planteada es que el incremente de la deuda se relaciona con factores tales como la discrecionalidad en el manejo de los recursos públicos, el aval de los recursos petroleros, el costo de los rescates financieros y el creciente gasto social ejercido. La pregunta de investigación fue: ¿Cómo ha evolucionado la deuda pública en el mediano y largo plazo, y qué consecuencias tiene? La metodología utilizada es cualitativa por cuanto analiza los hechos y los documentos, pero también cuantitativa por cuanto echa mano de un modelo de regresión en el cual se emplea una tasa de crecimiento de la variable en cuestión. Los datos proceden de instituciones como el Banco de México, el Banco Mundial, la Secretaría de Hacienda y Crédito Público (SHCP), así como World Population Review. El trabajo concluye destacando la necesidad de que los gobiernos adopten políticas responsables a fin de incidir en el crecimiento y el desarrollo económico, y no que las políticas de austeridad provoquen baja inversión y desempleo en el país.

Palabras clave: deuda pública; gasto público; Estado de Bienestar; política de gobierno; crecimiento económico.

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Public debt in Mexico: dynamics and policy implications

Abstract

The purpose of this paper is to analyze the factors that have driven the public debt in Mexico and its consequences on the economy. The hypothesis proposed is that the increase in debt is related to factors such as discretion in the management of public resources, the guarantee of oil resources, the cost of financial bailouts and the growing social spending exercised. The research question is: How has public debt evolved in the medium and long term, and what are the consequences? The methodology used is qualitative in that it analyzes the facts and documents, and the second is quantitative in that it uses a regression model in which a growth rate of the variable in question is used. The data come from institutions such as the Bank of Mexico, the World Bank, the Ministry of Finance and Public Credit (SHCP), as well as World Population Review. The paper concludes by highlighting the need for governments to adopt responsible policies in order to influence growth and economic development, and not that austerity policies cause low investment and unemployment in the country.

Key words: public debt; public spending; welfare state; government policy; economic growth.

Introducción

A lo largo de la existencia, las personas solucionan sus asuntos materiales a través de dos vías complementarias, a saber: 1) de los mercados y 2) de la política. En una condición ideal, la competencia en el mercado produce bienestar en las personas en vista de su interés en maximizar su beneficio. Por otra parte, al ser aquél un votante y contribuyente, espera recibir los mejores servicios posibles, toda vez que los partidos políticos compiten entre sí a fin de ofrecer lo mejor de los bienes públicos.

De acuerdo con Dornbusch *et al*., (2002), la deuda pública implica que el individuo se debe a sí mismo. En ese sentido, se precisa que la deuda no crezca más allá de lo que lo hace la economía. Sin embargo, las deudas tienden a crecer durante las guerras, en los periodos de desempleo —por los bajos ingresos y por las mayores transferencias y subsidios— y aun en épocas de elecciones. Por otro lado, las deudas tienden a disminuir y se contraen en tiempo de paz y cuando se incrementan la producción y las exportaciones.

No son pocos los ciudadanos que se plantean cuestiones fundamentales como: ¿por qué los gobernantes gastan sin control en la mayoría de los casos, aun cuando ello trae consecuencias adversas para la sociedad en su conjunto? ¿Por qué se exceden en el gasto aun cuando se tienen límites

establecidos? ¿Por qué no se informa a la ciudadanía sobre las implicaciones de los grandes proyectos de política pública? ¿Cómo hacer que los políticos y funcionarios paguen por sus errores y omisiones en la decisión y aplicación de políticas públicas?

El presente trabajo justifica su abordaje dado el bajo crecimiento económico de la mayoría de los países, incluido México, pues el mismo es menor al crecimiento de la deuda, lo cual ejerce una presión sobre las finanzas públicas fundamentalmente. El primer apartado corresponde a la revisión de la literatura. El segundo aborda la dimensión de la deuda y las implicaciones de política: sus antecedentes y el contexto internacional, así como el contexto de México y la deuda de sus entidades federativas. El tercero se refiere a los métodos y los resultados. El último plantea las conclusiones y las recomendaciones.

1. Revisión de la literatura

Según Parkin (2014), la deuda gubernamental es el monto total de dinero que un gobierno ha solicitado a préstamo y es igual a la suma de los déficits en que ha incurrido, menos la suma del superávit presupuestario del pasado. De acuerdo con Ayhan Kose *et al* (2020), durante el último medio siglo, las economías de mercados emergentes y en desarrollo han vivido episodios recurrentes de acumulación de deuda. Estos episodios nacionales han formado olas globales de deuda, acrecentando la vulnerabilidad de estos países, pues ello tiene consecuencias económicas y financieras dados los aumentos en los costos de refinanciar esas deudas.

El gobierno es un productor de bienes públicos, de modo que la salud, educación y demás van dirigidos al grueso de la sociedad. Por otro lado, las políticas de tipo industrial, comercial, agrícola, de comercio exterior y demás, se orientan a otros segmentos específicos de la sociedad (Samuelson y Nordahus, 2010). Sin embargo, si por algunas razones dichas políticas fallan, la sociedad en su conjunto acaba perdiendo a causa de los costos de oportunidad. En ese sentido, sí importan significativamente las decisiones de la calidad, pertinencia y eficiencia del gasto gubernamental. Los votos y el dinero de los contribuyentes sostienen financieramente a dichos gobiernos y constituyen su razón de ser. Están ahí, justo para el mejoramiento de las condiciones de vida material social.

De acuerdo con Krause (2014), cuando los funcionarios públicos aplican políticas, lo hacen para el conjunto de la sociedad. En este mismo sentido, deben destacarse los asociados a los incentivos e información que identifican a estos actores de la vida política. En el campo de acción pública deben señalarse tareas legitimas propias de los gobiernos, destacándose la producción de bienes públicos, regulación, seguridad, creación de

leyes, transferencia de recursos, etcétera. Los políticos y funcionarios tienen razones para conocer el impacto de sus decisiones con base en las posibilidades de ser electos, así como de su agenda de cara al futuro de su carrera partidaria. Sus decisiones, sean beneficiosas socialmente o no, entrañan costos normalmente no calculados, aunque estos se dispersan entre los agentes sociales y económicos.

En términos generales, la clase política y gubernamental se halla motivada por su agenda y la del grupo que representa. Para la misma, los votantes no siempre se encuentran del todo informados, o bien, son indiferentes respecto a los asuntos de la vida pública. Aunque en su plataforma política no lo expresan, suelen tener estrechos compromisos con intereses económicos y políticos creados. Por tanto, bien puede establecerse que el grado de intervención pública en la sociedad no es mínima ni enteramente circunstancial, sino más bien planeada. En buena parte de los países se asocia el trabajo político con intereses muy específicos, más que con respecto a sus representados.

Los principios de la ciencia económica, entre los cuales se encuentran la libertad de elegir, la lucha contra la concentración de la riqueza, la eficiencia asignativa, la primacía del interés público, entre otros, en los hechos suelen convertirse en retórica y se dejan de lado. En la literatura económica se señala la conveniencia del libre mercado, la competencia y el gobierno eficiente como socialmente beneficiosos. Sin embargo, no es difícil advertir que en muchos países se aprueben medidas proteccionistas o monopolistas, así como también gastos extraordinarios del gobierno con graves consecuencias.

En buena parte del mundo los gobiernos no se hacen responsables de sus errores de cálculo económico, ni tampoco pagan los costos sociales derivados de políticas dirigidas a beneficiar a funcionarios y a ciertos empresarios, aun cuando estas lesiones el interés público y sean costosas. Así, los costos de los fracasos se relacionan con la adopción de políticas tales como regulaciones excesivas o laxas, esquemas de privatizaciones, expropiaciones, acciones conducentes al déficit, rescates financieros, inflación, pérdida de competitividad de sectores, o inclusive, quiebras con consecuencias de desempleo y demás crisis que recaen en el grueso de la población.

Dentro del ámbito de su competencia, el Estado adopta, entre otras, la política fiscal, relacionada con los gastos e ingresos que ejerce, para lo cual requiere presupuestos —idealmente en equilibrio a largo plazo—. La economía debiera funcionar sosteniblemente, haciendo participar a los diversos agentes económicos de acuerdo con su capacidad de ingreso y beneficio en aras de alcanzarse mayores niveles de bienestar (Blanchard, 2017).

De acuerdo con Parkin (2014), en el pasado las funciones del Estado eran menores y se limitaban a la inversión en infraestructura y a la provisión de bienes públicos como defensa, seguridad, administración de justicia, creación y adecuación de leyes y normas, entre otras. Sin embargo, con el advenimiento de la Gran Depresión en Estados Unidos (EU) vino también la participación creciente del Estado de Bienestar. A este fenómeno siguió una inercia de expansión en diferentes magnitudes entre los países. En lo general, ello provocó que la corriente monetarista y la Escuela Austriaca se pronunciaran por detener el crecimiento del gasto público.

En el ejercicio del gasto público, sea discrecional o no, hay grandes ganadores. Hay evidencia de ganancias extraordinarias entre agentes privados que invierten en proyectos ambiciosos. Desafortunadamente, se observa en muchos casos que dicho gasto suele ser excesivo, especialmente en las compras a sobreprecio, adquisición de bienes de mala calidad, contratación de servicios innecesarios, entre otras acciones. No se trata solo de los malos manejos, pues hay evidencia de ganancias extraordinarias entre segmentos privados ligados estrechamente a la clase política. Esto pone de manifiesto que el problema que enfrentan las burocracias o quienes emprenden la acción colectiva es que no está del todo clara la dimensión de su ámbito de actuación: o se rigen por decisiones democráticas o por decisión judicial o, bien, por decreto autoritario.

Por otro lado, también los gobiernos tienen una agenda social, en la cual se halla la base electoral considerable. A la misma hay que atender con programas de asistencia. Para Buchanan (2000), una vez que el Estado interviene activamente, beneficiando a los que considera como grupos vulnerables —campesinos, madres solteras, viudas, pobres, etcétera—, contribuye a distorsionar al ideal de igualdad. El autor lo cuestiona por el hecho de provocar un elevado nivel de deuda, déficit y demás formas de intervencionismo, incapaces de sustituir la falta de verdadera democracia y de justicia distributiva.

2. Dimensión de la deuda e implicaciones de política: antecedentes y el contexto internacional, el contexto de México y el caso de la deuda de las entidades federativas

En este apartado se abordan tres dimensiones de la deuda pública y sus implicaciones de política, las cuales se describen a continuación.

2.1 Antecedentes y contexto internacional

En el pasado, las monarquías y los gobiernos disponían de programas de atención a la población en general, una significativa parte de la cual era pobre. Sin embargo, con el paso de tiempo fueron estructurando la ayuda

y atención a la sociedad en desventaja. Así fue hasta que sobrevino el llamado Estado de Bienestar. Ante este, una parte de la sociedad consideró indispensable la implementación de este tipo de políticas. Otra parte de la sociedad la consideró clientelar y sin efectividad para superar la pobreza y la brecha social. Según Ropke (1960), las políticas de gasto social deben ir más allá de los esquemas asistencialistas o populistas.

La cuestión es que los subsidios otorgados a cualquier grupo de la sociedad sean pobres o ricos, constituyen una deuda del mañana. Estos políticos oportunistas hipotecan el futuro de un país trasladando deuda a las generaciones venideras. Las políticas intervencionistas, entre las cuales figuran los subsidios generalizados y gasto extraordinario, derivan en inflación crónica, elevado nivel de déficit, deuda y demás costos económicos que acaban restringiendo las libertades individuales y que comprometen seriamente el futuro de las sociedades.

Friedman (1989) sostiene la existencia de un impacto intelectual y político en las ideas de los economistas clásicos como Adam Smith, Jeremy Bentham, David Ricardo y John Stuart Mill, entre otros. Como resultado de ello estas ideas se hicieron extensivas en EU y Gran Bretaña, observándose cómo las barreras arancelarias tendieron a decrecer. En Japón en poco tiempo se advirtió un avance espectacular en el crecimiento de las libertades sociales, asi como en los ámbitos políticos y económicos. Sin embargo, una vez que concluyó la Segunda Guerra Mundial y sobrevino la dictadura militar, la economía de Japón comenzó a estancarse. Los autores sostienen que prácticamente no hubo conflictos mayores entre 1815 y 1914, es decir, casi un siglo de *laissez faire* con políticas de intervención modesta.

Por su parte, Dicey (2008) sostiene que las ideas del socialismo fabiano se establecieron en favor de colectivismo, lo que permitió una mayor intervención del Estado, destruyéndose así, en muchos casos, la iniciativa y esfuerzo propios. A pesar del avance de las ideas referidas, algunos economistas de la Escuela Austriaca —Frederich von Hayek y Ludwig von Mises— y de Chicago —Frank H. Knight y Jacob Viner—, así como de Gran Bretaña —Lionel Robbins y G. R. Chesterton—, comenzaron a defender las ideas de limitar el tamaño del Estado y sus costosas implicaciones. Defendieron también las ideas de libre mercado. Ello ocurrió gracias al parteaguas que fue la obra de Hayek, *Camino de servidumbre* de 1944.

Por regla general, los gobiernos de la posguerra adoptaron políticas keynesianas que se orientaron fundamentalmente a recuperar la economía a través de la generación de empleos y el aumento de ingreso. El gasto público comenzó a aplicarse y crecieron los subsidios a empresas en malas condiciones con intenciones proteccionistas, así como los apoyos a desempleados, familias pobres y, en general, a aquellos que no podían valerse por sí mismos. Como es de esperarse, ello significó elevados costos de manutención del sector público (Heilbroner y Milberg, 1999). En ese tenor,

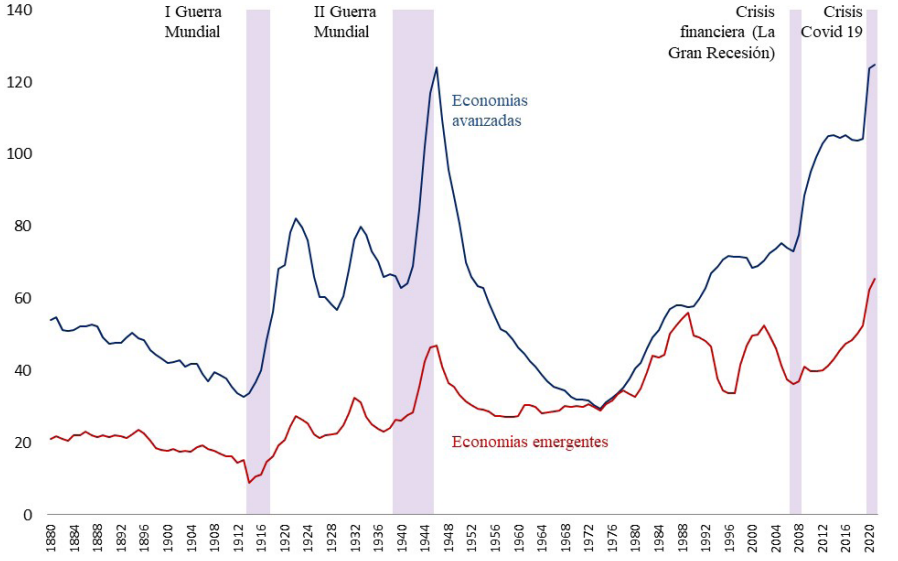
el gasto público requiere de recursos económicos para su sostenimiento, lo cual se da a partir de medidas como el incremento de impuestos, aumento de deuda, venta y expropiación de activos, cobro extraordinario de bienes públicos, emisión de moneda, confiscación, por mencionar algunos.

Ubicándose en el contexto de la historia reciente debe señalarse que, para el caso específico de la deuda contraída en América Latina, al decir de Méndez y Morales (2000: 69) la situación es la siguiente:

> La deuda de los paises latinoamericanos se ha convertido en un factor depresivo y caótico que subordina las políticas nacionales a factores exógenos incontrolables. El dilema que confrontan es dirimir si son o no naciones soberanas capaces de decidir su propio destino. Igualmente, cabe señalar que el proceso ortodoxo de ajuste que se ha instrumentado carece de elementos esenciales de equidad que lo justifiquen.

Existen factores que han contribuido a la inercia de deuda a nivel mundial. Según se observa en la gráfica 1. los fuertes gastos públicos derivados de eventos como el crecimiento del Estado de bienestar; las experiencias de la primera y segunda guerras mundiales; la posguerra y subsecuente carrera armamentista, la irrupción de altas tasas de inflación de los años setenta, además de factores como el prolongado estancamiento de la economía mundial, han impulsado el crecimiento del déficit y la deuda, obligando a recurrir al financiamiento con más impuestos y cargos. En los hechos, esto está implicando menores ingresos disponibles para buena parte de las familias. No es exagerado, por tanto, deducir las causas de la expansión del referido gasto, pues sí hay grandes receptores de sus rentas: empresarios ligados a políticos y funcionarios, por una parte, y los miembros de rentas o ingresos bajos, por la otra.

Gráfica 1: Patrones históricos de deuda del gubernamental internacional como porcentaje del PIB



Fuente: Fondo Monetario Internacional (Historical Public Debt Database) y Maddison Database Project. https://www.imf.org/en/Publications/FM/Issues/2020/09/30/october-2020-fiscal-monitor. Nota: La serie de deuda pública agregada a PIB de las economías avanzadas y de los mercados emergentes se basa en una muestra constante de 25 y 27 países, respectivamente, ponderados por el PIB en términos de paridad de poder adquisitivo.

El cuadro No. 1 muestra la deuda como porcentaje del Producto Interno Bruto (PIB) de una lista de países, entre ellos México. En buena medida, la presente deuda contraída es derivada de los rescates financieros acumulados hasta ahora. Hoy constituyen una preocupación respecto a la viabilidad financiera de estos países en el mediano y largo plazo. El principal y el servicio de la deuda entrañan elevados costos financieros, por lo que eventualmente los gobiernos suelen adoptar políticas recesivas con sacrificios para la mayoría de los ciudadanos. La cuestión es que aun en las naciones con mayores niveles de desarrollo y bienestar social existe preocupación dados los niveles extraordinarios de deuda. El entorno internacional adverso se presenta para México como una *camisa de fuerza* para crecer. Después de la gran recesión de 2008-2009 la recuperación ha sido lenta.

Cuadro No. 1 Deuda como porcentaje del PIB entre países seleccionados

Países	1990	2021	Tasa de variación	Deuda per cápita en dólares
Japón	52.9	237.5	349%	28,000
Italia	71.3	133.4	87%	39,200
Estados Unidos	40.9	106.7	161%	57,300
Chipre	86.8	101	16%	97,200
Gran Bretaña	30.5	85.7	181%	48,500
India	50.8	69	36%	340
Israel	138.5	59.5	-57%	10,700
México	40.6	54.1	33%	3,200
Dinamarca	62.2	33.6	-46%	85,700
Suiza	12.9	19.7	53%	205,000

Fuentes: Cálculos de los autores con base en World Population Review (s/f).

El aumento del gasto público afecta a la viabilidad financiera de las entidades públicas en el mediano y largo plazos. El creciente aumento del techo de la deuda en países como EU, algunos de Europa, Japón y demás está propiciando riesgos mayores de quiebres en la economía real. En el pasado y en el presente las políticas oportunistas e irresponsables de gasto extraordinario han sido denunciadas por algunos sectores de la sociedad, entre ellos el académico. Este tipo de medidas comprometen el futuro viable de millones de personas y significan esquemas de austeridad prolongada. Una parte importante de los ingresos fiscales seguirá canalizándose a pagos del servicio de la deuda a instituciones nacionales y extranjeras, lo cual significa menor ahorro e inversión disponible.

2.2 El contexto de México

De acuerdo con la Secretaria de Hacienda y Crédito Público (2020), las obligaciones contratadas por el gobierno federal se componen de los siguientes conceptos: préstamos bancarios, emisiones de valores gubernamentales, deuda con organismos financieros internacionales, bonos del Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado (ISSSTE) —por la implementación de la nueva Ley del ISSSTE— y cuentas relacionadas con la seguridad social, bonos de pensiones —

Petróleos Mexicanos (Pemex) y Comisión Federal de Electricidad (CFE)—, entre otros. En lo que respecta al endeudamiento del gobierno federal, empresas productivas del Estado y banca de desarrollo, se compone por deuda contratada por entes como el propio gobierno federal, empresas productivas del Estado —Pemex y CFE— y banca de desarrollo —Banco Nacional de Obras y Servicios Públicos (Banobras), Sociedad Hipotecaria Federal (SHF), Banco Nacional de Comercio Exterior (Bancomext), Nacional Financiera (Nafin) y Banco del Bienestar—

Por otro lado, instituciones como la Organización para la Cooperación y el Desarrollo Económico (2009) señalan la necesidad de tener un gobierno más pequeño, descentralizado, promotor del desarrollo inclusivo, proactivo y capaz de atender los más sentidos problemas sociales. Además de los crecientes costos de la deuda pública de México, también merecen señalarse la inercia del gasto asociado a la relación clientelar y su manejo discrecional creados desde hace décadas entre agentes públicos y privados. He aquí los más evidentes:

a) Los grupos de presión que abogan por más recursos o partidas como los partidos políticos; las grandes cadenas de medios de comunicación y demás grupos de interés que solicitan créditos y coberturas especiales como industrias en problemas.

b) Las organizaciones campesinas y propietarios rurales que demandan mayores subsidios para su operación, aun cuando no siempre se privilegie la eficiencia.

c) Las adquisiciones públicas diversas que no se sujetan a criterios de ahorro y eficiencia. Este tipo de gasto tiene identificados a sus benefactores; la teoría económica califica a este patrón de conducta como *crony capitalism*.

d) Los enormes pasivos laborales que tienen empresas para estatales como la Comisión Federal de Electricidad, Pemex, el Instituto Mexicano del Seguro Social (IMSS), entre otros. Cargan sobre estas instituciones un lastre de ineficiencia, rezago burocrático y pobre modernización, entrañando elevados costos de manutención.

e) Los rescates de 1995 a la banca mexicana a través del Fondo Bancario de Protección al Ahorro (FOBAPROA) y demás beneficiarios. En su momento, las autoridades justificaron estas acciones con el argumento de salvar empresas e instituciones estratégicas y de alto valor agregado en cuanto a empleos.

En el caso de México, la deuda pública sigue una inercia de crecimiento difícil de detener en vista de las necesidades de dichos recursos en términos de inversión y gasto corriente. Las acciones de recortes de gasto público se han aplicado de acuerdo con la ortodoxia económica. En los mismos se han

implementado programas de ajuste y austeridad, afectando también a la clase media, pues la misma se ve precisada a pagar por servicios privados en educación y salud, aun cuando pueda tratarse de derechohabientes.

Asimismo, debe precisarse que en la mayoría de los países no existen los *estabilizadores automáticos* como los subsidios, créditos fiscales y apoyos en caso de desempleo, utilizados para aminorar los efectos de tales medidas. La evidencia revela que las políticas de ajuste aumentan el desempleo y reducen la inversión y recaudación (Parkin, 2014; Blanchard, 2017).

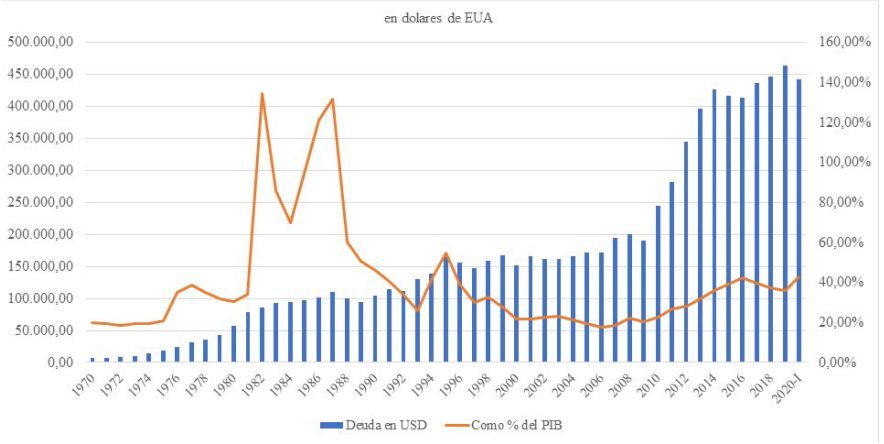
Cabe señalar que los incrementos en los tipos de interés y el tipo de cambio colocan mayor presión a la deuda contraída.

De acuerdo con Millán (2017), la peor combinación para la economía de un país son factores tales como su elevado endeudamiento, tasa cero de crecimiento, bajos ingresos, elevada inflación, desequilibrios financieros en sus cuentas externas, además de inestabilidad en sus variables macroeconómicas fundamentales. El autor refiere que en la década de los ochenta del siglo pasado la apuesta del gobierno por el petróleo elevó considerablemente el gasto público y ello colocó al país al borde del colapso.

Según Millán (2017), las causas fueron esencialmente: 1) el vencimiento de los bonos gubernamentales, predominantemente en manos de extranjeros; 2) salida de capitales; 3) reducción de las reservas internacionales; 4) desequilibrios en las cuentas fiscales; 5) depreciación del peso y, 6) la banca al borde de la quiebra. Ante esta situación, el gobierno mexicano solicitó una línea de crédito al gobierno de EU y de otros organismos internacionales. Este rescate financiero significó que el país aplicara un estricto programa de disciplina fiscal, ajuste al gasto y la venta de activos y empresas estatales.

La deuda pública de México tiende a crecer constantemente según se observa en la gráfica 2. Esta contempla todos los pasivos internos y externos del gobierno, el rescate bancario y carretero, así como la deuda de las empresas estatales, pensiones, además de otros conceptos. Estos pasivos aparentemente estaban bajo control; sin embargo, su crecimiento ha continuado y ahora está implicando que las calificadoras de riesgo alerten sobre sus niveles de mayores peligros. En el caso de México, el porcentaje de la deuda respecto al PIB es del 54.1 por ciento en el año 2020. Este tiende a incrementarse, reduciéndose el margen para que el gobierno actúe sin incrementar impuestos, crear nuevos cargos, o bien, reducir el gasto, extendiendo el estancamiento de la economía.

Gráfica No. 2. Evolución de la deuda pública de México en el periodo 1990-2020



Fuente: Elaborado por los autores con base en los datos de Secretaria de Hacienda y Crédito Público (SHCP) (2020).

2.3 El caso de la deuda de las entidades federativas

A nivel subnacional hay entidades que tienen elevados niveles de deuda mayor al 100 por ciento, sobresaliendo Coahuila, Chihuahua, Nuevo Leon y Quintana Roo. También se encuentran aquellas que tienen tasas de endeudamiento consideradas sostenibles y con indicador de rango bajo, entre las que se encuentran Aguascalientes, Guanajuato, Guerrero, Queretaro, entre otras. Estas últimas tienen un futuro sin graves presiones y compromisos que se desprenden de las decisiones de no incurrir en deuda y déficit.

De acuerdo con el Centro de Estudios de las Finanzas Públicas (2020), los gobiernos de las entidades federativas participan con 85 por ciento de la deuda contratada, los municipios con 6.9 por ciento, los entes públicos estatales con 6.9 por ciento y los entes públicos municipales con 0.5 por ciento (vease cuadro 2). El mismo documento señala que la deuda se ha incrementado en 450 mil 379.2 millones de pesos en términos nominales, al pasar de 147 mil 412.4 millones de pesos al cierre de 2005 a 597 mil 791.6 millones de pesos al primer trimestre de 2020.

Cuadro No. 2. Deuda estatal al tercer trimestre de 2020

Entidad	Nivel de deuda*	Rango	(%)	Entidad	Nivel de deuda*	Rango	(%)
Aguascalientes	S	bajo	27.1	Morelos	S	Bajo	59.1
Baja California	S	bajo	49.9	Nayarit	S	bajo	80.6
Baja California S	S	bajo	26.9	Nuevo León	EO	medio	108.2
Campeche	S	bajo	29.4	Oaxaca	S	bajo	69.2
Coahuila	EO	medio	153.6	Puebla	S	bajo	35.9
Colima	S	bajo	64.4	Querétaro	S	bajo	2.30
Chiapas	S	bajo	68.7	Quintana Roo	EO	medio	121.9
Chihuahua	EO	medio	148.0	San Luis Potosí	S	bajo	27.6
CDMX	S	bajo	49.8	Sinaloa	S	bajo	25.7
Durango	S	bajo	85.5	Sonora	S	bajo	88.3
Guanajuato	S	bajo	20.5	Tabasco	S	bajo	24.7
Guerrero	S	bajo	23.5	Tamaulipas	S	bajo	57.1
Hidalgo	S	bajo	28.8	Veracruz	S	bajo	83.8
Jalisco	S	bajo	37.3	Yucatán	S	bajo	26.9
México	S	bajo	41.0	Zacatecas	S	bajo	69.4
Michoacán	S	bajo	61.2	Promedio	S	bajo	57.9

Fuente: Flores (2020). *S (Sostenible); EO (En Observación)

Nota: Tlaxcala no es objeto de medición del sistema de alertas, toda vez que no cuenta con financiamientos y obligaciones inscritas en el Registro Público Único.

El crecimiento de la economía de México se ha situado lejos de las metas oficiales y ello ha tenido consecuencias adversas. El crecimiento real es casi de la mitad del proyectado, lo cual contribuye al mismo crecimiento de la informalidad laboral del 60 por ciento en promedio. El país se beneficiaba anteriormente con ingresos fiscales derivados de las exportaciones petroleras y de los altos precios del crudo. Ello llegó a representar casi una tercera parte de los ingresos públicos. Sin embargo, ahora se están importando más productos petrolíferos y los ingresos públicos por este concepto se han reducido. Los gobiernos anteriores intentaron compensar esta reducción de ingresos con mayores impuestos y nuevos cargos, lo cual

provocó malestar social.

Desafortunadamente, la coyuntura de ingresos petroleros extraordinarios del periodo 2010-2014 dio lugar al derroche e irresponsabilidad pública, pues buena parte de dichos recursos provocaron alzas en los niveles de deuda de las entidades del país y también en las dependencias públicas. Existen otras razones que han propiciado el incremento de la deuda en el país, las cuales han motivado que se ha denunciado por parte de ciudadanos y partidos de oposición, justo el gobierno actual (2018-2024) busca contener.

La normatividad inadecuada en el manejo de los recursos ha dado lugar a que en las entidades federativas y municipios los funcionarios abusen. A mayor cantidad de recursos federales otorgados, le corresponde mayor nivel de deuda estatal y municipal. A fin de poner orden en las finanzas públicas y debido a las presiones de la sociedad civil, el Congreso de la Unión aprobó la Ley de Disciplina Financiera de las Entidades Federativas y Municipios en 2018. Con esta legislación se pretende que en lo sucesivo se haga pública información relevante como el monto de préstamos, tasa de interés, condiciones, plazos, garantías, obligaciones, así como la utilización de los fondos de dichos recursos. Dicha ley requiere de plena licitación en la contratación de créditos, además de que debe ser aprobada por dos terceras partes de los congresos estatales y municipales, respectivamente.

La situación de endeudamiento público en un contexto de bajo crecimiento económico ha tenido consecuencias, pues las políticas de recorte del gasto público recetadas por las autoridades monetarias internacionales y por los gobiernos nacionales han agravado la situación. En el caso de México, la extendida austeridad del presente significa menores recursos para inversión en infraestructura, educación, salud y demás rubros que requieren atención urgente. Los programas de austeridad significan un menor dinamismo en la economía.

Los márgenes de maniobra que tiene el gobierno de México en la coyuntura actual de recesión son: 1) crear nuevos impuestos; 2) incrementar los ya existentes; 3) una combinación de los dos anteriores; 4) reducir el gasto público y, 5) incrementar deuda. Debe señalarse que estas son acciones que se han implementado en el pasado y no han mejorado la situación del grueso de la población. Sin embargo, siguen siendo una tentación en el presente. No obstante, son política y electoralmente costosas; tampoco son bien recibidas en virtud de los reclamos de la sociedad respecto a la discrecionalidad de las políticas de gasto excesivo del pasado. Ahora la sociedad civil exige mayor transparencia y rendición de cuentas, asi como limitar el gasto innecesario en la asignación de los recursos públicos.

Como factores adicionales que guardan una estrecha corresponsabilidad con el incremento del gasto público deben incluirse las enormes percepciones de los altos funcionarios del poder judicial, los sueldos de los consejeros

electorales, diputados y senadores. Debe enfatizarse que no son reguladas por autoridad alguna, es decir, estos funcionarios tienen soberana facultad para determinar los incrementos que estimen necesarias a sus percepciones. La crisis institucional y económica que atraviesa México ha elevado las críticas de la sociedad civil a fin de limitar este tipo de excesos. El actual gobierno (2018-2024) ha propuesto colocar límites a las percepciones de los funcionarios públicos.

Siguiendo con este mismo orden de ideas, el financiamiento público al Instituto Nacional Electoral (INE) advierte un crecimiento constante. En esta institución no se privilegian las economías de escala debidas fundamentalmente a la especialización, a la acumulación de la experiencia, al empleo de la tecnología y, en general, a una lógica de eficiencia como la que se llevan a cabo en las empresas privadas exitosas. El INE organiza los procesos electorales en México a partir de la creación de un marco legal en el que se establece el tiempo de inicio y finalización de las campañas políticas, el sistema de registro, sanciones y arbitraje a los actores político-electorales. Sin embargo, se cuestiona, entre otras cosas, lo extraordinariamente costosa que resultan las elecciones en el país.

De acuerdo con Heath (2015), México ha implementado una reforma fiscal recaudatoria junto con medidas de fiscalización casi extremas. El gobierno ha logrado un incremento importante en sus ingresos, aunque ello no se ha aprovechado para efectos de consolidación fiscal con el fin de sanear las finanzas. Los gobiernos impulsaron políticas de mayor gasto: el incremento extraordinario en el gasto que ha conducido a déficit fiscal como porcentaje del PIB más elevado hasta ahora. Para Heath, el gasto ha perdido su eficacia y no contribuye al crecimiento económico del país. El gobierno dispone de estos recursos que deben también apoyar a empresas y a los hogares y así crear empleos. De otro modo, al no considerarlo, se genera insatisfacción social. En ese sentido, el gobierno debe gastar menos, pero de mejor forma. Se trata de que la economía crezca y así se reduzca la pobreza.

3. Métodos y resultados

Con datos del Banco Mundial (2020) respecto a la variable deuda pública de México y como parte de la metodología propuesta para esta investigación se utiliza la técnica econométrica del Análisis de Regresión:

$$Y = \beta_o + \beta_1 X + \varepsilon \qquad (1).$$

Donde:

Y = Variable dependiente o de respuesta

X = variable independiente (predictora o explicativa)

β_o = ordenada al origen (valor de Y, cuando X es igual a 0)

β_1 = pendiente de la recta de regresión

ε = término de error aleatorio

En el modelo en cuestión se estiman, a partir de una muestra, los valores verdaderos, los cuales son:

$$\boldsymbol{y} = \boldsymbol{b_o} + \boldsymbol{b_1 X} \qquad (2).$$

En este caso, $\boldsymbol{y}$ es el valor pronosticado de Y.

En el ejercicio relativo a la tasa de crecimiento de la deuda gubernamental de México expresada en dólares lo que se plantea es lo siguiente:

$$\boldsymbol{Y_t = Y_o(1+r)^t} \qquad (3).$$

Donde:

Y_o =es el periodo inicial o el principio de Y

Y_t = es el valor del tiempo, o t

r = es la tasa de crecimiento de Y

Una vez que se manipula la ecuación de crecimiento, y toma el valor en logaritmo natural, lo que se tiene es:

$$\boldsymbol{\ln Y_t = \ln Y_o + t \ln(1+r)} \qquad (4).$$

Sin embargo, por tratarse de un modelo de crecimiento semilog, lo que se pretende es calcular dicho crecimiento con solo la variable dependiente *Y,* de manera que la variable independiente, en este caso X, toma el valor de tiempo: 1, 2, 3, 4, etcétera (Gujarati y Porter, 2010). En el ejercicio propuesto se calculan las tasas de crecimiento de la deuda de México para el periodo 1990-2020.

Cuadro No. 3. Mínimos Cuadrados Ordinarios usando las observaciones 1990-2020 (T=31)

Variable dependiente: ln Deuda México en USD						
	Coeficiente	*Desv. Típica*	*Estadístico t*	*valor p*		*R-cuadrado*
Constante	11.041427	0.09537451	115.769	3.2689E-40	***	
Tiempo	0.0303140	0.00520311	5.826	0.00000256	***	0.5392718

Fuente: resultados de la aplicación del Modelo de regresión de MCO utilizando el programa econométrico GRETL

3.1. Presentación e interpretación de los resultados

Del modelo de regresión estimado se deriva lo siguiente. En el período estudiado el cambio en el valor de la variable Deuda, en función del Tiempo, es muy significativo ($p<0.00001$). El intervalo de confianza para el coeficiente de regresión del Tiempo, con un nivel $\alpha=0.05$ es (0.0196, 0.0409); es decir, siempre creciente al aumentar el valor de la variable Tiempo, y como dicho intervalo de confianza excluye el valor 0, se rechaza la hipótesis nula:

Ho: La deuda pública no ha evolucionado en el mediano y largo plazo. Por lo que se considera que los datos son congruentes con la hipótesis alterna: *Ha: La deuda pública sí ha evolucionado en el mediano y largo plazo.*

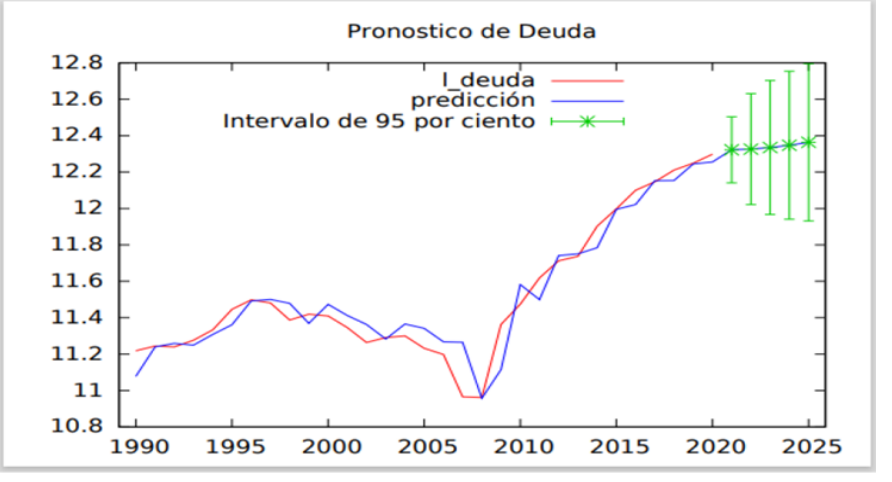
Tomada la hipótesis alterna, al observar los valores positivos de los extremos del intervalo de confianza para la variable Tiempo, se puede especificar que la deuda pública, en México, sí ha evolucionado y lo ha hecho con una pendiente de regresión positiva; es decir tiende a crecer a través del periodo estudiado.

En el subconjunto de datos en el período 1990-2008 un intervalo de confianza del 95% para el coeficiente de regresión del Tiempo es (-0.0237, -0.0001) con un $R^2= 0.2124$ y una probabilidad del estadístico de la pendiente de regresión de 0.047. En contraste el subconjunto de datos en el período 2009-2020 un intervalo de confianza del 95% para el coeficiente de regresión del Tiempo es (0.0770, 0.0960), con un $R^2= 0.9762$ y una probabilidad del estadístico de la pendiente de regresión de 1.8909E-09.

Aun cuando son de diferente signo las pendientes de las rectas de regresión en cada subconjunto muestral, en ambos casos también se rechaza la hipótesis nula probada anteriormente; siendo en el segundo subconjunto más significativa estadísticamente la relación entre las variables estudiadas. Por lo que el modelo propuesto es apropiado para

fines de pronóstico, particularmente a partir de los datos más recientes. En la figura No. 3 se observa el pronóstico calculado para los próximos 5 años; como es de esperar el intervalo de confianza se amplía, al alejarse hacia el futuro, de los valores de la muestra estudiada.

Figura No. 3 Pronóstico de crecimiento de la deuda pública de México



Fuente: Elaborado por los autores en base a programa econométrico GRETL.

Conclusiones y recomendaciones

Al hablar específicamente de la deuda de las naciones, debe tomarse en cuenta que el crecimiento de esta se ha extendido más allá de lo que lo hecho la producción. Su crecimiento es superior a las de los salarios y las percepciones del grueso de la población económicamente activa. Dicha deuda se explica, en buena parte, por razones como el gasto extraordinario que significa un creciente Estado de bienestar, la cultura de irresponsabilidad en el manejo de las finanzas públicas, así como el hecho de que los funcionarios encargados de las finanzas públicas han actuado por mucho tiempo con discrecionalidad y opacidad, sin consecuencias para ellos como la inhabilitación de cargos públicos, la obligación de resarcir el daño al patrimonio de la nación, entre otras medidas.

Con base en lo aquí expresado, México enfrenta limitantes serias en rubros tan fundamentales como la falta de disciplina fiscal y monetaria, al

alcanzar los actuales niveles de deuda de más de 50 por ciento. Esta situación es el resultado de no actuar a tiempo en lo que respecta a disminuir el gasto excesivo. La disminución en la inversión, además de la prevalencia de un entorno internacional recesivo, han afectado el desempeño de la economía mexicana, lo cual se traduce en una menor recaudación gubernamental. Para recomponer esta situación hay que combatir, adicionalmente, otros lastres que se han arraigado, como la corrupción e ineficacia las cuales obstruyen la aplicación del Estado de derecho.

No son pocos quienes se preguntan cómo es que la clase política es dada a gastarse enormes recursos del erario. Esta propensión al derroche ha significado el enojo de la ciudadanía. Sin embargo, aumentar cargos, crear nuevos impuestos, así como reducir beneficios sociales son acciones que se hallan al alcance del gobierno, sin embargo, ello va en detrimento del bienestar de la mayoría de los ciudadanos. La ciencia política y la economía convergen en los asuntos públicos y sociales bajo la premisa fundamental de que los ciudadanos (votantes y contribuyentes) tienen como objetivo maximizar su beneficio. Entre los diversos retos del actual gobierno en México se hallan la reducción del costo económico de los procesos electorales y asi dejar mejores resultados a la sociedad.

El gasto público debe incidir en el crecimiento de la economía y en la reducción de la pobreza. Empero, en México se destina un presupuesto mayor para gasto corriente que para gasto de inversión. Mayor tamaño del gobierno no necesariamente se traduce en bienestar para la población de escasos recursos. Se requiere, por tanto, un Estado menos costoso, más ágil, además de que sea promotor del progreso.

Otra exigencia ciudadana tiene que ver con la necesidad de acotar la desmedida discrecionalidad en el uso del gasto público, sin que ello implique que las políticas de austeridad conlleven a un mayor deterioro en la infraestructura física y social expresada en recortes en las asignaciones presupuestarias de escuelas, hospitales, carreteras, aeropuertos, parques y demás.

Por mucho tiempo la clase política y gubernamental ha sacado provecho de su posición de ventaja, para lo cual ha creado mecanismos de intervención a partir de esquemas considerados como de “interés público” o “interés nacional”, con lo cual se restringen oportunidades de que otros agentes sociales y económicos expongan sus puntos de vista, además de que tengan la información sobre las implicaciones del gasto público.

En base a lo anteriormente expresado, el gobierno está llamado a actuar con mayor sentido de responsabilidad en el manejo de los recursos públicos, pues se trata de los ciudadanos que los sostienen con sus impuestos y cargos. Ahora se propone que el gobierno sea eficaz y promotor del bienestar, además de respetuoso de las libertades sociales. Los gobiernos

con facultades discrecionalidades no han privilegiado los principios de respeto y apego a las leyes de protección ciudadana.

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Racial and Religious Determinants of Terrorism in Western Europe

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Abstract

The gradual rapprochement between peoples, cultures, beliefs involve numerous conflicts with indigenous peoples on ethnic or religious grounds. These conflicts tend to turn into articulation of radical positions and extremist activities. The aim of this study was to analyze the current state of terrorist acts and identify the determinants of terrorism on racial and religious grounds in Western Europe. The statistical method, comparison, graphic analysis, analysis of the Global Index of Terrorism; The European Union reports on the situation and trends of terrorism, as well as the research on terrorism-related issues for 2011-2021, were used as empirical research methods. It is determined that the UK, France, Germany, Greece, Belgium, Spain, Italy, and Sweden are subject to the highest risk of terrorist acts. It was proved that the determinants of terrorism are localized in relation to key issues related to the state of the economic sphere, social development, as well as the spiritual and cultural sphere. Emphasis is placed on the need to overcome the problems associated with terrorist activities by formulating a policy of national means of resolving ethnic and racial issues and active international cooperation. Further research will identify key determinants of terrorism in Eastern Europe.

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Keywords: terrorism and state; democracy and extremism; national security; determinants; conflicts.

Determinantes raciales y religiosos del terrorismo en Europa occidental

Resumen

El acercamiento gradual entre pueblos, culturas, creencias implica numerosos conflictos con los pueblos indígenas por motivos étnicos o religiosos. Estos conflictos tienden a convertirse en articulaciones de posiciones radicales y actividades extremistas. El objetivo de este estudio fue analizar el estado actual de los actos terroristas e identificar los determinantes del terrorismo por motivos raciales y religiosos en Europa Occidental. Se empleo el método estadístico, comparativo, análisis gráficos, análisis del Índice Global de Terrorismo; Los informes de la Unión Europea sobre la situación y las tendencias del terrorismo, así como la investigación sobre cuestiones relacionadas con el terrorismo para 2011-2021, de modo que se utilizaron como métodos de investigación empíricos. Se determina que el Reino Unido, Francia, Alemania, Grecia, Bélgica, España, Italia y Suecia están sujetos al mayor riesgo de actos terroristas. Se comprobó que los determinantes del terrorismo se localizan en relación con cuestiones clave relacionadas con el estado de la esfera económica, el desarrollo social, así como la esfera espiritual y cultural. Se hace hincapié en la necesidad de superar los problemas asociados con las actividades terroristas mediante la formulación de una política de medios nacionales para resolver los problemas étnicos y raciales y la cooperación internacional activa.

Palabras clave: terrorismo y estado; democracia y extremismo; seguridad nacional; determinantes; conflictos.

Introduction

Acceleration of the manifestation of factors that demonstrate the diversity of the world, its differentiation, the authenticity of cultural, linguistic, ideological manifestations of local societies is significant. Ideologically constructed manifestations of one's identity give rise to growth in the world of conflicts, misunderstandings, and xenophobia. This often turns into extremist (terrorist) actions by certain members of certain groups of like-minded people and entails tragic consequences. The countries of Western Europe, which experience complex consequences of

multiculturalism, given the increase in the flow of immigrants and refugees in recent decades, have not avoided terrorist acts. So, it should be noted that a significant number of terrorist incidents occur on ethnic and racial grounds. Terrorist activities in this study are considered to be the threat or actual use of violence by individuals or groups of individuals to achieve political, economic, religious or social goals.

According to the Global Terrorism Index (GTI), about 100,000 people died in terrorist attacks between 2014 and 2017 (Institute for Economics and Peace, 2018; 2019; 2020). In 2019, there were almost 8,500 terrorist attacks worldwide, carrying away more than 20,300 people, including 5,460 criminals and 14,840 of their victims. It should be noted that the number of terrorist attacks in Western Europe decreased by 6% from 2018 to 2019 (from 203 to 191 incidents, respectively), continuing the downward trend from 2015. Mass terrorist attacks in 2019 in Western Europe remained relatively infrequent. Of the 191 terrorist attacks, nine were incidents in which four people were injured or killed (University of Maryland, 2019). According to the German intelligence service (Verfassungsschutz), there were about 4,000 politically or religiously motivated crimes in the country in 2017 (BMI, 2018). A representative survey in France found that 16% of the adult population and 27% of young people aged 18 to 24 agree with the ISIS goals (Fischer, 2014).

European nations have faced security challenges in recent decades, the violence and consequences of terrorism have become tragic for many people and communities. The resurgence of ethno-nationalist populist movements across Europe has further strengthened the perception of ethnic and religious minority groups as dangerous (Amnesty International and the Open Society Foundations, 2021). Despite the decline in the total number of attacks and deaths caused, religiously motivated terrorist attacks are on the rise (Løvlien, 2021).

Analysis of data on terrorist acts shows that nationalist ideology is a more common feature than religious ideology in modern terrorism. Religious terrorist groups cause more deaths than other types of terrorist acts. Groups classified as exclusively Islamist have caused more deaths than all other nationalist groups. Modern religious terrorism threatens more people (Romano and Phelps, 2019). Some scholars identify Islamic ideology as the direct cause of the radicalization of Muslims, leading to extremist actions and terrorist attacks. Another view is that Islamist groups formulate the demands and agenda of radicalized people (Egger and Magni-Berton, 2021). In Western Europe, immigration has some connection to the level of terrorism in the country, which determines dissatisfaction with the existence of migrants and changes in social order but is not related to economic competition between the local population and immigrants (McAlexander, 2020).

Radicalization and extremism can be described as the result of a number of (social, individual) determinants (Lerner, 2018) that influence the development of extremist behaviour. Researchers (Kis-Katos *et al.*, 2014) argue that terrorist acts have different determinants, based on the problems of individual radical groups, different opportunities to reach compromises, and their own organizational constraints. The ideological foundations of a terrorist group can be motivated by various determinants based on their own ideology. For example, ethnic discrimination may be relevant to the manifestation of nationalist-separatist terrorism (Brockhoff *et al.,* 2016). But the determinants of ethnic and religious terrorism have both differences and common features (Kis-Katos *et al.,* 2014).

The problem of growing inequality due to austerity policies has led to a decline in social mobility, which has affected both the local population and national minorities, in particular in urban post-industrial settlements. This has exacerbated identity, citizenship and affiliation (especially in parts of Western Europe where industrial cities have faced a decline). Some changes in the local economy have led to a crisis, where the traditional practice of patriarchy has been threatened by the liberalization of labour markets, complicated by issues of identity uncertainty (perceptions of citizenship, belonging to religious and ethnic groups). The impact of these structural and cultural changes has led to the desire of far-right groups to avoid the risks of policy expansion based on diversity and multiculturalism (Abbas, 2020).

Given the conquest of right-wing populism and ethnic nationalism in Western European society, the problem of a general right-wing movement with the speeches of political leaders who support a broader transnational discourse is growing (Froio and Ganesh, 2018). This applies not only to developed Western democracies such as the United Kingdom, Germany and the Netherlands, but also to other liberal states such as Poland, Hungary and Slovakia (Halikiopoulou, 2017). There is a need to assess the dynamics of radicalization as embedded in social processes at the structural level, where concerns about identity, belonging and self-realization are fundamental (Abbas, 2020).

Ethnic identity refers to the feeling of affiliation with an ethnic group and the part of thinking, perception, feelings and behaviour that is due to belonging to an ethnic group. Religious identity is a specific type of identity. This is the feeling of group religious membership and the importance of such participation in the group, as it relates to personal philosophy (Ngari and Reva, 2017). If religion is understood as an ideology, many world ideologies tend to show a high level of intolerance, which leads to violence (Tarlow, 2017).

Actions that are deeply biased in terms of ethnic affiliation, religion, and similar factors arise a sense of discrimination in communities, creating

an impression of intentional state pressure on communities through the religion or ethnic affiliation of members. This discrepancy in the relationship between states and ethnic or religious groups raises serious concerns about discrimination and equal treatment of the law (Ngari and Reva, 2017).

At the broadest level, political, religious and other extremism is defined as a significant deviation in attitude and behaviour from basic legal and political norms and values within the social system (society or state), which seek to abolish and replace them (Beelmann *et al*., 2017). For example, terrorist activities based on religious and ethnic factors may arise from incomplete modernization in the social, political, and cultural spheres due to the clash of the modern and the traditional (Pain, 2007). The rise of right-wing nationalism can be seen as a response to growing European integration, which expresses transitional and modernization difficulties (Straume, 2012).

The model of radicalization begins with the definition of terrorist acts in several ways: a significant deviation in attitude and actions from specific fundamental, political, legal and humanitarian norms and values. The main issue is the values and goals that underlie views and actions, not the violence used to achieve them. But judgments about radicalization and extremism do not necessarily have to be based on clearly defined attitudes and actions. Interconnected but different processes of social development are central to radicalization and extremism: problems of identity, prejudice, political or religious ideologies, and antisocial attitudes and behaviours. These processes are caused by real social or individual conflicts and are marked by constant intergroup processes (Beelmann, 2020).

Racism can be characterized by the promotion of natural and hereditary differences between races, with the main belief emphasizing the superiority of one race over another, which is reduced to a certain incompatibility of habits and cultures. Non-natives are perceived as a threat to host communities, based on xenophobia, which is defined as fear, hatred or hostility towards "foreigners" (Mudde, 1995).

The debate on security in Europe borders on ideology-driven discussions on migration, social change and terrorism. Relative security in Europe may explain the rise of xenophobic politics by Western political actors, who believe that globalization is causing irreversible changes in the very nature of European society (Richards, 2017). Extreme political parties often propose to redistribute resources outside certain subgroups of society, such as ethnic minorities or citizens living in certain regions (Brückner and Grüner, 2020).

Conceptually, extremism gets its essence through association with other ideas — totalitarianism and terrorism, referring to the opposition of such concepts as democracy, openness, liberalism, tolerance and moderation

(El-Ojeili and Taylor, 2020). Based on the features most often mentioned in the existing definitions of extremism, it can be noted that authoritarianism, anti-democracy and nationalism determine the properties of extremism. In contrast, xenophobia and racism are concomitant characteristics of the concept. Right-wing extremism is an ideology that embraces anti-democracy and nationalism (Carter, 2018).

Given the undeniable importance of the problem, the aim of this study is to identify the racial and religious determinants of terrorism in Western Europe. The main objectives of the study are: obtain information on terrorist acts on racial and religious grounds based on a sample and analysis of the Global Database on Terrorism on the number of terrorist acts in Western Europe; determine the level of terrorist threat based on the analysis of data from the Global Terrorism Index to identify the risk of terrorist acts in Western Europe; identify the key determinants of the emergence of terrorist acts in Western Europe on the basis of modern research; propose approaches that can deter the development of terrorism on racial and religious grounds.

1. Methods

Information and analytical sources, which contain processed data on terrorist activities, as well as studies that are indexed in the Scopus scientometric database were used as an empirical basis. The materials for the study were the Global Database on Terrorism (University of Maryland, 2021); the Global Terrorism Index (GTI) study (Institute for Economics and Peace, 2020); European Union reports on the situation and trends of terrorism (Europol, 2021), and scientific articles examining terrorism-related issues for 2011-2021.

The use of the Global Terrorism Database (GTD) is related to the fact that it includes information on domestic and international terrorist acts around the world from 1970 to 2019, and includes more than 200,000 cases. The National Consortium for the Study of Terrorism and Responses to Terrorism (START) provides access the GTD database online for better understanding, detailed research information and prevention of terrorist acts (University of Maryland, 2021). The use of the Global Terrorism Index (GTI) (Institute for Economics & Peace, 2020) helped to determine the level of terrorist activity in Western Europe and to determine which countries and to what extent face a terrorist threat. The European Union's Terrorism Situation and Trends Report (Europol, 2021) provided information on terrorist attacks and terrorism-related arrests in the European Union (EU) in 2020, submitted to Europol by EU Member States. Search and analysis of scientific articles allowed us to identify the main determinants of terrorism in Western Europe.

According to the categories of variables (University of Maryland, 2018) contained in the Global Terrorism Database (GTD), the selection of the necessary information on terrorism on racial and religious grounds involves the following steps. The first limitation was the separation of Western European countries according to a sample based on the regional classifier — Western Europe. The next step was to select from the total number of terrorist incidents those that concerned only racial and religious incidents. According to the classifier (University of Maryland, 2018), incidents related to racial and religious factors are identified by the codes: 69 — Religion Identified, 71 — Race/Ethnicity Identified, 85 — Religious Figure, 86 — Place of Worship, 87 — Affiliated Institution. The last approach is separation of the information on terrorist acts on racial and religious grounds for 2000-2019. A comparative analysis was conducted based on the obtained data.

A study of the Global Terrorism Index for 2017-2020 and the use of a graphical method of analysis allowed identifying Western European countries with the highest risk of terrorist acts and changes in their level. At the final stage, the methodology included the identification of the main determinants of terrorism in Western Europe on the basis of research on terrorism issues for 2011-2021. The result of generalization was to determine the directions of localization of issues that give rise to the determinants of racial and religious terrorism.

The research procedure included the following stages: determining the countries in which the terrorist acts on racial and religious grounds were reported; analysis of the level of terrorist threat; identification of key determinants of terrorism on racial and religious grounds in Western Europe.

2. Results

The number of terrorist acts on racial and religious grounds in Western Europe in 2000-2019 was determined based on the results of sampling information from the Global Terrorism Database, which is presented in Table 1.

Restrictions of Western European countries on the basis of the reginal classifier — Western Europe — identified 18 countries of Western Europe, which recorded terrorist acts on racial and religious grounds in 2000-2019 (Table 1).

Table 1. Number of terrorist acts on racial and religious grounds in Western Europe in 2000-2019.

Country	Number of terrorist acts	Target/Victim Subtype				
		69 – Religion Identified	71 – Race/ Ethnicity Identified	85 – Religious Figure	86 – Place of Worship	87 – Affiliated Institution
Austria	3	1	1		1	
Belgium	6	1		1	4	
Cyprus	2				2	
Denmark	2				2	
Finland	3				3	
France	48	6	3	5	34	
Germany	32	1	6		24	1
Greece	11	3	2		6	
Iceland	1				1	
Ireland	1				1	
Italy	17		3		13	1
Malta	1				1	
Netherlands	8				8	
Norway	3		1		2	
Spain	9		2	1	6	
Sweden	12	1			10	1
Switzerland	1	1				
United Kingdom	146	49	15	2	72	8

Source: compiled based on (University of Maryland, 2021)

Accordingly, the comparison of terrorist acts on racial and religious grounds (8.48%) with the total number of terrorist acts for other reasons (91.52%) in Western Europe in 2000-2019 is presented in Figure 1.

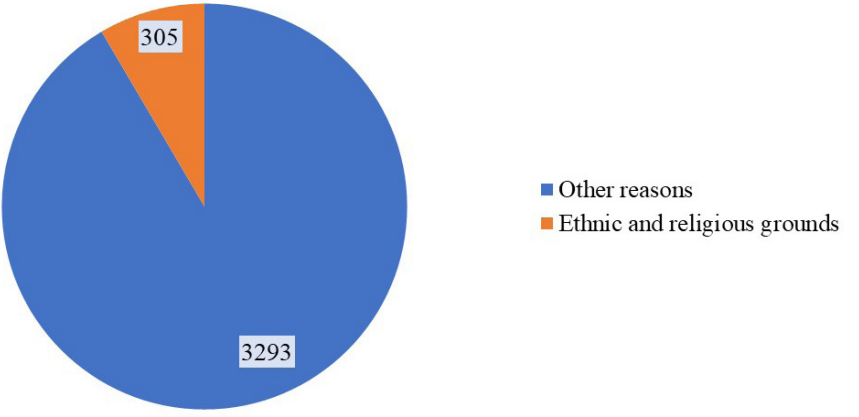

Figure 1. The number of terrorist acts on racial and religious grounds in the total number of terrorist acts in Western Europe in 2000-2019

A study of the Global Terrorism Index in EU member states for 2017-2020 showed that the highest risk of terrorist acts was found in the UK, France, Germany, Greece, Belgium, Spain, Italy and Sweden (Figure 2). This information confirms the preliminary data on the number of terrorist acts on racial and religious grounds in Western Europe in 2000-2019 (Table 1). It should be noted based on the data obtained, that the situation in the studied countries of Western Europe regarding terrorist acts on racial and religious grounds correlates with the results that reflect the situation regarding the general trends of the risk of terrorist threats.

It can be noted from the data obtained during the study, that the issue of terrorist acts has become more acute in the EU countries due to the influence of ISIS. ISIS terrorists attacked individual targets and public places, attracting recruiters from European countries. Most of the incidents in Western Europe were based on the use of various means to injure or kill people. For example, the deadly attempted attack on a synagogue in Germany in October 2019 demonstrated the serious danger of terrorism on racial and religious grounds. The majority of terrorism-related arrests in France have been made against individuals and groups suspected of involvement in ISIS. The German government has identified Islamist terrorists and terrorism on racial or religious grounds as the greatest threat to national security. The United Kingdom continues to stabilize the situation in Iraq and northeastern Syria, which has the potential to combat counter-terrorism and ISIS activities, and remains a top priority.

According to the latest data from the European Police Office (Europol), religious terrorism in the EU Member States remains the greatest terrorist threat. There were three terrorist attacks in the UK in 2020, and Switzerland was attacked by two jihadists. So, there were 15 completed jihadist attacks in Europe (EU, Switzerland and the UK) in 2020, which was twice as many as in 2019 in the EU (including the UK). In 2020, France and Spain reported 14 terrorist attacks by ethno-nationalists and separatists targeting infrastructure (Europol, 2021).

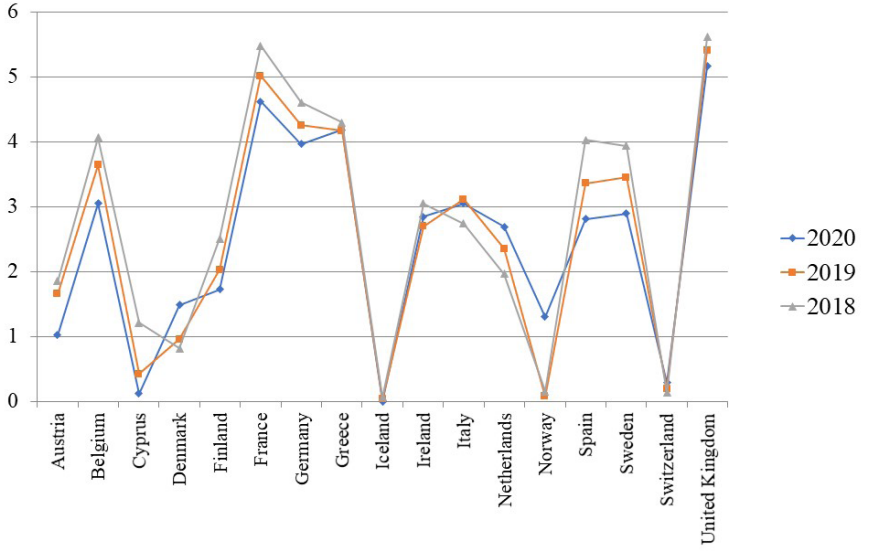

Figure 2. Global Terrorism Index in EU Member States for 2017-2020 (Institute for Economics and Peace, 2020; Institute for Economics and Peace, 2019; Institute for Economics and Peace, 2018)

The next result, which was obtained according to the methodological approach, is the identification of the main determinants of terrorism in Western Europe. The main determinants of terrorism are identified based on the study of terrorism-related issues for 2011-2021 (Table 2).

Table 2. Key determinants of terrorism

Determinants of terrorism	Source
Uneven economic development, difficult economic conditions, declining economic growth	(Shahbaz, 2013; Meierrieks, 2014; Poveda, 2012; Hou, 2021)
Income inequality	(Shahbaz, 2013; Sanso-Navarro *et al.*, 2021)
Lack of education, education coverage level	(Shahbaz, 2013; Nurunnabi and Sghaier, 2018)
Unemployment, employment rate, labour market conditions	(Shahbaz, 2013; Okafor and Piesse, 2018; Ismail and Amjad, 2014; Okafor and Piesse, 2018; Nurunnabi and Sghaier, 2018; Sanso-Navarro and Vera-Cabello, 2020; Sanso-Navarro *et al.*, 2021)
Significant number of people with low living standards (low GDP per capita)	(Shahbaz, 2013; Ismail and Amjad, 2014; Poveda, 2012; Tahir *et al.*, 2019; Tahir, 2020)
Increasing population density	(Freytag *et al.*, 2011; Hou, 2021)
Lack of effective and strong political control, political instability, civil wars, number of refugees	(Okafor and Piesse, 2018; Tahir *et al.*, 2019; Coggins, 2015; Nurunnabi and Sghaier, 2018; Tahir, 2020; Hou, 2021)
Ethnic, linguistic diversity of society	(Gassebner and Luechinger, 2011)
Religious diversity of society, religious fanaticism	(Gassebner and Luechinger, 2011; Halkos *et al.*, 2017)
Rising inflation	(Ismail and Amjad, 2014)
Accumulation of human capital	(Okafor and Piesse, 2018)
The importance of the business sector	(Sanso-Navarro *et al.*, 2021)

According to the identified determinants of terrorism, we can say that they are localized in terms of the key issues of the economic sphere (low level of economic development, poverty, unemployment, inflation, etc.), social development (education, human capital), as well as spiritual and cultural sphere (ethnicity, language, religion). It should be noted based on the aim of our study, that the areas of localization of issues that give rise to the determinants of terrorism on racial and religious grounds, in addition to the directly mentioned problems, are additional problems in the economic and social spheres. This reinforces the causes and consequences of extremist actions on ethnic and religious grounds.

It should be noted that, despite some reduction in terrorist acts in Western Europe, terrorism on racial or ethnic grounds (of jihadist terrorism

and terrorists coming from conflict zones) is of particular concern. These activities pose significant threats, given the support of an extensive network of EU citizens who are radicalized and may be complicit in terrorist acts on racial and ethnic grounds.

3. Discussion

The results of this study have certain features related to the approaches used to identify racial and religious determinants of terrorism. The proposed methodological approaches used in the study were based on information from the Global Terrorism Database. This database contains data on terrorist incidents from 1970 to 2019. The use of data sampling since 2000 has somewhat narrowed the array of information. But given that the period of the last two decades shows a significant increase in the number of terrorist acts and their objective record in the database, we consider this time period sufficient to draw our own conclusions.

The use of the regional classifier — Western Europe — has limited the number to 18 Western European countries (Austria, Belgium, Cyprus, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, the Netherlands, Norway, Spain, Sweden, Switzerland and the United Kingdom), which reduced the representativeness of the analysis. At the same time, the use of these European countries has been sufficient to demonstrate the share of terrorist acts on ethnic and religious grounds in the total array of terrorist incidents for other reasons. Besides, the restriction of the sample from the Global Terrorism Database only by the codes: 69 — Religion Identified, 71 — Race / Ethnicity Identified, 85 — Religious Figure, 86 — Place of Worship, 87 — Affiliated Institution shows only a fixed number of consequences of terrorist acts on ethnic and religious grounds. But other target subtypes identified by the Global Terrorism Database may include incidents on ethnic and religious grounds. So, the number of terrorist incidents committed on ethnic and religious grounds may actually be higher. Unfortunately, the Global Terrorism Database does not contain data on the motives for committing terrorist acts.

As we can see from the analysis of research on terrorism on racial and religious grounds, the threats posed to certain religious groups are an important factor in intensifying the radicalization of the belief system, which may have involved nonviolent action. These findings were confirmed by a Dutch study on the impact of collective identity and identity factors on attitudes towards violence in defence of religion or ethnicity (Van Bergen *et al*., 2015). The results of the study demonstrate the role of religious beliefs and their impact on the willingness to justify terrorism, which is closely linked to the strengthening of religious practices around the world (Egger and Magni-Berton, 2021).

The findings support evidence that belonging to a lower-middle-income minority group is significantly more likely to support a more radical view of terrorism tactics (Løvlien, 2021). The key determinants of terrorist activity, which are identified in this study, expand the previous results, considering a combination of factors of social development, economic and spiritual and cultural spheres as reasons.

The close link between extremist acts and violence, terrorist acts and the deaths of civilians urges the importance of such topics as security, deterrence, preventive actions, and the protection of democratic heritage; implementation of policies aimed at combating the ideas of xenophobia and intolerance, deradicalization; relevance of diagnosis of economic, social, spiritual and psychological factors.

Modern experience in the fight against terrorism in the world proves that the formation of policies which increase pressure on communities differing in their ideology, culture and religion; identifying them as dangerous and suspicious, distinguishing local communities under national paternalism, can create complications and controversy. Strengthening authoritarian measures can increase the long-term risks of lack of trust between certain communities in the country, complicate the issue of refugee adaptation, which will affect the ability to maintain social achievements based on democratic principles and freedoms.

Countering terrorism involves the development of multi-sectoral policies and measures on the possibilities of intervention, which can be the basis for fighting terrorism. These approaches should use proactive countermeasures, as well as operational security issues, police and intelligence. The fight against terrorism must build the resilience of the community and the ability to protect and counter those problematic features that potentially affect threats to national security. Besides, the effective response of the state to extremist acts and terrorist acts of a religious and ethnic nature should include a number of coordinated actions both within the country and internationally, including security, national minority, religious and immigration policies. The key approaches remain to ensure the development of cultural heritage by states and the provision of opportunities for spiritual and religious activities of national minorities in the territories of indigenous communities of Western Europe.

Conclusion

The study of the determinants of terrorism on racial and religious grounds in Western Europe is a critical issue, given the possible tragic consequences of extremist activities. The atmosphere of intolerance of ethnic and religious differences is quite common, including the current

situation in countries with developed democratic values. The available data set analysed in the study allowed us to partially distinguish terrorist acts on ethnic and racial grounds from the total number of terrorist acts in Western Europe in 2000-2019. The analysis demonstrates a high risk of terrorist acts (including ethnic and religious ones) in the United Kingdom, France, Germany, Greece, Belgium, Spain, Italy and Sweden. It is determined that the determinants of terrorism are caused by the problems of the economic sphere, social development, as well as spiritual and cultural sphere. Overcoming the challenges of terrorism must be based on policies that shape both domestic means of resolving ethnic and racial issues and active international action. The obtained results were based on the available data of countries that have come a long way in the development of democratic values and human freedoms. It will be useful to identify the key determinants of terrorism in Eastern Europe in further research.

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European Union as a Set of New Values in State-Building Processes in EU Enlargement Candidate Countries

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Abstract

The aim of the research was to analyze the latest values of the EU in the context of their adaptation in the process of state-building in the candidate countries for enlargement with a view to reforming the legal field of the States. The main method was the observation method as a component of the experimental procedure with subsequent interpretation of the results (description). The results of the study demonstrate the axiological importance of the EU's main values. At the same time, the need for a gradual implementation of reforms in the sphere of state-building is argued, given the desirability of preserving national identity. It is concluded that the low level of adaptation of the EU pyramid of core values is corroborated and confirmed by statistical data, which requires a qualitative transformation of the reform strategy of the state-building processes of the candidate countries for EU enlargement. Scientific research was concerned with the search for the optimal and effective concepts of the integrated application of European values in the state-building processes in the candidate countries for EU enlargement.

Keywords: state building in Europe; adaptation of legislation; partnership with the EU; EU values; European integration.

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La Unión Europea como conjunto de nuevos valores en los procesos de construcción del Estado en los países candidatos a la ampliación de la UE

Resumen

El objetivo de la investigación fue analizar los últimos valores de la UE en el contexto de su adaptación en el proceso de construcción del Estado en los países candidatos a su ampliación con vistas a la reforma del ámbito jurídico de los Estados. El método principal fue el método de observación como componente del procedimiento experimental con posterior interpretación de los resultados (descripción). Los resultados del estudio demuestran la importancia axiológica de los principales valores de la UE. Al mismo tiempo, se argumenta la necesidad de una implementación gradual de las reformas en la esfera de la construcción del Estado, dada la conveniencia de preservar la identidad nacional. Se concluye que el bajo nivel de adaptación de la pirámide de valores principales de la UE está corroborado y confirmado por datos estadísticos, lo que requiere una transformación cualitativa de la estrategia de reforma de los procesos de construcción del Estado de los países candidatos a la ampliación de la UE. La investigación científica se ocupó de la búsqueda de los conceptos óptimos y eficaces de la aplicación integrada de los valores europeos en los procesos de construcción del Estado en los países candidatos a la ampliación de la UE.

Palabras clave: construcción del Estado en Europa; adaptación de la legislación; asociación con la UE; valores de la UE; integración europea.

Introduction

The EU values are common to member states, in a society of inclusion, tolerance, justice, solidarity and non-discrimination. These values are an integral part of the European way of life and the vector of reforms of the candidate countries for EU membership (Dines *et al.*, 2020). Human dignity, freedom, democracy, equality, rule of law, human rights, among other things, remain the EU values. In turn, the values underlying European value integration have been widely discussed in recent years. Long discussions have shown that interpretations of these common values may differ, as may the process of their gradual implementation in the legal field of the state. Over the last decade, the EU's popularity among its citizens has decreased. In just a few years, EU leaders have witnessed a serious shift from a permissive consensus to "deterrent differences" (Wolczuk, 2019:

63). The deterioration of the EU's image has created the conditions to call the legitimacy of the integration project into question. In the search for narratives, values can reappear in institutional communication.

The gradual actualization of the enlargement of the European Union, the search by candidate countries for EU membership of the optimal vectors of reforms justifies the transformation of the value benchmarks of states with the preservation of their own national identity. the practice of Ukraine deserves special attention. This state, despite the existence of internal conflict with the intervention of the aggressor country to it, does not deviated from the declared European values. The movement towards the European community is being slowed down by unfavourable geopolitical tendencies, Russia's hybrid aggression, and the outbreak of a global pandemic (Herasymchuk *et al.*, 2020).

Moreover, despite the variability of approaches to European integration processes, the vector of driving change in Ukraine remains unchanged. Ukraine's European integration is a multi-level, dynamic and long process with a complex and sometimes dramatic evolution that depends on many internal and external factors (Yakymenko, 2020). Since Ukraine's independence, the European Union has been actively influencing its state-building processes. This is evidenced, among other things, by the Partnership and Cooperation Agreement signed in 1994 (Verkhovna Rada of Ukraine, 1994). At the same time, Ukraine's ratification of the Association Agreement with the European Union (Verkhovna Rada of Ukraine, 2014) qualitatively transformed the approach to domestic reform in all spheres of life. This regulatory act created the background for the latest approaches to state-building. At the same time, the legal analysis of the Association Agreement gives grounds to assert that it is already becoming an archaic document in fragments and does not correspond to modern realities and the potential of relations between Ukraine and the EU. Therefore, a comprehensive revision of this document should be on the agenda in order for Ukraine to actively enter EU industry markets. The renewal of the Association Agreement will provide a new quality of cooperation in key areas of sectoral integration (Stefanishyna, 2020).

It is worth noting that the new challenges also make adjustments to the partnership's priorities. Namely, the fight against COVID-19 raises priority issues of expanding cooperation in the field of health and pharmaceuticals, the introduction of new contactless technologies, strengthening business cooperation and employment guarantees (United Nations Ukraine, 2020). It should be noted that, on the one hand, the current technical assistance and financial resource potential do not correspond to the scale of transformation issues that países candidatos faces in the context of sectoral integration. On the other hand, acuerdos de asociación existentes entrelos Estados miembros y la UE does not contain the ultimate mobilizing goal,

that is the prospects of EU membership. In general, there is reason to believe that progress and achievements have been made on the way towards Europe: from active political dialogue to the implementation of a number of European norms in a number of sectors. Progress towards the EU is, however, limited and complicated by a number of unfavourable internal factors, including corruption, socio-economic problems, the quality of the public administration system, limitations and failures of government policy, and so on.

Unfortunately, the states have not managed to effectively transform the course of European integration into socio-economic changes appreciable for ordinary citizens. It is obvious that the overall results of European integration, as well as the process of the EU enlargement candidate countries' further development and implementation of European values of state-building will be determined by how effectively countries will overcome its internal problems (Yermolenko, 2020). At this stage of EU enlargement candidate countries state-building, the countries and society face the task not so much of legislative enshrinement of fundamental European values, as of their further effective implementation in everyday life.

Given the above, the aim of the article is to consider the values of the European Union as a driving factor of state-building in EU enlargement candidate countries state-building in the context of the legal sphere's transformation of the states. The aim of the research involved he following research objectives: 1) analyze the set of EU values and identify the most effective ones for testing in the EU enlargement candidate countries state-building processes; 2) consider the results of the implemented reform actions on the territory of EU enlargement candidate countries and especially in Ukraine in the context of intensification of the country-EU dialogue; 3) outline the prospects for changes in state-building in EU enlargement candidate countries in terms of the European integration aspirations of the states.

1. Methods and Materials

The results of the study were obtained through the use of a set of practical and methodological tools tested at each stage of scientific research. The research procedure in terms of the stated aim of the article is shown in Figure 1.

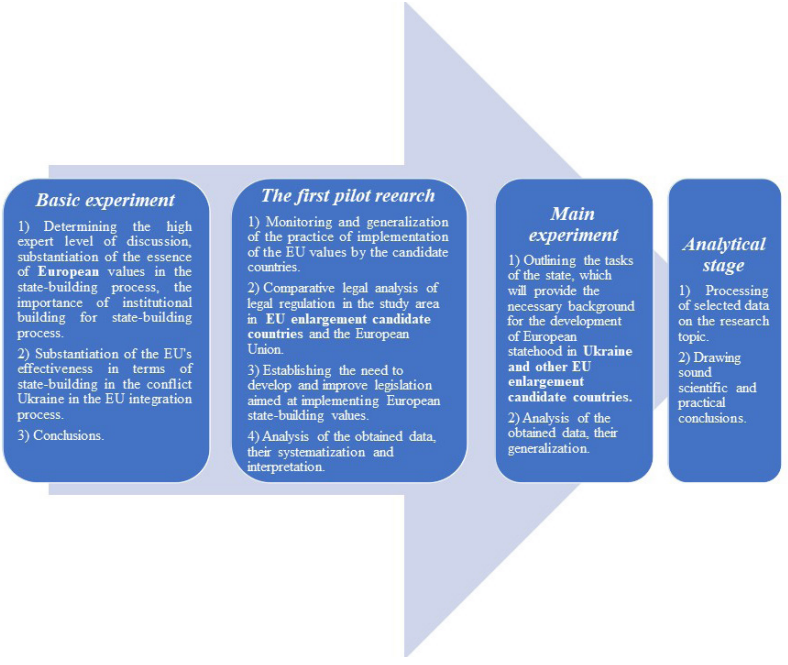

Figure 1: Abstract research design

The main hypothesis of the study is that certain ideas of European values, founded in the process of the EU's existence, can be actualized in the context of EU enlargement candidate countries' European integration. At the same time, the synthesis of these values, taking into account the national Ukrainian experience of integration, can become a strategic methodological and semantic background for the value reflection in both politics and economics.

Observation was the leading practical method of scientific research, which was aimed at vector passive study of the phenomena of adaptation of EU values in the legal sphere of EU enlargement candidate countries. This method allowed to reveal from the author's point of view the shortcomings of the gradual introduction of the concepts of EU integration into the current legislation of EU enlargement candidate countries; revealed imperfections in the right to implement and value vectors of European integration reforms; single out the positive aspects of further reforms for Ukraine and other EU enlargement candidate countries, provided that the optimal strategy is chosen; determine the low level of compliance with the pyramid of EU values and the obligations of the state of Ukraine in the direction of

adapting sustainable European law enforcement practices, especially in the context of concluded agreements. The method of observation was included as an integral part of the experimental procedure and its results were interpreted in the article taking into account the need for further scientific research.

The research involved a strategy of qualitative comparative analysis, which allowed to overcome the distinction between quantitative and qualitative research methodologies in the context of the causal link between values and state-building processes in EU enlargement candidate countries. This method has been recently used in fragments in legal and political sciences, while it was actively tested in the article. The application of the logic of qualitative comparative analysis in the framework of scientific research allowed identifying the types of combinations of causes and effects of a particular type of values, distinguished on the basis of indicators of their successful testing in the legal sphere of EU enlargement candidate countries.

The multifaceted phenomenon of the adaptation of European values to the state-building processes implies the need to apply the approaches of several sciences, in particular, political, economic, sociological, historical and legal. So, the research involved such scientific methods as: system analysis (to study the set of political, economic, social, cultural and civilizational spheres of EU enlargement candidate countries integration); structural and functional analysis (to study the functional interdependence of various elements of values in the state-building processes); institutional method (to study and assess the role of different institutions in the process of adaptation of European values); formal legal method (for the analysis of the legal background of integration processes, first of all, the basic concepts of ensuring compliance with the European vector of reforms in EU enlargement candidate countries); method of scenarios (to build a forecast of prospects for the development of legal relations between EU enlargement candidate countries and the European Union in the event of the need to update the provisions of the association agreements).

The works of leading scholars of the European Union and EU enlargement candidate countries were used in the course of the research. We analyzed 30 sources, among which special attention was paid to analytical and statistical reports on the implementation of European values in the legal sphere in EU enlargement candidate countries. The position of support for the currently proposed legislative reforms in light of their inadequacy to the countries realities was of particular importance. Working with authentic texts and relevant statistics allowed to form a comprehensive author's view of the subject of the article and to offer their own sound proposals for reform approaches to state-building.

2. Results

Commitment to common ideals, principles and values is one of the most important conditions for the formation and stability of integration associations. The law does not establish values and ideals, it only enshrines and confirms their existence, is based on them and relies on them, which ensures its fullest and most effective implementation (European Parliament, 2021). Common values are the basis for the establishment of the institutional structure, defining the goals and tasks set by the integration association and their enshrinement in law. The commonality of the foundations gives the integration processes stability and a certain direction. The fundamental values remain largely unchanged and are generally preserved and proclaimed in all EU constituent acts. They can be formulated differently, undergo certain changes in the relevant documents, but they remain unchanged in their essential content.

The fundamental values laid down in the foundation of integration determine the nature and ways to achieve the goals it sets. In practice, such goals and objectives are formulated and implemented within the development strategy, which may also undergo certain changes at various stages of the evolution of the integration process depending on the internal and external conditions. Goals and directly related tasks are enshrined in regulations. These are, first of all, the founding treaties, as well as the acts adopted to ensure their observance.

When comparing the European Union with other centres of power in the geopolitical space, it is necessary to keep in mind a number of its fundamental features. The formation of a single market and the euro area, while contributing to the convergence of conditions in EU countries, smoothing the differences between national and regional models of members of these associations, did not deprive them of national identity (Organisation for Economic Co-operation and Development, 2019). The EU continues to consist of sovereign actors in international economic relations, which have transferred only part of their sovereignty to supranational bodies, choosing a European value as a guideline in state-building processes instead. Within the EU, states often act “for themselves”, but join forces against third countries at the supranational level. “Europeanization of values and nationalization of interests” is taking place (Razumkov Centre, 2021).

It is important to emphasize that the countries of Central and Eastern Europe wishing to join the European Union must carry out public administration reforms at the national level in order to meet the Copenhagen and Madrid criteria for membership in the European Union. In turn, such reforms are expressed in the adaptation of EU values by implementing high-quality multisectoral reforms in order to bring national legal systems as close as possible to EU law.

The question of the nature of European normative or rational discourse is based on the nature of the "values" referred to by the European institutions. Such values range from functional principles (transparency, dialogue) to broad political paradigms (democracy). Values underlie socio-political development. Moreover, values constitute the content of political institutions, outlining their purpose and logic of functioning, sustainability, and efficiency. Based on the modern understanding, European values should be considered not only in terms of ethical guidelines for the behaviour of citizens. First of all, European values are pragmatic principles, one of the main functions of which is the ability to maintain and increase the effectiveness of democratic institutions (European Values Info, 2006). According to the current practice, European values as a whole remain inviolable. Accordingly, it is impossible to build democratic institutions without the formation of European values.

In the Lisbon Treaty, as well as in the previous founding acts, an indication of the values underlying the creation, building, and functioning of the EU is set out in the Preamble. In formulating these values, the authors of the agreement largely used previous documents. As for the basic principles, we are talking about such incorruptible and inviolable values as the historical heritage of the peoples of Europe. It includes the cultural, religious and humanitarian heritage of the European continent. The wording is more than broad, especially given that the continent's historical heritage is extremely diverse and multifaceted. In this regard, the authors of the Treaty clarify that historical development leads to the formation of common or universal values. These are inalienable human rights and freedoms, as well as freedom, democracy, equality, and the rule of law. The cessation of the division of the European continent, the commitment to building a united Europe of the future are the results of historical evolution included in the Preamble.

It can be argued that European high culture developed in six stages, which led to the formation of the six most fundamental European values. The study showed that the following EU values can be identified in modern conditions, which are able to influence the state-building reforms in Ukraine (Figure 2).

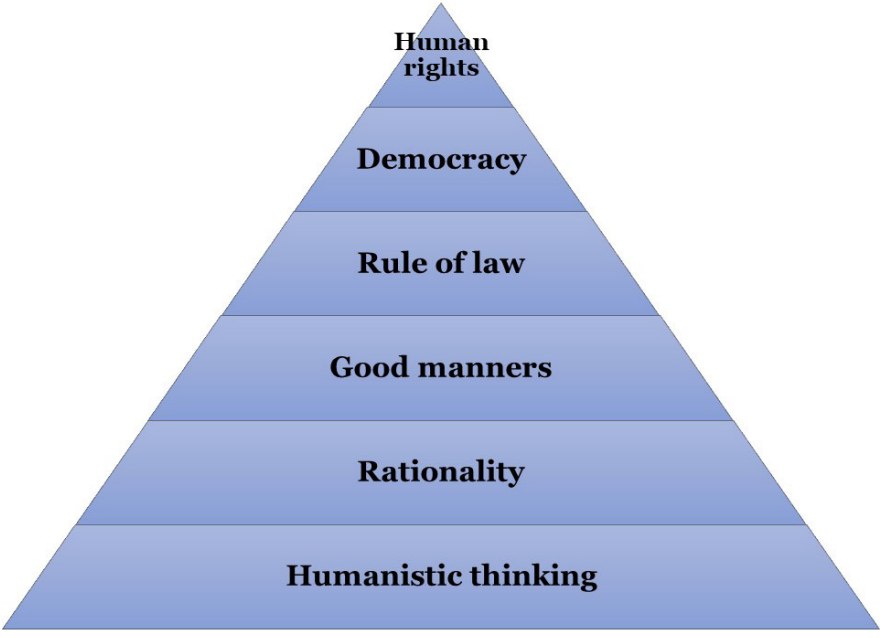

Figure 2: Pyramid of fundamental European values of state-building

From a legal point of view, the issue of respect for and observance of the fundamental values underlying the EU is inextricably linked to respect for human rights. So, it is the observance of fundamental human rights in the context of European integration that forms the most comprehensive and effective vector of national and foreign policy of any state that is trying to move closer to EU membership. The modern doctrine of human rights is, of course, Eurocentric. Moreover, respect for human rights is recognized in the EU as a leading concept for future generations.

At the same time, in the context of state-building, special attention is paid to the implementation of the rule of law in a particular state. In recent decades, international and European organizations have placed the rule of law at the heart of their prescriptions for economic, political and social reform. The EU's focus on the rule of law — as a shared value and tool for promoting democracy — dates back to the early 1990's, when EU institutions sought not only to democratize the EU's institutional framework but also to assess its role in the world. In this context, it is argued that the legitimacy of the EU as a "regulatory force" seems to be based on the ability to translate universal norms into more concrete policies (Lehne, 2020). Being both in

the list of values on which the EU is based and in the status of the goal of EU foreign policy, the rule of law is called "intermediate" and "final" for the development and legitimation of a wide range of domestic and foreign policies. The internal and external dimensions are highly interdependent and interlinked, as the content of the rule of EU law has been developed and enriched through its external promotion.

The rule of law has entered EU policy as a policy guideline that was originally used in the EU's external activity to assess candidate countries' commitment to democracy and as a form of technical assistance. In managing domestic reforms in the former Soviet Union, the European Commission has gained experience and knowledge in a number of policy areas, which have previously been outside the EU's remit (National Democratic Institute, 2021). In just a couple of years, the institution has been able to develop its new enlargement policy and define its approach to promoting the rule of law. The enlargement process has contributed to the technification of the rule of law debate. However, in recent years, the rule of law has been a matter of concern in the EU, which has increased tensions between domestic and European actors. The politicization of the rule of law has become an opportunity for the European Commission to clarify its powers in relation to the Member States. Despite differing concepts on how to protect the rule of law at the supranational level, EU institutions seek to "promote", "strengthen" and "protect" the rule of law. Therefore, in both its internal and external activities, the European Commission uses the rule of law to set political priorities and, as a result, politicizes it and gives it new meanings depending on the political context.

In turn, the current stage of law and state-building in EU enlargement candidate countries i can be characterized as transformational, associated, on the one hand, with the desire to carry out necessary reforms, the formation of civil society, the rule of law, and on the other — with the need to protect human rights and freedoms. conditions for overcoming the crisis and thrive to accelerate European integration. It is clear that such a legal phenomenon as the role of law and its effectiveness in today's conditions is not the last among the many factors that influence these processes. Thus, Ukraine's international legal obligations determine the implementation of a set of reforms of national sectors in the context of strengthening the European vector of state development. Ukraine remains a priority partner of the European Union. The EU supports Ukraine in ensuring a stable, prosperous and democratic future for its citizens, and unwaveringly supports the independence, territorial integrity and sovereignty of Ukraine. The Association Agreement, including its Deep and Comprehensive Free Trade Area signed in 2014, is a key instrument for rapprochement between Ukraine and the EU, fostering political ties, strengthening economic ties and respecting common values. Ukraine continues its ambitious reform agenda to accelerate economic growth and improve the living conditions

of its citizens. Priority reforms include the fight against corruption, judicial reform, constitutional and electoral reforms, improving the business climate and energy efficiency, public administration reform and decentralization. Since 2014, the EU and financial institutions have mobilized more than € 15 billion in grants and loans to support the reform process with tough conditions for further progress.

At the same time, the current process of adaptation of European values in Ukraine is taking place in the conditions of an obvious deficit of European values, which allows us to draw analogies with the so-called process of "building capitalism without capitalists". However, there is an unstable and intermittent value transformation, which results in the formation of the elements of democratic values. The gradual modernization of the values of Ukrainian society has the potential to change ("correct") the essence of existing political institutions, to fill them with democratic content. The coherence of Ukrainian values with post-materialist European values creates an additional ground for a relatively rapid transformation.

Since Ukraine's independence in 1991, successive governments have failed to build effective state institutions. In the early 1990's, a group of entrepreneurs seized control of parliament, government, and the judiciary, passing laws in their favour and in the interests of political allies. In the future, the creation of a background for sustainable socio-economic development has not become the prerogative of public administration. The concept of "reform" has become synonymous with new ways of stealing the budget, dismantling the rule of law and masking corruption (Lough and Solonenko, 2016).

At the same time, the ratification of the Association Agreement (Verkhovna Rada of Ukraine, 2014) was a confirmation of the development of bilateral relations between Ukraine and the European Union. Moreover, this document legalized the choice of our state in favour of modern European values. Despite the progressive nature of the document at that time, it is gradually losing its relevance. Besides, much of the international legal obligations undertaken by the state under the Association Agreement remain unfulfilled. Referring to the legal background for ensuring compliance with Ukraine's obligations to adapt European values, it should be noted that currently the implementation of the Action Plan for the implementation of the Association Agreement (Cabinet of Ministers of Ukraine, 2017) is unsatisfactory (Cabinet of Ministers of Ukraine, 2020). In particular, the Ukraine Common Country Analysis report states that Ukrainian society is facing significant structural divisions and polarization, which affects not only the progress of state-building, but also the sustainability of the social foundation of reforms. The analysis identifies numerous development opportunities that should be prioritized and constantly updated to promote an integrated solution that will provide numerous positive changes in the

development sectors of the state and sustainable common European value benchmarks (United Nations Ukraine, 2021).

It is especially reasonable to pay attention to the implementation of the concept of "rule of law" in Ukraine, enshrined at the constitutional level. For a long time, the position on the prospects of supporting and recognizing the rule of law with all its components was expressed by the Constitutional Court of Ukraine (2021). However, despite the enshrinement of one of the EU's most important values, it remains largely declarative. This is evidenced, among other things, by the indicators of the annual rule of law index in all countries of the world, which are summarized and published by the World Justice Project (2021). Such an analysis includes the following key indicators of the rule of law — 1) corruption; 2) observance of fundamental rights; 3) transparency and openness of the government; 4) the effectiveness of law enforcement; 5) restrictions on state institutions; 6) observance of order and security; 7) the state of justice. According to the World Justice Project Rule of Law Index 2020, Ukraine received a score of 0.51 out of 1 in 2020, where one means the absolute rule of law. In the overall ranking, Ukraine ranked 72nd out of 128 countries, and 7th in the regional division out of 14 countries in Eastern and Central Europe (World Justice Project, 2020). In general, occupying a rather low place in the above-mentioned overall ranking shows that Ukraine's approach to this EU benchmark is extremely slow.

At the same time, domestic changes in the vectors of reforms in EU enlargement candidate countries have led to a transformation of views on European values, which, unfortunately, have now receded into the background. The study allowed recording the emergence of negative phenomena that slow down or make it impossible to properly implement and protect the declared EU values in EU enlargement candidate countries. These factors are shown in Figure 3.

The analysis of the above-mentioned problems shows that each of them has its own subjective and objective reasons of origin and existence, and modern reform of the domestic legislation of the state is aimed at overcoming them.

In turn, the gradual implementation of European values, subject to moderate control by the EU, is possible by choosing one of the three types of reform strategies listed in Table 1. At the same time, we can observe an uncontrolled mixing of all three types of reforms, for example, in Ukraine, which, according to the author, is the cause of significant problems in the development of European membership criteria in Ukraine. Undoubtedly, the European values must be adapted in a balanced way, taking into account national realities and national identity. In turn, Ukraine has now chosen the unappealable implementation of all European values, which cannot be fully adapted for Ukraine without taking into account the peculiarities of law enforcement and state-building.

1

- The low level of legal culture and consciousness of the population of the state associated with the constant leveling of the very essence and content of human rights;
- Loss of self-esteem, feelings of honorr and dignity, lack of thriving for self-development

2

- Lack of motivation to increase responsibility for the results of their activities or inaction, low level of public order;
- Declarative equality of branches of government, lack of effective implementation of the competence of local governments

3

- Levelling the implementation of civil control at all levels of public life and statehood;
- Impossibility and unwillingness to overcome the corruption components of the modern state apparatus;
- The gradual destruction of unstable ties between man, citizen, state and society, and others.

Figure 3: Negative factors of introduction of European values in the state-building processes in EU enlargement candidate countries (Own creation).

Table 1. Types of strategy for reforming the state-building processes in the context of adaptation of European values (Own creation)

Radical change of the old (including the imperial) institutions, a complete break with the old management structure and rules, an attempt to replace them with new ones	**Maintaining continuity between old and new institutions**	**Inconsistent implementation of institutional reforms**
This strategy may involve a radical break with the institutions of "restricted order" and an attempt to replace them with institutions of "open access order". This strategy assumes high costs at the initial stage, but a reduction in the amount of resources required and the cost of overcoming the contradictions between the old and new institutions in the future	This strategy envisages saving resources for serious reforms, building a new management system and forming a new regulatory framework. The situation of certainty given the dominance of old norms and rules does not prevent long-term investment in public goods. However, the positive effect of this strategy cannot be long-term. Over time, contradictions between old institutions ("restricted access") and new requirements between formal and informal norms may escalate	Involves coexistence of old and new norms, rules and mechanisms, which mostly contradict each other, aggravation of the situation of uncertainty, aggravation of contradictions between formal and informal norms and procedures. This strategy motivates government agencies to use contradictions in their personal or narrow group goals, achieving benefits rather than investing in long-term public goods

It is also expedient to focus on other candidate countries for accession to the EU. Thus, in June 2018, the EU Council agreed to intensify accession talks with both North Macedonia and Albania if states comply with a certain range of EU conditions. At the same time, negotiations have not been started in 2019. In March 2020, the methodology for expansion to the Western Balkans was revised. However, negotiations on the accession of North Macedonia and Albania, which have been candidate countries for many years, have not yet been opened. The EU-Turkey relationship on EU accession has now been further exacerbated by Turkey's foreign policy choices, its unilateral actions in the Eastern Mediterranean, and its position and initiatives on the Cypriot issue. In this context, even the fragmentary approbation of European values by this state does not create the proper basis for a stable relationship with the EU.

After two decades of intensive and powerful process of state-building, Bosnia and Herzegovina, unprecedented in modern European history, still demonstrates a significant number of negative factors, making it impossible to implement European values comprehensively. The process of integration into the EU is currently almost completely blocked and the country has not yet submitted its candidacy.

Despite the European Commission's aspirations and efforts to increase confidence in the accession process and give it a stronger political steering wheel and clear value benchmarks, the process of membership has already become a shadow of what it has been in previous decades, when it was considered the largest indicator of a successful EU foreign policy. Annual state reports published by the European Commission continue to serve as a useful barometer of reforms for each country and the implementation of the most significant European values. The EU today has become an international actor promoting democracy on its territory, in member states and even around the world.

His democratic commitments are in line with his leading value benchmarks. The EU has successfully managed to gain significant geopolitical influence and allow democratic transformations in the Balkans, for example, and in Ukraine. In this respect, the EU can be seen as an «intermediary» between candidate states as an active arbiter of value reform vectors.

3. Discussion

The study showed that the values of the European Union produce their direct impact on the processes of development and transformation of any state that aspires to become a full member of the EU. The pyramid of key values is sustainable and needs to be gradually introduced into the legal

field of such candidate countries. Instead, the lengthy process of ensuring adherence to such values is not taken into account at all when choosing a European reform vector. Scholars support this position and point out that as a result of such actions the state receives an accumulation of declarative norms without mechanisms for their practical implementation (Fedorenko *et al*., 2019). It was stated that technical reforms are currently underway in EU enlargement candidate countries, which are manifested in the adoption of new regulations and the creation of new state institutions. EU enlargement candidate countries do not enter into disputes and negotiations with the European Union in the context of the implementation of EU values and standards. In this regard, blind copying of values can lead to negative consequences for the states, which will lose its iconic features developed over the years, and built a monolithic architecture of legislation. In this context, there is an active discussion on the selection of the most appropriate mechanisms for the implementation of European values.

Scholars state that the process of state-building creates a number of dilemmas of law enforcement and organizational nature in EU enlargement candidate countries (Babenko *et al*., 2020). The leading important dilemma concerns in Ukraine for example the question of whether it is correct to insist on the comprehensive adaptation of European values and the reconstruction of the state, which remains a shared hybrid aggression of the Russian Federation (Dzutsati, 2020). In this context, the European Union's approach is based on the assumption that integration into the EU through the gradual stabilization of state-building processes within the association will lead to internal tensions (Duleba, 2019). Another problem is relevant given the need to choose an approach to the renewed state-building process. With this in mind, two approaches proposed by scholars (Bargués and Morillas, 2021) are possible for testing: top-down (which focuses on building institutions and is technical in nature), and bottom-up (based on building participation, developing a democratic culture, civil society and reconciliation). Unfortunately, scholars have confirmed that current state-building missions and adaptation processes in EU enlargement candidate countries ignore the wider context and social factors and are focused mainly on the technical process of institutional building (Kharazishvili *et al*., 2021). Therefore, it can be argued that the formation of the most effective influence of EU values on state-building processes needs a broader context and understanding of national practice. This approach is important for the end result of the European integration process.

Addressing the pyramid of leading EU values and the state of their observance in EU enlargement candidate countries, scholars share the author's position on the low level of ensuring compliance with the declared postulates. Moskal (2021) emphasizes that Ukraine has currently no single approach to the interpretation of the rule of law. This, in turn, demonstrates the lack of consensus on an understanding of the European approach to the

rule of law. Popadynets (2020) emphasizes that the fundamental human rights in EU enlargement candidate countries are also observed at a low level, which is only an indicator of the gradual establishment of democracy.

Conclusions

The European Union has an institutional structure designed to promote its values, affirm its objectives, serve the interests of its citizens and its Member States, and ensure the integrity, unity, effectiveness and coherence of its policies and actions. The study showed that the fundamental values of the EU are inviolable and require qualitatively new views on their implementation at the national level.

The rise of public interest in EU enlargement candidate countries in the legislation of the European Union, the essence and content of European values, and especially in ensuring the rule of law is historically justified. After many years when the law was mostly used to achieve political goals, the proclamation of its supremacy as the main priority of the state is undoubtedly a progressive integration step of the states into the international community. Today, the need to find a compromise between European values, society and the state becomes especially urgent.

Sectoral integration is a global, multi-vector and multi-speed process aimed at the gradual construction of modern Europe in EU enlargement candidate countries. An indicator of the effectiveness of the state's European integration activities is the level of implementation of the association agreements and concepts of the countries (in general and by sectors). Unfortunately, the current state of adaptation of European values remains unsatisfactory due to various subjective and objective factors.

The prospect of further research should be the development of the cross functional concept of integrated implementation of European values in the state-building processes in EU enlargement candidate countries, taking into account geopolitical factors and features of national identity. In this context, the decisive vector of the author's search should be the choice of optimal mechanisms for law enforcement and ensuring compliance with the constitutionally proclaimed principle of the rule of law.

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Legislative Provision of Standardisation of Armaments and Military Equipment Development: International Aspect

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Abstract

The aim of the study was to identify objectives and measures for expansion of the system of standards in Ukraine for the development of armaments and military equipment in the context of improving national defence capabilities. The following methods were used to achieve the aim set in the study: the method of direct observation, comparison, monitoring and analysis of the content of documents that provide standardisation of armaments and military equipment at the state and interstate levels. The key results of the study were: observation and comparison of the scope of regulations that ensure the standardisation of armaments and military equipment at the national level, as well as among NATO countries; comparison and distribution of powers of the competence of executive and supervisory bodies for the development and implementation of standards. Besides, the study provides a chart of the legal background for standardisation, and directly determines the sequential logical place of the stage of development of armaments and military equipment in the life cycle. Proposals are made at the end of the study on how to increase the effectiveness of legislative provision for the standardisation of armaments and military equipment.

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Disposición legislativa de normalización de armamentos y desarrollo de equipos militares: Aspecto internacional

Resumen

El objetivo del estudio fue identificar objetivos y medidas para la expansión del sistema de normas en Ucrania para el desarrollo de armamento y equipo militar en el contexto de la mejora de las capacidades de defensa nacional. Para lograr el objetivo planteado en el estudio se utilizaron los siguientes métodos: el método de observación directa, comparación, seguimiento y análisis del contenido de los documentos que proporcionan la estandarización de armamentos y equipos militares a nivel estatal e interestatal. Los resultados clave del estudio fueron: observación y comparación del alcance de las regulaciones que aseguran la estandarización de armamentos y equipos militares a nivel nacional, así como entre países de la OTAN; comparación y distribución de poderes de competencia de los órganos ejecutivos y supervisores para el desarrollo e implementación de normas. Además, el estudio proporciona un cuadro de los antecedentes legales para la estandarización y determina directamente el lugar lógico secuencial de la etapa de desarrollo de armamentos y equipos militares en el ciclo de vida. Se hacen propuestas al final del estudio sobre cómo aumentar la eficacia de la disposición legislativa para la estandarización de armamentos y equipos militares.

Palabras claves: armas estandarización; estándares; legislación; equipamiento militar; normas de la OTAN.

Introduction

Standards have existed for many millennia. For example, standards for measuring time, distance and weight were among the first types of standards created. As mankind progressed, the scope of standardisation grew.

Defence standards have emerged because of the need for proper performance, stability and reproduction, as well as the logistical benefits of military equipment (Eurolab, 2017). The current system of standardisation of development and production of weapons, ammunition and military

equipment attracts attention not only in terms of co-ordination of compatibility of weapons by calibre, outfit by functionality and special equipment by purpose, but also because individual parts and elements of one defence product can be produced in different geolocations and countries. In this case, if the relevant standards are met, the assembly of separate parts of the future product will be successful.

The stage of implementation and compliance with standardisation in the development of armaments occupies a key place in ensuring compliance with security measures. In particular, weapons and ammunition are used in certain conditions not only by the armed forces, but also by law enforcement agencies, private security organisations, collectors, etc. Legislative provision for the standardisation of the development of armaments and military equipment (hereinafter — the AME) is a public activity of the relevant bodies, which affects the creation of products and tools for the defence industry through regulations.

Five European countries, France, Italy, the Netherlands, Belgium and Luxembourg, were the first to decide to standardize armaments by forming the FINBEL group in 1953 (Burigana and Deloge, 2006). FINBEL group had succeeded in standardization of spare parts, but not for finished products (Alla and Sergii, 2021). Also created regional organizations of a small amount of cooperation: Union of South American Nations (UNASUR), Association of Southeast Asian Nations (ASEAN), Shanghai Cooperation Organization (SCO), Economic Community of West Africa (ECOWAS), Southern African Development Community (SADC), African Union (AU). In turn, groups with great military capabilities made up the following groups of: North Atlantic Treaty Organization (NATO), Commonwealth of Independent States (CIS), European Union (EU) (Alla and Sergii, 2021).

Standardisation of military equipment is an integral part of the system, which is called “standardisation in the defence sector”. Armament’s standardisation is a method of improving interoperability within the country and between the armed forces, a process that can lead to cost savings in defence development and increase the operational efficiency of military personnel (European Union Institute for Security Search, 2018). At the same time, military standardisation activities in the defence sector result in a creation of a group, a complex and a certain system of standards.

Modern administrative and legal support for defence standardisation in foreign countries, NATO and the EU is a major factor in the establishment and operation of defence standardisation systems and directly affects the protection of sovereignty, territorial integrity and security, protection of society and states that are part of international and regional defence organisations from internal and external threats (Podoinitsyn, 2019).

Ukraine's thrive for global economic integration necessitates bringing the national system of standardisation and technical regulation in line with the principles of the World Trade Organisation (hereinafter — the WTO), in particular, the Agreement on Technical Barriers to Trade (hereinafter — the TBT Agreement) (State Committee of Ukraine on Technical Regulation and Consumer Policy, 2006).

In many developing countries, there are companies that produced weapons designed during the Soviet era, including ammunition, for several years. But, countries that decided to start producing ammunition in compliance with NATO standards have already set up export promotion councils to attract other countries to process, modernise and expand their product range (King, 2010).

In order to investigate the topic of article the aim of the study became to identify objectives and measures for expansion of the system of standards in the context of improving national defence capabilities.

The study will contribute to further progress of the national system of standards for the development of armaments and military equipment, taking into account the experience of other countries, which will promote effective management of this process, making optimal technical decisions, minimising state budget costs in developing defence products.

The *topicality* of the study is that the results of the work of the Ministry of Defence and other central executive bodies on the application of the system of standards by domestic enterprises indicate the need for its radical change or the creation of a new one (Cabinet of Ministers of Ukraine, 2009). In addition, a clear idea of the scope and structure of the system of legislation to standardise the development of armaments and military equipment is extremely important in times of armed aggression by the Russian Federation against Ukraine (Verkhovna Rada of Ukraine, 2018). A logically designed system of defence standards will further implement NATO and NATO member states' defence standards (Verkhovna Rada of Ukraine, 2019), increase the level of conformity of developed weapons with modern conditions of hostilities in eastern Ukraine, and thus strengthen the level of security at state borders and increase the prestige of the Armed Forces as a whole.

In the scientific literature one can find attempts to study the legislative provision of national defence product standardisation. However, despite the large number of available texts, little attention is paid to the issue of determining the scope of activities and existing AME standardisation Programmes.

A group of scholars studied the practical implementation of military standards.

Aim of the research is identification of ways, main objectives, and regulatory measures for further advance of the national system of standards for AME development in the context of improving national defence capabilities.

Research objectives are the following:

- Determine the essence and composition of the standardisation system of AME development.
- Determine the bodies responsible for the implementation of legislative support for AME standardisation.
- Analyse the foreign experience of administrative implementation of AME standardisation.
- Formulate proposals to increase the efficiency of legislative support for AME standardisation.

1. Literature Review

The study, analysis, generalisation, and systematisation of empirical developments in the scientific literature on the AME standardisation in the context of administrative law, allowed us to provide basic opinions that are important for this article. Namely:

1. Since the development of high-precision AME leads to the need to create a new generation of specialised control systems, their characteristics and parameters during testing, the primary need is to improve the test system, the regulatory framework of which is a system of standards.

As a result of the practice, the period of updating (glancing) of the standards in the middle warehouse is 5 years. For the rest of the rock, there have been changes in the minds of the growth of intelligence in military equipment, the accumulation of significant information about the robots with the existing system of standards in defense halls, the meaning of the changes and inadequacies of the new generation of standards (Lappo *et al.*, 2020).

2. Arms standardisation within a military alliance has a number of advantages. This ensures the division of arms production into separate coalition territories, which facilitate supplies in the event of a conflict. It also increases the cost-effectiveness of production and science by combining efforts of research agencies (Akşit, 2014). It also facilitates interaction between allied countries and the maintenance of units during war, allowing to join and exchange ammunition, spare parts, and so on (Raflik, 2016).

3. The success of the development of new technologies and AME is closely linked to the full cycle of theoretical and practical research, laboratory, and field tests. This, in turn, requires the creation or modernisation of appropriate material and technical resources as well as testing facilities, bringing it to the current technical level, which requires significant financial and material costs (Lappo *et al*., 2020).

4. NATO standardisation supports the achievement and strengthening of interaction between NATO forces and allied forces to strengthen defence capabilities and operational capabilities. Standardisation for achieving compatibility is not an end in itself but is a key factor. NATO standardisation is the development and implementation of procedures, projects and terms to the level required for interaction between the Allies, or recommendations on good practice. To achieve interoperability, standardisation requires a comprehensive and systemic approach, starting with the definition of requirements, followed by the development of solutions, their implementation and verification (NATO Standardisation Office, 2018). Reforming the military and security sectors in line with NATO standards is a priority for Ukraine (Mission of Ukraine to the North Atlantic Treaty Organisation, 2021).

5. The Ukrainian way of applying NATO standards has a positive dynamic, but often public discourse causes problems with the interpretation of basic concepts. There is still a lot of work ahead, as most standards have not yet been adopted (Kozii and Tarasiuk, 2019).

6. Woznyak *et al.* (2016) found that in recent years more than seventy countries of the Alliance at various levels (Partnership for Peace, Mediterranean Dialogue, Istanbul Cooperation Initiative, etc.) have shown interest in the Alliance's standardisation policy.

There are many reasons for this interest, the main of which are the partners' thrive to increase the level of national security through integration into a democratic community and saving their own resources and efforts. Thus, standardisation is a topical issue for both the Alliance and all its members and partners (Ministry of Defence and Veterans Affairs of France, 2011)

7. In the United States, there are no federal rules on the safety standards of firearms produced. Federal law does not establish any safety standards for the design of domestic firearms. This is because, unlike any other consumer product made in the United States, firearms and ammunition are not subject to the health and safety standards set by the Federal Consumer Safety Act. As a result, many types of firearms

are manufactured and sold in the United States without proper security testing and without the inclusion of basic security features (Giffords Law Centre, n. d.).

2. Methodology

The input data for this study were information obtained from scientific papers (Johannes, 2018; King, 2010; Lappo *et al.*, 2020) and articles (Eurolab, 2017; European Union Institute for Security Search, 2018; Ukrinform, 2021). In this case, the main empirical background of the study is collected using four methods: direct observation, comparison, monitoring and analysis of the documents, which ensure the standardisation of armament and military equipment at the state and interstate levels.

It was established in the course of *direct observation* that the role of legislative support is not limited to the establishment and enshrinement of technical requirements in regulations. The importance of regulation also lies in identification of bodies and organisations responsible for the implementation of standards, the distribution of functions between them, as well as identification of the limits of liability for non-compliance with the legal requirements set forth in engineering requirements. In addition, Ukraine's course towards association with the EU and the alliance of NATO member states is a promising direction for changing the current system of standardisation of AME development.

When using the method of *comparison*, the laws, documents, and regulations governing the standards of AME development were identified, the legal background for the standardisation of AME development was determined, and the life cycle of the AME models was formed.

It is established that the standardisation system will not function fully, have gaps and uncertainties without proper financial and legislative support. In addition, it was found that no NATO member country has yet implemented all existing Alliance standards.

The *monitoring* revealed that the regulatory framework needs to be improved in terms of the procedure for establishing, substantiating, and controlling standardisation requirements. It was established that, in addition to the NATO alliance, there are many other international armaments standardisation Programmes under the agreements reached.

During the *analysis of the content of various documents*, the information posted on social networks and news websites was studied. The current scope and sources governing the standardisation of AME development was established. In addition, the tendencies of standardisation in the world, objectives and directions of legislative regulation of standardisation are investigated.

3. Results

Armaments are a set of military weapons, ammunition and technical facilities that ensure their use. Military equipment is technical facilities designed to ensure and conduct hostilities, train personnel, as well as to ensure a given degree of readiness for the use of weapons and such facilities. The AME development is a stage that consists of designing, manufacturing and testing prototypes needed to test selected technical solutions (Ukrainian Research and Training Centre of Standardisation, Certification and Quality, n. d.).

The existing legal framework needs to be improved in terms of the procedure for establishing, justifying and controlling the requirements for standardisation and unification of advanced armaments systems and AME models. This is especially true for single or small-scale production of complex armaments systems and AME which are created using imported components, electronic component base, electrical radio products, software and algorithms (Kulagin, 2009).

In this regard, Law No. 2742-VIII introduced military standardisation. It should aim to ensure maximum interoperability between the Ministry of Defence, the General Staff of the Armed Forces, other military units, law enforcement agencies, central and other executive bodies in the field of defence, as well as with armed forces of the North Atlantic Treaty Organisations and forces of NATO member states through military standards. Military standards cover standards intended for administrative (management processes, information exchange, documentation procedures, etc.) and operational (military practice, operational planning, methods, procedures, etc.) defence objectives, and all, without exception, NATO standards and defence standards of NATO member states (Ministry of Economy of Ukraine, 2019).

By definition, a standard is a regulatory document based on consensus, adopted by a recognised body, which establishes rules, guidelines or characteristics of the activity or its results for general and repeated use, and aims to achieve the optimal degree of order in a particular area (Verkhovna Rada of Ukraine, 2014). Military standard is a standard adopted by the military standardisation body, which establishes rules and guidelines for activities in the defence sector for general and repeated use and is aimed at achieving the optimal degree of regulation in this area (Verkhovna Rada of Ukraine, 1992a).

Public law requires the Minister of Defence to have the highest level of standardisation of the Ministry's tools used by developing and using uniform specifications, reducing the number, size and types of such defence items. The library of unique military specifications, standards and reference books is one of the important tools used by the Ministry of Defence to acquire

and maintain its armaments systems. Military specifications, standards and reference books are crucial for the Ministry of Defence, as they provide the basis for meeting unique military needs at a cost-effective price while maximizing competition. Ongoing development, indexing and maintenance of these documents provide the needs of the Ministry of Defence in terms of time and costs (Defence standardisation Programme office, n. d.).

Yesimov and Dutuyk (2017) is also right that in order to accelerate the development of mechanisms that promote the implementation of the Association Agreement between Ukraine and the EU and increase the level of national security and defence capabilities of the state, it is necessary to explore priorities, trends, strategic goals, objectives, principles and directions of legal regulation of standardisation.

Formally, the legal background of the state standardisation system in the field of armaments and military equipment are: current legislation (Ministry of Economy of Ukraine, 2019), current regulations (Presidential Decrees, Government Resolutions, Orders of the Minister of Defence), the Concept of National Standardisation System to Create a National System for Developing and Supplying Armaments, Military and Special Equipment (Cabinet of Ministers of Ukraine, 2009), system of current standards, classifiers, targeted standardisation Programmemes by types of AME, international treaties, etc. Besides, the organisational principles of military standardisation are determined by the Resolution of the Cabinet of Ministers of Ukraine (1993) "On the Organisation of Work on Standardisation of Armaments and Military Equipment in Ukraine", "Regulations on Military Standardisation" approved by Order of the Minister of Defence of Ukraine No. 56 of 24.02.2020, which will regulate the process of implementation of NATO standards and guidelines within the security and defence sector of Ukraine (Ministry of Defence of Ukraine, 2020a), the Programme of Work on Military Standardisation for 2021 - 2023 approved by the Order of the Head of Standardisation, Codification and Cataloguing No. 80 of 30.12.2020 (Ministry of Defence of Ukraine, 2020b). At the same time, for better perception, it is proposed to schematically present the whole set of regulatory documents on standardisation of AME development in Figure 1 (Legal framework for standardisation of AME development).

To ensure the development of national standardisation, its compliance with the requirements of the Technical Barriers to Trade Agreement of the World Trade Organisation and harmonisation with the European standardisation model, the Programmeme of Revision of Current Interstate Standards (GOST) Developed in Ukraine before 1992, and Bringing them in Line with the Technical Barriers to Trade Agreement of the World Trade Organisation was adopted (State Committee of Ukraine on Technical Regulation and Consumer Policy, 2006).

At the same time, the system of documents on standardisation of armaments and military equipment is still represented both by the relevant standards of the former USSR in the military sphere, and standards adopted by the Ministry of Defence of Ukraine and the State Enterprise "Ukrainian Research and Training Centre for Standardisation, Certification and Quality" SE "UkrNDNC").

At the same time, in accordance with the agreement between the CIS countries "On the Organisation of Interstate Standardisation of Armaments and Military Equipment" of 03.11.1995, the work on interstate standardisation of armaments and military equipment will be carried out without harming the national interests of Ukraine (Verkhovna Rada of Ukraine, 1992b). However, this agreement is currently suspended (Cabinet of Ministers of Ukraine, 2019).

Podoinitsyn and Yafonkin (2017) note that the role of law is not reduced to the establishment and consolidation of technical requirements should be taken into account when considering the issue of legal regulation of standardisation. The legal regulation is also important because of the impact on the behaviour of individuals in society, which would ensure the implementation and compliance with technical requirements enshrined in the legal regulations. This is achieved by: establishing a general procedure for acceptance of raw materials and finished products of a certain level of quality; regulation of relations arising in connection with the use of measuring equipment; bringing to legal responsibility in connection with violation of regulations and metrological rules; regulation of relations regarding the quality of products and services.

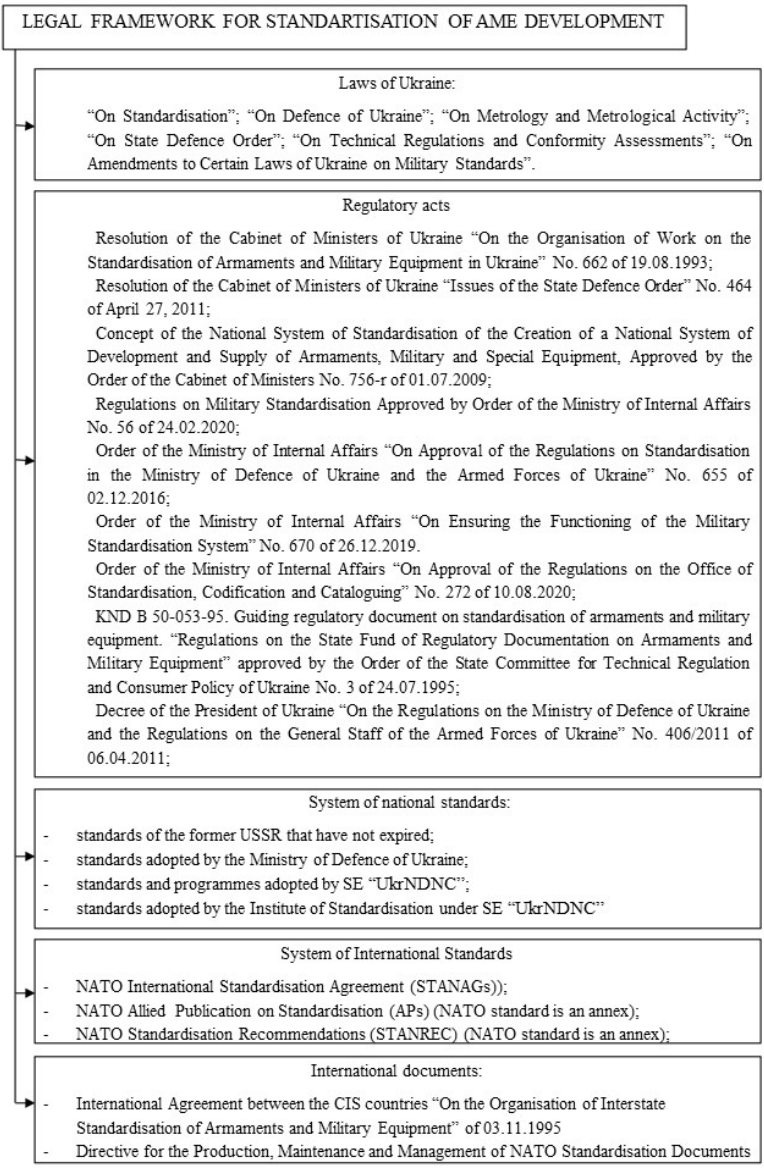

Figure 1: Legal Framework for Standardisation of AME Development.

According to the legislation of Ukraine, the standards are of a recommendatory nature and are applied on a voluntary basis. The powers of central executive bodies are determined by the Constitution and laws of Ukraine (Cabinet of Ministers of Ukraine, 2009).

Standardisation procedure includes: development, preparation, production and updating of standardisation documents (Bumgardner, 2010). In total, there are about 1,160 standards and related standardisation guidelines in the NATO Standardisation Documents Database (NSDD) (2021). In addition, national regulations for defence products are:

a) national standards for defence products;

b) national codes of good practice for defence products;

c) national standards for defence products for a particular period;

d) military supplements to national standards;

e) military supplements to national standards for a special period;

f) military supplements to national standards for defence products for a particular period.

In addition, the national regulations include a trial standard. This is a document that has been temporarily adopted by the standardisation body and brought to a wide range of users to gain the necessary experience during its application, for the basic standard to be based on (Figure 1).

NATO's standards system is integrated into a complex system of standardisation regulations. The NATO Allied Publications (AP) is a document that sets the standard itself and is intended for direct application by the military authorities of NATO member states, particular organisations and units (Getmachuk *et al.*, 2019).

Major NATO publications on standardisation include:

- AAR-3 standardisation procedures (Production, Maintenance and Management of NATO Standardisation Documents).
- Register of agreements and publications on standardisation AAP-4 (NATO Standardisation Agreements and Allied Publications).
- AAP-6 Glossary (NATO Glossary of Terms and Definitions).
- List of accepted abbreviations AAP-15 (Glossary of Abbreviations Used in NATO Documents).

The NATO Standardisation Agreement (STANAGs) is an international treaty that regulates the general rules and procedures, the unification of administrative, technical, and logistic processes, armaments and military equipment, as well as other material assets of Allied and Partner Countries.

Standardisation agreements also define the criteria for interoperability between Member States and partners (Kozii and Tarasiuk, 2019).

SRD — other documents related to NATO standards (Getmachuk and Fakhurdinova, 2021).

The NATO standards can best be formulated by multinational teams of national experts (North Atlantic Treaty Organisation (NATO), 1997).

The Ministry of Defence of Ukraine (n. d.) provides for the following measures to implement NATO standards:

- identification of lists of NATO standards by areas of activity (defence standards of NATO member states), their priorities.
- requesting and obtaining certain NATO standards (defence standards of NATO member states).
- study and elaboration of NATO standards (defence standards of NATO member states), their translation (if necessary), decision-making on the application of their provisions (norms, requirements) in the Armed Forces of Ukraine and other components of the security and defence sector.
- submission of proposals to the national standardisation body for adoption of international and regional standards as national standards in case of reference to them in international military standards.
- development of relevant regulations or documents on military standardisation (amendments to existing ones) on the basis of NATO standards (defence standards of NATO member states).

Figure 2 shows that the stage of implementation of material standards by the state, which is still carried out by many NATO countries, as well as Ukraine, is only one of the eight other necessary steps towards their mutual interstate coordination. We should not forget about the conditions of STANAG implementation under the conditions of a pandemic (Campbell, 2020).

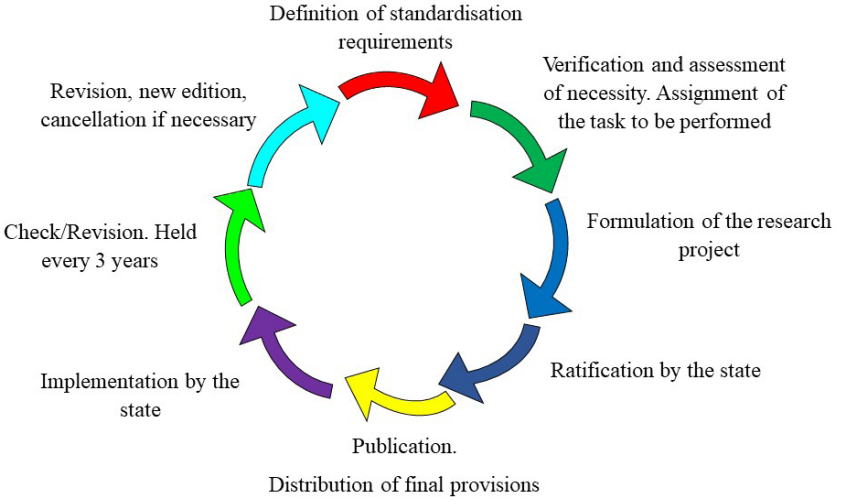

Figure 2: Lifecycle of STANAG Standards

On this issue, the enterprises of State Concern "Ukroboronprom" selected 300 NATO material standards (STANAG), which associated with the AME production in 2017, based on the results of elaboration of the entire list of NATO standards in order to determine the feasibility of their implementation in Ukraine as national standards — DSTU V.

The powers of executive and supervisory bodies for the development and implementation of AME standards are distributed as follows:

- SE "UkrNDNC" — conducts active work on the implementation and coordination of activities for the development, adoption, verification, revision, cancellation and renewal of standards;
- The Institute of Standardisation, which is a part of UkrNDNC, is the leading organisation of Ukraine in scientific and methodological management of development, implementation and operation of national standardisation, as well as the main organisation in Ukraine for standardisation of armaments and military equipment. In particular, 205 relevant standards have been adopted for military equipment (Cabinet of Ministers of Ukraine, 2009).
- The Department of Standardisation, Codification and Cataloguing of the Ministry of Defence performs tasks related to the legal regulation of relations in the field of military standardisation, cancellation, renewal, publication, introduction and application of military

standards, organisation and control over the standardisation of products (Ministry of Defence of Ukraine, 2020c).

- The Minister of Defence is responsible for the implementation of military standards.
- The Standardisation Commission is the leading supervisory body for standardisation, which is responsible for coordinating the activities of military authorities on the adoption and implementation of provisions (norms, requirements) of international military regulations and reconciliation of discrepancies that may arise when approving draft military standards, distributing responsibility for developing NATO standards, etc.
- Technical Committee for Standardisation 176 — conducts work on material (technical) standardisation, usually as part of national standardisation through defence products.
- Military standardisation organisations (scientific and research institutions) and temporary (joint) working groups develop, verify and timely revise military standards in accordance with the areas of work or under particular tasks (Getmachuk *et al.*, 2019).

Given the above, taking into account the terms and concepts of DSTU V 8821-1 2018, I propose to schematically present the lifecycle of AME (Figure 3). This figure shows the sequential and logical place of the stage of standardisation of AME development, namely: after setting the terms of reference, taking into account the standards for development and before production (manufacture, testing and creation) of AME.

In addition, the Cabinet of Ministers of Ukraine should establish a central executive body — Defence Technology Development Agency — by the end of June 2021 as part of the reform of the defence industry in order to implement an effective system of organisation and research on innovative defence technologies (hereinafter — DT) for the development of high-tech armaments on their basis.

However, there are obstacles and challenges in implementing NATO (1997) standards:

- Confusion in terms. In Ukraine, the term “standard” applies not only to military standards of NATO or NATO member states, but also to norms, principles and practices of the Alliance or its member states, which is not entirely correct;
- Insufficient number of professionals with the appropriate level of language involved in the process of developing NATO standards;

- Irrational use of human resources. Leading positions are mostly held by representatives of the "old cohort";
- The need for significant investment in the application of NATO material standards.

Some Eastern European countries, such as the Czech Republic and Poland, have made progress in standardising NATO by developing modern small arms of the NATO-approved calibre, but the transition to those small arms and qualified NATO ammunitions designs depends on the funding provided. More importantly, the US Army's 2014 Military Weapons Strategy showed that Americans are considering non-NATO calibres for new rifles and machine guns. The army's strategy stated that imminent threats prompted the development of a common, intermediate calibre to maximise firepower and efficiency for the unit, while having vulnerability and accuracy at all distances.

Past NATO experience has also shown that when the alliance switched to new weapons, the level of standardisation was generally maintained due to the availability of adequate funding and resources. From a practical point of view, it was not advantageous to introduce interchange ability of calibres, such as 5.56 mm, because the members of the alliance would have to further ratify the existing STANAG. At the same time, the alliance must always be ready to improve the standardisation of ammunition for the intermediate calibre to emerge (Zhou, 2016).

On paper, NATO is an ideal organisation that sets standards for the use of artificial intelligence for military purposes, but this may be hampered by the priorities and budgets of its 30 members (Heikkilä, 2021).

In addition to NATO, there are many other international armaments standardisation Programmes under the agreements. As a result, for some countries, the system of regulatory documents for AME standardisation is somewhat broader than the national one.

AME lifecycle is shown on Figure 3.

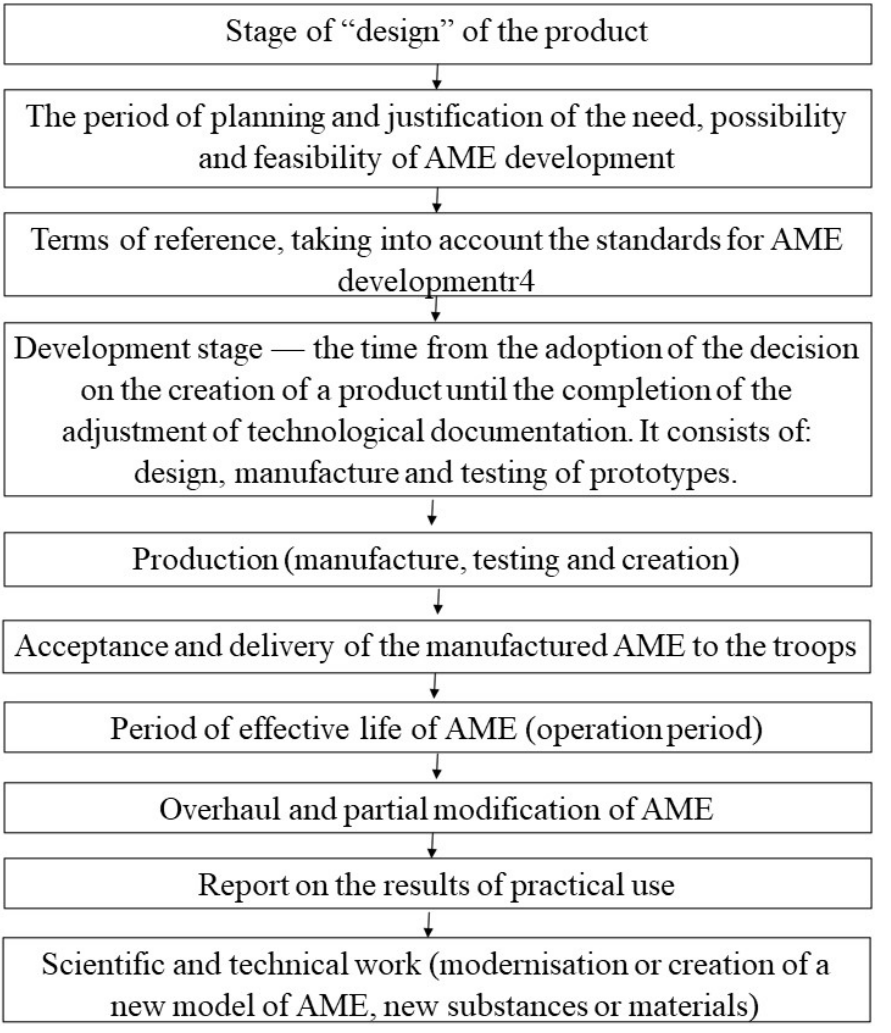

Figure 3: AME Lifecycle

United States (AUSCANNZUKUS). The AUSCANNZUKUS grouping is to facilitate the exchange of knowledge, which enables the serviceman to successfully complete missions in the full range of joint and combined operations. The Network's working groups cover the concepts of operations, standard operating procedures, and technical operating instructions.

The Combined Communications-Electronics Board (CCEB). CCEB is the five national joint military communications and electronics organisations (C-E) with the mission to coordinate any C-E military case transferred to it by a Member State. CCEB member states are Australia, Canada, New Zealand, the United Kingdom, and the United States (Defence standardisation Programme, n. d.).

In addition, during a briefing on March 16, 2020, the press secretary of the Minister of Defence of Ukraine S. Pavlovska said that the Ministry of Defence of Ukraine is putting all efforts to ensure that the Armed Forces of Ukraine are as compatible as possible with the forces of NATO member states. The Ministry has established standardisation, codification, and cataloguing departments in order to achieve this goal and interoperability between Ukraine's defence forces and NATO member states (UANATO, 2020).

'Ukraine is creating a national system of transition to the NATO standard. Deputy Prime Minister for European and Euro-Atlantic Integration Olga Stefanyshyna announced the launch of such a system on April 6. Ukraine is firmly moving towards accession; NATO is the only way to end the war in eastern Ukraine.' Shmygal wrote on his Facebook page (Ukrinform, 2021).

Valery Chaly, Chairman of the Board of the Ukrainian Crisis Media Centre, emphasised that NATO membership is a strategic direction of Ukraine's foreign policy. The Alliance, seen as a key game in Europe's fortified defence and security, is a benchmark for Ukraine, and the status of its member is a goal. "The constitution provides a clear background for future accession and membership strategies. However, it is important to remember that there is still a lot to do on the way, this is a homework for Ukraine', Valerii Chalyi said (Ukraine Crisis Media Centre, 2021).

Although NATO helps to limit the scope of standardisation, security aspects and the enormous size of the alliance make it a cumbersome grouping to achieve technical harmonisation of armaments. The ABCANZ group of countries is becoming a key factor in setting technical standards, which will also help influence NATO (Johannes, 2018).

In the long run, cooperation between NATO and a certain country without mutual commitments requires the first level of standardisation (compatibility), partnership with mutual assistance commitments requires the second level (interchange ability), and the country's integration into NATO requires the third level of standardisation (unification) (Woznyak *et al.*, 2016). As of January 2021, Ukraine has implemented a total of 292 NATO standards and guidelines (about 19% of standardisation agreements), of which 86 are substantive standards (Getmachuk and Fakhurdinova, 2021). This is 27% of the implemented standards and 14% of the total number of NATO material standards.

Moreover, since June 12, 2020, Ukraine has been one of the six countries (known as Enhanced Opportunities Partners under the Partnership Initiative) that make a particularly significant contribution to NATO operations and other NATO objectives. Thus, the country has expanded opportunities for dialogue and cooperation with allies (North Atlantic Treaty Organisation (NATO), 2021).

4. Discussion

Administrative and legal support for defence standardisation is not only a key factor in the effective functioning of standardisation systems, which affects the protection of sovereignty, territorial integrity and security of the state from internal and external threats (Podoinitsyn, 2019), it is also appropriate to keep in mind that this is an ongoing process for many NATO countries (Zhou, 2016), as well as other international defence groups (Heikkilä, 2021). It should be noted that obstacles to the implementation of STANAG standards become even greater (NATO, 1997), and the implementation process itself is delayed under the conditions of a pandemic (Campbell, 2020).

The development stage, which involves the design, manufacture and testing of prototypes, occupies an important place in the AME lifecycle. Adoption of STANAG material standards at the interstate level and at the level of the Ministry of Defence of Ukraine is still a long stage, inspection and revision can take place every 3 years (Figure 2).

Despite the fact that the system of current levels of military standardisation is fully consistent with the system of NATO countries (Cabinet of Ministers of Ukraine, 1993), work on material (technical) standardisation should be further carried out by TC 176.

The advantages of standardisation cannot be overestimated, in particular, it: ensures the establishment of mass production; improves coordination with suppliers; improves product quality; allows to simplify production process of necessary products and means; reduces the excessive accumulation of spare parts and components (AsqNotes, 2021).

The fundamental role of the North Atlantic Alliance is to protect the freedom and security of member countries by political and military means. The U.S. Code states that U.S. policy provides that equipment purchased for U.S. forces used in Europe under the terms of the North Atlantic Treaty should be standardised to the level or extent necessary to interact with equipment used by other NATO members for similar purposes (Campbell, 2020). For its part, the Alliance will play an active role in strengthening international security, in partnership with relevant countries and other

international organisations, keeping the door to NATO membership open to all European democracies that meet North Atlantic Treaty Organisation (NATO) (2010) standards.

In international aspect order to be able to integrate into NATO on an equal partnership basis, Ukraine means to implement the Alliance's positive experience of administrative and legal support for defence standardisation. That will allow it to effectively develop and implement concepts, doctrines, procedures and projects to achieve and maintain interoperability, as well as for optimisation, use of resources for operational, technical and administrative purposes. Modern administrative and legal support for defence standardisation in foreign countries, NATO and the EU is a major factor in the establishment and operation of defence standardisation systems, and directly affects the protection of sovereignty, territorial integrity and security, protection of society and states that are members if international and regional defence organisations, from internal and external threats (Podoinitsyn, 2019).

We propose the following to increase the effectiveness of legislative support for AME standardisation:

- Intensification of exchange of experience and information between Ukraine and NATO and EU countries on the implementation of STANAG;
- Modernisation of the existing system of standardisation in the field of defence industry and updating of standards to modern requirements for the Armed Forces of Ukraine;
- Complete replacement of the standards of the former USSR with domestic standards and armament standards STANAG;
- In order to comply with a single concept of implementation of standards and prioritisation of regulations, apply the scheme of the regulatory system of standards (Figure 1);
- implementation of new NATO standards by republishing (revision, translation).

Conclusions

Defence requirements are becoming increasingly complex, and frequent organisational changes and rapidly evolving technological advances can lead to inadequate compatibility of AME at both the national and international levels. Inconsistencies in capability planning and management, without a proper defence standardisation system, can contribute to duplication, re-invention, increased costs and time, and reduce the military effectiveness

of AME. In addition, the harmonisation of defence standards applied in the defence sector is a key factor in the interoperability of military equipment used by the armed forces.

In international aspect the method of implementing the standards, including NATO, is correct, the degree of their implementation depends on the amount of funding for this Programmeme and the desire to follow the concept of the national standardisation system. The implementation of the current STANAG standards has a positive dynamics, but is slow. In particular, in the period from 2014 to 2021, only 14% of the total list of NATO material standards was implemented. It should also be borne in mind that every 3 years STANAG may be revised and amended. Therefore, the logistical model of material standards of the STANAG alliance of NATO countries, a partner with enhanced capabilities of which is Ukraine, needs faster implementation to the appropriate extent.

The reasons for the slow implementation of AME development standards include: confusion in the terms used in STANAG, insufficient level of language training of those involved in the process of developing NATO standards; holding senior positions in the Ministry of Defence mostly by members of the "old cohort", the need for significant financial costs for the implementation and application of NATO material standards.

Legislative standardisation of AME development is a rather complex ongoing process of development and harmonisation of standards in the defence sector, it requires improvement and clear formal definition of the scope and powers, as well as appropriate financial support of the responsible authorities. Continuous implementation of a modern system of standards will meet the needs of the Ministry of Defence, while saving money and time during the development of weapons. The development and conduct of research according to existing standards should be entrusted to the Agency for Defence Technology Development.

However, the main disadvantage of the implementation of standards in the process of AME development is the burden of additional legal support and administrative control of the supply chain of defence products between both military and civilian suppliers.

Despite the fact that many standards have not yet been adopted, much remains to be done in the future to improve the existing system of legislative support for the standardisation of AME development.

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Aspects of Expanding the Interaction between the State and Civil Society

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Abstract

The aim of this study was a holistic analysis of aspects of expanding the interaction between the state and civil society on the example of the experience of foreign countries, namely Austria, Belgium, France, Italy, and Poland. The research involves such methods as sociological analysis, systemic and case study methods, structural and comparative methods, as well as the dialectical method. The factors of expanding the interaction of the judiciary as a representative of the state, which protects the rights and interests of civil society, were identified in accordance with the results of the study. As a result, conclusions were drawn on the need for the judiciary, as a representative of the state, to use methods to expand the interaction between the state and society, in the person of every citizen. The use of those factors in relation to such interaction will further help increase public confidence in the state, which will ensure effective protection of the rights and interests of society.

Keywords: Human rights; interaction of the state; judicial authorities; justice; protection of rights.

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Aspectos de la Ampliación de la Interacción entre el Estado y la Sociedad Civil

Resumen

El objetivo de este estudio fue un análisis holístico de los aspectos de la expansión de la interacción entre el Estado y la sociedad civil sobre el ejemplo de la experiencia de varios países a saber: Austria, Bélgica, Francia, Italia y Polonia. La investigación involucra métodos tales como análisis sociológico, métodos sistémicos y de estudio de casos, métodos estructurales y comparativos, así como el método dialéctico. Los factores de ampliación de la interacción del Poder Judicial como representante del Estado, que protege los derechos e intereses de la sociedad civil, fueron identificados de acuerdo con los resultados del estudio. Como resultado, se extrajeron conclusiones sobre la necesidad de que el Poder Judicial, como representante del Estado, utilice métodos para ampliar la interacción entre el Estado y la sociedad, en la persona de cada ciudadano. El uso de esos factores en relación con dicha interacción contribuirá aún más a aumentar la confianza pública en el Estado, lo que garantizará la protección efectiva de los derechos e intereses de la sociedad en general.

Palabras clave: derechos humanos; interacción del estado; autoridades judiciales; justicia; protección de derechos.

Introduction

The problems of expanding aspects of the interaction between the state and civil society are directly related to public administration, namely the judiciary, which creates one of the fundamental paradigms of the national science of public administration.

Analysis of current research of European scholars shows that the science of public administration by judicial authorities in advanced European countries focuses on studying current trends in the national civil service, in particular, their (judicial authorities) joint work with society, peculiarities and unique features, assessing the prospects of European universal models for expanding the civil service of the judicial authorities, which could bring civil society closer to the state as the most important prospect for future public administration.

As of 2021, Ukraine is at the stage of developing an effective expansion of interaction between the state and society, which would clearly regulate the activities of the judiciary and be able to guarantee the protection of the rights and interests of every citizen.

The object of the study is the social relations that have developed in the process of expanding the interaction between the state and civil society.

The subject of the study is the interaction of the judicial authorities, as a representative of the state, with society.

So, the main objectives include:

- analysis of the interaction of the judicial authorities, as a representative of the state, with society, as well as the practice of expanding the powers of the judiciary for the effective protection of the rights of civil society as a whole.
- determining the level of effectiveness of laws and regulations to expand the interaction of the state, represented by the judicial authorities and civil society in foreign countries.

The term "human rights" has been mentioned seven times in the United Nations Charter, which makes the promotion and protection of human rights a key goal and guiding principle of the Organization (United Nations, 1945).

The Universal Declaration of Human Rights introduced by the United Nations (1948) laid down the principles that brought human rights into the realm of international law. Since then, the Organization has diligently protected human rights through legal instruments and field measures.

Besides, the International Covenant on Economic, Social and Cultural Rights the International Covenant on Civil and Political Rights (United Nations, 1976a, b), both entered into force in 1976 and are the main legally binding instruments for the global protection of citizens' rights by the judicial authorities.

It should also be added that the Convention on the Rights of the Child (United Nations, 1990) recognizes that children also have human rights and that they need special protection to ensure their full development, survival, and best interests.

Therefore, in order to expand cooperation between the judiciary and the public interest as a protection of their civil rights, it is necessary to comprehensively analyse the current stage of communication between the state and society as a whole.

It is important to add that there was a need to regulate the protection of human rights through the adoption of new legislation during the Covid-19 period. These include the Statement on human rights considerations relevant to the COVID-19 pandemic, issued by the Committee on Bioethics of the Council of Europe (2020), which places a fundamental requirement on the judiciary to respect human dignity and protect human rights. In addition,

in the context of a pandemic, the Council of Europe Convention on Human Rights and Biomedicine (Council of Europe, 1997) became relevant as a binding international legal instrument concerning the protection of human rights in the field of biomedicine. It provides a unique framework for the protection of human rights, including those interpreted in the context of crisis and emergency management, to guide decision-making and practice in both the clinical and scientific fields.

It should be noted that, according to European Commission (2020a), well-functioning and fully independent justice systems can have positions that have a significant impact on investment and thus help increase productivity and competitiveness. As is well known, the judicial authorities must also take into account any obstacles that may arise and, on the basis of analysis and evaluation, look for ways to implement new effective interactions between the state and society by protecting their rights.

In the framework of the European Semester, evaluations are conducted for each country through a bilateral dialogue with national judicial authorities and stakeholders. Where the identified shortcomings affect the macroeconomic environment, this may lead the EU Commission to propose to the Council to adopt country-specific recommendations for improving national justice systems (or justice in general) in individual countries.

It should be noted that all domestic and foreign countries provide for the right to a fair trial by the Constitution and other laws. The Constitution of Ukraine (Verkhovna Rada of Ukraine, 1996), Article 55, states that everyone has the right to protection of their rights and interests. The Constitution of France (Conseil Constitutionnel, 2008), which, according to Section XI BIS of Article 71-1, provides everyone with a person (Advocate) who guarantees respect for the rights and freedoms of every citizen by state administrations, local self-government bodies, state institutions and any other bodies. The Constitution of Poland (Sejm Rzeczypospolitej Polskiej, 1997), where Section IX of Article 208 mentions the Commissioner for Human Rights, who is the protector of human, as well as civil rights and freedoms defined by the Constitution and other regulations (Ombudsman), etc.

Despite the large number of seemingly exhaustive legal frameworks governing the protection of the rights and interests of society through the judicial authorities, the level of the expansion and interaction of the state and civil society is not high in many countries. This is natural, on the one hand, because society is constantly changing and needs other methods and approaches to such cooperation between the state and society, and on the other - determines the readiness of states to find new ways to restore and gain the trust of every citizen by protecting their rights.

1. Methods and Materials

The activity of several countries in this field is analysed, they include such countries as: Austria, Belgium, France, Italy, and Poland. These countries regulate the activities of the judicial authorities in completely different ways to expand the methods of interaction with society, which allows a more specific approach to the study of this issue.

However, despite the specific considerations of this study from the perspective of these five countries, the experience of other foreign countries was also comprehensively analysed to assess the interaction between the individual state and society.

So, statistics on the activities of the judicial authorities in the European Union were analysed, summarizing issues that are under discussion and those that are already working in the justice system of the EU Member States. Besides, a comparative analysis of five countries that differ in the level of effectiveness of the judicial authorities in dealing with civil society is made. We determined the effectiveness of such interactions between the judicial authorities and citizens for each of the studied countries based on the factors that contribute to the expansion of aspects of interaction between the state and society.

Particular attention should be paid to methods of expanding the interaction of judicial authorities and society in France. A number of factors were studied that should be taken into account when analysing the need to expand such interaction, which is carried out in accordance with current legislation and analysis of statistics on the activities of the judicial authorities in France in 2020 (United States Department of State, 2020).

This analysis was based on official analytical data, so it fully corresponds to the aspects of expanding the interaction of the state represented by the judicial authorities and civil society in terms of protection of the rights and freedoms of every citizen in general.

The study involved sociological analysis, which contributed to the generalization of international practice of expanding the interaction of state and civil society through the judicial authorities, as well as the analysis of empirical information.

A case study method allowed to determine the effectiveness of the judicial authorities in the protection of human rights and society in general on the basis of particular statistics. The systemic analysis helped to consistently identify possible methods of expanding the interaction between the judicial authorities and civil society upon establishing structural links.

Structural and comparative methods allowed studying the expansion of the interaction between the state and civil society by the judicial authority

in compliance with legislation that protects the rights and freedoms of a citizen or society as a whole.

The dialectical method was used in considering the studied problems and determining the main directions of the development of interaction between the state and civil society through the judicial authorities by protecting human rights.

The theoretical background for the study were the scientific works of domestic and foreign scholars, analytical data, statistics on aspects of expanding the interaction between the state and civil society through the judicial authorities by the protection of human rights.

2. Results

Issues arising from the perspective of ways to expand the interaction between the state and civil society are becoming increasingly important. That is why we propose to consider the legislative and regulatory activities of the justice system used by the European Union during 2019-2020, and further assess the effectiveness of the adopted changes in one area or another, and assess the need to implement those changes that are still under discussion.

According to the information collected in collaboration with a group of contact persons on the national justice systems of the 26 Member States, the judiciary needs major reforms today, as it has the lowest position in all EU countries (Figure 1). That is, despite the fact that the procedural law is most fully and comprehensively enshrined in the EU, this process is slowed down at the stage of court proceedings.

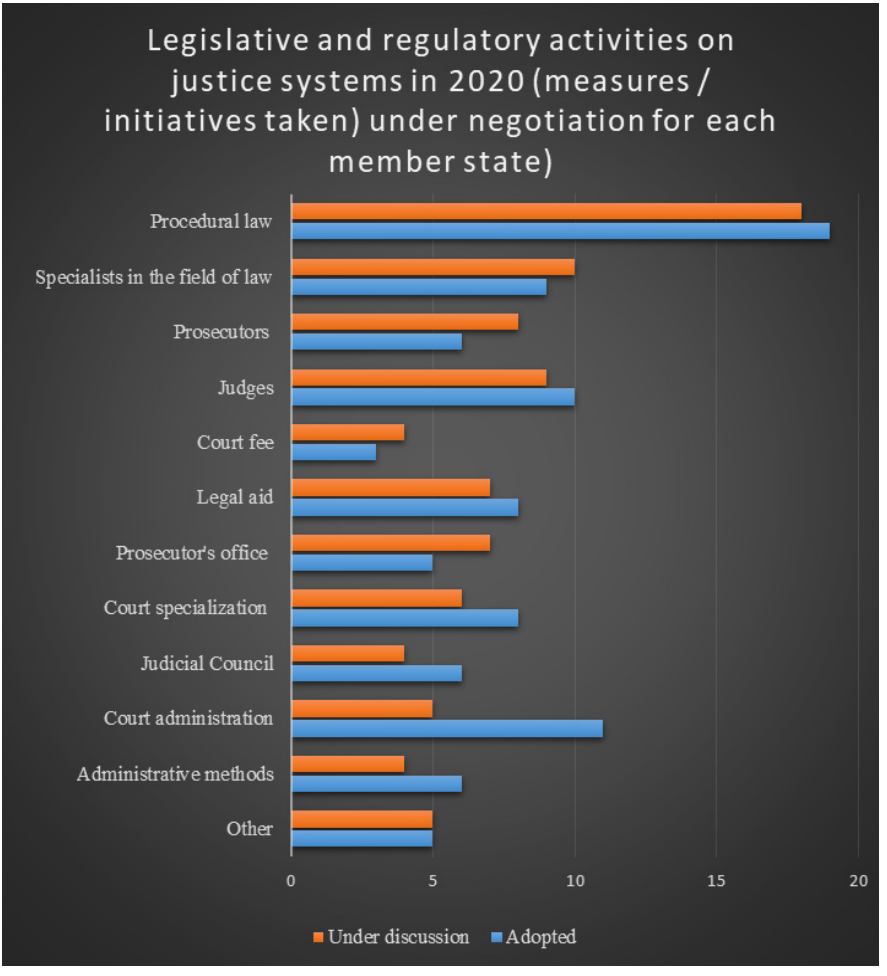

Figure 1: Legislative and regulatory activities on justice systems in 2020 (measures / initiatives taken) under negotiation for each member state). Source: European Commission (2021).

Thus, in 2020, procedural law continued to be the focus in a large number of Member States with a significant current or planned legislative activity.

There has been increased activity to implement a reform on the status of judges and rules for lawyers. Besides, a number of Member States are

in the process of implementing legislation on the use of information and communication technologies (ICT) in their justice systems.

The impetus from previous years for court administration measures continued in 2020. Activities in other areas, such as methods, alternative dispute resolution (ADR) rules for the prosecutor's office or court fees, have slowed down.

Some Member States are already actively using or planning to use artificial intelligence in their justice systems, but this is the case in countries that have quite successful judicial authorities.

This review confirms the observation that judicial reforms take time — sometimes several years —from their announcement to the adoption of legislative and regulatory measures and their actual implementation in the field.

It should be added that the COVID-19 pandemic has created new challenges that have emphasized the importance of accelerating reforms to digitize the justice system. In this context, several Member States have taken new measures to ensure the regular functioning of the courts, ensuring continuous and easy access to justice for all, in particular by adapting procedural rules.

In order to understand the differences between countries and the activities of their judicial bodies from the standpoint of the judiciary, we propose to consider the number of applications that are referred to the judiciary on the example of several foreign countries that differ in the intensity of their filing (Figure 2).

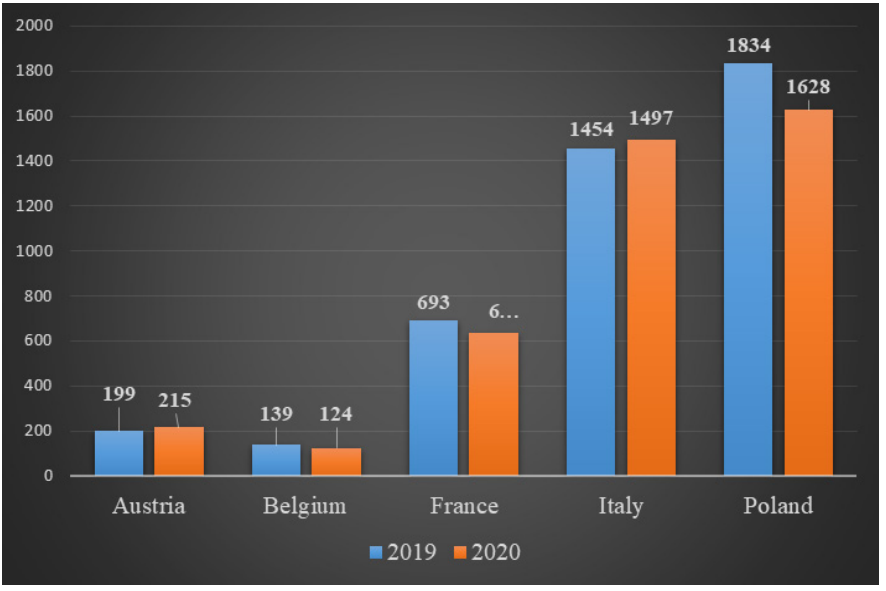

Figure 2: Dynamics of the number of applications filed to the judiciary during 2019-2020. Source: European Court of Human Rights (2021)

As we can note, Austria and Belgium are the countries where the judiciary operates effectively, France is neutral among these countries, while Italy and Poland show the highest rates of applications filed to the judicial authorities, indicating the need to enlarge cooperation between the state and society, because the current activities of the judiciary cannot be considered effective. Ukraine is one of the countries that need to improve the judicial branch, the number of applications to the judiciary in 2019 was 3,991, and in 2020 this figure grew to 4,271.

It should also be borne in mind that the indicators should be divided by population distribution, so we propose to consider Table 1 with the indicators of the countries we study, where you can consider the ratio of population to the number of applications.

Table 1. Indicators of the ratio of population to the number of applications filed to the judicial authorities

Country	Population as of 01.01.2019 (1000)	Population as of 01.01.2020 (1000)	2019	2020
Austria	8,859	8,901	0.22	0.24
Belgium	11,455	11,550	0.12	0.11
France	67,013	67,099	0.10	0.10
Italy	60,360	60,245	0.24	0.25
Poland	37,973	37,958	0.48	0.43

Source: European Court of Human Rights (2021).

Among the indicators that correlate the number of applications filed to the judicial authorities and the judiciary in general, the best indicators in France and Belgium are worth noting. While Belgium has a small number of applications relative to a small population, France is in a leading position, which, despite a large number of applications relative to a large population, is able to show some of the best performance in the judiciary as a whole.

In general, the French Ministry of Justice is taking a new step in modernizing justice by launching an online referral service on January 4, 2021. For proceedings without coercive representation by a lawyer, a person involved in the case (a person who can be heard or summoned to court) can sue in a dematerialized form available from the justice website, to which they can attach their supporting documents (Maison de Justice et du Droit, 2021). In Ukraine, the Ministry of Justice is also trying to launch digitization processes, as this helps to greatly simplify the work of the judicial authorities.

However, there is currently no single way to measure the quality of justice systems. In 2021, the EU continues to study the factors that are generally considered relevant for better interaction between the state and society. Therefore, we propose to consider them on the example of 5 studied foreign countries in Table 2, where "+" means a high rate, and "-" a low rate.

Table 2. Factors for better interaction between the state and society

Factors	Austria	Belgium	France	Italy	Poland
Access to justice for citizens and businesses	+	+	+	+	+

Adequate financial and human resources	+	+	+	+	+
Introduction of evaluation tools	+	+	+	-	-
Digitization	-	-	+	-	-

Source: Author.

Analysing the data shown in Table 2, we can understand why France has the best indicators of justice — this country uses all possible factors that help better interact with the state and society, as a result — the effective operation of the judicial authorities.

It should be added that states need to allocate at least 20% of the budget for the digital transformation, because this is what improves the better interaction of the state with society in the context of quarantine restrictions. Therefore, the proposal for the restoration and resilience of the state provides an opportunity to formulate country-specific recommendations for particular national justice systems, and to accelerate national efforts to complete the digital transformation of the justice system (European Parliament and the Council of the European Union, 2021).

States can benefit from the technical support of the EU Commission, available through the Directorate-General for Structural Reform Support (DG REFORM) under the Technical Support Instrument (TSI) (European Commission, n. d.).

The use of information and communication technologies (ICTs) can strengthen states' justice systems and make them more sophisticated, more efficient, sustainable, and ready to meet current and future challenges.

The COVID-19 pandemic has negatively affected national justice systems and identified a number of issues affecting the functioning of the judiciary. For example, previous editions of the EU Justice Scoreboard have provided comparative data on some aspects of ICT in justice systems. As reported by European Commission (2020b), additional data on digitization in the states were substantially supplemented. This should provide deeper monitoring of progress and unresolved challenges.

It should be added that the Ministry of Justice of Ukraine (n. d./a) positions itself as a body that protects a person, their rights and property, while ensuring the fulfilment of contracts, reducing recidivism and providing free legal protection to a person in a difficult life situation.

To expand the interaction between the state and society by the Ministry of Justice of Ukraine, it is necessary to first determine an effective action plan, as for several years the Ministry of Justice has been creating an

action plan for the medium term, but it includes the same provisions for different periods. For example, the goals of state policy and main tasks of the Ministry of Justice of Ukraine for 2022-2024 (Ministry of Justice of Ukraine, n.d./b) have already been defined, although the action plan of the Ministry of Justice for 2021-2023 (Ministry of Justice of Ukraine, 2020) is still in force, which contains the same goals and objectives. This means that the justice of Ukraine does not carry out its activities effectively, which confirms the need to expand the interaction between the state and society.

For example, the factors we study in Table 2 show that none of the factors is implemented at the appropriate level in Ukraine. That is, although the state is trying to finance adequate financial and human resources but this funding is not enough; assessment tools are not effective, as the situation remains unchanged for several years; the accessibility of justice for citizens needs to be improved, as the system of access to justice cannot be called easily accessible; and digitisation, despite the implementation of certain steps towards such changes, is still not brought to the expected result.

Based on the above, it should be noted that it is necessary to improve the activities of the Ministry of Justice of Ukraine, as it will significantly expand the interaction of the state with society, which will further lead to improved statistics that will satisfy both the interests of the state and each citizen.

3. Discussion

Having conducted research in the field of aspects of expanding the interaction between the state and civil society, it should be noted that it is difficult to call it unambiguous. Poland and Italy prefer to adhere to already known methods of human rights protection through the judicial authorities, and some countries consider them ineffective, and as a result seek methods for better organization of the judiciary in a country, for effective protecting the rights of its citizens, thereby raising public confidence in the state, such as France.

We agree that the duty of the state to respect, promote, protect and enforce the rights of citizens takes precedence over the responsibilities of regional or international courts in this matter and is essential, especially when the state knowingly or regularly violates rights (Brander *et al.,* 2020).

It should be noted that such scientists as Hetman and Hetman (2019) carried out an analysis of the judicial authorities of Ukraine and France, where they identified certain similarities and distinctions between Ukraine and France in conducting their activities through the judiciary. Although Ukraine has some similarities with the French judicial authorities, there are many gaps that Ukraine is not yet ready to close. Here, we are mostly

talking about funding and the unpreparedness for full digitalization, which are currently defined as the most effective methods of expanding the interaction of the state with society.

Di Martino and Prilleltensky (2020) concluded in their research on the relationship of EU member states with society that the development of the state should never stop (including the development of the judicial authorities), as it directly affects the satisfaction of citizens. In our research we can see that countries that do not particularly expand the interaction of judicial authorities and society do not have clear positive indicators (we are talking about such countries as Poland, Italy).

Franck (2018), who examined the balance between the EU judicial authorities and its legislative authorities and the changes they use, noted that without the application and extension of new methods for the relationship between the state and society, this is immediately reflected in the statistics that indicate sufficient or insufficient level of development.

Van Elsuwege and Gremmelprez (2020) examined the protection of the rule of law in the legal order of the European Union, where they explicitly stated that the state cannot be separated from society. That is, the state must expand its powers to act for the benefit of its citizens.

The same position is held by Lenaerts (2020), who also emphasizes the new opportunities for the rule of law in the EU, that is focuses on the need to progress the judicial authorities to maximize the protection of civil society.

We fully support Ovádek's (2021) position that the judicial authorities should also use its institutional role to promote European integration. Thus, he defines that justice, which gives limited access to its citizens (rather than full – that is, without the expansion of interaction between state and society) makes it quite difficult to talk about the benefits of such a system. This confirms the fact that the countries that maximize such cooperation have much better statistics, and the citizens of such countries are satisfied with the activities of the state as regards justice.

The analysis of Saurugger and Terpan (2019, 2020) can be considered quite comprehensive. They carried out a comprehensive analysis of the structural and politically-related legal assessment of the activities of the judicial authorities and paid special attention to the transformation of the judicial authorities in order to expand the relationship between the state and society. Besides, they analysed the interaction of individual judicial authorities with society in the context of the crisis in the Eurozone and Covid-19. The study showed that crisis situations create stress for political systems and their management, but the introduction of changes for their expansion is a necessary condition for the effective operation of the judicial authorities in cooperation with society as a whole.

Rieter and Zwaan (2021) generally define the expansion of the state's interaction with society as an urgent prerogative, as they emphasize human rights as a value that the judicial authorities cannot ignore. Therefore, the study focused on the procedure for the activities of the judicial authorities and the need for new innovations for them.

Based on the above research, it should be noted that the expansion of aspects of interaction between the state and civil society through the judicial authorities attracts much attention.

Conclusions

Today, aspects of expanding the interaction of the state with civil society through the judicial authorities in terms of the protection of their rights is undeniably important for each country and society as a whole. That is why the topic of this article attracts the attention of researchers and scholars who are ready not only to theoretically consider this topic, but also to provide their recommendations for improving the interaction between the state and society.

Based on a study of foreign and, above all, European experience, we considered the functioning and activities of the judicial authorities to protect the rights and interests of civil society, including such countries as Australia, Belgium, France, Italy and Poland.

Having made a comprehensive analysis of aspects of expanding cooperation between the judiciary as a representative of the state and civil society on the example of foreign countries, it should be noted that a serious attitude to the expansion of interaction between the state and society, namely the introduction of new aspects of the activities of the judicial authorities, allows carrying out the activities of the judiciary in relation to society much more effectively. As a result, this is directly reflected in the statistics and reports that are compiled to analyse the activities of countries, including the activities of the judicial authorities, which allows us to realistically assess the situation in a particular country in this context.

The obtained results can be used in research, law-making, law enforcement and educational process. For example, research provides a background for further theoretical research to expand the interaction between the state and civil society, which are aimed at improving the system of justice as a means of protection of citizens' rights. It is worth taking into account the results obtained in lawmaking, because the study contains the proposals to improve the interaction of the judicial authorities as representatives of the state for the protection of the rights and interests of civil society. Application in law enforcement will provide an opportunity to

improve the practice of the judicial authorities, increase the effectiveness of the introduction of methods to expand the interaction of state and society. The use of this study in the educational process is equally important, as the results of the study can be used in classes in law and other educational institutions to study subjects that involve the study of justice as a means of protecting the rights of civil society.

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Legality of Applying Coercive Medical Measures in Criminal Law

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Abstract

The objective of the study was to determine the legality of the application of coercive medical measures and to develop recommendations to improve the legislative regulation of their use. The study included data on the number of offenders with mental disorders; the empirical background was the decision of the European Court of Human Rights on the application of coercive medical measures; provisions of the legislation of 31 countries. Methods of system approach, comparison, descriptive analysis, pragmatic approach, prognosis were used. The national criminal law of most states regulates the application of coercive medical measures to persons who have committed a crime in a state of limited sanity or insanity or have acquired it before sentencing or during the execution of the sentence, but its practical application causes several complications. It is concluded that the legislative definition of coercive medical measures corresponds to human rights legislation. But there are problems with its practical application. Proposals were made to amend national and international legislation: to broaden the range of grounds for the application of coercive medical measures; regulate

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the possibility of early termination of a coercive medical measure; oblige the courts to determine the appropriate terms.

Keywords: coercive medical measures; mental illness; mental disorder; criminal law measures; human rights.

Legalidad de la Aplicación de Medidas Médicas Coercitivas en el Derecho Penal

Resumen

El objetivo del estudio fue determinar la legalidad de la aplicación de medidas médicas coercitivas y desarrollar recomendaciones para mejorar la regulación legislativa de su uso. El estudio incluyó datos sobre el número de delincuentes con trastornos mentales; el antecedente empírico fue la decisión del Tribunal Europeo de Derechos Humanos sobre la aplicación de medidas médicas coercitivas; disposiciones de la legislación de 31 países. Se utilizaron métodos de enfoque de sistema, comparación, análisis descriptivo, enfoque pragmático, pronóstico. La legislación penal nacional de la mayoría de los estados regula la aplicación de medidas médicas coercitivas a personas que han cometido un delito en un estado de cordura o demencia limitada, o lo han adquirido antes de dictar sentencia o durante el cumplimiento de esta, pero su aplicación práctica provoca una serie de complicaciones. Se concluye que la definición legislativa de medidas médicas coercitivas corresponde a la legislación en materia de derechos humanos. Pero existen problemas con su aplicación práctica. Se formularon propuestas para modificar la legislación nacional e internacional: ampliar la gama de motivos para la aplicación de medidas médicas coercitivas; regular la posibilidad de terminación anticipada de una medida médica coercitiva; obligar a los tribunales a determinar los términos adecuados.

Palabras clave: medidas médicas coercitivas; enfermedad mental; trastorno mental; medidas de derecho penal; derechos humanos.

Introduction

The application of certain criminal law measures within the limits of condemnation of criminal behaviour of a person on behalf of the state is one of the forms of realisation of criminal liability. Naturally, the most commonly used and most severe form of the state's response to a criminal offense is

the application of punishment to the perpetrator. But in law enforcement practice, there are situations when a person guilty of a crime cannot be punished, and his/her state of health (physical, mental or psychological) requires the application of other criminal law measures. One of the types of such criminal law measures that are not criminal punishment is coercive medical measures (Lapshin and Korneev, 2019).

The instrument of state influence includes the mechanisms, which provide for the restriction of certain human rights and freedoms, although it is recognised as the highest state value and object of protection. The legal grounds for restricting human rights and freedoms are criminal law measures applied to persons who have committed a crime and are found guilty of it on the basis of a court decision. The use of criminal law measures such as coercive medical measures due to social necessity — to respond to the criminal behaviour of persons who have committed a crime in a state of limited sanity or acquired such a state, or the state of insanity, during pre-trial and judicial investigation (Ferracuti *et al.*, 2019). In this regard, the criminal law of many countries contains rules that determine the conditions and grounds for the application of such criminal law measures (Markava, 2017).

Besides, European legislation also establishes the legality of compulsory medical care for persons suffering from certain diseases in terms of guaranteeing human rights (Israelsson *et al.*, 2015). But in practice, there are often difficulties in addressing the issue of possibility and necessity of applying these measures to perpetrators (Losych and Rutvian, 2019). These complications are especially often associated with the establishment of the actual occurrence of such a mental disorder or other morbid condition in the person who committed the crime (Kooijmans and Meynen, 2017).

But it is quite logical that other questions arise: Is it possible to apply coercive medical measures, including compulsory treatment, to persons who have committed a crime in a psycho-physiological state, which does not exclude criminal liability? whether there is a violation of human rights in such a case; Does the application of coercive medical measures against the defendants justify itself, is it effective?

1. Literature Review

Medical science studies the impact of coercive medical measures, their effectiveness and applicability to patients with mental illness or mental disorders (Zhang *et al.*, 2015); the procedure for the application of mandatory medical measures for insane (Zhumanbaeva and Alimkulov , 2019); the effectiveness of compulsory treatment of drug addicts (Werb *et al.*, 2016); the effectiveness of specialised centres for the maintenance and

treatment of drug addicts is analysed on the example of East and Southeast Asia (Kamarulzamana and McBrayer, 2015).

The current state and prospects of compulsory treatment in psychiatric institutions of persons in need of such treatment are also studied from the perspective of ethical considerations and in order to determine the advantages and disadvantages (Saya *et al*., 2019).

The effectiveness of the application of coercive medical measures is studied in legal science, in particular in the field of criminal law. Attention is paid to compliance with European standards of respect for human rights in the application of compulsory medical measures in criminal law and criminal proceedings (Tyshchenko *et al*., 2019). The effectiveness of compulsory hospitalization of juvenile offenders with drug addiction is also studied in order to prevent their further criminal activity (on the example of Brazil) (Dos Reis and Guareschi, 2016); the need for treatment of prisoners with drug or alcohol addiction is analysed (Brochu, and Levesque, 1991). It is emphasized that compulsory treatment of drug and alcohol addicts, including criminals, is not always effective when it is involuntary (on the example of the People's Republic of China (Xiong and Jia, 2019), Sweden (Lövgren, 2021). The need to establish stricter criteria for compulsory treatment, including criminals, is also emphasised (Zinkler, 2016).

At the same time, a large number of studies does not mean that the research of problematic issues related to the application of medical measures in criminal law is complete and comprehensive. In particular, almost no attention was paid to the legality of the application of coercive medical measures, compulsory medical treatment, and involuntary hospitalization to persons who committed a crime. Although the problem of the admissibility of involuntary medical intervention in the rehabilitation of criminals has been studied (Pugh and Douglas, 2016); the issue of applying coercive medical measures was considered in studying the experience of the interaction of law enforcement officers with citizens, organizations and institutions for compulsory treatment of persons in need for such a treatment, including criminals (Soares and Pinto da Costa, 2019), this issue was not clearly covered.

Given the urgency of the study, as well as the unresolved issues related to the application of coercive medical measures to perpetrators, the aim of this study will be to determine the legality of these measures and develop recommendations to improve their legal regulation. The aim of the study provided for the following objectives: determine the legal grounds for their application and proposals for their legislative enshrinement at the level of international and national legislation.

2. Methodology and Methods

This study was conducted in a clear sequence, following the stages of studying the issue, based on the logic of the presentation of the material, in order to achieve the aim set in the article and fulfil its objectives. These stages were: formulation of topic and defining the scope of the study; search and selection of references; selection and study of statistics; analysis of the material presented in selected references and evaluation of the results of these studies; identification of unresolved problems of legality of application of coercive medical measures in criminal law; determining the aim of the article; drawing conclusions and practical recommendations for solving the problems chosen for research; outlining prospects for further research in this area.

This study used statistics on the number of criminals with mental disorders; the empirical background of the study was the decisions of the ECHR on the application of coercive medical measures and compulsory treatment (30 decisions were analysed); expert opinions on the expediency and necessity of applying coercive medical measures to persons who have committed a crime in the relevant condition. The norms of international and national regulatory legal acts, which define certain aspects of the principles and procedure for the application of coercive medical measures were studied in detail in order to identify gaps and make proposals for their elimination both in international norms and in national legislation of individual countries to increase the effectiveness of these criminal law restrictive measures.

The legal framework of the study was the provisions of international regulations: UN General Assembly Resolution 46/119 of December 17, 1991, which approves the Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (hereinafter — the Convention), the International Covenant on Civil and Political Rights of 1966. The national legislation of 31 countries was considered to analyse the provisions of national legislation that determine the procedure and grounds for the application of coercive medical measures in criminal law and compulsory treatment.

The study involved the following methods to achieve the aim:

- a systemic approach was used to analyse the grounds for the application of coercive medical measures to criminals as a system of interrelated objective and subjective circumstances.
- comparison was used for comparative analysis of the grounds for the application of coercive medical measures enshrined in the criminal law of individual countries.

- descriptive analysis was used to arrange, classify and summarise information on the public danger of leaving persons who committed a crime in a state of insanity or limited sanity, or acquired such a state before sentencing or while serving a sentence, without medical care and treatment.
- pragmatic approach to data collection and analysis was used to determine the main grounds for the application of coercive medical measures to persons who committed a crime in a state of sanity or limited sanity, or acquired such a state before sentencing or while serving a sentence.
- forecasting approach was used to develop proposals and recommendations for improving the legislation to establish criteria and grounds for the application of cohesive medical measures in criminal law.

3. Results

Prosecution of perpetrators is always accompanied in practice by a number of problems related to the application of certain criminal law measures to them. One such problem is the application of coercive medical measures to persons who have committed crimes in a state of insanity or limited sanity, or acquired such a state before sentencing or while serving a sentence. According to statistics, the commission of crimes by persons in a state of insanity or limited sanity has always been quite common. For example, U.S. statistics show that approximately 16% of all inmates had serious mental illness (Mental Illness Policy, 2005). According to other data, about 25% of criminals suffer from mental disorders (Morgan *et al.*, 2012). Moreover, 10-12% of murders are committed by mentally ill persons (Russia) (Bersh, 2017). At the same time, the increase in the number of mental health care centres has a positive impact and helps to reduce crime by 1.7% in the relevant regions (on the example of the United States) (Deza *et al.*, 2019).

UN General Assembly Resolution of December 17, 1991 approved the Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, which states that every patient should have the right to treatment and care as far as possible in the society in which he or she lives (Principle 7: Role of Society and Culture). The legality of the use of compulsory treatment of persons suffering from certain types of mental disorders, including persons who have committed a crime, has been recognized in this Principle.

In order to ensure the application of coercive medical measures and compulsory medical treatment to persons who have committed a crime in a state of limited sanity or insanity, or acquired such a state before sentencing or while serving a sentence, coercive medical measures and compulsory treatment, the national criminal law of the vast majority of states regulates the application of these criminal law measures. These rules establish the procedure and grounds for the application of these measures to offenders who have committed a crime in a state of limited sanity or insanity or acquired such a state before sentencing or while serving a sentence (see Table 1).

Table 1. Norms of the national criminal legislation regulating application of coercive medical measures

Country	Provisions of criminal legislation
Germany	SIXTH TITLE MEASURES OF REHABILITATION AND INCAPACITATION Section 61 Overview Section 62 Principle of proportionality Section 63 Mental hospital order Section 64 Custodial addiction treatment order Section 66 Detention for the purpose of incapacitation Section 66c Organisation of detention for the purposes of incapacitation and of antecedent imprisonment Section 67 Sequence of enforcement Section 67a Transfer to another measure Section 67c Deferred start date of detention Section 67d Duration of detention
France	SECTION II PERSONALIZATION OF PENALTIES Subsection 1 Semi-detention ARTICLE 132-25 ARTICLE 132-26 ARTICLE 132-26-1 ARTICLE 132-26-2 Subsection 2 Division of penalties ARTICLE 132-45
Albania	CHAPTER V PUNISHMENTS Article 46 Medical and educational measures (Amended by law no. 36/2017) CHAPTER VII ALTERNATIVES TO IMPRISONMENT SENTENCES Article 58 Open prison
Switzerland	Chapter Two: Measures Section One: Therapeutic Measures and Indefinite Incarceration Art. 56-Art. 64c

Turkey	Part 2 Security Measures Article 57 Security Measures Specific to the Mentally Disordered
Russian Federation	Chapter 15. Compulsory Measures of a Medical Nature Article 97. Grounds for the Application of Compulsory Measures of a Medical Nature Article 98. The Purposes of the Application of Compulsory Measures of a Medical Nature Article 99. Compulsory Medical Measures Article 101. Compulsory Treatment in a Mental Hospital Article 102. The Prolongation, Change, or Termination of the Use of Compulsory Medical Measures Article 103. Set-off of the Time of Application of Compulsory Medical Measures Article 104. Compulsory Medical Measures Joined with the Execution of Punishment
Republic of Uzbekistan	SECTION SEVEN. COMPULSORY MEDICAL MEASURES CHAPTER 17. GROUNDS FOR AND APPLICATION OF COMPULSORY MEDICAL MEASURES Article 91. Purposes of Compulsory Measures Article 92. General Grounds for Application of Compulsory Medical Measures Article 93. Types of Compulsory Medical Measures Article 94. Application of Compulsory Medical Measures Article 95. Extension, Altering, and Discontinuation of Application of Compulsory Medical Measure Article 96. Application of Compulsory Medical Measures to Persons Suffering Alcohol, Drugs, and Toxic Substances Addiction
Georgia	CHAPTER XIV – Release from Punishment Article 74 – releasing from punishment due to illness or old age
Republic of Azerbaijan	Chapter 15. Compulsory measures of medical nature Article 93. Bases of application of compulsory measures of medical nature Article 93-1. The use of compulsory medical measures in respect of persons who are in need of treatment for alcoholism or drug addiction Article 94. Purposes of application of compulsory medical measures to the persons suffering from mental disorders Article 95. Kinds of compulsory measures of medical nature, appointed to the persons suffering from mental disorder Article 96. Out-patient compulsory supervision and treatment at psychiatrist Article 97. Mandatory treatment in psychiatric hospital Article 98. Extension, change and cancellation of compulsory measures of medical nature, appointed to the persons suffering from mental disorder Article 99. Offset of time on application of compulsory measures of medical character, appointed to the persons suffering from mental disorders

Republic of Kazakhstan	SECTION 7. COMPULSORY MEASURES OF MEDICAL NATURE Article 91. Grounds of application of compulsory measures of medical nature Article 92. Purposes of application of compulsory measures of medical nature Article 93. Types of compulsory measures of medical nature Article 94. Compulsory out-patient observance and treatment on the by a psychiatrists Article 95. Compulsory treatment in a mental hospital Article 96. Extension, change and cancellation of compulsory measures of medical nature Article 97. Imposition of punishment after application of compulsory measures of medical nature Article 98. Compulsory measures of medical nature, connected with execution of punishment
Republic of Bulgaria	Chapter Eleven COMPULSORY MEDICAL MEASURES Article 89 - Article 92
Denmark	Chapter 9 Other Legal Consequences of a Punishable Act §68
Netherlands	Chapter Two. Admission to a Psychiatric Hospital and Detention under an Entrustment Order Art. 37-Art.37e
Spain	Chapter II. On application of security measures Subchapter I. On measures depriving of freedom Art.101- Art. 104
Ukraine	Chapter XIV. COMPULSORY MEDICAL MEASURES AND COMPULSORY TREATMENT Article 92. Definition and purpose of compulsory medical measures Article 93. Persons subjected to compulsory medical measures Article 94. Types of compulsory medical measures Article 95. Continuation, change or discontinuation of compulsory medical measures Article 96. Compulsory treatment
Republic of Latvia	Chapter VIII Compulsory Measures of a Medical Nature Section 68. Compulsory Measures of a Medical Nature Section 69. Determination of Compulsory Measures of a Medical Nature for Persons in a State of Mental Incapacity Section 69. 1 Provision of Compulsory Measures of a Medical Nature after Several Rulings Section 70. Provision of Compulsory Measures of a Medical Nature for Persons in a State of Diminished Mental Capacity
Republic of Poland	Chapter X. Preventive Measures Article 93 - Article 94
Sweden	Chapter 31 – On special care orders in certain cases Section 3 Chapter 26 – On imprisonment Section 16 Section 22

Source: own elaboration.

The grounds and procedure for the application of coercive medical measures and compulsory treatment to persons who have committed a crime in a state of limited sanity or insanity, or acquired such a state before sentencing or while serving a sentence are also established in a number of other national regulations, which the court relies on its activities (see Table 2).

Table 2. Regulation of involuntary placement in medical institutions and involuntary treatment (EU legislation)

Country	Regulatory legal acts
Austria	Compulsory Admission Act (CAA) (Unterbringungsgesetz, UbG), BGBl 155/1990
Belgium	Act concerning the protection of the person of the mentally ill (26 June 1990) (Loi relative à la protection de la personne des malades mentaux) Patient's rights Act (22 August 2002) (Loi relative aux droits des patients)
Bulgaria	Chapter II Health Act (Закон за здравето), 1 January 2005
Czech Republic	Healthcare Act Zákon č. 20/1966 Sb., o péči o zdraví lidu (1 July 1966); Civil Procedure Code (Zákon č. 99/1963 Sb., občanský soudní řád), Act No. 99/1963 Coll.
Germany	§ 1906 Civil Code (BGB) introduced by the Betreuungsgesetz (BtG) (Custodianship Act) of 12 September 1990, (enforced 1 January 1992); Placement under public law governed by states (Länder) laws
Denmark	Act No. 331, 24 May 1989 on deprivation of liberty and other coercion in psychiatry
Estonia	§ 19-20 Social Welfare Act (SWA) (Riigikantselei (6 March 1995) Riigi Teataja I), 21, 323, (8 February 1995); § 533-543 Code of Civil Procedure (CCP) (Tsiviilkohtumenetluse seadustik), 20 April 2005
Spain	Article 763 Civil Procedure Act (Ley 1/2000, de 7 de enero, de Enjuiciamiento Civil); Act of the Autonomy of the Patient Law 41/2002 (14 November 2002)
France	Public Health Code, Articles L.3212-1 to L.3213-11
Hungary	Healthcare Act (1997. évi CLIV. törvény az egészségügyrõl) (15 December 1997)
Italy	Article 33-35 Law n. 833/1978 (23 December 1978)
Latvia	Article 68 Medical Treatment Law (Ārstniecības likums) (26 February 1998)
Lithuania	Law on Mental Health Care/1995, Nr. I-924, (Psichikos sveikatos priežiūros įstatymas, Žin., 1995, Nr. 53-1290). Available in EN (without amendments: www3.lrs.lt/pls/inter2/dokpaieska.showdoc_e?p_id=39589)

Luxembourg	Luxembourg law on hospitalisation of persons with mental disorders without their consent (relative à l'hospitalisation sans leur consentement de personnes atteintes de troubles mentaux) (10 December 2009)
Malta	Mental Health Act Chapter 262 of the Laws of Malta (adopted in 1976)
Netherlands	The 1992 Psychiatric Hospitals (Compulsory Admissions) Act (enforced January 1994)
Poland	Law on Protection of Mental Health, (Ustawa o wychowaniu w trzeźwości i przeciwdziałaniu alkoholizmowi) Dz. U. 1994 No 111 Item 53519, 19 August 1994
Portugal	Article 12 Law on mental health 36/98, 24 July 1998
Romania	Mental Health Law (Law 487/2002), 11 July 2002; Law on Patient's Rights No. 46/2002 (Legea drepturilor pacientului Nr. 46/2002)
Slovakia	Article 191a-191g Civil Procedure Code (Zákon 99/1963) 4 December 1963; 1 6 and 8 Health Care Act (Zákon 576/2004) 21 October 2004
Great Britain	Mental Health Act 1983; Mental Health (Care and Treatment) (Scotland) Act 2003 asp. 13; Mental Health (Northern Ireland) Order 1986 No. 595 (N.I. 4)

Source: European Union agency for fundamental rights (2012).

Coercive medical measures are understood in legal doctrine as providing a person who has committed a crime in a state of limited sanity or insanity, or acquired such a state before sentencing or while serving a sentence, compulsory outpatient mental health care, as well as placement such a person in a special psychiatrist medical institution for compulsory treatment and in order to prevent this person from committing new socially dangerous acts (Pukavskyi and Kushpit, 2019). Given the above, the primary task of applying coercive medical measures is not to criminalize the person who committed the crime, but to ensure the comprehensive safety of criminals with mental disorders, as well as other individuals and society from potential socially dangerous acts of these criminals. Although the wording of coercive measures of a medical nature applied to persons who have committed a crime in a state of insanity or limited sanity, or acquired such a state before sentencing or while serving a sentence, are not identical in the criminal law of different countries, but they are similar in essence.

Analysis of the national criminal legislation of a number of countries in terms of regulating the use of coercive medical measures allows us to identify common and distinctive features of the regulatory enshrinement of this institution. In general, the comparison found that the regulation of the application of coercive medical measures to persons who have committed a crime in a state of limited sanity or insanity, has more common features than

differences in the criminal codes of individual countries. In particular, the priority is given to the protection of the person of a criminal suffering from mental disorders over the protection of society, which is a manifestation of democracy and humanism. The grounds for the application of coercive medical measures to this category of persons are determined within this approach, which essentially coincide in nature in different criminal laws, as well as in accordance with criminal law doctrine (see Figure 1).

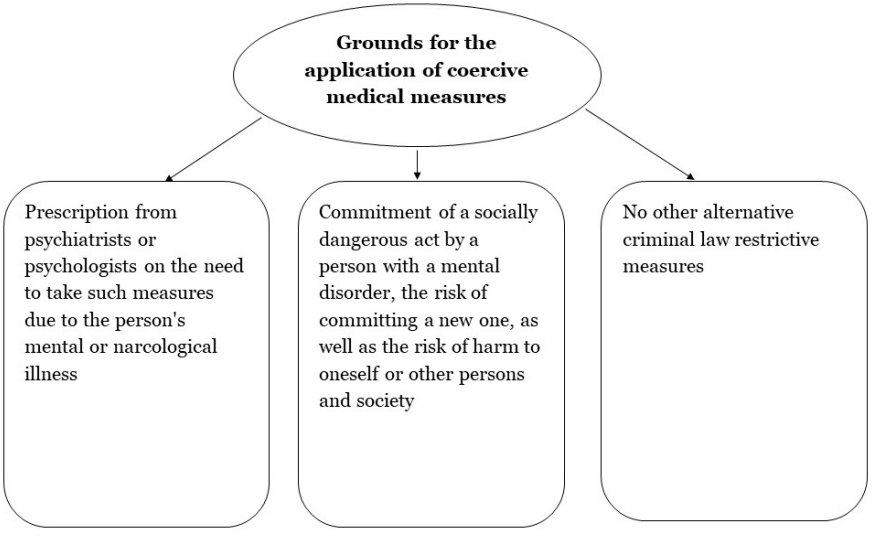

Figure 1: Grounds for the application of coercive medical measures. Source: European Union agency for fundamental rights, (2012).

National criminal law usually determines types of coercive medical measures, which are not always applicable to a person who has committed a crime in a state of limited sanity or insanity, or acquired such a state before sentencing or while serving a sentence, compulsory treatment. The types of coercive medical measures usually differ. They include, as a rule: outpatient observation of criminals with mental disorders; general-type psychiatric institutions; specialised medical psychiatric institutions with an enhanced regime of supervision (guard); public and private rehabilitation centres.

Despite a rather detailed legal regulation of the grounds and procedure for the application of coercive medical measures to criminals who were in a state of limited sanity or insanity at the time of committing the crime or

acquired such a state before sentencing or while serving a sentence, there are a number of complications regarding their application in practice. This is primarily because such measures (as other criminal law measures to influence criminals) are to apply certain restrictions to the subjects of crime on their rights and freedoms. In particular, this applies to such rights enshrined in the Convention as the right to liberty and security of person (Article 5); the right to a fair trial (Article 6 of the Convention); the right to respect for family and private life (Article 8 of the Convention) (see Table 3).

Table 3. ECHR decisions on violations of the Convention in the application of coercive medical measures and compulsory treatment

Article of the European Convention for the Protection of Human Rights and Fundamental Freedoms	ECHR judgement
Article 5. The right to liberty and security of person	Winterwerp v. the Netherlands (24.10.1979), Ashingdane v. the United Kingdom, 28.05.1985 Johnson v. the United Kingdom, 24.10.1997 Aerts v. Belgium, 30.07.1998 Nielsen v. Denmark, 28.11.1998: Varbanov v. Bulgaria, 05.10.2000 Herz v. Germany, 12.06.2003 Nowicka v. Poland, 03.12.2003 M.R.L и M.-J.D. v. France, 19.05.2004 H.L. v. the United Kingdom, 05.10.2004 Enhorn v. Sweden, 25.01.2005 Schneiter v. Switzerland, 31.03.2005: Storck v. Germany, 16.06.2005 Gajcsi v. Hungary, 03.10.2006 Filip v. Romania, 14.12.2006 Gulub Atanasov v. Bulgaria, 06.11.2008: Shopov v. Bulgaria, 02.09.2010
Article 6. The right to a fair trial	HODŽIĆ v. CROATIA (p. 1 Article 6) H.F. v. Slovakia 08.11.2005 Nenov v. Bulgaria, 16.07.2009
Article 8. The right to respect for family and private life	A.G. v. Switzerland (09.04.1997: Storck v. Germany (16.06.2005) Schneiter v. Switzerland (31.03.2005: Shopov v. Bulgaria (02.09.2010 X. and Y. v. the Netherlands, 26.03.1985 Bensaid v. the United Kingdom, 06.02.2001 K. и T. v. Finland, 12.07.2001 Shtukaturov v. Russia, 27.03.2008 Berková v. Slovakia, 24.03.2009 Salontaji-Drobnjak v. Serbia, 13.10.2009

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

The procedure for prescribing compulsory treatment or other coercive medical measures to criminals in need of medical supervision and treatment is quite often violated during law enforcement. In particular, this is evidenced by the case law of the European Court of Human Rights. Involuntary medical intervention against a person's will in his or her private life is in essence a violation of the right to privacy and inviolability (Hirvisaari v. Finland, application no. 49684/99, judgment of September 27, 2001), but if it was used to protect both the person himself/herself, and others, their use is justified by law.

The ECHR also ruled on June 16, 2005 in Storck v. Germany on the unlawful use of coercive medical measures to a person against his will, although it was later revoked because it became clear that the treatment permit and the contract with the medical institution was concluded by his representative in compliance with the law. Similarly, the judgment of March 31, 2005 in Schneiter v. Switzerland did not satisfy the person's claim, as it was found that the compulsory treatment was justified by law and pursued the aim of protecting the rights and freedoms of third parties. Instead, the ECHR ruled on 9 April 1997 in the case of A.G. v. Switzerland on the unlawful placing a person in custody, as this was found to be an unlawful invasion of privacy; as in the judgement of September 2, 2010 in the case of Shopov v. Bulgaria on the illegal long-term involuntary psychiatric treatment, as there had been a violation of the right to respect for private life (the judgement had never entered into force).

There are cases when the court's decision to forcibly place a person who committed a crime in a state of insanity or limited sanity in a specialized institution for treatment was lawful, or that coercive medical measures were lawful, but the terms of detention in such an institution were violated (for example, ECHR judgement of May 28, 1985 in Ashingdane v. the United Kingdom and judgment of October 24, 1997 in Johnson v. the United Kingdom). It is also a violation of the grounds for the application of coercive medical measures and compulsory treatment to place in an inappropriate institution for the detention of ill offenders (for example, the ECHR judgement of July 30, 1998 in Aerts v. Belgium).

Besides, the application of coercive medical measures or compulsory treatment violates other rights of persons who have committed a crime in a state of limited sanity or insanity, or acquired such a state before sentencing or while serving a sentence. In particular, according to the judgment of the European Court of Human Rights of March 24, 2009 in Berková v. Slovakia, the applicant's right to apply for restitution after receiving appropriate treatment for a mental disorder had been violated. There are also cases of failure to provide sufficient opportunities to ensure self-defence against arbitrariness (ECHR judgment of January 5, 2000 in Varbanov v. Bulgaria); the impossibility to challenge involuntary hospitalization because of the

restriction on the filing of an application for an unlawful decision in the case (unfinished trial since 2011 in Aleksandr Petrovich Lashin v. Russia), etc. (European Court of Human Rights, n. d.).

This state of affairs indicates the need to improve the legislative regulation of the grounds and procedure for regulating the application of coercive medical measures to criminals who need it, from the standpoint of ensuring respect for fundamental human rights and freedoms.

Article 5 of the Convention stipulates that "Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law (Part 1); and paragraph "e" of this rule states that such a legal case is, among other things, is "the lawful detention of persons to prevent the spread of infectious diseases, lawful detention of persons of unsound mind, alcoholics or drug addicts or vagrants."

With the development of society, the development of human-centred legislation and the approach to guaranteeing human rights and fundamental freedoms, the interpretation of this provision also changes towards humanization, individualization and proportionality (compliance). In particular, the conduct of new psychiatric research allows and even requires changes in existing legislation, in particular with regard to the use of coercive measures for the treatment of mentally ill criminals. For example, the latest developments in psychiatry and psychology allow the use of more flexible means of treating mental disorders and diseases, as well as able to change society's attitude to such diseases and those who have them. Similarly, the development of neuroscience in psychiatry and psychology allows for the use of softer and more humane methods of compulsory treatment and supervision of persons with mental disorders who have committed a crime (Hafner, 2019).

Taking into account the content of complaints and decisions of the European Court of Human Rights regarding human rights violations in the application of coercive medical measures, as well as to humanize and comply with the principle of proportionality, we propose to include the following in the grounds for application of the said criminal law measures:

- recognition of the person who committed the crime as having a real mental disorder, based on the conclusions of an objective impartial medical examination.
- the nature and degree of mental disorder in the person who committed the crime must be such that it requires the use of a specific medical technique.
- hospitalization of a person who has been declared mentally ill may not continue if it has been established that the mental disorder has ceased, even if the period of treatment has not expired.

There should also be a legal recommendation for national courts to apply the case law of the European Court of Human Rights to decisions in cases involving violations of the rights of criminals with mental disorders who have been subjected to coercive medical measures. This will avoid the typical mistakes made by courts in this category of cases. When applying these criminal law measures, a requirement should be established for the courts to clearly state the terms and type of the measures in the conclusions on the application of coercive medical measures.

The application of any criminal law measure must comply with the principles of criminal law and not violate human rights and freedoms. Therefore, the application of such measures should be necessary and sufficient to achieve the goal of their application — recovery, rehabilitation and loss of public danger of a person with mental disorders who committed the crime. Therefore, the possibility of early termination of the application of coercive medical measures should be regulated by law in the event that such a patient is cured and no longer needs medical care.

These recommendations should be enshrined at the level of international (in the Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care) and national (in criminal law and criminal procedure law) legislation.

4. Discussion

Given the above, the application of coercive medical measures against persons who have committed a crime while suffering from certain types of diseases as a criminal measure is a socially necessary step. The application of such measures is rightly considered an instrument of public (in terms of protecting society and other people) and personal (in terms of protecting the person in need of treatment) security in modern society (Dos Reis and Guareschi, 2016). This step is quite justified both from the standpoint of protection of human rights and freedoms, despite the compulsion to treat people with mental disorders, drug addiction, alcoholism (Israelsson *et al.*, 2015), and from the perspective of security (Pukavskyi and Kushpit, 2019).

But coercive medical measures should be applied to the extent necessary and sufficient to assist and ensure safety (Reitan, 2016). Therefore, the expediency of applying certain coercive medical measures is rather doubtful. In particular, the use of chemical castration of certain types of criminals is unacceptable (even in case of paedophilia and similar crimes) (Zhuang, 2018), because such a medical measure to prevent crime is not only the correction and re-education of the convict, but also intervention in physiological processes that violate the rights of these persons. It is also unacceptable to use repressive measures during compulsory treatment of

perpetrators, as it is an unjustifiably cruel measure and abuse that violates human rights and contradicts the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms (Windle, 2017).

The position on the complete refusal to use coercive medical measures as measures of criminal law influence on persons who have committed a crime is contradictory. The refusal of their compulsory treatment and the use of social care for them as other patients who did not commit a crime is contrary to the rights of the latter, and it will pose a threat to personal and public safety (Ferracuti *et al*., 2019). Nor can we agree with the position that compulsory treatment of drug and alcohol addicts violates the rights of the latter and is ineffective (Lövgren, 2021; Lunze *et al*., 2016), as these individuals are not fully able to control and realize their actions, which also poses a threat to both those individuals and society.

Instead, it is appropriate to consider the treatment of persons with mental disorders, alcoholics and drug addicts (including those who have committed crimes) compulsory, but the use of such coercive measures must be clearly justified, and the threat that may arise in the absence of such measures can harm the lives and health of these and other individuals (Pasareanu *et al*., 2017). Therefore, stricter and clearer criteria for the use of compulsory treatment of persons in mental health care institutions (Zinkler, 2016), as well as a mechanism for the use of compulsory treatment of perpetrators (Brochu and Levesque, 1991) should be developed at the national and international levels.

Conclusions

The study leads to the conclusion that the use of coercive medical measures in their legal meaning and wording does not violate international and national law in the field of human rights and freedoms. But there are certain violations and problems in the practical application of criminal law governing the use of coercive medical measures.

According to the results of the study on the legality of coercive medical measures, a number of proposals and recommendations were made to improve the practical application of these measures: expand the range of grounds for coercive medical measures, including the following:

a) recognition of the person who committed the crime as having a real mental disorder, based on the conclusions of an objective impartial medical examination.

b) the nature and degree of mental disorder of the person who committed the crime must be such that it requires the use of a specific medical technique.

c) the hospitalization of a person who has been declared mentally ill may not continue if it has been established that the mental disorder has ceased, even if the period of treatment has not expired (in the relevant provisions of national criminal law).

We also propose to regulate the possibility of early termination of the application of a coercive medical measure in the event that such a patient has been cured and no longer needs medical care at the legislative level (in the relevant provisions of national criminal law).

The next proposition is to establish in the relevant norms a requirement for the courts to clearly determine the terms and type of the measures in the conclusions on the application of coercive medical measures (in the relevant provisions of national criminal procedure legislation).

We suggest to encourage national courts to apply the case law of the European Court of Human Rights in cases involving violations of the rights of criminals with mental disorders that have been subject to coercive medical measures (Principle 20 of the Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care).

Making these changes in the relevant legislation will contribute to further humanization, individualization and proportionality in the application of criminal law measures.

This study is not exhaustive and does not address all issues related to the application of coercive medical measures to persons who have committed a crime in a state of limited sanity, insanity or acquired such a state before sentencing or while serving a sentence. Providing proposals to improve the legislation on the application of these criminal law measures open up prospects for further research in this area, which will improve the regulatory framework and the practical implementation of coercive medical measures.

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Legal Mechanisms for Protection of the Rights of Participants in Contractual and Non-Contractual Legal Relations

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Abstract

The aim of this study is a comprehensive analysis of legal mechanisms to protect the rights of participants in contractual and non-contractual relations based on the experience of foreign countries, namely: Australia, Brazil, Spain, Mexico, Germany, Portugal, Turkey, France, and Switzerland. This research involved the following methods: sociological analysis, system-structural and comparative methods, logical-semantic and formal-logical methods, as well as the dialectical method. Our study resulted in identification of the main characteristics and features of legal mechanisms to protect the rights of participants in contractual and non-contractual relations of each of the studied countries. As a result, we drew conclusions about the need to update the regulatory framework of most of the said countries. The further use of mechanisms for legal protection of the rights of participants

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in contractual and non-contractual relations will help ensure their real and effective protection.

Keywords: protection of rights; legal relations; obligations; legal mechanisms; Contractual and non-Contractual legal relationships.

Mecanismos Legales para la Protección de los Derechos de los Participantes en las Relaciones Legales Contractuales y no Contractuales

Resumen

El objetivo de este estudio fue un análisis integral de los mecanismos legales para proteger los derechos de los participantes en las relaciones contractuales y extracontractuales basado en la experiencia de varios países, a saber: Australia, Brasil, España, México, Alemania, Portugal, Turquía, Francia y Suiza. Esta investigación involucró los siguientes métodos: análisis sociológico, métodos sistémicos-estructurales y comparativos, métodos lógico-semánticos y formal-lógicos, así como el método dialéctico. El artículo resultó en la identificación de las principales características y rasgos de los mecanismos legales para proteger los derechos de los participantes en las relaciones contractuales y extracontractuales de cada uno de los países estudiados. Como resultado, sacamos conclusiones sobre la necesidad de actualizar el marco regulatorio de la mayoría de dichos países. El uso adicional de mecanismos para la protección legal de los derechos de los participantes en relaciones contractuales y extracontractuales ayudará a asegurar su protección real y efectiva.

Palabras clave: protección de derechos; relaciones legales; obligaciones; mecanismos legales; relaciones legales Contractuales y no Contractuales.

Introduction

Research topicality: Legal mechanisms for the protection of the rights of participants in contractual and non-contractual legal relations, first of all, allow preventing, ceasing violations of rights or restoring the violated rights of participants in such legal relations. It should be noted that any person has the right to protection of his/her right and interest, which does not contradict the principles of law, the requirements of fairness, integrity and reasonability.

Ways and methods of protection of participants in contractual and non-contractual legal relations are directly enshrined in law, which gives certain guarantees to participants in the proceedings to restore (recognize) violated (disputed) rights and to influence such an offender through the state.

Legal protection of contractual and/or non-contractual legal relations is carried out in the manner prescribed by law, that is through the use of appropriate forms, means and methods of protection. It should be noted that the legal protection of participants in legal relations directly depends on the country to which the parties are residents, because the regulations of such a state are applied in the event of a dispute.

Problems of legal mechanisms to protect the rights of participants in contractual and non-contractual relations in the scientific literature are also considered as contractual and non-contractual obligations. A comprehensive analysis of research by European scholars shows that the scope of legal mechanisms for the protection of participants in contractual and non-contractual relations is quite ambiguous.

As of 2021, Ukraine has the provisions on legal protection of both contractual and non-contractual legal relations, but the level of their protection cannot guarantee the protection of the rights and interests of the participants in these legal relations. The same trend is observed in other foreign countries.

The object of the study is the social relations that have developed in the process of legal protection of the rights of participants in contractual and non-contractual relations.

The subject of the study are the conditions of contractual and non-contractual legal relations, the violation of which may evoke a need for a legal mechanism to protect their participants.

The aim of this study is a comprehensive analysis of legal mechanisms to protect the rights of participants in contractual and non-contractual relations on the example of the experience of foreign countries. The identification of the main legal provisions, which are the basis for the regulation of the legal protection for participants in contractual and non-contractual legal relations, allowed determining the effectiveness of the legal protection for participants in such legal relations in these countries. The main *objectives* include:

- the issue of understanding of contractual and non-contractual legal relations by the participants as a type of legal relations that requires effective legal protection.
- analysis of legal mechanisms for protection of the rights of participants in contractual and non-contractual legal relations and the practice of their application in foreign countries.

- determining the level of effectiveness of laws and regulations on the legal protection of the rights of participants in contractual and non-contractual relations.

1. Literature Review

Complex qualification issues often arise when concluding unnamed contracts in the regulation of contractual and non-contractual relations. Kanashevskii (2019) notes that due to differences in national legal norms, certain types of legal relations can be included only in the legislation of one country (so-called contracts) and can be considered as mixed contracts (a special type of agreements).

The Brazilian Civil Code describes the civil law system with strong legislation and relatively predictable case law on complex legal relations, remedies, and rights against breach of obligations. In regulating the legal protection of contractual and non-contractual legal relations in the next few years, the market expects the development of legislation to introduce new rules with appropriate changes in the legal protection of contractual and non-contractual legal relations (Cardoso, 2002).

Germany, according to the Civil Code, has a highly developed legal system, where claims for legal protection of contractual and non-contractual legal relations can be satisfied through effective courts, complemented by a prosperous and well-maintained arbitration scene. However, there is a problem that includes the question of how to maintain a set of precedents in this area of legal relations (Federal Ministry of justice and Consumer Protection, n. d.).

Portugal is well aware of the importance of contractual and non-contractual relations. The Portuguese Civil Code has shaped its rules under the influence of EU law. The legal system and practice of Portugal in terms of contractual and non-contractual relations are constantly adapting to the conditions of the modern world (Government of Goa, 2018).

Particular attention is paid to contractual and non-contractual obligations in the Turkish Civil Code (International Labour Organization, 2001) and the Turkish Penal Code (European Commission for democracy through law, 2015). Turkey is a representative of the civil law system, and has a very liberal view, formed around the freedom of legal relations in this context. Turkish contractual relations contain reliable decisions on the conclusion of contracts, their invalidity or the consequences of the failure to fulfil or improper fulfilment of contractual obligations, as well as to compensate for losses that may be incurred by the parties.

Swiss contractual and non-contractual relations are fully governed by the Swiss Civil Code, which has a long tradition and usually gives the parties more freedom to formalize their contractual relationship. Its basic legal principles have not changed for years, and no major changes are planned in the near future. This contributes to the legal certainty and predictability of the parties. Swiss civil and commercial courts tend to specialize and try to resolve disputes in a competent, pragmatic and efficient way. Besides, international commercial arbitration is very common and effective in Switzerland. Due to the independence and stability of the Swiss legal system, as well as its high level of freedom of contract, international parties often choose Swiss law as the applicable law of their contracts, and they provide for jurisdiction in Switzerland (Fedlex, 2021).

The Spanish Civil Code (Gobierno de España, n. d.), the French Civil Code (Legifrance, 2016) and the Federal Civil Code of Mexico (Portes Gil, 1928) set out the main provisions on the legal protection of participants in contractual and non-contractual relations, indicating the key principles on which legal protection is based in these countries.

The Civil Code of Ukraine (Verkhovna Rada of Ukraine, 2003) fully regulates the issues of contractual and non-contractual legal relations starting from their conditions and ending with legal protection in case of disputes. However, there is still a problem of the effectiveness of these rules and assessment of the practical protection of the parties.

Besides, the General Data Protection Regulation, which sets out contractual provisions and, in some cases, non-contractual ones that provide appropriate data protection guarantees, can be used as a basis for data transfer from the EU to third countries (European Commission, 2021).

Despite an extended legislative framework that seems to be exhaustive in regulating the protection of the rights and interests of participants in contractual and non-contractual legal relations, it can be observed that the effectiveness of legal protection cannot be called high in many countries. This is natural, on the one hand, because the requirements and needs of the parties are constantly changing and need other methods and approaches to their legal protection, and on the other — determines the readiness of states to seek new legal mechanisms to protect parties to contractual and non-contractual relations.

2. Methods and Materials

For a comprehensive analysis of the study of legal mechanisms to protect the rights of participants in contractual and non-contractual relations, we analysed the activities of some foreign countries, namely: Australia, Brazil,

Spain, Mexico, Germany, Portugal, Turkey, France and Switzerland. These countries provide legal protection of the rights of participants in contractual and non-contractual legal relations in completely different ways, which allows a more specific approach to the study of this issue.

The study is based on an in-depth analysis of the legal framework of selected countries (Australia, Brazil, Spain, Mexico, Germany, Portugal, Turkey, France and Switzerland), which reflects the balance between different rules of legal protection and different intensity of protection.

Despite some similarities in the application of legal mechanisms to protect the rights and interests of participants in contractual and non-contractual legal relations and/or obligations, the level of their effectiveness and scope differ. Besides, the level of regulation and assessment of legal mechanisms to protect the rights and interests of participants in contractual and non-contractual legal relations in each country also differ.

This analysis was formed on the basis of official Internet resources of the studied countries and the current legal framework, so it fully complies with the mechanisms of legal protection of the rights and interests of participants in contractual and non-contractual relations in general.

The study involved methods of sociological analysis, which contributed to the generalization of international practice of legal mechanisms to protect the rights of participants in contractual and non-contractual relations, as well as analysis of empirical information, which further allowed comparing legal mechanisms to protect the rights of participants of the countries.

System-structural and comparative methods allowed exploring the legal background for the protection of the rights of participants in contractual and non-contractual relations and to compare them with each other.

Logical-semantic and formal-logical methods were used in the study of the level of legal protection of the rights and interests of participants in contractual and non-contractual legal relations, as well as determining the level of their effectiveness. Definitions are formulated within the research topic on their basis. The dialectical method was used in considering the studied problems and determining the main directions of development of legal mechanisms to protect the rights and interests of participants in contractual and non-contractual relations.

The theoretical background for the study was the works of domestic and foreign scientists, the regulatory framework of foreign countries, analytical information on legal mechanisms to protect the rights of participants in contractual and non-contractual relations in particular.

3. Results

Today, the protection of the rights of participants in contractual and non-contractual legal relations directly depends on their legal protection mechanisms. For a comprehensive analysis of this issue, we propose to consider international experience in the field of legal mechanisms for the protection of contractual and non-contractual relations. Therefore, we propose to consider Table 1 and analyse the example of Spain, Germany, Turkey and France sanctions, which are conditions for the legal protection of these legal relations.

Table 1. Conditions of protection of the rights of participants of contractual and non-contractual legal relations

Sanction	Description	Spain	Germany	Turkey	France
Performance	Performance of the contract	+	+	+	+
Termination of the contract	The damaged party has the right to terminate the contract if the breach of contract is significant and violates essential terms	+	+	+	+
Price reduction in some contracts	There is a judicial tendency to provide a price reduction in case of breach of contract	+	–	+	–
Liability for hidden defects	Obliges sellers to provide a warranty for hidden defects	+	+	+	+
Compensation for damages	Breach of contract entails an obligation for the violating party to compensate the damage caused to the other party due to failure to fulfil obligations	+	+	+	+

Source: Authors.

According to Table 1, we can see that Spain and Turkey have the highest legal protection of contractual and non-contractual relations. However, it should be noted that each country has its own peculiarities regarding their regulation. However, Germany and France involve more than one item of sanctions in the legal protection, which fully compensates for the other sanctions, which we will consider below.

It is worth noting that under Spanish contract law, the parties have several remedies in the event of a breach of contract, which are not necessarily related to a particular type of breach. As a general rule, each party can choose the remedy that it considers most appropriate to protect its rights and interests, as there is no legal provision in Spanish law regarding the primacy of remedies. In fact, the plaintiff may also bring joint actions on a subsidiary basis (for example, the claim may be based on a specific performance and, if this is not possible, on damages) (Vendrell and Cepero, 2021). However, non-contractual relationships are governed by the parties themselves and, for the most part, if the parties cannot agree among themselves, their dispute is still resolved with an emphasis on contractual obligations.

In Germany, the simplest remedy is a performance claim. In sales contracts and work agreements, the buyer or customer should usually give the seller or contractor the opportunity to remedy the defect. This does not prevent the buyer or customer from claiming damages for the defect, such as property damage. German law on damages requires that the damaged party be placed in the position in which it would be if it hasn't incurred any losses through full compensation, lack of enrichment due to damages, limitation of liability, and repair work (Sattler, 2021). At the same time, contractual relations between the parties may arise much more often, as German law emphasizes the good faith of both parties. Therefore, when resolving disputes, both contractual and non-contractual legal relations are taken into account equally.

Examining the legal protection of Turkey on this issue, we traced such a feature as the fact that the parties are free to decide on the amount of the fine, which is not always dependent on the amount of damage. If the parties set the penalty less than the damage, the creditor may claim damages in excess of the fine, given that the debtor is at fault (Namli, 2021). Thus, Turkish law directly shows that it provides legal protection for any legal relations that arise between the parties. Moreover, if there are clearly defined terms of performance in the contractual obligations, but the parties have decided to change them on a non-contractual basis, they are considered equally legally significant.

The analysis of French contractual law is quite interesting, which provides five remedies available to the damaged party:

- exception in case of non-performance of obligations: a party may either refuse to perform its own obligation if the failure to perform of the contracting party is serious enough, or suspend the performance of its obligation when it is obvious that the other party will not perform.
- enforcement: the creditor of the obligation may receive enforcement of the specified obligation or assume the fulfilment of the obligation upon official notification.

- price reduction: the creditor may accept, upon official notification, partial performance of the contract and demand a proportional price reduction.
- termination for violation: termination for violation can be applied on three grounds: application of the termination provision, court decision or unilateral termination. Unilateral termination of relations is the main innovation of the 2016 reform, according to which obligated persons may terminate contracts by notifying their debtors, if they have not eliminated the breach of contract, despite the official notification.
- damages: the creditor can receive compensation for the damage. Compensation will be reimbursed provided that the non-compliance is final or that a formal notice has been issued.

Besides, under French law, contractual liability applies between the contracting parties for any damage resulting from non-performance of a contractual obligation. Therefore, if these conditions are not met, the liability is non-contractual. In addition, in accordance with the principle of non-accumulation of contractual and non-contractual obligations, where the conditions of contractual liability are met, the party to the contract can no longer claim non-contractual liability. However, the case law recognises that the parties to a case may claim damages for both a contractual claim based on non-performance of a contract, and a non-contractual claim based on the abrupt termination of established commercial relations, even if these requirements are based on the same facts (Fages and Saarinen, 2021).

In Brazil, in case of breach of commercial agreement, the non-violating party has the opportunity to use various remedies, including:

- demand fulfilment of the overdue obligation.
- application of penalties provided for in the contract, if any;
- termination of the contract due to non-fulfilment of obligations by other parties.
- demand compensation in order to compensate for losses caused by non-fulfilment of obligations by counterparties (Gonçalves *et al*., 2021).

Based on the above provisions, it is clear that Brazilian law generally protects only contractual obligations, and only in the case of exceptions, can accept non-contractual relations by mutual agreement of the parties.

In the event of a breach of contract, the Portuguese legal system provides the non-violating party with several remedies: it may bring a declaratory action and demand specific enforcement in order to compel the infringing party to actually fulfil the contractual obligation. If the declaratory proceedings are successful, the creditor may file enforcement proceedings against the debtor, if the latter does not voluntarily comply with the court decision.

A non-violating party may also claim compensation from the infringing party (including loss of profits) incurred as a result of breach of contract. However, the losses are not punitive but compensatory in Portugal. The non-violating party may also terminate the commercial contract in case of violation. However, under Portuguese law, termination is lawful only if the non-performance of the contract is serious and final. In the event of a delayed performance, the non-violating party will be able to terminate the contract only if it is no longer interested in the performance of the contract or if it has issued the defaulting party a fair notice to remedy the breach. In the event of termination, the non-violating party may demand compensation for the damage. However, as mentioned, the method of calculating compensation is controversial in Portugal (Aguilar De Carvalho, 2021). Thus, it should be added that contractual relations are more regulated in Portugal, while non-contractual obligations are rarely used by the parties.

Examining the legal protection of legal relations in Switzerland, it was noted that in the event of a breach of contract, the non-violating party usually has the option of either seeking specific enforcement or suing for damages. Depending on the type of contract and breach, a party may also have the right to terminate the contract, enforce warranty rights (such as repair or subsequent delivery), or go to court with reservations or other remedies (Rohn, 2021). That is, although non-contractual relations can still be applied, contractual obligations have much better legal protection.

Mexico is of particular interest to the study, where, as in most Latin American countries, Mexico's Federal Civil Code is based on the Napoleonic Civil Code, which means that Mexico adheres to the civil law system as opposed to the general (judicial) system. Therefore, the rules for concluding and interpreting treaties, breach of contract, and remedies are largely codified, as in other civil law countries. However, with regard to commercial litigation, Mexico is introducing a predominantly oral system, which is likely to become faster and more efficient. Thus, non-contractual obligations are the most common in Mexico, which helps to carry out proceedings in certain cases much faster (Obscura and Juarez, 2021).

The regulation of contractual and non-contractual relations in Australia It is quite interesting, where there is such a thing as a common law estoppel — a legal doctrine that can come into force in circumstances where the parties have departed from the strict terms of this agreement but did not enter into a new agreement to give effect to their new agreement. In essence, the common law of estoppel prevents a party in this situation from asserting its legal rights under the original agreement against the other party when it would be unfair, as this would lead the other party to assume that their basic agreement had changed. Common law applies only to assumptions about the current state of affairs, not to ideas about what will happen in the future (Lacey and Lewis, 2018). Thus, Australia has established the

protection of non-contractual obligations to avoid possible bad faith of one of the parties.

Having analysed the foreign experience of contractual and non-contractual legal relations, it should be noted that in Ukraine contractual and non-contractual obligations are fully regulated by current legislation. However, its effectiveness should be considered quite controversial. This is due to the fact that, although the regulations provide for the protection of contractual relations and there is an exhaustive list of non-contractual relations, which include obligations arising from the public promise of remuneration; committing actions in the property interests of another person without his/her order; saving the health and life of an individual, property of an individual or legal entity; creating a threat to life, health, property of an individual or property of a legal entity; reparation; in practice the parties are not always convinced of their legal protection.

One of the reasons is that non-contractual obligations are very difficult to prove, which is not the case for the contractual obligations, where the terms of the legal relations are clearly defined. Besides, the ground for non-contractual obligations is not a contract, but legally significant actions that also need proof, as such actions can be both legal and illegal.

Thus, having carried out a comprehensive analysis of contractual and non-contractual obligations, it can be argued that all the conditions and further consequences that require legal protection are concentrated in their life cycle, which can be illustrated as shown on Figure 1.

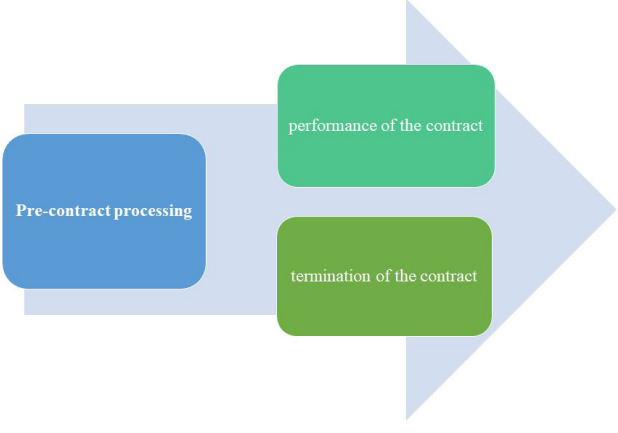

Figure 1: Life cycle of legal relations.
Source: Prinsley and Yaros (2019)

So, having studied the foreign experience of legal protection of contractual and non-contractual legal relations, it can be argued that their regulation and protection is not ambiguous. Therefore, we propose to consider Table 2 and determine which criteria provide legal protection in contractual and non-contractual relations, where "+" means "provide", and "-"—"do not provide".

Table 2. Assessment of legal protection of contractual and non-contractual legal relations by criteria

Criteria	Contractual relations	Non-contractual relations
Effective performance of the contract / agreement	+	–
Legislative requirements to support the performance of contracts	+	–
Alternative dispute resolution processes	+	+

Source: Organization of Economic Cooperation and Development (n.d)

On the basis of the countries that we studied, we propose to consider whether the protection of contractual and non-contractual relations is equal, where "+" means "full", and "-" — "not full" (Table 3).

Table 3. Level of legal protection of contractual and non-contractual legal relations

Item no.	Countries	Contractual relations	Non-contractual relations
1	Australia	+	+
2	Brazil	+	–
3	Spain	+	–
4	Mexico	–	+
5	Germany	+	+
6	Portugal	+	–
7	Turkey	+	+
8	Ukraine	+	+
9	France	+	+
10	Switzerland	+	–
Total		9	6

Source: Authors

So, having made a comparative analysis of contractual and non-contractual legal relations in Ukraine and foreign countries, we can see that although contractual obligations still occupy a higher position than non-contractual ones, the difference is quite small. Besides, it should be noted that most countries have a position of equal legal protection for both contractual and non-contractual obligations.

Based on the above, it should be emphasized that it is necessary to improve the regulation of non-contractual relations in modern conditions, as well as to pay attention not only to the legal protection of contractual and non-contractual obligations provided by the country on this issue, but also its effectiveness. Despite the availability of legal protection of both contractual and non-contractual legal relations in Ukraine, their effectiveness is quite low and needs legislative revision. The same applies to foreign countries, there are countries that focus on non-contractual relations, while the protection of contractual relations is imperfect, and vice versa. Therefore, there is an urgent need to review the legal framework for the effectiveness of protection of contractual and non-contractual obligations in accordance with modern conditions and needs of the parties to the existing legal relations.

4. Discussion

Having conducted research in the field of legal mechanisms for the protection of the rights of participants in contractual and non-contractual legal relations, it should be noted that it is difficult to call them unambiguous. Countries such as Australia, Germany, Turkey, Ukraine and France prefer to exercise legal protection to the same extent, although there are countries that adhere to the regulation of legal protection of mostly contractual obligations only — Brazil, Spain, Portugal, Switzerland, while some countries focus on non-contractual relations, such as Mexico.

Upon analysing the views of foreign scholars, we can agree with the statement that the legal protection of the rights of participants in contractual and non-contractual legal relations constantly requires legislative changes, as the effectiveness of legal protection of these obligations in the world is constantly changing.

Hryniak *et al.* (2018) conducted a study of the legal protection of contractual relations, which clarified the main reasons for the occurrence of contractual obligations and their relationship with non-contractual obligations.

The study of Wolff (2020), who examined the relationship between contract law and non-contract law in the field of property rights, is

quite interesting. In his work, he provided comprehensive comparative characteristics of contractual legal relations that arise in this area with non-contractual ones.

Researchers Taylor and Taylor (2017) have noted that contractual and non-contractual relations are generally considered part of contract law. He explains this by the fact that regardless of the type of legal relations, there is a certain obligation of one party to another, and it depends not only on the existence of separately defined terms of the contract, but on non-contractual legal relations between the parties as well.

The research of Svirin *et al.* (2021) is worth being mentioned, as it analysed the current problems of legal qualification in international private law of contractual and non-contractual relations.

In analysing contractual and non-contractual relations, Brownsword (2017) identifies three broad goals that govern the predictable, real, and ideal functions of modern contract law, namely, to facilitate exchange, protect the public interest and the parties themselves, and provide a private dispute resolution mechanism. In his study, he identified the main characteristics of contractual and non-contractual relations.

However, Ramaekers (2017) emphasises in her research that contractual and non-contractual legal relations are completely different areas that need a different legal protection, although they may address the same issue.

Petrova's (2019) research is quite interesting, where in distinguishing between contractual and non-contractual legal relations she notes:

> ...when distinguishing between contractual and non-contractual obligations, in order to determine the applicable legislation, the first question to be resolved is whether this obligation corresponds to the contractual one or is closely related to the contractual one. If there is a close relationship with the contract, the obligation is primarily classified as contractual. Accordingly, when an obligation cannot be classified as a contractual, the obligation should be treated as a non-contractual obligation (Petrova, 2019: 37).

In his research on contractual and non-contractual legal relations, Teo (2021) focused not only on their characteristics and analysis, but also on the legal protection of the rights of participants and their legality. At the same time, he took into account the claims relating to both contractual and non-contractual legal relations, which led him to conclude on the different legal protection of contractual and non-contractual legal relations, depending on the country.

Besides, taking into account the current features, which include the COVID-19 pandemic, we reviewed the results of studies conducted by Zagonek and Boulatov (2020) who examined the legal impact on contractual obligations in a pandemic. They partially carried out a comparative analysis

with non-contractual legal relations, which allowed tracing the main effects of the pandemic on these legal relations.

Györfi-Tóth (2020) also conducted research on this issue, who also studied the impact of coronavirus as a potential force majeure event on contractual and non-contractual relations, while identifying the main characteristics of legal protection of participants in such relations.

Conclusions

The study of contractual and non-contractual legal relations as a legal mechanism to protect the rights of their participants is undeniably important for each country and society as a whole. The topic of this article attracts the attention of researchers and scholars not only to theoretically consider this topic, but also to provide their recommendations for improving the legal protection of the rights of participants in legal relations.

Based on the study of foreign experience, the scope of regulation of legal mechanisms of protection through legal acts is considered and their efficiency is assessed in such countries as Australia, Brazil, Spain, Mexico, Germany, Portugal, Turkey, France and Switzerland.

Having conducted a comprehensive analysis of the mechanisms for legal protection of the rights of participants in contractual and non-contractual legal relations on the example of foreign countries, it should be noted that there is a need to expand legal mechanisms for legal protection of the rights of participants in legal relations. In particular, amendments should be made to the regulations of most of the countries we studied, because they either do not regulate this area of legal relations in full, or there are problems with the effectiveness of already established rules that should provide legal protection for both contractual and non-contractual relations. As a result, this is directly reflected in the statistics compiled to analyse the activities of countries, which allows us to realistically assess the position of a country in the context of protecting the rights of the parties to the legal relations.

The obtained results can be used in research, law-making, law enforcement and educational process. For example, research provides a background for further theoretical studies of legal mechanisms to protect the rights of participants in contractual and non-contractual relations, which are aimed at improving the system of protection of citizens' rights.

It is necessary to take into account the obtained results in law-making, because the study resulted in proposals to improve the legal protection of the rights of participants in contractual and non-contractual relations. Application in law enforcement activities will allow improving the legal protection of the parties to legal relations and increasing the effectiveness

of the introduction of mechanisms for legal protection of participants in contractual and non-contractual legal relations. The use of the results of this study in the educational process is equally important, as they can be introduced in educational materials on the subjects that involve studying the legal protection of contractual rights in law and other educational institutions.

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State Information Security Policy (Comparative Legal Aspect)

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Abstract

The rapid development of information technology and the problem of its rapid implementation in all spheres of public life, the growing importance of information in management decisions to be made by public authorities, a new format of media — these and other factors urge the problem of developing and implementing quality state information security policy. The aim of the article was to conduct a comparative analysis of the latest practices of improving public information security policies in the European Union, as well as European countries such as Poland, Germany, Great Britain, and Ukraine. The formal-logic, system-structural and problem-theoretical methods were the leading methodological tools. The analysis of regulatory legal acts showed that there is a single concept of international information security at the global and regional levels, which requires additional legal instruments for its implementation. It is stated that the reform of national information security policies has a direct impact on the formation of a single global information space. According to the results of the study, it is substantiated that the United Kingdom is characterized by the most promising information security policy.

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Keywords: Covid-19 pandemic; cybercrime; global cybersecurity index; global information space; information security.

Política Estatal de Seguridad de la Información (Aspecto Legal Comparativo)

Resumen

El rápido desarrollo de la tecnología de la información y el problema de su implementación en todas las esferas de la vida pública, la creciente importancia de la información y un nuevo formato de medios: estos y otros factores impulsan el problema del desarrollo de la investigación, implementar una política de seguridad de la información del estado de calidad. El objetivo del artículo fue realizar un análisis comparativo de las últimas prácticas de mejora de las políticas de seguridad de la información pública en la Unión Europea, así como en países como: Polonia, Alemania, Gran Bretaña y Ucrania. Las técnicas de lógica formal, estructura de sistemas y teoría de problemas fueron las principales herramientas metodológicas. El análisis de los actos legales regulatorios mostró que existe un concepto único de seguridad de la información internacional a nivel global y regional, que requiere de instrumentos legales adicionales para su implementación. Se concluye que la reforma de las políticas nacionales de seguridad de la información tiene un impacto directo en la formación de un único espacio global de información. Según los resultados del estudio, se corrobora que Reino Unido se caracteriza por tener la política de seguridad de la información más prometedora.

Palabras clave: pandemia Covid-19; ciberdelincuencia; índice de ciberseguridad global; espacio de información global; seguridad de la información.

Introduction

The development of information and communication technologies has affected all spheres of public life, including economics, politics, social issues, and culture, uniting them within the development of the information society. Technological progress has led to radical changes in the modern world, which has qualitatively transformed the system of international relations. The spread and use of innovative technologies affect the interests of the entire international community. Besides, science and innovation are particularly important for achieving sustainable development goals. This context played an extremely important role during the Covid-19 pandemic.

The fact that governments, businesses, organizations and government services were able to share important information quickly, efficiently and ethically during a pandemic has saved many lives and forced governments to take a fresh look at information security. At the same time, innovations can potentially be used for purposes that are incompatible with the goals of international stability and security, which will negatively affect the integrity of the infrastructure of states. All countries have been affected by the digital gap in one way or another, and cybersecurity, as a key driver of the digital-based economy, society and government must become a priority. According to the Global Cybersecurity Index (International Telecommunication Union, 2020), which provides an assessment of information security at the global level on 28 criteria, such as the United States, Britain, Saudi Arabia provide the highest level of information security. Ukraine ranked 78th out of 182 countries in this ranking.

However, it is widely believed that the efforts of individual states in the rapid transformation flow of innovation may not be sufficient to ensure international information security (Shafqat and Masood, 2016). One of the most pressing issues is that the ban on the use of information weapons by states should be legalized in international law (Futter, 2020). Separate regulation in the field of information security of individuals (protection of confidentiality and against defamation) seems urgent. Strengthening the level of information trust, including information security and network security, authentication, confidentiality and consumer protection, become necessary conditions for the development of the information society and enhancing trust among users of innovative technologies. Scientists are increasingly noting that the global culture of information security needs to be promoted, developed and implemented in collaboration with all stakeholders and international expert bodies (Olejnik, 2021). In this context, the reform of national information security policies is especially important.

Each country has its own information policy, which is supported through a network of laws, administrative rules and customs. Many countries are developing increasingly clear and restrictive information policies, which are being implemented to preserve their political, cultural and economic status. Today, the policy in the field of information security of an individual state is developed in response to relations with other countries; economic, social and political conditions, as well as the current state of technology are established. It is possible to understand the reasons for the development and implementation of the information policy of a particular state only with a view to the historical development and legal traditions of a particular country (Zakharenko, 2019). However, there have been tremendous technological changes over the past five years, and national governments need to step up their response and take urgent action to ensure information security.

Besides, most of the interstate conflicts that arise today are, among other things, also caused by the transformations associated with the information revolution and global transformations in the information age (Patrick, 2021). Such conflicts are not only technological, but, above all, political in nature. Every country, including European democracies, has its own way of reforming its national political system and tackling the challenges of the information revolution. At the same time, there are some contradictions given that cyberspace is global and exists beyond national borders. At the same time, the protection of information resources is a top priority of national security, despite the fact that it cannot be guaranteed by state institutions only. The government's capability to control individual production and consumption of information remains very limited. However, the new information security legislation is designed to address such issues as confidentiality, unauthorized access and security on the Internet. The data strategy, which would reflect the opportunities and challenges of the new hyper-digital world, is especially relevant in the globalization dimension (Lomas, 2020). Such a strategy would ensure that states take into account the priorities and potential trade-offs of data in a balanced and reasonable way in order to form the most effectively managed economy, which will contribute to the recovery of states from the Covid-19 pandemic.

Current globalisation trends show that most countries around the world now have consistent procedures for responding to computer incidents and information leaks, and almost two-thirds have some form of national information security strategy (Scroxton, 2020). In turn, states still remain vulnerable in the face of rapid digital transformation, which requires the development of an adaptive legislative platform in the field of information security at the national level. Given the above context, the aim of the article is to conduct a comparative analysis of the basics of public information security policy in the European Union and Ukraine. This aim outlined the vectors and objectives of further research, which are as follows:

1) identify the features of state information security policies in the European Union, Poland, Germany, Britain, and Ukraine.
2) reveal the prospects for the transformation of the national policy of the studied states in the area of information security in the digital age.
3) develop a sound strategy for reforming Ukraine's national information security policy, taking into account the positive experience of European states in this area.

1. Methods and Materials

The author's scientific research was conducted with the involvement of a set of methodological tools and within a clearly structured research architecture shown in Figure 1.

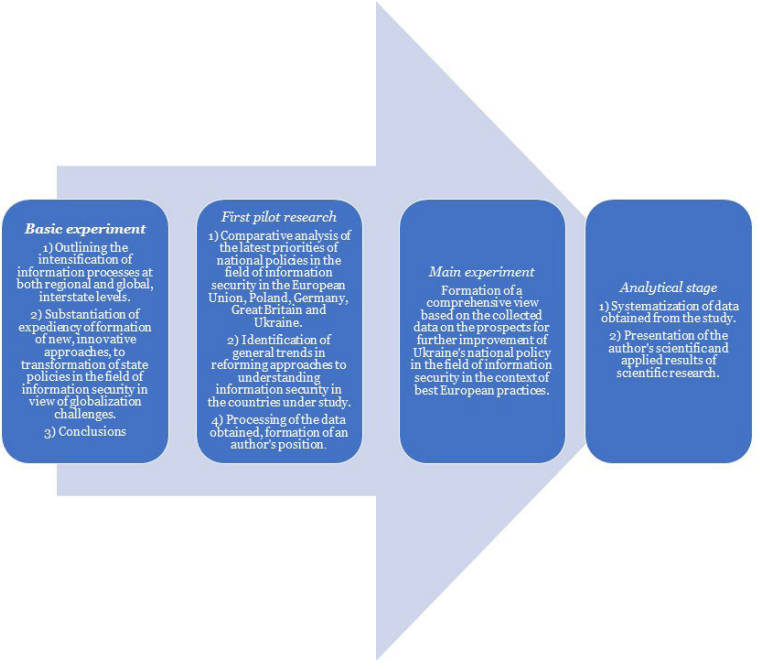

Figure 1: Research design. Source: Authors

Formal-logical, system-structural and problem-theoretical methods were used to analyse the existing international information security system and vectors of reforming national information security policies. At the same time, the comparative method was used to analyse information security provisions at the global and regional levels.

The method of observation was the leading practical method, which allowed analysing in detail the variable policy innovations in the field of information security in the European Union, Poland, Germany, Great Britain and Ukraine. This method led to the conclusion that the UK's national policy to protect the national information space and the introduction of the latest innovations in science and technology in public sector reforms is

the most successful for testing in Ukraine. The observation method helped to substantiate that the approaches to the information security policy of the European Union do not fully coincide with the national legal system of Ukraine and can be used in the development of national policy only partially.

The systemic analysis should also be considered one of the leading methods of scientific research in this article. Its application allowed to achieve the aim and fulfil the outlined objectives of the article, as well as to distinguish certain parts of the subject under research, in particular, when substantiating the features, properties and characteristics of legal regulation of information security in different jurisdictions. The historical chronological method was used in the study of the formation and development of legal regulation of information security policy in the analysed countries. Historical and legal analysis is not possible without taking into account the transformations that occurred not only with the object of study, but also with all related processes and phenomena. The above allows, first of all, to identify and take into account all the factors and conditions that determined the evolution of the concepts of information security, which qualitatively transformed the modern national policies of states.

The problem-chronological method helped to structure the text of the research, empirical analysis facilitated the comparison of historical documents and facts. The simulation method was used in the search for a universal model for reforming the national information security policy. This method was also tested to determine effective mechanisms of international cooperation between the legal systems of states in the field of information security and the formation of a single global information space of states. The conclusions were drawn through the dogmatic method in accordance with the aim of the study and the main objectives outlined.

The scientific works of leading scientists and lawyers, as well as analysed laws and regulations in the field of information security were the theoretical and methodological background of the research. A total of thirty-five references were used in the article.

2. Results

The issue of modern information security is given considerable attention around the world. The rapid development and active use of technology has led to the fact that states have become dependent on them, which entails the likelihood of new threats. Most often, such threats are associated with the objective possibility of using information and communication technologies to create conflicts. The use and proliferation of information weapons, which

poses a risk of information wars and information terrorism, is of particular concern. Ensuring international information security cannot be achieved solely through the efforts of an individual sovereign state and its national policy in this area. Besides, the concept of international information security has already been formed at the global and regional levels, and it, among other things, uses the achievements of national information security policies.

It should be noted that states have never stood aside from the problems of rapid development of the information space, as evidenced by numerous international resolutions. The existence of such documents, their accumulation and improvement of approaches confirm some progress in ensuring information security. In particular, the resolutions of the UN General Assembly contain specific proposals for the development of an information security system that can be used to draft relevant international agreements. For example, the UN General Assembly adopted Resolution 58/199 of 23 December 2003 on the creation of a global culture of cybersecurity and the protection of critical information infrastructure (United Nations, 2003), which defines the elements of protection of critical information infrastructures, namely: (1) the availability of cyber-threat and incident emergency warning networks; (2) raising awareness to facilitate stakeholders' understanding of the nature and extent of their critical information infrastructure and the role that everyone should play in protecting them; (3) studying infrastructures and identifying interdependencies between them, thereby strengthening the protection of such infrastructures; and (4) promoting partnerships between stakeholders, both public and private, to exchange and analyse critical infrastructure information in order to prevent, investigate and respond to damage to or attacks on such infrastructure, and so on.

Gradual global legislative transformations against the background of innovations have led to changes in the understanding of information security. At the same time, an institutional mechanism for ensuring international information security has been established within the UN. States regularly submit their assessments of the state of information security, which are included in the Secretary-General's reports, and contribute to a better understanding of the nature of international information security issues and related concepts. Besides, the United Nations (2020) has established a panel of high-level digital cooperation with representatives of governments, business and the scientific community. Based on the findings and recommendations, the United Nations (2021) has also developed a road map for cooperation in the digital sector. In particular, the eight leading spheres of cooperation in the field of digitalisation, shown in Figure 2, remain conceptual vectors of state development.

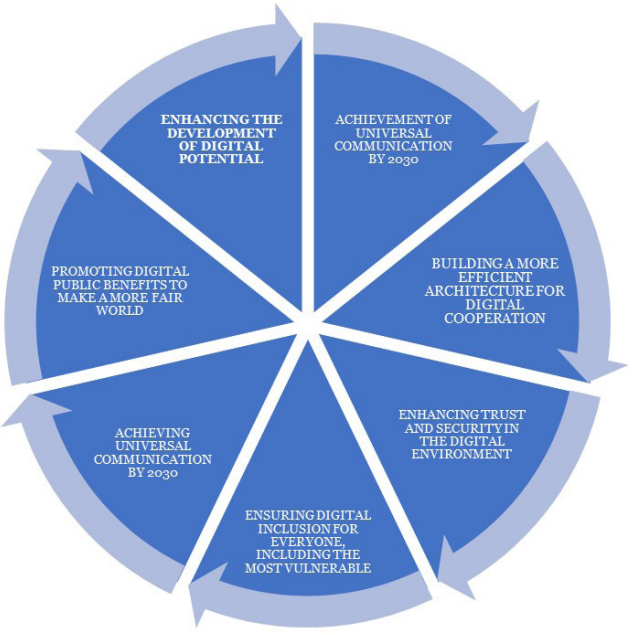

Figure 2: Key areas of interstate cooperation in the field of information security in the digital age (summarized by the author based on the analysis. Source: United Nations (2021)

The analysis of international documents showed that in the current conditions, states should strive to limit threats in the field of international information security. To this end, in their national policies states should refrain from: 1) the use of methods of influencing and harming information sources and regimes of another state; 2) targeted information impact on critical structures of another state; 3) informational influence in order to destroy the political, economic and social system of other states; 4) psychological information impact on the population in order to destabilise society; 5) unauthorized interference in information and telecommunication regimes; 6) encouragement of international terrorist, extremist and criminal communities, organisations, groups and individual criminals who threaten information resources and critical state infrastructures; 7) approval of plans, doctrines that provide for the possibility of information wars and are able to provoke an “arms race”; 8) the use of information technology and means to the detriment of human rights and freedoms created in the information sphere; 9) cross-border dissemination of information prohibited by international principles and norms of international law.

Referring to the practice of the European Union in the field of information security, it is worth emphasizing that this area is highly fragmented and even terminology is not consistent in EU legislation or policy. The main documents are as follows.

The Directive on privacy and electronic communications (European Parliament and the Council of the European Union, 2002) covers the processing of personal data and the protection of confidentiality in the electronic communications sector.

The Cybercrime Directive 2013/40/EU, (European Parliament and the Council of the European Union, 2013) aims to approximate the criminal law of the EU member States in the field of attacks on information systems by, among other things, establishing minimum rules for the definition of criminal offenses and the development of national policies in this area.

The GDPR (European Parliament and the Council of the European Union, 2016b) is a broad cross-sectoral law governing the processing of personal data. Each EU member State has set up one or more supervisory authorities (also known as data protection authorities) in accordance with this document, which are responsible for monitoring compliance with the GDPR on their territory. They also have the power to control the processing of personal data by a "controller" not registered in the European Union if the processing is directed at persons residing in the EU.

The Directive on measures to ensure the overall level of security of network and information systems throughout the Union (European Parliament and the Council of the European Union, 2016a) was the first part of EU cybersecurity legislation. The main purpose of this document is to strengthen cybersecurity in the European Union in key areas. The Commission Implementing Regulation 2018/151 (European Commission, 2018) further clarified and supplemented some provisions of this document.

The European Electronic Communications Code (EECC) (European Parliament and the Council of the European Union, 2018) requires EU member States to implement cybersecurity rules that, like the Directive on Privacy and Electronic Communication, apply to the electronic communications sector. EECC is a revision of a number of EU directives, including the Framework Directive (European Parliament and the Council of the European Union, 2002a). The Framework Directive established a harmonised framework for the regulation of electronic communications services, electronic communications networks, related facilities and related services. This Directive determines the tasks of national regulatory authorities and establishes a set of procedures to ensure the harmonised application of the regulatory framework throughout the European Union. The Framework Directive remained technically valid until December 20, 2020.

The EU Cyber Security Regulation (Regulation (EU) 2019/881) updates and strengthens the EU Agency for Cybersecurity (ENISA), including by transforming it into a permanent agency for pan-European cyber security. It also establishes a pan-European cybersecurity certification system for digital products, services and processes. By default, certificates will be voluntary, unless otherwise provided by EU law or the law of EU member States.

It can be stated that the above documents of the European Union take into account the models of functioning of integration organisations in the field of information security and need significant adaptation for use at the national level in the reform of state information security policy.

At the same time, the experience of individual EU member States in the field of high-quality reform of the state information security policy is worth attention.

The Ministry of Digital Affairs of Poland presented the latest cybersecurity strategy of the country for 2019 - 2024 (Zagórski, 2019). The strategy focuses on increasing the country's resilience to cyberattacks and improving data protection in the public, military and private sectors, committing itself to developing a national cybersecurity system, expanding the exchange of information on cyber threats and strengthening coordination between law enforcement agencies. The National Research Institute (NASK) plays a key role in implementing the strategy from a research and educational perspective. The document emphasises that national cybersecurity standards should be developed as a set of organisational and technical requirements for the security of applications, mobile devices, workstations, servers and networks, cloud computing models. To ensure the safe and cost-effective operation of information systems in public administration, it is necessary to implement recommendations and best practices that increase sustainability in the use of new types of information processing and storage. The fulfilment of state tasks related to information security is supported by Polish standards based on European and/or international standards and values.

In Germany, the Cyber Security Strategy for Germany (Federal Government of Germany, 2021) regulates the fundamental, long-term orientation of the federal government's information security policy. The strategy contains four main recommendations: 1) establish information security as a joint task of the state, business, society and science; 2) strengthen the digital sovereignty of the state, business, science and society; 3) ensure the safe development of digitalisation; 4) determine priority goals of the state and business in the field of information security on the grounds of reality and transparency. The document focuses on the distribution of responsibilities and cooperation between government institutions. Besides, Germany's commitments to the EU and NATO are also indispensable in

information security. Cooperation with international partners and the integration of national measures into European and international processes are necessary to ensure a high level of information protection in Germany.

Despite the fact that Ukraine is not a member of the European Union, it has been actively implementing European information security standards since 2014. By such actions the state decisively transforms the national policy according to the European model. The information security is recognised as a priority of national public policy. This position of the state, among other things, is reflected in the Doctrine of Information Policy of Ukraine (Administration of the President of Ukraine, 2017). This act was adopted in order to overcome the complex nature of current threats to national security in the information sphere, identify innovative approaches to the formation of a system of protection and development of the information space in the context of globalisation and free circulation of information. The main background for the development of this document was active illegal actions of the Russian Federation in the information space of Ukraine.

Despite the rather progressive content and direction of driving security actions, this document is somewhat one-sided and eliminates the expediency of many sectoral information policies of the state. Focusing on the aggressor country only is not a promising area of reform. In this context, it should be noted that in September 2021 the government approved the 2025 Information Security Strategy (Ministry of Culture and Informational Policy of Ukraine, 2021). The main purpose of this document was the urgent need to effectively counter threats in the area of information security, urgency in ensuring effective state sovereignty, preserving the territorial integrity of the country. The state of the hybrid war on the part of the Russian Federation is of growing concern given the possibility of illegal use of information space by the aggressor. Besides, the fulfilment of the international legal obligations of the state in the field of implementation of European and world standards of ensuring rights and freedoms has also led to the changes declared in the document. The proposed act currently outlines seven leading areas for reforming national information security policy (Figure 3).

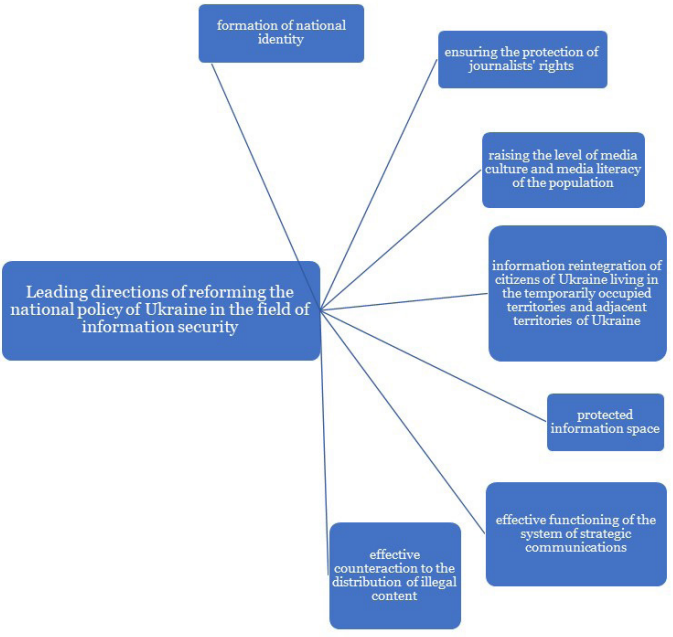

Figure 3: Directions for improving Ukraine's policy based on the results of the analysis of the draft 2025 Information Security Strategy of Ukraine. Source: Ministry of Culture and Informational Policy of Ukraine (2021)

It should be separately emphasized that the proposed changes are not yet final. In particular, the above strategy will come into force subject to the signing of a relevant decree by the President of Ukraine with the prior approval of the draft document still to be approved by the National Security and Defence Council of Ukraine. At the same time, it should be noted that today's challenges require Ukraine not only to take innovative approaches to state information security policy, but also to find effective mechanisms for implementing the declared vectors of action. It can be stated that the management decisions in the study area themselves are not able to increase the level of information security in the state and in various spheres of public life.

In the context of the analysis of the successful implementation of the state information security policy, it is advisable to take into account the experience of the United Kingdom, which has gained worldwide recognition as a digital state (Cattaneo *et al.*, 2020). The data market in the UK (including cash

from products or services derived from digitised data) remains the largest in Europe. In 2019, British technology rose sharply: the UK provided 33% of European investment in technical innovation (Tech Nation, 2020). The success of the state in this area was facilitated, among other things, by the step-by-step state information security policy. In particular, it is enshrined in the National Data Strategy (Department for Digital, Culture, Media & Sport of the United Kingdom, 2020). A rather positive point is its open discussion by all segments of the population, with subsequent amendments to the document taking into account the most reasonable proposals. Besides, in the further update of the National Information Strategy the government provided details of the steps to implement the strategy based on the results of the proposals that formed the latest approach.

This strategy has identified five public policy priorities which can address key issues that may prevent society from taking advantage of the opportunities opened up by the data today (Figure 4).

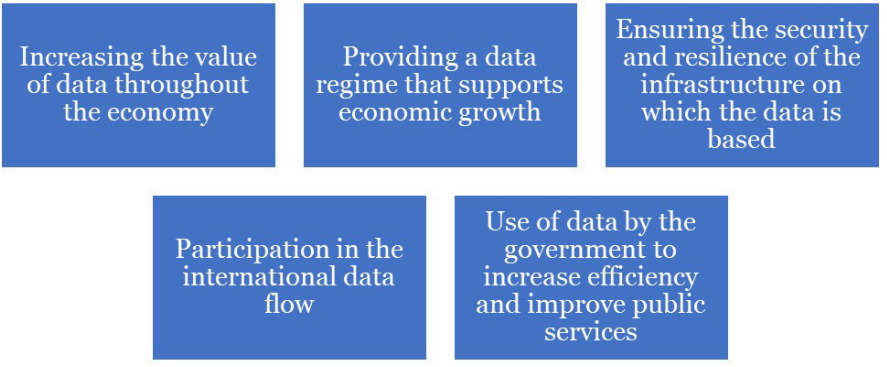

Figure 4: Priority areas of UK public information security policy. Source: Department for Digital, Culture, Media & Sport of the United Kingdom (2020)

Among the given vectors of the state policy, protection of an infrastructure on which the data is placed is especially important. In particular, variable registers are a vital national asset that requires the most effective protection against security risks and other issues, such as service disruptions. Interruptions in the operation of registers, the provision of public services and any other activity based on data processing may lead to disruption of enterprises, organisations and public services. These are also commercial risks for the government and the government is responsible for ensuring the sustainability of the data and the infrastructure that supports

them in the face of established and emerging risks. The UK's involvement in the international data flow is worth noting. The flow of information across borders facilitates global business operations, supply chains and trade, stimulating growth worldwide. It also plays a broader social role. The transfer of personal data ensures the payment of salaries to people and helps them communicate with loved ones from afar. As the Covid-19 pandemic has shown, sharing health data can help with vital research into diseases by uniting countries in responding to global emergencies.

3. Discussion

The lack of effective international legal instruments in the field of information security has been largely discussed in theoretical and political discussions. Controversial academic disputes mainly divide those who believe that states should play a more influential role in formulating international law on the information space (Tverdokhlib, 2021), and those who insist that cyberspace should remain free and globalised (Bondarenko and Mikhalchuk, 2021). Scientists point out that the information security of each individual state is part of a comprehensive system of international security. However, international relations are more than just relations between subjects of public international law. The requirement of information security is equally applicable to international non-governmental and domestic relations, to national policies (Zakharenko, 2020). The lack of effective international legal instruments in the field of information security has been largely discussed in theoretical and political discussions. At the same time, the analysed concept of international information security gives every reason to say that national policies in this area should act as a deterrent, while being the basis for testing the latest innovations in the information sphere — for the most effective formation of the global information space. The integrated system of international security and the system of national information security have a certain sphere of intersection.

The position that the postulates of information security of the state should be revised in view of the rapid growth of threats to various strategic sectors of society given the intensification of innovation seems to be well-argued (Adonis, 2019). It is the governments of the states that are entrusted with the greatest possible degree of coordination of the effective fulfilment of the state's obligations to ensure information security. Public authorities should gradually review the perception of data and the possibilities of their use in the long run.

Research has shown that data can revolutionize the public sector by creating better, cheaper and more efficient public services. These state services and capabilities depend to a large extent on data, but the systems

that process and store them are updated faster than national legislation. Many systems are outdated and unable to communicate with each other, creating problems in a world where public services are becoming increasingly interconnected (Ikeda *et al.*, 2019). In this context, the conclusion on the reasonability of multisectoral reforms of national information security policies in order to ensure maximum data protection at both the regional and global levels is well considered.

The experience of states responding to the Covid-19 pandemic has shown that choosing to handle data as a strategic asset is the most effective for states, which resulted in the improved coordination between organisations, as well as accelerated delivery of public services that are more innovative, efficient, and cost-effective. Scholars emphasise the need for public policies to move away from a culture of risk-taking to a unified approach, where it is assumed that, under appropriate safeguards, data should be shared to achieve better results (Lallie *et al.*, 2021). The international community now recognises that the most secure data means better and more effective decision-making for the central government (Sun *et al.*, 2021). This means policies that can be adapted and implemented more effectively, as well as significant savings for the state budget. The best evidence that policy has the expected effect in different areas and for different groups is that interference in public relations is inconspicuous and much more effective (Lee *et al.*, 2020). This is in line with the new expectations of the public in the current digital context.

The study found that the benefits of the new information security policy can be realised through better, more coordinated use of data in the broad public sector — in education, the judiciary, health care and local governments. The phase of gradual implementation of the state policy fully identifies the immediate needs and barriers faced by the local authorities in the use of data and testing of policy concepts. In the long run, this approach is supported by the scientific community and justifies: reducing bureaucratic burdens, overcoming and avoiding the risks of data leakage, strengthening incentives for data exchange in the public sector (Coco and Diaz, 2020). Non-standardization and lack of data coordination by the state mean that data collected by one organisation cannot be easily used by another. This leads to duplication of effort and waste of resources (Mantelero, 2018). Therefore, the interpretation of data in the public sector as a strategic asset with good governance seems to be the most acceptable leading thesis of further vectors of reforms of national information security policies.

Conclusions

At the end of the 20th century, information and legal research focused on studying the peculiarities of social relations, which arose in connection with the increasingly active use of innovative technologies and the attempt to regulate the changed relations at the state level. At the same time, there are two tendencies in the world of legal regulation of relations in the information sphere: to use the existing legislation by analogy, creating new norms only on the basis of the realities that arise in connection with comprehensive informatisation; or create new legislation. Modern legislation does not adapt in time to the advances of science and technological progress, which leads to the emergence of new social relations, which often require, first, ethical, and only then legal assessment by society. In view of the above, information, its preservation until the legalization of the updated legal security regime requires a revision of long-term obligations of the state in this area.

This research topic is especially relevant in view of the gradual increase in the number of domestic registers and databases. It is recognised that state databases have become an attractive target for cybercriminals who sell data for personal gain or use it to access government networks or services, to destroy critical infrastructure, or to expose individual officials. In this context, public authorities should take the most effective measures to ensure the security of the data they store. States, in turn, need to revise national information security policies in the face of the latest technological innovations and cyber threats.

Scientists confirmed the author's conclusion that new modern mechanisms for implementing information policy using the latest technologies designed to optimize and streamline the decision-making process in government and administration, mostly pose a threat to information security, where the improvement of the mechanisms and methods of state information policy will contribute to timely elimination of this threat. It was stated in this research that state control over the processes taking place is necessary and mandatory, given that information technology can carry a range of information threats.

A study of the latest developments in reforming public information security policies has shown that the vectors of British policy are the most effective. The UK, having left the European Union, continues to defend the benefits that data and the global information space can provide. The country promotes national best practices and co-operates with international partners to ensure that data are not unduly restricted by national borders and fragmented regulatory regimes. At the same time, the state policy of Ukraine in the field of information security in recent years has made significant steps towards its adaptation to global and European principles

of information security. Moreover, the long-term adoption of the 2025 Information Security Strategy of Ukraine will be a further vector of driving political changes in the study area. The vector of further research on the subject of the article will be a comparative analysis in order to find the most effective results of the implementation of the declared policy areas in the field of information security in the context of the Covid-19 pandemic.

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The Influence of the Coalition Approach in US Policy on the Integration Processes in Europe in the Post-Bipolar Era

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Abstract

The article examines the impact of the coalition approach in US policy on integration processes in Europe in the post-bipolar era. The aim of this article was to identify the peculiarities of the political situation in the world after a period of escalation of the nuclear conflict. It involved an analysis of sources in the field of coalition approach research in the United States, as well as a comparison of its impact on the political situation and European Union law. The author concluded that there is a lack of proper research in the field of the impact of the coalition approach in US policy in the post-bipolar era, and its impact on integration processes in Europe. Comparing the experience of the EU and the US, it was determined that the awareness of nuclear danger affected the development of a coalition approach in US policy. The study resulted in the identified specifics of the EU's security policy under the influence of the US coalition approach, where the need to ensure stability and armed security is crucial. Prospects for further research include identifying US influence on Eastern countries.

Keywords: coalition approach; international relations; was post-bipolar; political integration; geopolitics.

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La Influencia del Enfoque de Coalición en la Política Estadounidense sobre los procesos de Integración en Europa en la Era Post bipolar

Resumen

El artículo examina el impacto del enfoque de coalición en la política estadounidense sobre los procesos de integración en Europa en la era post bipolar. El objetivo de este artículo fue identificar las peculiaridades de la situación política en el mundo después de un período de escalada del conflicto nuclear. Implicó un análisis de fuentes en el campo de la investigación del enfoque de coalición en los Estados Unidos, así como una comparación de su impacto en la situación política y la legislación de la Unión Europea. Se concluyó que hay una falta de investigación adecuada en el campo del impacto del enfoque de coalición en la política estadounidense en la era post bipolar y su impacto en los procesos de integración en Europa. Al comparar la experiencia de la UE y los EE. UU., se determinó que la conciencia del peligro nuclear afectó el desarrollo de un enfoque de coalición en la política estadounidense. El estudio dio como resultado los aspectos específicos identificados de la política de seguridad de la UE bajo la influencia del enfoque de la coalición estadounidense, donde la necesidad de garantizar la estabilidad y la seguridad armada es crucial.

Palabras clave: enfoque de coalición; relaciones internacionales; era post bipolar; integración política; geopolítica.

Introduction

The topicality of this research is determined by the need to study the political and social reforms in the world (especially Europe and the United States) in the post-bipolar era.

The experience of nuclear confrontation in the era of "bipolarity" was extremely instructive for the world, because there was a threat of brutal and complete destruction of the world at that time. Nuclear arsenals have been and remain a means of achieving the doomsday rather than individual political goals. The theory and practice of international politics faced the problem of involving or integrating these arsenals in world affairs, and the formation of appropriate governance policies (Kononenko, 2018).

After the end of the East-West nuclear conflict, a world political situation arose that failed to find its structure and, therefore, was uncertain.

There was a global tectonic shift in the last decade of the 20th century: the Soviet Union collapsed, leaving the United States a single and truly global

state, and putting an end to the bipolar world order (Marshania, 2011). However, Western Europe, which has retained much of the world's political and economic power, remains one of the geopolitical heavy-weights. The same applies to other parts of the European continent. Geopolitical changes, which eventually created a new, post-bipolar world order, took place in two stages: the end of the bipolar world order; the first post-socialist states joined NATO and the EU. Accordingly, the global political situation has changed, and there have been numerous international conflicts that pose new challenges for the international community as a whole, as well as for individual countries (Fard, 2019).

After the threat of nuclear war and understanding of the dangers of nuclear potential in the world, new approaches to addressing current political aspects began to take shape. There is a growing number of newly independent states and the growing role of non-state actors, growing interdependence, changing relationship between economic and military factors as the most typical features of the world.

Coalition approaches to solving the set objectives have become important.

In the 90's of the 20th century, international relations underwent extraordinary transformations. The post-bipolar period was characterized not only by structural changes, but also by radical new circumstances in the challenges of international security at all levels, as well as the reorientation of foreign policy of leading states, ideological changes and revision of international regimes and organizations. At the same time, NATO was considered the only organization that was able to take responsibility for the state of international security in the Euro-Atlantic area (Volodina, 2012).

The corresponding path of NATO reform was determined not only by the positions of the leading member States, primarily the United States and the United Kingdom, but also by changing international security conditions, transforming challenges and identifying new sources of danger. It was emphasized during the NATO Summit in London on 5-6 July 1990 that Europe had never had such a realistic opportunity to overcome the constant recurrence of war and peace. This motif of the summit coincided with the strategic vision of the situation by leading NATO member States, in particular the United Kingdom. The agenda included consideration of the basic principles of regional security in the conditions that have changed radically as a result of the fall of the Berlin Wall, radical changes in the foreign policy of the Soviet Union, including in US-Soviet relations. The Summit participants had a double task: on the one hand, it was necessary to formulate a new vision of security principles in Europe; and, on the other hand, to transform NATO itself so that it best adapts to such principles.

The solution to the first problem was found in the spread of cooperation between all European countries, the final overcoming of political differences and the practical implementation of the concept of indivisible security — when the security of any country is impossible if its neighbours remain in danger (Volodina, 2012). The Summit resulted in the provisions of the London Declaration on a Transformed North Atlantic Alliance.

This document reaffirmed the US commitment to maintaining European security in the new environment, a position that best suits the long-term interests and strategic vision of the United States and the United Kingdom. Among other things, the declaration notes NATO's readiness to engage in dialogue with the Soviet Union and set new standards of openness in Europe — all this evidenced a radical change in the geopolitical situation on the continent (Volodina, 2012).

A new military strategy has been adopted, moving from a border defence strategy to a flexible response doctrine.

Accordingly, this period was determined by the achievement of consensus in the following areas:

- deployment of fewer regular forces at the borders.
- gradual reduction of combat readiness of its units, reduction of the need for combat training and the number of exercises.
- setting limits on the level of nuclear forces needed to prevent war; etc. (Volodina, 2012).

The issue of the impact of the collision approach in the post-bipolar era remains problematic today. This problem is becoming particularly acute, especially due to the change in foreign policy orientations in the world. It is these factors that determine the topicality of this research.

The aim of the article is to analyse US policy in the post-bipolar era, and its further impact on the formation of EU security policy.

This aim involves the following objectives:

- determine the place of the United States in the post-bipolar era on the world scene.
- analyse EU measures under the influence of US coalition policy.
- determine the main results of the post-bipolar era in the international arena.

1. Methods and Materials

This article uses general scientific and legal research methods, which include the comparative legal method used to conduct a comprehensive analysis of the conflict approach in the United States in the post-bipolar era. The comparative legal method allowed analysing the practice and standards of the European Union and other foreign countries in this area.

The paper also used historical method to study and analyse the preconditions for the creation of coalition approaches and their impact on the EU. These methods allowed analysing the political situation and practical achievements in different periods of the post-bipolar era.

Ukrainian and foreign scientific and practical materials on the research topic are analysed. Among the sources studied, we selected works that allowed us to investigate the history of the conflict approach in the United States.

An analysis of the legislation of individual EU and US countries in this area was also carried out. Accordingly, an analysis of international legislation, international documents and acts in this area was conducted.

The research procedure provided for determining the relevance and urgency of the chosen topic for research, analysis of scientific and practical methods and approaches used to conduct research on the impact of the coalition approach in US policy on integration processes in Europe in the post-bipolar era.

The next stage included the selection of materials for the study on the basis of an integrated approach, which allowed a comprehensive study of the subject, as well as identify the main problems and prospects of this study. We also selected materials according to the territoriality criterion, which allowed determining the state of development of this problem in different regions and to study the EU experience. As a result, we have drawn conclusions and provided recommendations on the basis of the research. An important task is to study the impact of the coalition approach in US policy on integration processes in Europe in the post-bipolar era.

The object of the research is public relations in the post-bipolar era in the development of the coalition approach in US policy, and their impact on integration processes in Europe.

2. Results

Analysis of research has shown that the world political situation of the “post-bipolar” world carried the prospect of “New Middle Ages”, as it

characterized by the weakening of state institution and the emergence of various social organizations, and later — the emergence of various low-intensity conflicts with nuclear challenges between them (Kononenko, 2018:54).

Accordingly, the creation of the EU has become a remarkable fact. The European Union was created on the basis of the Treaty of Rome, signed on 25 March 1957 by Belgium, Italy, Luxembourg, the Netherlands, Germany and France. Denmark, Ireland, and the United Kingdom joined these countries in 1973, Greece in 1981, Spain and Portugal in 1986, Austria, Finland and Sweden — in 1995. Negotiations on Norway's accession to the EU were successful, but 52.5% of Norwegians who took part in the national referendum on 27-28 November 1994 voted against EU membership. After the last enlargement, Estonia, Cyprus, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia, Hungary, the Czech Republic joined the EU in 2004, followed by Bulgaria and Romania in 2007.

At a meeting of the European Council held in Maastricht on 9-10 December 1991, the Heads of states and governments of the European Community concluded the Treaty on Political, Economic and Monetary Union, which together constitute the Treaty on European Union. The Treaty entered into force on November 1, 1993, upon its classification by all parties.

On 15-16 June 1997, the heads of states and governments of the EU Member States adopted a number of amendments to the Maastricht Treaty on the future common foreign and security policy (European Union, 2012).

In accordance with the Maastricht Treaty, the Contracting Parties were to create the European Union among themselves, which marks a new stage in development. It is a process of creating an ever-closer union between the peoples of Europe, in which decisions are made as openly as possible and as close as possible to the citizens. The Union is based on the European Communities, complemented by the policies and forms of cooperation established by the Treaty. Its task is to arrange relations between Member States and between their peoples, demonstrating consistency and solidarity (Ventura *et al.*, 2006).

In general, the European Union is an international entity with a global reach, but has a number of special characteristics compared to government agencies. The European Union is as an international actor at regional and global levels. Its relevant policies are aimed at securing the interests and developing the capabilities of member states. And the peculiarities of the EU structure affect the quality and capabilities of the EU as a subject of international security. Specific issues facing the EU include the diversity and difference of its institutions and Member States, the coherence and effectiveness of its external action, as well as issues of internal and external legitimacy.

In recent years, the EU has become an important player in international security policy. In the past, EU peacekeeping missions have been designed to prevent the recurrence of negative scenarios in European history. That is why the EU has become a defender of liberal values and the international legal order.

Over the last forty years, all EU countries have participated in European regional security partnerships, peacekeeping operations and arms control agreements, and adapted their security policies to these instruments.

After the end of the Cold War and the disbandment of the Warsaw Pact, the choice of new security instruments contributed to the development of EU security and defence policy. This has forced the EU to reconsider its priorities and course of development.

Together, the new common security and defence policy, after a brilliant and promising start in the first decade of the 20th century, as evidenced by the large number of militaries, civilian and mixed operations in the rest of the world to reduce conflict and resolve crises, has reduced and almost lost control of multilateralism of international security management.

The role of the European Union in international relations goes far beyond the positions and actions of the Common Foreign and Security Policy. The EU is also the largest player in world trade. It is also the largest financial donor to developing countries and one of the largest to the Middle East. Besides, the European Union provides the largest funding for international efforts to create the conditions for lasting peace in the former Yugoslavia. Many other areas of European Union policy, such as agriculture and fisheries, also have an important external dimension. The EU's role in external relations will be further strengthened after the creation of the European Economic and Monetary Union and the introduction of the single currency (Rudko, 2012).

The European Union pays great attention to ensuring that the Common Foreign and Security Policy is consistent with all other aspects of the EU's foreign policy. Both the Council of Ministers and the European Commission are responsible for the compatibility of the Union's overall external action with the objectives of external relations, security, economics and development policy.

The large-scale reforms that began in the USSR in the second half of the 1980's led to the intensification of similar processes in the Soviet-oriented socialist countries, and later to the disintegration of the entire Soviet Union. "Eastern Bloc". The issue of finding a new place in the system of international relations, which arose before all former allies of the USSR with the onset of the post-bipolar period, was particularly relevant for Mongolia (Ignatov, 2020). In this country, where a peaceful transition to democracy took place in 1990, a serious economic crisis soon began, caused by the

cessation of large-scale Soviet economic aid, as well as the need for further political reforms and the transition from economics to market tracks.

The last decade of the 20th century was marked by the triumph of the United States, which after the collapse of the Soviet Union were not only the only superpower, but also a determining factor in the formation of a new world order.

First of all, it should be noted that the global dominance of the United States was based on the willingness of the ruling circles of most of the country to pursue neoliberal economic policies, which included privatization of the public sector, liquidation of the welfare state, reduction of wages for the sake of "competitiveness", opening borders for foreign goods and capital, lifting any restrictions on financial speculation. The world economic order a priori provided for US hegemony in the military, political, technological, socio-cultural and information dimensions.

At that time, a policy was taken to comprehensively strengthen relations during the preparations for the Gulf War. Traditionally, Anglo-American relations have received a new impetus in times of international crises and military conflicts. It was in these situations that the particular closeness of the partners was confirmed, and it became clear that other countries were unable to provide the United States with a level of support comparable to that of the United Kingdom. London was determined to share the burden of global responsibility with its foreign partner.

During the Gulf War in January 1991, Great Britain and the United States closely coordinated their diplomatic missions to put pressure on NATO, EU, and WEU allies to encourage them to participate more actively in the multilateral coalition. Great Britain has a negative view of the idea of holding EU talks with Iraq without US involvement, and of France's attempts to take independent steps to resolve the conflict. London's tough stance on resolving the crisis was strongly supported by the United States and influenced the allies in the "right direction" (Rudko, 2012).

Great Britain's military contribution to the Gulf War was the largest among the largest Western countries since the United States. It was the British Armed Forces that became Washington's main combat partner in Operation Desert Storm. British troops were fully integrated with the Americans and operated under their leadership (Rudko, 2012).

The intensity of Anglo-American contacts continued to remain high after the end of hostilities.

Almost all countries in the Euro-Atlantic community also had to focus on their modernization and development in the United States, especially in order to adapt their government institutions that had been formed in the course of their own history to American domestic and foreign policy

standards. However, the process had its temporal and spatial (geopolitical) limitations.

The scale of change that swept the world in the late 20th century is associated with the phenomenon of globalization. The introduction of a set of unification processes, the establishment of universal structures, ties and relations, globalization manifested itself in the transition of dominance in politics and economics to supranational institutions (UN, NATO, G-7, Washington Consensus) and transnational corporations, and in the cultural sphere — in the global expansion of common standards of mass culture and individualized lifestyle, which replace traditional culture (Fesenko, 2017).

There is a view that current US security strategies are built around integration policies, which encourage the states, through a series of measures, to agree on worldviews (Bialasiewicz *et al*., 2007).

In general, the very concept of the state as the highest form of political organization has undergone tremendous changes in the post-bipolar era, which proved its vulnerability to transnational penetration; the relationship of internal forces; as well as international regimes, laws and organizations. The concept of sovereignty has been called into question by the United Nations Secretaries-General themselves. At the same time, the state relied on more aspects of human activity than ever before, including protection from external threats and destabilizers. Extreme forms of authoritarian order, such as apartheid systems in the third world and totalitarian systems in the second world, gave way to institutional participation, which was unable to maintain order. Some states end up with such a high degree of concentration of power that they have reached the peak of internal conflict.

Moreover, conflict is not necessarily chaos, just as disorder is the opposite of any particular form of order (Piren, 2000). Order manifests itself in many, often supposedly opposite forms: conflict and cooperation, war and peace, freedom and security, oppression and justice, symmetry and asymmetry, and many other concepts and values contained in sections of this collection.

The analysis reveals the main norms of factors among people who are actively involved in conflicts: future fears and concerns of the community, as well as distrust of stakeholders. So, conflicts indicate a deeper discourse in the discussion, thus indicating the diversity of motivations, values and beliefs, and indicating the inadequacy of relying on a lack of knowledge and/or explanations about the fractionation of policy (McLaughlin and Cutts, 2018). Moreover, order is what allows you to research and analyse any subject, because it turns data into knowledge; science seeks patterns or orders in events so that the theory can serve "to introduce order and meaning into a mass of phenomena that would otherwise remain disconnected and incomprehensible" (Zartman, 2009: 290).

Accordingly, the coalition's tactical environment was to consist of different networks of two or more organizations that team up to conduct a short-term tactical operation with a clearly defined mission. Today, cybersecurity is an important factor in the work of the coalition. This is a complex challenge due to the need for operational efficiency combined with the limited relationship of trust that exists between the various coalition partners. New paradigms in networks, such as programme-defined networks, provide a mechanism for more effective solutions to security problems in a coalition (Mishra *et al*., 2017).

Since the beginning of the post-bipolar era, the conflict has escalated, and new solutions have been sought. Agreed arrangements have been the subject of a huge surge of attention and analysis in the last decades of the previous millennium. Negotiations have been described as involving "an initial rift — a dispute — and an attempt to reach an order — a settlement." Today, this is being studied in an uninstitutionalized order of international relations, leaving the coalition, the government, and their variants as contradictory systems of order for domestic policy. While in the real world there are signal dates for a new focus on negotiations, in the 1960's in international relations, when the Cuban missile crisis turned the military confrontation of the superpowers into a diplomatic bargain, and in 1968 in domestic relations, when young people around the world relinquished power tried to agree on new realities. It was also a time of fundamental work, which initiated the analysis of the form of order, which differs from others — neither ordered nor divided, but based on unanimity between formally equal parties on the result.

Previous agreements and contracts had the legitimacy of participation and ownership, shared with the voted orders, but without the necessary players, and the triple choice of negotiated order (accept, reject, extend) allows getting a positive amount of creativity, which provides double choice of voting and "no choice" that is, such decisions did not provide for assuming the power. However, the negotiations required recognition of the legitimacy of the parties and tolerance for ambiguity in decisions that some situations did not allow at the time. Without negotiation analysis tools, it would be impossible to explore many aspects of the global and domestic order, such as international regimes, labour relations, peacekeeping, business agreements and law-making, but it is important that much remains to be done and learned about negotiations (Zartman, 2009).

Thus, the negotiations of that time can be considered as a dependent and as an independent variable in the search for order. Negotiation processes were conducted according to one of three models (or their combination): distributive bargaining for concessions; compensatory exchange trading, which gives positive results or a design that integrates parts, which also gives a positive result. At the same time, in fact, there was a high correlation

between the process and the result, but the determinants of the initial choice are not yet clear.

Accordingly, the trajectory of social security reforms in the United Kingdom and the United States after 2010 continued to reflect common views on the different characteristics of US and British policy styles. In particular, the gap in the traditional view of the stark contrast between the tough, competitive, and conflicting style in the US and the flexible policy style in the UK and the EU, guided by consensus, is still useful to describe the latest reform paths in both countries. Empirical analysis shows that the traditional confrontation between the highly politicized, rigid and limited regulatory style in the US versus the flexible regulatory process that dominates the EU, with little scope for parliamentary scrutiny and legal challenges in the UK remains broadly accurate. In the UK, Conservative-led coalition governments after 2010 could ignore resistance to cumulative, essentially punitive changes to social security reform in the context of strengthening public attitudes towards welfare recipients by adopting a package of regulations with very little parliamentary scrutiny and limited judicial scrutiny. In the United States, administrative exemptions, when a federal administrative body waives legal requirements, have become the main policy tools to try to make policy changes, but the use of bylaws has become open to political and legal issues (Daguerre, 2020).

3. Discussion

The complexity of the study is due to the peculiarities of socio-political changes, but after the terrorist attacks of September 11, 2001, the escalation of the civil war in Syria, escalating conflict in Ukraine, prolonged chaos in the Middle East, the emergence of Islamic State, the crisis in the EU begins to change. Largely due to the above events, the geopolitical world order is in transition (Fard, 2019).

There are currently several approaches to the political situation in the world in international relations: realism, liberalism, Marxism, behaviouralist are among the main prospects in international relations. In the light of the collapse of the Soviet Union and the subsequent withdrawal of Soviet troops from Central Europe, the debate between neorealism and neoliberal institutionalism became relevant. Realism and neorealism, as well as to some extent neoliberalism, have also had a profound effect on US foreign policy (Moravcsik, 1997; Slaughter, 2004). Neorealists dominate the world of security research, while neoliberals focus on political economy and, more recently, on issues such as human rights and the environment. These theories do not offer sharply contrasting images of the world. Neorealists say they are worried about survival. They argue that neoliberals are overly

optimistic about opportunities for cooperation between states. Neoliberals face claims that all states have common interests and can benefit from cooperation (Martin and Simmons, 1998).

The processes of globalization have forced neorealists and neoliberals to consider such problems and address new challenges to the international order (Ogunbanjo, 2021).

The United States ranks high on the scale of most traditional power factors, and more importantly, it continues to be able to shape and control the scale and scope of international influence of all other major players within the modern global international system. The relative decline in US influence on world politics at the beginning of the new millennium was in fact offset by a profound change in the nature of American power, which is now taking the form of structural dominance. It is thought that US hegemony is not doomed to weaken, given the enormous economic, political, and intellectual influence that the United States has already had on international relations since World War II (Subotin, 2019). The continued role of the United States in 21st-century international politics depends on the ability of the US political class to adapt to and use the social power of the many non-state international actors who must control the leading role in future world politics (Ferguson, 2008).

Accordingly, the unification of states in international organizations (UN, NATO) began to play a significant role in the political coalition component.

Next, the dynamics between informal groups of states and the UN Security Council are determined. Informal groups are thought to have spread in response to systemic change (Baccarini, 2018). These groups serve as a mechanism to overcome the structural constraints of the Security Council and to voice stakeholders in the conflict. In essence, they can reduce the gap in the involvement of participants, which grows out of many aspects of international conflicts, which prevents the Council from formulating an effective response to crisis situations. The processes of resolving diplomatic problems and their collective legitimacy are also becoming increasingly fragmented. Some are usually delegated to informal groups or coalitions of states, while the UN Security Council provides the latter (Subotin, 2019).

Thus, two decades after the end of the Cold War, the system of international relations has undergone some changes, and tangible results can be identified (Prantl, 2005). At the global level, there has been a transition from bipolarity to multipolar stability, mainly due to US dominance and consensus of countries with great influence in international organizations (UN, G8, G20) on the foundations of the political situation in the world (Prantl, 2005).

So, we believe that the need to ensure the security of the world community has become a significant aspect of foreign policy in the post-

bipolar era. Accordingly, the US coalition approach has become key to reaching consensus in resolving global conflicts (Majinge, 2011).

This was the result of a certain configuration of hierarchy and power, or, in other words, the balance of power and its recognition by international actors. In the early 1990's, the world's leading nations recognized the dominance of the United States and placed heavy and costly responsibility on the United States for its role as a global policeman. However, due to constant changes, this new world order proved to be unstable, and therefore at the beginning of the 21st century there were active attempts to revise it (Glebov, 2014).

There is still scientific debate as to whether the United States will lose its position as a world leader (Brooks

and Wohlforth, 2014). Most scholars argue that the United States will not soon lose its leadership position; rather, it faces a twenty-year window of opportunity to change the international system. Europe, in turn, has always been open to the rest of the world. The EU has never been a clearly demarcated continent or a fixed limited entity, and it has always been characterized by a change in policy space (Glebov, 2019). Unlike the United States or the East Asian perspective, the European perspective uses a critical approach to traditional divisions. The author demonstrates the added value of the European approach to international relations, given both the shortcomings and achievements in European history and modern European unity (Telò, 2010).

Thus, at one time bipolar system supports an increase in military capabilities with a high probability of its use, regardless of the consequences (Vakarchuk, 2018). The purpose of the post-bipolar phenomenon is not to increase, but to improve for the sake of protection. The post-bipolar system is still evolving, and this option is possible given the current trend that we will return to realism with several stages of protection of state security at the state level, at the organizational level, at the regional and general level of support.

In general, the bipolar system was created by the emergence of two powerful military-political blocs, for which the European continent became a springboard for an aggressive policy towards each other. The post-bipolar system was formed, on the contrary, due to the disappearance of the warring party, which in fact means the absence of a direct threat, as well as lack of pressure and control, which caused lawlessness in a certain area and leads to new threats — regional armed conflicts, escalation of Nagorno-Karabakh conflict). That is, the conditions under which they were created, and hence the mechanisms of provision, are completely different.

In the early 1990's, when the United States played the dominant role in solving global problems, a post-bipolar system of international relations was

being formed. It is in this decade that NATO's new identity — one of the key themes of this chapter — is gradually manifested and consolidated (Weible and Jenkins-Smith, 2016). Like other international organizations (IOs), the North Atlantic Treaty Organization (NATO) has become more complex since 1990. In the following summary reports, this collection examines the bureaucracy and decision-making process of NATO since the end of the Cold War, identifies changes in it, and assesses their implications for external security and related changes in governance — changes in national security policy transformation (Flockhart, 2014).

So, even when scholars have declared the end of the bipolar era, there is still a moment of primacy in the United States, and scholars are still trying to understand the exact nature of the primacy of the United States (Mayer, 2014).

Accordingly, the coalition approach has become expedient in the conditions of need to achieve a sustainable political solution and security results, even by rigid methods.

Conclusions

As a result of the study, we can conclude about the urgency of this subject in the world. New geopolitical challenges following the collapse of the bipolar system of international relations have led to a new balance of powers in the region and changes in foreign policy.

Since the emergence of public policy as a field of research in the middle of the 20th century, the final problem has been the development of theoretical approaches for the comparative study of political processes. One of the theoretical approaches that has survived for a long time is the Coalition Framework. With more than three decades of research and hundreds of applications spanning the globe, coalition approaches are now one of the most established and widely used approaches to studying political processes.

So, international organizations such as NATO have played a special role in shaping the coalition approach.

In general, since then societies (USA, Canada, Great Britain, Germany, France, Italy, Australia, etc.) are characterized by a community of strategic foreign policy and foreign economic goals, which is associated with the integration of globalization into political, economic, military, security, social science and the humanities. In turn, most regional states depend on the geopolitical world centres (USA, China, EU countries, Russia) of the system of international relations. Regional states are forced to cede their national sovereignty to the financial and economic expansion of the world's leading

states in order to ensure national stability, security and development in the face of global conflicts. This factor determines the geopolitical unification of regional states around these advanced countries, as well as the formation of a common foreign policy to ensure the interests of the international arena.

Accordingly, the problem of ensuring security by the US remains relevant today.

Let us note that the negotiations of that time can be considered as an independent variable in the search for order in the world. Negotiation processes were conducted according to one of the three models and were based on the motives of finding a balance between the interests of the parties and reaching an agreement. At the same time, there was actually a strong correlation between the process and the result, but the determinants of the initial choice are not yet clear. Decentralization and more or less consistent development have been and remain reasonable and important tasks of international cooperation. Today, the decentralization of economic development has become one of the pillars of sustainable development, which means that the economic development of any region is a global task that affects all humanity.

The European Union is currently working to build a security alliance that will make Europe safer by stepping up the fight against terrorism and serious crime, as well as strengthening Europe's external borders.

The EU offers its citizens a territory of freedom, security, and justice without internal borders. The overall goal of the security union is to increase security within the European Union. The EU and its Member States work together to combat terrorism and brutal radicalization, serious crime, organized crime and cybercrime. Therefore, we can conclude that the EU plays a significant strategic role in world security policy. At the same time, it should be noted that the category of security has expanded significantly in recent years, which contributed to a different understanding of the role and importance of the EU in security policy.

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Family Rights of the Child and Their Legislative Support

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Abstract

The objective of the study was to identify the legal mechanisms for the protection of the family rights of the child and to outline the main problems of their implementation. The child's family rights system was found to contain the child's intangible basic rights, which establish his or her legal status in the family. This system includes the child's right to life, name, citizenship, knowledge of his parents, care of parents, coexistence with parents, preservation of his identity and citizenship, free expression of his own views. It states that the protection of the family rights of the child and the legal relations of parents and children is based on four principles. It is determined that the practical solution of issues related to the exercise of the family rights of the child is regulated by international law, which makes it possible to resolve issues related to the legal relationship between parents and children at the inter-State level. It is concluded that perspectives on legislative support for the family rights of the child demand further empirical research, as well as a theoretical and methodological justification for determining the legal mechanisms of their practical implementation.

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Los derechos familiares del niño y su apoyo legislativo

Resumen

El objetivo del estudio fue determinar los mecanismos legales para la protección de los derechos familiares del niño y esbozar los principales problemas de su aplicación. Se encontró que el sistema de derechos familiares del niño contiene los derechos básicos intangibles del niño, que establecen su estatus legal en la familia. Este sistema incluye el derecho del niño a la vida, el nombre, la ciudadanía, el conocimiento de sus padres, el cuidado de los padres, la convivencia con los padres, la preservación de su identidad y ciudadanía, la libre expresión de sus propios puntos de vista. Se establece que la protección de los derechos familiares del niño y las relaciones jurídicas de padres e hijos se basa en cuatro principios. Se determina que la solución práctica de las cuestiones relacionadas con el ejercicio de los derechos familiares del niño está regulada por el derecho internacional, lo que permite resolver cuestiones relacionadas con la relación jurídica entre padres e hijos a nivel interestatal. Se concluye que las perspectivas sobre el apoyo legislativo a los derechos familiares del niño demandan de una mayor investigación empírica, así como una justificación teórica y metodológica para determinar los mecanismos legales de su implementación práctica.

Palabras clave: derechos familiares del niño; cuidado de los padres; desarrollo infantil; responsabilidad familiar; tratados internacionales.

Introduction

The attitude to the child, to his/her natural and subjective rights, is a measure of the spirituality and humanity of society. The standard of living and civilization of the state is determined by how children live in it, the degree of public attention to them and their legal protection. Protecting the rights of the child is one of the priorities for every country, as children are not only the future of the state, but its present first. Children are the least protected part of the population, both socially and legally. Violations of the family rights of the child are common in modern society, so the state needs to create an effective legal mechanism to protect the child's rights in the

family.

The global economic crisis is having a significant impact on children. According to Eurostat, children are the age group with the highest risk of poverty or social exclusion (Council of Europe, 2016). Although the EU is one of the richest regions in the world, its children still live-in poverty, with almost 9% of children under the age of 14 living in vulnerable families (Council of Europe, 2018). Over the last twenty years, child poverty and social exclusion have increased significantly in some EU countries. In general, younger children suffer more from poverty than other age groups. They are less prosperous than their peers but can reach their full potential at a later age.

Thirty years ago, the main international agreement on childhood, the UN Convention on the Rights of the Child, was adopted. Its provisions stipulate that a child is every human being under the age of 18 unless he or she reaches the age of majority under the law applicable to that person. The child, due to his/her physical and mental immaturity, needs special protection and care, including proper legal protection both before and after birth (OHCHR, 1996). The full and harmonious development of a child is ensured by his/her growth in a family environment, in an atmosphere of happiness, love and understanding. The UN Convention on the Rights of the Child proclaims the basic intangible rights of comprehensive development of the child: family, social, physical, informational, cultural, economic. The provisions of the Convention have helped to improve the lives of children around the world, but still not all children can enjoy their childhood to the full. Society requires not only states to fulfil their obligations and take measures to protect the rights of the child, but also parents to make a commitment so that every child can enjoy all his/her rights.

In addition to the above-mentioned Concept, the family rights of the child are reflected in other Conventions of international organizations (UN, Council of Europe, etc.). The chosen subject is topical because the problems of ensuring, protecting and defending the rights of the child in the family require a comprehensive approach to their solution, which should be based on close cooperation of different actors: the state represented by the relevant authorities, family, in which the child is brought up, and the child himself/herself as an independent person, which is gradually developed and socialized under the influence of a number of factors.

Protecting the family rights of the child through the prism of international standards has been the subject of research by many scholars. Dan (2017) studied the legal protection of the family rights of the child. Abella and Plant (2021) studied the issue of child custody through the prism of the Convention on the Civil Aspects of International Child Abduction. Rešetar (2018) researched the novelties of the Croatian legislation on the protection of the rights of the child in divorce proceedings. Lucić (2021)

analysed international and European standards for compliance with Croatian legislation on the institution of special child custody. Gerdts-Andresen analysed the role and place of the child in the divorce proceedings in Norway.

Churba (2021) studied parental authority and custody in cases of divorce in Spain. Nurtjahyo (2021) dealt with the parents' choice of religion in the family as a manifestation of domestic violence against children in Indonesia. Almusawi (2021) investigated the criminal liability of children and families under Iraqi law. Rochaeti and Muthia (2021) studied the legal framework of public oversight in the justice of children and parents in Indonesia. Rönsch (2020) examined German civil and social law on the temporary deprivation of parental care and the preventive protection of children's rights.

Many scientific works deal with the problems of protection of family rights of the child and their law enforcement. Thomson Henderson-Dekort *et al.* (2021) and Alekseeva (2020) revealed the content of the best interests of the child. Tabernacka (2021) considered mediation as an element of protection of children's rights. Nejaime (2020) reviews the constitutional rights of biological and non-biological parents. Gerber *et al.* (2020) examined the institution of legal representation of the child in foster care. Abbasi and Mahmoodian (2020) studied the protection of children's rights in the context of reproductive technology legislation. Butryn-Boka (2018) revealed the content of the international experience of implementing spousal alimony obligations. Kašný (2021) researched the family upbringing of children on the basis of religious and legal norms.

So, the aim of this study is to analyse the legal protection of family rights of the child and outline the main problems of their enforcement. This aim provides for the following objectives:

- reveal the content of the family rights of the child through the prism of international legal norms in the field of protection of the rights of the child and the state policy of protection of the rights of the child.
- determine the classification of family rights of the child and the principles on which the system of protection of the rights of the child in the family is based.
- identify the main problems of law enforcement of family rights of the child and suggest ways to solve them.

1. Methods and materials

Empirical and theoretical methods of scientific knowledge were used to study this topic. Empirical knowledge reflects the object of study (family rights of the child) from the standpoint of external relations (legislative support, legal relations). Next, we consider scientific, legal, and practical information on the protection of family rights of the child and reveal the legal nature of the rights of the child in the family, their systematization and classification through analysis, synthesis and logical approach. Theoretical knowledge of the family rights of the child reflects this subject of research from the perspective of universal internal essential connections and regularities which are covered by rational processing of empirical data. The combination of these two methods generates an empirical interpretation of the theory and theoretical interpretation of empirical data, as well as provides comprehensive coverage of the legal protection of the rights of the child in the family.

The main materials in this study are international legal acts: the UN Convention on the Rights of the Child; Convention on the Civil Aspects of International Child Abduction; European Convention on the Exercise of Children's Rights; Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children; Convention on Contact concerning Children; Convention on the Recovery Abroad of Maintenance; Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations; European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on the Restoration of Custody of Children; European Convention on the Legal Status of Children Born out of Wedlock; Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse; European Convention on the Adoption of Children (revised); Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption.

The information and empirical background of the study is statistics of the UN and the Council of Europe, generalization of practical application of international law in the field of family rights of the child, practical activities of social services for children's rights, reference books, publications in periodicals.

2. Results

The provisions of the UN Convention on the Rights of the Child guarantee every child the right to have a name, know his/her parents and parental care (OHCHR, 1996). The system of family rights of a child includes his/

her rights to life, name, and citizenship, to know his/her parents, parental care, living with parents, preserving his/her identity and citizenship, free expression of his/her own views (Figure 1).

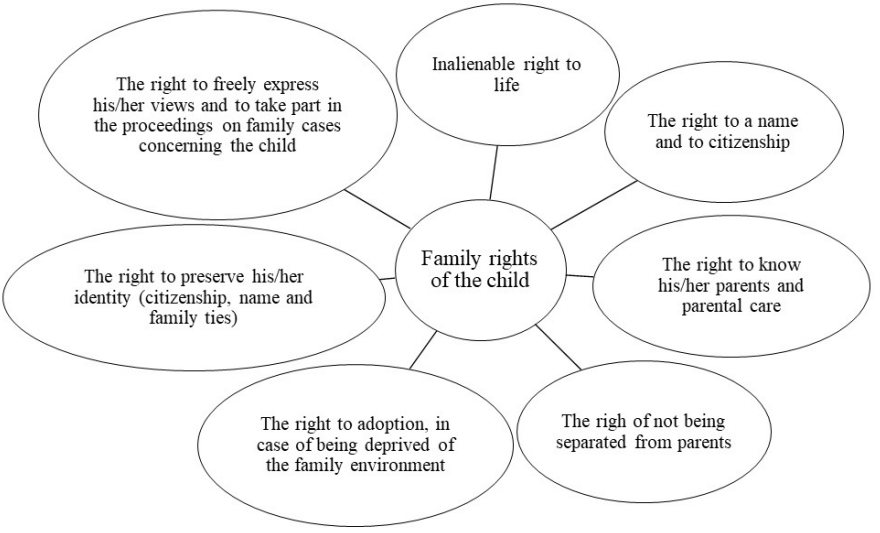

Figure 1. Classification of family rights of the child
Source: author's own development based on (OHCHR, 1996).

According to Article 6 of the UN Convention on the Rights of the Child, every child has the inalienable right to life, necessary for physical, mental, spiritual, moral and social development. The state ensures the maximum possible survival and healthy development of the child (OHCHR, 1996). The right to life belongs to the fundamental rights of the child, and no one has the right to deprive him/her of it.

Children must be registered after birth and have the right to a name and citizenship from birth. The state ensures the exercise of these rights in accordance with the law (OHCHR, 1996, Article 7). Parents are obliged to give the child a name and surname in accordance with current legislation and religion, as well as to register the child with the appropriate government agency.

Article 8 of the UN Convention on the Rights of the Child gives every child the right to preserve his/her identity, including nationality, name and family ties, as required by law, without unlawful interference. In the event that the child is illegally deprived of part or all of its elements, the state

undertakes to provide it with the necessary assistance and protection in order to regain his/her identity as soon as possible (OHCHR, 1996).

Every child has the right to know his/her parents and the right to their care (OHCHR, 1996, Article 7). More and more children are being born out of wedlock, and the European Community has adopted the European Convention on the Legal Status of Children Born out of Wedlock to resolve legal disputes concerning such children. According to the provisions of this Convention, maternity in respect of each child born out of wedlock is based only on the birth of a child (Article 2), and paternity can be confirmed or established by voluntary recognition or by court order (Article 3) (WORLDLII, 2000). The rights of the parents of such children have the same responsibilities to support the children as they would have had born in marriage. Besides, the European Convention on the Legal Status of Children Born out of Wedlock declares voluntary recognition of paternity, which may be the subject of appeal only if the person who wishes to recognize or recognized the child is not its biological parent (Article 4) (WORLDLII, 2000).

Every year, more and more families become parents with the help of reproductive technologies, which have recently become more developed and effective. The use of such technologies has raised questions about legal regulation in the context of parental rights.

According to the World Health Organization, reproductive rights are based on the recognition of the fundamental right of all couples and individuals to freely and responsibly decide the number, time and birth of their children and the opportunity to have information and means to do so (WHO, 2017). Reproductive rights are part of the human rights system as defined by the Universal Declaration of Human Rights. Recognition of maternity and paternity of children born of reproductive technologies in different countries is special, states interpret the concept of reproductive rights differently and establish different levels of their legislative support. Therefore, the practice of recognizing maternity and paternity through the prism of reproductive rights is realised at the advocacy level.

Parental care is aimed at the development and raising of the child. Parents at their own discretion choose methods that are sufficient for the comprehensive development of their children and are responsible for the upbringing of the child. To establish the institution of parental responsibility, the state creates a system of public authorities in the field of protection of children's rights (including social protection of children, adoption, custody, juvenile service, etc.). The establishment of such an institution of parental responsibility is provided for in the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (HCCH, 2002).

In general, the Convention covers issues of protection of children, parental responsibility, custody, in particular, the right to determine the child's place of residence, as well as the right to communication, care and similar institutions, placement of a child in a foster family or custody, supervision by a public authority for a child in custody, as well as taking measures to protect the person or property of the child (Article 3). However, the Convention does not apply to: the establishment or appeal of a parent-child relationship; adoption decisions, pre-adoption measures, or revocation or invalidity of adoption; name and surname of the child; acquisition of full legal capacity; maintenance obligations; trust or inheritance; social security; general government measures on education or health care; measures resulted from punishable offenses committed by children; decisions on the right to asylum and immigration (Article 4).

Caring for children requires both spiritual, moral, and material resources. The provisions on the maintenance obligations of parents for the development of a child are defined by the Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations and the Convention on the Recovery Abroad of Maintenance (HCCH, 1996; HCCH, 1998).

The provisions of the Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations allow for the recognition and enforcement of maintenance decisions made in other states, regardless of whether the decision is made by a court or an administrative authority. Maintenance obligations may arise from family relationships, maternity, paternity, marriage, or family ties. The Convention applies to decisions on maintenance between the recipient of alimony and the payer of alimony, or the payer of alimony and the public authority that recovers funds paid to the recipient of alimony (HCCH, 1996).

In order to facilitate the recovery of alimony in cases where the plaintiff and the defendant reside in different states, the Convention on the Recovery Abroad of Maintenance establishes the mechanism of transfer of the request for recovery of alimony from the defendant, transfer of court decisions to the contracting state in which the decision on execution shall be made.

Unfortunately, the manifestation of parental care can have negative sides: domestic violence against children, sexual violence, bullying and other manifestations. The UN Convention on the Rights of the Child obliges states to take legislative, administrative, social and educational measures to protect the child from all forms of physical and psychological violence, abuse, lack of care, negligent and brutal treatment and exploitation, including sexual abuse, by parents, legal custodians or any other person who cares for the child (OHCHR, 1996, Article 19). In order to prevent sexual exploitation and sexual abuse of children, including by parents, and to combat these phenomena, the Council of Europe has adopted the

Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Council of Europe, 2007).

Every child has the right not to be separated from his/her parents. The state ensures that the child does not get separated with the parents against his/her will, except when the competent authorities, in accordance with a court decision, determine that such separation is necessary in the best interests of the child under the applicable law and procedures (OHCHR, 1996, Article 9).

The child and his/her parents have the right to establish and maintain regular contact with each other. Such contact may be limited or prohibited only when it is necessary in the best interests of the child [10, Article 4]. Identifying general principles applicable to contact between children and their parents, as well as other persons with family ties to children, appropriate precautions, and safeguards to ensure proper contact and immediate return of children after contact, as well as the establishment of cooperation between the competent authorities is the subject of the Convention on Contact concerning Children (OHCHR, 2003).

In order to ensure the well-being of the child in the event of the loss of the family environment, the state undertakes to take measures for his/her adoption and custody. The European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children provides an opportunity to introduce measures that ensure wide recognition and enforcement of decisions regarding child custody, guarantee the rights of parents' access to the child, which is a normal consequence of the right to custody, ensure proper resolution of problems that arise when children are illegally moved across the state border; and establishes mechanisms for the restoration of custody of children in cases of its arbitrary termination, which will enhance the protection of children and the establishment of legal cooperation between the competent authorities of the Contracting States (Council of Europe, 1980).

For the full and harmonious development of his/her personality, a child must grow up in a family environment, in an atmosphere of happiness, love and well-being. In the event of a loss of family environment, it is a priority for each state to take appropriate measures to ensure that the child is brought up in a family. The issue of child adoption, including interstate adoption, is regulated by the European Convention on the Adoption of Children (Revised) and the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption. These international treaties establish common principles, regulate the institution of adoption and differences in adoption processes and legal consequences, as well as promote guarantees that interstate adoption is carried out in the best interests of the child and in compliance with all fundamental rights recognized in international law (Council of Europe, 2008; HCCH, 1993).

The Convention on the Civil Aspects of International Child Abduction is aimed at protecting children from illegal movement (HCCH, 1993). It establishes a mechanism to ensure the return of illegally removed or detained children to their country of residence.

According to international standards, every child has the right to freely express his/her views and to take part in court proceedings concerning relevant family cases. Article 12 of the UN Convention on the Rights of the Child says that States shall ensure that a child who is able to express his/her views has the right to express those views freely on all matters affecting the child, with due regard to the child's age and maturity. That is, children are given the opportunity to be heard in any judicial or administrative proceedings concerning them, directly or through a representative or appropriate body in the manner prescribed by the procedural rules of national law (OHCHR, 1996).

The subject of the European Convention on the Exercise of Children's Rights is ensuring the best interests of children, that is support for their rights, granting them procedural rights and facilitating the exercise of these rights by ensuring that children are personally or through other persons or bodies informed and allowed to participate in the consideration of judicial proceedings in cases concerning them (Council of Europe, 1996, Article 1). Family cases considered by a judicial authority are related to the exercise of parental responsibility, such as the child's place of residence and access to the child.

According to the European Convention on the Exercise of Children's Rights, every child who has a sufficient level of understanding is given the right to: be informed and express his/her views during the proceedings (Article 3); submit in person or through other persons or bodies a request for the appointment of a special representative during the consideration of cases concerning him/her by a judicial body (Article 4); request assistance from the person of his/her choice in expressing their opinion (Article 5); apply independently or through other persons or bodies for the appointment of an individual representative, and in appropriate cases — a lawyer (Article 5); appoint his/her representative (Article 5); exercise some or all of the rights of the parties in such a process (Article 5) (Council of Europe, 1996).

In the field of family relations between children and parents, the state plays a significant role in ensuring the protection of the rights of the child in the family and family upbringing of children with the possibility of their full spiritual and physical development. The main tasks and guarantees of the state to protect the family rights of the child are shown in Figure 2.

State obligations to protect the family rights of the child

- The state provides appropriate conditions for the healthy development of the child and his/her survival
- The state shall take measures to ensure the protection of the child from all forms of discrimination or punishment by parents or other family members
- The state provides the child with proper protection and care that is necessary for his/her well-being
- The state respects the responsibility, rights and responsibilities of parents to manage the child in the exercise of its right in a manner consistent with the child's developing abilities
- The state takes measures for the child to acquire name and citizenship
- The state ensures that the child is not sepatared from his/her parents
- The state respects the right of the child and his/her parents to leave any country, including his/her own, and to return to his/her country
- The state takes measures to recognize the principle of universal and equal responsibility of both parents for the upbringing and development of the child
- The state takes measures to protect the child from all forms of physical and psychological violence, abuse, lack of care or negligent and brutal treatment and exploitation, including sexual abuse, by parents
- The state undertakes to facilitate the adoption of a child who is temporarily or permanently deprived of a family environment
- The state takes measures to find the parents of any refugee child for their reunification
- The state takes measures to ensure the level of a full andadequate life of the child and to provide assistance to parents for his/her development

Figure 2. Powers of the state to protect the family rights of the child. Source: author's own development based on (OHCHR, 1996).

The system of protection of family rights of the child and legal relations of parents and children is based on four principles (Figure 3).

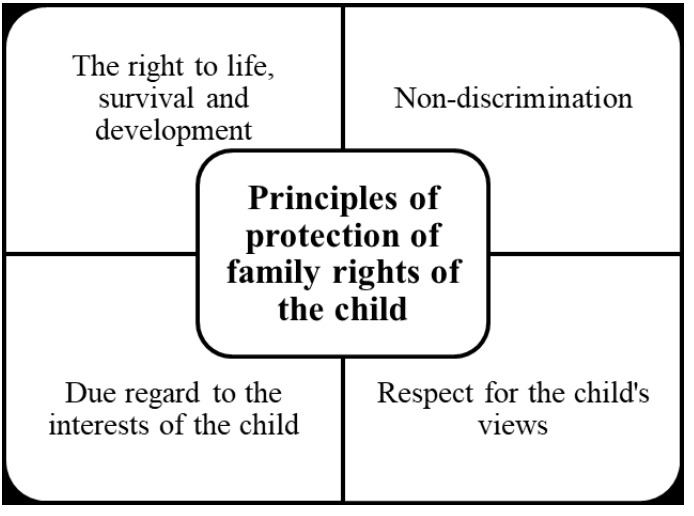

Figure 3. Principles of protection of family rights of the child Source: author's own development based on (OHCHR, 1996).

Non-discrimination of the child is guaranteed by Article 2 of the UN Convention on the Protection of the Rights of the Child, which provides that the state ensures all the rights of the child without any discrimination regardless of race, color, sex, language, religion, political or other beliefs, national, ethnic or social origin, property status, state of health and birth of the child, his/her parents. The state takes measures to ensure the protection of the child from all forms of discrimination or punishment based on the status, activities, views or beliefs of the child and the child's parents (OHCHR, 1996).

The right to life, survival and development of a child, as well as the protection and care of the child is guaranteed by the state, which is necessary for his/her well-being, taking into account the rights and responsibilities of his/her parents, custodians or other persons before the law. Such rights are guaranteed through legislative and administrative measures (OHCHR, 1996, Article 3).

Respect for the views of the child is guaranteed by the state, which provides free expression of his/her own views and participation in court proceedings concerning the child (OHCHR, 1996, Article 6).

Taking into account the interest of the child is a priority for parenting and a priority of public or private institutions in the field of social security, courts, administrative or legislative bodies (OHCHR, 1996, Article 3).

3. Discussion

The family rights of the child have clear and inalienable links with private international law. The practical solution of issues related to the exercise of family rights of the child is regulated by international treaties in the field of protection of family rights, which allow to address level issues related to parental relations, parental responsibility, custody, adoption, as well as recognition and enforcement of court decisions regarding the protection of children's rights at the interstate level.

Analysis of international legislation in the field of protection of family rights of the child, as Dan (2017: 56) notes, gives grounds to argue that foreign experience is important because it demonstrates, first of all, the variability of legal models for ensuring, protecting and defending the rights of the child used in different countries, as well as the effectiveness or ineffectiveness of their implementation in public practice. However, according to the scientist, there are no ways of state and legal development that are completely unified for different societies.

Analysing international agreements in the field of family rights of children, Gerdts-Andresen (2021a: 563-564) notes the inconsistency of

their rules with the provisions of national law in terms of custody and competence of social authorities to protect the rights of children. Abella (2021: 352-353) and Uchitel *et al.* (2019: 19-20) also note the differences between international standards for custody and protection of children's rights with national provisions. Butryn-Boka (2018: 44) argues that the institution of child support has its own characteristics in each country, which are established by a combination of international and national legislation in the field of protection of children's rights. The family right of a child to know his/her parents is realized through the establishment of paternity and maternity, which, according to Nejaime (2020: 261), is not always consistent with constitutional rights and provisions of international law.

The legislator must create conditions for the freedom to choose the individual parenting of the child, which, according to Rönsch (2020), will help maintain the child's well-being, reduce domestic violence against the child in the family and significant child abuse. Appropriate conditions for the upbringing and development of children, as Almusawi (2021) emphasized, are based on the moral behaviour of parents, because in case of their immorality, children become the object of criticism and harassment by society for the actions of parents. According to Thomson (2021: 277-279), the best interests of the child are a manifestation of social justice and stability, the principles of which must be guaranteed for every family. Realization of the best interests of the child, according to Henderson-Dekort *et al.* (2021: 78-80), Alekseeva (2020: 48-49), should be based on access to benefits aimed at the full development of the child, and in case of deprivation of the family environment — independent child's participation in the consideration of custody issues.

In order to properly protect the rights of the child in case of divorce of parents, as Rešetar (2018:63-64) noted, the child must act as a separate party in the divorce process, accompanied by a special custodian — a representative of the child's interests. Lucić (2021: 97-99) believes that the powers of such a representative custodian of the child should be clearly defined at the legislative level.

According to Gerdts-Andresen (2021b), to address the issue of custody of a child in a divorce proceeding, the court must take into account the opinion of a child above 7 years of age. And in order for the child's opinion to be impartial in deciding custody, Abella (2021: 351-352) offers to give the child to the authorized body at his/her place of residence for the period of the divorce process. Such relocation of a child, as the researcher argues, will allow him/her to make his/her own choice of living with one of the parents without pressure and will settle the conflict between parents for custody of the child, which may lead to kidnapping of the child by one parent in the future (Gerdts-Andresen and Aarum Hansen, 2021).

Jabbaz Churba (2021: 351-352) identifies three reasons that impair the rights of the child in the event of divorce: the lack of established rules on custody of the child before the divorce of the parents; the divorce process is a manifestation of hidden gender-based violence and gender stereotypes; parental authority is a manifestation of conditional violence after divorce.

Tabernacka (2021:89-90) believes that the use of pre-trial proceedings on illegal actions against children, will resolve conflicts, understand the child's legal status and serve as an educational element in the awareness of his/her own rights and responsibilities. According to Rochaeti and Muthia (2021: 293-295), improving the protection of children's family rights can be achieved through public control in the form of public involvement in litigation of children.

The influence of religion on the upbringing of a child in the family can be both positive and negative. Positive will be manifested in the case of the implementation of religious canons in the norms of the laws on which parents raise children, shape their worldview. In this case, as Kašný (2021: 19-21) argues, it is better to cover the legal background and structure of the family from a religious perspective in the provisions of the articles of regulations. Negative is manifested in the case of discordance between parents in the choice of religion. In this case, Nurtjahyo (2021) believes that when in religious families one parent changes his/her religion, it can lead to conflicts between parents and domestic violence against children.

According to Gerber *et al.* (2020), the institute of legal representatives of the child in foster families should be introduced to improve the child's stay in foster care. Its introduction in comparison with the independent lawyer will promote rapprochement of the child in foster families. The effectiveness of such representatives of parenthood will depend on the establishment of unity of representation, the accumulation of interdisciplinary practices and the maximum attention paid to the child for his/her well-being.

Abbasi and Mahmoodian (2020) studied the protection of children's rights in the context of reproductive technology legislation, proposing to establish a clear mechanism to protect the rights not only of parents who became parents through such technologies, but also the child.

As a result of the doctrinal analysis of the specified problems of protection of family rights of the child, we can note that researchers consider it reasonable to further study of protection of the rights of the child in a family, develop effective recommendations of their practical implementation that would adjust the content and directions of the development of legal mechanisms for the protection of the rights of parents and children.

Conclusion

The system of protection of family rights of the child is a set of guarantees of observing family rights of the child and their protection concerning development and education of children in a family, enshrined in the international and national regulations in the field of protection of family rights. The full development of the child is based on respect for the child's right to life, name, citizenship, knowledge of his/her parents, parental care, living with his/her parents, preservation of his/her identity and citizenship, and free expression of his/her views. Ensuring the family rights of the child in the system of their protection is based on four principles: respect for the views of the child, non-discrimination, taking into account the interests of the child, as well as the children's right to life, survival and development.

The practical application of the family rights of the child is regulated by international treaties, which resolve issues related to the legal relationship between parents and children and the activities of the state in the field of protection of the rights of the child at the interstate level. Problems of ensuring the protection of family rights of the child are related to the delimitation of rights and responsibilities of parents for the upbringing and development of their children while guaranteeing the best interests of the child, recognition of maternity/paternity, parental responsibility, introduction of custody, adoption, child support and authorised representatives of the child.

The prospect of further research is to develop mechanisms for the enforcement of family rights of the child, aimed at educating the individual in harmony and well-being of the family. Therefore, we see further prospects in the empirical study, as well as theoretical and methodological justification of effective legal mechanisms for implementing the principles of protection of children's rights in the family and the effectiveness of the system of state bodies authorized to protect family rights of the child.

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Criminal Liability of Legal Entities for Environmental Crimes: Problems of Law Enforcement Practice

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Abstract

The aim of the article was to conduct a comparative legal analysis of the features and problems of criminal prosecution of legal entities for environmental crimes. The research objectives were fulfilled through modern methods of cognition. The leading practical method was the method of observation. The study allowed to form a conceptual understanding of theoretical ideas about environmental crimes of legal entities in Ukraine. Currently, Ukraine is trying to focus in its legislative innovations on the implementation of progressive approaches to the introduction of a comprehensive institution of criminal law measures regarding the liability of these entities. Relevant legal mechanisms and comments identified in the practice of the European Union and substantiated by scholars, can be implemented in the legislation of Ukraine. Amendments to the rules governing the procedure for effective prevention of environmental crimes by legal entities are proposed. It seems reasonable to introduce an active monitoring analysis of anthropogenic activities of companies, and the creation of special units to identify relevant violations. The mechanisms for implementing the set of preventive and

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monitoring measures outlined in the article, set the background for further scientific research.

Keywords: environmental crime; criminal liability; anthropogenic impact; legal entities; environmental crime.

Responsabilidad Penal de las Personas Jurídicas por Delitos Ambientales: Problemas de la Práctica Policial

Resumen

El objetivo del artículo fue realizar un análisis jurídico comparado de las características y problemas de la persecución penal de las personas jurídicas por delitos ambientales. Los objetivos de la investigación se cumplieron mediante métodos modernos de cognición. El método práctico principal fue el método de observación. El estudio permitió además formar una comprensión conceptual de las ideas teóricas sobre los delitos ambientales de las personas jurídicas en Ucrania. Actualmente, Ucrania está tratando de centrar sus innovaciones legislativas en la aplicación de enfoques progresivos para la introducción de una institución integral de medidas de derecho penal en relación con la responsabilidad de estas entidades. Los mecanismos legales relevantes y los comentarios identificados en la práctica de la Unión Europea y fundamentados por académicos pueden implementarse en la legislación de Ucrania. En particular, se proponen modificaciones a las normas que rigen el procedimiento para la prevención efectiva de delitos ambientales por personas jurídicas. Parece razonable introducir un análisis de seguimiento activo de las actividades antropogénicas de las empresas y la creación de unidades especiales para identificar violaciones relevantes. Los mecanismos para implementar el conjunto de medidas preventivas y de seguimiento esbozadas en el artículo forman el marco para futuras investigaciones científicas.

Palabras clave: delito ambiental; responsabilidad penal; impacto antropogénico; entidades legales; delito ambiental.

Introduction

In the 21st century, humanity has faced specific threats to the environment due to air, water and soil pollution, declining species diversity and climate change. These trends contribute to the creation of an appropriate legal framework and strengthen liability for environmental damage (Sirant,

2020). Ecosystem protection has been the subject of numerous national, supranational, and international legal norms. The global nature of the environmental crisis necessitates high-quality reform of national legislation in different countries and the strengthening of criminal liability for environmental crimes. Moreover, the effects of the COVID-19 pandemic, including global economic uncertainty, rising unemployment, trade disruptions, and increased government incentives have increased the risk of corporate crime as such (Kerrigan *et al.*, 2021).

The world's leading countries note the need to create a harmonized legal, regulatory, methodological, and organizational framework that meets the requirements of national and European environmental security (Ladychenko *et al.*, 2019). In recent decades, the international community has stepped up its response to environmental challenges. The world community pays special attention to the anthropogenic impact of economic activity on national and transboundary ecosystems, which leads to increased ecologization of production processes at the global and regional levels (Lynch, 2020). Environmental management is becoming an integral part of the activities of legal entities in different countries. Moreover, the ecologization of production is recognized as the most important indicator of progress in approaches to business development (Lynch *et al.*, 2018). However, the desire to increase profits sometimes leads to the choice of the least environmentally friendly ways of doing business. This position mostly leads to the commission of environmental crimes, the consequences of which sometimes cause irreparable damage to the environment.

The concept of criminal liability of a legal entity is spreading around the world. It can be argued that a legal entity may be liable for an act committed by its officials, agents or managers in the 21st century (Adua and Abdul-Hamid, 2018). According to Art. 10 of the UN Convention against Transnational Organized Crime, subject to compliance of a State party with the principles of the law, the liability of legal entities may be criminal, civil or administrative (United Nations Office on Drugs and Crimes, 2000), but this Convention also directly recommends to member states (including Ukraine) to introduce criminal liability of legal entities for certain criminal acts.

Environmental crime is gradually becoming a separate category of crime in criminology (White, 2018). Definitions in this area remain unclear, and the number of scientific approaches to the nature and content of liability of legal entities is constantly growing. The study of environmental crimes requires their comprehensive assessment, taking into account the global consequences of environmental destruction. A clear understanding of environmental crimes and bringing perpetrators to justice is not only important, but also necessary in the realities of the global environmental crisis. The need to legalize the results of environmental damage research

remains a unique criminological problem (Nellemann, 2017). One of the most effective tools for solving the outlined problems is the signing of multilateral documents and, as a result, the intensification of partnerships in the environmental field. However, achieving a positive result even in the context of strengthening interstate cooperation remains ineffective. The continuing anthropogenic impact on ecosystems has made environmental security issues a particularly important item on the global political agenda.

In this context, lawmakers and practitioners increasingly support the strengthening of criminal liability for environmental crimes (Porfido, 2021). Criminalization of environmental violations and the search for the most effective sanctions become a vector of state activity for further active participation in democratic world politics (Camproux Duffrène and Jaworski, 2021). Environmental, social and governance issues increasingly got to the top on the political agenda. This trend is also reflected in the activities of companies of all sizes and types around the world.

The study of the essence of environmental crime as an object of criminological research, its main identifying features, provides an opportunity to argue that today "environmental crime" should be considered as a dangerous social phenomenon manifested in criminal behaviour prohibited by criminal law, which poses a real danger to the environment and/or its individual objects. Environmental crime is spreading rapidly, threatening not only habitats and wildlife populations, but also entire ecosystems, the environment, and even financial systems. These crimes can generate very high profits, carry a relatively low risk of detection, and are mostly committed by organized criminal groups operating across internal and external borders. The rise of environmental crime, together with its transnational nature, requires a comprehensive and coordinated approach by the legislature, law enforcement and the judiciary at the national level.

It can be stated that in today's conditions the vector of centuries-old international controversy has shifted from the question of whether or not legal entities can be held criminally liable and focused its efforts on defining and regulating the relevant liability, including the one in the environmental sphere. The main reason for the introduction of criminal liability of legal entities is the increase in the number and scale of crimes against the environment committed on behalf of legal entities, at their expense or for their benefit (in their favour) by individuals. Environmental crimes are the result of legal evolution, the result of processes of social transformation in response to the public's desire to have a green legal system focused on effective protection (Lennan, 2021).

In Ukraine, the application of criminal legislation in the field of environmental protection has achieved positive results in recent years, but has revealed many difficulties, obstacles and gaps in practice. According to the results of the analysis of judicial practice, it can be stated that

environmental crimes are the most common in the following areas: 1) industrial production (the situation with regard to waste management remains particularly critical); 2) the use of natural resources and minerals. Deforestation in Ukraine, especially the destruction of the Carpathian forests, remains an urgent problem; 3) hunting and trade in wild animals. Illegal wildlife trade is still public in Ukraine. High economic benefits brought by trade in endangered species make it difficult to prevent and combat illicit trade, etc. (Turlova, 2017:45). The institution of criminal law measures in the field of liability of legal entities has been introduced in Ukraine. The amendments to the criminal legislation of Ukraine are a novelty and, on the one hand, certainly have a positive impact on the rule of law in the environmental, economic and international spheres, but the introduction of this type of criminal liability requires more detailed study and significant changes in legislation to eliminate contradictions.

The aim of the article is a comparative analysis of problematic issues and features of the process of criminal prosecution of legal entities for environmental crimes in Ukraine and the European Union. The aim involved the following research objectives: 1) generalize doctrinal approaches to the essence and content of liability of legal entities for crimes committed in the environmental sphere; 2) identify the features and problems of bringing legal entities to justice for environmental crimes in Ukraine and in the European Union; 3) establish the most effective directions of reforming the criminal legislation of Ukraine in the studied area in the context of the European positive practice of law enforcement.

1. Methods and Materials

The results of the study were obtained through the use of a set of practical and methodological tools tested at each stage of scientific research. The research procedure within the stated aim of the article is shown in Figure 1.

The methodological background of the study was a set of subject-based principles, approaches and methods of cognition. The study used a set of general scientific, philosophical and special methods that meet the objectives of the article. General scientific methods of analysis and synthesis, induction and deduction, comparison, abstraction, etc. were used in the article.

The historical-legal method was used to determine the stages, analogues and determinants of international cooperation in the field of improving the legal regulation of the studied institution. The problem-chronological method allowed to structure the text of the research, empirical analysis helped to compare the gradual expansion of the subjective composition of criminal liability for environmental crimes in Ukraine and the European Union.

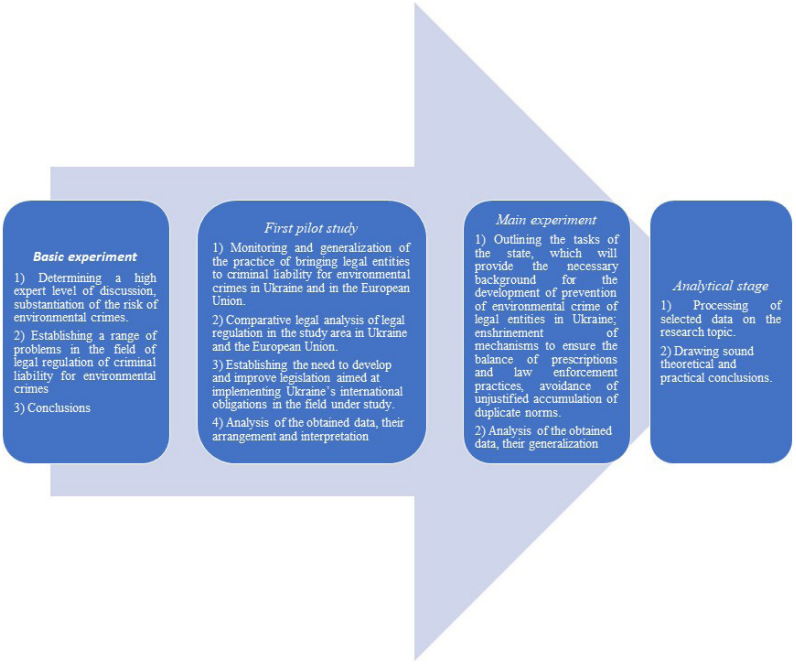

Figure 1: Abstract research design
Source: Authors

The leading practical method of scientific research was the method of observation. This method allowed to reveal the following items from the author's point of view: the shortcomings of criminal liability of legal entities for environmental crimes in the EU; identify the positive aspects for Ukraine that can be taken into account in the law enforcement practice; focus on the vectors of reforming the current legislation of the European Union and Ukraine; determine the obligations of Ukraine in the adaptation of the sustainable European practice of law enforcement, and especially prevention. A special legal method of cognition — the comparative method —was also used in the research. In particular, macro-comparisons were used in the context of the importance of testing the latest foreign practices of ecologization of the economic activity of legal entities in Ukraine.

The dialectical method was the leading method of scientific research, which was based on two principles: 1) determinism (the principle of conditionality and the relationship between different phenomena); 2) historicism (any phenomenon is not static, it develops in time). The chosen method allowed to focus the scientific research on the transformation of

scientific approaches to the essence and content of criminal liability of legal entities for environmental crimes through the prism of society and qualitative changes in modern realities of legal consciousness and law enforcement. This method also allowed to determine the state, directions, and prospects of development of scientific research and legislative developments in the studied area. The above methods allowed to identify and take into account all the factors and conditions that determined the evolution of criminal liability of legal entities for environmental crimes in Ukraine and in the EU, especially in the context of criminological and procedural aspects.

The research involved the 41 works of leading scholars of Ukraine and the European Union, among which special attention was paid to scientific research on the subject of the article, as well as the essence of criminal liability of legal entities as such. The analysis of the legal regulation of the European Union, its member states and Ukraine has become especially important. Working with authentic texts and relevant statistics allowed to form a comprehensive author's idea of the subject of the article, and to offer author's reasonable proposals for legislative innovations.

2. Results

The world community recognizes that the protection of the environment, the rational use of natural resources and environmental security are the key to the existence of not only the people, the nation, but humanity as a whole. That is why ensuring environmental safety and protecting the environment are becoming priorities of state policy. The practice of combating environmental crime in the territory of the European Union, including in matters of bringing legal entities to justice, seems to be quite positive. The adoption by the European Commission of the new European Green Deal, a roadmap for ensuring the sustainability of the EU economy in all segments of society (European Commission, 2021), deserves attention. In order to comply with the provisions of this document and to combat environmental crime, the European Commission adopted a number of proposals on July 14, 2021. In particular, the main vectors of the newly adopted documents stipulate that EU policy on climate, energy, transport and taxation must meet the requirements for reducing net greenhouse gas emissions by at least 55% by 2030 compared to 1990 levels. The European Green Deal was implemented because achieving this emission reduction over the next decade is crucial for Europe to become the world's first climate-neutral continent by 2050 (European Commission, 2021).

Criminal liability for environmental crimes has recently emerged in the European Union. Directive 2008/99/EC on the protection of the environment through criminal law was adopted on 24 October 2008.

Member States were required to transpose the Directive into national law by December 2010. The Directive aims to supplement the existing system of administrative sanctions with criminal law sanctions to strengthen compliance with environmental laws. Criminal penalties demonstrate social disapproval of a qualitatively different nature from administrative penalties or compensation mechanisms under civil law (Official Journal of the European Union, 2008). It is significant that, despite the fact that thirteen years have passed since the adoption of the directive, the process of its adaptation into the national legislation of the EU Member States cannot be considered complete.

All Member States have provided for additional sanctions, such as the obligation to compensate for the damage caused, the publication of a court decision or the revocation of a certain permit. These sanctions can be very useful in addition to traditional ones, such as financial fines/penalties and prison sentences. At the same time, the parallel application of additional and basic sanctions is not ensured in Member States where courts do not have the discretion to impose additional sanctions (European Commission, 2020). Most Member States provide for the criminal liability of legal entities, with the exception of Bulgaria, Germany, Greece, Latvia and Sweden. Although the most common form of criminal sanctions imposed on legal entities is financial sanctions, additional sanctions are applied fragmentarily.

The criminal liability of corporations was enshrined in French law under Article 121-2 of the French Penal Code (1994). Corporate criminal liability was governed by the "specialty principle": companies could be prosecuted for specific offenses only if specifically provided by law. From December 31, 2005, the corporation may be held liable for any criminal offense. However, corporations can only be prosecuted for offenses committed by: "their bodies or a representative". Violations that can lead to prosecution of companies must be committed "at their expense". An action is considered to be directly related to the company if it is "aimed at ensuring the organization, operation or goals of the company". Persons whose actions have led to the prosecution of companies can also be prosecuted for the same crimes. These provisions apply to foreign companies doing business in France, provided that they are established as legal entities in accordance with French law.

Besides, the French Penal Code (1994) provides for the following penalties that may be applied to a legal entity: fine (Articles 131-38), confiscation of property (Articles 131-21), liquidation of the legal entity (Article 131-37, Article 131-39) (Legislationline, n. d.). The Finnish Criminal Code (1889) also contains an example of an objective obligation in Section 9, Section 2, paragraph 1: a legal entity may be sentenced to a fine if it has not shown due consideration in its activities and the precautions needed to prevent the offense (Ministry of Justice of Finland, 2012).

Despite the fact that the United Kingdom is no longer an EU member, this country is effectively implementing the Directive. In particular, at the legislative level, offenders continue to be prosecuted by imposing punitive civil sanctions, the violation of which leads to criminal prosecution of legal entities (Government of the United Kingdom, 2021). The law of this country guarantees that employers or agents who have committed an environmental crime are held liable. This law enforcement practice seems to be quite effective.

It can be stated that the practical implementation of environmental criminal law and its challenges have been the subject of numerous reports by the national competent authorities of the EU member states. The analysis of these documents allowed identifying the main shortcomings of criminal liability of legal entities for environmental crimes in the European Union (Figure 2).

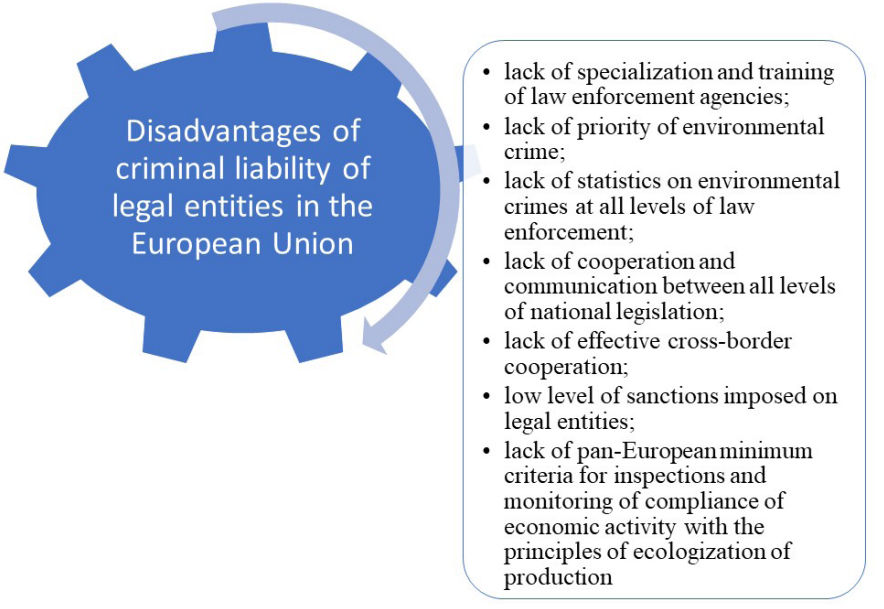

Figure 2: The main shortcomings of criminal liability of legal entities for environmental crimes in the European Union
Source: Authors

It is worth noting that on January 29, 2021, Eurojust published a Report on Casework on Environmental Crime (Eurojust's, 2021). The Report provides an overview of the legal and operational problems that arise in such cases and builds on the experience gained in almost 60 cross-border cases of environmental crimes that were referred to Eurojust between 2014 and 2018. The generalized positions of this document are mainly focused on the representatives of the judiciary of the EU member states, which deal with the problems of cross-border environmental crime. At the same time, such a practice can be taken into account based on the results of adaptation on the territory of Ukraine.

The most common types of environmental crimes in the European Union include the following: 1) trade in waste; 2) trade in various species of wildlife; 3) air pollution; 4) illegal trade in dangerous chemicals; 5) dangerous contamination of food; 6) illegal construction works and related issues. Besides, environmental crimes are often accompanied by other forms of crime, such as organized crime, fraud, forgery and money laundering. In addition to these data, the Report also identifies a number of legal and operational issues in the fight against environmental crime, such as insufficient specialized knowledge and practical experience, different legislative and investigative approaches in different jurisdictions, and the multidisciplinary nature of environmental investigations (led by various specialized national administrative bodies).

The analysis of the generalizations of the European Union practice set out in the Report allowed singling out the positive aspects for Ukraine that can be taken into account in law enforcement practice: 1) competent administrative, law enforcement and judicial bodies should strive for multidisciplinary cooperation; 2) environmental crime should be recognized as organized crime; 3) it is appropriate to use international instruments of coordination and cooperation, such as joint investigation teams and the involvement of international experts at an early stage in the investigation of complex cross-border environmental crimes; 4) key concepts of environmental criminal law need further harmonization and more consistent interpretation in the context of EU practice; 5) penalties for committing environmental crimes should be harsher and become preventive.

In turn, the European Union seeks to promote a high level of environmental protection on its territory and to do its utmost to prevent environmental damage in third countries caused by companies located in EU Member States. The European Parliament has expressed concern about the wide expansion of environmental crime, as evidenced by the combined assessments of the OECD, the United Nations Office on Drugs and Crime (UNODC), the United Nations Environment Program (UNEP) and Interpol on monetary assessments of all environmental crime. Europol

recognizes that this is the fourth largest category of international crime, which is directly or indirectly related to transnational organized crime and corruption (Europol, 2020:9).

At the same time, there is currently no EU legal document that addresses the possibility of prosecuting European companies abroad for environmental crimes or activities that cause environmental damage. It seems necessary to encourage parent companies to take sustainable and responsible approaches to cooperation with third countries in accordance with international standards in the field of human rights and the environment, as well as to refrain from adopting investment strategies that directly lead to dangerous consequences.

In this context, the adoption of the European Parliament Resolution on the liability of companies for environmental damage on 21 May 2021 in Brussels (European Parliament, 2021) became quite significant. In particular, Europol declared in the document the need to: 1) develop a harmonized classification of environmental crimes; 2) the introduction of much more timely and stringent regulatory measures in the Member States; 3) introduction of a comprehensive monitoring system to ensure compliance with environmental legislation; 4) adoption of a general framework directive on environmental offenses, effective and proportionate sanctions (defining the conduct, nature of offenses, types of offenses, reparation regimes, remedial measures and minimum sanctions, including joint liability of legal entities and individuals); 5) introduction of a secondary liability regime, namely parental and chain liability for damage caused to human health and the environment; 6) the urgency of assessing the current situation with the liability of subsidiaries operating outside the EU, including possible improvements in cases of environmental damage, etc.

It can be stated that comprehensive and effective precautionary measures, deterrent and proportional criminal sanctions are important deterrents against environmental damage in the EU. At the same time, the level of detection, investigation, prosecution, and conviction for environmental crime remains relatively low. The European Union's position in the area under study remains unchanged — according to the polluter pays principle, companies must bear the full cost of the environmental damage they have directly caused to encourage them to internalize environmental factors and avoid external costs.

As part of the need to comply with international legal requirements for environmental protection and criminalization of illegal acts in this area, Ukraine signed the Convention on Environmental Protection by means of criminal law (Verkhovna Rada of Ukraine, 1998). The provisions of the Convention stipulate the types of intentional criminal offenses or illegal acts committed through negligence (including serious). Ratification of this act was a driving factor in the further introduction of criminal liability of legal

entities for environmental crimes and the transformation of the national legal field.

At the same time, the level of environmental crime in Ukraine is gradually increasing, as evidenced by statistics (State Statistics Service of Ukraine, 2021) shown in Figure 3.

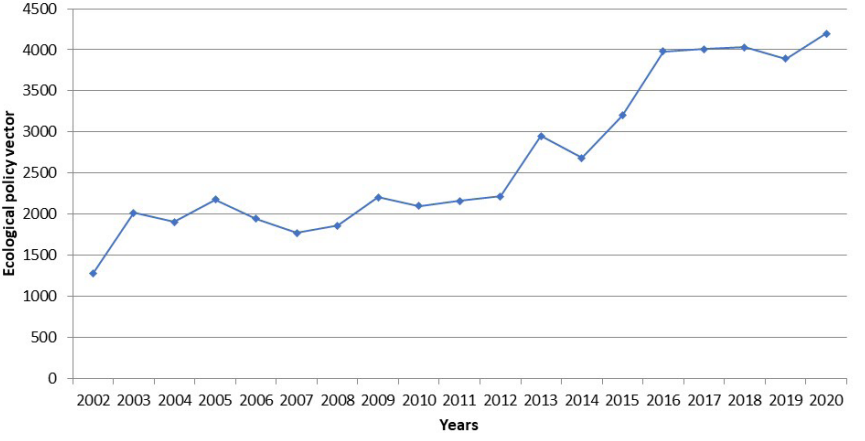

Figure 3: The share of environmental crime in the overall structure of crime in Ukraine for the period from 2002 to 2020 Source: Authors

This chart shows a gradual increase in environmental crime in historical perspective. Unfortunately, not all law enforcement reports, and statistical tables provide information on the commission of criminal offenses in the study area by legal entities, which allows forming an objective picture of the subject composition. At the same time, it is safe to say that the lack of comprehensive monitoring of environmental crimes is a negative factor in reforming law enforcement practices.

Ukraine has an institution of criminal law measures (quasi-criminal liability) regarding the liability of legal entities (Verkhovna Rada of Ukraine, 2013). At the same time, the Civil Code of Ukraine (Verkhovna Rada of Ukraine, 2003) defines a legal entity of private or public law as an organization established and registered in the manner prescribed by law, endowed with civil capacity and capacity to be a party in court.

At the same time, the Criminal Code of Ukraine (Verkhovna Rada of Ukraine, 2001) was supplemented by Section XIV-1 “Criminal Law Measures Concerning Legal Entities”, amending the Criminal Procedure

Code of Ukraine and other regulatory acts. It can be stated that it is the first time in Ukraine that criminal law measures were used against a legal entity, provided that the authorized person committed an offense on behalf of and in the interests of the legal entity.

The legislator determined that the subjects of such crimes are authorized persons of a legal entity who have committed criminal offenses under the relevant articles of the Criminal Code of Ukraine: violation of environmental safety rules (Article 236); failure to take measures to eliminate the consequences of environmental pollution (Article 237); pollution or damage to land (Article 239); illegal seizure of water fund lands on an especially large scale (Article 2392); violation of the rules of protection or use of subsoil, illegal extraction of minerals (Article 240); air pollution (Article 241) and others. It should be emphasized that Section VIII of the Criminal Code of Ukraine deals with environmental crimes.

Addressing the peculiarities of criminal liability of legal entities for environmental crimes in Ukraine, it is worth emphasizing that from the point of view of law enforcement practice, the financial form of liability is legalized and widespread — the application of penalties. In practice, the responsibility for illegal actions of a legal entity rests with its authorized persons. According to Article 96 of the Criminal Code of Ukraine authorized persons of a legal entity means officials of a legal entity, as well as other persons who have the right to act on behalf of legal entity in accordance with the law, constituent documents of a legal entity or contractual relationship. In particular, such crimes are committed directly in the interests of legal entities and lead either to improper benefit or to the creation of appropriate conditions for such benefit for the legal entity.

The legislator also considers it a crime to commit actions in the field of ecology aimed at avoiding the liability enshrined in law. Such criminal law measures as fines, confiscation of property and liquidation may be applied to legal entities.

In this case, the fine and liquidation are used as the main types of measures, while confiscation — only as an additional one. It should be noted that in 2020 the Resolution of the Verkhovna Rada of Ukraine adopted Recommendations of Parliamentary Hearings on Priorities of Environmental Policy of the Verkhovna Rada of Ukraine for the Next Five Years (Verkhovna Rada of Ukraine, 2020), which fully correlate with the Law of Ukraine No. 2697-VIII of 28.02.2019 “On the Basic Principles (Strategy) of the State Environmental Policy of Ukraine 2030” (Verkhovna Rada of Ukraine, 2019). These Recommendations provide for vectors of transformation of approaches to criminal liability of legal entities for environmental crimes, in particular, identifying not only the strengthening of responsibility, but also prevention (Figure 4).

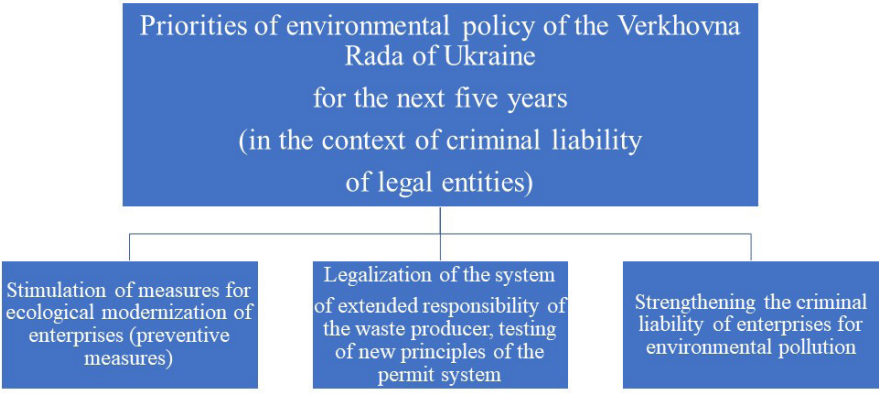

Figure 4: Priorities of the environmental policy of the Verkhovna Rada of Ukraine for the next five years (in the context of criminal liability of legal entities)

It can be noted that Ukraine has chosen the path by analogy with the legalization of criminal liability of legal entities for environmental crimes in the European Union. This approach of the legislator seems extremely progressive and deserves support. However, despite the fact that environmental issues are regulated by more than 40 laws and hundreds of bylaws in Ukraine, the system of liability for environmental crimes remains weak and inefficient. Low environmental taxes do not contribute to the implementation of the polluter pays principle. Moreover, the need to stimulate the implementation of measures for environmental modernization of enterprises and strengthen their responsibility remains a declarative thesis. Therefore, the criminal liability of legal entities for committing environmental crimes remains quite controversial, requires more detailed study by the legislator, and the introduction of effective mechanisms for its prevention and overcoming in the context of foreign experience.

3. Discussion

The study showed that the issue of criminal liability of legal entities for environmental crimes in accordance with the Criminal Code of Ukraine cannot be considered definitively resolved. Taking into account the criminal law policy of the state, the postulates of legal theory and practice, the priorities of sustainable development and environmental protection — legal approaches to the essence of the institution of responsibility of these entities should be reformed. When a legal entity is not held liable for its

actions, it will affect both the competitiveness of the company itself and the environmental losses for the state in the future (Lubis *et al.*, 2021). Scholars emphasize that if companies avoid responsibility for environmental crimes, law enforcement agencies will be considered incompetent because they will not comply with the rules established by law (Kisliy *et al.*, 2021; Mackie, 2020). In this case, it can be argued about the declarative legality of the inevitability of punishment.

It also seems quite balanced for the state to establish comprehensive programmes with the allocation of adequate financial and human resources to prevent, investigate and prosecute legal entities for environmental crimes. The role of civil society institutions in the fight against environmental crime must also be qualitatively revised. Faure (2020) supported public involvement and raising legal awareness and activity of the population on identifying legal entities guilty of environmental crimes.

The research substantiated the need to improve the skills of state bodies, including prosecutors and judges, in order to more effectively prosecute and sanction environmental crime. It is also proposed to create a specialized unit in the national police of Ukraine to investigate environmental crimes. Husarov (2019) supported the reasonability of creating a specialized environmental police unit in Ukraine in 2019. The scholar substantiated the need to create environmental police units with a clear definition of tasks, functions, competencies and powers at the legislative level. It seems possible to gradually expand the powers, as well as administrative and jurisdictional activities in the field of environmental protection of regional units of the National Police (Kazanchuk, 2017:57).

There are current discussions on the vectors of legislative reforms in terms of comprehensive and interdisciplinary analysis with the involvement of experts in various fields of science (Roef, 2019), complemented by a comparative study of Ukrainian and foreign criminal law. Gavrilishin and Kozyreva (2018) supported the reasonability of legislative innovations. The scholars stated that the criminal liability of legal entities for environmental crimes has led to difficulties in law enforcement practice, which is currently undergoing reforms and qualitative changes in the institutions of the general and special parts of the Criminal Code of Ukraine. According to Malanchuk (2020), it is necessary to supplement the system of penalties for legal entities by applying judicial supervision over the activities of legal entities, and to provide a specific term of appropriate supervision.

The development of a set of preventive measures and concepts of internal self-discipline in the course of business activities by legal entities seems to be quite balanced. In this context, the main tasks of combating environmental crime are the following: 1) the creation of a system of appropriate information and analytical support for combating environmental crime in Ukraine based on the results of the analysis of

reliable information about its condition and determinants; 2) development of criteria and constant analysis of monitoring data on the state of the environment; 3) minimization of the impact of criminogenic factors and practical possibilities of committing environmental crimes by legal entities.

The introduction of requirements for companies to develop compliance programmes at the legislative level should encourage companies to take proactive measures to prevent internal environmental risks (Dongmei, 2020). Approbation of this approach will allow increasing the effectiveness of punishment of legal entities and will correlate with the best European practices.

Moreover, a corporation that has taken appropriate steps to try to prevent wrongdoing should not be punished simply because the individual (the person in charge of the company) acted completely contrary to the corporate approach (Lennan, 2021). This should be recognized in any approach to corporate criminal liability for environmental crimes. In this sense, the strengthening of global law enforcement means that companies must be aware of the risks of law enforcement (Hamid *et al.*, 2020). Timely self-assessment of environmental damage by legal entities remains a key step towards preserving the environment, minimizing the negative consequences of national and global environmental nature, and avoiding criminal liability.

Conclusions

In modern conditions, the idea of criminal liability of legal entities for environmental crimes finds a significant number of supporters in different countries under the influence of various criminal law doctrines. Both national and international legal regulation in this area is undergoing constant changes, taking into account the transformation of the environment, anthropogenic impact and the peculiarities of the investigation of this type of crime. Criminal liability of legal entities in general, and liability for environmental crimes in particular, remains the subject of lively discussions in scientific schools of different countries. At the same time, current trends towards the gradual destruction of entire ecosystems by economic activities necessitate strengthening the responsibility of these perpetrators around the world.

The content of criminal liability of the legal entity of the subjects under research is currently being transformed. In most EU member states that support a similar model of criminal prosecution to Ukraine, such types as personal liability and liability of a legal entity for environmental crimes coexist, not replacing or excluding each other. At the same time, the study revealed the shortcomings of criminal liability of legal entities

for environmental crimes in the territory of the EU Member States. A comparative analysis of law enforcement practices allowed adapting the recommendations of the European Parliament to the vectors of reforming Ukraine's national legislation in this area. At the same time, the effective application of international regulatory, legal, and institutional tools requires the development and maintenance of the proper functioning of relevant national systems, an extended work at the national level.

The study resulted in a number of priority measures proposed to minimize the manifestations of criminal encroachments on the environment by legal entities in Ukraine. The need of internal corporate assessment of environmental risks of economic activity by legal entities as the most effective prevention tools is substantiated. At the same time, the results of approbation of such practice by Ukrainian enterprises will need further scientific analysis, especially in combination with the statistics of environmental crime in the country. Further research on the selected topic will also be based on the current state of fulfilment of Ukraine's international legal obligations on the comprehensive ecologization of production.

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Criminal Liability for Providing Inaccurate Information about the Spread of the COVID-19 Epidemic

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Abstract

The aim of this study was to identify problems related to the establishment of criminal liability for providing inaccurate information about the spread of the Covid-19 epidemic, and propose the ways to solve them. To aim involved the following methods: systemic approach, descriptive statistics, comparative approach, descriptive analysis, pragmatic approach, and forecasting. The effectiveness of health authorities' response to outbreaks of diseases depends on the completeness and accuracy of the information disseminated. In fact, national legislations do not provide criminal liability for providing inaccurate information about the epidemiological situation in a pandemic. Therefore, there is a need to develop Interim Guidelines to ensure the accuracy of information on the epidemiological situation in a pandemic. A rule that criminalizes the provision of inaccurate information or the dissemination of inaccurate information about the incidence in an epidemic and/or pandemic, should be one of the rules on liability for crimes against national security, and should be punishable by imprisonment for a certain period and deprivation of the right to hold certain positions and engage in certain activities. This study is not exhaustive and opens up prospects for further research in this area.

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Keywords: pandemic; epidemic; inaccurate information; misinformation; criminal liability.

Responsabilidad penal por proporcionar información inexacta sobre la propagación de la epidemia de Covid-19

Resumen

El objetivo de este estudio fue identificar los problemas relacionados con el establecimiento de la responsabilidad penal por proporcionar información inexacta sobre la propagación de la epidemia Covid-19 y proponer las formas de solucionarlos. Involucró los siguientes métodos: enfoque sistémico, estadística descriptiva, comparación y comparación, análisis descriptivo, enfoque pragmático, pronóstico. La eficacia de la respuesta de las autoridades sanitarias a los brotes de determinadas enfermedades depende de la integridad y precisión de la información difundida. De hecho, las legislaciones nacionales no prevén responsabilidad penal por proporcionar información inexacta sobre la situación epidemiológica en una pandemia. Por lo tanto, es necesario desarrollar directrices provisionales para garantizar la precisión de la información sobre la situación epidemiológica en una pandemia. Una norma que tipifique como delito el suministro de información inexacta o la difusión de información inexacta sobre la incidencia de una epidemia y/o pandemia debería ser una de las normas sobre responsabilidad por delitos contra la seguridad nacional y debería ser punible con prisión por un período determinado y privación del derecho a ocupar determinados cargos y realizar determinadas actividades. Este estudio no es exhaustivo y abre perspectivas para futuras investigaciones en esta área.

Palabras clave: pandemia; epidemia; información inexacta; desinformación; responsabilidad penal.

Introduction

The years of 2020-2021 have become unprecedented in the history of mankind — everyone, regardless of place of residence or stay, was in danger due to the Covid-19 pandemic. The Covid-19 pandemic, which affected almost all countries of the world, caused significant changes in all spheres of public life. Several measures have been implemented in each country to stabilize the spread of coronavirus disease and stop the growth in the number of patients in the world. These measures consisted mainly in the

restriction of certain spheres of life, which led to the problem of ensuring human rights and freedoms in pandemics (Kacper, 2020).

As a result, the vast majority of people have reconsidered their values, fundamental interests, their own rights and freedoms, the possibility and necessity of their restrictions in order to ensure them, and so on. The modern pandemic, like any dangerous phenomenon, has caused negative social changes. After all, these and similar phenomena in the world generate fear, paranoid moods in society, which in turn leads to an increased level of negative and dangerous manifestations in society (Freckelton, 2020).

These negative social manifestations have affected many spheres of life, and first of all, the sphere of protection and maintenance of human life and health in the rapid spread of Covid-19 and its various strains (Rajat, 2020; Radu, 2020). In particular, against the background of the spread of a new viral disease, the number of violent crimes has increased rapidly, especially in the field of family relations (Bettinger-Lopezand and Bro, 2020); cybersecurity and information security crime has increased(Kovaleva *et al*., 2020); people's right to life (Maheshwari and Gautam, 2021) and other fundamental rights and freedoms (Abrusci *et al*., 2020) are violated; the number of crimes in the medical and health care sectors by both doctors (Alameer *et al*., 2021) and health workers (Ernesto D'Aloja *et al*., 2020) has increased, thus raising the issue of medical ethics during the pandemic (Bustan *et al*., 2021). Besides, there are frequent violations of quarantine restrictions and prohibitions (Kovalova, 2021) aimed at stabilizing the health situation and reducing the incidence in the world until overcoming the global pandemic. Of course, this negatively affects the level of public life both in individual countries and in the world.

But one of the biggest threats to protecting the population from the spread of the pandemic and protecting the right to life and health is the falsification of morbidity data and the spread of inaccurate statics. A pandemic is a phenomenon that is developing very rapidly, and the quality of counteraction to this phenomenon is based on the analysis of the latest data that can provide an answer about the sources, rates of spread, risks (Kacper, 2020; Li *et al.,* 2020). The effectiveness of such activities depends on the data which must be reliable, complete and comprehensive in describing the situation (Barnert *et al*., 2020).

1. Literature review

A large number of recent studies deal with certain aspects of counteracting the spread of the Covid-19 virus in the world, ensuring the protection of the population from the spread of this disease, and overcoming the pandemic. Researchers and healthcare workers propose a number of measures to

protect safety in a pandemic, and given these threats, the necessary step is to develop new security measures for all areas of public life, which are covered in the relevant sources.

The security of life, health of the population, other social spheres (economic, informational, medical, cybernetic, etc.) constitute the national security of individual states. That is why the vast majority of countries and international organizations are working to improve the legislation, which will provide additional guarantees of compliance in a pandemic. The issues of responsibility of states for offenses in the field of anti-pandemic activities and the use of international law resources (Quintana and Uriburu, 2020; Allahverdipour, 2020) for this purpose are currently being developed; special criminological research is carried out in the economic sphere in a pandemic (USA) (Friedrichs and Vegh Weis, 2021); the problems of criminal liability in a pandemic are studied, including liability for violations of anti-epidemic and sanitary rules in some countries and regions of the world (Ukraine (Kovalova, 2021), Syria (Roger and Layla, 2020) China (Roger and Layla, 2020), India (Dattaa *et al.,* 2020) Bahrain (Bani-issa, 2021), Africa (Bani-issa, 2021).

One of the main directions, given the importance of obtaining accurate information, is to establish responsibility for providing official inaccurate information on the incidence of Covid-19 and disseminating inaccurate information about the epidemic — for the so-called infodemic in the global Covid-19 pandemic (Gorbatenko, 2021; Yirong, 2021). In particular, the impact of unreliable news and misinformation during a pandemic on both the epidemiological situation and other areas of social life is studied (Kacper, 2020); negative consequences of misinformation of the population through messages or stories about protection against Covid-19 (Hurford *et al*., 2021); modelling and forecasting of consequences of the failure to use standard data on Covid-19 is carried out (Ashrafi-Rizi and Zahra, 2020); the dangers of inaccurate messages are emphasized (Bratu, 2020; Minfin, 2021).

Despite the danger of providing inaccurate data on the state of the Covid-19 epidemic, both for the individual and for each country, the problem of liability, including criminal liability, for providing inaccurate information on the incidence rate remains unresolved. However, in the context of globalization and the need to join forces to overcome the pandemic in the world, appropriate standards must be developed at both national and international levels. So, this study is the first to raise the problem of criminal liability for providing inaccurate information about the spread of the Covid-19 epidemic in this formulation.

1.1 Aim

Given the urgency of the study, the aim will be to identify a range of issues related to the establishment of criminal liability for providing inaccurate information about the spread of the Covid-19 epidemic, and ways to address them at the national and international levels. The aim involved the following objectives: determine the grounds for criminalizing the provision of inaccurate information on the Covid-19 epidemic situation and develop proposals for improving the legal regulation of criminal prosecution for this act.

2. Methodology and methods

This study was conducted in a clear sequence, following the stages of studying the issue based on the logic of the presentation of the material, in order to achieve the aim, set in the article and fulfil the objectives. The stages were the following: formulation of the range of issues and defining the scope of the study; search and selection of literature and other resources; selection and study of statistics; analysis of the material presented in selected resources and evaluation of the results of these studies; identification of unresolved problems of criminal liability for dissemination of inaccurate information about the spread of the Covid-19 epidemic; determining the aim of the article; drawing conclusions and making practical recommendations for solving the problems chosen for research; outlining prospects for further research in this area.

The study involved statistics on quantitative indicators of morbidity and mortality caused by Covid-19 by individual countries and regions of the world, as well as statistics on the dynamics of morbidity of Covid-19 in the world for 2020-2021; expert opinions on the inaccuracy of statistics on the level of morbidity and mortality caused by Covid-19 in individual countries and in the world. The provisions of international regulatory acts, which determine certain aspects of the procedure for information circulation in various sources, in particular on the Internet, were studied in order to identify gaps and make proposals for their elimination both in international provisions and in the national legislation of individual countries for holding liable for providing inaccurate information on the epidemiological situation in the context of the Covid-19 pandemic.

The legal framework of the study consisted of the provisions of international regulations, in particular the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, 1981; UN Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental

Matters, 1998; Okinawa Charter on the Global Information Society 2000; and others. The national legislation of 10 countries was reviewed to analyse the provisions of national legislation that determine the responsibility for providing inaccurate information, including in the context of a pandemic on the incidence rate.

The study involved the following methods: the system approach was used to analyse the Covid-19 pandemic as a system of interrelated and interdependent measures of national and international health policy; descriptive statistics, which was used for processing, systematization and visual demonstration of basic statistical indicators on the incidence of Covid-19 in some countries and in the world in the form of tables; comparison was used to determine the dynamics of the Covid-19 epidemic in the world for 2020-2021; descriptive analysis was used to arrange, classify and summarize information on public danger and the consequences of info emic and the dissemination of unreliable news about the incidence of Covid-19; pragmatic approach to data collection and analysis, which was used to determine the main grounds for criminalization of illegal acts in the field of dissemination of inaccurate information about Covid-19; forecasting was used to develop proposals and recommendations for improving the legislation on the establishment of criminal liability for providing inaccurate information about the epidemiological situation.

3. Results

The effectiveness of health authorities' response to outbreaks depends on the completeness and accuracy of the information disseminated. This also applies to the dissemination of information about the epidemiological situation on the incidence of Covid-19. The world has been living in a pandemic for the last two years. This situation is far from over, as all measures taken during 2020-2021 aimed at stabilizing the epidemiological situation at all levels (national, regional, global) do not yet give the expected and desired result. Although there are certain periods of declining morbidity, the number of people who fell ill with Covid-19 and died as a result is constantly growing. This is clearly evidenced by official statistics (see Table 1 and Table 2).

Table 1. Data on the incidence of covid-19 (as of September 2021). (Worldometers, 2021).

Country	Population	Number of patients	Number of recovered	Number of fatalities
USA	331,002,651	42,799,907	32,434,166	690,714
India	1,380,004,385	33,417,390	32,632,222	444,563

Brasilia	212,559,417	21,102,536	20,180,106	589,744
Great Britain	67,886,011	73,71,301	5,934,018	134,983
Russian Federation	145,934,462	7,254,754	6,485,264	197,425
France	65,273,511	6,942,105	6,612,898	115,960
Turkey	84,339,967	6,794,700	6,285,887	61,140
Iran	83,992,949	5,396,013	4,708,195	116,436
Argentina	45,195,774	5,237,159	5,090,449	114,286
Spain	46,754,778	4,929,546	4,633,527	85,783
Italy	60,461,826	4,627,699	4,383,195	13,233
Germany	83,783,942	4,139,009	3,873,700	93,517
Republic of Poland	37,846,611	2,897,395	2,659,020	75,487
SAR	59,308,690	2,877,063	2,714,565	85,952
Ukraine	43,733,762	2,344,398	2,230,306	54,829
Czech Republic	10,708,981	1,685,878	1,650,292	30,429
Japan	126,476,461	1,668,136	1,564,097	17,097
Canada	37,742,154	1,569,186	1,497,434	27,370
Israel	8,655,535	1,211,443	1,122,876	7,494
Republic of Kazakhstan	18,776,707	857,643	784,541	10,670
Switzerland	8,654,622	823,074	736,388	11,010
Georgia	3,989,167	593,763	558,042	8,498
Republic of Belarus	9,449,323	512,460	500,051	3,978
Norway	5,421,241	181,195	88,952	841
China	1,439,323,776	95,623	90,074	4,636
Australia	25,499,884	84,086	61,869	1,148
Luxemburg	625,978	77,189	75,209	834
Singapore	5,850,342	75,783	69,614	59
Niger	24,206,644	5,951	5,685	201
San Marino	33,931	5,388	5,240	90
Total in the world	**7,894,214,059**	**228 112 671**	**204,762,776**	**4,688,259**

Table 2. Incidence of Covid-19 by regions of the world (according to the WHO as of September 2021). (Global-data, 2021).

Region	The number of Covid-19cases
Americas	87,430,315
Europe	67,977,169
South-East Asia	42,385,258
Eastern Mediterranean	15,377,433
Western Pacific	7,779,616
Africa	5,893,789

The dynamics of the pandemic throughout the time was wavy (and continues to be so): from a sharp increase in the number of patients with Covid-19 to a gradual significant reduction in the incidence. Depending on the season, the seasonal diseases, the number of mass events and the number of crowded places (the period of celebration of public and religious holidays, the beginning of studies in schools and universities, starting work after vacations, etc.), the incidence of Covid-19 is growing rapidly; the introduction of stricter quarantine measures, the state of emergency in some countries, the beginning of the period of holidays and vacations contributes to reducing the incidence rate (see Table 3).

Table 3. Dynamics of the Covid-19 pandemic (daily morbidity and mortality at the end of each month for 2020-2021). (Worldometers, 2021).

Date (month, year)	Incidence rate	Mortality rate
January 2020	> 2,000	n/a
February 2020	3,000	n/a
March 2020	75,613	4,788
April 2020	89,843	6,389
May 2020	126,892	4,133
June 2020	183,598	5,756
July 2020	290,503	6,769
August 2020	250,654	4,864
September 2020	322,022	5,661

October 2020	504,382	6,935
November 2020	497,366	9,185
December 2020	735,218	14,067
January 2021	415,869	9,679
February 2021	320,446	6,638
March 2021	547,699	12,231
April 2021	875,901	14,671
May 2021	368,714	9,040
June 2021	398,202	8,840
July 2021	597,080	9,222
August 2021	538,833	9,581
September 2021	419,393	6,820

Declines in the incidence of Covid-19 in the world in certain periods indicate that the methods introduced by states at the national level have been effective. Therefore, these measures were applied in a timely manner, which means that the information on the statistics was used correctly. With the onset of the pandemic, the relevant state authorities were forced to respond quickly to changes in the epidemiological dynamics at the national level.

The countries have introduced stricter measures to combat the spread of the disease, or there has been a weakening of anti-epidemic measures. These measures are introduced, changed and repealed based on statistics on the incidence rate. And in order to make the change in the effectiveness of anti-epidemic measures as effective as possible, the data on the number of people who fell ill, recovered or died corresponded to the real state of affairs. But, unfortunately, these data are not always real — they are often falsified to achieve one or another illegal goal.

For example, according to some data, the incidence of Covid-19 in Italy is 6 times higher than indicated in official statistics, and the real mortality it caused is 60% higher than the official one (Corriere Della Sera, 2020). The official incidence of Covid-19 in Ukraine is also far from reality: it is noted that statistics are only 30% of the actual number of cases (Interfax, 2020). German scholars have found that the actual number of Covid-19 cases is 10 times higher than official figures (Zdrav.Expert, 2021). It is also stated that the real mortality caused by Covid-19 in the Russian Federation is 72% higher than official figures. In India, the real number of deaths is 5-10 times

higher than the death rate reported in official statistics (DW, 2020). As for the general world statistics, it is also indicated that the real mortality rate caused by Covid-19 is 60% higher than the official data (Financical times, 2020).

The list of countries the official information on morbidity and mortality caused by Covid-19 of which is significantly different from the actual state of the epidemic can be continued. This situation with the provision of inaccurate information is disappointing.

Distortion of data on the incidence of Covid-19, in turn, entails a decrease in the effectiveness of counteracting its growth both at the level of individual states and at the global level. Thus, this state of affairs makes it almost impossible to overcome the pandemic in the world.

Such a situation necessitates measures to ensure the provision of accurate information. One of the effective measures is to bring a person who spreads false information to the most severe type of liability — criminal. However, national law enforcement agencies face the problem of the lack of a specific rule both in individual states and at the international level that would penalize misinformation in an emergency. Moreover, as the analysis of the legislation has shown, the criminal law of some countries does not even have a general rule that establishes responsibility for providing or disseminating inaccurate information as a threat to national security.

Criminal liability for misinformation as a crime against state interests is provided in China, Egypt, the United Arab Emirates, where misinformation is punishable by imprisonment for a term and a fine; disseminate false personal information about certain categories of persons under Canadian law; Denmark, Great Britain, Germany, India provides responsibility for disseminating inaccurate information on the Internet, social networks, etc. (HSDL, 2019). But the responsibility for providing inaccurate information and disseminating fake data on the Covid-19 epidemiological situation in these countries is not provided. Some countries, including Ukraine, do not provide criminal liability for disseminating inaccurate information at all.

A specific term — infodemic — is used in the article for the provision of inaccurate information or the dissemination of false data, which means the rapid spread of false news, usually in relation to the pandemic and its individual aspects. The term has come about recently, as this phenomenon spreads during the Covid-19 pandemic in the world.

The barrage of false information about Covid-19, some information, and data about this viral disease, which was often spread by government officials and the media, helped to undermine trust in the leaders of health care organizations and create obstacles to contain the pandemic in the world. This was caused by the statements of so-called experts, virologists, and other members of the public, who downplayed the danger of Covid-19

and spread rumors about the origin of the virus, false information about its course and consequences. The most common such news includes the so-called conspiracy theory; danger of vaccination against Covid-19 for human life and reproductive health; an attempt to establish control over people (chip implantation) with the help of a vaccine (Parmet and Paul, 2020). And if such false news is not confirmed by anything, the dissemination of unreliable statistics on the incidence of Covid-19, which are presented in the form of figures, often leave no doubt, such data is trusted, and they use them if necessary.

Recently, the number of cases of misrepresentation in the field of health care regarding the epidemiological situation, has increased rapidly, which requires national policy to ensure the procedure for prosecution for this dangerous offense. But a logical question arises: can it be a question of criminal liability; are there grounds for criminalizing such an illegal act?

The answer to these questions can be the principles (grounds) of criminalization of illegal acts. There is no single approach to the principles of criminalization of acts in the doctrine of criminal law. However, since this is not the subject of this study, it is not worth delving into the discussion. But there are five main general grounds for criminalizing wrongdoing (see Figure 1).

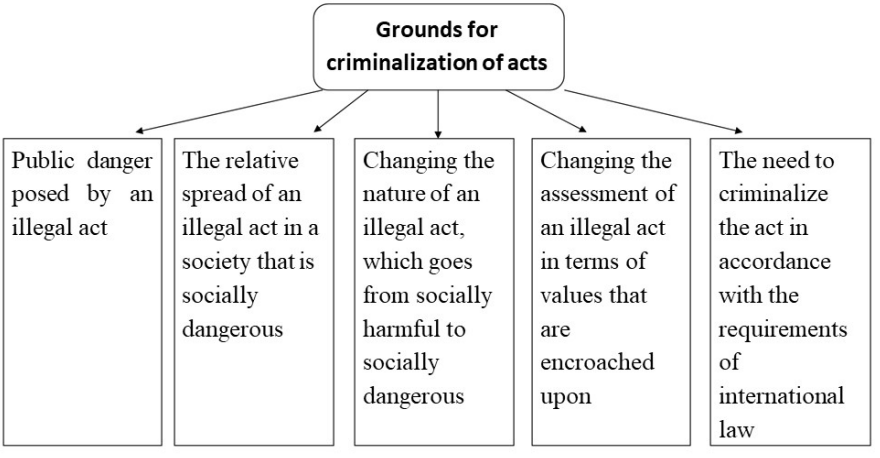

Figure 1. Grounds for criminalization of acts (Dorokhina, 2014).

The main and most important reason for criminalizing the offense is the level of its social danger. Providing inaccurate data on the incidence of pandemics, concealment of information, suppression, falsification of data

on certain local aspects in the context of the spread of Covid-19 misleads both health workers and ordinary citizens. This, in turn, entails a partial or complete misunderstanding of the situation with morbidity, mortality and danger of this viral disease in general by ordinary people, resulting in a further increase in the incidence of Covid-19. However, if the health care workers rely on inaccurate information about the epidemiological situation, they will simply not be able to react in time and take the necessary measures to stabilize the situation. Therefore, we have a so-called vicious circle, in which the inaccuracy of data leads to failure to take the necessary anti-epidemic measures, and their failure in turn contributes to an increase in morbidity, which responsible persons try to hide again by further providing inaccurate information. This is the reason for the public danger of providing inaccurate information about the epidemiological situation in individual regions and in the world in a pandemic, which represents the first ground for criminalizing this act.

The second important reason for criminalization is the spread of the offense. The above data on the ratio of real and official data on the incidence of Covid-19 by individual countries and in general indicates that the information on the incidence rate is at least 3 times lower than the real figures; the Covid-19mortality rate is 60% higher than the official figures provided by the authorized persons. Unfortunately, even countries with a high level of obedience and legality are also included in the list of countries that provide inaccurate information about the epidemiological situation in their countries. This indicates the widespread negative phenomenon of the falsification of data on Coivd-19 pandemic. This is the second ground for criminalization of acts.

Besides, there are also other grounds for criminalizing illegal acts of providing inaccurate information about the epidemiological situation in a pandemic. In particular, if the dissemination of inaccurate data on a particular disease under normal conditions is only socially harmful and does not pose a serious threat, except for incorrect statistical reporting, in a global pandemic, when there is a threat to human life and health in general, this indicates the existence of such a ground for criminalization as a change in the nature of the assessment of the harmful effects that the dissemination of fake information entails.

At the same time, the attitude towards honesty in providing certain data has changed, regarding the level of morbidity, mortality, and other indicators of the spread of Covid-19, as it has become a value not for each person but for the community as a whole. Accordingly, such a reassessment of the attitude to dishonesty in relation to this type of information determines such a ground for criminalization as a change in the assessment of an illegal act in society.

The emergence and rapid spread of a new viral disease Covid-19 has become not a national but a global problem. With the rapid increase in the number of people affected by the disease, the international health community has had to respond quickly to this situation and develop special measures to stabilize the health situation in each country. WHO interim recommendations were developed and enshrined in the document entitled Infection Prevention and Control Guidance for Long-Term Care Facilities in the Context of COVID-19 (World Health Organization, 2020). These measures were to be reflected in the national legislation of individual countries. To ensure the effectiveness of these measures, each state must ensure their implementation on the basis of data on the epidemiological situation. And, as mentioned above, the distortion of such data allows implementing the measures specified in the document. That is, there is a fifth ground for criminalizing such an act as providing inaccurate information about the incidence of Covid-19.

The above presupposes not so much the possibility but the urgent need to establish criminal liability for providing inaccurate information in critical conditions, including the epidemics and pandemics. Such a rule may be part of an existing one (if any) in national criminal law, which establishes liability for encroachment on epidemic safety, or a new rule may be created to establish criminal liability for providing inaccurate information on the incidence of the population during an epidemic and/or pandemic.

The rule that should be included in the national criminal law of countries that take all necessary and possible anti-epidemic measures should define actions in the form of providing inaccurate information about the epidemic situation in a pandemic, as well as establish penalties that can be applied to those who committed such act. Given the scale of the impact of providing inaccurate information about the epidemiological situation and the level of morbidity, such an illegal act first of all poses a danger to everyone living in a particular country, and consequently threatens the epidemic security of an individual state. It is the state that is called upon to ensure the safety of citizens and persons staying on its territory on legal grounds, including epidemic security. Human health is the greatest value that the provision of inaccurate data encroaches on, and this illegal act violates the mechanism of state protection of the human right to life, health, and personal safety. Therefore, a rule establishing liability for providing inaccurate information or disseminating inaccurate information on the level of morbidity in an epidemic and/or pandemic should be included in the rules providing for liability for crimes against national security. This socially dangerous illegal act should be punishable by imprisonment for a certain period and, as inaccurate data are usually provided by persons holding relevant management positions in health care facilities — deprivation of the right to hold certain positions and engage in certain types of activities.

Besides, the right to reliable and complete information in the context of epidemic and/or pandemic and at the international level needs to be guaranteed. Therefore, it is necessary to develop an appropriate international legal act, which will not only indicate the need to prosecute for providing inaccurate information in an epidemic/pandemic, but also to explain why this act should be criminalized and on what grounds. These may be certain Interim Recommendations to ensure the accuracy of information on the epidemiological situation in a pandemic. This document should contain the following provisions:

- Stipulating the importance of obtaining reliable information in the specific conditions of the epidemic/pandemic — obtaining reliable information on morbidity and mortality caused by Covid-19 is a guarantee of timely and necessary measures to stabilize the situation and reduce morbidity.
- Determining the level of public danger of providing inaccurate information about the epidemic situation of Covid-19 — providing inaccurate information about this phenomenon entails failure to take or improper use of necessary anti-epidemic measures, which further increases the incidence and prevents its overcoming.
- Explaining the abundance of inaccurate data on Covd-19 morbidity and mortality — the dissemination of fake information and news and the provision of inaccurate statistics are often carried out by persons holding senior positions in health care institutions and organizations in order to avoid the introduction of anti-epidemic restrictions (in case of data understatement) or obtaining government subsidies to prevent the growth of morbidity (in case of data overstatement).
- Establishment of the main and additional object of illegal provision of inaccurate information about the epidemic situation — this illegal act violates the security in the state, as well as affects the health and lives of people; determination of the type of legal liability and provisions that should contain a rule that will establish liability for providing inaccurate information on the level of morbidity, mortality and epidemic situation in general in the Covid-19 epidemic/pandemic in particular — given the public danger and abundance of this illegal act, responsibility for it should be provided for in national criminal law by including a rule that will determine the composition of such an act and the punishment for its commission in the form of imprisonment for a certain period and a ban on holding certain positions and engaging in certain professional activities.

4. Discussion

Thus, ensuring the protection of the population from misinformation about the incidence of Covid-19 in a global pandemic is no less important than the practical application of measures taken to stabilize the epidemic situation at the national and, consequently, global level. Ensuring the circulation of reliable information in this situation is almost impossible without taking certain criminal law measures, in particular, bringing to justice for providing inaccurate information about the epidemic situation (Matić Bošković and Nenadić, 2021).

The position on the need to criminalize the provision of inaccurate data on the incidence of Covid-19 in a pandemic is confirmed by the socially dangerous nature of threats to information security created by the dissemination of false news about Covid-19 (Kacper, 2020). If in other conditions distortion of certain data was not considered a crime, in current conditions of epidemic threats even partially reliable data can be considered completely unreliable (Elm and Sarel, 2021). Besides, the so-called infodemic during the Covid-19 pandemic entails significant social changes, including health care, which also requires government intervention and a more severe response to these offenses (Gorbatenko, 2021).

We cannot agree with the statement regarding the national legislation of some states, which do not have criminal liability for providing inaccurate information on any important issue, that their responsibility for misinformation is sufficiently regulated (Prostir.ua, 2020; Olatunji *et al*., 2020), including misinformation about the epidemic situation. Given the public danger and the abundance of inaccurate data on the incidence of Covid-19, which ultimately entails the impossibility of stabilizing the epidemic situation and overcoming the pandemic, is almost impossible to ensure compliance with the obligation to provide reliable statistics on the incidence of Covid-19 (false news) without the introduction of criminal liability (Kisliy *et al.,* 2021; Bradbury-Jones, 2020; Tereschenko, 2020).

At the same time, we cannot agree that doctors should be protected from liability (including criminal liability) in a pandemic, as this indicates their insecurity before the state (based on a study conducted in Italy) (Ernesto *et al*., 2020). But it is not advisable to completely eliminate the responsibility of doctors, even during a pandemic, because even in such extreme conditions there are manipulations in the medical field (ALameer *et al.,* 2021; Inshyn *et al*., 2020), including falsifying data on the incidence of Covid-19. Besides, there is a certain, usually unregulated, medical ethics (Bustan *et al*., 2021), non-compliance with which cannot be justified even by an epidemic or pandemic.

It should also be borne in mind that some countries are introducing strange practices, establishing responsibility for doubting the reliability

of official data on the epidemic situation of the incidence of Covid-19, in particular Turkey (Owen, 2020). This position is erroneous because such doubts give rise to the need to revise statistics, which will help to correct errors and more closely monitor diseases, in particular, Covid-19, in terms of developing measures to overcome them (French and Monahan, 2020).

Therefore, the development of the provisions and amendments to national criminal law and relevant international regulations is an appropriate and well-conditioned step in the face of the urgent need to protect the population from the threats posed by the Covid-19 pandemic (Oancea, 2020).

Conclusion

The problem of criminal liability for providing inaccurate information about the spread of the Covid-19 epidemic in this formulation is raised for the first time. It is established that the national legislation of the countries does not provide for criminal liability for inaccurate information about the epidemic situation in a pandemic. But this illegal act has every reason to be criminalized: it is socially dangerous; quite common in some countries and in the world; the social assessment of misinformation has changed towards increasing condemnation due to the danger posed by the pandemic; the obligation of international organizations to ensure the application of the necessary anti-epidemic measures in the states and their legal enshrinement.

The author is the first to substantiate the need to establish criminal liability for providing inaccurate information about the spread of the Covid-19 epidemic and proposes the wording of the relevant norms. Due to the need to introduce criminal liability for providing inaccurate information at the national level, there is a need to develop the international regulation to clarify the necessity to criminalize this act. This regulation may be Interim Recommendations to ensure the reliability of information about the epidemic situation in a pandemic, which will contain the following provisions:

- stipulating the importance of obtaining accurate information in the specific conditions of the epidemic/pandemic.
- determining the level of public danger of providing inaccurate information about the Covid-19 situation.
- an explanation of the abundance of providing inaccurate data on the incidence of Covid-19 and mortality.
- an indication that this illegal act violates security in the state, as well as encroaches on the health and lives of people.

- determination of the type of legal liability and the provisions that the norm should contain.

Liability for this act should be provided for in national criminal law by including a rule that will determine the composition of such an act and the penalty for its commission in the form of imprisonment for a certain period and a ban on holding certain positions and engaging in certain professional activities.

The norm that will establish criminal liability for providing inaccurate information or disseminating inaccurate information about the level of morbidity in an epidemic and/or pandemic should be included in the norms providing liability for crimes against national security. The said socially dangerous illegal act should be punished by imprisonment for a definite term and deprivation of the right to hold certain positions and engage in a certain type of activity of persons who provide inaccurate information.

This study is not exhaustive and does not solve all the problems associated with the establishment of criminal liability for providing inaccurate information about the Covid-19 pandemic situation. Instead, the coverage of problematic aspects of the regulation of these aspects of information circulation at the national and international levels opens prospects for further research in this area, which will improve regulatory and practical implementation of criminal law support for reliability of information on the incidence of Covid-19.

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Protection of the Rights of Persons Who Have Lost Their Jobs Because of the Spread of COVID-19

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Abstract

The aim of the study was to identify possible ways to protect the rights of people who have lost their jobs due to the spread of COVID-19, and thus to analyze the effectiveness of international experience. The information in this article is obtained by three methods: direct observation, comparison, and analysis of the content of the documents. However, at the beginning of the pandemic, the regulation of guarantees and social protection of the rights of dismissed people was not enough. In the future, job seekers must learn the skills of the most popular professions and specialties: in the field of healthcare, in the field of digital technology and transportation. In turn, government programs should promote the reconversion of the most vulnerable groups in the labor market through free courses and online learning programs, and assistance in the employment of people with disabilities. It is concluded that, during the pandemic, most countries modified their labor regulations and provided labor subsidies to preserve jobs. However, during recovery after the pandemic, governments in all countries must change their approach.

Keywords: rights protection; dismissal of employees; spread of COVID-19; labor law; international situation.

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Protección de los derechos de las personas que han perdido su trabajo debido a la propagación del COVID-19

Resumen

El objetivo del estudio fue identificar posibles formas de proteger los derechos de las personas que han perdido su empleo por la propagación del COVID-19 y, por lo tanto, analizar la efectividad de la experiencia internacional. La información de este artículo se obtiene mediante tres métodos: observación directa, comparación y análisis del contenido de los documentos. Sin embargo, al inicio de la pandemia, la regulación de garantías y protección social de los derechos de las personas despedidas no fue suficiente. En el futuro, los solicitantes de empleo deben aprender las habilidades de las profesiones y especialidades más populares: en el campo de la atención médica, en el campo de la tecnología digital y el transporte. A su vez, los programas gubernamentales deben promover la reconversión de los grupos más vulnerables en el mercado laboral a través de cursos gratuitos y programas de aprendizaje en línea, y ayudar en el empleo de personas con discapacidad. Se concluye que, durante la pandemia, la mayoría de los países modificaron sus regulaciones laborales y proporcionaron subsidios laborales para preservar los empleos. Sin embargo, en el curso de la recuperación después de la pandemia, los gobiernos de todos los países deben cambiar su enfoque.

Palabras clave: protección de derechos; despido de empleados; propagación del COVID-19; derecho laboral; situación internacional.

Introduction

The crisis of the COVID-19 virus has led to massive job losses and complicated the operation of the labour market around the world. According to the National Statistics Service, the number of employed people aged 15 to 70 decreased by 4%, the number of applications to the employment service increased by 33.1%, and the demand for jobs decreased by 28% one year after the beginning of the coronavirus epidemic (Fund of Compulsory State Social Insurance of Ukraine, 2021). Anti-epidemiological containment measures have led to a significant drop in employment worldwide. For example, these figures were the following: in Mexico — 40%, in Korea and Japan — 8-9% (OECD, 2020). In the United States, the number of applications to the employment service 4 times (Fowler, 2020) exceeded the 1982 record in one week of 2020, and the number of vacancy announcements decreased by 30% (Shuai *et al.*, 2021).

Due to the pandemic, remote work "from home" using digital technologies has become the norm for many countries and will continue to be a requirement of employers. In general, the number of new vacancies registered with public employment services has declined sharply, although demand for certain occupations and industries has increased: agriculture and food production, health care, logistics and IT services. By 2030, the labour market is expected to reduce demand for retail, food and manufacturing workers and increase demand for transport and health workers. As a result, jobseekers need to learn the skills of in-demand occupations and specialties that will have a higher salary level: in the field of health care, digital technology, and transportation.

Dismissed employees face numerous employment difficulties: they have psychological problems; low level of motivation; reduced working time of the public employment service and other pandemic-related restrictions. The lack of adequate social protection for employees dismissed through COVID-19 has a negative impact on the labour market, people and society (PRI, 2020). However, due to a coordinated international policy response, the impact of coronavirus on employment has been significantly reduced (ILO, 2020c). Developed countries have taken large-scale measures and additional steps to preserve jobs to be terminated: they facilitated the mass transition to teleworking for persons whose physical presence in the workplace is not mandatory (OECD iLibrary, 2020); introduced wage subsidies for employers; introduced monthly subsidies to dismissed employees; provided additional funds to enterprises that did not have liquidity (Larue, 2020).

Combating the spread of COVID-19 at the company's workplaces plays an important anti-epidemiological role, as it protects not only workers but also the society around them, as well as preserves the viability of doing business (ILO, 2020d). This poses a need for additional jobs for doctors and those who oppose the spread of infectious diseases, while for other professions the spread of COVID-19 leads to a decreased need for workers, even in the form of dismissal. The paradox of the legal protection of people dismissed in connection with the spread of COVID-19 is that lawyers who can protect them also lose their jobs.

In the real business world, the protection of the rights of individuals to keep working while staying in safe workplaces should be a priority of public policy and social activities, and not be resolved by workers alone after their redundancy or dismissal. Despite the difficulties in labour relations, the majority of the working population remains in their jobs at the risk of losing their jobs at any time.1.

Expected results

The study will provide further development and improvement of ways and means of protecting the rights of persons dismissed during COVID-19 taking into account the experience of other countries.

Topicality

By the end of 2020, 16 million people had lost their jobs due to the pandemic. Low-skilled, low-paid and temporary workers were the first to be dismissed. Work is essential not only for their families, but also affects the size of the pension (European Commission, 2021). At the same time, self-employed and informal workers who have lost their jobs due to the virus are less socially protected than those who work officially because they do not have access to sick leaves and other forms of social unemployment benefits (ILO, 2020b). According to the survey, 88% of Europeans believe that in the context of a pandemic, the most pressing problem for citizens is everyone's access to the labour market (Data.europa.eu., 2020).

The pandemic crisis has accelerated the processes of digitalisation and automation of production. Almost all jobs with close physical contact were eliminated in a short time, and some will still experience a similar effect. Work during the pandemic was supported by the rapid introduction of new digital solutions: video conferencing and remote exchange of electronic documents. By 2030, more than 100 million workers in eight countries (China, France, Germany, India, Japan, Spain, the United Kingdom and the United States, which together make up half of the world's population) are expected to change occupations. The problem of retraining and the transition of workers to new professions is long-term. At the same time, policymakers can play an important role in expanding the digital infrastructure and supporting retraining, ensuring that lifelong learning becomes a reality and distance work becomes the norm. The concept of "workplace" should not have fundamental formal differences between the place of work in the office or at home (McKinsey Global Institute, 2021). It has been found that workers who are unable to do certain tasks at home are more likely to lose their jobs in the future (Adams-Prassl *et al*., 2020).

Many countries have actively implemented unprecedented measures and targeted programs to overcome the negative processes in the labour market associated with the dismissal of employees. However, no changes have been made to Ukraine's labour law (Verkhovna Rada of Ukraine, 2021a) to strengthen the legal protection of workers after their dismissal during a pandemic (Free legal aid, 2020). As before, in case of violation of labour rights regarding illegal dismissal and in case of official employment, people should write complaints to the employer to the State Labour Department or go to court (Legal 100, 2020).

That is, apart from the ways and means of protecting workers from coronavirus-related dismissal that existed prior to COVID-19, no other ways and means has been introduced. With regard to the protection of dismissed persons, the system of labour legislation and state social insurance in case of unemployment was not "ready" to respond to the pandemic crisis, therefore this issue is topical and needs comprehensive study.

Aim of the research

The aim of the study is to identify possible ways to protect the rights of people who have lost their jobs due to the spread of COVID-19, analyse the effectiveness of international experience and propose promising changes to labour law in this matter.

The main research objectives included establishing measures have been introduced in the labour market; what programs were adopted by the state employment services; what short-term and long-term measures are planned in the labour market in order to protect job seekers during quarantine.

1. Methods

The input data for this study were information obtained from scientific papers and articles, generalizations of international human rights organizations. In total, more than 70 official sources were used. At the same time, the main empirical data were obtained using three methods: direct observation, comparison, and analysis of the content of documents governing the protection of the rights of persons dismissed during the pandemic at the national level and in other countries.

The regulatory documents and programmes governing the procedure and features of protection of the rights of persons dismissed during COVID-19 were reviewed in the course of direct observation. Typical programmes of state employment services for overcoming unemployment were identified. The significance of specific programmes and active measures aimed at protecting the rights of persons dismissed during COVID-19 is proved.

During the observation of modern scientific opinion, it was established that there is a need for further development of legislative regulation of telecommuting, as well as additional support for those dismissed during the coronavirus pandemic.

It is established how the countries ensure the protection of the rights of persons dismissed during quarantine through the method of comparison. The public employment service is unable to respond to the changes in the labour market without a sufficient amount of reserve fund in a crisis. In addition, it was found that at the national level, telecommuting is enshrined only a year after the start of the pandemic.

The information posted on social networks, scientific journals and on news websites was studied in the course of the analysis of the content of various documents. The programmes and ways chosen by the state employment services in the labour market to reduce unemployment were established.

2. Results

The right of citizens to social protection in case of unemployment is provided by the Constitution of Ukraine and is guaranteed by the obligatory state social insurance (Verkhovna Rada of Ukraine, 1996). The Law of Ukraine "On Employment" provides that in case of unemployment everyone has the right to social protection, in particular: to receive unemployment benefits in accordance with the social insurance programme, obtain information and counselling services, training, advanced training for employment at a proper position, receive special guarantees in connection with changes in the organization of production and labor (Verkhovna Rada of Ukraine, 1991).

The duration of unemployment benefits is not reduced for persons who resigned voluntarily during the quarantine period without good reason or by agreement of the parties, but it does not exceed 270 calendar days. It is recommended to apply directly to the employer or to the state employment service for a job search (State Employment Center, n.d.). In addition, Ukraine, as a signatory to the Employment Promotion and Protection against Unemployment Convention, should follow the following recommendations for the unemployed: take full account of them; increase the amount and duration of unemployment benefits; reduce the duration for job search, including for part-time workers; provide them with medical care (Verkhovna Rada of Ukraine, 2008). As a result of the pandemic, employees and employers experienced gaps in labour legislation that needed to be addressed immediately to curb the spread of the virus and maintain a normal work schedule. National procedures or special bodies should be established to plan, monitor and adjust job return plans (Lukianova and Zaitseva, 2021).

However, the national labour legislation was finally amended in 2021 in response to the pandemic, but the bill itself was registered only in early September 2020 (Verkhovna Rada of Ukraine, 2021b). From now on, the Labour Code regulates the concepts of telecommuting and home-based work in considerable detail, as well as the differences between them (Adams-Prassl *et al.*, 2020).

When considering the basic skills listed in the current vacancy announcements in the studied countries (Australia, Canada, New Zealand,

the UK and the US), the increasing demand for workers with technical skills in the medical sector such as "emergency and intensive care" or "first aid to patients" was found. Therefore, in the short term, it is important for the government to support the development of skills that increase people's livelihoods by satisfying efforts in the labour markets. In the long run, governments should support the low-skilled and imaginary worker through effective government retraining and retraining programmes (OECD, 2021a).

The European Skills Agenda has identified a new and dynamic approach to 2025 on skills policy for able-bodied people aged 16 to 74. European countries, businesses, social partners and other stakeholders should work to increase adult participation in learning and improve the level of learning, especially digital and advanced skills. During 2021-2027, the European Social Fund, with a budget of EUR 86 milliard, as well as EUR 4.6 milliard of the Erasmus+ programme, will remain an important source of funding for national retraining programmes (European Commission, 2020a). Besides, the European Commission recommends to gradually move away from emergency measures and consider the following strategic (not short-term) policies in the labour market: incentives to support and start a business; opportunities for advanced training and retraining; strengthening support from youth employment services and workers most affected by the pandemic. The Commission continues to support Member States' efforts to increase the availability of care services for children and other dependents through investments from the European Social Fund+, the European Regional Development Fund, the InvestEU Programme and the European Agricultural Fund for Rural Development (Eurofound, 2021).

In Hong Kong, an analysis of the impact of telecommuting on business success has shown that the government should consider the following in the short term: introducing formal telecommuting guidance for employees and employers; accounting for expected employees; determination of minimum requirements for technology training for a virtual office; and technical means for telecommuting. In the long run, the government should focus on: reviewing the opportunities of telecommuting to become the new norm; revision of the current labour legislation and extension of labour insurance policies to work from home; encouraging small and medium-sized businesses by providing subsidies and other incentives; strengthening the current distance business programme; promoting the practice of employment, taking into account the fact of having a family (Vyas and Butakhieo, 2021). The use of working time while working from home can be more productive and beneficial to people's health (Hallman *et al*., 2021).

After the start of the pandemic, regulatory changes provided for additional obligations of employers regarding the amount of severance pay, dismissal and hiring. For example, Gabon provided for the payment of

additional compensation to dismissed workers, which was not previously provided for in the Labour Code (ILO, 2020a). In Suriname, the Ministry of Labour recommended that the employment service worker hold joint consultations between the parties and set up additional contacts of the Labour Inspection Hotline, where dismissed workers can apply if their rights are violated (Covid-19, 2020). In Azerbaijan, in order to prevent unjustified dismissals or dismissals of private sector employees, the government has provided daily monitoring through an electronic job protection system (ILO, 2020a). In the Australian context, economic measures in the form of financial support for those affected by the pandemic have provided positive health outcomes by reducing the number of people experiencing financial stress due to job loss (Griffiths *et al.*, 2021).

Some countries also adapted their employment services during the pandemic: they introduced new digital tools for online mediation in the labour market in order to facilitate successful matches between workers and employers; created new training and retraining programmes for dismissed employees (Lukianova and Zaitseva, 2021). For example, the Russian Federation has introduced a remote procedure for employment, registration of unemployed citizens and the payment of compensation, as well as increased unemployment benefits (Verkhovna Rada of Ukraine, 2021b). Brazil, in turn, has introduced remote work with the transition to a "home office", doubled the amount paid to men who are the head of the family and created a digital platform to help and facilitate the hiring of health workers in the fight against the pandemic (KPMG, 2020).

Lithuania and Germany have also expanded access to employment for low-skilled older people, and the Republic of Korea has favoured employment for young adults and increased the number of new employees in public institutions (ShieldGeo, 2021). In Anguilla, with 23.5% of the population suffering from poverty, the government has offered free training courses to more than 500 employers in the field of tourism to overcome the crisis (COVID-19: The Anguillian Response, 2020). Antigua and Barbuda paid severance pay for retraining to citizens who once worked for the regional airline (Office of The Prime Minister Antigua and Barbuda, 2021). In the UK, the government has introduced a scheme to provide financial support to companies to create jobs and train young people who have cash loans (Gov.ua, 2020b). In Indonesia, a pre-employment program aimed at the development and retraining of the unemployed has been introduced in the budget: tuition fees; incentive payment for job search; incentive payment for participation in social surveys (Bahar, 2020). In December 2020, the Government of the Maldives allocated additional funds to the unemployed, and in February 2021 announced a new programme to train young people in tourism and construction (The President's Office Republic of Maldives, 2021). Zimbabwe has announced that it will involve the private sector in the creation of training and retraining centres, labour-intensive public works

programmes, etc. as part of the 2021 National Development Plan (ITUC CSI IGB, 2021). Sweden provided a partial financial compensation of 60% of the tuition fee (Myklebust, 2020).

In some countries, labour market support costs depend on the current unemployment rate, making the employment system more responsive to changing labour market needs. In Denmark, the Netherlands and Switzerland, the size of the budget for labour market measures automatically increases as unemployment increases. At the same time, some countries still plan to increase the number of public employment service staff with the increase in the number of unemployed, in particular: France, Great Britain, Luxembourg and Turkey (OECD, 2021b). In addition, the Slovak government has introduced the "First Aid" scheme to support self-employed workers who have been forced to close down.

The measures implemented in the labour market were divided according to the number of countries as follows (Table 1): about 50% of countries implemented regulatory changes to labour regulations or provided wage subsidies, about 25% of countries conducted training or the transition to reduced working hours.

Table 1. Distribution of implemented measures in the labour market (author's own development)

Labour market measures	Number of countries that have implemented measures
Regulatory changes to the labour regulations	125
Wage subsidies	120
Training activities (learning new skills)	76
Transition to reduced working hours	75

Only 16 countries have implemented a full set of four measures: Antigua and Barbuda, Australia, Austria, Belgium, Brazil, Canada, Chile, France, Greece, Honduras, Mauritius, the Netherlands, Norway, Serbia, the Slovak Republic, and Uzbekistan; at least one of these measures was implemented by about 80% of countries. Active measures in the labour market are aimed at increasing the likelihood of employment in the short term and include: training, employment promotion, sheltered and supported employment and rehabilitation, direct job creation and promotion of start-up projects. In addition, subsidised social security contributions (245 programmes), unemployment benefits (172 programmes) and paid sick leave (134 programmes) are widely used. Pension-related measures in some countries,

such as Ecuador, allow for the early withdrawal of accumulated pensions (World Bank, 2021).

However, due to the pandemic, most public employment services have completely closed their offices to their clients (e.g., Germany, France, Denmark, Croatia, Spain, Estonia, Lithuania, Greece, and Poland). To avoid unnecessary visits to employment centres and vocational training centers, channels and digital tools have been introduced to provide consultations. A wide range of communication channels is used for remote counselling: telephone, Skype (Estonia, Sweden, Denmark), electronic communication programs, and to group meetings and webinars through audio and video conferences (Netherlands, Portugal). In Slovenia, consulting services were provided by regular website operators.

However, due to the pandemic, most public employment services have completely closed their offices to their clients (for example, Germany, France, Denmark, Croatia, Spain, Estonia, Lithuania, Greece and Poland). The channels and digital tools have been introduced to provide consultations in order to avoid unnecessary visits to employment centres and vocational training centres. A wide range of communication channels is used for remote counselling: telephone, Skype (Estonia, Sweden, Denmark), electronic communication programmes, group meetings and webinars through audio and video conferences (Netherlands, Portugal). In Slovenia, consulting services were provided by on-duty website operators.

The services of a psychologist, medical tests and skills tests (to decide on retraining measures) were not provided remotely. At the same time, there were restrictions on the provision of consultations due to the fact that the staff had not been previously trained (Austria, Slovakia, Croatia) (European Commission, 2020c). Specialists from the Public Employment Service also provided online correspondence services in electronic form (in Finland), with digital access for people with hearing or vision problems through the free mobile application RogerVoice (in France) (TE-palvelut, 2021).

Thus, many countries have comprehensively implemented their programmes on the activities in the labour market mainly in two ways: the activities of public employment services (Semaine Europeenne Pour, 2020) and active measures in the labour market (OECD, 2021b; Eurofound, 2020a). The programmes implemented in the labour market will be schematically presented in Figure 1.

Activities of public employment	Active measures in the labour market
- Advising and managing job seekers (Netherlands, Portugal, Slovenia, Suriname); - Financial assistance in finding a job (Denmark, the Netherlands, Switzerland), but Mexico and Spain, on the contrary, have reduced their labour costs for the unemployed); - Brokerage for employers in "hot" vacancies (for example, Germany created an online platform to help agricultural companies find local harvest workers, Estonia has ShareForceOne platform); - Provision of administrative benefits in order to preserve the jobs (Azerbaijan).	- Creation of development and new skills training (internship) funds (Italy, Ireland, Luxembourg, the Netherlands, Portugal, Austria, Lithuania, Germany), but Slovakia and Croatia suspended all training activities; - Initiative employment programmes (Estonia, the Netherlands, Spain, Malta). Ukrainian government has announced a programme to create 500,000 jobs; - Supported employment of people with disabilities (Italy, Ireland, Spain, France, Portugal, Poland, Slovakia, Croatia); - Subsidies for job creation (Netherlands, Romania, Lithuania, Hungary), Sweden, Denmark, Belgium, the Netherlands already had additional anti-crisis funds before the pandemic; - Start-up financing (Finland, Austria); - Subsidies to the unemployed for employment (Cyprus, Greece, France, Bulgaria, Spain, Great Britain).

Figure 1. The programmes implemented in the labour market (author's own development)

At the same time, employment under a permanent contract has been introduced in Portugal (Cabinet of Ministers of Ukraine, 2020). To help the unemployed adjust to the labour market, the French Employment Service provides access to free or paid employment courses in various professions and specialties, as well as webinars (Estamos On, 2020). Besides, the Public Employment Service in Germany has started providing information on online learning opportunities, including free courses (Pole-Emploi, 2021).

The vast majority of public employment services have suspended the introduction of incentives for employment. Only a minority of them continue to launch specific programmes and implement new measures, mainly for vulnerable groups. However, stimulating employment compared to other measures in the labour market, such as training and retraining, has longer-term prospects (KOFA, n.d.). Besides, the facts show that it is more advantageous to retrain existing employees instead of dismissing them and then finding new people (European Commission, 2020b).

Unemployment assistance programmes implemented by employment services are presented in Table 2 (Unemployment assistance programmes).

Table 2. Unemployment assistance programmes (author's own development)

Name of the programme	Countries where it is introduced	Peculiarities
Reducing the duration of processing applications for unemployment benefits	Spain, France, and Finland	Norway and Finland have reduced the time for receiving temporary unemployment benefits and extended the period for paying unemployment benefits. In Norway, the pay period for dismissal has been reduced from 15 to 2 days. The state bears the costs starting from day 3 (Sneader and Singhal, 2021).
Increasing the amount of unemployment benefits	Ireland and Norway	In Ireland, workers who lost their jobs due to the Covid-19 crisis received increased unemployment benefits in connection with the pandemic of EUR 1,400 per month, and those seeking — EUR 812 per month. In Ukraine, unemployment benefits have been increased by UAH 350 for the period of quarantine (Eurofound, 2020b).
Extension of unemployment benefits for several months, despite the availability of vacancies	Germany, France, Greece, Portugal, Luxembourg, USA	In response to the pandemic, all U.S. states provided 13 additional weeks of unemployment benefits from the federal budget and several weeks from state budgets (Ministry of Economy of Ukraine, 2020).
Simplification of the procedure for applying for unemployment benefits by means of an online programme or a programme by phone	France, Germany, Spain, Italy, Spain, Cyprus, Greece, Estonia, the Netherlands, Croatia, Russia, Romania and Ukraine (Center on Budget and Policy Priorities, 2021).	Aimed at reducing the administrative burden. These programmes are valid even without a signature, additional documents can be scanned or sent by mail if necessary.

In the period from March 20, 2020, to May 14, 2021, 3,333 social protections were applied in 222 countries or territories. Most social protection measures (55%) are provided in the form of social assistance, in particular in the regions of Eastern Europe, Central Asia and high-income countries. At the same time, in 186 countries social assistance was provided in cash. About 17% of the world's population has received at least one Covid-19-related money transfer. Only a minority of countries have the high flexibility of financial resources to respond to changes in the labour market. For example, by the first wave of COVID-19, in early 2020, Israel and Switzerland had already prepared crisis management plans in the labour market, which proved useful (Free legal aid, 2020). Croatia, Finland and Slovenia believe that the adaptability and commitment of

employment service staff, as well as the ability to redistribute tasks, have been key to their success in tackling COVID-19 in 2020 (Gov.ua, 2020a). At the same time, targeted activities for imaginary groups should be organised at the company level first aid available online or quick financial assistance for those who have partially or completely lost their way (OECD iLibrary, 2020).

3. Discussion

Countries with more flexible rules have been able to review their policies more quickly. About one third of the countries had very general framework laws on employment before the crisis, so the introduction and change of employment was practically implemented without the adoption of additional emergency laws. For example, in the Czech Republic, Malta and New Zealand, there was no need for the government or ministry to bring regulations into line with the crisis conditions. In countries with less flexible labour regulations, adaptation has been carried out without the involvement of parliament (Tušl *et al.*, 2021). As a result of the pandemic, the countries of the Anglo-Saxon legal family (USA, Great Britain) suffered the most in the labour market than the countries of the Romano-Germanic legal family (Germany) (Adams-Prassl *et al.*, 2020).

The results of monitoring the activities of the Government of Ukraine after the pandemic indicate the need for further implementation of a comprehensive approach to the legislative regulation of telework, as well as additional support for those whose employment and welfare have suffered most from the crisis (Publications Office of the EU, 2020).

Restrictions on the pandemic have forced automation of the workplaces in many industries after dismissals, and therefore, many firms will not return to the previous production process, even after the jobs are safe. At the same time, women with medium and low wages will feel the greatest risk of the negative impact of production automation (Filipchuk and Lomonosova, 2020).

Due to the pandemic, many industries in the market are unlikely to fully recover for some time, and many companies will emerge from this crisis in a negative financial position. New policy decisions should promote active labour market measures, including: investment in advanced skills development; temporary employment and transition to related specialties; increasing the volume of staff and qualifications of employment services, using the allocated funds.

To do this, it is necessary to develop and implement labour standards suitable for future work. However, the labour world is constantly changing,

especially due to digitization (European Commission, 2021). More than 80% of companies surveyed in 2018 have already used digital learning tools, and approximately 70% of companies consider the use of digital learning tools as an important tool to keep up with the times (Chernoff and Warman, 2021).

There is a direct link between the level of education, the results of practical training and the chances of employment. Many European countries do not provide training or retraining for those who have already received their first education. Women's labour can gain popularity in the labour market through education reforms and the introduction of childcare programmes. Control and testing of the actual skills of the working population remains low. The use of short-term schemes in work has already mitigated the negative effects of the pandemic on the labour market (KOFA, 2020).

Due to the Covid-19 crisis, the implementation of training activities seems difficult, as it is carried out only by digital means via the Internet. The potential for work from home in developed economies is only 20-25 percent of workers who could work remotely five days a week (ILO, 2020b).

Legal regulation of guarantees and social protection of the rights of persons dismissed from work at the beginning of the pandemic was not sufficient. Depending on income levels, countries allocated wage subsidies and labour regulations. Due to the prepared plans in case of crisis and rapid response to the pandemic, the countries of the predominantly Romano-Germanic legal family (Germany, Austria, Switzerland) suffered less losses in the labour market than the Anglo-Saxon family (USA, UK). The advantage for the country is the provision of reserve funds in the budget in proportion to the unemployment rate.

In order to protect the rights of those dismissed at the national level, programmes to combat unemployment are being implemented rather slowly. Such forms of work as telework and work at home are enshrined in law only a year after the start of the pandemic, but the introduction of a national digital system for receiving unemployment benefits is positive. Automation, digitisation and efficiency in the processing of applications for unemployment benefits avoids physical contact of the unemployed with the public employment service and speeds up the process of processing applications.

Conclusion

During the pandemic, most countries amended their labour regulations and provided labour subsidies to preserve jobs. However, in the course of recovery after the COVID-19 pandemic, governments in all countries need

to shift the focus from short-term immediate income and employment support to the long-awaited return to work of large numbers of unemployed by increasing labour demand. Although most European countries do not promote retraining for those who already have an education. To achieve this goal, governments and businesses need to: anticipate the current needs of the labour market; promote redistribution between industries; promote comprehensive development, training and retraining through free online courses and programmes; provide material support to the most vulnerable groups (women, youth, the elderly, unskilled workers).

In the short term, it is advisable to make changes to labour legislation: the introduction of the procedure for official management of remote work for employees and employers; determination of minimum requirements for digital technology training programmes in the context of a virtual office. In the long run, the government should focus on: reviewing existing labour legislation and ensuring the extension of remote work insurance policies to work from home; promoting the practice of hiring women, taking into account the availability of children and providing child care programmes (accessibility of social babysitting). Besides, the government should promote employment in safe remote working conditions for all those who can switch to this form of work by providing for appropriate rules in a standard employment contract.

The State Employment Service should develop a plan for crisis management in the labour market to protect the rights of those who lost their jobs due to the pandemic, which should include: increasing the staff of highly qualified personnel; consulting and case management of job seekers; providing financial and intermediary assistance in finding a job from among "hot" vacancies. Unemployment assistance programmes for the quarantine period should provide for the extension of unemployment benefits, despite the availability of vacancies.

The active measures to help the unemployed should include: the use of short-term work schemes; provision of funds for the development and training on new skills in the budget; technological support of employment for people with disabilities; provision of subsidies to employers to create new jobs; active provision of financial assistance and creation of incentives to support the implementation of start-ups of newly established enterprises; allocation of targeted subsidies to the unemployed.

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Suicide in the era of digital transformations (crime investigation practices)

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Abstract

The objective of this article was to identify the characteristics of crime investigation in the action of provoking someone's suicide on the Internet, identifying the main problems, characteristics of the investigation and prospects for improvement of the crime investigation methodology. For the development of the article the following methods were used to meet the objectives: comparative legal method, historical and comparative methods, which made it possible to analyze the state, problems, and prospects for the development of Ukrainian legislation in the field of liability for causing someone to commit suicide. The article also involves the method of systematization, which provided the opportunity to study the genesis and changes in the legislation that regulates the matter. It was concluded that there was a lack of good practices and an effective system for investigating Internet crimes, due to the peculiarities of the development and use of the Internet, as well as rapid technological advancement. Comparing the experience of the EU and the US, it was determined that preventive and educational functions are the main ones in this area, helping to prevent relevant crimes.

Keywords: suicide; information society; digitization; digital crimes; cybercrime.

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El suicidio en la era de las transformaciones digitales (prácticas de investigación del delito)

Resumen

El objetivo de este artículo fue identificar las características de la investigación de delitos en la acción de provocar el suicidio de alguien en Internet, identificando los principales problemas, características de la investigación y perspectivas de mejora de la metodología de investigación del delito. Para el desarrollo del artículo se utilizaron los siguientes métodos para cumplir los objetivos: método legal comparado, métodos históricos y comparativos, que permitieron analizar el estado, los problemas y las perspectivas de desarrollo de la legislación ucraniana en el campo de la responsabilidad por causar que alguien se suicidara. El artículo también involucra el método de sistematización, que brindó la oportunidad de estudiar la génesis y los cambios en la legislación que regula la materia. Se concluyó que existía una falta de buenas prácticas y un sistema eficaz para investigar delitos en Internet debido a las peculiaridades del desarrollo y uso de Internet, así como al rápido avance tecnológico. Comparando la experiencia de la UE y EE. UU., se determinó que las funciones preventivas y educativas son las principales en esta área, ayudan a prevenir delitos relevantes.

Palabras clave: suicidio; sociedad de la información; digitalización; delitos digitales; ciberdelito.

Introduction

The topicality of this work is due to the rapid economic and technological development in the world, which is reflected in the Ukrainian realities. The development of information technology in the early 21st century has led to the development of new opportunities and technological prospects in various spheres of human life. This resulted in the emergence of new serious world-class threats related to the current state of information and communication technologies.

Suicide is the leading cause of death worldwide, and suicide attempts that didn't cause death, which occur much more frequently, are a major source of disability, as well as social and economic burden.

One of the most pressing issues today is the liability for causing somebody to commit suicide, which is a sensitive problem in the modern world. Crimes against human life and health are considered to be among the most dangerous in the world. That is why special attention is paid to the law and practice of bringing people to justice for such crimes. The commission

of such crimes with the help of information technology significantly complicates the possibility of finding and prosecuting the perpetrators.

Children and adolescents are most often affected, thus posing a serious threat to the world community. This problem is multifaceted, and includes legal, psychological, social, medical, educational aspects.

The legislation of Ukraine does not provide a single approach to the definition and understanding of the essence of cybercrime or crimes in the information field. On the one hand, technology has significantly expanded human capabilities, while on the other, new types of crime have emerged, which are possible only with the use of information technology.

Causing somebody to commit suicide or attempted causing somebody to commit suicide are particularly dangerous and violating the Constitutional right to life and health as the highest social value (Article 3 of the Constitution of Ukraine) (Verkhovna Rada of Ukraine, 1996). Article 120 of the Criminal Code (Verkhovna Rada of Ukraine, 2001) was amended and supplemented in 2018 because of the spread of attempted crime on the Internet. The basic international act in the field of combating crimes committed in cyberspace for Ukraine is the Council of Europe Convention on Cybercrime of 23 November 2001, to which Ukraine acceded with reservations in 2005. This Convention has been ratified in 58 countries, and it is an international agreement under which the parties undertake to approximate domestic criminal law provisions on cybercrime and create opportunities for the use of effective means of their investigation (Samoilenko, 2020).

Modern innovative technologies have given the opportunity to communicate with people from around the world, facilitated the search for information, the impact on people. However, there is still no scientific development of ways of their interaction and coexistence, they have no direct interpersonal contact. The virtual image is not separated from the person, the person does not see the other person directly, does not know the whole truth about the behaviour of another person and his/her intentions (Dragunov, 2020). There was a time of several waves of dangerous Internet games, which included the so-called “death games”: Blue Whale, Wake Me Up at Midnight, Silent House, and so on. The peculiarity of such games was that the curators used neurolinguistic programming to influence the participants of these games, forcing them to carry out criminal and risky orders of the curators, and ultimately, the last task is to commit suicide (Dragunov, 2020).

Accordingly, the police faced a number of problems in investigating such crimes, including the lack of legal elements of the crime, the difficulty of finding evidence, and the tracing of criminals. There were no methods of investigating such crimes, which often turned out to be cross-border and required international intervention. Thus, Ukraine established the Cyber

Police Department in 2015 to monitor and investigate cybercrimes. Over time, there has been an improvement in the methods and techniques of such investigations, primarily through the use of an integrated approach and preventive measures. There are almost no facts of prosecution for such crimes. In Ukraine, no sentences have been passed in such cases. In the United States, there have been cases of both adults and minors being prosecuted for causing somebody to commit suicide (Keryk, 2017). Particular attention was paid to the fact that adolescents were the most vulnerable group. Therefore, it was especially important to learn how to prevent relevant crimes.

Accordingly, a number of studies were made regarding not only on the legal side of such crimes, but also the social, psychological, technological, medical and other aspects. As a result, it became clear that overcoming crimes against life and health on the Internet is possible only through preventive and consistent action. The need to prevent such crimes is of great importance: through artificial intelligence, which removes and blocks death groups when they first appear, through the work on education and raising awareness of adolescents, as well as outreach to parents and relatives (Keryk, 2017).

Criminals are often high-tech professional groups (Keryk, 2017), which can cause even healthy, socially successful adults to commit suicide with the help of psychological methods on the Internet. The causes of such crimes include the desire to make money by selling suicide videos on DarkNet, psychological and social experiments, and testing new psychological methods of manipulating groups of people. Most often, such groups have high-tech cross-border opportunities for concealment. Therefore, this issue remains urgent for Ukrainian realities, and needs comprehensive research and development.

That is why the problem of bringing to justice for such crimes is one of the most controversial and discussed issues not only in Ukrainian realities, but also in the world. There is a need to study foreign legislation and experience in order to improve methods of suicide prevention, especially among minors through social networks.

The nature of Internet threats has changed, became international with the introduction of Internet technologies in everyday life, and especially with the use of Web 2.0.

The study of the causes and criminal characteristics of causing somebody to commit suicide on the Internet due to its urgency attracts the attention of many world scholars. This global problem is studied from different angles:

- from the perspective of criminal law, which defines the main criteria and features of bringing to justice for such crimes.

- from the information and technical perspective to remove content that poses a threat, as well as to facilitate the search for crimes.
- from the sociological perspective to determine the features of the impact of relevant crimes on society.
- from medical and psychiatric perspective to determine medical indicators, biochemical processes, and preconditions for human suicide.
- from the psychological perspective to determine the preface and the possibility of preventing such crimes.
- from the pedagogical perspective, which includes educational function.

Relevant previous studies have shown that not only adolescents and children, but also adults of any age and profession are at risk. In many cases, causing somebody to commit suicide on the Internet is a professional psychological work involving neurolinguistic programming practices, which can affect anyone. The peculiarities of the Internet space and the use of the latest technologies significantly complicate the process of finding criminals, obtaining evidence in the process of investigating such crimes and bringing the perpetrators to justice. Moreover, criminals in many cases operate in professional international groups using the latest technological developments. As a result, there is a very low level of detection and prosecution for relevant crimes both in Ukraine and around the world. The problem is complicated by the level of technical provision and communication support of national law enforcement agencies. Therefore, the issue of prosecution for crimes committed on the Internet is one of the most difficult issues in the world and, accordingly, remains one of the most acute socio-legal problems of mankind. It is these factors that determine the topicality of this article.

1. Methods and materials

This article involves modern general scientific and legal research methods, among include the comparative legal method, which was used to conduct a comprehensive analysis of the practice of prosecuting crimes against life on the Internet. The comparative legal method allowed analysing the practice and standards of the European Union and other foreign countries in this area.

Historical and comparative methods were also used in the work to study and analyze national and foreign scientific and practical sources in this field in the historical context. These methods allowed to analyze the current

state of the legal framework and practical developments in different periods of development of criminal liability for crimes against life committed on the Internet. The method of systematization is applied in the work, which provided an opportunity to generalize, arrange and classify the studied material. Thus, the lack of a systemic approach to fulfilling the tasks in the legal regulation is identified as the main cause of the problem the lack of good practice of investigation for causing somebody to commit suicide on the Internet.

The study analysed the legislation of Ukraine in the field of liability for crimes against life committed with the help of innovative technologies, namely the Constitution of Ukraine, the Criminal Code of Ukraine and ratified international instruments in this area.

Ukrainian and foreign scientific and practical materials on the research topic were also analysed. Among the studied sources, works were selected that allowed to research the practice of investigating crimes against life from a legal, medical, socio-educational and psychological perspectives. It also identified weaknesses and approaches to studying the practice of investigating cases of causing somebody to commit suicide in the context of the digital transformation of society in Ukraine and around the world. An analysis of the legislation of some EU and US countries in the field of responsibility for causing somebody to commit suicide on the Internet was carried out. An analysis of international legislation and international documents and acts in this area was conducted.

The research procedure included determining the relevance and urgency of the chosen topic, analysis of scientific and practical methods and approaches used to conduct research on the practice of investigation into cases of causing somebody to commit suicide in the context of digital transformation of society. The next step was a selection of materials for the study on the basis of an integrated approach, which allowed a comprehensive study of the subject and identifying the main problems and prospects of this study. We also conducted a selection of materials on the territoriality basis, which allowed determining the state of development of this problem in different regions and studying the experience of individual countries. On the basis of our research, we made conclusions and recommendations for improving the practice of investigating cases of causing somebody to commit suicide in the context of the digital transformation of society.

An important task is to create a complete system of investigation of relevant crimes, considering the best technical, legal, socio-pedagogical experience to form a comprehensive mechanism of liability for leading to suicide in the context of digital transformation of society. The object of research is public relations in the field of investigation and prosecution for causing somebody to commit suicide in the context of digital transformation of society.

2. Results

Analysis of the number of cases by year and statistics of detection of such crimes showed that crimes on the Internet are latent, and therefore the detection rate is very low. In the United States, suicide is one of the leading causes of death among adolescents and young adults. According to a 2016 study, suicide in the United States was the second leading cause of death among adolescents and young people aged 14 to 24 (Kessler *et al.*, 2020).

According to official data from the World Health Organization, suicide as the cause of death of children and adolescents ranks third (Kessler *et al.*, 2020). Moreover, Ukraine ranks one of the first in Europe in the number of suicides. In 2020 alone, 7,654 cases of suicide were recorded, including 123 suicides of adolescents. The urgency of the problem of investigating the relevant crimes was determined by the fact that encroachment on human life and health was identified as one of the most socially dangerous acts in the world. The mechanism and dynamics of these crimes indicate that law enforcement agencies and courts face significant difficulties in investigating them.

The study showed a lack of a unified approach to terminology at the legislative level. Ukraine still has no single approach to understanding such crimes, and the terms "crimes with the use of information technology", "digital crimes" and so on are used. Such crimes include the crimes provided for in Article 120 of the Criminal Code of Ukraine: "causing somebody to commit suicide". First of all, the subject of such a crime is not homogeneous, amorphous and is anonymous. The object is legal relations, but also the honor and dignity of man. The objective aspect usually has technical means as the subject of crime. The subjective aspect is presented in the form of action of a certain person who has a direct intention and has the suicide of another person as his/her motive (Merriott, 2016).

The implementation of Article 120 of the Criminal Code of Ukraine was once complicated by the problem of obtaining evidence. According to Guidelines No. 9 to the Regulations on the Procedure for Maintaining the Unified Register of Pre-trial Investigations, such crimes are registered in Ukraine as "committed with the use of high information technologies and telecommunication networks", that is the emphasis is on the means of their commission — information technologies. Moreover, as the practice of banned Internet resources — Blue Whale, Pink Fairies, Silent House, Wake Me Up At 4:20, Sea of Whales, Milky Way, U19, F57 —showed, adolescents and children are at a particular risk.

Such "death groups" first became known in May 2016. The administrators of these groups did not interact with the victims personally, but via the Internet, that is the victims did not know their whereabouts and personal data (Karppi, 2016).

In 2017, the Criminal Code defined four ways of causing somebody to commit suicide or suicide attempt: ill-treatment, blackmail, coercion to commit illegal acts or systemic humiliation of human dignity. Moreover, the offender may not make a direct call to commit suicide, but act through pressure, insults, and so on.

Analysis of scientific and practical criminological and medico-psychological research has identified potential victims, namely vulnerable groups, as well as factors that contribute to committing suicide. Not only teenagers and young people, but also adults, the military, employees of educational institutions, the police, etc. were at risk. Moreover, people with psychiatric illnesses are particularly vulnerable groups. Studies showed that society has a misconception that people with mental illness are potentially dangerous and can commit a crime (Swanson *et al.*, 2015). The victimization of potential victims takes place, which has been little studied in criminology.

Also, several medical scientists have concluded that certain human diseases and sleep problems cause inflammatory processes, which further affect a person's emotional state (Swanson *et al.*, 2015; Institute of Medicine, 2006). The results showed that the assessment of sleep problems can be useful for identifying risk groups. It is worth noting that such groups as "4.20", "Wake me up at midnight" were especially common among death groups, which are designed to disrupt the human sleep cycle.

The causes of suicide can include both blackmail and incitement to crime, as well as disorders ranging from depression to some viral and parasitic infections, Covid-19 (Singh *et al.*, 2021; Goyal, 2019). Environmental problems, overpopulation of the planet, social pressure (Smail, 2002), quarantine and job search problems (Smail, 2002), loss of livelihoods (Shammi *et al.*, 2021) are of great importance for increasing suicide rates. Risk groups also include people with accumulated stress, in a state of moral crisis (Shammi *et al.*, 2021), with genetic variability, adverse life events (Prasad Neupane, 2021; Chaudhuri *et al.,* 2021). Vulnerable categories also include farmers due to rising debt. In India, for example, 16,000 farmers die each year from suicide, well above the rates of general population. The widespread use of pesticides is among the reasons (Onwona Kwakye *et al.*, 2019). US studies showed that the suicide rate among police officers is much higher than among the general population (Schweitzer Dixon, 2021). Therefore, it is necessary to purposefully involve and train staff to work with suicide prevention.

In 2021, the neuroimmunology of suicide is actively developing (Sosnina, 2017). Moreover, the modern world faces new risks and threats during a pandemic, especially when the Internet becomes the main source of communication. Thus, the ongoing COVID-19 pandemic has fostered communications and increased human vulnerability.

There has also been increased alcohol use, domestic violence and child abuse during a pandemic, potentially increasing vulnerability to suicide. Given the fact that the potential for increasing the number of suicides persists, the issue of suicide prevention remains urgent and important (Hari Hara *et al*., 2021).

Analysis of methods and approaches to committing relevant crimes showed that causing somebody to commit suicide on the Internet is realized mainly by a psychological impact on a person through the display of photos and videos, blackmail, intimidation, incitement to commit certain acts, up to suicide, even if a person does not want it, etc. (Rec, 2020). Moreover, it should be noted that when intentionally causing somebody to commit suicide, criminals deliberately seek out vulnerable people who can easily fall under their influence.

So, the problem of causing somebody to commit suicide in the age of digital transformations is a complex problem and cannot be solved by legal science alone.

The main means of influence are specially selected verbal and nonverbal language programmes, the assimilation of the content of which helps to change a person's beliefs, views and perceptions. In the so-called "death groups", reprogramming is conducted by the curator of these groups, who communicates with the members of the groups in person and assigns them tasks.

The following stages of communication are identified in this process:

- search and recruitment of participants.
- involvement in the group.
- involvement in rules and culture, among which the ban on telling adults is important.
- propaganda and cult of death.
- threats or control over the participant, with the requirement to commit suicide.

The methods of causing somebody to commit suicide include cyberbullying, which is the persecution of a person for various reasons (Schweitzer Dixon, 2021).

Cyberbullying can be seen as a fragment of invective communication, which regulates the relationship between speech participants to the individual through aggressive verbal and nonverbal actions aimed at reducing social status (Daineka, 2013), through harassment and bullying or other actions that provoke the emergence and intensification of suicidal thoughts in victims (Rec, 2020).

According to the Cyber Security Forum 2018 (CSF, 2018), 48% of adolescents aged 14-17 have been blackmailed, 46% of adolescents have witnessed aggressive online behaviour, and 44% have received aggressive messages (Myskevych, 2019). According to various data, about 67% of children in Ukraine have experienced bullying among peers. The most common causes of bullying by peers are appearance, beliefs and potentially victimized behaviour, communication) (Myskevych, 2019).

As a response, Law of Ukraine "On Amendments to Article 120 of the Criminal Code of Ukraine on Establishing Criminal Liability for Assisting in Suicide" was adopted on February 8, 2018. According to this Law, the act remained unchanged — causing somebody to commit suicide or suicide attempt, but the methods of committing this act have expanded. The legislator was forced to expand the content of the provision of Article 120 of the Criminal Code of Ukraine, namely, to expand the disposition of the article to the responsibility for causing somebody to commit suicide and suicide attempt.

Such crimes are in most cases committed by highly organized professional criminal groups consisting of specialists in psychological, technical, and medical fields. Organizers of digital crimes are often psychologists who aim to either test technology to influence people at a distance or earn money by reselling suicide videos. They use modern technologies, as well as methods of psychology and neurolinguistic programming to influence potentially vulnerable people. Performers have a good understanding of the psychology of the adolescent and using it, easily gain confidence of the potential victim.

There is also the problem of establishing a causal link between suicide and the actions of criminals. The prosecution practice in this area is very limited. The experience of other countries also shows rather limited results of investigations.

For example, in Australia, inducing a person to commit suicide is a crime. A crime will be recognized if incitement or counselling has resulted in another person attempting suicide (McGorrery and McMahon, 2019). Penalties for incitement to suicide vary by territorial jurisdiction. The maximum penalty is 5 years of imprisonment in New Wales, 10 years — in the Australian capital, life imprisonment in Queensland and the Northern Territory, and in South Australia the punishment is applied if the suicide attempt was successful (14 years) or unsuccessful (8 years) (McGorrery and McMahon, 2019). However, there is no evidence that anyone has ever been convicted or charged with any of these crimes of inducing a person to commit suicide in Australia.

As in Ukraine, the problem is to establish a causal link in such cases. In Britain, causing somebody to commit suicide is classified as murder. On 29 April 2002, the European Court of Human Rights in Strasbourg

delivered its judgment in Pretty v. The United Kingdom, which found that the prosecution for causing somebody to commit suicide provided for in the 1961 UK Suicide Act did not violate fundamental human rights as enshrined in the European Convention on Human Rights and Fundamental Freedoms. According to Section 2 of the 1961UK Suicide Act, "a person who assists, induces, advises or arranges another person's suicide, or another person's attempt to commit suicide, shall be liable to imprisonment for a term not exceeding 14 years".

According to EU law, each country must decide for itself how to prosecute such crimes. In general, causing somebody to commit suicide has been decriminalized. However, a number of states have retained the relevant rules. Article 301 of the Greek Criminal Code provides for punishment for "participation in suicide", that is aiding or abetting suicide (Steering Committee on Bioethics, 2003).

Swiss law also criminalizes incitement, aiding and abetting a person who assists in someone's suicide "for selfish motives" (Steering Committee on Bioethics, 2003). There are euthanasia and abetting suicide. Articles 212, 213 and 323c of the German Criminal Code also provide for criminal liability for aiding and abetting suicide (Steering Committee on Bioethics, 2003).

Causing somebody to commit suicide is criminalized in some US states and there are successful examples of prosecution for such crimes. However, this norm conflicts with the First Amendment to the US Constitution (Binder and Chiesa, 2019).

In 2017, a Massachusetts court in the United States convicted Michelle Carter of involuntary manslaughter for abetting suicide of Conrad Roy by text message, but sentenced her to only 15 months of prison. Under Massachusetts law, the perpetrator who causes death of another person is found guilty of murder and is liable to life imprisonment.

Also, California Penal Code No. 401 provides liability for causing somebody to commit suicide punishable by up to 3 years in prison (Sierra, 2020).

Ukraine has no methodology for investigating cybercrime and has a problem of lack of specialization of investigators at the regional level. Prosecution of crimes committed in cyberspace is entrusted to inexperienced investigators, which leads to incomplete investigations, the inability to establish the composition of the criminal group. According to the materials analyzed in more than 80% of criminal proceedings, the investigation found that unidentified persons were involved in the crime (Samoilenko, 2020).

Therefore, there was a question of speed and efficiency of involvement of specialists in the relevant fields to fulfil the tasks set by the investigation.

The issue of involving such specialists in the personnel reserve of law enforcement agencies is relevant. The problem of criminal prosecution for causing somebody to commit suicide in the context of digital transformation is international and reflects the socio-educational problems of the modern world.

As a result of identifying a number of problematic aspects, a number of recommendations were developed at the international level, mainly based on preventive principles, namely education and raising awareness of children and adults, search and removal of illegal content, methodological work consisting of: work with at-risk groups and relatives; monitoring of root causes; identification of content that poses a threat to society; technical development that will allow tracking and preventing relevant crimes.

The WHO concept of suicide prevention — Live Life — recommends the following effective and evidence-based measures: restricting access to means of suicide; interaction with mass media; development of social and emotional life skills in adolescents; early detection, examination, management of persons suffering from suicidal behaviors. A successful example is the experience of Finland, which was one of the first countries to develop a national programme for the prevention of suicide among adolescents. The suicide rate in the country has dropped by 30% in ten years.

In order to solve the problem of suicide among children and adolescents, it is also necessary to regulate the safety of minors on the Internet, in particular, to establish control over access to the network in computer rooms and libraries.

On the other hand, India, where suicides are of religious and traditional origin, Article 21 of the Indian Constitution says that "no one shall be deprived of life or personal liberty except as provided by law", attempted to decriminalize crimes against life in 2014. The victim of a crime is determined by the offender. Section 309 of the Indian Penal Code makes it clear that anyone who attempts to commit suicide and makes any act of committing such an offense is punishable by a simple imprisonment of up to one year or a fine (Ranjan *et al*., 2014). Law enforcement agencies and non-governmental organizations, including the Cybercrime Center, which is part of the U.S. Immigration and Customs Enforcement, play an important role in preventing suicide among minors in the United States. The main tasks of the Cybercrime Center are fighting against Internet crimes; information and technical support for the investigation of such crimes; training and technical support. The US Secret Service also plays a role in preventing and investigating high-tech crimes.

US regional computer forensics laboratories are particularly important in the context of the study. Their main tasks are the collection and analysis

of digital crime scene data; objective search and review of digital evidence; technical assistance to law enforcement agencies during the investigation of cybercrime; recovery of damaged digital information, etc. (Kessler *et al.*, 2020). The United States have the National Strategy for Suicide Prevention of the US Department of Health and Human Services (Breux and Boccio, 2019), which advocates greater involvement of the public and private sectors in suicide prevention initiatives among young people. The education system has been recognized as a logical place to continue suicide prevention efforts, and schools have taken on a greater role as leaders in identifying, soliciting, and assisting young people.

The experience of Germany is also valuable. In particular, there are non-governmental organizations in this country that provide protection for minors on the Internet. One such association is the non-profit organization Jugendschutz.net, which, together with the State Commission for the Protection of Minors in the Media and the German Society for Suicide Prevention, takes measures to prevent suicide. These organizations search for so-called "suicide forums" on the Internet, where suicides communicate, and take steps to remove content, educate and raise awareness of young people.

Germany and Austria have The Ripple Effect programme for suicide prevention, which has developed guidelines, support and descriptions of the experiences of people who have had unsuccessful suicide attempts (Dreier *et al.*, 2021).

The participation of the international community and organizations in the implementation of a consistent policy to prevent digital crime is critical. For example, in 2019 there was an improvement in the way Facebook processes information. Artificial intelligence detects dangerous content, and make actions on potentially harmful content. From April to June 2019, Facebook took steps to remove more than 1.5 million suicide content, and more than 95% of it was detected by the time users reported it.

The Department of Cyberpolice of Ukraine is taking measures to prevent causing minors to commit suicide of minors on the Internet. They identified 434 "death groups", of which 102 were blocked.

As of 2021, significant progress has been made in the development of suicide prevention and treatment strategies (Swanson *et al.*, 2015). Scientists have concluded that the prevention and investigation of relevant crimes requires coverage of phenomena such as suicide with the involvement of different scientific approaches and areas of research (Prasad Neupane, 2021). Unsatisfactory results of law enforcement reform led to the fact that the technical arsenal of criminals often exceeds the level of means to combat them, necessitates the development of innovative principles to provide the activities of relevant bodies (Keryk, 2017). The investigation of such crimes can be optimized by:

- supplementing Article 120 of the Criminal Code with a note in which to provide the conceptual framework.
- introduction of new tactical operations, identification of criminals and their personal data.
- improvement of technologies.
- development for the accumulation of special knowledge in the investigation of crimes committed in cyberspace.
- involvement of specialists and experts for direct technical assistance during procedural actions, etc.

3. Discussion

The complexity of the investigation is due to the peculiarities of the Internet, the vulnerability of wireless access and the use of proxy servers, which greatly complicates the detection of criminals. Therefore, such crimes remain one of the most dangerous. It is difficult to prove involvement and influence on human consciousness. Moreover, customers, organizers may be in another country, which complicates their search and prosecution. There are many cases when the organizers of groups remain at large (Fazel and Runeson, 2020). Therefore, when investigating crimes in cyberspace, it is first necessary to refer to the rules of international law and international treaties.

So, it was concluded that there is no effective mechanism for prosecuting individuals for committing a crime against life on the Internet. Law enforcement agencies investigating such crimes have lengthy and complicated procedures for accessing the assistance of focused specialists.

Research in this area were chaotic, the adoption of legislation was fragmentary, resulting in the failure to build a single integrated management system or its legal mechanism. There are no proper material and technical resources, and the level of support does not allow for the effective implementation of ever-changing technologies. Thus, the level of scientific and technical background and the involvement of focused specialists in the bodies investigating such crimes are usually insufficient for an effective investigation.

There is also an unresolved issue of ownership of the evidence base and proof of the causal link between the perpetrator's actions and the victim's death. In 2015, the Cyberpolice Department was established in Ukraine on the basis of Resolution of the Cabinet of Ministers "On the Establishment of the Territorial Body of the National Police" No. 831of October 13, 2015.

This Department participates in the detection of various crimes committed through telecommunications networks and technologies.

To prevent and combat such crimes, it is necessary to pursue a comprehensive system of measures designed not only to prosecute criminals, but also to prevent such crimes and even suicide attempts where possible. Therefore, preventive pedagogical and psychological work with young people is important. By establishing trust with adolescents, establishing contact, it is possible to detect criminal groups at an early stage and prevent crime, gather evidence and bring the perpetrators to justice for intending to commit a crime. There are a number of recommendations In Ukraine for identifying and preventing the impact of "death groups" on young people (State Penitentiary Service of Ukraine, 2020).

In general, the practice of prosecuting in this area is very limited. Thus, the complexity of the investigation of the relevant crimes has determined the priority of preventive measures. They include education of children and adults, search and removal of illegal content, methodical work.

Conclusion

As a result of the study, we can conclude about the relevance of this problem in Ukraine and the world. After all, crimes against life pose an increased social threat. The urgency of solving this problem is also determined by the fact that the suicide rate in the world is quite high, and the number of crimes is growing with the expansion of innovative technologies.

Accordingly, there are a number of difficulties that slow down the process of investigating crimes under Article 120 of the Criminal Code of Ukraine, including the lack of proper methodology, facilities, experience of investigation, the cross-border nature of such crimes. The complexity of detecting, stopping and investigating cybercrime is largely due to the electronic form of information. Besides, the detection, cessation and investigation of cybercrime requires appropriate material and technical resources, which is a difficult issue in Ukrainian realities.

Based on the results, we can draw conclusions about the relevance and urgency of this problem, the lack of a unified approach to the conceptual framework. There are also no effective mechanisms for obtaining evidence, as well as finding and prosecuting perpetrators.

The level of equipment and focused training of specialists is insufficient, especially in comparison with highly equipped criminal groups. Therefore, we have developed recommendations that include, first of all, preventive and precautionary measures. The experience of foreign countries has shown their focus on educational activities in the educational process, working

with psychologists, etc. An important part is the psychological work to establish trust between parents and children, which allows us to quickly identify potential victims and prevent such crimes at the first attempt to influence a person for causing him/her to commit suicide.

Awareness-raising is important for children, adolescents, and adults alike. We also recommend the introduction and provision of additional functions for the position of psychologist in educational institutions, specialized law enforcement agencies. Professional psychologists can not only conduct initial and explanatory work, but also identify potential victims in a timely manner and help prevent crime and track down a criminal group.

It is important for the specialized law enforcement agencies to improve the function of researching risky sources and content on the Internet, to remove it in advance. Therefore, it is recommended to introduce and improve information technology, expand the technical resources of departments. Specialists in medicine, psychology, psychiatry, and social sciences, etc. need to be involved on a regular basis and as needed. Causing somebody to commit suicide through the use of digital technologies is a multifactorial phenomenon, so it requires comprehensive consideration by legal science, sociology and psychology.

The root causes of the practice of criminal prosecution for causing somebody to commit suicide in the context of the digital transformation of society is the lack of a consistent integrated approach in the work of law enforcement agencies. To achieve an effective result, it is possible to create an effective mechanism for combating crimes on the Internet. Therefore, it is important to develop a comprehensive methodology for detecting and investigating such crimes. Moreover, such conditions contributed to significant problems in the legal regulation and practice of application, and proper communication has not been established between the responsible subjects.

Prospects for further research are methodological approaches to the definition of terminology, as well as the search for and confirmation of the evidence base in crimes against life committed with the help of information technology.

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Experience in the legal regulation of international cooperation in police activity

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Abstract

The objective of the research was to reveal the experience in the legal regulation of international collaboration in the police and further define opportunities to use this experience in Ukraine. The need to study the successful experience of administrative and legal regulation of international police cooperation, is emphasized in order to determine the possibility of using this experience proactively, and developing ways to improve the quality of administrative and legal regulation of international police cooperation in Ukraine. Materials and methods based on the analysis of documentary sources were used. It is concluded that the main advantages of administrative and legal regulation of international police cooperation in the investigated countries, should be taken into account to improve the mechanism of administrative and legal regulation of international cooperation in the National Police of Ukraine, with respect to implementing better and more effective provisions of its activities, which includes: introduction of special international training programs, retraining, advanced training (internship) of police personnel for the creation of an institute for international cooperation in various spheres of its activity.

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Keywords: international police experience; International cooperation; prospects for implementation; comparative research; police science.

Experiencia en la regulación jurídica de la cooperación internacional en la actividad policial

Resumen

El objetivo de la investigación fue revelar la experiencia en la regulación legal de la colaboración internacional en la policía y además definir oportunidades para usar esta experiencia en Ucrania. Se enfatiza en la necesidad de estudiar la experiencia exitosa de la regulación administrativa y legal de la cooperación policial internacional a fin de determinar la posibilidad de utilizar esta experiencia proactivamente y desarrollar formas de mejorar la calidad de la regulación administrativa y legal de la cooperación policial internacional en Ucrania. Se utilizaron materiales y métodos basados en el análisis de fuentes documentales. Se concluye que las principales ventajas de la regulación administrativa y legal de la cooperación policial internacional en los países investigados, debe tenerse en cuenta para mejorar el mecanismo de regulación administrativa y legal de la cooperación internacional en la Policía Nacional de Ucrania con respecto a implementar mejores y más efectivos provisiones de sus actividades, lo que incluye: introducción de programas internacionales especiales de formación, reciclaje, formación avanzada (pasantía) de personal policial para la creación de un instituto de cooperación internacional en diversas esferas de su actividad.

Palabras clave: experiencia internacional policial; cooperación internacional; perspectivas de implementación; investigación comparada; ciencias policiales.

Introduction

In recent years, Ukraine has kept its course for European integration, which requires it to bring domestic legislation in line with the EU legislation, in particular this concerns legal regulation of international cooperation between the bodies and subdivisions of the National Police. This state of affairs presupposes necessity of studying foreign experience (including European experience) in the legal regulation of international cooperation in activities of police and international law enforcement organizations.

Analyzing the process of formation of legal bases of cooperation in police activity in the leading countries of the world, their essential transformations and changes will give an opportunity to allocate directions which are important for definition of conceptual bases for improvement of administrative and legal regulation of international cooperation of bodies and divisions of the National police of Ukraine.

The European integration course of Ukraine, bringing domestic police legislation in line with the legislation of the EU countries and establishing international cooperation between the bodies and subdivisions of the National Police of Ukraine determine the necessity to study foreign experience of administrative and legal regulation of international cooperation in police activities as well as the necessity to borrow ways of its introduction into the national system of law and legislation.

1. Literature review

I.V. Skorohod notes that the present day situation requires further elaboration of development directions and more detailed analysis of their prospects. On the one hand, not all experiences are successful and on the other hand, as the author points out - not all experiences can be implemented at once Research of international experience in legal regulation of international cooperation of police activity in various spheres always causes scientific interest, which is also connected with rather variable legislation in the mentioned sphere (Kulish, 2020).

According to A.M. Chorna a number of reform processes is taking place in Ukraine today, in particular, due to the fact that our country seeks to integrate into the highly developed Western European community. This explains the need to introduce rules and standards that are commonly adopted in a civilized democratic world into all spheres of our public life. In this regard, the study of foreign countries' experience in formulation and implementation of state policy in key areas of public life is of particular importance (Chorna, 2018).

Successful foreign experience of the Armed Forces of Latvia, Lithuania and Estonia shows that the effectiveness of the functioning and operation of Armed Forces depends on a clear definition of key priorities in the sphere of defense, chains of international cooperation and proper logistics. In order to intensify international cooperation and implement NATO standards, Ukraine has already taken a large number of steps toward closer integration into the North Atlantic Alliance, but implementation of NATO standards defined at the regulatory and legal level does not yet mean their actual implementation, which requires a number of resources, including adequate level of material and technical support (Chumak, 2019).

Studying certain directions of activity of the police of Ukraine, in particular counteraction to different forms of cybercrime taking into account international experience, V.V. Chumak points out that international activities of the cyberpolice of Ukraine acquires a special importance in connection with the rapid development of information technologies that destabilizes normal functioning of the cyber society , and violates rights and fundamental freedoms of persons and citizens (Ilchenko, 2019). A reliable guarantee of proper functioning of the European space of justice, freedom and security consists in provision of the necessary level of law and order not only on the territory of each member state of the European Union and the entire international community as a whole, but also on the territories adjacent to it.

Thus, as indicated by O.I. Bezpalova a characteristic feature of the common space of justice, freedom and security is presented as the need to ensure a harmonious combination of its two aspects: external and internal. It is clear that the internal aspect of this space presupposes consolidation of efforts of law enforcement bodies of the European Union member states aimed at insurance of internal security and maintenance of law order throughout the Community, creation of a number of specialized bodies (institutions) whose activity should be directed at the promotion of the work of national law enforcement bodies (Chumak, 2019).

Thus, taking into account that at present the Institute of International Cooperation of bodies and subdivisions of the National Police of Ukraine is at the stage of its formation, the urgent need is to study successful foreign experience of legal regulation of international cooperation in police activity in order to determine the possibility to use this experience in Ukraine and to develop ways of qualitative improvement of administrative and legal regulation of international cooperation of the police in Ukraine.

2. Materials and methods

Research of materials and methods based on the analysis of documentary sources and normative legal acts of foreign countries. The dialectical method of knowing the facts of social reality is the basis on which formal-legal and rather legal approaches are largely based. The formal-dogmatic method contributed to the development of the author's explanation of the current state, problems, problems and practical role of legal technologies for the further development and improvement of police activities in foreign countries (Myronets *et al.*, 2021). The official legal method allowed to suggest directions and types of use of legal technologies as prospects of police activity in foreign countries.

3. Results and discussion

Introduction of European standards and values in the social, legal and economic spheres of the Ukrainian way of life, as well as introduction of the world best practices in domestic legal thought entails not only changes in existing regulations and dogmas, but also emergence of new norms and rules which are sometimes contrary to the current legislation. A special role in almost all European integration processes is played by changes brought to the current legislation of Ukraine which Ukraine has undertaken to implement in real life (Smirnova, 2010).

We would like to start the research with analysis of the administrative and legal regulation of international police cooperation in France, where protection of national interests has been determined as a priority direction of activity of all public authorities (National Police of France, 2021).

The National Police of France (French: *Police nationale*) is one of the two national police organizations of the country, along with the National Gendarmerie of France. The National Police of France was created

on August 14, 1941 by the Vichy Government to replace the General Directorate of National Security and came under the leadership of the Fourth French Republic in 1946. The National Police is part of the French Ministry of the Interior (hereinafter – the FMI). The National Police works mainly in urban areas, and in rural areas law enforcement functions are performed mainly by the Gendarmerie (National Police of France, 2021).

Since international police cooperation in France is at a fairly high regulatory level the National Police has an international technical cooperation service which takes care of international police cooperation and defines criminal law, criminal procedure, criminology, organizational law and international spheres of activity of the National Police of France.

It should be emphasized that the International Technical Cooperation Service of the National Police closely cooperates with the Office of International Cooperation of the FMI, which serves as a guarantee of an effective legal mechanism for implementation of international cooperation of the Police of France.

Interaction between the mentioned subdivisions takes place on the following principles:

- ensuring participation of each police officer in international cooperation in the relevant sphere of his activity.
- control by the International Cooperation Department of the FMI over compliance with legislation in the sphere of international police cooperation, assessment, and analysis for compliance with modern challenges.

- establishing effective cooperation between the National Police of France and foreign police authorities and international law enforcement organizations.
- taking into account opinion of the International Technical Cooperation Service of the National Police during the formation of agreements on cooperation of the National Police by the International Cooperation Department of the FMI (Leheza *et al.*, 2021).

The mentioned body plays a coordinating role in the mechanism of international cooperation of the National Police of France in order to promptly resolve issues within its competence.

And finally, we should note that international cooperation between the bodies and units of the National Police of Ukraine and the National Gendarmerie (Police) of France is an important component in the integral mechanism for detecting and combating international threats (terrorism, smuggling, human trafficking) (Leheza *et al.*, 2018).

Thus, the experience of legal regulation of international cooperation in the activities of the National Police of France shows an effective system of bodies engaged in international cooperation. Specially established bodies for international cooperation are the key link through which police officers are able to more effectively perform their tasks and functions assigned to them by law.

In our opinion, the experience of administrative and legal regulation of international cooperation of such an International law enforcement structure as the International Association of Gendarmerie and Police Forces with Military Status (FIEP) is interesting. FIEP was established to develop law enforcement and military cooperation and exchange of experience between related entities. FIEP is an Association of Gendarmeries and Police Forces with Military Status The purpose of FIEP (which was started from the Armed Forces of France, Italy, Spain and Portugal) is to expand and strengthen mutual relations, promote innovative and active analysis of forms of police cooperation and appreciate its model of organization and structures abroad (Leheza *et al.*, 2020).

Therefore, it is clear that this organization is called upon to establish international cooperation not only between the police authorities of the Association, but also with other related bodies, such as the gendarmerie and the National Guard. We should also point out activities of Nordic-Baltic Network of Policewomen (NBNP), which was founded in April 2001 in Riga. Its members are presented by all the countries of the Northern Europe - Sweden, Finland, Iceland and Denmark, as well as by the Baltic States - Lithuania, Latvia and Estonia, which, as a member of the network, actively participates in organized events.

The main task of the NBNP is to promote equal opportunities for women and men in police, increase the number of women in leadership positions in police, and to establish good professional relations and exchanges between police organizations in the Member States (Leheza *et al*., 2021).

This network strengthens professional relations and contacts between member states and seeks to ensure equal conditions for national police forces. Exchange of information and knowledge, creation of various exchange programs for policewomen, as well as organization of conferences and seminars are the main means for achieving the goals.

Thus, at present, the main tasks of the programs on which law enforcement bodies of Ukraine cooperate with European structures are to strengthen Ukraine's capacity concerning ensuring implementation of European international agreements in the sphere of crime prevention and support of international security. Of course, many initiatives have been implemented, but due to the challenge of the modern times many problems in the legal sphere require further joint attention (Halaburda *et al*., 2021).

Conclusions

Thus, the main advantages of administrative and legal regulation of international police cooperation in the researched countries, which, in our opinion, must be taken into account when improving the mechanism of legal regulation of international cooperation in the National Police of Ukraine for better and more efficient ensuring their activities, are as follows:

- introduction of special international programs on training, retraining, advanced training (internship) of police personnel on issues of establishing the institute of international cooperation in various spheres of their activity.
- establishing close international partnerships in the sphere of forensic support between research forensic centers of the Ministry of Internal Affairs of Ukraine.
- creation of an extensive network of counseling centers at institutions with specific training conditions of the Ministry of Internal Affairs of Ukraine in order to supplement the educational process with mechanisms of international interaction of cadets and master's degree students and representatives of foreign police organizations (law enforcement), institutions and services.
- ensuring deep and systematic interaction of the International Cooperation Department of the Ministry of Internal Affairs of Ukraine with other international police departments and services.

- strengthening the role of the International Cooperation Department of the National Police of Ukraine as a coordination center for interaction of bodies and units of the National Police of Ukraine with other international law enforcement organizations, foreign police bodies and services.
- active introduction of electronic interaction between cybercrime counteraction units.
- establishment of international mechanisms for conducting operational and search activities.
- introduction of an ethics code for police officers on ethical standards of international police cooperation.

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Problems of implementing international digitalisation standards of criminal investigation

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Abstract

The study consisted of identifying the existing problems in the implementation of international standards of digitization of criminal investigation at the legislative level. The research was carried out in stages as a summary, based on the logic of presentation of the material, to achieve and meet the objectives set out in the article. The method of direct observation, the method of comparison and analysis of the content of the documents, the method of systemic and pragmatic approach were used. The key results of the study were the analysis of the experience of implementing digital standards in forensic activities in the United States, Canada, Great Britain, Denmark, England, Austria, Estonia, and Ukraine. It is concluded that the problems that exist in the implementation of these standards, were identified from the criteria of evaluation of the efficiency and capacity of digital data processing by the agencies involved in the criminal investigation. In addition, the problems and

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difficulties faced by the authorities in implementing existing international digitization standards, indicate the need for comprehensive measures to organize criminal investigations. To overcome them, appropriate measures must be taken in the field of legislative changes.

Keywords: data digitization; criminal investigation; police; international standards; implementation of legislative changes.

Problemas de implementación de los estándares internacionales de digitalización de la investigación criminal

Resumen

El estudio consistió en identificar los problemas existentes en la implementación de los estándares internacionales de digitalización de la investigación criminal a nivel legislativo. La investigación se llevó a cabo por etapas a modo de resumen, basándose en la lógica de presentación del material, con el fin de lograr y cumplir los objetivos planteados en el artículo. Se utilizó el método de observación directa, el método de comparación y análisis del contenido de los documentos, el método de enfoque sistémico y pragmático. Los resultados clave del estudio fueron el análisis de la experiencia de implementación de estándares digitales en actividades forenses en Estados Unidos, Canadá, Gran Bretaña, Dinamarca, Inglaterra, Austria, Estonia y Ucrania. Se concluye que los problemas que existen en la implementación de estos estándares fueron identificados a partir de los criterios de evaluación de la eficiencia y capacidad de procesamiento de datos digitales por parte de los organismos involucrados en la investigación criminal. Además, los problemas y dificultades que enfrentan las autoridades en la implementación de los estándares internacionales de digitalización existentes indican la necesidad de medidas integrales para organizar la investigación criminal. Para superarlos, se deben tomar las medidas adecuadas en el campo de los cambios legislativos.

Palabras clave: digitalización de datos; investigación criminal; policía; estándares internacionales; implementación de cambios legislativos.

Introduction

The development of scientific and technological progress entails changes in the economy, society and politics. In this context, the methods and technology of investigation and detection of crime have changed towards digitalisation of criminal investigation (Janaki, 2019). The technological impulse completely penetrated into the process of data collection in the course of criminal investigation (Alrwishdi, 2021). The outdated written hard copy forms of interaction in criminal investigations turned out to overload the law enforcement system and make it ineffective (Churikova *et al*., 2021). The main task of digital technology is to form evidence by searching, recording and investigating various objects related to criminal proceedings (Antonov *et al*., 2019).

Besides, the location and time of a criminal offense can be found and sometimes predicted quickly thanks to digital technology. The task of fighting crime and protecting citizens becomes almost impossible without the use of digital technology. In turn, citizens and criminals are adapting to the world of digital data faster than police officers (Deloitte, 2015). This requires that bodies involved in criminal investigation to comply with international digitalisation standards.

All possible technologies needed to digitise criminal proceedings have already been developed and are widely available for implementation (Ishchenko, 2019). Therefore, it can be unequivocally stated that the system of criminal prosecution receives great benefits from the implementation of digital technology standards in its procedural activities.

The digital form of recording the criminal investigation is an inevitable future that will simplify the process of storing and retrieving criminal case materials in archives (database files) and improve the quality of the investigator's work. At the same time (Artamonova *et al*., 2021), law enforcement agencies acknowledged the lack of general interest in the digitalisation of criminal investigation, as this could lead to further reductions in staff or equipment needed in their activities. However, early digitalisation was the reason why it was difficult for prosecutors to interpret electronic evidence (Goodison *et al*., 2015).

Information and communication technologies are constantly evolving, so in order to detect cybercrime, the employees involved in criminal investigation must be "life-ling students". In such circumstances, police officers must be constantly trained to stay abreast of the latest technology, to study cybercriminals, their motives, tactics and methods of work. In turn, national security forces experience a so-called "brain drain", when highly qualified and experienced cybercrime investigators leave these agencies to work in private firms, with higher salaries for their knowledge and skills (Harkin *et al*., 2018).

Thus, the issue of implementing digitalisation standards in criminal investigation is relevant both in the world and at the national level.

1. Literature review

Given the fact that the criminal investigation is aimed at obtaining primary information regarding criminal proceedings, the inquest can be built on the basis of the information obtained. Therefore, the main problem that arises during the implementation of digitalisation standards is to determine the limit and scope of the type of digital information that can be provided to a person against whom criminal prosecution is conducted. In this context, the information balance of the interests of the investigation and the public should also be ensured. In turn, the transparency of the criminal investigation for society should not interfere with effective and simple interaction between law enforcement agencies and coordination of their activities, etc.

The use of computer simulator programmes in the course of criminal investigation is not entirely justified. The computer programmes that simulate the process of committing a crime do not exclude the possibility of falsification of evidence, as there are no clear criteria for such programmes, there is enough data collected in different criminal situations (Przhilenskiy, 2020).

A clearer understanding of organizational barriers and professional challenges, as well as a more detailed picture of how electronic evidence can assist police in investigations, is needed to substantiate allegations more empirically about how digitalisation contributes to changing the principles of criminal investigation (Wilson-Kovacs, 2021).

The effectiveness of the use of data from digital networks depends on many factors, and the method of obtaining intelligence information can have both positive and negative results. First, the digitalisation of criminal investigation requires a police officer to have a number of skills and abilities, namely:

- effectively and objectively use search engines and other opportunities to obtain electronic data.
- correctly arrange and analyse the information obtained and draw appropriate conclusions that are important for operative action.
- follow the procedure of correct recording and capture of the data obtained in accordance with the regulatory documents and procedural legislation, which regulate the admissibility of evidence in criminal proceedings.

Besides, it has been found that attempts to optimize the flow of documents in connection with the transition to a new method of electronic data processing leads to an increased flow of such data. At the same time, the volume of the created database increases, which, in turn, requires even more skills and abilities of the user in terms of their rational analysis and interpretation. The information itself, and especially large databases, without proper analysis and processing are insignificant (Tambovtsev and Pavlichenko, 2021) Law enforcement agencies receive a large amount of information and must be able and willing to analyse it in an automated way (Fatih and Bekir, 2015).

The aim of this study was to establish the problems that exist in the implementation of the main international digitalisation standards of criminal investigation at the national level.

The aim provided for the following objectives: identify criteria for assessing the ability to use digital data by the bodies involved in criminal investigation; determine the range of digitalisation standards of criminal investigation that are applied in the world and at the national level; find out the experience and problems faced in the world and at the national level during the implementation of the digitalisation standards of criminal investigation.

2. Methods

The study was conducted through the following methods: direct observation was used to establish the opinion of modern scientists and researchers in the field of digital technology in forensics and clarified the experience of implementing digital standards in forensics, USA, Canada, UK, Denmark, England, Austria, Estonia and Ukraine; the analysis of the content of documents helped identify the main international forensic digitalization standards developed by the International Organization for Standardization and the International Electrotechnical Commission, as well as the criteria for evaluating the effectiveness and capability to process digital data by the bodies involved in criminal investigation; the method of comparison was used to compare the criteria for assessing the effectiveness and ability to process digital data by bodies involved in criminal investigation with international digitalization standards of criminal investigation, resulting in the identification of problems faced by national government agencies in the implementation of existing international digitalization standards; recommendations and proposals for overcoming problems of the implementation of international digitalization standards of criminal investigation at the national level were developed through a systemic and pragmatic approach.

The main tool for obtaining information on the research topic were the views and position of scientists on the introduction of digitalization standards in the criminal investigation activities of police. It was established that the main purpose of these standards is to promote advanced methods and processes of finding and preserving the authenticity of digital evidence, to be able to compare and contrast with each other. Examining separately the training standards that are currently used to train specialists in operational police units, it was found that they do not provide at the national level in-depth knowledge of the methods of obtaining information. Examining the standards for the search and analysis of electronic evidence by the bodies involved in criminal investigation, it was proved that digital information should be obtained without abusing interference in a person's private life. At the same time, digital evidence is often collected incorrectly and analyzed inefficiently, or simply not noticed due to technical difficulties, and therefore the obtained digital data should be studied by specialists who know how to work effectively, analytically, comprehensively, and fairly with large databases.

Separately considering other concepts of forensic activity, it was found that despite the existence of the mechanisms and standards for digitalization, many information technologies have not been properly enshrined in law.

A total of 40 sources and references were used in the work.

3. Results

Mobile computers were the most used technology in policing and tested in police examinations. A study of a separate U.S. police department that implemented a special wireless mobile broadband access system found that its implementation contributed to saving working hours and performing special tasks more efficiently (Carter and Grommon, 2015). A study by the UK government showed that the use of artificial intelligence in the digital police system can have real benefits not only in the fight against crime, but also for the public.

A study conducted among officers in Ontario, Canada, showed that information transmitted informally (through informal social networks) is and will be more relevant, detailed, reliable and secure. The ability of social networks to provide intelligence information can be more useful in criminal investigation only to understand the information dissemination trends (Sinclair Cotter, 2015).

A study in Denmark, England, Austria, and Estonia found that digitalization should be primarily part of the ongoing or long-term process of improving investigative activities of the police. In this context, the

best approach depends on the specific country and the goals underlying digitalization. It should be noted that digitalization is not the goal, it is a tool to promote rationalization and increase the efficiency of crime investigation (De Blok *et al*., 2014).

The study conducted among Norwegian police officers is worth mentioning. It is established that the digitalization of policing leads to a broader division of labor: new positions, new specialties appear, the method of managing police officers changes within the institution (department) towards bureaucratization. That is, the control of policing at a distance, the use of new technologies and standards for stronger management can be considered as a transition to a new form of digital leadership (Gundhus *et al*., 2021).

A study of law enforcement activities of police in Russia found that there is a tendency to complicate the procedure for obtaining electronic data. It was also clarified that the use of computer data should take place only in the manner prescribed by procedural law. Therefore, the investigator must be able to use them properly during the investigation (Stelmakh *et al*., 2021).

The training standards currently used to train specialists to work in operational police units do not provide in-depth knowledge of the methods of obtaining information necessary for the detection and investigation of crimes in the modern information environment and the development of relevant skills. Most employees involved in criminal investigation do not have the appropriate analytical skills and skills to work with large databases.

It has become necessary for the digitalization of criminal investigation procedures to be consistent and to ensure harmony between lawyers, judges, forensic experts, law enforcement agencies, corporations, and individuals. International digital forensic standards and procedures aim to improve the effectiveness of investigations, ensure the admissibility and accuracy of digital evidence and include identification, collection, acquisition and storage. At the same time, standards for storage, ensuring accuracy, completeness and persuasiveness of digital evidence are extremely important, as they are used at the stage of criminal proceedings (Yeboah-Ofori and Brown, 2020)

So, let's cover the main international forensic standards for digitalization that should be used during the criminal investigation (Table 1). These standards were developed by the International Organization for Standardization (hereinafter — ISO) and the International Electrotechnical Commission (hereinafter — IEC).

Table 1. The main international forensic standards for digitalization, which should be used during the criminal investigation (author's development)

ISO/IEC 27043:2015	A general standard that provides guidance on how to reproduce a criminal incident preparation procedure, in the form of idealized models for different scenarios, so that such reproduction can be repeated in each scenario and produce the same result. It includes processes from preparation for the incident to closing the investigation, as well as any general advice on such processes. The provisions of the standard describe the processes and principles applicable to various types of investigations. Unauthorized access, damage to digital data, technical malfunctions of the information system or corporate violations of information security and other digital investigations (ISO, 2015a).
ISO/IEC 27037:2012	A standard that contains guidelines for processing digital evidence, which includes identifying, collecting, obtaining, and storing potential evidence. It assists organizations in their disciplinary proceedings, and also facilitates the exchange of potential digital evidence between jurisdictions (ISO, 2012).
ISO/IEC 27041:2015	The standard, which guarantees the handling of criminal incidents, specifies the procedure for processing evidence, storage and methods used in the investigation process. The purpose of the standard is to provide guidance on: the collection and analysis of data on information security incidents investigation; use of validation of investigation processes; assessment of the level of validation of evidence, and the volume of data required for the audit (ISO, 2015b).
ISO/IEC 27042:2015	A standard that provides guidance on what tools, techniques, and methods to use in analysis and interpretation to ensure continuity, reliability, reproducibility, and repeatability. It includes best practices in the selection, development and implementation of analytical processes and registration of the information obtained, which allows, if necessary, to subject such processes to independent verification (ISO, 2015c).
ISO/IEC 27050-1:2019	The standard provides a definition of electronic discovery (hereinafter — ESI). Besides, it defines related terms and describes concepts, including, but not limited to, identifying, storing, collecting, processing, reviewing, analysing, and creating ESIs. This document also defines other relevant standards (e.g., ISO/IEC 27037) and how they relate to and interact with electronic device detection activities (ISO, 2019).

Besides, we outline the criteria for assessing the effectiveness and ability to process (collect and process) digital data by the bodies involved in criminal investigation (Table 2).

Table 2. Criteria for evaluating the effectiveness and ability to process (collect and process) digital data by bodies involved in criminal investigation (author's development)

Availability of appropriate software and hardware	Changes made to the organizational and procedural documents on the activities of the bodies involved in criminal investigation	Responsibilities of institutions, enterprises, organizations and individuals to assist with the bodies involved in criminal investigation	Prerequisites and guarantees for the preservation of digital data that can be provided to the bodies involved in criminal investigation	Opportunities for the exchange of digital personal data at the request of the bodies involved in criminal investigation	Availability of staff in the bodies involved in criminal investigation, who are able to work rationally with large databases
Are there appropriate electronic devices, computers and analytical software for search and analysis?	Compliance with the regulatory approach to digitalization and departure from previous methods of work of the bodies involved in criminal investigation	Provision of the coordination of activity of bodies involved in criminal investigation on search and requesting of data is provided, and in persons who give them — the relevant duty	Is there relevant information infrastructure and whether cybersecurity bodies operate at the state level	There are technical means and legal opportunities for the accumulation and requesting of electronic data	Working with large databases requires analytical and effective user skills

At the legislative national level, criminal investigation is aimed at finding and confirming data on illegal actions of persons or groups of persons for which criminal liability is provided. Criminal investigation also aims to stop the intelligence and subversive activities of special services of foreign states and organizations, and to obtain information in the interests of the security of citizens, society and the state. In order to exercise their powers, the bodies involved in criminal investigation are already vested with many rights related to the processing of digital data. They can carry out audio and video surveillance of a person, obtain information from transport telecommunication networks, electronic information networks, collect information about the illegal activities of persons subject to inspection; use and create automated information systems, etc. (Verkhovna Rada of Ukraine, 2020).

In turn, the national telecommunications operators are obliged to implement the technical means on the telecommunications networks on their own necessary for the criminal investigation to be carried out by the authorized bodies and to prevent leakage of information about them (Verkhovna Rada of Ukraine, 2004). Besides, personal data may be provided to law enforcement agencies in the interests of national security and human rights (Verkhovna Rada of Ukraine, 2010). Thus, criminal procedure law gives the relevant authorities the right to receive restricted information to perform their functions. That is, the legislative regulation of the rights of the bodies involved in criminal investigation partially testifies to its legal probative force, as a preliminary investigative act provided by the criminal procedure legislation (Verkhovna Rada of Ukraine, 2013).

However, funding, as well as the provision of material and human resources for criminal investigation remains insufficient. The European Union is helping Ukraine in many ways to strengthen its capacity to fight organized crime. To support the e-learning platform of the academies of the Ministry of Internal Affairs in 2020, Ukraine received server stations in almost all regional centers. Such servers are part of a technical upgrade aimed at improving policing efficiency. Two modular data processing centers have also been established in Ukraine with the EU's assistance to increase the secure and timely exchange of data between regional authorities and the national police. The EU and UNOPS have supplied about 200 computers to the Ministry of Internal Affairs (EUAM Ukraine, 2020). Besides, Ukraine received modern servers and data storage systems in 2021to create an IT system to coordinate the work of the national police with Interpol (Europol) in the fight against organized crime (United Nations, 2021).

The fight against cybercrime provides for the involvement of relevant teaching staff in the national police training system to perform the following tasks:

- improvement of procedural mechanisms for collecting electronic evidence.
- appropriate training and preparation of investigators to work with electronic evidence (Ismaylov, 2017).

Improving social control efforts to reduce crime is also relevant at the national level. The expansion of information technology, big data and related approaches is expected to become critical. To this end, law enforcement could in turn teach the community how to use new technologies to prevent crime. It is necessary to establish interaction with the community and increase the effectiveness of crime prevention by providing Internet access in different parts of the country (Stubbs-Richardson *et al.*, 2018).

Given the above, we group the typical problems faced by national authorities in the implementation of existing international digitalization standards of criminal investigation (Table 3).

Table 3. Typical problems faced by national authorities in the implementation of existing international digitalization standards of criminal investigation (author's development)

Insufficient level of training and education of investigators to work with information obtained during the criminal investigation to ensure its compliance with admissibility and relevance	Inadequate level of training specialists who are able to work in a large information environment, with large databases	Inadequate level of cooperation between the police and the community in the field of crime prevention	Insufficiently regulated criminal investigation in terms of recording, exchange, and application of electronic evidence	Inadequate level of material and financial support of bodies involved in criminal investigation

4. Discussion

Digital technologies create problems in terms of equality for all citizens. Detention procedures using modern technology are more likely to be used against minority and foreigners. Another example of using the software to identify and search for faces is recognizing faces in public places. Such technical errors can lead to mistakes in court and illegal acts. With regard to privacy, digital technologies also have some gaps. Privacy is a fundamental human right. But in the digital environment, large amounts of personal data are accumulated against people without proper permission, which can be used against us. We constantly provide data about our location, political views, family life, and we do not know who will use this data, how and why. Therefore, sufficient attention must be paid to the risks posed by digital technologies (Mijatović, 2019). Personal data from mobile phones should be removed with minimal interference with privacy.

To use information in electronic form as evidence in accordance with accepted standards, its entire life cycle shall be subject to procedural enshrinement. It should be provided for identification, research, copying, attachment of the materials to the case and direct use as evidence at the legislative level. To do this, it is necessary to change the conceptual and regulatory approaches to the methods of collecting, studying, belonging and admissibility of digital evidence used in criminal proceedings, at the national level.

The ISO 27037 standard adopted in 2012 will increase awareness of the specifics of working with digital traces and evidence. However, the first part of it can be considered as a mandatory basis in the development and implementation of procedures for the collection of digital evidence. Aa the same time, the second part of this standard, which already contains certain procedures, is now obsolete.

The main goal of the ISO 27k group of digital forensic examination standards are to promote advanced methods and processes of searching for digital evidence. While individual investigators, organizations, and jurisdictions may well maintain their methods and controls in accordance with local laws and established practices, it is hoped that standardization will lead to adoption of similar approaches to criminal investigation at the international level, making it easier to compare, combine, and contrast the results of such investigations (ISO, 2018).

Many terms or concepts of information technology have not yet been legally enshrined. Recognition and standardization of terminology in the legal context of forensic activities are extremely important to prevent miscommunication by law enforcement agencies. Digital evidence is often collected incorrectly and analyzed inefficiently or simply overlooked due to technical difficulties. Specific legal rules and principles should be followed in order to fulfil the tasks of the investigation and to ensure fairness in the conclusions (Nortje and Myburgh, 2019).

The system for recording and collecting digital data in Ukraine should be oriented at potential victims of crime, be transparent to the public, inclusive, and comply with international norms and standards (Council of Europe, 2020).

The above criteria for assessing the ability to use digital data by the bodies involved in criminal investigation indicate the degree of the country's readiness to implement digitalization standards. At the same time, the training and education of highly qualified staff for the system of bodies involved in criminal investigation requires time and adaptation of training programs to perform analytical work.

Conclusion

The experience of the United States, the United Kingdom, and Canada has shown significant benefits from the digitalization of policing. However, the experience of digitalization in Denmark, England, Austria, and Estonia has shown that digitalization is not the goal, it is a tool to promote rationalization and increase the efficiency of criminal investigation.

The use of digital data in the criminal investigation should take place exclusively in the manner prescribed by procedural law, in compliance with international standards. The main purpose of international standards is to promote advanced methods and processes for finding and preserving the authenticity of digital evidence, to compare them.

In the age of digital technology and large amounts of data, crime prevention places new demands on the work of employees involved in

criminal investigation who are able to work with databases. However, national employees are lacking, or their level of training is insufficient. Little attention is also paid to the protection of objects used for electronic communication and exchange of information with pre-trial authorities. It will be appropriate to involve the public in interaction and cooperation as regards crime prevention. However, work in this direction is slow.

Thus, the typical problems faced by national government agencies in the implementation of existing international digitalization standards indicate the need for comprehensive measures to organize criminal investigation. Appropriate steps should be taken in both the legislative and material areas. Besides, the training system of the police officers should involve highly qualified teaching staff, and the digitalization of policing itself should not bureaucratize criminal investigations. The transition to a digital form of law enforcement should take place in parallel: at the level of the bodies involved in criminal investigation, and at the level of investigative bodies and prosecutors.

The conclusions and recommendations given in this study can be used in rule-making and practical activities, in the training of police officers and investigators on the digitalization of criminal investigation. Prospects for further research include paying attention to the problems of digitalization of the activities of investigative bodies in the legislation of Ukraine.

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Peculiarities of Realization of the International Mechanism for the Protection of the Rights of Victims of Armed Conflict in the East of Ukraine

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Abstract

The article analyzes the content of international legal acts related to the protection of the rights of victims of military conflicts. At the same time, its results identify the characteristics of its implementation in Ukraine. It has been established that some of these legal sources have not been ratified by Ukraine or otherwise Ukraine has not given them a binding legal effect. Using a documentary-based methodology close to legal and political hermeneutics, this article develops scientifically sound and relevant proposals aimed at improving the legal mechanism to protect the legitimate interests and rights of the victims of the military conflict in Eastern Ukraine. It is concluded that the current legal problems not only negatively affect the state of law enforcement activity in Ukraine, which is directly related to the content of this process, but also does not allow adequate influence on the determinants that give rise to, and cause military and territorial conflicts in Ukraine, a situation that can be extrapolated to other societies near or far.

Keyword: victim of armed conflicts; legal norm; hybrid war; ratification of international treaties; international agreement.

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Peculiaridades de la aplicación del mecanismo internacional de protección de los derechos de las víctimas de conflictos armados en Ucrania oriental

Resumen

El artículo analiza el contenido de los actos jurídicos internacionales relacionados con la protección de los derechos de las víctimas de conflictos militares. Al mismo tiempo, sus resultados identifican las características de su implementación en Ucrania. En particular, se ha establecido que algunas de estas fuentes legales no han sido ratificadas por Ucrania o, de lo contrario, Ucrania no les ha dado un efecto legal vinculante. Mediante una metodología de base documental próxima a la hermenéutica jurídica y política este artículo desarrolla propuestas científicamente sólidas y relevantes destinadas a mejorar el mecanismo legal para proteger los intereses y derechos legítimos de las víctimas del conflicto militar en el Este de Ucrania. Se concluye que los problemas legales actuales no solo afectan negativamente el estado de actividad de la aplicación de la ley en Ucrania, que está directamente relacionado con el contenido de este proceso, además tampoco permite influir adecuadamente en los determinantes que dan lugar y causan conflictos militares y territoriales en Ucrania, situación que puede extrapolarse a otras sociedades cercanas o lejanas.

Palabras clave: víctima de conflictos armados; norma legal; guerra híbrida; ratificación de tratados internacionales; acuerdo internacional.

Introduction

According to modern realities in Ukraine, on the way to its future membership in NATO and the EU, as well as the full implementation of relevant state programs regarding ensuring the fundamental rights and freedoms of human and citizen, a serious problem has arisen, namely: terrorist activity and in general a hybrid war of the Russian Federation, which is carried out by military units of this country and separatists (French separatism; Latin separatus - separated from society) (Decree of the President of Ukraine, 2015; Bulko, 2010). in the Donbass (Donetsk and Luhansk regions). As a result, almost 11 thousand terrorist acts (and, in fact, the results of the armed conflict), which have been committed by 1 thousand 375 people, took place only in 2014-2019 on the territory of our state.

Similar trends persisted in subsequent 2020-2021 years. Moreover, the specific gravity of criminal offenses of this nature, which resulted from the military conflict in the East of Ukraine, is almost 11% of the total number of the socially dangerous acts that encroach on the public safety.

Regarding the structure of these criminal offenses, it is dominated by terrorist acts (71.68%). In general, the specified offenses are also committed by:

1. creation of a terrorist group or terrorist organization, as well as participation in it - 23.65%.
2. terrorist financing - 4.16%.
3. committing other terrorist acts (military actions of a hybrid nature) - 0.51%.

Although the Global Index of Terrorism places Ukraine only 24th out of 138 countries of the world, the level of terrorist attacks on the national security of our state, its state sovereignty, territorial integrity, and other objects of legal protection, referred to the art. 111 of the Criminal Code of Ukraine, according to international experts, is the highest, given the threats that are posed by the hybrid war of the Russian Federation in the Donbass.

This conclusion is based on the following empirical materials:

1. terrorist activity in the East of Ukraine (as a type of hybrid war) has a group character (consolidated, united, and purposeful).
2. military aggression on this territory is carried out with active use of modern types of armor and conducting combat operations on the basis of new developments and technologies.
3. creation of terrorist groups or terrorist organizations, such as the "LPR" and "DPR" (respectively Luhansk and Donetsk People's Republics) is done by military professionals, as well as military formations and security agencies of the Russian Federation.
4. illegal armed groups "LPR" and "DPR" are stable criminal associations that operate in conjunction with military units of the Russian Federation.
5. sources of financing terrorist activity in Ukraine are: funds of the aggressor state; financial income from illegal business in our state (sale of drugs, psychotropic substances, money, etc.); funds that are received from certain political forces, as well as from the secret funds of international terrorist organizations "Al Qaeda", "Al-Islamiya", "Al-Qiyam", etc.;
6. members of terrorist groups and organizations are males, who are 30-45 years old (82% in the structure of all participants in the hybrid war in Ukraine) (Mokliak, 2020).

Thus, it should be recognized that there is a complex applied problem that needs to be solved at the doctrinal level, given the peculiarities of the

protection of the rights of victims of the armed conflict in Donbass, in this regard, problems that are related to the inconsistency of domestic law and norms of international law on the specified issues.

1. Description (statement) of the problem

For the eighth year in a row, the so-called "hybrid war" (war with a combination of terrorism, cyber warfare, and criminal behavior in order to create internal contradictions and conflicts in a country chosen for aggression by an aggressor state) with the Russian Federation, its victims were more than 14 thousand servicemen and civilians, as well as significant (according to experts) material damage to our country as a whole and to individual citizens.

Thus, feature of military actions in the specified territory of Ukraine is that until now:

1. This military-political conflict is not recognized as war at the level of legislative and executive power of both warring countries, therefore, its content and consequences do not fall under the scope and jurisdiction of a number of key international legal acts, which regulate the specified issue (according to some researchers, it is almost 50 such legal sources, of which only 20% have been ratified by Ukraine (Khavroniuk, 2005).
2. The legal guarantees and other preferences (from French preference - advantage; Latin preferred - privilege; advantage), which are provided by the norms of international law for victims of military conflicts do not apply to persons who do not fall under the status of refugees, but are considered internally displaced persons (Bulko, 2010; Verkhovna Rada of Ukraine, 1977; Verkhovna Rada of Ukraine, 1951; Verkhovna Rada of Ukraine, 2014).
3. If the term "victim of a crime" is used in the norms of international law, then "victim" is used in the national legislation that is not identical with regard to the protection and legal guarantee of the specified statuses of the person.

In particular, the victim of a crime is understood as a person or a community of people in any form of their integration, who are directly or indirectly harmed by the crime (Golina *et al.*, 2014). It should be noted that this term is not enshrined at the legislative level in Ukraine.

In turn, the following concept of "victim" has been formulated in the part 1 of art. 55 of the Criminal Procedure Code (CPC) of Ukraine, namely, it is a natural person who has suffered moral, physical or property damage as a result of a criminal offense, as well as a legal entity that has suffered property damage by a criminal offense.

1. Those guilty of committing unlawful military acts in eastern Ukraine are not prosecuted for crimes against peace, security of mankind and international law and order (Section XX of the Criminal Code (CC) of Ukraine), but are prosecuted for committing terrorism or criminal offenses against the foundations of national security, public safety and the individual, which, again, is not identical in terms of international legal mechanisms for the protection of victims (Verkhovna Rada of Ukraine, 1977).

Namely, these circumstances that necessitated the scientific development of this problematic, as well as determined the theoretical and applied significance of this article.

2. Analysis of the recent research

The closest to the subject of this scientific article are the doctoral theses of Yu. V. Danylchenko and O.O. Stepanchenko, as well as V.V. Mokliak thesis for the degree of candidate of law (Danylchenko, 2018; Stepanchenko, 2018; Mokliak, 2020).

At the same time, in the context of the peculiarities of the military events taking place in the East of Ukraine, and existing problems in this regard, the chosen research topic is aimed not so much at expanding the boundaries of theoretical knowledge about the phenomena of terrorism, but at developing effective measures, aimed at improving the legal mechanism for the protection of victims from the hybrid warfare, taking into account the potential opportunities of norms of international law on this issue.

This, in fact, is the purpose of this scientific article, and its main task is to clarify the gaps, conflicts and contradictions that exist between the content of relevant international legal acts and the legislation of Ukraine, which regulate public relations that are related to the protection of the rights of victims from the military conflicts.

3. Materials and methods

This scientific article uses both general scientific and special scientific methods. The methodological basis of this work is a dialectical method of scientific cognition of social legal phenomena and processes in their contradictions, development, and changes, which made it possible to objectively assess the state and effectiveness of the realization of the international mechanism for the protection of the rights of victims of the military conflict in the East of Ukraine.

In turn, the priority in the course of this research was the comparative legal method, by means of which it was possible to establish the existing discrepancies (contradictions, conflicts and gaps) between the norms of international law and the legislation of Ukraine on the specified problematic.

The application of the system-legal method allowed to consider the investigated elements of the subject of this scientific article as an interconnected and mutually conditioned set of normative-legal acts of international and domestic character, as well as to formulate in this direction systemic measures aimed at improving the legal mechanism for the protection of the rights of victims of the military conflict in the East of Ukraine.

The formal-dogmatic method has created appropriate conditions for substantiation of the conclusions that are formulated in this work both on divisions (there are three of them in it), and as a whole on the given scientific work.

Important in the course of this research was the role of methods of analysis and study of documents, by means of which the content of the international legal acts and norms of the current legislation of Ukraine on issues of protection of victims of hybrid war in Donbass is found out, as well as the essence and direction of scientific developments on the specific problematic.

Statistical methods gave the opportunity to determine quantitative and qualitative indicators, characterize the state and trends of protection of the rights of victims of the military conflict in the East of Ukraine.

In one way or another, in the context of solving the local tasks of this scientific article, it uses the possibilities of other scientific methods (social naturalism - in justifying the priority of natural human rights, namely - the principle of the rule of law; synthesis - if the need to harmonize the norms of international law and legislation of Ukraine; induction and ascent from the abstract to the concrete - to clarify the content of the key concepts of this scientific article ("hybrid war"; "refugee"; "temporarily displaced person"; "victim of a criminal offense", etc.) and their relationship between them .

This research methodology allowed to fully achieve the goal and implement the defined in this work main task.

The results of the conducted research of the content of international legal acts and current legislation of Ukraine, which relate to the content of protection of the rights of victims of military conflicts, have showed that the effectiveness of their realization in practice is influenced by several significant circumstances that constitute certain elements of the content of the subject of this scientific article.

Regulatory and legal incompatibilities between the above-specified legal sources. First, it concerns those international legal acts that have been ratified or, in one or another way that is specified in the law, have become mandatory for implementation on the territory of Ukraine.

As it is stipulated by part 1 of article 9 of the Constitution of Ukraine, the current international agreements that are approved by the Verkhovna Rada of Ukraine, are part of the national legislation of Ukraine.

At the same time, in accordance with the requirements of the Law of Ukraine "On international agreements", international legal acts come into force in Ukraine in different ways, namely:

1. through the procedure of ratification, approval, acceptance, or accession (according to the articles 9, 12, 13 of this Law).
2. when an international treaty is signed, ratified, approved, accepted, or acceded to, declarations and cautions may be made to its provisions in accordance with norms of international law.

As a result, it should be stated that today in Ukraine more than 40 international legal acts, which have a direct relation to the investigated problematic in this scientific article, have not acquired legal force.

These include such important norms of international law as:

- European Convention on the compensation for victims of violent crimes of November 24, 1983 (Verkhovna Rada of Ukraine, 1983);
- Rome Statute of the International Criminal Court of July 17, 1998 (Verkhovna Rada of Ukraine, 1998).
- Declaration of basic principles of justice for victims of crime and abuse of power of November 29, 1985, and others (Verkhovna Rada of Ukraine, 2011; Khavroniuk, 2005).

This approach has an extremely negative impact on activity of Ukraine to protect victims from the hybrid warfare in the East, whereas there is still no proper in our country legal mechanism on these issues, given the requirements of international law.

Moreover, there is a discrepancy between the content of the laws of Ukraine and international legal acts governing this area of public relations in many cases.

Thus, the term "refugee" is used in the norms of international law in relation to persons, who are affected by military conflicts of various character, the term "temporarily displaced person" is used in the current legislation of Ukraine, which do not match in their status.

In particular, a refugee is a person who has become a refugee as a result of events prior to January 1, 1951, and due to well-founded fears of being persecuted on racial grounds, religion, nationality, membership of a particular social group or political opinion, who has been outside the country, his national identity and has been unable to enjoy the protection

of that country or has not wished to enjoy such protection due to such fears or has not been able or has not wanted to return to it due to such fears, not having a certain citizenship and being outside the country of their former place of residence as a result of such events.

In turn, albeit the provisions of the Convention are reproduced in full, but a legally significant remark (French remarque - note) about that, a citizen of Ukraine cannot be a refugee is also made in the Law of Ukraine "On refugees and people, who need the additional temporary protection"(Bulko, 2010).

At first glance, everything seems logical, because how can refugee be a person, who lives in the country of which he is a citizen?

At the same time, the citizens of Ukraine, foreigners and stateless persons who are on the territory of Ukraine on legal grounds and have the right to permanent residence in Ukraine, who were forced to leave their place of residence as a result or in order to avoid the negative consequences of armed conflict, temporary occupation, generalized violence, human rights violations and emergencies of natural or technical nature (part 1 of the article 1) are considered to be such people in the Law of Ukraine "On ensuring the rights and freedoms of internally displaced persons".

In this regard, a logical question arises, what status is more extensive in the context of a hybrid war and, in fact, the open aggression of the Russian Federation in the East of Ukraine?

As it appears, it is necessary to clarify the meaning of other terms that are used in connection with this in the norms of international law in order to give an answer in this regard.

First of all, this applies to the term "aggression", which is widely used at the normative and legal, doctrinal, applied and other levels in Ukraine.

This term without official interpretation is used in the art. 437 of the Criminal Code "Planning, preparation, resolution and conduction of aggressive war" in the legislation of Ukraine.

Moreover, nobody has been prosecuted for the commission of this criminal offense since the entry into force of this Code in 2001, including the period 2014-2021.

As practice shows, the main obstacle for the justice is the lack of such an important feature in the objective side of the specified criminal offense, as way, – the application of armed force by the aggressor state directly against the state of Ukraine, whereas the latter has not declared yet a state of war with Russia at the political and legal level, which is a necessary condition of recognizing its actions as aggression, as this follows from the content of the relevant norms of international law.

Thus, the aggression means the use of armed force by a state (group of states) against the sovereignty, territorial integrity, political independence of another state or people (nation), is incompatible with the UN Charter in the UN Convention of March 23, 1934.

However, in this sense, it should be noted that in the scientific literature there are other approaches, according to which aggressive war can be called the events of military conflict, which occur without declaring war on the aggressor state (Maliar, 2016).

This position does not seem to be acceptable, given that Ukraine still does not comply with the requirements of the UN General Assembly Convention of December 14, 1974, in which the concept of "aggression" is divided into two types that are not used in the legal practice of our country, namely:

1. aggression that leads to international responsibility.
2. aggression, which is a crime against international peace (UN General Assembly, 1974).

Apart from this, in this sense is the resolution of the Verkhovna Rada of Ukraine dated 21.04.2015 № 337-VIII "On the statement of the Verkhovna Rada of Ukraine "On responsing the armed aggression of the Russian Federation and overcoming its consequences", which has a more political meaning, as it also did not enshrine the fundamental principles that are set out in the above-mentioned UN Convention (Verkhovna Rada of Ukraine, 2015).

Indicative and at the same time instructive in this context is the social and legal paradox that has developed in connection with the events, which occur in the East of Ukraine, namely: if there is a hybrid war in the specified territory, why are its participants from both parties not called prisoners of war in cases of their detention and why are they subject to international legal acts that govern this issue (Verkhovna Rada of Ukraine, 1949).

At the same time, the separatists of the quasi-republics "LPR" and "DPR", having no domestic legislation, use the Criminal Code of Ukraine and prosecute servicemen of the Armed Forces and other formations of Ukraine for committing general criminal offenses (terrorist act; premeditated murder; illegal handling of weapons; etc.), thus giving these persons the status of a convict, not a prisoner of war.

Domestic courts follow the same path, as they do not have legal grounds to recognize participants in a military conflict for the reasons that are discussed above.

Therefore, until Ukraine ratifies the Rome Statute of the International Criminal Court and applies its norms to Russian servicemen, mercenaries and separatists who are waging a hybrid war in the East of our state, we will not be able to provide adequate legal protection to the victims of this military conflict and, in fact, but not from a legal point of view to Russian aggression.

Important in this regard is another conclusion that the fundamental principle of the rule of law is enshrined in international law, as, in fact, in the Constitution of Ukraine (article 8), which is a necessary prerequisite for the alignment (harmonization, convergence, etc.) of domestic legislation and international legal acts, which regulate the issue of protection of the rights of victims (no matter how they are defined at the regulatory level (refugees; internally displaced persons; victims of military conflicts; etc.)) (Golovatyi, 2006).

The second key problem, which has an extremely negative impact on the effectiveness of the realization of the international mechanism for the protection of the rights of victims of the military conflict in the East of Ukraine, is the low level of fulfillment of commitments of our country.

As a result, every year Ukraine, on the one hand, becomes a subject of judicial proceedings in the European Court of Human Rights (ECHR), on the other hand, is forced to pay significant funds for victims of inaction and wrongful acts of officials of relevant government agencies, institutions, enterprises and organizations, as it is provided by the Law of Ukraine of 23.06.2006 "On the implementation of decisions and application of the case law of the European Court of Human Rights" (Verkhovna Rada of Ukraine, 2006).

In particular, as it has been established in the course of special scientific research, the ECHR has so far adopted almost 200 decisions, in which it stated the Ukraine's violation of articles 2 and 3 of the Convention for the Protection of Human Rights and fundamental freedoms of November 4, 1950, regarding its citizens.

At the same time, according to the decisions of the European Court of Human Rights, our state annually pays from 25 to 30 million hryvnias (Podilchak, 2015).

If to evaluate the specified legal facts in view of the structure of offenses that have been committed by Ukraine, it has the following view:

a) this is a procedural violation (21% of the total number that are related to ineffective investigation).

b) 15 violations, which were consequences of torture of the person (9%).

c) 59 violations concern cases of inhuman and degrading treatment (34%).

d) 62 violations (non-response or ineffective investigation of complaints of citizens) (36%) (Babin, 2015).

According to social and political practice, the main reason of the low level of executive discipline in our country is the mentality (from Latin mentalis - way of thinking), that formed in Ukrainian society, namely:

from the President of Ukraine, people's deputies and other government officials, including judges who take an oath to serve the law (adhere to the international principle of the rule of law, as well as to ordinary citizens in certain legally significant situations promises, voluntary commitments are made, etc., but already at achievement of the desirable purpose (election as the President of Ukraine, etc.) everything at once "is forgotten" for some reason – this is immoral, and in the West this is unacceptable behavior that undermines the reputation (French reputation, Latin reputation - thinking; creating a general opinion about the human virtues of a certain person) of our state as a whole in the international arena (Golovatyi, 2006; Bulko, 2010).

Indicative in this sense is the behavior of representatives of Ukraine in relations with the International Monetary Fund (IMF), when our state receives a financial tranche (French tranch - series, part; financial credit), but does not fully comply with the commitments that are made in this regard, including the conduction of reforms in the military sphere, protection of the rights of victims of violent crimes, the creation of a fair trial, etc.

However, as some researchers have aptly concluded in this regard, regarding the mental component, then to change attitude to the man, the task is complex, systemic and affects consciousness. Moreover, the consciousness is not an individual and not a separate community, but the whole society, its social and cultural layers.

Important, in the context of the problematic that is studied in this scientific article, there is another conclusion of scientists: the norm becomes legal only when it is reflected in the social practice (Kyrychenko, 2015).

Practical aspects and problems of realization in Ukraine of the international mechanism of protection of the rights of victims of the military conflict in the East of Ukraine.

The essence of the specified problematic is that our country, contrary to the requirements of the generally accepted international legal norms, according to which any state which, in one form or another, has made it binding on its territory, cannot explain by the lack of material, financial and other resources of the violation of fundamental human and civil rights and freedoms, as well as narrowing their scope and content.

Instead, Ukraine, based on the decision of the Constitutional Court of 25.01.2012 № 3-rp / 2012 (the official interpretation of the article 1 of the Constitution of Ukraine), chose a completely different approach, namely: when adopting new laws or amending current laws, it allows the narrowing of the content and scope of existing rights and freedoms, including those that are the subject in this research article (Constitutional court of Ukraine, 2012).

As a result, our state is not fulfilling its obligations and improperly ensuring the rights of victims of the military conflict in Donbas starting from 2014 to the present.

In particular, until the adoption of the Law of Ukraine "On ensuring the rights and freedoms of internally displaced persons" in October 2014, the Government of Yatsenyuk blocked receiving pensions and other social benefits of those who remained living in the occupied territories of the East of our country, and later created other obstacles for this category of victims of military conflict at the regulatory level (Verkhovna Rada of Ukraine, 2014).

In addition, neither in the banking nor in the social spheres, Ukraine has not provided any benefits and preferences, which are provided not only by the norms of international law, but by the above-specified Law of Ukraine, for the specified victims of the war.

There are even more problems that are related to the availability of legal gaps and conflicts, as well as inconsistencies with the content of international legal acts of the practice of assigning pensions to servicemen and persons, who are equated to them who have become war invalids.

Instead of as provided in civilized countries (USA, FRG, England, etc.), for establishing a single number of benefits for all categories of people with disabilities, they are based on two main criteria in Ukraine - the presence of work experience before injury (mutilation, etc.), as well as the amount of salary that had been received before.

In addition, as a result, some war invalids receive several times higher pensions than others, which is a gross violation not only of international law but also of the art. 24 of the Constitution of Ukraine, according to which citizens have equal constitutional rights and freedoms and are equal before the law.

No less disgusting in this regard is another practice, when due to lack of funds in the State Budget of Ukraine, social payments (compensations, amounts of money that the court ordered to be paid, etc.) in the relevant state institutions are made according to the lists that are approved by him, not taking into account neither the level of inflation nor other financial and price aspects that prevailed at that time in the state, at the time of their receipt by creditors (direct victims).

And there are many such factors in the historical socially dangerous practice of our state that are directly and indirectly related to the protection of the rights of victims of hybrid warfare in the East, which can also be attributed to the peculiarities of the implementation of our state's international obligations on the specified problematic.

"The freshest" example in this regard is the misuse of funds that have been allocated to the Government of Ukraine to combat COVID-19, which were aimed at the road construction by the latter.

All this testifies to the systemic character of the problems that have arisen in connection with the need to protect the rights of victims of the military conflict in Donbass, as well as to the need to resolve them as soon as possible in the context of the Euro-Atlantic intentions of Ukraine and the desire to join the EU and NATO as soon as possible.

Conclusions

Therefore, based on the results of the study, it can be argued that the rights of all categories of victims of the military conflict in the East of Ukraine are inadequately protected today in Ukraine, as it is provided by the international mechanism on these issues.

In this case, the main circumstances that negatively affect the specified activity, are not only and not so much disharmony (inconsistencies) of norms of domestic and international law, that are directly related to solving the problems of the specified persons, how much low is the level of fulfillment of Ukraine's obligations of international legal character, as well as a gross violation of the internationally recognized principle of the rule of law by our state, which is reflected in the art. 8 of the Constitution of Ukraine, and of other conceptually important principles of international law, which govern the spheres of protection of victims (injured) of military conflicts.

No less "vulnerable" to this process is the misuse of funds and other material resources that are allocated to solving tasks, which are involved in the problematic of research, both by the Government of Ukraine and by its other partners (French pretensive - participant of the game) (primarily, by the United States, Canada, the European Union, etc.) at improving the structure and combat capability of the Armed Forces of Ukraine, to protect the population living in the territories that are close to the military conflict, the so-called "gray areas" (neutral human settlements that are located between the parties to the military confrontations) of social rehabilitation of victims of hybrid war: fight against corruption directly in the combat units of military formations of our state; etc. (Bulko, 2010).

Thus, there is a complex applied problem, which has signs of relevance, theoretical and practical significance, which necessitated its need of analysis in this scientific article, and also created an appropriate methodological basis, including pros and cons, for further similar scientific research in this direction in order to create appropriate conditions for the realization of the international mechanism for the protection of the rights of victims of military conflict in the East of our country.

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Criminal protection of children's life and health: international experience

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Abstract

Through a documentary methodology, the article examines the characteristics of the criminal protection of the life and health of children in Ukraine and some other countries. The problem of determining the time of the beginning of the protection of a child's life and health, is analyzed in the light of the European experience. It is noted that in Ukraine it is necessary to recognize the right to live of the child at any stage of fetal development, to ensure the criminal protection of the child before birth. This approach is enshrined in several international legal acts, as well as confirmed by legal guarantees in the legal systems of many countries around the world. In addition, the article analyzes criminal law measures to guarantee the rights and interests of the child under modern Ukrainian law. The list of socially dangerous acts against minors is a result, so reinforced criminal liability is provided for considering the interests of minors. It has been concluded that in all post-Soviet countries the components of crimes against a person's health, considering the legislator's reaction to causing harm to the health of children during their commission, are clearly divided into three separate groups.

Keyword: criminal protection of children; life and health; children and minors; criminal responsibility; *corpus delicti*.

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Protección penal de la vida y la salud de los niños: experiencia internacional

Resumen

Mediante una metodología documental el artículo examina las características de la protección penal de la vida y la salud de los niños en Ucrania y algunos otros países. El problema de determinar el momento del inicio de la protección de la vida y la salud de un niño se analiza teniendo en cuenta la experiencia europea. Se observa que en Ucrania es necesario reconocer el derecho a la vida del niño en cualquier etapa del desarrollo fetal, para garantizar la protección penal del niño antes de su nacimiento. Este enfoque está consagrado en una serie de actos jurídicos internacionales, así como confirmado por garantías legales en los sistemas legales de muchos países del mundo. Además, el artículo analiza las medidas de derecho penal para garantizar los derechos e intereses del niño bajo la ley ucraniana moderna. Es resultado la lista de los actos socialmente peligrosos contra los menores, para que es prevista la responsabilidad penal reforzada teniendo en cuenta los intereses de los menores. Se ha concluido que en todos los países postsoviéticos los componentes de los delitos contra la salud de una persona, teniendo en cuenta la reacción del legislador al hecho de causar daño a la salud de los niños durante su comisión, están claramente divididos en tres grupos separados.

Palabras clave: protección penal del niño; vida y salud; infancia y menores; responsabilidad penal; *corpus delicti*.

Introduction

There is no doubt about the importance of ensuring the necessary protection of human rights to life and health. The special importance of human life and health as the most important intangible values has led to the consolidation of human rights to life and standard of living necessary to maintain health and care for illness or disability at the international level, in particular in the Universal Declaration of Human Rights (Art. 25) and the International Covenant on Economic, Social and Cultural Rights (Article 11). These provisions are concretized at the constitutional level of each country, in particular, Art. 3 of the Constitution of Ukraine proclaims human life and health as the highest social value. Ensuring the right to life and health is also detailed at the sectoral level, in particular, at the level of criminal law, which provides for liability for crimes against life and health.

Human life is not only a subjective right, protected by legal norms, but also an independent social, spiritual and biological value. Protecting

everyone's life is a top priority for criminal law. Many lawyers have devoted their work to the issue of criminal law protection of life, but their work does not cover all the problems of criminal law regarding comprehensive protection of life.

Crimes that affect the life and health of a person are the most socially dangerous acts. Today, special attention needs to be paid to the protection of the lives and health of children, who, due to their age, are the most vulnerable category of the population.

Problems of securing children, protecting their rights and legitimate interests, in particular, from socially dangerous encroachments, must be constantly in the focus of attention of a democratic state. Crimes committed against a child, or related to his coercion, involvement in their commission, are characterized by increased social danger. They can not only cause physical, moral or property damage to the child, but also negatively affect its further development, causing unpredictable consequences. Criminal protection of children's rights is an important part of their protection system. In the process of further European integration and development of the rule of law in Ukraine, it is important to clarify the vectors of the domestic legislator in the field of criminal law protection of children's rights and compare Ukrainian legal provisions on children's rights protection with legislation of other countries.

1. The problem of determining when to start protecting the life and health of a child

There are many different points of view on the question of the beginning of life in the legal and medical literature. Researchers determine the beginning of human life from a certain stage of physiological childbirth. At the same time, one group of scientists believes that human life begins from the moment when the child is capable of independent existence, completely separated from the mother's body and took the first breath (Naumov, 2005; Lysenko, 2002). However, back in 1923, S. Pozdnyshev wrote that the most convincing proof of the life of the newborn is breathing. However, there may be cases when the child has not yet breathed, but already lived through the bloodstream (Pozdnyshev, 1923).

Some authors suggest that the initial limit of human life should be associated with the appearance of the formed mass of brain cells, which makes the fetus viable (Sharapov, 2005). Proponents of this position have conclude that, from a legal point of view, the beginning of human life is the birth (formation) of the brain, namely: the achievement of the fetus 22 weeks of fetal development (Trubnikov, 2009).

At the same time, it should be noted that in the modern criminal law literature attempts are made to determine the beginning of life in a different way. Thus, according to Professor V. Glushkov, the life of a human fetus after twenty-eight weeks is an additional object of illegal abortion, so his death because of an illegal operation should be classified as murder (Glushkov, 1987).

Regarding the beginning of life, the position of M. Korzhansky, who notes that the beginning of physiological childbirth is when the development of the fetus is over and it is ripe for independent life outside the mother's body, at that moment a new life appears, which must already be protected by criminal law (Korzhansky, 2001).

At the same time, there is a point of view according to which the moment of the beginning of life is the moment of fertilization (Popov, 2001; Poroshuk, 1998). In jurisprudence, there are strong trends to support this point of view. Thus, some scientists point out that the period of intrauterine human development is an early period of its biological life. Being in the womb in the state of the embryo, it is physically independent, because it is not part of the body of its carrier and is capable of self-development: because the life processes occurring in it, act as an internal impulse of its development.

The mother's body is only an ideal environment for development. With birth begins the second stage of biological existence of man, or rather, the stage of his body in the social environment. This indicates the fallacy of the existing idea that human life begins at birth (Jurek, 2020).

This should be corrected: a person's social life begins from the moment of his birth (Selikhova, 2002).

Some authors believe that the legal relationship to the status of embryos should be based on the recognition of the fact that the embryo is not part of the mother's body, but the beginning of a new life (Besedkina, 2005). It should be emphasized that this position has its own normative consolidation. In the civil legislation of Ukraine in Art. 1222 of the Civil Code of Ukraine, the right to inherit arises from a person who was conceived during the life of the testator and born alive after the opening of the inheritance.

Supporting this approach, Professor A. Kovler emphasizes that "modern law strongly defines another boundary: human life begins with the fertilization of the egg" (Kovler, 2002: 128).

Unfortunately, at the legislative level, the moment of the beginning of life is not clearly established. Only in the Instruction on definition of criteria of the perinatal period, live birth and stillbirth, approved by the order of the Ministry of Health No. 179 from March 29, 2006 (Ministry of Health of Ukraine, 2006), it is specified that live birth is expulsion or

removal from mother's body a fetus which after expulsion / withdrawal (regardless of the duration of pregnancy, whether the umbilical cord is cut and whether the placenta has detached) breathes or has any other signs of life, such as palpitations, pulsation of the umbilical cord, certain movements of skeletal muscles, although from this definition it is not clear what should be considered the beginning of human life. The Instruction focuses on the criteria that indicate whether a person was born alive.

The solution to the problem of criminal-legal consolidation of the moment of the beginning of protection of life should be sought considering foreign, first of all, European legislative experience.

According to the legislation of most European countries, human life begins at conception, and the child at the prenatal stage of development before birth is the very fact of its existence, including the fact of being in physical (biological) relationship with his mother, has a certain legal status that entitles him to protection.

Traditionally, the prenatal period is divided into three stages: the zygote stage (about two weeks), the embryo stage (from the 2nd to the 8th week) and the fetal stage (from the 9th week before birth).

The terms "zygote", "embryo" and "fetus" are used exclusively to indicate the stages of ontogenetic development of the human individual but cannot be grounds for recognizing the lack of value of the child's life at the prenatal stage of development.

According to the Judgment of the Grand Chamber of the European Court of Justice (Court of Justice of the European Union) in Case No. C-34/10 of 18 October 2011 (Court of Justice of the European Union, 2011) concerning the interpretation of Article 6 (2) (c) of Directive 98 / 44 / EU of the European Parliament and of the Council of 6 July 1998: "On the legal protection of biotechnological inventions", a human ovum from the moment of fertilization must be considered as a "human embryo" (European Parliament and the Council, 1998: 55).

The presence of a person at the initial (prenatal) stage of his life and development does not give legal grounds to treat him (and accordingly - his life) as an object that is not a human individual and has no right to life.

The right of such a child to life by its legal nature follows from the natural human right to life and must be recognized by the state as the highest value. Thus, the state is obliged to recognize the need for legal protection of life and health of a child in the prenatal stage of development and to establish legal guarantees for the right of such a child to life, his right to normal development and criminal protection of his health from conception (Urbaniak and Spaczynski, 2015).

The legislation of most European Union countries enshrines rules that guarantee the right to life, health, and other rights of a child in prenatal development. A child in the prenatal stage of life should be legally recognized a number of fundamental rights, including the right to life, safety and protection, to receive proper care and nutrition, to receive special criminal protection from all forms of negligence, violence, intentional and unintentional abuse and other actions that may harm its development.

It is obvious that at present the levels and specific measures of legal protection of a person born and legal protection of a person in the prenatal period of development in different states differ significantly, but it does not follow that the obligation of the state to respect and protect human rights in the prenatal period is less important (or that there is no such obligation of the state at all) and that a person in the prenatal period is deprived of any legal protection.

Thus, the legal recognition of a child at any stage of fetal development as a subject of the right to life, the legal recognition of the rights of such a child to life, health care and development, as well as criminal protection before birth is expressed in a number of provisions of international legal acts, and also is confirmed by the legally established guarantees in legal systems of many states.

2. Criminal-legal measures to ensure the rights and interests of the child under modern Ukrainian legislation.

According to the modern Criminal Code of Ukraine, issues of criminal liability and punishment of minors are resolved in a separate Section of the General Part "Features of criminal liability and punishment of minors". The existence of a special system of punishment for juveniles is justified by their biological, psychological, and social characteristics, so public authorities must take into account all the peculiarities of the age of minors and their psychological and social characteristics to administer humane and democratic justice to persons of this social group.

Separation of features of criminal responsibility of minors in the independent section means that concerning these persons norms on criminal responsibility are applied considering the special provisions provided in this section. Minors between the ages of fourteen and eighteen, on the one hand, reach a fairly high level of socialization, namely: they have independence, perseverance, ability to control their behavior, etc., and on the other, there is further socialization of the individual: training continues or ends in school or college, experience of interpersonal relations, etc. is accumulated. This age is characterized by excessive categorical judgments, irritability, imbalance, inability to assess the situation taking into account

all the circumstances. These age features have led to the establishment of a number of exceptions and additions to the liability of minors compared to the general rules of criminal liability (Astemirov, 1970). Assessing the content of the section of the Criminal Code of Ukraine on criminal liability and punishment of minors, it should be borne in mind that this section is an integral part of the General Part of the Criminal Code, it is inextricably linked with other provisions.

This connection is manifested primarily in the fact that all the initial provisions on the tasks and principles of criminal law on the grounds of criminal liability, the effect of criminal law in time, space and circle of persons, the concepts and types of crimes, guilt and its types, complicity, about the circumstances that exclude the criminality of the act and some others also apply to minors who have committed crimes. The General Part of the Criminal Code contains norms on the peculiarities of children's responsibility for committing criminal offenses and does not preclude the extension to the latter of other privileged norms of the General Part of the Code.

The authorities of all countries of the world make a lot of efforts to establish their country in the international arena as an independent, sovereign, democratic and legal state.

An important characteristic that determines the authority of any state in the international arena to some extent is the policy to protect the rights and freedoms of its citizens, especially the youngest. At the same time, modern social conditions in which adolescents are born, grow and are brought up are far from the desired well-being. Socio-economic crisis phenomena in Ukraine, such as unemployment, indifference to the upbringing of young people, impoverishment of the population, directly affect the formation of the younger generation in the country.

It is important that it is the modern social conditions in which minors grow up and are brought up in some cases that alienate minors from official institutions of socialization, such as the family and the school. According to the State Statistics Service of Ukraine, the country has a low birth rate, which does not provide even a simple reproduction of generations. However, despite the low birth rate, alcohol consumption is becoming increasingly important among young people, the phenomenon of the first drug attempts among adolescents aged eleven to twelve has become widespread, and drug addiction and sexually transmitted diseases are spreading. Social neglect of minors in the conditions of pluralism of views, the absence of clear moral guidelines contributes to the emergence and spread of negative phenomena among minors, which generates crime (Kretsul, 2016).

The world community has repeatedly called for issues related to the protection of the rights and legitimate interests of children. In Art. 3 of

the Convention on the Rights of the Child emphasizes that in all actions concerning children, regardless of which public or private enterprise they use, priority must be given to the best interests of the child (United Nations, 1989).

Similar protection of the rights of the child is enshrined in the Minimum Standard Rules for Juvenile Justice - the Beijing Rules (United Nations General Assembly, 1985) and in the Universal Declaration of Human Rights (United Nations, 1948). On September 30, 1990, the United Nations General Assembly adopted the Universal Declaration on the Survival, Protection and Development of Children, which called for all children to be able to identify themselves as individuals and to realize their potential in a safe and favorable environment, among seven or caregivers who ensure their well-being (United Nations General Assembly, 1990). Based on this requirement of the Universal Declaration of Human Rights and recognizing that a minor at any age is a person who has all the rights of a member of society, he must also be recognized as having the right to the protection of the law.

Criminal law in Ukraine, protecting the interests of minors, their physical and mental development, provides for increased responsibility for the following socially dangerous acts against them:

- Premeditated murder of the mother of her newborn child (Article 117 of the Criminal Code); infection of a minor with immunodeficiency virus (Part 3 of Article 130 of the Criminal Code).
- Infection of a minor with a sexually transmitted disease (Part 2 of Article 133 of the Criminal Code).
- Leaving the mother in danger of a newborn child (Part 2 of Article 135 of the Criminal Code).
- Improper performance of responsibilities for the protection of life and health of children (Article 137 of the Criminal Code).
- Illegal experiments on humans (Part 2 of Article 142 of the Criminal Code).
- Unlawful deprivation of liberty or kidnapping (Part 2 of Article 146 of the Criminal Code).
- Hostage-taking (Part 2 of Article 147 of the Criminal Code).
- Human trafficking (Part 2 of Article 149 of the Criminal Code).
- Exploitation of children (Article 150 of the Criminal Code).
- The use of a minor child for begging (Article 150-1 of the Criminal Code).

- Rape (parts 2, 3, 4 of Article 152 of the Criminal Code).
- Forcible gratification of sexual passion in an unnatural way (parts 2, 3 of Article 153 of the Criminal Code).
- Sexual intercourse with a person who has not reached sexual maturity (Article 155 of the Criminal Code).
- Depravity of minors (Article 156 of the Criminal Code).

Also, there should be mentioned:

- Import, production, sale, and distribution of pornographic items (Part 2 of Article 301 of the Criminal Code).
- Creation or maintenance of cities of debauchery and pimping (Part 3 of Article 302 of the Criminal Code).
- Pimping or involving a person in prostitution (parts 3, 4 of Article 303 of the Criminal Code).
- Involvement of a minor in criminal activity (Article 304 of the Criminal Code).
- Illegal production, manufacture, purchase, storage, transportation of narcotic drugs, psychotropic substances, or their analogues (parts 2, 3 of Article 307 of the Criminal Code).
- Illegal introduction into the body of narcotic drugs, psychotropic substances, or their analogues (Part 3 of Article 314 of the Criminal Code).
- Predisposition to the use of narcotic drugs, psychotropic substances or their analogues (Part 2 of Article 315 of the Criminal Code).
- Organization or maintenance of places for illegal use, production or manufacture of narcotic drugs, psychotropic substances, or their analogues (Part 2 of Article 317 of the Criminal Code).

In practice, the right of children and adolescents to protection of their physical and spiritual development exists formally and this right arises there and when it comes to bringing them to justice (Shedlosky, 2008). As can be seen from the above list of norms of the Criminal Code, today the right to life and health of a child is guaranteed by criminal law on a common basis with adults. The Criminal Code contains virtually no rules specifically regulating liability for encroachment on the lives and health of adolescents. Their age is taken into account only as an aggravating circumstance in determining the culprit. It is obvious that murder, intentional infliction of grievous bodily harm on a minor is an increased social danger. As an example: in paragraph 2 of Part 2 of Art. 115 of the Criminal Code of Ukraine provides for increased liability for premeditated murder of a person under the age of 14, i.e., a minor child.

In particular, D. Kalmykov, conducting research on criminal liability for the exploitation of children, determines that the Ukrainian legislator has supported the global trend regarding the rights of the child, enshrining in Part 2 of Art. 52 of the Constitution of Ukraine that any violence against a child and its exploitation are prosecuted by law, and the provisions of parts 3, 5 of Art. 43 of the Constitution of Ukraine categorically forbade the use of forced labor of children and labor of children in work dangerous to their health (Kalmykov, 2011).

At the same time, despite the different legal decisions on the protection of children's rights, the consideration of violations of children's rights provides for the need to take more decisive measures. Thus, D. Kalmykov proposes to explain Article 150 of the Criminal Code of Ukraine "Exploitation of Children" as the use of forced labor of a child who has not reached the age of sixteen with qualifying characteristics for a minor, or for two or more children, etc. (Kalmykov, 2011).

I. Dolyanovska, considering criminal liability for exploitation of children, proves the need for provision in Art. 150 of the Criminal Code of Ukraine is not responsible for the exploitation of children, but for the economic exploitation of children, which is consistent with the provisions of the UN Convention on the Rights of the Child (Dolyanovska, 2008). I. Dolyanovska believes that the forms of sexual exploitation of a child are all cases of satisfaction of sexual needs of persons, in which the culprits receive profit from such activities of the victim. The author argues that criminal liability for sexual exploitation of children should be provided in Art. 149 of the Criminal Code of Ukraine. In this context, the concept of "sexual exploitation" was developed, which proposed to supplement paragraph 1 of the Note to Art. 149 of the Criminal Code of Ukraine: the use of children's activities to meet the sexual needs of third parties in order to make a profit by the perpetrators (Dolyanovska, 2008).

The current situation in Ukraine regarding the application of criminal law to children (minors) is in a difficult position. Despite the fact that the current Criminal Code of Ukraine still contains norms of a privileged, more human nature for children, there are still a large number of gaps. The most important thing is that there are norms in the current international law that could fill the gaps in the legislation of Ukraine, although the positive trend should include the fact that the basic international legal acts have been ratified by Ukraine today.

3. Comparative analysis of criminal protection of life and health of a child under the laws of Ukraine and other countries

First, it should be mentioned that the corpus delicti of crimes against a person's health, taking into account the reaction of the legislator to the fact of causing harm to children's health during their commission, is very clearly divided into three separate groups. The first such group consists of infection with human immunodeficiency virus or other incurable infectious disease and sexually transmitted diseases, the composition of which provides for their commission against minors as particularly qualifying features under the legislation of Ukraine (Part 3 of Article 130 and Part 2 of Article 133 of the Criminal Code), the Republic of Belarus (Part 3 of Article 157 and Part 3 of Article 158 of the Criminal Code), Georgia (Article 131 and Article 132 of the Criminal Code), the Republic of Moldova (Part 3 of Article 212 and Part 2 of Article 212 of the Criminal Code), the Russian Federation (Part 3 of Article 122 and Part 2 of Article 121 of the Criminal Code).

The second group, the so-called opposite to the first, are acts during which the infliction of bodily harm to children does not affect their qualifications under the criminal law of Ukraine or the criminal law of these post-Soviet states (intentional grievous bodily harm caused in the state intentional infliction of grievous bodily harm in the event of exceeding the limits of self-defense or in excess of the measures necessary to apprehend the offender; negligent grievous or moderate bodily harm).

Finally, the third group of crimes against the health of a person, which under the law of other post-Soviet (except Ukraine) states provide for / recognize their commission of children as a sign of a crime that affects its qualification, includes intentional grievous bodily harm; intentional moderate bodily injury; intentional minor bodily injury; beatings; torture.

Along with the above-mentioned general positive provision of criminal legislation of some post-Soviet of child health care by normative fixing of crimes referred to the third group, we will pay attention to the existence of so-called normative-legal differences.

For example, the criminal codes of the Republic of Bulgaria and the Republic of Lithuania contain as qualified corpus delicti crimes against children in articles that provide for liability for: intentional grievous bodily harm (Article 131, Article 135); intentional moderate bodily injury (Article 131, Article 138); intentional minor bodily injury (Article 131, Article 140); beatings and muggings (Article 187, Article 140). According to the legislation of the Republic of Moldova, the following are recognized as qualified crimes: intentional grievous bodily harm (Article 151); intentional moderate bodily injuries (Article 152), their killing as well as the use of juvenile torture (Article 166-1).

Intentional infliction of the same severe or moderate bodily injuries on minors, as well as the use of torture against them are attributed to the relevant components of crimes, which affects their qualification and the legislation of the Republic of Kazakhstan (Article 106, Article 107, Article 110). In the criminal codes of Georgia and the Russian Federation such qualifying features of corpus delicti as their commission against children are provided in the articles establishing bodily injury (Article 117, Article 111), intentional moderate bodily injury (Article 118, Article 112); torture (Article 126, Article 117). Only the torture of children is recognized as a sign of a crime that affects its qualification in the legislation of the Republic of Azerbaijan (Article 133) and the Republic of Belarus (Article 154).

In general, according to the criminal legislation of foreign countries, encroachment on the health of children as a qualifying feature of the crime is often recognized in the case of torture (Article 133 of the Criminal Code of Azerbaijan, Article 154 of the Criminal Code of Belarus, Article 126 of the Criminal Code of Georgia, Article 140 of the Criminal Code of the Republic of Lithuania, Article 166-1 of the Criminal Code of the Republic of Moldova, Article 117 of the Criminal Code of the Russian Federation), but not so often in case of intentional infliction of grievous and moderate bodily injury (Article 117, Article 118 of the Criminal Code of Georgia, Article 106, Article 107 of the Criminal Code of the Republic of Kazakhstan, Article 135, Article 138 of the Criminal Code of the Republic of Lithuania, Article 152 of the Criminal Code of the Republic of Moldova, Article 111, Article 112 of the Criminal Code of the Russian Federation) and others.

The criminal legislation of the post-Soviet countries is characterized by certain differences in determining the age of children victims of the crimes under investigation.

In most of the criminal codes, juveniles (codes of the Republic of Azerbaijan, the Republic of Belarus, Georgia etc.) are recognized as such victims. According to the criminal legislation of the Russian Federation, the victims of intentional severe and moderate bodily injuries are minors (Article 111, Article 112), and of beatings and torture - minors (Article 117).

It is also worth noting the establishment in the legislation of individual states of criminal liability of parents for specific encroachments on the health of their children. Thus, according to the Criminal Code of the Republic of Lithuania, parents may be liable for causing serious harm to the health of their child (Article 135), as well as damage to the health of minor gravity (Article 135).

Conclusions

The current situation in Ukraine regarding the application of criminal law to children (minors) is in a difficult position. Even though the current Criminal Code of Ukraine still contains norms of a privileged nature for children, there are still a large number of gaps. The most important thing is that there are norms in the current international law that could fill the gaps in the legislation of Ukraine, although the positive trend should include the fact that the basic international regulations have been ratified by Ukraine today.

First of all, the legal recognition of a child at any stage of fetal development as a subject of the right to life, the legal recognition of the rights of such a child to life, health care and development, as well as criminal protection before birth is expressed in a number of provisions of international legal acts, and also is confirmed by the legally established guarantees in legal systems of many states.

The need to further improve the criminal law protection of children's health in Ukraine is obvious, especially against the background of resolving this issue in criminal law at least in the post-Soviet states. At the same time, we also believe that, given the legal status of children in Ukraine after reaching the age of sixteen, unlawful infliction of bodily harm on a person under the age of sixteen should be considered a sign of a crime against the health of a person who affects his qualifications.

Accordingly, in Art. 67 of the Criminal Code of Ukraine should provide that the aggravating circumstance is the commission of a crime against a person under the age of sixteen.

At the same time, encroachment on the rights, freedoms and interests of a person under the age of sixteen, committed by a close relative or family member, a person charged with the care of the victim or caring for him, should be recognized as an aggravating circumstance, and harm to the health of a person under the age of sixteen by a subject from among the above as a sign of a crime against health, which affects his qualifications.

The general directions of further improvement of the Ukrainian criminal legislation in the field of protection of children are: allocation of the separate section in the Special part of the Criminal Code devoted to crimes in the sphere of a family, guardianship, care and normal development of children; revision of the norms of the Criminal Code for the uniformity of use and the same ratio of the terms "child" and "minor"; improvement and unification of the lists of special subjects of crimes from among parents and persons who replace them (in Articles 150-1, 155, 156, 166, 304, 323) taking into account the provisions of family and civil law; further strengthening the responsibility for certain crimes that may be committed against children.

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Legal and educational areas of improving civil service management systems in Ukraine and Poland

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Abstract

The objective of the research was to structure conceptual approaches for the establishment, development and improvement of the formation and functioning of (civil) public management systems in Ukraine and the Republic of Poland, as well as the identification of ways and methods to improve national mechanisms for the implementation of the state personnel policy, based on the modern positive Polish experience. The positive experience of modelling an effective public (civilian) service management system in Poland that can be used in Ukraine to solve its problems has been systematized. Materials and methods were used from the analysis of documentary sources. The basis was the dialectical method of knowledge of the facts of social reality, on which formal and comparative legal approaches are largely based. Conclusions indicate that ways and directions for further reform of the management system in the field of public service in Ukraine, include the further integration of the national public service model, and management mechanisms in this area to the standards of the single administrative area within the framework of the Association Agreement between Ukraine and the European Union.

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Áreas legales y educativas para mejorar los sistemas de gestión de la función pública en Ucrania y Polonia

Resumen

El objetivo de la investigación fue estructurar enfoques conceptuales para el establecimiento, desarrollo y mejora de la formación y funcionamiento de sistemas de gestión pública (civil) en Ucrania y la República de Polonia, así como la identificación de formas y métodos para mejorar los mecanismos nacionales para la implementación de la política de personal estatal basada en la experiencia polaca positiva moderna. Se ha sistematizado la experiencia positiva de modelar un sistema eficaz de gestión del servicio público (civil) en Polonia que se puede utilizar en Ucrania para resolver sus problemas. Se emplearon materiales y métodos a partir del análisis de fuentes documentales. La base fue el método dialéctico de conocimiento de los hechos de la realidad social, en el que se sustentan en gran medida los enfoques jurídicos formales y jurídicos comparados. Conclusiones indican que las vías y direcciones para seguir reformando el sistema de gestión en la esfera del servicio público en Ucrania incluyen el fortalecimiento de la integración del modelo de servicio público nacional y los mecanismos de gestión en esta esfera hasta los estándares del espacio administrativo único dentro del marco del Acuerdo de Asociación entre Ucrania y la Unión Europea.

Palabras clave: servicio público; servicio civil; sistema de gestión del servicio público; reforma del servicio público; derecho comparado.

Introduction

Development of Ukraine as a successful European state depends first and foremost on the success of public administration and public service reform during the transformation period. It is the professional and virtuous body of civil servants that is called to become the leader of progressive changes in society and the state. And in general the positive reform of the public service (separation of political and administrative positions; introduction of competitions for all vacant public service positions, approval of the institution of state secretaries, etc.) carried out in Ukraine in 2015-2019,

today, in 2020, requires reinterpretation of its results and achievements, as well as determination of new goals and priorities for their further development. In particular, this should be done in terms of improving the mechanisms of organization and operation of the public service management system in Ukraine, taking into account the best practices of the member states of the European Union. The experience of civil service creation in the Republic of Poland is the closest and most comprehensible for Ukraine.

1. Literature review

An equally important point for the theory and practice of public service in Ukraine today consists in a constructive response to the global challenge to ensure effective control in the sphere of formation and provision an effective public service management in conditions of overcoming the coronavirus pandemic (COVID - 2019). It is obvious that the procedures for temporary selection for the public service for the period of quarantine (*Demmke*, 2003) only partially solve this problem and are currently subject to sharp criticism by the EU. These and other issues of organization and functioning of the public service management system in Ukraine need to be urgently solved on the basis of relevant scientific developments and taking into account positive foreign experience. Since during the last five years reforming of the public service in Ukraine has been based on the phenomenology experience "civil service creation" in the Republic of Poland it will be appropriate to analyze and compare the public service management systems in Ukraine and the Republic of Poland.

2. Material and methods

A set of general scientific and special research methods was used in the work which gave an opportunity to ensure comprehensiveness of studying the problem as well as reliability of the research conclusions. The main research methods are the systematic method, which contributed to disclosure of the basic public service elements and principles; method of historical analysis which appeared to be the basis for describing the current state and development of the public service; structural and functional method which made it possible to take into account most of the features of service and focus on the problems and prospects of civil service in administrative reform conditions, as well as methods of analysis and synthesis used at all stages of writing this work. Combination of these and other methods and techniques has made it possible to ensure comprehensiveness of studying the problem as well as reliability of the research conclusions.

3. Results and discussion

Established in the 21st century views on the public service as a special regime for citizens endowed with appropriate competence to exercise functions of the state, or as a body of civil servants ensuring the legal personality of the state, implementation of its internal and external functions give the most general idea of this important institution for the society and the state. At the same time, the civil service, like any resource-intensive institution of public administration, requires its rational and effective use in the interests of the people and the state.

In our opinion, the public service management is a determined by the Constitution and laws of Ukraine, purposeful, administrative, organizational and governmental activity of the state authorities, aimed at: 1) Identification, harmonization and implementation of a common public personnel policy in the sphere of the public service with broad attraction of the community; 2) implementation of international standards in the sphere of public service; 3) approval of a comprehensive and balanced system of civil service management, represented by entities that: a) form public policy in the sphere of public service, taking into account international standards; b) implement the public personnel policy and provisions of the current legislation, strategies and programs on public service issues; c) provide training, retraining and advanced training of the public service body; 4) formation and permanent renewal of educated, highly professional, patriotic and virtuous body of the public service, which should be carried out transparently on a competitive basis; 5) prevention of conflict of interest, nepotism and any manifestations of corruption during the entry into the public service and throughout its duration; 6) organization of continuous professional training, retraining, specialization and advanced training throughout the public servant's career; 7) ensuring social and legal protection of public servants, increasing the public service prestige in the society and the state.

In its turn, the public service management system is an established by the current legislation hierarchy of subordinate and coordinated functioning of public administration subjects, as well as a system of tasks, functions and powers, methods, forms and mechanisms for formation and realization of personnel policy in the sphere of public service. Its key features are: a) legality and legitimacy; b) taking into account national traditions and international standards of public service management; c) hierarchy (the so called "personnel vertical") in combination with democratic nature; d) unity combined with collegiality; g) integrity and prevalence of activity throughout the territory of state; integration into the national system of state executive authorities with the involvement of the public service in the parliament, office of the head of the state and judicial power administration etc.

The public service management systems in Ukraine and Poland have undergone a long and largely similar genesis and evolution since the 9th century. At his time in the middle of the 19th century the German scientist G. Ahrens wrote:

> Slavs appear divided into two great tribes. Now based on their place of residence and peoples that make them these tribes form two branches: Bohemian-Polish, or North-Western branch including Moravians, Czechs, Poles and Wends in close relations, and Russo-Serbian, also called Russo-Illyrian, or South-Eastern branch composed of the Russians belong, that is, the Great Russians, the Little Russians, the Russinians (Rusyns or Ruthenians), the Bulgarians, and various tribes of the Illyrian Slavs. There is more similarity between the Germanes and the Slavs in language and character than between the Germanes and the Celts; but the Slavic character differs from the Germanic in the dominance of feelings and ideas, often with a greater desire for the public…" (Ahrens, 1862: 524).

In our opinion, the above expansive quotation testifies not only to the difference in views of Slavic and German scholars on the origin of the Slavic peoples, but also to the fact that Poles and Russians have long been independent. However, the assertion of their statehood, as well as the beginning of the public service, falls at the 9th century At that time, the public service in the Kyiv principality was organized by legendary princes Yaroslav, Volodymyr and others, and the Polish Principality was ruled by Prince Mieszko, Bolesław I the Brave, Mieszko II, Casimir, etc. (Goldryng, 1928), and to the modern systems of the public service management in Ukraine and Poland in the 21st century.

The Prince could solve all issues of state life, including appointment of administration foreman, centurion and thousanders). The prince's court (as a power institution) managed economic, cultural, religious processes, and in order to perform these functions numbered about a hundred of persons. It should be noted that the state apparatus of the Grand Duchy of Lithuania owing a part of Ukrainian lands was quite specific. As in the Kyivan Rus, the duke ruled the state affairs through his squad, which included land aristocracy. However, expansion of the borders of the Dutchy and entry of a number of new lands led to the need to modernize and complicate the state apparatus.

The wife was transformed into a Duke's Court which was the only institution of the state apparatus during the 4th century. The first officials who appeared in the structure of the court were voyevodes (military leaders) and tivunkis (volost leaders), as well as clerks (scribes and treasurers). With the abolition of appanage principalities and the formation of regions and voivodships, they were replaced by the positions of elders and voivodes, who performed not only military functions; and later positions of courtiers, marshals, cellarers, cornets etc. The highest military authority (after the

duke) was given to o the hetman who was entrusted with the leadership of the army during campaigns. The mentioned posts were multifunctional, i.e. one person could hold several positions simultaneously. Positions of deputies, city governors, chastelains etc. were introduced within the regions in order to control collection of taxes and the organization of construction and maintenance of roads and fortifications in proper condition.

Avoiding disclosure of the genesis and evolution of the public service in Ukraine and Poland, which deserves its own study, we note that the establishment of national public service systems, in their modern sense both in Ukraine and Poland took place at the beginning of the 20th century, after the revival of our statehood. Up to date reforms of public Poland, which is a member of the EU, are a good example for Ukraine in its integration processes.

Thus, the main periods of formation and development of public service management systems in Ukraine and Poland are:

- *The first period* (the 9th century. – the 13th century) – establishment of the public service management system in the Kyivan and Polish principalities;
- *The second period* (the 13th century. – the 14th century) – the decline state institutions in the Kyivan principality during the Orda times, development of Halych and Volyn' Principality: and formation of the Grand Duchy of Lithuania, where the feudal-valesal model of public service management was launched;
- *The third period* (the 14th century. - the 18th century – establishment and development of the public service management at the time of the formation of the Lithuanian-Polish Union, and since 1569, after theUnion of Lublin – the Polish-Lithuanian Commonwealth (Rzeczpospolita) as well as establishment of the Cossack state phenomenon and the strengthening of the public service basis;
- *The fourth period* (the 18th century the 20th century). – Ukrainian and Polish lands in the Russian and Austria-Hungary Empire and the attachment of aristocratic and discriminatory public service management systems based on the legislation of the respective metropolitan areas;
- *The fifth period* (beginning of the 20th century – middle the 20th century). – birth of the national systems of state service management for the days of national-liberation competitions of the UPR- WUPR 1917-1922 and during the period of revival of the Second Rzeczpospolita in Poland (1918-1939);
- *The sixth period* (the first part of the 20th century – end of the 20th century). Introduction of the Soviet state-party system of public

service management in Ukraine (1922) And introduction of the communist model of public service in the Polish People's Republic after the Second World War;

- *The seventh period* (end of the 20th century – beginning of the 21st century). - revival of national public service management systems after the "Velvet Revolution" in Poland and during the Third Rzeczpospolita and after the proclamation of Ukraine's independence in 1991; adoption of the first laws on public (civil) service in Ukraine (1993) and Poland (1998);
- *The eighth period* (from the beginning. Of the 21st century – till now) – reforming the public (civil) service management system based on the values of the United Europe and adoption of new laws on the public (civil) service in Poland (2008).

It should be noted that each country in the world has its own model of public service, as well as its own system of public service management, in particular the civil service management. At the same time, states that have related legal and administrative systems, common aspects of genesis and evolution of their state-building and law-making, public administration and public service, as well as similar problems in the sphere of public service and approximate ways of solving these problems have also public service management systems of similar nature. The public service management system in Ukraine and the civil service management system in the Republic of Poland are a clear example of this.

Taking into account the normative content of Article 12 of the current Law of Ukraine "On Public Service" (Law of Ukraine, 2013), the system of public service management bodies in Ukraine should be understood as a system of legally defined and hierarchically organized subjects of public administration with general Cabinet of Ministers of Ukraine and special (central executive power body) Committee on Senior Public Service body and relevant tender commissions; heads of the public service; personnel management services), competence as well as specialized educational institutions (the National Academy for Public Administration under the President of Ukraine, etc.) and research(scientific) institutions, and a system of their standardized and interdependent functions and powers that ensure the formation, renewal and functioning of civil servants in Ukraine (Leheza *et al.*, 2021).

Instead, in the Republic of Poland, the system of public (civil) service management is similar to the Ukrainian one and is represented by the following subjects described in our previous publications (Fedorenko, 2020):

- Head of the Civil Service subordinated directly to the Head of the Council of Ministers of Poland p. 7 Art. 148 of the Constitution of

Poland (Law of Poland, 1997) and appointed / dismissed by the government, formulates and implements the state personnel policy and manages the civil service in Poland;

- The Civil Service Council consisting of 15 members, as an advisory body on matters related to the preparation of human resources management strategy in the civil service, preparation of bills and drafts of other regulations and programs in the sphere of civil service, budget requests for funding of the civil service, qualification requirements for candidates for civil service positions, as well as issues of ethical and disciplinary liability of civil servants, etc. Activities of this Council are provided by the Office under the President of the Council of Ministers of Poland;
- Director General of the Government, whose position is formed at the Chancellery of the Council of Ministers, ministries and government committees, central executive bodies and voivodship (province) governments, as well as at the Office for Registration of Medicinal Products, Medical Devices and Biological Products and the Forest Seed Bureau. The Director General is subordinated to the head of the relevant executive body. The posts of the Director General are not created t the General Command of the Police, the General Command of the State Fire Service and the Command of the Border Guard;
- Head of the department at the Office of the Council of Ministers, ministries and governmental committees, central executive bodies and at the governments of the voivodships;
- Lech Kaczyński National School of. Public Administration (*Krajowej Szkoły Administracji Publicznej im. Prezydenta Rzeczypospolitej Polskiej Lecha Kaczyńskiego*, *KSAP*) (named after the president of the Republic of Poland) which carries out professional training, retraining and advanced training of civil (public) servants in Poland.

This system became an instrument and the result of the complex process of civil service creation in the Third Polish Republic (III Rzeczpospolita). The phenomenon of "civil service creation" in the Republic of Poland consists in the fact that since 1998 a new "civil service" has been created (and alongside with it two more components of public service (service t local government bodies (*"służba samorządowa"*) and military and paramilitary service (*"służba mundurowa*") are presented, and a balanced system of state personnel policy and civil service management has been formed. This generally contributed to integration of Poland into the single European administrative space and, finally, in 2008, it became an EU member state (Leheza *et al*., 2021).

The successes of reforming the public service management system in Ukraine, taking into account the Polish experience, in 2014-2019 opened similar prospects for European integration of Ukraine, but today the public service reform needs to be completed, without compromises in terms of "quarantine procedures". Moreover, given the spread of the practice of passing state examinations and defending dissertations in Ukraine through *Zoom* software applications and other applications used on the global Internet.

In addition to that development of the public service management system in Ukraine in 2019-2020 demonstrates ambiguous trends that distance the public service model in Ukraine not only from Poland, but also from the EU as a whole. These "reverse transformations" include the following: unreasonable delay of the Parliament with adoption of the new Law of Ukraine "On Service in Local Self-Government Bodies" (Law Of Ukraine, 2001) which was to be adopted simultaneously with the Law of Ukraine "On Public Service" in 2013 (Law of Ukraine, 2013); lack of global international donor projects on reforming the public service in Ukraine; weakening the position of the Senior Public Service Commission and its "forced unemployment" during the COVID-19 pandemic in 2020; outflow of representatives of civil society institutions from personnel commissions; introduction of a novelty into the legislation when competitive selection takes place according to part 1 of Article 28 of the Law of Ukraine "On Public Service" (Law of Ukraine, 2013) ubiquity of appointments to positions of category "A" and "B" in the "coronavirus" mode, without competitions; transfer of the National Academy for Public Administration under the President of Ukraine to the Ministry of Education and Science of Ukraine, etc. However, these "reverse transformations" are not fatal and, in our opinion they are subject to constructive solution. This can be done taking into account the positive experience of civil service creation in Poland (Leheza *et al.*, 2021).

And what are the similarities and differences of the researched public service management systems? Public (civil) service management systems in Ukraine and Poland are similar, but not identical. They have hierarchical structure and, in fact, they form the managerial vertical of "personnel authority". These systems, in their broad sense, are represented by: a) parliaments that regulate the public service institution at the legislative level; b) general executive bodies (the government, head of the government) and special competence (commissions on public service, specially authorized bodies or officials on public service regulation; heads of the public service (state secretaries, directors general, personnel services (departments) and divisions). At the same time, unlike Ukraine, the public (civil) service management system in Poland is concentrated primarily under the Head of the Council of Ministers of the Republic of Poland responsible for formation and operation of the Civil Service Council, as well as under the Head of the

Civil Service who is subordinated directly to the Prime Minister. Instead, in Ukraine, the central entity of the Public Service management is presented by the National Agency for Public Service of Ukraine which is subordinated directly to the Cabinet of Ministers of Ukraine and ensures activities of the Senior Public Service Commission. In our opinion, the Polish model (with the head of the Civil Service being the central subject of the Civil Service) may be promising for Ukraine as well, given the established legal management status of the sole head of the public service who is appointed and dismissed by the government (Liutikov *et al*., 2021).

Poland also has a unified vertical of "personnel authority" when directors general of the government are heads of the civil service in the entire system of executive power bodies – from the Office of the Council of Ministers of the Republic of Poland to central executive bodies and military administrations (voivodships). Instead in Ukraine state secretaries operate at the Secretariat of the Cabinet of Ministers of Ukraine as well as at ministries while heads of the state service at other central executive bodies (state services, state inspections, state agencies and central executive authorities with a special status) are heads of these central executive authorities. Thus, change of the head of a central executive authority generally brings about radical changes in the personnel policy and public service management at the departments.

It should also be noted that an important component of the system for implementation and formation of state personnel policy and the civil service management in Poland is presented as State School of Public Administration (KSAP). Thanks to the special professional training graduates of this school have preferences regarding holding vacant civil service posts. Instead, in Ukraine, after transferring the National Academy for Public Administration under the President of Ukraine (NAPA) to the Ministry of Education and Science of Ukraine in November 2020, the issue concerning the entity (entities) for provision of training, retraining, specialization and advanced training of civil servants requires its constructive solution (Pryimachenko *et al*., 2021).

Conclusion

So, the main ways and directions for further reforming the system of management in the sphere of public service in Ukraine include: Strengthening of the integration of the national public service model and management mechanisms in this sphere up to the standards of a single administrative space within the framework of the Association Agreement between Ukraine with the European Union; b) conducting a system audit, involving *SIGMA* international assessment tools (*Support for Improvement in Governance and Management*), etc., main achievements and miscounts of the public

service reform carried out in Ukraine in 2015-2020, as well as identifying prospects for modernization of the civil service management system in Ukraine for the next three years; c) performing functional examination of the main components of the state service management system in Ukraine and ensuring the discussion of its results with the public (community), as well as returning the community to competitive commissions, which determine the winners for holding vacant posts of the public service; d) strengthening of the state-management status and independence guarantees of the Senior Public Service Commission providing change of its name as the Senior Public Service Commission under the Prime Minister of Ukraine; g) abolition of dubious innovations on determining the winners "not more than five people per position" (Part 1 Art. of Article 28 of the Law of Ukraine "On Public Service") and suspension of the provisions of the same Law during quarantine caused by the COVID-19 pandemic as those which, in fact have reduced the transparent nature of the public service reform and significantly weakened the public service management system in Ukraine, etc.

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Principles of administrative procedural law of Ukraine in the modern conditions of the present time

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Abstract

The objective of the research was to analyze the regulations of administrative law and the doctrine of administrative procedural law, in terms of determining the nature and transcendence of the basic principles that underpin its structure, social orientation, and basic properties of the legal regulation of this branch of law, and that, in addition, create the appropriate organizational and functional conditions for administrative procedure activities. Materials and methods of documentary research were implemented. Everything allows us to conclude that the principles of administrative procedural law can be divided into those that directly reflect the specificity and content of this branch of law, determine its characteristics, purpose, objectives, and intention, and, on the other hand, administrative procedural principles, that is, basic principles enshrined in the administrative procedure. It does not undergo significant changes, which determines the nature and content of the activities of all subjects of administrative procedural relations in general.

Keywords: administrative procedural law; administrative procedural rule; principles of law; administrative process; administrative judicial process.

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Principios del derecho procesal administrativo de Ucrania en las condiciones modernas del tiempo actual

Resumen

El objetivo de la investigación fue analizar la normativa del derecho administrativo y la doctrina del derecho procesal administrativo en cuanto a determinar la naturaleza y trascendencia de los principios básicos que fundamentan su estructura, orientación social y propiedades básicas de la regulación jurídica de esta rama del derecho, y que, además, crean las condiciones organizativas y funcionales adecuadas para las actividades de procedimiento administrativo. Se implementaron materiales y métodos propios de la investigación documental. Todo permite concluir que los principios del derecho procesal administrativo pueden dividirse en aquellos que reflejan directamente la especificidad y el contenido de esta rama del derecho, determinan sus características, finalidad, objetivos e intención y, por otro lado, principios procesales administrativos, es decir, principios básicos consagrados en el procedimiento administrativo, ley que tendencialmente no sufre cambios significativos, lo que determina la naturaleza y contenido de las actividades de todos los sujetos de las relaciones procesales administrativas en general.

Palabras clave: derecho procesal administrativo; norma procesal administrativa; principios de derecho; proceso administrativo; proceso judicial administrativo.

Introduction

Global political, economic, social, and legal transformations that are taking place in the state against the background of numerous reforms in all spheres of the society, directly affect the entire domestic legal system, its individual branches and institutions. In the last two decades alone, the current legislation has been significantly updated and supplemented. An influential codified act was adopted - the Code of Administrative Proceedings of Ukraine (hereinafter referred to as CAPU) which finally completed formation of the national administrative justice institution (although the process of making significant changes and additions to it is still ongoing); more than a hundred amendments were made to the main codified act of administrative torts (the Code of Ukraine on Administrative Offenses) has been made during the period of its existence; and the dispersion of administrative procedural norms in the legislation in general testifies to their increase not only in number, but also in form of replenishment with fundamentally new concepts and categories. It is obvious that today it is extremely urgent to rethink certain legislative structures and categories

defined in the norms of administrative and procedural legislation, in particular including such categories as principles.

1. Literature Review

The purpose of legal principles in general is difficult to be overestimated. In any case, their function is to ensure ideological unity of lawmaking, law enforcement as well as law and order in general. Each principle is an idea, i.e. a spontaneous thought as a product of real human thinking, which reflects the most significant understanding of law and legal worldview. Ideas-principles as a general social phenomenon indicate what the law should be. Obviously, in the same way (i.e. as a result of the society evolutionary development) certain concepts and ideas about the legal process, its purpose and objectives, role and place in the society are formed. Such views further form the basis for the formulation of starting points, which over time may represent a "shell" of legal principles.

Turning directly to the study of the principles of administrative procedural law, at the onset we cannot fail to note the fundamental position (expressed by V.S. Bukina) which has not still lost its relevance: "The principles of a certain branch of law reflect fundamentals of its construction, functioning and development" (Bukina, 1975: 95). This intermediate conclusion directly refers to administrative procedural law, whose principles permeate all its norms and institutions, reflect the basic provisions, specificity, content and purpose as those of a branch of law, and they also define administrative procedural activity, administrative procedural powers and administrative procedural status of administrative process subjects, are based on the formation and functioning of administrative procedural legal relations. Moreover, the principles of administrative procedural law should be presented as such fundamental principles enshrined in law which for a long time do not undergo significant changes and ensure implementation of tasks assigned to this area. A.M. Kolodiy notes that "…within the framework of law-making, new legal principles are born with the help of legal practice, and they evolutionarily cancel the effect of old, outdated principles" (Kolodiy, 2012: 41).

2. Material & Methods

To achieve the objectives of the work a set of methods of scientific knowledge was used in it including the following main methods: Formal-dogmatic method, structural and functional analysis, comparative legal method, statistical method, and sociological method. Thus, the formal-dogmatic method was used to form and improve the terminological series

of the Thesis, as well as the categorical apparatus required to form an integral view of the legal nature and system of principles of administrative proceedings; the structural and functional method is used to form the structure of the principles of administrative proceedings, as well as their relationship with the principles of law; the comparative legal method was used to compare domestic case law with the decisions of the European Court of Human Rights in various public law spheres; by means of a statistical method the characteristic of an actual condition of performing administrative legal proceedings was carried out; sociological method was used to analyze the effectiveness and ways to implement various principles of administrative proceedings in various areas of public law.

3. Results and Discussion

It should be noted at once that systematization of scientific approaches, understandings and legal ideas about theoretical interpretations of administrative procedural law depending on the understanding of the "administrative process" definition in today's conditions gives an opportunity to define administrative procedural law as one of the independent procedural branches of law being a properly ordered set of administrative-procedural norms (rules) enshrined in administrative procedural legislation governing public relations between the court and participants in court proceedings in the sphere of administrative proceedings for the purpose to effectively protect rights, freedoms and interests of individuals, rights and interests of legal entities from being violated by subjects of power. It is based on this approach to understanding the content of administrative procedural law as an independent branch of law the fundamental and guiding principles of the latter will be considered in this article.

From the scientific point of view, expediency of studying principles of any branch of procedural law consists in the fact that these branches belong to one of the fundamental categories of the Ukrainian legal science and occupy a priority place in its conceptual apparatus, act as a kind of a "coordinate system" for scientific analysis of procedural legal relations in the process of their functioning. The law's procedural branches are characterized by a higher degree of generality of normative attributes than in case with the branches of material law. As mentioned on pages of legal literature, research of any branch principles of law should be carried out based on their origin, evolution, legal nature, importance, and practical implementation. It is also important to deduce the legal essence from the philosophical understanding of the principles (Polyanichko, 2013). It is no coincidence that the pioneers in the studying of problems of principles in legal science, have historically been representatives of procedural branches (they belong to the science of criminal procedure, where the doctrine of

principles arose much earlier than in other branches of jurisprudence) (Leheza *et al.*, 2018).

The term "principle" as a general scientific category is of Latin origin (Latin "principium") and can be interpreted as: basic, starting point of any theory, doctrine, scientific system (Lopatina, 1990); beliefs, norms, rules guiding someone in life and behavior; canon (Yaremenko and Slipushko, 1998); the feature underlying the creation or implementation of something, the method of creating or implementing something; beliefs, norms, rules that guide someone in life, behavior, or the basic, starting point of any scientific system, theory, ideological direction, etc. (Yaremenko and Slipushko, 2007). The terms "basic", "guiding" or "starting", which are used in almost all definitions provided in reference publications, indicate that this system-forming element, given its essence, is endowed with the highest imperative, it encompasses a fundamental rule that does not require any proof.

Theorists of law, who have studied the principles of law, come to the same conclusion that these are "basic ideas or initial provisions that characterize the content of law, patterns of its development, essence and purpose as a special social regulator" (Dobkin, 2012: 560). In any case, definition of "principles of law" is used under specific conditions when it comes to a basic rule or requirement that belongs to the sphere of jurisprudence and is considered in connection with either the law in general or a particular activity. In specific cases, the definition of "principles" can either be interpreted or clarified, depending on the range of its use and functional orientation (Skakun, 2005).

Norms of the CAPU determining the principles of administrative proceedings are worth to be mentioned as an example. The latest version of this coded act clearly demonstrates legislators not only moved the list of basic principles to the beginning of this legislative act, but also placed them together with the provisions on the tasks of administrative proceedings (Part 3 Art. 2 of the CAPU) and supplemented with the following new principles: understanding of the time of court proceedings; inadmissibility of abuse of procedural rights; reimbursement of court costs of individuals and legal entities in whose favor the court decision is made (Leheza *et al.*, 2020).

Judicial proceedings in administrative cases are characterized by certain stages, their own goals and objectives, a special range of participants and certain specifics of their procedural status, a set of procedural actions, the number of legal facts, legal results and their procedural design. As a result, the principles functioning within a certain institute of administrative procedural law or separate administrative proceeding (Zadykhayla, 2016) were thoroughly studied by scientists at the proper level. It is worth mentioning O.V.Kuzmenko's monograph "Theoretical Principles of the

Administrative Process", its author points out that the principles form a structural conglomerate which constitutes the ideological basis of the public administration and its officials in the procedure of meeting public interests. The researcher systematically analyzed the principles of various administrative proceedings and viewed them as administrative and procedural principles (Kuzmenko, 2005).

Since 2005 (with the introduction of the CAPU) and till now, most scientific publications and theses have been devoted to the analysis of separate principles of the administrative judicial process (dissertation research by S.A. Bondarchuk "Principles of Administrative Justice of Ukraine" (2010). This state of scientific developments on this issue does not cause any complaints, because until the mid-December 2017 the CAPU clearly defined the concept of "administrative process" (paragraph 5, Part 1 Art. of the Code) as "legal relations formed during implementation of administrative proceedings" (Matviychuk, 2008). That is why the above-mentioned research were conducted on the basis of the legislative requirement. The Researchers equated the principles of administrative process to the principles of administrative proceedings and considered them as the basis, beginning, fundamental, and most abstract rules (basic requirements, principles), which serve as indisputable requirements underlying activities performed by the administrative court to resolve its cases fairly (Matviychuk, 2008).

According to scientists, these principles are the basic normative-governing provision objectively existing as a category of legal awareness and due to the need to regulate public relations enshrined in procedural law which forms the borders for execution and development of administrative proceedings (Bondarchuk, 2010). Such definitions indicate that the procedure for conducting administrative proceedings is provided by a set and system of procedural actions, which are based on the principles reproduced in the principles of administrative procedural legislation, and in particular in the principles the Code of Administrative Proceedings of Ukraine (CAPU) Principles determine the main points in the organization and activity of the administrative court with provisions of a more detailed nature appearing from these main points. That is, legal requirements, rules contained in the principles of administrative proceedings, run as the "starting line" through the entire course of consideration and resolution of administrative cases, they determine contents of the relevant specific procedural rules as well as procedural activities carried out on their basis (Leheza *et al.*, 2021).

Let us point out the characteristic features of this legal phenomenon based on the above observations and conclusions. Such features include:

1. legal orientation - each principle is based on a certain idea, theory, concept or view, which is a prerequisite for its emergence, and it is

always determined by social, legal, ideological factors and values of social life;

2. normative and textual fixation - the principles are reflected in the norms of legislation by their textual fixation; 3) universality and effectiveness - principles of administrative procedural law viewed as universally binding and normative provisions determine formation and prospects of development of this branch of law, they are directly related to its norms and institutions, in particular principles have practical and general significance for each of them and determine their basic properties and typical features; 4) stability and stability - the principles must not undergo significant changes for a long time and ensure the implementation of the main goal of this industry - to ensure the proper level of realization and protection of individuals and legal entities of their rights, freedoms and legitimate interests from violations by government powers; 5) firmness and certainty - principles must have a separate clearly defined content, in particular, certain content elements of one principle must not repeat content elements of other principles of administrative procedural law or be derived from them; 6) in case of violation or non-compliance with the principles, during making decision of an administrative case, the court decision shall be subject to cancellation (Leheza *et al*., 2021).

An interesting approach is followed by E.F. Demsky. He distinguishes two independent groups (types) of principles, in particular: 1) principles of administrative procedural law (rule of law; presumption of legality of actions and requirements of the subject of appeal and the person concerned; supremacy of law in the system of administrative procedural regulations; ensuring and protecting interests of individuals and the state; differentiation and specialization of the administrative process; compliance of norms of the procedural law of Ukraine with provisions of international legal acts); 2) principles of administrative process, or administrative-procedural principles: a) functional principles, which determine direction of the administrative process as well as form and content of its institutes; b) organizational principles which determine procedural activity of bodies authorized to consider administrative cases. This position is justified by the fact that it is a mistake to equate principles of law (which determine functioning of the system) with contents of law and the principles of the subjects of legal relations, its components which alongside with the method of procedural actions, guarantees of administrative proceedings and the legal status of the subjects of the administrative process form the structure of the administrative-procedural regime (procedural form) (Demsky, 2008). The listed individual principles (which are part of each group of proposed fundamentals) have repeatedly been the subject of research; their content and essence at the appropriate scientific level are set out in scientific publications and monographs.

Conclusion

When viewing the principles of administrative procedural law we consider it expedient to divide them into those that directly reflect the specifics and content of this branch of law, determine its features, purpose, objectives and intention, as well as separately - administrative procedural principles, i.e. basic principles enshrined in administrative procedural law which do not undergo significant changes, determine the nature and content of the activities of all subjects of administrative procedural legal relations. The functional purpose of principles is to ensure a relatively stable vector orientation for settlement of administrative procedural relations arising from the protection of rights, freedoms and interests of individuals, rights, and interests of legal entities from being violated by subjects of power during court proceedings in the sphere of public and relations.

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The Role of Public Authorities in Combating Gender-Based Violence

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Abstract

The objective of the research was to identify the factors that contribute to the increase in rates of gender-based violence and to clarify the role of the authorities in the fight against this problem. To achieve this objective, the following methods were used: statistical analysis, hypothetical-deductive model, factor analysis, generalization and analogy and correlation analysis. It was found that there is a negative relationship between the level of violence against women and the economic situation, the level of gender inequality, the level of development of social norms and the level of gender development (only for violence against women who are not intimate partners). A positive relationship between the level of gender development and the level of domestic violence was demonstrated. Factors that directly negatively affected rates of gender-based violence were identified: cultural, traditional, religious beliefs about the status of women in society; authorities' restrictions on the rights of individuals associated with the COVID-19 pandemic. The authorities' tools to counter gender-based violence were identified. The perspective of further research is the identification of the social and legal aspects of this global phenomenon.

Keywords: gender inequality; gender development; violence against women; gender-based violence; domestic violence.

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El papel de las autoridades en la lucha contra la violencia de género

Resumen

El objetivo de la investigación fue identificar los factores que contribuyen al aumento de las tasas de violencia de género y aclarar el papel de las autoridades en la lucha contra esta problemática. Para lograr este objetivo se utilizaron los siguientes métodos: análisis estadístico, modelo hipotético-deductivo, análisis factorial, generalización y analogía y análisis de correlación. Se encontró que existe una relación negativa entre el nivel de violencia contra las mujeres y la situación económica, el nivel de desigualdad de género, el nivel de desarrollo de las normas sociales y el nivel de desarrollo de género (solo para violencia contra mujeres que no son parejas íntimas). Se demostró una relación positiva entre el nivel de desarrollo de género y el nivel de violencia doméstica. Se identificaron factores que afectaron directamente de manera negativa las tasas de violencia de género: creencias culturales, tradicionales, religiosas sobre la condición de la mujer en la sociedad; restricciones de las autoridades a los derechos de las personas asociadas con la pandemia de COVID-19. Se identificaron las herramientas de las autoridades para contrarrestar la violencia de género. La perspectiva de una mayor investigación es la identificación de los aspectos sociales y legales de este fenómeno mundial.

Palabras clave: desigualdad de género; desarrollo de género; violencia contra la mujer; violencia de género; violencia doméstica.

Introduction

Gender-based violence is one of the most common human rights violations in the world (Elsherief *et al.*, 2017). According to the United Nations Population Fund, one in three women worldwide experiences physical or sexual violence during their lifetime (UNFPA, 2016; Autiero *et al.*, 2020). The victims of gender-based violence are mostly women and girls. The various factors that contribute to the increase in gender-based violence rates must become a priority issue that needs to be addressed by the authorities.

An important tool in resolving any crisis situation in all public-private spheres is their legal settlement at the international and national levels. Authorities are empowered to protect the rights of vulnerable groups, to develop and improve mechanisms to combat violations of their rights. In particular, it concerns the prevention of an increase in gender-based

violence rates and the elimination of existing factors that contribute to violence.

1. Literature review

There are several approaches to understanding gender-based violence in the literature. A narrow understanding of gender-based violence is defined by Wirtz *et al.* (2018) as a general term for any harm caused against human will and resulting from gender inequality. Gender inequality is identified as the root cause of gender-based violence. In addition, the main causes of gender-based violence are related to beliefs, norms, attitudes and structures that promote and/or tolerate gender discrimination and gender inequality (Nordby, 2018).

A broad approach is proposed by Johnson (2004) as gender-driven violence. The majority of victims are women and girls (although men may also be victims of violence), covering racial, ethnic, class, age, economic, religious and cultural diversity. Gender-based violence exists in different places: at home, in society, in public institutions. There are five types of gender-based violence: sexual violence; physical violence; emotional and psychological violence; negative traditional practices; socio-economic violence (Johnson, 2004).

The Declaration on the Elimination of Violence against Women interprets gender-based violence as "any form of violence that causes or may cause physical, sexual or psychological harm or suffering to women, including threats of such acts, forced arbitrary deprivation of freedom, regardless of whether they are in the state or in private life" (United Nations, 1993).

Gender-based violence is a man-caused crisis that exists in various forms, including offline, through physical and sexual violence, and in today's world, gender-based violence occurs through the Internet through harassment and trolling. An innovative tool to combat gender-based violence is to involve Internet users in the joint fight against gender-based violence in social media (Karuna *et al.*, 2016). Combating gender-based violence on the Internet requires the involvement of technology companies that are Internet providers to prevent the use of networks by those who intend to commit violence. One of the key tasks of the state is to involve Internet providers in effectively solving the problems of Internet violence in their networks. Combating gender-based violence is a complex task that requires joint action by the public, private sectors, and society as a whole (Suzor *et al.*, 2018).

Globally, gender-based violence increased during the COVID-19 pandemic. COVID-19 and past pandemics have led to an increase in intimate

partner violence (physical, intellectual, economic and psychological); increased the number of sexual harassment on the Internet and offline, intimidation of persons on the grounds of sex; sexual exploitation and abuse, especially among women and girls; human trafficking for profit from exploitation, especially of girls via the Internet; child, early and forced marriage in order to reduce family expenses; ill-treatment of persons with disabilities and gender non-conforming people; damage to the female genitals; attacks on female healthcare workers; human trafficking (USAID, 2021).

The factors that cause gender-based violence are interrelated. The evidence is the Covid-19 pandemic, which has led to restrictions on movement, social exclusion, and increased financial stress, which could have led to increased gender-based violence rates. In such circumstances, the government's opposition to gender-based violence is reduced to expanding hotlines and information exchange; funding shelters and other options for the safe accommodation of victims of gender-based violence; expanding access to services for victims of gender-based violence; limiting risk factors associated with violence; modifications of family law and justice (Guedes *et al.*, 2020).

The COVID-19 pandemic has revealed many societal inequalities based on gender, class, race, and access to health care. State and local authorities have introduced innovative and coordinated counteraction to gender-based violence, which aims to address the systemic causes of violence. It is reduced to ensuring the continuity of existing services and creating new strategies to improve the communication system. Increasing gender inequalities in a pandemic have contributed to increased gender-based violence rates. As a result, it is necessary to develop a multi-level and coordinated response to gender-based violence, its cultural and social causes and to eliminate its consequences (Polischuk and Fay, 2020).

The crisis is increasing the vulnerability of women and girls due to the lack of access to sources of social support, healthcare services, social and other services. The consequences of violence are growing as economic tensions in the state facilitate the concealment of the perpetrator, which reduces the ability to effectively combat gender-based violence. The United Nations Office for Disaster Risk Reduction has clearly recognized the need to better integrate gender perspectives into crisis preparedness (John *et al.*, 2020). Legal and forensic medicine must work to achieve two main goals: the assessment of gender-based violence; risk assessment after isolation from the abuser (Acosta, 2020).

Legislation criminalising violence against women as a tool to combat gender-based violence codifies women's right to live without violence. Legislative sanctions for violence against women can be a deterrent to the development of gender-based violence. New international law and national

law recognise women's right to life without violence. National legislation in most parts of the world not only prohibits and criminalises violence, but also provides mechanisms to support victims of gender-based violence and their families. States have a duty to protect women from violence and to enact laws to prevent and punish gender-based violence (Klugman, 2017).

Research objectives

The aim of the research paper is to identify the factors that contribute to the increased gender-based violence rates and to establish the role of the authorities in combating gender-based violence.

Research objectives of the article

1. Identify countries with the largest and smallest human development, gender development, gender inequality.
2. Identify factors that may affect the level of gender-based violence in identified countries.
3. Analyse statistical indicators of factors that may affect the level of gender-based violence in the studied countries.
4. Investigate the impact of established factors on the level of gender-based violence in the studied countries.
5. Find out the role of the authorities in combating gender-based violence.

2. Research materials and methods

The main approach in the study of the role of public authorities in combating gender-based violence was to identify the countries with the highest, medium, and lowest human development index, gender development index and gender inequality index. We believe that these indices are a reflection of the effectiveness of the government's functions of ensuring respect for the gender rights of individuals. This approach was chosen in order to fully explore the role of the authorities in combating gender-based violence. The formula for determining the arithmetic mean was used in the study:

$$\overline{x} = \frac{1}{n}\sum_{i=1}^{n} x_i = \frac{x_1 + x_2 + \cdots + x_n}{n}$$

where X1 – Gender Inequality Index (Gender Development Index) for 2005, X2 – for 2010, X3 – for 2015, X4 – for 2017, X5 – for 2018, X6 – for 2019, n – number of indicators.

The study of the role of the authorities in combating gender-based violence was carried out using statistical analysis to identify countries with the highest and lowest human development, gender development and gender inequality indices. Statistical analysis involved the indicators of the Gender Social Norms Index, the number of cases of gender-based violence against women in the studied countries and regions of the world, the level of economic development of the studied countries, which is reflected in GDP per capita.

The direction of the research was determined through the hypothetical-deductive method, which was reduced to the identification of factors that may affect the level of gender-based violence, as well as the role of public authorities in combating gender-based violence.

A study was conducted through the correlation analysis to establish the relationship: between the Gender Development Index and violence against women ever experienced in 2005 — 2019 in Germany, Australia, USA, Japan, Ukraine, South Africa, India; between the Gender Inequality Index and violence against women ever experienced in 2005 — 2019 in the studied countries; between GDP per capita and the gender development index for 2000 — 2019. The study used the formula of correlation analysis:

$$r = \frac{\sum (x_{1j} - \bar{x}_1) \cdot (x_{2j} - \bar{x}_2)}{\sqrt{\sum (x_{1j} - \bar{x}_1)^2} \cdot \sqrt{\sum (x_{2j} - \bar{x}_2)^2}}$$

where x1 — Gender Inequality Index and x2 – violence against women ever experienced, r – linear correlation coefficient.

The method of factor analysis, generalisation and analogy identified the factors that affect the number of cases of gender-based violence.

The research used the most significant scientific works that reflect the development of scientific thought in the field of gender-based violence and ways to combat gender-based violence for the period 1993 to 2021. This period of the study was chosen as the one that most clearly reflects the role of the authorities in combating gender-based violence.

The paper analyses the following indicators:

- Gender Development Index (GDI) 2000 – 2019 reflected in United Nations Development Programme.
- Gender Inequality Index (GII) 2000 – 2019 reflected in United Nations Development Programme.
- Violence against women ever experienced, (% of female population ages 15 and older) 2005 – 2019 reflected in UN Women.

– Gender Development Index (GDI) and Violence against women ever experienced (% of female population ages 15 and older) in regions reflected in United Nations Development Programme, UN Women.
– Gender Social Norms Index (GSNI) 2005-2014 reflected in United Nations Development Programme.
– GDP per capita (current US$) 2000 – 2019 reflected in The World Bank.

3. Results

The Gender Development Index measures the gap between three components: education, life expectancy and income of men and women, taking into account the impact of human development. The Gender Development Index reflects the influence of the authorities on gender equality, ensuring the well-being and prosperity of all social groups. In order to achieve the goals, set in the study, we select countries with a high, medium and lowest index of human development during 2000 — 2019.

Table 1. Table of correlation of the CSOCI components

HDI Rank	Country	2000	2005	2010	2015	2017	2018	2019
6	Germany	0.943	0.957	0.960	0.968	0.969	0.968	0.972
8	Australia	0.961	0.970	0.976	0.975	0.976	0.976	0.976
17	USA	0.987	0.992	0.996	0.994	0.995	0.993	0.994
19	Japan	0.950	0.955	0.960	0.971	0.976	0.977	0.978
74	Ukraine	0.992	1.004	1.012	0.997	1.000	1.000	1.000
114	South Africa	0.959	0.959	0.975	0.982	0.981	0.983	0.986
131	India	0.736	0.761	0.782	0.809	0.817	0.818	0.820

Source: United Nations Development Programme, 2020.

Thus, the countries with the highest human development index include: Germany and Australia, the medium — the United States and Japan, the lowest — South Africa and India (Table 1). At the same time, the highest level of the gender development index in the studied countries during 2000 — 2019 was recorded in Ukraine, and the lowest level of the gender development index — in India.

The Gender Inequality Index is an indicator that reflects inequality between women and men in three areas: reproductive health, empowerment, and the labour market.

Table 2. Gender Inequality Index (GII)

HDI Rank	Country	2000	2005	2010	2015	2017	2018	2019
6	Germany	0.130	0.117	0.097	0.076	0.084	0.084	0.084
8	Australia	0.160	0.139	0.138	0.110	0.104	0.103	0.097
17	USA	-	0.263	0.259	0.238	0.229	0.211	0.204
19	Japan	0.135	0.146	0.121	0.121	0.103	0.100	0.094
74	Ukraine	0.388	0.379	0.334	0.288	0.273	0.270	0.234
114	South Africa	0.470	0.464	0.439	0.419	0.414	0.411	0.406
131	India	-	0.624	0.590	0.550	0.525	0.512	0.488

Source: United Nations Development Programme, 2020.

There is a positive trend of decline in the Gender Inequality Index in all countries from 2000 to 2019. At the same time, violence against women aged 15 and older remains high (Table 3).

Table 3. Violence against women ever experienced, (% of female population ages 15 and older)

HDI Rank	Country	intimate partner	Non-intimate partner
		2005-2019	2005-2019
6	Germany	22.0	7.0
8	Australia	22.8	10.0
17	USA	-	-
19	Japan	-	-
74	Ukraine	26.0	5.0
114	South Africa	21.3	-
131	India	28.8	-

Source: UN Women, 2019.

Between 2005 and 2019, women were more likely to be victims of intimate partner violence than non- intimate partners, indicating a high level of domestic violence.

In order to establish the relationship between the Gender Development Index and violence against women ever experienced and between the Gender Inequality Index and violence against women ever experienced, it is necessary to determine the arithmetic mean of these indices in the studied countries for 2005 - 2019, as the arithmetic mean violence against women ever experienced is provided for 2005 —2019. The arithmetic mean of the Gender Inequality Index in Germany is 0.090, Australia — 0.115, the United States — 0.234, Japan — 0.114, Ukraine — 0.296, Africa — 0.425, India — 0.548. In order to establish the relationship between the Gender Inequality Index and violence against women ever experienced, it is necessary to conduct a correlation analysis of the indicators in Tables 2 and 3.

The linear correlation coefficient between the Gender Inequality Index and violence against women ever experienced (non-intimate partner), excluding the USA and Japan, South Africa and India, is -0.636; between the Gender Inequality Index and violence against women ever experienced (intimate partner), excluding the United States and Japan, is -0.727.

Thus, a negative correlation was established between the index of gender inequality and the amount of violence against women during 2005-2019. Therefore, the lower the Gender Inequality Index, the more cases of violence against women. In order to establish the interaction between the Gender Development Index and violence against women ever experienced, it is necessary to calculate the arithmetic mean of the Gender Development Index. The arithmetic mean of the Gender Development Index for 2005 — 2019 is: Germany — 0.966, Australia — 0.975, USA — 0.994, Japan — 0.970, Ukraine — 1.002, Africa — 0.978, India — 0.801.

The linear correlation coefficient between Gender Development Index and violence against women ever experienced during 2005 — 2019 in the studied countries (intimate partner), excluding the USA and Japan, is 0,603, nonintimate partner, excluding the USA and Japan, South Africa and India, is 0.731.

Thus, there is a positive correlation between the gender development index and the number of cases of violence against women (intimate partner), and a negative correlation between the gender development index and the number of cases of violence against women (non-intimate partner). Therefore, gender development reduces the incidence of domestic violence against women.

In Australia, there has been an increase in sexual assault as a form of domestic violence in 2020. The statistics is as follows: in 2017 — 105.1, 2018 — 105.3, 2019 — 105.9 cases per 100,000 people were recorded, while

in 2020 the number of cases of violence increased by 13% compared to 2019 (107.1) (Australian Bureau of Statistics, 2021). The reason for the increase domestic violence rates is the pandemic caused by Covid-19. The decision of the authorities to restrict the movement of the population led to a long stay of people indoors, resulting in increased number of cases of domestic violence.

Analysing the indicators of the gender development index in some regions of the world (Table 4), the highest index during 2000 — 2019 was found in Latin America and the Caribbean — 0.957 - 0.978, and the lowest — in South Asia — 0.734 - 0.824. At the same time, Latin America and the Caribbean have the highest percentage of violence against women who are not intimate partners and the lowest percentage of violence against women who are intimate partners.

Table 4. Gender Development Index (GDI) and Violence against women ever experienced (% of female population ages 15 and older) in regions

	Gender Development Index (GDI)					Violence against women ever experienced (% of female population ages 15 and older)	
						nonintimate partner	intimate partner
Regions	2000	2005	2010	2015	2019	2005-2019	
Arab States	0.807	0.821	0.835	0.853	0.856	-	-
East Asia and the Pacific	0.916	0.930	0.948	0.959	0.961	3.2	-
Europe and Central Asia	0.924	0.930	0.952	0.952	0.953	3.4	27.9
Latin America and the Caribbean	0.957	0.971	0.977	0.986	0.978	31.5	23.8
South Asia	0.734	0.765	0.790	0.818	0.824	3.0	31.0
Sub-Saharan Africa	0.857	0.857	0.879	0.887	0.894	2.2	31.4

Source: United Nations Development Programme, 2020. UN Women, 2019.

Domestic violence is observed in the regions of the world where the largest percentage of the population professes Islam — East Asia, Southeast

Asia, Africa. The regions of the world where the majority of the population professes Christianity have a lower percentage of violence against women being intimate partners — Latin America, Europe and Central Asia.

The Gender Social Norms Index is made by persons who have at least one gender bias, those who do not have prejudices and those who have prejudices in the areas of politics, economics, education and physical integrity (Table 5).

Table 5. Gender Social Norms Index (GSNI)

	GSNI (share of people with at least 1 bias)		Share of people with no bias		Share of people biased by dimension							
					Political		Economic		Educational		Physical integrity	
	2005-2009	2010-2014	2005-2009	2010-2014	2005-2009	2010-2014	2005-2009	2010-2014	2005-2009	2010-2014	2005-2009	2010-2014
Germany	59.11	62.6	40.89	37.4	26.43	26.59	26.94	30.91	14.32	15.78	39.9	44.68
Australia	52.23	46.24	47.77	53.76	32.37	32.48	26.05	18.06	7.53	4.09	26.05	20.93
USA	60.63	57.31	39.37	42.69	42.23	39.9	19.41	14.81	7.81	6.54	38.84	34.57
Japan	72.08	68.81	27.92	31.19	46.44	46.87	39.69	41.79	18.34	16.21	37.04	26.28
Ukraine	87.28	86.53	12.72	13.47	60.6	62.63	58.18	57.69	32.47	18.23	50.8	56.61
South Africa	93.32	96.32	6.68	3.68	61.33	75.56	55.22	57.06	19.98	38.8	81.04	88.8
India	91.4	98.28	8.6	1.72	62.12	64.1	68.32	69.91	38.63	35.24	75.31	88.38

Source: United Nations Development Programme, 2020.

It is established that India, where the highest level of domestic violence is recorded, has the highest percentage of gender-biased people for 2010 — 2014, the lowest percentage of people without prejudice (for 2010 - 2014), the highest percentage of people who are most biased in politics (2005 — 2009), economics (2005 — 2014), education (2005 — 2009). The lowest level of domestic violence is observed in South Africa, however this country has a high level of gender bias and a low percentage of people without gender bias, the highest percentage of gender bias in politics (2009—2014), education (2010—2014), physical integrity (2005 — 2014).

Thus, domestic violence does not depend on gender bias of the population. The well-being of the population depends on the economic development of the state. Based on the conclusion about the relationship between the gender development index and the number of cases of violence against women (intimate partners), we consider it appropriate to study the

impact of economic development of the studied countries on the gender development index.

Table 6. GDP per capita (current US$)

Country	2000	2005	2010	2015	2017	2018	2019
Germany	23,635	34,507	41,531	41,086	44,552	47,810	46,467
Australia	21,679	33,999	52,022	56,755	54,027	57,354	55,057
USA	36,334	44,114	48,467	56,839	60,062	62,996	65,297
Japan	38,532	37,217	44,507	34,524	38,386	39,159	40,246
Ukraine	653	1,826	2,965	2,124	2,640	3,096	3,659
South Africa	3,032	5,383	7,328	5,734	6,131	6,372	6,001
India	443	714	1,357	1,605	1,981	2,005	2,099

Source: The World Bank, 2020.

The linear correlation index between GDP per capita and the gender development index in the studied countries during 2000 — 2019 is equal to: 2000 — -0.895, 2005 — -0.842, 2010 — -0.853, 2015 — -0.765, 2017 — -0.772, 2018 — -0.791, 2019 — -0.757. Thus, there is a negative correlation between economic development and the gender development index.

4. Discussion

Vulnerable groups of the population are a category of people, the provision and observance of whose rights is a changing phenomenon in crisis situations in the country and the world.

In general, the role of the authorities in combating gender-based violence is divided into three stages: prevention, response and elimination of the consequences of gender-based violence.

Prevention of gender-based violence, as the main stage of counteraction, is to prevent and eliminate factors influencing the increase in the number of cases of gender-based violence.

The study showed that the level of gender inequality does not affect the number of cases of violence against women, and a study of the social norms index found that the level of domestic violence does not directly depend on the level of gender bias in general and in certain areas of society.

Therefore, we do not agree with the rationale that gender-based violence depends on gender norms — that is, social norms about the corresponding roles and responsibilities of men and women (Heise *et al.*, 2002). The level of violence against women and girls depends on the religion of the majority of the population in a given country. The highest level of domestic violence is established in those regions of the world where the largest percentage of the population professes Islam — East Asia, Southeast Asia, Africa. A lower percentage of violence against women (intimate partners) is observed in those regions where the majority of the population is Christian — Latin America, Europe and Central Asia. Therefore, we agree that patriarchal society is the direct cause of gender-based violence, as patriarchy establishes such socio-cultural values and norms of society that subordinate women, determine and dictate their place and behaviour (Hadi, 2017).

The positive correlation between the gender development index and the number of cases of violence against women (intimate partner), the negative correlation between the gender development index and the number of cases of violence against women (non-intimate partner) is proved. Thus, gender development reduces the incidence of violence against women (intimate partners).

Therefore, we unequivocally believe that effective prevention of gender-based violence among adolescents and young adults is a key strategy to reduce gender-based violence (Crooks *et al.*, 2018). Authorities are required to develop programmes and strategies to prevent gender-based violence to address the root causes and factors of violence against women and girls at the population level (Perrin *et al.*, 2019), as most cases of gender-based violence can be prevented by effective preventive measures (Oliveira *et al.*, 2018; Rituerto-González *et al.*, 2019). Prohibiting the coverage of intimate information in the form of images, videos or text in the media will reduce the risk of violence against women (Russo and Pirlott, 2006).

It is established that the economic development of the population does not affect the level of gender development, and accordingly the level of gender-based violence.

The current Covid-19 pandemic is a factor that negatively affects the dynamics of gender-based violence: social isolation, increased Internet use, reduced access to support services and financial stress have led to increased domestic violence rates. We agree that the failure to implement methods to prevent the risk of gender-based violence in all sectors and activities in crisis situations may create a risk of gender-based violence (USAID, 2021). Therefore, as the COVID-19 pandemic continues to negatively affect women's lives, there is a need to prioritise their right to health and safety. It is also important to note that some women remain financially dependent on those who have abused them. Therefore, there is a need to implement community programmes, especially for psychological support and shelter, especially for victims of abuse (Bingol and Ince Yenilmez, 2020).

An important step in combating gender-based violence is to eliminate the consequences of violence against women and prevent their recurrence. Therefore, in the face of government restrictions on the rights of individuals to overcome the Covid-19 pandemic, access to justice for survivors of gender-based violence needs to be increased, support for women victims of violence and prevention of re-violence shall be provided (Morrison *et al*., 2007).

Conclusions and recommendations

The authorities are the main actors that can directly influence the dynamics of gender-based violence by addressing the factors that increase the incidence of violence against women and girls. The countries with the highest, middle and lowest levels of human development, gender development and gender inequality were found to include Australia, Germany, the United States, Japan, Ukraine, South Africa and India. The study found a negative relationship between the level of violence against women and the economic situation in the country, the level of gender inequality, the level of social norms and the level of gender development (only for violence against women non-intimate partners) in the studied countries during 2000 - 2019. It was found that the factors that negatively affect the amount of gender-based violence are: restriction by the authorities of the rights of persons associated with the Covid-19 pandemic; cultural, traditional, religious beliefs about the status of women in society. The relationship between the level of gender development and the level of domestic violence has been proven.

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The pandemic caused by the Covid-19 mass morbidity has led the authorities to impose a number of restrictions, some of which have affected the movement of the population. Prolonged stay at home has led to increased domestic violence rates. Accordingly, the authorities are obliged to develop an action plan in crisis conditions to prevent and eliminate the consequences of gender-based violence.

Authorities have several levers of influence in the fight against gender-based violence, which are reduced to legislative regulation (international and national), prevention of gender-based violence, including through the media, educating young people, balancing religious views, culture, and traditions with respect to the opposite sex or gender-nonconforming people, support and development of family institutions, social, medical and financial support for victims of gender-based violence.

The prospect of further research is to cover social and legal aspects that affect the level of gender-based violence.

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Guarantees within tax legal relations: challenges of the present day

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Abstract

The purpose of the research is dedicated to modern challenges related to the implementation of legal guarantees within tax legal relationships. Legal guarantees within tax legal relations are the embodiment of the constitutional and legal guarantees of human and civil rights and, at the same time, act as an integrated intersectoral tool, covering both the administrative, financial and tax spheres respectively. The methodological basis of the article consisted of a set of general and special methods of scientific knowledge that, when applied, provide the opportunity to achieve the stated objective and ensure the scientific reliability and validity of the theoretical conclusions obtained. It is concluded that, to implement the potential to ensure taxpayers' choice of alternative methods of taxation, it is necessary to create conditions for commercial entities to perform the appropriate calculations and make the appropriate decisions. Entrepreneurs should receive government help in this through various electronic services.

Keywords: taxpayers; tax legal relationships; legal guarantees; electronic services; alternative tax systems.

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Garantías dentro de las relaciones legales tributarias: desafíos actuales

Resumen

El propósito de la investigación está dedicado a los desafíos modernos relacionados con la implementación de garantías legales dentro de las relaciones legales tributarias. Las garantías legales dentro de las relaciones jurídicas tributarias son la encarnación de las garantías constitucionales y legales de los derechos humanos y civiles y, al mismo tiempo, actúan como una herramienta intersectorial integrada, que abarca tanto el ámbito administrativo como el financiero y tributario respectivamente. La base metodológica del artículo consistió en un conjunto de métodos generales y especiales de conocimiento científico que, al ser aplicados, brindan la oportunidad de lograr el objetivo planteado y asegurar la confiabilidad científica y validez de las conclusiones teóricas obtenidas. Se concluye que, con el fin de implementar el potencial de garantizar la elección de los contribuyentes de métodos alternativos de tributación, es necesario crear condiciones para que las entidades comerciales realicen los cálculos adecuados y tomen las decisiones adecuadas. Los emprendedores deberían recibir gubernamental ayuda en esto mediante diversos servicios electrónicos.

Palabras clave: contribuyentes; relaciones jurídicas tributarias; garantías legales; servicios electrónicos; sistemas tributarios alternativos.

Introduction

In recent years, scholars and practitioners, especially in the field of jurisprudence, are concerned about how effective is the procedure of guaranteeing human and civil rights by the Ukrainian state, and which model of the state is more able to guarantee for citizens their rights and freedoms? This necessitates the clarification of various approaches to the concept and possible classification of "guarantees of human and civil rights and freedoms with legal guarantees within tax legal relations taking a prominent role in these rights and freedoms. It is generally believed that guaranteeing legal protection and protection of human rights is a comprehensive function of the state.

Guarantees within tax legal relations are a sectoral embodiment of the system of constitutional guarantees of human rights and freedoms. The subject of regulation of tax law is presented as a set of financial and legal norms governing public relations arising in connection with

the establishment, collection, change or abolition of taxes, fees, other mandatory payments to budgets of various levels and trust funds in form of monetary assets ensured by the coercive force of the state apparatus. Tax law is a system of financial and legal relations, which regulates the tax relations of state bodies and taxpayers to establish, change and collect a part of taxpayers' income to the budget, - says P.T. Gegha (Gegha, 2003). It is also worth recalling that according to Professor M.P. Kucheryavenko, the tax right is in a state of administrative law, or even belongs to it as an independant institution (Kucheryavenko, 2003). Thus, Legal guarantees within tax legal relations are the embodiment of constitutional and legal guarantees of human and civil rights and at the same time they act as an integrated intersectoral tool, which covers the administrative sphere as well as financial and tax spheres.

1. Literature Review

The legal term "guarantee" comes from the French "garantie", which means a surety, a condition that provides something. In modern encyclopedic literature, the concept of guarantee (from the French 'garantie' - security, surety) of human and civil rights and freedoms is understood as conditions, means, methods that ensure a full-range implementation and comprehensive protection of individual rights and freedoms. The concept of "guarantee" covers the whole set of objective and subjective factors aimed at the practical realization of rights and freedoms, to eliminate possible obstacles to their complete or proper implementation (Shemshuchenko, 1998).

From the standpoint of the theory of law and domestic constitutionalism, the issue of guarantees of human and civil rights and freedoms is a topic widely covered in scientific publications. The situation with the applied aspect of assessing the impact of guarantees precisely in the legal relationship of a tax nature is quite different.

When defining the concept of guarantee V. M. Kornukov wrote:

> Everything that to any extent contributes to achievement of certain results or provides a certain condition can be regarded as a guarantee of the relevant activity or condition, because it promotes this activity, protects this condition, that is it guarantees them. The general concept of a guarantee is often quite conditional and, if the expression may be tolerated, mobile, because what in one case is a guarantee, in another case is not such (Kornukov, 1988: 410).

It should be noted that the concept of guarantees reflects the perfection of legislative technique and the variety of law language forms. In his work V. F. Pogorilko considers legal guarantees as the provision by the state of a formal (legal) generally binding nature of conditions necessary for everyone

could be able to exercise his/her constitutional rights and freedoms. Legal guarantees are established by the state in the Constitution and norms of the current legislation. Their purpose is to provide real legal means for maximum exercising protection of rights and freedoms of citizens (Pogorilko, 1999).

When speaking about implementation of rights and freedoms of persons and citizens A.R. Yuzefir noted that within the limits of the whole (system) the purpose of guarantees consists in that they are called to provide such most possible and favorable situation for person's rights and freedoms (those written down in the Constitution and laws) could become the de facto position of each individual and citizen (Yuzefir, 2018).

O.F. Skakun believes that the guarantees of human and civil rights, freedoms and responsibilities are a system of social and economic, political, legal conditions, methods and means that ensure their actual implementation, protection and reliable protection. When it is not about guarantees, rights, freedoms and responsibilities of persons and citizens take the form of declarations of intent (Skakun, 2006).

Guarantees help to fix ways for achieving reality of rights and freedoms (the way guarantees unction) - provision, implementation, protection and defense of rights and freedoms.

The system of guarantees also includes such guarantees as social and political, social and economic (material), ideological, legal (lawful).

The role and significance of guarantees of individual rights and freedoms is determined by the fact that they are important factors in the economic, political, legal, cultural and other spheres of social life, which create conditions for real possibility to implement individual rights and freedoms. The system of guarantees of individual rights and freedoms is quite complex and extensive.

Economic guarantees of rights and freedoms constitute a separate important group of guarantees. Their significance is especially raised in the conditions of a market economy, under creating a material basis of life of the society. It should be noted that economic guarantees of human and civil rights and freedoms in Ukraine deserve a special attention. Let's consider how this concept is interpreted by modern scientists. V. F.Pogorilko states economic guarantees of rights and freedoms of citizens of Ukraine as: method of production; economic freedom of citizens and their associations in choosing forms of ownership and carrying out business activities; economic system of the society which should ensure a steady growth of productive forces based on recognition and protection of various forms of ownership of the means of production; socially-oriented market economy (Pogorilko, 2006).

According to V.Y. Tatsiy and Y.M. Todyka economic and social guarantees include material conditions and social environment that ensure the free use of human rights and freedoms (Tatsiy *et al*, 1999).

Thus, an important task of the present day consists in the necessity to assess the current state and challenges of practical realization of guarantees within tax legal relations, as a special variety of economic guarantees of persons and citizens.

2. Material and Methods

The methodological basis of the article consists in a set of general and special methods of scientific knowledge which if applied give an opportunity to achieve the set goal and ensure the scientific reliability and validity of the obtained theoretical conclusions. The consistency and positivity of methodological application results is due to their complexity, which naturally led to the completeness, comprehensiveness and objectivity of the formulated scientific conclusions. The research was based on a systematic method, which contributed to a comprehensive and objective study of legal phenomena and categories in the process of their interaction. In particular, the systematic approach is used to determine the system of legal doctrines, define the place of guarantees within tax legal relations, establish a system of subjects of forming guarantees within tax legal relations, outline the system of principles of guarantees within tax legal relations. Based on taking into account such qualities of the system as component, integrativeness, the ratio of the whole and a part, functions and structure functional and structural analysis provided an in-depth study of such categories as “doctrine”, “legal doctrine”, “guarantees within tax legalrelations”, etc.

3. Results and Discussion

Important challenges of today in the sphere of practical implementation of guarantees in tax legal relations of Ukraine include three interrelated elements. We are talking about the widespread use of international practice to guarantee taxpayers’ choice of alternative ways of taxing their income, challenges of special territorial tax profiles and guarantees for their participants, the widespread use of “electronic legal relations” in tax administration (in Ukraine it is better known as “digitalization”).

1. Guarantees for payers’ choosing alternative methods of taxation. Economic (stimulating) function is one of the key functions of taxation, which ensures harmonization of interests of all participants of tax relations. By means of this function the state can encourage taxpayers to develop

those areas and activities that meet the priorities of the national economy, stimulate the intensification of investment processes and rational use of resources etc. On the other hand, with the help of tax policy, the state can prevent development of areas it is not interested in.

Alternative taxation systems are a common tool for optimizing the tax burden on small businesses. Tax reform gives us an opportunity to talk more specifically about the special attitude to small businesses in this area. Small enterprises with regard to their payment of taxes have got a possibility of a certain choice, limited by the requirements of the tax legislation: taxpayer applies either the general tax profile or an alternative system. When the taxation system is properly selected business entities receive opportunities to optimize the burden of paying taxes and focus their efforts on other tasks.

Researching foreign countries' experience in legal regulation of taxation of small and medium-sized businesses have an opportunity to reveal the following specific features: according to the legislation of most developed countries small and medium-sized businesses are defined as a special subject of state regulation; the specifics of taxation of such payers consists in the possibility to apply privileges, choice of alternative taxation, simplified reporting and increase of investment activity of small and medium-sized businesses; alternative taxation systems have more incentive principles for businesses and efficiency of tax administration for these categories, and namely these principles include: the principle of certainty, the principle of sufficiency and elasticity of tax receipts, the principle of social justice and the principle of economic substantiation, as compared to the principles of the general taxation system (Anistratenko, 2017).

Alternative taxation systems are a certain manifestation of the society democratization. In their presence business entities (taxpayers) have the opportunity to independently choose tax conditions of management, i.e. they have the opportunity to actively influence this factor of the external environment, and this significantly increases the degree of their freedom in making business decisions. Therefore, the possibility of applying alternative taxation systems at the level of business entities should be considered as one of the reserves to improve the efficiency of their management.

In developed countries, alternative taxation systems are aimed at stimulating the development of certain sectors of the economy and prioritized forms of entrepreneurial activity. The systemic nature of these tax regulation instruments is manifested in the fact that in case of their application the structure of tax payments and tax objects are fundamentally changed.

The alternative nature of these systems in most countries that use such a regulator is determined by the following factors:

- the same activity carried out by an economic agent may be taxed only under one taxation system - the ordinary (general) one or an alternative one.
- each of these systems is an alternative to the general taxation system, i.e. it limits the relevant list of taxes and fees that are mandatory. At that, the choice of one of these systems exempts the payer from paying a number of the most legally significant taxes and fees, which are provided by the general system.
- transition to one of these taxation systems (subject to the established restrictions) is largely conditioned by the decision of the taxpayer itself.

In the Tax Code of Ukraine, a separate chapter 1 of Section 14 "Special Tax Profiles" is devoted to the issues of simplified system of taxation, accounting and reporting. This chapter establishes legal principles for application of simplified taxation, accounting and reporting system, as well as for collection of a single tax. A simplified system of taxation, accounting and reporting is a special mechanism for collecting taxes and fees as well as for keeping records. A legal entity or a sole proprietor may independently choose a simplified taxation system if such an entity/natural person meets the requirements and is registered as a single tax payer according to the procedure (Law of Ukraine, 2010).

Today, there are four groups of single tax payers and a general taxation system for sole proprietors and limited liability companies. The first group is created for traders in the markets; the fourth group is for farmers. The general system, the second and the third groups are the most common in Ukraine. The first group of sole proprietors pays the single tax and the unified social tax (the UST), has a limit of UAH 1,002,000 of annual turnover, has the right to trade in the markets and provide household services to the population. Types of services are listed in paragraph 291.7 of the TCU. The second group of sole proprietors pays the fixed unified social tax and the single tax monthly, has a limit of UAH 5,004,000 of annual turnover. Proprietors of the second group have the right to engage in restaurant business, production and sale of goods, as well as in provision of services to the public and single tax payers. For example, for the IT-sector this taxation system is not always suitable. The third group of sole proprietors pays the UST and 5% of the income tax and has a limit of UAH 7,002,000 of annual turnover. This group is also suitable for legal entities and gives an opportunity to provide services without restrictions. The fourth group is created for agrarians and has its own registration conditions.

Thus, at first glance, the effectiveness of implementing the guarantee of taxpayers' choice of alternative methods of taxation is obvious - it is a simplified system of taxation. But it is not always right. Comparison

of alternative taxation systems and the general taxation system gives an opportunity to conclude on the feasibility and necessity of such alternatives that stimulate activity of small businesses and, as a consequence, increase economic growth (Slatvinska, 2012). At the same time, in order to more or less accurately calculate the amount of taxes that will have to be paid in the case of choosing a particular taxation system it is necessary to know the estimated amounts of revenue and expenses, and this is not always possible. However, for typical cases, recommendations can be made based on the knowledge of typical economic indicators, even without accurate calculations. For a legal entity, the correct choice of a proper taxation system is a more difficult task than for a sole proprietor (a natural person). This can be done most accurately by comparing results of calculations of several alternatives using the respective estimated amounts of income and expenses.

Alternative taxation systems solve two extremely urgent problems:

- implementation of the regulatory function of taxation, in particular stimulating the growth of activities and efficient use of available resources, as well as stimulating effective employment of population and small business development as a basis for formation of an entrepreneurial initiative in the country;
- reduction of administrative pressure on business activities, which significantly reduces expenses of the state for administration of taxes as well as taxpayers' fees and the costs for preparation of reports, and it also reduces the risk of errors and application of penalties. This aspect, along with the reduction of the tax burden in many cases, is crucial for taxpayers in making a decision on the transition to this or that alternative system.

Thus, in order to implement the potential of guaranteeing taxpayers' choice of alternative methods of taxation it is necessary to create conditions for business entity's performing appropriate calculations and making appropriate decisions. Entrepreneurs should be helped in this by various electronic services (Halaburda *et al*., 2021).

2. Distribution of "electronic legal relations" in the sphere of tax administration. The modern Internet has become a universal means of communication, commerce, instant payments, a space for the realization of rights and interests of individuals, and the unimpeded access to the web environment is recognized as one of the universal human and civil rights. Formation of the doctrine of "electronic rights" or «digital rights» of individuals is going on. It is natural that such a situation requires legislator's close attention to the mechanisms of protection and defense of the rights, freedoms and interests of both individual Internet users and the society as a whole. Not least of all, this concerns the regulation of present day tax legal relations.

Creation of an effective public and legal mechanism for legal regulation of public relations using the Internet-network is incomplete. Active development of the information society and digital economy, global processes of digital transformation in Ukraine and the world in general, form the tasks set out in the CMU Program of Activities on "the state in smartphones", "digitalization of the economy" and "digital transformations" in government (Leheza *et al.*, 2018).

In order to implement the guarantees of taxpayers, it is necessary to develop a separate electronic system (interactive service). Conventionally it can be called "Choice of alternative taxation system" module. With its help, taxpayers will be able to choose their optimal taxation system based on their own parameters without contacting the specialists and get confirmation of their optimal choice.

3. Special territorial profiles of taxation and guarantees of their participants. Special territorial and economic entities called Special (free) Economic Zones (SEZ) and Priority Development Territories (PDT) are leaders of international economic exchange of capital and goods, catalysts for innovation and points of social and economic development. For positive zoning results the host country must take into account both the general developmental patterns of SEZ and PDT, and their specific features, adapt the mechanism of special territorial and economic entities to its own economy. As a rule, SEZs provide for a whole set of privileges which gave an opportunity to quickly open factories and conduct business activities, the abuse of this process ultimately led to their elimination. Officially, the goal of the SEZ and PDT has not been achieved: in the conditions of social and political changes caused by events of 2004, they were assessed as "tax havens" inside the country. In this regard, in 2005 the government decided to liquidate FEZ (SEZ) and PDT on the territory of Ukraine (Leheza *et al.*, 2020).

The legislation requires a number of amendments, and namely: it is necessary to determine the term of the special economic regime, general management bodies created in all special (free) economic zones and their powers, as well as to specify definite benefits (privileges) provided to economic entities depending on the type of the respective special economic zone and conditions of privileged regimes.

In this case, it is possible to ensure solution of problems of SEZ activity, without losing the investment attractiveness of the country's territories (Leheza *et al.*, 2021).

Conclusion

Legal guarantees within tax legal relations are the sectoral embodiment of the system of constitutional guarantees of human rights and freedoms. Legal guarantees within tax legal relations are the embodiment of constitutional and legal guarantees of human and civil rights and at the same time they act as an integrated intersectoral tool, which covers the administrative sphere as well as financial and tax spheres. The object of guarantees is presented as public relations related to protection of human rights, satisfaction of proprietary and non-proprietary interests of taxpayers. Guarantees within tax legal relations should be understood as satisfaction of the proprietary interest of taxpayer or declarant, if we mean tax guarantees in the broadest format, including the relationships of customs regulation. Important challenges of today in the sphere of practical implementation of guarantees in tax legal relations of Ukraine include three interrelated elements.

It is about the widespread use of international practice to guarantee taxpayers' choice of alternative ways of taxing their income, challenges of special territorial tax profiles and guarantees for their participants, the widespread use of "electronic legal relations" in tax administration (in Ukraine it is better known as "digitalization"). In order to implement the potential of guaranteeing taxpayers' choice of alternative methods of taxation it is necessary to create conditions for business entity's performing appropriate calculations and making appropriate decisions. Entrepreneurs should be helped in this by various electronic services. In order to implement the guarantees of taxpayers, it is necessary to develop a separate electronic system (interactive service).

Conventionally it can be called "Choice of alternative taxation system" module. With its help, taxpayers will be able to choose their optimal taxation system based on their own parameters without contacting the specialists and get confirmation of their optimal choice. Another important guarantee of taxpayers' rightsis the restoration of special (free) economic zones as part of the power decentralization program in Ukraine, when the development interests of separate territorial communities provoke creation of special (free) economic zones for implementation of projects in these territories.

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El Fenómeno del votante ucraniano moderno: esencia, peculiaridades y tendencias de su desarrollo

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Resumen

El artículo revela las peculiaridades del votante ucraniano moderno como un fenómeno especial en la ciencia política. El objetivo principal de la investigación es formar un retrato del votante moderno basado en los datos de algunas encuestas sociológicas, así como abordar la aparición y formación de la imagen de un candidato deseable para el votante. Se utilizaron métodos de análisis histórico, estadísticos, así como el método de comparación. En los resultados destacan que en la personalidad del votante entenderemos a un sujeto que hace una elección consciente de esa figura política que él (el votante) considera capaz de resolver problemas urgentes de la vida, tanto del Estado como de su persona. En este sentido, la atención se centra en revelar los estados de ánimo en la sociedad ucraniana moderna, para describir la imagen de "un candidato ideal" a los ojos de un votante moderno. Se prestó especial atención a la personalidad como elemento integral del espacio sociopolítico y la cosmovisión del ámbito político y electoral. Se concluye que el contexto histórico es muy importante en la formación del entorno político ucraniano, lo que dejar entrever analíticamente las peculiaridades del significado del acto del sufragio.

Palabras Clave: votante ucraniano; cardiocentrismo; cosmovisión política; absentismo; comportamiento electoral.

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The Phenomenon of the Modern Ukrainian Voter: Essence, Peculiarities and Trends of its Development

Abstract

The article reveals the peculiarities of the modern Ukrainian voter as a special phenomenon in political science. The main objective of the research is to form a portrait of the modern voter based on data from some sociological surveys, as well as to address the emergence and formation of the image of a desirable candidate for the voter. Historical and statistical analysis methods as well as the comparison method were used. In the results they emphasize that in the personality of the voter we will understand a subject who makes a conscious choice of that political figure that he (the voter) considers capable of solving urgent problems of life, both State and of his person. In this regard, the focus is on revealing the moods in modern Ukrainian society, to describe the image of "an ideal candidate" in the eyes of a modern voter. Special attention was paid to personality as an integral element of the socio-political space and the worldview of the political and electoral sphere. It is concluded that the historical context is very important in the formation of the Ukrainian political environment, which makes us glimpse analytically the peculiarities of the meaning of the act of suffrage.

Keywords: Ukrainian voter; cardiocentrism; political worldview; absenteeism; electoral behavior.

Introducción

Presentación del material principal

A principios del siglo XXI, el fenómeno del votante moderno se ha convertido en un elemento fundamental y básico que determina la imagen del sistema político ucraniano y, en consecuencia, crea en su desarrollo dialéctico características especiales de la democracia como el poder sustantivo del pueblo, y penetra en toda la vida social del país.

La participación cada vez más baja en las elecciones, la disminución de la confianza en el sistema político y sus instituciones, la decepción en el Estado como mecanismo de gobernanza efectiva y, otros factores negativos del fenómeno electoral moderno, así como la realidad política y cultural actual indican la confusa conexión de la modernidad con el pasado y el futuro de Ucrania. De ahí que, la importancia de estudiar el fenómeno del votante moderno radica en su fundamentalidad, porque el votante es un indicador y al mismo tiempo un participante en la formación y posterior desarrollo del Estado; un instrumento sutil que permite determinar, en lo

objetivo y subjetivo, el grado de éxito y corrección del curso de desarrollo de la sociedad y los políticos como parte de un sistema multidimensional, complejo y contradictorio.

Caracterizando el contenido moderno de la política ucraniana, los científicos están tratando de identificar la esencia, las características y los diferentes enfoques del análisis del fenómeno del votante moderno, que se basa en la clave del lugar y el papel de Ucrania como estado independiente, su orientación política y cultural, los procesos de evolución de la sociedad ucraniana. Compartimos las opiniones de Z. Samchuk y enfatizamos que, a lo largo de los siglos, las eras, se reemplazaron entre sí, la autoconciencia ucraniana se formó bajo la influencia de muchos factores: desde la física y geografía socioeconómica, que se formó y esas características políticas y culturales, que crearon el fenómeno del votante moderno.

El fenómeno del votante moderno es una situación sociocultural específica, un fenómeno especial en la ciencia política y la filosofía. Es importante establecer la secuencia, las peculiaridades de la formación de la autoconciencia "humano-votante", las regularidades de su formación y desarrollo, para una comprensión integral de Ucrania como estado independiente y especifica comunidad política y cultural.

En la mente del votante hay un proceso constante de comparar la supuesta meta y el resultado obtenido, la meta y los medios, el ajuste entre la meta, los medios y el resultado. Según Hegel, "El triste deambular del espíritu en uno mismo".

1. "Enfoque histórico" de la evaluación del fenómeno electoral moderno

Analizando el fenómeno del votante moderno ucraniano se utiliza un "enfoque histórico" que se basa en el complejo cultural, político y social de ideas, valores, creencias que influyen activamente en cada persona con conciencia política. El enfoque histórico es un factor formativo en cualquier fenómeno, ya que la historia es el pasado, y el pasado da forma al presente, tanto como el presente da forma al futuro. La era soviética tuvo un efecto revelador en la formación de la conciencia del votante ucraniano. Sin embargo, esto no significa que la contribución de tiempos pasados no deba subestimarse: desde las primeras tribus eslavas y durante el período imperial, cada época dejó su marca especial en la formación de la autoconciencia, la cosmovisión y la identidad propia del ucraniano contemporáneo. Como ejemplo, podemos mencionar la actividad de Zemsky Sobors (1613) y Zaporizhian Sich.

La era soviética dio forma a las instituciones socioculturales básicas que operaban en todas las etapas de los procesos electorales, desde el presidente hasta los diputados del pueblo de todas las convocatorias. Su tarea principal era reducir la participación continua y consciente del individuo en el proceso electoral.

La peculiaridad del período de la era soviética era que el votante de la URSS no tenía experiencia de elección política. Al mismo tiempo, los ciudadanos de Europa y de los Estados Unidos tienen siglos de experiencia en la sociedad civil y política. El elector recibió un "producto terminado" por el que tuvo que votar. Así como no había "democracia de vida" - como el derecho a elegir y responder por su elección.

Coincidimos con los puntos de vista de V. Sabadukh, y enfatizamos que la reestructuración cardinal de la conciencia pública, la cultura, la estructura de la sociedad a la que nuestro país fue sometido en esta época puso una marca especial en la formación de una imagen de un votante moderno. Durante los años de existencia de la URSS, la conciencia de generaciones enteras ha sufrido una metamorfosis radical, de generación en generación, en la conciencia de todos fortaleció la nueva realidad – socialista.

La era, cambió para siempre a todos los ucranianos que nacieron en la URSS. Después de su colapso, a pesar de la edad y el género, en mayor o menor medida, se ha creado una imagen completamente nueva de un político, mediante los conceptos de uso generalizado de: "persona política-económica", "hombre interior", "hombre del pueblo". En las realidades de hoy se entiende más bien como un término de ciencia política.

Se formó un estereotipo en la conciencia pública según el cual sólo "un hombre del pueblo" que era capaz de entender al pueblo, para formar parte de él, puede así "dar" al pueblo esperanza y prosperidad, y un sentido efímero de estabilidad. En la autoconciencia del votante ucraniano, el "hombre interior" fue capaz de proporcionar estabilidad en el Estado y en la vida pública.

La imagen de la "persona económica" se basa en el "cardiocentrismo ucraniano", un concepto que se originó en la filosofía ucraniana del el siglo XIX, en las obras de G. Skovoroda, Gogol, P. Yurkevich,T. Shevchenko y P. Kulish (Fidrowska, 2019). El cardiocentrismo es una doctrina idealista en la filosofía ucraniana, cuyo desarrollo político ha tenido un efecto especial en los últimos siglos de la formación de la nación, fortalecida como término politológico. En el sentido politológico, se puede considerar como una doctrina de la ciencia política ucraniana moderna, que determina la forma de pensar de los votantes en el contexto de una imagen idealizada del "hombre del alma" (sobre el "cardiocentrismo" del votante ucraniano). Fueron los filósofos ucranianos quienes presentaron el cardiocentrismo ucraniano como un fenómeno cultural, caracterizado por la mentalidad

nacional y otros factores socioculturales. Según esta interpretación, el cardiocentrismo es esencialmente una doctrina sobre el alma, sobre su predominio sobre el cuerpo, en su encarnación materialista.

La visión de la imagen de la "persona económica" es una característica diferenciadora del campo electoral ucraniano. Desarrollado por tecnólogos políticos y propagado por todos los medios de comunicación e impuesto al votante mediante la idea de una persona candidata-económica que como resultado lo lleva a la victoria. Como sabemos, la imagen de V. Zelensky como futuro presidente se formó sobre la base de la película «Siervo del Pueblo», donde se creó una imagen positiva para consumo general, que hizo que la campaña electoral fuera exitosa.

2. La imagen de la "persona económica" en las condiciones de los sentimientos electorales modernos

En nuestra opinión, la imagen de "persona económica" es, en primer lugar, la encarnación de la competencia y el profesionalismo, la integridad y la firmeza en la toma de decisiones.

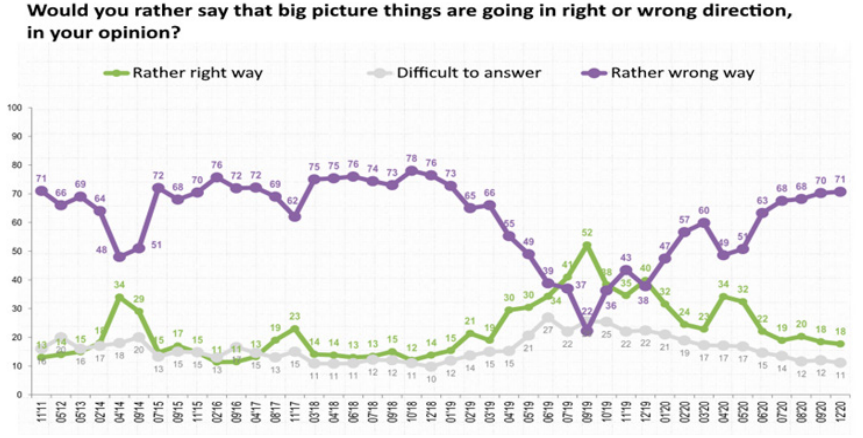


Figura 1. Satisfacción de las necesidades de los ciudadanos ucranianos por las autoridades y confianza en las decisiones del gobierno. Fuente: Elecciones locales (2020a).

En la encuesta de opinión pública realizada los días 16 y 20 de diciembre de 2020, en la se hizo la pregunta: ¿las cosas en Ucrania van en la dirección

correcta o incorrecta?, más del 71% de los encuestados eligieron la segunda opción (Figura 1), en respuesta a la pregunta: ¿Cómo ha cambiado la situación económica en Ucrania durante el último medio año?, preguntada por los expertos a mediados de diciembre, el 74% delos participantes dijeron: "ha empeorado" (Actitudes sociales y políticas de la población, 2020). Por lo tanto, es posible establecer un patrón: la decepción está relacionada principalmente con los problemas sociales y económicos. La demanda de una "persona político-económica", un "hombre del alma", no es sólo un fenómeno cultural e histórico, sino también socioeconómico, que encarna la decepción del votante en las reformas, en el régimen político y en el sistema económico de nuevo.

Todo indica que la tendencia, durante las elecciones, revela que confianza en la dirección correcta en la que Ucrania se está moviendo está creciendo, por lo que, en abril 2014, durante las elecciones presidenciales, el 34% de la población creía que el país se está moviendo en la dirección correcta, mientras que, en julio de 2015, el 71% de los encuestados eligió la respuesta opuesta. Del mismo modo, durante las elecciones presidenciales de 2019, el 30% de los encuestados dijo que Ucrania se estaba moviendo en la dirección correcta. Por otra parte, en septiembre del mismo año, más de la mitad de los encuestados (el 52%) respondió positivamente (Figura 1) (Actitudes sociales y políticas de la población, 2021).

Pudieran pensarse que el votante, durante la campaña, se identifica con el candidato de su gusto, idealizándolo. El electorado ucraniano, busca desesperadamente el ideal de una "persona económica", en los líderes políticos ucranianos modernos. Ser de confianza y perderlo de nuevo, repitiendo el mismo camino.

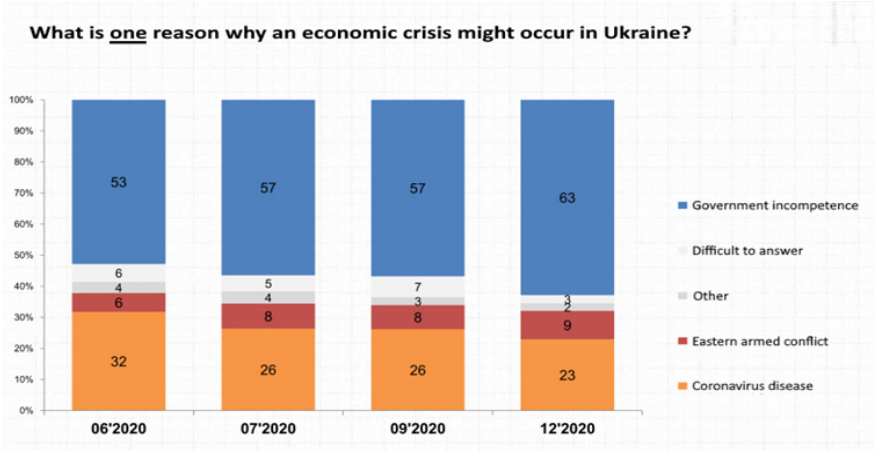


Figura 2. Resultados de la encuesta sobre la posible causa de la crisis económica en Ucrania. elaboración propia con base a la información proporcionada por: (Actitudes sociales y políticas de la población, 2020a)

Según la encuesta realizada a finales de 2020, cuando se le preguntó al elector "¿Cuál son las razones por las que podría haber una crisis económica en Ucrania?", más del 63% de los encuestados respondió que la incompetencia del gobierno podría ser la razón principal de una posible crisis. Hace de un año, el 53% de los encuestados sostenía esta opinión (Actitudes sociales y políticas de la población, 2020b). (Figura 2)

El crecimiento del 10%, en el nivel de desconfianza hacia el gobierno, en menos de medio año, revela una de las principales características de la autoconciencia, la percepción del mundo y la autoidentificación del votante ucraniano moderno, cuya esencia apunta a la necesidad de un enfoque fuerte y de gestión. En caso de que el votante se sienta decepcionado con la estrategia elegida por el gobierno, el nivel de confianza cae.

Cada vez que la esperanza en la persona de un votante ucraniano se vuelve más tenue, terminada desvaneciéndose con cada nueva decepción política, lo que puede configurar un sentimiento generalizado de descontento endémico y antipolítica.

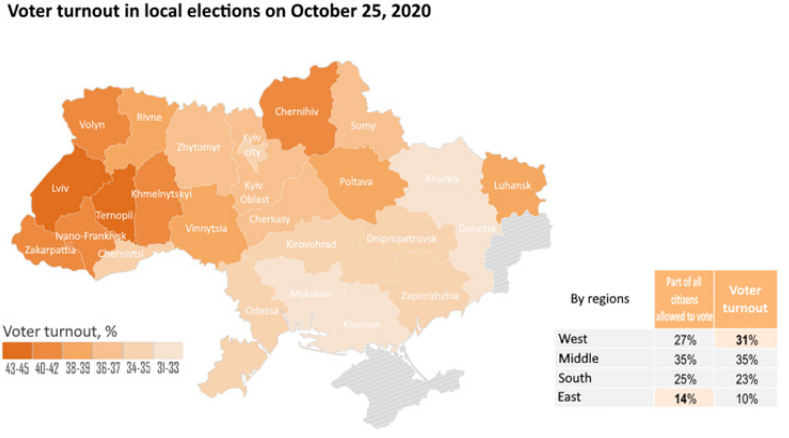
El deseo de cambio es un marcador de la política contemporánea, la edad y la morfología geográfica. De una región a otra y de generación en generación, el "deseo de cambio" tiene un carácter completamente diferente. En el caso de la mayoría de los votantes occidentales y la generación más joven, se trata de un cambio cardinal hacia el lado progresista. Para

los votantes orientales- hacia el lado regresivo; la cara del pasado está firmemente fijada en la conciencia de los votantes orientales. Sin embargo, la imagen de la "persona económica" sigue siendo una característica común de los votantes tanto de Occidente como de Oriente.

3. El abstencionismo como característica de la política ucraniana moderna

El abstencionismo, esto es, el comportamiento político caracterizado por la inacción, es decir, la evasión de cualquier participación política se ha convertido en una característica distintiva del sistema electoral ucraniano, que atestigua la desconfianza del votante ante la institución electoral (Shinkarenko, 2013). En la autoconciencia del votante moderno hay una idea: las elecciones no cambian nada, se desacreditan como herramienta de expresión de la voluntad individual y colectiva.

De una elección a otra, la participación electoral es cada vez menor. Esto se puede ver en la baja participación récord en las elecciones locales de 2020, que fue de alrededor del 37%. La participación electoral en las regiones occidentales de Ucrania fue mayor que en las regiones del sureste. Por ejemplo, si en la región de Ternopil y Lviv la participación fue de alrededor del 44%, en las regiones sudorientales sólo alrededor de un tercio de los votantes acudieron a las elecciones. Como resultado, la participación de las regiones occidentales en el número total de votos aumentó del 27% al 31% (Monitoreo de las elecciones locales, 2020, totales) (Figura 3).



By regions	Part of all citizens allowed to vote	Voter turnout
West	27%	31%
Middle	35%	35%
South	25%	23%
East	14%	10%

Figura 3 – Porcentaje de participación electoral en las últimas elecciones locales. Fuente: (Elecciones locales, 2020a).

La aceptación hostil de las élites y de la política en general, manifestada en la alta proporción de papeletas deliberadamente estropeadas, de hecho, es una forma de protesta. En las elecciones presidenciales de 2019, el porcentaje de papeletas nulas en la segunda vuelta fue del 2%. Observamos ahí un patrón claro: en el Este, la proporción de votos nulos es mucho menor, con un promedio de 1,5%, en comparación con el 3% en las regiones occidentales (Figura 4).

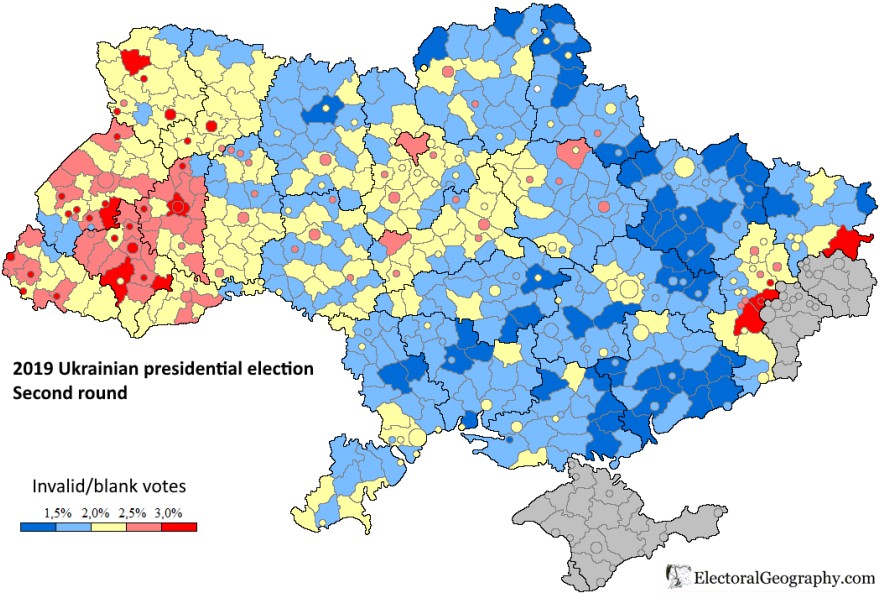


Figura 4 – Porcentaje de votos nulos o en blanco en la segunda vuelta de las elecciones presidenciales de Ucrania de 2019. Fuente: Geografía electoral 2.0. Ucrania. Elecciones presidenciales (2019).

Además, en las zonas urbanas, el número de papeletas nulas es significativamente mayor que en las zonas rurales. Anteriormente, el sistema electoral brindaba oportunidades para la protesta pasiva a través de la cláusula "contra todos", pero esta ha sido eliminada. Esto se correlaciona con la participación, donde es posible trazar una tendencia - las zonas occidentales, en promedio, tienen una mayor participación, al igual que las zonas urbanas tienen una mayor participación que las zonas rurales (Elecciones locales, 2020b). Todo esto da fe del mayor potencial de protesta de Occidente y de la relativa pasividad de las regiones oriental

y sudoriental. Todo esto refleja diferencias electorales-geográficas, sin embargo, en ambos casos, se convierte en una prueba de la decepción general en el sistema político, solo que los métodos y formas de protesta difieren, la protesta pasiva en el Este y la protesta activa en el Oeste.

4. El fenómeno del votante moderno en el contexto de la estructura electoral de la edad

La estructura de los votos dependiendo de la edad se remonta a los jóvenes políticos del electorado bajo la hipótesis de que no están suficientemente formados "edad política". La inmadurez de la comprensión del enfoque político estatal se observa tanto por parte de los votantes como de los elegidos. Esta naturaleza apolítica está relacionada con el hecho de que, en el contexto regional, también es posible rastrear una tendencia: de Oeste a Este, la proporción del electorado de más edad en el número total de votos está aumentando, allí la proporción de votantes mayores de 50 años era del 60%, con diferencias insignificantes en la estructura de edad de la población.

Con el envejecimiento de la nación y la crisis demográfica, no es sorprendente que la actividad electoral de la población mayor de 50 años represente la mayor parte del voto. Sin embargo, con la proporción de la población mayor de 50 años en el número total del electorado en el 45%, la desproporción se hace evidente (Elecciones locales, 2020, análisis de la estructura por edades de los votantes) (Figura 5).

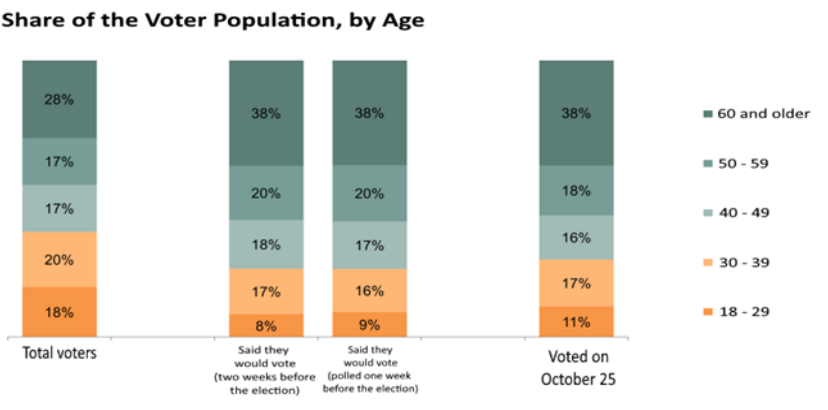


Figura 5 – Proporción de la población votante por edad. Fuente: (Elecciones locales, 2020b).

En los distritos rurales, la abrumadora mayoría de los candidatos son locales, en una comunidad pequeña, de clase media, bien establecidos en posiciones gubernamentales o económicas. La imagen del "muchacho de la granja" es claramente evidente en el abrumador número de candidatos ganadores en los distritos rurales. La peculiaridad es que, en las zonas rurales, la desproporción hacia el electorado de más edad es entre un 3 % y un 4 % menor, siempre que, por término medio, la estructura demográfica de la población sea mayor.

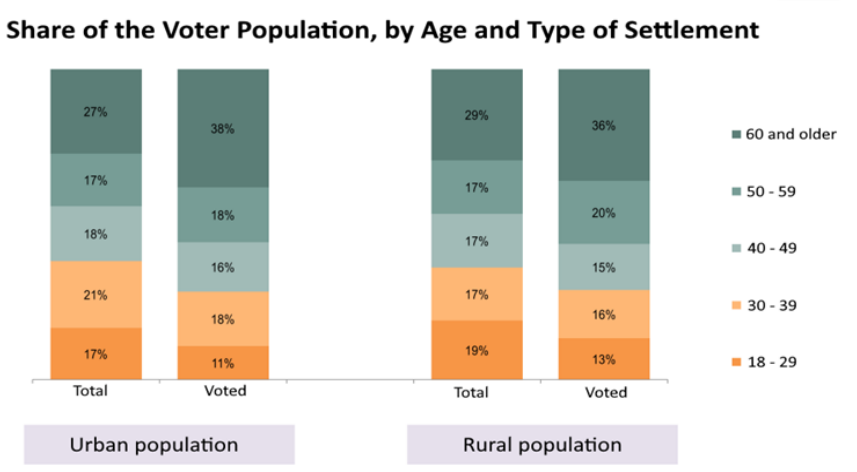


Figura 6 – Proporción de la población votante por edad y tipo de asentamiento. Fuente: (Elecciones locales, 2020b).

El electorado, de entre 18 y 29 años, fue el más pasivo en las últimas elecciones locales. En una proporción, en la estructura general de edad de los electores, 18 %, una proporción del electorado de 18-29 años, en la estructura general de votos significa sólo el 11 % (Seguimiento de las elecciones locales, 2020, totales). Para la generación joven - el empleo el día de las elecciones y no saber por quién votar, se convirtió en las principales razones de la ignorancia del proceso electoral (Seguimiento de las Elecciones Locales, 2020, totales). (Figura 6). También podemos suponer que una de las razones por las que los jóvenes ignoran las elecciones es su deseo de migrar.

La socialización política como proceso de inclusión de un individuo en la sociedad se produce a través de la asimilación de la experiencia de

generaciones propias y de otras generaciones fijadas en la cultura de la sociedad. Para los jóvenes y parte del grupo de mediana edad, la socialización política tuvo lugar en el tiempo postsoviético en el cual se da la formación de Ucrania como un estado independiente (Andrushchenko, 2015), situación que, en gran medida, influyó en la perspectiva, las características sociales y psicológicas de la llamada "generación de la libertad". La destrucción o degradación de las antiguas instituciones públicas tradicionales, el libre acceso a la información marca una huella en el proceso de socialización política del electorado del grupo de edad de 18 a 29 años.

La imagen del político para la generación más joven, formada en las realidades de la era de Internet, es diferente, a las generaciones mayores, lo que da paso a un político directamente cercano al electorado. Para las generaciones anteriores, la imagen de un "hombre de alma", era una condición necesaria para la percepción de un candidato, mientras que, para la generación más joven, la imagen de las generaciones pasadas ha sido reemplazada por la imagen de un "hombre de enfoque", un hombre dispuesto a defender ideas de avanzada, abierto y comprensible para el electorado.

La visión del mundo de las generaciones más jóvenes y mayores parecía tener diferencias significativas. Sin embargo, de hecho, la imagen del "hombre del alma" sólo ha recibido cambios menores. El cardiocentrismo, en la cosmovisión de la "generación de la libertad", ha conservado su forma anterior, cambiando al mismo tiempo algunas características: la simplicidad del alma ha cambiado a la apertura; principios morales idealizados, integridad y honestidad, han sido reemplazados por la ideología; sabiduría, por la capacidad de ajustarse a las tendencias. Con diferencias aparentemente visibles, el cardiocentrismo ucraniano se ha convertido en la base de la cosmovisión de la generación ucraniana moderna también. La actitud hacia el papel del estado, por parte de todas las generaciones se mantuvo sin cambios, el votante ve su papel en la esfera social y económica, delegando funciones significativas en el estado, en tanto eje central del sistema político y del orden social.

Cambios de edad, en la percepción del "candidato ideal" por generaciones, causados por el hecho de que el individualismo, en mayor medida, es típico para el electorado joven en la edad de 18-29 años, mientras que, para los mayores, por el contrario, los valores colectivistas no son más relevantes (Shaygorodsky, 2020).

Las redes sociales, como forma de obtener información para la generación más joven, han sustituido a los medios de comunicación tradicionales, que siguen siendo relevantes para los grupos de edad de 30 años o más. La naturaleza de la percepción de la información es el factor más importante de la socialización política, forma valores individuales o colectivos. Evidencia de diferencias morfológicas en la percepción, así como en ausencia de

diferencias fundamentales, puede ser la estructura electoral-geográfica de la población, donde hay una clara tendencia: la disparidad de edad, en la estructura de las personas que votaron disminuye, de oeste a este.

En las regiones orientales, los partidos populares en su mayoría de izquierda moderada, en virtud de su ideología colectivista, local y nacional, que explotan la imagen de "persona económica", en Occidente, en su mayoría populares son partidos de derecha radical o moderada, de naturaleza individualista, que en su mayor parte explotan la visión de la generación más joven. Para el electorado de 18 a 29 años, el futuro de Ucrania está en avanzar, en las reformas de acuerdo con el modelo occidental y, para los mayores, en volver al viejo modelo de desarrollo. Sin embargo, en ambos casos, hay decepción por parte de la generación más joven en el bajo ritmo de aplicación y el débil efecto socioeconómico de las reformas políticas y económicas y; por parte de la generación más antigua, en el camino elegido (Guseva, 2020).

La generación de la mediana edad (30-49 años) es un vínculo de transición, que maduró en el cambio de una era, en consecuencia, los representantes del grupo de edad electoral media se convirtieron en algo entre los jóvenes y la generación mayor, encarnando la visión del mundo de ambas generaciones. Toman una posición centrista en el conflicto de la cosmovisión, van a elecciones, a diferencia de la generación más joven, pero no son tan activos como la generación mayor. Con un nivel medio de apoliticismo, más cercano a la imagen de un "Hombre del alma" que a la de un "hombre más cercano".

5. El ascenso de partidos regionales en el contexto del fenómeno moderno del votante

La búsqueda de una "persona económica" se ha convertido en el principio de los votantes, como lo demuestra el surgimiento de los partidos regionales, encarnados no a partir de una ideología política tradicional, sino en la figura de un alcalde bien establecido, a imagen de un líder fuerte, un luchador honesto y de principios contra las élites centrales que representa los intereses locales de la gente común. La llamada "feudalización" o "latifundismo" se manifiesta en muchos factores. Sin embargo, quizás la más importante es la división del campo electoral en partidos regionales y nacionales.

Los partidos nacionales representan la ideología del Estado, instituyendo el vector para el establecimiento del Estado ucraniano. Los partidos regionales, a los ojos del votante moderno, encarnan la imagen de una "persona económica". Según los resultados de las elecciones locales de 2020, los partidos locales recibieron más del 20% del número total

de votos, y la calificación general de los cinco partidos parlamentarios nacionales disminuyó del 78% al 51% (Seguimiento de las elecciones locales, 2020, totales). Bloque Kernes - Éxito Járkov con un resultado del 60%, Confiar en los hechos, el alcalde de Odessa Gennady Trukhanov con el 54%, Vadim Boychenko partido- alcalde de Mariupol con el 64%, Partido de Vladimir Buryak "Unidad", que ganó en la primera ronda con el resultado del 60% (Información sobre los cargos de jefes de ciudad, municipio y aldea, 2020) - un desfile de victorias de los partidos locales nombrados, en las elecciones de los jefes de las ciudades, especialmente en las ciudades grandes y medianas, es una demostración de la decepción total del electorado en los partidos nacionales. Sin embargo, tal división, caracteriza sólo los problemas nacionales, "puntos dolorosos" de la política ucraniana, sin embargo, también demuestra que la imagen de "persona económica", fiablemente fijado en las simpatías electorales**.**

En la abrumadora mayoría de los votantes ucranianos, no importa en absoluto la ideología del partido, la personalidad del candidato es lo realmente importante. El político que en condiciones de formación del sistema de partidos-democrático es el que más encaja en la imagen idealizada por los votantes y obtiene el mayor apoyo (Goncharenko, 2020). Esto es sobre lo que se basa la campaña electoral moderna, la ideología es de importancia secundaria, es sólo una cubierta en la que la imagen de un líder: honesto, responsable, amable y simple "un hombre del alma" está envuelto.

Conclusiones

Así, en la autoconciencia del votante moderno, la política, se personifica con la *kakistocracia* --el poder de los peores representantes de la sociedad--, los menos calificados, los más inescrupulosos, deshonestos y no sabios. Este estado de cosas afecta negativamente el proceso de formación del sistema electoral en Ucrania, donde hay una responsabilidad tanto del que elige como del que es elegido. Podemos suponer que el votante ucraniano, en primer lugar, es una persona insegura sobre el futuro, no confía en el sistema político, en los actores políticos ni en el Estado, lo que se personifica, la decepción es la característica misma del fenómeno del votante moderno.

Es la imagen de una "persona económica" que es ante todo la imagen de un estadista, cuya actividad se basa en principios morales firmes, un líder sabio, cuya característica principal es la integridad y la honestidad.

Se descubrió que la formación de la personalidad del elector pasó en tres etapas, desde los primeros pasos de la formación de la experiencia electoral en el imperio zarista a través de su colapso en el período soviético y la etapa moderna de la vida del elector. El electorado se estudiaba en función de la edad y el lugar de residencia.

El fenómeno del votante moderno radica en las realidades histórico-históricas y sociopolíticas que han moldeado la cosmovisión electoral, dentro de un solo individuo. En su esencia, la "persona económica" es una continuación evolutiva del "hombre del alma". El cardiocentrismo, en absoluto, no se convirtió en una cosa del pasado durante la época soviética, sino que se transformó más bien en una parte de la teoría político-filosófica y cultural general, marcando los rasgos característicos del fenómeno del elector moderno.

La estructura electoral de los votantes refleja las diferencias geográficas y de edad, sin embargo, en ambos casos hay decepción en el sistema político, y como resultado hay una protesta social constante. Además, se establece que el ascenso de los partidos regionales en las últimas elecciones se produjo a expensas de la imagen artificialmente formada de "persona económica", que entiende y siente el electorado en el campo.

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International Aspects of the Protection of Victims' Rights in the Conditions of Armed Conflict in Ukraine

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Abstract

Using a comparative methodology based on documentary, the objective of the research was to analyze the international aspects involved in the defense of the rights of the victims of the armed conflict in eastern Ukraine. The priority of using military force to resolve questionable issues, national contradictions of an ethical, religious, political, territorial, economic, etc. nature that are in dispute, remains one of the essential characteristics of today's realities. Everything allows us to conclude that in almost all regions where there are armed conflicts, laws are violated and prohibited means and methods of warfare are used, related to the violation of the principles of distinction, of proportionality admitted in the process of artillery rocket attacks and air attacks of rockets and bombs, recruitment, training, financing and/or use of mercenaries in military activities, destruction of human settlements, executions in the form of intentional killings for reasons of hatred or political, ideological, racial, national, religious enmity, torture, among other inhumane behaviors and appalling atrocities, which by their nature and degree of brutality cannot go unpunished and constitute war crimes and crimes against humanity.

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Aspectos internacionales de la defensa de los derechos de las víctimas en condiciones del conflicto armado en el este de Ucrania

Resumen

Mediante una metodología comparativa de base documental, el objetivo de la investigación fue analizar los aspectos internacionales que implica la defensa de los derechos de las víctimas del conflicto armado en el este de Ucrania. La prioridad de uso de la fuerza militar para solucionar las cuestiones discutibles, las contradicciones nacionales de tipo ética, religiosas, políticas, territoriales, económicas, etc. que se hallan en litigio, sigue siendo una de las esenciales características de las realidades actuales. Todo permite concluir que en casi todas las regiones donde hay conflictos armados se violan las leyes y se utilizan medios y métodos de guerra prohibidos, relacionados con la violación de los principios de distinción, de proporcionalidad admitida en el proceso de los ataques de cohetes de artillería y ataques aéreos de cohetes y bombas, reclutamiento, entrenamiento, financiación y/o utilización de mercenarios en las actividades militares, destrucción de asentamientos humanos, ejecuciones en forma de asesinatos intencionados por motivos de odio o enemistad política, ideológica, racial, nacional, religiosa, torturas, entre otros comportamientos inhumana y atrocidades espantosas, que por su naturaleza y grado de brutalidad no pueden quedar impunes y se constituyen en crímenes de guerra y crímenes de lesa humanidad.

Palabras clave: víctimas de conflictos armados; violaciones a los derechos humanos; derechos de las víctimas; conflicto armado en el este de Ucrania; geopolítica en Europa del este.

Introduction

Armed aggression of the Russian Federation against Ukraine, which began in February 2014 with the annexation of the Autonomous Republic of Crimea and continued in April 2014 with the organization and support of illegal armed groups, who proclaimed the so-called "people's republics" in Donetsk and Luhansk regions, among many other problems, posed difficult tasks and questions to the Ukrainian legal system.

The key role in responding to them, no doubt, belongs to lawyers, investigators, judges. Namely, the by the Ukrainian state's fulfillment of its obligations to both its citizens and the international community, depends on their readiness to properly understand the applicability of the provisions of international humanitarian law to the armed conflict in Ukraine, the adaptation of the relevant provisions of national law to the rules of international law, their interpretation and direct application.

Like any armed conflict, the armed conflict in the East of Ukraine is characterized by violations of the rights of civilians, in particular the right to life, health, personal liberty and security of person. Citizens experience incredible mental anguish from the experience, torture, loss of loved ones, and loss of property that was destroyed, damaged, or left in non-government-controlled territory.

Human rights violations in the conditions of armed conflict violate the basic international principles of human rights and humanitarian law that are enshrined in international legal documents (Grushko, 2010). Despite the international community's ratification of various conventions on international humanitarian law and the fight against their violations, as well as their partial implementation and the enshrined at the national level criminal liability for war crimes, almost all wars and armed conflicts are accompanied by commitment of serious war crimes. However, it is necessary to admit that a significant portion of such crimes remain unpunished, and those responsible are not held to criminal responsibility, taking advantage of the state's sovereignty. At the same time, the legal prospects for punishing criminals are not entirely clear and expectations for the restoration of violated rights of victims of the armed conflict in eastern Ukraine, compensation for damages, etc. remain uncertain in this situation (Grygoryan, 2009).

Of course, the responsibility of any state for the fate of its own citizens and the protection of their rights is extremely high. The issue of protection of civilians, who have been subjected to torture, inhuman and degrading, the treatment or punishment under the armed aggression of another state, as well as the protection of family members in the event of the death or unknown disappearance of their loved ones and relatives is the issue, which lies in the plane of legislative and organizational-legal initiatives of Ukraine, and must correspond to the valid mechanisms of effective investigation of violations of the Criminal Code of Ukraine and international humanitarian law that are developed by world practice.

1. Analysis of the recent research

In modern Ukrainian realities, the problems of protecting victims from various crimes are more relevant than ever. Certain theoretical and practical aspects of the protection of victims' rights in the conditions of armed conflict have been the subject of research of such scholars as R.A. Avramenko, M.M. Gnatovskyi, D.O. Koval, O.V. Senatorova, V.V. and other authors.

At the same time, many issues remain unresolved that need to be comprehensively analyzed and covered. In particular, the issues of clarifying international and national mechanisms of guarantees of protection of victims' rights (prisoners of war, women, children, etc.) in the conditions of armed conflict, of delineation of certain organizational and forensic vectors of protection of the rights of victims in the conditions of the armed conflict in the East of Ukraine, of revision of criminal legal means of protection of persons from commission of war crimes, etc. require additional solutions. It is also indisputable that certain tactical and procedural "tools" of the investigation of war crimes that are committed in the context of an international armed conflict, must be properly disclosed from the standpoint of forensic science and criminal procedure.

2. Materials and methods

The methodological basis of the scientific article is formed by general scientific and special methods and techniques of scientific knowledge, that are aimed at an objective and substantiated study of the international legal regime of prisoners of war. The basis of the methodological toolkit is the system analysis, which determined the directions of research of mechanisms of protection of victims' rights in the conditions of armed conflict on the territory of Ukraine. The conceptual apparatus has been enriched with the help of the dialectic method; the essence of such terms as "armed conflict", "war", "international humanitarian law", and the peculiarities of liability for violation of victims' rights in the conditions of armed conflict have been clarified.

Formal and legal method was used for analysis of the legal meaning of international and national legal acts in the field of protection of the rights of children, women, prisoners of war and wounded. The comparative and legal method has allowed to clarify the relationship of universal international treaties with each other, international treaties, and international legal customs regarding the protection of the rights of victims of armed aggression of another country and to study the issue of reflection of international legal requirements in national legislation. The scientific and heuristic potential

of such philosophical research methods as analysis, synthesis, deduction, induction, abstraction, etc. has been also used.

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

3. Research and results

General characteristics of the sources of international humanitarian law and national legislation governing legal relations in conditions of the armed aggression.

The basic Law of our state recognizes human life and health as the highest social value (the article 3 of the Constitution of Ukraine) (Constitution of Ukraine, 1996). That is why the state has undertaken to take all measures to protect human rights and fundamental freedoms, guided by the case law of the European Court of Human Rights and other sources of law that take precedence over the norms of national law.

Of course, specific protection mechanisms depend on the nature of the violations. When it comes to human rights violations in the context of the European Convention on Human Rights, it regulates property rights in detail. Not all other international tools allow similarly for the effective protection of this right. Accordingly, in the event of a violation of property rights, an effective mechanism may be for individuals or legal entities to apply to the European Court of Human Rights. If it is a question of violation of the international humanitarian law, then other legal mechanisms will be involved here, the protection of victims will be carried out already within the framework of bringing the perpetrators to justice in national courts. There is also a procedure for resolving the specified disputes in international courts.

Given that the subject of the research is to develop effective mechanisms to protect the rights of victims of the armed conflict in the East of Ukraine and their restoration at the national level given the requirements that have been developed by world practice, it would be logical to clarify the nature of the armed conflict.

Undoubtedly, armed conflict in all its manifestations is a deformation of social relations, which accompanied by sharp contradictions, widespread use of weapons, declining value of human life, rising level of violence and other crime, which is the root cause of committing 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

that are under the control of another state. In this case, it begins to be used after the first shot against the territory of the state or crossing the border by the armed forces of another state. The conflict will also be considered as international if the third country exercises at least general control under non-governmental armed formations. 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).

It should be noted that the term "armed conflict" is broader in scope than the term "war". This is confirmed by the art. 2 that is general for the Geneva Convention, according to which the norms of these documents are applied not only in the event of a declaration of war, but also in relation to any other armed conflict. According to classical international law, "war" requires availability of several international legal criteria: it must be proclaimed, which usually results in the severance of diplomatic relations and the termination of bilateral international agreements between the belligerents. The fact is that states are at war without declaring war and even they are maintaining diplomatic and contractual relations in recent decades, after the ban on the use of force and the threat of force in the art. 2 of the Charter of the United Nations. No one wants to declare war than to declare to the whole world that you are an aggressor and to bear international legal responsibility for it (Grygoryan, 2009).

Even when a state defends itself against invasion, it often does not even recognize the state of war between it and the aggressor. Undoubtedly, this resulted in the enshrinement of the term "armed conflict" in the Geneva Convention and the gradual departure from the application of the term "war" in the documents of international humanitarian law, leaving it as just ad bellum (Senatorova, 2018).

International humanitarian law is the general name for a set of rules of international law, which are sometimes referred to as the international law of armed conflicts, or the law of war. It regulates the protection of persons who do not participate in or have withdrawn from an armed conflict, as well as regulates the means and methods of armed conflict (Koval and Avramenko, 2019). International humanitarian law or the law of armed conflicts is a branch of international law whose rules and principles limit the application of violence in the time of armed conflicts by making such demands: a) to spare those who do not or have ceased to take a direct part in hostilities; b) to limit violence to the extent that is necessary to achieve the goal of the conflict, which may result (regardless of the causes through which the conflict began) only in weakening the military potential of the opposing side.

The main sources of international humanitarian law, as well as international law in general, are international treaties and international

customs. Beginning in the third quarter of the nineteenth century, when the process of codification of the laws and customs of war began, the international treaty became the main source of international humanitarian law. Today, international humanitarian law is one of the most conventionally secured branches of international law. In doing so, it is important to note the extremely high level of commitment of states under multilateral agreements. This also applies to the settlement of relations in the field of protection of the rights of victims in the conditions of armed conflict in the East of Ukraine.

Despite the legal uncertainty of the place of international customs in the legal system of Ukraine due to the lack of references to international customs in the art. 9 of the Constitution of Ukraine, there is no doubt that Ukraine is bound by the customary norms of international humanitarian law, which create a system of international legal obligations of Ukraine in the treatment and protection of victims of armed conflicts next to the provisions of the Geneva Convention (Geneva Convention, 1949). This is confirmed by the provisions of the Law of Ukraine "On the bases of domestic and foreign policy", according to which the basis of domestic and foreign policy are based on generally accepted principles and norms of international law (paragraph 1 of the article 2), and foreign policy is based on the following principles: respect for human rights and fundamental freedoms; conscientious fulfillment of the undertaken international obligations; priority of generally recognized norms and principles of international law over norms and principles of national law (paragraph 3 of the article 2).

Undoubtedly, the generally accepted norms and principles of international law include customary norms of international humanitarian law. General provisions regarding the binding nature of obligations under international treaties, approved by the Verkhovna Rada of Ukraine, are contained in the Law of Ukraine "On defense of Ukraine" (parts 2, 5 of the article 2), the Military Doctrine of Ukraine (paragraph 2).

The Constitution of Ukraine in the national legislation provides the basic guarantees of the person on protection, namely: everyone, under all circumstances, has the right to life and inviolability, to personal respect, to respect for his honor, their religious beliefs, the right to the family and other fundamental human rights, the protection of which is enshrined in other regulations, in particular, but not limited to: the Criminal Code of Ukraine, the Code of Civil Protection, the Law of Ukraine "On the armed forces of Ukraine", Law of Ukraine "On ensuring the rights and freedoms of citizens and the legal regime in the temporarily occupied territory of Ukraine", Law of Ukraine "On ensuring the rights and freedoms of internally displaced persons", Therefore, it is incorrect to say that the state of Ukraine is not doing anything for the protection of its citizens at the legislative level in connection with the armed conflict in the East (Executed in Donbass, 2021).

In our opinion, the main problem is not only the lack of a sufficient number of relevant regulations or the imperfection of their provisions regarding the protection of fundamental rights and freedoms of the population during an armed conflict (although there is enough work in this direction regarding the improvement of the current legislation), but also in the absence of an effective mechanism of their application. We will carry out the scientific analysis of the international and national provisions, which regulate public relations in this sphere, in substantiation of the stated considerations.

International and national mechanisms of guaranteeing the protection of the rights of victims in the conditions of armed conflict.

The protection of civilians, the wounded and the sick, as well as prisoners of war and children, is confirmed by the provisions of the first Additional protocol to the Geneva Conventions. They extend the scope of such protection to any person under the authority of a party, which is involved in the conflict and do not enjoy a more favorable treatment under the Geneva Conventions in the context of an international armed conflict. The commission of a number of acts is prohibited and will remain prohibited at any time and in any place, regardless of whether they are committed by representatives of civil or military bodies (violence against life, health and physical and mental condition of persons; outrage to human dignity; taking hostages; collective punishment; coercion into prostitution or indecent assault in any form (Additional Protocol to the Geneva Convention, 1977). Some of these actions are considered serious violations of international humanitarian law, such as: murder, torture, mutilation, and hostage-taking (serious violations of the Geneva Conventions and the Additional protocol); abuse of human dignity, collective punishment and committing sexual violence, including coercion into prostitution (war crimes in accordance with customary international humanitarian law), for the commission of which the criminal liability must be provided.

As it is noted in the scientific literature with reference to specific facts, most cases of sexual violence, that are related to the armed conflict in eastern Ukraine took place in the context of the deprivation of liberty by illegal armed formations. In such cases, sexual violence was directed against both men and women. Beating and electric shock to the genital area, rape, threats of rape, and forced exposure were used as methods of torture and cruel treatment to punish, humiliate, or confess. Facts of detentions, abductions, rapes, injuries, or killings of victims' relatives, including their children and women, are known. In most cases, sexual violence was also used to force detainees to give up their property or perform other acts that were required by perpetrators as an obvious condition of their safety and release, in areas, which had been controlled by illegal armed formations (CIVIIM, 2019).

At the national level, the Constitution of Ukraine enshrines the fundamental principles of non-discrimination and humane treatment and provides that everyone has the right to respect for his or her dignity, religious beliefs and practices in all situations (Constitution of Ukraine, 1996). About the establishment of criminal liability for serious violations of international humanitarian law, it should be noted that the content of the provisions of the art. 438 (Violation of laws and customs of war) of the Criminal code of Ukraine is generalized enough, for covering the full range of serious offenses, such as murder, torture, hostage-taking, pimping or Involvement of a person in prostitution, etc.

First, let's turn to the basic guarantees that are provided to women internationally and nationally during an international armed conflict.

Under the first Additional protocol, women are given special protection when their freedom is restricted for reasons that are related to the armed conflict. For example, they are kept in rooms that are separate from those for men (or if women are part of families, such women are kept in the same room with their families), in addition, they are under the direct supervision of women. Cases of pregnant women and mothers of young children on whom such children depend, who are arrested, detained, or interned for reasons that are related to the armed conflict, are considered as a matter of priority (Additional Protocol I to the Geneva Conventions, 1977).

It should be noted that the Criminal Executive Code of Ukraine and the Criminal Procedure Code of Ukraine define specific mechanisms for the protection of women and families in peacetime. However, these provisions were not intended to be applied in time of armed conflict but remain relevant today as they can be applied for the implementation of international humanitarian law and be an informative source of recommendations for an appropriate approach. In particular, the Penal Code provides for the separate detention of women and men during detention (Law of Ukraine, 2003).

In addition, the Criminal Procedure Code of Ukraine stipulates in the art. 535 that imprisonment may be postponed in the case of pregnancy of a convicted person or in the availability of a child under the age of three. Also, this article stipulates not only that during the execution of sentences the court in criminal cases should consider women's cases as a matter of priority (in accordance with the international standard), but also that the judge should consider releasing pregnant women and women with children under the age of three from liability (Law of Ukraine, 2012).

The guide to the application of norms of international humanitarian law in the Armed Forces of Ukraine contains a similar provision that provides for the separation of men and women during captivity (Order of the Minister of Defense of Ukraine, 2004). However, the Guide to the application of norms

of international humanitarian law in the Armed Forces of Ukraine do not contain provisions regarding most international requirements, namely: families should be kept in family blocks; women should be under the direct supervision of women; the cases of pregnant women and mothers of young children on whom such children depend, who are arrested, detained or interned for reasons that are related to armed conflict, are considered as a matter of priority.

Special additional guarantees are provided to pregnant women and mothers of young children (Denysov and Belousov, 1978). Thus, in the case of an international armed conflict, the cases of pregnant women and mothers of young children on whom such children depend, who are arrested, detained, or interned for reasons that are related to armed conflict, are considered as a matter of priority. The authors of Additional protocol I sought to provide a legal basis for the early opportunity of release of pregnant women and mothers with young children by this provision. However, the authors of the Additional protocol failed to impose an absolute ban on the death penalty for pregnant women and mothers of young children in cases of international armed conflict. Such a ban contradicted some provisions of the national legislations of a number of countries (Yatsetiuk, 2007). However, international humanitarian law recommends that such sentences be avoided as far as possible for both women, who are prisoners of war and civilian women.

International humanitarian law places considerable emphasis in its provisions on providing the protection of women, in particular protection against rape, coercion into prostitution or any other form of encroachment on their morality (Geneva Convention, 1949). Thus, committing sexual violence, in particular rape (the article 152 of the Criminal Code of Ukraine) and pimping or involving a person in prostitution (the article 303 of the Criminal Code of Ukraine), constitutes a serious violation of the international humanitarian law in accordance with its customary norms (Order of the Minister of Defense of Ukraine, 2004).

At the same time, in our opinion, the level of detail of the art. 438 of the Criminal Code of Ukraine is insufficient. There is a high probability that in such an edition, it does not provide the accuracy and specificity that underlies effective bring to justice for appropriate forms of prohibited conduct.

It should be emphasized that the Guide to the application of norms of international humanitarian law in the Armed Forces of Ukraine do not provide that rape, coercion into prostitution or any other form of encroachment on a person's morality constitutes a serious violation of international humanitarian law (Order of the Minister of Defense of Ukraine, 2004). Such actions must be described as serious violations of international humanitarian law for ensuring the effectiveness of bringing the perpetrators

to justice under the art. 438 of the Criminal code of Ukraine, such actions should be characterized as serious violations of international humanitarian law, and the art. 438 of the Criminal Code should be interpreted in view of their new qualification.

The first and second Geneva Conventions require governments of the countries to protect and respect members of personnel of the armed forces who are wounded or ill during the armed conflict (Verkhovna Rada of Ukraine, 1949). It should be noted that the art. 12 of the specified conventions are applied both to sick and wounded persons of the Ukrainian military, and to the wounded, sick and shipwrecked people, who are part of the enemy forces (for example, prisoners of war). It undertakes to ensure humane treatment and care without any discrimination on grounds of sex, race, nationality, religion, political opinion, or other similar criteria (Verkhovna Rada of Ukraine, 1949). Ukraine is obliged to prohibit any attempt on the life of the sick and wounded persons, or any violence against them, i.e., to kill, destroy, torture, or conduct biological experiments. It is forbidden to intentionally leave such persons without medical care and services, to intentionally create conditions for their infection (Verkhovna Rada of Ukraine, 1949).

We believe that it is necessary to apply the provisions of namely criminal law for the commission of the specified acts that are committed against sick and injured persons, as these acts are tantamount to serious violations of international humanitarian law (e.g., murder, torture, and biological experiments).

It must be noted that the fundamental principles of non-discrimination and humane treatment are enshrined in the Constitution of Ukraine, and therefore are applied at any time, including to the wounded and the sick persons from among the personnel of the armed forces.

With regard to acts that equate to serious violations of international humanitarian law, the art. 434 of the Criminal code of Ukraine unambiguously establishes criminal liability for cruel treatment of wounded and sick prisoners of war as for a war crime, as well as for negligent performance of duties to the wounded and sick persons by those, who are obligated to provide them with medical assistance and care. The procedure of prosecuting for committing such acts often depends on law enforcement practice.

In conditions of armed conflict, one of the common categories of victims of war is prisoners of war. The Third Geneva Convention stipulates that prisoner of war always have the right to humane treatment. International humanitarian law prohibits subjecting them to physical injury or any medical/scientific experiments, which are not justified by the need of committing medical, dental, or inpatient treatment of a prisoner of war,

as well as requires establishing responsibility for committing such acts (Additional Protocol I to the Geneva Conventions, 1977).

States have obligations to stop other violations of international humanitarian law, which do not amount to serious violations, but require, at a minimum, the adoption of disciplinary sanctions. In particular, protection of prisoners of war should be provided in situations where they are particularly vulnerable, such as intimidation, insults, and when they are the object of "public interest". The application of repression by the state, which keeps in captivity, is also not considered a serious violation and should be subject to disciplinary sanctions. In addition, the Government of Ukraine should provide special protection to women prisoners of war (for example, early repatriation for the pregnant women with all due respect, which corresponds to their gender, and in all cases, they must be treated as favorably as the men (ICRC, 1958; Geneva Convention, 1949)).

International humanitarian law legally enshrines the basic principle of equality between men and women, developing it in paragraphs that prohibit discrimination. Namely, the art. 16 III of the Geneva Convention and the art. 75 of Additional protocol I, as well as the art. 4 of Additional protocol II provide the treatment without any adverse difference that is based on the signs of gender (Geneva Convention, 1949; Additional Protocol to the Geneva Convention, 1977). It is also noted that women should be treated in all cases no worse than men. This means that women use all the rights and freedoms that are provided by the Convention on the treatment of prisoners of war. Accordingly, any discriminatory measures resulting from the application of the Convention are prohibited. That is, women, who are prisoners of war have the right to protection of rights and freedoms, as well as men, who are prisoners of war.

The article 434 of the Criminal Code of Ukraine directly defines the cruel treatment of prisoners of war as a war crime. However, such actions may not predict the application of appropriate sanctions (the punishment of up to three years imprisonment). Alternatively, the art. 438 of the Criminal code of Ukraine (which is applied to civilians and to servicemen) can also be applied, because it establishes that the cruel treatment of prisoners of war, contrary to the provisions of the conventions, is punishable by eight to twelve years imprisonment. because it establishes that the cruel treatment of prisoners of war, contrary to the provisions of the conventions, is punishable by eight to twelve years imprisonment. Depending on how this provision is applied in practice and the actual circumstances of the alleged violations, this may or may not be sufficient to effectively stop these violations by bringing the perpetrators to justice.

At the same time, it should be noted that in addition to these provisions, Ukrainian legal means do not reflect many requirements of international humanitarian law, including: procedures regarding detention in awaiting

trial; rights of the defense, such as the right to call witnesses and have an interpreter; the preconditions for the execution of the sentence and the necessary guarantees, such as the impossibility of depriving the privileges that are enshrined in his rank, or the right to do physical exercises and be in the fresh air during at least two hours.

At the same time, the Constitution of Ukraine contains the basic judicial guarantees, which are applied to prisoners of war (for example, the right to be immediately informed about the reasons why measures have been taken, the presumption of innocence, the right to consultation) (Constitution of Ukraine, 1996). The specific requirements that are related to the status of prisoners of war are not regulated at the constitutional level.

The Criminal Code of Ukraine provides for criminal liability of a prisoner of war in three cases in the part of determining the penalties for committing crimes: voluntary participation of a prisoner of war in any work of military significance or other measures that may knowingly cause harm to Ukraine or allied states, in the absence of signs of treason; violence against or ill-treatment of other prisoners of war by another prisoner of war, who is in the position of a senior; the commission by a serviceman, who is in captivity of actions that are aimed at harming other prisoners of war, for selfish motives or in order to ensure a lenient attitude on the part of the enemy (Law of Ukraine, 2001).

Although the basic judicial guarantees are provided by the Constitution of Ukraine, the Criminal Code and the Code of Criminal Procedure, these legal acts do not take into account the special requirements that are related to the status of prisoners of war. Other measures of implementation are inadequately defined, making it impossible to ensure a comprehensive implementation regime for the use of criminal penalties for prisoners of war (for example, notification of the case, the rights of the person and means of its protection, the conditions of action of the sentence, the right to appeal, execution of punishment, etc.).

It is advisable to provide a brief overview of the basic safeguards regarding children during an armed conflict of international nature. Thus, the main international legal instrument, which defines the rights of children, is the Convention on the rights of the child, which defines that all states-parties are obliged to take all possible measures to ensure the protection and care of children, who are affected by the armed conflict (Verkhovna Rada of Ukraine, 1989).

The issue of protection of children in the time of the armed conflict is governed by the Geneva Convention about the protection of civilian persons in the time of war and the Additional protocols I and II. In particular, the Convention emphasizes that children have the right, under all circumstances, to personal respect, respect for their honor, the right to a family, their

religious beliefs and rites, habits, and customs. They should always be treated humanely and protected, from any act of violence or intimidation, from the insults and curiosity of the crowd (Geneva Convention, 1949).

A child, who has suffered because of hostilities and armed conflicts, is a category that is defined in the Law of Ukraine "On child protection" (Verkhovna Rada of Ukraine, 2001). The law provides for the possibility of obtaining the status of a child, who has suffered because of hostilities and armed conflicts (Cabinet of Ministers, 2017). The right to receive this status have children and persons who at the time of the war were not 18 years of age (adult) and who as a result of hostilities and armed conflicts: received injuries, contusions, mutilation; experienced physical and sexual violence; were abducted or illegally taken out from Ukraine; were involved to the participation in actions of paramilitary or armed formations; were illegally detained, including in captivity; suffered psychological violence.

If we talk about criminal legal mechanisms of protection of children, who are victims of crimes, that had been committed in the conditions of an armed conflict, we believe that the article 438 of the Criminal Code of Ukraine is sufficiently voluminous for ensuring the prosecution of persons, who are responsible for conscription and the use of children during the armed conflicts as violators of laws and customs of war (Law of Ukraine, 2001). Such approach to criminalization is general and does not detail this process, which is the basis for effective prosecution for the committing of crimes that were committed in the armed conflict.

There are several regulations (Law of Ukraine "On child protection" and the Law of Ukraine "On military duty and military service") in Ukraine, aimed at regulating issues regarding the use of children during the armed conflicts. Their provisions seem to additional detail the art. 438 of the Criminal Code of Ukraine. However, when viewed in general terms, Ukrainian legal means do not contain sufficiently detailed provisions regarding the prohibited acts and the nature of criminal punishment. Although, certain provisions indicate that the use of child-soldiers and their compulsory conscription are prohibited, the provisions do not explain the essence of a serious violation of the international humanitarian law, which becomes the result of conscription of children for military service and their use (without coercion or obligation), for the commission of which it is necessary to apply the criminal punishment.

As for the special protection of children during an armed conflict, the Law of Ukraine "On child protection" provides general protection of the child during an armed conflict. The amendments enshrine specific measures of protection of children, who are affected by hostilities or armed conflict, such as specific obligations of social services (Verkhovna Rada of Ukraine, 2001).

In this segment of activity, Ukraine is taking all necessary and possible measures for searching and returning children to Ukraine, who have been illegally taken abroad, including in connection with circumstances that are related to hostilities and armed conflicts (Verkhovna Rada of Ukraine, 2001). In particular, the protection of children who are in the zone of hostilities and armed conflicts, and children who have suffered as a result of hostilities and armed conflicts.

At the same time, it is necessary to emphasize that the legal means of Ukraine do not take into account the following: if, in exceptional cases, children under the age of 15 are directly involved in hostilities and are taken prisoner by the enemy, they continue using special protection due to the status of the child, regardless of whether they are prisoners of war; in the case of arrest, detention or internment for reasons of armed conflict, children must be kept in rooms that are separate from those for adults.

It should be noted that the above-mentioned obligations arising from the Convention on the rights of the child, the Optional Protocol thereto, as well as customary international law, are also applied during non-international armed conflict. In particular, the hiring or recruitment of children under the age of 15 into the armed forces, or their use for active participation in hostilities, are also considered as a serious violation of international humanitarian law during a non-international armed conflict in accordance with customary international humanitarian law and the article 8 of the Rome Statute of the International criminal court (Rome Statute, 2002).

Progressive ones, given the prospects of the specified by us problem regarding developing legal mechanisms of restoring the rights of victims, which are violated as a result of armed aggression in the East of Ukraine, are the provisions of the draft Law of Ukraine "On protection of property rights and other real rights of persons, who are affected by the armed aggression", that was registered under № 5177 from 01.03.2021, the purpose of which is the protection of property rights of persons that are violated as a result of armed aggression through the introduction of mechanisms of restitution, as well as the compensation for property damage that has been caused to victims of the armed aggression in accordance with international and European human rights standards, in particular the practice of the European Court of Human Rights.

One of the main advantages of the specified bill is that in the case of its adoption of the condition of receipt, the grounds for refusal in providing, the amount of compensation, etc. will be introduced by law, the rules of which will have a higher legal force compared to the resolutions of the Cabinet of Ministers of Ukraine. At the same time, the development of relevant implementing regulations for fulfilment of the provisions of the law will allow to create a full-fledged, comprehensive compensatory mechanism. In addition to the above, the availability of a legislative mechanism

will contribute to the proper implementation of the international legal obligations of Ukraine that have been undertaken in accordance with international treaties (Law of Ukraine, 2021).

Regarding the compliance of the doctrine of criminal law with the requirements of international humanitarian law in terms of criminalization of crimes that were committed in conditions of the armed conflict.

The issue of criminalization of certain illegal acts, which are recognized by the international community as war crimes but classified as "ordinary" criminal offenses at the national level, needs increased attention.

Objective principles of determining the grounds for the application (criminalization) or refusing the application (decriminalization) of criminal legal influence should be recognized as a constant problem of criminal law (Kozachenko *et al.*, 2021). We have to state that the perpetrators of most war crimes today, unfortunately, manage to avoid criminal prosecution. Accordingly, the possibility of compensation by such persons for the damage that has been caused to the victims is minimized. It is well known that the war crimes, by their nature, are one of the heaviest and most serious crimes that have been known to humanity. Under international law, the state on whose territory war crimes is committed must actively investigate and bring the perpetrators to justice (Nazarchuk, 2020).

However, Ukraine is not always able to adequately respond to hostilities in the temporarily occupied and adjacent territories at present. For example, there are no defined in detail norms that determine the illegality of certain actions in an armed conflict in the Criminal Code of Ukraine, in addition to the art. 438. Also, there is no clarification of what war crimes are, which among them are light, medium, heavy, which is a gradation of degrees of responsibility. The specified problem needs a comprehensive solution. Some lawyers rightly consider the adoption of the law on transitional justice to be a way out of this situation (Bida, 2021).

The realities of today in the East of Ukraine indicate the imperfection of certain norms of the Criminal Code of Ukraine, in particular, the lack of legal norms in it that would correspond to socially dangerous acts, which have been committed in the zone of holding the Joint Forces Operation in the conditions of the armed conflict. Currently, there is an urgent need to revise of sections XIX-XX of the Criminal Code in order to include in their norms, which would provide for the 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 the direction of protection of the rights of victims in the conditions of the armed conflict in the East of Ukraine there are not enough legislative instruments, which would promote more constructive work and increase responsibility and accountability regarding the actions and

measures that have been committed, which would be both: the expected signals for citizens of the country who are under occupation or have been forced to leave the occupied territory; the signals for collaborationists and violators of the regime of sanctions about the inevitability of liability for the actions that have been committed; the leadership of other countries and international organizations, as a confirmation of the sequence of actions of the authorities of Ukraine, in its pursuit to deoccupation and reintegration of temporarily lost territories.

I. Nazarchuk rightly recognizes the imperfection of the legislation and its inconsistency with international norms as one of the reasons. Current art. 438 of the Criminal code of Ukraine ("Violation of laws and customs of war") is enough generalized, therefore, there is an obvious need to specify the elements of war offences in national law, defining all serious violations of International humanitarian law as war crimes. Thus, there is an obvious need to specify the elements of the war offences in the national legislation (Nazarchuk I. Military) (Nazarchuk, 2020).

Undoubtedly, we believe that it is necessary to be guided by practice of the international criminal courts, the doctrine, authoritative comments of the international economic law and provisions of the international agreements in the application of art. 438 of the Criminal code of Ukraine. In doing so, the list of actions that may be considered as violations of the laws and customs of war, is not necessarily to be coincided with the list from the art. 8 of the Rome Statute, or with a list of serious violations of international economic law. It can be expanded, but not arbitrarily. In any case, the expansion of the list of the specified actions should find support in the international practice. Otherwise, Ukraine will almost certainly face cases against itself in the European Court of Human Rights.

Considering this, we suggest focusing on the list of acts that can be classified as violations of the laws and customs of war that has been suggested in the draft law "On amendments to certain legislative acts of Ukraine to ensure harmonization of criminal legislation with the provisions of international law" № 9438.

This is, in particular, the art. 437 "Aggression", the art. 437 "Crimes against humanity", the art. 438 "War crimes against persons", the art. 438 "War crimes against justice", the art. 438 "War crimes against property", the art. 438 "War crimes against humanitarian operations and the use of symbols", the art. 438 "War crimes, which consist in the application of prohibited methods of warfare", the art. 438 "War crimes, which consist in the application of prohibited means of warfare", the art. 438 "War crimes against the movable and immovable property, buildings and centers that are protected under international humanitarian law", the art. 436 "Peculiarities of criminal liability for crimes against the foundations of international law", the section XXI "Crimes against the international

law and order"(Vakhrushev, 1999; Grushko, 2010; Grygoryan, 2009; Constitution of Ukraine, 1996; Koval and Avramenko, 2019; Gnatovskyi, 2017).

The specified list of actions is at least conceptually in line with international standards and obligations of Ukraine under international treaties regarding criminalization of violations of international humanitarian law. In our opinion, the introduction of appropriate amendments to the Criminal Code will undoubtedly assist the victims of armed aggression in the East of Ukraine in gaining the status of a victim in criminal proceedings, and, consequently, will make it possible to use the determined by the criminal procedure law mechanism of compensation for damage that has been caused by a criminal offense.

Features of detection and collection of evidence during the investigation of crimes that were committed during the armed conflict in the East of Ukraine.

Given the problem that is outlined in the introductory part of the article, we consider it appropriate to identify other directions of protection of the rights of victims in the conditions of the armed conflict in the East of Ukraine. In particular, the research of the peculiarities of detecting and gathering evidence during the investigation of the identified crimes deserves attention. After all, in our opinion, as opposed to the criminal process as it is commonly understood, realization of the procedure of investigation in cases of war crimes, namely, such crimes that were committed in the conditions of the armed conflict in the East of Ukraine, need to be revised and improved.

The complexity and diversity of the 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 affects 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 party to the armed conflict and fall under 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 the list of cases opposes the investigation; limited opportunities to gather evidences in 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 of the conflict; the inevitable conflict of constitutional, procedural and substantive norms that act in the territory of the parties to the conflict; non-fulfillment of requests for the international legal assistance by the parties, etc.

A principled feature of the procedural order of investigation of war crimes is that the perpetrators belong to the parties to the conflict, and for the establishment of the involvement of specific service members (pilots, artillerymen, snipers, etc.) of the other party, who gave and carried out orders about air strikes, shelling and destruction of civilians, other war crimes, proof of their guilt, etc., it is necessary to conduct investigative (in particular, such specific ones as interrogation of prisoners of war, research of places of mass burials, analysis of radio talks, etc.) and procedural actions on the territory and with the participation of the party of conflict. We believe that national investigative bodies, guided solely by the provisions of the Criminal Procedure Code of Ukraine without regard to international legal norms and mechanisms of investigating such crimes, without holding investigative and procedural actions on the territory and with the participation of the other party to the armed conflict or the absence of a truce, will not be able to effectively use the potential of criminal procedure means and to ensure the investigation and opportunity of prosecution of representatives of the other party to the conflict, who are responsible for war crimes, except, of course, of military-violent scenarios of purely hypothetical nature.

At the same time, national law enforcement agencies face the problem of limiting their powers under the national Code of Criminal Procedure after initiating criminal cases of the specified category on the principle of extraterritorial criminal jurisdiction, at the stage of investigation and presentation of the evidence to the representatives of the other party of conflict. At the same time, namely the fact of initiating a criminal case regarding representatives of the other side of the conflict has not yet indicated that any of them will be prosecuted. The specified problem is beyond the scope of the opportunities of national criminal procedure legislation or giving the legal force within the legal system of Ukraine to the international treaties.

Thus, it can be argued that there are specific patterns of detection, documentation and investigation of crimes that were committed in the conditions of the armed conflict. Knowledge of such features, prompt, skillful and coordinated cooperation in the specified area is extremely important from the standpoint of ensuring the rights and legal interests of victims, both military and civilian.

One of the significant steps that are aimed at improving the effectiveness of investigations of the war crimes, including those committed in the conditions of an international armed conflict, is a signing on October 21, 2019 of the order on creation in the Prosecutor General's Office of Ukraine of the Department of supervision in criminal proceedings concerning crimes, that are committed in an armed conflict, whose activity will focus on overseeing the investigation of crimes that are committed in the temporarily

occupied territory of the Autonomous Republic of Crimea and the city of Sevastopol, in the temporarily occupied districts of Donetsk and Luhansk regions and in the conditions of armed conflict (Ministry for Reintegration of the Temporary Occupied Territories, 2021). All this creates a vertical for coordinating the efforts of all law enforcement agencies in the investigation of war crimes and crimes against humanity, will promote the systematic fixation and systematization of evidence of guilt of specific persons in committing illegal acts, in search for logical connection between the harm that has been caused to a person and the relevant criminal acts and, as a result, to create appropriate conditions for the restoration of the rights of victims of the armed conflict in the East of Ukraine.

Conclusions

Based on the results of the problems that are covered in the scientific article, we can make certain conclusions, which are aimed at determining the prospects of the protection of the rights of victims in the conditions of the armed conflict in eastern Ukraine, given the requirements of the international community.

1. Full fulfillment by Ukraine of its obligations in the fight against impunity for the heaviest crimes against international law, that have been committed in the conditions of an armed conflict, should be ensured by applying the Criminal Code of Ukraine (including the Section XX of the Special Part, but also a list of provisions of the General Part) in accordance with the current state of development of international criminal law. In particular, we see the need to expand and specify the compositions of war crimes in the national law. After all, in accordance with only the provisions of the national Criminal and Criminal Procedure Code, without regard to international legal norms and mechanisms for the investigation of war crimes, without conducting investigative and procedural actions on the territory and with the participation of the other party to the armed conflict or the absence of a truce, investigative bodies will not be able to effectively use the potential of criminal procedural means in achieving the goals of criminal proceedings, to ensure the restoration of the rights of victims of the armed conflict and compensation for the damage that has been caused to them.
2. Arguments in favor of creating a legislative mechanism of compensation to victims of the armed aggression in the south and east of Ukraine are provided, which would cover various issues of protection of property rights of persons that have been violated by the armed conflict, by introducing mechanisms of restitution, as well as

compensation for property damage, in accordance with international and European standards of human rights, in particular the practice of the European Court of Human Rights.

3. The expediency in: a) introduction of the National center of information and documentation on victims of the armed aggression (dead, wounded, persons that lost property, prisoners of war, children, etc.), which will unite all existing state registers with the provision of access to the relevant state bodies and local governments; b) the creation of the State Register of property that has been destroyed, damaged and lost as a result of the armed aggression, as a single state information and telecommunication system, that is intended for the accumulation of information about property, which has been destroyed, damaged or lost as a result of the armed aggression, registration of persons, who have a right to compensation for such property or the restitution, as well as the accrued amounts of compensation, the committed restitutions, etc. The specified data can be used for forming a consolidated claim of Ukraine to the aggressor state regarding the implementation of its international legal responsibility for the armed aggression against Ukraine.

Finally, it should be noted that the requirements for the scope of the article did not allow outlining all aspects of such a multifaceted problem, as a protection of the rights of the victim in the conditions of the armed aggression in the East of Ukraine, and encouraged to the separation of only individual problems and the development on the basis of their scientific analysis of the relevant recommendations of an organizational and legal nature, which are governed by national law and are complied with the provisions of international humanitarian law.

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About the need to introduce a presumption of consent for organs transplantation and other human anatomical materials

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Abstract

The purpose of the article is to discuss the need to introduce a presumption of consent for the transplantation of organs and other human anatomical materials in Ukraine. Therefore, the object of the study is the presumption of consent for organ transplantation. The authors of the article have used methods of deduction, analysis and synthesis, comparative, and legal methods. The need to make amendments to the legislation of Ukraine regarding the introduction of the presumption of consent for the transplantation of organs and other human anatomical materials from a person and the feasibility of the practical implementation of these changes, namely, mean a major improvement and elimination of problems in the field of transplantation. It is concluded that at present one of the main problems governing the matter is the absence of presumption of consent for transplantation in Ukrainian legislation and, at the same time, the lack of significant funding of the medical sector, together with the low awareness of the rights of actors involved in organ transplant processes.

Keywords: presumption of consent; organ transplantation; human anatomical materials; medical help; presumption of consent.

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Sobre la necesidad de introducir una presunción de consentimiento para el trasplante de órganos y otros materiales anatómicos humanos

Resumen

El propósito del artículo es discutir la necesidad de introducir una presunción de consentimiento para el trasplante de órganos y otros materiales anatómicos humanos en Ucrania. Por lo tanto, el objeto del estudio es la presunción de consentimiento para el trasplante de órganos. Los autores del artículo han utilizado métodos de deducción, análisis y síntesis, comparativos y métodos legales. La necesidad de realizar enmiendas a la legislación de Ucrania con respecto a la introducción de la presunción de consentimiento para el trasplante de órganos y otros materiales anatómicos humanos de una persona y la viabilidad de la aplicación práctica de estos cambios, a saber, significan una mejora importante y la eliminación de problemas en el ámbito del trasplante. Se concluye que en la actualidad uno de los principales problemas que rigen la materia es la ausencia de presunción de consentimiento para el trasplante en la legislación de Ucrania y, al mismo tiempo, la falta de financiación significativa del sector médico, junto a la baja conciencia sobre los derechos de los actores involucrados en los procesos de trasplantes de órganos.

Palabras clave: presunción de consentimiento; trasplante de órganos; materiales anatómicos humanos; ayuda médica; presunción de consentimiento.

Introduction

Particular attention is paid to the relevance and expediency of disclosing the issue of the need for organ transplants as a way of treating and saving human life, as well as studying the issue of Ukraine's experience regarding the presumption of consent for transplantation.

The article examines the experience of countries with a presumption of consent for organ transplantation and other anatomical materials, and the necessity of implementation of this practice in Ukraine is proved.

1. Methodology and Methods

The authors of the article have used methods of deduction, analysis and synthesis, comparative and legal methods.

Each year in Ukraine more than 5 thousand people need transplants. Without waiting for a transplant, 7 people die every day. It is impossible to change the situation in Ukraine with transplantation of organs and tissues for the better without changes to the national legislation - first of all, Article 16 of the Law of Ukraine «On the application of transplantation of anatomical materials to a person» of 17 May 2018, which entered into force on January 1, 2019 (Law of Ukraine № **2427-VIII**, 2018).

Section 7, paragraph 4, «Final and transitional provisions» of the Law of Ukraine «On the Application of the Transplantation of Anatomical Materials to a person» of May 17, 2018 stipulated that the Cabinet of Ministers of Ukraine before the enactment of this Law should ensure the development and approval of a number of by-laws required for its proper implementation, as well as to ensure the establishment and functioning of the Unified State Information System of Transplantation, the work of which involves the practical implementation of the provisions of the said Law (Law of Ukraine № **2427-VIII**, 2018). That is, the Cabinet of Ministers of Ukraine and its subordinate Ministry of Health of Ukraine showed negligence and incompetence, which prevented from carrying out transplant operations in Ukraine from the 1 of January, 2019.

The purpose of the article is to prove the necessity of introducing a presumption of consent for organ transplantation and other human anatomical materials in Ukraine.

Researchers such as Krainyk H., Vakulovich E., Popova S., Sachuk B., Shklyarska O., Gel A. etc, after analyzing the experience of countries with a presumption of consent for transplantation, came to the conclusion that it should be supported by the introduction presumption of consent for organ transplantation and other anatomical materials in Ukraine (Krainyk and Sachuk, 2018; Krainyk *et al.,* 2019; Shklyarska, 2017; Gel, 2018).

The article provides various arguments to support the introduction of the presumption of consent for transplantation in Ukraine, as well as the authors' suggestions on specific changes in the legislation of Ukraine concerning the solution of this issue are covered. At the same time, Trinova Y.A., Chebotareva G.V. and some other researchers oppose the presumption of consent for transplantation in Ukraine.

2. Results and Discussion

In some countries, there is a presumption of consent for transplantation (India, the United States of America, the Russian Federation, the Kingdom of Spain, the Republic of Poland etc.), which consists in the fact that every adult citizen of the state automatically becomes a posthumous donor, if

during his life he did not express disagreement with the transplantation. The positive experience of these countries is based on the knowledge of psychology, when mostly young people (whose death can be caused by accidents in traffic accidents, in work or through fire-fighting injuries) do not think at all that they can die, especially since what will happen their organs, and therefore do not write the wills and do not give instructions to their relatives about the use of their organs after death.

As for the relatives of the deceased, they are primarily concerned with the burial issues and do not think that the bodies or tissues of their deceased relatives can save somebody's life, and some simply do not want to do this. Data from medicine show that often transplantation is the only chance to save people's lives. But there is one important detail on this issue: certain organs can be transplanted in just a few hours.

Article 3 of the Constitution of Ukraine states: «The person, his life and health, integrity and safety are recognized in Ukraine as the highest social value», Article 8 of the Constitution of Ukraine contains the provision that «Ukraine is a law-governed state, laws and regulations must comply with the Constitution» (The Constitution of Ukraine, 1996).

From this it follows that in case of non-compliance with the normative acts of the Constitution of Ukraine, they are subject to cancellation or bringing into compliance with the provisions of the Constitution of our state - the Constitution of Ukraine.

Consider the provisions of the Law of Ukraine «On the Transplantation of Bodies and Other Anatomical Materials to a person» from the 16 of July, 1999 (Law of Ukraine № 1007-XIV, 1999). Article 16 of this law contained the provision that a person should always consent to transplantation (this is a presumption of disagreement with transplantation). This law expired in January 2019. Instead, the provisions of the new Law of Ukraine «On the application of transplantation of anatomical materials to a person» from the 17 of of May, 2018 (which came into force in January 2019) also do not significantly change the situation with transplantation, since Article 16 also implies a presumption of disagreement on transplantation (Law of Ukraine № **2427-VIII**, 2018), which does not meet the needs of Ukrainian society.

Currently, there are only five transplantation centers in Ukraine that carry out kidney, liver and heart transplantation operations (interesting fact is that over the past twenty years in Ukraine, only 8 heart transplants have been performed, if necessary, in 1000-1500 transplantations), for comparison, in the Kingdom of Spain, for 47 million people, more than 40 transplantation centers, the average number of transplants ranges from 98 to 115 transplants per year (Krainyk and Sachuk, 2018).

Musienko A.V. recommends the adoption of standards regulating the organ and tissue transplantation, in accordance with the Guidelines

developed by the World Health Organization and the World Health Organization, to organize bilateral and regional cooperation on the basis of the development of common standards, guided by the conventions and recommendations adopted by the Council of Europe, as well as bring domestic legislation in line with these general principles (Musiyenko, 2004).

Of great importance in considering the question of transplantation plays a religious factor. In Ukraine, according to religious beliefs, the majority are Christians (over 80%). They are diametrically opposite to the question of transplantation. Some, recognizing the provisions of Article 3 of the Constitution of Ukraine, do not oppose transplantation and do not object to it, referring to the Bible's position on love for one's neighbor, the need to preserve the life of a Christian for his family and for the church. Another position is taken by the Russian Orthodox Church, the Moscow Patriarchate (in Ukraine, it calls itself the Ukrainian Orthodox Church), which has millions of Ukrainian citizens. She insists that transplantation is unacceptable. But at the same time, members of the church use the services of doctors, including in need of surgical intervention, and other benefits of civilization.

It should be noted that there are no scientifically substantiated arguments regarding the prohibition of transplantation or the presumption of consent for the transplantation of organs and other human anatomical materials in Ukraine from a legal, economic, or religious point of view.

From the legal point of view, the prohibition of transplantation or the prohibition of consenting to the transplantation of organs and other anatomical materials of a person contravenes Article 3 of the Constitution of Ukraine. From an economic point of view, such a ban is unprofitable for the church, since the money that may be earned by church ministers in the funeral ceremony is much smaller than those who would bring a Christian to a church for their lifetime (and in case of creation family - and his descendants). In any case, the church can still receive money at the human burial ceremony, but later.

From a religious point of view - there is no commandment in the Bible about the prohibition of transplantation, but there is a commandment to love one's neighbor as himself. Therefore, one should approach this issue with concrete proposals. Thus, some churches need to change their unconstitutional position; otherwise, those churches that carry out anti-constitutional activities and destructively affect the consciousness of Ukrainian citizens should be held responsible for violating the law. It is proposed to impose penal sanctions on such churches or even to close them when the church promotes, for example, the renunciation of medicine, the prohibition of transplantation.

It is a fact that some Ukrainian citizens do not consider the possibility of transplantation through the mass media reports of «black transplantologists».

According to the Institute of the heart statistics, most Ukrainians are not ready to become donors. Only about 10% of respondents agreed to donate after death. Cardiac surgeon Boris Todurov, director of the Institute of the heart, believes that the reason for the ignorance of society, what is transplantology; unfortunately, in Ukraine, the majority of the media tell about transplantologists, as people who want to take away other organs, and represent transplantology as a science of organ harvesting. In fact, transplantology is a science of how to save incurably sick people. In 2010, criminal cases were opened on «black transplantologists». This undermined the credibility of all transplantation in society, although no evidence of guilty surgeons was given (Institute of Heart of Ukraine).

However, there are positive examples in Ukraine - one of the channels clearly explained in a number of reports that the presumption of consent for transplantation is very important for every citizen of the state, and that without a number of measures, including the register of transplant patients who need organ transplants, they threatened with inevitable death, while the dead bodies of their bodies are no longer needed.

The main arguments against the presumption of consent for transplantation are:

1. *Religious*. In some religions, there is a ban on transplantation of organs from a deceased donor, only a living person who has given consent to transplantation can be a donor. This prohibition operates in Judaism, Islam, Buddhism.

2. *Legal*. Possible violations of human rights during transplantation.

Chebotareva G.V. takes the stand against the presumption of consent for transplantation. The investigator concludes that the current legislation on transplantation «the model of the presumption of disagreement corresponds to the generally recognized international law of the legal provision on the need for a man's life consent to the removal of organs or tissues after her death, or the corresponding consent of the authorized persons after the death of a person and corresponds to world trends unification of legislation and the development of common standards of legal regulation in this area» (Chebotareva, 2003: 12-13).

Y. Trynova, after analyzing the pros and cons of the consent for transplantation, concluded that it would be appropriate to preserve the presumption of disagreement on transplantation, taking into account the risks to potential donors (Trynova, 2015).

However, Article 2, «Human Priority» of the Convention on Human Rights and Biomedicine (1999), states that «Individuals' interests and welfare prevail over the interests of society or science». The right of a person to provide disagreement is not violated by the legislative assertion of the presumption of consent for transplantation, since anyone who does not wish to become a donor in the future may indicate his reluctance to be specified in a will or in another accessible manner.

The main arguments for the presumption of consent for transplantation are: 1. Lack of need for organs for a deceased person. The traces of operations under the clothes of the deceased will be invisible, but with cremation - are absent. 2. The existence of a religious aspect. The religious obligation of every Christian in some foreign countries to become posthumous donors. Thanks to Catholicism, the Kingdom of Spain came out first in the world in the number of post-mortem donors. Catholics are loyal to organs transplant from a deceased person, as well as engage in educational activities in this area. In the Kingdom of Spain, an educational program from the church began in the 1980-s - the church talked about the need to become post-mortem donors, calling it the responsibility of every Christian. 3.

A sincere and unselfish desire to help others. 4. Existence of cases where only transplantation can save human life. 5. The level of awareness and awareness of people about transplantation needs to be improved. Often, people do not think at all that they can die, and even more so what to do then with their organs. Surveys show that most Ukrainian citizens do not mind giving their body to another person in case of death, but the vast majority of them do not agree to hand over organs to criminals. Therefore, this provision should be fixed legally in Article 16 of the Law of Ukraine «On the Application of the Transplantation of Anatomical Materials to a person» of the 17 of May, 2018. These arguments are clear and convincing, therefore they do not require additional explanation and justification.

Consider the arguments against the presumption of consent for transplantation:

1. *Religious*. In some religions (Judaism, Islam, Buddhism) prohibited transplantation from the deceased donor. However, the sacred books of these religions do not contain a direct prohibition on such transplantation, since at the time of their writing about transplantation was not discussed. One of the main tasks for each state is to ensure prosperity and decent living conditions and to protect the lives of its own citizens - we consider it expedient at the legislative level to oblige religious communities to permit the transplantation of organs and other anatomical materials, and in case of violation of the law, to bring these religious communities to liability.

2. *Legal*. Regarding possible violations of human rights during transplantation, it can be noted that there are indeed certain risks of such a fact, but saving thousands of lives is more important than tolerating several possible violations. At the moment, when permission for transplantation is not a widespread phenomenon, there are even more different offenses and crimes in this area, because when there is an urgent need for organ transplant, there is also a donor, often in an illegal way. In order to prevent or at least minimize such violations, it is advisable to introduce open access to the list of transplant recipients and donor lists to prevent violations of current transplant legislation.

The Law of Ukraine «On Amending Certain Legislative Acts of Ukraine on the Application of the Transplantation of Human Anatomical Materials» from the 28 of February, 2019 postponed the entry into force of the provisions on the establishment of a donor register by the 1 of January, 2020 (Law of Ukraine № 2427-VIII, 2019).

In the current edition of Art. 16 of the Law of Ukraine «On the application of transplantation of anatomical materials to a person» dated by the 17 of May, 2018 reads as follows: «Every adult legal person can give written consent or disagreement to become an donor of anatomical materials in case of his death. In the absence of such an application, anatomical materials in a deceased adult capable person may be taken with the consent of the spouses or relatives living with her until death. Anatomical materials may be taken with the consent of their legal representatives in deceased minors, disabled or incapacitated persons».

An individual has the right to order the transfer of organs and other anatomical materials of her body to scientific, medical or educational institutions after her death.

In case of need for forensic examination, the anatomical materials of the deceased donor are taken with permission and in the presence of a forensic medical expert. The taking of anatomical materials should not compromise the conduct of pre-trial investigation, and forensic medical expert must inform the head of the local prosecutor's office within twenty-four hours.

The taking of anatomical materials from a deceased donor should not result in distortion of his body. The taking of anatomical materials from a deceased donor is made by an act. This act is signed by doctors who took part in the taking of anatomical materials, and in the case of forensic medical examination - and forensic medical expert, and attached to the medical documents of the deceased person. The taking of anatomical materials in a deceased person for transplantation and (or) for the manufacture of bioimplants is not permitted in the event of a statement made by that person during the lifetime of his disagreement as a donor.

In the deceased adult legal person whose application for donation is absent, as well as in minors, disabled and incapacitated persons, the taking of anatomical materials is not allowed, if it is not received or impossible to obtain the consent of the persons specified in part one of Article 16 of the Law of Ukraine «On application transplantation of anatomical materials to a person». The taking of anatomical materials in a deceased person is also not allowed in the absence of a permit of a forensic expert in case of necessity of forensic medical examination».

Despite the available human and scientific potential, the development of clinical transplantology in Ukraine has slowed down in the last decade. The revival of domestic transplantation is possible only due to a combination of state policy, active work of public and charitable organizations, persistent work of general practitioners and representatives of the Ministry of Health of Ukraine. Therefore, the most important thing now is to create a legislative foundation and provide an effective and efficient mechanism for regulating and implementing transplants. Also, with a huge demand for such operations, they are very few, and public funds are spent on treatment of citizens abroad, although in Ukraine it would be much cheaper (Krainyk and Sachuk, 2018: 700).

It is worth mentioning that in 1933 the Ukrainian surgeon Yuriy Voron performed a successful kidney transplant of a deceased person. This operation was the first of its kind. However, today in Ukraine more than 5 thousand people are being treated for acute and chronic renal failure with the help of an artificial kidney device, and some of them are waiting for a kidney transplant. Today, there are only five transplant centers in Ukraine that perform kidney, liver and heart transplants. Compared to Spain, there are more than 40 transplant centers per 47 million population, and the average number of transplants ranges from 98 to 115 transplants per year.

One of the problems of transplantology in Ukraine is the lack of donors, both living and dead. Living potential donors rarely agree because they take care of their own health, and for the dead, according to rough statistics, there are about 3,000 people killed in road accidents in Ukraine each year, as well as about a thousand dead each year in Operation United forces and more than 1,000 suicides. In Ukraine, transplantation from a living family donor predominates, and transplantation from a corpse donor has hardly been practiced in recent years. Therefore, in recent years (2016 - 2020) no more than ten kidney transplants were performed from a cadaveric donor. And in countries with a well-developed transplant system, there are 14-39 cadaveric donors per 1 million population, while in Ukraine in 2016 it was 0.2 people per 1 million population.

Therefore, in Ukraine, in our opinion, it is necessary to create a single state information system of transplantation, which will have a convenient register of patients, and in which every citizen of the state will be able to

consent or disagree to donate and thus save someone's life. For this purpose, Art. 14 of the Law of Ukraine "On the use of transplantation of anatomical materials to humans." This is very important because, according to clinical studies, transplants from a living donor are safer for the recipient and take root better.

Ukraine can also borrow the experience of a "donor card", as in the United States. The procedure for obtaining a "donor card" is usually carried out when issuing a driver's license, and in Ukraine it would be advisable to carry out a similar procedure when a citizen receives a driver's license and at the time of conscription. Data on this are not registered, so in case a person changes his decision, the "donor card" can simply be destroyed. thus, it will help raise public awareness, give the right to choose and the opportunity to save others.

Worldwide, transplantation of human organs and biological materials is one of the most effective, and sometimes unalterable, ways to save lives. Most irreversible damage to vital organs such as the kidneys, liver, pancreas, lungs and heart cannot be cured other than by surgery. That is why transplantology in the developed countries of the world is one of the most dynamically developing areas, according to the Chairman of the Parliamentary Committee on Health - Olga Bogomolets (Nikonenko, 2014). The global growth rate of transplant operations predicts that in 20-30 years, 50-60% of all surgeries will involve transplantation of organs, tissues and cells, in addition, will no longer transplant organs, but artificially or artificially grown.

Up to 100,000 organ transplants and more than 200,000 human tissue and cell transplants are performed annually worldwide. Today, there are more than 1 million people with transplanted organs in the world, and their number is constantly growing.

Today, there is no country on the planet where transplantation is banned. According to the World Health Organization, it is held in 104 countries around the world, which have the financial, logistical and human resources.

Statistics show the effectiveness and popularity of transplantation as the most effective treatment for irreversible diseases of the organs. Thus, about 26-28 thousand transplants are performed annually in the United States, in the Kingdom of Spain - more than 4 thousand, in the Republic of Poland - more than 1.5 thousand. In Estonia, this figure is 46.2 transplants per 1 million population, in Latvia - 36.2, in Lithuania - 22.

The situation in Ukraine can be called catastrophic, even compared to its neighbors. According to the statistics of 2018, we perform only 3.1 transplants per 1 million population per year. And this is one of the worst indicators in the world (Bogomolets, 2018).

In absolute numbers, this is only 130 operations per year, despite the fact that more than 5,000 Ukrainians need organ transplants every year. Of these, more than 2,500 patients need kidney transplants, up to 1,500 patients need liver transplants, more than 1,000 patients need heart transplants, and 300 people need bone marrow transplants.

The number of people in need of surgery is growing steadily, and most of them die without waiting for a transplant. Of the 5,000 people in need of a transplant, about 3,400 die each year. O. Shklyarska (2017:15) quotes: "Every day in Ukraine, nine people die without waiting for a transplant." Those who are lucky are sent abroad by the state, spending millions of hryvnias to pay for the services of foreign doctors. With the funds that Ukraine transferred to foreign clinics for the treatment of our citizens in 2013-2015 ($ 2.431 million and 612.2 thousand euros), 6 bone marrow transplants, 8 heart transplants, 5 liver transplants and 18 kidney transplants were performed. With a well-established transplant system in Ukraine, 1122 heart transplants could be performed with these funds, 116 - liver and 5623 – kidney (Shklyarska, 2017).

A few words need to be said about the norm of the following content, which is enshrined in Part 5 of Art. 13 of the Law of 17.05.2018: "If the recipient is in an urgent condition, which is a direct and imminent threat to his life, medical care with the use of transplantation is provided without the consent of the recipient, his parents or other legal representatives." According to A. Gel, the norm is as follows: first, it restricts the personal non-property rights of the recipient and his parents (legal representatives) in terms of the right to consent to medical intervention, and secondly, directly contradict the requirements set by the legislator in Part 2 of Art. 43 Fundamentals of the legislation of Ukraine on health care (1992) (Consent to medical intervention). We quote this rule:

> The consent of the patient or his legal representative to medical intervention is not required only in the presence of signs of direct threat to the patient's life, provided that it is impossible for objective reasons to obtain consent for such intervention from the patient or his legal representatives (Fundamentals of the legislation of Ukraine on health care, 1992: n/p)

Thus, the legislator explicitly determines that the implementation of medical intervention without the consent of the relevant entity is possible only if there are two necessary conditions: a) the presence of a direct threat to the patient's life; b) the lack of objective reasons to obtain such consent. We share the opinion of A. Gel that this is exactly the wording that the legislator should have used in constructing the norm enshrined in Part 5 of Art. 13 of the Law of 17.05.2018. At the same time, the norms of special medical legislation do not look very correct, which directly contradict the requirements of the Fundamentals of Legislation of Ukraine on Health Care - the basic legislative act that defines legal, organizational, economic and

social principles of health care in Ukraine, and is essentially nothing more than a "constitution of a medical worker" (Gel. 2018: n/p).

Such an edition of the article requires urgent changes, since it does not solve the issue of saving the lives of Ukrainian citizens due to the lack of donor agencies' contributions from corps donors.

Other issues that require urgent resolution are the creation of the Uniform Register of Donors and Recipients, the preparation of sub-normative acts on transplantation etc.

Conclusions

1. The necessity of making amendments to the legislation of Ukraine regarding the introduction of the presumption of consent for transplantation of organs and other human anatomical materials of a person and the feasibility of practical application of these changes, namely, significant improvement and elimination of problems in the transplantation sphere, is grounded, one of the main is the absence of presumption of consent for transplantation in the legislation of Ukraine and significant underfunding of the medical sector, low awareness and «transplantation» of illiteracy of citizens.
2. Given that one of the major opponents of transplantation is the church that affects the consciousness of not only ordinary citizens of Ukraine, but also of state authorities of Ukraine, one must ask the following question: either some churches (the Ukrainian Orthodox Church (which is essentially a part of the Russian Orthodox Church churches of the Moscow Patriarchate), Jehovah›s Witnesses, etc.) change in Ukraine their unconstitutional position on the prohibition of transplantation or presumption of consent for transplantation, or they are legally liable in the territory of Ukraine as such anti-constitutional activity and destructively affect the consciousness of Ukrainian citizens.
3. Article 16 of the Law of Ukraine «On the Application of the Transplantation of Anatomical Materials to a person» from the 17 of May 2018, is proposed to be worded as follows: «Every adult legal person may give written consent or disagreement to become an donor of anatomical materials in case of his death. In the absence of a statement of disagreement with the transplant, consent from relatives or others is not required. In this case, deceased persons are deemed to have given consent to the transplantation of anatomical materials».

4. In Ukraine, in our opinion, it is necessary to create a single state information system for transplantation, which will have a convenient register of patients, and in which every citizen of the state will be able to give their consent or disagreement to donate and thus save someone's life. For this purpose, Art. 14 of the Law of Ukraine " On the Application of Transplantation of Anatomical Materials to a person".

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Legal regulation of combating illegal migration in Ukraine and the EU

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Abstract

Through a methodology of legal interpretation and analyze the stages of formation of migration policy and legislation in Ukraine since its independence. It was determined that in the initial stage the main elements of the legal regulation of migration processes in Ukraine were the development of the legal framework on migration, the initiation of international cooperation and the creation of organizational structures that address migration issues. The article also analyzes the extensive system of normative acts developed in Ukraine today, aimed at the legal regulation of migration processes and the fight against illegal migration. In this context, the details of the fight against illegal immigration in EU countries are described. Finally, the guidelines for EU migration policy in the field of combating illegal immigration are studied. It is concluded that, unlike Ukraine, where the fight against illegal immigration is mainly limited to the establishment of prohibitions and fines for illegal immigrants, the EU has developed a system of incentives and measures aimed at supporting third countries, among other aspects.

Keywords: illegal migration; migration processes; immigration legislation; immigration in Europe; refugees and asylum.

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Regulación legal de la lucha contra la inmigración ilegal en Ucrania y la Union Europea

Resumen

Mediante una metodología de interpretación jurídica se analizan las etapas de formación de la política y la legislación migratoria en Ucrania desde su independencia. Se determinó que en la etapa inicial los principales elementos de la regulación legal de los procesos migratorios en Ucrania fueron el desarrollo del marco legal sobre migración, el inicio de la cooperación internacional y la creación de estructuras organizativas que atiendan los temas migratorios. El artículo además analiza el extenso sistema de actos normativos desarrollado en Ucrania hoy, destinado a la regulación legal de los procesos migratorios y la lucha contra la migración ilegal. En este contexto, se describen los detalles de la lucha contra la inmigración ilegal en los países de la UE. Por último, se estudian las orientaciones de la política de migración de la UE en el ámbito de la lucha contra la inmigración ilegal. Se concluye que, a diferencia de Ucrania, donde la lucha contra la inmigración ilegal se limita principalmente al establecimiento de prohibiciones y multas para los inmigrantes ilegales, la UE ha desarrollado un sistema de incentivos y medidas destinadas a apoyar a terceros países, entre otros aspectos.

Palabras clave: migración ilegal; procesos migratorios; legislación migratoria; inmigración en Europa; refugiados y asilo.

Introduction

At the present stage of Ukraine's development, changes and processes are taking place, which primarily cover the political sphere, and therefore require a deeper scientific understanding. Migration policy is no exception, which, depending on internal and external circumstances, must be formed in accordance with the requirements of the time, considering primarily the interests of society and the state. In terms of economic and political crisis, the imperfection of legal regulation of migration processes is rather important.

A serious issue that Ukraine has faced in recent years is the growth of illegal migration. Socio-economic instability in the world has made Ukraine attractive not only to refugees forced to flee persecution, but also to immigrants from many Asian and African countries suffering from poverty, hunger, unemployment, and power struggles. In various, often illegal ways, they are trying to reach Ukraine in order to cross the West. However, in recent years there has been an obvious tendency to transform

Ukraine from a transit country to a destination country for migrants. Due to the aggravation of entry procedures in Central and Western Europe, a significant number of illegal migrants remain in Ukraine.

After the accession of Ukraine's western neighbors to the European Union, the attractiveness of the route through the territory of Ukraine for illegal migrants has increased sharply, at the same time the question of the need to regulate this phenomenon has become acute for society. That is why migration problems in Ukraine become especially politically acute and relevant and need political, regulatory, organizational systematization.

Illegal migration has a pronounced transit character - illegal migrants try to enter Ukraine from Russia, Belarus, by air or sea, and then illegally leave for Slovakia, Hungary, or Poland and then to other Western European countries. Illegal migrants enter Ukraine using legal means of entry (under the guise of tourism, visiting relatives, in private) or illegal (crossing the border outside checkpoints or through checkpoints with forged documents), mostly from Russia.

The important point is that for some migrants Ukraine becomes not only a transit territory, but also a place of long-term stay, sometimes consciously chosen country of residence. As a result, illegal migrants are accumulating in the country. Due to the unsettled status of their stay in Ukraine, these people often find themselves in rather difficult circumstances. At the same time, the uncertainty of their situation is a factor in creating additional tensions in the socio-economic and interethnic spheres, the deterioration of the criminogenic situation. A significant number of illegal migrants are concentrated in the city of Kyiv and border regions. This is where they try to get to Western Europe. The growth of illegal migration to Ukraine poses a real threat to the public security of our country. Persons from among foreigners commit various crimes on the territory of our country, including serious criminal ones.

It is worth noting that the European Union itself suffers from the problems of illegal migration. After 2014, the refugee crisis in the EU intensified, because of which the EU was forced to adopt a number of regulations and legal measures aimed at stopping the growth of illegal migrants.

These issues highlight the need to study the problems of legal regulation of migration processes, as well as the specifics of combating illegal migration in Ukraine and the European Union.

1. Formation of bases of legal regulation of migration policy in Ukraine.

The beginning of the legal regulation of migration processes in independent Ukraine can be considered the Declaration of State Sovereignty, which was adopted in 1990. Here it was first stated that Ukraine "regulates immigration processes" (USSR, 1990). At the same time, the Law of Ukraine "On Rehabilitation of Victims of Political Repression in Ukraine", which guaranteed the repressed, deported and their descendants (along with the restoration of other violated rights) the opportunity to return to their places of residence, was adopted in 1991(Verkhovna Rada of Ukraine, 1991). The Law of Ukraine "On Citizenship of Ukraine" defined the right to citizenship of immigrants from Ukraine who returned to its territory (Verkhovna Rada of Ukraine, 2001).

As the share of forced displacements in the mass influx of population to Ukraine in the early 1990s was significant, the state paid special attention to this problem. The concept of refugee status was first introduced in the summer of 1992, when Ukraine accepted more than 60,000 refugees from the Transnistrian military conflict zone. To resolve their legal status, the Cabinet of Ministers of Ukraine approved the Provisional Regulation on the Procedure for Determining the Status of Refugees from the Republic of Moldova and Providing Assistance to Them (Verkhovna Rada of Ukraine, 1992).

This was the first legislative document directly aimed at resolving the migration problem. The experience of its implementation and the scale of forced migration proved the need to develop a special law in this area, so the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Refugees and Persons in Need of Additional or Temporary Protection" (Verkhovna Rada of Ukraine, 2011). To implement it, local bodies of the migration service were created, which were to consider applications for refugee status in Ukraine, make decisions on them, organize assistance to refugees (Dergach, 2013).

Considerable attention in the field of legal regulation of migration processes in Ukraine was paid to ensuring the right of their own citizens to freedom of movement leaving the country and returning home. This provided for the abandonment of Soviet permitting procedures for emigration, total control over travel abroad. As early as January 1993, in accordance with the Resolution of the Cabinet of Ministers, the procedure according to which a citizen had to obtain a permit from the competent authorities for each border crossing was abolished. The Parliament adopted the Law of Ukraine "On the Procedure for Leaving Ukraine and Entering Ukraine by Citizens of Ukraine", which guaranteed the right to freely exercise the relevant rights (Verkhovna Rada of Ukraine, 1994). With its adoption, the provisions of

the Law of Ukraine "On Employment" came into force, which allowed labor or entrepreneurial activity of citizens during a temporary stay abroad, i.e., labor migration (Verkhovna Rada of Ukraine, 2012).

This law also contained provisions according to which bureaus, agencies, and other organizations, i.e., labor migration infrastructure, could be established for the employment of citizens of Ukraine during their temporary stay abroad. To carry out business activities, these structures had to obtain licenses from the state employment service (Malinovskaya, 2010).

Nevertheless, after the collapse of the Soviet Union, due to the lack of legally bound borders, Ukraine found itself at the center of migration flows, which led to the uncontrolled movement of foreigners. This situation required legal regulation of immigration into the country and determination of the legal status of foreigners. As a result, the Law of Ukraine "On the Legal Status of Foreigners and Stateless Persons" was adopted, according to which foreigners permanently residing in Ukraine received rights (other than the right to elect and be elected to hold public office) and had to perform their duties (except for military service).

The law established the rules of stay of foreign citizens, their departure and entry, provided for liability for violation of the relevant rules (reduction of the period of stay, the order of expulsion). It enshrined the possibility of immigration to Ukraine, asylum, refugee status, citizenship. These issues were to be regulated by special laws the immigration law, which was planned to be adopted (Kushnir *et al*., 2021).

In order to prevent illegal migration, the first State Program to Combat Illegal Migration was approved in 1996. This program provided for organizational and practical measures, which included the creation of special units within the structure of the Ministry of Internal Affairs; prevention of offenses related to illegal migration; international cooperation in the fight against illegal migration by signing bilateral agreements on mutual legal assistance; improving the legal framework for immigration. The practice of developing such programs continued in the future (Cabinet of Ministers of Ukraine, 1996).

The adoption of the Constitution of Ukraine on June 26, 1996, was of great importance for the further development of legal regulation of migration processes (Verkhovna Rada of Ukraine, 1996). It is expedient to identify three areas of development of migration legislation: bringing current regulations in line with the Constitution of Ukraine; adoption of new laws that do not contradict the Constitution and harmonization of Ukrainian legislation with international law.

Considering these areas, it should first be noted that the Constitution of Ukraine is the basic law on which the legal system of the country should

be based. The Constitution contains provisions that stipulate the need to adopt specific laws on the implementation of migration policy: Laws of Ukraine: "On Citizenship of Ukraine" (Verkhovna Rada of Ukraine, 2001), "On Immigration" (Verkhovna Rada of Ukraine, 2001), "On the legal status of foreigners and stateless persons" (Verkhovna Rada of Ukraine, 2011).

The Constitution enshrines the basics of legal regulation of migration processes in Ukraine regarding the movement of people, namely: everyone who is legally on the territory of Ukraine is guaranteed freedom of movement, free choice of residence, the right to leave Ukraine, except for restrictions established by law (Art. 33).

The Constitution provides for the possibility of establishing restrictions on freedom of movement on the territory of Ukraine and the choice of place of residence in a state of war and emergency (Article 64). This applies equally to citizens of Ukraine, foreigners, stateless persons. Restrictions should be temporary, pending the imposition of such a state of war, natural disasters, accidents or catastrophes, epidemics, epizootics, and other force majeure.

Thus, the Constitution of Ukraine reflects various aspects of migration processes, establishes the basics of regulation of these processes, the right to freedom of movement and free choice of residence. It the basis for further legislative and rule-making activities in the field of migration, its rules have a special priority in the regulatory system of Ukraine.

Thus, by the beginning of the twentieth century the main elements of the legal regulation of migration processes in Ukraine were formed: the legal framework on migration issues was developed, international cooperation was initiated, and organizational structures dealing with migration issues were established.

2. Basic principles of legal regulation of migration processes and counteraction to illegal migration in Ukraine

During the harmonization of the legal framework with the international one, many shortcomings were revealed. From the assessment of the effectiveness of legal norms followed the task of improving them. The adoption of the Constitution and Ukraine's accession to the most important international legal agreements in the field of human rights, in particular, to the European Convention on Human Rights and Fundamental Freedoms, required the migration legislation to be brought into line with these documents. Thus, in order to protect the interests of migrant workers, the Law of Ukraine "On Licensing of Certain Types of Economic Activity" was adopted.

During 2001, several basic legislative acts on migration regulation were adopted, in particular, new versions of the laws "On Citizenship of Ukraine", "On Refugees" (repealed), as well as laws "On Immigration", "On Amendments to Certain Legislative Acts of Ukraine on Combating Illegal Migration" (Verkhovna Rada of Ukraine, 2001).

In December 2003, the Parliament adopted the Law of Ukraine "On Freedom of Movement and Free Choice of Residence in Ukraine" (Verkhovna Rada of Ukraine, 2003), which applied to both citizens of Ukraine and foreigners who were legally in the country.

In 2004, the Law of Ukraine "On Ukrainians Abroad" was approved, which, among other things, fixed the right of this category of foreign citizens to immigrate to Ukraine outside the established quotas (Verkhovna Rada of Ukraine, 2004).

Increased attention to labor migration of Ukrainians abroad was associated with a special report of the Verkhovna Rada of Ukraine Commissioner for Human Rights (April 2003), the subject of which was a violation of human rights in connection with labor migration. Responding to the ombudsman's report, the Parliament held special hearings on the legal and social status of modern Ukrainian labor migration, Ukraine acceded to the European Convention for the Protection of the Rights of Migrant Workers (Libanova, 2010).

The Government has developed a Program for Ensuring the Rights and Interests of Citizens Going Abroad for Employment and Children Adopted by Foreigners. Special units began to operate to combat this phenomenon.

Some norms of the laws "On the Legal Status of Foreigners and Stateless Persons", "On the Procedure for Leaving Ukraine and Entering Ukraine by Citizens of Ukraine", "On Citizenship of Ukraine" were systematically improved by amending them. The development of legal regulators was aimed at more complete protection of human rights, improvement of mechanisms for regulating migration flows (Bil, 2017).

Thus, nowadays the legislation of Ukraine on migration is represented by the system of current laws of Ukraine: "On the procedure for leaving Ukraine and entering Ukraine for citizens of Ukraine", "On the legal status of foreigners and stateless persons", "On Immigration", "On Refugees and Persons in Need of Additional or Temporary Protection", "On Citizenship of Ukraine", "On Freedom of Movement and Free Choice of Residence in Ukraine".

The Law of Ukraine "On Citizenship of Ukraine" is based on the requirements of international legal acts. The Law takes into account the living conditions and interests not only of immigrants, but also of persons who do not have the status of immigrants in Ukraine.

The connection between the implementation of the provisions of the Law of Ukraine "On Citizenship of Ukraine" and migration can be traced through such an important aspect as the acquisition of Ukrainian citizenship abroad by territorial origin, i.e., immigrants from Ukraine, including persons previously deported outside Ukraine and their descendants who permanently reside in other states. With the acquisition of Ukrainian citizenship, the Law of Ukraine "On the Procedure for Leaving Ukraine and Entering Ukraine by Citizens of Ukraine" applies to them. A citizen of Ukraine is free to enter Ukraine with a national passport.

The connection of the institute of citizenship of Ukraine with migration processes is reflected in the principle of preservation of the citizenship of Ukraine established by the Law regardless of the place of residence of the citizen of Ukraine.

The Law of Ukraine "On Freedom of Movement and Free Choice of Residence in Ukraine" applies to all categories of individuals who are legally on the territory of Ukraine. The law clearly states the grounds determined by law for stay on the territory of Ukraine, the conditions of registration of residence, place of stay, deregistration of residence. The law establishes the grounds (for the territory and for certain categories of persons) that restrict freedom of movement. The adoption of this law is timely and important in resolving migration issues in Ukraine.

The next law in the field of migration is the Law of Ukraine "On the Legal Status of Foreigners and Stateless Persons". It determines the legal status of foreign citizens and stateless persons in Ukraine, establishes the basic rights, freedoms and responsibilities of foreign citizens and stateless persons residing or temporarily staying in Ukraine, as well as the procedure for resolving issues related to them.

As the analysis of the legislation shows, the rights of foreigners and stateless persons who are legally on the territory of Ukraine comply with international law, their legal status is determined by the Constitution of Ukraine, the Law of Ukraine "On Legal Status of Foreigners and Stateless Persons" and other laws of Ukraine as well as international agreements. In the case of establishing by an international agreement other rule than those provided by law, the rules provided by such an international agreement of Ukraine shall apply (Dergach, 2015).

Immigration to Ukraine is carried out both out of quota and in accordance with quotas. The Cabinet of Ministers of Ukraine for each calendar year sets the maximum number of persons in the categories defined by the Law "On Immigration" who can immigrate to Ukraine. The law also provides for the issuance of immigration permits outside quotas for certain categories of foreigners, especially those from Ukraine, regulates the departure and expulsion of persons from Ukraine in connection with the revocation of

immigration permits, appeals against immigration decisions, actions, or inaction of public authorities.

The Law of Ukraine "On Refugees and Persons in Need of Additional or Temporary Protection" regulated the issue of one of the categories of foreigners and stateless persons. It established the procedure for granting and revoking refugee status, appealing against decisions on refugees, the rights and obligations of refugees and persons in need of additional protection, the powers of executive bodies to decide on persons seeking recognition as a refugee or a person in need of additional protection. The law defines the terms "refugee" and "person in need of subsidiary protection", which clearly corresponds to the definition provided by the UN Convention relating to the Status of Refugees, adopted on 28 July 1951 (United Nations, 1951).

Migration issues are also regulated by a number of resolutions of the Verkhovna Rada of Ukraine. Among them the resolution of June 17, 1999 "On the Principles of the State Policy of Ukraine in the Field of Human Rights" is important. In this document, the main directions of state policy in the field of human rights migration include:

- strengthening the reality of the right to freedom of movement and free choice of place of residence in Ukraine (by abolishing the institution of residence).
- humanization and effective implementation of legislation on refugees and internally displaced persons.
- promoting the development of a system of non-judicial protection of human rights and freedoms, providing support to public organizations in the field of human rights protection (Verkhovna Rada of Ukraine, 1999).

Obvious progress in the field of legal regulation of migration processes was ensured due to a number of important decisions taken in Ukraine during 2011-2015, in particular, approval of the Concept of State Migration Policy (President of Ukraine, 2011), establishment of the State Migration Service (President of Ukraine, 2014) and its territorial subdivisions (Cabinet of Ministers of Ukraine, 2011).

In order to improve the legislation aimed at combating illegal migration across the state border of Ukraine, it was decided to amend the Criminal Code of Ukraine (Verkhovna Rada of Ukraine, 2001), Criminal Procedure Code of Ukraine (Verkhovna Rada of Ukraine, 2012) and the Code of Administrative Offenses of Ukraine (Verkhovna Rada of Ukraine, 1984) in terms of strengthening liability for illegal crossing of the state border of Ukraine, violations by foreigners and individuals without citizenship rules of stay in Ukraine and transit through the territory of Ukraine, violation of

employment, housing, registration, or discharge of foreigners and stateless persons and registration of documents for them, deportation outside Ukraine. The functions of combating illegal migration were entrusted to the intelligence agencies of Ukraine, which, in addition, participated in the fight against international organized crime, including terrorism, drug trafficking, illicit arms trafficking and its technology, as well as specially authorized body of executive power for the protection of the state border of Ukraine - to ensure the interests of the state in the areas of border and immigration policy, as well as in other areas related to the protection of the state border of Ukraine and its sovereign rights in the exclusive (maritime) economic zone and continental shelf (Dergach, 2016).

Illegal migration is identified among the main real and potential threats to Ukraine's national security and stability in society. In this regard, it is decided that the main directions of state policy in the fight against illegal migration will be addressed through the participation of the state in international cooperation (Mikolaichuk, 2010). The decision on freedom of movement and free choice of residence was made in accordance with the Constitution of Ukraine and aimed to regulate relations related to freedom of movement and free choice of residence in Ukraine, guaranteed by the Constitution of Ukraine (Freika *et al*., 1999).

Thus, in Ukraine the main areas of legal regulation to combat illegal migration are: implementation of international migration law in domestic law; definition of the basic rules of behavior of the migrant in laws; identification of correlation between state border legislation and migration legislation; emergence of separate legislation regulating entry into and exit from the temporarily occupied territory of Ukraine; openness of the legal system of Ukraine to the application of new sources of law, in particular decisions of international and national courts.

3. Legal regulation of combating illegal migration in the EU countries

After the consolidation of legislative powers in the field of regulation of migration processes for the EU institutions, a number of normative legal acts were adopted aimed at introducing uniform rules in relation to illegal immigrants in the EU countries. On May 28, 2001, the Council adopted Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third-country nationals (Council of the European Union, 2001). The document states that a decision to expel an illegally staying alien made by one of the member states is subject to execution by other member states, on whose territory the person may later be.

In order to simplify the procedure for the expulsion of illegal immigrants from the EU Member States, Directive 2003/110 / EC of November 25, 2003, "On assistance in cases of transit for the purposes of removal by air" (Council of the European Union, 2003) was adopted. The beginning of the unification of criminal legislation in the field of combating illegal immigration in the EU is the adoption of EU Council Directive No. 2002/90 / EC of November 28, 2002 "On the definition of facilitation of unauthorised entry, transit and residence" (Council of the European Union, 2002). Directive 2002/90 / EC contains definitional norms and establishes general signs of criminal acts, consisting in facilitating the illegal entry of foreigners into the territory of the Member States.

Since 2014, the European Union has been actively fighting the refugee crisis, which turned out to be the biggest humanitarian problem for the EU in its entire history (Butorina and Kaveshnikova, 2016). In 2015, the number of illegal migrants to the European Union from third countries has exceeded 1 million, it was a record year for the intensity of migration flows to the EU. Frontex recorded 1.8 million cases of illegal migration in 2015, including 1.04 million of them in Greece and Italy. However, both countries are only "trans-shipment points", since most illegal migrants strive further, to more developed EU countries, in particular to Germany, Great Britain, France and the Scandinavian countries (Bolshova, 2016).

On May 13, 2015, the European Commission published a message "The European Agenda for Migration", in which it outlined a plan for short-term and long-term EU actions to overcome the migration crisis (European Commission, 2015). An important part of the agenda was the development of an action plan to combat the smuggling of migrants (Chacon Hernandez, 2021). Two weeks later (on May 27, 2015), the European Commission prepared a communication "EU Action Plan on Combating Migrant Smuggling (2015–2020)", which identified four priority areas of EU policy in this area:

- strengthening of joint actions within the framework of police and judicial cooperation between the EUs countries.
- improvement of the mechanism for data collection and information exchange; stepping up joint action to prevent the smuggling of migrants and provide assistance to the most vulnerable categories of migrants.
- strengthening cooperation with third countries in the field of combating illegal migration (European Commission, 2015).

The document also emphasized that the implementation of the Plan should be considered in the broader context of EU policy in such areas as combating the causes of irregular migration, creating safe legal channels for migration to the EU, general EU policy in the field of security and defense (CSDP), as well as the EU return policy.

Refugee Crisis 2014–2015 contributed to the strengthening of the external dimension of the EU migration policy. In the period 2014-2016, the EU has intensified its interaction with third countries - sources and transit countries of migrants at different levels: within the framework of the Migration Dialogues at the highest level, the EU summits with Turkey, African and Western Balkan states (Sadykova, 2016), the dialogue on mobility and migration between the EU and Africa, the Budapest and Prague processes, the European neighborhood policy (Potemkina, 2015). The outcome of the EU meetings with third countries on migration issues during this period was the project "New Framework Partnership with Third Countries in the Field of Migration", approved by the EU Council in June 2016. In accordance with this document, partnerships pursue short-term and long-term goals.

The short-term goals are: saving lives in the Mediterranean, increasing the share of illegal migrants returning home, helping migrants and refugees in their places of residence in order to reduce new attempts of illegal migration. In the long term, partnerships are aimed at eliminating negative political, economic, social, climatic, and other factors that are the main causes (root causes) of illegal migration and forced resettlement. The project defines a methodology for the implementation of framework partnerships on migration, which includes five key elements (areas of activity):

1. Increasing the effectiveness of the policy of return, readmission, and reintegration of migrants. These policies are aimed at destroying the business of smugglers and human traffickers working on the principle of "small risks, big profits." A significant increase in the percentage of illegal migrants returning home should significantly weaken the motivation of people to pay money to smugglers to organize their illegal transportation to Europe. To achieve the long-term effect of the return process (prevention of repeated illegal migration), the EU (in cooperation with the International Organization for Migration) promises its partner states active support in the voluntary return and reintegration of returned migrants (Molinari, 2019).

2. Greater coherence and better coordination between the EU and Member States is seen as essential to the success of partnerships with third countries. Some European states (former colonial powers) have closer bilateral relations with specific third countries due to longstanding historical and cultural ties. The EU calls on states with such potential to join forces for the good of a common cause and to make more active use of their influence on third countries in order to facilitate more effective implementation of mutual agreements and obligations within partnerships (in particular, under readmission agreements). At the same time, the document emphasizes the importance of joint work of EU institutions and member states in tandem with each other.

3. Reorientation of EU policies (methods of their use) to address the problem of illegal migration. Following the meetings in the framework of the High-level Migration Dialogues, the EU prepared proposals for the first packages for concluding contracts (compacts) with 16 third countries (Ethiopia, Eritrea, Mali, Niger, Nigeria, Senegal, Somalia, Sudan, Ghana, Cote d'Ivoire, Algeria, Morocco, Tunisia, Afghanistan, Bangladesh, and Pakistan). Discussions with Member States in June 2016 identified five priority African countries (Ethiopia, Niger, Nigeria, Senegal, and Mali). An individual interaction plan was developed for each country. Individual agreements (compacts) represent a new format of partnerships with third countries, in which the EU has combined its external and sectoral policies (European Neighborhood Policy, Development Assistance Policy, Foreign Trade Policy, Energy Policy, Security Policy, Digital Policy, etc.) into a single system focused on a common goal - to reduce illegal migration. Migration policy is an important component of the Compact (Devisscher, 2011).

The EU plans to strengthen the instruments of this policy in cooperation with third countries:

- introduce a new "structured resettlement system" based on the general approach of providing safe and legal entry into the EU for persons in need of international protection.
- expand channels and opportunities for legal migration to the EU using visa policy instruments.
- develop training programs for migrants, focused on the needs of labor markets in the EU; facilitate remittances of migrants to their home countries.
- to create a single platform for registration of displaced persons in order to accelerate the delivery of necessary assistance to third countries and the implementation of resettlement of refugees to the EU or other countries, etc.

4. Effective multilateralism. The need to develop this area is due to the fact that migration is a global challenge and therefore requires a coordinated international approach. In the past few years, the EU has strengthened cooperation in the field of asylum policy and combating illegal migration with international organizations (UN High Commissioner for Refugees, UN International Organization for Migration), partner countries within the G-7, G-20 groups. In particular, the EU actively cooperates with UN structures in the framework of such programs as the global plan for sharing the burden of responsibility for the resettlement of Syrian refugees, the program of assistance in the voluntary return and reintegration of returned migrants (Provine, 2009).

5. Consolidation and targeting of EU financial instruments. The EU stresses the important role of the partnership financing mechanism. The choice of these or those financial instruments should be determined by the specific goals of the partnerships. For short-term purposes of partnerships (assistance to refugees and their host communities), financial instruments are provided such as the Fund for Refugees in Turkey, the EU Regional Investment Fund in connection with the crisis in Syria (Madad Fund), the Trust Emergency Fund for African Countries. For long-term goals (combating the root causes of illegal migration), the EU is betting on stimulating private sector investment in Africa as part of the European External Investment Plan.

In September 2016, the European Commission published an ambitious European External Investment Plan for emerging economies, in particular for Africa and the European Neighborhood. The priority goal of the plan is to promote the social and economic development of third countries by attracting investments. The European Commission has contributed 3.35 billion euros to the External Investment Fund by 2020 and plans to attract another 62 billion euros from other sources - public and private funds, as well as from the budgets of the member states. This fund will provide guarantees to government organizations and the private sector when investing in countries where there are political risks. Any interested company will be able to receive a guarantee for investing in a project that meets certain criteria. In particular, the project should contribute to sustainable development, job creation in third countries and the elimination of the root causes of illegal migration (Blasi Casagran, 2021).

Thus, counteraction to illegal migration in the EU is unfolding in two directions. On the one hand, the EU has developed a system of regulations aimed at introducing uniform rules for illegal immigrants in the EU countries and criminalizing illegal border crossing. On the other hand, the EU implements a system of incentive measures aimed at supporting third countries and facilitating the legalization of migrant flows.

Conclusions

The analysis of the migration legislation makes it possible to distinguish three types of documents according to their content, related to combating illegal migration in Ukraine: regulatory legal acts determine the model of legal entry of a migrant and stay in the country; law enforcement norms establish responsibility and regulate the application of other coercive measures in case of violation of migration norms; organizational documents determine the competence of the authorities involved in the process of combating illegal migration.

According to the content of international legal regulations, migration offenses are naturally recognized as illegal. Indication of any other characteristic of migration in violation of the established rules, apart from illegality, pursues a purpose other than that required to establish a certain prohibition.

In Ukraine, the main areas of legal regulation to combat illegal migration have been: implementation of international migration law in domestic law; definition of the basic rules of behavior of the migrant in laws; identification of coercive measures that can be applied to individuals and legal entities involved in migration processes; the correlation between state border legislation and migration legislation; emergence of separate legislation regulating entry into and exit from the temporarily occupied territory of Ukraine; openness of the legal system of Ukraine to the application of new sources of law, in particular decisions of international and national courts.

The protection of the external border and the fight against illegal entry into the territory of the EU is entrusted to national border formations, mainly of the police type, the interaction and coordination of which is provided by a special European agency. EU standards for combating illegal migration in the protection of state codons should be defined as enshrined in EU law principles, assets (values), norms, criteria, forms, and methods of law enforcement, used on the basis of combining humanity and efficiency to regulate the activities of border control authorities.

In contrast to Ukraine, where combating illegal migration is mainly limited to the establishment of bans and fines for illegal migrants, the EU has developed a system of incentives and support measures aimed at supporting third countries. The main areas of combating illegal migration in the EU are: increasing the effectiveness of the policy of return, readmission and reintegration of migrants; greater coherence and better coordination between the EU and Member States, which is seen as essential to the success of partnerships with third countries; reorientation of EU policies (methods of their use) to address the problem of illegal migration; effective multilateralism; consolidation and targeting of EU financial instruments.

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Preventive diplomacy as a tool for conflict solutions in Eastern Europe

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Abstract

The modern world community is concerned about the search for humane, non-forceful methods for solving hybrid conflicts that characterize the system of international relations of the 21st century. That is why the concept of preventive diplomacy has become popular and in demand. The conflict in the East of Ukraine has shown that this concept has some flaws in terms of its implementation in practice. Using the historical method, the key means of implementing preventive diplomacy are revealed. The article analyzes examples of the use of preventive diplomacy methods for solving conflicts in Europe by the Organization for Security and Cooperation in Europe. The authors used the method of comparative analysis to compare examples of implementation of the principles of preventive diplomacy by different international players. Attention is drawn to the fact that excessive caution of the OSCE and unwillingness to call Russia a participant in the conflict and even more, so an aggressor country led to skepticism about the organization itself in Ukraine.

Keywords: Foreign policy in Europe; preventive diplomacy; confidence-building measures; clarification of the facts; preventive deployment and demilitarization of the territory.

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La diplomacia preventiva como herramienta para la solución de conflictos en Europa del Este

Resumen

La comunidad mundial moderna está preocupada por la búsqueda de métodos humanos y no contundentes para resolver los conflictos híbridos que caracterizan el sistema de relaciones internacionales del siglo XXI. Es por eso por lo que el concepto de diplomacia preventiva se ha vuelto popular y solicitado. El conflicto en el este de Ucrania ha demostrado que este concepto tiene algunas fallas en términos de su implementación en la práctica. Usando el método histórico, se revelan los medios clave para implementar la diplomacia preventiva. El artículo analiza ejemplos del uso de métodos de diplomacia preventiva para resolver conflictos en Europa por parte de la Organización para la Seguridad y la Cooperación (OSCE) en Europa. Los autores utilizaron el método de análisis comparativo para comparar ejemplos de implementación de los principios de la diplomacia preventiva por diferentes actores internacionales. Se concluye que llama la atención el hecho de que la excesiva cautela de la OSCE y la falta de voluntad de llamar a Rusia un participante en el conflicto y más aún un país agresor llevan al escepticismo sobre la propia organización en Ucrania.

Palabras clave: Política exterior en Europa; diplomacia preventiva; medidas de fomento de la confianza; clarificación de los hechos; despliegue preventivo y desmilitarización del territorio.

Introduction

The search for ways to effectively ensure the peaceful development of any state, the analysis of the necessary prevention means that are flexible and adequate to modern types of threats and the timely elimination of conflict situations is one of the most important tasks of modern diplomacy. The sharp increase in the number and frequency of local conflicts in almost all parts of the world after the end of "the cold war" and the disappearance of the bipolar world have made it critical to find new ways and means for regulation and solving conflicts. Among these ideas, the concept of preventive diplomacy, because of its almost peaceful nature, is the most attractive.

The modern world community is concerned about the search for humane, non-forceful methods for solving hybrid conflicts that characterize the system of international relations of the 21st century. That is why the concept of preventive diplomacy has become popular and in demand. The

conflict in the East of Ukraine has shown that this concept has some flaws in terms of its implementation in practice. After all, international structures designed to implement the ideas of preventive diplomacy include countries that are latent participants in conflicts, actual initiators. For this reason, preventive diplomacy is not always effective and does not justify the hopes placed on it.

The purpose of the study is the peculiarity of preventive diplomacy as means of conflict prevention, as well as preventive activities of the OSCE to prevent and regulate conflicts in Europe.

The problem of preventive diplomacy is popular in the works of researchers. For example, the work of the Ukrainian researcher I. Nazarovsky (Nazarovska, 2012) analyzed the range of the main subjects of preventive diplomacy and highlighted their main advantages and disadvantages, peculiarities of the involvement in the activities for preventing armed conflicts. In the works of I. Goncharenko (Goncharenko, 2006), the peculiarities of interaction between the UN and the OSCE as for prevention and non-forceful conflict solution in the post-Soviet space are investigated. Yu. Pashchuk (Pashchuk, 2002) analyzes the practice of using preventive diplomacy on the example of Yugoslavia in 1991-1995, and T. Fichora (Fichora, 2007) - on the example of the Transdniestrian conflict. However, there is no objective and impartial analysis of the use of preventive diplomacy methods in the East of Ukraine.

1. Methodology of the study

In the analysis of the concept of preventive diplomacy and its practical application, the author was guided by the method of historicism, which allowed to place the problem in a changing historical context, to explain the reasons for its emergence, its evolution, use by individual subjects and examples of implementation. The historical approach has made it possible to explain the causes of successes and political failures in the practical application of preventive diplomacy in a particular setting. The benchmarking method has been widely used in comparing examples of implementation of preventive diplomacy principles by various international players.

2. Results and Discussion

As is known, the concept of preventive diplomacy was first proposed by the UN Secretary General D. Hamerscheld. It was he who provided the first definition of preventive diplomacy, under which he understood

the actions aimed at preventing the transfer of local conflicts to the global confrontation of two military-political alliances. However, this term came into the world practice and scientific use after the report of the UN Secretary General Boutros Boutros-Ghali, which he spoke at the 47th session of the UN General Assembly on July 17, 1992, with.

Preventive diplomacy is the official diplomatic activity of international organizations, states, their governments, aimed at preventing conflicts at the beginning of their escalation, stopping their growth, creating conditions for peace. It includes political, economic, military, and other types of activities for restoring trust between hostilities and for the earlier conflict warning.

For the success of preventive diplomacy, the combinations, and the simultaneous presence of a number of factors, both objective and subjective, are necessary. In this regard, many analysts agree that the lack of information adequate to the crisis situation is not always the cause of these failures. On the contrary, sometimes there is more than enough disturbing information, but other reasons of a more prosaic nature, such as, for example, the overload of the staff of the UN Secretariat with current conflicts or the availability of relevant state services with similar crisis situations, do not allow to pay sufficient attention to latent conflicts. As a result, sometimes due to negligence, sometimes due to the uncertainty of the level of accuracy of the incoming earlier warning signals, and sometimes because of uncertainty about the correctness of the actions taken, the elimination of latent cases does not occur.

Moreover, many people responsible for preventive actions wait until the conflict reaches the crisis phase, when they can confidently prove their actions and receive political dividends. So, one of the main subjective factors in preventive diplomacy, the so-called political will, sometimes turns out to be decisive, whereas if preventive attempts fail, inaction can always be justified by various excuses (Rakhmatullaev, 2007).

The system of subjects of preventive diplomacy consists of the government of states, international organizations (UN, OSCE, ASEAN, etc.) and non-governmental organizations. Each of these three elements of the system plays an important role in the caution, prevention, and solution of armed conflicts. For example, governments initiate military and political actions that demonstrate the credibility of a solution for a conflict; international organizations initiate coherence of international efforts, and non-governmental organizations quickly and effectively react to the challenge. Each element must be leading at a certain time and in a certain sphere and each of them has the right to count on the support and understanding of other subjects in prevention of armed conflicts.

The achievements of these international structures in the field of conflict prevention have not always been further developed for their implementation due to the lack of political will, the policy of double standards, or ignoring the specific circumstances of particular situations. In a number of crises, the initiatives of the UN, the OSCE and other subjects of preventive diplomacy on the invention of the formula for a political regulation did not result in fundamental, qualitative changes.

2.1. OSCE preventive diplomacy in the post-Soviet space

The OSCE is one of the key subjects of preventive diplomacy. This organization has 57 member-states around the world, covering three continents - North America, Europe, and Asia.

A comparative analysis of institutions implementing strategies of preventive diplomacy, at the disposal of the OSCE, allows us to distinguish two key institutions - a) long-term missions; and b) the OSCE High Commissioner for National Minorities (HCNM). The long-term CSCE missions arose under the pressure of circumstances and the emergence of the need to prevent and solve the conflicts in the area of responsibility of the Organization (Rakhmatullaev, 2008).

OSCE actions taken in Lithuania have become the best example of an orderly transition from the Soviet republic to a sovereign state with regard to relations with Russia. Although a similar process took place in Estonia and Latvia, it was not so successful, however, there was some progress as well. On the one hand, the specifics of the Baltic countries, their Western political culture, historical experience, Baltic geopolitics contributed to this process. On the other hand, the OSCE's efforts to regulate relations between Russia and the Baltic states took place in fairly favorable conditions, primarily because the parties wanted solving of existing conflicts.

The center of the "Baltic question" was the presence of the Russian military on the territory of three countries. The OSCE mission, starting its work in 1992, provided a solution to the acute problems of the region: the withdrawal of troops from the territory of Lithuania, Latvia and Estonia; advice on regulations of issues of citizenship and language; guaranteeing the rights of military retirees; cooperation in the negotiations on the dismantling of the radar in Skrunda; establishing a dialogue with Western countries.

The specifics and focus of the actions of the OSCE High Commissioner on National Minorities in Latvia and Estonia helped to prevent the crisis development of events related to the restriction of the rights of the Russian-speaking minority there.

Also worth mentioning is the practice of applying preventive diplomacy in the Moldavian-Transdniestria conflict. The most important instrument used by the OSCE was the sending of a special mission to the Republic of Moldova in response to the appeal of the Moldavian government.

The main task of the Mission was to promote the achievement of a final political settlement of the conflict in all its aspects, based on the independence and sovereignty of the Republic of Moldova, within the existing borders and restoring the territorial integrity of the state with granting special status to Transdniestria. The Mission's mandate covered several points, the main of which was to provide favorable conditions for the dialogue between the parties with the aim to solve the problem politically, as well as to establish contacts with all parties of the conflict, local administrations, local people, monitoring the situation, providing recommendations and expert assessments, monitoring compliance of international obligations to ensure human and minority rights, the return of refugees, etc. (Fichora, 2007).

In December 1999, according to the 19th Paragraph of the Declaration of the Istanbul Summit, the Mission's mandate was expanded with the aim to ensure transparency in the process of removing and destroying of Russian ammunition and weapons, to coordinate financial and technical assistance that was provided to facilitate the implementation of their withdrawal and destruction. The OSCE Mission (then it was CSCE) in Moldova began its activities on April 25, 1993, in Chisinau (Melnyk, 2013). The Memorandum of Mutual Understanding with the Government of the Republic of Moldova was signed on May 7, 1993 and amended on March 28, 1996. The mutual understanding of the OSCE activities in the Transdniestria region came into force on August 25, 1993, as a result of an exchange of letters between the Head of the Mission and the president of the so-called Transdniestrian Moldavian Republic (hereinafter – the TMR). The mission opened its office in Tiraspol on February 13, 1995. In September 1993, the cooperation of the Joint Control Commission with the OSCE Mission in the Republic of Moldova was established. And in November 1993, the Head of the OSCE Mission in Moscow, T. Williams, sent Report No. 13 to the head of the organization. This document described the Mission's viewpoints on how to solve the conflict and a possible basis for negotiations between the two parties (Melnyk, 2013).

It should be noted that since 1993, the OSCE Mission has been considered the main mediator in this conflict. It was the OSCE that constantly promoted peace negotiations between Moldova and the TMR. The negotiations in the "5 + 2" format was particularly active, in which Moldova and the TMR as parties of the conflict, Russia, Ukraine and the OSCE as mediators, as well as the US and the EU as observers, take part. The negotiations were interrupted in 2006, then they were restored several times in 2011 and

2016. In addition to a direct political regulation, the OSCE focuses on confidence building measures and interpersonal contacts through informal negotiations during meetings of experts on humanitarian and social issues (Zvezdova, 2017).

For many years, the Mission has been actively involved in discussions dedicated to ensuring military transparency and restoring confidence between the parties of the conflict. Only during the first half of 2004, the Mission's experts proposed 14 draft agreements on confidence and security building measures. The proposals drew attention to the possible reduction of the armed forces and armaments; they also included the intensification of contacts, monitoring of weapons production capacities, joint exercises for peacekeeping operations, joint inspection exercises and so on.

It should be noted that the OSCE's activities in the regulation of the Transdniestrian conflict have an ambiguous assessment. On the one hand, the involvement of this organization in the regulation process has had a positive significance, since it allowed to internationalize the negotiation process and attract the attention of the international community, because with the assistance and support of the OSCE the format of the negotiations was expanded. In addition, the presence of the OSCE Mission restrained the hostile actions of the parties in conflict situations since awareness of the fact of oversight from the side of the international community was important.

However, sharp criticism exists towards this organization, and not without reasons. The criticism concerns the ineffectiveness of the peacekeeping efforts and the monitoring mission of the OSCE. There are no effective tools and levers in the OSCE that could force countries to fulfill their commitments. And it is vividly seen in the failure of the OSCE to achieve the implementation of the decisions of the Istanbul Summit on the export of weapons and ammunition of the Russian 14th Army from the territory of Transdniestria. The procedure for making decisions and coordinating activities continues so long that sometimes a moment for the effective implementation of this decision is lost (Fichora, 2007).

In addition, the activities of the OSCE Mission in Moldova are extremely negatively perceived on the left bank of the Dniester. Although the OSCE office operates in Transdniestria, this organization is not trusted there, it is criticized for formalism, prejudice, and bias. In the opinion of Transdniestria's, the OSCE monitoring is one of the methods of collecting military strategic information. The OSCE is accused of becoming a tool of pressure, pursuing a policy of double standards, and protecting the interests of the Western world, regardless of the objective reality existing in the conflict zone. Of course, this is the result of propaganda, and first of all, Russian one.

2.2. OSCE and preventive diplomacy in solving the conflict in the East of Ukraine

Ukraine has been a member of the OSCE since January 30, 1992, when the first president of independent Ukraine, Leonid Kravchuk, signed the Helsinki Final Act. For a long time, Ukraine has been actively involved in regulation of conflicts under the auspices of the OSCE. However, after the start of the Russian aggression, Ukraine has turned from a donor to a recipient of international security and is now forced to seek external support in order to restore peace.

In the practice of international peacekeeping, the responses to the challenges that Ukraine faces now have long been processed, and even a simple linear projection of the state of conflict on the forms of peacekeeping assistance allows to avoid false expectations and answer the question of what kind of peacekeeping assistance Ukraine needs.

As noted by the Ukrainian expert V. Filipchuk, already during the Maidan - in February 2014 - Ukraine should have called for the preventive deployment of an international peacekeeping contingent. Preventive deployment is one of the most effective mechanisms of international influence to prevent the escalation of violence, allowing in a number of cases to stop conflicts before the start of their active phase. But the restraint of international players and the short-sightedness of the Ukrainian political leadership led to the fact that this issue was not even considered at the international level. Only a year after several military defeats, the loss of territories, the deaths of thousands of Ukrainians, the conversion of millions of citizens into refugees, and finally the signing of Minsk-2, the Ukrainian leadership turned at last to the international community with a request to introduce a “peacekeeping” contingent (Filipchuk, 2016).

The annexation of Crimea put the world community before the fact that one member state of the UN and the OSCE violates the territorial integrity of the other state through direct use of military force. The Russian special services removed the Special Representative of the UN Secretary General in Ukraine from the territory of Crimea during the annexation, the peninsula was removed from international monitoring altogether. To facilitate the regulation of the conflict on the territory of the Donetsk and Luhansk regions, the OSCE has been determined as the main format of international involvement. But the mandate and activities of the OSCE Special Monitoring Mission in Ukraine, the OSCE Observer Mission on the Russian-Ukrainian border, as well as the OSCE’s activities to facilitate the operation of the tripartite contact group (the Minsk process) did not help to stabilize the situation in the Donbass, but also failed to prevent an escalation of the armed conflict (Filipchuk, 2016).

Standard mechanisms that the OSCE uses to solve conflicts under the conditions of conflict in the East of Ukraine do not work. The Minsk process and the agreements that are accepted during its work are not effective. These agreements are violated almost immediately after their approval.

In Ukraine, a special monitoring mission of the OSCE is now operating, but its capabilities are limited - it has neither the ability to coerce, nor the ability to protect itself. Moreover, the mission's right to free movement and monitoring in the conflict zone is systematically violated from the side of the militants, and the OSCE representatives themselves often become objects of aggression by military formations in the East of Ukraine. Ukraine has repeatedly expressed a request to strengthen the existing mission with an additional mission under a military mandate or a police component.

Excessive caution of the OSCE and unwillingness to call Russia a participant in the conflict, and even more so an aggressor country, lead to skepticism towards the organization itself in Ukraine. The situation is similar to how the OSCE is perceived in Moldova and Transdniestria. In addition, in the mission of the OSCE observers there are representatives of Russia, which also does not contribute to the increase of the credibility to the OSCE among Ukrainians. When one state is at the same time a party of the conflict and a mediator, this is nonsense. One can only imagine how this situation affects mission reports, their content and language.

The Russian Federation has many levers of influence on the functioning of the OSCE. Consensus must be not only in political, but also in administrative decisions. In particular, in decisions to send a mission or extend its mandate. Many of those who came to the East of Ukraine, had experience in other missions. For example, in Bosnia. There, they promoted dialogue between Bosnian Muslims, Serbs, and Croats. They put in their memory that the mission should facilitate dialogue. They intended to act in Ukraine in such a way as well. At the beginning, it was believed that the conflict in Ukraine was a civil conflict, where there are two sides - the majority of the population of the state and residents of the East, in particular of the Donbass. Only later they realized that this was not an internal conflict. Therefore, in this case, the mission's mandate was inadequate to the situation.

The definition of the Ukrainian crisis as an internal conflict between Ukraine and ORDLO (separate districts of the Donetsk and Luhansk regions) excludes the deployment of an international peacekeeping operation, and regulation of the conflict due to the implementation of the Minsk agreements is an obligation of Ukraine, which was approved by the UN Security Council resolution (Zartman, 1996). The Minsk agreements are only a mechanism for transforming the war in the East of Ukraine into a conflict of low intensity, but it continues in the acute stage. The use of preventive diplomacy will only contribute to the localization of the conflict and its non-proliferation to other regions of Ukraine and neighboring

countries, which is not expedient in this situation. Therefore, the only effective form in this case would be assistance to peace using the whole arsenal of efforts provided by Art. 33 of the UN Charter (negotiations, examination, mediation, arbitration, appeal to regional organizations), with the following use of peace-building form and peace enforcement of the Russian Federation, however, with the official qualification of Russia as the aggressor country, and then the removal of the Russian Federation when considering the issue of Ukraine in the UN Security Council (Panchenko, 2016).

It should be noted that some members of the OSCE realized that Russia is a party of the conflict, but this happened only after the tragedy with the Boeing 777 in July 2014. But then it was too late to remove Russia from the mission to the East of Ukraine. This could, but only theoretically, be done at the very beginning - in the spring of 2014. But then, and now this requires political will in the countries of the West. Western politicians, even those who personally would like to increase the pressure on Russia in the OSCE, should take into account the opinion of Western society. And their anti-war sentiments are dominant.

It is also necessary to say that the OSCE insists on the principles of tolerant relationships between the parties of the conflict in Ukraine. Back in 2014 in Minsk, representatives of the organization offered to adopt the relevant documents on amnesty at the level of national legislation in Ukraine.

In the conditions of the conflict, an amnesty is understood as a deliverance from criminal prosecution and, possibly, from civil liability, limited by the conduct that took place during a specified period and/or related to a military conflict.

The world experience is rich in the application of amnesty in different countries and with a different purpose. Under some conditions, amnesties for “ordinary” criminal offenses may have a humanitarian purpose, for example, to allow terminally ill persons to return home or to ease the harsh conditions in overcrowded prisons.

At the insistence of the OSCE and the world community, Ukraine adopted a relevant law - the Law of Ukraine “On the Prevention of Prosecution and Punishment of the participants of the events on the territory of the Donetsk and Luhansk regions” dated September 16, 2014. This document was approved to facilitate the peaceful regulation of the situation in the East of Ukraine and was adopted in compliance with the Minsk agreements, where an amnesty was introduced for all parties of the conflict, without the possibility of granting a conditional amnesty and establishing responsibility for war crimes (Panchenko, 2016).

Accordingly, the persons referred to in the first part of Article 1 of the document

> Are exempt from criminal responsibility, provided that, after a month since the entry into force of this Law, they fired or do not hold hostages, voluntarily surrendered to state bodies or do not keep firearms, ammunition, explosives, explosive devices, military equipment, do not occupy buildings, premises of state bodies and local self-government bodies and do not take part in blocking the work of state bodies authorities, local authorities, enterprises, institutions, organizations in the Donetsk and Luhansk regions, about which they filed a relevant application to the pre-trial investigation authority conducting the criminal proceedings (Abugu, 2000: 29).

Also, in this document it is not specified what time frame for the commission of crimes is in question.

In addition, the consequence of an amnesty for such persons is the closure of criminal proceedings. Article 4 establishes:

> Exemption from administrative responsibility of persons who committed from February 22, 2014, to the date of entry into force of this Law inclusive in the territory of the Donetsk and Luhansk regions where the antiterrorist operation was carried out, acts containing signs of administrative offenses envisaged in the Code of Ukraine on administrative offenses.

Even though the list of administrative offenses for the commission of which the exemption from administrative responsibility is provided, isn't specified, the exemption from any administrative offense is presumed.

Ukraine should be very careful about the issue of amnesty in the aspect of the armed conflict in the Donbass. If Ukraine should introduce amnesty, it is only conditional, because the provision of a broad, unconditional amnesty can create social tension in the society. The introduction of conditions for granting amnesty makes it difficult to solve the conflict, at the same time increases the legitimacy of the amnesty, contributes to reconciliation of the population.

Several conditions are crucial for performance. First of all, this is disarmament and demobilization, which is the key to further solution and stabilization of the situation. Refusal of violence and release of prisoners of war and hostages are obligatory requirements for granting amnesty. No less important is the prediction of the conditions for the future behavior of the persons who received the amnesty. But in any case, to implement and highlight the main ideas and requirements for the granting and preservation of amnesty, a law is needed that would regulate in detail the conditions under which amnesty is granted. Monitoring the fulfillment of such conditions would make it impossible for abuse on the part of persons who apply for an amnesty, or for officials who make decisions about its provision, as well, would perform a preventive function, establishing

conditions for further behavior of persons for preserving the amnesty, and would provide a measure of responsibility in case of violation of these conditions.

Conclusion

Preventive diplomacy as a tool for conflict prevention was first used only in specific cases, and over time, preventive activity started to have a character of the daily work of subjects of preventive diplomacy. The use of preventive technologies has had positive results on the European continent: Macedonia, Albania, Latvia, and Estonia, etc. At the same time, there are unsuccessful attempts to prevent crises in Croatia, Moldova, Bosnia, and Serbia.

All successful attempts to apply preventive diplomacy methods were such because of the willingness of the governments of these countries to work, the countries were able to control the special services and the armed forces. The failures of the use of preventive diplomacy are primarily due to the unwillingness of politicians to solve conflicts and the long-term ignoring by the world community of those conflicts that were inevitable.

The Transdniestria conflict and the conflict in the East of Ukraine are examples of how preventive diplomacy achieved partial success. Because these conflicts do not have a large scale and numerous victims. In this result of preventive diplomacy methods, the OSCE is often blamed, which does not conflict with the Russian Federation, denies that Russia is a party of these conflicts and does not fully perform the functions assigned to this organization.

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Postmodern neoliberal discourses vs postfeminist theories and practices

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Abstract

The aim of the article is considered the conceptual reconstruction of the relationship between postmodern feminism and the notional field of contemporary neoliberalism. The analytical methods used were based on the assertion that the complexity of textual interventions requires interdisciplinary approaches. The findings and results of the research carried out accentuate that COVID-19 has contributed greatly to the contradictions of the current global landscape in the contexts of neoliberalism and feminism. Feminism asserts as a discourse that the conceptual apparatus of neoliberalism has not served its goals; in fact, postfeminism has not yet chosen its route in the neoliberal context. The assumption that women cannot win their "vindication battle" in the world where "the game is fixed" continues to be taken as an axiom, even though the coronavirus pandemic causes some observers to proclaim the return of influential governments and social contracts. The latter accentuates the role of female representation in neoliberal social, cultural, and political discourses at the global level.

Keywords: life world; virtual economies; problematization of theory; social construction; pop-culture.

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Discursos neoliberales posmodernos frente a teorías y prácticas posfeministas

Resumen

El objetivo del artículo se considera la reconstrucción conceptual de la relación entre el feminismo posmoderno y el campo nocional del neoliberalismo contemporáneo. Los métodos analíticos empleados se basaron en la afirmación de que la complejidad de las interpretaciones textuales exige los enfoques interdisciplinarios. Los hallazgos y resultados de la investigación realizada acentúan que el COVID-19 ha contribuido en gran medida a las contradicciones del panorama mundial actual en los contextos del neoliberalismo y del feminismo. El feminismo afirma como discurso que el aparato conceptual del neoliberalismo no ha servido a sus objetivos; de hecho, el postfeminismo aún no ha elegido su ruta en el contexto neoliberal. La suposición de que las mujeres no pueden ganar su "batalla reivindicativa" en el mundo donde "el juego está arreglado" se sigue tomando como un axioma, a pesar de que la pandemia de coronavirus hace que algunos observadores proclamen el regreso de los gobiernos influyentes y los contratos sociales. Esto último acentúa el papel de la representación femenina en los discursos sociales, culturales y políticos neoliberales a nivel global.

Palabras clave: mundo de la vida; economías virtuales; problematización de la teoría; construcción social; cultura pop.

Introduction

The list of radical changes, which have been wrought in the "postmodern condition," makes scientists conceive late modernity as a dramatic period with a number of significant shifts. In the Western world those changes are both symbolic and real-life, embracing the problematization of the philosophic absolutes against the background of renouncing abstract models and modes that have been applied for thousands of years. Scientific legitimation of the "post-Brave New world" requires the development of the conceptual apparatus for understanding and explaining collective and individual experiences of man/woman in the problematic fields of postmodernity. The contradictory "web" of the social, political and economic picture of our days is represented in the context of the dominating influence of two key factors: "new popular culture" and "new cyberspace" of mass-media expansion, with the focus on their aggressive attitudes towards the "public" and the "individual".

"Life world" ("Lebenswelt" to E. Husserl) of our day-to-day experience

can be represented nowadays as a kind of universal horizon covering chaos of non-science-conscious reflection, without the burden of scientific concepts and notions in the minds of "ordinary" people, - men and women, in their own subjective interpretation. "Life world" is extremely important in the postmodern context of "hyper-intensification of modernism" with its loads of facts and metaphors providing much material for comprehension of the postmodern "landscape". Still the fact is that "life world" is an initial stage of any comprehension, a kind of "matrix", which stipulates all the branches of the Theory (Svasyan, 2010: 60). The confusions and contradictions of the contemporary thought have become much more evident due to the current global pandemic situation with COVID-19, which has shown vividly "how the real world became a Fable", and what the realities of the social construction are at present (Schwab *et al*., 2020).

Hence follows the importance of popular culture, its idols and ideas, its ideology including all the aspects of the postmodern life in the production of the "world picture", loaded with scientific concepts and the metaphorical "truths," which regulate individuals' relations to the surrounding world with the focus on the "must" to simulate the "objective essence" of the existence. The issue, which arises here, is referred to by postmodernists as the "problematization of theory". New cosmological ideas are making the world picture even more complicated, theology seems to add by concentrating on the particular religious issues, philosophy is, as a rule, engaged in the analysis of the cultural discourses, not being preoccupied with the metaphysics of absolutes. Political science provides quite a cluster of new research trends: political economy, institutional studies, social politics, neoliberalism, feminism and gender studies (the last two, being no doubt connected, are not at all synonyms). All mentioned above nowadays represents the development of the corresponding sub-branches of the political science in many countries, Ukraine included.

The increase of interest to these scientific fields testifies to the evident successful attempts of the Ukrainian political science in its expansion into the Western "theory". Such research entails many interdisciplinary dialogues; in this particular article it means the analysis of the neoliberal theories and postfeminist agendas with the focus on understanding their interconnection and contradiction in the context of the current postmodern theoretical problematization.

1. Methods of research

With the focus on the complexity of the interpretation of the contemporary "world picture", the interdisciplinary approaches are considered of great significance. In order to develop the theoretical analysis and the conceptual

presentation of the given research material, some definite methods of the scientific investigation are also considered important. Here the deconstruction should be mentioned as the key principle of postmodernism. The phenomenological and existential approaches to the analysis are significant too as they help to stress the issue of the "human experience", which is valid in this investigation.

Hermeneutics, as the postmodernism theory of interpretation, also plays its role in this research. Applying the hermeneutic interpretation means the coordination of the different contexts presented in the article. The constructivist method permits to claim the social-cultural determination of the phenomena analyzed in the article. The logic of the hermeneutic interpretation in the aspects of the sociological discourse leads to the acknowledgment of the systematic approach used in order to escape the simplified treatment of the definite socio-cultural facts and phenomena. On the whole, this scientific paper advocates interdisciplinary dialogue, which is considered absolutely necessary as it reflects the postmodernist idea of epistemological pluralism.

2. Neoliberal conceptualization of postmodern discourses

Neoliberal conceptualization of political, cultural, and economic discourses in postmodern neoliberalism is considered by theorists as a kind of "generalized term". While mainly treating this term as "a theory of political, economic practices that proposes that human well-being can be best advanced by liberating individual entrepreneurial freedom" (Harvey, 2007: 2), scientists accentuate that neoliberalism is a key to the postmodern political, social, cultural, and economic transformations. Among many definitions of neoliberalism there are such, in which the focus is on the "market" and "trade" (Harvey, 2007: 2). On the other hand, the tendency is evident to oppose neoliberalism to liberalism primarily in their connection to the market. Speaking about "a vision of capitalism" F. Jameson claims that "the affirmation of the primacy of the market is sheer ideology" (2009: 211).

The liberal "consensus", which preceded neoliberal "skepticism", has been achieved, and, according to F. Fukuyama (2006), has been realized when America announced the victory of its principal free-market ideal. Postmodern researchers argue that namely postmodern ideas provide a valuable critique to Fukuyama's thesis, and pose the questions: can we talk about a universal and ideological history; a universal human nature, or an autonomous individual? The declaration of controversial ideas from the start provoked much debate. In 1994 J. Derrida set his deconstruction scheme as a binary opposition to Fukuyama and Modernist-enlightenment world (Sim, 1995).

It is stated that liberalism and social democracy tendencies went into the reverse course with the election of the Thatcher and Reagan governments. That era has been dominated since early 80s of the last century by the contemporary forms of neoliberalism - based "market fundamentalism", globalization and the ideology of "free trade". The postmodern scientists using the theoretical lens of M. Foucault's ideas of governmentality, understand it as a form of radical political economy, and criticize neoliberalism as the ruling "ideological consensus".

D. Harvey (2007: 3) claims that neoliberalism is the doctrine asserting that market exchange is an ethic in itself, capable of acting as a guide for all human action. While the institutional framework is often mentioned too, it is stressed that state interventions into markets must be kept to a minimum, because the state cannot possess enough information as for the market signals powerful interest groups will inevitably distort state intentions. Still D. Harvey (2007: 7) is sure that the conceptual apparatus of neoliberalism represents concepts of dignity and individual freedom. His assumption is that individual freedoms are guaranteed by freedom of the market, and this is a cardinal feature of neoliberalism.

Some researchers' approaches to neoliberalism accentuate its cultural implications. Embracing the complexity of neoliberalism and the corresponding difficulty to comprehend it, J. Gilbert (2016) constructs a vision of the ways neoliberalism is represented in a full scope of cultural life. The scientist claims that the possible ways to understand neoliberalism include viewing it as a discoursive formation, an ideology, a hegemonic project of ideas, techniques, and technologies, as what Deleuze and Guattari call "abstract machine".

As "reality is made up of the Absolute and Causality" (Y. Gonzalez), we should put some accent on the "concept," its role and significance in postmodernism. In our instance, it is the philosophic evolution of how G. Deleuze represents transition from one concept to another. For him, philosophy means creation of concepts, in his view, the history of philosophy is the history of concepts (Deleuze and Guattari, 2009). G. Deleuze and F. Guattari create a concept of the "abstract machine". The preceding concept of "trans-semiotics" allows Deleuze and Guattari to claim that not the signs refer to the language, which forms the structural and generating abstract machine. On the contrary, the language itself refers to the regimes of the signs. That is why trans-semiotics represents the abstract machine, which operates not with the "essences", but with the "matters". Thus, we cannot use the categories of the form and the essences to the abstract machine (Dyakov, 2013).

In the view of all said above the comparison made by J. Gilbert looks quite provocative. To our mind, it means that an answer to neoliberalism cannot be some other ideology, because it is not pure ideology, which is

quite disputable. Some researchers maintain that there is an "answer" to neoliberalism, and it means democracy (Davis, 2017: XI). However, the definition that appears later in the book, cited here, states that neoliberalism is the elevation of market-based principles to the level of state-endorsed norms (Davis, 2017: XI).

Another interesting assertion, made by W. Davis, is about disenchantment of policies by economics. The example, provided by the scientist, seems quite valid: the economic crisis of 2008 was separated from the political one at the beginning, but the Brexit reference was a kind of eruption – the long awaited politization of the crisis.

Psychological pain, which many people suffered during that period, is not separated from the physical pain concept, writes the theorist, asserting that "pain" has become far more wide-spread in neoliberal societies: "Brexit and Trump supporters both have an above-average tendency to support the death penalty" (Davis, 2017: VIII). Summing it up, W. Davis comes to the conclusion that neoliberalism is "a moral economic system", which provides power to the most competitive people and institutions.

The fact is that it has become a target (rationally or not) for the vast number of people that made them suffer not only from the pain of defeat, they were punished for that defeat politically and economically (Davis, 2017: VIII). Since its entry on the world stage COVID-19 has dramatically torn up the existing script of how to govern countries. The paradoxical nature of neoliberalism is represented in the following situation: the dominating role of monopolies, banks and other "principal players" in the neoliberal society along with the decreasing role of states and their institutions should have led to the prosperity of the citizens – free individuals in the free market relations.

In fact, the aim of neoliberalism – absolute freedom of market and trade – has given the reverse result: the aggravating decrease of economic indices. The pandemic with its great impact on the five main categories – the economic, the societal, the geopolitical, the environmental, and the technological – has proposed "the reset", the new conceptual framework with three defining characteristics of today`s world: interdependence, velocity, complexity, and – what is of great importance - the return of "big government" and the social contract (Schwab *et al.*, 2020).

As the key dimension of neoliberalism is competition per se, it should be noted that this principle seems a bit "cumbersome", rising much misunderstanding and confusion in the minds of ordinary people. The essential change that has recently happened is quite evident to the category of "ordinary citizens": bankers, hedge-fund owners have detached their activities from the real world. Instead of being a "service industry," banking became a closed system, which has no social value. This phenomenon

has not only been analyzed by scientists, but it has also been depicted by the authors of the "serious novels" and mass culture products (e.g. in the popular "Billions", produced by Showtime (2016-2021). One of the main characters of the novel "A Week in December" by S. Faulks, a hedge-fund billionaire's wife, a psychologist, and a lawyer by education, thinks about what is happening:

> Profit was no longer related to growth or increase, but became self-sustaining; and in this semi-virtual world, the amount of money to be made by financiers also become unhitched from normal logic. It followed… that the people who could flourish here must themselves be in some profound and personal way, detached…, they did take precautions to minimize the possibility of any contact with reality… However, it remained necessary for these people to have – or to develop very quickly – a limited sense of "the other"; a kind of functional autism was the ideal state of mind (Faulks, 2010: 102-103).

It is obvious that if neoliberalism is an "ethic" in itself, it is quite a special kind of ethic. And it is not only about the crisis of the philosophy absolutes, it means something different, a kind of new realization of the "old" binary oppositions. G. Gonzalez writes that people are special insofar they access the higher aspects of the absolutes, the classical philosophic conception of Truth, Love, Compassion, Altruism, etc. The absolutes have their oppositions in the classical dichotomies: Evil, Falsehood, Greed, Lust, Hate, Self-centeredness, Conceit, etc. Predicting society on what scientists consider the lower aspect of the absolutes, results in personal and social dysfunction, and consequently – in the end of civilization (Gonzalez, 2019).

3. The neoliberal discourses and narratives vs the postfeminist theories and practices

If the thesis is true that postcapitalist "logic" and neoliberal "ethic" generate psychological and cultural pressure resulting in negative effects on individuals, it is worth addressing it with the examples of discourses of postfeminism and the narratives of the contemporary popular culture. As the key dimension of neoliberalism is the ethos of competitiveness, the women's place "in the market" and "around the market" is obviously disadvantageous from the "start". It is well-known that liberal feminism is deeply rooted in modernity as a project of emancipation. In the feminism "dilemma" of two main conceptual directions. The feminist emancipation political activity has depended on the "linear purposeful time", in which the historical achievements of one generation are passed to the next one. As scientists' comment, this is the modernist historical mode, in which the definite acts of self-realization make the realization of the initial objectives and ideals possible (Appignanesi and Garratt, 2006: 202). To our mind, feminism is a good example of a long-term emancipational target, though it is problematic, whether it is "guaranteed" by historical progress.

No doubt, some recent economic and political trends vividly testify that feminism has successfully realized some (though not all) its goals. At present the feminist "mainstream" includes governmental programs, grant projects, funds' support. The programs and projects can be motivated by feminism and gender theories, though quite often in the asymmetrical way, with the obvious bias towards gender ideology and practices. When in the West it is governmentally accentuated that women live in the "aftermath" of feminism because now they enjoy the "long-sought" equality with men, it is often implicitly meant to say to the women living in the West: "You should remember, how lucky you are! ` Indeed, according to the Forbes ratings, annually the number of women, who increase their wealth, is constantly grows (with the exception of 2017).

If in 2018 the Forbes included only 91 ladies in its rating of billionaires, in 2019 this number was 243, in 2021 it is 328 women. The first position in the list of women- billionaires (the 15th in the overall list of 2019) is occupied by Francoise Bettencourt Meyers, the co-owner of L'Oréal. Her mother Liliane, who died not long ago, had kept the first position in this "female list" for many years. Alice Walton, the co-owner of Walmart, occupies the second position, and Jaqueline Mars –from Mars Inc.- the next. In the biographies of all those women, notwithstanding their personal abilities and capabilities, there is "old money", which is one more proof of the old proverb "wealth begets wealth".

Then what about the competition? Are millions of ordinary women can be considered "losers"? Neoliberalism with its focus on "market" and "competition" in fact increases inequalities, especially in the economy and as a result undermines democracy, because democratic state is replaced by market principles in the organization of major services. This problematic situation lies in the classical dichotomy "to be – to seem". Feminists address the public and governmental organizations with the motto "Stop pretending!

The Global Gender Gap Index, according to the version of World Economic Forum (The Global Gender Gap Report), shows that the index of not below 0,8 represents countries: Iceland (0,858), Norway (0,835), Sweden (0,822), Finland (0,821), Nicaragua (0,809), Rwandan (0,804). In the list, mentioned above, Ukraine occupies № 65 (0,708) (Global Gender Gap Index, 2020).

At the average level and in the global context, women take 22% of people's representatives in the national parliaments. Three countries of the EU have the gender parity (50:50): Sweden, France and Slovenia. In Ukraine the percentage of women in Verhovna Rada is 20,56% (06.01.2020). According to "Finance and Development" report (March, 2019) in 149 countries, which were under analysis, there were 17 women - heads of states, 18% – ministers, 24% – parliament members. Only in 60%

of these countries' women have the same access to the financial services as men; in 42 of them women have the same possibilities for land ownership as men. Professionally, women are most of all engaged in health care and educational work: as for technologies the situation shows gender trouble": globally 22% of women are specialists in the field of the artificial intellect, correspondingly, men – 78%.

Feminist scientists claim that taking into consideration all said above, gender equality cannot be achieved in the nearest hundred years. Without the aim of going into detail of the sociological aspects, we would like to give some more information about the gender statistics concerning the higher educational establishments in Ukraine. At present, there are about 1500 educational establishments of the four levels of accreditation, and less than a third of them are managed by women as principals, which concerns mainly colleges. As for the universities, there are only 53 women, who are rectors of the academies and universities. As a rule, the `glass ceiling` stops the careers of women at the level of the heads of the departments. The situation in the Academy of Sciences is even worse, among 342 Corresponding Members of the Academy there are 30 women, and that vividly shows that in the nearest 10-15 years the gender tendencies in the academic science will not change (Gender in detail, 2020). All this is valid evidence that neoliberal state policy, which at present is often represented as a libertarian one, has not changed yet, - there are valid gender inequalities in the institutional domains of economy, political life and academic science.

Of course, there have been some attempts to incorporate feminist problems within neoliberal project, but as the recent discourses show, such new forms mainly embrace "genders"; in general, individualism and sexuality. If we do not touch "genders," the number of which is growing with every year, and concentrate on women, we cannot but state that the neoliberal focus of attention has drifted in the direction of "femininities" (in plural), no doubt, in close connection with sexualities (in plural). Generally speaking, the interest for femininity seems to be, as it has been up to now, in the spheres of gender and cultural studies, with some more evident accent on popular culture. At present scientists accentuate the ways in which experiences and representation of femininity are changing, and try to analyze the possibilities for producing "new femininity".

Some of them even announce the "impossibility of femininity" (Allan, 2010). J. J. Halberstam writes that new (neoliberal) femininity does not simply connect people and concepts, the rise of Lady Gaga and her fame is a hint at new formulations of gender politics for a new generation: "This feminism is invested in innovative deployments of femininity and finds them to be well represented by pop performances, characterized by their ecstatic embrace of loss of control, a maverick sense of bodily identity" (Halberstam, 2012: XIII).

This mode of neoliberal tendencies has been discussed by J. Butler, J. Scott and other outstanding feminist scientists. The main idea is that through instrumentality feminist ideals are seized in control by governments and agencies of the state in order to pursue a completely different agenda (Butler, 2006). It is apparent that Butler asserts the thought that capitalism, certainly in its neoliberal form, is failing to provide a liveable life for the majority of human beings (Butler, 2018).

As for the ideology of the neoliberal "new femininities", researchers point out that the Internet and mass-media with other popular culture resources have created the space for sexualities that borrow its vocabulary from the world of pornography and sex industry (Gill, 2011).

Conclusion

At present, feminism recognizes that the neoliberal world has changed the agenda of the classical liberal feminism, which was shaped by capitalism and rooted in modernity. Its emancipational goals have been drifting from the "liberation of the oppressed" and consequently, from neomarxist theories, which were very influential in the second wave of feminism (M. Barret, L. Vogel, G. Spivak et al.), towards understanding the fact that the "late capitalism" phase has finished, that the conceptual apparatus of neoliberalism – concepts of dignity and individual freedom of the market - have failed to serve the objectives of the classical feminism.

Postfeminism in the neoliberal context has not chosen its new route yet, however, what is comprehended and represented as the truth is a supposition that women cannot win their battle under the neoliberal conditions where, in fact, the "the game is fixed" by monopolies, hedge-funds, and such like "movers and shakers" of the new neoliberal world where governments have resigned themselves to their decreasing role in the state support of those social groups, which must be supported in the democratic regimes.

In general, the context is becoming increasingly hostile to the practical realization of the feminist targets: neoliberal turn poses threats to feminism in the classical agenda of achieving gender equality. With the evident crisis of classical feminism, "management" of social relations prove that the traditional modes of production have been changed, while women are still mainly engaged in the "reproduction" sphere, though with changed narratives and implicitly different accents, - e.g. the pandemic of COVID-19 has vividly demonstrated that the social value of an experienced nurse is much higher than the role of a billionaire, the owner of a hedge fund. Speaking about hi-tech branches of production, it is necessary to stress that the percentage of women engaged in hypermodern production spheres is extremely little.

What is said in mass-media, what is seen in the TV shows and TV series, what is visible on the "screens" in its meanings makes evident that the de-materialization of the real is reflected in the popular culture narratives, that the Western world's media representation of women often borrows its vocabulary from the pornography and sex industry.

The dichotomy of "to be and to seem" is vividly illustrated by the recent phenomenon of "#MeToo". On the one hand, postfeminism is an extremely active in the struggle with all forms of sexual harassment, on the other, – it looks like the neoliberal conceptualization of the ideology of new femininities. The problem of woman's subjectivity is reflected both in high culture and in its pop-version, as it is revealed in many other real-life instances, in which woman as a subject does not always act in her own interest in the context of the de-democratizational processes of current neoliberalism.

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Apuntes para la crítica del discurso progresista históricamente existente

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Resumen

Desde una metodología hermenéutica dialéctica que discute distintos textos ideológicos producidos en particulares contextos políticos de poder, el objetivo del artículo radica en definir una línea crítica que señala inconsistencias y contradicciones ante lo que genéricamente puede definirse sin mucha precisión conceptual como discurso progresista, esto es: una formación discursiva que agrupa a distintos movimientos sociales, organizaciones civiles y partidos políticos --en teoría-- de franco carácter contrahegemónico. Se concluye que moralmente el discurso progresista no es por sí mismo malo, bueno, ni neutral, todo dependerá, en último término, de los gustos y preferencias de cada persona construidos mediante sus sesgos culturales y, más específicamente, al calor de los procesos de socialización política por los que han sido condicionados ontológicamente. Por lo tanto, más que una crítica del discurso progresista históricamente existente, se debe efectuar una revisión a la forma tendenciosa mediante la cual ciertos actores políticos usan este discurso para validar sus intereses hegemónicos en su contexto de actuación. Además, en muchos aspectos verificables este discurso puede

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Palabras clave: pensamientos crítico latinoamericano; discurso progresista; izquierda latinoamericana; violaciones a los derechos humanos; estudios latinoamericanos en Europa.

Notes for the critique of the historically existing progressive discourse

Abstract

From a dialectical hermeneutic methodology that discusses different ideological texts produced in particular political contexts of power, the objective of the article lies in defining a critical line that points out inconsistencies and contradictions before what generically can be defined without much conceptual precision as progressive discourse, that is: a discursive formation that brings together different social movements, civil organizations and political parties --in theory-- of frank counter-hegemonic character. It is concluded that morally the progressive discourse is not by itself bad, good, or neutral, everything will depend, ultimately, on the tastes and preferences of each person built by their cultural biases and, more specifically, in the heat of the processes of political socialization by which they have been conditioned ontologically. Therefore, rather than a critique of the historically existing progressive discourse, a review must be made of the tendentious way in which certain political actors use this discourse to validate their hegemonic interests in their context of action. In addition, in many verifiable respects this discourse can mean the justification of authoritarian practices that contravene the enjoyment and enjoyment of fundamental rights, which does not mean that the authors bet on conservative political and ideological positions.

Keyword: Latin American critical thinking; progressive discourse; Latin American left; human rights violations; Latin American studies in Europe.

Introducción

Probablemente se puede definir el discurso progresista como una formación discursiva[6] que articula dialécticamente, y en algunos casos sin mucha consistencia, distintas narrativas de franco carácter contrahegemónico para revindicar los derechos de minorías e identidades etno-sociales históricamente relegadas-oprimidas por el orden establecido, tales como: la comunidad LGBT, los pueblos ancestrales, las mujeres, los pobres, los ecologistas, los migrantes y los animalistas, entre otros muchos (Nikitenko *et al*., 2021).

Todo indica que el discurso progresista es el punto nodal de una agenda política internacional que según Ruiz, (2015) maneja tópicos reiterativos como: el aborto, la eutanasia, el matrimonio igualitario y la defensa de estilos de vida alternativos en función de los intereses de las identidades sociopolíticas emergentes que se posicionan en cada momento como opuestas a los valores neoconservadores de la sociedad moderna-burguesa, razón por la que en muchos sentidos se trata de una narrativa postmoderna[7] que tiende a erosionar los valores de la modernidad al tiempo que sintetiza y/o resignifica la tradición socialista del siglo XX, en sus dicotomías conceptuales al estilo de: explotados/explotadores, ricos/pobres, capitalistas/socialista, democracias burguesas/democracias populares, con la diferencia que incluye en sus núcleos de significado nuevos actores, temas y contextos desde múltiples lugares de enunciación que difícilmente pueden configurar una unidad monolítica, de ahí que la misma categoría de *discurso progresista* pueda resultar problemática cuando se la aborda desde una perspectiva científica, dada su creciente polisemia.

De cualquier modo y para los efectos particulares de este artículo por discurso progresista entendemos a un tipo de discurso político que según Muñoz (2004) se identifica por ciertos patrones argumentativos estables sobre las formas de democratizar y descentralizar el poder, en el marco de una reflexión tacita sobre el desmantelamiento de las hegemonías que, agregamos nosotros, cuestiona el accionar de las elites políticas, económicas

6 Según Vasilachis de Gialdino (1998), Irene, *Discurso político y prensa escrita, un análisis sociológico, Jurídico y lingüístico*, Gedisa editorial, Barcelona, pp.31-32, Michel Foucault supone que: "…cierto número de enunciados, semejante sistema de dispersión, en el caso de que, entre los objetos, los tipos de enunciados, los conceptos, las elecciones temáticas, se pudiera definir una regularidad (un orden, correlaciones, posiciones en funcionamiento, transformaciones), se dirá por convención, que se trata de una formación discursiva. En este sentido, dentro una formación discursiva se encuentra interconectados una gran cantidad de narrativas, discursos y relatos que pueden llegar a transcender limites espaciales, temporales e ideo-políticos.

7 Se habla de una narrative postmoderna en el sentido que lo refiere Lyotard (1987), como un discurso que desconoce los elementos primarios o ideas constitutivas de las modernidad occidental, estos es: el cristianismo y sus instituciones religiosas como espacios para la trascendencia espiritual; la posibilidad ilimitada del progreso científico y social basado en una concepción instrumental de la razón y, por último; la supuesta capacidad de las ideologías políticas como el socialismo o liberalismo para liberar a la persona humana de todo lo que entorpece el desarrollo autónomo de su personalidad.

y religiosas de una sociedad determinada y, al mismo tiempo, propende en la perspectiva simbólica y material a la creación de espacios de democracia radical de base que acerquen a los colectivos organizados a la toma de decisiones prescindiendo, si es preciso, de las instituciones burocráticas tradicionales y de los políticos profesionales.

El objetivo del artículo radica en definir una línea crítica que señala inconsistencias y contradicciones en el discurso progresista, al menos en el plano del análisis teórico, toda vez que un estudio más específico requiere como condición de posibilidad para su realización de la selección amplia de una muestra discursiva de distintos sujetos políticos en su contexto, cosa que se hace muy tímidamente, por ello, el presente ensayo esta más próximo a la reflexión filosófica que el dato empírico típico del análisis del discurso. Especialmente el objetivo planteado se traduce en las preguntas ¿Cuáles son las principales inconsistencias del discurso progresista en líneas generales? ¿hasta qué punto estas inconsistencias pueden significar la justificación de prácticas autoritarias que contravienen el goce y disfrute de derechos fundamentales en personas y comunidades enteras? ¿es el discurso Progresista un producto cultural novedoso?

El articulo está dividido en cuatros secciones interconectadas al propósito de responder al objetivo de la investigación: en la primera y luego de la introducción, se aclaran los aspectos teóricos y metodológicos que permiten entender el desarrollo del artículo; en la segunda, se describen las característica generales del discurso progresista en Latinoamérica; en la tercera, se analiza como ciertos discursos en concreto sirven para construir una nueva hegemonía que oprime a personas y comunidades enteras, aunque retóricamente dice propender a su liberación. Por último, se muestran las conclusiones del estudio.

1. Aclaratoria teórica y metodológica

Desde al menos tres décadas los estudios del discurso en general y el de tipo político, en particular, ocupan un lugar destacado en disciplinas como la filosofía del lenguaje, la lingüística, la pragmática, la semiótica y la filología. Sin embargo, no sería adecuado afirmar que se trate de un campo de estudio monopolizado por un específico campo del saber científico, se trata más bien de un espacio de franco carácter inter y transdisciplinario en el que confluyen científicos y especialistas de las más variadas disciplinas de las ciencias sociales y humanas interesados *grosso modo* en develar la relación lenguaje y poder, bajo el supuesto que toda estructura de poder, tiene a su servicio un aparato comunicacional que lo justifica y lo racionaliza por ante las masas.

En este orden de ideas, no existe un método univoco para abordar el fenómeno de la discursividad en un tiempo y espacio determinado, sino una multiplicidad de herramientas con protocolos particulares para procesar la información que incluso pueden combinarse, tales como: la hermenéutica dialéctica, la fenomenología, el análisis crítico del discurso político (ACDP), el análisis de contenido o las historias de vida. En todos los casos aludidos se postula que:

> La definición del discurso como lengua en uso es coherente con el funcionalismo en general: se ve al discurso como un sistema (como una forma de hablar social y culturalmente organizada) a través de la cual se realizan funciones particulares. Si bien pueden muy bien examinarse regularidades formales, una definición funcionalista del discurso aleja al analista de las bases estructurales de dichas regularidades para centrarse en el modo en que los patrones del habla se usan para ciertos propósitos en contextos particulares, y/o de qué modo dichos patrones resultan de la aplicación de estrategias comunicativas (Schiffrin, 2011: 16).

A pesar de su tendencia excesivamente funcionalista, se extrae de la cita que el discurso es un producto simbólico que se manifiesta en el orden social como un sistema intersubjetivo mediante al cual se realizan funciones comunicativas particulares en el marco de una cultura con valores y prácticas que dotan de significado e identidad a grupos de personas. No obstante, desde nuestro punto de vista, aunque la realidad sea una construcción social forjada en buena medida por la ontología del lenguaje[8], conviene diferenciar, en cada momento, entre lenguaje y realidad, es decir, entre el discurso como instrumento ideológico para justificar ciertos intereses de poder, de la realidad misma que victimiza con sus contradicciones a ingentes grupos de personas subordinadas por el poder, incluso aunque este poder se exprese mediante una narrativa a tono con los parámetros del discurso progresista.

Sin esta diferenciación como entender por ejemplo el fracaso estrepitoso de la experiencia histórica del socialismo real en la URSS o, más recientemente, como valorar la crisis humanitaria compleja acontecida en la Venezuela del siglo XXI, liderada por un gobierno que se auto percibe como socialistas y comprometido con los pobres y marginados, de hecho, ¿cómo negar la condición totalitaria de las estructuras políticas del socialismo marxista en el mundo? , más allá de su narrativa propagandística.

Por su parte, Soler (2011) propone desde la teoría de la argumentación entender el discurso político como un marco donde confluyen las relaciones de poder cuyo propósito sería convencer a la audiencia de la viabilidad y pertinencia de determinadas tesis sobre la política y lo político, es decir,

8 Esta es la tesis de Echeverría (2003), para quien el lenguaje es la esencia misma de toda realidad, de modo que la diferencia entre discurso y realidad se daría solo en el plano analítico más que en los mundos de vida de las personas.

la vida de *la polis moderna* y, justificar una gestión de gobierno. En este punto, agregamos nosotros, la tesis que reproduce y reproduce el poder hegemónico en los medios de comunicación de masas no se sustenta, en muchos casos conocidos, en datos solidos o evidencia empírica verificable, por el contrario, se apela a la emocionalidad de la audiencia y a permear se estructura afectiva como condición de posibilidad para persuadirlos y convencerlos, incluso, a contravía de sus propios intereses. Esto explica como un grupo importante de votantes se aferran de forma vehemente a partidos y lideres carismáticos en el ejercicio del poder, de izquierda o de derecha, que sistemáticamente erosionan sus condiciones de vida y deterioran el bienestar social.

En cuanto a la definición de discurso progresista, como discurso político de nueva hegemonía un balance sistemático de búsqueda por Google académico demuestra que esta categoría ha sido poco estudia, al menos en Latinoamérica, tal como lo evidencian los pocos resultados sobre el tema. En consecuencia, el discurso progresista es estudiado en la región más bien como un epifenómeno de otros temas, a diferencia de lo sucedido en Europa donde abundan las fuentes sobre el tema.

El artículo de investigación que hoy se presenta se inscribe en la tradición filosófica de la hermenéutica que, según Gadamer (1993), puede significar una metodología novedosa para las ciencias del espíritu ganadas en entender los texto en sus contextos, esto es, es su horizonte histórico, político, económico, social y cultura por ser precisamente el contexto, en tanto realidad multidimensional, donde emerge el sentido y significado de un discurso o de una narrativa; de modo que, al entender adecuadamente lo que un autor quiere expresar (por adecuado se destaca la no distorsión de su mensaje), se llega a captar *por extensión* las representaciones del tiempo y espacio del que forma parte, de lo que se puede inferir lógicamente que, cuando no se conoce el lugar de enunciación de un discurso difícilmente se puede decodificar su mensaje.

Desde la perspectiva hermenéutica no solo ya como filosofía, sino además como herramienta metodológicamente, el fenómeno epistemológico de la interpretación se erige en el acto primario de todo conocimiento científico o vulgar, por lo tanto, el conocer transcurre mediante un diálogo inter-temporal en la cual un exegeta formula un conjunto de preguntas a un texto-autor, estas preguntas son: ¿Qué quiere expresar el autor? ¿Qué ideología profesa? ¿Qué intereses defiende con su discurso? Por lo demás, operativamente el equipo de investigación participó en igualdad de condiciones en todas las fases de la investigación: a) selección del tema, b) arqueo de fuentes, c) selección de la piezas discursivas trabajadas y d) redacción del artículo científico.

2. Características del discurso progresista en el siglo 2021

No es suficiente hablar del discurso progresista en abstracto tal como lo supone la metodología hermenéutica que vincula los textos a su contexto de producción, para poder entenderlos; en consecuencia, el discurso progresista es un fenómeno histórico concreto que solo puede ser conocido y estudiado, mediante las narrativas de los actores políticos y sujetos sociales que se adhieren a su núcleo argumentativo y se expresan según sus estándares. Sin embargo, como ya se afirmó en un primer momento se trata de una formación discursiva que se identifica por:

1. Manifestar su antagonismo a los poderes tradicionales del estado, la iglesia, la academia, los medios de comunicación y las finanzas, por suponer *a priori* que están al servicio irrestricto de los intereses hegemónicos que buscan en cada momento someter y subordinar permanentemente a la ciudadanía.

2. Apostar por formas de democracia de base que maximizan las capacidades comunitarias de asociación, organización y movilización en la defensa de los legítimos intereses de personas y grupos diversos, históricamente marginados y explotados, como las mujeres, los extranjeros, los pobres, los negros, los indígenas y los homosexuales, entre otros.

3. Revindicar las formas de producción no capitalistas que, por un lado, apuestan al desarrollo sostenible y, por el otro, reducen el afán de lucro a la satisfacción de las necesidades humanas. Al igual que los socialistas clásicos, la mayoría de los progresistas de hoy suponen que el capitalismo es el centro de las desigualdades materiales y simbólicas en las sociedades modernas, de ahí que apuesten por el cooperativismo, la economía naranja, la economía social de mercado o el llamado socialismo liberal en el marco de una economía mixta.

4. Aportar herramientas ideológicas para frenar el accionar de las hegemonías políticas, económicas y sociales que suponen oprimen de forma material y mental a comunidades enteras, bien sea denunciando su situación de víctimas y al mismo tiempo impulsando la lucha para su consecuente liberación.

5. Yuxtaponer la retórica a la realidad concreta, de modo que ciertos gobiernos que se presentan por ante la opinión pública como progresista intentan más bien crear una hegemonía cultural en la cual los discursos importen más que los logros y resultados de su gestión. En este sentido, son comunes en esta operación ideológica la propaganda, la censura y la crítica violenta a todas las fuentes de información que no se pliegan a los parámetros de su agenda de poder.

6. Usar selectivamente el pensamiento crítico, de modo que la crítica solo se aplique a la revisión del accionar cotidiano de las personas y agrupaciones opositoras y, casi nunca, como autocritica, para determinar los aspectos a mejorar y fortalecer internamente.
7. Adversar la ideología liberal por considerar, al igual que los marxistas, que es el núcleo epistemológico de las elites en el poder, del patriarcado y de la sociedad moderna en general, como máxima expresión de la alienación y del consumismo.
8. La transferencia de responsabilidades propias a terceros o entidades indeterminadas como: *la derecha internacional, la burguesía capitalista o los enemigos del pueblo*.

En este orden de ideas, como se verá en el apartado que sigue los actores políticos y sujetos sociales identificados por producir discursos progresistas son aquellos que, sin importar su lugar de enunciaron o sus referentes ideológicos particulares, construyen un discurso a tono con al menos 6 de las características descritas como indicadores centrales de esta formación discursiva. No se descarta que en posteriores investigaciones se puedan postular otros indicadores adicionales que vendrían engrosar este menú teórico. Además, tampoco se puede desconocer que algunas características como las (a, b y e), no son exclusivas de los progresistas y también pueden manifestarse, con algunos matices, en el discurso de liderazgos neoconservadoras o neopopulistas.

3. Hegemonía y discurso en casos concretos

La muestra de los discursos seleccionados de forma intencional y no aleatoria son de tres personajes de izquierda con amplia trayectoria política y con una estructurada hegemonía[9] en sus respectivas sociedades, nos referimos a: Nicolas Maduro Moros, presidente de Venezuela; Alberto Fernández, presente de Argentina y; el excomandante guerrillero Daniel Ortega, presidente de Nicaragua. Seguros estamos que en futuros estudios la muestra se extenderá también a otras latitudes incluyendo personas de Europa, en función de elaborar un análisis comparado.

En al caso de presidente Nicolas Maduro destaca para los autores de este artículo ubicados en Europa del este, por el hecho de que sea el primer presidente del continente americano que lidere un gobierno sindicado por la fiscalía de la Corte Penal Internacional (CPI) de haber cometido,

9 Simplemente se entiende por hegemonía la supremacía en términos de poder y autoridad que dentro de un sistema políticos ejercen unos grupos sobre otros. No se descarta que esta supremacía sea violenta y que comúnmente se constituya en un óbice para el goce y disfrute de los derechos fundamentales en poblaciones marginadas o subalternas.

posiblemente, crímenes de lesa humanidad, por la supuesta práctica deliberada y sistemática de delitos como: ejecuciones extrajudiciales, detenciones arbitrarias y torturas (Singer, 2021); no obstante, el líder suramericano se caracteriza por pronunciar continuamente discursos a tono con el ideal progresista.

Una muestra de las piezas retoricas del presidente de Venezuela está en su discurso pronunciado recientemente por ante la Asamblea General de la ONU, en la cual en un video grabado de 20 minutos de duración denuncia, las que a su juicio son "sanciones criminales" contra el pueblo de Venezuela impuestas por Estados Unidos y sus socios europeos:

> Se persiguen las cuentas financieras. Se nos ha secuestrado y bloqueado el oro de las reservas internacionales legales del Banco Central de Venezuela en Londres. Se nos ha secuestrado y bloqueado miles de millones de dólares en cuentas bancarias de Estados Unidos, Europa y más allá (Maduro, citado por: Ocando, 2021: s/p).

Al tiempo que agregó: "Le decimos a los pueblos del mundo con valentía, decisión, inteligencia y sabiduría sí se pueden afrontar las agresiones imperiales y avanzar", dijo, haciendo votos por el multipluralismo, "sin hegemonismos imperiales" (Maduro, citado por: Ocando, 2021: s/p).

Si bien es cierto que las sanciones implementadas desde 2017 han detenido un efecto perturbador sobre la estabilidad económica venezolana, queda claro que, en buena medida fueron las políticas económicas del fallecido presidente Chaves y su sucesor Maduro, caracterizadas por controles de cambio, controles de precios y subsidio general a la sociedad, muy próximas a la experiencia de planificación centralizada de la economía acontecida en la URSS, las responsables principales de la actual situación de calamidad, tal como lo evidencia el hecho de que la crisis humanitaria compleja en Venezuela inicia mucho antes de las sanciones. En consecuencia, se trata de un discurso que intenta crear una versión muy poco realista de las verdaderas causas y consecuencias de la situación del otrora "país mas rico" de la América del sur.

Por su parte, el presidente de Argentina Alberto Fernández también se identifica por su vinculación a una narrativa que pretende socavar las bases escleróticas de la política tradicional para estar en completa sintonía con los parámetros del discurso progresista, con un énfasis especial en la reivindicación de los derechos canculcados históricamente a las personas y comunidades LGBT. En este sentido, en un discurso pronunciado como homenaje a César Cigliutti quien fuera uno de los lideres más emblemáticos de la comunidad gay en el país austral indicó:

> Él fue un pionero en ese punto, definitivamente lo fue, y soy testigo de que lo fue. Y la verdad alguien que se anima a tanto, tanto es **animarse a abrirle la cabeza a toda una sociedad y a decir: "admítanme como soy y denme**

> **los mismos derechos que ustedes tienen, porque yo no soy distinto**" es un ser inmenso, inmenso. Y yo celebro que hoy esté su imagen, entre todos estos cuadros, porque claramente es un referente de una Argentina que queremos (Fernández, 2021: s/p) (negristas añadidas).

Conviene remarcar que Fernández es, al menos en el caso del tema de la *sexodiversidad y la igualdad de género*, consecuente con su discurso, hasta el punto de que es Argentina el primer país de la región latinoamericana en crear un ID no-binario para incluir, aunque sea simbólicamente al conjunto de las personas que no se auto-perciben simplemente como hombre o mujer. A este respeto reseño la BBC New (2021: s/p) que:

> Una de las primeras personas en recibir su Documento Nacional de Identidad (DNI) argentino con la nomenclatura no binaria fue Gerónimo Carolina González Devesa. De 35 años y profesional en medicina, González Devesa llevaba tres años de batallas para lograr el reconocimiento formal de su identidad no binaria.

Aunque los críticos de Fernández argumenten que la medida es más efectista que real ya que buena parte de los LGBT siguen viviendo en condiciones de emergencia social que vulneren sus derechos y su dignidad humana, todo indica que esta política significa un gran logro en términos de reconocimiento para todas las personas que reclaman para sí la posibilidad de desarrollar una sexualidad alternativa sin por ello tener que ser discriminados, estigmatizados o perseguidos, como ha venido sucediendo hasta ahora en buena parte del mundo desde el medioevo.

Otra cosa diferente, pero también valida científicamente, seria hacer una crítica interna al tema del discurso de la sexodiversidad y su núcleo central de la teoría de género, según la cual el sexo y el género son cosas diferentes que requieren, por lo tanto, tratamiento particular. En este sentido, la teoría de genero en boga afirma que universalmente este fenómeno es una construcción social que asigna arbitrariamente roles, estatus, atributos y ventajas a las personas y comunidades en términos biopolíticos para al mantenimiento y preservación de la sociedad de tipo patriarcal, ante lo cual habría que afirmar que el género, como concepto y realidad, no es solo una construcción social sino además biológica.

De modo que, la construcción individual de un género determinado no-binario como una forma heterodoxa de ser y estar en el mundo, no puede depender únicamente de la subjetividad auto-percibida, de lo contrario las sociedades contemporáneas se enfrentarían a problemas jurídicos irresolubles. Piénsense, por ejemplo, en el caso de un hombre biológico de 40 años que se auto-percibe como un chico de 8 años ¿es valido que pueda ser novio de una niña biológica de 8 años? O, imagínese el caso de un hombre biológico que se auto-percibe como mujer y se relaciona afectivamente con otra mujer biológica ¿Qué hacer si este hombre biológico golpea a su pareja mujer biológica? ¿Estaríamos ante un caso de violencia de género? De ser condenado por el delito ¿debe ser recluido en una cárcel de mujeres? En estos ejemplos, las limitaciones de la teoría de género son evidentes.

Por último, Daniel Ortega Saavedra es un personaje que se aproxima en su devenir histórico a la arraiga tradición caudillista latinoamericana identificada por producir y reproducir continuamente liderazgos carismáticos que personalizan de forma radical la política y, al mismo tiempo, crean las condiciones de posibilidad, objetivas y subjetivas para erosionar la frágil arquitectura democrática de la región. Se trata de la emergencia continua de lideres populistas radicales o neoconservadores que construyen mediante su discurso un profundo vinculo afectivo con sus seguidores en el cual no hay espacios para la mediación institucional de tipo legal-racional de la que hablaba Max Weber, tal como advierte Castaño (2017).

El excomandante sandinista señalo en un discurso pronunciado con ocasión de la celebración del 42 aniversario de la revolución sandinista en Nicaragua que:

> Aquí tenemos un **Ejército** que está para **resguardar la soberanía nacional** y también construir la seguridad y la lucha contra la delincuencia, contra el narcotráfico. Y tenemos una Policía que está dedicada de lleno también a la lucha por la seguridad ciudadana. Por eso les digo: **el pueblo unido jamás será vencido y el pueblo armado jamás será aplastad**o… Aquí está Nicaragua de pie, firme y adelante, a pesar de que han querido **destruir la economía y han asesinado sembrando el terro**r, han puesto en práctica el terrorismo en Nicaragua (Citado por: Voz de América, 2021: s/p) (negritas añadidas).

A pesar de que es difícil encasillar al discurso progresista en una o varias categorías ideológicas, ya que se trata de una narrativa de síntesis que combina a veces sin mucha coherencia distintas filosofías y tradiciones políticas, sin duda, se trata de un discurso socialista-nacionalista en el cual ocupan lugar importante las trajinadas nociones de pueblo, soberanía y unidad nacional frente a los supuestos enemigos externos del proceso revolucionario.

Tal como se puede apreciarse en la cita, Ortega emplea en muchos sentidos una noción de soberanía nacional limitada y parcializada porque, por un lado, no incluye a los nicaragüenses opositores a su gobierno, los cuales son más bien catalogados continuamente de “traidores a la patria” y; por el otro, no se trata de una soberanía que permita a la sociedad civil organizada acceder a los espacios de poder político para fiscalizar el ejercicio del poder o desarrollar iniciativas a contravía de la hegemonía.

En Ortega, como en la mayoría de los liderazgos socialista marxistas, todos las formas y manifestaciones de pensamiento crítico que busquen cuestionar legitimante al ejercicio del poder, de su poder, son automáticamente catalogadas con epítetos negativos, cerrando con ello toda posibilidad de diálogo nacional y pluralismo ideológico como es el deber ser de una sociedad democrática plena donde no se persigue a la disidencia.

Del mismo modo, al menos en Latinoamérica, la concepción de soberanía que emana de este discurso es en muchos aspectos decimonónica, ya que implícitamente se trata de una idea en la cual se propaga el papel del estado como máxima expresión de la autoridad política y de la estabilidad social y no se fomenta, como seria el caso en una tradición democracia participativa, de base y deliberativa, la soberanía individual y la autodeterminación de la persona humana como fuerza creadora para el desarrollo la conciencia ciudadana.

Conclusiones

La crítica al discurso progresista puede ser interna o externa; en el primer caso, la investigación sobre el tema se concentra en examinar las contradicciones argumentativas, epistemológicas y lógicas de este discurso desde variados enfoques o perspectivas de análisis, como la teoría neo-retórica, el análisis del discurso, la semiótica, la filología o la filosofía del lenguaje, entre otras. En el segundo, de lo que se trata es de valorar cualitativamente el modo como los actores de poder usan esta herramienta lingüística en función de sus propios intereses y sus estrategias de comunicación política.

Moralmente el discurso Progresista no es por si mismo malo, bueno, ni neutral, todo dependerá, en último término, de los gustos y preferencias de cada persona construidos mediante sus sesgos culturales y, más específicamente, al calor de los procesos de socialización política por los que han sido condicionado ontológicamente. Por lo tanto, más que una crítica del discurso progresista históricamente existente, conviene efectuar una revisión a la forma tendenciosa mediante la cual ciertos actores políticos usan este discurso para validar sus intereses hegemónicos en su contexto de actuación.

¿Cuáles son las principales inconsistencias del discurso progresista en líneas generales? ¿hasta qué punto estas inconsistencias pueden significar la justificación de prácticas autoritarias que contravienen el goce y disfrute de derechos fundamentales en personas y comunidades enteras? ¿es el discurso Progresista un producto cultural novedoso?

Ante la primera pregunta, toda la evidencia teórica y empírica recaba por esta investigación permite afirmar que las principales inconsistencias del discurso progresista están en el hecho de no hay completa sintonía en entre el acto comunicativo y lo sucedido en la realidad concreta de los mundos de vida de las personas comunes; por lo tanto, más que una expresión de la realidad en términos de lo que las personas más vulnerables quieren, desean y necesitan, se trata de enmascarar los fracasos de una gestión de gobierno y de transferir responsabilidades a factores abstractos como la “derecha

internacional", "los fascistas" y los "enemigos de la patria", situación que es muy común en la tradición discursiva del siglo del XX.

Ante la segunda pregunta, podemos responder muy concretamente que estas inconsistencias discursivas pueden justificar en todo momento prácticas autoritarias de todo tipo, porque al negar *a priori* la legitimidad de las personas y grupos que legítimamente piensan diferente al poder hegemónico, se socaba las bases del diálogo que es la sabia vital de toda experiencia verdaderamente democrática y, la historia contemporánea mundial a demostrado que es en democracia únicamente donde puede desarrollarse el proyecto jurídico y axiológico de los derechos humanos, para resguardo de la dignidad por ante el uso arbitrario del poder político.

Finalmente, el discurso progresista no es necesariamente un producto novedoso hasta ahora desde el punto de vista teórico o epistemológico. Como ya se dijo en las páginas anteriores se trata de una narrativa de síntesis que agrupa distintas ideologías y tradiciones, que van desde el ecologismo y el animalismo, hasta la justicia social con equidad de género. Lo que puede resultar realmente novedoso, llegado el caso, es la capacidad de este discurso para ir estructurando palatinamente un nuevo pensamiento político que venga a superar definitivamente la impronta política del programa filosófico de la modernidad ilustrada que dio vida desde el siglo XVIII, en un proceso dialéctico, al liberalismo y al socialismo aun vigentes.

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Russian court in adversarial criminal procedures

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Abstract

This article discusses the role of the Russian court in accusatory criminal proceedings. At the legislative and practical levels, there is uncertainty about the degree of judicial activity in relation to the question of evidence. The theoretical model of the accusatory system assumes that there is minimal judicial intervention in the investigative proceedings of the parties. The latter must act and defend their position in the criminal case. The court is supposed to have a passive stance. The methodological basis of this study is composed of general scientific and legal methods such as dialectical, historical, systematic, comparative legal, formal-logical methods, etc. Most countries that practice an accusatory model of criminal justice grant the court a certain level of action that allows it to participate fully in the evidence during trials. By way of conclusion, it is suggested to improve the capabilities of the Russian court to actively investigate the evidence, as well as to offer new forms of defense to the parties.

Keywords: adversarial system; presiding judge; prosecution; defense; judicial investigation.

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Tribunal ruso en procedimientos penales contradictorios

Resumen

Este artículo analiza el papel del tribunal ruso en los procedimientos penales acusatorios. En los planos legislativo y práctico, existe incertidumbre sobre el grado de actividad judicial en relación con la cuestión de la prueba. El modelo teórico del sistema acusatorio supone que existe una mínima intervención judicial en las diligencias de investigación de las partes. Estos últimos deben tomar medidas y defender su posición en el caso penal. Se supone que el tribunal debe tener una postura pasiva. La base metodológica de este estudio está compuesta por métodos científicos y jurídicos generales como los métodos dialécticos, históricos, sistemáticos, jurídicos comparativos, formales-lógicos, etc. La mayoría de los países que practican un modelo acusatorio de justicia penal otorgan al tribunal un cierto nivel de acción que le permite participar plenamente en la prueba durante los juicios. A modo de conclusión se sugiere mejorar las capacidades del tribunal ruso para investigar activamente las pruebas, así como para ofrecer nuevas formas de defensa a las partes.

Palabras clave: sistema adversarial; juez presidente; enjuiciamiento; defensa; investigación judicial.

Introduction

In criminal procedure science, there are three main functions carried out by particular participants. These functions are criminal prosecution, defense, and resolution of the case based on its merits. Art. 15 of the Criminal Procedure Code of the Russian Federation stipulates the adversarial principle which assumes a strict division of procedural functions between the parties and the court. It is against this principle for one body to perform several functions. It can also lead to the revival of the inquisitorial process which is incompatible with the principles of a democratic State of law. Thus, the adversarial principle is a fundamental principle of the modern Russian criminal procedure which is stipulated in Art. 15 of the Criminal Procedure Code of the Russian Federation.

However simple and clear the idea may seem, it is quite complicated to implement it. Firstly, the obstacles arise from the imperfections of the legislation which does not allow the defense to unleash its potential in proving. Secondly, the parties are passive while they should take action. Finally, the court has an uncertain stance in the evidentiary activity.

1. Materials and methods

The methodological base of this study is comprised of general scientific and legal methods such as dialectic, historical, systematic, comparative-legal, formal-logical methods, etc.

A systematic method helped reflect the connection between theoretical and practical approaches to the realization of the adversarial principle in criminal proceedings as well as to define the development of its nature at different time periods. The systematic approach, as the main method used by the authors, helped gain a comprehensive understanding and full analysis of debatable issues on the role of the Russian court in the adversarial criminal proceedings.

A comparative-legal method helped study the peculiarities of the legal and regulatory framework of the court's stance in criminal proceedings.

A formal-logical method helped interpret correctly the substance of legal norms which regulate adversarial trial.

All of these methods helped reveal the current problems both at the theoretical and practical levels and suggest ways to solve them.

2. Results analysis

In Russia, judicial proceedings are adversarial what prescribes a certain level of activity to each party and the court.

The Russian criminal procedure legislation stipulates the standards for the conduct of judicial proceedings which prescribes a strict division of functions. The court does not only settle a criminal dispute but also organizes the judicial process.

There are also specific standards of judicial proceedings established at the international level. The Universal Declaration of Human Rights, the Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights enshrined the main provisions for judicial proceedings in order to ensure that the rights of the parties are protected.

According to Art. 10 of the 1948 Universal Declaration of Human Rights, "everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him". Art. 14, Para. 1 of the 1966 International Covenant on Civil and Political Rights contains quite a similar provision. That is why the adversarial principle is followed in the majority of countries since it can ensure the equality of parties' legal possibilities as well as the impartiality and independence of the court.

Meanwhile, the international legal standards do not forbid the court to take active actions. On the contrary, according to the European Court of Human Rights, it is not against the adversarial principle for the court to request the gathering of evidence. It is only necessary for the hearing to be public and for the accused to be present at it (Baranova, 2013).

Apart from its main function of solving criminal case, the court has other important roles. They are as follows: control over the preliminary investigation bodies; handling complaints on actions (or inaction) of officials responsible for criminal proceedings; managing the violations of rights, freedoms, and lawful interests of citizens, the principle of lawfulness, etc (Andreeva, Zaitsev, Emelyanov, 2017).

Moreover, the presiding judge is responsible for the strict adherence to the procedures of judicial trials. They must be respectful to all the participants, including the accused and the jurors. Inappropriate behavior towards the participants may take the form of asking incorrect questions, ignoring the parties, and accusing the innocent person. Such behavior is inappropriate and can influence the objectivity of the verdict. On the contrary, the presiding judge must prevent the participants from humiliating one another, prevent and manage conflict situations what is of utmost importance in jury trials. In addition, the presiding judge should be highly professional and avoid taking responsibilities of other participants which will allow more objectivity of the verdict (Khaldeev, 2000, p. 121-122).

It should be noted that the responsibilities of the judge are exclusive since they cannot be delegated to other participants of criminal proceedings. The judge has no interest in the outcome of the case which guarantees the independence and autonomy of the court (Lutsenko, 2019).

The judiciary controls the lawfulness of actions (or inaction) and decisions of public authorities and individuals. It is possible due to the principle of the independence of the judges which allows them to solve conflicts according to their belief in the lawfulness and justification of their decision. We believe it is possible to extend the rule of the independence of judges on the court as well since it makes decisions as a unified position of a whole panel of judges. This approach does not equate the court as a body that administers justice and a judge as an individual. In its turn, it enhances the objectivity and impartiality of justice (Grinenko, 2016).

The principle of the independence of judges is stipulated in Art. 120 of the Constitution and Art. 8.1 of the Criminal Procedure Code of the Russian Federation. It implies that judges are subject only to the Constitution and federal legislation. No one can interfere in decision-making and all out-of-court communications with judges are prohibited by law. The judge shall not "adapt" to anyone's opinion. The judge must make a lawful, justified, and

fair decision in order to restore law and order in society (Sharafutdinova, 2014, p. 378).

However, it is important to remember that the judge is a human being whose behavior during the trial may be influenced by a number of factors (state of mood, education, beliefs, surroundings, etc.). It is impossible to insulate the judges from external factors and pressures. The independence of judges should be ensured by a procedure for administering justice which should contain rules for criminal proceedings in order to ensure justice (Kozyavin, Chistilina, 2016). The judges should ignore external factors and aim for more objective decisions based on laws. Undoubtedly, the independence of judges and court is a crucial basis for fair decision-making and the correct functioning of the judicial system (Azarov, 2019).

Undoubtedly, great responsibility implies certain guarantees such as irremovability and inviolability of judges. It means that it is impossible to prosecute or impose sanctions on judges for their decisions in criminal proceedings if those decisions were based on law and moral beliefs.

The law stipulates that the court should settle the disputes based on their moral beliefs guided by the law and conscience. So, it is important to define these notions. A belief is a strong view on something based on a certain idea or a worldview. In criminal proceedings, it is based on the legal conscience of the court which guides the procedural decisions. In the legislation, the notion of "moral beliefs" is mentioned in terms of the evaluation of evidence when the court has to decide whether there was a crime; whether it was committed by a person in question; etc., i.e., when the court has to solve the main issues.

In the decision-making process, there are contributing factors such as relevance, clarity of circumstances of the criminal case, the presence of certain provisions in the law, the legal conscience of the judge, the exhaustiveness statement of the law, the existing enforcement practices, etc (Azarova, 2019). Meanwhile, the court is not bound by the opinions of other participants; the decisions should be based on the studied evidence. In this case, according to M.S. Strogovich (1957), the objectivity of the belief is based on facts that predetermine the objective nature of the belief. Thus, a moral belief is an intellectual process based on evidence studied during the trial and it is always motivated to some extent (Sharafutdinova, 2014).

Another prominent issue is the level of activity of the court in criminal proceedings. According to the Code of Judicial Ethics, judges should fulfill their duties with due diligence and take measures to ensure a timely and comprehensive examination of case files.

We suppose that the judge cannot be a passive arbitrator but should possess functions that will enable them to act in the evidentiary procedure with other parties. It should be noted that the Russian legislation declared

the court to be the subject of evidence with investigatory functions. It is against the adversarial principle for the presiding judge to investigate the circumstances of the case since such actions aim to create conditions for the parties to perform their procedural functions and to ensure their rights as well as to determine what really happened (Yakimovich, 2015, p. 32). In addition, the presiding judge justifies his actions by the presence of evidence which is necessary to take a lawful, justified, and fair decision what is impossible if the judge sticks to a passive stance (KARJAKIN, 2016).

What is more, the court's participation in proving is aimed at ensuring the balance between public and private interests in order to ensure the legitimacy of legal and public authorities; however, the court's actions should be justified by their appropriateness for justice (Senkina, 2013). The judge should be able to take all necessary measures to eliminate doubts which impede judgement. However, we do not support the highest levels of activity of the presiding judge. We believe that such actions should seek to clarify certain facts but not to reveal new circumstances.

In this approach, it is impossible for judges to substitute one of the parties that is why their activity should focus on the main aspects which are as follows: the resolution of motions filed by the parties to obtain new evidence; enhancing the evidence-gathering activities; ensuring organizational and procedural conditions and providing procedural assistance for the parties to ensure the adversarial principle; gathering evidence only to check evidence already gathered (Plashevskaya, 2006).

The presiding judge should enhance the parties to be proactive in the investigation of evidence to ensure equality (e.g., to clarify whether the victim or the accused has questions or additional information) (Ivanov, Fadeev, Alimamedov, Dung, 2020; Ivanov et al., 2020; Pushkarev *et al.*, 2021), to check whether the evidence is relevant, acceptable, credible, and sufficient. To complete these goals, the judge has to study all the case files in advance and devise a plan for the trial (Golovko, 2016).

It is especially relevant in the Russian criminal proceedings under the low level of activity of the defense especially during pre-trial proceedings (Kozyavin, Chebotareva, 2015). A nominal adversarial approach which is present at the pre-trial stage is substituted by a real adversarial approach during court proceedings at which the defense files a motion to investigate additional evidence over the judge who does not have any procedural interest.

It should be mentioned that the activity of the presiding judge should aim to check and evaluate the gathered evidence and not to gather new evidence. This possibility to request evidence ensures that the criminal case will be resolved, and the sentence will be justified. However, though being active, the presiding judge does not substitute one of the parties because

he does not know what evidence (conviction or acquittal) will be gathered. Moreover, the court is allowed to act under the indictment. Thus, it proves again that the court acts only to check and evaluate the evidence which has already been gathered. In addition, only the presiding judge can make authoritative decisions that will influence the process of proving (subpoena witnesses, assign forensic expertise, etc.).

Undoubtedly, a professional judge knows legal norms and understands how to apply them. The possibility to request any evidence, which is necessary to clarify certain facts and circumstances, is granted by law. These two aspects fully condition the activity of the judge. According to L.V. Golovko (2016), these aspects can help the judge to dispense justice properly in criminal cases.

In the Soviet period, it was almost impossible to provide qualified legal assistance for everyone, so it was the only option to form an initiative court. It was the court that was in charge of studying the case files, subpoenaing witnesses, assigning forensic expertise, reviewing compliance with time limits, and addressing time extensions if necessary. According to the Statute of the People's Court of the RSFSR on October 21, 1920, the court is a body that monitors, manages, and guides the process, i.e., it was not bound by the evidence presented by the parties (Regulations on the People's Court of the RSFSR, 1920).

Art. 20 of the Criminal Procedure Code of the RSFSR stated that the court, the prosecutor, the investigator, and the interrogator must take measures as prescribed by the law to conduct a comprehensive, complete, and objective study of the case, to reveal incriminating and exculpating circumstances. However, on the approval of the new Criminal Procedure Code of the Russian Federation, this provision was no longer in force but there were several responsibilities in the process of proving that remained (Piyuk, 2017).

Undoubtedly, in order to fulfill the duty of solving the case, the judge has to be impartial, i.e., according to the European Court of Human Rights, there must not be any bias or predisposition. That is why the judge must possess a psychological competency which implies a possibility to assess one's bias, to evaluate with concern arguments of both parties, and to be able to relieve psychological tensions during the investigation of evidence (Kudryavtseva, Syskov, 2007, p. 83). Impartiality is a basis of a fair trial. If the judge acts as the principle of impartiality requires, it may increase the level of trust in the judiciary among citizens.

In verifying the impartiality, The European Court distinguishes between the subjective approach and the objective approach. The former reflects the personal beliefs of a judge regarding a particular case, the latter defines whether there was enough guarantee to eliminate doubt. It is crucial to

highlight that personal impartiality shall be presumed whereas objective grounds may be not. However, the Constitutional Court of the Russian Federation demands some proof that the judge is impartial no matter how difficult it is to obtain such proof. Thus, a judge should behave in such a way so that neither the participants nor the attendees have doubts about the impartiality of the court (Trubnikova, 2013).

Therefore, the main aim of the court is the resolution of a case based on its merits and making a lawful, justified, and fair verdict which is impossible if the court does not possess an active function. The court cannot be a passive observer but shall identify all the circumstances in order to seek justice.

In addition, there certain requirements that should be met such as the representation and investigation of all pieces of evidence; the gathering is performed by legally stipulated means. A court which is passive and is not engaged in seeking the truth cannot fully protect the rights of a person, public and social interests, and, consequently, cannot uphold a fair sentence (Baranova, 2013).

Moreover, according to the decision adopted on 23 December 2008 of the plenary session of the Supreme Court of the Russian Federation "On the norms of the Criminal Procedure Code of the Russian Federation regulating appeal courts and cassation courts", a violation of the criminal procedure law affects imposing a lawful, justified, and fair sentence by deprivation or restriction of legal rights of the accused, the defendant, and other participants or by any other means. Thus, it is not always a violation of rules for the court to be active. Every case should be studied individually with consideration of all the circumstances.

It should be noted that in continental Europe, judges play a more active role in proceedings than in those countries which practice the Anglo-American system where the activity of the judge is quite restricted.

For instance, in the USA, the Federal Rules of Evidence stipulate that the court controls the method and procedure of questioning of witnesses and presentation of evidence, the judge has a right to intervene in the presentation of evidence by the parties in order to establish true facts, and the judge can also subpoena a person as a witness (The Criminal Procedure Code of the Republic of Kazakhstan No. 231-V, 2014).

According to Art. 310, the judge has such an authority "by which he may, upon his honor and his conscience, take any measure he believes useful for the discovery of the truth" (Federal Rules of Evidence, 2014). In Germany, the court can also seek truth in spite of the presented evidence and filed motions (Bundesrecht konsolidiert: Gesamte Rechtsvorschrift für Strafproze ßordnung, 1975).

In CIS member States, the court also plays an active role. In this way, according to the Criminal Procedure Code of the Republic of Uzbekistan, the court can conduct expertise and investigation during the trial. Moreover, according to Art. 442 of the Criminal Procedure Code of the Republic of Uzbekistan, the presiding judge begins the questioning of the accused (Criminal Procedure Code of the Republic of Uzbekistan No. 2013 – XII, 1994). According to Art. 309 of the Criminal Procedure Code of the Republic of Tajikistan, the presiding judge defines the procedure of evidence examination as agreed with the parties and authorizes the order (The Criminal Procedure Code of the Republic of Tajikistan, 2009).

Conclusions

The authors believe that the main problem is that there is still no well-functioning model of the adversarial criminal procedure elaborated under the Russian legislation. The court is often accused of excessive activity and substitution of one of the parties which happen when the party is not willing to act. In this case, the forced court activity can be explained by its responsibility for the legitimacy, validity, and justice of the sentence. Meanwhile, the proactive stance of the court is often viewed negatively in practice. It can lead to the annulment of the verdict despite the fact that there is no strict prohibition of court activity in criminal proceedings.

All things considered; the court is a unique public body that has a right to resolve a case based on its merits. The legislation provides a judge with a set of guarantees against negative influence from other officials and public bodies. A judge's authority shall be aimed at a fair resolution of criminal cases through establishing the facts and circumstances in order to obtain a holistic picture. The unjustified restriction of a judge's power to request evidence is a significant obstacle to a fair and objective resolution of a case.

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Concept and grounds for the acquisition of ownership rights in the civil law of the Russian Federation

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Abstract

The purpose of the article was to study the legal nature, concept, and motives for the acquisition of property rights in Russian civil law. The main method of documentary research. The article also uses the inductive method, the method of systematic scientific analysis, comparative legal methods, and historical methods. The main method underlying the solution of the problem is to study the legal bases and characteristics of the acquisition of property rights. The article demonstrates the theoretical irresolubility of the problem of scientific understanding of the grounds for acquiring property rights in the civil law of Russia and other countries. The authors of the article consider that the interpretation of Russian legal norms on property rights is multidimensional in contrast to the relatively recent past. It is concluded that judicial argumentation has occupied an important place in the modern scientific interpretation of civil law rules on property rights. Both the modern legal state and the constitution were created by interpretation and argumentation, including the rules of the property law institute.

Keywords: human rights; civil code; property institute; private property; law in Russia.

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Concepto y motivos para la adquisición de derechos de propiedad en el derecho civil de la Federación de Rusia

Resumen

El propósito del artículo fue estudiar la naturaleza legal, el concepto y los motivos para la adquisición de derechos de propiedad en el derecho civil de Rusia. El principal método de investigación documental. El artículo además utiliza el método inductivo, el método de análisis científico sistemático, los métodos jurídicos comparativos y los métodos históricos. El método principal que subyace a la solución del problema es estudiar los fundamentos jurídicos y las características de la adquisición de derechos de propiedad. El artículo demuestra la irresolubilidad teórica del problema de la comprensión científica de los motivos para adquirir derechos de propiedad en el derecho civil de Rusia y otros países. Los autores del artículo consideran que la interpretación de las normas jurídicas rusas sobre los derechos de propiedad es multidimensional en contraste con el pasado relativamente reciente. Se concluye que la argumentación judicial ha ocupado un lugar importante en la interpretación científica moderna de las normas de derecho civil sobre los derechos de propiedad. Tanto el estado legal moderno como la constitución fueron creados por la interpretación y la argumentación, incluidas las normas del instituto del derecho de propiedad.

Palabras clave: derechos humanos; código civil; instituto de propiedad; propiedad privada; derecho en Rusia.

Introduction

Based on the analysis of the legislation of countries with developed market economies, we observe that new trends in the legislation of economically developed countries do not mean a reduction in the role of private ownership. The grounds for the emergence of real rights are usually divided into initial and derivative ones. In a subjective sense, the ownership right is considered as a subjective civil law, i.e., as a legal measure of the possible (permissible) behavior of the authorized person (owner).

The content of the ownership right (Article 209 of the Civil Code of the Russian Federation) determines the legal possibilities. The possession means the ability to have a thing in its real ownership. The utilization, as the right of the owner, is the use of an object, the extraction of useful properties from a thing. The disposal is the ability to perform any legal, factual actions in relation to a thing (sale of a thing, renting out, donating, destroying, etc.) (Shevchenko et al., 2019).

Let us consider some types of state registration of ownership rights in the Russian Federation.

State registration of the ownership rights of housing association members based on the housing association certificate of the paid share. The basis is a certificate of the paid share, and the registration of the right is at the same time the state registration of the right of common shared ownership to common ownership that is inextricably linked to it.

State registration of rights to newly created immovable property. The right is registered based on documents confirming the fact of the creation of the object. The basis for state registration can be: Resolution on the construction of an object, land acquisition (lease or other grounds), an act of acceptance of a finished object into operation by a state commission, data from the TIB. If the rights to an object under construction are registered, it is registered based on the land allocation for the construction of this object with its description or design and estimate documentation attached.

State registration of rights based on a contract for the transfer of residential premises in the order of privatization. The basis for state registration is an application and a transfer agreement between the citizens occupying the area and the owner of the housing.

State registration during the alienation of residential premises (purchase and sale, exchange, donation, rent, etc.). Both the contract and the resulting right (transfer of the right) are registered. A basis is a contract. When the rent is registered, both the right of the renter and the pledge by virtue of the law in favor of the renter are registered, the amount of maintenance per month is indicated.

The encumbrance of the pledge is terminated by the death of the renter. The rights and obligations under the contract are considered to have arisen and are binding after the state registration of the transaction with the appropriate inscription on the contract. Registration of the right can be made both simultaneously with the contract, and after the parties fulfill their obligations to each other (Singer, 1993).

In relation to the real estate object, the information is indicated in accordance with the plan of the primary (secondary) real estate object, the cadastral plan of the land plot, the passport for the apartment. After the court makes a decision, the judge should pay attention to the indication of information about the rightsholder and the real estate object in the court decision, and also make sure that the court has copies of all necessary documents: a photocopy of the owner's passport, a certificate of registration of a legal entity, a certificate of assignment of a TIN, a plan of the real estate object, etc.

After receiving the decision from the office, it is necessary to check the presence of the specified information in the decision and the absence of technical errors in it. The decision must be signed by a judge and sealed with an official stamp, and the decision must be with a mark on its entry into legal force. If the solution is on several sheets, it must be sewn, numbered, and sealed with the stamp of the office (Grudtsina *et al*., 2018).

If there is no information about the right holder and the real estate object in the decision submitted for registration, the registration of the ownership right is suspended and an application for clarification of the procedure for its execution is sent to the court that issued the decision. The court, having received the specified application, makes a ruling, which actually corrects the operative part of the decision. The ownership right will eventually be registered, but the applicant will still lose his/her time.

1. Methods

The leading method of studying the problem was the deductive method, which allowed studying the legal nature and features of the acquisition of ownership rights in the civil law of Russia. The article uses the inductive method, the method of systematic scientific analysis, comparative-legal, and historical methods (Ryan, 2008).

There is trust ownership in the countries of the Anglo-American legal system. Russian legal system has Romano-Germanic roots. Therefore, trust management in Russian law differs from trust ownership in the Anglo-American legal system (Pilyugina, 2009).

2. Results

State ownership and citizens' ownership are distinguished in the Fundamentals of Civil Legislation of 1991. Since the beginning of the 90s, the current civil legislation has been created, the first part of the Civil Code of the Russian Federation has been adopted. Russia has taken the path of creating private ownership in 1992-1994. The Constitution of the Russian Federation establishes the equality of forms of ownership: private, state, municipal. Article 212 of the Civil Code of the Russian Federation identifies not the forms of ownership rights, but the forms of ownership.

According to E.A. Sukhanov, the form of ownership is more of an economic concept. From the standpoint of civil law, it is necessary to distinguish the subjects of ownership rights. This position of the legislator is reflected in Article 212 of the Civil Code of the Russian Federation, which distinguishes private, state, and municipal forms of ownership through

subjects. E.A. Sukhanov, in principle, proceeded from the fact that the form of ownership is more an economic category, rather than a legal one (Belov, 2011).

Part 1 of Article 36 of the Constitution of the Russian Federation refers to the right of associations of citizens to possess land, which can be interpreted in different ways. On the one hand, the concept of «citizens' associations» is ambiguous. On the other hand, the Constitution contains provisions about the different types of associations: on religious associations (article 14), on public associations (article 13, 46), which are created with different objectives, and the scope of rights of the Association cannot depend on the objectives of its creation.

Considering the totality of the provisions of the Constitution of the Russian Federation, the Russian Constitutional Court in its decision pointed out that parts 2 and 3 of article 35 of the Constitution apply to legal persons to the extent that this right is in its nature may apply to them. This decision is in line with the decisions already taken by the constitutional courts of other countries in cases of this kind and, creating the possibility of applying the protection of the rights of legal entities based on constitutional provisions on ownership, leaves the «door open» for refusal in a specific case if it is considered that the nature of this legal entity is not compatible with this right.

The motivation to observe good faith and reasonableness consists in negative consequences for unfair conduct and privileges for good-faith behavior. This is most fully illustrated in the Civil Code of the Russian Federation by the category of bona fide and mala fide acquirer. The owner may demand ownership, securities, money from a mala fide acquirer, demand compensation for losses, return of the received income (Articles 15, 147.1, 223, 301, 302 of the Civil Code of the Russian Federation).

It is forbidden to make such claims to a bona fide acquirer with rare exceptions (he/she purchased the ownership free of charge, the ownership was disposed of against the will of the owner). The requirement of good faith shall be observed when filling in gaps, if the analogy of the law is not applicable (paragraph 2 of Article 6 of the Civil Code). Good faith is a value in building relationships between participants in civil turnover. This is one of the moral and legal categories that allow for a fair social policy without the forced redistribution of ownership from one person to another (Alchian, Demsetz, 1972; 2004).

3. Discussion

Turning to the regime of ownership turnover, we find that on the pages devoted by English, Italian (Chianale, 1990) and German (1989) lawyers to the transfer of ownership, the most insistent phrase is that, due to the respect with which the will of the parties should be treated, the ownership will be transferred based on this latter.

This phrase should not, however, mislead: the will necessary for the transfer of ownership «between the parties» is expressed in a contract (an act that is not a gift and, therefore, supported by «consideration»). The contract alone, moreover, transfers the ownership exclusively «between the parties»; at least, according to the Sale of Good Act 1893, updated several times before 1979. The ownership right –after the contract of sale is concluded– passes at the time set by the parties «between the parties»; and it is assumed that the parties wanted to make the transfer of ownership depends on the condition that the price was paid or that the buyer was granted a loan entailing the establishment of a deadline for payment.

After the contract has been concluded and the payment has been made, for the transfer of ownership to act concerning everyone and to all purposes, it will be necessary to deliver the thing.

If the rule of cumulation (proclaimed by ABGB in Austria) was strictly applied, the rules on improper enrichment should always allow the one who transferred the thing unreasonably, without a valid title, to destroy it, as well as to vindicate it (since the ownership could not pass by virtue of the traditio alone). The ABGB rules on the reverse reclamation of an improper payment (§ 1432) exclude (Chianale, 1990).

The doctrine considers it indisputable that the exclusion of a claim for enrichment keeps pace with the exclusion of vindication; this means that a payment (traditio) made by sine causa and without error transfers ownership.

The Austrian doctrine did not fail to note this aspect of the phenomenon, and therefore Savigny's theories were popular in Austria at one time: the sufficiency of the modus, despite the absence of the titulus, sanctioned in special legislative rules (such as the rule relating to the reverse reclamation of the unduly paid), annuls the principle of the equal necessity of two elements, as it is proclaimed in the norm of general significance (Grudtsina, Galushkin, 2013).

There is one difference compared to the BGB mode in Austria: the abstraction is perfect in BGB, Ubergabe (transmission) has a translational effect in any case, even if solvens is deluded about the validity of titulus at the time of execution.

The statement of this difference in the regime led the Austrian doctrine to depart from Savigny's thesis in the analysis of ABGB and to the vision of a transfer performed without an error and a previous obligation, rather a gift. Today, finally, the direction prevails, indicating as a causa Ubergabe, along to fulfil the obligation preceding the transfer, any permissible intention. Thus, it is recognized that the modus must be accompanied by a causa, interpreted, however, in the sense of a permissible goal. The Austrian system, therefore, can be placed in an intermediate position between the system of simple modus and the system of cumulation titulus plus modus.

Recently, the objectivist interpretation has regained some followers. The transfer of ownership of movable property in the light of comparative law, the Code by means of art. 931 subordinates the validity of the gift to the notarial form. The interpreter has always recognized the validity of the manual gift, no matter what its cost. The doctrine of the manual gift reinforces the doctrine of the «state of error», which is meant to subordinate the demand for payment of the improper: for one who pays what should not be paid, knowing that he/she owes nothing, can be regarded as a giver.

In France, as in other countries, a person who pays in fulfillment of a natural obligation cannot demand back what he/she paid.

Almost any transfer of ownership, made without an error regarding the causa to transfer ownership, is carried out either out of a sense of duty (and falls under the payment of an in-kind obligation), or out of generosity (and falls under manual donations). In both cases, the ownership will be transferred as a result of the transfer. The error of solvens opens the way to the means provided for in his/her favor, namely, a claim for reverse reclamation. We can say that the transfer has the same degree of abstraction that we find in Austria. We can also say that in France, anyone who wants to alienate has a choice between a system of causal contract and a system of transfer, accompanied by an unmixed will to alienate (Andreev, 2005).

The actual applicable law and the legislative law also differ in Germany. The legislative rule in Germany is based on modus. The following are distributed in business practice: the establishment of ownership, which takes over the place of transfer, and the commission of the transfer under the condition (even tacit), according to which such a transfer does not have an effect if the main contract preceding it is invalid.

In Holland, Switzerland, and Turkey, there is a system of double props, as in Austria; and, as in Austria, in Switzerland, payment of an improper, made without error, is considered to be transferring ownership; in Holland and Turkey, on the other hand, the interpretation rejects this decision as it considers it to be in conflict with the rule giving title to alienation.

In Italy, legal sources voice French decisions, but the interpreter refuses to deviate from the props of the title, except for very modest concessions made in the field of manual donation and natural obligations.

The wording of the English definitions does not take into account the rules inherent in the law applied. In systems that require titulus and modus for the transfer of ownership, the relationship that exists between one and another element is the subject of variable definitions. The Austrians could have believed at one time that the transfer of ownership is caused – at the same level – by an alienation contract and a transfer, but now they prefer to think that the transfer of ownership is caused by an alienation contract (i.e., an agreement between the alienator and the acquirer concluded at the time of the transfer) and that the contract that generates the obligation is the causa of the alienation contract.

The Swiss prefer to bring the transfer of ownership under the agreement that the parties concluded at the time of the commitment agreement. As for the transfer, in their opinion, it is not a contract, but a material act.

Conclusion

The above allows concluding that the modern civil law regulation of ownership directly or indirectly bears the imprint of the historical path passed, in several countries it includes the regulation of different layers of ownership relations by origin.

The understanding of ownership rights in the Constitution has evolved significantly with the strengthening of legal control. The bodies of constitutional control argue their decisions based not on one constitutional norm, but the diversity of its relations with other constitutional norms, through the prism of constitutional principles and values, giving preference to one or the other of them, and taking into account supranational norms (international law). Thus, in contrast to the relatively recent past, the interpretation of national constitutional norms is multidimensional. Judicial argumentation has taken an important place in the modern scientific interpretation of civil law norms on ownership rights. Both the modern legal state and the constitution were created by the interpretation and argumentation, including the norms of the institute of ownership right.

Socialist lawyers (Soviet, Hungarian, German from the GDR) presented the contract as a genuine causa of the transfer of ownership and reduced the transfer to specifying the moment of this transition.

It is not easy to say whether these different concepts correspond to the specifics of different positive systems or simply depend on the systematics preferred by theorists of different countries (which would be equivalent to a useless multiplication of qualifications). If a delivery that does not rely on an obligation that has existed before it transfers ownership, this phrase does not yet seem to be a sufficient explanation to theorists. They see it rather

as a kind of empirical judgment that needs appropriate qualifications to be explained from a dogmatic point of view. The search for such a qualification can leads to numerous results.

Sometimes the problem of qualifications is solved by the idea of abstraction: the transfer is an act sufficient for itself since it is abstract. We have seen that a noble doctrine, such as the Savigny doctrine, linked this decision with German law.

The second explanation is based on gift: if the alienator transferred the thing without being obliged to do it and not considering himself/herself mistakenly obligated, he/she wanted to gift it. In English law, this explanation has an official character; it had followers in Austria; to the extent that the French system allows it, it is not disputed in France; finally, it is used (but alternatively with other explanations) in Switzerland.

The third explanation is based on the nullity of the acts and on the possibility of invalidating them: if someone transfers a thing without being obliged to do so, it means that the transferring party had the intention to convalidate the act; this explanation prevails in Argentina. Again, three different doctrinal explanations correspond to the phenomenon alone. It can be stated that the legal doctrine has missed an opportunity here.

So far, we have spoken as if the concept of «transfer of ownership» had an exact meaning: the most that we have noted is that the English statutory norm distinguishes the transfer of ownership «between the parties» and the transfer of ownership «to all purposes». We have not questioned that the transfer of ownership has a single content.

This position would be perfect only if all the elements of the legal position of the owner were transferred from the alienator to the acquirer at the same time.

We will mention the following among the elements of the legal status of the owner:

- the right to demand the transfer of possession of a thing or its holding from the opposite party
- and from third parties holding it without a title.
- the right to dispose of the thing in favor of third parties.
- the acquisition of fruits.
- the risk of the item loss.
- the purpose of the thing to serve as a general guarantee for the debts of the owner.
- liability for damage caused by the thing to third parties.

In England and the United States, what we call the transfer of ownership concerns only the assignment provided for by common law, which (at least in the real estate sector) can be opposed by equitable interest» (especially by virtue of trust), considered by common lawyers as a form of proprietary assignment and transferred (in the equity system) based on completely different procedures.

The right of the buyer to seek the delivery of a thing from a third party does not always, therefore, depend on the quality of the owner. In many legal systems, the delivery transfers the ownership, even if there is no titulus. This creates a contrast with legal systems in which the transfer of ownership presupposes (in addition to the transfer or without the need for it) a valid causal contract. Now, however, the moment has come to remember that ownership acquired without titulus can keep pace with a restorative obligation (based on the rules on claiming payment of an improper or unjustified enrichment) and that the construction of ownership accompanied by a restorative obligation can be very different from the construction of normal ownership.

Since the obligation to return an individually defined thing may lead to certain protection against third parties, in the sense that a third person who receives ownership of a thing free of charge from the owner who is obliged to return this thing may be obliged (in relation to the creditor who has the right to return) by virtue of the principles of enrichment; and the same third person, if he/she maliciously acquires ownership of a thing from the owner who is obliged to return it, may be subject to non-contractual liability (to the creditor).

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Historical overlook on the birth and formation of the institute of departmental procedural control in predictional criminal court proceedings in Russia

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Abstract

The authors submit to a detailed analysis the historical milestones of the origin and formation of the institution of departmental procedural control in criminal proceedings in Russia. Taking the generally accepted classification as the basis for constructing a preliminary investigation and highlighting seven periods of the formation of the institution of departmental procedural control, the principles for establishing a particular institutional model of a concrete historical period are reflected. As the main method in the process of writing this article, the general systemic method of cognition was used, which made it possible to comprehensively consider and analyze the process of origin and formation of the institution of departmental procedural control in pre-trial criminal proceedings in Russia. In addition, the authors argue that the institution of departmental procedural control of judicial control in the Russian Federation is quite young and its mechanisms need in-depth study. It is concluded that, through the analysis of statistical data, law enforcement practice, as well as the opinions and developments of scientists-processes, made it possible to identify the optimal ways to solve existing problems and directions for improving criminal procedure legislation.

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Keywords: criminal proceedings; procedural control; head of the investigative body; preliminary investigation; legal-institutional history.

Visión histórica sobre el nacimiento y la formación del instituto de control procesal departamental en los procedimientos judiciales penales de predicción en Rusia

Resumen

Los autores someten a un análisis detallado los hitos históricos del origen y la formación de la institución de control procesal departamental en los procedimientos penales en Rusia. Tomando la clasificación generalmente aceptada como base para construir una investigación preliminar y destacando siete períodos de la formación de la institución de control procesal departamental, se reflejan los principios para establecer un modelo institucional particular de un período histórico concreto. Como método principal en el proceso de redacción de este artículo, se utilizaron el método sistémico general de cognición, que permitió considerar exhaustivamente y analizar el proceso de origen y formación de la institución de control procesal departamental en los procedimientos penales previos al juicio en Rusia. Además, los autores argumentan que la institución del control procesal departamental del control judicial en la Federación de Rusia es bastante joven y sus mecanismos necesitan un estudio profundo. Se concluye que, un análisis de los datos estadísticos, la práctica de aplicación de la ley, así como las opiniones y desarrollos de los científicos-procesalistas, permitieron identificar las formas óptimas de resolver los problemas existentes y las direcciones para mejorar la legislación procesal penal.

Palabras clave: proceso penal; control procesal; jefe del órgano de investigación; investigación preliminar; historia jurídico-institucional.

Introduction

The issues of organizing the preliminary investigation in the Russian Federation have not lost their relevance for many years. The attention of scientists and practitioners is drawn to the comprehension of the logic of its development. It is obvious that the formation of the Russian criminal process is directly related to the formation of the Russian state and is developing in parallel with it.

1. Materials and methods

The method of a systematic approach made it possible to consider the mechanism of departmental procedural control over the procedural activity of an investigator at the stages of initiating a criminal and preliminary investigation, as well as to study the interaction of the head of an investigative body and an investigator at these stages of pre-trial criminal proceedings.

The historical and legal method made it possible to study the genesis and legal nature of departmental procedural control over the activities of an investigator in pre-trial criminal proceedings.

The use of methods of analysis and synthesis made it possible to identify existing problems in law enforcement practice on the implementation of departmental procedural control in the course of pre-trial proceedings in criminal cases.

The formal-logical method made it possible to analyze the procedural independence of the investigator in the course of pre-trial proceedings in criminal cases and put forward proposals for improving legislation in this area.

The use of the formal legal method made it possible to characterize the relationship between prosecutorial supervision, judicial control and departmental procedural control over the activities of an investigator in pre-trial criminal proceedings.

As a result of the application of this methodology, new knowledge was obtained about the mechanism of departmental procedural control over the procedural activities of an investigator in pre-trial proceedings in criminal cases, as well as trends in improving legislation in order to optimize the work of investigative units at the stages of initiation of a criminal case and preliminary investigation.

2. Results analysis

The study of archival data shows that some surviving and extant sources say that the state power of the period of Kievan Rus actively influenced the administration of justice, resolved judicial and procedural issues that were previously regulated by generic customs. Along with this, the court, as an organ of state power exercising not only judicial, but also administrative functions, existed in two forms: as a “court of the prince himself” and as a “court of judges appointed by the prince”.

The judiciary of the period of Kievan Rus can be described as uncontrolled. The court itself was an active participant in the search process:

it participated in the search for evidence, investigated the circumstances of the case. With such a combination of the functions of the prosecution, the resolution of the case on the merits and the search for evidence there can be no talk of monitoring the actions and decisions of the persons carrying out the proceedings. Moreover, all administrative and judicial functions were concentrated "in one hand" (Kolokolov, 2009).

The procedural legislation of Russia before the judicial reform of 1860 resembled an "incoherent" collection of Peter's decrees, the Code of Tsar Alexei Mikhailovich, various orders and regulations. For the first time in the history of Russia, in the Decree of June 8, 1960, "The Institution of Judicial Investigators", the separation of the investigation function and its assignment to special officials – forensic investigators – was fixed. This served as the historical starting point for the formation and development of the institution of preliminary investigation.

In the pre-reform period until 1860, one of the laws of the Code of Laws of the Russian Empire "On Criminal Proceedings" was in force in the field of criminal proceedings, which provided for two types of investigation: preliminary and formal. The preliminary investigation was aimed at establishing the fact of the crime, identifying the perpetrators, and the formal one envisaged the scope of all subsequent actions directed against the known guilty person in order to establish the degree of his guilt. Both types of investigation were carried out by the police.

The reform of 1860 was the predecessor of the Peasant Reform of 1861 and was developed in the context of work on the "bills" of the reform of 1861, during the discussion of which there was a clear need to reform the police and separate investigative functions from it (Tarasov, 2001).

In the course of further reforms and with the adoption of a number of laws dated November 20, 1864, "Establishment of Judicial Regulations", "Charter of Criminal Procedure", the powers of judicial investigators are expanded. According to the Charter, the investigator was obliged to inform with complete impartiality all circumstances incriminating and acquitting the accused. Art. 263 of the same Charter contains a provision that a forensic investigator must inform the prosecutor about any investigation that he initiated not on the basis of a police report or a complaint from a private prosecutor. Control over the activities of the investigator by the prosecutor and the court is actively developing.

It would seem that the legislator of that time very carefully approached the issue of organizing the judicial investigation bodies, paying great attention to the powers of investigators, trying as much as possible to preserve their procedural independence, and also delimited the limits of control by the prosecutor's office and the court. In contrast to this opinion, A. G. Mamontov speaks, believing that "despite the entire progressive

complex of transformations, there are a number of significant shortcomings that do not allow the apparatus of the judicial investigation to fully function positively.

This fact is influenced, first of all, by the existing absence of a normative separation of formal and preliminary investigation, which, in turn, predicted the same lack of a clear separation between investigation and inquiry" (Mamontov, 1984, p. 86).

The investigator himself had to carry out not only a preliminary investigation, but also an inquiry, and often a search. Also, according to the Charter, the investigator could not start an investigation without information about the person who committed the crime.

V. P. Danevsky in his work "Our preliminary investigation, its shortcomings and reforms" expresses the idea that the preliminary investigation according to the Judicial Statutes of Emperor Alexander II is perhaps the weakest part of the criminal process (Danevsky, 1985, p. 3) and explains this by the fact that the judicial investigation was given an accusatory status, control by the prosecutor's office and the court, which, as a rule, led to the unlimited termination of criminal cases by judicial investigators.

Also, relying on statistical data and reviews of contemporary jurors from the Kursk province, Moscow, and Kharkov, he came to the conclusion that in view of the incompleteness of the preliminary investigation and its one-sided direction, the number of acquittals increased. This has led to the fact that the judicial investigation has become the most "refractory" structure.

In 1869, a special commission was created to consider problematic issues of the functioning of the apparatus of judicial investigators. In conclusion, she ruled that one of the reasons for the abnormally unsatisfactory work of investigators is the lack of a competently structured police search for the perpetrators, which, by its nature, should closely interact with the preliminary investigation bodies at the stage of pre-trial proceedings (Azarov, 2012, p. 112)

Nevertheless, the reform gave its results, the main of which we consider the establishment of the bodies of the judicial investigation. But the institution of judicial investigation existed for a relatively short period of time and was gradually lost with the onset of 1917 and the coming to power of the Bolsheviks. Gradually, the judicial investigation passed from the judiciary to the executive branch.

So, in clause 3 of the Decree of the Council of People's Commissars of the RSFSR "On Court No. 1" dated December 24, 1917, it was said that the preliminary investigation was assigned to local judges alone until the entire procedure of legal proceedings was transformed.

Clause 4 of the Decree of the NCJ of the RSFSR of December 15, 1917: "On the measures of imprisonment of detainees and on the establishment of commissions of inquiry in prisons to check the correctness and legality of arrest" contains a provision on the creation of temporary commissions of inquiry in prisons (of three people) to check the legality and validity of arrests, by agreement of the Petrograd Soviet with the district Soviets of Workers and Soldiers Deputies.

Published on December 19, 1917, the NCJ Instruction "On the revolutionary tribunal, its composition, the cases subject to its jurisdiction, the penalties imposed by it and the procedure for conducting its sessions" and the Decree of the Council of People's Commissars of the RSFSR of January 28, 1918 "On the Revolutionary Press Tribunal" only consolidated the existing regulation. Thus, in order to make a decision on the arrest, search, seizure and release of those arrested, it was necessary to assemble a collegium of three persons. A sole decision could be made only in a case that could not be delayed, but at the same time, such a measure was approved by the commission within 12 hours. Thus, this indicates that there is no need for court control over the legality and justification of the application of the above measures.

The Regulation on the People's Court of the RSFSR, approved by the Decree of the All-Russian Central Executive Committee of October 21, 1920, provided for the establishment of a new body – People's Investigators, under the jurisdiction of the Council of People's Judges. People's investigators were elected by the Provincial Executive Committees of the Soviets and acted within their area.

Investigators were also appointed for the most important cases, which were under the jurisdiction of the departments of justice and the People's Commissariat of Justice. According to Art. 32 of the Regulations, the people's investigator could start the preliminary investigation on the basis of applications from citizens, according to the police, officials and institutions, by order of the People's Court and at his own discretion.

The investigator's demands were obligatory both for the police and for other bodies and institutions. There is a growing role of investigative bodies and an increase in their procedural independence.

However, already in May 1922, with the adoption of the Regulations on Prosecutor's Supervision, approved by the All-Russian Central Executive Committee, supervision over the activities of the investigative bodies was entrusted to the Prosecutor's Office.

According to Art. 121 of the Code of Criminal Procedure of 1922, supervision over the production of the preliminary investigation is carried out by the prosecutor, who also has the right to familiarize himself with the acts of the preliminary investigation and give instructions to the

investigator, which are binding. At the same time, the prosecutor's office for this period was not the only controlling body for the investigator. The latter also remained subordinate to the court. So, according to Art. 216 of the Code of Criminal Procedure of 1922, all interested persons, as well as parties, witnesses, experts, translators, attesting witnesses, guarantors, pledgers for the accused could bring complaints about the actions of the investigator that violated their rights. Such complaints are considered by the court at which the investigator is a member.

During this period, a scientific discussion arises among scientists-proceduralists, associated with the choice of the optimal model for the development of the investigative apparatus and with the consolidation of the role of the prosecutor in it. There was a lot of controversy about the latter. So, A. Y. Vyshinsky supported the complete removal of control and supervisory powers from the court and the assignment of such powers to the prosecutor. In opposition to this point of view, the first chairman of the Supreme Court of the RSFSR P. Y. Knock. He believed that the control and supervisory functions should be fully retained for the court (Tsvetkov, 2015).

In September 1928, new changes took place. The resolution of the All-Russian Central Executive Committee and the Council of People's Commissars of the RSFSR "On Amendments to the Regulations on the Judicial System of the RSFSR" secured the transfer of the investigative apparatus to the full subordination of the prosecutor's office.

The essence of such an investigation was that the prosecutor began to direct the investigation, giving binding instructions, authorizing many actions and decisions of the investigator, exercising supervision over him. A paradoxical situation was created: the investigator was largely the executor of the will of the prosecutor during the preliminary investigation, and the prosecutor practically began to exercise supervision over himself (Manova, 2015).

Y. A. Tsvetkov claims that such a prosecutor's model for carrying out a preliminary investigation existed until 1938. Such a tendency:

> To the destruction of the prosecutor's monopoly on the preliminary investigation was laid in its very conceptual basis, which did not recognize the independent legal nature of the investigation. In the future, such a concept will present us with the fact that every department that has at least some kind of police powers will seek to "pinch off" a "piece" of investigative functions for itself (Tsvetkov, 2015, p. 33).

Subsequently, in connection with the formation of an investigative unit based on the NKVD of the USSR, which, in turn, was reorganized into an investigative part of the main department of state security and an investigative part of the main economic department, this model was lost.

It is worth noting that such a complete concentration in one hand of all the investigative work had negative aspects, for example, in the form of an overload of investigators.

But this situation, on the other hand, aroused a growing interest in the bodies of inquiry. In this regard, in 1940-1950, the police created their own investigative bodies, which were no longer directly subordinate to the prosecutor's office, but to the investigation department of the Main Police Department of the USSR Ministry of Internal Affairs. But still, so far, they did not have the legal right to carry out the preliminary investigation in full and carried out only individual orders of the investigators.

The adoption of the Fundamentals of Criminal Procedure of the USSR in 1958 and the Code of Criminal Procedure of the RSFSR in 1960 served as the beginning of a global discussion about the departmental affiliation of the preliminary investigation. But, as before, at the legislative level, which was enshrined in Art. 25 of the Code of Criminal Procedure of the RSFSR, the right of procedural supervision over the prosecution authorities was retained.

By decree of the Presidium of the Supreme Soviet of the USSR No. 1237-VI of April 6, 1963 "On granting the right to conduct a preliminary investigation to public order protection bodies", the right to conduct a preliminary investigation was transferred to the Ministry of Public Order Protection of the USSR (USSR Ministry of Internal Affairs), which marked the beginning of the official work of the investigative bodies of internal affairs.

The right to conduct a preliminary investigation was vested in investigators of public order protection agencies. Their work was supervised by the heads of the investigative bodies. Thus, during the first half of the 60s, the powers of the head of the investigative body, who exercised control functions over the activities of the internal affairs officers conducting the inquiry and investigation, were formalized. But so far, these powers have been reflected only in departmental regulations.

Clause 6 of Art. 34 of the Code of Criminal Procedure of the RSFSR contained a definition of the concept of the head of the investigation department, which came to be understood as the head of the investigation department, department, department of public order, state security and his deputies, acting within their competence.

So, now the head of the investigative body performed the following functions: exercising control over the activities of the investigator in solving and investigating crimes, checking criminal cases, giving binding instructions on the progress of the investigation, seizing the case and transferring it to another investigator, entrusting the investigation to several investigators, as well as personally took part in the investigation.

Thus, in accordance with the Code of Criminal Procedure of the RSFSR, the head of the investigation department was endowed with a very small range of organizational powers. In the academic environment of the 60s and 70s a discussion broke out about the procedural position of the head of the investigation department. Some suggested expanding the powers of the head of the investigation department, transferring to him certain powers of the prosecutor, for example, the right to remove the investigator from the investigation, cancel his decisions, allow challenges and some others (Urakov, 1964, p. 16).

Of course, there were also opponents of such ideas who said that such a comprehensive empowerment of the head of the investigation department would oppress the procedural independence of the investigator. It was also suggested that such a transfer of powers from one "hand to another" would not entail any positive changes for the investigation but would only change the name in the form of control (Chistyakova, 1964).

This issue has not lost its relevance in the course of the judicial and legal reform of the late XX century. In the course of the development of the draft law of the new Code of Criminal Procedure of the Russian Federation, the discussion did not subside, but, on the contrary, only became more acute. So, during this period, in addition to the already existing positions, ideas were put forward to eliminate the procedural figure of the head of the investigative body, as well as to significantly reduce the functions of the head of the investigative department in order to ensure the procedural independence of the investigator. As a result, in some bills the figure of the head of the investigation department was deprived of procedural status, and his powers were either left unchanged or significantly reduced.

In the current Criminal Procedure Code of the Russian Federation in 2001, the figure of the head of the investigation department was retained, and the scope of his powers was somewhat expanded. Thus, for the first time in legislation, the right of the head of the investigation department to cancel the unfounded decisions of the investigator to suspend the criminal case was enshrined.

The Code retained the following powers for the head of the investigation department: he, as before, could entrust the investigation to one or several investigators, he had the right to accept a criminal case for his own proceedings and conduct an investigation independently in full, using all the powers of the investigator. The head of the investigation department had organizational powers, supervised the work of the investigator, checked the materials of the criminal case, could give binding instructions on the direction of the investigation, the application of preventive measures, and the qualification of the crime.

During this period, the question arises of a clear delineation of the functions of the prosecutor and the head of the investigation department, since the border between the prosecutor's control and departmental control began to blur (Manova, 2015). Particularly relevant is the question of expanding the adversarial principle in the stages of pre-trial proceedings in a criminal case, while the most acute, as V. V. Pushkarev correctly notes, there is a problem of correlation of powers of the investigator and the head of the investigative body, on the one hand, and the prosecutor, on the other, at the end of the preliminary investigation with the preparation of the indictment (Pushkarev *et al.*, 2021).

The next stage of transformations of the institution of departmental control is associated with the establishment of the Investigative Committee under the Prosecutor's Office of Russia in 2007. At the same time, significant changes were made to the Criminal Procedure Code of the Russian Federation concerning the head of the investigation department. From that moment on, he began to be called the head of the investigative body. Its powers have also been significantly expanded. Practically all the power and administrative powers of the prosecutor regarding control over the course of the preliminary investigation have been added to the functions already existing.

After the 2007 reform, the legal literature again started talking about the need to return to the prosecutor some of the control and supervisory powers in the field of preliminary investigation. For example, it was proposed to return the authority to check the materials of the criminal case, cancel the illegal and unjustified decisions of the investigator, give binding instructions to the investigator about the direction of the investigation and the performance of certain investigative actions.

In addition, suggestions were made about the need to impute to the prosecutor the right to initiate a criminal case, conduct an investigation himself, entrust it to an inquirer or investigator, and also stop criminal prosecution (Popova, 2015, p. 201).

Federal Law No. 403-FZ of 28.12.2010 "On the Investigative Committee of the Russian Federation" separated the Investigative Committee from the Prosecutor's Office, which also entailed the need to amend the Code of Criminal Procedure of the Russian Federation.

So, part 2 of Art. 37 of the Code of Criminal Procedure of the Russian Federation was supplemented with clause 5.1, which implied the right of the prosecutor to demand and verify the legality and validity of the decisions of the investigator or the head of the investigative body to refuse to initiate, suspend or terminate a criminal case, as well as the right to subsequently make decisions on them. In accordance with paragraph 12 of Art. 37 of the Code of Criminal Procedure of the Russian Federation, the prosecutor

had the right to seize the criminal case or inspection materials from the investigator and transfer them to another body of preliminary investigation or to the Investigative Committee of Russia. According to this law, the competence of the head of the investigative body began to include the right to cancel illegal or unreasonable decisions of the head, investigator of another body of preliminary investigation on criminal cases pending under the jurisdiction of a subordinate investigative body.

Conclusions

In conclusion, the authors substantiated the conclusion that the negative impact of the comprehensive administrative function of the head of the investigative body is often expressed in excessive suppression of the procedural independence of the investigator by a series of instructions on the direction of the investigation, the application of preventive measures, or the qualification of the accusation. Of course, this is one of the modern multifaceted problems of the institution of departmental procedural control over the procedural activities of an investigator in pre-trial criminal proceedings.

In the future, we see a steady trend of expanding the procedural status of the head of the investigative body. Art. 39 of the Code of Criminal Procedure of the Russian Federation continues to be supplemented by editions of powers, thus, endowing the head of the investigative body not so much with organizational functions as, for the most part, with power and administrative functions.

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Culture of legal techniques: key dominants in the modern Russian legal system

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Abstract

The article is dedicated to the conceptual and specific analysis of the emergence of the culture of legal techniques under the conditions of a new technological form. The identification and analysis of key types of culture of legal techniques, allows to show their specificity following typological groups. Its systemic unity, which has its specificities, can be considered as the second dominant of the culture of legal techniques. The article further offers a primary doctrinal definition of the concept of culture of legal techniques based on the identified dominant characteristics and manifestations of the culture of legal techniques, studied in the context of the search for ways of effective functioning of the system of power and powerless principles in the Russian legal system. This phenomenon is in the formation stage. The authors have used dialectical, historical-political, formal-legal, and comparative-legal methods. It is concluded that a promising systematic understanding of the essence and meaning of the culture of legal techniques will help to improve the legal culture as a whole and thus increase the effectiveness of the law in modern society.

Keywords: legal culture; deliberation; digitization; power and impotence in law; dominant aspects.

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Cultura de las técnicas jurídicas: dominantes clave en el sistema jurídico ruso moderno

Resumen

El artículo está dedicado al análisis conceptual y específico del surgimiento de la cultura de las técnicas jurídicas en las condiciones de una nueva forma tecnológica. La identificación y análisis de tipos clave de cultura de las técnicas jurídicas, permite mostrar su especificidad siguiendo grupos tipológicos. Su unidad sistémica, que tiene sus especificidades, puede considerarse como la segunda dominante de la cultura de las técnicas jurídicas. El artículo además ofrece una definición doctrinal primaria del concepto de cultura de las técnicas jurídicas basada en las características y manifestaciones dominantes identificadas de la cultura de las técnicas jurídicas, estudiada en el contexto de la búsqueda de formas de funcionamiento efectivo del sistema de poder y los principios impotentes en el sistema jurídico ruso. Este fenómeno se encuentra en la etapa de formación. Los autores han utilizado métodos dialécticos, histórico-políticos, formales-legales y comparativos-legales. Se concluye que una comprensión sistemática prometedora de la esencia y el significado de la cultura de las técnicas jurídicas ayudará a mejorar la cultura jurídica en su conjunto y, por lo tanto, a aumentar la eficacia del derecho en la sociedad moderna.

Palabras clave: cultura jurídica; deliberación; digitalización; poder e impotencia en derecho; aspectos dominantes.

Introduction

The modern reality, conditioned by a new technological way of being, requires a new look at the interaction of man and the "state machine", a different specificity, and the development of clear permissible boundaries. Therewith, the awareness of legal information, the perception of legal innovations, the arrangement of a communicative action focused on achieving mutual understanding and consent (Habermas, 2000) does not lose relevance, especially within the framework of legal practice.

The need for equal, open dialogue between the state and society is of particular importance in the current realities, which is possible only in the conditions of adequate, thoughtful use of technical and legal tools by a wide range of persons with different levels and volumes of legal knowledge, skills, and abilities. The promising development of law today is presented in the conditions of a partnership dialogue between the power (state) and powerless (social) principles that have common legal and cultural grounds.

As A.S. Bondarev (2010) rightly notes, legal culture is a concrete historical phenomenon since the degree of legal maturity is directly dependent on the concrete historical stage of development of society and its legal values. Foreign researchers also point to the enduring claims of culture as a necessary and inevitable mechanism by which people construct meaning from existing reality (Rose, 2006, p. 102). It is also noted that the legal culture is a direction of research on relatively stable patterns, focused primarily on the specifics of social relations and behavioral reactions (Nelken, 1997, p. 69).

In general, the relevance of this problem, the need for its research, and the predetermination of the transformation of the legal system depending on the characteristics of the legal culture of a certain period have been emphasized in foreign legal doctrine for decades (Cowan, 2004; Friedman, 1975; Gibson, Caldeira, 1996; Wilhelmsson et al., 2007). The ideas of a partnership between the state and society in the modern Russian legal system, typical of the European model of statehood, have undergone significant changes, following the specifics of the national and legal culture, which is natural and justified.

Building an effective mechanism for such interaction using the achievements of technological progress is inevitable and desirable, but, at the same time, it is very difficult, is ambiguously evaluated by society, and can lead to bipolar consequences. It should be recognized that any innovation requires time, implementation efforts, and adjustments. The construction of legal communication in a new format, by unusual means, is aimed at a more extensive introduction of the ideas of deliberative democracy, embodying in real life the equal interaction of the power and powerless principles of law through special technical and legal tools.

Already today, an active policy of integrating information technologies that mediate legal communication into the activities of state authorities is being implemented. There are calls to: “Digitalize the entire system of public administration, increase the transparency of the activities of state structures, increase the speed of processing citizens’ appeals, reduce bureaucratic barriers, introduce new forms of interactive communication with citizens” (Bakanova, 2020: 24). The same trends take place in the modern foreign legal doctrine. Scholars are increasingly turning to a comprehensive study of cultural phenomena from the positions of both legal and social analysis, they need a deeper understanding and appeal to irrational approaches or more variable aspects of the rationality of public life (Cotterrell, 2006).

1. Methods

Author have used dialectical, historical-political, formal-legal, comparative-legal methods.

2. Results

Modern national legal systems function within the process of technologization and permanent dialogue of cultures, which actualizes the understanding of the elements of the language of the law that serve the purpose of the effective functioning of the power and powerless principles of law. The harmonious, interdependent coexistence of power and powerless beginnings enriches the legal culture and legal practice, providing innovative opportunities for the use of technical and legal tools, creates a resource for effective legal communication between the state and society.

Many researchers emphasize that the legal culture is a poly structural formation (Kartashov and Baumova, 2008). Moreover, some of its components have not been studied, and the attempt to comprehend such an important phenomenon as a culture of legal techniques is an important stage in the development of legal doctrine. Technical and legal culture is a differentiated part of the legal culture, which is characterized by a system of technical and legal (power) and ethical and deontological (powerless) values.

This phenomenon reveals and states the level of development of legal technology in the state, the degree of awareness of the need for a respectful attitude to technical and legal tools. The technical and legal culture serves as the basis for the effectiveness of the implementation in the legal practice of professional legal rules, techniques, means necessary for the qualitative functioning of the spheres of law-making, legal interpretation, power and powerless implementation of the law, ensuring the perfection of the form and content of the law.

The technical and legal culture within the framework of legal practice is based on the perception of the subject from the standpoint of his/her culture, his/her knowledge, and ability to own technical and legal tools. Technical and legal culture as an independent phenomenon is currently in the stage of formation, its active development will contribute not only to the improvement of legal culture in general but also to the development of various spheres of modern society.

The problem of determining the main dominants of various manifestations of the existence of culture as a systemic and integral

phenomenon is not new. Several studies are devoted to this, emphasizing the most important system-forming foundations of cultural phenomena, which allow understanding the process of their formation and genesis. For example, cultural dominants are understood as the most essential meanings for a certain culture, the totality of which forms a type of culture (Frolova, 2017). Of the existing variations of a cultural nature that reveal this category, understanding it in line with the dominant idea that reveals the essence and content of the analyzed legal phenomenon will play a scientific and practical significance as the main semantic meaning.

3. Discussion

It is necessary to recognize the increasing relevance of legal knowledge in the conditions of active legalization of relations, which determines the immersion in legal regulatory processes not only of subjects of legal practice but also of citizens. The legal culture of society comes to the fore, since:

> ...the legal mechanism is a complex apparatus, for the effective operation of which a purposeful spiritual activity of all members of society is required. Each individual, by his/her participation in the exercise of the right, transforms the necessary into the requirement of the due in social relations. This creative process is possible only due to the conscious and volitional activity of all members of society – self-sufficient citizens of their state (Karasik, 2002: 128).

The legal culture of modern Russian society is characterized by a change in its essential basis, which is based on the revival of a series of traditions, the formation of innovations in line with the active processes of digitalization of society. Currently, there is a solid accumulated experience of doctrinal and scientific-practical developments containing a system of requirements for the creation of various types of legal acts developed in line with the Nizhny Novgorod scientific school under the leadership of V.M. Baranov.

In this regard, the basis of this accumulated heritage, its popularization, and practical implementation gives reason to believe that there is a need to distinguish and delimit an independent legal category from related legal phenomena – culture of legal techniques. The prerequisites for its isolation have gradually developed over a certain amount of time, and recently several researchers have revealed its aspects to one degree or another. For example, V.M. Baranov refers to lawmaking culture (2018, p. 1), G.A. Tosunyan and L.V. Sannikova investigate the culture of lawmaking (2018, p. 28-34), L.A. Petruchak highlights the culture of lawmaking and law enforcement (2012, p. 304), S.N. Boldyrev highlights the culture of legal technology (2011, p. 37), and S.A. Bogolyubov characterizes the culture of the legislative technique (2006, p. 52). This list can be continued.

The prospective relevance of the study of the culture of legal techniques is based, first of all, on the challenges of legal practice, which determine a set of clear requirements for the professional activity and training of a lawyer. The realities of life dictate the need to form not only a wide range of special knowledge, mastery of techniques and means of legal technology, but also real skills and abilities of their implementation in the proposed conditions. Only in this case can we talk about the effectiveness of the lawyer's activity, the effectiveness of the functioning of the law as a whole.

Today, the legal technique harmoniously combines the power and powerless principles. Being aware of the familiarity and primacy of the power component, which is subjected to regular doctrinal analysis, it is necessary to recognize the need to address powerless aspects that cause a different manifestation outside of the technical and legal tools. Initially, the basic component of ideas about legal technology was the imperious principle of lawmaking technology in Russian legal science (narrow approach).

Later, an approach took root that combined the spectrum of power and powerless legal activities and the typical special tools for this (a broad approach). In the context of this approach, the subject series allows talking about the technique of power and powerless legal activity. Indeed, not all subjects of legal communication have authoritative powers, which means that it is quite justified to single out and analyze these types of legal equipment, but everything is ambiguous in the real relations of the state and society – the types are sometimes difficult to separate, especially in the conditions of technologization.

The use of the Internet has simplified and accelerated legal communication and legal acculturation. The globalized, legalized reality for the participation of the dialog requires the special legal knowledge, authoritative powers, possession of the skill of using special technical and legal forms. Within the framework of legal practice, it is assumed that there is a power, or an action on behalf of the power, on the authority's instructions, within the framework of power requirements, forms, competence, mandates.

It should be particularly noted that the professional activity of a lawyer includes a powerless component – the requirements for functional professional suitability, the required socio-psychological qualities. The component that characterizes the personality allows not only identifying accentuations, character traits, possible dominant behaviors, willingness to cooperate but also affects the set and combination of power and powerless culture of legal techniques tools required in the future. Ultimately, it affects the level of legal technology in general. The legal doctrine has now been confirmed in the opinion about the importance of the role of legal technology for identifying the level and quality of the legal culture of society.

Jurisprudence continues to develop intensively and opens up new meanings of established phenomena, which actualizes the rethinking of the conceptual apparatus. Thus, approaches to the definition of the concept of culture as a whole today differ in variability and discussion. Therewith, the axiological approach is dominant, focusing on the significant, positive results of people's activities, on the good produced. As G.P. Vyzhletsov rightly noted, who justified the concept of the axiology of culture, the value doctrine of culture, unlike many other theoretical approaches to it, allows seeing culture from the inside (Vyzhletsov, 1996, p. 3). From the point of view of this concept, legal culture in a general abstract understanding is a set of legal values developed by humanity, reflecting the progressive legal development of society.

The essential basis of legal culture is manifested in the process of influencing the formation and modernization of significant social institutions. Having a systematic character, the legal culture absorbs and arranges legal values, fixes the level of development of legal technology, the instrumental value of law within a specific period. The legal culture in Russia has a pronounced feature – it has been historically developed based on the basic value guideline of "truth"/"justice"/"conscience", and the echoes of the key components of this approach, to one extent or another, manifest themselves in the modern legal culture of the country, and the national legal system as a whole. Initially, these components served to evaluate behavior, choose a model of behavior, and the form of exercising the functions of law.

Understanding of the law, the requirements of state-power dictates and the idea of "truth"/"justice"/"consciences" have been conflicting for a long time, causing conflict situations. The law has always remained the universal guarantor of order in society. The concept of "truth"/"justice"/"conscience", as a basic measure in legal (power) and other social (powerless) issues, still exists organically in the national legal system. It is resistant to destabilization, can modernize following the realities. The specificity of the understanding of legal culture is manifested in modern legal institutions, determines the interaction of the state and society, the ratio of power and powerless principles in legal technology, the elevation of a particular phenomenon, object to the rank of value.

The range of values underlying the system of assessment of legal phenomena and processes also extends its influence on non-legal regulators (powerless), since they are more or less conditioned by law (power), are interconnected with it, are mediated by it, and mediate it. Currently, social non-legal regulators attract the attention of legal scholars, since their importance for a wide range of relations is visible. For example, Professor Yu.A. Tikhomirov, referring to the issue of the admissibility of a prospective merger of legal and non-legal regulators, proposed his vision of the social

concept of law. He noted in a study on forecasts and risks in law, that: "Social regulators in Russian legislation are reflected in the content of economic and other branches of law" (Tikhomirov, 2015: 97).

An emphasis on legal and non-legal social norms, an understanding of their value directly, an analysis of related legal values will allow for more effective implementation of legal regulation. R.Pento and M. Gravitts, analyzing the methods of social sciences, noted that: "various social norms can act as legal norms" (Pento and Gravitts, 1972: 54).

Recognizing the validity of the conclusion about the inseparable connection of legal and non-legal, power, and powerless regulators and instruments of influence, it should be assumed that this has a significant impact on the specifics of legal technology, legal culture, culture of legal techniques concerning various types of legal practice.

In this regard, the analysis of the possibility of a specific division of technical and legal culture following the distinguished varieties of legal technology – lawmaking, interpretive law, law enforcement, law systematizing, and others, acquires special relevance. Turning to the analysis of the characteristic features of the formation of the legal phenomenon under study, we note the most important of them following the specified typological groups.

The specifics of the law-making legal technique have received quite detailed coverage in doctrinal research. Currently, there is a need for professional specialists who would have the skills to prepare high-quality regulatory legal acts and other sources of law, based on a mature culture of legal techniques consciousness, awareness of the need to prepare high-quality regulatory documents. We should not discount the activation of citizens' involvement in the processes of deliberation.

The Russian state expresses its power interest in this, for example, a serious step was taken in 2011 in recognizing the value of the participation of a wide range of citizens in the process of legal education – the following entered into force: Decree of the President of the Russian Federation No. 167 of February 9, 2011:

> On the public discussion of the draft Federal Constitutional laws and federal laws" and Decree of the President of the Russian Federation No. 183 of March 04, 2013 "On consideration of public initiatives sent by citizens of the Russian Federation using the Internet resource "Russian Public Initiative.

The complexity of this task should be noted while recognizing the unconditional importance of deliberative processes. The insufficiency, and, sometimes, the complete lack of legal knowledge, skills in dealing with a legal matter, technical and legal tools programmable causes difficult-to-overcome or unavoidable problems in underestimating the current and

desired legal regulations. The available range of technical and legal means is unreasonably narrowed, approaches, forms are primitivized, ideas are impoverished.

Professional knowledge of legal technology provides a wealth of opportunities and tools, the appropriate choice of which is based on systemic legal knowledge, specific critical thinking, experience, skills, and abilities. This is especially important in law-making; therefore, we should agree with the position of Professor V.M. Baranov on the need to professionalize the rule-making process. At this stage of development and demand for practical knowledge about legal technology, the issue of organizing the training of "norm-writers" – specialists who do not pass regulatory legal acts, namely, write them, develop the structure and architectonics of the document (Baranov, 2017) is relevant.

The gradual formation of a positive attitude to the use of foreign language vocabulary in the textual expression of normative prescriptions of various sources of law should also be noted among the characteristic features of the culture of legal techniques. This is a reflection not only of the developing legal culture of society, which is characterized by the revival of the traditions of Latin legal terminology in the language of law and the language of legal doctrine but is also a consequence of the development of linguistic culture, which, in the context of digitalization of public relations, is distinguished by the active introduction of foreign lexis into the vocabulary. Reasonably and timely used foreign lexis contributes to the development of law, its enrichment with new constructions that have a more effective regulatory potential.

In addition, one more dominant feature of the modern culture of legal techniques should be noted – the development of the variability of technical and legal consciousness. Currently, there are active processes of transformation of the existing ideas about the formulation and specifics of regulatory requirements and their relationship with other phenomena. The specifics of the analysis and processing of legal information are changing in our era of the second modernity. In this regard, it is necessary to work out options for operating with legal norms that are combined into certain complexes of a systemic nature and to use a different structuring of normative material in their work.

There is no doubt that at present this is not yet a requirement of legal reality, but it is necessary to understand and form the prerequisites for the development of this area of activity right now so that the legal system and specialists are ready for changes in social reality in general and legal reality. There are reasons to believe that in line with these legal transformations, research on topics in law will be constructive, timely, and in demand by legal practice. The tops of the legal language as structural and semantic models of a linguistic nature have a significant potential for improving the legal and technical components of the legal matter.

The normative institutions of the modern system of sources of law are gradually changing both of a substantive and formal nature in connection with the ongoing processes of globalization and digitalization of law. In this line of transformation processes, topical jurisprudence can be positioned as one of the most important areas of the foundations not only of the culture of the legal language but also of the technical and legal culture. The top of the legal language should include the structural elements of the text of a legal act, which have their content and interact with each other, determining the additional internal structuring of law, as well as interpretative and law enforcement provisions.

It is important to note that the understanding of the text, the conceptual apparatus is significantly influenced by the specifics of the personality of the subject of perception. Differences in the educational level, the specifics of knowledge, social status, life experience, the degree of language proficiency, mental characteristics play a significant role. There is a well-established belief in jurisprudence that the legal language forms specific legal thinking. The versatility and consistency of the key components of the legal language allow clearly and correctly expressing, understanding, explaining, implementing (power and powerless) the normative command.

Conclusion

The globalized world involves national legal systems in active legal acculturation, interaction in social and political spheres, which actualizes the appeal to the study of modern processes of transterminologization, universalization, standardization of elements of the language of the law that serve the purpose of effective functioning of the system of power and powerless principles of modern Russian law.

This system can be considered as one of the most important dominants of the modern culture of legal techniques, which has a system-forming character and allows identifying the main trends not only of its formation but also of development in line with the progressive development of post-industrial society.

The interdependence of these principles in the national law of Russia, in the legal technique, as previously noted, is historically due to the balance of state power dictates and the value guideline of “truth”/”justice” formed in the legal culture/”conscience”. The harmonious, mutually conditioned coexistence of power and powerless principles enriches the legal culture and legal practice, providing innovative opportunities for using technical and legal tools, creating a resource for effective legal communication between the state and society.

The culture of legal techniques within the framework of legal practice is based on the perception of the subject from the standpoint of his/her culture, his/her knowledge, and ability to own technical and legal tools.

Based on the dominant features and manifestations of culture of legal techniques, we can offer a primary definition of the concept of culture of legal techniques:

Culture of legal techniques is a part of legal culture, which is a system of technical and legal (power) and ethical-deontological (powerless) values, the level of development of legal technology, conscious respect for technical and legal tools, which serves as the basis for the effectiveness of the implementation in the legal practice of professional legal rules, techniques, means necessary for the qualitative functioning of the spheres of law-making, legal interpretation, power and powerless implementation of the law, ensuring the perfection of the form and content of the law.

The significance of the culture of legal techniques and its level for the legal system can be formulated based on the well-established approach in Russian jurisprudence to the essence and value of legal culture as a whole. If: "... the level of culture reflects the measure of reproducibility of order factors as opposed to the chaotic state of public life" (Maltsev, 2013: 6), then the conclusion about the indisputable value of culture of legal techniques as a promising phenomenon reflecting the measure of proper order in legal technology, as opposed to the existing state, problems, deviations from strict and justified technical and legal requirements in all spheres of legal practice, both power and powerless, seems quite justified.

Promising culture of legal techniques as an independent phenomenon will continue its formation. It can be argued with a high degree of confidence that its active development will contribute to the further improvement of legal culture, the transformation of key areas of society, the entirely legal system.

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Influence of cooperative ideologies on the origin of credit societies in Russia

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Abstract

The aim of the research was to examine the influence of cooperative ideologies on the origin of credit societies in Russia. The emergence of a legal framework for consumer and, later, credit cooperation in Russia came in two ways. The first formal credit union was established in 1831 by Russian military officers banished to Siberia after the December 1825 revolt. Other cooperatives were organized in a Western model by enthusiasts from the wealthy strata. Later, the history of cooperation in consumer credit before the revolution in Russia can be divided into three stages: first, 1831-1860 (before the peasant reform); second, 1861-1904 (after the peasant reform); and third, 1905-1917 (adoption of government regulations on cooperation). To solve the objective set, the authors used the documentary method close to the historical method. It is concluded that analysis of the preconditions of the first cooperative organizations in Russia shows that there were some known forms of primitive cooperation or pre-cooperation over the centuries.

Keywords: classics of cooperation; economic conditions; credit cooperation; legal regulation; history of the ideas of credit societies.

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Influencia de las ideologías cooperativas en el origen de las sociedades de crédito en Rusia

Resumen

El objetivo de la investigación fue examinar la influencia de las ideologías cooperativas en el origen de las sociedades de crédito en Rusia. La aparición de un marco legal para la cooperación de consumo y, más tarde, de crédito en Rusia se produjo de dos maneras. La primera cooperativa de crédito formal fue establecida en 1831 por oficiales militares rusos desterrados a Siberia después de la revuelta de diciembre de 1825. Otras cooperativas fueron organizadas en un modelo occidental por entusiastas de los estratos ricos. Más tarde, la historia de la cooperación en crédito al consumo antes de la revolución en Rusia se puede dividir en tres etapas: primero, 1831-1860 (antes de la reforma campesina); segundo, 1861-1904 (después de la reforma campesina); y tercero, 1905-1917 (aprobación de reglamentos gubernamentales sobre cooperación). Para resolver el objetivo planteado los autores utilizaron el método documental próximo al método histórico. Se concluye que un análisis de las condiciones previas de las primeras organizaciones cooperativas en Rusia muestra que hubo algunas formas conocidas de cooperación primitiva o pre-cooperación a lo largo de los siglos.

Palabras clave: clásicos de la cooperación; condiciones económicas; cooperación crediticia; regulación legal; historia de las ideas de las sociedades de crédito.

Introduction

A study of the origin and development of cooperation in Russia should involve an analysis of legal regulation. Therefore, the history of consumer cooperation from the second half of the 19th century to the early 20th century should be taken into account. This would imply a critical review of the impact of Western cooperative practices on the establishment of cooperatives in Russia and an analysis of the legal status of credit cooperatives in legal practices of the 19th century. Terminological approaches to the definitions "credit cooperation" and "cooperation" should be also included with regard to the analyzed period.

1. Literature review

The word "cooperation" comes from Latin and literally means the act of working together. The Brockhaus and Ephron Encyclopedic Dictionary (1895: 156) provides an interpretation of cooperation as: "Any joint effort of several people toward a common shared objective".

Ever since the time of origin of the cooperative movement within the ideological stream of utopian socialists, such as Claude Henri Saint-Simon, Charles Fourier and Robert Owen, the idea of cooperation had been understood as a form of economic management opening the potential to transform the socioeconomic formation. Only cooperation, in their view, was capable of reinstating labor as a natural tendency and joy, of combining science and production and smoothing out social disproportions. Assimilation of cooperation with the practical realisation of the principle of mutual assistance and social interaction in economic operation can be found in the works of Herbert Spencer (1898), Auguste Comte (1912), P. A. Kropotkin (1922) and others.

The Russian cooperation scholar V. S. Sadovsky in the 1870s defined cooperation as the consolidation of productive forces leading to the emergence of new forms of economic management enabling the development of self-governance skills, free exchange of opinions and finding trade-offs (Sadovsky, 1868). A major role in understanding the principles of cooperation was played by the Russian scholar M. I. Tugan-Baranovsky (2010: 94) who observed that a cooperative is an economic enterprise comprising several voluntarily combined people which has as its aim not obtaining the greatest profit on capital expended, but rather increasing the labour income of its members or reducing the outlay of members on their consumer necessities.

An analysis of various definitions of "cooperation" suggests that since the time of origin of the concept, two main approaches had developed, specifically institutional and functional approaches. Institutionally, cooperation is defined as the consolidation of efforts in cooperatives for running joint economic operation and social activities. Under the functional approach, cooperation is primarily joint engagement in some sort of activity for the attainment of a common outcome.

The Brockhaus and Ephron Encyclopedic Dictionary of the late 19th century identifies a specific type of cooperation, namely, credit cooperation existing in two primary forms, mutual loan associations and loan-and-savings societies. The latter refer to alliances of low-resourced individuals needing small loans, established to build up, through gradual small contributions, a more or less significant mutual capital to extend loans to its members and to facilitate borrowings from third parties based on mutual joint liability as may be necessary for running their business or enterprise

on more favorable terms than would be accessible to them individually. (Brockhaus and Ephron Encyclopedic Dictionary, 1895: 156).

Thus, credit cooperation was understood as a type of cooperation uniting small rural and urban producers, workers and servicemen to establish a mutual cash fund to meet the requirements in small credit. Ideas concerning the nature of credit cooperation at a later stage will be discussed further.

The development of the "cooperative ideology" is credited to the utopian philosophers Charles Fourier and Robert Owen who pioneered the idea of class antagonism in the society, which influenced their understanding of the nature of cooperation. The French scholar Ch. Fourier (1772-1832) believed that the state would become redundant under communal socialism and would only administer minor functions. Fourier believed society was based on a commune he called a phalange (phalanx). He believed that the cooperative ideology was about free labour exercised to attain the personal happiness of community members, understood as the principle of an equitable society. Fourier presented his views in his works, "Théorie des quatre mouvements et des destinées générales" (1808; "The Social Destiny of Man; or Theory of the Four Movements", 1857); "The Theory of Universal Unity" (1822; originally "Traité de l'association agricole domestique", "Treatise on Domestic Agricultural Association") and "Le Nouveau Monde industriel" (1829–30; "The New Industrial World").

The "English" viewpoint on the cooperative ideology is represented by R. Owen (1771-1858). While Fourier was a utopian dreamer who never put his ideas to practice, Owen had had successful experience in managing production. In his first work, "A New View of Society, Or Essays on the Principle of the Formation of the Human Character" (1813-1814), he presented his guiding principles he would stick with in his practice. For him, cooperative communities would be created to change human nature and instill a better moral character. Reviewing Owen's years of educational effort, F. Engels noted, "All social movements and all real advances made in England in the interest of the working class were associated with Robert Owen's name" (Marx and Engels, 1961: 118). The cooperative ideology of Fourier and Owen, as well as their followers later, was rather social than economic.

A Fourier follower, Christian socialist Philippe Buchez (1796-1865), proposed the idea of "production associations" for collective labour and further marketing of the manufactured goods. Part of the proceeds should be distributed to the community fund along the lines of contributions to the church (Bulgakov, 1913). One of Owen's first followers was notably William King (1786-1865). A physician by education, W. King was among the agents of the cooperative movement in practice. He supervised the launch of the monthly journal "The Co-operator" running an active promotion

of cooperative efforts. The fundamental principle of cooperation for King was free labour for the common good arranged through the establishment of cooperative unions. The cooperative theory credits him with the establishment of the "co-operative socialism" movement.

In France, socialist and economist Pierre-Joseph Proudhon (1809-1865) proposed the "progressive association" project for a peaceful social reorganisation; he believed social freedom for workers could be attained through production, credit and consumer associations. The first Secretary of the British Co-operative Union E. Vansittart Neale and the prominent cooperator and Christian socialist T. Hughes published a seminal scholarly work titled "Foundations: A Study in the Ethics and Economics of the Co-operative Movement" (1879) which contributed to the English cooperators toward the development of the ideology of credit (Webb, 2015).

Fourier's ideas had the strongest influence on the development of the Russian cooperation doctrine. So, the next observation should concern the followers of this movement in the Russian Empire. This list notably includes M. V. Petrashevsky, N. Ya. Danilevsky, I. L. Yastrzhembsky, D. D. Ashkharumov, V. S. Sadovsky, M. I. Tugan-Baranovsky, F. G. Turner and many others who "stepped directly from German philosophy toward Fourier's phalanx..." (Delo Petrashevtsev, 1937: 538).

The ideas of association and Ch. Fourier's views made the subject of some of the articles included in the "Pocket Dictionary" published by M. V. Petrashevsky, specifically "Owenism," "Organic epoch," "Production engineering," "Explanation on the Fourier system," etc. Ch. Fourier's teaching was particularly popular in Russia. Specifically, the N. S. Kashkin circle focused on the legacy of Fourier (Delo Petrashevtsev, 1937). A. I. Herzen believed this particular preoccupation of Russian scholars with Ch. Fourier's ideas could be explained by the resemblance between the phalanx and the traditional Russian commune (which the Petrashevsky circle also found to be the most equitable social form).

Here comes a notable observation of the ideas of A. I. Hertzen concerning the cooperative ideology. E. g., in contrast to many Western socialists' ideas, A. I. Herzen's views of the Russian peasant commune focused on the elements of socialism and included, as one of the main priorities, encouraging entrepreneurial and competitive spirits in peasantry while sticking with the communal principles. The success of the Rochdale Pioneers convinced A. I. Herzen (1955) the former bore the potential of further development of the cooperative movement in England and America, though he pointed at the challenges of competition between such cooperatives with capitalist enterprises.

Democrat and utopian socialist N. G. Chernyshevsky followed A. I. Herzen where it comes to the recognition of the commune as the ideal

social form. However, being a personality of "tremendous intelligence and tremendous knowledge", according to M. I. Tugan-Baranosky (2010: 2), Chernyshevsky went further in his studies and offered his own accounts on some aspects, particularly, the future socialist economy. The commune fascinated N. G. Chernyshevsky (1950: 619) as a "unity supported and protected by the forces of society itself resulting from the initiative of private individuals". Going further, the development of these forces of communal organisation could make the involvement of central authorities and administration redundant. He defended communal land use as the only possible way to maintain peasants' land possession.

N. G. Chernyshevsky believed that after the land is transferred to private ownership, peasants would inevitably lose possession of it, as private law contained no guarantees to maintain the independence of peasants' enterprise and could not protect it from the danger of being lost to the capitalist system. Even with collective ownership, small private economies would not survive competition against large capitalist enterprises. The only way to conclusively ensure the independence of workers is via "collective production uniting them in partnerships commanding the benefits of large-scale production. Thus, the commune is only an initial form."

Chernyshevsky believed that cooperative associations should spread across all areas of the economy and life to become universal. In farming, the association of people in "shared interest communities" should follow the trajectory of advancement of communal principles. In manufacturing, Chernyshevsky (1950: 619) argued, it should also involve a transition of ownership of plants and factories to "collective possessions of all those working at the respective factory or plant" (Chernyshevsky, 1950: 619).

Working on his own "Political Economy for Workers" and a translation of J. S. Mill's "Principles of Political Economy", Chernyshevsky focused on the "fullest development of the communal principle," as well as his own plan of social reorganisation. That plan was largely influenced by the ideas of R. Owen and Ch. Fourier and to some extent Louis Blanc's concept of the system of "social (production farming) workshops" included rules of production engineering and management and also living arrangements for the people. This is a concise outline of the literature for the period.

There are also co-authored papers on the subject in Web of Science-rated journals focusing on the historical, legal or economic aspects of the development of pre-cooperation in the context of a commune-based society (Nevleva *et al.*, 2020) and on the ethnic and social nature underlying the legal origin of cooperation in the Russian Empire (Nevlev *et al.*, 2021). Also, V. V. Nevlev (2019) takes a legal perspective to consider the roots of cooperation in the West and Russia.

Some aspects of the problem under study have been reflected or touched on in contemporary articles of journals of the international SKOPUS system.

J. Grashius and M. Elliott (2018) explore the potential role of capital capacity, competition and strategic orientation for mergers and acquisitions of U. S. farmers cooperatives. J. Juga and J. Juntunen (2018) from the University of Oulu analyse the antecedents of retail patronage in the cooperative retail context.

G. McKee, A. Kagan and A. Ghosh (2019) approach executive succession concerns in small asset credit unions. V. Milovanovich, L. Smutka and G. Jusufi (2016) cover the aspects of work cooperation in rice farming in rural Bangladesh.

Developing further the subject of rural cooperation, K. Hakelius (2018) proposes techniques of selecting board composition and interaction patterns in Swedish farm cooperatives. I. Hatak and K. Hyslop (2015) focus on cooperation between family businesses of different sizes

2. Methods

The theoretical and methodological basis for writing this work is legislative, regulatory, and instructional documents, certain provisions of legal theory, the history of the state and law, and legal laws. Based on the topic of the problem under study, the methodology of the article was built on a set of methods: universal (dialectics, metaphysics), general scientific (analysis, synthesis, comparison, forecasting, modeling of social and legal processes, systemic and functional) and particular scientific (historical, statistical, formal-legal and comparative-legal).

3. Results and Discussion

The theoretical and legal principles of cooperation and, thus, credit cooperation, adopted in Russia were originally laid out by the Western ideologists. And one should draw clear distinctions between the main cooperative doctrines. The socialist concept represented by Robert Owen, Charles Fourier and Philippe Buchez was based on the idea of transformation of a capitalist society into a socialist one. For that, Robert Owen proposed, for example, establishing: “Agricultural and manufacturing villages of unity and mutual cooperation” (Koryakov, 1998: 14).

Formerly a manager of a major enterprise, Owen attempted to transform the moral foundations of the existence of labour and the setbacks he faced drove him to conclude that there was no moral transformation without

a transformation of the social environment. He thus moved to America and established the community called New Harmony on the land plot he acquired in Indiana. Even though Robert Owen's communist settlements which he called cooperative societies had little resemblance to cooperatives in the modern sense, there is no denial of his role in the development of the foundations of the cooperative ideology.

Charles Fourier believed that rural cooperatives could accumulate the functions of procurement, marketing and credit thus sustaining the full business cycle of an industrial complex. Under Fourier's concept, a community, or a phalange, should be a symbiosis of a commune and a joint-stock company forming initial capital from contributions of its members. Income would be distributed in accordance with labour, skills and other inputs — thus, all members of the phalange, including the under-resourced, could eventually become owners of property over time, Fourier believed. The high social ideal sought by Charles Fourier constituted a planned progression of the poor toward the class of small proprietors while bringing the rich more affinity with labour, which would ease class pressures.

Building on Fourier's ideas, the Christian socialist theoretician Philippe Buchez called for the establishment of "production associations" to engage in joint manufacturing operations at the joint expense and further marketing of the output. Such associations, Buchez believed, would replace capitalist enterprise from the market. Thus, socialist ideologists believed the development of cooperation and specifically credit cooperation could help resolve social issues and smooth out political contradictions.

The (charitable and religious) doctrine of support supported most prominently by Wilhelm Raiffeisen (1818-1888) and Victor Huber (1800-1869) prioritised assistance to the poor in running economic operations. E. g., W. Raiffeisen first founded a rural aid society in Flammersfeld and later a charitable society in Heddesdorf, which were legally half cooperative and half charitable institutions. Yet, the good causes of helping former prisoners, orphaned children and other needy people left Raiffeisen's societies with huge debt.

This led Raiffeisen to establish a credit cooperative of its kind respecting the Commandments of the Gospel. Raiffeisen insisted that the capital of the credit society should remain the undivided property of the society and all excessive gains above a specified threshold should be used for charitable purposes. Notably, the initial capital of such societies primarily flowed in from donations and loans of the wealthy members of the community.

Societies of a similar type as those created by Raiffeisen rejected the idea of equity capital even though the charter of the first Heddesdorf society provided for such capital accruing dividends. Wilhelm Raiffeisen himself strongly opposed the equity system and when all credit cooperatives were

obliged to have share equity capital after German laws changed, he only settled for nominal compliance with a symbolic amount of equity units. This was quite reasonable given the subject composition of prospective members in credit cooperatives. The under-resourced population in Germany would be challenged by the requirements to contribute any significant amount.

April 25, 1869, is deemed to be the founding date of the first German credit cooperative when the Heddesdorf Benevolent Society set up earlier by Raiffeisen was transformed as a credit society. Its operations ran on non-equity-based principles and consisted in the provision of loans to society members at an interest, while its initial capital was built from external borrowings, not member equity contributions (Antsyferov, 1909).

Loan repayment guarantees were founded on personal trust based on the borrower's moral character. Loans were only available subject to personal acquaintance with the borrower who had to live in the same area with society members. And still, as M. I. Tugan-Baranovsky (2010: 94) reasonably observed, W. Raiffeisen largely viewed credit cooperatives as a tool for a profound "transformation of the contemporary social order to be founded on the basis of Christian duty and brotherly love".

The third ideological movement we would call the dimension of economic efficiency of cooperation was developed by Hermann Schulze-Delitzsch (1808-1883). Without denial of the social aspects of cooperation, he still prioritised the outcomes, i. e., the economic value of such operation. The first credit cooperatives in Germany emerged in response to cash requirements of production societies that lacked funds to purchase materials, which created the need for loans.

Loan-and-savings societies of Schulze-Delitzsch, in contrast to credit cooperatives of Raiffeisen's type, were created to cater to urban populations, specifically petite bourgeoisie, merchants and artisans. Schulze-Delitzsch believed credit cooperation should not be class-based and consolidated the interests of different social strata based on private property and freedom of enterprise.

Interestingly, the organisational and legal status of Schulze-Delitzsch's loan-and-savings societies prompted debate among scholars, specifically, V. A. Kosinsky (1901), M. I. Tugan-Baranovsky (2010) and others. They pointed at the dual nature of loan-and-savings societies showing in two contradictory trends, the need to provide loans to the members on the cheapest possible terms and simultaneously to provide their equity holders with maximum dividends on equity capital. Raiffeisen in his criticism of Schulze-Delitzsch's organisations of cooperative credit reproached the latter for his departure from cooperative objectives in favour of capitalist motives.

Thus, Schulze-Delitzsch's loan-and-savings societies, among other cooperative organisations, came closest to capitalist enterprise. This is also underscored by the fact that equity capital in Schulze-Delitzsch's loan-and-savings societies accrued dividends proportionally to the amount of the society's net income rather than the number of services provided, i. e., loans. Members of societies operating on a model of Schulze-Delitzsch had unlimited joint and several liability within the amount of all their assets, which substantiated the provision of credit.

Cooperation in the modern sense was created artificially. And while capitalist economic management emerged in the natural historical process, cooperation was: "A result of influence on the capitalist society of the socialist ideal" (Tugan-Baranovsky, 2010: 94). Some authors sought to lay theoretical foundations under the ideas of R. Owen, S. Simon and Ch. Fourier, specifically N. G. Chernyshevsky who believed that land communes could provide the basis for establishing production societies; A. I. Herzen who viewed traditional communes as a potential embodiment of communist principles; and M. V. Petrashevsky who understood cooperation as a collective form of consumption and production based on the principles of proportional distribution of goods aligned with labour and capital contributions.

E. g., N. G. Chernyshevsky's works (Chernyshevsky, 1987) substantiated the idea that successful development of agriculture in Russia is only possible if returns are to be ensured on invested capital in the agricultural sector, which, in his view, required market and population growth. Indeed, the small peasant enterprise economy could not compete against major producers, and that created the need for developing a collective form of economic management, communal land management.

N. G. Chernyshevsky believed that traditional communes as a primeval form of land relations could be transformed, by gradual improvements, into an ideal highly developed form of agriculture. The scholar proposed that the state should provide financial support in the form of interest-bearing loans for setting up production and farming societies. The state would also assist in attracting skilled competent talent to lead the association-building process on the new principles.

Society members' earnings, according to Chernyshevsky, should be based on the level of labour input, "The basis for calculation will be a classification of needs taking into consideration what level of labour can go into fulfilling a given need without a loss for other more or less urgent needs" (Nikitina, 1952: 34). The scholar specifically emphasised the principles of freedom universal to all operations of societies, e. g., joining and leaving the ranks, selecting the occupation, lifestyle and residence.

Similar ideas were consistently proposed by M. V. Petrashevsky, who pinned hopes on the promise of production and consumer associations as a vehicle for a socioeconomic renaissance of the Russian society (Nikitina, 1952). M. V. Petrashevsky understood cooperative forms (M. V. Petrashevsky used the term "associations") potentially as production and consumption arrangements based on the principle of proportional distribution tied to capital, labour and talent inputs.

Many researchers associate the birth of the first credit and consumption cooperatives in Russia and consumer cooperation in general with the abolition of serfdom, reforms of local government, education, the development of capitalist relations and other socioeconomic transformations. According to T. A. Seliverstov (2001: 14): "The modern history of cooperation dates back to the mid-19th century and is fully a consequence of the transfer of Western practices to the Russian soil". Let us disagree with this point.

A typical form of social association for mutual assistance and interaction was the traditional peasant commune, which administered economic, fiscal, social and educational functions. Even despite certain resemblance between the institute of cooperation and the peasant commune, more aspects differentiated these phenomena (Nevlev, 2018).

Conclusion

Early on in the development of the cooperative movement, utopian socialists proposed an idea that cooperation, as a form of economic management, could embody the ideals of a principal new socioeconomic formation. The theoretical basis of cooperation was created by Western ideologists whose views were adapted in the three main collective doctrines in Russia. The first one, the socialist doctrine, developed by C. H. Saint-Simon, R. Owen, Ch. Fourier, Ph. Buchez, W. King, P. J. Proudhon, N. G. Chernyshevsky, A. I. Herzen, M. V. Petrashevsky, N. Ya. Danilevsky and others approached cooperation as a tool for the transition to socialism that would provide work and income to the needy and bring the rich more affinity with labour.

The religious and charitable doctrine, or the doctrine of support, supported most prominently by W. Raiffeisen, V. Huber, H. Spencer, A. Comte, P. A. Kropotkin and others, prioritised assistance to the poor in running the cooperative economy. And finally, the third ideological movement, dubbed the dimension of economic efficiency of cooperation was developed by V. S. Sadovsky, F. G. Turner, M. I. Tugan-Baranovsky, V. A. Kosinsky, V. F. Totomiants, L. Blanc, H. Schulze-Delitzsch. The latter approached cooperation in connection with the potential to improve economic performance.

There were some known forms of primitive cooperation or precooperation over the centuries of Russian history. Those included the peasant commune, artel-based forms of arts and crafts, various institutes of resource-pooling and mutual help, which contributed toward the adoption of credit and consumer cooperation in the living context of the Russian peasantry. Before the revolution, credit cooperation was approached in research as a type of cooperation uniting small rural and urban producers, workers and servicemen to establish a mutual cash fund to meet the requirements in small credit. That said, there were two major forms of credit cooperation during the analysed historical period, namely, mutual loan associations and loan-and-savings societies.

The first Russian association we would refer to, a prototype of a credit cooperative, was the Malaya Artel (small artel) established in 1834 as a mutual aid society resembling the features and functions of a loan-and-savings society. Emerging in the 1830s, consumer credit cooperation only became subject to legal regulation in 1872 when the Model charter of loan-and-savings societies was developed and approved.

On June 1, 1895, the Regulation on institutions of small loans was approved, which was the first regulatory act governing the operations of credit organizations and providing for the existence of two types of consumer credit cooperatives, loan-and-savings, and credit societies. The Regulation provided for government aid measures to be supported by the National Bank and available for credit societies; meanwhile it also stepped-up control of economic operations run by credit societies, which negated the cooperative principles of autonomy and self-governance.

Credit cooperation was integrated into social practices in Russia in the third quarter of the 19th century amid the advance of exchange relationships, the transition from closed-cycle natural economy arrangements toward the market economy and weakening of the communal form of land management. This institute organically drove artel and commune-based traditions of the rural world, enabling the peasantry to gain the privileges of market-based, financial and industrial urban development while maintaining traditional economic forms. Credit cooperation became a genuine instrument of modernization of the Russian society which contributed to social stability and harmony of the interests of the industrial urban and patriarchal rural environments.

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Application of budget allocation models in the management of investment processes in the context of the digital economy development

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Abstract

Within the study, the use of the public-private partnership mechanism in the management of investment processes in the context of digitalization was argued. The methodological basis of the study was a process approach, which allows to study multidirectional investment actions and the interdependent impact of the investment process, which determines the causal links of the development of investment entities at different levels in the collection of resources, in the conditions of the development of the digital economy. Endogenous sources include financial resources of internal and external origin. Exogenous investment resources include financial resources on loan, as well as budgetary allocations. Varieties of budget allocations include government procurement, concession, life cycle contract. Comparativecreativecharacterization of investment resource attraction models was carried out at the expense of budgetary allocations. In conclusion, they highlight the advantages of attracting investment resources at the expense of budgetary allocations, namely the public-private partnership model as a concession. Finally, it carriesout the comparative characteristic

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of the conditions of the implementation of investment projects in various models of attraction of investment resources at the expense of budgetary allocations.

Keywords: budget allocation; state-private partnership; investment processes; investment resources; digital economy.

Aplicación de modelos de asignación presupuestaria en la gestión de procesos de inversión en el contexto del desarrollo de la economía digital

Resumen

Dentro del estudio se argumentó el uso del mecanismo de alianza público-privada en la gestión de los procesos de inversión en el contexto de la digitalización. La base metodológica del estudio fue un enfoque de proceso, que permite estudiar acciones multidireccionales de inversión y el impacto interdependiente del proceso de inversión, que determina los vínculos causales del desarrollo de las entidades de inversión a diferentes niveles en la captación de recursos, en las condiciones del desarrollo de la economía digital. Las fuentes endógenas incluyen recursos financieros de origen interno y externo. Los recursos de inversión exógenos incluyen recursos financieros en préstamo, así como asignaciones presupuestarias. Las variedades de asignaciones presupuestarias incluyen contratación pública, concesión, contrato de ciclo de vida. Se realizó la caracterización creativa comparativa de los modelos de atracción de recursos de inversión a expensas de las asignaciones presupuestarias. Como conclusión se destacan las ventajas de atraer recursos de inversión a expensas de las asignaciones presupuestarias, a saber, el modelo de asociación público-privada como concesión. Por ultimo, se lleva a cabo la característica comparativa de las condiciones de la implementación de proyectos de inversión en varios modelos de atracción de recursos de inversión a expensas de las asignaciones presupuestarias.

Palabras clave: asignación de presupuesto; asociación estatal-privada; procesos de inversión; recursos de inversión; economía digital.

Introduction

Current challenges of increasing threats and risks are relevant to the study of the issues related to the attraction of investment resources in the activities of economic entities at the level of microeconomic systems, areas of activity, regions and the state as a whole. This is due to the limited self-financing of businesses at different levels, global and local threats and risks, the presence of inflation. Changes in the credit and banking, and currency system, fluctuations in energy prices, etc. should be also considered.

Attracting investment resources and the efficiency of their use makes it possible to modernize the production capacity of economic entities of different levels, to increase their profitability, to solve problems of inclusive and sustainable development. The activation of investment processes has a positive effect on economic growth and sustainable development of economic systems at various levels. Attracting investment resources are expressed through the investment of resources to increase the capital of enterprises, areas of activity, regions, state.

The purpose of the study is to justify the use of the mechanism of public-private partnership in the management of investment processes in the context of digitalization.

1. Literature Review

The study of budget allocations in the management of investment processes, public-private partnerships, and their role in regional development in the context of digitalization is devoted to the scientific achievements of domestic and foreign scientists, namely: Abramova (2021); Ahmad and Raza (2020); Albalate, Bel, Geddes. (2020); Armand (2020); Balykina and Zakharov (2015); Belyaev (2020); Cosmulese (2019); Chen (2021); Dergaliuk *et al.* (2021); Dubyna *et al.* (2018); Elwakil and Hegab (2020); Fedyshyn *et al.* (2019); Fleta-Asín and Muñoz (2021); Garafonova *et al.* (2021); Grigoraş-Ichim *et al.* (2018); Kadhim *et al.* (2020); Khan *et al.* (2020); Khanin *et al.* (2021); Kholiavko *et al.* (2020, 2021); Kychko *et al.* (2021); Mashnenkov *et al.* (2021); Popelo (2017); Pravkin *et al.* (2020); Prokopenko *et al.* (2018); Qin *et al.* (2021); Raza *et al.* (2021); Samiilenko *et al.* (2021); Samoilovych *et al.* (2021); Shahbaz *et al.* (2020); Shevchuk *et al.* (2021); Shkarlet *et al.* (2019); Sresakoolchai (2020); Tulchynska *et al.* (2021); Vovk *et al.* (2021) and others.

According to the results of the study (Kadhim *et al.* 2020), the authors concluded that there is a need for constant state support, the constant flow of funding and the search for other sources. According to the authors, this will help prolong the implementation of investment projects and increase

annual allocations. The authors of the article (Balykina and Zakharov, 2015) have developed a plan support algorithm that can be used to allocate the budget over a period of time based on key performance indicators that are formed in the context of the budget policy framework. The research results of scientists (Chen, 2021) have shown that public-private partnership has significant and positive economic growth and the consequences of spatial space, which can contribute to regional economic integration, embodying its function of economic stability. It is proved that the economic impact of public-private partnership has significant industrial heterogeneity, energy and water public-private partnership have positive externalities.

The authors of the article (Fleta-Asín and Muñoz, 2021) concluded that the support of multilateral development banks has a positive effect on the participation of private investors in public-private partnerships for renewable energy. The authors argue that government actions that contribute to the institutional financing of third parties, as well as to the improvement of their institutions and the economic environment, contribute to setting priorities through a positive impact on private participation.

The research of the article (Raza *et al.,* 2021) is aimed to focus public-private partnerships on renewable energy where it is more efficient. The results of the authors' research will be useful for politicians in developing countries, which will contribute to the rational and effective solution of urgent environmental problems. The authors (Khan *et al.,* 2020) examine the impact of public-private partnership investments in energy and technological innovation on carbon emissions based on the consumption for China. Based on the research, scientists recommend technological innovations for a cleaner production process and public-private partnership investments in renewable energy sources.

The main idea of the study (Ahmad and Raza, 2020) is to examine the impact of public-private partnership investments in energy, technological innovation, economic growth, exports, and foreign direct investment on CO2 emissions in Brazil. The results of the analysis and the adoption of scientists contribute to the formation of a new view of politicians on the regulation of public-private partnership investments in the energy sector in order to improve the quality of the environment. The importance of public-private partnerships is explained (Sresakoolchai, 2020) by the fact that many governments around the world have budget constraints and may try to prioritize their budgets for other events in need. The authors argue that the ability of the private sector to participate in investment is an important aspect of saving for the government. The authors proved that public-private partnership has certain advantages and risks, depending on the phase of the project.

The authors of the study (Albalate *et al*., 2020) argue that the use of public-private partnerships is an important component in providing the

infrastructure. According to researchers, attracting private investment and expanding opportunities contributes to the exemption from property taxes, exemption from current legislation on procurement and protection of confidentiality. Within the research (Pravkin *et al.,* 2020), the use of benefits of public-private partnership is suggested.

The authors emphasize the consideration of regional specifics on the example of the rail freight market as a meso-level institution. Scientists suggest the ways to improve legislation on the development of the freight market based on established guidelines for the development of public-private partnership models in transport projects. The scientists' article (Elwakil and Hegab, 2020) is based on a study of the impact of gross national income and the percentage of the population with access to drinking water on the choice of candidate countries for investing in public-private partnerships in water supply projects. The authors simulated the relationship between gross national income and the percentage of the population with the access to drinking water. To classify countries by investment groups, scientists have developed four models.

2. Materials and Methods

The methodological basis of the study. The use of the mechanism of public-private partnership in the management of investment processes in the context of digitalization is a process approach. This is due to the fact that investments are a process of investing in investment objects, in this process, the transformation of the potential of investment entities into capital is highlighted. The process approach makes it possible to study the multidirectional actions of investing, the interdependent impact of the investment process, which determines causal links of the development of investment entities in terms of attracting investment resources in today's growing threats and risks.

The process approach makes it possible to plan, coordinate, optimize and increase the efficiency of investment processes. It also provides an opportunity to simultaneously investigate the impact of the external environment on investment, namely by the state in the form of regulatory, security and protective influence, macroeconomic factors of the development, market economic laws and more.

As a methodological basis, the process approach provides an opportunity to consider the attraction of investment resources as a logical sequence of interrelated actions over time, which, in turn, leads to changes and turns input resources into the end result, which in turn can become an input resource again.

Also, in the process of studying the use of the mechanism of public-private partnership in the management of investment processes in the context of the digital economy development, general economic and specific methods of scientific knowledge are used.

3. Results

Investments have been and remain an important and relevant process for the economic development of economic entities at various levels, they contribute to the development of productive forces, increase profits, social, environmental and economic effects. The process of the formation of investment resources and their attraction depends on many factors, including the process of capital accumulation and redistribution, political and financial stability, economic policy of the state, globalization challenges of social development and so on.

Today's challenges of social development require more and more investment at different levels of economic systems. For businesses, the sources of investment resources can be endogenous and exogenous, depending on their origin. Endogenous sources include the own financial resources of economic entities. Such sources include:

- financial resources of internal origin (for example, the profit of the business entity, initial contributions of the founders, etc.).
- external origin (for example, payments of insurance companies, sale of part of assets, additional contributions of share or share capital, etc.).

They have many different advantages, but their main drawback is the limited and insufficient for the further development of the economic entity at different levels. And this is the main incentive to attract investment resources from exogenous sources.

If we consider in more detail the investment resources of exogenous approval in relation to the entity, they can also be divided into several components such as (Fig. 1):

firstly, attracted financial resources (for example, from the sale of securities, equity and other contributions of legal entities and individuals, venture capital, factoring operations, sales, etc.);

secondly, borrowed financial resources (for example, types of lending, bond loans, investments of non-bank financial institutions, etc.);

thirdly, budget allocations (the participation of budget funding at the level of state or local budgets using different models of public-private partnership is considered).

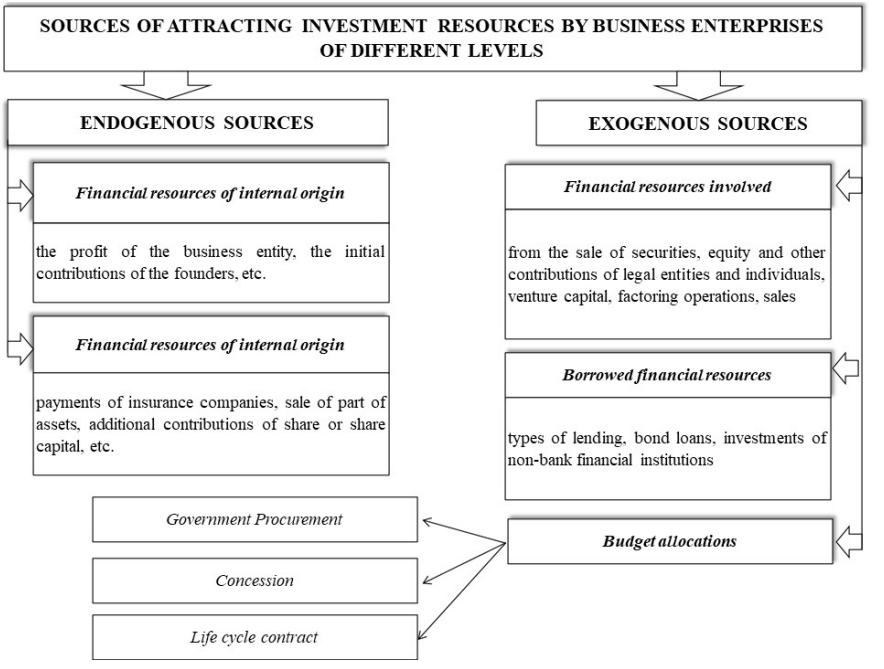

Fig. 1. Varieties of sources of investment resources by economic entities of different levels. Source: suggested by the authors

If we dwell in more detail on budget allocations, the most commonly used models of interaction between private business and public partner are:

- public procurement, including deferred public procurement, in which case financing is provided by the public sector through redistribution of budget funds, debt financing or in the form of soft loans from institutional or commercial banks with the participation of a state guarantee. It should be noted that this model of investment is gradually, as the world experience shows, ceases to be widespread. This is due to the processes of the power decentralization, the reduction of revenues to central budgets and the emergence of more effective models for attracting budget allocations;
- concession, the main essence of this investment model is to transfer the main commercial risks to the concessionaire, namely the risks associated with the level of income from the use of goods and services by the final consumer;

- life cycle contract, in this investment model the risk of demand remains with the public partner, and the private partner implements all stages of the life cycle of the investment project, including the operation and maintenance of the project object;
- combinations of the previous investment models using budget allocations.
- Comparative characteristics of investment models of budget allocations in the context of digitalization are presented in Table 1.

Table 1. Comparative criteria characteristics of models for attracting investment resources through budget allocations in the context of digitalization

Criterion for comparing budget allocation models	Model		
	state purchases	concession	life cycle contract
Terms of the preparation of the investment project (months)	12-24 months when attracting a loan, 3-6 months when deferred payment under a state guarantee	12-36	12-24
Percentage of budget financing of the total cost of the investment project (%)	100	50-80	100 less compensatory business
Percentage of attracted private partner funds from the total cost of the investment project (%)	0	50-20	in the volume of compensatory business
Percentage of state guarantees, from the total cost of the investment project (%)	100	10-20	100 less compensatory business
The core of finding the risks of the investment project	state customer	balance of risks between public and private partner	public partner
Deviation of investment project costs from the planned level in capital expenditures (%)	30-50	3-5	5-10
Deviation of investment project costs from the planned level in operating costs (%)	30-40	has no data	10-15

Source: suggested by the authors

The presented in Table 1 criterion comparison of models of the attraction of investment resources at the expense of budgetary allocations gives a chance to state that each model has the unconditional advantages and lacks. Thus, according to the model of public procurement, the center of finding the risks of the investment project is the state customer, which reduces the risks of the private partner. Given the application of the life cycle contract model, on the contrary, the main burden of risk falls on the public partner. The public procurement model has a very limited range of involvement in investment processes and very long deadlines for signing agreements and preparing contracts.

But, as already noted, the global trend of attracting investment resources through budget allocations has moved away from the model of public procurement. This is due to the fact that attracting investment resources through such models of public-private partnership as a concession has certain advantages, including:

- a possibility of using the latest innovative technologies owned by the private sector;
- distribution of investment risks in the direction of their transfer to a private partner who has more experience and higher efficiency of such risk management, which, in turn, helps to obtain the effect of value for money in such risk distribution;
- reducing the cost of investment projects through the use of optimal, innovative, creative technologies and motivation of the private partner to reduce investment and the compliance with time periods of its implementation;
- financing of capital investments at the expense of private, not public funds, which reduces the burden on the budgets of different levels;
- maximum reduction of the deviation of investment project costs from the planned level.

Also, the use of the public-private partnership model to attract investment projects has many other advantages over the model of public procurement, which is presented in Table 2.

Table 2: Comparative characteristics of the conditions for the implementation of investment projects for different models of attracting investment resources through budget allocations in the conditions of digitalization

Conditions for financing an investment project	Due to budget financing (public procurement)	Due to the use of public-private partnership (concession)
Technological risk management	A high level of the effective technological risk management is not achieved due to the gap in the competencies of the private sector	High level of the technological risk management because the private partner directly takes care of them at all stages of the investment project
The cost of the investment project	There are no motivating factors to reduce the cost of the investment project, and can be increased in the presence of a corruption component of public administration	Motivates to reduce the cost of the investment project in terms of using the model of attracting investment resources through public-private partnership
Volumes of state funding	The design and construction of the investment project is fully financed by investments from the state (local) budget	Capital expenditures on the investment project are financed by a private partner with partial state financing or state crediting and guaranteeing
Use of innovative technologies	Lack of motivation to use innovative technologies as there is no motivation to reduce the cost of the project and attract the latest technological solutions	Private partner is interested in using innovative technologies to ensure a balance of value and quality of the investment project
Transfer of risks of investment projects	Risk transfer is not used, i.e., the effect of price-quality ratio is not achieved due to risk transfer	With a reasonable distribution of risks on the investment project, the effect of value for money is achieved
Reduction of terms (construction, reconstruction) for the investment project	There is no reduction in the terms of the investment project because there are no motivational mechanisms for this, and often the deadlines are increased due to delays in budget allocations	Motivational factors using public-private partnerships help to reduce the time of implementation of investment projects
Gradual state financing of the investment project	The state financing of the investment project occurs at all its stages from designing to its implementation, financing is carried out for a short period of time.	The state partially finances the creation of an object to attract investment resources, as well as pays service fees for services related to quality infrastructure, distributed over the entire life of the investment project. Deadlines can be reduced by the amount of payment received from end users, when transferring such a function from the state to a private partner

Source: suggested by the authors.

The presented comparative characteristic (Table 2) of attracting investment resources under different models of budget allocations clearly

in the conditions of digitalization demonstrates the greater attractiveness of using the model of public-private partnership compared to public procurement. The mechanism of public-private partnership involvement has strong positive effects for all participants of investment projects both for state (local) authorities and for the private partner, as well as for the final consumer, as it can receive timely and higher quality services and products due to the use of innovative technologies in the investment project.

At the same time, it should be noted that the model of attracting investment resources has negative factors of its implementation that accompany any complex process. Negative factors include a significant political influence and lobbying of the interests of different political elites on the institutional basis and the procedure for regulating the objects of attracting investment resources. This issue is especially acute when the country is experiencing political turmoil, changes in the Government and the Cabinet of Ministers, reforming the political system and economic regulation, legitimate procedures for reviewing and revoking previous decisions to attract investment resources and signing public-private partnership agreements. Also, the facts of bureaucracy and corruption, the shadowing of the economy, can negatively affect the attraction of investment resources and the interaction of public-private partners, lead to an increase in the cost of investment projects.

Conclusion

Thus, the use of such a budget allocation model as a public-private partnership has significant positive effects over other models, such as public procurement. This is due to the fact that public-private partnership makes it possible to reduce the cost of providing services to consumers, develops various creative forms of project financing, establishes closer relationships between the authorities at different levels and private partners and businesses. The mechanism of attracting investment resources using the model of public-private partnership gives other indirect effects in the form of increasing employment, reducing the cost of services, including socially significant, helps to solve environmental problems.

The scientific novelty of this study is that based on the process approach to attracting investment resources and highlighting the criteria characteristics of budget allocation models justify the principles of using the mechanism of public-private partnership in managing investment processes in the context of digital economy development.

Further research requires the activation of power structures at various levels to intensify the attraction of investment resources through the model of public-private partnership.

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Human rights during the mass introduction of artificial intelligence and robotic systems into public life

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Abstract

Purpose: This article considers legal approaches to implementing human rights during the mass exploitation of artificial intelligence and robotic systems in public life. Methods: Within the framework of this study, an emphasis is placed on the legal regulation of artificial intelligence systems and robotics used for remote biometric identification of a person and the creation of social credit systems. This study analyzes different models of legal regulation that are typical of certain countries and regions, including the UK, USA, China, and the EU. Results: In the UK, it is allowed to use real-time face recognition systems in public spaces but the set of scenarios and situations for their use is significantly limited by legislation and law enforcement. The legal regulation of these systems in each state is based on a constant dialogue between state and civil society. The use of artificial intelligence and robotic systems to create social credit systems is tested in some countries. Modern states have formed several approaches to the creation of such systems: some of them completely prohibit these systems, while others develop a technological and regulatory framework for the creation of national systems.

Keywords: human rights; robotics; social rating; state; civil society.

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Los derechos humanos durante la introducción masiva de la inteligencia artificial y los sistemas robóticos en la vida pública

Resumen

El objetivo del artículo fue considerar enfoques legales para implementar los derechos humanos durante la explotación masiva de inteligencia artificial y los sistemas robóticos en la vida pública. Se trata de una investigación documental que hace énfasis en la regulación legal de los sistemas de inteligencia artificial y robótica utilizados para la identificación biométrica remota de una persona y la creación de sistemas de crédito social. Además, este estudio analiza diferentes modelos de regulación legal que son típicos de ciertos países y regiones, incluidos el Reino Unido, EE. UU., China y la UE. Resultados. Como conclusión se muestra que, en el Reino Unido, se permite el uso de sistemas de reconocimiento, pero el conjunto de escenarios y situaciones para su uso está significativamente limitado por la legislación y la aplicación de la ley. La regulación legal de estos sistemas en un estado determinado se basa en un diálogo constante entre el estado y la sociedad civil. El uso de inteligencia artificial y sistemas robóticos para crear sistemas de crédito social se prueba en algunos países. Los estados modernos han formado varios enfoques para la creación de tales sistemas: algunos de ellos prohíben completamente estos sistemas, mientras que otros no.

Palabras clave: derechos humanos; robótica; calificación social; estado; sociedad civil.

Introduction

It would not be an exaggeration to say that the digital environment has become an independent sphere of society. The social relations arising in this regard are relatively new and do not always have established approaches to their regulation in legal science. On the contrary, the regulatory policy of many states is still searching for the most adequate and effective legal approaches (Gurinovich *et al*., 2020; Gurinovich and Smirnikova, 2021).

At first glance, such traditional constitutional rights as the inviolability of private life, the freedom of speech and expression, the right to information and some other rights fully embrace the emerging relations in the field of information technology. However, the legal means of ensuring and protecting such rights should also consider the specifics of these relations (Livingston and Risse, 2019).

At the level of states and private companies, technical means are developed and introduced into public life, based on the use of complex algorithms which are abstractly defined in the regulatory legal acts of different countries by the term "artificial intelligence".

Public administration in various areas, including law enforcement, uses technologies for collecting personal data of citizens (for example, digital pass systems to control the movement of a person, including in transport, as well as to differentiate citizens by the scope of their rights; video surveillance systems with face recognition technology, etc.). Many countries develop comprehensive government systems to control public life. Under such circumstances, an unprecedented amount of data is generated and is increasing exponentially, along with the potential risks of violating human rights.

1. Methods

We set the objective of analyzing the world's legal approaches to protecting human rights during the mass introduction of artificial intelligence and robotic systems into public life. This article studies approaches to the legal regulation of artificial intelligence and robotic systems for the remote biometric identification of a person and the creation of social credit systems.

The first task was to study the legal regulation of artificial intelligence and robotic systems for the remote biometric identification of a person in the UK, USA, EU, and China. The analysis of their legislation is conditioned by different ways to the regulation of the issue under consideration. The study of these approaches will reveal the best options for legal regulation.

The second task was to analyze the use of artificial intelligence and robotic systems to create social credit systems. The study identifies several approaches to the legal regulation of this issue that are typical of certain countries and regions. It also analyzes the impact of these systems on fundamental human rights.

2. Results

In recent years, the UK has developed legal regulation and law enforcement practice on the use of artificial intelligence and robotic systems in public life. Security authorities allow the use of real-time face recognition systems in public spaces, but scenarios and situations of their use are significantly limited by legislation and law enforcement practice. The legal regulation of these systems in each state is based on a constant dialogue between state and civil society.

The United States still has no federal laws on the use of artificial intelligence for biometric identification. State and local legislation go differently. In several states and cities, the use of the corresponding technologies is prohibited completely or significantly limited.

The EU has developed a draft Regulation of the European Parliament and the Council laying down Harmonized Rules on Artificial Intelligence (Artificial Intelligence Act). This draft is supposed to impose a ban on the use of artificial intelligence for the remote biometric identification of people in public spaces in real-time to protect law and order, except for three listed and defined situations when such use is necessary to achieve a significant public interest, whose importance outweighs the risks.

In China, there is no special regulation of this sphere. The use of these systems is described in civil legislation, as well as in legal acts on cyber security and data circulation. The development of these systems is controlled by the Chinese government. Due to the high centralization of power, there is a risk of violating human rights and ending up with the total surveillance of citizens without any legislatively established framework and restrictions.

The use of artificial intelligence and robotic systems to create social credit systems is not widespread in most countries. However, their legislations utilize several approaches: a complete ban on the creation of these systems or the formation of a regulatory framework for the deployment of nationwide systems. At the same time, the functioning of these systems will not correspond to universally recognized human rights and civil freedoms. Thus, it is necessary to prevent the creation and application of social scoring both at the national level and at the level of individual territories or spheres of public life.

3. Discussion: the use of artificial intelligence and robotic systems for the remote biometric identification of a person

One of the most sensitive spheres of public life, influenced by the implementation of the aforementioned technologies, has become relations associated with the establishment of legal guarantees for the protection of human rights to privacy in connection with the use of artificial intelligence systems for remote biometric identification. These systems are usually used by government agencies to ensure national security (the search and capture of offenders, the predictive analytics of crime) but there are other ways to use them in the public sector, for example, payments for public transport, public services, etc. These systems are being used in the private sector, especially in banking, retail, communications, and security.

In the UK, public and human rights organizations are against the use of real-time facial recognition by the police in public places after several citizens were apprehended for no reason (Woollacott, 2021).

From the legal perspective, the use of face recognition systems by the police did not have any regulation until recently. In 2019, human rights organization Liberty filed a lawsuit against the South Wales Police alleging that the police's use of facial recognition in public places violated the fundamentals of human rights, such as the Human Rights Act, the Data Protection Act and Equality Act (Gordon, 2021). The court ruled that, on the one hand, there was a sufficient legal basis to ensure the proper use of real-time face recognition systems and, on the other hand, that the police used these systems in full compliance with the existing law (Centre for Data Ethics and Innovation, 2020).

In 2020, Liberty appealed against this decision (R. (Bridges) v. Chief Constable of South Wales Police. The court ruled that the use of real-time face recognition systems by the police in some cases did not comply with law. The court reached the following conclusions (Biometrics and Forensics Ethics Group, 2021):

- The use of facial recognition systems violated the right to privacy protected by the Human Rights Act. The court found critical flaws in the legal framework that left too much regulatory leeway for employees.
- The use of face recognition systems violated certain provisions of the Data Protection Act. While considering the impact on data protection, it was impossible to properly assess the risks of violating the rights and freedoms of data subjects, and no measures were taken to eliminate these risks. Two groups of powers were also identified, within which state bodies have unacceptably wide opportunities for discretion: firstly, how persons are selected for observation lists; secondly, on what basis technical complexes equipped with face recognition systems are in a particular public space.
- The South Wales Police violated their responsibilities under certain provisions of the Equality Act because the police did not attempt to verify, either independently or through an outside review, that the software was free of potential race- or gender-based bias (The Court of Appeal of England and Wales, 2020).

Based on this judgment, amendments were made to the Surveillance Camera Code of Practice. Accordingly, system operators should plan their work based on 12 guiding principles, including limiting an exhaustive list of areas and scenarios for their use, transparency, the priority of human rights, and non-discrimination (Surveillance Camera Code of Practice, 2013).

In the UK, it is allowed to use real-time face recognition systems in public spaces but the set of scenarios and situations for their use is significantly limited by legislation and law enforcement. The legal regulation of these systems in a given state is based on a constant dialogue between state and civil society.

In the United States, there are no federal laws on artificial intelligence systems for biometric identification. The development of one or several system-forming acts has been discussed by legislators but there are only some legislative initiatives that are at different stages of consideration. This is due to the general legal regulation of artificial intelligence systems and the circulation of personal data, which are carried out ad hoc. In 2020, the Decree of the President of the United States was adopted, and appropriate recommendations were developed for executive authorities.

Such tech companies as Amazon and Microsoft imposed a moratorium on this set of technologies until legislators form a sufficient regulatory framework or roadmap. In contrast, IBM announced that it would cease its participation in the related business projects (Feiner and Palmer, 2021).

State and local legislation go differently. In several states and cities, the use of the corresponding technologies is prohibited completely or significantly limited (Sakin, 2021). The use of these systems has attracted great public attention after the Black Lives Matter protests and arrests after the "2021 Capitol attack".

The EU has developed a draft Regulation of the European Parliament and the Council laying down Harmonized Rules on Artificial Intelligence (Artificial Intelligence Act). This draft is supposed to impose a ban on the use of artificial intelligence for the remote biometric identification of people in public spaces in real-time to protect law and order, except for three listed and defined situations when such use is necessary to achieve a significant public interest, whose importance outweighs the risks.

These situations include: firstly, the search for potential victims of crime, including missing children; secondly, a threat to human life or safety, in particular in case of terrorist attacks; thirdly, the detection, localization, identification and prosecution of persons who committed or are suspected of committing crimes according to constituent elements (32 elements of criminal offenses with imprisonment of at least three years) (Proposal for a regulation of the European Parliament and of the Council, 2016).

A similar position was expressed by the European Data Protection Board (EDPB) and the European Data Protection Supervisor (EDPS) regarding the previously published European Commission Artificial Intelligence Regulation draft. The document states that given the extremely high risks associated with remote biometric identification in public places, the EDPB and EDPS call for a general ban on any use of artificial intelligence to

automatically recognize human features in public places such as the face, gait, fingerprints, DNA, voice, keystrokes and other biometric or behavioral signals in any context (European Data Protection Board, 2021).

The EU is currently forming a stable and multidimensional system for the legal regulation of artificial intelligence and robotic systems for remote biometric identification in public places in real-time. However, the regulation of such public relations in the EU is "human-oriented", which protects and guarantees human rights and civil freedoms. This emphasizes the legal support of regulation in the field of technological development. At the same time, it slows down business processes and the application of specific products in public life. The EU is an important market for almost all big tech companies, so as with the GDPR. If adopted, this can become one of the key approaches since new technology products will be designed with these constraints in mind.

The most widespread use of artificial intelligence and robotic systems for remote biometric identification is typical of China. The regulation of these systems is reflected in civil law, as well as in regulatory legal acts on cyber security and data circulation. Currently, this sphere of public relations does not have special regulations. China has done quite a lot of work in the field of data protection. In 2016, the Cybersecurity Law of the People's Republic of China was adopted which established regulatory requirements like those of the EU and the US. Since China is a state with an authoritarian political system, data confidentiality is more connected with the decisions of public authorities rather than with the creation of a unified legal framework supported by independent judicial decisions.

This issue is common to other spheres of social and economic activity, where the freedom of private and public organizations is rather limited by the state's interests. By adopting legal acts, the state provides a lot of opportunities for unlimited participation in the activities of private companies and actively introduces innovations to create a unified system for controlling all the spheres of public life.

In July 2017, the State Council of the People's Republic of China announced a strategy for the development of artificial intelligence called the "Next Generation Artificial Intelligence Development Plan". According to this strategy, China aims at becoming a global leader in artificial intelligence by 2030, as well as to take a leading position in the development of regulatory acts, ethics, and standards for artificial intelligence. The concept represents only a general model and objectives of future legal regulation. Consequently, it should be considered in conjunction with other regulatory legal acts. Although this concept was developed by the state, the actual implementation of these innovations and transformations will be carried out by the private sector and local authorities (Roberts *et al.*, 2021).

The Chinese regulation is also characterized by rather quick adaptation to the use of new technologies in the market. Unlike the above-mentioned countries, China uses unmanned vehicles on public roads in marked areas (Ziyan and Shiguo, 2021) and created the first automated e-courts and a unified social credit system.

An important feature of China is a rather high level of citizens' approval of video surveillance systems if compared to the other countries. According to the study conducted by European scientists, the Chinese demonstrate much support for the use of face recognition technologies (67%), as well as the lowest dissatisfaction with their deployment (9%) (Kostka *et al.*, 2021).

On the one hand, China has adopted ambitious concepts in relation to the functioning of artificial intelligence and robotic systems and introduces innovations into public life much more actively than the EU and the USA due to centralized regulation. On the other hand, the development of these systems in China is controlled by the state, which, due to the high centralization of power, leads to the risk of human rights violations and the creation of total surveillance of citizens without any legislatively established framework and restrictions.

It can be argued that the use of artificial intelligence systems for remote biometric identification in public places can affect the privacy of a large part of the population, create a sense of constant surveillance and indirectly interfere with the freedom of assembly and other fundamental rights. In addition, the proper functioning of these systems and the impossibility of correcting errors when using these systems in real-time raises concerns.

It should also be noted that:

> Automatic face recognition not only tracks behavior but can also change it. When suspects know that they are being watched, for example, during a peaceful protest, their behavior might differ from what it would have been if they had not been watched (Gordon, 2021: 2).

Thus, the legislation of most democratic countries develops a system of legal regulation based on a balanced approach between the protection of human rights and the interests of national security. Legislators need to regulate the procedures and specific cases of using artificial intelligence for the remote identification of a person, as well as consider the possibility of limiting human rights.

4. The use of artificial intelligence and robotic systems to create social credit systems

Artificial intelligence for remote biometric identification together with systems for processing big data can be used to create social credit systems.

These trends cannot be called universal, but China is systematically moving towards the creation of a unified system for monitoring public life, i.e., it has begun testing these technological solutions in separate territories (Haciyakupoglu, 2021).

The assessment and classification of the individual's trustworthiness based on social behavior, known, or predicted personality traits can lead to the discrimination of certain social groups and their exclusion from public life.

Certain countries, including the EU, plan to introduce a complete ban on the creation of such systems. The draft Regulation of the European Parliament and the Council laying down Harmonized Rules on Artificial Intelligence (Artificial Intelligence Act) established that such systems should be prohibited by law since the assessment and classification of the individual's trustworthiness based on social behavior, known or predicted personality traits can lead to the discrimination of certain social groups and their exclusion from public life (Proposal for a regulation of the European Parliament and of the Council, 2016).

A similar position was expressed by the European Data Protection Board (EDPB) and the European Data Protection Supervisor (EDPS) regarding the previously published European Commission Artificial Intelligence Regulation draft. The document states that the EDPB and EDPS recommend a ban on the use of biometric data by artificial intelligence and robotic systems to divide people into social groups based on their ethnicity, gender, political or sexual orientation or other grounds on which discrimination is prohibited by Article 21 of the EU Charter on fundamental rights. In addition, the EDPB and EDPS believe that the use of artificial intelligence and robotic systems to detect human emotions is highly discouraged and should be prohibited, except for some cases (such as for some medical purposes where the recognition of patient's emotions is essential). The use of artificial intelligence and robotic systems for any type of social scoring should be prohibited (European Data Protection Board, 2021).

Conclusion

Thus, modern states have formed several approaches to the creation of social credit systems: some of them completely prohibit these systems, while others develop a technological and regulatory framework for the creation of national systems. It seems that the use of such systems will comply with the legislation of most democracies and fundamental international acts. From the legal viewpoint, it is necessary to prevent the creation and application of social ratings both at the national level and at the level of certain territories or spheres of public life.

The state should regulate public relations in the digital sphere, especially to protect human rights and civil freedoms, but there is a risk of excessive regulation. The latter can decrease the benefits of using technological solutions and slow down the development of the digital economy.

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American constitutionalism and the mid-19th-century nation

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Abstract

The authors of the article have studied the causes of the American Civil War with due regard to the history of constitutional law. This research is based on several political, economic, legal and cultural factors. The authors used the method of analyzing historical documents. After analyzing judicial precedents and global historical trends, they have concluded that America's constitutional institutes lost their effectiveness and became a weapon in the hands of struggling parties during the constitutional crisis. As a result, the compromise system of the early nineteenth century became a new state and legal structure.

Keywords: Causes of the Civil War; American constitutionalism; U.S. legal system; slavery in American history; legal-institutional history.

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El constitucionalismo estadounidense y la nación de mediados del siglo XIX

Resumen

Los autores del artículo han estudiado las causas de la Guerra Civil estadounidense teniendo debidamente en cuenta la historia del derecho constitucional. Esta investigación se basa en varios factores políticos, económicos, legales y culturales. Los autores utilizaron el método de análisis de documentos históricos. Tras analizar los precedentes judiciales y las tendencias históricas mundiales, han concluido que los institutos constitucionales de Estados Unidos perdieron su eficacia y se convirtieron en un arma en manos de los partidos en lucha durante la crisis constitucional. Como resultado, el sistema de compromisos de principios del siglo XIX se convirtió en una nueva estructura estatal y legal.

Palabras clave: Causas de la Guerra Civil; Constitucionalismo estadounidense; Sistema legal de Estados Unidos; esclavitud en la historia de Estados Unidos; historia jurídico-institucional.

Problem statement: citizenship and rights at the federal and state levels

American constitutionalism in the late 18th and early 19th centuries had several "pitfalls" that created zones of potential tension in the US political and legal field. Some problems arose at the very beginning of USA history and had been successfully masked by the system of compromises and figures of speech in the constitutional documents written by the Founding Fathers.

The first challenge was the lack of clarity about the rights of citizens in the United States and their guarantees. Therefore, there is a logical question: how does US citizenship correlate with the citizenship of each state and who is authorized to use the power of law to protect these rights, namely the state government or the federal government? Traditionally, states (Kettner, 1978) ensured civil rights, i.e., protected life, liberty, and property through their institutions, statutes, and court decisions, while punishing crimes and resolving civil disputes. Although states were the guarantors of rights, there was no clear theory of citizenship. In 1862, the Attorney General under President Lincoln admitted that he did not like the definition of "a citizen of the United States" and argued that "the matter was as obscure as it was at the moment the American state was founded" (Kaczorowski, 1986: 872).

The pre-Civil War legal theories generally accepted two types of rights: basic and inalienable rights guaranteed by the federal government and

protected by federal courts, which could not be denied by states, and rights that did not need a national guarantee (Wiecek, 1977). Nevertheless, precedents important for the American constitutional theory demonstrated different views on this issue.

In Corfield v. Coryell (1823), Supreme Court Justice Bushrod Washington ruled that:

> We felt no hesitation in confining these expressions to those privileges and immunities which are, in their nature, fundamental; which belong, of right, to the citizens of all free governments; and which have, at all times, been enjoyed by the citizens of the several states which compose this Union, from the time of their becoming free, independent, and sovereign (Hurd, 1968: 551).

At the same time, there are other rights approved by certain states and valid only in their territory.

However, not all court decisions supported this viewpoint. In Barron v. Baltimore, the Supreme Court claimed that the Fifth Amendment in particular and the Bill of Rights in general restricted the federal power and could not be considered as delegating to it any powers to protect the rights of citizens. The *comity clause* in Article 4 of the US Constitution empowers the federal government to guarantee the rights of citizens of one state if they are discriminated against in the territory of another. At the same time, the rights of citizens are protected exclusively by the authorities and courts of the state in question (Hurd, 1968).

Initially, state citizenship and US citizenship had been regarded as two aspects of the same status. Gradually, the primary loyalty and supremacy of guarantees had become questionable. This issue reached a new level and acquired an additional aspect since it dwelled on territorial structure, the balance of powers between the federal center and state authorities, and the implementation of the principle of subsidiarity. In its extreme form, this problem conditioned the right to secession.

Is the United States a community created by the united will of a political nation or a federation of sovereign and independent states? During the mid-19th century crisis, two views became polarized. The proponents of unity headed by A. Lincoln argued that the Union and the nation preceded the Constitution, which logically follows from its Preamble: “We the People of the United States, in Order to form a more perfect Union…” (Kettner, 1978: 339). In mathematical terms, A. Lincoln understood the Union as a set, uniting several subsets, of which only the former could have the supremacy.

The secessionists represented the Union as an agent of independent states that delegated their sovereignty to the federal government. At the same time, citizens delegated their rights to the states, and the states further delegated their rights as collective entities rather than individual rights of citizens (Kettner, 1978).

The important factors that stipulated the growth of constitutional confrontation were a growing gap in the economy and management of the North and the South, as well as the issue of slavery, which were closely connected.

1. A system of compromises in a crisis. Political balance and judicial precedents

The constitutional tradition required maintaining a balance between the Southern and Northern states in the Senate. Therefore, the admission of new states to the Union had to be in a 1:1 ratio. For example, the adoption of slave Missouri in 1820 was compensated by the division of Massachusetts into two states (Massachusetts and Maine). This system maintained a balance but was not formalized, which created the risk of complications. One possible way to overcome them was the Missouri Compromise, according to which states were divided into free and slave along the parallel 36°30' north from the western tip of Missouri.

If the situation with California and Texas was more or less obvious since they were included in the Union as states with their own Constitutions and their inclusion kept the balance (Texas was a slave state, California was a free state), then the issue with territories was quite challenging (Carlisle, 2008).

The Northern states protested not against slavery but feared the expansion of the southerners' power. The latter suspected the northerners of conspiracies and tension between the parties increased. In 1846, Congressman David Wilmot of Pennsylvania proposed prohibiting slavery in any territory purchased or seized from Mexico (Wilmot Provisio). Alternatively, the Southern Democrats offered to extend the Missouri Compromise line to the Pacific Ocean. According to the southerners, it was unfair that the territories acquired due to joint efforts would become unequivocally free, i.e. would give a political advantage to the North.

As a result, Senator from Kentucky Henry Clay proposed a package of eight decisions that had far-reaching political and constitutional consequences. Some of them satisfied both parties, including the admission of Texas as a slave state and California as a free state, the federal government securing the debts of the Republic of Texas, the planning of Utah and New Mexico without resolving the issue of slavery (Carlisle, 2008). There was a comradely gesture towards the northern abolitionists, namely the prohibition of slavery in the Federal District of Columbia which created some inconvenience for the southern congressmen who could not bring their slaves.

However, the following action brought the confrontation to a new level and emphasized the issue of human rights and the balance of powers between the states and the federal government (Varon, 2008). This referred to the Fugitive Slave Act of 1850.

In 1793, a law was passed that allowed masters to pursue fugitive slaves even in free states. However, the law did not oblige local authorities to facilitate slave owners and slave hunters who acted at their own risk. This law was followed by numerous precedents.

In Prigg v. Pennsylvania, the US Supreme Court considered the conflict between the federal act of 1793 and the Pennsylvania state law of 1826, according to which:

> If any person or persons shall by force and violence take and carry away [...] any negro or mulatto from any part of that commonwealth, with a design and intention of selling and disposing of [...], every such person or persons be deemed guilty of a felony (Goldstein, 2011: 763).

Pennsylvania authorities arrested a runaway-slave hunter Edward Prigg and his four assistants who apprehended Margaret Morgan living in Pennsylvania as a free woman without her master's permission.

In the course of judicial proceedings, Prigg appealed to the US Supreme Court. Judge Joseph Story found the law of 1826 inconsistent with Article 4 of the US Constitution. However, he upheld the state's right to prohibit its officials from assisting in the capture of fugitive slaves since state officials reported to their state rather than the federal government (United States Supreme Court, 1842). This caused a range of new laws on personal freedom in the Northern states which prohibited filing and accepting claims for the return of fugitive slaves, considering cases and providing any assistance in the capture.

The Fugitive Slave Act required state governments to assist in the capture of fugitive slaves. Another concern for the supporters of freedom was an article according to which a judge deciding in favor of returning a slave to their owner received a remuneration of $10 and a judge recognizing a black person free got only $5. Opponents reasonably accused slave owners of bribing judges (Huston, 2003).

The Northern states objected that blacks have equal rights with white citizens. In 1842, there was great difficulty in adopting the Constitution of Rhode Island to expand the rights of the population, including giving black citizens of Rhode Island voting rights (Fitz 246). This was the victory of the Equal Rights Party building its election campaign on anti-slavery rhetoric. Under the Constitution of Rhode Island or the so-called "the people's constitution", blacks could bring claims to the court on an equal footing, including defending their freedom, and appeal to the *Habeas Corpus Act*.

The other Northern states began enacting freedom laws that allowed blacks to defend their rights in court through various freedom suits.

Courts supported the above-mentioned theory and created several precedents. In 1852, the New York Supreme Court ruled in the case of Lemmon v. New York. The Lemmons, Virginia planters, decided to move to Texas. For reasons of economy and safety, they chose to travel by sea. They arrived in New York with eight slaves, including two children aged between five and two years old. In New York, there was a law passed in 1817, according to which any slave who found themselves in New York, even in transit, could file a claim for freedom (Fehrenbacher, 1997: 394).

During judicial proceedings, the Lemmons appealed to the fact that there was a transit trade between two states and each of them recognized slavery as legal. Under the courtesy clause, this trade was subject to federal regulation and states could not restrict it at their own discretion. The defense represented by John Jay (grandson of the first Chief Justice of the United States) and future President Chester Arthur claimed that the Lemmons deliberately and voluntarily brought slaves to New York, knowing that this was a free state. While requiring assistance in the return of fugitive slaves, the federal law neglected slaves who legally filed a claim for freedom. In this regard, an expansive interpretation of federal laws on civil rights and freedoms is unacceptable.

Judge Payne ruled that slavery could only be established by positive law based on the English precedent in the Somerset v. Stewart case of 1772 (Nadelhaft, 1966). Getting into the territory without such a law, slaves automatically became free. Such precedents as Winny v. Whitesides (1824) and Rachel v. Walker (1832) determined that "the one liberated, becomes forever free" and slaveowners could not claim the return of their property even if they moved to any slave state.

A similar decision was made in Holmes v. Ford in the Oregon Territory in 1853, which created a precedent for the regulation of slavery by the laws of not only states but also those of the federal territories (Lockley, 1922).

In Ableman v. Booth (1859), the US Supreme Court partially overturned this practice. In 1854, the abolitionist Sherman Booth was arrested for hindering US Marshal Stephen Ableman from capturing the fugitive slave Joshua Glover. However, Booth was released by a county judge in Wisconsin who found the federal agent's actions unconstitutional. Later this decision was approved by the Wisconsin Supreme Court. Ableman filed a complaint with the federal district court but the Wisconsin Supreme Court ruled that such decisions had no effect across the state (Campbell, 1970).

The US Supreme Court, represented by Judge Roger Taney, ruled that if state courts were able to overturn federal judgments on the application of federal laws, the government would lose the ability to enforce federal laws.

Inevitably, different states would provide their own interpretations of the US Constitution and there would be no unified government established by the Constitution. The power of the Wisconsin courts was limited by the US Constitution, and they could not declare unconstitutional federal acts or reverse decisions of federal courts (United States Supreme Court, 1859).

This decision did not prohibit blacks who legally found themselves in free states from filing claims for freedom, and the federal agents, who formally had the right to demand assistance from local authorities, faced sabotage and even direct violence.

This decision was much more important for the development of American constitutionalism. It created a precedent for the superiority of federal laws over state laws and was a milestone in the formation of the dual court system. In addition, the state's right to nullify was denied by the corresponding decision of the US Supreme Court.

The concept of nullification was initially associated not with judicial practice but rather with disputes over prerogatives of the federal government and the right of states to secession, as well as an economic conflict between the North and the South over customs tariffs (Huston, 2003).

Many southerners regarded tariffs as leverage from the North. As a result, John C. Calhoun, a Senator from South Carolina, announced the right of states to nullify, i.e., a refusal to apply federal laws in their territory. The US Congress had the power to enact federal laws in the interests of all the states, therefore the states could determine whether a particular law was in their best interest. In case of a dispute about the constitutionality of laws, each state could block its operation in its territory or hold a convention to resolve the issue of nullification.

This theory was realized after the adoption of the new tariff in 1832. The convention in South Carolina nullified both tariffs and enabled local authorities to enforce such nullification. At the initiative of President Andrew Jackson, the US Congress passed a bill empowering the President to use military and navy force to implement acts of the Congress. The Civil War could have started as early as 1832.

Henry Clay, a Senator from Kentucky, proposed a compromise, according to which tariffs should be gradually reduced from 1833 to 1842, eventually reaching the level of 1816. However, both parties could not resist symbolic actions. The US Congress passed the Compromise Bill and the Force Bill on the same day as the South Carolina Convention nullified the Force Bill (Mountjoy, 2009).

However, the 'tight knot' of economic interests and disputes over supremacy was not resolved through tariff changes. The status of territories remained questionable. In the early 1830s, the US Congress made another

outrageous decision and banned the sale of federal lands in such territories. Robert Hayne, a Senator from South Carolina, highlighted the need for an alliance between the West and the South against the dictatorship of the North since the latter took advantage of federal laws to restrict labor migration to the West from the New England states, providing themselves with cheap workers.

2. New territories and new challenges. Kansas on fire and the Dred Scott case

The economic development of California required the construction of a transcontinental railroad, which promised great financial benefits. There were two promising routes: from Illinois through Kansas and Nebraska in the north, or from Louisiana through Texas and New Mexico in the south. A potential change in the balance of free and slave states in the Senate depended on the solution of this issue if the new territories were given the status of states (Carlisle, 2008).

Stephen Douglas, a Democratic Senator from Illinois, proposed to extend the Compromise Principle of 1850 to Kansas and Nebraska and build a route through these states. The issue of slavery should be resolved by the settlers themselves based on the principle of *squatter sovereignty*. For slave owners, this meant removing the issue of slavery in the new territories from the jurisdiction of the federal authorities and created prospects for the spread of slavery and the maintenance of balance in the Senate. S. Douglas reassured the Northerners that these states were not suitable for plantation management, therefore the extension of slavery practices would be unlikely. The thing is that both territories were located north of the Missouri Compromise line, i.e. latitude 36º30'N.

The bill hardly passed the House of Representatives (113 in favor; 100 against) and was signed by President Franklin Pierce in 1854. When the decision was transferred to the territories themselves, it provoked outright violations of the law. In Kansas, clashes turned into real battles (for example, near the village of Lawrence) and more than 200 people were killed (Carlisle, 2008).

The new President J. Buchanan demanded the interim Governor to adopt the state constitution, hoping that the legal consolidation of some principles would end the 'hot phase' of the conflict. Upon the invasion of slavery supporters, a referendum was held which confirmed that all slaves in Kansas preserved their status. After that, the Constitution was passed that allowed slavery in Kansas. Considering numerous violations in the referendum, the US Congress refused to include Kansas in the Union. Even Stephen Douglas, who regarded it as a violation of settler sovereignty,

opposed the Lecompton Constitution. Kansas was eventually adopted in early 1861 as a free state before the beginning of the Civil War (Mountjoy, 2009).

President J. Buchanan, who came to power during a civil, constitutional and partisan crisis (the conflict between Kansas and Nebraska provoked a split in the Democratic Party and the Whig Party; the creation of a regional Republican Party representing the interests of the North and uniting the northern branches of the Whigs and Democrats, as well as representatives of the American Freedom Party), saw the only solution in the adoption of an unambiguous legal decision that would resolve all the existing contradictions and unite the parties with a binding precedent.

This decision was supposed to be a verdict in the Dred Scott v. Sanford case, one of the most iconic cases in the history of the US Supreme Court known not only by its significance but also as the worst decision in the history of the US Supreme Court (Schwartz, 1997).

In 1854, the dispute about the freedom of the slave Dred Scott (and his daughter who was free by any law since she was born in a free state) and his owner Irene Emerson reached the US Supreme Court, where it had been considered until 1856 (Fehrenbacher, 1997). Indeed, this case had a clear political component. Democrat J. Buchanan, who won the election with considerable efforts, viewed this court decision as the only way to resolve the constitutional crisis that was eroding the entire US state system. The president asked his friend, Supreme Court Justice John Carton, to hear the case before the inauguration. The northerner judges were pressured to make a unanimous decision since a split, especially on a regional basis, could only exacerbate the overall crisis (Baker, 2004).

The ruling by Supreme Court Justice Roger Taney was almost 200 pages long (United States Supreme Court, 1857). R. Taney announced that "the Founding Fathers did not include blacks and did not intend to include them in the category of "US citizens". Consequently, they could not appeal to the rights and privileges listed in the Constitution, as well as to the instruments of their protection, such as the federal court" (Chemerinsky, 2015: 722). According to Taney, blacks, whether slaves or free, and the descendants of former slaves could not sue at all. Furthermore, Taney believed that the Missouri Compromise and all the subsequent compromises were unconstitutional since they limited property rights provided by the Fifth Amendment (Chemerinsky, 2015).

The decision was disastrous. Two Supreme Court Justices recorded dissenting opinions. Justice McLean highlighted that there was no reason and no indication in the text of the Constitution that blacks could not be US citizens. When the Constitution was ratified, blacks had the right to vote in five out of 13 states. Taney's decision was dictated by "prejudice rather than law" (Chemerinsky, 2015: 771).

Judge Benjamin Curtis mentioned that since Taney had recognized that blacks could not go to federal courts, the rest of judicial decisions became null and void (*obitur dicta*) and did not create a binding precedent (Chemerinsky, 2015).

Conclusions

The confrontation over the issue of human rights and the relationship between the federal government and the states only intensified. The northerners feared that Taney would go further and declare all the anti-slavery laws unconstitutional. The northern press introduced the *slavocracy* term, denoting a conspiracy of 347,000 slave owners to seize power over a million-strong nation. The southern radicals expressed an opinion that there would be a slave auction on the Boston Stock Exchange in ten years (Mountjoy, 2009).

It was unclear how this precedent correlated with the "squatter sovereignty" (popular sovereignty) defended by slave owners. During the presidential election of 1860, A. Lincoln used this logical contradiction against the Democratic candidate A. Douglas, saying that if Congress could not prohibit slavery in the federal territory, then it would not delegate this power (McClintock, 2008).

Our review has proved that the traditional view on the South (the southerners defended the independence of their states) and the North (the northerners supported the idea of a strong federal government) is not fully justified. In the conditions of a growing constitutional crisis, both parties used federal and local institutions as tools in their confrontation. In this context, courts, Congress, and other entities lost their constitutional significance.

Nevertheless, this confrontation resolved several burning issues about the relationship between the rights of states and the federal government and revealed the extraterritoriality of the US army. In the long run, Taney's disastrous decision resulted in the Civil Rights Act of 1866 and the 14th Amendment of 1868, which became the basis for the legal concept of American citizenship.

By the middle of the 19th century, economic and political interests, gaps in the US Constitution and legal concepts, complex precedents had woven into a knot that could not be cut, as Buchanan wanted, by a purely legal decision. It became clear at 4:30 a.m. on April 12, 1861 when the first shells fell on Fort Sumter.

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Constitutional foundations and principles of the formation of a sovereign, secular, and democratic state in India: history and modernity

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Abstract

The purpose of the research was to study the fundamental provisions of the Constitution of India and the amendments made to it, which regulate the constitutional foundations and principles of the formation of a sovereign, secular, and democratic state. In addition, the article discusses the constitutional provisions relating to the acquisition of independence, the freedom of India, the formal establishment and consolidation of the fundamental rights and freedoms of its citizens and the abolition of the institution of untouchability. The study of the role and importance of the political and legal views of the leader of the national liberation movement, the philosopher and jurist Mohandas Karamchand Gandhi in shaping the constitutional foundations and state structure of India is of some interest. The author used a complex of scientific methods to achieve the objective. It is concluded that the achievement of India's political independence, the declaration of equal rights and freedoms and the abolition of the untouchable caste in the state Constitution, is a significant contribution to the development of this country and a rapid step in increasing India's importance in the world.

Keywords: democracy; society; citizen; rights and freedoms; equality.

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Fundamentos constitucionales y principios de la formación de un estado soberano, laico y democrático en la India: historia y modernidad

Resumen

El propósito de la investigación fue estudiar las disposiciones fundamentales de la Constitución de la India y las enmiendas realizadas a la misma, que regulan los fundamentos constitucionales y los principios de la formación de un estado soberano, laico y democrático. Además, el artículo analiza las disposiciones constitucionales relativas a la adquisición de la independencia, la libertad de la India, el establecimiento formal y la consolidación de los derechos y libertades fundamentales de sus ciudadanos y la abolición de la institución de la intocabilidad. El estudio del papel y la importancia de las opiniones políticas y legales del líder del movimiento de liberación nacional, el filósofo y jurista Mohandas Karamchand Gandhi en la formación de los fundamentos constitucionales y la estructura estatal de la India es de cierto interés. El autor utilizó un complejo de métodos científicos para lograr el objetivo. Se concluye que el logro de la independencia política de la India, la declaración de igualdad de derechos y libertades y la abolición de la casta intocable en la Constitución del estado, es una contribución significativa al desarrollo de este país y un rápido paso en el aumento de la importancia de la India en el mundo.

Palabras Clave: democracia; sociedad; ciudadano; derechos y libertades; igualdad.

Introduction

The formal definition, proclamation, and direct implementation of the principle of a mixed economy with active participation and the possibility of regulation by the state, the synthesis of religious Indian institutions with institutions that arose as a result of the formation and development of the branch of constitutional law, and the implementation of the state function to maintain universal peace and international security, considering the priorities and state of the modern Indian state determine the relevance and significance of studying the genesis of the constitutional structure of India and modern legislative regulation of the foundations of its constitutional system.

In the process of studying the genesis of the constitutional principles of India's statehood, we consider it necessary to note that the Constitution of India was adopted on November 26, 1949, two years after the declaration of independence from British colonial rule. The document was officially published on January 26, 1960 and is valid considering the changes made.

The Constitution is the supreme law of the state, regulating the main directions of its activities, the mechanism (apparatus) of the state, the powers of state bodies, and the fundamental rights and freedoms of its citizens.

The Constitution of India is currently the most extensive basic law of the state in the world, published using Hindi and English, which has the highest legal force concerning the system of legislative acts of the state. According to a professor at Oxford University, J. Insert (2012), the creators of the basic law of India were able to accumulate in it the positive aspects of the international constitutional experience of countries such as the USA, UK, USSR, Canada, Australia, and many others.

1. Methods

The methodological basis of this research was an original universal dialectical method of cognition. In addition, the following scientific methods were used to fully achieve the purpose of the presented article: historical, statistical, formal-legal.

We also used the method of comparative analysis of various views on the priority of customary law in the regulation of public and state life in India and on the importance of constitutional provisions in the process of forming a sovereign, secular, and democratic Indian state, which allows identifying the qualitative features of the basic law of the state and formulating its significance at the present stage of development of society and the state in India.

2. Results

Let us consider the points of view of statesmen and leading jurists on the role and significance of the adoption of the Constitution, the formation of constitutional foundations on the process of becoming a sovereign, secular, and democratic state in India.

In this regard, we consider it necessary to investigate the well-founded position of Gabriel Foster, who notes that the adoption of the Constitution of India was not just a huge step on the historical path of the formation and development of its independent statehood. It was a total secularization of its public and state life, the formal consolidation of the legal status of the individual, and the proclamation of his/her freedom from the varna-caste system. It was incredibly significant progress of the personal system of Hindu law, the formation of an independent state, and a free society (Foster, 2007).

Supporting the importance of the basic law of the state of India, R. Shatropp pointed out that the Constitution of 1950, together with the changes and amendments of 1976, represents for India and every individual Hindu a door to integration on a global scale. It is a painful transition from traditionalism to the norms of law and legislation that considers the unconditional religious way and historical features of the state (Tharoor, 2018).

Pointing out the significance of the amendments made to the Constitution of India, we consider it appropriate to study the 42nd amendment to the basic law of the state, published in 1976, under which India was recognized as a sovereign, social, and secular democratic republic. Despite the formal establishment of the above-mentioned status of the state, the question of how secular the state can be considered in India is debatable at present. Many authors, well-known jurists, and public and state figures note the actual impossibility of recognizing India as a secular state due to the significant influence of religious norms and traditions on the regulation of an individual's life, on his/her worldview, rooted for several centuries, and the unshakable way of society as a whole.

Adhering to a similar point of view, the famous professor of the Delhi University in the field of law, V. Luthera, points out in his works that India has never been a secular state, neither before the adoption of the Constitution and amendments to it, nor after, and what is most interesting it can hardly ever become such. Religion, society, and the state in it represent one indivisible whole, in which the latter two parts repel and live according to the norms of the former, which have been permeating them for centuries, determining and directing. The fact that the adoption of the Constitution and amendments to it makes it secular is, in my opinion, reckless, showing only the strengthening of the role of the state in regulating public life and nothing more (Luthera, 1964).

Agreeing with the opinion of V. Luthera, N. Lindton, professor of constitutional law, focuses on the fact that by adopting the Constitution, it is impossible to change the state itself in an instant, the foundation of which throughout its historical development was the norms of customs and traditions. Therefore, the recognition of a secular character is mostly at least declarative, formal in nature, after all, the role of religion is perfectly understood and realized in the life of the society, state, and individual in India, regardless of whether the state establishes a certain status and order (Lindton, 1972).

A similar position is held by Western Professor D. Smith (1967), arguing that India, by its nature, cannot in principle be a secular state in the format of currently and previously existing public and state relations.

The desire of India to be recognized as a secular state contradicts in its essence not only the very historical path of Indian civilization, where religion and the norms of traditional law were of predominant importance but also the political worldview of neighboring states, which is also an important factor that cannot be ignored.

The establishment and recognition of the constitutional principles of sovereignty, democracy, and a secular state, according to R. Khorny, is the result of the assimilation of Western ideas and approaches that are unacceptable for traditional India. In no way they affect the development of its statehood: India itself is original and special, therefore Western innovations in its legislation are not able and should not affect its path and especially eradicate the original, traditional that allows its dharma to exist (Khorny, 2015).

Refuting the above arguments, P. Gajendragadkar believes that with the adoption of the Constitution of India, it acquires the shades of a secular state. This occurs not by the fact of the entry into force of the basic law of the state and amendments to it, but consistently, gradually, going through a complex long path of transformation of the religious consciousness of Hindus, recognition of the state itself, its mechanism, the possibility of democratic governance, and the consolidation of rights and freedoms in contrast to the imposed colonial control and management of England (Gajendragadkar, 1971).

Therefore, at the initial stage, there is a recognition of the state as such, awareness of its independence and freedom, a change not only in the consciousness of representatives of society but also the existence of legal consciousness. It represents a new stage in the development of statehood in India and its integration into the international community as a full-fledged sovereign, independent, and free subject.

F. Brittner, sharing this point of view, emphasizes at the same time the synthesis and absolute harmony between the constitutional foundations and the religious adherence of the Hindus. The scholar points out that the recognition of India as a free and secular state, as well as the recognition of the freedom and rights of all representatives of the varna-caste system, does not diminish the role and significance of religious dogma, which will forever remain in the heart and consciousness of absolutely every Hindu (Brittner, 1984).

However, in the process of studying the constitutional foundations and principles of the formation of a sovereign, secular, and democratic state in India, we consider it necessary to point out the importance of the political and legal views and policies of the leader of the national liberation movement, the great statesman and reformer, philosopher, and jurist Mohandas Karamchand Gandhi.

All of Gandhi's state activities determined and contributed to the liberation of India from the colonial rule of England and the formation of a free, secular, and independent democratic state. Through the unification of Hindus and Muslims, Gandhi promoted the establishment of religious tolerance, the unification of members of Hindu society, and the recognition of each of them as free and full-fledged citizens of India.

Moreover, Gandhi (1958) subjected the representatives of the religious orthodox direction to reasonable sharp criticism from rationalistic and moral-ethical grounds abandoning the role of the sacred sources of Hinduism, calling for establishing and verifying their truth and then throwing out forever everything that does not correspond to reality, the rationalistic principle and the norms of morality, paying special attention to the prescriptions that establish and support early marriages, women's inequality, suttee, the boundaries of the varna-caste system.

Thus, without abandoning the meaning and role of Hinduism, but directly interpreting its position, Gandhi (1957) denied the existing hierarchical structure of society with an inherent differentiation into varnas and castes. In his political and legal doctrine, Gandhi justifies the thesis that the varna-caste structure of Hindu society has never been a necessary natural organic part of Hinduism while drawing an interconnected and conditioned parallel between the hierarchy of the caste structure of society and the institution of «untouchability», the fight against which he recognized as the fundamental and primary function of the state.

Gandhi rightly noted that Krishna has always instructed that a real Bhakti, neither in his thoughts nor in his actions, will never allow any distinction between an ordinary dirty scavenger and a Brahman. Therefore, there is no place for the institution of untouchability in Hinduism (Gandhi, 1959).

With his views, principles, life example, and dedication, Gandhi led India to gain independence, establish equality and freedom, and consolidate basic natural and positive rights. We would like to pay special attention to the synthesis of the provisions of Hinduism and its argumentation in the political and legal concept of the leader of the national liberation movement. Gandhi managed to convey to everyone the meaning of the religious tenets of Hinduism, the belief in the possibility of acquiring freedom, both state and personal. Gandhi's methodology is his life example, way of thinking, consciousness, and sincere sacrifice in the name of India and every Hindu. His direct contribution to the adoption of the Constitution, the acquisition of independence of India, and the codification and unification of Hindu legislation is invaluable.

Highlighting the role of Gandhi in the development of Indian statehood on the principles of freedom, equality, and democracy, J. Nehru (1964: 94) noted that:

> we must always hold on to the anchor of the exact unshakable established and generally accepted objective knowledge, reality, verified by reason, and most importantly by experience, practice, which Gandhi revealed and presented to the Hindu society, giving and explaining to every Hindu, regardless of his affiliation and status (1964: 94).

The author repeatedly emphasized in his speeches that the political and legal principles formed by Gandhi, his very philosophy, permeated with the faith of a true Hindu in synthesis and rational harmony, are combined with legal education, practical skills, scientific knowledge, and empirical experience of a statesman, which in absolute meaning allow giving India and every individual Hindu freedom and independence (Husein, 1978).

3. Discussion

Despite the significant influence of religious norms and traditions on the consciousness and worldview of Hindus, the adoption of the Constitution contributed to the development of the statehood of India, the consolidation of the rights and freedoms of its citizens, and the proclamation of an independent sovereign secular state.

The religious dogma of Hinduism plays a significant role in the regulation of public and state relations in India, historically forms the way of life, hierarchical structure, norms of behavior, and much more. In our opinion, it is impossible to deny the role of religion and customary law in the establishment and formation of statehood since the above-mentioned aspect historically acts as a structural element of the consciousness, worldview of every Hindu, and an integral part of society and the state.

The provisions of Hinduism and the norms of customary law have proved the ability and effectiveness of social and state regulation for a long time and have shown the possibility of harmonious coexistence with the norms of positive law.

We believe that the adoption of the Constitution and the codification of Hindu law does not detract from the role and importance of Hinduism and customary law but expands the subjective rights, obligations, and opportunities of Hindus, giving them freedom and equality in an independent sovereign state.

Conclusion

We analyzed the significance of Mohandas Karamchand Gandhi, the leader of the national liberation movement of India, in gaining independence from the colonial rule of England, and the subsequent adoption of the

Constitution, reflecting his political and legal views, and codification and unification of Hindu legislation. We consider it necessary to note that, when studying the constitutional foundations and principles of the formation of India, Part 3 of the Indian Constitution is of considerable interest. It is devoted to the fundamental rights of Indian citizens, equal employment opportunities, as well as protection of some subjective rights concerning freedom of speech outside of religion.

We consider it relevant to note the prohibition of discrimination based on caste, religion, race, and gender, provided for in article 15 of the Constitution of India. When establishing the prohibition of discrimination, the legislator, first of all, had in mind representatives of the untouchable caste class, restrictions to which were distributed both on a caste and religious traditional basis, and were carried out on a racial basis.

Investigating the issue of the institution of untouchability in the constitutional foundations of India, it is necessary to refer to the provisions of article 17 of the Constitution. It includes the declarative formal abolition of the existing untouchability and its practice in any manifestations and the actual prohibition of the use and indication of any legal restrictions based on untouchability, which in turn were recognized and sanctioned by the state as crimes strictly punishable by law (Sen, 1976).

The above-mentioned articles of the basic law of India, as well as the codified normative legal acts supplementing them, and judicial practice have had a significant impact on the formation and development of the personal law branch, creating the constitutional foundations and principles for the reform of personal legal systems.

In this connection, the norms of personal law had to comply with generally accepted public order, morality, norms of morality and universal public health (Harrow, 2005), as well as, accordingly, other provisions of Part 3 of the Indian Constitution, which also provided an opportunity to make any innovations and changes by the legislative method.

This possibility was provided for by the provisions of article 246 of the Constitution, in list 3 of annex 7 of which the issues of regulating the institution of marriage, divorce, probate, minors, the united family, and the possibility of dividing it, that is, listing those areas of public relations that were regulated by the norms of personal law, were, in turn, referred to the general joint competence of the union and the states.

Thus, in the process of studying and analyzing the fundamental principles of the formation and development of a sovereign, secular, and democratic state in India, we concluded that political and legal views, their direct active implementation in Gandhi's state activities, in particular, the reformation of the caste system in public the structure of India, the statement about the unequal and unfair position of the untouchable caste, the need to provide

equal rights, freedoms, and opportunities for all members of society and the state, the establishment of gender equality, and the prohibition of early marriage were the prerequisites for the adoption of the 1950 Constitution.

The adoption of the basic law of the state and several above-mentioned amendments to it determines a new historical stage in the formation of an independent sovereign democratic state of India. Despite the criticism of several provisions of the Constitution, justified by the prevailing importance of traditions and customs in the regulation of public and state life, the actual impossibility of implementing constitutional principles in the real life of India, we believe that the acquisition of political independence and the consolidation of democratic principles is a significant progressive step both for the state itself and for its citizens.

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The effect of individual differences on the cognitive processes of a witness during interrogation

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Abstract

The article presents an analysis of the different existing conceptions of interrogation and, at the same time, indicates the ambiguity of approaches to the examination of witnesses according to the type of crime, the body conducting the investigation and the tactics used. The study explores the effect of individual differences on the cognitive processes of witnesses in a simulated interrogation. The authors conducted a survey using the *Eysenck Personality Inventory* (EPI) method. The groups of witnesses are divided not by the types of temperament per *se* but according to the set of temperamental characteristics (introversion and extraversion; neuroticism) and controlling the sincerity of the interviewees during the test, which significantly improves the reliability of the conclusions (Eysenck Personality Inventory). Finally, the study experimentally demonstrates that the speed of the mental reactions of the witnesses is not uniform and varies according to their temperamental characteristics. This gives reason to affirm the need to adapt to different groups of witnesses before and during their interrogation, giving an account of the peculiarities of their perception and processing of information.

Keywords: interrogation; witness; personality; individuality; temperament.

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El efecto de las diferencias individuales en los procesos cognitivos de un testigo durante el interrogatorio

Resumen

El artículo presenta un análisis de las diferentes concepciones existentes del interrogatorio y, al mismo tiempo, indica la ambigüedad de los enfoques del interrogatorio de testigos según el tipo de delito, el organismo que realiza la investigación y las tácticas utilizadas. El estudio explora el efecto de las diferencias individuales en los procesos cognitivos de los testigos en un interrogatorio simulado. Los autores realizaron una encuesta utilizando el método *Eysenck Personality Inventory* (EPI). Los grupos de testigos se dividen no por los tipos de temperamento *per se* sino en función del conjunto de características temperamentales (introversión y extraversión; neuroticismo) y controlando la sinceridad de los entrevistados durante la prueba, lo que mejora significativamente la fiabilidad de las conclusiones (Inventario de Personalidad de Eysenck). Finalmente, el estudio demuestra experimentalmente que la velocidad de las reacciones mentales de los testigos no es uniforme y varía según sus características temperamentales. Esto da razón para afirmar la necesidad de adaptarse a diferentes grupos de testigos antes y durante su interrogatorio, dando cuenta de las peculiaridades de su percepción y procesamiento de la información.

Palabras clave: interrogatorio; testigo; personalidad; individualidad; temperamento.

Introduction

The existing and applied systems of methods for crime witness interrogation show insufficient effectiveness in exposing lies and preventing self-incrimination and perjury. This situation is due to the widespread dissemination of information about the means and methods of police work and the wide spread of practical psychological techniques that allow adjusting one's mental profile before and after committing a crime. In this situation, the arsenal of police interrogation tools needs to be strengthened by new techniques not directly associated with an open confrontation with a witness or a suspect (Horák *et al.*, 2021; Soldz *et al.*, 2017).

An increased interest in the psychological foundations of interrogation is observed in recent years. Ultimately, this interest is manifested in the concept of mediated interrogation that does not directly address the core issues for which it is conducted. An essential aspect of this process is the cognitive abilities and emotional state of the interrogated person. All of the above has a significant impact on the interrogation program, which leads to

its practical individualization (Morgan *et al.,* 2020; Sambrano *et al.*, 2021; Vrij *et al.*, 2019).

The inclusivity of interrogation methods also manifests in choosing the interrogation setting designed to obtain a confession or to exclude self-incrimination. These methods are quite diverse, but the practice has revealed their usefulness in creating a comfortable psychological environment and establishing and maintaining psychological contact with the witness, as well as ample opportunities to apply the emotional components of the interrogation and the generally lower number of false testimonies given (Swanner *et al.,* 2016).

It can be stated that the conducted research on the course of mental processes in the minds of the interrogated primarily focuses on assessing their emotional state. On this basis, criteria for the evaluation of the mental state of the interrogated, their prevailing psychological characteristics, fears, and directions for establishing cooperation are identified.

Analysis of literature on the studied problem points to efficient research on the feelings of interrogated persons as a basis for the construction of methods for examining their mental processes. The "feeling-as-information" theory introduced into the scientific arsenal explores changes in a person's perception of information depending on their current emotional state (anger, sadness, happiness) and the resulting erroneous data, false confessions of guilt, and other untruthful information. It is found that different emotional states can produce similar emotions and accounting for this pattern allows supplementing the interrogation program for further precise correction and adjustment to the witness (Sambrano *et al.,* 2021).

The situation of interrogation implies the objective of obtaining credible testimony from a witness to provide the court with a basis for the allegations of the prosecution or defense (Rudenko and Senchikova, 2021).

Our study reflects the individual characteristics of witnesses as mass participants in investigations. We chose to differentiate witnesses by their temperament since it is a fundamental characteristic of any personality. Knowledge of the patterns of emotional and cognitive processes serves as a prerequisite for forensic and psychological analysis of a witness' personality and has an impact on the processes of testimony formation and the identification of deliberately false testimony.

The goals of the study lie in the identification and analysis of individual differences in witnesses' cognitive processes in the situation of a simulated interrogation. Determining such individual differences is required for more rational planning of witness interrogation.

The methods used in the study include the analysis and synthesis of scientific information, summarization and classification of factual data,

situation modeling, comparison method, and testing (Eysenck Personality Inventory determining the types of temperament; Schulte tables studying the characteristics of attention).

The obtained data are processed using the methods of primary and secondary mathematical statistics, as well as the mathematical method of data interpretation. The psychological foundations of investigative tactics are considered as their starting points serving as a means of determining the tactical techniques. Works on general and legal psychology are analyzed (Antonian *et al.,* 1996; Enikeev, 1996; Granovskaia, 1997; Ratinov, 1967; Vedernikov, 1968).

Interrogation requires the investigator to have a set of qualities such as professional culture and ethics, knowledge and understanding of human psychology, and skilled psychological influence, as well as the mastery of tactical and criminalistic techniques. An interrogation involves obtaining information regarding the factual background of the event under investigation from a witness. The purpose of an interrogation is to obtain a testimony that is the most complete and objectively reflects reality.

Essentially, interrogation is the most "psychologized investigative action" (Antonian *et al.,* 1996) associated with the personal characteristics of the investigator and the witness, as well as the individual psychological characteristics of their interaction. Each person has a unique reaction to different arguments, their own pace and rhythm of conversation, and without accounting for the individual characteristics of a person, it will be difficult for an investigator to establish contact with a stranger. This obliges an investigator to have mastery of the means of interaction relying on the knowledge of the mental processes of an individual.

Thorough preparation for an interrogation implies gathering information on the personality of a witness to determine the model of their actions and behavior during interrogation. Thus, from the very beginning of studying the personality of the interrogated, an investigator must focus their professional attention on the typology of their personality, as well as on the individual properties of the psyche that determine the dynamics of a person's mental activity (Kashapov and Serafimovich, 2020). Here, emphasis is put on the behavioral stereotypes manifesting in the speed of reaction to stimuli and the subsequent correction of behavior prior to a new reaction to a stimulus.

The commonly used psycho-typological methods are based on the classic psychological division of people into extroverts and introverts. The criminalistic study of personality began with typological studies and several authors argue that it is rational to study the temperament of a person who committed a crime (Krivoshein, 2001).

Considering the typology of temperament, temperament meaningfully incorporates not only personal and behavioral aspects, but also the cognitive processes of an individual that help to work with them. The content side of this work is designing a plan of conversation with a witness accounting for the risks that arise for each type of temperament.

It should be noted that the dynamic side of interrogation is essentially associated with temperament, as well as with the cognitive processes of the person being interrogated (e.g., attention and memory). If an investigator wants to achieve success, they must plan the pace, rhythm, duration, and level of intensity of the interrogation considering the individual mental characteristics of the interrogated.

The study and identification of the types of the temperament of the interrogated allow determining the specifics of their cognitive sphere and emotional behavior during interrogation (Vilenskaya, 2020) which, in turn, allows individualizing the interrogation tactic. An investigator's use of psychological knowledge on the individual mental processes and specific characteristics of a person makes it possible to determine the set of tactical techniques to be used during interrogation in advance.

Physician Claudius Galen proposed the first typology of temperament more than two thousand years ago. The four types identified by him are currently considered as the main ones – sanguine, choleric, phlegmatic, and melancholic. While Galen associated temperament with the patterns of metabolism in the body, I.P. Pavlov indicated the contingency of temperament on the type of nervous system.

The scientist revealed the patterns of higher nervous activity and found them to be the basis of temperament along with individual characteristics of conditioned reflex activity. Pavlov believed that the characteristics of nervous processes determine the type of nervous activity, which, in turn, is closely associated with the type of temperament (strength, weakness, equilibrium, and mobility of the nervous system) (Averin, 1999). Experiments in practical psychology have supported the legitimacy of Pavlov's approach and led to it becoming a basis for further detalization.

The additional properties of the nervous system (dynamism and lability) were also substantiated which provided for the integration of temperament into the structure of personality. Temperament shapes the formal and dynamic, process aspect of the human psyche and answers the "how" question. Temperament manifests in all spheres of human mental activity: the emotional, cognitive, and volitional. Thus, temperament is a biological foundation for personality based on the characteristics of the nervous system and associated with the structure of a person's body (constitution) and metabolism (Balin and Il'ina, 2020).

Although research utilizes different criteria for distinguishing between the types of temperament, the typology retains its four-member structure.

A sanguine person (strong, balanced, agile) is emotionally quick, easily adapts to the changing life conditions, their main desire is a thirst for pleasure. In a complex unexpected situation, they hold themselves together without losing emotional tonus. This type has a high resistance to the difficulties of life, they are sociable and mobile, easily converge with new people, and are not characterized by consistency in interaction. They can quickly lose interest in an activity if it ceases to be entertaining.

This type of witness has a strong balanced nervous system, does not react to weak influences, is not vulnerable, and has balanced volitional and communicative qualities. They are active in their activity when interested and become bored when uninterested.

A choleric person (strong, unbalanced) is hardworking and ready to react quickly, but it is difficult for them to "get along" with themselves. The choleric nervous system is characterized by a predominance of excitation over inhibition. Such a person has a lot of vitality but not enough self-control, they can be fiery and intemperate. When they proceed with a new activity, they devote themselves to it passionately and with full power, but the strength and energy last for a short time, power comes to an end, and they end up in a decadent mood.

The nervous system of such witnesses is unbalanced, and cyclical moods dominate. In their interactions with people, such a person is impatient, shouty, aggressive, and short-tempered, which makes testimonies excessively emotional.

A phlegmatic person (strong, balanced, inert) is calm, balanced, has an increased capacity for work, "internally" leveled, but is "stick-in-the-mud", it is very difficult for them to abandon the established attitudes and stereotypes, enter a new job, get out of the usual pace.

Such a witness firmly remembers everything they perceive but has difficulties if it is necessary to change the daily routine, work, and friends, it is very hard for them to adapt to new conditions of life. They can resist prolonged stimulation for a long time.

A melancholic person (weak) resists the influence of strong stimuli poorly, therefore, can often be passive and inhibited. Strong stressors and stimuli can lead to disrupted behavior.

This type of witness is fearful, restless in behavioral acts, anxious, their stamina is weak. A minor occasion can bring them to tears, they are insecure, timid, lack energy, and have little social interaction.

Aside from the characteristics of temperament, important aspects of personality are cognitive processes and emotional qualities that affect the activity and behavior of individuals in social and legal situations, especially in situations of interrogation.

In an interrogation, a witness is the bearer of evidentiary information. Obtaining this information is, however, complicated by the psychological characteristics of a witness. Only the knowledge of these specifics can ensure the effectiveness of investigative action by obtaining complete and objectively new data.

During witness interrogation, it is necessary to pay attention to the factors that affect the formation of personal information (e.g., attention span, concentration, stability of attention). This work is often overlooked by young investigators, but it contributes to the fastest diagnosis of the individual characteristics of a witness and allows for the adjustment of the issues under discussion.

Attention is often defined as the focus and concentration of a person's consciousness on a particular object. The object of attention can be anything: the questions asked by the investigator, actions, thoughts, feelings, and even the inner world of the witness.

Attention is also understood as the identification or selection of relevant and personally significant signals, orientation, and concentration of consciousness on certain objects of activity with distraction from the rest. Just as memory, attention belongs to "cross-cutting" mental processes as it is present at all levels of the mental organization (Enikeev, 1996).

At the same time, attention is a cognitive process that ensures the organization of the incoming information based on the priority of objectives faced by the subject.

Some researchers tend to equate attention with the orienting activity (Gippenreiter, 2001; Granovskaia, 1997). Others (Enikeev, 1996; Leonov, 2018; Prohorov, 2020) consider attention to be an independent form of mental activity, specifically a psychological form of control.

An objectively immeasurable quantitative category is the concentration of attention, that is, the degree of its focus. Concentrated attention is directed to one object (type of activity) and does not extend to others. Witnesses with a high degree of concentration are the most preferable since focusing on a single object for a long period of time contributes to remembering the details of an event or phenomenon.

It is worth noting that the concentration (focus) of attention on a certain object entails distraction from everything beside it, as concentration is a prerequisite for comprehending and capturing the information coming into the brain making the reflection clear and distinct.

Focused attention is characterized by high intensity, which is necessary to perform important activities. Among witnesses, good characteristics of concentration are demonstrated by the phlegmatic and sanguine types.

Although attention presents a cognitive process providing the systematization of the incoming information depending on the priority of the objectives faced by a person, it is not an independent mental function. It cannot be identified in a witness as it presents a special form of human mental activity incorporated in all types of mental processes (memory, imagination, representation). At the same time, attention is a vital condition for high-quality and long-term activity, such as an interrogation.

The supports the need to have knowledge of and focus one's professional attention on the cognitive process of attention, especially regarding the effect of temperament on a person's attention in the course of witness interrogation.

For example, when interrogating a melancholic, it is necessary to account for the individual properties of their nervous system. They may be frightened by new surroundings and easily fatigued, they have little capacity for work, due to which their attention concentration decreases. Here, concentration becomes one of the basic properties of attention and determines the level of performance, which is especially important in an interrogation due to the established time limit.

To achieve the goal of the study, psychological testing of the group of subjects was conducted before and after the simulated interrogation situation. The sample of the study comprises 30 male and female subjects at the average age of 21.6 years old and ranging from 20 to 45 years old.

Situational modeling allowed assessing the subjects' attention span before the simulated "witness interrogation situation" and after it. In turn, this approach provided the opportunity to compare and contrast the characteristics of the subjects' cognitive processes with their temperamental characteristics.

The simulated interrogation situation lasted no longer than three hours for each study participant.

1. Methods

The psychodiagnostic assessment of the subjects using the Eysenck Personality Inventory (EPI) provides data on the degree of manifestation of temperamental characteristics (extraversion and neuroticism) and sincerity (the lie scale) in them, as well as their overall type of temperament. These results are presented in Table 1 (Mironova, 2005).

Table 1. Results of Eysenck Personality Inventory*

Scale	Type of temperament							
	melancholic		choleric		phlegmatic		sanguine	
	Mean	SD	Mean	SD	Mean	SD	Mean	SD
Extraversion/ introversion	10.5	0.57	16.4	2.5	10.6	1.5	15	2
Neuroticism	17	1.7	17.4	2.7	10	1	8.8	2.1
Sincerity	3.5	0.5	4	1.4	3.3	0.5	4.4	1.2

* compiled by the authors

The data in Table 1 show that the "melancholic" and "phlegmatic" subjects were sincere when tested, while the "choleric" and "sanguine" groups show an excess on the sincerity scale, that is, the subjects could be orientated toward social approval and social desirability when answering the test questions (Figure 2).

After that, the subjects were divided into groups according to the type of temperament using Eysenk's "circle".

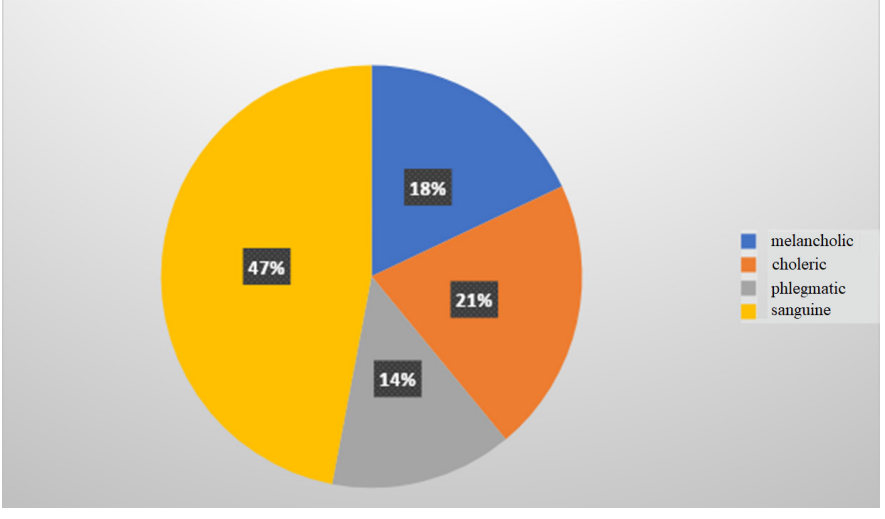

Figure 1. Distribution of the types of temperament (in %)*

*Compiled by the authors

Figure 1 demonstrates that the distribution of the sample by the types of temperament is uneven: choleric people make up 21% of the sample (high extraversion and neuroticism), the largest group is the sanguine, 47% of the sample (high extroversion and low neuroticism), 15% of subjects are phlegmatic (high introversion and low neuroticism), and 18% are melancholic (high introversion and high neuroticism) (Figure 2).

Here we have to note that this distribution by the types of temperament cannot be considered precise as the distinction between the low and high scores does not take average scores into account. Thus, the difference in just one point can lead to assignment to different types of temperament. In this regard, we can once again note that it is more accurate to consider the expression of temperamental characteristics as a characteristic of temperament and not the type of temperament per se.

In addition, people with a strongly pronounced type of temperament are rarely found, most personalities are characterized by an intricate intertwining of temperament types. In unusual situations, such as an interrogation, the characteristic traits of one type of temperament manifest fully and vividly, for example, the choleric tendency to violent and affective response to a stressful situation.

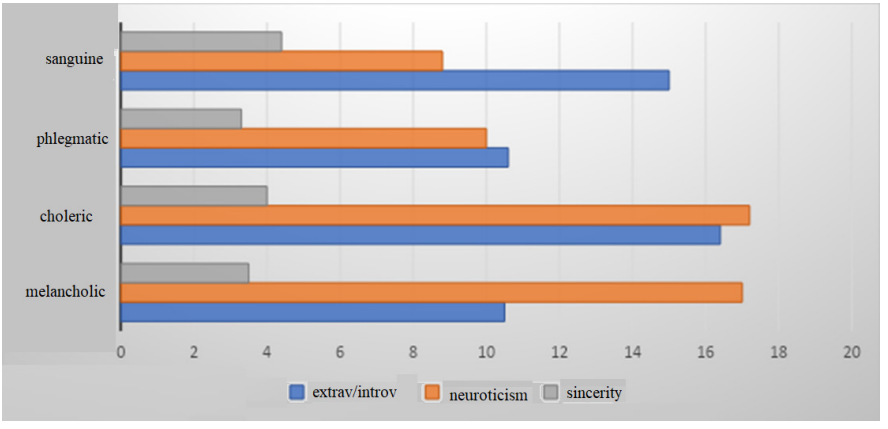

Figure 2. Distribution of the types of temperament (scales)*

* Compiled by the authors

Further on, we deployed Schulte tables to assess the witnesses' focus of attention. The tables are used to test people of various age groups to determine the subjects' information perception rate depending on the type

of their temperament before and after the interrogation situation. Schulte tables are square tables of 5 columns and 5 rows filled with numbers from 1 to 25 placed in a random order, the study participants were presented with five Schulte tables in two sessions (before and after the interrogation).

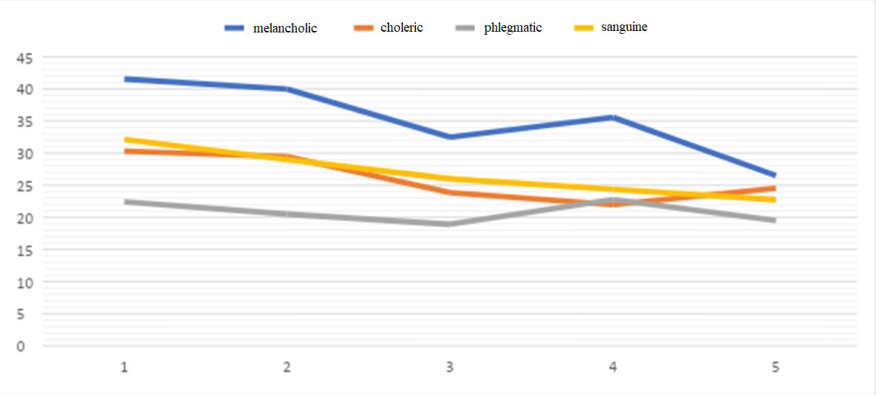

Figure 3. Distribution based on the Schulte Table results (pre-interrogation)*

* Compiled by the authors

The results of the study (see Figures 3 and 4) show that the group of melancholics is more prone to lower attention focus, poor ability to switch attention, and low stability of attention (before and after the situation of interrogation). Naturally, this will make it significantly more difficult to establish contact and dialogue in an interrogation situation with a witness of a melancholic temperament type (Vedernikov, 1968).

Table 2. Schulte Table results (pre-interrogation)*

	Schulte Table (pre-interrogation), in seconds				
	1	2	3	4	5
melancholic	41.54	39.99	32.47	35.58	26.5
choleric	30.318	29.44	23.854	21.964	24.52
phlegmatic	22.416	20.51	18.916	22.76	19.53
sanguine	32.140	29.005	25.99	24.345	22.74

* compiled by the authors

The phlegmatic group demonstrates stable results both pre- and post-interrogation: the distribution and switchability of attention is less mobile, even though this type is "stick-in-the-mud" and needs a longer adaptation to the situation of interrogation due to the long period of time required for involvement in the dialogue.

In the most populous group of the sample, the sanguine and choleric subjects, the distribution, switchability, and attention and mobile. When interrogating choleric and sanguine witnesses, an investigator can proceed from knowing that the pace, rhythm, and intensity of the interrogation may be high, but not so long with a choleric, the introductory stage of the interrogation and the long establishment of contact may be reduced to a minimum, and the transition from one topic to another may be performed without lengthy preliminary preparation.

Table 3. Schulte Table results (post-interrogation)*

	Schulte Table (post-interrogation), in seconds				
	1	2	3	4	5
melancholic	26.38	27.375	24.8575	28.105	28.97
choleric	22.806	22.414	21.146	23.458	21.42
phlegmatic	18.06	18.457	17.73	20.47	19.83
sanguine	22.897	21.942	22.074	22.25	21.56

* compiled by the authors

Thus, determining the temperament of the person under interrogation is important when considering how the investigator needs to structure their interrogation tactics. Determining the temperament and attention concentration via observation, conversation, and familiarization with the open profile in social media allows obtaining necessary and valuable information on the psychological state of the person involved in a criminal situation, as well as their individual characteristics now. This constitutes the psychological essence of witness interrogation (Ratinov, 1967).

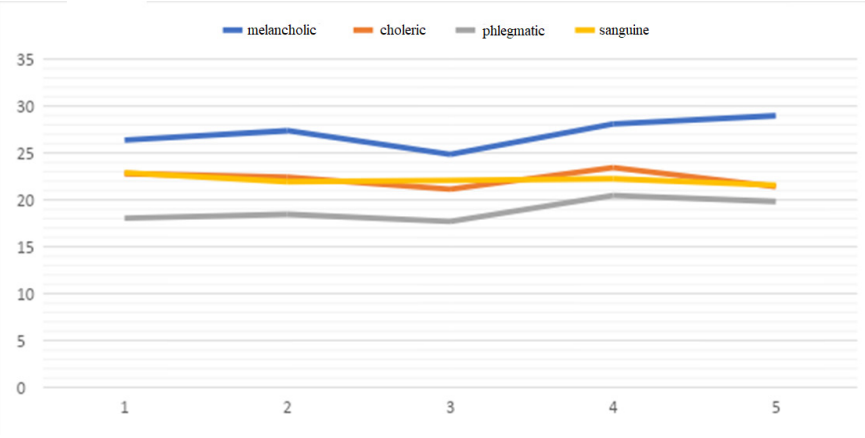

Figure 4. Distribution based on the Schulte Table results (post-interrogation)*

* Compiled by the authors

2. Results

Thus, when questioning choleric and sanguine people (a strong and mobile type of nervous system), an investigator can proceed from knowing that the pace, rhythm, and intensity of the interrogation may be high, but not so long with a choleric, the introductory stage of the interrogation and the long establishment of contact may be reduced to a minimum, and the transition from one topic to another may be performed without lengthy preliminary preparation.

In the situation of interrogation with this type of witness, the focus on social desirability of their actions induces sanguine and, to a greater extent, choleric people to give false testimony without any intentional motivation behind the reported information. It is necessary to account for this fact when preparing for an interrogation, develop a list of test questions, and prepare evidence for presentation.

When questioning phlegmatic people (a strong and stable but less mobile type of nervous system), it should be borne in mind that this type is "stick-in-the-mud" and needs a longer adaptation to the situation of interrogation due to the long period of time required for involvement in the dialogue. Therefore, the dynamics of the interrogation are characterized by a large introductory part and the stage of establishing contact and a slow transition from one episode to another, the pace of the conversation is relatively slow.

Convinced of their mission as a witness, a phlegmatic person is very valuable because of their accuracy of perception and ability to engage in questioning for long periods of time without cognitive decline.

When interrogating melancholic witnesses (a weak type of nervous system), it is necessary to account for their tendency to intense deceleration in difficult life situations (such as an interrogation). This type of witness requires a special approach, as high levels of tension can lead to lethargy, apathy, and anxiety and make it difficult to establish contact and dialogue in an interrogation (Vedernikov, 1968).

Therefore, the main task of an investigator is to establish contact with them on a topic close to the subject of the interrogation. This allows a relatively smooth transition to communication without crossing the subjective level of stress of such a witness beyond which they become objectively unable to give accurate and truthful testimony due to a significant decrease in cognitive abilities.

3. Discussion

Our findings regarding the patterns of cognitive ability in people of different temperaments suggest the need for allocating interrogation techniques suitable for each temperament. This approach is consistent with the results obtained in a different work on the state of persons undergoing interrogation.

It is found that it is most advantageous for the interrogator not to be overzealous in obtaining testimony and provide the person under interrogation with feedback in which hostile tactics toward them are minimized (Sambrano *et al.,* 2021).

It should be noted that the results of our study are not universal as they cannot be applied to persons with mental illnesses or suffering from memory or cognitive disorders. In this regard, it is worth noting the research that determines the limits of interrogation techniques traditionally used in police practice and obtaining evidence (Manzanero and Palomo, 2020). In addition, such traditional interrogation techniques should be used with caution in the interrogation of persons possessing knowledge of the tactics of operative investigative measures (Khalymon *et al*., 2020).

Ultimately, the interrogator creates for themselves an information model of the prognosed object (Kaluzhina *et al.,* 2019), in our case, the witness, and implements the pre-planned program of obtaining testimony from them. Therefore, a psychological approach to the analysis of personality, the temperament, and, accordingly, their effect on the cognitive abilities of a witness serves as a basic criterion for a positive outcome of witness interrogation.

The results of this work should be used in conjunction with other techniques for both planning and conducting the interrogation. The most relevant additional interview preparation techniques should include the analysis of the non-verbal reactions of the interrogated based on videos from social media or exploratory interviewing. It should also be noted that additional tools ensuring successful interrogation have their own limitations on their effectiveness (Denault *et al.,* 2020).

Conclusion

It is found that a specific structure of the interrogation plan emerges in regard to each type of temperament. This structure is determined by the speed of mental reactions and the opportunity to conduct long interrogations without cognitive decline on the part of witnesses.

The study demonstrates how the temperament and cognitive abilities of witnesses influence the effectiveness of interrogation techniques before and after the interrogation. The time interval is shown to largely change the effectiveness of perception of the posed questions depending on the temperament of the witness.

The underlying features of this state of affairs lie in the level of neuroticism and the manifestation of introversion and extraversion. Therefore, at the initial stage of the interrogation, the tactics of gathering information and assisting in recalling what has been forgotten should prevail over attempts to obtain the information sought from the witness. Depending on the witness's temperament, the tactics for their interrogation are selected accounting for the patterns of their cognitive abilities.

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The current state of copyright and intellectual property in the IT field

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Abstract

Fast improvement of the IT field requires relevant safety of intellectual assets rights. The legal protection of laptop applications, software programs and foreign legal practices is a contentious issue. With the rapid development of the IT sector within the international context, the issues of copyright safety, patenting and non-disclosure of personal data have gained urgency. The research methodology involved the use of methods of analysis and synthesis, logical and system - structural analysis, control methods, structural and functional analysis in combination with the method of case study and the method of content analysis. The article comprehensively analyses the modern perspective of intellectual belongings proper and copyright in IT outsourcing. The scope of unconventional challenges in the sphere of copyright safety inside the area of IT sphere are exemplified using the case of Ukraine. The case addresses opportunities to enhance the regulatory framework for copyright safety of experts engaged in IT outsourcing. It is stressed that the existing legal procedures and methods are slower in responding to changes in the field of IT outsourcing than the world's quickest trends in this sphere.

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El estado actual de los derechos de autor y la propiedad intelectual en el campo de las tecnologías de la información

Resumen

Con el desarrollo del sector de las tecnologías de la información TI en el contexto internacional, las cuestiones de la seguridad de los derechos de autor, las patentes y la no divulgación de datos personales han ganado urgencia. La metodología de investigación implicó el uso de métodos de análisis y síntesis, análisis lógico y estructural de sistemas, métodos de control, análisis estructural y funcional en combinación con el método de estudio de caso y el análisis de contenido. El artículo analiza exhaustivamente la perspectiva moderna de la propiedad intelectual y los derechos de autor en la subcontratación de TI. El alcance de los desafíos no convencionales en el ámbito de la seguridad de los derechos de autor dentro del ámbito de la esfera de las tecnologías de la información se ejemplifica utilizando el caso de Ucrania. Además, el trabajo aborda oportunidades para mejorar el marco regulatorio para la seguridad de los derechos de autor de los expertos involucrados en la subcontratación de TI. A modo de conclusión se destaca que los procedimientos y métodos legales existentes responden más lentamente a los cambios en el campo de la subcontratación de TI que las tendencias más rápidas del mundo en esta esfera.

Palabras Clave: outsourcing de TI; protección del derecho de autor; mercado de TI, servicios de TI; propiedad intelectual.

Introduction

An important aspect in the IT industry is the transfer of intellectual property rights from the developer to the purchaser. Within the framework of IT, highbrow assets present a relevant issue to be highlighted. With the speedy improvement of the IT sector on the global scale, we encounter, on the one hand, a big call for offerings within the subject of IT outsourcing, and on the other hand, increasingly unresolved issues associated with copyright safety in this sphere.

The huge economic losses of British Airways in May 2017 due to mistakes made by the IT Department caused many CEOs to rethink their attitude to digital technology in their companies. More than 1,500 flights were cancelled for two days. The problems were brought by IT services and British Airways' efforts to reduce expenditures by following the advice of outsourced Indian IT firm Tata Consultancy Services.

The experienced IT outsourcing businesses usually are expecting the results of positive enterprise decisions and conduct thorough audits. Given the fast growth of the IT outsourcing market, every other urgent issue nowadays is the problem of copyright protection.

The first computer systems and prototypes of computers appeared in the middle of the 20th century, and there were so few that the applications were customized. There was no point in copying them and no need to protect them by copyright. However, overtime statistics data generation has come to be an indispensible part of everyday life, the difficulty of protecting the rights to laptop programs and copyrighted content material came to the foreground.

A computer program is protected by copyright as a literary work within the meaning of Article 2 of the Berne Convention for the Protection of Literary and Artistic Works. In contrast to patent law, copyright in a work has no territorial regulations and applies in all countries which signed the Berne convention without any formalities and has the longest time period of criminal safety. Second, formally a PC software is a textual content written by programmers and s such it is like a literary work.

There are numerous options for the safety of a laptop software, and the choice relies upon the scope of its use and the functions of protection. As an instance, with regards to selling software, general regulations stipulate that the source code of a PC program is included as a copyright item as opposed to illegal copying. But if the device that operates on the premise of authentic software program is marketed, it will be more suitable to gain a patent for the invention. In America, it is expedient to guard a laptop application as an invention if it is a part of an object in the world wide web. Provided that each of the standards for obtaining a patent is met, the principle, method, algorithm of the software program may be submitted for registration. The principal advantage of patenting is that it is not the expression of this system in a reliable programming language, but its realistic implementation and the underlying idea.

Ukraine is fighting against the problem of copyright protection for software products. It should be noted that in 2019 Ukraine took a leading position in the ranking of nations that are most likely to violate the rights to intellectual assets. As in the case of Microsoft, there also are almost 85% of products manufactured with the help thereof and used by Ukrainian authorities in 2018.

The findings of the studies addressing IT outsourcing development problems in Ukraine are covered in the works of domestic researchers: Chizhov (2016), Koval (2019), Yaremchuk and Kolomiets (2015), etc. The complexity of IT packages and software for the protection of intellectual property and copyright to enhance the applicable countrywide mechanism, the relevant advice for Ukraine's integration strategy are the fundamental principles for the implementation of European integration intentions of Ukraine. The fast improvement of the sphere requires genuine interest to the accurate protection of intellectual assets rights to those products. The issue of global protection of computer programs, software and related products remains topical (Data Unit City, 2019).

Chen *et al.* (2017) are convinced that the ever-increasing complexity of the IT tasks performed by an outsourcing company should be associated with a more comprehensive exchange of intellectual property rights with suppliers. Outsourcing providers are more likely to gain know-how redistribution rights if they conclude agreements for super innovative software development projects Another group of scholars, Hafidi *et al.* (2017), believe that the most important thing in the provision of services is the correctness of drafting contractor's agreements, copyright issues are not relevant enough for them.

According to Ramasubbu and Kemerer (2021), for modern IT outsourcing companies, violation of established standards in the development and subsequent maintenance of corporate systems causes information asymmetry between customers and suppliers. Conversely, balanced manipulation, i. e. periodic adjustment of outsourcing assignment management configurations facilitates mitigation of statistics asymmetry shortcomings. Mazzola *et al.* (2018) emphasize that the challenges associated with technical problems in the later stages of the innovation process are positively related to the growing importance of copyright protection. Traditional content of IT structures is usually no longer associated with a big role of copyright protection. Kotlarsky *et al.* (2018) emphasize the pace of technology changes, thus affecting society. This results in new ways of handling the relationships with suppliers and a deeper understanding of a variety of things. The researcher raises, but does not resolve, the issue of copyright in the sphere of information technology. In their work, Hergueux and Jemielniak (2019) emphasize that in the public sector (including the judiciary and academia), specialists are even more tolerant of online copyright infringement than those in the private sector. Scholars noted the consequences of the copyright reform debate for the country at present, but do not answer all questions. We hold that this subject matter is given sufficient attention in the scholarly publications.

The objective of this review is to address in more detail the challenges of copyright and IT outsourcing, involving interview techniques for managers

of IT companies, attempting to identify recommendations for enhancing regulatory protection of copyright inside the area of IT on the example of Ukraine.

Of course, each creator or rightful owner desires to guard their copyright from infringement to the maximum feasible extent. However, this isn't so easy to do within the Ukrainian context, as the mechanisms for protective and preventing piracy in Ukraine are far from being perfect. Similar to the sale and replication of counterfeit software program, the distribution of software program merchandise over the net is tremendous these days, entailing serious problems in resolving the copyright infringements. The highest court of intellectual belongings is presently starting its operation in Ukraine. It has no longer yet furnished enough case-law for scientific analysis. However, in any case, the life of a specialized court docket in this area is a tremendous and serious step for Ukraine. This demonstrates the relevance of the safety of intellectual property rights, along with the subject of IT (therefore, it is suggested in the article to take a closer look at assessing the case of Ukraine).

1. Methods and Materials

The study method is concerned with the usage of a number of research tools in a logical succession.

The research method draws on the premise of a conceptual evaluation of the issues covered in the article. This allowed figuring out the functionality of IT services and analyzing them on the domestic and global markets. This technique received primary importance with the help of applying the relevant state-of-the-art scientific methods, In particular: analysis and synthesis, generalization, logical and well-established gadget evaluation, management methods, experimental assessment and others were used. Structural and focused, combined with the case study technique (which is a specific author's approach) was used within the framework of observing Ukraine's experience of IT outsourcing and IT offerings as a separate case in the international context of analyzing this issue. The method of content material analysis was applied while considering the criminal offences.

The next level of the research technique was the use of qualitative sociological strategies and quantitative techniques of statistical facts evaluation, collection of empirical information in order to characterize the problematic scenario within the field of copyright safety in IT outsourcing.

Strategies of high-quality processing records (records of IT professionals and the services they provide, special classification methods, differentiation of issues in the field of copyright protection) were completely grounded on certain characteristics of the IT sphere in the case of Ukraine.

The author made ample use of empirical study method that allowed obtaining scientific facts in the IT outsourcing commentary route; analysis of the home and global market; experiment and forecasting of the IT services growth, awareness of specialists as regards copyright protection. Qualitative methodology of sociological surveys using focused in-depth interviews was used. This method allowed obtaining a wide range of opinions to problematize issues related to the research topic. Focused in-depth interviews resulted in transcripts of 10 in-depth interviews.

This method involved individual meetings with representatives of certain target groups (namely: medium-level managers of companies that provide services in the field of IT outsourcing — heads of departments, divisions, units) to study their attitudes to current issues of copyright protection in Ukraine in the field of IT. This interview was conducted using open-ended questions and was not clearly structured. At the same time, it allowed to reveal the deep attitude of the target audience to the problematic issues, to hear real thoughts, ideas, views of the respondents.

The procedure for arranging and conducting an in-depth interview included the following stages: designing an in-depth interview plan for each of the identified target groups; the process of planning and preparing for the interview; organizing and conducting interviews; processing and analysis of transcripts; preparation of the report.

The main criteria for selecting respondents for in-depth interviews were as follows: 1) belonging to one of the target groups; 2) the ability to provide quality and reliable information on problematic issues of copyright protection in the field of IT outsourcing in Ukraine (based on the results of a previous interview); 3) maintaining the balance of the geographical sample in the selection of participants — the emphasis was on the cities of Ukraine with a population of over one million.

The guiding questions were used while conducting the interviews, including open-ended questions, techniques that helped to reduce emotional tension, establish friendly and partnership relations with respondents, techniques that stimulated the answers or “cut off” side topics that did not relate to the study. There were 3 people trained as interviewers.

2. Results

The Ukrainian IT market shows consistent growth from year to year. In line with an evaluation by way of the international agency percent, the IT market in the entire country market has accelerated 2.5 times. In 2011-2020, it increased by 150%, and is expected to reach $ 5.7 billion in 2021 (Figure 1). At the same time, 80% of medium-level managers of

IT outsourcing companies in Ukraine interviewed by the author reported insufficient protection of copyright in IT outsourcing as “very important” and “important” problem.

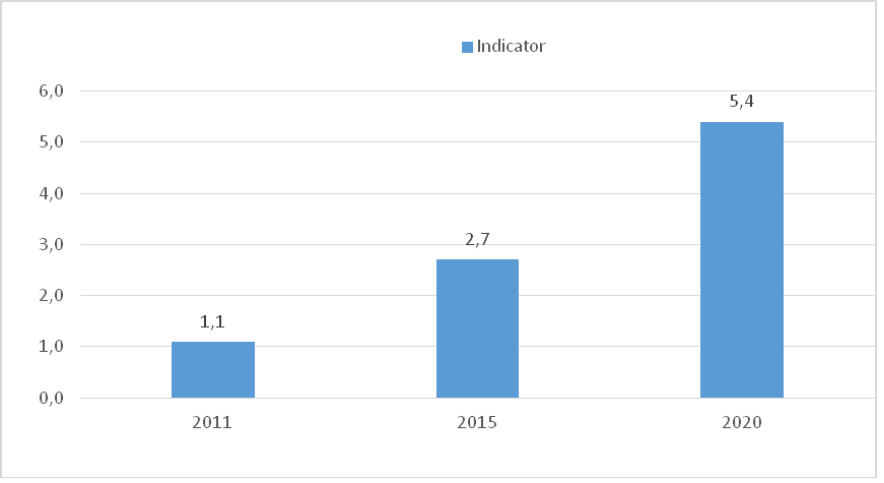

Figure 1: Increase of IT market for 2011-2020

Ukraine is a European leader in the variety of outsourcing agencies. According to Ukrainian experts, 90% of our IT specialists work based on outsourcing and are not developers of their own IT products (Data Unit City, 2019). In the second half of February 2020, the domestic press actively discussed the news that of the 100 best providers of outsourcing services in the world, which were carefully selected by the International Association of Outsourcing Professionals (IAOP) for its annual Global Outsourcing 100 (GO100), 18 places were taken this year by companies with RandD offices in Ukraine (International Association of Outsourcing Professionals, 2020; UNESCO, 2020).

They include 12 Ukrainian employers and six “legionnaires” — global agencies which have their personal development centers in Ukraine. The Ukrainian IT outsourcing industry maintains its position in the global market. Ukrainian providers have already managed to prove themselves as ones of the most socially responsible and, exceptionally, to ensure an overwhelming success. On their initiatives, 94% of customers are satisfied with the Ukrainian level of service, whilst this figure is only 84% with the big foreign businesses. This is determined, in particular, by the fact that 72% of Ukrainian providers are actively engaged in innovation.

In Ukraine, the IT industry ranks second on the market (3% of GDP) and brought in about $5 billion in 2020. That is just the beginning: the quantity on the Ukrainian market will increase, 10% of the United States of America's gross domestic product will reach $ 10 billion. IT groups lack criminal experts to protect copyright and propose on legislation. Export of PC technology is turning into one of the predominant sources of sales in Ukraine. According to the macroeconomic studies of the IT Committee of EVA and Pricewaterhouse Coopers, which are subject to a positive scenario of the computer industry in the top countries, the volume of exported information technology could double and attract more than UAH 27 billion to the state budget (Deloitte, 2016).

There were many IT groups in Ukraine that could compete within the world market, but the development of the computer era market is limited by a range of factors, consisting of the risky political and economic situation — existing customers are able to place orders in neighbouring Poland, while actively hiring Ukrainian specialists and offering difficult working conditions and low wages. The second reason is that it's far tougher to attract new clients.

Developing markets in neighbouring countries are making an investment into a whole lot of assets to promote their IT services on the global market. Poland (22% growth), Belarus (12% gain) and Romania (19% increase) are key competing nations. The third reason is that the number of IT experts of the professional stage is reducing. According to average estimates in other countries for 2019-2020, there were about 5,000 specialists, many of whom have a high qualification level (Deloitte, 2016).

Experts are simultaneously working on these issues in several areas. The first problem is incentives for the improvement of the IT industry. In the end, it ought to become the part of the enterprise's improvement strategy. At the same time, tax policy must be consistent and predictable for 5 -10 years. The second problem is the reform of IT education: technology is developing faster than schooling at the colleges, so the curricula should be well tailored to new realities for preparing exceptionally professional IT specialists.

The third problem that's important to be addressed for the safety of intellectual belongings rights is that IT specialists ought to develop the cutting-edge programs to efficiently sell them overseas. Therefore, the safety and respect of highbrow property rights should be one of the vital concerns on the agenda of cooperation between IT agencies and the public.

The extent of offerings inside the IT market multiplied during 2011-2020. In accord with industry forecasts, Ukraine has been estimated to have about 240,000 IT professionals as of 2021. Such speedy growth is explained with the help of the prestige and dynamism of the IT sector in

Ukraine. There are also certain advantages in terms of working conditions: in most offices, advanced technology and a flexible work schedule are available (Table 1).

Table 1. Dynamics of volumes and growth rates of the global IT outsourcing market, 2015–2021 (based on International Association of Outsourcing Professionals (2020).

Year	Outsourcing market volume, billion $	% to the previous year
2015	369.3	-5.1%
2016	370.9	2.4%
2017	386.5	3.8%
2018	394.4	4.0%
2019	404.1	4.5%
2020	415.3	5.4%
2021	426.4	5.7%

The increase in the growth rate of IT outsourcing is due to the restoration of the business segment of the market. In 2019 – 2021, the global IT outsourcing market has shown high dynamics due to favorable monetary conditions. During this period, the IT outsourcing market was taken into consideration as one of the quickest growing and promising segments of the IT services market. Next, we present the diagram of the global market for IT offers by segments (Figure 2).

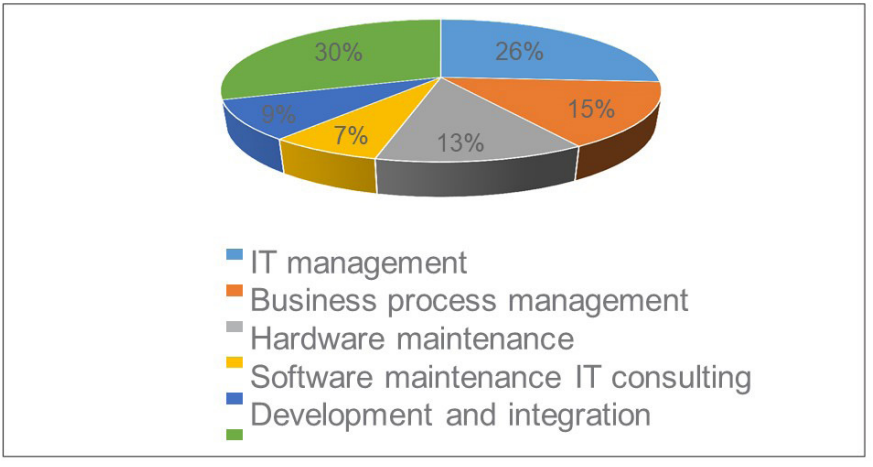

Figure 2: Structure of the global market of IT services by segments, 2020, % (based on International Association of Outsourcing Professionals (2020).

In 2020, a large share of IT services was provided in the field of development and integration — 30% of the total market. Help and upkeep of hardware and software program in 2020 gave 20% of the market for IT services. Enterprise process control segments accounted for 26% and 15% of the market, respectively. In 2020, net outsourcing accounted for more than a quarter of the global IT market offerings.

The Indian IT market attracts companies around the arena with low value and a large quantity of software builders. As of 2019, the market price of Indian IT offerings has approached the United States with its 2.75 million neighborhood software improvement professionals (the USA has approximately 3.5 million developers). At the end of the previous year, the Indian industry employed approximately 5 million profess ionals.

The comparison of the Ukrainian and Polish markets of IT services makes it clear that according to the latest indicators, Ukraine is lagging behind in the development of IT outsourcing but is equated to developed countries (Table 2).

Table 2. Comparative characteristics of the Ukrainian and Polish markets of IT services (based on International Association of Outsourcing Professionals (2020))

Indicator	Ukraine	Poland
Number of developers	166, 000	160,000
Number of IT companies	11,932	60,700
The cost of the industry	$ 1.256 billion	$9.457 billion
The focus market	USA	Western Europe
The average cost of software development	$25-149 per hour for the development of applications	$40-77 per hour
Number of new IT specialists	+ 27,000	+15,000
English language proficiency	40% of specialists	90% of specialists
The first three programming languages	Java, Java Script, C#	PHP, Java Script, RUBY

Having compared the data of the Ukrainian and Polish markets of IT services, it can be argued that Poland, in terms of aggressive education and migration policy, has every chance to become a leader not only in IT but also in other areas. Poland has already taken up the global struggle for talents. Unfortunately, Ukraine is still out of this process (Business.ua, 2019). The level of Polish programmers is no worse than Ukrainian programmers in terms of price or quality of work. Our domestic IT products are similar to Estonian in their innovations and results. Of course, it is inappropriate to

compare Estonia with Ukraine, which is 6 times larger in territory and 30 times larger in population. Ukrainian IT companies have revenues of $ 3.6 billion, and India earns $ 150 billion, ranking 1st in the Global Services Location Index with a huge number of young specialists (A.T. Kearney Global Services, 2019).

In 2021, international analytical forecasts are quite positive. The principal driving force of marketplace development will be 'cloud' technology. In keeping with forecasts, approximately 80% of corporations will function within the "clouds" for approximately 5 years. This opens up a lot of possibilities for remote work, including overseas contractors and connecting them to the control and coordination of all activities. Artificial intelligence is increasingly gaining popularity. At the same time, many specialists have to broaden individual solutions.

Presently, the development of cybersecurity isn't always a legally fast technological solution. It's essential to have additional experts within the corporation of effective records protection. Similarly, the connection among outsourcing agencies and customers will alter in future. These aren't any striking statistics yet, but rather better work ethics and the rising relevance of professional abilities that have been evaluated in recent years. Organizations have begun to recognize the importance of outsourcing business, and this means that there's big room for development.

Currently, there are more than 140,000 programmers in Ukraine, and this range is growing approximately 20% due to the influx of programmers recently who form a strong innovative enterprise. Our domestic intellectual ability and the advent of innovations create a new perception. IT enterprise in Ukraine is progressively turning into consulting in the area of services. IT creates additional jobs in the related industries (the programmer creates two or four extra jobs). The state budget revenues for 2018 - 2020 increased annually by 27% and reached UAH 4.1 billion (Businessviews, 2017).

A great proportion of taxes paid by IT businesses has increased because of the considerable amount of salaries of IT specialists (as of 2020, the legal profits in the IT field became 69% higher than the countrywide average).

Among the primary constraints to the improvement of the IT enterprise in Ukraine is the lack of regular payment of taxes; low safety of intellectual property rights of IT specialists; unstable development of the IT business, in addition to weak investor safety at the legislative stage. Every other feature proves that the IT market industry is difficult to investigate due to the lifestyle in Ukraine of particularly quasi-product companies, whilst the organization's headquarters and market are placed overseas, and the manufacturing itself — in Ukraine.

The evaluation of the facts in the field of IT revealed the principal issues associated with the improvement of methodological techniques and the formation of the market of IT services in Ukraine:

a) restrained set of statistics at the IT market (together with problems in collecting information to investigate the scenario of copyright infringement inside the IT subject), the duties inside the IT region are not tailored to global standards.

b) methodological issues related to the development of statistical analysis of the application of IT technologies in numerous fields according to international practice have now not been developed.

c) there is a need for continuous tracking of the IT area, which helps the consistent implementation of the national software for the improvement of ICT.

The role of the IT market and IT technologies is constantly growing, but Ukrainian researchers poorly study the ICT exports, which is in some way related to copyright. After all, the volume of the domestic market of IT products is the most important economic indicator that shows our development of IT in relation to other countries and their indicators. The IT sphere has a significant potential to attract educated young people aged 22-33, which has a positive effect on the formation of the middle class.

The object of copyright safety inside the IT discipline are specially PC programs (software program), it can additionally be part of a PC software (if it can be used independently), layout materials acquired in the course of the improvement of a laptop software however now not included in it, different kinds of objects disguised in the laptop software (audio-video materials, images). Generally, copyright safety applies to all styles of laptop packages that can be expressed in any language, including supply code and item code. It ought to be remembered that new ideas, software algorithms, innovations used to expand this system aren't disguised by means of copyright.

Copyright may be divided into categories: non-public non-property rights and assets rights. Non-public non-assets rights include the author's right to a name, the property to post, which cannot be transferred to others in any way. Personal non-property rights belong to the author. The author is a person who created the PC application. Only the author can allow other people to use the work: publish the program; remodel, adapt and make modifications; use part of an application or its element to another program; distribute (through sale, lease, subscription, etc.); import copies.

Property rights (the right to apply, distribute, alienate) can be transferred (for instance, under a license agreement, under a software improvement settlement). Property rights may be transferred by using the author to any other character(s) (individuals and criminal groups).

Under the license settlement, one party — the right holder (licensor) — grants the other party — the user (licensee) — the permission to use the item of copyright. The license may be extraordinary or non-special. Under

the special license agreement, the licensor has the right to apply the item of copyright effectively within the manner and within the scope supplied by means of the agreement. In this case, the right holder (licensor) has no right to use and allow other people to apply this copyright item within the part provided to the licensee.

Under a license agreement other than a non-one kind (easy license), the proper holder (licensor) presents the licensee the right to apply the item of copyright whilst maintaining the proper to apply the object of copyright and the proper to oppose a license to other people. The license settlement ought to specify the following obligatory conditions: the item of copyright in recognition of which the use is authorized; remuneration transferred below the license settlement, or the situation of loose settlement; license type; license validity duration; the authorized territory for the use of the item of copyright.

A copyright settlement is a form of license settlement, applicable inside the copyright agreement the author of the item is the licensor. Under the mission settlement for the special proper to the object of copyright, one party (the right holder) alienates the one-of-a-kind property to the object of copyright in full to the other party. The mission settlement must contain a circumstance on the quantity of remuneration or on the technique for its determination, or an instantaneous indication of being free.

In the IT sphere, the realization of an agreement for the improvement of laptop programs is common (in line with the effects of the writer's survey of managers of IT outsourcing agencies, this is 70% of all agreements). This agreement governs copyright issues. The developer is a legal entity in the event of agreements for the creation of computer programs. These are mixed contracts which could include the following factors of contractor's agreement (appearing work to create a computer software, its installation and edition); carrier agreement (training the customer's personnel on the use of the advanced laptop software, provision of consulting offerings); license settlement or project agreement (in terms of transfer of unique rights to use the created computer application to the client). Therefore, such contracts need to incorporate all the vital situations for each of the abovementioned forms of agreements. In such agreements it is necessary to specify the scope of the contract, in addition to the technical characteristics of the developed program.

Most often, Ukrainian entities are not organizations in their classical sense, however marketers who work under a civil agreement. The transfer of intellectual property rights is one of the most important aspects of such an agreement. According to Ukraine's Copyright and Related Rights Law, Art. 31 (Verkhovna Rada of Ukraine, 1993), property rights transferred under a copyright agreement must be defined in it. Property rights not specified in the copyright agreement as alienable are taken into consideration are not transferred.

This means that the phrase within the agreement "all intellectual property rights belong to the purchaser" has no practical meaning. Because Ukrainian developers frequently work for European or American clients, it is critical to specify the extent of rights and the law under which they are transferred. For instance, non-public non-assets rights cannot be a priori alienated in Ukraine. In this example, the scope of rights that may be transferred under the regulation and which the purchaser desires to receive is compared, the full scope will be listed in the settlement, but it is possible to provide a reservation that an indefinite license can be issued for the rights that cannot be transferred, or a responsibility not to assert such rights to the consumer's detriment.

It's important to collect all copyrights from each developer in the company, and only then transfer them to the consumer. Switching copyright clause also can be used as a mechanism to manage the client. For example, it can be stipulated that each intellectual assets rights may be transferred only after complete payment of the supplier.

As part of copyright activity, there may be a method for identifying complex nature of a video game, which includes a PC application, a literary work, and an audiovisual picture.

On the market of computer video games, a very commonplace phenomenon is copycat games — those are clone games that are very just like each other and the average consumer cannot distinguish them. They typically create a "twin" of the famous arena for the countrywide market. For instance, in 2013, Wargaming filed a copyright lawsuit to Chinese developers Chang you and Games, who created a twin of globally well-known Tanks. The maximum exciting aspect is that the plagiarists not only copied the sport space, plot, dialogues, also reproduced all the historical inaccuracies and fictional tanks in their game.

There is an exception for the concept of "scenes à faire", in keeping with which there are obligatory elements for certain genres. For example, if the studio creates a computer recreation approximately the world of myth, it's going to make sure to have orcs, elves, gnomes, to have certain traits which might be repeated by means of different agencies.

To counter infringers within the U.S., direct claims can be filed, or infringing content material can block the use of the take down notice technique. This device is provided via US regulation, namely the digital Millennium Copyright Act (DMCA). It increases the duty for copyright infringement inside the virtual age, and additionally permits to speedy eliminate irrelevant content material without going to court. Under this system, the issuer shall, upon the right holder's demand, in keeping with the DMCA, remove the infringing object by using notifying the individual that published it if you want to avoid legal responsibility, or in case of refusal

shall be responsible for infringement. If the internet site does no longer have a DMCA utility form, a demand about copyright infringement may be filed with the sellers that ensure the operation of this internet site at the net.

With the help of intellectual assets, you may consolidate leadership in the market and gain user loyalty. Informing customers that the product contains copyrighted materials reflects well on the firm and is a big competitive advantage.

During an in-depth interview with managers of IT outsourcing organizations, we identified the following most common examples of copyright infringement. These are actions committed without a relevant agreement (authority), which gives the right to commit them, namely: making a copy and transferring it to a third party (both paid and free of charge); processing; reproduction of a computer program; dissection (hacking) of the program security, etc.

The performance of these acts by people who do not have rights to the program permits the program's owners to seek protection for their rights that have been infringed. To defend their violated rights, the proper holder can also: apply to a notary to attract up a protocol of overview of written evidence to record the offense. This can be appropriate if there may be a need to report copyright infringement on the internet; ship a claim to the perpetrator; record a copyright infringement file with law enforcement agencies.

Relying on the character of the copyright infringement, the right holder has the right to call for the following: cessation of actions that infringe the proper or create a hazard of its infringement; restoration of the scenario that existed earlier than the infringement (for instance, elimination of adjustments made in a laptop software without the consent of the copyright holder); reimbursement for non-pecuniary damage (best an character can declare it); compensation for damages or fee of reimbursement; seizure of items by using which the unique property is violated, and material objects created as a result of such violation. However, only every second manager of IT outsourcing companies in Ukraine we interviewed was able to name most of the actions they can take from the list below. This indicates a low legal awareness of IT outsourcing specialists in the field of copyright in Ukraine.

3. Discussion

Yaremchuk and Kolomiets (2015) believe that the legal protection and protection of computer programs in the legal practice of foreign countries is a controversial issue.

That is due to the truth that the prevailing mechanisms and methods of legal law are slower to reply to modifications associated with rapidly growing volumes of software program improvement.

The problem of copyright and related rights is regulated the law of Ukraine on Copyright and Related Rights. In keeping with this regulation, the non-public assets proper is difficult to protect — copyright and rights of contractors, producers of phonograms, broadcasting organizations, which might be related rights. The regulation stipulates that software program, creation of websites, databases is recognized as works inside the area of technological know-how, literature and artwork which have a scientific-and-technical, technical, or different nature. This means that the finished software product is covered by way of regulation as a literary work. However, this does not apply to the technological manner of statistics processing, the algorithm itself, that's frequently a critical made of intellectual interest. This is a practice is applicable not only in Ukraine, but all over the world (Verkhovna Rada of Ukraine, 1993).

Chizhov (2016) suggested that it is necessary to consider the industrial process approach to software development, which requires clear and complete protection of these products. The level of software copyright safety ought to correspond to the complexity of making this type of product. The very concept, technique or method of a product have to be protected in a well-timed manner (due to the fast lifestyles cycle of this type of product).

In our opinion, all thoughts may be covered not simplest as a form of expression, but also as inventions of products or software fashions, a technical solution, that should solve any hassle. According to The Law of Ukraine on Copyright and Related Rights (Verkhovna Rada of Ukraine, 1993), copyrights are divided into personal non-property and property rights.

Personal non-property rights include, among other things, the right to demand that the work's integrity be preserved and to resist any distortion or other change of the work, as well as any other infringement on the work that would harm the author's honor and reputation. For example, a programmer created an authentic script this is used on web sites to create the illusion of moving slides, after which saw the same animation on every other internet site that promotes terrorism. This will damage the dignity and popularity of the writer.

In keeping with Ukrainian regulation, most effective a man or woman may be the holder of private non-belongings rights, and that they cannot be alienated. Inside the USA, the situation is particularly special. Those (moral) rights have been identified recently, and special regulations governing their felony safety have not yet been advanced. As a result, copyright in the United States only covers the property aspect of the work; but, when the

author's property rights to the work are alienated, he may decline to include his name when the work is used.

The assets rights of the author consist of an exclusive right to use the paintings; a unique right to authorize or prohibit using the work via different humans.

It is important to highlight that only the author can be the original subject to whom the copyright belongs, although the rights might be held by a legal body.

As for the validity period, private non-belongings rights are indefinite, whilst assets rights are constrained in time. In Ukraine, non-public assets rights are valid at some point of the life of the writer and 70 years after his death, however in different countries this time can be exclusive.

In case your software is so modern that it has no analogues at the time of guide, it makes sense to test whether or not it can be patented.

Since that the patent presents a monopoly at the manufacture and sale of such programs from experts, it is hard to obtain, it has a shorter safety length and it have to be cautiously prepared for state registration. A patent to an invention that comprise a software program and a software copyright are specific cases. You may be the holder of a copyright of this system and/or the patent holder, both concurrently and one after the other. As a preferred mode, copyright protects a certain embodiment of a certain idea (as an instance, a set of rules written in code). If you want to protect a particular technical solution that underlies the software, it is expedient to do so through a patent. The patent comes into action upon country registration and is restrained by way of the country of registration. Copyright arises routinely from the moment the idea is implemented in a greater or less fixed form, without the need for country of registration.

Unlike patent regulation, copyright arises from the moment a piece is created and does now not require any formalities of registration. Registration of a work is performed in Ukraine and in other countries. The author's certificate confirms that the object was created on a certain date, and is also a good cause to apply to court in case of violation of rights.

For example, copyright registration also exists within the USA it is executed by using a state body — the Copyright workplace as part of the Library of Congress. They sign both published and unpublished paintings, however, not like the registration of literary works, the PC software is going through a positive process in particular to verify area of expertise: whether or not the source code submitted for copyright registration includes elements of other rights holders. It's believed that through depositing you've got automatically notified every person of your copyright, and in case of violation it will likely be less complicated with the intention to protect your

function in court. It must be taken into account that by way of depositing this system in the Library of Congress, you are making the supply code public, however it is also feasible to put the source code for registration by means of hiding some records that contain a trade secret.

According to The Law of Ukraine on Copyright and Related Rights (Article 21), there are several ways to use the work without the consent of the copyright holder, but with mandatory reference to the author's name and source (Verkhovna Rada of Ukraine, 1993). There could be amendments to the code to execute certain technical works, making a duplicate for archival purposes or to replace the legally obtained uniqueness in case of failure of utilization or loss. Such techniques also include observing the software for scientific purposes.

Any country that is a signatory to the Berne Agreement can benefit from copyright protection. Ukraine, like most countries in the world, is a member to this agreement. However, granting patents for PC applications isn't a cutting-edge practice in Ukraine. The Civil Code of Ukraine presents the safety of laptop packages as literary works, and the law of Ukraine "On safety of Rights to inventions and utility fashions" no longer specifies anything about the patentability of software program. Consequently, it's the software program copyright this is specifically disguised.

It is frequently possible to guard software that is used t in the agency and was developed independently to keep change secret. Most outsourcing agencies in Ukraine are non-citizens of Ukraine. They provide their personnel to signal a non-disclosure settlement (NDA), that's drawn up according with the regulation of the USA of a in which those groups are registered. In view of this, the NDAs may additionally contain provisions that are not simply peculiar for Ukrainian law, but which are invalid in any respect, that is those who cannot be implemented in Ukraine.

In our opinion, for cases where there may be no choice to transfer the right, the NDA could be a method to protect copyright. The usual method under the NDA practices is the "automated" transfer of rights to the created software program to the organization.

The developer can assign copyright to the following items: software; personal factors of the system; pictures on display presentations; menu and person interface layouts; databases; command lines.

Programming languages and targeted codecs, as well as the codecs for recording documents, are do not present a problem to copyright safety (as evidenced through the choice in the case of SAS Institute Inc. vs global Programming Ltd. (C-406/10). As already mentioned, copyright arises automatically through the appearance of the work itself. Any registration, printing of the code or transfer to the depository is the most expedient consequence of the authorship and does not necessarily entail an obligatory

situation. In Ukraine, registration of a software in a high-level asset department basically requires a record on a tangible instrument. However, copyright isn't always tied to the time the computer application that is provided on paper.

In Ukraine, illegal storage of a copy of a PC program in computer memory is a violation of copyright property. But in Ukraine, judges hardly ever have a look at copies of PC applications. Properly certified experts generally cope with it at the request of a party and/or by a court order. This is not an unusual legislative practice in Ukraine to limit the ability to create the multiple copies of software program for private use, since it is allowed for copies of books or paintings.

Copyright does not shield thoughts of: the introduction of a program that performs the identical function as a formerly launched comparable software, without different "suspicious" factors, have to no longer be taken into consideration an infringement of intellectual property rights.

Having analyzed the records obtained, we are able to make the subsequent generalizations. In present day Ukraine, the hassle of copyright safety within the IT discipline remains very pressing. In 2016, Ukraine still ranked 4th many of the pinnacle 10 nations for the usage of pirated web sites. The Ukrainian authorities is trying to implement sure measures, but Ukrainians are still seeking out opportunity ways now not to pay for content and software. A unique cyberpolice unit has been installation in Ukraine to cope with these problems. Best while the hassle of protection of intellectual belongings rights is solved in Ukraine it is going to be feasible to anticipate investments and the preference to increase intellectually in-depth spheres. Ukrainian IT experts ought to be assured of their copyright when working on their new projects.

Conclusion

Laptop applications are disguised as literary works. However, this does not allow to fully protect technical solutions, algorithms and ideas, venture designs, information about the programs that are being developed. In this case, the answer can be the trade secret of security procedure. Additional measures need to be taken to ensure the security in Ukraine, there is the best operating mechanism for including the said information into the listing of records constituting an industrial mystery. Further measures should be taken to ensure the confidentiality of these facts (identifying who will get right of access, concluding non-disclosure agreements with developers in relation to change secrets, improving the guidelines for sharing secrets and techniques). It is possible to register the name of the computer software as a trademark. The software product's legal protection will be strengthened

because of this. In this situation, a registered brand of the Windows operating system can be an example.

The reality and moment of introduction of the PC program may be registered. The registration of a PC software may be one of the proofs that the laptop software existed at that time, and the author of the program was the man or woman indicated in the registration certificates.

Further improvement of IT outsourcing in Ukraine is feasible provided the assistance of the inner market, strengthening of the regulatory mechanism of public administration within the discipline of intellectual property protection, granting proper rights to customers, improving a reasonably good tax structure and relevant rules for IT enterprise.

The analysis of copyright protection in Ukraine should pay more attention to the shortcomings of security mechanisms for PC packages. Implementation of copyright protection for PC packages with individual patent elements must be properly exercised. The Law of Ukraine on Copyright and Related Rights (Verkhovna Rada of Ukraine, 1993) should be detailed. An essential element of ensuring copyright in Ukraine in IT outsourcing can be the adoption of a special law "On Protection of Rights to Computer Programs". In such documents it is vital to address and outline the concept of "laptop software" and its related characteristics.

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The concept and structure of activities in the field of organizing and holding elections to government bodies in the theory of constitutional law

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Abstract

The article aims to study the concept and structure of activities in the field of the organization and holding of elections to governing bodies in the theory of constitutional law. The main method was the analysis of systems that allows to study the system of activities in this field. The latter can be represented by different structures depending on the stage of their cognition as an object or their internal processes. In addition, the article used the historical method, deduction, induction, etc. It is concluded that the system of activities in the field of the organization and holding of elections to the governing bodies is a unit of their properties and integral elements, order and their interaction, as well as stable connections between them, based on the principles of preservation or invariance, which are organized as appropriate relations between the structural elements themselves and their external environment, that is, the sphere of the organization and conduct of elections to the governing bodies.

Keywords: political activity; area of the organization and conduct of elections; electoral process; elemental composition; functional-intentional method.

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El concepto y la estructura de las actividades en el campo de la organización y celebración de elecciones a órganos gubernamentales en la teoría del derecho constitucional

Resumen

El artículo tiene como objetivo estudiar el concepto y la estructura de las actividades en el campo de la organización y celebración de elecciones a los órganos de gobierno en la teoría del derecho constitucional. El método principal fue el análisis de sistemas que permite estudiar el sistema de actividades en este campo. Este último puede ser representado por diferentes estructuras dependiendo de la etapa de su cognición como objeto o sus procesos internos. Además, el artículo utilizó el método histórico, la deducción, la inducción, etc. Se concluye que el sistema de actividades en el campo de la organización y celebración de elecciones a los órganos de gobierno es una unidad de sus propiedades y elementos integrales, el orden y su interacción, así como conexiones estables entre ellos, basadas en los principios de preservación o invariancia, que se organizan como relaciones apropiadas entre los propios elementos estructurales y su entorno externo, es decir, la esfera de la organización y celebración de elecciones a los órganos de gobierno.

Palabras clave: actividad política; esfera de la organización y celebración de elecciones; proceso electoral; composición elemental; método funcional-intencional.

Introduction

Constant transformation processes in a state-organized society stipulate the need to adapt activities in the field of organizing and holding elections to government bodies to changing conditions. One of the key directions of such adaptation is the transformation of the system-structural approach and the improvement of the functional-purposeful organization of such activities. Today, there is a large discrepancy (inconsistency) between the actual system and structure of activities in the field of organizing and holding elections to government bodies and those enshrined in the current legislation. This fact is reflected in the relevant judicial practice (Supreme Court of The Russian Federation, September 2, 2019; Supreme Court of The Russian Federation, September 7, 2019; Supreme Court of The Russian Federation, September 16, 2019).

The constitutional and legal regulation of this activity does not fully meet the requirements of the system-wide approach both at its system-structural

level (the invariant of the system-structural organization of the activity under study) and at the functional-purposeful level. In particular, it is expressed in the fact that federal election law lacks the goals and objectives of both the legal regulation of organizing and holding elections to government bodies and the goals and objectives of its manifestations, namely, activities in the field of organizing and holding elections to government bodies. This state of affairs develops alongside an equally difficult situation in the science of constitutional law, where insufficient attention is paid to the very activity in the field of organizing and holding elections to government bodies in general and its system-structural and functional-purposeful organization in particular.

1. Methods

The scientific methodological study of the systemic and structural organization of the above-mentioned activity stipulates the need to determine positions on the relationship between the concepts of system and organization, system and structure, as well as clarify the understanding of the structure of activities in the field of organizing and holding elections to government bodies. According to the systemic approach, the concept of "structure of activities in the field of organizing and holding elections to government bodies" should be correlated with the concepts of "system" and "organization".

At the same time, it is difficult to classify such concepts as "system/structure/organization of activities in the field of organizing and holding elections to government bodies" since there is no single viewpoint on the correlation of generic concepts "system", "structure" and "organization". We will share the initial prevailing opinion that the concept of "system" is the broadest one among the above-mentioned generic concepts. It gives an idea about various manifestations of a complex object of cognition. In this case, they are manifestations of activities in the field of organizing and holding elections to government bodies (its elements, structure, connections, functions, goals, etc.).

The concept of "structure" in relation to the "system" concept expresses only something that remains stable and relatively unchanged under various transformations of the system (Obshchii Tolkovyi Slovar Russkogo Yazyka, n.d.). Therefore, we will build our further research on the interpretation of the structure of activities in the field of organizing and holding elections to government bodies as one of the aspects (invariants) of their system.

Finally, the generic concept of "organization" embraces both structural-static and communicative-functional characteristics of a system that ensure its stability, balance and directed functioning. Organization is usually

presented as internal orderliness and coherence of interacted elements of the structure, which manifests itself in the limited diversity of states common to the elements within its structure. As a rule, it is much easier to define the structure of a system as its internal organization. Consequently, the organization of activities in the field of organizing and holding elections to government bodies is an integral property of the system of this activity.

Furthermore, science has not found a universal answer to the question of what the system is. Its traditional semantic understanding includes several meanings, namely: 1. the interposition and connection of the constituent parts, elements of something; structure; 2. arrangement, organization or structure, internal settlement (Obshchii Tolkovyi Slovar Russkogo Yazyka, n.d.).

In philosophy, the structure of a system is described in different ways. Within the framework of the communicative approach, it is defined as a set of stable connections of an object ensuring its integrity and identity, which presupposes the preservation of basic properties under various external and internal changes. The communicative approach can be supplemented with functional components when a structure is regarded as a set of not only organized connections but also the relations among its elements (Poleshchuk, 2015).

A different position is formed under the influence of the systemic-structural method of cognition, according to which a structure is formed as a relatively stable unity of elements, their relations and the object integrity expressed as an invariant aspect of this system. The system-purposeful approach can be traced in I. Kant's understanding of a structure, which is described as "the position and connection of parts of an organism formed for a specific purpose" (Kant, 1994: 217-218). As a result, we deal with different definitions of both structure and system.

To find a certain compromise, the structure of a system should be assessed based on several approaches. Logically, this position is consistent with our ideas about activities in general and activities in the field of organizing and holding elections to government bodies in particular, based on the use of various, multifaceted techniques, methods and means of cognizing objects of state and legal reality via methodological pluralism. In this regard, activities in the field of organizing and holding elections to government bodies are studied in the context of the integrated approach comprising positivist, systemic, axiological and anthropological methods of analysis. Accordingly, the structure of this activity is formed as a multifaceted phenomenon with various invariants of its existence and functioning. Therefore, a structure requires an integrated approach to its cognition and science makes such attempts.

For example, a team of scholars (Sadovskii, Babaitsev, Drozdov, Chernyshov, Chernyshov, Aleksandrov) argue that the structure of a system presupposes orderliness, organization and arrangement conditioned by the relationship between the elements and its relationship with the external environment. This manifests two opposite properties of the system: limitation (an external property of the system) and integrity (an internal property of the system) (Sadovskii *et al.,* 2021).

This definition is based on a set of techniques underlying the understanding of a structure: system-structural (organization, structure), communicative (relationships between elements), environmental (its relationship with the external environment). Another complex definition of the "structure" concept represents it as the composition, order and principles of interaction among system elements that determine the basic properties of this system (Information Systems And Networks, n.d.), relying on the system-structural, normative and communicative cognition.

In our case, the structure of activities in the field of organizing and holding elections to government bodies is a unity of its integral properties and elements, the order and principles of their interaction, as well as stable connections between them, which are organized by the corresponding relationship between the structural elements and its relationship with the external environment, i.e., the sphere of organizing and holding elections to government bodies.

We should pay attention to the fact that the same system of activities in the field of organizing and holding elections to government bodies can be represented by different structures, depending on the stage of its cognition as an object or its inner processes, the aspect of their consideration and/or the purpose of creation (Volkova and Denisov, 2014). Generally, the system of activities in the field of organizing and holding elections to government bodies can be represented by "a simple listing of elements (objects, subjects, principles, means, results)" (Vedeneev, 2003: 85; Biktagirov, 2010; Krasnov, 2000).

However, a comprehensive analysis presupposes "the representation of a system by dividing it into different and interconnected subsystems, components, elements, and their subsequent integration into a structure" (Volkova and Denisov, 2014: 40). In any case, the structure of activities in the field of organizing and holding elections to government bodies establishes the role and purpose of elements in the system of activities in this area, their location and relationship with each other.

Moreover, the system of activities in the field of organizing and holding elections to government bodies is closely related to its composition. This structure presupposes the decomposition of the system of a given activity, i.e., the division of a single (whole) system into its constituent elements. On

the contrary, its structure provides the composition of the system of activity and the combination of its components (Yamashkin and Novokreshchenova, 2016). Thus, the structure of activities in the field of organizing and holding elections to government bodies characterizes the overall organization, the stable arrangement of its elements and connections between them.

Let us proceed from a general understanding of the structure of activities in the field of organizing and holding elections to government bodies to its composition. The science of constitutional law does not provide direct answers to this question. To fill the existing gaps in the science of constitutional law, we need to analyze scientific views related to the systemic-structural organization of a given activity, to determine their positive and negative aspects for this research. The generalization of some characteristics of the structure of the procedure for organizing and holding elections to government bodies (the election process) will allow to use them for the comprehension of the structure of the subject under study, i.e., the system of activities in the field of organizing and holding elections to government bodies as a manifestation of this order.

Currently, no scientific works study the structure and composition of the procedure for organizing and holding elections to government bodies. The latter is regarded as an activity carried out in the field of organizing and holding elections to government bodies. The election process is also an external expression of the procedure for organizing and holding elections to government bodies.

In this context, it is quite logical and expedient to study the structure of activities in the field of organizing and holding elections to government bodies from the particular (election process) to the general (the procedure for organizing and holding elections to government bodies as activity). To attain this end, we have analyzed several scientific works considering the structure of the election process. The above-mentioned ideas will be considered and serve as a starting point for the further development of our own viewpoint on the structure of activities in the field of organizing and holding elections to government bodies.

First of all, we need to refer to R.G. Mazitov's position. While considering the content and functioning of the election process in the context of the political process as a whole, the scholar argued that the election process was a form of implementing public power, its political reproduction and recognition. In his opinion, the election process was a dynamic phenomenon consisting of the purposeful activity of the subjects of the election process aimed at implementing the constitutional right of citizens to elect and be elected to representative bodies of power (Mazitov, 2009).

If the question is posed in such a way, R.G. Mazitov identified the form (process) and content (activity) of the procedure for organizing and

holding elections to government bodies, which is incorrect from the general philosophical perspective. R.G. Mazitov formed the concept of "election process" by summarizing the main scientific positions on this issue and used several interdisciplinary research methods (political-legal, procedural, activity-based).

As a result, his concept of the election process tends rather to the category of the so-called integrative. The scholar's merit lies in the application of the integrated approach to studying the concept of "election process". Despite its eclecticism, his approach claims to be unique. R.G. Mazitov's opinion on the inner structure of the election process is also constructive for our research. Based on his provisions on the election process, we can determine the following elemental composition of such a process:

- Subjects of the election process (participants in a particular electoral campaign).
- The goal of the election process (the formation of elected bodies of state power and local self-government).
- Specific election actions and procedures associated with certain stages of preparation and conduct of elections.

U.S. Iskandarov emphasized that the current election law of Russia identified the election process with the procedure for organizing and holding elections as a form of exercising subjective voting rights reflecting the technology of voters' participation in the exercise of power. While developing his concept of the election process, U.S. Iskandarov (2007) distinguished between two external forms: the procedure for organizing and holding elections as a set of legal norms and the election process aimed at the election of officials, the implementation of the enshrined legal rights and obligations through a certain sequence of electoral actions.

The author also drew attention to the existence of procedural norms establishing the procedures for exercising electoral rights in the election process along with the substantive norms governing the procedure for organizing and holding elections. We agree with the scholar on this matter. However, he narrowed the procedure for organizing and holding elections and identified it with a set of legal norms. As a result, the procedure for organizing and holding elections loses its procedural aspect, which creates the actual form of the corresponding order.

According to V.V. Ignatenko, the election process is a legally regulated procedure for organizing and holding elections that ensures the legitimacy of voting and election results. Its structure consists of relatively independent stages that differ from each other in tasks, participants and their legal status, the types of electoral documents and the final results of procedural activities.

This position is characterized by a different approach to the structure of the election process. In this context, the structure of the election process is presented at two levels. The top level consists of stages as constituent elements. At the lower level of the structure, each stage of the election process unites participants, tasks, electoral documents, and the final results of procedural activities as certain elements.

Thus, V.V. Ignatenko defined the election process as a system of a higher order, comprising systems of a lower order (subsystems) that play the role of stages of the election process. However, this system analysis of the election process is not completed, and the elemental composition of its subsystems (stages) is not fully determined. They lack such invariable elements of procedural activity as goals, principles, functions, objects, means and methods. In addition, we should not equate the procedure for organizing and holding elections with the election process. The latter is only part of the procedure for organizing and holding elections that forms one of its stages (sub-processes), i.e., the procedure for holding elections.

We should dwell on A.V. Ivanchenko's viewpoint, who considered the election process

a technological infrastructure and a form of realizing the constitutional functions of elections and the principles of organizing periodic free elections and ensuring the electoral rights of a person and a citizen within the sequence of performing complex electoral actions and procedures stipulated by law (Ivanchenko, 1999: 255-256).

Undoubtedly, this understanding of the election process was based on the technical and instrumental approach. As for the structure of the election process, A.V. Ivanchenko identified electoral actions and procedures, election functions and two types of principles (the first is the principles of organizing periodic free elections; the second is the principles of ensuring the electoral rights of a person and citizen). In addition, the concept of "technology" used by the author presupposes the inclusion of methods and techniques in the structure of the election process (Bychenkov, 2018). Despite positive aspects, A.V. Ivanchenko's approach has certain shortcomings. In particular, the scholar did not designate the subjective component as an independent element, as well as the conscious-volitional component (goals and tasks). As a result, the concept of the election process is reduced to a purely technical and instrumental configuration.

It is worth mentioning the position of A.V. Zinoviev and I.S. Polyashova on the concept and structure of the election process. They tried to summarize the existing definitions of the election process. The generalized version interprets the election process as a subinstitution of the electoral system and as a special type of activity characterized by a complex, polystructural and multifunctional nature since it covers the actions of all subjects (state

bodies, election commissions, citizens, their political associations, etc.) (Zinovev and Polyashova, 2003: 156).

While emphasizing the polystructural and polyfunctional nature of such activities, A.V. Zinoviev and I.S. Polyashova did not determine substructures in the election process as independent elements of this activity and did not include functions in the structure of the election process as activity. Based on the proposed definition of the "election process", its structure comprises legal norms, actions and subjects.

According to S.D. Knyazev (1999b), it is preferable to define the election process not through the activities of competent entities but as a system of interrelated and implemented in a set of relations that mediate the preparation and conduct of elections. In his opinion, this understanding of the election process meets the interests of a comprehensive representation of this multifaceted political and legal phenomenon and clearly shows its relationship with electoral procedures and forms.

We must give credit to S.D. Knyazev who tried to fully reflect the internal structure of the election process and form certain types of components in its structure: subjective, technological, and institutional (stadial). The subjective component of the election process encompasses participants in some election campaign who, due to their endowment with procedural rights and obligations, act as subjects of the election process. The technological component includes temporary (terms) and formal (election documents) that make up the legal regime of election campaigns.

The institutional component comprises the stages of preparation and conduct of elections based on electoral actions and phases. According to the rules of system-structural analysis, the institutional component of any system is represented by its subject composition (actors) (Chernyshov and Chernyshov, 2008; Danelyan, 2010; Gerasimov, Popova, Zlobina, 2011).

In legal science, this path is followed primarily by theorists of state and law, revealing the legal system of society, where its institutional component is the composition of subjects and participants (the subjective component) (Melekhin, 2009). Consequently, the institutional level of the election process includes only its subjects. At the same time, the author's merit is an attempt to combine its elemental composition into groups based on certain criteria (actors, tools, stages) within the framework of the election process.

The rational kernel is contained in D.M. Khudolei's ideas on the essential features and stages of the election process (Khudolei, 2015). The scholar attempted to consider the election process from the viewpoint of its content: legal (electoral rights and obligations) and actual (the activities of various participants in the preparation and conduct of elections) within the process-functional approach.

R.T. Biktagirov defined the election process as a complex and integrative (collective) category of the science of election law, election system and practice of election campaigns expressed in the legal relations that develop between elements of the election system during the preparation and conduct of general elections to state and local self-government bodies. The scholar emphasized that the election process was the purposeful activity of subjects of election law to implement the subjective constitutional right of citizens to elect and be elected to government bodies, on the one hand, and the power-related activity of voters in the formation of government and local self-government bodies, as well as on the empowerment of elected officials, on the other hand, performed through electoral actions and procedures in the manner and terms provided for by the procedural norms of election law (Biktagirov, 2012-2020).

Thus, R.T. Biktagirov declared two types of activities conducted by the subjects of election law: law-enforcement and power-related. As a result, the author highlighted the legal will of the subjects of election law, the goal to achieve a certain political and legal result, the political and legal result reproducing and legalizing public authority as elements of the election process. Within the framework of this article, it is crucial to consider the election process through the activity-based approach.

While defining the election process as a purposeful activity of subjects aimed at the implementation of their active electoral rights, the scholar dwelled on only one aspect, namely, the power-related activity of voters in the formation of government and local self-government bodies, as well as in empowering elected officials. He neglected the second aspect, i.e., the power-related activities of competent public authorities and the exercise of passive electoral rights by other subjects.

Finally, M.V. Maslovskaya (1999) examined the actions of subjects and participants in the election process in terms of their form and content. Functional content can be expressed in the activities of actors, and such actions are formalized in the form of temporary stages, from which the election process is formed.

This position correlates with our opinion on the correlation of the election process as a procedure for organizing and holding elections to government bodies with activities in the field of organizing and holding elections to government bodies considered as the content of this procedure. For some reason, M.V. Maslovskaya substituted these concepts and highlighted the elements of activity (subjects and participants, actions, material and legal results, election technologies) as essential characteristics of the election process.

A critical review of the above-mentioned constitutionalists allows us to draw a number of our own conclusions. As we can see from the corresponding

analysis, the views of constitutional scholars on the understanding and the elemental composition of the election process are not the same, there is no universal and unified approach. On the one hand, some authors see the concept of "election process" in a broader sense, while the others interpret it in a narrow sense.

In the first case (broader understanding), scholars include elements of activities in the field of organizing and holding elections to government bodies into the structure of the election process. Thus, the system of a lower order (less structural) or the election process is endowed with the properties typical of a system of a higher order (more structural), including the properties and elements of activities in the field of organizing and holding elections to government bodies. We believe that the election process is only a part of the procedure for organizing and holding elections to government bodies as activity.

On the other hand, the other authors mix two concepts and use the concept of "election process", which has not been enshrined in law, as a legal category identified either with the procedure for organizing and holding elections or with activities in the field of organizing and conducting elections to government bodies, which, in our opinion, seems incorrect from the methodological viewpoint.

These concepts (the election process and activities in the field of organizing and holding elections to government bodies) have their own content and, accordingly, a different structure. Moreover, the election process is part of the procedure for organizing and holding elections, which forms a stage of this order, namely, the stage of holding elections.

The current elaboration of the above-mentioned issue is conditioned by the following reasons: firstly, an imbalance in the development of theories regardless of their scientific significance (for example, disputes about the relationship of the concepts of "election process", "procedure for organizing and holding elections", "election system", the study of the order of organizing and holding elections in a purely theoretical field (Demeshko, 2015, 2016); secondly, the lack of adequate consideration of the relationship among such categories as "election process", "procedure for organizing and holding elections" and "election system" (Keshikova, 2001; Keshikova and Demeshko, 2015).

In addition, the current situation was influenced by the absence of a clear understanding of activities in the field of organizing and holding elections to government bodies, its main parameters (features) and elemental composition in the science of constitutional law. This subsequently leads scholars to an unjustified identification of activities in the field of organizing and holding elections to government bodies with the election process, election campaigns, etc. and the most diverse assessments of the elements that form the structure of such an activity.

2. Results

To fix the existing situation, we need to form our own opinion on the structure of activities in the field of organizing and holding elections to government bodies. For these purposes, it is crucial to pay attention to the general philosophical interpretation of the structure of activity.

The general philosophical concept of activity reveals the specific life of people who purposefully transform nature and social reality, including the political and legal nature and political and legal reality. In our opinion, the most developed rationalistic concept of activity (an integral concept) was offered by the German philosopher G. Hegel. It is not by chance since G. Hegel's concept considers nothing but the dialectics of the structure of activity (Leiashvili, 2013).

According to G. Hegel (1997: 16), activity is "the unity of goals, means and results presented in the process". It is also necessary to take into account our previous studies of activities in the field of organizing and holding elections to government bodies. Based on various aspects of understanding activities, we defined activities in the field of organizing and holding elections to government bodies as a complex phenomenon. Finally, we need to consider the achievements of scientific constitutionalism with due regard to the elemental composition of a related institution, i.e., the election process. As a result, we have concluded that the structure of activities in the field of organizing and holding elections to government bodies should be represented by the following composition of elements: subjects, goals, objectives, principles, functions, means, methods, objects and results.

The elemental composition of the structure of activities in the field of organizing and holding elections to government bodies we developed can be somehow traced in the current election law. Thus, Federal Law No. 67-FZ provides Chapter 4 "Election commissions, referendum commissions" concerned with subjects of the activity under study; Article 3 "Principles of conducting elections and referendums in the Russian Federation" defines the basic principles for carrying out such activities, etc.

At the same time, there is no single systemic approach in relation to such activities in election law. The legislator decided to regulate some of its types, i.e., activities in the field of organizing and holding elections of the president (Federal Law Of The Russian Federation, 2003), deputies of the parliament (Federal Law Of The Russian Federation, 2014), etc.

3. Discussion

Within the framework of constitutional law, scholars studied certain elements of the structure of activities in the field of organizing and holding elections to government bodies only in relation to the following institutions of constitutional law: election law and election process, for example: **subjects** (Biktagirov, 2010; Lebedeva, 2003; Uraev, 2006; Demyanov, 2018; Krasnov, 2000; Andrianova, 2013); **principles** (Mateikovich, 1998; Khudolei, 2007; Kuznetsova, 2010; Petrov, 2004; Tarovik, 2009; Kravets, 2016); **functions** (Agaev, 2010; Vdovin, 2008; Kazachenko, 2005; Volobueva, 2005; Buchin, 2007); **means** (Zagainov, 2006; Getman, 2010; Samsonov, 2000; Gorbunov, 2000; Shubina, 2006), **methods** (Zabotin, 2001; Malyukov, 2004; Knyazev, 1999a); **objects** (S.A. Belov, S.I. Tsybulyak, V.M. Malinovskaya, P.A. Astafichev, O.A. Pleshkova), **results** (I.A. Borovikova, A.A. Prokhorov, V.N. Rudenko). At the same time, the constituent elements of the structure of activity in the sphere of organizing and holding elections to government bodies in their unity have not been the subject of constitutional and legal research.

Despite a wide range of constitutional and legal studies of election law, election process and procedure for organizing and holding elections, such important elements of the structure of activities in the field of organizing and holding elections to government bodies as **goals**, **tasks** and **functions** carried out to achieve the above-mentioned goals and implement tasks (the main directions of the given activity) have remained understudied.

The significance of such an element as a goal was emphasized by G. Hegel in his dialectics of the structure of activity. It is not an accident that this concept was called purposeful activity since it reveals the deep interdetermination of a goal and its means (Hegel, 1974). G. Hegel's ideas were further developed in modern scientific works concerned with activity types, in which authors consider the corresponding type of activity from the teleological standpoint (Leiashvili, 2013).

Developing the initial doctrine, the authors included functions into the structure of purposeful activity along with the goals. Purposeful activity consists of actions, each of which has its own function. An action is the unity of goals, means and results, in which the result is a function of means. In this case, the result is a realized goal. Since the goal is to obtain resources for other purposes and achieve other results, the means of some actions are the functions that resulted from other actions (Leiashvili, 2013).

In other words, there is not a one-sided relationship between a purpose and a function but rather a mutual relationship. Therefore, all the above-mentioned elements (goals, means, functions and results) are mandatory for the structure of activity. Without any of these elements, purposeful activity loses its integrity and ceases to be an optimal system.

Conclusion

Goals, objectives and functions were selected as the research subject due to the specifics of the legislator's position that is contained in federal election laws. These federal laws have no indications of the goals and objectives of state policy in the field of organizing and holding elections to government bodies, as well as the goals and objectives of legal regulation in this area. This legislator's position resulted in the deformation of the integral legislative structure. In general, this testifies to the lameness and inefficiency of the legislative structure of Federal Law No. 67-FZ. It "got rid of" such elements as goals and objectives, although their inclusion suggests itself.

Why the legislator neglected these elements of the election law necessary for the implementation of activities in the field of organizing and holding elections to government bodies remains a mystery. Furthermore, the activities conducted in the field of organizing and holding elections to government bodies are purposeful, which is noted by almost all constitutionalists. There is also a positive legislative practice of defining the goals and objectives of state policy and legal regulation of relations emerging in certain activities of society, state, and individuals.

The positive practice can be exemplified by codified federal laws. Thus, the Criminal Code of the Russian Federation contains Article 2 "The Tasks of the Criminal Code of the Russian Federation" that defines the main tasks of criminal regulation. The Housing Code of the Russian Federation includes Article 1 "Main beginnings of the housing legislation" that provides the objectives of housing legislation and Article 2 "Providing conditions for implementation of the right to housing" that highlights the main activities of state authorities and local self-governments to ensure conditions for the exercise of civil rights to housing. Among the current federal laws, we should mention Federal Law of December 29, 2012, No. 273-FZ "On Education in the Russian Federation" which regulates activities in the field of education.

This law contains Article 3 "The basic principles of state policy and legal regulation of the relations in the field of education" and Article 4 "Legal regulation of the relations in the field of education". These two articles clarify the goals and objectives of state policy in the field of education and the legal regulation of relations in this area. Federal Law of December 28, 2010, No. 390-FZ "On Safety" regulates security activities and comprises Article 3 "Content of activities for safety" and Article 4 "State policy in the field of safety". These establish the main goals and objectives, as well as the directions of activities to ensure safety.

Recommendations

Guided by the existing positive practice of legal regulation of various social activities, we need to comply with the constitutional and legal regulation of activities in the field of organizing and holding elections to government bodies in federal election laws with the functional-purposeful method. While studying the structure of activities in the field of organizing and holding elections to government bodies, we should consider their goals, objectives and functions through the functional-purposeful method, which involves the study of goals and objectives through the prism of systemic functions in the chosen sphere.

The teleological and functional analysis of such activities reveals the essence of political and legal processes in the field of organizing and holding elections to government bodies and the logical formation of steps, stages and cycles of actions and procedures for carrying out activities in the established area. It also allows creating an optimal conceptual model of both activities in the field of organizing and holding elections to government bodies and an integral, effective legislative structure of its constitutional and legal regulation.

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Criminal policy in countering corruption crimes related to bribery and other illegal remuneration (legislative aspect)

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Abstract

Criminal policy is part of state policy, defining the main objectives and means to influence crime through legislative activities related to change, first, criminal, criminal-procedural, criminal-executive legislation. Through a scientific methodology of a documentary nature, the objective of the research is to analyze the criminal and legal policy of the State in the fight against crimes related to bribery and other illegal remuneration. It should be noted that the criminal policy of crimes related to bribery and other illegal remuneration is currently in crisis. It is concluded that there is a tendency to increase the range of criminal acts related to illegal remuneration, to broaden the scope of the criminal regulation of liability for illegal remuneration by making changes and additions to the composition of offences related to illegal remuneration, and to criminalize new types of acts related to unlawful remuneration, which is associated with the assessment of the role of illegal remuneration as a particularly dangerous criminal phenomenon, which has a significant negative impact on protected public relations.

Keywords: criminal-legal policies; corruption; anti-corruption; bribery; tampering.

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Política criminal en la lucha contra los delitos de corrupción relacionados con el soborno y otras remuneraciones ilegales (aspecto legislativo)

Resumen

La política criminal es parte de la política del estado, definiendo los principales objetivos y medios para influir en el crimen a través de actividades legislativas relacionadas con el cambio, en primer lugar, la legislación penal, penal-procesal, penal-ejecutiva. Mediante una metodología científica de carácter documental el objetivo de la investigación consiste en analizar la política penal y legal del Estado en la lucha contra los delitos relacionados con el soborno y otras remuneraciones ilegales. Cabe señalar que la política criminal de los delitos relacionados con el soborno y otras remuneraciones ilegales se encuentra actualmente en crisis. Se concluye que existe una tendencia a aumentar la gama de actos delictivos relacionados con la remuneración ilegal, a ampliar el alcance de la regulación penal de la responsabilidad por remuneración ilegal mediante la realización de cambios y adiciones a la composición de los delitos relacionados con la misma, y a tipificar como delito nuevos tipos de actos relacionados con la remuneración ilegal, que está asociada con la evaluación del papel de la remuneración ilegal como un fenómeno delictivo particularmente peligroso, que tiene un impacto negativo significativo en las relaciones públicas protegidas.

Palabras clave: políticas penales-jurídicas; corrupción; lucha contra la corrupción; soborno; manipulación.

Introduction

Countering crime is one of the most important areas of the state's activities, implemented within the framework of its criminal policy. Criminal policy, being a part of public policy itself, includes some components that correspond to the structure of crime: the fight against organized, corruption crimes, attacks on the person, etc. A lot of scientific research are currently devoted to criminal policy issues, however, a unified approach as to what should be included in the content of this concept has not been developed in the doctrine of criminal law.

1. The theoretical basis of the state's criminal-legal policy

1.1. Approaches to understanding the criminal - legal policy of the state

There are now some relatively contradictory approaches to understanding the criminal policy of the state in science. According to the first approach, the concept of «criminal policy of the state» is considered in a broad sense, where the concept of «criminal-legal policy of the state» is part of the first.

According to proponents of this approach, the criminal policy of the state covers all the activities of state and local governments, as well as public associations and citizens to fight crime and eliminate its negative consequences. At the same time, in the opinion of A. A. Herzenzon, tools of both legal and other origin (environmental, medical, economic measures) can be used to achieve these goals (Herzenzon, 1970; Kazyrytski, 2020). This approach is partially reflected in the definition formulated by N.A. Belyaev (1986), who under the criminal policy understands

> The direction of state and public bodies and organizations based on objective laws of development of society to protect the interests of citizens from criminal encroachments by the use of punishment or replacement of punishment measures of administrative or public influence to the persons who committed them, as well as by preventing crimes by means of the threat of punishment (1986: 15).

Proponents of the second approach assume that only legal tools and only authorized law enforcement agencies can be used to combat crime. At the same time, the priority is the use of legal means that have found enshrining in criminal, criminal procedure, and criminal-executive legislation (Zubkov and Zubkova, 2002).

Thus, the content of the criminal policy includes the policy of criminal-legal, criminal-procedural, criminal-executive, crime prevention policy, criminal-tactical policy, penitentiary, criminal-preventive, criminal, operational-investigative, etc. (Troshchenko, 2011). Categories of criminal-legal policy and criminal policy of the state in this case also correlate with each other as part and whole and are not considered as equivalent. This approach includes the definition of criminal policy given by A.I. Korobeyev (2019), according to which:

> Criminal policy is a general line developed by the state, defining the main directions, goals and means of influencing crime by forming criminal, criminal-procedural, criminal-executive legislation, regulating the practice of its application, as well as by developing and implementing measures aimed at preventing crimes (2019: 16).

Finally, the proponents of the third approach view the criminal policy of the State in a narrow sense. Therefore, it is more than a criminal policy, but

a criminal policy of the state, as the proponents of this approach consider only the means of combating crime, which are directly reflected in the criminal law.

The concepts of «criminal policy of the state» and «criminal-legal policy of the state» are identified with each other in this approach. N.A. Lopashenko (2004: 266), who writes that the concepts of «criminal policy» and «criminal-legal policy» are identical to each other, also concludes: «Criminal policy is no different from the policy of criminal law; criminal-legal policy does not include criminal-procedural or criminal-executive policies».

1.2. The concept and content of the state's criminal policy

Preferring the second approach, we believe it is necessary to support the position of A.I. Korobeyev (2019: 19) in the definition of criminal-legal policy as the part of criminal policy. It develops the basic objectives, principles, directions, and objectives of criminal and legal influence on crime.

One of the components of criminal-legal policy is law-making, which is based on the detection of those negative social phenomena, the fight against which is possible by criminal means, if there is an objective need of society in criminal-legal regulation. Criminal law is socially conditioned. The criminal-legal prohibition is a consequence of the reflection of the real needs of society in criminal law. Therefore, the task of the legislator is an adequate response to changes in the system and structure of public relations in order to take under legal protection the most valuable and significant of them.

Of course, the content of criminal and legal policy is reduced not only to legislative activity, it includes the activities of law enforcement. However, the effectiveness and quality of law enforcement depends on the quality of the criminal law. Therefore, we believe it is necessary to focus on the legislative aspect of the criminal-legal policy in the sphere of countering corruption crimes related to bribery and other types of illegal remuneration.

2. Stages of implementation of criminal policy in the field of countering corruption crimes

2.1. Establishing anti-corruption legislation

The criminal and legal policy in countering corruption crimes related to bribery and other types of illegal remuneration, its legal component is an improvement of legislative measures to counter this type of crime. The

study showed that such a policy in its evolutionary development has passed several stages. At the same time, each stage has specific features that have become determinants for a new round of law-making.

The first stage of the establishment of legislation to counter corruption crimes related to bribery and other forms of illegal remuneration is the adoption and ratification of international obligations and treaties (Council of Europe's Convention on Criminal Responsibility for Corruption, 1999); United Nations Convention Against Corruption, 2003).

Numerous anti-corruption regulations had already been adopted in the Russian Federation by the time the Criminal Code of the Russian Federation came into force in 1996. However, there is a different approach of the legislator to assess corruption crimes in terms of their public danger and to impose penalties for their commission.

This period is marked by the liberalization of criminal legislation in the area of anti-bribery, which is associated with the mitigation of penalties even for the commission of qualified bribery. Thus, in the Criminal Code of the Russian Federation in 1996, for receiving a bribe in the presence of special qualifying features was sentenced from seven to twelve years with the confiscation of property or without it, and for giving bribes in the presence of qualifying signs was established the maximum penalty of imprisonment up to eight years.

In addition, the criminal law in the original version did not contain a special rule establishing responsibility for mediation in bribery. Judicial practice assessed these socially dangerous acts from the position of complicity in bribery (assistance in the receipt of the bribe and assistance in giving of the bribe).

Since 2007, there has been a further improvement of domestic legislation in the field of countering corruption crimes by adopting a significant number of legal acts: strategies, concepts, laws, presidential decrees, orders of various ministries and departments.

2.2. Specification of anti-corruption legislation

Since 2011, the second stage can be identified, which was marked by the adoption of numerous laws that have made significant adjustments in the regulation of criminal responsibility for corruption crimes.

In addition, the responsibility for these forms of misconduct was seriously differentiated, namely:

1. a significant (in total over 25 thousand rubles) and a particularly large (in total more than 1 million rubles) amounts of bribes have been established.

2. the differentiation of responsibility for bribery, depending on its size, has been improved.
3. established responsibility for the commission of the act by a group of persons under preliminary collusion and organized by a group in Article 291 of the Criminal Code of the Russian Federation.
4. the procedure for calculating the fine for bribery in the size, multiple value of the subject of the bribe is fixed. However, we would like to point out that the criminal significance and determination of the effectiveness of this type of punishment is the subject of separate study.
5. chapter 15 «Confiscation of Property» of the Criminal Code of the Russian Federation has been introduced, extending its effect to certain types of corruption crimes related to bribery and other types of illegal remuneration.
6. the rule establishing responsibility for mediation in bribery with differentiation depending on certain circumstances was criminalized (Article 291 of the Criminal Code of the Russian Federation, 1996).

The novelty of the criminal law in the framework of the fight against corruption crimes was the rule enshrining the measures of criminal punishment for the promise or offer of mediation in bribery, established by the Federal Law from May 4, 2011 No. 97-FL.

However, it is impossible to recognize this criminal-legal prohibition completely new, previously there were preconditions for its emergence, just over a hundred years ago in Russia there was such a composition of the illegal act in the form of bribery at the stages of promise and offer. The 1845 Sentencing of Criminal and Correctional Offences in Article 372-382 chapter VI «On bribery and collusive corruption» section V «On crimes and misdemeanors in the service of the state and public» recognized bribery as a completed crime at a time when «money, things and other benefits were only promised to the official as promises» provided that the official had complied with the expected actions (Semykina, 2016).

These articles recognized crimes when money, belongings and other benefits were only promised to the official as promises, but in this case it was taken into account whether the law was «in the case of the relaxation of the law» as a result of the bribe or it was not «an incentive to do so»; the amount of money, belongings and other goods donated or promised was insignificant; bribes were handed over to the official not directly, but through an intermediary under the pretext of any imaginary legal and specious transaction (under the pretext of losing, selling, exchange, etc.) (Shiryaev, 1916: 425-427, 479-481).

In the Criminal Statute of 1903, the legislator already allocated one rule on responsibility for bribing jurors (including those on the reserve list), which indicated the «acceptance» of bribes offered to him (or them) as the end of the crime (A. 659) (Criminal Act, 1903: 65-66, 266-268).

In part 5 Article 291 of the Criminal Code of the Russian Federation (1996) the legislator made provisions for prohibition of promise or suggestion of mediation in bribery. However, as the study of these legislative innovations showed, certain provisions of the Criminal Code of the Russian Federation were formulated in violation of legal and technical rules, in conflict with the provisions of the General Part of the Criminal Code of the Russian Federation, in connection with which numerous problems of a practical nature have given rise to.

Establishing responsibility for promise or suggestion of mediation in bribery the Legislator does not connect these actions with a size the way it was done in part 1 Article 291 of the Criminal Code of the Russian Federation (1996). This way, actions written in part 5 Article 291 of the Criminal Code of the Russian Federation (1996) are considered as crimes regardless the size of the bribe.

In addition, the legislator for a not quite clear reason made a roll in the direction of a significant increase in responsibility for bribery under Article 291 of the Criminal Code of the Russian Federation, which already included five parts. At the same time, the sanction of part 5 Article 291 of the Criminal Code of the Russian Federation for bribery in a particularly large amount set a penalty of imprisonment for a period of seven to twelve years with a fine of seventy times the amount of the bribe.

2.3. Transforming criminal law in the fight against corruption

The third phase (2016-2017) is related to the transformation of criminal law in the field of anti-corruption, which was significantly influenced by the issuance of decrees of the President of the Russian Federation from April 2, 2013 No. 309 «On measures to implement certain provisions of the Federal Anti-Corruption Act» (Decree of the President of the Russian Federation, 2013a), April 2, 2013 No. 310 «On measures to implement certain provisions of the Federal Law on the Control of Compliance of Expenditures of persons replacing public office and other persons and their income» (Decree of the President of the Russian Federation, 2013b); from April 1, 2016 No. 147 «On the National Anti-Corruption Plan for 2016-2017» (Decree of the President of the Russian Federation, 2016).

In connection with the publication of legal acts, the legislator, embodying the goals of criminal policy at the current stage of the development of the state, strengthens the responsibility for corrupt officials. Thus, the Federal Law No. 324-FZ of July 3, 2016, the Criminal Code of the Russian Federation

was supplemented by Article 204 and 291, providing responsibility for petty commercial bribery and petty bribery, in which the amount of bribery or bribes is no more than ten thousand rubles (Federal Law of the Russian Federation, 2016).

It is worth noting that the need to establish responsibility for petty bribery arose before the moment of criminalization in the national anti-corruption plan for 2010-2011 (Decree of the President of the Russian Federation, 2010). In this document, the term «domestic corruption» was defined as «corrupt violations, which citizens encounter most often».

In an explanatory note to the draft of Federal Law was noted that in 2012-2015 most criminal cases on the facts of commercial bribery, giving or receiving bribes were initiated with the sum of less than ten thousand rubles. That was why it was suggested that the small public danger of such crimes should be considered and that the need to implement the principle of fairness in criminalizing those acts should be taken into account. At the same time, it was proposed in the sanctions of this article to establish a more lenient punishment than provided for by sanctions of Part 1 of Article 290 and Part 1 of Article 291 of the Criminal Code of the Russian Federation (Explanatory note to the draft Federal Law, 2016).

Establishing responsibility for criminal acts of corruption of up to ten thousand rubles is a logical legislative decision, corresponding to the spirit of changes previously made in Articles 204, 290, 291 of the Criminal Code of the Russian Federation, according to which a significant, large, and especially large number of bribes or bribery were provided as qualifying features.

2.4. Development of the concept and improvement of legislation in accordance with the National Anti-Corruption Plan 2018-2020

The fourth phase (2017-2019) is related to the development of the concept and the improvement of legislation in accordance with the National Anti-Corruption Plan for 2018-2020 (Decree of the President of the Russian Federation, 2018).

In accordance with the anti-corruption strategy of the Prosecutor's Office, the prosecutor's supervision of the implementation of the law on public and municipal service has been strengthened.

In addition, the improvement of criminal legislation in countering such crimes continued. Thus, on May 4, 2018, the amendments made by the Federal Law of April 23, 2018 no. 99-FZ (Federal Law of the Russian Federation, 2018) in the Criminal Code of the Russian Federation and the Criminal Code of the Russian Federation, aimed at strengthening the

responsibility for violations in the procurement of goods, works, services for the provision of state or municipal needs, in connection with which the composition of the crime was criminalized (Article 200 of the Criminal Code of the Russian Federation, 1996)). The norm is designed quite similar to the composition of commercial bribery, establishes responsibility for two counter-acts: illegal transfer of the subject of bribery and illegal receipt of it by representatives of the customer.

2.5. Criminalization of the composition of corruption offences related to bribery and other forms of illegal remuneration

The fifth phase (2020 to the present) is related to the ongoing criminalization of the composition of corruption crimes related to bribery and other types of illegal remuneration. Federal law of October 27, 2020, No. 352-FZ introduced responsibility for bribing the arbitrator Article 200 of the Criminal Code of the Russian Federation (Federal Law of the Russian Federation, 2020).

As can be seen from the periodization of the stages of the evolution of the criminal-legal policy to counter the corruption crimes related to bribery and other types of illegal remuneration, it occurred in leaps and bounds, but at the same time it was caused by a whole set of factors. This includes the adoption of international obligations by the Russian Federation; the emergence of new types of crimes involving bribery and other new types of crimes related to giving and receiving illegal remuneration and the need for a legislative response to them; need to deepen the differentiation of criminal responsibility for crimes related to bribery and other types of illegal remuneration, and the need for a legislative response to them (Anyushina *et al.,* 2021; Korobeyev, 2019; Szakonyi, 2021).

The process of law-making during all the five stages of the development of criminal and legal policy in the sphere of countering corruption crimes related to bribery and other types of illegal remuneration, makes it possible to conclude that it is haphazard and inconsistent, which is due to the initial lack of a clear concept to counteract this type of act. In turn, the haphazard nature of the change in criminal law in the designated sphere led to the discrepancy of individual norms among themselves, difficulties in law enforcement.

Conclusion

Speaking about the current state of the criminal-legal policy of the state as a whole, most scientists note that it is in crisis. This applies fully to the criminal-legal policy in the area of countering corruption crimes related to bribery and other types of illegal remuneration. We believe

that the development of a scientifically sound concept for fighting crime and reforming criminal legislation in the area of countering corruption crimes related to bribery and other illegal remuneration can contribute to the development of a scientifically sound concept for fighting crime and reforming criminal law. Implementation of such a concept would help to bring criminal law with a criminological reality, implement systemic measures to prevent corruption crimes related to bribery and other forms of illegal remuneration.

The current legislation has significantly increased the responsibility for illegal remuneration, depending on the area of public relations in which the encroachment is committed, the range of persons involved in criminal activities, the nature of their actions (inactions). Monitoring of existing legislation shows a tendency to increase the range of criminal acts related to illegal remuneration. This appears to be due to an assessment of the role of illegal remuneration as a particularly dangerous criminal phenomenon, which has a significant negative impact on legally protected public relations.

In recent years, there has been a steady trend of expanding the scope of criminal regulation of liability for illegal remuneration by making changes and additions to the composition of crimes related to such and criminalizing new types of acts related to illegal remuneration. Thus, since only 2018 and till present times The Criminal Law has been completed with new elements of crime: Article 200 5 of the Criminal Code of The Russian Federation "Bribing of a contact service worker, contract manager, the member of buying commission" and Article 200 of the Criminal Code of the Russian Federation «Bribing an arbitrator (awarder)».

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Legal features of the use of big data in the tax activities of the state

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Abstract

Objective: The article is devoted to determining the legal nature of Big Data technology. Some aspects of the problematic in the field of using Big Data technology in public tax activities are investigated. The theoretical and legal approaches to the regulation of Big Data technology in domestic and international law are analyzed. Methods: The authors used a combination of methods: theoretical, general scientific methods and empirical methods. Results: The development of the conceptual and terminological apparatus and the harmonization of domestic and international legislation is indicated as one of the possible directions for the formation of legislation. Conclusion and recommendations: Active implementation of the activities of tax authorities in the digital economy requires the adoption of adequate legal decisions. The thesis that legislation must be formed considering the legal and commercial nature of Big Data technology is considered. The use of Big Data technology must be accompanied by legal and ethical standards.

Keywords: Big Data; tax activities, personal information; legal regime, information security.

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Características legales del uso de big data en las actividades fiscales del estado

Resumen

El artículo está dedicado a determinar la naturaleza jurídica de la tecnología Big Data. Se investigan algunos aspectos de la problemática en el campo del uso de la tecnología Big Data en la actividad tributaria pública. Del mismo modo, se analizan los enfoques teóricos y legales de la regulación de la tecnología Big Data en el derecho internacional. Los autores utilizaron una combinación de métodos: teóricos, métodos científicos generales y métodos empíricos. El desarrollo del aparato conceptual y terminológico y la armonización de la legislación rusa e internacional se señala como una de las posibles orientaciones para la formación de la legislación. En las conclusiones y recomendaciones se muestra que la implementación activa de las actividades de las autoridades tributarias en la economía digital requiere la adopción de decisiones legales adecuadas. Se plantea la tesis de que la legislación debe formarse teniendo en cuenta el carácter legal y comercial de la tecnología Big Data. El uso de la tecnología Big Data debe ir acompañado de estándares legales y éticos.

Palabras clave: Big Data; actividades fiscales; información personal; régimen legal, seguridad de la información

Introduction

The editor of the scientific journal Nature, Clifford Lynch, introduced the concept of Big Data over twelve years ago, noting that digital information has overtaken oil as the most valuable commodity in the world. Big data is new oil; this similarity is determined not only by value. Raw data arrays are just as of little use as raw oil, and companies that "extract" data quickly become the most profitable in the world (Sosnin, 2019). Clifford Lynch, having discovered the Big Data phenomenon, proposed using this term by analogy with the metaphorical expression "big oil" that is similar in the English-speaking business environment (Lynch, 2008). It is indisputable that today, data in conjunction with modern technologies for their analysis modify economic, political, and legal relations.

The active digitalization of the economy has a direct impact on the tax activity of the state, which is defined as "... the activity of the state in organizing taxation and ensuring its implementation in order to meet its need for funds" (Khudyakov, 1995: 55). Tax activity of the state in the most simplified version is defined as the activity of the state in establishing, imposing and collecting taxes and fees.

The key point in defining public tax activities is public fiscal interest. Now public tax activity reflects the connection between the state, the economy, public financial interests and needs.

In the context of the digitalization of the economy, public administration, and society, it is important to determine the priorities, forms and boundaries of legal regulation, transformed and awaiting further transformation, taking into account the use of information technologies.

Digitalization processes also have their drawbacks, primarily due to the risk of disclosing personal information, information, in addition to speed, efficiency, accessibility and a number of other advantages.

World trends in the digital transformation of the financial activities of the state are manifested in the following: open development in government departments and IT departments; open government data; machine readable laws; websites of public authorities; development of digital administrative codes; building a community of government IT developers; involvement of CDO (Chief Data Officer) specialists - the main ones in terms of data quality, policy of their formation and implementation of data-based solutions; training and retraining (Botasheva, 2018).

Today, there is a lot of incomprehensible for lawyers in the field of new information technologies. There are more questions than answers in attempts to regulate digital relations arising, including in the financial sphere. Nevertheless, the future lies in advanced digital technologies, and therefore the need to clarify the legal essence and use Big Data in state tax activities in the digital economy will only grow and become more relevant.

1. Methodology

Analysis of publications shows that today there is no comprehensive scientific research devoted to the use of Big Data in public activities of the state in the formation, distribution, and organization of the use of state funds. In modern conditions of development of the digital economy, which creates the vulnerability of the legal regime of confidentiality of personal data, consideration of the legal protection of personal financial data is required.

The methodological basis for the development and implementation of legal instruments for regulating Big Data in the activities of bodies engaged in financial activities is a set of research methods: theoretical methods - analysis and study of regulatory acts that determine the implementation and development of Big Data technology; theoretical analysis and synthesis, analysis of the status of legal regulation of Big Data in Russia and the world, methods of inference; general scientific methods - modeling of possible

options for legal regulation of Big Data technology, analysis, synthesis, generalization, systematization, classification; empirical methods - observation, survey methods, monographic studies, methods of statistical processing and qualitative analysis of the results of scientific research.

2. Results

Regulation of the Big Data technology in the domestic regulatory environment should be formed based on a balance between the principle of formal certainty of legal norms, on the one hand, and technological development, on the other (Arkhipov and Naumov, 2016). The definition of Big Data should be interpreted in a uniform manner to ensure consistent and predictable application of the law, which at the moment is not reliable.

Big data requires independent consolidation in the current legislation, different from the definition of personal data. The legislator needs to develop new basic principles for the application of Big Data, based on their versatility, innovation and commercial nature.

The digital economy is a data economy. Big data promises big socially acceptable and desirable benefits in state financial activity (Silva, 2019). Digital information has overtaken oil as the most valuable commodity in the world. Big Data technology is inherently global and limitless; the study showed a lack of uniform international norms and agreements regarding which standards should govern the use of Big Data. To fill this gap, it is important to adopt unified international agreements based on international human rights law. International standards should contain legal and ethical restrictions for the global commercial use of Big Data technologies.

3. Discussions

One of the main tasks of the national program "Digital Economy of the Russian Federation" is to ensure favorable conditions for the collection, processing, and storage of data. Humanity is at a new stage in its development, which is seen as the fourth industrial revolution; and modern statistics show that the amount of generated data is constantly growing. According to expert estimates, the global data volume can reach 163-175 zettabytes by 2025 (this figure was 33 ZB in 2018), and their analysis becomes a tool for making effective decisions in the field of public administration, improving the quality of public services provided, adjusting production and business processes (Shuvalova, 2019).

Big data refers to the amount of information that cannot be processed by traditional methods, that is, using a conventional computer in a short time.

Special software and infrastructure - data centers, a network is needed to work with them. Big Data technology solutions are equipment kits, software and service kits.

The term "Big Data" does not have a universally accepted definition in both jurisprudence and the information technology industry. A.I. Savelyev, Senior Research Fellow at the Higher School of Economics National Law University's Information Law Research Laboratory, defines Big Data as a set of tools and methods for processing massive and structured and unstructured data from various sources subject to constant updates in order to increase the quality of managerial decision making, creating new products and increasing competitiveness (Savelyev, 2015). The above definition reflects, in our opinion, the legal nature and practical significance of Big Data.

Big Data technologies are universal in nature and can be used in various fields of financial activity. The potential advantages of using Big Data in the financial activities of the state are carried out both in imperative relations, mediating the participation of the state in the financial activities of the state; these are budgetary, tax relations, relations in the field of state insurance and state credit, as well as dispositive financial relations, which include credit, settlement, insurance, investment, stock relations (Nefedov, 2013).

Central banks see the benefits of using big data as a potentially effective forecasting tool to support analysis of macroeconomic and financial stability. An analysis of monetary policy can benefit from better and more timely forecasts of macroeconomic indicators for the near future; it may be useful for macro and micro prudential policies. The development of technologies for processing and analyzing gigantic amounts of data today determines the future of tax administration.

The information system of the Federal Tax Service of Russia today stores and uses information from 4.8 million legal entities and 3.6 million existing individual entrepreneurs. At the same time, the volume of the documents presented by them only on VAT returns is about 2 Tb. In addition, the Federal Tax Service of Russia aggregates and uses information received from other departments; About one billion records come to tax authorities per year (Matveeva, 2016).

There is a resonant bill "On a unified federal information register containing information about the population of the Russian Federation." The specified register will contain a huge array of data, more precisely, more than 30 types of information about a person - in particular, name, date and place of birth, gender "and another gender if it changes", marital status, citizenship, information about registration with the tax authority , including as a taxpayer of the tax on professional income, information on registration as an individual entrepreneur, on military registration,

registration in the systems of compulsory health insurance, social insurance and the pension system, documents on education / study, qualifications, awards, deprivation, restoration of an academic degree / title, information about parents / children, date and place of death.

It is not clear from the provisions of the bill how the information security of the system will be ensured, because the data stored in it is of great value for commercial use. In the era of Big Data (Big Data), one cannot ignore the commercial value of the information that will be included in a single information register. The question of the legal definition of Big Data remains open, which causes uncertainty in the understanding of personal data and their differentiation from Big Data.

The unified federal information register falls under the jurisdiction of the Federal Tax Service, which raises a lot of questions and indicates the priority of fiscal, public interests to the detriment of private interests. Since we are talking about personal information, the issues of ensuring privacy and protecting the rights of subjects of personal data should be dominant and decisive.

The obvious imperativeness of the provisions of the bill raises many questions, indicating a bias towards ensuring public interests. The compulsory nature of the processing of personal information about an individual, from the moment of birth to information about the date of death. An individual should not be deprived of the right to prohibit the use of his own data. Just as in the case of the processing of personal data, it is necessary to provide for the consent of an individual.

The reliability of information, methods and means of providing it raises many questions. It also does not provide for the possibility of an individual checking the reliability of his information.

However, the global problem is the lack of an independent normative act regulating Big Data. Most countries, including EU countries, regulate their personal data protection laws and are subject to the GDPR (General Data Protection Regulation). The GDPR provides for the creation of a European Data Protection Board, a European Inspector for Personal Data Protection. There is centralized control over the application of the provisions of the law, as well as uniformity of policy in the EU.

In our opinion, the existence of a supervisory authority is a situation that deserves the attention of the Russian legislator, since the activities of the Federal Service for Supervision in the Sphere of Telecommunications of the Russian Federation, Information Technologies, and Mass Communications, covering only personal data, leaving Big Data without legal protection mechanisms (Politou *et al.*, 2019; Dautova, 2019).

The lack of separate independent regulation of Big Data is compensated in the European Union by the presence of an extensive interpretation of personal data, including the definition of an IP address. It should also be noted that in addition to the general provisions of the GDPR, the rules regarding profiling apply. "Profiling" means "any form of automated data processing for the purpose of analyzing and making assumptions about various personal characteristics of an individual, in particular, his performance, creditworthiness, economic situation, location, health, taste preferences and behavior" (Article 4 (4) GDPR) (HSE university, 2018).

The definition of Big Data as arrays of information, the source of which are various channels with a high transmission rate, are mentioned in the Big Data Policy of the European Commission (Sosnin, 2019). Moreover, data can be either created by people or generated by computers.

Because Big Data is primarily the personal data of the user; It should be noted that the EU has positive experience in collecting certain types of information in the provision of online services, in particular cookies. The processing of cookies by users of online services is regulated by Directive 2002/58 / EC on the protection of privacy and electronic communications (e-privacy Directive).

The provisions and experience of the European Union should play a legal role in the regulation of Big Data, since Big Data has a high potential for the economy and financial activities of the state. The next important stage in the development of technology should be the task of creating modern legal tools that meet the requirements of the existing experience of individual countries, including the European Union.

Conclusions and recommendations

The process of updating the tax law is now being observed. Modern technologies provide fundamentally new opportunities, tax law is also experiencing their impact. On the one hand, the technological process and digitalization create opportunities for increasing the efficiency of tax mechanisms, on the other hand, such innovations can be interpreted as new challenges for tax regulation. These challenges include: the balance of public and private interests, protection of information and personal data.

Big Date in tax activities can be used primarily in fiscal interests for forecasting, making decisions in tax administration, assessing the positive and negative consequences of these decisions, and determining previously hidden dependencies. Unfortunately, it should be noted that today the tax service is only able to store data and deliver it upon request, without using the huge potential inherent in the data that the Federal Tax Service of the Russian Federation has at its disposal.

Tax activity in the digital economy, capable of providing high-quality information and communication infrastructure and mobilizing the capabilities of information and communication technologies for the benefit of taxpayers, business and the state, must undoubtedly transform and change. The digital economy is a form of economic activity that emerges from billions of examples of the networking of people, businesses, devices, data and processes.

"The Strategy for the Development of the Information Society in the Russian Federation for 2017–2030" determines that the digital economy is an economic activity in which the key factor in production is digital data, the processing of large volumes and the use of the analysis results of which, compared with traditional forms of management, can significantly increase the efficiency of various types of production, technologies, equipment, storage, sales delivery of goods and services.

The digital economy is based on hyper-connectivity, i.e., the growing interconnectedness of people, organizations, and machines, emerging thanks to the information and telecommunications network Internet, mobile technologies and the Internet of things. The industry of tax law and legislation will have to face all the consequences of digitalization, which are already generating fundamental changes in the models of economic and financial activity in leading countries. Digitalization should make the taxation activities of the state more open.

The digitalization of government tax activities leads to the accumulation of a huge array of tax and financial data, which is used either to provide consumers with new financial services or to increase authority through automatic compliance checks. The term "digitalization" is steadily associated with Big Data. Modern policy is developing towards ensuring openness and transparency of data in the financial sector, requiring public authorities to publish "open data" on official websites. This position is unconditionally rational, since the entire digital economy is a data economy, but so far, the issues of financial and tax confidentiality remain open. The right to financial and tax confidentiality continues to be illusory.

The extensive collection and use of "large" tax and financial data seriously violates data privacy and protection, especially when these data are used in smart algorithms to create digital personal profiles or to make automatic decisions that can only affect people. Ultimately, this practice of profiling tax and financial behavior creates a fertile ground for discriminatory treatment of individuals and groups.

The conclusion is substantiated that it is necessary to introduce a norm for mandatory publication of information on leaks, compensation payments and large penalties to bodies carrying out financial activities as the most effective mechanism of self-regulation, in which a sense of security policy

appears, i.e., motivation to comply with the social responsibility of state authorities for the security of Big Data.

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Ethical Conduct of Public Servants

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Abstract

The objective of the investigation was to examine the content and specific characteristics of the ethical conduct of public officials in Ukraine and the world. To achieve the objective, the authors used the following methods: epistemological, comparative-legal, structural-functional, analytical, informative-analytical. Among the results of the article, it was possible to consider the ethical conduct of public servants in a broad and narrow sense. In the same way, the main requirements of the legislation that regulate the conduct of public servants have been analyzed and the conditions that standardize in detail the legal relationships in the field of professional activity of public servants, their relationships with each other and with citizens. Finally, everything allows us to conclude that a Code of Ethics for public servants establishes common rules of conduct for them and determines responsibility for their violation. To be effective, this regulatory legal act must also include the following obligations for public servants: requirements for the performance of official functions; requirements for advanced training; requirements for relationships with colleagues, managers, and subordinates; norms of communication with citizens and norms to resolve conflicting interests.

Keywords: public service; ethical conduct; code of ethics; standards of ethical conduct; comparative law.

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Conducta ética de los servidores públicos

Resumen

El objetivo de la investigación fue examinar el contenido y las características específicas de la conducta ética de los funcionarios públicos en Ucrania y el mundo. Para lograr el objetivo los autores utilizaron los siguientes métodos: epistemológico, comparativo-legal, estructural-funcional, analítico, informativo-analítico. Entre los resultados del artículo se pudo considerar la conducta ética de los servidores públicos en sentido amplio y estrecho. Del mismo modo, se han analizado los principales requisitos de la legislación que regula la conducta de los servidores públicos y se ha establecido las condiciones que normalizan detalladamente las relaciones jurídicas en el ámbito de la actividad profesional de los servidores públicos, sus relaciones entre sí y con los ciudadanos. Finalmente, todo permite concluir que un Código de Ética para los servidores públicos, establece reglas comunes de conducta para ellos y determina la responsabilidad por su violación. Este acto jurídico reglamentario debe incluir además para ser efectivo las siguientes obligaciones para los servidores públicos: requisitos para el desempeño de funciones oficiales; requisitos para la formación avanzada; requisitos para las relaciones con colegas, directivos y subordinados; normas de comunicación con los ciudadanos y normas para resolver intereses contrapuestos.

Palabras clave: servicio público; conducta ética; código de ética; normas de conducta ética; derecho comparado.

Introduction

The establishing the guilt of a particular official in committing an offense in the field of his professional activity may result in his removal from office and a ban on holding this position in the future. All the standards of purification of power will be observed in this case: the guilt will be personal, an individual objective investigation will be carried out, and the person will be able to use all the mechanisms to protect his own rights (Pchelin, 2020: 17). Ukraine's integration into the European Community requires our state to introduce qualitatively new standards of public service, which are based on European values and national experience.

At the same time, the issue of rethinking the requirements for public servants, their business and moral qualities become important, since their activities are always under the close attention of society. Their conduct, performance discipline, attitude, communication style and behavior must be impeccable. Ethical conduct is one of the important factors of internal

provision of the subject of public administration's activities. In this regard, the issue of ethical conduct of public servants is relevant and requires detailed study. At the same time, despite the considerable interest in the researched issue, many matters of ethical conduct of public servants need additional research. This determines the relevance of this work.

Nowadays, one can confidently state that the implementation of quality public administration remains the key element in the state system functioning and its individual mechanisms of government. Thus, we understand that the adoption of useful experience from private spheres of public life to public ones (state or local) can be applied as one of the types of significant improvement of the efficiency of the state system or its individual mechanisms (Serohina, Mykolenko, Seliukov, Lialiuk, 2021: 281).

The scientific novelty of the research is that this article is one of the first comprehensive studies, which determines the content and specific features of ethical conduct of public servants based on the analysis of scientific papers and legal regulation, and which provides reasonable propositions for amending national legislation in the researched area.

The purpose of the research is to determine the content and specific features of ethical conduct of public servants based on the analysis of national and international legislation, scientific works, as well as to develop propositions for improving its legal regulation. To achieve the set purpose, it is necessary to solve the following main tasks: to determine the content of the concepts of "public service", "a public servant", "ethical conduct" based on the analysis of the current legislation and scientific works; to study national and international legislation that establishes requirements for the conduct of public servants; to provide propositions for improving the legal regulation of ethical conduct of public servants.

1. Methodology of the Research

General scientific and special methods of scientific cognition constitute the methodological basis of the work. The *epistemological method* was used to clarify the content of public service, public servants, ethical conduct of public servants. The use of the *comparative and legal method* is the basis for comparing the legal regulation of ethical conduct of public servants in different countries, as well as for clarifying the positive aspects of such regulation to implement them in Ukraine.

The *structural and functional* analysis was used for determining the basic requirements for the conduct of public servants. The *analytical method* provided an opportunity to develop propositions and recommendations for improving the ethical conduct of public servants in Ukraine.

Information and analytical basis of the scientific research was the regulatory base regulating relations in the field of ethical conduct of civil servants, as well as scientific achievements of scholars in the field of public administration.

2. Results and Discussion

The realities of life have shown that top business managers, who are committed to formulating public policy aimed at the development of a particular industry, do not understand the peculiarities of public administration, namely – responsible service to all citizens of Ukraine. At the same time, the issue of combining bureaucracy based on strict adherence to the rule of law and procedures and the application of innovative approaches to management decisions remains unsolved. The key problem is the professional ability of those who shape and implement public policy to solve socially significant problems in an indeterminate environment during the implementation of decentralization reform. This requires the application of innovative approaches to the training of public servants (Vasylieva et al., 2020: 304-305).

Problems of ethical conduct of public servants are receiving more and more attention in all countries of the world. The issue of developing and implementing certain rules of conduct into practical activities of public servants has always been relevant for both national and international science. Analysis of such experience and critical assessment of the current state of ethical conduct of public servants, development of directions for its improvement will bring the prestige of both the public service and the relevant subjects of public administration to a new level.

It is expedient to begin the research of the specified problems with defining the content of the concepts of public service and public servants. Public service – is the activity on state political positions, in state collegial agencies, professional activity of judges, prosecutors, military service, alternative (non-military) service, other civil service, patronage service within state authorities, service in the authorities of the Autonomous Republic of Crimea, local self-government agencies (The Code of Administrative Proceedings of Ukraine, 2005). Accordingly, a public servant is a person who holds one of these positions and performs the functions of the state within the limits set by law.

The legal status of public servants provides (Serohin, Lypovska & Borodin, 2019: 69):

1) direct involvement in the preparation, adoption, and implementation of decisions in the field of executive and administrative activities of

the state within the performance of official duties, in particular in some cases these actions entail political, economic and other social consequences for the whole society or any part of it.

2) a public official's authority and opportunity to act within his competence on behalf of a public administration agency (and thus, as if on behalf of the state), representing the state interest.

3) combination of strict normative regulation of activity in the formal and procedural relation with rather wide possibilities to take volitional decisions on the basis of subjective interpretation of both a situation, and its legislative norms.

4) belonging to a special professional status group; although it consists of representatives of different professions, but its unifying factor is the work within public administration agencies.

One of the important features of the status of a public servant is the strict normative regulation of his activity, which provides not only regulation of the state of his official duties, but also determines the rules of his ethical conduct.

Ethical conduct is a set of deeds, actions of people that meet the norms of morality, consciousness, order, formed in society or it strives to (Shcheblykina and Hrybova, 2015). This concept can be considered in broad and narrow senses. In the first case, ethical conduct should be understood as human behavior that meets the norms of morality, legal principles, order, which have been formed in society. In a narrow sense, it should be interpreted as the behavior of a person that complies with legal principles and principles, norms of morality and order in a particular team, where a person lives, works, studies, etc.

The ethical conduct of public servants in Ukraine is regulated by several laws and regulatory legal acts. A prominent place among them is occupied by the Law of Ukraine "On Civil Service" (December 10, 2015, No. 889-VIII). It stipulates that a civil servant is obliged to perform duties, as well as: 1) not to allow acts incompatible with the status of a civil servant; 2) to show a high level of culture, professionalism, endurance and tact, respect for citizens, management, and other civil servants; 3) to take care of state property and other public resources. The control over the observance of ethical conduct by the employees is entrusted to their managers. A public servant may be subject to disciplinary action for violating the established requirements. Even if the actions of the employee outside the service significantly affect the interests of his department, in particular affect the "respect and trust in his position", it is considered that he is committing a misdemeanor (Hubanov, 2016: 42).

According to the Law of Ukraine "On Prevention of Corruption" (October 14, 2014, No. 1700-VII), the ethical conduct of public servants must meet the following requirements: the priority of the interests of the state or community; political neutrality; impartiality; competence and efficiency; non-disclosure of information that became known in connection with the performance of official duties; refraining from executing illegal decisions or orders. Having compared these legal norms, we can conclude that they pose different requirements for the ethical conduct of public servants.

Besides, there is a separate legal act that defines the rules of ethical conduct for almost every type of public servants. For example, the Order of the Ministry of Internal Affairs of Ukraine dated from November 9, 2016, No. 1179 "On approval of the Rules of ethical conduct of police officers" stipulates that a police officer while performing official duties must: strictly comply with the Constitution and laws of Ukraine, other regulatory legal acts regulating the activities of the police and with the Oath of a police officer; professionally perform the duties, act only on the basis, within the powers and in the manner prescribed by law; to respect and not violate human rights and freedoms; in each case, choose the measure from among the measures provided by the legislation of Ukraine, the application of which should lead to the least negative consequences; strictly adhere to the anti-corruption legislation of Ukraine, restrictions related to service in the National Police of Ukraine defined by the Laws of Ukraine "On the National Police", "On Prevention of Corruption" and other legislative acts of Ukraine.

To show respect for the dignity of each person, to treat everyone fairly and impartially; behave restrained, friendly, open, attentive and polite causing the population to respect the police and a willingness to cooperate; control own behavior, feelings and emotions, not allowing personal likes or dislikes, hostility, bad mood or friendly feelings to influence decision-making and official behavior; to have a neat appearance, to be in the established form of clothes; to adhere to the norms of business speech, to prevent the use of profanity; to keep the information with limited access, which became known in connection with the performance of official duties; to inform the immediate supervisor about the circumstances that make it impossible to continue the service in the police or to hold the position (On approving the rules of ethical conduct of police officers, 2016).

To systematize the legal norms on ethical conduct of public servants, the Order of the National Agency of Ukraine for Civil Service "On approval of the General rules of ethical conduct of civil servants and officials of local self-government" dated from August 5, 2016, No. 158 was adopted. It stipulates that public servant and official of local self-government while performing their official duties are obliged to strictly adhere to generally accepted ethical norms of conduct, to be friendly and polite, to adhere to a high culture of communication, to respect the rights, freedoms and

legitimate interests of a man and citizen, association of citizens, other legal entities.

Civil servants and officials of local self-government should strengthen the authority of the civil service and service in local self-government agencies, as well as the positive reputation of state authorities and local self-government agencies (On approving General rules of ethical conduct of civil servants and officials of local self-government, 2016). This regulatory legal act establishes in great detail the rules of conduct of civil servants both while performing their official duties and while communicating with citizens, management, subordinates, in everyday life, etc. Particular attention is paid to the compliance with the principle of integrity.

Given the urgency of the compliance with the rules of ethical conduct by public officials worldwide, the Committee of Ministers of the Council of Europe has developed and approved the Model code of conduct for public officials (Annex to the Recommendations of the Committee of Ministers of the Council of Europe of 11 May 2000, No. R (2000) 10). It both defines the general principles of conduct of public officials and establishes the basic principles of proper conduct, namely: the need to put public interests above the own ones (the Art. 6); the public official has a duty always to conduct himself or herself in a way that the public's confidence and trust in the integrity, impartiality and effectiveness of the public service are preserved and enhanced (the Art. 9); the public official should report to the competent authorities any evidence, allegation or suspicion of unlawful or criminal activity, or any violation of the Code by other public officials (the Art. 12).

The Articles 13-15 focus on conflict of interest; the definition of conflict of interest and personal interest is given, the responsibilities of the public official to prevent such a conflict are listed in details; protection of the public official's privacy (the Art. 17); the public official should not demand or accept gifts and services; this does not include conventional or minor gifts (the Art. 18); the public official must not misuse of his official position (the Art. 21); the public official should not take improper advantage of his or her public office to obtain the opportunity of employment outside the public service and to disclose confidential official information (the Art. 26) (Appendix to Recommendation No. R (2000) 10). All the indicated provisions are enshrined in the norms of national law.

Another important normative document on the observance of rules of ethical conduct by public officials is the International Code of Conduct for Public Officials (UN General Assembly Resolution 51/59 of 12 December 1996). The International Code lists the basic principles of conduct (efficiency, competence, attentiveness, fairness, impartiality) and summarizes the basic rules for preventing conflict of interest, declaring income information, accepting gifts, handling confidential information, etc. As we can see, international legal norms quite briefly enshrine the rules of

ethical conduct, ignoring many aspects of the activities of public servants and their compliance with ethical norms.

The rules of ethical conduct of civil servants in other states are enshrined in a rather general form. Thus, the Civil Service Code (Statutory guidance, updated 16 March 2015) of the United Kingdom establishes the basic principles of civil servants, namely: decency, honesty, objectivity, impartiality.

Ethical rules for civil servants of the Republic of Lithuania determine the following basic principles of ethical conduct of public servants: respect for people and the law (the Art. 2); a civil servant must be fair (the Art. 3); a civil servant must be guided only by public interests, not to use his official position in personal interests or in the interests of family / friends (the Art. 4); be incorruptible, not to accept gifts or money (the Art. 5); to be objective, to act impartially and lawfully (the Art. 6); be responsible (the Art. 7); be polite, perform own duties in time and professionally (the Art. 9) Valstybės tarnautojų veiklos etikos taisyklės (2002). The analysis of these provisions demonstrates that much attention in Lithuania is paid to civil servants' compliance with anti-corruption legislation. At the same time, many other aspects of such behavior have gone unnoticed by the legislator. This list should be supplemented with requirements for professional growth, communication with citizens, management and subordinates, principles of morality, etc.

The ethical principles of civil servants of the Kingdom of Norway enshrine the following principles of civil service: the principle of loyalty – to perform the tasks of management and report to it in a timely manner (the Art. 2); the principle of openness – public access to public services, the right of employees to report unacceptable circumstances in the institution (the Art. 3); impartiality; it is also necessary to be careful when communicating with former colleagues, not to accept gifts (the Art. 4); the principle of professional independence and objectivity (the Art. 5) (Etiske retningslinjer for statstjenesten, 2017). These principles define the rules of ethical conduct in a general way and need to be supplemented and clarified.

The main provisions of the Code of Ethics for Civil Servants of Croatia establish the following requirements for the conduct of civil servants: a civil servant must respect citizens and other civil servants (the Art. 6); a civil servant at official events and during public speeches must clearly distinguish his or her own opinion from the position of the institution, where he or she works (the Art. 8); civil servants should not use their position to influence the decisions of the legislative, executive or judicial branches of power (the Art. 9); civil servants in relation to citizens must act professionally (the Art. 10); communication between civil servants should be based on mutual respect, trust, cooperation and courtesy (the Art. 12) (Etički kodeks državnih službenika, 2011).

There is currently a number of problems in Ukraine related to the formation of the level of ethics of a civil servant: first of all, there is a great need for highly qualified personnel who have the theory and practice of regional development, who are able to work in conditions of fierce professional competition and have a high stress-resistant threshold and adhere to ethical and moral norms in business relations. Secondly, there is the lack of appropriate professional education (and sometimes specialized) and the level of professional training, which is a mandatory requirement for holding public office. Thirdly, there is insufficient legislative enshrinement and legal establishment and coverage of moral norms for civil servants, as well as insufficient responsibility for violating these norms (Bobrovnyk, 2016).

In this regard, there is a widespread opinion among scholars about the need to develop and adopt the Code of Ethics for Civil Servants at the central level, which should consist of basic principles, norms, requirements, rules of conduct for civil servants and include tools for assessing moral and ethical competencies, and most importantly, which would define mechanisms for monitoring its implementation and develop a system of specific actions and measures in case of its violation. It is appropriate that this Code should include the following types of requirements for public servants: requirements related to the profession; requirements for relations with colleagues; requirements for advanced training and self-education; norms of communication with citizens; requirements for off-duty behavior; norms of relations with superiors and subordinates; norms for resolving conflicts of interest; a list of sanctions, in case if these rules are ignored or unethical behavior of a public servant is detected.

It is also important that this Code becomes a "model" for the creation of the "Rules of ethical conduct of public servants" in every public agency. The content of these rules should include already typical, specific norms and values for the relevant agency (Sorokina, 2020). Supporting this suggestion, it should be noted that the adoption of such a legal act will ensure the unity and systematization of the rules of conduct for all civil servants, will improve the performance and behavior of the employees, increase the prestige of civil service and public confidence in government.

Conclusions

Summarizing the above, we can conclude that there is a current need to adopt the Code of Ethics for civil servants in Ukraine, which would establish general rules of conduct common to everyone and would establish responsibility for their violation. This regulatory legal act should include the following requirements for public servants:

– requirements for the performance of official duties: to perform their official duties in the best possible way, honestly and impartially; to direct their actions to protect public interests and to prevent conflicts between private and public interests; to comply with anti-corruption legislation; not to use official position in private interests or for illegal private interests of other persons; not to disclose information that has become known in connection with the performance of official duties; to use own official position, official resources exclusively for the performance of their official duties and lawful assignments of managers; to adhere to political impartiality and neutrality; not to use own official position for political purposes; not to harm the environment or human health;

- requirements for professional advanced training: to constantly improve own cultural level, the level of own professional development, to improve own skills, knowledge and abilities in accordance with the functions and tasks on the position, in particular in terms of digital literacy, to improve the organization of official activities.
- requirements for relations with colleagues, management and subordinates: to communicate on the basis of mutual respect, trust, cooperation and courtesy; to prevent conflicts; not to allow discussion of personal or family life of colleagues, members of their families and other close persons.
- rules of communication with citizens: to show respect for the dignity of each person, to treat everyone fairly and impartially; to behave restrainedly, kindly, openly, attentively and politely, causing respect and willingness to cooperate in the population; to show restraint in case of criticism or insult on the part of citizens, to remark on the unacceptability of such behavior and the need to comply with the norms of polite communication; to prevent conflicts; to strengthen the authority of the civil service and service within local self-government agencies, as well as the positive reputation of state authorities and local self-government agencies by their behavior; not to allow:
    a) the use of obscene language, high intonation, humiliating comments.
    b) the spread of rumors.
    c) manifestation of any of the forms of discrimination.
    d) acts of a sexual nature expressed verbally (threats, intimidation, obscene remarks) or physically (touching, slapping), humiliating or insulting persons who are in a relationship of labor, official, material, or other subordination.

- norms for resolving competitive interests: to direct their actions to prevent conflicts between private and public interests, to avoid the emergence of real and potential competitive interests in their activities.

The indicated requirements are not exhaustive and can be supplemented and detailed in the Code of Ethical Conduct for a particular type of public servants.

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Assessing the Need of Using Artificial Intelligence within Legal Practice

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Abstract

The objective of the article is to analyze the content and particularities of the use of artificial intelligence in legal practice. Historical and legal, epistemological, and comparative scientific methods are used. It has been clarified that artificial intelligence is the ability of a computer (machine) to simulate human intelligence while solving certain tasks. This type of intelligence is also designed to solve complex integral tasks related to the collection, processing, storage, generalization, and other actions with information. It has been argued that the introduction of artificial intelligence technologies in all spheres of public life requires adequate legal regulation of all aspects of their use. The main guidelines for the development of artificial intelligence in legal practice have been identified, namely: development of innovative cybersecurity systems; determination of the list of administrative services, the decisions of which can be made by automated systems using special information processing algorithms; development of digital systems for the identification and verification of persons; use of artificial intelligence technologies to detect illegal activities in computer systems, registries, other socially dangerous phenomena; protection of personal data; development of technologies for e-government.

Keywords: artificial intelligence; legal practice; e-court; e-government; administrative services.

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Evaluación de la necesidad de utilizar la inteligencia artificial en la práctica jurídica

Resumen

El objetivo del artículo es analizar el contenido y las particularidades del uso de la inteligencia artificial en la práctica jurídica. Se utilizan métodos científicos de tipo históricos y legales, epistemológicos, comparativos. Se ha aclarado que la inteligencia artificial es la capacidad de una computadora (máquina) para simular la inteligencia humana mientras resuelve determinadas tareas. Este tipo de inteligencia está diseñado además para resolver complejas tareas integrales relacionadas con la recolección, procesamiento, almacenamiento, generalización y otras acciones con información. Se ha argumentado que la introducción de tecnologías de inteligencia artificial en todas las esferas de la vida pública requiere una regulación legal adecuada de todos los aspectos de su uso. Se han determinado las principales orientaciones para el desarrollo de la inteligencia artificial en la práctica jurídica, a saber: desarrollo de sistemas innovadores de ciberseguridad; determinación de la lista de servicios administrativos, cuyas decisiones pueden ser tomadas por sistemas automatizados mediante algoritmos especiales de procesamiento de información; desarrollo de sistemas digitales para la identificación y verificación de personas; uso de tecnologías de inteligencia artificial para detectar actividades ilegales en sistemas informáticos, registros, otros fenómenos socialmente peligrosos; protección de datos personales; desarrollo de tecnologías para el gobierno electrónico.

Palabras clave: inteligencia artificial; práctica jurídica; tribunal electrónico; gobierno electrónico; servicios administrativos.

Introduction

Search for criminals becomes more difficult in modern conditions of continuous growth of the population of big urban centers and more and more frequent use of the latest achievements of science and technology by criminals for the realization of their purposes and for counteraction to law enforcement agencies. To increase the efficiency of the search for offenders it is necessary to introduce the latest technologies (Korshenko, Chumak, Mordvyntsev, Pashniev, 2020). As the development of information technology and computer technology, artificial intelligence is widely used in various related fields, and plays a greater role. Artificial intelligence is the frontier technology.

In the future, the development of artificial intelligence technology will also be able to alter people's work and life. (Hao, 2017). The introduction of information technology in all spheres of public life, the development of artificial intelligence technology is an integral component for the formation of a modern highly developed country. The global tendency is the use of artificial intelligence in the areas of socio-economic, scientific, and technical, defense, educational, legal, and other activities of society. Its types, such as computer software, information technologies, etc. have become quite widespread in our daily lives.

It must be acknowledged that organizational work in public administration agencies on forming and storing databases, processing information on the basis of certain algorithms, developing documents and making management decisions by using artificial intelligence technologies will become an integral part of our lives in the nearest future. At the same time, the legal regulation of using artificial intelligence in Ukraine, in particular within legal practice, requires more thorough development and implementation into practical activities.

The content and specific features of using artificial intelligence, its place in society have been studied by scholars from various fields of science. At the same time, the issue of using artificial intelligence within legal practice requires additional study and identification of possible areas of application of its technologies in law enforcement and law-enforcement spheres, judicial system, etc. The scientific novelty of the research is to develop the concept and specific features of using artificial intelligence within legal practice.

1. Research Purpose and Methodology

The purpose of the article is to determine the role and place of artificial intelligence within legal practice and analysis of perspectives for its use in this area. To achieve this purpose it is necessary to solve the following tasks: to determine the content and specific features of artificial intelligence; to study the state of legal regulation for the use of artificial intelligence in Ukraine and the world; to analyze the current state of using artificial intelligence within legal practice; to find out possible directions of using artificial intelligence in the field of jurisprudence on the basis of the analysis of national and international experience.

There is no way one can acquire artificial intelligence in the legal practice without assessing its effectiveness and implementation. There is always that place of such intelligence in questioning the necessity of legal protection, but what is of essence here is to see the extend in which such intelligence can contribute to an effective legal system. The State of Ukraine has seen

to that such intelligence should be recognised and applicable, even though much need to be done. It is one thing in stipulating artificial intelligence, and the other in ensuring its recognition and applicability.

General scientific and special methods and techniques of scientific cognition constitute the methodological basis of the work. The historical and legal method allowed us to outline the main stages of regulating the process of using artificial intelligence in various spheres of public life. The epistemological method was used to clarify the concept and specific features of artificial intelligence. The comparative and legal method was used to compare the basic principles of using artificial intelligence in Ukraine and the world. The structural and functional analysis was used in determining the main areas of using artificial intelligence within legal practice.

2. Results and Discussion

In artificial intelligence a factor of the first order that has accelerated the technological s processes, which in turn drive continuous improvements in all fields of human action. However, despite its many benefits, on the one hand, that this form of non-human intelligence will increasingly play an important role in all cultural, labour, military and recreational human relations and; on the other hand, that modern and civilized nations, therefore, have a moral duty to create l eyes that establish mechanisms of regulation and balance between artificial intelligence and human condition, as a condition of possibility so that its widespread use does not become a distinction in the style of what was planted at the time by some sci-fi narratives, in film and literature (Vidovic López, 2021).

Artificial intelligence is an important technology that supports daily social life and economic activities. It contributes greatly to the sustainable growth of the economy and solves various social problems. In recent years, Artificial intelligence has attracted attention as a key for growth in developed countries such as Europe and the United States and developing countries such as China and India (Lu *et al*., 2018).

Artificial intelligence, as a separate field of research, is currently experiencing a boom -new methods of machine learning and hardware are emerging and improving, and the results achieved change the life of society. Machine translation, handwriting recognition, speech recognition is changing our reality. The work of creating unmanned vehicles, voice assistants and other devices using these technologies is in an active process (Eliseeva, Fedosov, Agaltsova, Mnatsakanyan, Kuchmezov, 2020).

The term of “artificial intelligence” in explanatory dictionaries of the Ukrainian language is defined as: the ability of a computer system to model

the process of human thinking using functions inherent only in human intelligence (Busel, 2005). "Artificial intelligence" in the international encyclopedic dictionary is interpreted as: the ability of a machine to simulate intelligent human behavior (thinking, learning, or understanding language); section of computer science, which deals with modeling of intellectual behavior in computers (Webster's New International English Dictionary, 2012). Thus, it is the ability of a computer (machine) to simulate human intelligence by solving certain tasks. The solution of such problems is carried out in accordance with specially developed algorithms.

Artificial intelligence is a term used to describe how computers can perform tasks that are generally considered to require human intelligence, such as language and object recognition, data-based decision-making, and language translation (Lauri, 2018). M. Stefanchuk (2020) proves that artificial intelligence is modeling of the ability to abstract, creative thought – and especially the ability to learn – by using digital computer logic.

The spread of the use of artificial intelligence technologies in all spheres of public life has obliged international and national institutions to take measures to determine the basic principles of their use and ensure their legal regulation. The Organization for Economic Co-operation and Development states in its principles that artificial intelligence is:

> A machine system that can make predictions, recommendations or decisions influencing the real or virtual environment on the basis of a set of goals established by a human being. Moreover, such systems can be designed to work with different levels of autonomy (OECD, 2019: 16).

The concept of artificial intelligence development in Ukraine defines that artificial intelligence is an organized set of information technologies, with the use of which it is possible to perform complex comprehensive tasks by using a system of scientific research methods and algorithms for processing information obtained or independently created during the work, as well as to create and use knowledge bases, decision-making models, algorithms for working with information and to identify the ways to achieve the objectives (Resolution of the Cabinet of Ministers of Ukraine, 2020). It is designed to solve complex comprehensive tasks related to the collection, processing, storage, generalization, and other actions with information.

Artificial intelligence goes further and surpasses a human being in understanding own inner construction and ability to self-rebuild (rapid evolution) through the correction of errors or shortcomings and further repeated improvement (the program finds errors within itself, corrects them, and rewrites itself to infinity) (Radutnyi, 2019).

The introduction of artificial intelligence technologies in all spheres of public life requires proper legal regulation of all aspects of its use. One of the first regulatory legal acts in the researched area was the recommendations

of the Committee of Ministers of the Council of Europe CM / Rec (2009) to the Member States of the Council of Europe on e-democracy of 18 February 2009. They became the basis for the development, implementation, and use of e-justice system, which was offered to understand as the use of information and communication technologies in the administration of justice by all stakeholders in the legal field in order to improve the efficiency and quality of public services, in particular for individuals and enterprises. Its main goal is to increase the efficiency of the judicial system and the quality of justice, since the access to justice is one of the aspects of the access to democratic institutions and processes (Brennan-Marquez and Henderson, 2019).

These recommendations oblige Member States to introduce an electronic document management system in the courts, the creation of information databases, records, and registers, which should improve the access to justice, inform the public about the activities of courts, relieve the work of courts and judges, increase their efficiency. To better their formation and use, the European Commission for the Efficiency of Justice (CEPEJ) approved the e-justice guidelines of 6-7 December 2016.

The next important step towards the legislative consolidation of standards for the development and use of artificial intelligence was the adoption of the EU Resolution of 16 February 2017 with the Commission's recommendations on the rules of civil regulation of robotics (2015/2103 (INL)). The Robotics Charter annexed to the Resolution was developed by the Scientific Foresight Unit (STOA) and the European Parliament's Research Center.

The Charter contains the Code of Ethics for robotics developers, the Code of Ethics of committees for research, and licenses for developers and users. The main part of the Resolution consists of 64 clauses, conditionally divided into groups with the appropriate thematic title: research and innovation, ethical principles, European Agency, intellectual property rights and data flow, standardization, security, and safety; autonomous transport means; care works; medical works; recovery and improvement of the human body; education and employment; impact on the environment; international aspects (Katkova, 2020).

2.1 The position of European Charter in the Recognition of Artificial Intelligence

The European Ethical Charter on the Use of Artificial Intelligence in the Judicial systems and Their Environment of 3-4 December 2018, adopted by the European Commission on the Efficiency of Justice, became the first document in Europe to establish ethical principles for the use of artificial intelligence in judicial systems at international level. The CEPEJ is convinced that the application of these principles will guarantee respect for

fundamental human rights, non-discrimination, quality, and information security in the introduction of artificial intelligence in the judicial systems of the Council of Europe Member States.

The White Paper on Artificial Intelligence, which was published on February 19, 2020, has also defined the direction of European strategy in regard to artificial intelligence: A European approach to excellence and trust. It enshrines that artificial intelligence must work for people and be a force that works for the good of society. This document is aimed at identifying possible changes that should contribute to the reliable and safe development of artificial intelligence in Europe with full respect for the values and rights of EU citizens.

The basic regulatory legal act in Ukraine regulating the use of artificial intelligence technologies is the Concept for the development of artificial intelligence in Ukraine, approved by the Order of the Cabinet of Ministers of Ukraine dated from December 2, 2020, No. 1556-r. The priority areas, which realize the tasks of the state policy for the development of artificial intelligence, are education and vocational training, science, economics, cybersecurity, information security, defense, public administration, legal regulation and ethics, justice. Having analyzed the main tasks for the development of artificial intelligence in each of these areas, we can conclude that they are as follows in the field of jurisprudence:

- protection of communication, information and technological systems, information technologies.
- improvement of legislation and creation of a modern regulatory base for the implementation of the world's best practices of artificial intelligence in the field of cybersecurity.
- development of innovative cybersecurity systems that widely use artificial intelligence technologies for automatic analysis and classification of threats and automatic selection of strategies for their containment and prevention.
- studying the issue of licensing foreign developments of artificial intelligence in the field of cybersecurity, especially in the public sector.
- updating state standards on information security, in particular state information resources, as well as developing new national standards in the field of cybersecurity.
- formation of the list of administrative services, which assist in making automatic decisions with the minimum participation of civil servants and / or employees of state and / or municipal enterprises, institutions, organizations.

- development of artificial intelligence technologies for digital identification and verification of persons, including for the provision of public services.
- application of artificial intelligence technologies for the analysis, forecasting and modeling for the development of efficiency indicators of public administration system.
- application of artificial intelligence technologies in order to identify cases of illegal interference into the activities of the electronic system of public procurement and other public electronic systems.
- application of artificial intelligence technologies to detect unfair practices in the activities of officials and civil servants in various areas by analyzing the texts of management decisions and other data generated in computerized systems / registers during such activities.
- determining directions of data conversion into electronic form, creation (in case of absence) or updating and cleaning of available state electronic information resources.
- development of mechanisms for anonymization of personal and other data during processing in artificial intelligence systems, which should make it impossible to identify individuals.
- further development of existing technologies in the field of justice administration (Unified Judicial Information and Telecommunication System, Electronic Court, Unified Register of Pre-trial Investigations, etc.).
- introduction of advisory programs based on artificial intelligence, which should open access to legal advice to the wide layers of population.
- prevention of socially dangerous phenomena by analyzing the available data with the help of artificial intelligence.
- determining necessary measures of re-socialization of convicts by conducting analysis of available data with the help of artificial intelligence technologies.
- making court decisions in cases of minor complexity (by mutual consent of the parties) based on the results of the analysis carried out by using artificial intelligence technologies, the state of the compliance with legislation and caselaw.

Summarizing the indicated tasks, we can identify the main directions for the development of artificial intelligence in legal practice, namely: development of innovative cybersecurity systems; determining the list of

administrative services, decisions on which can be made by automated systems by means of special algorithms of information processing; development of digital identification and verification systems; control over the activities of the electronic system of public procurement and other public electronic systems; use of artificial intelligence technologies to detect illegal activities in computerized systems / registers, other socially dangerous phenomena; conversion of data into electronic form and protection of personal data; development of e-justice technologies, including the issuance of court decisions in cases of minor complexity (by mutual agreement of the parties); modernization of the e-government system; providing legal advice based on information processing; determining the necessary measures for re-socialization of convicts by analyzing the available data.

It follows from the indicated areas that artificial intelligence technologies can be used in the following spheres of legal practice: in the administration of justice; in the law enforcement sphere; in notarial activity; in the field of providing administrative services; in public administration; in the work of defense attorneys; in the field of probation.

Artificial intelligence technologies out of all currently indicated areas are mostly used in the administration of justice. Its participants actively use the Unified Judicial Information and Telecommunication System, the Electronic Court, the Unified Register of Pre-trial Investigations, the Unified Register of Court Decisions, etc.

The High Council of Justice in pursuance of the Order of the Cabinet of Ministers of Ukraine dated from December 2, 2020, No. 1556-r. offered to launch a pilot project on the use of artificial intelligence based on one of the courts of first instance in terms of hearing administrative offenses (Shevchuk, 2021). The Deputy Chairman of the High Council of Justice stressed: The Council welcomes the initiatives to introduce artificial intelligence in the judiciary and considers it another step to approximate, further develop and improve existing modern technologies in the field of e-justice – e-court, the UJITS subsystem, etc. However, he believes while appropriate technological conditions and a qualitative basis should be created for such technological changes – it is necessary to provide courts with adequate funding, in particular, the Internet should be of good quality in all courts of our country (Malovatskyi, 2021.).

To date, the reform of the judicial system is aimed, among other things, at introducing artificial intelligence technologies both in the justice process and in the daily work of courts, creating all the necessary conditions for this. The introduction of artificial intelligence into the judicial process is possible only when its technical level will ensure strict observance of fundamental human rights; will prevent any manifestations of discrimination between individuals or groups of persons; will ensure transparency, impartiality and fairness of the case, protection of confidentiality, electronic communications

and processing of personal data; technical and software reliability and security both for the individual and for society in the whole (Shishka, 2021).

Regarding international experience in terms of introducing artificial intelligence into judicial system, there are different approaches – starting from the active use of artificial intelligence algorithms in solving various categories of cases (China, United States) to the introduction of criminal liability for predicting court decisions and usage of computer software to resolve the cases (France).

Artificial intelligence technologies in the law enforcement sphere are used in the formation of information databases, registers, records, identification of persons, detection of illegal acts on the Internet, etc. Perspective area is the use of artificial intelligence to detect illegal actions through the analysis of information. It can also be used to receive and initially process applications and reports of crimes and offenses. Its use in the security sphere will be also effective.

Artificial intelligence in notarial activities and in the field of providing administrative services can be used to perform the simplest operations related to the certification of copies of documents, registration actions based on the documents provided, etc. It is worth noting that currently a number of administrative services in Ukraine are already provided with the use of computer technology. In particular, every citizen can register the child's place of residence, the birth child's support, a certificate of no criminal record, some licenses and permits, renew or exchange a driver's license and more through the online public service «Diia». There is also a number of services for business entities.

Artificial intelligence technology in the work of a defense attorney can be used to collect and process information, to solve simple situations, to create documents based on samples. Such technologies in the probation sphere will allow to study the convict's personality and on the basis of the obtained data to choose re-socialization measures for him or her.

Lawyers have been already using artificial intelligence for cases such as reviewing documents during court hearings and due diligence, analysis of contracts to determine whether they meet pre-defined criteria, conducting legal research and forecasting the results of cases hearings (Lauri, 2018). At the same time, it should be noted that the introduction of artificial intelligence technologies into legal practice should be accompanied by appropriate legal regulation. It is the timely and appropriate legal provision for the use of such technologies will protect human rights and freedoms from illegal actions or decisions involving artificial intelligence.

Borgesius (2020) draws attention to strengthening legal protection against discrimination of algorithms and artificial intelligence. The adoption of legislation that contains new rules for algorithmic decision-

making should be specific to each sector: occupational safety, consumer protection, environmental protection. Besides, new legislative norms should be developed on the basis of the principles of regulation of a particular branch of law (e.g., the principle of equality, freedom of contract, fair trial). A. Moriggy (2017) believes that the existing system of protection of intellectual property rights should be revised in connection with artificial intelligence, namely computer software should be protected by patents.

According to T.H. Katkova (2020), the map of legal reforms for using artificial intelligence in Ukraine should include the following areas: civil law (definition of legal personality, in particular, the situations when he can act as an intermediary of an individual or a legal entity; enter into agreements; bear civil liability); criminal law (definition of criminal liability of artificial intelligence); insurance legislation; anti-discrimination legislation (issues of equality of people and persons using artificial intelligence; issues with criteria and data provided to artificial intelligence); protection of personal data (the possibility of providing differentiated consent to the processing of personal data, as well as improving the mechanism of informed consent to the processing of personal data); legislation in the field of intellectual property; medical law (the use of artificial intelligence in the health care sector, aspects of the activities of a physician who uses artificial intelligence).

Conclusion

Summarizing the above, it should be noted that today artificial intelligence technologies are increasingly used in all spheres of public life. Legal practice is no exception, where the indicated technologies are used to collect, process and store information, to conduct electronic document management, to provide administrative services and more.

At the same time, there are many perspective areas for the use of artificial intelligence within legal practice, which can provide faster and better services to the public, to promote the rights and freedoms of individuals and legal entities, to detect and stop offenses, etc. It can be used in judicial system, law enforcement sphere, advocacy and notary, public administration, and probation. The perspective direction is to expand the functions of online service «Diia». However, there are currently many issues of artificial intelligence within legal practice in Ukraine that need to be addressed, including legal regulation, organizational and technical provision.

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Current state and role of domain names as an object of legal relations

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Abstract

The article is dedicated to the legal study of domain names. The authors of the article analyzed the scientific literature on the formation of the concept of "domain names". Theoretical and practical proposals have been formed to improve legislation in the field of the provision of domain names on the Internet information and communication network. General and special scientific methods were used. In addition, the subjects of the legal relationships under study were identified, analyzed exhaustively and, as a contribution to the research, a draft contract for the provision of paid Internet services was proposed, considering the details of the domain names and at the same time identifying the rights and obligations of the parties. In short, judicial practice materials relating to the attribution of domain names, the means of individualization and the Russian domain name market have been studied. Conclusions have been drawn on the need to improve Russian legislation in the field of paid provision of Internet services, namely the provision of domain name services, by amending and adding to existing regulatory legal acts.

Keywords: domain name; Internet services; russian domain name market; means of individualization; legal relations.

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Estado actual y función de los nombres de dominio como objeto de relaciones jurídicas

Resumen

El artículo está dedicado al estudio jurídico de los nombres de dominio. Los autores del artículo analizaron la literatura científica sobre la formación del concepto de "nombres de dominio". Se han formado propuestas teóricas y prácticas para mejorar la legislación en el ámbito del suministro de nombres de dominio en la red de información y comunicación de Internet. Se utilizaron métodos científicos generales y especiales. Además, se identificaron los sujetos de las relaciones jurídicas objeto de estudio, se analizaron exhaustivamente y, como aporte de la investigación, se propuso un proyecto de contrato para la prestación de servicios de Internet de pago, considerando los detalles de los nombres de dominio y al mismo tiempo identificando los derechos y obligaciones de las partes. En definitiva, se han estudiado los materiales de la práctica judicial relativos a la atribución de nombres de dominio, a los medios de individualización y al mercado ruso de nombres de dominio. Se han extraído conclusiones sobre la necesidad de mejorar la legislación rusa en el ámbito de la prestación pagada de servicios de Internet, a saber, la prestación de servicios de nombres de dominio, modificando y añadiendo a los actos jurídicos reglamentarios existentes.

Palabras clave: nombre de dominio; servicios de Internet; mercado ruso de nombres de dominio; medios de individualización; relaciones jurídicas.

Introduction

Domain names as a means of addressing on the Internet have become an integral part of human life. Every day we use sites that are hosted on second, third-level domain names. High-quality Internet projects contribute to improving the quality of life, and websites simplify people's lives. At the same time, these sites are the face of the organization, create the image of the company. The domain name is the key to opening the site.

Many studies of this phenomenon had been conducted even before the accession of the Russian Federation to the World Trade Society, where significant changes in domestic legislation had been made even at the stage of preparation for joining the above-mentioned society. There was a need to bring the national legislative array following the provisions of the Agreement Establishing the World Trade Organization and multilateral trade agreements. In particular, Draft No. 323423-4 of the Civil Code of the Russian Federation (2006) contained repeated references to domain

names. They were included in the list of results of intellectual activity and equated means of individualization of legal entities, goods, services, information resources that are provided with legal protection. The draft contained the same chapter 76, which included section 5 "The right to a domain name", containing 9 articles, however, these articles did not appear in the latest edition.

The sphere of services on the Internet is quite diverse, new types of services are appearing every day. In this regard, the legislative array regulating these legal relations is diverse, the application of a particular regulatory legal act depends on the service offered.

To date, such a phenomenon as a domain name has been investigated fragmentarily, scientific works of the following authors should be noted: S.Yu. Revinova, who reviewed the Russian domain name market, prospects, and development of a domain name (Revinova, 2016); E.I. Gladkaya and S.V. Petrovsky, who studied the legal nature of domain names in the context of legal regulation of Internet services (Gladkaya, 2014; Petrovsky, 2003); E.S. Pakhomova, whose research was devoted to the contract for the provision of domain names (Pakhomova, 2016); N.K. Naroznikov, who considered the contract for the paid provision of Internet services (Naroznikov, 2010).

Also, special attention should be paid to the works of L.B. Sitdikova, who studied the theoretical and practical problems of legal regulation of information and consulting services, the contract for the provision of paid information services (Sitdikova, 2008); I.M. Rassolov, who studied the theoretical problems of providing services on the Internet (Rassolov, 2009); S.A. Sudarikov considered the right of intellectual property in the network (Surikov, 2010).

1. Methods

We were guided by general scientific methods of cognition (analysis and synthesis, generalization, and analogy); special methods of cognition: legal modeling, critical analysis, etc. in the course of the research.

A comparative legal method in the analysis of Russian and foreign legislation was used. In particular, the logical and legal method of legal cognition was used when analyzing and systematizing the available scientific knowledge about the legal regulation of the provision of a domain name in the Russian Federation and abroad. The system-structural method made it possible to identify the legal nature of domain names.

The use of all the above methods allowed analyzing the area under study, identifying existing shortcomings in legal regulation. The method of

legal modeling allowed formulating of theoretical and practical proposals for improving legislation.

2. Results

We believe that a national domain name system should be created that duplicates the list of domains and numbers of autonomous systems that are delegated to Russian users. It is assumed that the above measures will help to protect the Russian segment of the Internet from external threats.

It is advisable to recognize the domain registration as a condition for the emergence of the exclusive right to a domain name, as well as to provide for two types of agreements: on alienation of the exclusive right to a domain name and a license agreement on granting the right to use a domain name.

Domain names should be recognized as a means of individualization in the information and communication network of the Internet to improve the legislation.

The registration of a domain name is recognized as "the conclusion of an urgent consensual civil contract for the provision of paid services between the organization for the distribution of domain names and the potential owner of the domain name" after the registration of information about the domain name and inclusion in a single database. The proposed wording allows attributing this type of contract to a contract for the paid provision of Internet services.

It is necessary to further develop the Russian domain space, attract both individuals and legal entities to this market — Russian and foreign international companies to maintain the country's competitiveness. At the same time, such an expansion of the domain market indicates the need for control by the state and independent organizations, therefore, it is also necessary to create a legal framework regulating the provision of domain name services.

The terms of the contract for the provision of paid services that meet the modern realities of the studied sphere of relations have been put forward, namely, standard rights and obligations of the parties under the Internet services agreement, considering the specifics of domain names, have been proposed:

Obligations of the contractor:

- provision of the service requested by the customer/consumer in the time and the manner stipulated by the contract.
- providing the necessary and reliable information about the service provided.

- warning the customer/consumer about cases when the latter's requirements may violate the law.
- the direction of the result that meets the established requirements.
- elimination of deficiencies (in case of their detection) in a reasonable time.

Contractor's rights:

- the right to demand the provision of a certain amount of information with an indication of the list and the purpose of the processing.
- refusal to perform the contract if the customer does not fulfill its obligations.
- the right to demand remuneration for the services rendered by him/her.
- Obligations of the customer/consumer:
- provision of all necessary and reliable information.
- provision of the request to the extent required for its execution.
- acceptance of the result of the Internet service within the time and in the manner provided for in the contract; inform when deficiencies are detected, setting a reasonable time for their elimination.
- assistance in the execution of the contract.
- payment to the customer for the Internet services provided.
- Rights of the customer/consumer:
- obtaining reliable and complete information about the services provided.
- the requirement to eliminate the detected deficiencies in the manner and terms specified in the agreement.
- unilateral refusal to perform the contract: if the contractor has not committed to work within the terms specified in the agreement; delay in the performance of obligations unless otherwise provided for in the contract.

3. Discussion

The legal status of domain names in the national legislation, to date, has not yet been determined, but there is a close relationship with the rights to trademarks and trade names since they perform a similar function, which

makes it possible to consider them as a means of individualization of an information resource.

In this regard, "unauthorized use of the mark in the information and communication network-Internet, in particular in the name of the domain" was recognized as a violation of the rights of the owner of the trademark in the text of the draft law "On Trademarks, Service Marks and Appellations of Origin of Goods", however, this amendment did not appear in the final version of the Law of the Russian Federation of September 23, 1992, N 3520-1 "On Trademarks, Service Marks and Appellations of Origin of Goods" (hereinafter– the Law "On Trademarks ...").

Therefore, today there are no legal grounds to classify a domain name as a means of individualization, and disputes on this issue do not subside in the courts. The court's approach in the case "commpromat.ru" versus "anticompromat.ru" is noteworthy, where the court considered that the domain name of the former was transformed into a means of individualizing the site on the network. Based on this, the court considered it necessary to prohibit the defendant "anticompromat.ru" from using the specified domain name (Resolution of the Federal Antimonopoly Service of the Moscow District of March 26, 2009, N KG-A40/964-09 in case N A40-44359/07-93-440).

The Moscow Arbitration Court has an opposite point of view, and it indicated the following in confirmation of the impossibility of violating the rights to a domain name: "A domain name is neither a means of individualization, nor is it an object of copyright, it is a" telephone number "on the network, and the very concept of "the right to address" is absent in the legislation" (Decision of the Moscow Arbitration Court of June 10, 2011, in case No. A40-136893/10 (6-1133). The Intellectual Property Rights Court explained that the main function of a domain name is to convert IP, represented in the form of numbers, into a domain name to facilitate the search and identification of the owner of an information resource, and is like a trademark.

The court also decided that the domain name is fully covered by the Law " On Trademarks...", which gives the exclusive right to use, dispose of and prohibit the use of the domain name to other persons. (Resolution of the Intellectual Property Rights Court of October 30, 2013, N C01-155/2013 in the case N A40-12151/2013). In our opinion, the court's position is fair and corresponds to modern trends.

The mention of sites with the corresponding names in the bylaws of certain public authorities is a confirmation, for example, the Order "On commissioning the official website of the Investigative Committee under the Prosecutor's Office of the Russian Federation on the Internet", as well as the Federal Law "On Non-State Pension Funds" of May 7, 1998, N 75-FL,

the Federal Law "On Investment Funds" of November 29, 2001, N 8-FL, which states that the fund is obliged to have a website in the information and communication network, including a domain name that belongs to the foundation.

In addition, Article 1484 of the Civil Code of the Russian Federation specifies a domain name in the context of ways to exercise the exclusive right to a trademark (Civil Code of the Russian Federation (Part four) of December 18, 2006, No. 230 – FL).

Considering such a phenomenon as a domain name, fixed in the Federal Law "On Information, Information Technologies and Information Protection" of July 27, 2006, N 149-FL as: "a symbol designation intended for addressing sites on the network to provide access to the information posted on the Internet".

However, the legislative consolidation of the concept of a domain did not allow the discussions around it to subside. I.M. Rassolov defines a domain name as "a unique symbolic name intended for navigation in cyberspace and identification of an information resource on the network" (Rassolov, 2009). V.B. Naumov defines a domain name as "a special object of law, the use of which is provided within the DNS system, performing the function of individualization on the Internet and having a high defense capability" (Naumov, 2009).

S.A. Sudarikov believes that this is "a part of the network address of a site or resource in the network belonging to a second or third level domain" (Sudarikov, 2010). a domain name is understood in this work as a full domain name, which includes all domains of higher levels, where the "domain" term should be considered the lower level, and "domain zone" – the upper level. The above levels have different technical content; however, they do not need to be distinguished from a legal point of view.

The early version of the draft of Part four of the Civil Code of the Russian Federation (Draft No. 323423-4 of the Civil Code of the Russian Federation (Part four), 2006) contained repeated references to domain names, they were included in the list of results of intellectual activity and equated means of individualization of legal entities, goods, services, information resources that were provided with legal protection.

The specified project contained the eponymous chapter 76, which included section 5 "The right to a domain name", containing 9 articles. The condition for the emergence of an exclusive right was the registration of a domain; two types of agreements were also envisaged: on the alienation of the exclusive right to a domain name, and a license agreement on the granting of the right to use a domain name.

The draft also provided grounds for challenging the provision of legal protection to a domain name, unfair competition. The issues of termination of the exclusive right to a domain name, the terms of its validity were considered, in addition, it was envisaged that in the event of continuous non-use of a domain name for 2 years, legal protection could be terminated ahead of schedule by a court.

This provision brought domain names closer to trademarks. the adoption of the considered draft law could solve many problems, contribute to the development of national legislation in this area. However, the bill adopted by the State Duma of the Federal Assembly in the first reading was subsequently amended: the provisions on domain names were excluded.

In many ways, the legislator rejected the proposed draft law in connection with the report of the Working Group on Accession to the WTO, which included the position that domain names are not considered as intellectual property in the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights, or by virtue of other agreements on intellectual property (Clause 1252 of the Report of the Working Group on the Accession of the Russian Federation to the World Trade Organization (November 16 – 17, 2011)). A certain role is also played by the "The Internet Corporation for Assigned Names and Numbers", created with the support of the United States in 1998, and controlled by it (Starodumova, Sitdikova, 2020).

The registration of first-level RU and РФ domain names is carried out by an autonomous non-profit organization "Coordination Center for TLD RU". The registration of second-level domain names by providers is carried out only if they are accredited by the above-mentioned center, it provides services for organizing the functioning of the network domain, is engaged in the expansion of the use of the information and communication network in Russia in the interests of the state (Charter of the ANO "Coordination Center for TLD RU", n.d.). The RU and РФ domains play a special role in the Russian Federation, the latter acts as an internationalized domain name (IDN).

The use of the Cyrillic alphabet in it is a distinctive feature. The appearance of the RU Domain in 1994 marked a new stage in the development of information and communication technologies in Russia, and D.A. Medvedev, being president, approved the initiative to create a domain name – РФ in June 2008. The following sites were launched on this platform in 2010: http://government.ru/ and http://kremlin.ru/ .

Another step was the creation and development of the Russian Internet space "Runet", which received its name from the RU domain. It should also be noted that the SU and newgTLD domains belong to the national zones, where the USSR acts as the first, its management is carried out by the

Coordination Center, about 119 thousand are registered under this domain, which is comparable to the national domains of Kazakhstan, Latvia, Estonia (Revinova, 2016). Of the new TLDs, the most popular today areМосква and Moscow.

The appearance of each domain name is associated with the registration process arising from civil contractual relations. According to E.I. Gladkaya, registration of a domain name is "the conclusion of an urgent consensual civil law contract for the provision of services between the organization for the distribution of domain names and the potential owner of the domain name" after registration, information about the domain name falls into a single database (Gladkaya, 2014).

Indeed, the scholar's description of the contractual relations between the parties is logical, since it allows talking about this contract as a paid provision of Internet services. The regulatory legal framework recognized to regulate these legal relations is represented by a large number of sources, depending on the specifics of the services provided. Thus, the Constitution of the Russian Federation contains the fundamental rules, which are contained in Articles 8 and 74, guaranteeing the free movement of goods, services, and financial resources, freedom of economic activity (Tchinaryan et al., 2021; Ryzhik et al., 2020).

Chapter 39 of the Civil Code of the Russian Federation contains a general statute on the provision of paid services, paragraph 2 of Article 779 indicates the application of this chapter to information services, and as is known, Internet services are a type of information. Also, there is a reference to the following in Article 783 of the Civil Code of the Russian Federation (Civil Code of the Russian Federation (part two) No.51-FL dated November 30, 1994): the general provisions on the work and labor contract (Articles 702-729) shall apply to the contract for the repayable rendering services unless this runs counter the specific subject of the contract for the repayable rendering of services (Neznamova et al., 2020).

The provisions of Chapter 39 of the Civil Code of the Russian Federation, dedicated to the regulation of the contract for the paid provision of Internet services, apply to contracts for the provision of information services, the structure of which includes the first. N.K. Naroznikov in his study directly refers to these relations for the provision of Internet services – a contract for the provision of information services using the Internet, which is not a contradiction but rather reveals the essence of the relations under investigation (Naroznikov, 2010).

Also, Internet services include the following in the Tax Code of the Russian Federation, namely in Article 174.2 (the Tax Code of the Russian Federation (part two) of August 5, 2000, N 117-FL): the provision of domain names, the provision of hosting services. Domain names are also included

in the classification of Internet services by E.P. Pakhomov: "hosting service and providing a domain name to the customer" (Pakhomova, 2016: 225).

Considering the contract as a means of legal regulation of Internet services, the contract model proposed by the legislator of Chapter 39 of the Civil Code of the Russian Federation (Civil Code of the Russian Federation (Part two) of November 30, 1994, No. 51-FL) contains only general provisions of the norms, the content of which is insufficient for regulating the paid provision of Internet services due to several features:

- the subject composition of the participating persons: it is not always possible to find out with which person, natural or legal, the relationship takes place, whether the counterparty also has the legal capacity, whether he/she is authorized to conclude such transactions because there is a risk of recognizing the transaction as null and void.
- the lack of the possibility of identifying the subjects of legal relations, which prevents the proof of contractual obligations between them, entailing the impossibility of applying liability measures in case of non-fulfillment or improper fulfillment of obligations.
- the customer is not always allowed to verify whether the contractor is authorized to provide the services in question, there is no possibility of bringing the culprit to justice in case of violation of the rights of third parties.
- there is a practice when a certain program acts as a contractor, the customer sends a request to the database and the program gives out certain information corresponding to the request.
- often there is no possibility of quickly changing the terms of the contract, the ability to agree on it, since several Internet services are characterized by an instantaneous direction of the result, and therefore it is necessary to apply again to eliminate shortcomings.

In addition to the above, the very nature of the service provided in the contract for the provision of Internet services is also endowed with specifics. According to N.K. Naroznikov, it is advisable to determine the condition of Internet service quality as a guarantee of its expected result, quality should be recognized in connection with this essential condition of the contract (Naroznikov, 2010). The question of the contractor's responsibility for quality should be considered separately in each case.

There is an opinion that the contractor, even in cases where the result is of proper quality, should be responsible for the customer's failure to achieve the desired effect, which he/she assumed when concluding the contract (Starodumova et al., 2018).

Therewith, the circumstances that the information is mobile are not considered: the information may lose its relevance and reliability from the beginning of receiving the request and by the time of receiving the service. It is advisable to pay special attention to the terms of the service provided since untimely receipt of information in today's ultra-fast realities can lead to several negative consequences. Oblige the contractor to notify about the time of the processed information in cases when the request is processed by the program.

Based on the provisions of Chapter 39 of the Civil Code of the Russian Federation and the specifics of Internet services, it is advisable to include the following in the duties of the contractor: provision of the service requested by the customer in the time and the manner stipulated by the contract; sending the result that meets the established requirements; elimination of deficiencies in the time, in case of detection, to provide full information.

In turn, the contractor has the right to demand remuneration for the services rendered by him/her; to demand the provision of a certain amount of information indicating the list and purpose of processing, to refuse to fulfill the contract if the customer does not fulfill his/her duties.

The rights and obligations of the latter should naturally include: to provide a request to the extent required for its execution; to accept the result of the Internet service in the time and manner provided for in the contract; to report when deficiencies are detected, setting a reasonable time for their elimination; to facilitate the execution of the contract; to pay the customer for the Internet services provided.

The contract for the paid provision of Internet services is terminated with the end of the fulfillment of its obligations by the parties based on Article 425 of the Civil Code of the Russian Federation, and the agreement of the parties is recognized as the basis for the change as a rule. Article 450 of the Civil Code of the Russian Federation (Civil Code of the Russian Federation (part one) of November 30, 1994, No. 51-FL) regulates the procedure for unilateral refusal to perform the contract. In our opinion, taking into account the peculiarity of the services under consideration it is also advisable to include the following in the list: unilateral refusal, if the contractor did not start working within the terms specified in the agreement, as well as delays in fulfilling obligations; if the detected shortcomings were not eliminated in the order and terms specified in the agreement and if the parties did not provide for the number of penalties or fines for non-compliance with obligations. In addition to the services, registration is often performed by hosting providers.

Formed provisions of the agreement of L.B. Sitdikova and S.V. Petrovsky on the provision of paid Internet services can fully apply to domain names, there are no contradictions between these provisions and the Rules for

registering domain names, (Rules for registering domain names in RU and РФ domains (approved by the decision of the Coordination Center for TLD RU from October 5, 2011, N 2011-18/81)), moreover, they are similar (Sitdikova, 2008; Petrovsky, 2003). Thus, for example:

- the user is obliged to provide the registrar with reliable information to the extent and following the procedure established by the Rules and the contract, to notify about changes in the provided information promptly.
- the registration period is one year; it is possible to extend an unlimited number of times after the expiration of the period.
- a citizen of any country can register a RU and РФ domain.
- the registrar has the right to suspend the maintenance of the domain, in case of specifying false data.
- the right to apply for the renewal of the domain name registration is reserved for the previous owner 30 days after the end of the registration period.
- the domain is canceled in cases when the registration is not renewed, and in the future, it can be registered by another user.

After reviewing the Rules, the document protects the interests of both parties, which is not enough in hosting services, and what the derived provisions of the paid provision of Internet services serve. As for the parties when registering domain names, they are called the registrar and the user, we also refer to the donor registrar, the recipient registrar, and the administrator. Where the registrar is a legal entity accredited by the Coordinator for the registration of domain names in domains .RU and/or .РФ; the donor registrar is a registrar who transfers support for domain name information to the recipient registrar; the recipient registrar is a registrar who accepts support for domain name information from the donor registrar; a user is a person who orders or uses services related to domain name registration; the administrator is a user in whose name the domain name is registered in the Registry.

However, the usual terms are more common in Russian civil turnover in practice: the customer and the contractor, which is not a violation but refers to a standard contract for the provision of paid services. Moreover, the participants of these relations offer their sample contracts, so CJSC "Regional Network Information Center" within the framework of the "parking" or "domain parking" service, according to which the client provides domain names to the company for temporary use for advertising purposes, offered a sample contract, according to which the company undertakes to: accept the client's Internet resource (domain name) for advertising and information belonging to third parties; consult on all issues

of interest to the client who transferred his/her resource; notify about all changes in the work of the site, including possible interruptions; comply with all rules established by law; timely pay income payment.

This approach of the participants in the studied legal relations is commendable, but it should be considered that insufficient legislative regulation can contribute to permissiveness and violation of the rights of individuals.

Conclusion

To date, the existing legislative array does not contain the legal qualification of domain names, does not fully regulate the relations on registration and use of a domain name, although they were contained in the early version of part four of the Civil Code. At the same time, the Government of our state has been paying great attention to the development and use of the information and communication space in recent years.

The Institute for the Development of the Internet began to function in 2015. The state policy has a positive impact on the development of the domain market, which corresponds to global trends, at the same time, it allows talking about the need for control. The adoption of the statute on the paid provision of Internet services would regulate the activities of stakeholders in this field, in particular the activities of e-Commerce, having at the present stage, the demand of most of the population; to create legal protection for contractors and consumers.

Due to the dynamism of the legal relations under study, the legislator practically cannot quickly respond to the rapidly emerging types of services on the network and when omissions are detected about a particular use of Internet resources. However, recently there has been an increase in control over the Internet space in the Russian Federation, in connection with which international experts have classified Russia as a state with a "partially free Internet". information resources that are antisocial and anti-state in nature are blocked to a greater extent, thus the state complies with national legislation, protects minors from "dangerous" information for them, prevents the formation of illegal behavior among the population.

Also considering the legal regulation of the paid provision of Internet services, in particular the services of providing a domain name, it is necessary to emphasize that they often go beyond the limits of national regulation. With the accession of the Russian Federation to the World Trade Organization, it became necessary to bring the national legislative array following the provisions of the Agreement Establishing the World Trade Organization and multilateral trade agreements. To date, there is no

Federal law regulating the position of domain names in Russian legislation and Internet services in general.

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The Relationship Between the Right to Security and the Right to Freedom in Islam and the Study of Formal Rules for Relinquishing these Rights in Iran

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Abstract

This article raises fundamental conceptual questions about the relationship between the right to security and freedom, from the point of view of Islam. Also, in criminal law in Iran, the relationship between freedom and security is examined in all formal laws adopted after the Iranian Revolution. This study was conducted with a descriptive-analytical method using sources and documentary texts with the aim of explaining the relationship between the right to security and freedom in Islam and, at the same time, analyzing the formal rules of renunciation of these rights in formal laws and regulations. It is concluded that in Islam three types of minima, intermediate and maximum relations between security and freedom are conceivable. These three proportions, in addition to fulfilling the existence of security and freedom; introduce different types of relations between the two rights referred to according to the conditions that can be implemented. Likewise, when examining the formal norms, it can be recognized that the Code of Criminal Procedure, approved on 23.02.2014, has eliminated all the defects and ambiguities of the previous law in the field of the right of persons to liberty and personal security.

Keywords: right to security; right to freedom; legal relations; formal rules; iranian criminal law.

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La relación entre el derecho a la seguridad y el derecho a la libertad en el islam y el estudio de las reglas formales para renunciar a estos derechos en Irán

Resumen

En el presente artículo se plantean cuestiones conceptuales fundamentales sobre la relación entre el derecho a la seguridad y a la libertad, desde el punto de vista del islam. También en el derecho penal en Irán, se examina las relaciones entre libertad y seguridad en todas las leyes formales adoptadas después de Revolución iraní. Este estudio se realizó con un método descriptivo-analítico utilizando fuentes y textos documentales con el objetivo de explicar la relación entre el derecho a la seguridad y la libertad en el islam y, al mismo tiempo, analizar las reglas formales de renuncia a estos derechos en las leyes y regulaciones formales. Se concluye que en el islam son concebibles tres tipos de relaciones mínimas, intermedias y máximas, entre seguridad y libertad. Estas tres proporciones, además de cumplir la existencia de seguridad y libertad; introducen diferentes tipos de relaciones entre los dos derechos referidos según las condiciones que se pueden implementar. Asimismo, al examinar las normas formales, se puede reconocer que el Código Procesal Penal, aprobado el 23.02.2014, ha eliminado todos los defectos y ambigüedades de la ley anterior en el campo del derecho de las personas a la libertad y seguridad personal.

Palabras clave: derecho a la seguridad; derecho a la libertad; relaciones jurídicas; normas formales; derecho penal iraní.

Introduction

Security is the absenteeism of psychological and physical threat to the individual and society. If freedom has been the voice of man for many centuries, it can be said that security has been the equal desire of man and animal in all times and places. The quest for security is based on human nature, and apart from the fact that security is the necessity of social life or the establishment of the state; but from the very beginning of creation, it has always been one of the desires of human beings. But when "security" comes into society, it has a more advanced meaning because, from an individual point of view, security includes the protection of rights and freedoms and human security in providing the necessary conditions for human health, but from a social point of view, in Friedman, view. "Security in the objective sense determines the absence of threat against the acquired values and in the mental sense determines the fear of attacking the values" (Friedman, 1999: 246). This is where national security and international security come into play to preserve these values.

In the modern sense of security, we also speak of the security of the dependencies of human life, which are inanimate things; including money security, cyberspace security and communication network security; "The idea of security can be applied to comfortable objects of people" (Buzan and Weaver, 2007: 79).

For example, the security of money in a bank is subject to calculations related to certain threats in terms of its unauthorized relocation or the possibility of the effects of inflation on value. But the security of individuals cannot be simply defined. Factors such as life, wealth, social status, health, and freedom are very complex and many of them are irreplaceable in case of loss (Dinarvand *et al.,* 2021).

Now, considering broad meaning of word and its similarity can be less found in other words, it is necessary to know its characteristics in order to gain a more accurate understanding in examining the relationship between this concept and freedom. In total, there are two characteristics of security that open the way for governments to always prioritize security over freedom in "emergencies" (Forouzan Far, 2021).

First, security is inherent. Man is equal to animals in his pursuit of security, and apart from how and to what extent, they both escape threat and insecurity, while this cannot be claimed with respect to freedom, and it is only man who seeks freedom; Because "if a creature does not have intellect, freedom and lack of freedom are the same for him" (Soroush, 1992: 59). But security is rooted in the course of human life. Although human beings have realized for thousands of years that the secret of their survival is collective life and the instituting of the state, but much later they sought to gain freedoms and rights. This shows that the first human need is security, not freedom (Soroush, 2009).

1. Recognizing the Concept

In any scientific research, it is necessary to first discuss the concepts and definitions of the key words of the research. In the present study, we first try to address this issue and examine the two main concepts of this paper, which are "security" and "freedom".

1.1. The concept of security

Humans and animals, both in terms of inner perception, always avoid external threats and therefore turn to collective life for their survival. This collective life brings some security, but it does not eliminate insecurity. To avoid insecurity in social life, here the human path is separated from the animal and, from wisdom; he establishes a system of domination and

obedience, the result of which is the establishment of the state. The tendency towards security and the establishment of a government to protect it; It has both a sociological and a psychological face.

The sociological approach to security was developed by Mirahmadi, considers security as the reason for the establishment of the government and its end. He writes in Leviathan:

> The ultimate goal, purpose and desire of human beings (who naturally love freedom and domination over others) is to restrict themselves (which is to live within the state), to be far-sighted about self-preservation and to Consequently, providing a more satisfying life (Mirahmadi, 2012: 113).

In Shakeri, viewpoint, natural laws such as justice, fairness, moderation, compassion, and doing what we do not like about ourselves towards others can in no way guarantee human security (Shakeri, 2006).

So, despite the natural laws, if not enough power is established to ensure our security, then everyone can and will really rely on their own power and skill to be cautious in front of others, and wherever people are within the dynasty, small tribes and clans have lived, looting and plundering each other has become a work and profession and has never been considered contrary to the law of nature (Mirahmadi, 2012).

In Shakeri, viewpoint, security does not come from the unity of groups, no matter how many. Even if these groups come to power at critical times when security is threatened, such as war, they still do not achieve security. The only way to obtain and maintain security:

> That can protect people from the invasion of strangers and from each other's harms and protect them so that they can nourish themselves through their own efforts and through the fruits of their land and live well and happily. It is to delegate all their power and authority to one person or group of people (Shakeri, 2006: 748)

Indeed, this has always been the case to this day, so the government is considered as the framework and system of social life, whose essence protects both individual security and social security (Shakeri, 2006).

The psychological approach to security is that of Earth Friedman, in his view man has felt lonely and insecure no matter how much he steps towards freedom. The more man is freed from the bondage of primitive oneness with other people and nature, and the more he finds himself, the more he will find himself faced with the choice that he is compelled to surrender himself to love and productive work and thus unite with the world or pursue a kind of safety that is the product of dependencies on the world that do nothing but destroy freedom and self-righteousness (Friedman, 1999).

Mirahmadi, contrasts individuality with security, saying, as long as one is a complementary part of this world and unaware of one's possibilities and responsibilities, there is no need to be afraid of it. But when one finds

individuality, one must stand alone against the world and its dangerous and powerful aspects (Mirahmadi, 2012).

According to Mirahmadi, to achieve security and escape from freedom, "there are two main ways in society: in fascist countries, submission to a leader and in democracy, obsession to be with others" (Mirahmadi, 2012: 113).

That is, one of the fundamental roots of fascism in Germany was security-orientation, and the German people accepted this security, even though it was accompanied by Nazi dictatorship. Mirahmadi, considers this simultaneous tendency of the Nazis and the German people to be close to the sadistic and masochistic tendencies:

> Sadism means the desire for unlimited power over someone else, and this desire is sometimes mixed with a sense of destruction. Masochism means the desire to change to the powerful power and to share in its power and glory. Both sadistic and masochistic talents are both the result of the single person's inability to bear loneliness and his need for a coexistence that overcomes this loneliness (Mirahmadi, 2012: 113).

Secondly, security has a contractual aspect. Being contractual is in long with being natural of security. Here security is limited not only to man but also to society. In fact, the establishment of the state always expresses a meaning of security that is related to sovereignty (power). In this sense, "the contract is the footstone of security. With the institutionalization of the contract, the power of establishment and security is provided and maintained" (Shakeri, 2006: 748). If we express power and security in two scales, the fulcrum that determines the balance of power and security is the contract. According to Hobbes, power can guarantee security when it is the product of a contract. The power of an individual who is not bound by a contract conflict with security, and personal power is always considered a threat to security (Shakeri, 2006).

1.2. Recognizing the Concept of freedom

Ashour, has a broad and general meaning, and at first sight it refers to the situation of a person who is not a deterrent to his actions, words, and thoughts. The meaning of this word is close to the meaning of the two words authority and will, and since all three of these words are relative and general, no clear boundary can be drawn between them.

The first meaning of freedom must be examined from a religious point of view, on the basis of which man is created free and independent, and some thinkers have put the manifestation of freedom at the forefront of creation and mentioned the devil's disobedience to God's command as the fundamental origin of freedom; After the expulsion of the devil from the court of God, he swears to mislead man, and this "presence and action of

devil on man as a force or opposite pole to the instinctual force of creation and reason and expediency, leave us in temptation and confusion; That is, it amazes and confuses us" (Ashouri, 2008: 40).

This is the same authority, freedom, position, and gift that God has given to mankind. From the point of view of divine rituals, freedom begins with the choice of the devil or God, and the freedom and slavery of man follows which one he chooses. It is clear that going to God is freedom from the bondage of the devil. Such freedom cannot be neglected; since one of the fundamental reasons for the liberation was the chains that religious rulers and leaders were tied to human feet. They used the pretext of religion or the fattening of its precepts to try to enter the most hidden parts of human life and lead them in a way they love. That is, the desire for liberty in Europe began with enmity with the church (Ashouri, 2008).

The religious view of freedom marginalizes man and seeks obedience and servitude only from it, and philosophers and thinkers saw that religious rulers and powerful people sat in the place of God and took man to a third path between God and the devil which ended on their own, and to escape from this vast trap, they put forward philosophical and legal freedom, focusing on man himself.

From a philosophical point of view, various views have been put forward due to the ambiguity of the position of freedom or authority. The first question of thinkers in this field is whether the existence of freedom or free will is necessary or whether freedom is based on the link of causality? Leibniz seeks to establish a place for freedom by distinguishing between absolute necessity and probable necessity by turning to destiny. The action of substance relies on the necessity of God's decision on which the existence is on its basis, but it is possible. It means that it is practiced freely. Therefore, determining the essence is not practical, but is an increasingly continuous tendency towards what will happen and what will not happen (Hatzenberger, 2007).

Kant also considers the autonomy of the will as the highest principle of morality and the only principle of all moral laws and duties of confrontation. If there is no freedom, one can neither learn from moral behavior and authority to follow or disobey the law, nor from the possibility of the absolute. In his view, "there is only one absolute thing, and that is to act only on that rule by which you can at the same time want this rule to become general" (Copleston, 2013: 141).

In contrast, utilitarian's do not believe in the originality of freedom. Hume, for example, takes the step of destroying freedom with the vision of belief. Although he separates free will or free will from the will in general, in any case, he considers free will or freedom (free will) as a means of rejecting necessity or accident. According to him, "necessity is the essential

component of causality, and as a result, freedom, by removing necessity, also removes causes, and is exactly the same as accident" (Copleston, 2016: 173). Because it is often thought that accident requires contradiction and at least is directly opposite to experience, there are always the same arguments for rejecting free will.

For Hume, therefore, free behavior is behavior that has no cause; Because he recognized only one kind of causal relation in which it is to some extent a linguistic problem, that is, although freedom must be denied, it can be acknowledged if it is defined in such a way as to impede necessity, if it is defined in another way. For example, if freedom is taken with the same with spontaneity, there is freedom; because it is clear that many human actions arise as rational actors without external coercion to reject work. Indeed, spontaneity is the only form of freedom that we must strive to acknowledge (Copleston, 2016).

Ashouri, natural rights advocates see rights as pre-legal and the law as the only means of finding and enumerating rights as well as supporting them, in the end what is the criterion of right is that the law recognizes it as right and hence the origin of freedom is the law. The law configures freedom in two ways. The first is to predict the patterns of freedom and the second is to determine its size and boundaries. so it is the law that nurtures freedom and separates it from identical meanings such as chaos, selfishness, and permissiveness. Although the most prominent criterion of wise freedom is not to harm others, the same should be known of the law. Therefore, the background of freedoms should be sought in laws or documents.

International law and documents have never been involved in defining dynamic words such as justice, freedom, order, and security, but it is not clear how the proponents of the French Declaration of Human Rights and Citizenship of 1789 how have come to believe in the need to define freedom. Article 4 of this declaration states: "Freedom is the ability to do anything that does not harm others" (Ashouri, 2008: 40).

The idea of freedom is a Western product and not something that Europeans have learned from the East. The ground for freedom has been laid since the Enlightenment in Europe, and it has been reflected in the minds of philosophers of the continent, especially Britain, who are led by John Locke and John Stuart Mill. Among Muslim countries, most those who travel to foreign countries sought freedom, but the people and political power were neither able to accept it nor knew it well. In Iran, the idea of freedom was founded shortly before the constitutional event and was closely linked to this movement.

One of the origins of the constitution (as we will discuss in future discussions) has been the writings and speeches made by thinkers who travel to foreign countries about freedom. These ideas provided the bedrock

of freedom in an Iran where traditionalism and religiosity were rampant. Also known as liberalism, constitutionalism places Iran at the forefront of countries that have strived for freedom and achieved great achievements such as legislation and conditional government.

2. Methodology

This research, which has been done in a descriptive-analytical method, using library sources and texts, with the aim of explaining the relationship between the right to security and freedom in Islam and analyzing the formal rules, deprives these rights in formal rules and regulations. Accordingly, the required information will be collected using the library method. For this purpose, the tool of taking notes and preparing a checklist will be used.

An attempt is made to accurately identify the available resources in the country, including law books related to the subject, articles and dissertations related to the discussion, as well as internal laws and regulations and, if necessary, Internet sites such as the Comprehensive Humanities Portal and Noor Islamic Studies Center after preparing a checklist and taking notes from the found sources, collected the information and then started the work of writing the article by logical analysis and summarizing the information.

3. The relationship between security and freedom in Islam

Considering that basically one of the most important sources of Iranian law is jurisprudence and the teachings of Islam, so in this section we will try to examine the situation and the relationship between security and freedom in Islamic societies, as well as its relationship in the Islamic system.

3.1. Security and freedom in Islamic societies

Based on Islamic criteria, a theory can be put forward according to which, in terms of substance and proof, there is basically no difference or conflict between individual and collective interests, and in fact, each is on two sides of the same coin. They complement each other. These rights, which have the same origin and purpose, are based on religious teachings based on human values and common rights such as justice and dignity, which are accepted by human society. But what may happen is not an inherent conflict or contrast of individual or collective interests, but an antagonism in their practical provision.

In other words, in terms of implementation, the operational scope of protection, provision and guarantee of individual or collective rights that have challenged criminal policy. In this way, according to the principles and

religious teachings based on reason, narration, and revelation in a direction in the direction of logic, law and rationality will be able to eliminate the conflict. Recognition and preparatory study of this ratio requires acceptance of the assumptions, some of which are mentioned below.

3.2. Assumptions

Understanding the relationship between security and freedom in Islam requires several basic assumptions that are derived from religious teachings and accepted as assumptions.

3.3. The ultimate goal

The ultimate goal of any criminal strategy or policy that derives from Islamic teachings should be to "move towards pure light" which is the series of all causes and essence of the sublime and enlightenment and justice to the attributes and ultimately the provision of good human life and material and spiritual dimension in the light of Shari'a and rationality (verse 1 of Surah Ibrahim)

These concepts are very important and basic because they determine the destination and ultimately all actions and their direction. Other concepts such as security, justice and freedom are considered as mediators to achieve the ultimate goal.

3.4. Intermediate goal

In order to create the right balance between security and freedom, it is necessary to consider a kind of alignment between the mediating goals. Regarding this alignment, it should be emphasized that all intermediate goals should be the basis for achieving the ultimate goal and in their internal relations should not be conflicting or contradictory, but all of them should be assumed to complement each other, which means that justice is a better guarantee for society.

It is secure and also provides the basis for the realization of other concepts. Proper understanding of the hierarchy and position of each concept is a kind of closeness and proper relationship between theoretical and practical wisdom. In this regard, if we believe in the hierarchy between mediating concepts. Freedom is at the peak of this process. Freedom is the main point of man's descent from heaven and at the same time the main possibility of man's return to heaven (Mirahmadi, 2012).

4. Existence of value system

In Islam, we should not look at the elements of religious interests and values independently or as an island, but it should be noted that the set of interests and values in a systematic, logical, and coordinated system and in a meaningful relationship and together form the Islamic system. And in fact, the constituent elements and basic concepts that make up Islamic knowledge are placed together in regular and codified thoughts and find meaning. This systemic approach will be more comprehensive than the traditional view and will be able to respond more to the incidents (Mirahmadi, 2012).

Security and freedom are not considered as single and independent values, but in various forms are prerequisite and not sufficient conditions for the realization of the desired political system in Islam. Therefore, other superior Islamic ideals in Islam should not be sacrificed for security. At the same time, the existence of a system of other values in Islam is considered, which in a coordinated system and in a completely interrelated manner, provide the conditions for achieving the desired goal. Justice and dignity are among these values that will be present together as measure to measure their accuracy throughout the rout.

It is based on the necessary minimum, middle and maximum relationship between security and freedom in Islam.

4.1. Minimal relationship

This ratio depends on the political and social conditions in which Muslims live, in which no social group is dominant in terms of population. Due to the existence of safe contexts, individual freedoms are possible, and it is in the light of these freedoms that Muslims can achieve their faith and religious goals in a minimal and individual way. In this regard, the basis of action is based on the law and based on equality and freedom and is similar to the teachings of the Republicans on freedom in which not only do people not harm each other (security) and provide them with the opportunity to live freely and participate.

In this regard, while respecting the "specific" approaches to social construction, the government domain is "neutral" and the public arena is based on "public good".

In such a society, there is a field of cultural tolerance, and no group attacks the other and they all live together according to the law and framework. The bond of Muslims in this system is due to the provision of appropriate security and freedom for holding religious ceremonies, as well as the possibility of trying to prevent the approval of anti-Islamic laws. This provides the minimum living conditions for Muslims.

In this situation, Muslims must reach a kind of compromise with other groups to maintain security, justice, and freedom in terms of political and social construction. Also, the Muslim community in this type of society is confined to a specific area and with specific actions. There is no legal solution to the conflict between the social issues of Muslims and non-Muslims.

Therefore, the minimum ratio between security and freedom is necessary only for a suitable individual life and may not necessarily provide a life in accordance with Islamic teachings. In this space, criminal policy is present only in individual areas and will not be able to be present in society. However, it must be emphasized that it provides minimal security and freedom, and that such a society is better than an insecure, unjust, and authoritarian one.

4.2. Intermediate Relationship

This relationship, which is the responsibility of the government, is to provide the basic interests of the right to life, the right to faith, the right to reason, etc., from the duties and responsibilities of the government and from the rights of the people.

In this theory, there is a constructive interaction between security and freedom. "Purposeful" and "limited" participation of the people should be used as an effective source of security alongside the government; this action makes it possible to lose the originality of security or freedom of subject matter and somehow be able to combine between the two.

Belonging to these materials guarantees the fundamental freedoms of individuals. Here, security and freedom from the form of public good that was discussed in the previous relationship can be pursued as a duty of the government and the fundamental right of the people, and the legitimacy of the Islamic government in pursuing the five basic interests of human life.

Here, sovereignty is a means to ensure the security and freedom of the Muslim community, and the main sovereignty of God, therefore, is the original issue of security and freedom of individuals; Man, as the divine caliph on earth, must be the trustee of the government to achieve the divine goals. This makes Muslims wary of tyranny and arrogance but ensuring security and individual freedoms will require the existence and maintenance of the security of the Islamic government.

If these things are achieved in the Islamic government, the Islamic society will move in the direction of its sublime goals, namely faith in God and happiness, because if the government provides basic human rights and freedoms, the ground will be prepared for the realization of good and authority for Muslims. Human beings, due to their rationality and responsibility, as well as the existence of a suitable social context, will know the God better.

This particular social context can only be ignored if there is some kind of reform. Correction or the process of assessing expediency refers to a good or a harm that is in line with the purposes of the Shari'a and the requirements of common sense. According to Al-Ghazali, the purposes of Shari'a are to protect the five intrinsic values, namely religion, modesty, intellect, generation, and property. Any action that guarantees these values is in the scope of expediency and anything that violates them is corrupt, and stopping the latter is also a useful expediency (Kamali, 2002).

The difference between this system and the first type is that these fundamental rights and freedoms are inferred from the teachings of the Shari'a; Humans have a role to play in legislation; the system seeks to implement the teachings of Sharia. Unlike the first type, subjects and laws cannot go beyond the religious realm, so they are considered religious. In other words, the measure is Shari'a, but the public space is free to study the subject (Nezhad, 2020).

4.3. Maximum Relationship

The main relationship that can be considered between security and freedom, then, is the maximum ratio between them. In the first relation, the instant purpose of this system of human life was defined in agreement with each other and away from any oppression and in the personal realm of individuals. In the second ratio, based on the religious teachings of the Islamic government, it acts to establish a relationship between security and freedom and to provide basic interests. In this system, security and freedom are the same. In the third relation, which is the maximum relationship between security and freedom, security and freedom are defined in another way.

Security is not only the protection of the five interests, but also religious and faith security (Akhoondi, 2005), and freedom is considered here in the form of complete freedom. Because the little basis of the movement of the world is towards monotheism. Criteria for assessing security and freedom should also be drawn based on the trend of short life. This makes human beings know and evaluate each other's performance with a more appropriate criterion.

In this process, security and freedom are not limited to the material world, but also include the hereafter of human beings. so there is no substantive conflict between them in the material and spiritual worlds, although we may encounter conflict in their operational realization. Therefore, it is justifiable that during jihad, some people have to sacrifice their lives for the safety of other people. Therefore, the practical goal is to realize the good life of this world and the hereafter and the mutual happiness of the individual and society in the light of religious and intellectual teachings.

This new structure can be offered in three forms: First, in the form of free will, in which man can freely choose his religion (No reluctance in religion) based on his rationality and responsibility. This aspect, the aspect of goodness, is defined in the Islamic system and in individual domain. The second form, is the realm of right, in which security and freedom emerge in the collective realm in a participatory manner. The third form is the realm of purpose, which is the security of faith, and freedom means submission and servitude. The concepts of security and freedom at this stage go beyond the means of good and right and approach the realm of duty. These forms show that Islam, despite being a perfect religion, but at the same time, the interference and conflict between external authority and freedom and duty in Islam will disrupt this good system.

In this sense, security and freedom have a definite purpose and freedom is a kind of servitude. Therefore, in Islam, freedom is associated with submission and servitude, and this submission, which is accompanied by the voluntary acceptance of religious restrictions, is accompanied by an apparent reduction of freedom, followed by security.

In the same way, when man enslaves God, he not only achieves more complete security and freedom in the shadow of the law, but also frees himself from belonging to anything other than God. Therefore, in this situation, there is no paradox between freedom and servitude, and in fact submission and servitude are the same as freedom. Another important point is that these three realms of authority, right and duty in Islam should not interfere with each other. The domain of authority is a personal matter and in the social domain it does not function properly, and its actions cause the imposition of opinions and sometimes the violation of the rights of others. Issues in this realm include freedom of choice, freedom of authority, freedom of personal decision, and freedom of creation (Govich, 1974).

This domain is related to the individual realm of individuals and cannot be extended to the public domain, and therefore entering into social domain in this domain restricts the right of human beings to privacy and the private domain of individuals. At the same time, the domain of authority that is attached to the personal realm is different from the domain of right and the domain of duty. Since the social realm is the realm of right, it cannot be described on the basis of good and free will, but it is described on the basis of duty, because right and duty are related to each other.

It is this heterogeneity that, if the domain of individual authority increase in relation to the responsibility of the origins of primordial theories, will lead to improper justifications in the domination of security and freedom over each other. Human beings are inherently equal, but the responsibility of individuals is also defined in terms of the extent to which they enjoy social rights such as the right to sovereignty.

Thus, the social domain is the domain of the reciprocal relationship of rights and responsibilities, not their one-way relationship. Just as the individual has the right and responsibility, so does the ruler have the right and responsibility. Failure to combine rights and duties will result in nothing but rebellion. Finally, the realm of faith in God is the realm of education and servitude, and indeed the realm of duty.

The scope of the task will be due to the interrelationship with the field of rights and comprehensive authority of the minimal and intermediate systems. The Islamic system has succeeded only when it can establish a logical proportion between the three aforementioned components, which is authority, right and duty, and when this proportion is not achieved and in other words, an imbalance (departure of objects from their positions) occurs, it affects the good system, and we move away from the desired system as much.

5. Formal rules of temporary deprivation of the right to liberty and security

As stated in the previous section, according to international human rights instruments, the deprivation of the right to liberty and security of persons must necessarily be carried out in accordance with the law, and in addition to the legal authorization for deprivation of the right to liberty and security of individuals, it is necessary that this matter be based on the observance of formal rules and regulations, including the deprivation of the mentioned right by the judiciary and its limitation. Individuals' right to liberty should be exercised in the case of illegal extradition, which is also recognized in domestic law. Therefore, we will discuss the mentioned issues in order to clarify the degree of compliance of these laws with the international human rights instruments in this field.

5.1. The necessity of justifying and substantiating the temporary deprivation of liberty

During the preliminary investigation, the judicial authority who has sought evidence of the crime from the person being prosecuted, will limit, or deprive the freedom of the human in accordance with the requirements of the society and, contrary to the presumption of innocence. This decision of the investigator is made on the basis of quia timet bill, the subject of which may be a financial obligation, such as the obligation to appear with the determination of the obligation; Moral commitment, such as the obligation to attend as promised; The power of distress, such as collateral or sponsorship; Restriction of travel, such as the obligation not to leave the jurisdiction; Finally, the most severe form of deprivation of liberty is called detention or power of distress.

Deprivation of the right to liberty of a defendant is an issue which has been seriously criticized by jurists and the advanced rules of criminal procedure; Because non-observance of the right to liberty and security of person and non-observance of the equal rights of the parties to a criminal case - what is known as the equality of arms - infringes on the right of the accused to defend himself; and in this way only the rights and freedoms of the accused are lost; especially that the probability of judicial errors due to incomplete information of the decision-making authority at this time is much higher than the judicial stage and pronouncement (Khaleqieh, 2014).

These issues have caused that governments both domestically and internationally seek to establish rules and regulations that are consistent with their obligations with respect to protection of individual rights and freedoms and the conduct of a fair trial that according to which the reasons for issuing a temporary detention order very limited and in that case, the maximum facilities for providing and guaranteeing the freedoms and preparation and defense of the accused should be provided to him.

For example, clause 2, article 9 of the Covenant on Civil and Political Rights provides: Whoever is arrested must be informed of the reasons for his arrest at the time of his arrest and (must) be informed promptly of any charges against him. Elsewhere, declare the estate duty to bring the suspect to the judiciary as soon as possible and to prohibit his detention during the course of the preliminary investigation and proposed to the extent that is possible to use alternatives actions of temporary detention. For this reason (Ashouri, 2008), the judicial authority should, at the time of the arrest of the accused, give detailed reasons as to why there are not enough alternatives to keep the accused at his disposal, and the detention of the accused should be considered as the only possible means (Ashouri, 2008).

On this basis, and with respect to guarantee of the rights of citizens as much as possible and the prevention of arbitrary detention and the protection of the right to liberty and personal security of individuals, the Iranian legislature has always obliged the detention authorities to mention the reasons for detaining and justifying the privation of liberty of citizen.

In the domestic law of Iran, in addition to Article 32 of the Constitution of the Islamic Republic of Iran, which regulates the prohibition of illegal detention. Article 437 of Judicial Procedure Code of the General and Revolutionary Cou3rts has been approved in criminal matters approved in 1999 has considered the necessity of proving by reasoning and legal approve of having temporary detention writ.

Accordingly, “the investigating judicial authority shall, in the event of an attempt to secure a criminal conviction, have sufficient evidence for the occurrence of the crime and its attribution to the accused”.

Clause 1 of the Law on Respect for Legitimate Freedoms and Citizenship Rights 5, approved on 04.05.2004, also emphasizes the rationale and documentation of the deprivation of the right to liberty of individuals. And other provisions of the law regarding the provision of criminal justice goals and the achievement of human rights standards and norms, including the prevention of arbitrary detention and avoidance of unnecessary detention of individuals and the reduction of the issuance of detention and protection of the right to liberty and security of individual is of very importance. New Code of Criminal Procedure 2013 has also considered the same provisions of the previous laws regarding the necessity of justification of detention.

Subject to the provisions of these articles, Iranian law on the need to justify a temporary detention writ is totally in accordance with international human rights law, in particular Article 9 the International Covenant on Civil and Political Rights, which is fully applicable in the civil and political law of the country.

5.2. Limiting the period of detention and temporary deprivation of liberty

One of the issues related to temporary detention, which has attracted the attention of jurists, has long been that changing its title from detention pending trial to temporary detention under French July law of 1970 also confirms the temporary and limited nature of this provision. However, when the period of detention is not provided for in the law, the accused, who has been remanded in custody for a period of time, will in practice be imprisoned for a long time due to the high density of the case or the need to complete an investigation. and the detrimental and irreparable effects of its reparation, especially when it becomes apparent that, due to lack of sufficient reasons, it will eventually lead to a confinement prohibitory function or acquittal, or that, if convicted, the defendant is sentenced to less than a term of imprisonment (Khazaei, 1998).

Clause 3, article 9 of the Covenant on Civil and Political Rights provides: "Anyone arrested and/or detained on a criminal charge shall be promptly brought before a judge or other authorized official to be tried and acquitted by a law governing the jurisdiction of the judiciary during the reasonable period" (Khazaei, 1998: 285). Detention and waiting for the trial of individuals should not become a general rule ...". Article 6 of the European Convention on Human Rights provides: "The detention of the accused shall not exceed a reasonable period of time" (Khazaei, 1998: 285).

It should be noted that the International Covenant on Civil and Political Rights and other human rights instruments do not provide a specific period of detention for the accused, but that the detainee should be released immediately before a judge in a reasonable period.

Setting a time limit for the detention of individuals is, of course, a matter of expediting the expeditious conduct of the investigation by the investigating authority within the time limit set. Therefore, the creation of a time limit should be short-lived, as it is a matter for the law to detain persons and to detain them in support of individual rights and is considered an important step by the judiciary to prevent long-term detention.

Article 37 of Judicial Procedure Code of the General and Revolutionary Courts in Criminal Affairs, adopted in 1999, stipulates that the status of the detained defendant must be clarified within one month, and he must be released and must be released upon the issuance of an quia timet bill and, if necessary, the quia timet bill shall be renewed, stating the reasons and documents.

The Amendment to the Law on the Establishment of Public Courts and the Revolution approved in 2002, which also entrusted the preliminary investigation of all crimes to the investigator, in this regard, Article "T" Article 3 stipulated that whenever in the crimes in question the jurisdiction of the provincial criminal court is up to four months and in other crimes up to two months due to the issuance of a quia timet bill, the accused is in custody and If the case against him does not lead to a final decision in the court, the authority issuing the contract is obliged to consider or reduce the quia timet bill of the accused.

Unless there are reasons for legal mitigation or justifiable reasons for the survival of the issued quia timet bill, in which case the reasons are maintained and ..., "If the detention of the accused continues, the provisions of this paragraph shall be applied every four months or every two months, as the case may be" (Forum, 2006: 290).

Considering the difference in the contents of the preceding articles, it is considered that within the time limit, temporary detention and explicit paragraph (T) of the above-mentioned law which states: "... The accused has been detained and his case file has not led to a final decision in court" (Forum, 2006: 290), it should have been determined that if a temporary detention order is issued in court, the court was obliged to comply with the provisions of Article 34 mentioned above, and if this decision is issued in the prosecutor's office, the interrogator should comply with the provisions of clause (T) article 3 of the mentioned law for the investigator and prosecutor.

The new Criminal Procedure Code has adopted in 2003 a single procedure in the courts and tribunals, and in Article 7242, the Iranian legislature, in addition to the legal requirement of temporary detention and its reasonableness, the minimum length of detention of accused in proportion to the current law in major offenses reduce from two months to one months. And the maximum time in which the accused is detained for the crimes of deprivation of life and other crimes is also determined by the

observance of the rights of the accused and a fair trial and the limitation of the period of deprivation of liberty of accused and compliance with international human rights instruments is also a key step in this regard (Forum, 2006).

5.1.1. The right to request the review of the legality of the temporary deprivation of liberty and the request for liberty

Since the principle of liberty of the accused while conducting preliminary research is based on sovereignty the principle of innocence and deprivation of liberty is contrary to the principle and only in exceptional cases may be the subject of the verdict and that inevitable judicial errors are reminiscent of the bitter experiences of depriving innocent people of their liberty.

The advanced rules of criminal procedure code, contrary to what has prevailed in the past, in such a way that only the judicial authority issuing the temporary detention order or his successors could reduce, convert or cancel temporary detention order. The right of the defendant to appeal the judicial decision has been accepted by the decision-making authority, if necessary, with the exercise of judicial control and two-level trial.

Clause 3 of Article 3 of the International Covenant on Civil and Political Rights recognizes this right: Anyone deprived of liberty as a result of arrest or detention have the right to demand justice and in order for the court to declare without delay that the detention is lawful and, if it is illegal to detain him, to order his release.

Apparently, the basis for accepting this right is to reduce judicial errors and, as a result, to limit any further effects of an act is in contrary to the principle of the acquittal of the accused in the detention of the accused.

Cancel of detain writ or convert him at the request of the accused had long been accepted in clause 4 of Article 38 of Criminal Procedure Code of Iran, but with the approval of Law on the Establishment of Public and Revolutionary Courts approved in 1994, the right to appeal against the detention was revoked pursuant to paragraph (b) of Article 19 of the said law that considered as infringes on the rights and freedoms of individual of accused and violate the country's international commitments in terms of justice processing and granting the right to appeal to the accused and followed the protests of lawyers and finally by approval Law on the Rules of Procedure of Public Courts and the Revolution approved in 1999 and accordance with Article 33 of this law, again the writ of temporary detain was declared admissible in the provincial court of appeal. Pursuant to this article, "... the deadline for appeal is 10 days and the competent court will consider the request of the accused out of turn". If the appellate court finds the defendant's objection hearable terminate the temporary detention writ

and returns the case to the issuing court in order to obtain appropriate security.

Another provision that was considered in the law to guarantee the rights of the accused and to prevent the deprivation of liberty of individual in violation of the law was the need to obtain the approval of the head of the district jurisdiction or his deputy if the judge had ordered it.

In the Law Amending the Law on the Establishment of Public Courts and the Revolution approved in 2002, the legislature adopted a more appropriate mechanism for judicial control and objection to temporary detention and did consider some duties for issuing authorities. In Clause (H) of Article 3 of the mentioned law, the investigator who has the right to issue a temporary detention writ for the accused, must be approved by the prosecutor if a decision is issued by him, and if the reason for detention come to an end, removing the detention must be by agreement of prosecutor. also in this clause, the right of the accused to request the removal of his detention if the reason for his removal was removed has been recognized.

Clause (T) of Article 3 of the said law the issuing authority shall also temporarily suspend if the case does not lead to a final decision in the prosecutor's office, In the crimes subject to the jurisdiction of the criminal court of the province up to four months and in other crimes up to two months, in relation to the mitigation of the quia timet bill of the accused; Unless there are legal reasons or a valid reason for the survival of the issued quia timet bill which in this case by mentioning them the writ will be retained and in this case the accused has the right to appeal against this decision within 10 days from the date of notification to the local or revolutionary court, as the case may be.

As is clear from the text of paragraphs (H) and (T), the Iranian legislature to guarantee the right to object of the defendant to temporary detention in addition to the "right" to object to the "issuance" and "continuation" of the detention write that recognized for defendant. "It was also an 'obligation' for the issuing authority to review its contract at regular intervals".

Criminal Procedure Code of 2013 in article 10241 in protest of the detention order, has accepted almost the same provisions of the previous laws, and in Article 242, has also recognized the right of the accused to object to the renewal and maintenance of the temporary detention order after two months in serious crimes and one month in other crimes, within 10 days from the date of notification in the competent court.

Article 244 of the said law and note 1 of it also recognizes the right to request a reduction of security even after issuance of indictment only once and the court is obliged to hear the sentence even if it wants to plead, and according to Article 245, the court is obliged to consider the defendant's objection in an extraordinary time.

Pursuant to the above-mentioned articles of Judicial Procedure of the Public and Revolutionary Courts Code in 1999 and the Law on Amending the Law on the Establishment of General and Revolutionary Courts approved in 2001, and Code of Criminal Procedure approved in 2013, It is clear that Iranian law on the recognition and enforcement of the right to object to the provisional deprivation of liberty is explicitly stated in accordance with international human rights instruments, in particular Article 4 of the article 9 International Covenant on Civil and Political Rights and the laws of the country in this field do not have ambiguity and problems.

Conclusion

In the present study, an attempt was made to discuss the issue of the relationship between the right to security and the right to liberty in Islam and the formal regulations for the deprivation of these rights in Iran. In this regard, after examining the concept of these two rights and discussing the challenges related to their nature, we conduct research and criticize the relationship between these rights in Islam.

In the present article, we have dealt with three types of relations between freedom and security, and it was said that there are three types of structures, minimum, intermediate and maximum in Islam, which indicate the correspondence between security and freedom in Islam and is of great importance. And if there is not possibility of maximum in a situation, Islam has made it possible for Muslims to build other structures, and it is not necessary to abandon one ideal in favor of another.

According to this, we examined the formal provisions of Iranian criminal law from the perspective of the situation of deprivation of these rights. The results showed that according to the right to liberty and security of individual, all persons should always have the right to liberty, and the deprivation of liberty of persons should be exceptional. This is recognized in the Constitution of the Islamic Republic of Iran in accordance with international human rights instruments. Deprivation of liberty and personal security of individuals should be done only on the basis of law and the order of a judicial authority and as an inevitable necessity.

This is recognized in the basic and ordinary laws of Iran, and although it has its defects, the approved criminal procedure law has removed most of the objections raised in the previous law. The deprivation of liberty exercised by the judicial authorities must be reasoned and justified, and the legal document and the reasons for its issuance must be stated. According to the right to liberty and security of individual, it is necessary to deprive the individual of liberty exercised in accordance with the law must be limited to a certain period of time and a fair trial of the arrested persons should be

held as soon as possible.

In Iranian law, Civil Procedure Code and the Revolution in Criminal Affairs and the Law Amending the Law on the Establishment of Public Courts and the Revolution recognized this right. However, there were ambiguities that the adopted Code of Criminal Procedure, in addition to eliminating, also reduced the period of temporary deprivation of liberty. On the other hand, according to the principle of deprivation of liberty, individuals have the right to object to their arrest or detention. Iranian law explicitly recognizes this principle. Under the right to liberty and security of law, individuals have the right to seek their liberty on the ground that their deprivation of liberty is illegal. Iranian law also explicitly recognizes this principle.

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Protection of Critical Infrastructure Facilities as a Component of the National Security

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Abstract

The issue of protecting critical infrastructure as one of the components of national security is analyzed. The following methods were used in the study: bibliographic, dialectical, empirical, and theoretical, comparative, and legal. The essence of the term «critical infrastructure" is explained both according to the opinions of scientists and from the very position of the authors of the article. The importance of proper protection and proper functioning of infrastructure in Ukraine is well founded. It emphasizes the fact that for many years the issue of the importance of protecting critical infrastructure has been almost forgotten and is not relevant to the governing bodies of the state. In addition, this situation applies to many other countries in the world. The current situation shows that there are countries that, despite being among the most prosperous and innovative, did not pay attention to their situation with their own security infrastructure. It is concluded that, based on a comparative analysis of international experience, in addition to exploring the peculiarities of national realities, the article proposed measures to improve the internal state of protection of critical infrastructure.

Keywords: critical infrastructure object; national security; infrastructure protection; state security policy; geopolitics of security.

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Protección de instalaciones de infraestructura crítica como componente de la seguridad nacional

Resumen

Se analiza el tema de la protección de la infraestructura crítica como uno de los componentes de la seguridad nacional. En el estudio se utilizaron los siguientes métodos: bibliográfico, dialéctico, empírico y teórico, comparativo y legal. La esencia del término "infraestructura crítica" se explica tanto de acuerdo con las opiniones de los científicos como desde la propia posición de los autores del artículo. Se fundamenta la importancia de la protección adecuada y el buen funcionamiento de la infraestructura en Ucrania. Se enfatiza el hecho de que durante muchos años el tema de la importancia de la protección de la infraestructura crítica ha sido casi olvidado y no es relevante para los órganos de gobierno del estado. Además, esta situación se aplica a muchos otros países del mundo. La situación actual demuestra que hay países que, a pesar de ser parte de los más prósperos e innovadores, no prestaron atención a su situación con una infraestructura de seguridad propia. Se concluye que, a partir de un análisis comparativo de la experiencia internacional, además de explorar las peculiaridades de las realidades nacionales, el artículo propuso medidas para mejorar el estado interno de protección de la infraestructura crítica.

Palabras clave: objeto de infraestructura crítica; seguridad nacional; protección de infraestructura; política estatal de seguridad; geopolítica de la seguridad.

Introduction

The need to protect important infrastructure is one of the most important priorities of the state. The importance of the safe operation of critical infrastructure, namely its key facilities, is a major factor in ensuring national security, sustainable functioning of the economy, welfare, and protection of the population (Chumachenko, 2017). At the same time, global tendencies to increase the threats of natural and man-made nature, increase in the level of terrorist threats, increase in the number and complexity of cyberattacks have led to the actualization of the issue for protecting systems, facilities and resources that are critically important to society, socio-economic development of the state and ensuring national security (Kraivska, 2021).

It is necessary to state the indisputable fact that the attention to protection and qualitative improvement of infrastructural facilities has been recently increased among the countries of the world. It is especially

true of those infrastructure facilities that are critically valuable (important) to the national security of the state.

It is known that after the "Servant of the People" party and its leader Volodymyr Zelenskyi, who was elected the sixth President of Ukraine, came to power in Ukraine in 2019 as a result of democratic and transparent elections, the infrastructure program "Large Construction" was launched, which was the initiative of the new authorities. This program, as officially stated in its plan, is aimed at carrying out large-scale repair and construction works throughout Ukraine. Roads, bridges and other facilities of national and local infrastructure, which are important for society and the state, are among the highest priorities. In addition, the program intends to create new and improve existing schools, hospitals, and other socially important institutions. The initiators of this state program claim that its implementation can increase the level of economic well-being of the state and its citizens. In particular, it is expected that it will be able to raise the country's GDP due to the fact that the new quality infrastructure, which is expected to be the final result of this program, can increase the intensity of cooperation between various economic subjects in Ukraine and can help to make the country more attractive for foreign tourists and investors. Researchers' views on this program are quite different.

The purpose of this article should be to justify the importance of protecting critical infrastructure facilities at the national and local levels for the security of the state, its citizens and institutions.

The objectives of the article are to search for and carefully analyze methods and ways to protect critical infrastructure facilities, to define specific reasons for the importance of a well-functioning infrastructure for the national security and to reveal the terms of "critical infrastructure", "element of the national security", etc.

1. Methodology

The problems of the importance for protecting and proper functioning of infrastructure facilities, especially those that are critical to ensure national security, has been addressed by many researchers and scholars who studied those problems and issues in various fields of science.

The bibliographic method was used that assisted to received up-to-date information on the current state of affairs in the field of protecting critical infrastructure facilities from the leading foreign and domestic researchers of the present time.

The use of dialectical, empirical and theoretical methods was useful in revealing the terms related to the subject matter of this article.

The comparative and legal methods helped to analyze and detail the existing methods of protecting infrastructure facilities that are critically important for the national security of the state, as well as their compliance with domestic, socio-political realities were studied. This method was also used in the analysis of the current state of affairs in the field of protecting infrastructure facilities in the developed world countries. Particular attention was paid to those states that were progressive in accordance with international standards in regard to the issue studied in this article.

2. Results of the Research and Discussion

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 (Politanskyi, Lukianov, Ponomarova, Gyliaka, 2021). Can confidently state that an efficient and smoothly functioning infrastructure in today's world is one of the key elements of the well-being of the state and its citizens. After all, strong and wide bridges, level roads and other facilities of "communication" infrastructure allow people and goods to move quickly in space between different regions of the country (Critical Infrastructure Protection, 2020).

Thus, they provide an opportunity to increase the interaction between different individuals and legal entities (including enterprises) representing different regions of the state. At the same time, besides critical infrastructure communication facilities, it is noted that the main part of the category "critical infrastructure facilities" consists of enterprises and institutions, whose operation is "strategically important for the existence of the state" and for the inviolability of the national security. For example, according to the list of critical infrastructure facilities approved by the Resolution of the Cabinet of Ministers of Ukraine "On approval of the Procedure for forming a list of information and telecommunication systems of critical infrastructure facilities of the state" dated from August 23, 2016, No. 563 this list regardless of ownership includes enterprises, institutions and

agencies representing such industries as: energy, transportation, chemical industry, information technology, food, finance, telecommunications, utilities, health care, banking (The National Infrastructure Protection Plan, 2006).

It is common to distinguish enterprises related to the production or storage of electricity, oil, gas, large water tanks and reservoirs, hydroelectric power plants, etc. among the institutions classified in the energy sector. It is also known that not every institution in the banking and financial sector is recognized as critically important to the national security of the state. It is argued that the critical infrastructure institutions in this area include those, whose sustainable operation "is essential for the economy and security of the state, the existence of society and those that are of significant public interest" (Osypchuk, 2020: 34). This list includes all banks recognized by the National Bank of Ukraine as systemically important. At the same time, all banking institutions that are in the status of critical infrastructure facilities and are 100% of the list of systemically important, that is, both lists duplicate each other.

The approaches to determining the content of such a category as "threats to national security" are changed with the development of the concept of "critical infrastructure". This should be reflected in administrative activities of the Security Service of Ukraine and should be enshrined in the relevant regulatory acts and create a solid foundation for the protection and security of critical infrastructure of Ukraine (Osypchuk, 2020).

On the basis of generalization and analysis of the current legislation in the field of national security and defense, O. V. Nesterenko (2020) has defined the system of subjects of national security and defense of Ukraine as follows: 1) management subsystem (the President of Ukraine); 2) controlled subsystem: security forces – law enforcement and intelligence agencies, state agencies of special purpose with law enforcement functions, civil defence forces and other agencies; Defense Forces – the Armed Forces of Ukraine, as well as other military formations, law enforcement and intelligence agencies, special purpose agencies with law enforcement functions formed in accordance with the laws of Ukraine; defense-industrial complex; citizens and public associations; 3) auxiliary parts of the system (Verkhovna Rada of Ukraine, Cabinet of Ministers of Ukraine, judicial agencies, international institutions).

In our opinion, some of the achievements of the developed countries in the field of protecting critical infrastructure facilities should become a model for Ukraine. It should be noted that the term of "protection of critical infrastructure facilities" means not only its physical or legal protection from dangers and encroachments, but also constant work on its improvement and bringing it into line with modern standards.

For example, it is applied to regular maintenance and construction works on such facilities to prevent them from losing their effectiveness or functionality. It can also include the introduction of new or revision of existing standards of safety and quality of work, which is especially critical for institutions and enterprises that in their direct activities interact with hazardous substances or transport them (Critical infrastructure protection, 2021).

It is worth noting that according to recently published research conducted by foreign scholars, high technology is one of the most important components of efficiency and reliability of institutions and departments that are part of critical infrastructure facilities.

The seriousness of the "technological issue" in compatible infrastructure industries is growing stronger over the time. Most of the current activities for the protection and proper maintenance of infrastructure facilities are carried out using high-tech devices, as well as software both of domestic and mostly foreign production.

Security experts point out that cyberspace threats are currently the biggest threat to critical infrastructure facilities. Given the high level of "computerization" in today's world, public and private institutions that carry out control and protection of the above-mentioned critical infrastructure facilities are trying to protect themselves as much as possible from real and potential cyber threats.

In order to properly protect cyberspace in a particular country, the following two conditions must be met. First of all, effective executive activities of agencies that carry out protection of critical infrastructure facilities should be ensured (Protection of Critical Infrastructure, 2020).

Secondly, these activities should be supported by qualitative legislation in order to make it more effective. It is noted that despite certain mistakes and negative factors, which currently enrich the realities of the domestic sphere of combating cybercrime, we can say that Ukrainian society and government are taking some positive steps towards creating reliable mechanisms to protect cyberspace, including critical infrastructure facilities.

Thus, considering the legal basis for the functioning of domestic cybersecurity systems, regarding the protection of infrastructure facilities, it is necessary to note the Law of Ukraine "On Basic Principles of Cyber Security of Ukraine" (October 5, 2017, No. 2163-VIII). This regulatory legal act, among other things, defines critical infrastructure facilities as "enterprises, institutions and organizations, regardless of ownership, … of great importance to the economy and industry, the functioning of society and public safety….". This legal act also states that the "decommissioning or malfunctioning" of these facilities "may have a negative impact on the

state of the national security and defense of Ukraine..., may pose a threat to human life and health".

Given the fact that this law has a direct focus on cybersecurity sector, it also specifically defines the term of "critical information infrastructure" as "a set of critical information infrastructure facilities".

Thus, we note that the importance of this law primarily lies in providing a clear definition and relative systematization of subjects, objects and legal phenomena related to ensuring cybersecurity and protection of critical infrastructure facilities. It is recognized important mainly because a legal act (specified Law) appeared in Ukraine for the first time after a long time, which is supported by a real, actively functioning program of the government, the National Bank and other state agencies.

Each of the indicated institutions outlined its activities in this direction by its own statutes and special by-laws. On this basis, we argue that finally we received a balanced comprehensive approach to solving existing problems in the field of critical infrastructure protection by various public authorities (Insuring Public Buildings, Contents, Vehicles, and Equipment Against Disasters, 2020).

Ukraine, having this approach to solve a specific problem, becomes on a par with politically and economically developed countries, such as the United States, Canada, and Western Europe countries. The vast majority of both domestic and foreign researchers strongly support the statement that this way of solving existing problems with infrastructure facilities will bring positive results (Ismael and Aaron, 2020). Other existing problems of the Ukrainian state and society should be solved in a similar way. We fully agree with the views of researchers and scholars regarding this issue and argue that those successes that have been recently achieved should be further developed. To this end, government agencies and departments of Ukraine, which are responsible for the proper protection and operation of critical infrastructure facilities of Ukraine, should follow the example of the developed countries (Understanding and Pursuing Information Advantage, 2020).

In particular, we should pay attention and try to adopt the technological solutions that are used in the United States or European countries to protect infrastructure facilities. It is especially true about their methods and means of protection within cyberspace (OPSWAT, 2019). The Department of Homeland Security, which includes federal agencies and institutions, also operates in the United States as the coordinating agency.

We suggest among the specific propositions for improving the systems and mechanisms for the protection of critical infrastructure facilities to introduce the uniform safety standards at these facilities.

Having studied the problematic issues of further development of the state system of critical infrastructure protection, D. H. Bobro (2017) identified the following areas that do the world's countries: 1. Develop the normative base and regularly review it. 2. Determine the coordinating agency. 3. Develop methodological approaches, form a list of critical infrastructure, assess the threats and risks of critical infrastructure, develop response plans, regularly evaluate their effectiveness (for example, the National Center for Analysis and Simulation of Infrastructure of the Home Affairs Ministry takes care of this issue in the US). 4. Provide training of qualified personnel in the field of critical infrastructure protection. 5. Organize the exchange of information and best practices. 6. Develop public and private partnership.

Detailing and revealing this proposition more deeply, we note that the option of implementing this proposition may be a single (unified) "set" of solutions and specific actions that must be implemented by the management of a critical infrastructure facility in case of the threat of attack, natural disasters, and other emergencies (Cyber Security Strategy, 2016). At the same time, the protection of infrastructural facilities that are critically important for the state does not have to be entrusted to a single institution.

The main thing is that public and private agencies that carry out these security activities adhere to common standards. We also consider it necessary to suggest the introduction of a mechanism to control the selection and further operation of the software, which is the basis for the system of protection of critical infrastructure facilities (The History of Critical Infrastructure Protection, 2021). It is due to the fact that Ukraine must seriously care about the process of selecting and implementing foreign software in its own infrastructure protection system in the context of the ongoing armed and information conflict with the Russian Federation, as well as due to the growing "cyber espionage" by China and other authoritarian states (NISS, 2020).

As an example of the dangerous impact of "hostile" software on operating systems and access to private information, we should note the Russian anti-virus "Kaspersky system", which has been repeatedly noticed and recorded in illegal access to personal information of customers and its subsequent transfer to Russian state military and security agencies.

About China, we emphasize that its illegal interference into cyber systems of critical infrastructure facilities of Western countries is mainly due to industrial espionage. Thus, it concerns the theft of the necessary information to take over the secrets of manufacturing and application of certain technologies (Demos, 2021). Instead, a serious and well-thought-out approach to the processes related to the selection and implementation of the necessary software into the infrastructure protection system will significantly improve the domestic infrastructure protection system (Khazaei and Amini, 2021). We should separately note that these

propositions should contain the best elements of the experience of leading foreign countries in this area and should be adapted to domestic realities (Rehak, 2019).

Conclusions

Summarizing all the theses, statements and scientific views of researchers presented in this article, as well as forming the author's final conclusions based on them, we note that the protection of critical infrastructure facilities is one of the key elements for functioning of the state's national security.

Achieving a proper (effective) state of affairs in the field of protecting critical infrastructure facilities will be possible only if there is successful implementation of several components listed and detailed in this article.

First of all, it concerns the creation and smooth functioning of clear legislative and legal regulation, which should facilitate to make the state policy on the protection of critical infrastructure facilities clear and unambiguous.

Secondly, it is noted that the development and improvement of the system of protecting infrastructure facilities must be accompanied by the mandatory use of high technology in the activities of the competent authorities for the protection of critical infrastructure.

The emphasis is placed on the fact that the level of "processibility" or scientific and technical provision of a particular state is currently a major factor in its ability to reliably protect its own critical infrastructure.

This logically implies the conclusion about the importance of a reliable cybersecurity system at enterprises, institutions, and other facilities, which are included in the list of critical infrastructure facilities according to the legislation of the country.

In particular, the author has made own suggestions that the cybersecurity system at the above facilities should be based on uniform standards (rules) of operation. The importance of fruitful interaction of domestic structures involved in this sphere with developed countries has been especially emphasized.

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Escasa eficiencia en costos y plazos en proyectos de inversión en Arequipa y Moquegua 2004-2020

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Resumen

Objetivo: Demostrar la escasa eficiencia en costos y plazos en 22 proyectos de inversión (PIP) del Gobierno Regional de Moquegua y Arequipa, los cuales generaron mayores costos y plazos entre el ex ante y el ex post en el periodo 2004-2020. Método: Inductivo, básico, no experimental. Resultados: En base a la prueba de Wilcoxon, se demostró que los costos de 12 proyectos en Moquegua, antes y después, fueron diferentes con significancia asintótica (bilateral) 0.006, de 127 a 220 millones; y la prueba "t" para muestras relacionadas gener**ó** la significancia (bilateral) de 0.000. Se observó que la media calculada en días fue diferente, que la media del plazo ex ante resultó ser de 339 días mientras que la media del plazo real fue de 2307 días. En 10 proyectos de Arequipa, la prueba de Wilcoxon gener**ó** 0.007 y los costos pasaron de 1030 a 1585 millones de soles; la diferencia de plazos gener**ó** un p-valor de wilcoxon de 0.004 de una media de 15.4 a 57.5 meses. Conclusión: Los costos del periodo anterior y posterior son diferentes; al igual que los plazos propuestos y los plazos efectivos en ambas regiones.

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Palabras claves: escasa eficiencia; costos; plazos; proyectos de inversión; corrupción administrativa.

Low cost and time efficiency in investment projects in Arequipa and Moquegua 2004 - 2020

Abstract

Objective: To demonstrate the low efficiency in costs and timeframes in 22 investment projects (PIP) of the Regional Government of Moquegua and Arequipa, which generated higher costs and timeframes between the ex ante and ex post in the period 2004-2020. Method: Inductive, basic, not experimental. Results: Based on the Wilcoxon test, it was shown that the costs of 12 projects in Moquegua, before and after, were different with asymptotic significance (bilateral) 0.006, from 127 to 220 million; and the "t" test for related samples generated the significance (bilateral) of 0.000. It was observed that the average calculated in days was different, that the average of the ex ante period turned out to be 339 days while the average of the actual period was 2307 days. In 10 projects in Arequipa, the Wilcoxon test generated 0.007 and the costs went from 1030 to 1585 million soles; the difference in terms generated a p-value of wilcoxon of 0.004 from an average of 15.4 to 57.5 months. Conclusion: The costs of the previous and subsequent period are different, as are the proposed deadlines and actual deadlines in both regions.

Keywords: Low efficiency; costs; time frame; investment projects; administrative corruption.

Introducción

Los proyectos de inversión pública (PIP) van de la mano con el crecimiento económico y la consolidación del capital institucional. La necesidad de una buena gestión de proyectos es relevante y se explica por múltiples factores, doce son los que señala (Villegas, 2018). Los planes estratégicos, la gestión por resultados se vuelven verso frente a la realidad de perjuicios contra la nación que descubre la contraloría. Los 22 mil millones de perjuicio al estado empiezan en los proyectos. Un factor es el alargamiento de los plazos y el otro, los sobrecostos, se nota cuando los costos del proyecto viable distan del proyecto ejecutado. Así mismo, con los plazos.

El capital y el trabajo se combinan: el primero impulsa al segundo y viceversa. El porcentaje de crecimiento de la renta por persona es resultado de la productividad del trabajo que se consigue por el incremento de la tecnología (Duarte **& Ruíz**, 2015). Entonces, ¿por qué no se ejecutan en su momento los proyectos de inversión? En este sentido Balcázar (2015), citado por (Fernández, 2018), afirma que los problemas de titularidad de propiedades, pésimos perfiles de proyectos y la falta de saneamiento de los terrenos donde se pretende construir repercuten en la demora en los permisos; de la misma manera, influyen en que los tiempos y costos transcurran en perjuicio del costo de oportunidad de los recursos.

Arela Bobadilla (2020) sostiene que son proyectos (PIP) de los sectores, agricultura y transportes donde hay mayores retrasos. Asimismo, Romero (2016) afirma que los proyectos (PIP) de los sectores, agricultura y transporte superan los estándares de costos en la ejecución. La Contraloría, en el informe sobre el cálculo de la corrupción en el Perú, señala que los sectores de transporte, educación y salud son los que mayormente incumplen con los plazos (Shack et al., 2020)pues los costos de ineficiencia que generan este tipo de conductas, muchas veces, están relacionados con la introducción de grandes distorsiones y, por consiguiente, con la falta de alineación de las decisiones políticas con una actitud íntegra y actuación eficiente del Estado. El primer paso para determinar los efectos de la corrupción es, sin duda, la identificación del tamaño de la misma. En tal sentido, a partir de la exploración de los productos del control gubernamental, como la base de un modelo experimental natural de observación directa de la corrupción, este trabajo propone una metodología de cálculo del tamaño de este fenómeno. En otras palabras, sobre la base de la extrapolación del perjuicio económico producido al Estado (i.e. sobrevaloraciones, pagos injustificados, entre otros hechos de similar importancia. Al respecto señala que es el 15% del presupuesto público ejecutado que se pierde por los delitos contra la administración pública, por corrupción e inconducta funcional.

Ahora la fiscalía observa que se constituyen organizaciones criminales constituidas para robarle al estado. Esto es importante saber, los sobrecostos al estado, por ejemplo, en la ejecución de una obra pública, se requiere que se coludan -como mínimo- el funcionario público que da la conformidad del sobre valor, el que supervisa y firma el sobre valor y el Ing. residente y contratista que presentan los documentos sobrevalorados. Y ello ocurre cuando el estado pretende adquirir un bien, se otorga un servicio o adjudique una obra. ¿Tiene algo que ver la dimensión de lo que se le paga (soborno) al funcionario o al jefe de pliego? Claro, es el tamaño del daño causado al presupuesto público. Lo que se pierde por 10 debido a que la coima es el diezmo.

Qui**é**n no ha escuchado del Caso Lavajato, que captaba a presidentes, ministros, gobernadores, alcaldes políticos en campaña (Proetica, 2021)

cuyo fin era llegar al poder del estado y al presupuesto público para delinquir. Allí está también la "centralita" en Ancash, el caso Manos limpias, en Chiclayo. y cuál es el perjuicio que la corrupción le causa al Perú y las regiones? Según estimaciones de Nelson Schak, (Shack et al., 2020) pues los costos de ineficiencia que generan este tipo de conductas, muchas veces, están relacionados con la introducción de grandes distorsiones y, por consiguiente, con la falta de alineación de las decisiones políticas con una actitud íntegra y actuación eficiente del Estado. El primer paso para determinar los efectos de la corrupción es, sin duda, la identificación del tamaño de la misma. En tal sentido, a partir de la exploración de los productos del control gubernamental, como la base de un modelo experimental natural de observación directa de la corrupción, este trabajo propone una metodología de cálculo del tamaño de este fenómeno. En otras palabras, sobre la base de la extrapolación del perjuicio económico producido al Estado (i.e. sobrevaloraciones, pagos injustificados, entre otros hechos de similar importancia de Alfonso Quiroz (Blondet, 2013), en los últimos años es un promedio anual estimado del 3% a 4% de su Producto Bruto Interno (PBI).

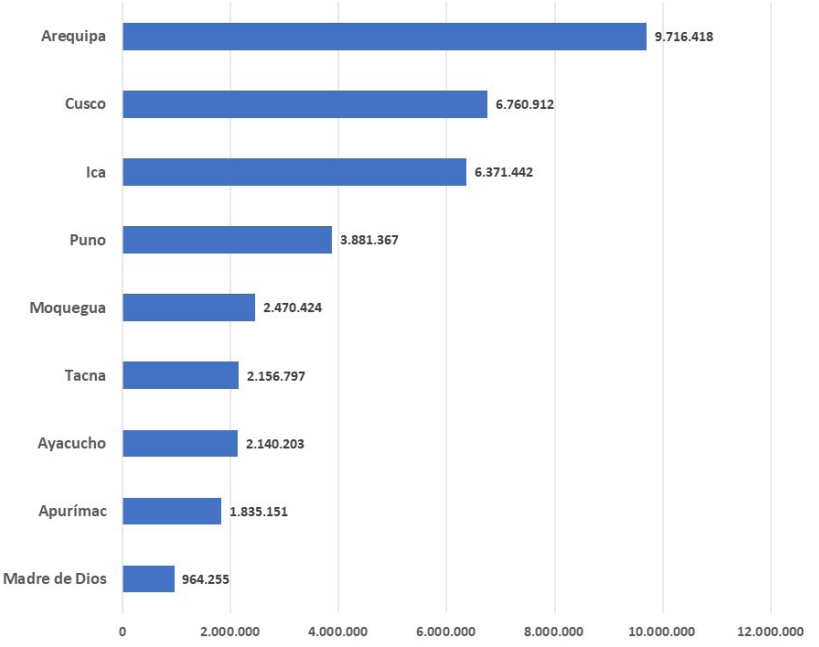
Así en el caso de las economías regionales de Arequipa seria de 900 millones de soles anuales y de Moquegua sería un aproximado de 240 millones de soles anuales. Es una pena decirlo, Moquegua y Tumbes lideran con funcionarios por cada 100 mil habitantes con denuncias administrativas, civiles y penales por presuntas faltas y delitos cometidos en sus funciones, sea colusión, peculado, malversación o negociación incompatible. Así Moquegua tiene 62 denunciados por cada 100 mil habitantes, Tumbes 61, Tacna 50 denunciados. Arequipa 17 de cada 100 mil. Calculando el 3% del PBI regional y multiplicando por 10 años, los resultados se muestran en la Tabla 1 y en la Figura 1.

Tabla 1. Pérdidas generadas por la corrupción por pliegos

Sector	Pérdidas 2020	Porcentaje
Gobierno Nacional	11,580,217,388	10.3%
Gobierno Regional	5,762,725,383	15.7%
Gobierno Local	4,716,240,287	17.6%
Transportes y comunicaciones	1,515,916,802	
Educación	1,546,657,991	

Fuente: Contraloría general de la rep**ú**blica del Perú.

Figura 1. La corrupción en la última década en el sur Peruano (2011 – 2020) en soles



Fuente: Elaboración propia con información de Contraloría de la república del Perú.

Otro fáctico es el generado por el Instituto Nacional de Estadística e Informática INEI (INEI, 2021), cuando el 3.7% de los respondientes en el Perú dijeron que tuvieron que pagar, entiéndase sobornar, por petición, por solicitar un servicio en instituciones públicas. Para la encuestadora (Proetica, 2021) el 13% de los respondientes aseguran que tuvieron que pagar coimas. Y en el índice del Barómetro de las Américas (Latino barómetro, 2021) se afirma que un 26.3% de personas fue víctima de la corrupción, pero según proética existe una alta tasa, del 91%, que no realiza las denuncias porque no confía en las autoridades, fiscalía, poder judicial, contraloría, policía nacional, dicen que no encontraran justicia. respecto el debido proceso (Sánchez, 2020), refiere que cada país lo ha adecuado a sus exigencias, un debido proceso aplicable tanto a la vía administrativa como a la judicial.

Burgos & Vela, (2015)multidrug resistanceassociated protein 1 (MRP1/ ABCC1 destacan la importancia de la programación y monitoreo de las obras, dado que es la única manera de identificar fallas en los procesos técnicos

como administrativos, y con esto se evitarían sobrecostos e incumplimiento de plazos. De hecho, el requisito básico es cumplir con la programación de los PIP, y eso, al parecer, no se cumple en el Gobierno Regional de Arequipa (en adelante GRA) y Gobierno Regional de Moquegua (en adelante GRM). (Gordo et al., 2017) señalan que la vida útil de un proyecto está destinada al éxito o al fracaso desde el momento de su concepción, pues desde que se elabora el perfil puede empezar el "favorecimiento" o "direccionalidad". También, se ha observado que, desde la elaboración de referencias, se favorecen marcas y proveedores.

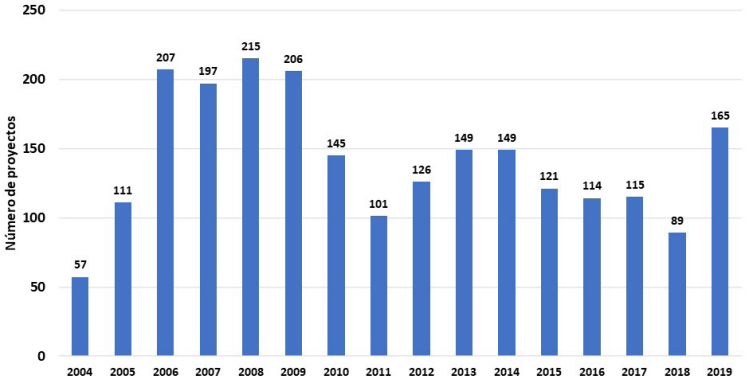
Porras & Diaz (2015) sostienen que, con un correcto cálculo de los costos del PIP se evita sobrecostos y/o asignación de menor presupuesto del requerido. Huaquisto (2016) afirma que, a menor eficiencia de la supervisión del PIP, mayores son los costos y retrasos. Por su parte, Dueñas (2017) vinculó el mayor beneficio social (valor actual neto social) con el óptimo de costos y plazos del PIP.

Para iniciar u operar un proyecto, es ideal lograr el menor costo de los factores de producción. Esta es una ley del capital. En nuestro caso es el tamaño del PIP relacionados con la tecnología y los costos. Se trata de encontrar una relación **ó**ptima de factores que permita ubicar un máximo de beneficio social a un costo óptimo. Usualmente son capital (K) y trabajo (L). El tiempo está contenido en el capital.

La liquidación de obras, el cierre de PIP y la evaluación ex post; que es una debilidad en los estados regionales, como menciona (Beltrán, 2010), deberían cumplirse, precisamente, para corregir defectos y lograr mayor beneficio social.

Se ha observado en Moquegua y Arequipa, espec**í**ficamente en sus gobiernos subnacionales, la programación de diferentes proyectos. Al final de cada periodo, algunos resultan ejecutados, otros no. También se ha notado que hay proyectos que se vienen ejecutando en varios periodos anuales y que superan su plazo de ejecución en meses, o incluso en años. Esto por supuesto lleva a la percepción de lesión del presupuesto p**úblico** por incremento de costo y plazos. La pretensión de la investigación, es saber cuántos proyectos emblemáticos programados para un determinado plazo y costo terminan siendo mayores; cuántos proyectos tienen mayor avance, y; cuáles son los proyectos que se vienen ejecutando en varios periodos, al notar que los beneficios sociales se demoran y los costos se incrementan. Por ello, en esta primera parte, se genera una visión panorámica y ejecutiva de la situación de los proyectos del Gobierno Subnacional de Moquegua (MEF - DGPMI, 2021).

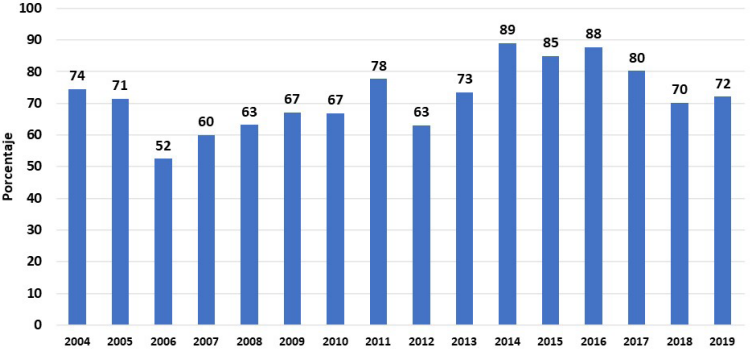
Figura 2. Proyectos programados por años en el Gobierno Regional de Moquegua 2004 – 2019



Fuente: Elaboración propia.

En la Figura 2, sobre los proyectos programados por años en el GRM 2004-2019, se muestra un mínimo de 57 proyectos y un máximo de 215. En la etapa 2006 y 2009 fue el máximo de proyectos programados y en el periodo 2015 y 2018, el mínimo; en todos los años hubo proyectos que no se ejecutaron. En ese sentido, existen en promedio 31 proyectos (MEF - DGPMI, 2019).

Figura 3: Representación porcentual de 15 proyectos emblemáticos por año del Gobierno Regional de Moquegua



Fuente: Elaboración propia.

En la Figura 3, los 15 proyectos representan el porcentaje que se indica. Así, los 15 proyectos emblemáticos son los que ejecutó el GRM. El PIP, con código 2017318, indica una demora que figura entre los años 2004 al año 2017 (MEF - DGPMI, 2021).

Tabla 2. Proyectos emblemáticos de la región Moquegua

Devengado	Código: 2017318: reubicación y ampliación del PTAR- Moquegua	Código: 2046177: mejoramiento de red vial departamental Moquegua-Arequipa	Código: 2057931: Amp. y mejora del hospital de Moquegua	Código: 2022049: represa Chirimayuni, Chojata y Lloque
2019		4,051,111	7,546,525	38,664
2018		15,616,336	14,237,852	29,842
2017	834,696	9,842,439	70,143,555	193,952
2016	22,500	4,929,657	58,425,209	155,395
2015	208,426	12,939,383	32,988,434	208,117
2014	1,154,846	51,576,516	54,546,554	2,356,723
2013	1,360,712	35,547,144	27,559,091	7,030,956
2012	2,820,415	456,050	1,089,562	14,547,135
2011	7,956,422	0	0	6,730,880
2010	9,946,750	0	69,460	1,340
2009	18,419,902	0	302,050	78,694
2008	5,207,287	5,574	439,872	10,530
2007	3,592,981	248,967	0	60,849
2006	776,279	0	0	80
2005	434,019	0	0	0
2004	407,377	0	0	0
TOTAL	**53,142,612**	**135,213,177**	**267,348,164**	**31,443,157**

Fuente: Elaboración propia.

La Tabla 2, señala que el proyecto con código 2046177, conocido como la carretera Moquegua - Arequipa, se invirtieron un total de 135.2 millones de soles y al 2019 fueron 10 años desde su inicio. El proyecto 2057931 ha devengado 267.3 millones de soles, por lo que son 11 años con devengados.

En el caso del código 2022049, este cuenta con 14 años de ejecución (MEF - DGPMI, 2021).

Tabla 3. Proyectos emblemáticos de la región Moquegua

Devengado	2109460: Infraestructura del ISTU-JCM	2159754: Centro de tratamiento enfermedades	2166595: Amp. de la frontera agrícola Lomas de Ilo	2087465: red vial mo-534, San Gerónimo - el Algarrobal	2159756: Prog. no escolarizados de educación inicial	2091434: Accesos a la irrigación Pampas San Antonio
2020	27,077	0	185,935	2,658,991	220,420	0
2019	7,752,779	710,765	17,476,373	2,204,166	1,903,813	0
2018	8,389,367	2,327,469	727,370	2,290,823	1,500,998	0
2017	8,239,222	2,974,692	978,344	378,324	1,010,145	0
2016	12,891,464	1,712,452	2,060,617	250,581	328,769	346,334
2015	3,452,850	3,432,988	17,864,092	2,554,822	457,410	5,535,751
2014	1,304,557	2,597,190	107,133,933	8,094,172	0	4,076,095
2013	7,989,937	1,758,777	38,620,879	970,182	0	0
2012	5,586,274	2,500	0	33,029	0	149,678
2011	3,798,719	0	0	102,713	0	0
2010	1,182,191	0	0	0	0	0
TOTAL	**60,614,437**	**15,516,833**	**185,047,543**	**19,537,803**	**5,421,555**	**10,107,858**

Fuente: Elaboración propia.

La Tabla 3 corrobora que el PIP **código** 2109460, al 2020, suma 11 años. El PI, código 2159754, al 2020 tiene 9 años de inversiones. El PIP con código 2166595, Lomas de ILO, tiene 8 años; el proyecto 2166595, 8 años. El PIP 2087465 de San Gerónimo, cuenta con 10 años. El PIP 2159756, Programa No Escolarizados de Educación Inicial, dura a la fecha seis años, mientras el proyecto 2091434 duró cinco años.

Tabla 4. Proyectos emblemáticos de la región Moquegua

Devengado	2031201: el Pampa Jaguay rinconada	2116058: electrificación rural MN GSC	2112687: construcción del almacén de medicamentos	2159755: servicios de salud sexual y reproductiva	2160741: IE coronel Fco. Bolognesi Cervantes, Ilo
2019	9,251		393,396	0	134,183
2018	2,235,827		41,751	680,333	1,983,360
2017	2,201,868	5,000	27,725	3,016,567	5,535,018
2016	6,276,814	22,159	17,423	151,909	3,223,688
2015	18,901,581	1,528,106	0	292,741	3,557,543
2014	4,864,097	3,944,338	0	338,718	2,516,213
2013	1,406,526	116,436	40,692	665,338	315,048
2012	0	1,962	520,987	34,986	35,799
2011	0	70,521	0	0	0
TOTAL	**35,895,964**	**5,688,522**	**1,132,364**	**5,180,592**	**17,300,852**

Fuente: Elaboración propia.

La Tabla 4 muestra el proyecto 2031201, cuyo tiempo de ejecución viene siendo de siete años. El PIP 2116058 demand**ó** siete años, 2013 al 2019. En el caso del proyecto 2112687, Construcción del Almacén de Medicamentos, han pasado 8 años y contin**ú**a en ejecución. El PIP 2159755 tuvo una duración efectiva de siete años. Por último, el proyecto de mejoramiento 2160741 a la fecha tiene una duración de 9 años.

Tabla 5. Proyectos emblemáticos de la región Moquegua

	2164210: casa hogar (car) para niños en abandono	2166593: radiación UV nivel primario la UGEL-ILO.	2167234: radiación UV en UGEL ILO	2173528: servicio de energía eléctrica Ilo	2177187: carretera a nivel de trocha carrozable,	2177741: TIC en II.EE. de UGEL MN. GSC.	2187790: cadenas productivas agrícolas
2019	1,168,976	98,447	1,341,745	125,730	8,162,531	151,865	728,804
2018	958,192	1,786,136	2,326,357	769,370	11,020,501	302,188	564,084
2014	145,438	476,938	2,855,655	2,282,612	11,882,559	382,568	654,824

2016	2,101,535	2,415,401		0	3,237,728	697,834	697,578
2015	490,534	1,488,785		0	3,659,755	656,940	1,025,919
2014	35,039	112,571	157,309	4,000	1,441,448	424,331	95,000
2013	1,300	91,232	107,869	88,493	402,241	418,935	0
TOTAL	**6,120,813**	**6,469,510**	**6,788,935**	**3,270,205**	**39,806,763**	**3,034,661**	**3,766,209**

Fuente: Elaboración propia.

La Tabla 5 muestra que el proyecto 2164210 tiene una duración de 8 años, incluido el Presupuesto Institucional Modificado del año 2020. El proyecto 2166593 dura ocho años, puesto que en el año 2020 se han destinado 70 mil soles al mismo. El proyecto 2167234 tiene siete años desde que empezó. El PIP 2173528 acumula siete años y 84 meses. El PIP 2177187, un proyecto de carretera carrozable comunica Quinistaquillas a Cuchumbaya, dura siete años. El Devengado del proyecto con código 2177741 trata de las TIC; también con siete años. Los años de ejecución del proyecto 2187790 van por siete años desde el año 2014 (MEF - DGPMI, 2021).

Ante lo expuesto, la pregunta de investigación es: ¿Cómo son los costos y plazos entre el ex ante y ex post en 22 PIP del GRM y GRA, en el periodo 2004-2020? La hipótesis planteada es que existe la percepción de que los periodos de ejecución de proyectos son mayores a los programados y los costos son superiores a los que fueron declarados viable. En ese sentido, la presente investigación analiza la ejecución de PIP que generen beneficios sociales en base a economías de escala, pues como explica (Vargas, 2007), esta relación sirve a más familias y personas.

Es preciso señalar que se entiende por economías de escala al proceso de un mayor volumen de producción con menores costos unitarios; al mismo tiempo, se relaciona con la elasticidad. Aquí, es preciso acelerar el crecimiento de la producción con los factores utilizados en el proceso económico. A partir de ello, se deriva que el principio de economía de escala, el valor del dinero en el tiempo, optimización de recursos y responsabilidad social son factores cuestionados en los gobiernos subnacionales analizados. La tarea es detectar plazos excesivos y la existencia de sobrecostos que, según Burgos y Vela (2015)multidrug resistanceassociated protein 1 (MRP1/ABCC1, son ocasionados por la escasa puntualidad en el desempeño de obras.

1. Material y métodos

El tipo de investigación fue básica, por otra parte, fue necesario que exista una concatenación entre tipo, diseño, objetivos y métodos (Díaz y Calzadilla, 2016). Asimismo, fue no experimental, dado que se demostró que existen diferencias entre lo planteado en el periodo ex ante y lo que se efectiviz**ó** en el periodo ex post. Por último, la muestra escogida consistió en 22 proyectos de inversión (PI), 12 en Moquegua y 10 en la región Arequipa. Fueron elegidos debido a que estos explican, en promedio, entre el 60% y 80% del presupuesto anual en los años que van del 2004 al 2020. También, son los proyectos que ejecutaron el GRM y el GRA en el periodo que, como se ve en cada uno de los años analizados, se repiten en promedio de 200 a 300 PI.

En este caso, se eligió una población de 22 proyectos de inversión, aun cuando se ha demostrado que 15 proyectos de inversión representan en promedio el 80% del presupuesto en Moquegua y 10 representan el 60% en Arequipa. Los criterios para elegir los proyectos analizados fueron dos: uno fue su ejecución en varios periodos y el segundo fue el incremento notorio de sus costos. Los 22 proyectos reunieron los requisitos mencionados y, finalmente, fueron tomados como muestra para la investigación.

Con un margen de error de 1%, la técnica utilizada fue la observación, tal como la describe (Díaz & Calzadilla, 2016), quienes orientan su utilización y su importancia. También, se recurrió al Portal de Transparencia del Ministerio de Economía y Finanzas (MEF). Adicionalmente, se tomaron los datos sobre la fecha de inicio de los proyectos de inversión, los tiempos y costos de ejecución y el cierre del año 2019 y 2020. Finalmente, se realizaron las pruebas de normalidad en seis distribuciones, la prueba de Wilcoxon para pruebas no paramétricas y las pruebas “t” para muestras relacionadas en el GRA.

2. Resultados

El análisis estadístico de la Tabla 6 muestra los plazos y costos de 10 proyectos: el PI con código 323143, el PI 2279710, el PI 246218, PI 249565, PI 2057380, PI 372773, el PI 2165385, PI 2111564, el PI 2290485 y el PI 2102290. En todos los casos, se comprueba que no tienen distribución normal. En la prueba Shapiro Wilk (SW), se obtuvo para costo ex ante Arequipa (0.000), costo ex post Arequipa (0.000), plazo ex ante Arequipa (0.033) y plazo ex post Arequipa (0.011). Al aplicar la prueba Wilcoxon, genera un P-valor de 0.007 que muestra la diferencia entre los costos del periodo anterior al efectivo. De la misma manera, los plazos propuestos y los plazos efectivos denotan que son diferentes en el sentido que los promedios

van de 5.4 meses a 57.5 meses; por lo mismo, la prueba de Wilcoxon genera un p-valor de 0.005. En relación con los plazos, en la penúltima columna de la Tabla 6, se expone el incremento de tiempo en porcentajes y, en la última, se expone el exceso porcentual del costo.

Tabla 6. Seguimiento de proyectos de inversión pública, Región Arequipa

N°	CUI de inversiones	Monto (soles)	Plazo Ejec	Monto Actual ejecución (soles)	meses de ejecución	Tiempo (1) exceso	Costos (1) exceso
1	323143	46,094,512	24	62,845,047	52	116.7	36.34
2	2279710	72,120,588	24	90,946,659	49	104.2	26.10
3	246218	590,385,602	17	652,652,270	42	147.1	10.55
4	249565	214,432,065	18	627,536,702	48	166.7	192.65
5	2057380	48,800,168	24	54,974,937	150	525.0	12.65
6	372773	1,199,270	3	2,811,496	11	266.7	134.43
7	2165385	7,314,456	9	7,285,106	35	288.9	-0.40
8	2111564	34,414,668	24	63,109,573	55	129.2	83.38
9	2290485	12,739,166	6	16,392,957	48	700.0	28.68
10	2102290	2,990,669	5	6,714,919	85	1600.0	124.53

Fuente: Elaboración propia con información de consulta amigable, consulta inversiones, (SSI – MEF)

Se debe mencionar que la sumatoria del volumen en PI del GRA, declarados costos viables, fueron de 1030 millones de soles. Al cierre del periodo de 2020 o a la fecha de culminación, este costo se incrementó a 1585 millones, mostrando una diferencia de 554 millones que sería el sobrecosto en soles corrientes, sin considerar el valor del dinero en el tiempo que resultaría mucho mayor. Lo mismo ocurre en el GRM, puesto que se tenía un costo viable de 127 millones que se incrementa en el tiempo a 220 millones de soles. Un sobrecosto de 92.6 millones. En la tabla 7, se presentan los costos y plazos de la región de Moquegua.

Tabla 7. Costos y plazos mayores en PI del GRM

N°	Código único de inversiones	Monto del Estudio Definitivo o Expediente Técnico	Devengado Acumulado al 31 de diciembre del 2020	Plazo Ejecución Exp. Tec. (días calendario)	Total, días acumulados a enero 2021
1	2022049	18 630 088	31 601 477	365	3559
2	2109460	38 258 125	60 619 560	450	3784
3	2159754	7 482 438	15 516 834	270	2572
4	2087465	9 726 245	19 537 802	360	2970
5	2159756	6 282 422	6 570 375	520	3006
6	2091434	10 441 577	10 107 857	184	3032
7	2159755	5 451 134	5 180 591	540	3013
8	2160741	8 793 496	17 300 852	300	2542
9	2164210	3 322 381	6 127 622	120	1851
10	2166593	216 834	6 468 756	180	1841
11	2167234	698 021	6 795 362	240	1166
12	2188230	19 586 301	34 228 367	540	2421

Fuente: Elaboración propia con información de (SSI – MEF)

En la Tabla 8, se comprueba seis distribuciones que tienen normalidad y dos que no, según la prueba SW. En la Tabla 9, se muestra la prueba Wilcoxon para pruebas no paramétricas. Esta enseña que hay diferencias entre costos ex ante y ex post en Arequipa (0.007) y Moquegua (0.006), aquí se incluye también la diferencia de plazos en Arequipa (0.0045). En la Tabla 10, se nota que sí hay disparidad de plazos; se utiliza la prueba "t" para muestras relacionadas en el GRA. Se presenta que son distintos en términos de días, dado que la sig. (bilateral) es de 0.000. En este caso, puede observarse que la media del plazo ex ante es de 339 días, mientras que la media del plazo actualizado es de 2307 días. Los datos ex ante y ex post son diferentes.

Tabla 8. Normalidad

	Kolmogorov-Smirnova			Shapiro-Wilk		
Moquegua-Arequipa		gl	Sig.		gl	Sig.
Costo ex ante Moquegua	.261	12	.023	.826	12	.019
Costo ex post Moquegua	.221	12	.108	.786	12	.006
Plazo Moquegua ex ante	.140	12	,200*	.929	12	.365
Plazo ex post Moquegua	.129	12	,200*	.973	12	.939
Costo ex ante Arequipa	.367	10	.000	.607	10	.000
Plazo ex ante Arequipa	.236	10	.122	.830	10	.033
Costo ex post Arequipa	.404	10	.000	.614	10	.000
Plazo ex post Arequipa	.327	10	.003	.792	10	.011
*. Esto es un límite inferior de la significación verdadera.						

Tabla 9. Estadísticos de prueba

	Costo ex post Arequipa – Costo ex ante Arequipa	Costo ex post Moquegua – costo ex ante Moquegua	Plazo ex post Arequipa – Plazo ex ante Arequipa
Z	-2,701b	-2,746b	-2,805[b]
Sig. asintótica (bilateral)	.007	.006	.0045

a. Prueba de rangos con signo de Wilcoxon

b. Se basa en rangos negativos.

Tabla 10. Diferencias emparejadas

		95% de intervalo de confianza de la diferencia				
	Media de error estándar	Inferior	Superior			
Plazo Moquegua ex ante – plazo ex post Moquegua	185.7	-2377.0	-1559.5	-10.6	11	.000

Fuente: Elaboración propia.

3. Discusión

Es notorio que el PBI de Arequipa incrementó en 3.46% anual promedio y el de Moquegua solamente creció en 0.9% entre los años 2007 y 2020. Al respecto, se analiza lo explicado por (Villegas, 2018), quien prob**ó** que la ejecución puntual de los proyectos repercute en el crecimiento económico de un distrito. Ante el crecimiento mínimo expuesto y los plazos postergados, se evidencia una situación preocupante en ambas regiones.

La percepción es hacer crecer la renta nacional per cápita, la cual se interpreta como calidad de vida. La inversión pública y privada efectiva impulsan hacia este objetivo. En ese sentido el objetivo es el desarrollo económico que coincide con los resultados de (Duarte & Ruíz, 2015). Pero para lograrlo se tienen elementos perturbadores; los mayores costos, y allí coindice con la propuesta de Balcázar (2015), citado por (Fernández, 2018), aunque ellos agregan el saneamiento de los terrenos donde se pretende erigir las infraestructuras. Este problema es notorio también en los gobiernos subnacionales de las regiones analizadas. (Liñán, 2019) también concluye que otro factor, además de los mencionados, son las ampliaciones. De manera precisa, (Fernández, 2018) indica que las buenas compras de insumos ayudan a la logística de productividad; sin embargo, cuando no se cumple el precepto, generan laudos arbitrales que terminan favoreciendo en su mayor parte al proveedor.

Hay sectores por función que se caracterizan por los atrasos en inicio y ejecución de obras. Sobre ello, (Arela, 2020) ha señalado que estos son los sectores de transporte, educación y salud; al respecto (Romero, 2016), en su análisis, agrega el sector agricultura.

En tal sentido, se insiste en la política de gestión por resultados, y un requisito es el cumplimiento de la programación. Aun cuando los funcionarios lo saben, se observa que la función pública regional no está comprometida, y así también lo señala (Burgos & Vela, 2015), (Almanza, 2018) además de (Porras & Diaz, 2015), quienes agregan que inclusive el cálculo matemático no se valora. Otro elemento en el análisis son los indicios de corrupción, así lo manifiesta la contraloría de (Shack et al., 2020), quienes han observado que desde el perfil del proyecto se insinúan marcas y proveedores, de igual forma lo advierten (Gordo, 2017).

Como se mencionó anteriormente, para iniciar u operar un PI, es ideal buscar el menor costo de los factores de producción. En ese sentido, se coincide con la apreciación de (Huaquisto, 2016), quien aduce que aquellos factores son la eficiencia y la supervisión; de manera similar (Prado, 2015) sostiene que estas son claves para lograr la óptima producción y los menores costos y plazos.

Es un hecho de la probación que los conceptos metas, tiempo y recursos para medir eficiencia y eficacia no son aplicados por la función pública, aquí se coincide con (Galván & García, 2019). Como señalan (Sapag & Sapag, 2008) y (Dueñas, 2017), si el análisis fuera por el valor del dinero en el tiempo, se tendría el valor actual neto social por debajo de cero, y una tasa de retorno social por debajo del costo del capital, con lo cual se confirma la pérdida de valor social.

Para realizar un análisis de costo beneficio, los flujos deben ser sometidos a un costo de oportunidad, en este caso del capital, y se refiere a lo que perdería por elegir el proyecto, desde la perspectiva más rentable. Aquí la pérdida es clara, el costo del dinero por no realizar un proyecto en el plazo estipulado y la repercusión social que conlleva. Es peor iniciar un proyecto en el año 1 y dejarlo el año 2 y 3 paralizados para retomarlo el año cuatro, y así sucesivamente. Esto crea un grave perjuicio a la economía de la región. Como señala (Blondet, 2013), el costo de no hacer obras en sus plazos y costos, agregando la corrupción, afecta el desarrollo del país. De esta manera, se muestra que las inversiones ejecutadas en los plazos adecuados garantizan el crecimiento económico.

Si se liquidaran las obras (evaluación ex post) en su debido tiempo, se lograría información para transparentar y corregir las deficiencias que se han probado, consecuentemente, se lograrían los objetivos con mejores resultados. Aquí se coincide con (Beltrán, 2010), quien señalar que al lograr el beneficio social, se traduce en mayor incremento estándar del PBI y calidad de vida.

Conclusiones

Se ha demostrado que existe escasa eficiencia en costos y plazos en 22 PIP de los GR de Moquegua y Arequipa, los cuales generaron sobrecostos por 646 millones de soles y un promedio de plazos excesivos de 1968 días. La prueba estadística verificó las diferencias. La escasa eficacia en proyectos de inversión se relaciona de manera directa con los informes de la contraloría, en base a la extrapolación generado por Nelson Shack, la corrupción le "costo" al departamento de Arequipa 9716 millones y a Moquegua 2470 millones de soles y en general al sur peruano 36 mil 296 millones de soles en la última década (2011-2020).

Moquegua Y Tumbes Lideran con funcionarios públicos con Presunta responsabilidad Civil Y Penal Por 100 Mil Habitantes. Se entiende en alguna forma del porque los retrasos en las obras, son mayores plazos y costos.

El informe de la contraloría general, ha sentenciado que el 30% del presupuesto anual y el 3% del PBI es lo que cuestan los actos de corrupción

en el Perú, cada uno de los años en la última década. Para ello se ha calculado el valor del PBI regional y se ha encontrado cómo en las regiones del sur peruano, se afecta a su riqueza. Son 1.33 veces el presupuesto anual de inversiones de Arequipa, y 3 veces el presupuesto de inversiones de Moquegua. Por ello cuando se señala que la corrupción afecta al crecimiento económico, se tiene toda la razón.

De todas maneras, el soborno, que es pedir o recibir, es conocido en el argot penal como cohecho. Son los que terminan elevando los costos que pagan los peruanos a través de los impuestos que recauda el estado. Y con obras que no son ejecutadas o con plazos excesivos donde los servicios no llegan a los ciudadanos. Ahí está la infraestructura de salud, débil, fallida, que permitió que fallezcan 200 mil peruanos y que llevo dolor a las familias de los peruanos. La corrupción generó pérdidas por 608 soles a cada arequipeño y 1165 a cada moqueguano en el año 2020.

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The transition of insurgent-guerrilla movements to radical terrorist methods of struggle: retrospective features

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Abstract

The realities of modern reality indicate that there are a significant number of unjustified attempts to resolve controversial issues based on the use of force. The article shows the evolutionary processes of the transition of insurgent-guerrilla movements to radical terrorist methods of struggle in the period of 1991-2001 and reveals the reasons for this process. The article analyzes the definition of "international terrorism" in the modern sense, analyzes the characteristic features of international terrorism of the 1990s, the reasons for its spread, new forms of terrorist activity. The following methods were used in the study of the chosen topic: historical-genetic, comparative-historical; problem-chronological, the method of historical modeling. Authors conclude, there is no doubt that all the insurgent-guerilla movements, without exception, pursued their own goals. The most effective way to achieve them at the turn of the century turned out to be precisely terrorist attacks, which, with all the strength of state structures, were not possible to fend off. Thus, terrorism has become a strong weapon in the hands of weak players in the international arena.

Keywords: radicalism; terrorism; civil war; guerrilla war; multipolar world.

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La transición de los movimientos insurgentes-guerrilleros a métodos de lucha terroristas radicales: características retrospectivas

Resumen

Las realidades modernas indican que hay un número significativo de intentos injustificados de resolver cuestiones controvertidas basadas en el uso de la fuerza. El artículo muestra los procesos evolutivos de la transición de los movimientos insurgentes-guerrilleros a métodos de lucha terroristas radicales en el período de 1991-2001 y, al mismo tiempo, revela las razones de este proceso. El artículo analiza la definición de «terrorismo internacional» en el sentido moderno; estudio los rasgos característicos del terrorismo internacional de la década de 1990, las razones de su propagación y las nuevas formas de actividad terrorista. En el estudio del tema elegido se utilizaron los siguientes métodos: histórico-genético, comparativo-histórico; problema-cronológico y el método de modelado histórico. Los autores concluyen que no hay duda de que todos los movimientos insurgentes-guerrilleros, sin excepción, persiguieron sus propios objetivos. La forma más efectiva de lograrlos a principios de siglo resultó ser precisamente los ataques terroristas, que, con toda la fuerza de las estructuras estatales, no fueron posibles de evitarse. Por lo tanto, el terrorismo se ha convertido en un arma fuerte en manos de actores débiles en la arena internacional.

Palabras clave: radicalismo; terrorismo; guerra civil; guerra de guerrillas; mundo multipolar.

Introduction

The modern world continues to live under the pressure of the use of military means in various regions of the world, without which the current post-industrial civilization cannot balance political existence. Battles sometimes break out that are close in intensity to military ones even in the seemingly peaceful politics of many countries.

People often do not feel how fierce political battles imperceptibly draw them into large-scale bloodshed in fratricidal conflicts. We observe armed forms of confrontation today in different regions of the world (Afghanistan, Syria, Mali, Nigeria, Libya, Ethiopia), one of the manifestations of which are armed conflicts in various forms, ranging from minor clashes of paramilitary formations and ending with fairly large-scale hostilities covering the significant territory. As a rule, the causes of these conflicts are the struggle for power within the country, which makes their consequences

for the population more tangible. In our opinion, local military conflicts today constitute one of the main threats to both national and international security.

According to researchers (Fearon and Laitin, 2003), guerrilla wars (insurgent guerrilla warfare and urban guerrilla warfare) are one of the main forms of civil war, which involves the use of non-conventional strategy methods and allows making long-term campaigns. Carles Boix (2010) emphasizes that such a phenomenon as guerillas is characteristic of civil wars. Moreover, S. Kalyanaraman (2003) believes that the growth in the number of guerillas in some wars suggests that the latter can claim to become an army. According to researchers (Centeno and Hoffman, 2003), insurgent-guerrilla movements occur most often in the poorest countries, rejecting the prospects for the economic and social development of the latter.

The situation with guerrilla movements during the large-scale civil war in Russia in 1918-1922 was no exception. Moreover, the insurgent-guerrilla movements acted both on the side of the Bolsheviks who came to power and fought against the Soviet government.

Moreover, the guerrilla war of the period of the civil war in Russia was distinguished by its scale. In the summer of 1919, the «red guerrillas» of the Altai province, who were on the side of the Soviet government, united in the West Siberian Peasant Red Army, numbering about 25 thousand people. In total, the guerilla movement in Siberia numbered about 100 thousand guerillas, who even before the approach of the Red Army liberated vast areas from the White Guards.

In our opinion, the radical left movements received a new development at the end of the twentieth century. The situation in the world changed dramatically in the early 1990s. The Soviet Union collapsed, and several new states emerged, the traditional religion of which was Islam. The Islamic Republic of Iran continued to be in international isolation, however, without abandoning the «export of the Islamic revolution» to neighboring countries. Libya and Iraq are under international sanctions. Pakistan, on the territory of which the Afghan Mujahideen were located, was forced to intensify its policy towards neighboring Afghanistan, because of which the Najibula regime fell in 1992, and former guerrillas or terrorists came to power.

There were many crises points around the world (Colombia, Mexico, Sri Lanka), where insurgents or terrorists from various organizations were fighting for national liberation, the legal separation of certain territories, or for political power (Smith, 2003). Such zones also appeared on the territory of the former USSR, especially in areas where Muslims mostly lived.

De facto, the only superpower in the world was the United States, but Washington's policy was ambiguously perceived by most international actors. All this and many other factors not only did not lead to the disappearance of the terrorist threat but on the contrary – to its increase (Smith, 2003). In addition, we should add radical differences between the standard of living in the United States and Western European countries and other countries of the world. Thus, the ground for the development of the international terrorist threat has only increased and today terrorism has acquired an international nature (citizens of different states could be members of terrorist organizations), an international essence (the commission of terrorist attacks was not limited to a particular country, but extended to one or several other states) and the main goal that distinguishes this phenomenon from other forms of struggle is to cause fear among people from heads of state to ordinary residents.

These factors determine the urgency of the problem of studying the causes and peculiarities of the transition of insurgent-guerilla movements to radical terrorist methods of struggle.

The purpose of the study is to analyze the causes and peculiarities of the transition of insurgent-guerilla movements to radical terrorist methods of struggle.

1. Methods

The historical and genetic method allowed consistently revealing the origins and development of terrorist forms of the armed struggle of insurgent-guerilla movements to radical terrorist methods of struggle. Using the comparative-historical method, the general and special features of the transition of insurgent-guerilla movements to radical terrorist methods of struggle were shown. Using the problem-chronological method, the corresponding problems that had been existing in the world community during the specified chronological period were identified. The method of historical modeling, or the method of reconstruction, was embodied in the analysis of the reasons for the transition of insurgent-guerilla movements to radical terrorist methods of struggle.

The chronological framework of the study – 1991-2001 – is since it was in the 1990s that the term «international terrorism» received its usual understanding (the understanding itself, but not the definition). If the term «international terrorism» was used with an ideological meaning in the previous period (during the cold war), now it has acquired its practical meaning.

2. Results

The analysis of literary sources has shown that terrorism can be manifested both by specific actions directed against specific representatives of another state, in fact, up to their physical destruction, and by actions of a military-populist nature.

An example of a concrete manifestation of international terrorism in the 1990s was the murder by suicide bombers on May 21, 1991, of the Prime Minister of India and the leader of the country's largest Indian National Congress Party, Rajiv Gandhi. None of the organizations claimed responsibility for this action. Much later, the leadership of the insurgent organization Liberation Tigers of Tamil Eelam (LTTE) in Sri Lanka stated that the murder of Rajiv Gandhi was the work of their supporters (Sarvananthan, 2018).

Thus, a terrorist or insurgent organization carried out an act of political murder of the leader of a State on the territory of which it did not conduct its struggle. The consequences of this terrorist attack were beneficial for the LTTE – at the end of the year, Indian troops who helped the Sri Lankan government in the fight against Tamil rebels left the country (Bruevich *et al*., 2019; Sarvananthan, 2018).

In our opinion, an interesting example of a military-populist action was the uprising of the so-called Zapatista Army of National Liberation in the Mexican state of Chiapas in 1994-1995. This organization, which acted as an insurgent-guerilla formation, but its actions intimidated US citizens on the territory of Mexico, was headed not by an Indian (the Indians were fighters of this army) and not by a Mexican, but most likely by a very educated European who became known to the world under the name of Subcomandante Marcos (Barmeyer, 2003). Moreover, having unexpectedly started the fight, the subordinates of Subcomandante Marcos also unexpectedly stopped it, without winning or losing. Therewith, this army retained all its military structures, which in turn became an indicator of the effectiveness of the so-called latent terrorism, which means intimidation, not by specific terrorist actions, but only by a factor of its existence (Barmeyer, 2003; Zelenkov *et al*., 2021a, 2021b).

We have concluded that terrorism as a phenomenon, including an international one, has changed dramatically since the previous historical era. In the 1990s, due to several objective reasons, almost all organizations that fought for their interests with the help of weapons turned out to be subjects of international relations in a multipolar world.

This became possible since a kind of regional political vacuum arose because of the collapse of the socialist system, as well as the desire of some countries for a more peaceful policy (for example, India) (Bapat, 2007).

Armed non-governmental organizations took advantage of it in their struggle. Solely because of this, the Tamil insurgent organization Liberation Tigers of Tamil Eelam was not only able to dramatically increase its potential in the new geopolitical conditions but also to switch to completely new forms of terrorist struggle – on the territory of India and to maritime terrorism. The latter has become a completely new threat, primarily for the South Asian region (Sinai, 2005).

Another characteristic feature of international terrorism in the 1990s was its activation and radicalization. Moreover, the trend here was twofold. On the one hand, various insurgent-guerrilla organizations, especially in Latin America and Asia, were turning to terrorist forms of struggle (Messelken, 2005). On the other hand, existing terrorist organizations have begun to reorient their activities to the international or even global level. Meanwhile, new organizations began to appear, which were interpreted as terroristic ones with an international orientation. This is against the background of at least the legal refusal of such well-known organizations as the Irish Republican Army and the Palestine Liberation Organization from the terrorist struggle in the early 1990s (Galam, 2003).

Indeed, in Latin America in the early 1990s, everything indicated that Marxist guerrilla groups, finding themselves without material assistance from outside, seeing the collapse of communist ideology and losing their strategic positions due to the effective counteraction of government forces to the rebels, should at best have gone to political negotiations with the government, as happened in 1990-1991 in El Salvador (Consalvi, 2010).

At the end of the 90s, the Colombian insurgents not only did not lay down their weapons but on the contrary switched to new, diverse, including terroristic forms of struggle. As a result, the period of some passivity in 1991-1997 was replaced by a sharp offensive of Colombian Marxist insurgents on the positions of the government and government troops in 1998-2002. Thereby, two Colombians emerged – official and controlled by Marxists (ORTIZ, 2002). Moreover, the terrorist tactics of the guerrillas of Colombia turned out to be large-scale and effective. As a result, the situation in 1998-2002 was characterized by a new phenomenon – the terrorist guerrilla (Valenzuela, 2018).

In Peru, Marxist insurgents from the Tupac Amaru Revolutionary Movement, who in 1992 suffered a military defeat together with their colleagues from Sendero Luminoso, were forced to go deep underground. Having partially restored their potential, the Amaru followers did not return to Guerilla but switched purely to terrorist measures (Fumerton, 2018).

On December 17, 1996, 14 fighters of the Tupac Amaru Revolutionary Movement broke into the residence of the Japanese ambassador in Lima, where a gala dinner was organized in honor of the birthday of the Japanese

Emperor Akihito. Immediately, more than 500 guests and members of the embassy were taken hostage. The terrorist insurgents demanded the release of more than 400 of their associates from prison. However, this could lead to the fact that all the efforts of the government of Peruvian President Alberto Fujimori to fight left-wing insurgents would be in vain. That is why the international crisis had to be solved radically. On April 23, 1997, special forces units of the Peruvian army stormed the Japanese Embassy in Lima. The terrorists were killed, but some of the hostages also died (Tolmacheva *et al.*, 2018; Zirakzadeh, 2002).

An active process of transferring the terrorist activity of existing non-governmental organizations to the international level began in 1991-2001. Moreover, this phenomenon remains unclear until now, since the actual initiators of this process are almost unknown. Most likely, the first manifestation can be considered the explosion of the Israeli embassy in Buenos Aires on March 17, 1992. Then 29 people were killed, and about 250 were seriously injured. According to the first versions, the initiators of this terrorist attack could be either «Nazi groups» or «Marxist insurgents». A specially created commission to investigate this terrorist attack did not come to a consensus. However, the President of Argentina, Carlos Menem, blamed the «Islamic radicals» for this terrorist attack (Zirakzadeh, 2002).

That is why we concluded that international terrorism has received an «Islamic» coloring. In our opinion, the reason for such a widespread opinion, even among scholars, is several factors.

Firstly, the authors of almost all large-scale terrorist acts are still unknown. They are unknown because they have not been captured by the law enforcement agencies of the countries where the terrorist attacks were committed. Namely, this does not give grounds for any accusations.

Secondly, the radicalization of the Islamic world took place. Thus, almost all the countries of North Africa were threatened by Islamic radical organizations (Hinds, 2013). In Algeria, since 1992, Islamic radicals have launched a civil war. In Egypt, it was terrorists from radical Islamic groups who organized large-scale terrorist attacks against foreigners several times (the explosion of a bus with German tourists in Sharm el-Sheikh in 1997, the assassination attempt on Egyptian President Hosni Mubarak in Sudan in 1998). All this has led to the fact that it was Egypt that began to use extremely radical methods to fight against Islamic radicals and international terrorism. These measures proved to be very effective, but they did not find understanding among the politicians of the states of the region (Hinds, 2013).

Thirdly, the consequences of the Afghan war of 1979-1989 manifested themselves. In its course, the United States was forced to rely on non-standard measures of struggle in the confrontation with the USSR for

Afghanistan. These measures were taken by mercenaries from Arab or Islamic countries who fought against the Soviet troops on the side of the guerrillas-mujahideen.

Each of them received a salary of at least 1,500 USD dollars per month and therefore was interested in this source of profit. That is why such mercenaries had been fighting for years (Grau, 2018). However, after 1992, when the Taliban Mujahideen seized power in Afghanistan, the war theoretically ended. Due to this, the former «fighters for the faith» began to return to their countries, where they could not integrate into peaceful life and turned out to be a destabilizing factor in the internal life of their countries, as they joined the ranks of radical anti-government organizations (Guest, 2010).

Pakistan has had a particularly difficult time in this regard. On the one hand, this country was an outpost of the struggle against the USSR in Afghanistan, since the camps of the Afghan mujahideen were located on the territory of the Islamic Republic, where Arab mercenaries were trained. On the other hand, a significant number of radical-minded people and well-armed ones have appeared in the country (according to experts, more than 1 million Kalashnikov assault rifles are in the hands of radicals in Pakistan – twice as many as in the entire Pakistani army) (Guest, 2010).

This is what led to the fact that Pakistani society did not follow the path of Islamic radicalization. In this case, the only measure, according to the researchers (Findley and Young, 2012), was the attempt of the Pakistani government not so much to fight the radicals but to send them out of the country. As a result, international terrorism was de facto provided with personnel.

Another significant factor in the transition of insurgent-guerilla movements to radical terrorist methods of struggle was the fact that terrorism turned out to be financially accessible to many. Thus, according to researchers (Carter, 2016), terrorist acts do not require large funds and cost an average of 10-30 thousand dollars. Moreover, many of the previously existing insurgent-guerrilla movements accumulated significant finances, for example, from drug trafficking, obtaining ransom for hostage-taking, and the like (Carter, 2016; Gurinovich and Petrykina, 2021).

Thus, there were political, ideological, personnel, and material conditions for the reformatting of insurgent-guerrilla movements into international terrorist organizations. It should be noted that the main activity of international terrorist groups has become the struggle against any hegemony, and in the case of Islamic organizations, the creation of a hypothetical Islamic state. However, this idea turned out to be flawed precisely because Muslims themselves are different and only the most radical of them could support it. In addition, the idea of «political Islam»

– that is, the spread of the influence of the Islamic religion in the world – turned out to be unfavorable in the West, which once again equated even moderate Islamists with terrorists.

Conclusion

Thus, terrorism as a social phenomenon has turned into an international problem in the conditions of the world's transition from bipolar to multipolar. This was made possible due to the virtually imperial policy on the part of the United States, the radicalization of societies in countries, primarily Asia and Latin America, the accumulation of significant material resources among some of the insurgent-guerilla movements, and, most importantly, the emergence of an international political situation in which terrorist organizations were able to fill the international vacuum that arose because of the end of the cold war.

The extraordinary effectiveness of the terrorist attacks was revealed very quickly, which in turn prompted the terrorists to spread their actions to an almost global level. This, in turn, prompted the rapprochement and even the unification of terrorist organizations into single international structures. However, the idea of creating a Worldwide caliphate itself turned out to be very abstract, and if so, it became a psychological weapon of international terrorism, which, if not frightened the governments of the leading countries of the world, then forced them to take the terrorist threat seriously.

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Methodological foundations of the spatial development of the region: content, conceptual instrument

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Abstract

Through a methodology of documentary and dialectical basis, in the article, the authors investigate the methodological foundations of the spatial development of the region, through the study of its content and conceptual instrument. In the same way, different points of view on the concept of "region" are presented, the fundamental methodological elements of the formation and organization of the socio-economic development of the region are listed, characterizing the potential of natural resources and the socio-economic development of the municipal districts. Based on this information, the region's place in the social division of labor was determined, the development prospects of the districts were outlined, and the cause-and-effect relationships of the region's socioeconomic indicators were also established. By way of conclusion, everything indicates that the socio-economic development of the region under modern conditions is seen, in the first place, in self-sufficiency. Therefore, your accumulated potential must first be assessed to make a real assessment and then organize a search for the missing resources and funds. The use of a type of strategic management at all levels of management of the political system is the key to a balanced and successful development.

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Fundamentos metodológicos del desarrollo espacial de la región: contenido e instrumento conceptual

Resumen

A través una metodología de base documental y dialéctica, en el artículo, los autores investigan los fundamentos metodológicos del desarrollo espacial de la región, mediante el estudio de su contenido e instrumento conceptual. Del mismo modo se presentan diferentes puntos de vista sobre el concepto de «región», se enumeran los elementos metodológicos fundamentales de la formación y organización del desarrollo socioeconómico de la región, caracterizando el potencial de recursos naturales y el desarrollo socioeconómico de los distritos municipales. A partir de esta información, se determinó el lugar de la región en la división social del trabajo, se delinearon las perspectivas de desarrollo de los distritos y además se establecieron las relaciones de causa y efecto de los indicadores socioeconómicos de la región. A modo de conclusión todo indica que el desarrollo socioeconómico de la región en condiciones modernas se ve, en primer lugar, en la autosuficiencia. Por lo tanto, primero debe evaluarse su potencial acumulado para hacer una evaluación real y luego organizar una búsqueda de los recursos y fondos faltantes. El uso de un tipo de gestión estratégica en todos los niveles de gestión del sistema político es la clave para un desarrollo equilibrado y exitoso.

Palabras clave: economía regional; región; economía espacial; desarrollo espacial de la región; espacio económico común; estrategia de desarrollo integral.

Introduction

In Russia, in the conditions of the formation of market relations, the role of the regional factor is increasingly manifested, since reforms are carried out within the constituent entities of the federation, which differ significantly from each other in many parameters (Kolmakova*et al.*, 2018;Kolmakova, 2014; Kolmakova*et al.*, 2016; Vilner, 2016; Vilner, 2017; Simonova and Efremova, 2016;Bukhvald and Valentyk, 2015; Belomestnov, 2019). In this regard, the number of scientific studies devoted to regional problems is

constantly increasing, which has led to the allocation of scientific knowledge about the regional economy as an independent branch (Kolmakova*et al.*, 2018; Kolmakova, 2014; Kolmakova*et al.*, 2016; Vilner, 2016; Vilner, 2017; Simonova and Efremova, 2016; Bukhval and Valentyk,2015;Belomestnov, 2019;Zubarevich, 2015; Belomestnov and Khardaev, 2017; Manasyan, 2006;Granberg, 2000;Gutman*et al.*, 2001; Bilchak and Zakharov, 1998; Kazachenko, 2012). The term "regional economy" appeared in the last century. In the early 70s of the XX century. Pavlenko defined its subject as follows: "This is the specific economy of individual regions, general patterns, factors and problems of their development" (Bilchak and Zakharov, 1998: 35). It is necessary to proceed from the fact that, along with general economic problems, the regional economy should include the problems of the development of material production, demography, sociology, and ecology of the region.

In turn, the study of the specifics of the spatial development of the region is impossible without considering the features of the economic space. To date, an appropriate scientific base has been formed for conducting research on the methodological issues of the development of the economic space, including the economic space of the region. However, the conceptual foundations of the spatial economy have not yet been fully identified, and the mechanisms of economic development based on spatial transformations have not been developed. Moreover, there is no common understanding of the key definition - "economic space". Revealing the peculiarities of the concept of "spatial development", determining its place among related terms, allows to form a terminological basis that contributes to the development of a scientifically grounded methodology of spatial development of the region. The key element of the methodology is the approach, within which the strategic planning documents reflecting aspects of the spatial development of the territory should focus on the organization (primarily, structural) space, while setting the criteria for the optimality of this phenomenon (Suvorova, 2019).

The growing interest in the regulation of the sphere of spatial development, due to the change in the state policy of the Russian Federation in the field of regional development and the corresponding change in regulatory legal acts related to strategic planning in the Russian Federation, as well as the transformation of foreign policy conditions and macroeconomic factors, actualizes the study of the methodological foundations of the spatial development of the region, by defining the essential characteristics of a number of key terms, which include the concept of "spatial development".

1. Literature Review

The development of the regional economy as a science did not result in the creation of a generally recognized synthetic theory. Today its state is characterized by a variety of theoretical approaches, increased specialization of research, and the emergence of new directions.

By now, two views on the subject of regional economics have formed in Russia (Kazachenko, 2012). The first considers the regional economy as one of the specific economic sciences that studies the general laws, factors and problems of regional development. Supporters of the second view consider the rational distribution of productive forces to be the basis of the subject of regional economics. However, in this interpretation, the subject of the regional economy is completely absorbed by economic geography (Granberg, 2000; Gutman*et al.*, 2001; Bilchak and Zakharov, 1998; Kazachenko, 2012).

According to academician Granberg (2000), a new area of economic knowledge is now emerging - spatial economics, which is based on the regional economy. In his opinion, economic geography and the distribution of productive forces as academic disciplines are almost unrelated to the fundamental disciplines of economic education in macro- and micro-economics. The core of economic science and education, according to the researcher, should develop as a three-pole system: macroeconomics, microeconomics, regional (spatial) economics.

In Russia, it is customary to use the term "placement theory". In the English language literature, the term "spatial economics" is used, translated as "spatial economics". The founder of the theory of production location is von (Thünen 1998; Gorkin, 2013). He was not the first researcher to study space as an economic phenomenon, but he was the first to use special methods of analysis to study space.

In general, "space" is understood as an objective reality, one of the main forms of existence of matter, characterized by length and volume, in which the interaction of a set of elements occurs.

Appendix 1 presents approaches to the concept of "space". In all economic studies, "space" basically means a gap between something, a place where something fits, a limited area. Economic geography also considers limited areas, united by some peculiarities (Gorkin, 2013; Voronin and Sharygin, 1998). The study of the economic aspect of the concept of "space" is contained in Appendix2.

Each science, each scientific direction develops in an indissoluble connection with the practical needs and demands of society. The theory of regional science, methods of location and territorial development are closely intertwined with the practical tasks of regional planning and forecasting,

management, the formation of a regional economic market, the functioning of the social environment. Regional science, as is usually called in market countries, regional studies is, in the opinion of most experts, a field of scientific and educational knowledge that is widely demanded by the time, aimed at studying the specifics of socio-economic, natural, environmental development in relation to integral territorial formations called regions (Granberg, 2000; Gutman*et al.*, 2001; Bilchak and Zakharov, 1998). In the economic and geographical literature, regions are called a variety of territories, united by some common features:

- groups of countries (for example, the Caribbean or North African region, etc.) - macro-regions.
- region, territory, republic, and their groups - mesoregions.

Less commonly, regions are called territories within a region, territory, republic (microregions).

The gradations of the classification of regions found in Western literature are presented in Appendix 3.

In foreign and domestic literature today, you can find several dozen interpretations of the concept of "region" (Kazachenko, 2012). This diversity is explained by the lack of clarity in the definition of the subject of regional science itself, which, undoubtedly, is one of the reasons for the diversity of directions and methodological conditions in modern research both in Russia and abroad.

The situation created in regional science by the famous American economic geographer Isard (1960) is explained as follows:

> As we delve into purely spatial theorizing, the region as a definition disappears altogether and appears only in connection with the specification of the problem. In other words, the "hierarchy" of regions is determined only by a scientific problem. The region is determined by the issue we are studying (1960: 760).

The unity in the interpretation of the concept of "region" among scientists, dealing with regional problems, lies in the fact that almost all of them highlight the following features: limited territory with production content, natural, labor resources; specialization in some kind of activity; characteristic internal and external connections. Then disagreements begin.

The term "region" in most cases is characterized by a large-scale criterion. In theory and practice, it is used to designate fairly large physical-geographical, economic-geographical, geopolitical and other territorial taxa. In some cases, regions may even unite several lower administrative districts, but this is rather an exception to the general rule.

In Russian economic and economic-geographical science, the term "region" is most often used as a synonym for the concept of "region".

Historically, the concept of "region" in Russian scientific literature appeared much earlier than the term "region". Back in the 80s-90s of the XIX century, researchers distinguished agricultural areas, industrial areas, etc. In the Soviet period, the regional direction in the organization of the country's productive forces became, due to its vast territories, fundamental, both in theory and practice.

Based on the official terminology adopted in our country, the term "district" was defined quite "rigidly" (Alaev) and was most often associated with the administrative grid, while the term "region" was more elastic (Vituleva, 2014). Over time, in the scientific literature and the media, the term region began to be gradually replaced by the term "region" as more rigorous in the scientific sense.

Interpretations of the concept "region" are presented in Appendix 4.

2. Methods

The methodology adopted in this article is of a qualitative type. Qualitative analysis of literature documents was the preferred method in this study. Documentary sources include materials of international scientific and practical conferences, articles, monographs produced in the field of strategy, spatial development of the region, regional economy, economic geography, strategic development of territories, spatial development, as well as official documents of the Government of the Russian Federation that express various positions and interests in the field strategizing the spatial development of the Russian Federation.

During the study, general and special methods of economic and managerial research were used, including analysis and synthesis, induction and deduction, generalization and comparison, methods of logical and comparative analysis, as well as the following applied methods, one of the methods of economic and statistical analysis - method of graphical display of information.

3. Results and Discussion

All the numerous interpretations of the concept of "region" we have considered in this article can be conditionally divided into the following groups:

- reproductive, - when it emphasizes the importance of reproductive processes in the region.

- administrative-territorial, - when it is based on the existing administrative-territorial division of the country's territory or on the factor of controllability of regional development.
- socio-territorial, - when a socio-territorial community is emphasized, and the region is considered as a socio-territorial system.
- territorial-economic, - considers the region as a complex territorial-economic complex with its resources, production, needs and connections.
- socio-economic system. In this approach, the opinions of the authors differ: some characterize the region with such fundamental features as complexity, integrity, specialization, and manageability; others - in the direction of the development of productive forces, the existing and promising social infrastructure; the third in terms of any properties of the territory within which a certain community of people (society) has developed, which has certain development goals.

Based on the existing modern approaches to the definition of the concept of a region, we believe that it is a spatial holistic, complex socio-economic system, within which a certain community of people (society) has developed, which has certain governing bodies, which purposefully works to increase the competitiveness of space and the quality of life of people living in the region.

Appendix 5 contains the author's characteristics of the concept of "region".

An important feature of the region is manageability, which is directly related to the administrative - territorial division. And here it is necessary to emphasize that the integrity of the region contributes to a certain extent to manageability, because the administrative and territorial bodies are called upon to ensure the coordination (management) of all elements of the social economy: material production, natural resource potential, infrastructure, labor resources, etc., as well as diverse connections - trade, financial, social, environmental, industrial, which have a certain spatial and temporal stability (Vituleva, 2014; ArzhenovskiyandKiy, 2014; Blaug, 1994;Artobolevsky, 1993).

Appendix 6 provides a description of the principle of "expedient integrity of the region".

Interaction theory explains the regional system and its development as a result of the interaction of various isolated and independent parties, and the conditions of social life. Moreover, the degree of influence of one factor or another on the state and dynamics of the region is its specificity. The founder of this theory is the Russian scientist Kovalevsky (1851-1916) (Dejan and Vujadinović, 2017).

The differentiated role of various factors in different regions, changing in time, does not allow building their hierarchical system, since in a given region at the moment one group of factors plays a decisive role, at another time - another, and in another region at the same time - a third. Region-forming factors are presented in Appendix 7.

This list (appendix7) of region-forming factors is universal, suitable for considering regions of any scale. In our case, when considering a micro-region, i.e., region within the subject of the federation, the need for a detailed consideration of some factors disappears. For example, we cannot study the socio - economic system of the region, since in our work we only consider the possibility of creating a new region, and not the existing region. The political and geographical factor is considered mainly in the study of macroregions.

There are also different points of view on the tasks and essence of regional policy, theory, and practical ways of its implementation, which is caused by an ambiguous understanding of the very object of regional policy, goals and means of its implementation (Ronald, 2005; Garretsen*et al.*, 2013; Dejan and Vujadinović, 2017).

According to the majority of authors (Arzhenovskiy and Kiy, 2014; Artobolevsky, 1993; Ronald, 2005; Garretsen*et al.*, 2013; Dejan and Vujadinović, 2017), the regional policy of the state is a sphere of activity for managing the economic, social and political development of the country in the spatial aspect, i.e., connected with the relationship between the state and the regions, as well as the regions among themselves.

Regional policy in the Russian Federation is the sphere of activity of state authorities in managing the economic, social and political development of the country in the regional (spatial) aspect. According to some experts, its essence is the implementation of government measures to redistribute resources between regions of the country for the sake of the set goals (Artobolevsky, 1993). At the same time, three levels of spatial relations and interactions can be distinguished: federal, interregional and intraregional.

At the federal level (federal center - regions), regional policy is carried out by federal government bodies. At the interregional level (region - regions), it can be carried out by state authorities of the constituent entities of the Federation in conjunction with regional associations of economic interaction. The intraregional level (regional center - periphery) is provided by state authorities of the subjects of the federation and local self-government bodies (Artobolevsky, 1993).

The main directions of regional policy are presented in Appendix 8.

Regional aspects of demographic, agrarian policy and other measures of state power should also be referred to the directions of regional policy. The

attitude of the state to each of these areas and the specific measures carried out in them constitute the content of the state's regional policy.

The content of regional policy in almost all developed countries (pursuing an active regional policy) has common features (Artobolevsky, 1993; Walter, 1960;Ronald, 2005; Garretsen*et al.*, 2013):

- development of underdeveloped territories, reconstruction of the economy of depressed industrial regions.
- decentralization of agglomerations and areas of concentration of industrial production.
- the formation of new industrial centers outside of urban settlements, not associated with the existing centers of industry.

Without the implementation of such a policy, imbalances both regionally and throughout the country will increase.

In the works of the world-famous Organization for Economic Cooperation and Development (OECD, 2012), which periodically summarizes the experience of different countries and publishes relevant materials, it is noted that the objects of regional policy in the countries of market economy are various kinds of regional (spatial) inequality - differences in the level and conditions of life, in employment and unemployment, in the rates of economic development of individual regions, in the conditions of entrepreneurship, etc. Regional policy acts in the form of government intervention in various subsystems of the region, and not only in the economic one (Artobolevsky, 1993; Walter, 1960; Garretsen*et al.*, 2013; Dejan and Vujadinović, 2017; OECD, 2012).

Appendix 9 presents a grouping of traditional tasks of regional policy.

Experts in the field of state regional policy refer to its main elements: economic, structural, investment, budgetary, tax, tariff, institutional, social policy (Artobolevsky, 1993; Walter, 1960;Garretsen*et al.*, 2013; Dejan and Vujadinović, 2017; OECD, 2012), and consider the main features:

- complexity, i.e., focus on all aspects of social life.
- durability, i.e., calculation for the long term.
- conjugation, i.e., coordination with other components of the state strategy.
- centralization, i.e., compliance with the interests of the state as a whole.
- the balance of all elements of the territorial system of the region.

Moving on to the consideration of the methodological foundations of the spatial development of the region, based on the world and Russian experience of regional policy, the following fundamental methodological approaches can be singled out.

The methodological foundations of the spatial development of the region are presented in Appendix10.

In modern conditions of a digital market economy, the most important type of management of the activities of regional administrations is the strategic type of management.

A strategy is understood as the development of promising areas of activity, carried out on the basis of a long-term forecast of development and an assessment of real opportunities, taking into account the accumulated potential, on the basis of which the term "strategic management" appeared, which in its most general form is considered as the activities of the relevant bodies for the choice of areas, directions and image actions to achieve long-term goals in a changing external environment.

A brief description of Russia's spatial development strategy is given in Appendix 11.

It should be emphasized that in the modern conditions of the development of the digital economy, more and more attention is paid to the issues of strategic management at all levels of management, which is confirmed by numerous publications of researchers on this topic (Kvint, 2014; Kvint, 2016; Kvint, 2009; Darkin and Kvint, 2016; Plakhotnikova, 2018; Plakhotnikova, 2019; Patova and Plakhotnikova, 2020; Eliseeva, 2018;Plakhotnikova*et al*., 2019;Anisimov*et al*., 2017).

Conclusion

Thus, among the fundamental methodological elements of the formation and organization of the socio-economic development of the region should include:

- consistency of analysis, decisions, transformations.
- market reorientation of the regional economy.
- taking into account the specifics of the region.
- integration of activities of types, spheres, industries, forms, processes.
- modern innovative activity.
- organization of strategic management.

Based on these methodological foundations, it is possible to build a framework for the modern socio-economic development of the region and the corresponding management mechanisms.

At the same time, based on world experience, it is necessary to take into account:

- the need for a gradual evolutionary (phased) structural transformation of the regional economy.
- the presence of an extremely close interconnection of the components of the reproduction process in the regional economy.
- the possibility of alternative development options.
- differentiated, local testing of new mechanisms and tools.

The socio-economic development of the region in modern conditions is seen, first of all, in self-reliance. Therefore, you first need to assess your accumulated potential in order to make a real assessment and then organize a search for the missing resources and funds. The scientific position of most authors is based on the need to integrate the potential of all individual parts of the territorial system (industrial complexes, industries, municipalities) into a complex systemic set that ensures the progress of the region.

The interrelationships and merging in the regional economy of resources, advantages, advantages, opportunities and results of the functioning and development of individual territories (cities, districts, villages, townships) qualitatively transform and strengthen the total potential of the region.

The use of a strategic type of management at all levels of management is the key to further successful balanced development.

Annexes

Appendix 1. Approaches to the concept of "space"

There are two approaches to the concept of "space". The first assumes the presence of clearly defined boundaries (external and internal), which can change over time. This is a geographic space, which is formed by any factors, such as the requirements of the administrative-territorial structure of the state, but has fixed boundaries. The second presupposes the establishment of an economic (political, legal, cultural and national) space that has not borders of territories, but borders of economic, political, legal, cultural and national interests (Gutman*et al.*, 2002; Kazachenko, 2012).

It should be borne in mind that any division of space (territory) into regions is rather arbitrary. The need to divide large territorial units into

parts is due to the very large differentiation of parts according to many characteristics.

Appendix 2. The economic aspect of the concept of "space"

Let's consider the concept of «space» in the economic aspect. For economic science, as already mentioned, the boundaries of space are the limits of the action of the main economic flows. It is necessary to highlight the mega, meso, micro and macro levels of space. If we consider the world economic space as a mega-level, then the country's economic space can be defined as a macro-level. The meso-level can be attributed to the economic space of the region, and the micro-level - the space of specific socio-economic systems.

The Common Economic Space (hereinafter referred to as the CES) is a single structure of the national economy. Within this structure, there is an interaction between the market and the state in space. Therefore, it can be argued that all agents of the economy are united by a single economic space of the country, where the same rules for all are monitored and supported by special state institutions.

The Common Economic Space (CES) presupposes the existence on the territory of the country of a single national currency, a single legislative framework, a single national bank, and uniform conditions for the movement of people and goods across the territory (Huseynov, 2014).

The common economic space underlies the formation of a common economic space (hereinafter referred to as the CES), which implies the achievement of an "equilibrium and balanced economy", approximately the same standard of living throughout the country, income equality, based on the self-sufficiency of regions and budgetary equalization (Arzhenovskiy and Kiy, 2014).

For the first time, a theoretical model of general economic equilibrium in the classical market was developed by the Swiss economist Blaug (1994). From the point of view of Blaug(1994), the total supply of final products in monetary terms should be equal to the total demand for them as the sum of incomes brought by all factors of production to their owners. At the same time, equilibrium is considered achieved only when there is not only an equilibrium of supply and demand, but also an equal well-being of participants in market relations, which implies an increase in the well-being of all participants. These provisions are presented in Figure 1 - a diagram of a single and common economic space.

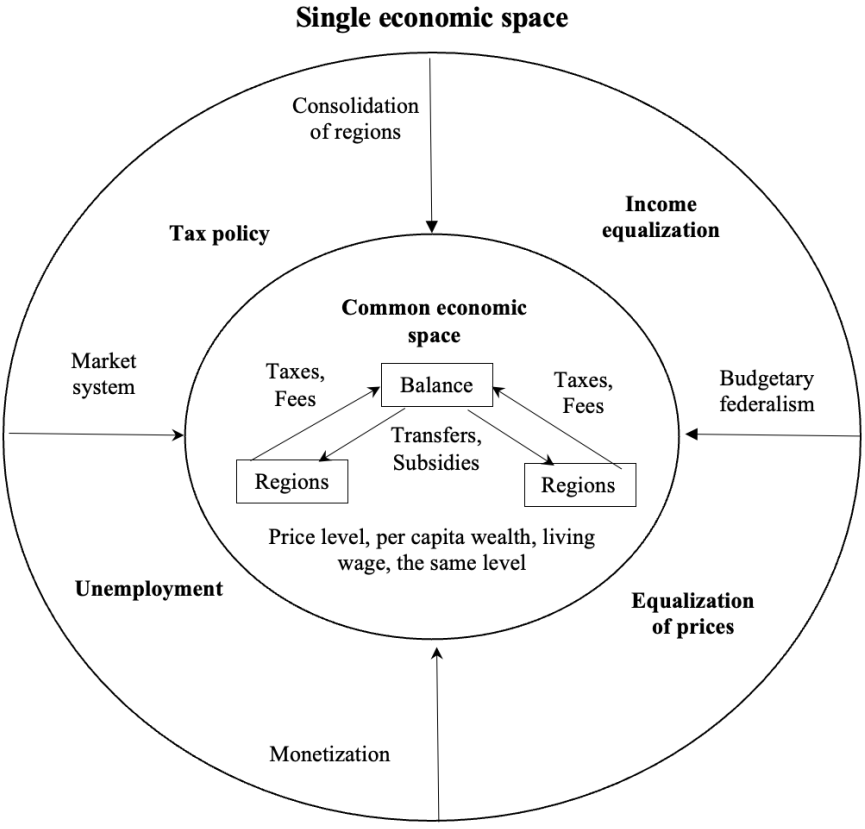

Figure 1. Scheme of a single and common economic space (Huseynov, 2014).

When market mechanisms cease to operate, an imbalance arises in the national economy and government regulation becomes necessary. The role of the state in the economy involves the interaction of the state and the market as two complementary ways of coordinating relations between economic agents and their groups. Thus, it is advisable to consider the market and government regulation as the main regulatory forces for achieving economic equilibrium, and, accordingly, ways to achieve a common economic space.

The mutual influence of the state and the market is realized as follows: the state regulates and stimulates the economy and promotes the organization of

society, the economy determines the capabilities and power of the state and forms the economic interests of society (Artobolevskiy, 1993). Maintaining and stimulating competition in the OES is a function of the state. Therefore, even in the theoretical market model, the state plays the most important role in preserving the economic space itself by expressing public interests (Gutman*et al.*, 2002). Not a single private business, no matter how gigantic it has reached, by its nature can ignore its own interests and assume the interests of the whole society. Any market model is implemented under the influence of both economic and non-economic factors. As the complexity of the economic development of a country increase, the role of non-economic factors increases, since the achievement of CES is not an end in itself, but a means of improving the quality of life of people.

Appendix 3. Grades of classification of regions found in Western literature

In Western literature, when classifying regions, the following three gradations are most often used (Bilchak and Zakharov, 1998; Kazachenko, 2012;Vituleva, 2014; Gorkin, 2013):

- regions distinguished by single characteristics, that is, taking into account some individual phenomenon (for example, a beet-growing zone). Such regions are sometimes called simple.
- regions distinguished by several characteristics. They reflect a combination or symbiosis of various phenomena (for example, landscape regions in physical geography). These regions are called complex.
- regions covering almost the entire totality of manifestations of human activity within the territory under consideration. They usually reflect the close relationship between natural (natural) and social indicators of the territory.

Appendix 4. Interpretations of the concept of "region"

By definition Alayev (2014), the term "region" is used quite ambiguously:

- as a synonym for the term "district", hence - regional, i.e., relating to the district, districts.
- to designate comparable taxa belonging to different taxonation systems or to different orders of the same taxonation system.
- to designate any territories that, by their characteristics, do not "fit" the adopted system of territorial division and do not allow them to be designated by other terms.
- to designate territorial taxonomic units of a certain class in a particular taxonation system.

The concept of "region" is quite clearly defined in official documents as a part of the territory of the Russian Federation, which has a common natural, socio-economic, national-cultural, and other conditions (Potapov, 2016). The region can coincide with the borders of the territory of a constituent entity of the Russian Federation or unite the territories of several constituent entities. In those cases when a region acts as a subject of law, it is understood only as a subject of the Russian Federation (Potapov, 2016).

In the definition of (Bilchak and Zakharov, 1998; Vituleva, 2014; Huseynov, 2014) emphasizes the importance of the factor of controllability of regional development: "A region is a socio-economic spatial integrity characterized by the structure of production of all forms of ownership, concentration of population, workers, any territory that is economically and administratively independent, starting from rural area and ending with large national economic territorial complexes".

A well-known specialist in the field of regional economics Nekrasov viewed the region from a socio-economic standpoint, without considering such a category as "self-government", i.e., administrative division. "Under the region," Nekrasov, - is understood as a large territory of the country with more or less homogeneous natural conditions, and mainly a characteristic direction of the development of productive forces based on a combination of a complex of natural resources with the corresponding established and promising social infrastructure" (Bilchak and Zakharov, 1998; Kazachenko, 2012; Vituleva, 2014).

The importance of reproduction processes on the territory of the region is emphasized by the authors of the book "Fundamentals of the theory of regional reproduction" Marshalova and Novoselov, for whom "the region is not only a subsystem of the country's socio-economic complex, but also a relatively independent part of it with a complete reproduction cycle, special forms of manifestation of reproduction stages and specific features of the course of social and economic processes" (Bilchak and Zakharov, 1998; Kazachenko, 2012; Vituleva, 2014; Gorkin, 2013).

The region is a relatively isolated part of a wider socio-territorial community. The region forms a subsystem of the economy, population, culture, politics and other aspects of social life, organized on the basis of the principles of functioning of a part of the territory"- this is the definition given by Belov (Bilchak and Zakharov, 1998;Kazachenko, 2012; Gorkin, 2013).

In her opinion, the difference between a region and other types of social systems lies in the fact that it is a socio-territorial system. It is the territory that acts as the initial prerequisite for the acquisition by the region of systemic qualities inherent only to it. The cohabitation of people

within a common natural - geographical and social space predetermines, on the whole, general conditions for work, life, leisure, etc., hence the approximately equal opportunities for improving personal qualities, forming and meeting material and spiritual needs.

"Region" is a historically evolving compact territorial community that contains physical content, socioeconomic, political and cultural environment, as well as a spatial structure that is different from other regions and territorial units, such as a city or nation (Kazachenko, 2012).

Doliatovsky believes that the region in the modern sense is a complex territorial-economic complex with limited internal resources, its own production structure, and certain needs in connection with the external environment (Bilchak and Zakharov, 1998; Kazachenko, 2012; Vituleva, 2014; Gorkin, 2013).

The region, according to Dergachev and Vardomsky, is always self-sufficient (but not self-sufficient) and distinctive, that is, it has an internal socio-cultural code (Bilchak and Zakharov, 1998; Kazachenko, 2012; Gorkin, 2013).

A universal theoretical interpretation of the concept "region" was given by Alaev. He believes that "a region is a territory that differs from other territories by the totality of its saturating elements and possesses unity, interconnectedness of constituent elements, integrity, and this integrity is an objective condition and a natural result of the development of this territory" (Bilchak and Zakharov, 1998; Kazachenko, 2012; Vituleva, 2014; Gorkin, 2013).

It also considers integrity to be an obligatory element of the region, and the term "region" is defined as a part of the country's territory that has emerged in the process of social (territorial) division of labor, which is characterized by specialization in the production of certain goods and services; community and specific in relation to other territories, the nature of the reproduction process; the complexity and integrity of the economy; the presence of governing bodies that ensure the solution of the tasks facing the region.

Appendix 5. The author's characteristics of the concept "region"

The integrity of the region means a completely rational use of the natural resource potential of the region, a proportional combination of various industries, the formation of stable intraregional and interregional production and technological ties, the presence of a special community of people with certain traditions, a certain way of life (Vituleva, 2014; Oshchepkov and Kuzmina, 2013).

The complexity of the region's economy means, first of all, a balance, proportional coordinated development of the region's productive forces. This is such an interconnection between the elements of the economy, when the main national economic function is effectively performed - the specialization of the region, there are no significant intraregional disproportions and the region's ability to carry out expanded reproduction within its limits on the basis of available resources remains (Voronin and Sharygin, 1998; Oshchepkov and Kuzmina, 2013).

An indicator of the complexity of the regional economy, - points out Arzhenovskiy (2014), - can be the products of intraregional production consumed in the region; the share of products for cross-industry use; the degree of use of regional resources. Complexity and integrity serve as a prerequisite for the relative isolation of regions within the national economy of the country. It manifests itself in the fact that part of the reproductive ties is limited to a given territory, on this basis, relative independence is formed.

Appendix 6. Characteristics of the principle of "expedient integrity of the region"

The selection of a region is based on the principle of expedient integrity, determined by a group of region-forming factors. Distinguish, on the one hand, the internal integrity of the region - the formation of its economic complex, the implementation of a single policy, the creation of unified authorities and management, etc., as well as the external integrity of the region - its isolation in relation to other similar regions, to the whole territory, to other territories and their constituent parts.

The development of any region is a contradictory process: uniting centripetal and separating centrifugal forces are simultaneously operating in it. Moreover, any region-forming factor in some specific conditions contributes to the strengthening of the region, and in others - to its degradation and disintegration. It is important to establish the limits beyond which the region-forming factor turns from centripetal to centrifugal.

Region boundaries are dynamic. The long historical process of regional development is characterized by a change in periods of centralization, consolidation of regions by the annexation of new territories and periods of decentralization, reduction of regions by their disintegration into parts and disconnection of territories (Ronald, 2005).

Appendix 7. Region-forming factors

The researchers distinguish the following factors as region-forming factors:

- history of development and formation of the region.
- natural conditions and resources.
- ethnic and confessional factors of regionalism.
- the demographic factor of regionalism.
- labor resources of the region.
- state and territorial structure.
- socio-economic system in the region.
- the economic and geographical state of the region.
- the political and geographical factor of regionalism.

Appendix 8. Main directions of regional policy

Regional policy is an integral part of the national strategy for socio-economic development and covers the following main areas (Artobolevskiy, 1993):

- determination of the ratio of the moving forces of regional development and ensuring their interaction (public and private sectors of the economy, internal and external factors of the development of the region and means).
- the ratio of national and regional aspects of development, central and regional levels of economic management.
- the rise of the economy of the backward regions and the development of new regions and resources.
- national economic issues (in a multinational state).
- problems of urbanization.

Appendix 9. Group of traditional tasks of regional policy

The group of traditional tasks includes:

- reconstruction of the economy of old industrial regions and large urban agglomerations by converting defense and civil sectors, modernizing infrastructure, improving the ecological situation.
- overcoming the depressive state of agro-industrial regions, for example, the Non-Black Earth Region, the South Urals, Siberia, the Far East; revival of small towns and Russian villages, restoration of the lost living environment in rural areas, development of local industrial and social infrastructure, development of abandoned agricultural and other land lands.

- stabilization of the socio-economic situation in regions with extreme natural conditions and predominantly raw materials specialization.
- creating conditions for the revival of small peoples.
- development of interregional, regional and intraregional infrastructural systems (transport, communications, informatics), providing structural changes and efficiency of the regional economy.
- overcoming the excessive lag in the level and quality of life of the population of individual republics and regions and taxonomic units.

Appendix 10. Methodological foundations of the spatial development of the region

From a scientific point of view, any region should be considered as a complex socio - economic complex, within which a system of connections and dependencies between organizations, enterprises, institutions, population, and governing bodies is specifically formed and manifested in a peculiar way. A region is both a whole (a single economy) and a part (of a national economy). Therefore, the most acceptable and productive scientific approach to the study of phenomena, connections, problems and ways of development in the regions is the system methodology.

Effective management of the socio-economic development of the region is unthinkable without a deep knowledge of certain market laws. Chief among them: the development of production is driven by effective demand and, above all, by the final demand of consumers; production is focused on improving quality characteristics, individualizing the satisfaction of needs, increasing the beneficial effect of using products; competitive manufacturing based on innovation thrives; there is an expansion of the service sector, a certain overflow from the industrial sector into the sphere of various kinds of services (the so-called "serviceization" of social production).

As a result, the economy becomes socially oriented, focused on increasing the efficiency of meeting the needs of society, i.e., the main thing is the market reorientation of the entire economic system of the region, and everything else is the profit of producers, employment of the population, budget revenues, social protection of the poor, etc. - is derived from the main one.

Each region is deeply specific, unique in its own way both economically and in social, geographic, climatic, demographic, ecological and other characteristics. Without knowledge of the specific features of a particular region, any attempt at reform is doomed to failure.

The practice of regional management clearly proves the effectiveness of integration carried out in various forms. There are intra-sectoral, inter-

sectoral, territorial, intra-regional, inter-regional and international types. There are also horizontal, vertical, diagonal and combined types of integral structures. There are various classifications of activity integration. It can be distinguished: organizational, economic, financial, industrial, trade, technological orientation of integration and their combinations. Integration allows you to increase the efficiency of functioning of differentiated links and processes and to obtain a specific synergistic effect (Arzhenovskiy and Kiy, 2014; Dejan and Vujadinović, 2017).

The reality of the market system of life is such that only a general increase in the competitiveness of the regional economy can ensure sustainable socio - economic development. It, in turn, consists of the growth of the competitive advantages of individual enterprises, industries, territories and their totality. The most significant factor in increasing competitiveness in the world is considered to be the activation of innovative activities. It is innovations that primarily attract investment, which creates the preconditions for the technical modernization of production, renewal of the range of products, and economic progress. Research and global experience make it possible to recognize the transition to the intensification of innovative activity as one of the key methodological premises of the region's economic development.

Appendix 11. Strategy for spatial development of the Russian Federation until 2025 (summary)

At present, in Russia, in accordance with the federal law "On strategic planning in the Russian Federation" (Federal Law "On Strategic Planning in the Russian Federation" dated 28.06.2014, No. 172-FZ), a strategy for the spatial development of the Russian Federation for the period up to 2025 has been developed (Strategy of spatial development of the Russian Federation for the period up to 2025. Approved by the order of the Government of the Russian Federation dated 13.02.2019, No. 207-r).

The main objectives of the Strategy are:

- ensuring sustainable and balanced spatial development of Russia.
- reduction of interregional differences in the level and quality of life of people.
- acceleration of economic growth and technological development.
- ensuring national security.

To implement the above goals, the Strategy defines the tasks, principles, priorities, and main directions of the spatial development of Russia, scenarios of spatial development, including the priority (target) scenario, promising centers of economic growth, macroregions, promising economic specializations of the subjects of the Federation, target indicators of the spatial development of Russia.

As part of the implementation of the Strategy, it is envisaged to increase the accessibility and quality of the main transport, energy, information and telecommunications infrastructure, reduce the level of interregional differentiation in the socio-economic development of the constituent entities of the Federation, reduce intraregional socio-economic differences, expand geography and accelerate economic growth, scientific, technological and innovative development of Russia due to the socio-economic development of promising centers of economic growth.

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The military-technical revolution of the XXI st century (Philosophical and analytical review)

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Abstract

The article discusses the history of the military-technical revolution, revealing its main characteristics. It was interesting to explain to others theconnection between the revolution and the technical and technological structure ofsociety, on the one hand, and the changes in modern warfare, its timing, the scale of the deployment of hostilities, on the other hand. The study is based on the methodology of systems analysis, as well as the use of logical generalization, synthesis, and abstraction. The authors rely on a wide range of illustrative material, which allowed to show the changes of the sixth military-technological revolution. The nature of the use of unmanned aerial vehicles in modern warfare is considered factual material. Based on specific material, it is argued that the nature of modern warfare is hybrid in nature, but this hybridization itself is heterogeneous. Possible options for waging war and using certain equipment are shown. Based on analytical research, the authors focused on the transformation's characteristic of modern wars. It is concluded that there is a transition period between the sixth and seventh technical-military revolutions that demand future interdisciplinary research.

Keywords: military-technical revolution; hybrid warfare; technique; science; unmanned aerial vehicles.

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La revolución militar-técnica del siglo XXI (revisión filosófica y analítica)

Resumen

El artículo discute la historia de la revolución técnico-militar, develando sus principales características. Interesó explicar a demás la conexión entre la revolución y la estructura técnica y tecnológica de la sociedad, por un lado, y los cambios en la naturaleza de la guerra moderna, su momento, la escala del despliegue de las hostilidades, por otro lado. El estudio se basa en la metodología de análisis de sistemas, así como en el uso de la generalización lógica, síntesis y abstracción. Los autores se apoyan en una amplia gama de material ilustrativo, que permitió mostrar los cambios de la sexta revolución tecnológico-militar. La naturaleza del uso de vehículos aéreos no tripulados en la guerra moderna se considera material fáctico. Basado en material específico, se argumenta que la naturaleza de la guerra moderna es de naturaleza híbrida, pero esta hibridación en sí misma es heterogénea. Se muestran posibles opciones para hacer la guerra y usar ciertos equipos. Basados en la investigación analítica, los autores se centraron en las transformaciones características de las guerras modernas. Se concluye que hay un período de transición entre la sexta y séptima revoluciones técnico-militar que demanda de futuras investigaciones interdisciplinarias.

Palabras clave: revolución técnico-militar; guerra híbrida; técnica; ciencia; vehículos aéreos no tripulados.

Introducción

At the beginning of the XXI century. the term military-technical revolution has been increasingly used. The Revolution in Military Affairs was first written about by M. Roberts. studying in the 1950s the fundamental changes in the European way of warfare, which were caused by the use of firearms, he actively began to refer to this term (Roberts, 1967). According to E.A. Cohen:

> American military experts have been forecasting revolutionary changes in the warfare nature for the past decades. Sometimes these changes are spoken about as military technical revolution. Such a revolution will be the beginning of a fundamental restructuring of the defense system and this will lead to a reduction in the armed forces, a transition to new forms of their organization, revision of the existing army structure and investment of unprecedentedly large funds in research and design development (Cohen, 2005: s/p).

The characteristic features of the military-technological revolution, which is always in coherent development according to the technical-

technological mode of society, are given. It justifies the thesis of the obvious transitional period between the sixth and seventh military-technological revolutions, emphasizing the high-tech and informational nature of the latter.

1. Methodology

The focus was on the system analysis methodology, the national defense system of any state is a complex system that is constantly developing, relying on the scientific achievements, industrial potential, political national ideas and international documents of legal and ethical nature. Since we are talking about the modern military-technical revolution and technological order, the system analysis itself will be based on the cause-effect relationship principle. This will be necessary because the very process of conducting military operations must be seen as open to all changes and unexpected factors, indicates the need to consider the unexpectedness events. This aspect requires consideration of explanation models, both linear and nonlinear, drawing on various forms of causality.

We actively use the methodology of M. Kondratiev about the «economic mode» of development of any country, the world and the methodology of L. Grinin, who adapted this idea to describe the state of science and technology on a global scale. We also take the development of M. Trebin, which actively applies the term «sixth-generation wars», which emphasizes the nature of wars and the ways by which they are organized modern warfare methods. We also fix the transition from mechanization to informatization in the organization of the weapons nature and military actions, that is why we strengthen our reconnaissance with A. Dolskaya's methodology of humanity entry into the third intellectual revolution period, where the emphasis is placed on intellectualization, informatization and mediatization.

The next line should be the methodology of strengthening the technical and technological nature of modern society, because it is the latter has become an indicator of the development and military position of the countries of the world. A significant contribution to the development of this methodology was made by the famous American political scientist Zb Brzezinski: «Post-industrial society becomes a technotronic society - a society which in cultural, social and economic relations is formed under the influence of technology and electronics, general informatization, which is especially developed in the computer and communications field» (Brzezinski, 2005: 6). It is important to understand that the military technology development is subordinate to the general development of science, technology, technology in their complex subordination and cannot be detached from the nature of social development.

We cannot ignore the methodology proposed by T. Kuhn about the nature of the scientific revolutions development, their connection with scientific rationality, which also affects the technological transformations: «the scientific and technological revolution is a narrower concept, and it is a form of STP, when it takes an accelerated, leapfrog character» (Kuhn, 1974: 650). The military-technical revolution is a radical restructuring of the whole technical and technological production base, which are carried out on the basis of the practical use of the fundamental achievements of modern science.

M. Heidegger's methodology provides an opportunity to embark on a comprehension process of the essence of technology, man and the world in general, emphasizing the broken consciousness whose beginnings are already present in attempts to reflect on the events that humanity experienced after the First World War. That is why the methodology of M. Heidegger with his idea of the correlation between the man and technology development with the man's need to constantly improve it is relevant here, « technique is connected with the fundamental features of man's existence in the world « (Heidegger, 2013: 460). Modern technique, according to M. Heidegger, reveals the essence of the hidden being in nature, placing, ordering everything in order to bring out the unhidden. This kind of interaction with hidden being is the marker of the modern age, and this aggressive kind of disclosure with respect to secret being brings the danger of turning man himself into a technical device, into a function.

2. Results and discussion

In our opinion, military revolutions are closely tied to the so-called technological modes. This term was actively used by N.D. Kondratiev, and today it is implemented in analytical reconnaissance by L.Y. Grinin: «Technological modes (TM) are a set of technologies that are typical for production development, a set of connected productions having a single technological level developing synchronously» (Grinin, 2015: 182). We can say that each stage of MTR, each generation of warfare corresponds to a certain technological mode (TM).

In our opinion, modern wars organically fit into the 6th technological paradigm with the characteristic development of science, techniques and technologies, which are the result of a new stage of science and technology development - the so-called NBIC-technology paradigm. This is evidenced by the state of modern warfare, warfare conditions, the use in modern wars the newest weaponry, which is formed due to informatization (the use of IT-technologies, compliance with the intellectual shift in the form of intellectual revolutions, robotization processes, etc.). Moreover, the development and

implementation of innovative technologies in the military affairs gives impetus to the development of general science, technology, economy, industry, productive forces, employment of able-bodied population, leads to the withdrawal of the country to a higher stage of development (Schwab, 2017).

Analyzing the wars of the first quarter of the 21st century we record two types of wars: contact wars (4th generation using conventional weapons) and non-contact wars (6th generation using precision weapons on new physical principles, informatization of weapons, forces and means of electronic warfare (Slipchenko, 2002). It should be noted that we do not consider the wars of 5th generation in this article because they are wars using nuclear weapons. The wars of 6th generation cardinally differ from the 4th generation also in that all power of the aggressor is functionally directed mainly to the defeat of the enemy's troops and economy by simultaneous powerful information and high-precision strikes of various weapons (Slipchenko, 2002). Along with contact wars the current numerous combined arms units of ground forces will gradually begin to disappear, and not only nuclear weapons, but also conventional armed forces will finally depreciate.

Maybut wars will widely use weapons based on new physical principles, such as geophysical, radiological, radiofrequency, laser, infrasound, psychotronic, genetic, acoustic, electromagnetic and others (Slipchenko, 2002), i.e. the reduction, minimization of the number of troops involved in an armed conflict, localization of armed conflicts (the transition to the 6th generation war is considered to be the date of the use of guided air bombs by the American military in Vietnam in 1967).

The wars of the 6th generation are commonly referred to as «information wars». In practice, the transition to an «information society» leads to increased opportunities to use methods of economic-information confrontation to strengthen and improve methods of information warfare (Trebin, 2005). For example, the Gulf War «Desert Storm», which lasted five weeks - from January to February 1991, was called the first information war (Colins, 2019). The wars in Yugoslavia (1998), and more recently in Syria (2015) (Sherlock, Homsi, Neuman, 2021) and Karabakh (2020) also fit this characteristic (Gall, 2020). The main characteristics of some 6th generation wars are provided in Table 1.

Tab. N°1.Comparative characteristics of the 6th generation wars

№ n/n	The name of the war	total time active operational phase	Type of war (generation)	New types of weapons, communications, navigation
1.	The war in the Persian Gulf.	17.01.91--28.02.91 (41 days)	VI-th (with Elemmi IV-th)	Used more than 2,000 guided bombs, only 10% successful launches of guided missiles and high-precision weapons, use of new types of communication, navigation
2.	NATO operation	23.07.93-03.09.93 (43 days)	VI-th (with Elemmi IV-th)	Used 15,000 precision weapons, the total percentage of precision targeting increases to 50-60%, point attacks on command and control points and communications predominate
3.	"Desert Storm".	20.03.03 15.04.03 (27 days)	VI-ro (with Elemmi IV-ro)	Used more than 250 samples of high-precision weapons, 80% of successful launches of guided missiles and high-precision weapons, the use of a new generation of communication, targeting, navigation
4.	The war in Yugoslavia.	30.09.15 11.12.17 (2 years 73 days)	VI-ro (with Elemmi IV-ro)	Use as armored vehicles samples of the 21st century, the newest aircraft models of the 5th-6th generations, antiaircraft defense, fundamentally new electronic warfare means, communication
5.	NATO operation	27.09.20 10.11.20 (45 days)	VI-ro (with Elemmi IV-ro)	Active employment of unmanned aerial vehicles (Bayraktar, Heron, Hermes 4507), high-precision weapons (Sky Stiker, Hagor)

Source: systematized by the autor.

Considering this table, we can see that the active phase of recent military conflicts is reduced in time, and as a rule, it does NOT lead to the deployment of conflicts in other territory, but the narrowing of the geographical criterion. The wars are becoming localized, the use of high-precision weapons is increasing, and the defeat is primarily aimed at destroying command and control centers, troop concentrations and large military facilities. There is an active use of drones not only for reconnaissance purposes, but the drones are also becoming automated weapons, and the army is turning to «smart weapons,» which minimizes civilian casualties. The modern army is being rapidly computerized, which also speeds up the commanders' decision-making, and this generally affects the timing of combat operations in the direction of a reduction in time (Aksenov, 2020).

We have come to live in the Hybrid War era. Researchers of hybrid warfare recognize that all major wars have an element of hybridity. Indeed, no war has ever been reduced to the actions of the military on the battlefield; wars have always had at least a political and economic dimension.

The hybrid combination forms were unique. C. von Clausewitz compared the variability of the conditions of warfare to water, which has no form of its own. But the uniqueness of hybrid warfare today is that the usual instruments of hybrid influence on the course and outcome of the war is now joined by the factor of new technologies, the use of the newest means of warfare, which are already moving in their technological indicators from the 6th to the next - 7th technological paradigm.

Depending on what factors influence on the course of military actions, some or other warfare hybridization characteristics become transparent, making it possible to fix different hybrid warfare characteristics (Hoffman, 2007). Hybrid wars have the character of locality, short in time active phases, which are replaced by protracted armed conflicts, and this, as a consequence, is reflected in the course of the war. That is why its name is «hybrid»: beside the main warring parties, there are also external influence levers - global-political and transnational-economic, which decide their geopolitical interests in conducting a small local war.

In the course of these conflicts a completely new terminology emerged, which traces the trends towards the transition to the next generation of warfare - the 7th: non-contact, contact, asymmetric, information, hybrid warfare; informatization of military affairs, network command systems and de-italization of military control systems; information technology, computer and cyber warfare; robotic systems with artificial intelligence (drones, works, drones) remote defeat with precision weapons; use of nanotechnologies and other means of communication.

In spite of the fact that these terms began to be used in everyday life, it gives us a hint to consider that we are in a transitional stage of military development with new characteristics of precision defeat, miniaturization of means of defeat, minimization of personnel involved in a military conflict. The ontologization of military affairs is shaped by new techniques and technologies and gives us an opportunity to talk about new characteristics of military space.

Today all developed states pay much attention to the creation and financing of military information technologies («technologies of creation of visible and invisible» - hybrid information technologies as one of the elements of technological hybridization of warfare), modern military-scientific centers, engaged in research in creating modern weapon systems, military robotics, autonomous weapon systems, unmanned systems of air and ground, sea-based, nanobiotechnology in military sphere and so on.

The use of information technology as an information weapon is considered more promising. The latter are an integral part of high-precision munitions. Therefore, it is reasonable to consider these functional subsystems as information weapons as well. The more we dijetalize troop control systems, immerse ourselves in the world of information technology, the more we become unprotected from intrusion of intruders into our electronic bases and electronic troop control systems as a whole. Information weapons based on software code, so-called «cyber weapons,» are being actively developed. At the Defense One Tech Summit on June 23, 2021, U.S. Deputy Assistant Secretary of Defense for Cybersecurity Mieke Yeoyang said: «We want to convince everyone that the issue of cybersecurity is the most significant and its size is an impediment to the entire Department of Defense» (Vergun, 2021: n/p).

The second characteristic of the changes in the transition to the next phase of warfare should be called the growing nature of cybersecurity. The only existing international legal document in the field of information security today is the European Cyber Convention (ETS No. 185 Budapest, 2001), which provides for the possibility to conduct investigative actions in the information space of another state without notifying its law enforcement authorities.

Back in the mid-2000s, at a conference in Washington on the problems of defense against cyberterrorists R. Clark explicitly acknowledged that «electronic Pearl Harbor is not a theory. This is reality. In such a context, information operations against control systems become particularly important.

The most famous organization that deals with the latest military technology is the Defense Advanced Research Projects Agency DARPA (USA). It was established in 1958 during the Cold War. The success of the DARPA phenomenon has led to the creation of counterparts of this organization in other countries. For example, DRDO (India) MAFAT (Israel), SASTIND and SRSC (China), the Research Center «Bureau of Defense Solutions» (Russia), GDA (France) and GARDA (Ukraine).

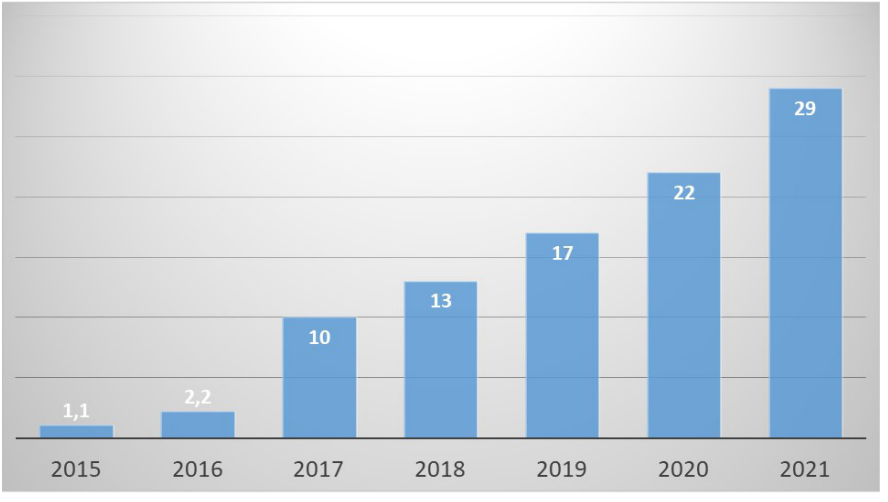
Above, we have already drawn your attention to the fact that even in the 6th generation wars of the early 21st century robotic systems of various purposes are actively used. With the example of drones and drones, we would like to show how their demand in the weapons market is changing. And this is an indication of what changes are taking place in the nature of combat, warfare in general. As for drones, they, strictly speaking, do not belong to the category of classical robots, because they do not reproduce human activity and cannot function successfully without human intervention.

But, as a rule, they are also counted as robotic systems (Bondareva, 2016). Military work is traditionally one of the most common varieties

(drones, robot-sappers, robot-sanitation, etc.). Military robotics is a well-funded industry, as promising military developments can be applied to civilian needs as well. Already there is the question of attempts to equate military robots with inhumane weapons, that is, to subject them to the «Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects» (Convention, Geneva, 1980: n/p).

Public organizations, including The Future Of Life Institute, as well as Human Rights Watch, have advocated their prohibition. The key thesis of these organizations is that uncontrolled military works will cause great harm to the civilian population. The fear is that the provision of artificial intelligence in their design makes it possible for them to be fundamentally out of human control.

Global drone and robot procurement spending is projected to exceed $200 billion in 2022 (Daily Comm, 2018). According to research firm Gartner, total global sales of drones (of various purposes) alone have reached 2,200,000. Units in 2016 at a value of $450,000,000. U.S. dollars, and as early as 2021, sales of 29 million units worth more than $12 billion are planned (Drone market outlook in 2021: industry growth trends, 7 market stats and forecast., 2017).



Tab. N°2. Analysis and forecasts of the drone sales market for 2021 (in millions of units). Source: systematized by the author on the basis of statistical data.

Based on fact analysis, the following modern characteristics of hybrid warfare can be emphasized: miniaturization of weapons; providing weapons with artificial intelligence elements, which means that a favorable outcome of battle can be achieved by using swarms of small drones and drones invisible to enemy radar stations (Cronk, 2021a), rather than using large numbers of armored vehicles and powerful ground forces units. And this next characteristic is to minimize the number of divisions and the total number of troops involved in armed conflicts.

Moreover, as a result of general informatization and growing cybercrime, technologies that once possessed the most powerful armed forces are now in the hands of less capable forces, countries with small armies and even non-state actors, terrorist organizations (it is now no problem to make a flock of drones from cell phone parts or buy a small toy drone from a store) (Cronk, 2021b).

In the development of military affairs, the anthology factor comes out ahead of all qualitative changes. As the technical means of destruction become more complex, as the forms of warfare themselves become more complex (war becomes hybrid, asymmetric), the military's responsibility in decision-making becomes more significant, and around this issue the theme of the human-warrior role in the 7th generation wars will evolve.

Conclusions

More and more often scientists refer to the term «military-technical revolution». Each revolution contributes not only to technical and technological transformations in the troops' armament, it will necessarily «stimulate» the transition to a new warfare nature and, as a consequence, will act as a factor through which war will have special characteristics. Today, humanity is dealing with high-tech wars.

This means the next thing. Firstly, today's warfare is conducted in a different information space, where we see the intertwining of informatization and robotization. Secondly, the use of modern scientific advances in military equipment and technologies leads to changes and transformation of the ontological dimension in military affairs. Thirdly, the above-mentioned characteristics are not conclusive, but, in our opinion, allow us making conclusions that mankind is on the verge of transition to the 7th generation wars, where artificial intellect is in the focus, nanotechnologies are gradually being applied, informatization of troops becomes global and multilevel, penetrates into all military structures, forms new armament samples, digitalizes military management.

Today wars are most often characterized as hybrid wars, which have their own characteristics in terms of the timing and nature of the weapons used. The latest data provide an opportunity to reach the general characteristics of modern hybrid wars, which include: the growth of information technology, a special attitude to cybersecurity, miniaturization of weapons, providing weapons with artificial intelligence elements, minimization of the number of divisions and the total number of military personnel, the aggravation of the anthropological issue.

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Restorative and productive methods of environmental management in the implementation of environmental policy

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Abstract

The objective of this work is to define and base the principles of environmental management through the introduction of regenerative (restorative) and productive methods of environmental policy. The problems were solved with the help of such general and special research methods, such as generalization, systematization, analysis, synthesis, and the empirical method. It is argued that the operation of industrial enterprises without a balanced set of appropriate environmental measures always has negative consequences. The formation of environmental awareness of entrepreneurs, assigning to environmental management the status of a mandatory component of the policy to achieve regional environmental objectives, requires greater attention and effective methodological developments. The strategic directions of ecological development of one of the regions of Ukraine are indicated. The essence of the concept of "environmental management" is defined. The definition of "regenerative method of ecological management" and "productive method of ecological management" is offered. In conclusion, scientific ideas on the feasibility of implementing environmental management in companies are presented. The need for ecological measures for the implementation of ecological policy is based.

Keywords: ecological policy; environmental management; production method; industrial enterprises; regenerative method.

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Métodos regenerativos y productivos de gestión ambiental en la implementación de la política ambiental

Resumen

El objetivo de este trabajo es definir y fundamentar los principios de la gestión ambiental a través de la introducción de métodos regenerativos (restaurativos) y productivos de política ambiental. Los problemas se resolvieron con la ayuda de métodos de investigación tanto, generales y especiales, como la generalización, la sistematización, el análisis, la síntesis y el método empírico. Se argumenta que el funcionamiento de las empresas industriales sin un conjunto equilibrado de medidas ambientales adecuadas siempre tiene consecuencias negativas. La formación de la conciencia ambiental de los empresarios, asignando a la gestión ambiental el estado de un componente obligatorio de la política para lograr los objetivos ambientales regionales, requiere una mayor atención y desarrollos metodológicos efectivos. Se indican las direcciones estratégicas del desarrollo ecológico de una de las regiones de Ucrania. Se define la esencia del concepto de «gestión ambiental». Se ofrece la definición de «método regenerativo de gestión ecológica» y «método productivo de gestión ecológica». Como conclusión se presentan ideas científicas sobre la viabilidad de implementar la gestión ambiental en las empresas. Se fundamenta la necesidad de medidas ecológicas para la realización de la política ecológica.

Palabras clave: política ecológica; gestión ambiental; método productivo; empresas industriales; método regenerativo.

Introduction

Environmental issue for the economy of Ukraine is becoming especially relevant since processes of environmental degradation take place in almost all regions of our country, and changed environment has a negative impact on our society. For Ukraine, as a country that is looking for ways to achieve sustainable economic development, the priority is to form a sustainable environmental policy to be enshrined in the overall state development strategy. It is well known that industrial enterprises functioning, which are the basis for any country's economy, always causes negative consequences without mature complex of adequate environmental measures.

They have different power but demand mature complex of overcoming measures. These measures should not only be developed and coordinated by state and regional authorities, but also directly implemented at the enterprise level. General management system of enterprise, without

alternative, should include department managing environmental safety of economic activity. The activities of industrial enterprises in our country allow us to confirm that these issues are not addressed comprehensively and require special attention and effective development of scientists to improve the methodology of environmental management for the implementation of environmental policy. Such developments should form the basis forming foundations for Ukraine's worthy accession to European community.

M. Zos-Kior, O. Shkurupiy, I. Gnatenko, O. Fedirets, I. Shulzhenko, V. Rubezhanskaya, O. Chygryn, V. Krasniak, L. Lipych, T. Hlubitska, R. Oleksenko, devoted their scientific papers to issues on developing conceptual means, introducing and developing environmental management, environmental bases of economy and management. Issues on ecosystem management are reflected in publications of Gregory McGee, M. Jafari. However, issues on developing environmental management concept, forming entrepreneurs' environmental awareness, assigning environmental management the status of obligatory component of programs to achieve regional environmental goals require heightened attention and further theoretical and methodological developments.

1.Objectives

The purpose of this work is to define and substantiate the principles of environmental management through the introduction of regenerative (restorative) and productive methods of environmental policy.

2. Materials and metnods

Neoclassical economic theory defines environmental management as integral scientific area. It combines scientific problems of management, environmental management, economy, medicine, law. This synthesis requires creation of unified methodological means for effective interaction of environmental management elements as a holistic system.

To solve the scientific and practical problem, we will consider and substantiate the methods of organizing environmental management for the implementation of environmental policy. According to "type of organization" criterion, we offer to divide them into direct and indirect in relation to solving environmental problems. Each of these approaches has certain positive features, so both might be implemented in practice and be united for implementation in one and the same region.

Direct approach to environmentalization is realized by activity of organizations that directly perform environmentalization functions of

conditions for society and human existence. Among such organizations, for example, forestry occupies an important place. To clarify the meaning, specify the mission and distinguish from existing ones, we offer to use "productive method of environmental management" concept to define the direct type of organization and implementation of environmental management.

Indirect approach to regional environmentalization lies in introduction and implementation of environmental management at enterprises, which themselves create environmental problems in the region where they are located. To specify this approach more exactly, we offer to use "regenerative method of environmental management" concept. Environmental management carries out its main mission the most completely by implementing regeneration method.

3. Results and discussion

Choosing structure and approaches to implement environmental management by this method is to address issue about responsibilities that should be performed by different participants in the process of environmental safety.

From the point of view of regional authorities, first of all, it is necessary to decide whether certain functions for implementing environmental management measures should be entrusted to specialized firms and, if so, what limits of implementation and responsibility they are going to have.

Study of theoretical means and current state of environmental responsibility system allows us to state that environmental goals for regions of Ukraine differ in experience they were set by. But they must be united into a common system for the country. Unifying motivational lever for solving this crucial economic and, at the same time, social problem should be a deep understanding that its solution should ensure healthy existence of humanity, achieve better standard of living, create new jobs, ensure healthy environment, reduce morbidity rate, and therefore, will achieve qualitatively new standard of living and establishment of socio-economic development of regions and economy. This multi-purpose direction is a goal determinant of economic activity environmentalization among other economic problems.

"Regional Report" of Department of Ecology and Natural Resources of Zaporizhia Regional State Administration states that "country should transit to innovation and technological development on the basis of certain priorities in order to form national innovation system and holistic structure of scientific and technical complex in the context of globalization. The main directions of innovative development should be:

- Ecological restructuring and ecological modernization of production, which involves changing industry structure by reducing demand for products of not environmentally friendly industries or by modernizing enterprises – consumers of such products.
- Developing and using environmental technologies, in particular, using technologies for waste disposal, resources recycling, reclamation of disturbed lands.
- Implementing environmental management systems at industrial enterprises, which is a modern mechanism for managing environmental activities, whose functioning contributes to improvement of enterprises environmental activity.
- Formulating ecological requirements for development of new ones, introduction into practice of strict ecological control of existing technologies in accordance with modern ecological norms and standards" (Department of Ecology and Natural Resources, Regional state administration of Zaporizhzha, Regional report on the state of the environment in Zaporizhia region in 2017, Department of Ecology And Natural Resources, 2018).

The main strategic directions for ecological development of other Ukrainian region, city of Mykolaiv, in 2021 are defined the following:

- Utilization of household and industrial waste.
- Development of public transport and cycling.
- Environmental education.
- Environmental management of the city.
- Rational land use, etc., (Mykolayiv City Council, Ecological policy of the city of Nikolaev, 2021).

One of the first direction positions concerns activity of industrial enterprises, which also substantiates decisive role of introduction and development of environmental management in these and other enterprises. Among indicators of sustainable environmental development are identified, in particular, "sustainability of environmental management" in the direction of increasing percentage of enterprises that carry out environmental management procedures.

Defined areas of innovative development of regional innovation systems and holistic structure of scientific and technical complex, able to function in the context of globalization, indicate necessity to create methodological basis for development of environmental management at industrial enterprises in Ukraine.

To justify decisive role of implementing environmental management at enterprises, it is necessary to understand its essence. Specialists' and scientists' views on importance of implementing environmental management at enterprises of different economic areas are slightly different, but they are united by common understanding of its mission. Environmental management is "part of entire management system, covering organizational structure, planning activities, allocation of responsibilities, practical work, procedures, processes and resources for development, implementation, achievement of goals, evaluation of environmental policy" (Varfolomeev, 2019).

According to scientists studying issues of environmental management of enterprises, environmental management is aimed at minimizing costs, increasing enterprise's competitiveness and gaining customers' creditworthiness in relations with all involved parts; contributes to effective functioning of entire enterprise's ecological and economic system.

A number of these and other advantages confirm relevance of implementing eco-management at chemical enterprises. It is difficult to disagree with this issue, considering that during the period when state authorities' and Ukrainians' efforts are aimed at creating preconditions for European integration, a country, which does not follow environmental rules of coexistence in the world, might not receive creditworthiness. Scientific developments of individual approaches to consolidation and development of environmental management at enterprises of different economic sectors and different economically based regions of the country are designed to become a guarantee of solving general economic problems.

Ukrainian scientists L. Zos-Kior, M., Shkurupiy, O., Gnatenko, I., Fedirets, O., Shulzhenko, I. & Rubezhanskaya, V. in their work "Modeling of the process of formation of the investment program of ecological management of an agrarian cluster" Ukraine has "... preconditions to form environmental management system, which is confirmed by existing legal framework for environmental protection. But now it is underdeveloped.

Scattering of regulations relating to environmental management in various laws and regulations of environmental legislation leads to its ineffectiveness. General state of environmental safety in Ukraine is quite complex. There is a wide variety of factors (both natural and anthropogenic) that ambiguate its condition in time-space aspect. This significantly affects environment and leads to deteriorating living conditions. Therefore, there is an urgent need for comprehensive study and solution of problems related to environmental safety (Zos-Kior et al, 2021a). Ensuring study comprehensiveness and solution of problems related to environmental safety is perhaps the most important scientific task in this direction.

It is worth noting that in the territory of "Zaporizhia oblast" there are such powerful industrial enterprises as private joint-stock companies "Zaporizhzhya Iron Ore Plant", "Zaporizhkoks", "Zaporizhskloflus", "Pology Oil Extraction Plant", public joint-stock companies "Zaporozhye" steel works", "Ukrgrafit", "Zaporizhzhia Ferroalloys Plant", Limited Liability Company "Zaporizhzhya Titanium and Magnesium Plant" and other powerful industrial enterprises. According to "Regional Report" of Department of Ecology and Natural Resources of Zaporizhia Regional State Administration at these enterprises: "...management decisions are made that will increase natural resources efficiency" (Department of Ecology and Natural Resources, Regional state administration of Zaporizhzha, Regional report on the state of the environment in Zaporizhia region in 2017, Department Of Ecology And Natural Resources, 2018: 48).

Among measures are indicated those that are the main peculiarities of environmental management (Fig. 1).

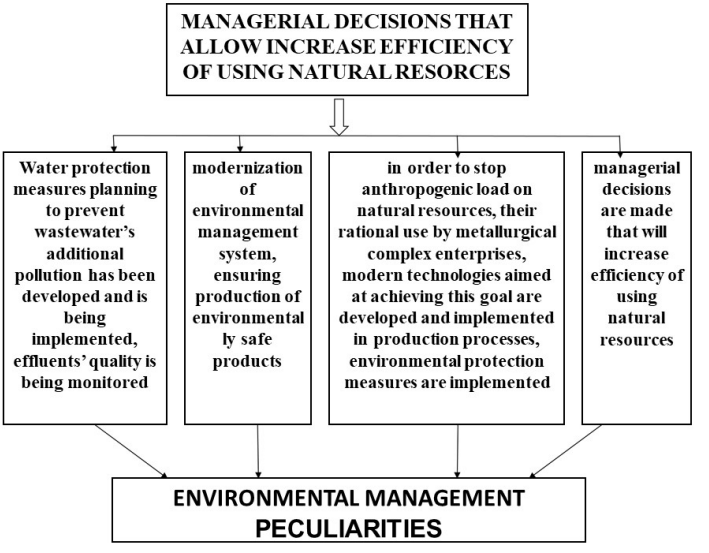

Figure 1. Environmental management peculiarities in Department of Ecology and Natural Resources of Zaporizhia Regional State Administration activities at regional enterprises for efficiency of using natural resources (summarized based on funds (Department of Ecology and Natural Resources, Regional state administration of Zaporizhzha, Regional report on the state of the environment in Zaporizhia region in 2017, Department of Ecology and Natural Resources, 2018).

Measures mentioned by Department indicate signs of existence of environmental management in view of purposefulness and complex nature of environmental measures, which are coordinated by regional authorities.

To these measures, in our opinion, and from experience of implementing environmental management, should be added the following:

- Using primary production waste in the same production process from which it is obtained.
- Using production waste in other production processes.

It is obviously considered quite possible at enterprise level under the conditions of purposeful ecological policy and introduction of ecological management which should be presented by effective organizational structure, rational planning of specified actions, allocation of responsibilities, practical work, procedures and resources for development, implementation, achievement of goals, evaluating achievements in implementation of environmental policy.

Studying processes of environmentalization of enteprise production processes, Chygryn, O. and Krasniak, V. (Chygryn et al, 2015) indicate the following functional areas of environmental management : development and implementation of technological processes and schemes that eliminate or minimize waste and emissions of harmful substances water cycles and drainage systems to save and protect against fresh water pollution as one of the most scarce resources. Design and implementation of systems for processing waste production and consumption, return to the main production cycle of secondary material resources.

Development and implementation of fundamentally new processes for obtaining traditional types of products and waste disposal. Creation of regional industrial complexes, whose enterprises relate to waste processing. Obviously, authors point out not only importance to ensure comprehensiveness in solving environmental problems, but also consolidation of efforts in this direction of regional enterprises. This is also confirmed by scientists Zos-Kior M., Shkurupiy O., Gnatenko I., Fedirets O., Shulzhenko I. And Rubezhanskaya V. indicating that: “Existence of contradictions between natural environment and economic activity, including functioning of agricultural clusters, has made essential production transferring to a qualitatively new level associated with adaptation to environmental conditions” (Zos-Kior *et al.*, 2021b: 571).

Authors consider it necessary to establish priority environmental aspects of enterprise, involve stakeholders and parties in planning enterprise’s environmental activities, development and coordination of environmental goals and objectives, define criteria and indicators for evaluating results of achieving environmental goals and objectives. Obviously, these measures

are related to the fact that they can be implemented by environmental management group.

However, as for any enterprise in the region, there are certain obstacles in achieving environmental goals. By analogy: to introduce, for example, marketing, the obstacle is so-called "inertia" of replacing marketing with sales, i.e., partial implementation of marketing functions. Thus, for environmental management system there is a problem of replacing environmental management system with implementation of certain environmental measures, which is neither systematic nor comprehensive.

This study has also identified such a problem as lack of funds for implementing environmental projects, environmental management measures for enterprises and for regional authorities. It is at least indicated by enterprises' representatives and cities and towns authorities, justifying the fact that it is not economically justified to attract additional staff for full functional implementation of environmental management.

But this might be considered as lack of competence using means to implement environmental projects and plans. Thus, according to Department of Ecology and Natural Resources of Zaporizhia Regional State Administration, only 54.03% of Regional Fund for Environmental Protection funds were used in 2017. And from local funds of environmental protection (village, town, city, rayon) were used only 12.39% of funds (Department of Ecology and Natural Resources, Regional state administration of Zaporizhzha, Regional report on the state of the environment in Zaporizhia region in 2017, Department Of Ecology And Natural Resources, 2018).

Thus, we can conclude that solving issue of financial support of environmental measures lacks competent management measures to involve them.

The second method of environmental management, productive, which is united with organization mission. This method is implemented at enterprises which form a basis for ecological balance reproduction. One of them – State Enterprise "Melitopol Forestry" of Zaporizhia Regional Department of Forestry and Hunting is located in the southern part of Zaporizhia oblast on the territory of 3 administrative rayons: Melitopol, Yakymiv and Pryazovsk. It is relatively middle-sized enterprise of steppe zone with consequently average volume of forestry – 3065.3 thousand UAH, industrial production – 565.5 thousand UAH, agriculture – 594.7 thousand UAH.

Enterprise's management uses scientifically substantiated methods to improve production, uses the latest technologies, forms of labour organization, which allows to increase production, produce new products, create new jobs. For such enterprises, environmental management is the basis of management process. Activity goal, organization mission, strategic

and tactical development plans are carried out in the direction of creating environmental safety of our country by means of implementing ecosystem management as a kind of environmental management.

According to forest ecosystem management researcher Gregory McGee's point of view, "forest ecologists have accumulated extensive experience in environmental impact of traditional forest management practices and realized importance to integrate knowledge about relationship between forest structure and biodiversity into modern management practices.

This contributed to development of forest ecosystem management, which was applied by various foresters on public and private land plots in the hope of improving ecological condition of forests in the world" (McGee, 2015). Ecosystem management unites mission of regional forest management and environmental safety management of the region, it reproduces what is lost in the result of production activities of industrial enterprises. It is implied to support ecosystem structure, models, and processes within natural boundaries. Protected areas, monitoring and adaptive management are additional elements.

For State Enterprise "Melitopol Forestry" together with mission of improving regional ecological condition, there is a production issue and environmental management is part of management system of its production activities. Like any manufacturing enterprise, it must coordinate its activities with general rules of environmental safety. Wood obtained from logging is mainly sent to processing plant or processed on site. In processing plant, wood is processed into lumber and other products made of wood. At logging sites, wood is processed into technological firewood, which is exported to Zaporizhzhya Aluminum Plant. The annual export is more than 1000 m^3 of wood. The plant also procures fuel chunks, which are delivered to consumers by enterprises' transport.

Essence of implementing productive method of environmental management of SE "Melitopol Forestry" lies in forestry, which acts as main independent production in enterprise's production structure. This activity's goal is forest management, protecting state ownership of forests, protecting forests from fires, protecting forests from diseases and pests. The main goal of forest management is organizing forests' usage, and thus implementing environmental management at regional level.

Organization of ecological management at State Enterprise "Melitopol Forestry" is aimed primarily at rational using natural resources of state forest fund. A great role in enterprise's activities used to belong to field afforestation, especially planting in ravines, gullies, and afforestation of unproductive lands unsuitable for agriculture, riverbanks and reservoirs. In addition, forests are of sanitary and aesthetic importance and are a rest area for this region residents. These functions are of great environmental and economic importance for regional environmental safety.

To implement innovative methodological approaches to ensure introduction and effective functioning of environmental management system in management system of modern enterprises to achieve environmental goals of any region of the country we should take into account opinion of such authors as Lipich L. and Hlubitska T. who consider that "in order to ensure environmental management effectiveness at enterprise it is necessary:

1) To develop for each waste type progressive ways of their usage, which would not only reduce waste amount at enterprise and in forest, but also bring environmental and economic benefits.

2) To pay attention at such ways of problem solving, which would reduce production activities impact on the environment.

3) To create innovative mechanism for implementing environmental management systems at Ukrainian enterprises. In the modern period of scientific and technological progress, along with increasing environmental demands for production technologies, environmental management becomes essential decisive economic factor, which defines further effective economy development. Thus, it is necessary to consider environmental demands to management of production, new product development, marketing operations, personnel, finance, that is necessity to form environmental management at enterprises" (Lipich et al, 2013).

To ensure effectiveness of environmental management as organizational and methodological measures for their consolidation, it is reasonable to recommend the following priorities defined by authors:

- Guaranteeing comprehensive company's staff awareness of environmental goals of the region and the country.
- Improving organizational structures of enterprise management by creating environmental management department.
- Providing enterprise management system with human, technical, information resources essential for environmental management functioning.
- Enterprise adaptation to ecological legal sector not only in Ukraine, but also in other countries.
- Permanent monitoring of environnemental activités of other entreprises.
- Using world experience of ecological management implementation to achieve regional ecological goals.

- Popularization and promotion of ecological values through dissemination of information on ecological legislation, experience of achieving ecological stability in countries, regions.

Recommended measures implementation should become indicators for environmental management introduction to achieve environmental goals of the region and the country.

Conclusions

Solving environmental problems is always a priority for the sustainable functioning of the regions of our country. It is substantiated that for the implementation of environmental policy it is functionally important to use productive and regenerative methods (definitions recommended in this paper) of environmental management.

The introduction of a regenerative method of environmental management to achieve the strategic goal of regional development policy requires the coordination of economic goals of enterprises that form the industrial base of the region and the goals of its environmental policy. The orientation of management at industrial enterprises to the implementation of innovative science-based measures that support environmental safety is a sign of the development of the concept of environmental management in all economic management activities.

The system of environmental management in Ukraine is defined and regulated by the Law of Ukraine “On Environmental Protection”, which was adopted at the beginning of the proclamation of independent Ukraine. However, the methodological foundations that develop the environmental principles of enterprises in the region are insufficiently developed. The initiative of scientists and work on the development of environmental management methodology are promising for laying the foundations for achieving environmental policy goals.

The work was carried out within the framework of the scientific topics «Formation of an effective system management of enterprises in the region» (state registration number : 0121U109915).

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State policy for the development of multimodal transportation by clean and energy efficient motor transport

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Abstract

The article substantiates the need for the Government of Ukraine to form a state policy for the development of multimodal transportation by clean and energy efficient vehicles, which will accelerate Ukraine's integration into the European and world space. The main strategic priorities for the development of multimodal transport, provided by the National Transport Strategy of Ukraine until 2030, are studied and its gaps are emphasized. The state policies of the developed countries concerning popularization of multimodal freight transportations by electric cars are considered and their comparative analysis is carried out. During the study, the following methods were used: comparative analysis, strategic analysis, - GAP-analysis, abstract-logical. It is substantiated that the formation of the balanced state policy for the development of clean and energy efficient multimodal transportation should be carried out with a presize definition of the stage and sequence of actions, ie in accordance with a guide for the state policy formation. The present paper is dedicated to the development of the guide. The author's guide is aimed at protecting the environment and ensuring the interests of present and future generations in a favorable environmentally friendly living conditions.

Keywords: public policies; multimodal transport; clean vehicles; energy efficiency; sustainable development.

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Política estatal para el desarrollo del transporte multimodal mediante transporte de motor limpio y eficiente energéticamente

Resumen

El artículo estudia la necesidad de que el Gobierno de Ucrania forme una política para el desarrollo del transporte multimodal mediante vehículos limpios y energéticamente eficientes, que acelerará la integración de Ucrania en el espacio europeo y mundial. Se estudian las principales prioridades estratégicas para el desarrollo del transporte multimodal, previstas por la Estrategia Nacional de Transporte de Ucrania hasta 2030 y se enfatizan sus lagunas. Se consideran las políticas estatales de los países desarrollados en cuanto a la popularización de los transportes multimodales de carga por carros eléctricos y se realiza un análisis comparativo. En el curso del estudio, se utilizaron los siguientes métodos: análisis comparativo, análisis estratégico, análisis GAP, abstracto-lógico. Se concluye que la formación de la política estatal equilibrada para el desarrollo de un transporte multimodal limpio y energéticamente eficiente debe realizarse con una definición preestablecida de la etapa y secuencia de acciones, es decir, de acuerdo con una guía para la formación de la política estatal. El presente trabajo está dedicado al desarrollo de la guía. Esta guia tiene como objetivo proteger el medio ambiente y velar por los intereses de las generaciones presentes y futuras en unas condiciones de vida favorables con el medio ambiente.

Palabras clave: políticas públicas; transporte multimodal; vehículos limpios; eficiencia energética; desarrollo sostenible.

Introduction

Ensuring Ukraine's integration into the European and world economic systems is to some extent marked by the development of multimodal transport, the pace of which is determined by Ukrainian carriers' compliance with the European Climate Law (European Commission, in: https://ec.europa.eu/clima/policies/eu-climate- action / law_en, 2021), the new transport strategy of the European Commission and the Action Plan for the transformation by 2050 of the European transport system to a smart, competitive, sustainable and safe transport system with a reduction of carbon emissions by cars up to 90% compared to 1990 levels., in order to accelerate the development of multimodal transport and, consequently, Ukraine's integration into the European and world space, the Government of Ukraine urgently needs to take a number of measures, including the

development of a state policy for the development of multimodal transport by clean and energy efficient vehicles. etc. terraces of present and future generations in a favorable environment. Instead, this is possible only with a clear understanding of the challenges facing Ukrainian carriers, their critical understanding and understanding of the possibilities of their prevention or minimization.

Consequently, there is an urgent need to develop a guide (guide - plan, guide) for the formation of state policy for the development of multimodal transportation by clean and energy efficient vehicles.

1. Objectives

The aim of the article is to develop a guide to the formation of state policy for the development of multimodal transportation on the principles of equality of generations to the well-being and safe environment, partnership of generations and their responsibility for the environment.

2. Materials and methods

In the course of the research the following methods were used: comparative analysis - in studying the state policies of developed countries with a guide to the formation of state policy for the development of multimodal transportation by clean and energy efficient vehicles; strategic analysis - in assessing the realism of the nationally determined contribution in terms of transport; GAP-analysis - in finding ways to achieve the ambitious goals for the development of multimodal transportation by electric vehicles; abstract-logical - in generalizing the results of the study and formulating conclusions.

3. Results and discussion

1. Modern processes of globalization transform the market of transport and logistics services and encourage its players to develop new forms and types of transport, in particular, multimodal transport. Therefore, in order to accelerate their development and ensure full and effective use of the country's transit potential by the National Transport Strategy of Ukraine until 2030, approved by the order of the Cabinet of Ministers of 30.05.2018 for № 430-r (Verkhovna Rada: 30-05-2018, 2018) (hereinafter - the National Transport Strategy) identified the following strategic priorities for the development of multimodal transport, in particular:

- Improvement of the regulatory framework for the development of multimodal transportation and transport logistics.
- Creation of a network of «dry ports», terminals, specialized transshipment complexes, etc.
- Ensuring unified technological compatibility in the main areas of transportation, etc. (Verkhovna Rada, 2018).

On the other hand, the issue of developing multimodal transport by clean and energy-efficient transport has practically gone unnoticed by government officials. Ukrainian road hauliers for the transportation of goods through the territory of the EU is becoming more difficult every day. Standards for CO2 emissions from cars are also rising, tax rates on gasoline and diesel are rising, and so on. It is worth remembering the conclusion of the Association Agreement between Ukraine and the European Union, under which Ukraine has committed itself to adapt regulations to EU law, in particular, in terms of «greening» of motor vehicles (Chernyshova *et al.,* 2020).

Understanding the omissions in the National Transport Strategy, to remedy the situation by the Law of Ukraine «On Basic Principles (Strategy) of State Environmental Policy of Ukraine until 2030» of 28.02.2019 for №2697-VIII (Verkhovna Rada: 28-02-2019) in the context of «landscaping» of vehicles provides:

- Reduction in 2030 of emissions of pollutants into the atmosphere from mobile sources, compared to the base 2015 by 30%.
- Increase in the share of electric vehicles in the total number of newly purchased vehicles in 2030 to 10% (Verkhovna Rada, 2019).

However, to reduce by 30% emissions of pollutants into the atmosphere from mobile sources, it is necessary that the share of electric vehicles in the structure of vehicles was at least 20-25% (Chernyshova *et al.*, 2020). Therefore, in order to correctly determine the vectors of the state policy for the development of multimodal transport by clean road transport, we consider it necessary to first of all consider the European policy of multimodal freight transport.

According to the new transport strategy of the European Commission and the Action Plan for the transformation by 2050 of the European transport system to a smart, competitive, sustainable and safe transport system, the European policy of multimodal freight transport is based on the principles of:

- Balancing the interests of stakeholders.
- Commodities.

- Seamless door-to-door service.
- «Green» cars.
- «Green» transport corridors.
- Locality of «dirty» restrictions.
- «Electronic freight».
- «Electronic transport document».
- «Intelligence of transport systems» etc. (Melnyk, 2020).

In particular, the principle of balancing the interests of stakeholders outlines the interests of present and future generations in a favorable environment. The modality of European policy is to ensure the efficiency of freight through the compatibility of different modes of transport (rail, water, air, road) and the efficiency of transport infrastructure, which combine to create seamless transport corridors with door-to-door service.

The principle of «green cars» (promotion of electric vehicles and scaling of freight with reduced impact of vehicles on the human and natural environment), as well as the principle of «green corridors» (i.e. the creation of integrated routes by combining vehicles with low-carbon two-way transport in seamless service doors ", using, where appropriate, specialized terminals) indicate the intentions of EU countries to make freight more sustainable and environmentally friendly, safe and friendly to consumers and the environment.

Different levels of car congestion and pollution in some areas, encourages more and more EU cities to introduce local regulatory policies, ie to be guided by the principle of locality «dirty» restrictions, which provides or payment for infrastructure depending on direct or indirect environmental standards (eg toll roads) , or the arrangement of low emission zones or even a complete ban on the use of cars on diesel and / or gasoline fuel (Chernyshova *et al.,* 2020).

Digitalization of the same multimodal freight involves the use of:

- «Electronic freight», which allows you to track the cargo during its transportation by different modes of transport.
- «Single transport document», which prevents the emergence of regulatory, technical, organizational, financial and other barriers in the movement of goods.
- «Intelligent transport systems» (hereinafter - ITS), which provides the ability to obtain additional data on traffic and predict network efficiency (Melnyk, 2020).

- Thus, these principles clearly define the purpose of the new transport strategy of the EU - to support global trends in «greening» of freight, and above all, trucking. Currently, many countries around the world have formed state policies for the development of multimodal transportation by «green» cars, as evidenced by Table 1.
-

Table 1: Comparative analysis of state policies for the development of freight transportation by clean and energy efficient vehicles (International Energy Agency, IEA, 2021).

Country	The content of measures provided by public policy	Ambitious goals
EU	- Directive 2009/33 / EC of the European Parliament and of the Council of 23 April 2009 (European Parliament in: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32009L0033, 2009) was revised; - at the request of the participating countries (Austria, Belgium, Denmark, Greece, Ireland, Lithuania, Luxembourg, Malta and the Netherlands) set a date for the phasing out of the sale of new cars with gasoline and diesel engines in the EU; - a ban from 2030 on the registration of new cars with internal combustion engines	- reduction of CO2 emissions in the field of road freight transport by 20-10% by 2030 compared to the level of emissions in 2017.
Finland	state support and incentives for the production of NDV electric vehicles	production by 2030 of 4600 NDV electric cars
France	- ambitious plans for the production of electric trucks and ways to implement them have been identified	annual issue before: 2023 - 200 FCEV electric trucks; 2028 - 800-2000 FCEV electric trucks.
Germany	introduced: - from November 5, 2019 to December 31, 2025, the Umweltbonus support program - an environmental bonus for electric cars; - by the end of 2021, economic incentives to overcome the effects of COVID-19; - charging infrastructure program (EUR 300 million), etc.	ensuring the registration of 7-10 million electric vehicles by 2030 in order to reduce emissions from the transport sector by almost 42%
Canada	- agreed the Standard of CO2 emissions from transport with HBV2 USA	reduction of CO2 emissions in the field of freight transport by road by 2027 (depending on the category and weight of the car) by 5-25% compared to 2017.

China	introduced: - Fuel economy standard (GB 17691-2018. URL: https://www.transportpolicy.net/standard/china-light-duty-emissions/); - when buying electric cars of national and local incentives; - exemption of buyers of electric vehicles from paying consumer tax; - exemption of buyers of electric vehicles from 01.09.2014 to 31.12.2017 from the purchase tax; - reduced registration fee by 50%, etc.	reduction of fuel consumption by 14-16% compared to 2015.
South Korea	introduced: - measures to stimulate and simplify the system of taxation of electric car production	production by 2040 up to 30,000 electric trucks
Norway	introduction of measures to stimulate and simplify the system of taxation of electric car production: - zero VAT rate on electric cars; - exemption from purchase tax; - exemption from road insurance; - 50% of the toll; - - 50% of the parking fee	increase by 2030 the share of electric trucks (up to 50%) in the total volume of truck production
USA	introduced: - 10 million dollars. for research, development and demonstration of innovative technologies and designs; - $ 20 million to accelerate the introduction of affordable electric vehicles (plug-in electric vehicles - PEV)	creation by 2030 of a national network of 500 thousand chargers for electric vehicles
Japan	introduced: - Fuel economy standard: 6.52-7.63 km / l for heavy commercial vehicles (depending on the class and weight of the vehicle)	reduction of fuel consumption by 13.4-14.3% compared to 2015

Subject to the implementation by the EU countries of the multimodal transport policies listed in Table 1, Ukrainian carriers will be gradually displaced from the European market. Therefore, the Government of Ukraine should immediately decide on the state policy for the development of multimodal transportation by clean vehicles, its priority vectors and ways of implementation.

At present, the Ministry of Infrastructure of Ukraine, in close cooperation with other ministries, has taken the first steps towards the promotion of electric vehicles and whether they are effective and truly efficient remains an open question. So, let's take a brief look at some of them.

Thus, the Law of Ukraine №3476 «On Amendments to the Tax Code of Ukraine and Certain Legislative Acts of Ukraine on Stimulating the Development of the Electric Transport Sector in Ukraine» of 14.05.2020 under №3476 (Verkhovna Rada, 2020) (hereinafter - the Law of Ukraine №3476) and the Law of Ukraine "On Amendments to the Customs Code of

Ukraine to stimulate the development of the electric transport industry in Ukraine" dated 14.05.2020 by 773477 (Verkhovna Rada, 2020) (hereinafter - the Law of Ukraine №3477) provides for amendments to the Tax Code of Ukraine (Verkhovna Rada, 2010) and Of the Customs Code of Ukraine (Verkhovna Rada, 2012) to create favorable conditions for attracting investment in the production of electric vehicles, chargers, accessories products to them, as well as stimulating the demand for cars and trucks equipped exclusively with electric motors (Verkhovna Rada, 2020).

According to the mentioned legislative acts, a temporary exemption from VAT and income tax on transactions is provided, the list of which is given in Fig.1.

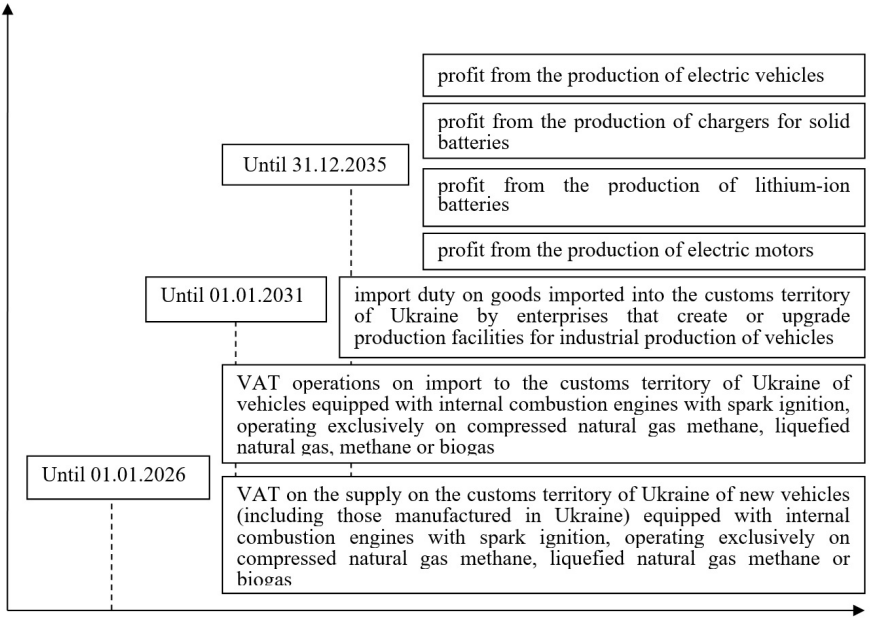

Fig.1. Measures to stimulate the promotion of clean and energy efficient transport in Ukraine, defined by the Law of Ukraine №3476 (Verkhovna Rada, 2020).

Instead, funds were released (as a result of tax exemption) according to paragraph 2 of Article 1 of the Law of Ukraine №3476 (Verkhovna Rada, 2020) is recognized as targeted funding and therefore they can be used by taxpayers (eligible for tax exemption) only for research and development

work in the field of electric transport, creation or re-equipment of material and technical base, increase volume of production and introduction of new technologies (Verkhovna Rada, 2020).

The Draft Law of Ukraine "On Amendments to the Law of Ukraine" On Road Transport "dated 05.04.2001 under №2344-III (Verkhovna Rada, 2001) to stimulate the use of vehicles equipped with electric motors «, is also designed to stimulate the promotion of vehicles equipped with electric motors.

The Concept of implementation of the state policy in the field of development of infrastructure of charging stations for electric vehicles (further - the Concept) is not deprived of measures of stimulation (BRDO, 2018), developed by the Directorate of State Policy in the Field of Digital Infrastructure for Transport and Postal Services of the Ministry of Infrastructure of Ukraine in close cooperation with the Better Regulation Delivery Office, Of course we already have some results. Thus, if according to the marketing agency IRS Group, in September 2020 in Ukraine there were 8529 points of charging stations, during the year their number increased by more than half (Eu4business, 2021). Instead, to achieve this goal - to increase the share of electric vehicles in the structure of vehicles, such a pace of development of charging stations is significantly insufficient.

The list of steps taken by the government to develop multimodal clean road transport can be continued, but each is fragmentary and focused only on stimulating the promotion of electric vehicles. With such a regulatory policy to achieve in the near future the goal of «greening» vehicles and defined in the Law of Ukraine №2697-VIII (Verkhovna Rada, 2019) reducing emissions of pollutants from mobile sources is quite difficult. Therefore, we have every reason to say that Ukraine still lacks a balanced state policy for the development of multimodal transportation by clean and energy efficient vehicles. We consider it expedient to start its formation with the development of a guide, ie a guide with a clear definition of the etapology and sequence of actions.

And its development should begin with the definition of strategic imperatives - mandatory framework goals of strategies, which are determined by the current state of the national transport system, current risks and challenges, needs and expectations of stakeholders. Therefore, the initial stage of developing a policy of multimodal freight transport by clean vehicles should be a stakeholder analysis, which will include collecting information on stakeholders, prioritizing them, studying the interests of «greening» transportation and the possibility of balancing them.

The next step should be to study the transit potential of the country and prospects for its development. It should be noted that according to the decision of the II Pan-European Conference of Ministers of Transport

of European countries, the network of international transport corridors (hereinafter - ITC) includes the following transport corridors passing through the territory of Ukraine (Table 2).

Table 2: International Road transport corridors passing through the territory of Ukraine (Ministry of Infrastructure of Ukraine, 2021)

Name of the international transport corridor	Itinerary	Countries-members	The length of the main course by road, km
Pan-European Transport Corridor №3 (Cretan №3)	Berlin (Dresden) - Wroclaw-Lviv-Kyiv)	Germany, Poland, Ukraine	611,7
Pan-European Transport Corridor №5 (Cretan №5)	Trieste-Ljubljana-Budapest-Bratislava-Uzhhorod-Lviv	Italy, Slovenia, Hungary, Slovakia, Ukraine	338,7
Pan-European Transport Corridor №9 (Cretan №9)	Helsinki – St. Petersburg – Vitebsk – Kyiv – Odessa – Plovdiv – Bucharest – Alexandropolis (with four branches)	Finland, Ukraine, Belarus, Moldova, Romania, Greece	996,1
Europe - Caucasus - Asia (TRACECA) Europe-Asia	Krakivets-Lviv-Rivne-Zhytomyr-Kyiv-Poltava-Kharkiv-Debaltsovo-Izvaryne	Europe, Georgia, Ukraine	712,3
Gdansk-Odessa (Baltic Sea-Black Sea)	Yahodyn-Kovel-Lutsk-Ternopil-Khmelnytskyi-Vinnytsia-Uman-Odessa / Ilchivsk	Poland, Ukraine	1208,4

Therefore, the Ministry of Infrastructure of Ukraine, realizing the transit potential of the country, sees an ambitious goal in the near future - its full implementation and thus transforming Ukraine into the main transit country of the Eurasian continent with the most comfortable conditions for transportation in Europe-Asia and reliable international partner. logistics services on the continent (Ministry of Infrastructure of Ukraine, 2018).

With information on the country's transit potential and opportunities to increase the volume of multimodal road transport, it is impossible to avoid the study of the car fleet. Therefore, the next stage in the formation of a policy for the development of multimodal transportation should be a study of vehicles by age and technical condition, the need for renewal, the type of fuel used, compliance with environmental norms and standards, and so on.

In particular, according to IAG AUTO Consulting, the car fleet of Ukraine, as of January 1, 2019, amounted to more than 10 million cars. At the same time, the average age of cars in Ukraine is about 21.5 years. For comparison, the average age of cars in the EU is 10.5 years, in Germany - 9.3, in Poland - 13.6 years. More than 50% of Ukraine's car fleet was produced before 1991, when Europe first introduced the EURO-0 environmental standards and from which the regulation of vehicle emissions began. In the future, almost every 5 years, the requirements for environmental standards of vehicles were strengthened until in 2014, the adoption of EURO-6 (Chernyshova *et al.,* 2020) (Table 3).

Table 3. EURO environmental standards for regulating the level of emissions of hazardous substances from cars (Chernyshova et al., 2020).

Introduction date			Gasoline		Diesel		Gasoline and diesel
Euro standard	New certifications	All new registrations	Nox (g/km)	Particle mass (g/km)	Nox (г/км)	Particle mass (g/km)	The number of fine particles per km
EURO-1	01.06.1992	31.12.1992	0,97 (1)	-	0,97(1)	0,14	-
EURO-2	01.01.1996	01.01.1997	0,5 (1)	-	0,9(1)	0,1	-
EURO-3	01.01.2000	01.01.2001	0,15	-	0,5	0,05	-
EURO-4	01.01.2005	01.01.2006	0,08	-	0,25	0,025	-
EURO-5	01.09.2009	01.01.2011	0,06	0,0045(2)	0,18	0,0045	6 x 1011 (3)
EURO-6	01.09.2014	01.09.2015	0,06	0,0045(2)	0,08	0,0045	6 x 1011 (4) (5)

(1) Expressed as HC + NOx

(2) Applies to gasoline direct injection engines

(3) Applies to diesel engines only

(4) Within 6 x 1011 in the case of direct injection petrol engines

(5) General limits 6 x 1011 for gasoline direct injection engines and diesel engines starting from September 2017 / September 2018 (Chernyshova *et al.*, 2020).

On the other hand, the share of cars that meet the EURO-5 and EURO-6 standards in Ukraine so far fluctuates only within 5-6% (Chernyshova *et al.*, 2020). Thus, while Europe is actively working to update the requirements and technological solutions for «greening» cars, Ukraine continues to be filled with old vehicles from EU countries. Regarding the distribution by type of fuel, it should be noted that among the 496.5 thousand cars registered in 2019, more than 50% are equipped with diesel engines (of which more than 88% - second-hand), gasoline cars accounted for 38% of registered and 8% - cars with gas cylinder equipment. Hybrid cars accounted for almost 2% of

those registered, and electric-powered cars accounted for barely 1% of the primary market (Chernyshova *et al.,* 2020).

The unregulated standardization of motor transport and the lack of a state policy for the development of freight transport by clean motor transport have caused Ukraine to constantly become a reserve for used environmentally friendly cars from abroad (Chernyshova *et al.,* 2020), which leads to environmental pollution due to significant gases. Therefore, the next stage in the development of state policy for the development of multimodal transport by clean vehicles should be to study the dynamics of greenhouse gas emissions by vehicles, study forecasts of their changes with increasing freight and conduct a comparative analysis with indicators of the Second National Contribution of Ukraine to the Paris Agreement. .

Thus, according to the Annual National Inventory Report for Submission under the United Nations Framework Convention on Climate Change and the Kyoto Protocol «UKRAINE'S GREENHOUSE GAS INVENTORY 1990-2019» (Ministry of Environmental Protection and Natural Resources of Ukraine, in: https: // unfccc .int / documents / 273676, 2020), prepared by the Ministry of Environmental Protection and Natural Resources of Ukraine, the volume of greenhouse gas emissions by vehicles during 1990-2020 is characterized by the data presented in table. 4.

Table 4: Volumes of greenhouse gas emissions by vehicles of Ukraine during 1990-2019, mln tons of CO2-eq. (Ministry of Environmental Protection and Natural Resources of Ukraine, 2020).

Emission category	CO2 emissions in Ukraine as a whole	Among them Transport					
		1.A.3 Transport total, including:	Including				
			1.A.3.a Civil Aviation	1.A.3.b Road Transport	1.A.3.c Railways	1.A.3.d Water-way Transport	1.A.3.e Other types of transport
1990	705.8	111.79	0.68	61.37	3.83	3.27	42.64
1995	389.9	49.22	0.11	20.73	1.32	0.43	26.63
2000	285.3	34.55	0.07	15.78	1.39	0.20	17.12
2005	313,1	39.19	0.20	22.16	0.88	0.20	15.75
2010	294.1	40.20	0.17	28.89	0.55	0.10	10.49
2011	308.0	40.29	0.18	28.38	0.53	0.08	11.12
2012	304.0	39.36	0,20	29.10	0.38	0.08	9.60
2013	297.2	39.51	0,17	28.86	0.44	0.05	10.00
2014	257.5	35.89	0,09	26.73	0.45	0.06	8.55
2015	223.8	31.10	0,08	22.81	0.45	0.08	7.68
2016	234.0	32.89	0,13	23.96	0.47	0.08	8.24
2017	223.1	34.94	0,17	24.68	0.56	0.08	9.45
2018	232.0	34.96	0,17	24,72	0,57	0.08	9,41
2019	222.6	37.73	0,18	26,65	0,59	0.08	10,23

Greenhouse gas emissions in 2019 amounted to 26.65 million tons of CO2-eq., Increasing compared to the base year 2015 (as defined by the Law of Ukraine №2697-VIII), by 16.8%, which we can clearly see in Fig. 2.

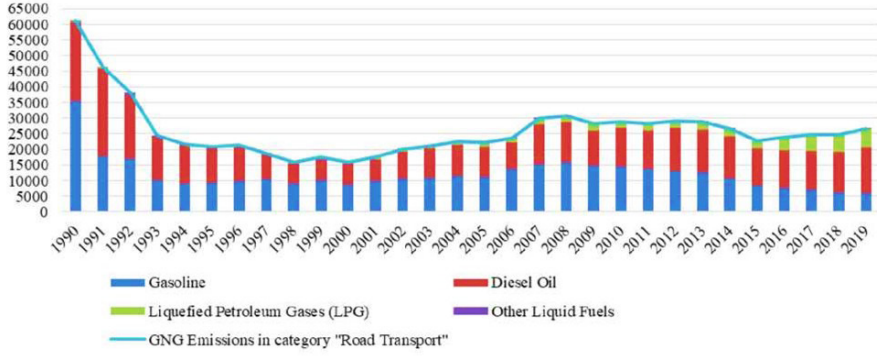

Fig. 2: GHG emissions in category 1.A.3.b "Road Transport" by fuels, for 1990-2019, kt of CO2-eq. (Ministry of Environmental Protection and Natural Resources of Ukraine, 2020)

We emphasize that according to the indicators of HBV2, Ukraine has committed to reduce emissions of pollutants into the atmosphere from mobile sources by 2030, compared to the base 2015 by 30%. Therefore, based on the expected reduction of greenhouse gas emissions by vehicles, a model for achieving this goal should be clearly defined: accelerated import of electric vehicles (import-dependent), establishment of own production of electric vehicles (own production) or mixed model, which provides .

Regarding the import-dependent model of implementation of the state policy of development of multimodal transport by clean motor transport, it should be noted that the Laws of Ukraine №3476 and №3477 provide for measures to stimulate demand for cars equipped exclusively with electric motors. However, we note that despite the steady increase in the number of electric cars in Ukraine, their share is growing steadily due to the growth of imports of used cars. Thus, in 2019, 7,542 units of vehicles operating exclusively on electric traction were registered in Ukraine.

However, among them continue to dominate electric cars (namely 93%) with mileage. At the same time, the average age of an electric second-hand car registered in Ukraine in 2019 is four years. Since most manufacturers guarantee battery life for up to 8 years, we have reason to believe that almost half of electric vehicles are already on the verge of battery use (Chernyshova *et al.,* 2020). The purchase of new electric cars is significantly complicated

by high prices and low solvency of Ukrainian buyers. Thus, we come to the conclusion that the choice of «import-dependent» model is impractical.

The choice of the «own production» model should be determined by the technological capability and readiness of the machine-building industry of Ukraine for the production of electric vehicles. Thus, when choosing the model of «own production» the next step in the formation of state policy for the development of multimodal transport by clean vehicles should be to study the state of the machine building industry and its readiness for technological change, determine the potential volume, type and sources of funding - whether national and / or international.

According to the latest research, the engineering industry in Ukraine is in decline, so its recovery and modernization requires some time, the loss of which Ukraine can not afford. Therefore, with the establishment of its own production of clean and energy efficient transport, measures should be taken simultaneously to update the fleet, namely the modernization of vehicles, replacement of the traction source and so on. An example of this is the programs of renewal (replacement) of obsolete vehicles, which have become widespread in world practice (Table 5).

Table 5: Programs for renewal (replacement) of obsolete vehicles that have become widespread in world practice (Chernyshova et al., 2020)

Program	Vehicles covered	Approximate size of the average subsidy	Additional programs that were used for amplification
USA: Carl Moyer Program (California)	various vehicle types, including non-road infrastructure	$28 000 on vehicle	mandatory modernization of vehicles with a high level of pollution
USA: National Clean Diesel Campaign (CARS)	trucks	$9 400 on vehicle	no
China: National Vehicle Recycling Program	cars and trucks	depends on the type of vehicle: from $ 980 to $ 2940	mandatory limit on the maximum age of the car
China: local vehicle recycling program	cars and trucks	depends on the type of vehicle: cars $ 410 - $ 2410; trucks: $ 1330 - $ 2100	mandatory limit on the maximum age of the car

Mexico: Federal Land Transport Modernization Program	trucks on federal highways	up to 15% of the cost of vehicle replacement	no
Chile: Exchange your truck	trucks	from $ 8,000 to $ 24,000 depending on the category of vehicle	partially: a decree on the implementation of a low-emission zone.

It should be noted that the procedure for updating vehicles should be both voluntary (for cars with low levels of environmental pollution) and compulsory (for cars with medium and high levels of environmental pollution). This, in turn, requires the full implementation in domestic practice of European standards for emissions of pollutants by cars and, accordingly, the organization of control over their emissions.

Of course, the model of «own production» is the most desirable, but its introduction in the disastrous state of the engineering industry requires significant investment. Investors today prefer ESG-investing. Instead, most machine-building enterprises of Ukraine do not meet the ESG criteria. Therefore, it is quite risky to expect the desired amount of investment. Lending by international development banks also requires compliance with certain requirements: the creation of an appropriate legal, institutional and favorable investment environment; state guarantee of repayment of international loans, etc. The measures taken by the Government of Ukraine to comply with these requirements are currently insufficient. Consequently, the introduction of the «own production» model is complicated by the lack of adequate financial support.

Therefore, the most optimistic for the introduction in Ukraine at the present stage we consider a «mixed» model, which provides for the establishment of its own production with the simultaneous import of electric vehicles. The implementation of such a policy will provide a comprehensive approach to accelerating the transition to mass use of clean and energy efficient vehicles (BRDO, 2018).

Instead, the validity of the choice of a model for the implementation of state policy for the development of multimodal transportation by clean vehicles requires the calculation of not only the amount of investment but also the effectiveness of public policy. Since Ukraine has implemented the Sustainable Development Goals, when assessing the effectiveness of the state policy for the development of multimodal transportation by clean vehicles, the expected environmental, social and economic effects should be assessed. It is also important to keep in mind the need to study possible risks and threats, as well as to identify ways to prevent or minimize them. Therefore, only if you are confident in achieving these effects and successful

implementation, the state policy for the development of multimodal transportation by clean vehicles should be implemented.

Thus, the author's guide to the formation of state policy for the development of multimodal transportation by clean vehicles acquires the following schematic image, presented in Fig. 3.

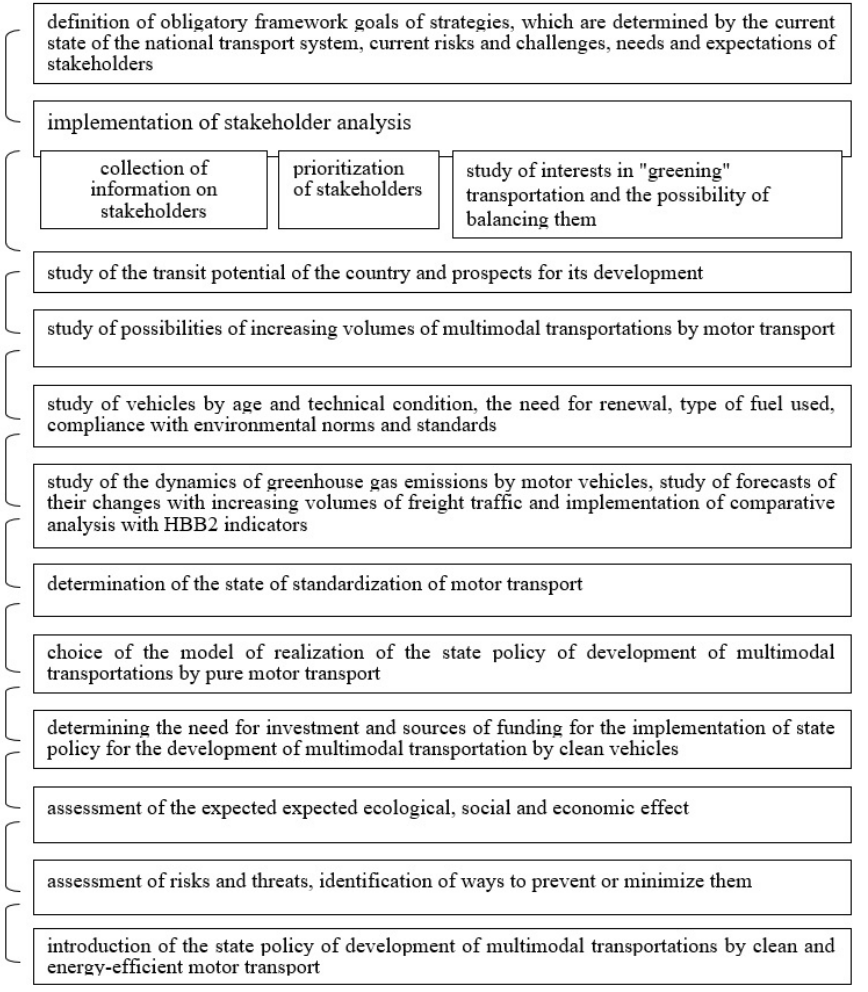

Fig. 3: Guide to the formation of state policy for the development of multimodal transportation by clean vehicles (author's development)

The state policy of developing multimodal transportation by clean and energy-efficient transport formed in this way will ensure environmental protection, fulfillment of Ukraine's commitments on HBV2 and balancing the interests of present and future generations in a favorable environment.

Conclusion

The above proves that with the intensification of Ukraine's integration into the European and world space, the development of multimodal transportation is gaining momentum. Instead, in order to maintain such trends in the future, many urgent issues need to be addressed, and first of all, the issue of forming a state policy for the development of multimodal transportation by clean and energy-efficient vehicles.

It is proved that the formation of a balanced state policy for the development of multimodal transportation by clean and energy efficient vehicles is possible only with a clear understanding of the challenges facing Ukrainian carriers, their critical understanding and understanding of the possibilities of their prevention or minimization. It is substantiated that the formation of state policy for the development of multimodal transportation by clean and energy efficient vehicles should be carried out with a clear definition of the stage and sequence of actions, ie in accordance with the guide for the formation of state policy. The author's guide on the formation of state policy for the development of multimodal transportation by clean and energy efficient vehicles, aimed at protecting the environment and ensuring the interests of present and future generations in a favorable environment.

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Estudio de política experimental de tecnologías preservadoras de salud: sobre el ejemplo de rehabilitación sistémica de jóvenes estudiantes

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Resumen

El objetivo de la investigación fue la aplicación de una política para la rehabilitación sistémica en un grupo de estudiantes (n=120) con trastorno de estrés postraumático (TEPT). Mediante estudio experimental, se utilizó un conjunto de herramientas de psicodiagnóstico confiable con formularios de prueba estándar y se realizó un análisis comparativo del grupo control con los grupos experimentales. Asimismo, se construyó un modelo estructural de clúster de los tipos de TEPT. Los resultados mostraron que los mecanismos de defensa psicológica como represión, regresión, sustitución, compensación y educación reactiva ($p \leq .05$) tienen mayor actividad entre los estudiantes con TEPT (n=112). Se identificaron también los siguientes tipos de trastornos: asimilativos (n=38; 33.93%), acomodativos (n=48; 42.86%) y disarmónicos (n=26; 23.21%) y además se halló que los encuestados con alto grado de manifestaciones de

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TEPT tienen una tensión interna excesiva, disforia, explosividad y bajo nivel de integración. Finalmente, se comprobó que la rehabilitación sistémica es un componente importante del trabajo con el contingente afectado y que el uso de los resultados experimentales de nuestro estudio operacionaliza el proceso educativo con jóvenes que experimentaron trastorno de estrés postraumático.

Palabras clave: política de salud mental; salud psicológica; ayuda psicológica; estrategia de afrontamiento; trastorno de estrés postraumático.

Experimental policy study of health-preserving technologies: on the example of systemic rehabilitation of young students

Abstract

The aim of the article was to conduct an experimental study and provide evidence for systemic rehabilitation of student youth with post-traumatic stress disorder (PTSD). Psychodiagnostic methods that are valid and reliable with standard test forms were used. It was stated that psychological protective mechanisms such as displacement, regression, substitution, compensation, and reactive formation were more active in psychological youth with PTSD (n=112). Assimilation (n=38; 33.93%), accommodation (n=48; 42.86%), and disharmonious (n=26; 23.21%) disorders were identified. A comparison of the control and experimental groups was carried out. A cluster structural model of respondents' PTSD types was constructed. Respondents with a high level of PTSD manifestations were shown to have excessive internal tension, dysphoria, explosiveness, and a low level of integration with the environment. It was established that the proposed systemic rehabilitation is an essential component of working with the affected contingent. It was generalized that the application of experimental results from the study of health technologies operationalizes the educational process's work with students who have experienced post-traumatic stress disorder.

Keywords: mental health policy; psychological health; psychological help; coping strategy; post-traumatic stress disorder.

Introducción

Consideramos las políticas de tecnologías preservadoras de salud de la juventud estudiantil como un sistema de eventos que integra todos los componentes del espacio educativo orientado a preservar la salud física, psicológica y mental del estudiante de todos los niveles de educación, en las etapas de su desarrollo educativo y profesional. Las tecnologías preservadoras de salud son un sistema integral que combina el diagnóstico, la prevención, la psicocorrección y la psicoterapia de los sujetos del proceso educativo.

En la actualidad, la situación sociopolítica en el mundo está acompañada de todo tipo de tensiones, desastres naturales, y provocados por el hombre, un número crítico de acciones ilegales, conflictos agudos permanentes, enfrentamientos militares e invasiones. Además, desde 2019, la pandemia de COVID-19. se ha sumado a todas estas tensiones. Las condiciones de cuarentena, según muchos científicos, cambiaron significativamente la realidad sociopsicológica, aumentaron la depresión y la ansiedad de la población (Tomaszek y Muchacka-Cymerman, 2020), cambiaron los parámetros de regulación espacial (Khmiliar *et al.*, 2020), transfirieron la comunicación a redes sociales (Hudimova *et al.*, 2021), influyeron en las orientaciones de valores y afectaron significativamente la salud humana (Hudimova, 2021; Vogt *et al.*, 2011).

Los jóvenes estudiantes se ven constantemente obligados a estar en condiciones estresantes y / o extremas. Después de todo, el crecimiento, la búsqueda de lo desconocido, el desarrollo, suelen ir acompañados de contradicciones y estrés. El problema científico esbozado por nosotros se refiere a la aparición de los trastornos de estrés postraumático (TEPT) y su superación, es relevante tanto desde el punto de vista psicológico como social.

Es de interés científico estudiar el TEPT en el contexto de la psicología clínica y del perfil médico y psicológico. El científico G. Fastovtsov (2010) investigó las características psicopatológicas clínicas del trastorno de estrés postraumático en los combatientes y describió los parámetros de contenido clave de los trastornos. Existen estudios que han establecido que la mayor parte de los trastornos en los pacientes están asociados a la epidemiología, etiología, dinámica, diagnóstico y terapia de combatientes que han sufrido diversos desastres y atentados terroristas. Cabe señalar que, en casi todos los estudios, la muestra estuvo compuesta principalmente por personas en edad madura (Kekelidze y Portnova, 2002).

Estudios en los que se realiza la clasificación y se propone la tipología clínica de los trastornos, se investigan los aspectos de la psicofarmacoterapia diferencial, se establecen las características clínicas y dinámicas del TEPT son relevantes (Bundalo, 2009). Se investigó la rigidez mental como factor

del desarrollo del síndrome postraumático en los empleados de las unidades operativas (Kosova, 2005). Se estudiaron las diferencias de género en los trastornos resultantes del acoso entre los niños de la escuela primaria (Volchegorskaya *et al.*, 2019).

Desde un punto de vista metodológico, es relevante el estudio de los estados mentales motivacionales de los militares que participan en las hostilidades (Popovych y Aleksieieva, 2019). Hay una serie de trabajos en los que la metodología de investigación de los estados mentales en la actividad educativa y profesional (Blynova *et al.*, 2020a; 2020b; 2020c; Popovych *et al.*, 2020b; 2020c; Tsiuniak *et al.*, 2020), deportiva, la de entrenamiento (Popovych *et al.*, 2020a) y otros tipos de actividad que a veces van acompañadas de condiciones extremas y cargas excesivas Popovych *et al.*, 2020d; 2021a; 2021b Shevchenko *et al.*, 2020).

Se analizaron los estudios que examinaron las experiencias de violencia emocional y física y los límites psicológicos de los estudiantes de psicología. Se encontró que la vivencia de la violencia determina el alto nivel, complejidad e inconsistencia de la estructura de los mecanismos de defensa psicológica del individuo, entre los cuales la búsqueda de apoyo social pierde su inmediatez y se asocia al enfrentamiento, en parte a la planificación de una fuga. (Suvorova *et al.*, 2017).

Observamos que no hay suficientes estudios dedicados al estudio de las características sociopsicológicas del desarrollo y superación del TEPT en los jóvenes, a pesar de que los científicos señalan las particularidades de la formación de manifestaciones del TEPT y su corrección en las personas de diferentes edades (Kekelidze, 2011). El análisis teórico de los trabajos científicos esbozados da fundamento para afirmar que el estudio de las tecnologías que preservan la salud de los jóvenes requiere un análisis científico profundo, generalización y sistematización con el fin de desarrollar medidas sistemáticas para su rehabilitación.

Hipótesis.

Asumimos que la rehabilitación sistémica comprobada y estudiada experimentalmente de estudiantes jóvenes con trastornos de estrés postraumático establecerá hechos científicamente importantes que se pueden utilizar al trabajar con víctimas; la aplicación de los resultados de la investigación experimental contribuirá a la operacionalización del proceso educativo de los estudiantes jóvenes con trastornos por estrés postraumático.

En lo concreto nuestro propósito fue investigar y fundamentar experimentalmente la rehabilitación sistémica de los estudiantes jóvenes con trastornos de estrés postraumático.

1. Método

Participantes. La muestra estuvo formada por 112 participantes con síntomas de TEPT: hombres (n=44; 39.29%) y mujeres (n=68; 60.71%). Todos los participantes fueron incluidos en el grupo experimental (GE). Otros participantes, un total de 104 personas: hombres (n=52; 50.00%) y mujeres (n=52; 50.00%) formaron el grupo control (GC). No presentaban estos síntomas. La edad de los participantes en el momento del estudio osciló entre 18 y 32 años. La edad media de la muestra fue de 19.2años (SD=1.36). La base de investigación estaba formada por: El Centro de Investigación de Psicotecnología Moderna (Severodonetsk, Ucrania), Department Differential and Special Psychology, OdessaI. I. Mechnikov National University (Odessa, Ukraine) y el centro de rehabilitación para participantes en operaciones antiterroristas (Lutsk, Ucrania). El número total de participantes en el estudio experimental fue de 216 personas: (n=96; 44.44%) y mujeres (n=120; 55.56%).

Organización del estudio. El estudio experimental se realizó desde enero de 2017 hasta principios de octubre de 2020. Los jóvenes estudiantes que formaron la muestra experimentaron trastornos de estrés postraumático como resultado de los eventos militares en el este de Ucrania. Los jóvenes se mudaron de los territorios ocupados temporalmente para estudiar y vivir en el territorio de Ucrania, donde no hay acción militar, es decir, a las ciudades de Severodonetsk, Odessa y Lutsk. La participación en el estudio de los encuestados fue voluntaria y confidencial. Los investigadores se adhirieron a las normas y recomendaciones éticas de las administraciones de educación superior.

Procedimiento e instrumentos. Se utilizaron herramientas de psicodiagnóstico válidas y fiables con formularios de prueba estándar. Se aplicó la "Escala de evaluación de impacto traumático" ("IES-R") (Weiss *et al.*, 1995). La Metodología fue adaptada N. Tarabrina (2009). Para establecer los parámetros de contenido psicológico de la hostilidad, se aplicó el método "Buss-Durkey Inventory" ("BDI") (Buss y Durkey, 1957). También se utilizaron métodos de observación y análisis intencionados de documentos. Se aplicó una entrevista estructurada ("SCID") con una escala para diagnosticar el trastorno por estrés postraumático ("CAPS") (Weathers, 1990). Las entrevistas estructuradas identificaron los siguientes parámetros de situaciones traumáticas y experiencias postraumáticas: Frecuencia; Intensidad; Ansiedad; Excitabilidad; Sociofobia, Comportamiento oposicional; Reflexión; Auto evaluación; Actividad social / pasividad; Características etnoculturales; Religiosidad. La combinación de métodos de entrevista y análisis de documentos permitió comparar la visión subjetiva de los sujetos y aquellos parámetros que se determinaron mediante el "IES-R" y el cuestionario de estrés traumático "QET". Se aplicaron las escalas: Intrusión; Evitación; Hiperactivación; Angustia (Distrés); Desadaptación.

Utilizando el análisis de grupos de k-medias basado en parámetros de frecuencia, la intensidad de situaciones traumáticas estresantes y el nivel de angustia, pudimos distinguir los niveles de TEPT: bajo, medio y alto.

Análisis estadístico. Se implementó el procesamiento matemático y estadístico de datos empíricos y la presentación gráfica de los resultados obtenidos con la ayuda de un paquete de programas estadísticos "SPSS" v. 23.0 y MS "Excel". Para establecer correlaciones entre parámetros psicológicos significativos de los trastornos por estrés postraumático, se utilizaron los coeficientes de correlación de Spearman (rs).

Se utilizó el coeficiente de Kolmogorov-Smirnov para distribuir a los encuestados en subgrupos de diferentes niveles de TEPT (Smirnov, 1983; Stephens, 1992). Este coeficiente mostró que la muestra pertenece a la distribución normal con un alto grado de probabilidad ($p \leq .01$). Se calcularon las características de frecuencia descriptiva, incluida la media aritmética (M) y la desviación estándar (SD).

2. Resultados y discusión

Presentamos los resultados de los indicadores estudiados en los GE y GC seleccionados según las escalas metodológicas "CAPS", "IES-R" y "QET" (n=216) (Tabl. 1).

Tabla 1. Resultados de los parámetros estudiados en los EG y CG según "CAPS", "IES-R" y "QET"

Parámetros	**Indicadores por grupos de sujetos de prueba**			
GC		**GE_1**	**GE_2**	**GE_3**
Frecuencia de situaciones traumáticas	2.29±.11	8.06±1.68	16.48±3.64*	23.11±3.58*
Intensidad de situaciones traumáticas	1.01±1.69	11.38±1.33	19.76±3.12*	27.312±1.19*
Nivel de angustia	.08±.02	.23±.03*	1.54±.03*	2.41±.07*
Intrusiones	1.08±.91	3.02±.89	19.08±1.06*	26.91±1.69*
Evitación	2.04±.51	6.51±.79*	2.09±.88	2.19±1.71
Hiperactivación	2.09±1.28	10.19±1.09*	18.32±.89*	23.66±1.69*
Depresión	.04±.03	1.21±.02*	1.95±.08*	2.49±.19*
Desadaptacion	.06±.03	.11±.03	1.91±.07*	2.69±.12*

Nota: * – $p<.05$; GE_1 – el primer grupo experimental; GE2 – el segundo grupo experimental; GE3 – el tercer grupo experimental.

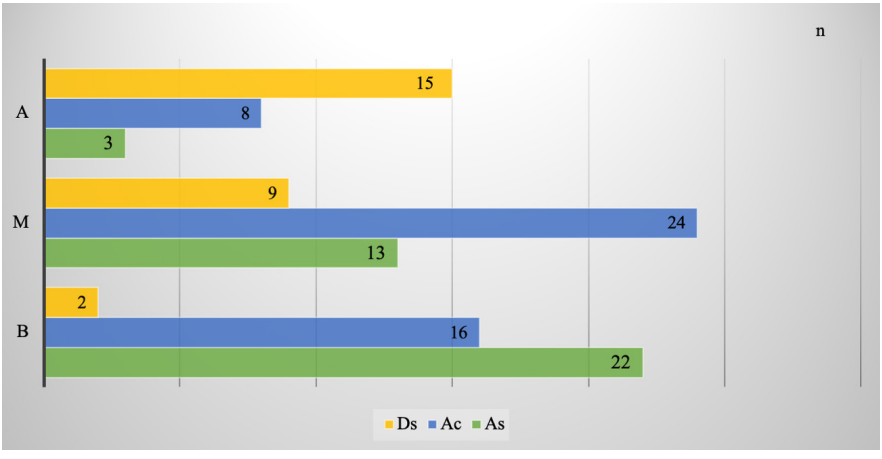
Tabla. 2 presenta la distribución cuantitativa de los encuestados del GE según el nivel de PTSD para ciertos tipos (n=112).

Tabla 2. Distribución de los GE estudiados según el nivel y tipo de TEPT

Nivel de TEPT	Tipos de trastorno de estrés postraumático					
	Asimilativo		Acomodativo		Disarmónico	
	n	%	n	n	%	n
Bajo	22	19.63	16	14.29	2	1.78
Medio	13	11.61	24	21.43	9	8.04
Alto	3	2.69	8	7.14	15	13.39
Total	38	33.93	48	42.86	26	23.21

En la segunda etapa del estudio empírico, se identificaron los factores sociopsicológicos del TEPT en estudiantes jóvenes y se propuso un modelo estructural de conglomerados de los tipos de manifestaciones del TEPT (Fig. 1) y su diferenciación. Los datos obtenidos se tuvieron en cuenta al construir un programa psicocorreccional.

Figura 1. Modelo estructural de clúster de tipos de encuestados con TEPT



Nota: n – número de encuestados; A – alto; M – medio; B – bajo; Ds – tipo discordante; Ac – tipo acomodativo; As – tipo asimilativo.

Se encontró que el tipo asimilativo de TEPT con una adecuada valoración de la situación traumática predominó en los estudiados del GE_1 estudiado (19.21%) y del GE_2 (12.91%). El tipo acomodativo con tendencias ansioso-depresivas se registró principalmente en los encuestados del GE_2 (21.52%) y del GE_1 (14.21%). El tipo disarmónico con trastornos del funcionamiento social y la tensión interna se registró en el 12.51% de las personas del GE_3. Los encuestados de este tipo se caracterizan por conflictos, explosividad, brutalidad, tendencias autoagresivas, uso de sustancias psicoactivas.

Se encontró una relación estadísticamente significativa entre la intensidad de las manifestaciones del TEPT y las características sociodemográficas de los sujetos. En general, se puede afirmar que en jóvenes de 18 a 24 años con bajo nivel educativo, la intensidad de tales manifestaciones es mayor ($p \leq .01$). Se estableció que la diferenciación del coeficiente de desintegración según el nivel de TEPT en los subgrupos seleccionados presenta diferencias estadísticamente significativas.

En la mayoría (64.9%) de los estudiados del GE_1, este coeficiente fue de 32.1±.4 puntos, lo que correspondió a los datos normativos e indicó la ausencia de conflictos internos estables ($\varphi=2.21$; $p \leq .01$). En el 72,89% de los encuestados del GE_2, el indicador promedio del coeficiente de desintegración fue de 45.92±0.3 puntos, lo que indicó el estado de frustración y la presencia de dificultades significativas para lograr objetos de valor ($\varphi=1.56$; $p \leq .05$). En el 71.19% de los individuos del GE_3, el coeficiente de desintegración fue de 64.19 ± .4 puntos, en su consecución hubo un conflicto interno estable, profundo, y en relación inversa – un estado de vacío interno y una disminución significativa en la productividad de la actividad ($\varphi=1.60$; $p \leq .05$).

Se revelaron relaciones significativas entre el conflicto interno y la auto-actitud de los encuestados del GE_1 (según los parámetros de autoaceptación, autoestima y auto-ubicación). Las correlaciones negativas entre estos indicadores significan que con el crecimiento del conflicto interno disminuye el interés en su mundo interior (en una escala de "autoestima" $r=-.186$; $p \leq .05$), lo que a su vez conduce a una disminución de la autoestima – confianza, auto-insatisfacción, deseo de cambiarse de acuerdo con los ideales sobre uno mismo (en la escala de "auto-compromiso" $r=-.142$; $p \leq .05$)) y disminución de la apertura, aumento de la criticidad en la autoconciencia (en la escala de "autoaceptación" $r = -.123$; $p \leq .05$).

Se determinó una correlación negativa entre el conflicto interno y la autoestima (la conexión con la escala de "autogobierno" es estadísticamente significativa) $r=-.163$; $p \leq .05$), lo que significa la disminución de la capacidad de influir en las circunstancias, la reducción de la autorregulación y de la actividad en el logro de sus metas.

Se observó un alto nivel de ansiedad personal en una parte significativa de los sujetos en todos los grupos (GE_1; GE_2; GE_3). Al mismo tiempo, la mayoría de los encuestados están dominados por la ansiedad personal que prevalece sobre la ansiedad situacional ($p \leq .05$). Se encontró que la gravedad de la ansiedad situacional en los encuestados probablemente crecía con el aumento de las manifestaciones de TEPT. Además, la proporción de personas con altos niveles de ansiedad personal también aumentó, del 52.7% con un nivel bajo de TEPT al 85.19% con un nivel alto.

Se encontró que los indicadores de depresión fueron mayores en GE_2 y GE_3 ($p \leq .05$). En los sujetos del GE_1 los indicadores de este parámetro estaban dentro de los límites normales ($\varphi=1.87$; $p \leq .03$), sin embargo, resultaron ser más altos que entre los encuestados del GC. A medida que aumentaba la manifestación del TEPT, aumentaban los indicadores de depresión y también crecía el número de personas con un nivel más alto de depresión.

El estudio de las características individuales y tipológicas de los sujetos mostró la presencia de acentuaciones del carácter de tales tipos: distímico, excitante, exaltado, ciclotímicos en los jóvenes de GE_3. Esto nos permite constatar la tendencia de los sujetos a acciones impulsivas, arriesgadas, conflictivas y asociales. Entre los estudiados del GE_1, predominaban las acentuaciones del carácter de tales tipos emotivo, ansioso y distímico ($\varphi=2.35$; $p \leq .01$). Los encuestados EG_2 y EG_3 identificaron acentuaciones en mosaico, es decir, combinaciones tan contradictorias de rasgos acentuadas como atascadas con características de excitación (34.92%), o una combinación de características demostrativas y atascadas de acentuación en 17.4% de las personas del GE_2, así como una combinación de rasgos demostrativos y excitatorios en el 11.09% de GE_3 ($\varphi=2.18$; $p \leq .01$).

Se demostró que los jóvenes con TEPT tienen una mayor actividad de mecanismos de defensa psicológica tales como la represión, la regresión, la sustitución, la compensación y la formación reactiva ($p \leq .05$). La diferencia determinada en los subgrupos de EG de acuerdo con los parámetros indicados atestigua la elección de los métodos ineficaces menos diferenciados de protección psicológica por parte de los sujetos. Tal elección de mecanismos de defensa por parte de los encuestados del EG_1 enfatizó el deseo de deshacerse de la situación de ansiedad, de desviar la atención de los impulsos y conflictos afectivos percibidos ($\varphi=1.43$; $p \leq .05$).

En respuesta, se formaba baja o menos alta autoestima. Se afirmó que los recursos de afrontamiento personal de los jóvenes inciden en el proceso de su interacción social, en la adquisición y aplicación de habilidades adaptativas, determinan la elección consciente de estrategias para superar el estrés. Se encontró que el estado mental desadaptativo de los estudiados de EG_2 y EG_3 con TEPT activa los recursos de afrontamiento que no se forman o se agotan (se reducen bruscamente).

Esto conduce a un dominio pronunciado de las estrategias de afrontamiento desadaptativas (59.56%). Se constató que los encuestados de estos subgrupos se caracterizan más por opciones de estrategias de afrontamiento orientadas emocionalmente ("escape-evitación", "relajación emocional", "indiferencia"), que se consideran menos productivas en comparación con las estrategias de afrontamiento orientadas a problemas. El uso limitado de opciones cognitivas para las estrategias de afrontamiento también determinó la eficiencia insuficientemente alta de superar el TEPT en los jóvenes.

Se identificaron los niveles y tipología de las manifestaciones del TEPT en los jóvenes, los criterios generales para determinar cuáles son la frecuencia e intensidad de las situaciones traumáticas, el nivel de angustia, intrusión, hiperactivación, depresión y predictores de mala adaptación sociopsicológica, cuya dinámica depende del funcionamiento social.

Se encontró que los sujetos con un nivel bajo de TEPT se caracterizan por malestar emocional, insatisfacción con sus relaciones con los demás, con su estatus social, con el nivel de autorrealización y aquí prevalece el tipo asimilativo del TEPT. Los encuestados con TEPT moderado se caracterizan por tener tendencias ansiedad-depresivas, uso de patrones de conducta desadaptativos y falta de autocontrol, pasividad social, baja autoaceptación con predominio de la mala adaptación sociopsicológica de orientación intrapsíquica y el tipo acomodativo del TEPT.

Los sujetos con altos niveles del TEPT se caracterizan por una tensión interna excesiva, disforia, explosividad, bajo nivel de integración con el entorno, falta de contactos personales profundos, comunicación limitada y tipo de TEPT disarmónico con predominio de mala adaptación de orientación interpsíquica. Los resultados obtenidos son una continuación de las búsquedas científicas para el estudio de los parámetros de contenido psicológico del TEPT de los combatientes en el este de Ucrania. Los tipos de TEPT identificados por nosotros: asimilativo, acomodativo y disarmónico están en sintonía con las manifestaciones activo-protector, pasivo-protector y desarmonioso del síndrome postraumático de los encuestados (Zavatskyi *et al.*, 2020).

Trabajo de rehabilitación sistémica. Al trabajo de rehabilitación asistieron 36 sujetos con diferentes niveles y tipos de TEPT – 12 personas (6 hombres y 6 mujeres) del GE_1, 12 encuestados (6 hombres y 6 mujeres) del GE_2 y 12 personas (6 hombres y 6 mujeres) del GE3. Los participantes fueron seleccionados de forma aleatoria y voluntaria. El resto de los participantes (76 sujetos, de los cuales 26 son hombres y 50 mujeres) del TEPT formaron el grupo control, con el que no se llevaron a cabo medidas de rehabilitación. Los sujetos del grupo experimental se dividieron en 3 subgrupos de 12 personas. Con cada subgrupo se realizaron sesiones de terapia dos veces por semana durante tres meses.

El trabajo de rehabilitación se basó en un enfoque polimodal, que combinó técnicas de psicoterapia racional, cognitiva, conductual, técnicas de relajación, terapia Gestalt, psicodrama, logoterapia, debriefing psicológico, teniendo en cuenta las principales estrategias de superación del TEPT en los jóvenes: distanciamiento personal; modelado; cambios de posición; disminución de la importancia subjetiva. Se logra un nuevo significado inventando una experiencia que corresponda a una mayor libertad, espontaneidad, la capacidad de confiar en uno mismo y en los demás, comprobar y poner a prueba el límite psicológico de uno, tomar una decisión y encontrar un recurso personal para superar el TEPT.

Al introducir medidas de rehabilitación, se tuvieron en cuenta las características sociopsicológicas de los jóvenes y la correspondencia de los métodos de asistencia elegidos con las principales tareas del programa propuesto: reducción de la tensión psicoemocional; procesamiento de impresiones, reacciones y sentimientos de los sujetos; formación en ellos de comprensión de la esencia de los hechos ocurridos y de la experiencia psicotraumática; reducción del sentimiento de singularidad y de patología de las propias reacciones al discutir sentimientos e intercambiar experiencias; movilización de recursos internos, apoyo grupal, solidaridad y comprensión; reducción del estrés individual y grupal; preparación para experimentar aquellas manifestaciones y reacciones que puedan ocurrir en el futuro; desarrollo de la competencia comunicativa y social; aprendizaje de los métodos básicos de autorregulación psicológica.

Se estudió la posibilidad de superar el TEPT en los jóvenes en las etapas de prevención, intervención y postvención en las condiciones de las formas individuales y grupales de trabajo de rehabilitación, cuya diferencia se ve en el carácter organizativo, más que en el contenido semántico. Durante la organización del espacio de interacción de rehabilitación, se introdujeron una serie de requisitos que correspondían a las ideas modernas sobre las características organizativas e interactivas de dicha asistencia. Estos incluyeron la responsabilidad mutua del psicólogo y los participantes por el proceso y los resultados de las actividades conjuntas (implementadas mediante la discusión y conclusión de contratos organizativos y terapéuticos); implementación de la actitud fenomenológica "aquí y ahora" (Steiner, 1984), ausencia de la presión y coacción de los participantes – no directividad (Rogers, 1999). El hecho de tener en cuenta las características etnoculturales y religiosas de los jóvenes contribuyó a la eficacia de las medidas de rehabilitación, especialmente para lograr el objetivo de cambiar las creencias destructivas traumáticas.

El análisis de los resultados de la implementación del sistema de rehabilitación desarrollado mostró que debido a la disminución en el nivel de malestar interno ($t=-3.1$; $p\leq.05$) y autoculpa ($t=-2.89$; $p\leq.05$) el nivel de autoestima de los encuestados se volvió más adecuado ($t=-1.97$;

p≤.05). Se constató una disminución en el coeficiente de desintegración entre los valores principales y las posibilidades de alcanzarlos (p≤.01) entre representantes de GE_1 y GE_2.

El nivel de diferencia entre "valor" y "disponibilidad" en la esfera de valor motivacional de las personas GE_3 no cambió, pero el nivel de malestar interno disminuyó (t=-4.11; p≤.05). Los encuestados del grupo experimental mostraron un aumento en el interés por su mundo interior (en la escala de "autoestima" t=2.39; p≤.05), un aumento en la autoconfianza y la autosatisfacción (en la escala de "autocompromiso" t=2.44; p≤.05) y una disminución en la criticidad de la propia conciencia (en la escala de autopercepción t=4.33; p≤.05).

Se estableció un aumento en la capacidad de los encuestados del grupo experimental para influir en las circunstancias y mejorar la autorregulación (en la escala de "autogestión") t=3.67; p≤.05). Se confirmó una disminución de indicadores de competencia social comunicativa como el aislamiento (t=1.79; p≤.05), inestabilidad emocional (t=1.49; p≤.05); se aumentó la capacidad para obedecer las reglas establecidas (t=2.29; p≤.05).

El análisis comparativo de los niveles de ansiedad antes y después de la corrección reveló cambios significativos en la ansiedad alta (T=1645; p≤.01) en las personas del GE_1 y del GE_2 y la disminución del parámetro de agresividad (T=2345; p≤.01), lo que indica un mayor control de las tendencias agresivas y moderación en el comportamiento. En los encuestados del GE_3, la mejora no alcanzó el nivel de significación estadística, lo que puede indicar el predominio de tendencias agresivas en la conducta. Se indicó que en el grupo experimental aumentó la frecuencia de uso de la estrategia de afrontamiento para planificar la resolución de problemas (T=3476; p≤.05).

Es decir, los sujetos comenzaron a utilizar con mayor frecuencia el análisis dirigido de posibles comportamientos, teniendo en cuenta las circunstancias objetivas y la experiencia pasada. Los valores medios de la estrategia de afrontamiento del distanciamiento disminuyeron (T=1876; p≤.05). Se determinó que los sujetos de GE_1 y GE_2 tuvieron un aumento significativo en el indicador general de apoyo social y la red de apoyo social se expandió (T=2865; p≤.05): mejoraron las relaciones con el entorno inmediato, amplió el círculo de amigos. Sin embargo, en el GE_3 de los encuestados la red de apoyo social queda limitada; se observa una formación insuficiente de ideas adecuadas sobre los tipos de apoyo social y la posibilidad de recibirlo.

Los cambios positivos más pronunciados se registraron en jóvenes con niveles bajos y medios de TEPT adaptativo, en menor medida, en personas con niveles altos de tales trastornos y el predominio de la mala adaptación sociopsicológica de orientación interpsíquica de tipo disarmónico. En el grupo de control, no hubo diferencias estadísticamente significativas

en estos parámetros. Los resultados de la etapa formativa del estudio confirmaron la efectividad del programa psico-correccional desarrollado y la posibilidad de su implementación para superar el TEPT en los jóvenes de la sociedad moderna.

Conclusiones

1. La efectividad del sistema de rehabilitación aplicado se confirma por la dinámica positiva del nivel de integración entre la necesidad de alcanzar valores básicos de vida y la posibilidad de alcanzarlos en la realidad; reducción de indicadores de malestar interno, ansiedad situacional y personal, depresión, indicadores de agresión y hostilidad; aumento de la competencia comunicativa y social.
2. Los cambios positivos más pronunciados se registraron en jóvenes con un nivel bajo y medio de TEPT de tipo adaptativo, menos pronunciados en personas con un nivel alto de TEPT y un desajuste sociopsicológico predominante de la dirección interpsíquica desarmoniosa.
3. Se estableció una relación estadísticamente significativa entre la intensidad de las manifestaciones del TEPT y las características sociodemográficas de los sujetos. Se demostró que los jóvenes con TEPT tienen mayor actividad de mecanismos de defensa psicológica tales como la represión, la regresión, la sustitución, la compensación y la educación reactiva ($p \leq .05$).
4. Se encontró que los sujetos con niveles bajos de TEPT se caracterizan por malestar emocional, insatisfacción de las relaciones con los demás, con su estatus social, con el nivel de autorrealización y predominio del tipo asimilativo de TEPT.
5. Los encuestados con un nivel medio de TEPT se caracterizan por tendencias ansiosodepresivas, uso de patrones de conducta desadaptativos y falta de autocontrol, pasividad social, baja autoaceptación con predominio de mala adaptación sociopsicológica de orientación intrapsíquica y del tipo acomodativo de TEPT.
6. Los sujetos con altos niveles de TEPT se caracterizan por una tensión interna excesiva, disforia, explosividad, bajo nivel de integración con el entorno, falta de contactos personales profundos, comunicación limitada y por el tipo discordante de TEPT con predominio de mala adaptación de orientación interpsíquica.
7. Se comprobó que la rehabilitación sistémica investigada y propuesta a los estudiantes jóvenes con TEPT es un componente

importante en el trabajo con el contingente afectado. La aplicación de los resultados de la investigación experimental operacionaliza el proceso educativo con estudiantes jóvenes con trastornos de estrés postraumático.

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Legal procedure in roman law and its reflection in modern civil procedure

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Abstract

Tremendous efforts of legislators are directed towards the development of an ideal judicial system and procedure of administering justice. However, current trends of judiciary reformation are easier to comprehend and accept if we turn to the origins of legal protection of human rights which, undoubtedly, go back to the Roman law. Methodology: From this point we use comparing methods for analizing the legislative provisions; the structural method and historical method was used for the background of Legal procedure in roman law. Results and conclusions: In this article we will outline the main stages of formation of legal protection of human rights in Roman law and characterize types of these processes – namely *legis actiones, formulary procedure* and *cognitio*. By analyzing the original sources that have survived to our times, namely the Law of Twelve Tables, Gaius`s Institutions and Justinian`s Digestes, we will examine what peculiarities of consideration and resolution of cases each of these stages demonstrated; how the traditional views on the behavior of the parties and the court in the process were established; which main requirements were applied to justice in civil matters in Roman law. In the course of the work the following methods were used: essential, comparative, general historical.

Keywords: legis actiones, formulary procedure, cognitio.

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Procedimiento legal en derecho romano y su reflexión en el procedimiento civil moderno

Resumen

Los tremendos esfuerzos de los legisladores se dirigen hacia el desarrollo de un sistema judicial ideal y un procedimiento de administración de justicia. Sin embargo, las tendencias actuales de reforma judicial son más fáciles de comprender y aceptar si nos dirigimos a los orígenes de la protección jurídica de los derechos humanos que, sin duda, se remontan al derecho romano. Metodología: A partir de este punto utilizamos métodos comparativos para analizar las disposiciones legislativas; El método estructural y el método histórico se utilizaron para el trasfondo del procedimiento legal en derecho romano. Resultados y conclusiones: En este artículo describiremos las principales etapas de formación de la protección jurídica de los derechos humanos en el derecho romano y caracterizamos los tipos de estos procesos, a saber, legis actiones, formulario de procedimiento y cognitio. Analizando las fuentes originales que han sobrevivido hasta nuestros días, a saber, la Ley de las Doce Tablas, las Instituciones de Cayo y los Digestes de Justiniano, examinaremos qué peculiaridades de la consideración y resolución de casos demostró cada una de estas etapas; cómo se establecieron las opiniones tradicionales sobre el comportamiento de las partes y del tribunal en el proceso; qué requisitos principales se aplicaban a la justicia en materia civil en el derecho romano. En el curso del trabajo se utilizaron los siguientes métodos: esencial, comparativo, histórico general

Palabras clave: legis actiones, procedimiento de formulario, cognitio.

1. Legal Procedure in Roman private law

Roman law received its second name – “the law of action” because Roman lawyers acknowledged only those things that had an action for its provision as law. The Roman people, like many others, had experienced the era of private savage punishment of violators of law before the creation of a state court. Everyone who considered his right to be violated took the law into his own hands with those who inflicted an offense. The most common ways of protecting rights were self-defence and arbitrariness, which, in fact, were examples of blood revenge since the victim himself was the judge.

The transition from private punishment to state court trials was gradual. At first, the rules of use of violence against the offender were established; then the alternative in form of redemption for crime was suggested. It was foremost caused by the fact that state authorities began to pay significant attention to the internal state structure. Sorting out relations between private persons and their families became an undesirable phenomenon.

It is worth noting that Roman lawyers didn't have special science of civil process and didn't single it out as a separate branch of law. The word "processus" was never used by Romans in the sense which it has in the modern law. In the works of Gaius and Justinian, the teaching of civil law and legal proceedings is one entity. For example, in the Laws of Twelve Tables, the first tables are devoted to the issues of legal procedure, and the structure of the Gaius Institutions reflects the significance of legal proceedings and the protection of rights.

The judicial procedure of the protection of rights in Rome went through three stages in its development, reflecting the following forms:

1) *legis actiones*;
2) formulary procedure, which were together called the ordinary processes,
3) and cognitio or extraordinary.

The first process received its name from *legis actiones*, which translates from Latin as "lawsuits" and dates from the period preceding the publication of the Laws of Twelve Tables and until the middle of the 2nd century BC.

The formulary procedure received its name from the formula of the praetor or *per formulas* in Latin and for some time coexisted with *legis actiones*. It corresponds to the time of classical period of Roman law, since it was used from the middle of the 2nd century B.C. till the 3rd century BC.

Legis actiones and formulary procedure were carried out in two phases: the first phase, during which the action took place in the presence of the magistrate, and the second phase, which took place in the presence of a judge. This was the usual order of consideration of the case, therefore these processes are called *ordinary*.

The formulary procedure was used in jurisprudence until the time of Dominat, and it finally disappeared from the courts in 342, under the constitution of Constance and Clement.

In contrast to ordinary processes, the cognitio procedure (*extraordinaria cognition*) was carried out only in the presence of a magistrate, that is, a public official, so it was called *extraordinary*. It was in practice in Rome and Italy from the time of August and began to be actively developed under Andrian when the emperor delegated the consul or other magistrate the right to interfere in certain affairs that affected the interests of individuals.

All these litigations have become a reflection of the aspirations of society and the state policy of protecting rights. It is in them that the basic procedures and rules for the administration of justice have been formed, which are still considered traditional in the countries which were recipients of Roman law.

2. Ordinary Roman lawsuits: legis actionem and per formulas

The main source (although incomplete) of information about the ancient civil process in Rome is the Roman lawyer Gaius, who considers the issue in the fourth book of his work "Institutiones" – Institutions. Gaius reports that the oldest form of the civil process in Rome was the so-called *legis actiones*. (I. 4. 11)

Gaius ambiguously expresses what exactly "Lege agere" means: either it is to file a legal claim, which means "certis verbis agere", or to file a lawsuit with certain fixed and unchangeable words.

The filing of a claim is not permitted, unless otherwise provided by law or *nulla legis actio sine lege*. This is the most significant feature of the legislation process, which will later become the main reason for its replacement with a formulary showing its excessive formalization. According to J. Pokrovsky, "lege agree" in ancient times simply meant "to act, to exercise the right in a lawful way, in opposition to violence" [5]. Consequently, the process was called *legis actiones*.

To begin the process, the mandatory condition was the personal presence of both the plaintiff and the defendant. In this case, the question is how to force the defendant to appear in court, as his absence would prevent the process. A characteristic feature of Old Roman law is that the state power itself did not summon the defendant and did not force him to appear. It was the plaintiff who had to bring the defendant. To this end, the plaintiff was provided with a tool such as in jus vocation (summons to court). The first resolutions of the laws of the Twelve Tables were devoted to this matter.

Legis actiones procedure is based on strict formalism and complex rituals, with the use of certain gestures, words, and special verbal formulas.

The process consists of two stages: ***in jure*** and ***in judicio***.

The purpose of the *in jure* stage was to establish exclusively the legal side of the case, which is the existence of a claim and compliance with the procedure associated with it. This stage took place before the magistrate, which was endowed with the relevant jurisdiction (*juristio* – from the words *jus dicere* – "say the right", i.e. to apply the legal rules). First spoke the consul, then the praetor (*peregrinus* for disputes with foreigners and *urbanus* for disputes between the Romans), and *aedile* in the event of disputes related to the market. The parties had to appear in person, as the representation was not allowed, and nobody could act on behalf of another person (or lat. *Nemo alieno nomine agere potest*). This stage ended with the magistrate appointing a judge for its consideration, having established the conformity of the brought suit with its established form in the law, and the case went to the second stage.

5 Pokrovskyi I.A. History of Roman Law. – Moscow: Statut, 2004. – p. 101

The stage *in judicio* was devoted to solving another task, which is verification of the actual part of the case. This task was performed either by a permanent board or a specially created jury for the case, or a judge (individually), or an arbitrator selected by the parties. The process ended with making a decision (sententia), which concluded the dispute between the parties.

Gaius stated that there are *five basic forms of legis actio* or five types of lawsuits that are brought in accordance with the law (*lege autem agebatur modis quinquae*).

1. Legis actio per sacramentum.

In essence, it is a process in the form of a bet, when by expressing the claim, the plaintiff contributed a certain amount of money (*sacramentum*) and demanded that the defendant would spend the same amount. Since only one of the parties can be favoured in the dispute, its *sacramentum* is considered just, and the one given by the other party is unjust (*utrius sacramentum justum sit, utrius injustum*).

This means that legitimate doubts about the encroachment of one party smoothly transferred the process from material to personal – *legis actio sacramento in personam*, which, unfortunately, remained unknown to us. The winning party in the process was the one whose sacramentum was considered just, while sacramentum made by the other party was charged to the proceeds of the treasury. Various private disputes could be resolved in the form of legis actio, except those for which independent claims were foreseen (I. 4.13).

The general form acquired certain characteristics depending on whether it was about belonging to a particular thing (*actio in rem*) or about the liability of the defendant to the plaintiff (*actio in personam*).

1) A*ctio in rem* manifests in a dispute about the seizure of things by one person from another. Under the rules, the property on dispute was delivered to the magistracy. If the thing was something that was hard to deliver, then some part of it was necessary to be brought (for example, a sheep from the disputed flock). If the subject of the dispute was a piece of land, then some amount of its soil was brought, which performed exclusively ritual functions (I. 4.17).

This norm can be explained by the presence of several logical reasons. First, the court proceedings, without the certainty that the thing really exists, and one of the parties owns it, makes the court absurd, since the main purpose of the appeal was not the conduct of the court proceedings, but the establishment of fairness by a court decision, for example, the transfer of the thing to its owner. Secondly, this thing, available at the moment of the

beginning of the dispute, could disappear and thereby render the whole process pointless, so it was necessary to solve its fate at the time of the dispute. This norm can be considered a prototype of the modern institute for the provision of claims.

The plaintiff, holding in his hands a spear called vindicta, proclaimed a precisely defined formula: Hanc *ego rem ex jure Quiritium rneam esse ajo; sicut dixi ecce tibi vindictam imposui! – I claim that this thing belongs to me according to the right of quirts, in affirming this, I impose a vindict!* This moment of affirmation of the right to a thing is called lat. *vindicatio*, hence the legal ways to protect the right to claim are called *vindicatory*. In response, contrvindicatio took place – the implementation of similar actions and the declaration of the same words by the defendant. Then the praetor ordered both parties to leave the thing and each party introduced sacramentum at the request of the other, and the praetor transferred the thing to the temporal use of the plaintiff or defendant for the resolution of the dispute. Everything that happened was recorded and witnessed by the people present (*litis contestatio*). This concluded the stage in jure and the in judicio stage began. The parties, with the participation of the magistrate, chose a private judge who then resolved the dispute and made a decision without the participation of state authorities. For the conduct of the second stage there were no forms or rituals. Party statements and provision of evidence happened in a free form.

2) A*ctio in personam* is less known, because the full description of the ritual of this case was lost. It is likely that the plaintiff started with the statement "*Ajo te mihi centum dare oportere"*, which is, "I claim that you must pay me 100"; the defendant denied with "*nego me tibi centum dare oportere"* ("I deny that I owe you 100"). Then the process took place in the order indicated earlier.

2. Legis actio per manus injectionem.

This type of procedure was used to collect debts. In order to do this, the creditor delivered the debtor to the magistrate, declared his debt in verbal form and laid the hand (*manus*) on the debtor (hence the name of the form). The debtor himself could not dispute his debt. This could be done for him by another person, who would be called *vindex*, i.e. a person, who, in fact, vouched for the debtor and risked to pay the plaintiff double amount of money (in duplum) if the contestation failed to succeed. In the absence of a vindex the debtor was brought at the creditor`s disposal. The law of the Twelve Tables gave the debtor 30 days to pay the debt, the failure of which could lead to debtor`s dissection *(Table III of the Law of Twelve Tables).*

Discussions about the application of this law are still on-going but no one better than Shakespeare in The Venice Merchant succeeded to describe its essence.

Petelius law of 326 BC substantially limited the Law of Twelve Tables by abolishing the right of the creditor to sell and kill the debtor. At the time of Julius Caesar, legislation was reformed and, according to T. Mommsen "a large legal principle was proclaimed, claiming that freedom does not depend on property, but is the primordial right of a person, which can be taken by a state only from the criminal, but not from the debtor"[6].

3. Legis actio per pignoris capionem.

In this case, it is not about applying to the magistrate, but about the self-employed actions of the plaintiff (grabbing a certain thing of the debtor and keeping it to pay the debt). A person who had a claim to another person, in the case of non-payment, pronounced certain official words (which have not reached us), took the debtor's thing.

These actions were carried out without the participation of a public authority and, possibly, in the absence of the debtor himself. The latter circumstance essentially distinguishes the third form from the others. In any case, the seizure of things was accompanied by the proclaiming of verbal formulas, which testify to the legitimate grounds for seizure. The application of such actions was possible only with some religious or public demands, for example, when collecting animal fees sold for sacrifice or a soldier demanding from a treasurer to pay for military service.

4. Legis actio per judicis postulationem.

It should be noted that the corresponding place of Gaius's "Institutions" was lost. What is known about this form is only that during the in jure stage it was manifested in the request for appointment of a judge without sacramentum. It is believed that this form was used in cases where both parties were not sure of their righteousness and everyone was afraid of losing the sacramentum. The parties themselves had to first come to a certain agreement not to require each other to pay sacramentum. And this is possible only in conditions where the parties recognized the rights of each other, but without noticing their limits they apply to the court as an arbitrator to resolve the differences that arose between them. O. Joffe believes that the specified form of the process was used in the distribution of property and in other cases of the same type, for example, after the refusal of the defendant to pay the debt, the plaintiff stated: "If you refuse, then I ask you, praetor, that you give us a judge or an arbitrator".

According to M.H. Garcia Garrido, the emergence of this kind of claim has become progressive in the development of the Roman process[7]. This

6 *Mommsen* T. History of Rome / Vol. 1, second edition, stereotype. – Saint-Petersburg: "Nauka", 2005. – p. 176.

7 *Garsia Garrido M. H*. Roman Private Law: Cases, actions, institutions / Transl. from Spanish; editor L.L. Cofanov. – Moscow.: Statut, 2005. – p. 170.

claim established the legal right of the parties to request the appointment of a judge or arbitrator. For the first time, such a lawsuit was referred to as a means of collecting debt from the template, as well as for distribution of inheritance. Litsinius Law of 210 BC applied this particular suit for the division of a common thing.

5. Legis actio per condictionem.

The evidence on this form is such that it makes it possible to summarize only the general idea: the parties first appealed to the praetor about the appointment of a judge while his actual appointment took place after 30 days and the case moved from the stage in jure to the stage in judicio (I. 4. 18).

For what purpose this form was introduced and what specific needs it served remains unknown. There are no reports of either the old or the modern sources of anything definite about it. Even Gaius points out that it is unclear how to implement the legal process *legis actio per condictionem*:

As for claims on obligations, it was possible to use both *legis actio per sacramentum* and *legis actio per judicis postulationem*. Gaius reports that this form was introduced by two laws – lex Silia and lex Calpurnia (269 BC). *Legis actio per condictionem* is the latest form and belongs to the Republican period. The law of Sylia established such a form for collecting a certain amount of money on demand, while by the law of Kalpurnia it was done for a certain item (Gaius I. 4.19).

These five forms formed the oldest Roman court procedure – *legis actiones*. It was in this form that it functioned in the first half of the republican period and is described us to Gaius. The first three forms of the process are adversarial because they result in a litigation between the plaintiff and the defendant. The last two forms can be called "executive", since their purpose was to ensure the effectiveness of a court decision or the exercise of a recognized right.

Summarizing briefly, it should be noted that, first, the *legis actiones* procedure showed the desire and the need to establish common rules for resolving a dispute between individuals. Whether in the law or in the agreement recognized by both parties to the dispute, there were established successive rules on which the case was considered by the court.

Secondly, the first *legis actio* are prototypes of modern procedural actions, for which the form, the content and their temporal limits are important. Each action must be clearly defined by pre-approved rules and implemented at a definite stage. These are the first forms of the requirements that relate to the form and content of procedural documents, as well as the procedural deadlines defined by modern procedural law.

A characteristic feature of the *legis actiones* procedure is its division into two stages: in jure and in judicio. This is a reflection of the stages of modern proceedings in the case, each of which has its purpose and ensures the achievement of the result.

Proceedings in jure were carried out before the magistrate only in Rome at first, and then in prefectures, municipalities and colonies. It was held publicly on the square (comitium), before magistrate *(pro tribunali)*. The judiciary was implemented by consuls and later by newly created magistrates – praetors.

Thirdly, litigation has always been associated with costs and Sacramento can be considered the first cost of legal proceedings, which was paid as a court fee for appealing to the court and was lost by the party which lost the case. But the actual court fee for appealing to the court is a novel of a later formulary procedure.

From ancient times Roman law *limited individuals* who frivolously treated the lawsuits in two ways: a fine or a holy oath.

At the same time, it is in Roman private law where we can see the development and changes that took place with the judicial processes during the time of the existence of the Roman state, analyze how the legal process is connected and dependent on the state structure and form of government.

In the first half of the period of the republic the legis actiones system continued to operate, but with certain additions and changes. Significant changes occurred in the process of legis actio per manus injentionem. If, according to the general rule, the debtor could not defend himself, then during the period of the republic certain laws provided for the right of the debtor to protect himself independently in certain cases (*manum sibi depellere)*.

Despite some improvements, legis actiones more and more lacked the ability to meet the requirements of society and economic relations, which developed in the conqueror country quite quickly. The formalism of the procedure was kept and the slightest mistake in the formulation of the claim led to a loss. Therefore, appropriate litigation reform was necessary.

Most likely, the new form of the process, according to Y. Pokrovsky[8] and C. Sanfilippo[9] was borrowed from the process between the peregrinus, or from the process that was used in the provinces.

Consequently, since the times of Augustus, the *legis actiones* procedure remained in force only for inheritance cases, however, legis actio sacramenta, in jure cessio, manumissio, vindicta also remained in use.

8 Pokrovskyi I.A. History of Roman Law. – Moscow: Statut, 2004. – p. 175

9 Sanfilipo Chesare. Course of Roman Private Law: Textbook/ editor D.V. Dozhdev – Moscow.: Publishing house BEK, 2002. – p. 100

The formulary process put an end to rituals and the extreme formalism of the latter. The gestures and predefined words are replaced with the praetor formula from which this process takes its name. Just as the *legis actiones*, the formulary procedure consisted of two stages, but the stage in jure had its sole purpose of obtaining a praetor formula. M.H. Garcia Garrido notes that the typing of praetor written formulas led to the birth of a saying: "The way the formula is, such is the law"[10].

The duty to formulate the subject of the dispute was transferred from the parties to the praetor. In the formulary process, the parties could express a case in any words and in any form before the magistrate, and it was the praetor who provided the claims of the parties with an appropriate legal form. From the explanations of the parties he deduced the legal essence of the dispute and described the essence in a special note to the judge, who was appointed to consider a particular case. This note was a formula, and since the moment it was received, it was considered to be the case of *litis contestatio*, and thus excluded the possibility of applying to the praetor to protect the same right, for the same reasons, in accordance with the rule of *nie bis de eadem re sit action* (the impossibility to initiate the same case twice).

All formulas were divided into *civil* and *praetorial*. Civil formulas reflected legis action and praetorial ones applied to new relationships.

The formula consisted of four mandatory parts (along with the mandatory part of appointing of a judge (judicis nominatio), for example, "Octavius judex esto" - Let Octavius be the judge)):

1) a statement of the circumstances from which the claim arises (***demonstratio***), for example, an indication that the claim originated from a debt obligation;

2) the formulation of the claim itself (***intentio***), which was carried out in the conditional form ("if it is true that Mucius must pay 100 sestertions" – "si paret Mutio sestertium centum dare oportere"). Intentio could have been different in nature, whether it was a matter of substantive law or a commitment. Depending on the situation, claims were divided into personal and tangible;

3) an order for the award of a clearly defined part of the property (***adjudicatio***), applied only in cases of division of joint property and the separation of borders;

4) an order for the award (***condemnatio***), if the claim is confirmed, looked like a continuation of the phrase relating to the previous part of the formula, if what is mentioned is confirmed, "the judge awards,

10 *Garsia Garrido M. H.* Roman Private Law: Cases, actions, institutions / Transl. from Spanish; editor L.L. Cofanov. – Moscow.: Statut, 2005. – p. 185.

and if not, then he denies the claim" (*judex condemna, si non paret, absolve*). When the dispute arose about the division of property, the last part of the formula was called not condemnatio, but adjudicatio: let it be sued as much as should be sued, (quantum adjudicare oportet, adjudicato). The content of this part could be different: with the indication of the amount, without indicating the amount or with the indication of the amount but with setting a certain maximum.

It should be noted that the formulas did not always contain four parts. Obligatory were **judicis nominatio** and **intentio**, because without a plaintiff's claim there would be no lawsuit.

The formula could also contain two auxiliary parts. The first of them was called ***exceptio*** (objection) and applied in cases where the defendant did not deny the claim, but his objections prevented its implementation (for example, the seller demanded payment of the purchase price and the buyer, without denying the fact of the contract, referred to the fact that the seller himself has not yet executed the contract – exceptio non adimpleti contractu).

The second auxiliary part of the formula was called ***praescriptio***. A statement was introduced to restrict the plaintiff's right to the object of the dispute. For example, if a payment was to be made on a monthly basis, and the respondent had paid only one month, then the plaintiff may only claim unpaid payments.

Intentio (the subject of a claim) occupies a special place among the constituent parts of the praetorial formula. It is here that the praetor, along with the literal use of the old Quirith laws, applied to them a more modern interpretation or formulated new lawsuits. Over time, individual ways of protection, provided in the praetor formula to particular individuals in a particular case were subject to increasing typization with the assignment of their own names. Such, for example, claims for sold or purchased (actio venditi, actio empti), claims for recovery of the property by the owner (rei vindicatio) and others. The formula made in this way was an instruction for a judge who considered the case on the merits. It defined the limits of the trial.

The procedure of a formulary trial was as follows. When the parties appeared before the praetor, the proceedings began with the claimant filing a claim. The statement was addressed to both the praetor and the defendant. It was addressed to the praetor in order to ask him for the formula, and to the defendant to find out his position. If the defendant acknowledged the plaintiff's claim, the plaintiff received a claim of execution in the same way as if the process took place and the decision was made. But usually the defendant entered into a dispute, then a formula was made according to the procedure mentioned above.

In the formulary procedure, the notion of jurisdiction (or, in Latin, *ius dicere "to say what is right"*) appeared. After setting the formula the proceeding before the magister was finished, this point is called litis contestatio.

The proceedings in judicio took place in the following manner. On the day chosen by the parties by mutual consent (but not later than 18 months - lex Julia), they should have appeared before the appointed judge for the second stage of the proceedings. According to general rules, the courts were represented by private judges or *judices privati*. Usually, private individuals (one is most often), three or five were appointed to be judges. The judge was appointed by the praetor, but the consent of the parties played the main role in the selection of a judge. Only if reaching agreement was impossible, the praetor appointed a judge of his choice.

The transition from the *legis actiones* procedure to the formulary one marked the development of new so-called *praetorial methods of protecting* private property rights, which opposed Quirith law. The most important of these methods were:

1. *Praetorian stipulations* (stipulationes pretoriae), the meaning of which was as follows. If the Quirith law required extremely complex forms of contract, then in the case of a mere promise to take certain actions given by one person to another before the praetor, the latter acknowledged this informal promise to be legally binding and enforced its execution in a compulsory manner. Praetorian templates could be used as a means of resolving a dispute between the parties. So, "if the damage is caused by the amount of 100 sesterces and the injured person is ready to pay it," the parties could legally draw up their relationship, appearing before the praetor and saying one phrase: the victim says: centum dare spondes? (do you promise to give 100?); the offender answers: spondeo (I promise). From the moment of the announcement of the said phrases, the obligation was considered to have arisen and was received compulsory protection from the praetor.
2. *Introduction in possession* (missio in possessionem). It could be extended not only to individual things (in rem), but also to property in general (in bona). The need for such a method arose, for example, in cases where a person, who was not considered to be the heir according to Quirith law, acquired inheritance rights under praetorian law. In these cases the praetor introduced it into the possession of hereditary property, thereby minimizing the rights of the Quirith heirs;
3. *Restoration of the previous situation* (**restitutio in integrum**). The Quirith law's formalism was manifested not only in the strict observance of the established procedure, but also in the fact that

when it was observed, its legal consequences came irrespective of the real shortcomings of such a procedure. For example, if the seller rejected the property due to threat or violence from the buyer, then Quirith law did not take into account such circumstances. It adhered to the principle: coactus voluit tarnen voluit (wanted under coercion, but still wanted). In contrast to this the praetor in the presence of the injustice of the act, although formally and properly implemented, did not give it legal power and obliged to restore the situation that existed before the implementation of such an act (the parties returned the received property, the victim was compensated for damage, etc.);

4. *Interdict* (interdicta). Among the specific praetorial methods of protecting private property rights, interdicts had the most significant practical significance[11].

If a certain fact was not reflected in the Quirith law, but the praetor considered it worthy of legal recognition, such recognition was ensured through an interdict, which the praetor, at the request of the person concerned, obliged the judge to make the appropriate decision upon confirmation of the circumstances mentioned by that person. Due to the interdicts, such an important institution of Roman law as the protection of possession was modelled, as well as other legal provisions that appeared in the formulary procedure.

In brief summary, it is worth mentioning the following. First, the formulary procedure became more complex and perfect. The inalienable procedural documents of legal proceedings, the prototype of a statement of claim, in which the subject matter of the dispute and court decision were formulated, appeared.

Secondly, with the introduction of the formulary procedure, access to judicial protection was simplified and representatives of the parties appeared.

And lastly, the list of means of proof expanded, and its rules became more understandable. Competition was provided by the right of parties to prove their correctness, and the impartiality of the judge was provided by the right to assess evidence.

3. Cognitive (extraordinary) procedure

In the classical era, along with the usual process, which was divided into two stages, jus and judicium, there were occurrences where disputed cases

11 Ioffe O.S., Musin V.A. The Fundamentals of Roman Civil Law. –Leningrad: Publishing House of Leningrad University.–1975. – p. 24

were considered by the magistrate without transferring the case to a judge. Such a special, extraordinary procedure for dealing with cases was called *extra ordinem* and gradually became applicable in such categories of cases that were previously considered in the formulary process.

The grounds for applying in an extraordinary manner was the lack of protection in civil law and in the forms of ordinary litigation. In this case, the person could apply to the magistrate with a request to protect him by administrative means of power. If the magistrate considered the request worthy of attention, it itself solved the case, made a decision and executed it. This administrative review was called cognito or notion, and the process was called cognition extraordinarium.

During the republic period such a process was a rare event, its active development dates back to the era of the reign of Augustus and in the end of III century AD, with the transition to an absolute monarchy it completely superseded the formulary process.

The reason was quite simple: in the conditions of the empire there was no confidence in elected judges – private persons – and to give them power to resolve disputes meant to divide the absolute power. Therefore, these functions began to be performed by imperial officials, and the judiciary gradually but finally moved from the hands of praetors to praefectus urbi (head of city police).

Cases were also personally considered by the imperial governors of the provinces – praesides or rectores. Since 294, the Emperor Diocletian issued an order to the rulers of the provinces to solve the cases by themselves, which secured extraordinaria cognitio as the only form of litigation.

Thus, the extraordinary process is the process of consideration of the case by the administrative bodies and officials appointed for the position.

Such changes significantly influenced both the principles and the procedure for dealing with cases. First of all, significant changes took place in the general principles of the trial. If in the ordinary proceedings the consideration of the merits and the judge's decision were based on the consent of the parties, then the whole process was built on the authorities' power and the decision was built on the order of authorities[12].

The consideration of the case became public in nature and took place only in the presence of the parties and especially the venerable persons who had the right to be present at the consideration, which occurred indoors. If the plaintiff did not appear at the trial, the trial stopped. In the absence of the respondent, the case was considered in absentia. Almost everything that happened in the court was recorded in the judicial record.

12 Pokrovskyi I.A. History of Roman Law. – Moscow: Statut, 2004. – p. 248

Finally, the process was not free: the parties of the dispute were required to make certain court fees for office expenses.

The procedure for summons to court changed. It was now officially involved with the participation of a government official. The plaintiff's complaint was filed with the court's report and then officially reported to the defendant. This method of summons to court was called litis denuntiatio.

The lack of division of the process into two stages led to the disappearance of litis contestatio. But since the moment of the trial had material and procedural consequences, for the sake of these consequences, litis contestatio refered to the moment the parties established a dispute, that is, when the plaintiff declared the defendant his claim in court, and the defendant expressed his intention to challenge it. After this, the judge began the examination of the case on the merits, verification of evidence, etc.

Proofs in the process were: testimony of the parties, testimony of witnesses, evidence of a documentary nature, expert assessments, presumptions[13].

The acknowledgment of the parties was understood as the testimony given by the party overseen by the request of the other party. All that was said under oath was taken as truth.

Presumption as a means of proof was to relinquish the need to provide evidence in the event when facts were found from which the judge derided certain legal consequences: when the presumption could not be countered by any evidence; the presumption was admitted because the other party could not refute it with other evidence.

The role of witnesses was less significant. However, there were rules that determined the criteria for assessing witness testimony by judges. Witnesses were supposed to respond when the party requested it.

Proof of documentary character prevailed over testimony of witnesses. Government documents issued by officials were considered the most reliable type of evidence, since they were based on the authority of the state power. Documents drawn up by notaries were also considered to be reliable evidence if confirmed by the oath of notary. Documents of a private nature were of probative value only if they were confirmed by testimonies from at least three witnesses.

In this period the conclusions of experts-representatives of different professions (doctors, midwives, scribes) continued to be used.

13 *Garsia Garrido* M. *H.* Roman Private Law: Cases, actions, institutions / Transl. from Spanish; editor L.L. Cofanov. – Moscow.: Statut, 2005. p.213-214

When the case was exhausted, the judge made his decision, lat. decretum. Now the decision did not necessarily have to formulate satisfaction of the claim in cash. It may have contained an order for enforcement in natura, the execution of which the defendant had to ensure.

Unlike the trial of the classical period in the cognitive process, an appellation of a resolution passed to a higher instance was admitted. Thus, complaints could be filed on the decision praefectus urbi: complaints on the decision of the ruler of the province were to be filed to the head of the imperial guard (praefectus praetorio), and complaints on his decision were to be filed to the emperor.

The procedure for lodging an appeal was as follows: it was filed in the same court where the decision was made by oral application "I am appealing", or in writing, through the submission of the so-called appellate plaque, within 2-3 days (10 days - according to the Newlines of Justinian), starting from the day when the parties learned about the court decision[14].

The judgment, which was not challenged, was considered final after the expiration of the time limit for the appeal, and the process of its execution began. If the decision was appealed, then the execution was temporarily stopped[15].

In addition to appellation (appeal), there were other means to cancel a court decision. In the cognitive process, the use of the restitution procedure considerably expanded. In particular, the restitution was applied if the decision was rendered on false evidence or if the judge made a decision as a result of a mistake, knowingly or threatened.

The court decision was appealed to the authorities by the request of the plaintiff. In the case of the awarding of the defendant the return of a certain thing, it was forcibly removed (manu militari) if, within two months, the defendant did not reject it voluntarily. If a sum was awarded, the bailiffs seized the defendant's amount or a certain thing sold for satisfaction of the plaintiff's claim. The recovery of all debtor's property took place only when claims were filed by several creditors of the debtor, while the debtor did not transfer the property voluntarily to their satisfaction.

The execution of decisions was now only the final part of the proceedings. In order to violate enforcement proceedings it was not necessary to file a separate claim (as it was in the formulary process), but rather a simple request from the party concerned.

14 Some of the following modern features of the appeal procedure we may find here, *O Uhrynovska* 'Novelization of Civil Procedural Legislation of Ukraine in Cassation Review: Panacea or Illusion? (2020) 4(8) *Access to Justice in Eastern Europe 209-225.*

15 *Garsia Garrido* M. *H.* Roman Private Law: Cases, actions, institutions / Transl. from Spanish; editor L.L. Cofanov. – Moscow.: Statut, 2005. – p. 215

Another kind of litigation became a specific form of the cognitive process, which under Justinian was called the libellar process. This name was given by the much more active development of written acts, libelli, than it had been before.

The beginning of such a process was the libellus conventionis or the petition. Thus, the process began with the filing of a claim – libellus conventions, which had to be filed with copies.

Having checked the formal correctness of the request, the court itself sent it through its contributing defendant with a proposal to appear at the specified time before the court. The runner had to obtain the provision of a valid appearance (cautio judicio sisti) from the respondent. Otherwise, the defendant could be arrested. If the defendant had objections to the claim, they were also laid out in writing, libellus contradictionis. The case was being processed in the same manner as before. The decision was also given in writing and now had the old name sentential. If the defendant did not appear in court, the proceedings continued in the form of an out-of-court process. The out-of-court process had serious procedural consequences. In this case, the defendant was no longer entitled to appeal the decision. He could hardly win the process and obtain a justifiable decision, since he could not refute the evidence provided by the plaintiff.

The liberal cognitive process was different from the previous ones in the issue of evidence. The means of proving were the same as in the extraordinary, but now the judge had the right to independently investigate, examine and obtain various evidence for using them in the course of the proceedings[16]. This is evidenced by the development of an *inquisitorial model of legal proceedings*[17].

Also, the principle of limitation in assessing evidence was introduced: now the judge could not investigate the evidence at his own discretion but should have been guided by legislative acts.

These changes in the post-classical process were significant but they were unlikely to indicate the emergence of a new process. All characteristic features of the cognitive process were preserved.

Summarizing, it is worth mentioning the following. The transition to an extraordinary process of cognition indicates a significant impact of the state and state bodies on judicial activity.

16 See more about modern sources of a judge power in investigation of facts in Izarova Iryna, Szolc-Nartowski Bartosz, Kovtun Anastasiia Amicus Curiae: Origin, Worldwide Experience and Suggestions for East European Countries Hungarian Journal of Legal Studies Vol. 60, No 1, 2019, Pp. 18–39. 10.1556/2052.2019.60.1.3

17 Izarova Iryna, Flejszar Radoslaw *Summaries of the conference "Small claims procedure: the European and the Ukrainian experience"* in Access to Justice in Eastern Europe, 2018, Issue 1, Pp. 81-84.

First and foremost, the formation of a bureaucratic apparatus of officials that implemented judicial power led to the emergence of professional judges who were familiar with the proceedings, as well as the law applicable to the resolution of the dispute. On the other hand, the combination of the functions of the administrative executive power and the judiciary negatively affected the procedure for the administration of justice as it led to the disappearance of such elements as the publicity and veracity of the process and led to the secrecy of the consideration of the case.

The introduction of such new institutions as an appeal, which allowed to correct court errors, is also of significant importance.

Conclusions: On the impact of Roman law on the regionalization of the civil process in modern Europe

For centuries general principles and rules for the administration of justice were established in Roman private law. They relate not only to procedural law, but also to the legal status of judges and the judiciary in general. The relationship between the court system and the judicial process is evident precisely on the example of Roman litigation.

At the time of the occurrence of the first trials there was the formation of their main principles, general provisions, which play an important role today. These are the ideas of equality of everyone before the law and the court, openness and publicity of the administration of justice, adversarial, compulsory court decision, etc., which became traditional in the idea of the administration of justice in European civilization[18].

Among *the basic principles of the Roman lawsuits, which became the general foundations of the modern European civil process,* one should distinguish the following:

1. the main purpose of the trial is to resolve the dispute by establishing, by means of evidence, the circumstances of the case, determined by the requirements of the plaintiff and objections of the defendant;
2. the consideration of the case occurs through the implementation of certain and orderly procedural steps, which are carried out in stages, binding to all participants and the court;
3. publicity and openness, which were realized with the help of a single language of legal proceedings;

18 Izarova Iryna Strengthening Judicial cooperation in civil matters between the EU and neighboring countries: the example of Ukraine and the Baltic states Baltic Journal of Law &Politics, Volume 12, No 2, 2019, Pp. 115-133. 10.2478/bjlp-2019-0014

4. the claim is a means of initiating the process; accordingly, determinative for the civil process is the principle of discretion; the dynamics of the process in the future depends on the presence of the plaintiff;
5. the parties of the process are both parties: the plaintiff and the defendant, who in the adversarial process prove their rightness; in conjunction with the idea of equality of rights of the parties, which was reflected in the first table of the laws of the Twelve Tables; these principles became one of the most evolutionary achievements of Roman law;
6. the case ends with the adoption of a decision for the implementation of which there is a special procedure, since judicial proceedings are not aimed at persons who seek protection of their rights.

The regionalization of the civil process in modern Europe testifies the importance and necessity of addressing the general principles of legal proceedings. The idea of creating a unified European code of civil process [19] is updated with a more in-depth study of the foundations of Roman litigation. The idea of creating a unified European code of civil process is updated with a more in-depth study of the foundations of Roman litigation.

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Disease prevention for the social and economic well-being

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Abstract

The objective of the article was to analyze the socio-economic effectiveness of preventive measures of the main diseases of people of different age groups in the reality of Ukraine. The subject of the study is the characteristics of disease prevention for various age groups. The following research methods are used in the article: analysis and synthesis; systematization of theoretical and empirical research results; analogy and summary. As a result, the role of the prevention of major human diseases is clarified to ensure the socio-economic potential of countries, increase labour capital and productivity and, in addition, contribute to the expansion of gross domestic product. Prevention possibilities are characterized to reduce the burden of disease. At a practical level, comprehensive means of disease prevention are proposed for different age groups of the population. By way of reference, the conditions and possibilities of reducing the fatal outcomes of the main diseases inherent in the population of Ukraine, such as cancer and cardiovascular diseases, among others, are determined.

Keywords: public health policy; disease prevention; life expectancy; labour productivity; socioeconomic well-being.

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Prevención de enfermedades para el bienestar social y económico

Resumen

El objetivo del artículo fue analizar la eficacia socioeconómica de las medidas preventivas de las principales enfermedades de personas de diferentes grupos de edad en la realidad de Ucrania. El tema del estudio son las características de la prevención de enfermedades para varios grupos de edad. En el artículo se utilizan los siguientes métodos de investigación: análisis y síntesis; sistematización de resultados de investigaciones teóricas y empíricas; analogía y resumen. Como resultado se aclara el papel de la prevención de las principales enfermedades humanas para garantizar el potencial socioeconómico de los países, aumentar el capital laboral y la productividad y, además, contribuir a la expansión del producto interno bruto. Se caracterizan las posibilidades de prevención para reducir la carga de morbilidad. A nivel práctico, se proponen medios integrales de prevención de enfermedades para diferentes grupos de edad de la población. A modo de conclusión se determinan las condiciones y posibilidades de reducción de los desenlaces mortales de las principales enfermedades inherentes a la población de Ucrania, como el cáncer y las enfermedades cardiovasculares, entre otras.

Palabras clave: política de salud pública; prevención de enfermedades; esperanza de vida; productividad laboral; bienestar socioeconómico.

Introduction

Health is a crucial factor of well-being and a fundamental human right; its protection, in addition to its social significance, has an important economic effect. Over the last century, improving health has been a critical driver of global growth, by stimulating the growth of the labour force and productivity.

The improvements in hygiene, nutrition, and the invention of antibiotics and vaccines over the past century have led to tremendous progress in global health; scientific and technological progress and continuous innovation have significantly contributed to a significant improvement in the survival rate of people with non-infectious diseases, especially cancer and cardiovascular diseases. This allowed life to be extended almost 2.5 times between 1800 and 2017 – from just over 30 years to 73 (McKinsey Global Institute 2020), thus increasing labor potential.

As life expectancy increases, the working age of the population, its participation in social production also increases, which leads to higher economic efficiency of the countries. However, these conditions place new demands on the health care system to ensure high health status, as there is now a growing risk of premature death and the development of health problems that not only disrupt the normal functioning of people, but also prevent their full production potential. Given this, it is important to understand the importance of disease prevention in achieving the socio-economic well-being of the country.

1. Methodology

The realization of the purpose of the article involves the use of the following research methods:

Theoretical method is used to review the relevant literature in order to study scientific sources and develop conceptual foundations of the research.

- The method of systematization of theoretical and empirical results of the study allows to determine the features of disease prevention to support the socio-economic well-being of the population.
- The method of analogy is applied to determine the effectiveness of preventive measures to preserve the health of people of different ages.
- The method of summarization makes it possible to formulate the conclusions deriving from this study.
- To consider the effectiveness of prevention of key diseases and the possibility of reducing the consequences of diseases, logical method is used.

The data of official reports of the State Statistics Service of Ukraine is analyzed with the help of statistical method.

2. Literature Review

The relationship between health and socio-economic issues has been in the attention of scholars and officials since the second half of the 20th century, but in recent decades they have taken on special importance. The World Health Organization (WHO) stressed in 2009 on the need to assess health not only in terms of viability, but also in terms of social and economic opportunities. The WHO recommendations for identifying the economic consequences of diseases and injuries at both micro and macro levels,

as well as the losses incurred by individuals, households, firms, and the state as a whole, formed the basis for the further in-depth theoretical and empirical research. At the same time, the scientists have analyzed various aspects of health and their impact on economic potential.

The economic impact of infectious diseases has been determined by international organizations (World Bank (2017) and WHO (2009)), as well as by some scientists (Saker et al. 2004; Parpia et al. 2016; Alfaro-Murillo et al. 2016). Besides, many researchers (Egger 2009; Merkur, Sassi, and Mcdaid, 2015; Machalaba et al. 2017; Palamar & Gruzeva 2018) have studied certain aspects of health and socio-economic consequences of certain infectious and non-infectious diseases. The threat of psychological disorders and diseases for human life and the economy as a whole was raised in the works by (McDaid, Park, and Wahlbeck 2019). The researchers of the American Heart Association and American Stroke Association (2017), as well as foreign scientists (Barolia et al. 2019; Archer, and Blair, 2011; Volpe, Battistoni et al. 2020; Chatterjee & Cheng 2020) analyzed the cost of cardiovascular disease treatment and the possibilities of their prevention.

The empirical study by the Institute for Health Metrics and Evaluation (IHME) is important for the systematic analysis of the economic role of disease prevention. The IHME found that the global burden of disease (disability-adjusted life year) could be reduced by about 40% if standardized disease prevention measures and the most effective of the available tools were applied (Table 1). Thus, for middle-aged people, disease prevention can increase the number of healthy years by a decade (McKinsey Global Institute 2020).

Table 1. Opportunities to improve health status by preventing major diseases for different age groups

Period	Risk for health	Preventive measures	Potential for disease reduction, %
Pregnancy	Maternal and neonatal diseases	Safe delivery in hospital with obstetric support and appropriate care	74
	HIV/AIDS and sexually transmitted infections	Antiretroviral therapy	74
	Genetic and birth defects	Pre-conceptional prevention	41

0-14 years	Respiratory infections and tuberculosis	Integrated child immunization programme; Regular clinical examinations	81
	Meningitis and gepatitis	Vaccination, access to qualified treatment	24
	Intestinal infections	Healthy development and sanitation	24
14-21 years	Bad habits	Comprehensive Programme to Reduce Substance Abuse	29
	Mental ilness	Access to psychological assistance	18
	Injuries and interpersonal violence	Review, education, referral and treatment for adolescents and adults	28
21-60 years	Cancer	Hepatitis B and C vaccine, habit-free, annual screening, early detection and treatment of breast cancer	27-36
	Cardiovascular diseases	Comprehensive cardiovascular prophylaxis, including drug use, lifestyle and behavioural change, specialized cardio	31-39
	Musculoskeletal abnormalities	Weight control, physiotherapy, occupational health and safety, sport	34
	Mental illness	Psychotherapy	15
After 60 years	Cardiovascular diseases	Comprehensive cardiovascular prophylaxis and specialized cardiovascular care	40
	Cancer	Adoption of a healthy lifestyle	29
	Diabetes and kidney disease	Diabetes prevention programme, including awareness-raising, weight control, maintenance treatment	33

Developed by the Authors.

Thanks to preventive measures, a global improvement of $12 trillion, or just about 8% of world GDP can be achieved by 2040. This is a consequence of changes in the labour market due to increased employment (Low rate of early death from cardiovascular diseases, cancer, malaria and other causes), reduction of periods of temporary disability due to health condition and higher involvement of healthy people in work process, improving physical and cognitive health of employees. Besides, higher economic efficiency is achieved due to the fact that older people can work longer, which reduces the need to care for the elderly and sick, and ensuring the health of children and adolescents has a positive impact on human development (McKinsey Global Institute 2020, pp. 87 – 90). Investment in maintaining and improving health has a significant rate of return of 2-4 times depending on the level of economic development.

Therefore, given the significant socio-economic impact of health on the quality of life and welfare of countries in general, the aim of the article is to analyze socio-economic effectiveness of measures to prevent major diseases of people of different ages in Ukrain**e.**

3. Results and Discussion

The success of disease prevention depends on the effectiveness of preventive measures at all ages, starting with pregnancy planning. At this stage it is extremely important to go through the set of measures for preconception prevention - diagnosis and correction of the health of future parents. It should be started at least 3 months before the planned conception – that's how long it takes to undergo medical examinations and adjust your lifestyle and diet. If doctors find any diseases (such as TORCH infections) during the examinations, it will take some time to treat them. This approach to reproductive medicine will most likely count on a favorable pregnancy and the birth of a healthy baby.

Maintaining and improving children's health (0-14 years) is an important function of the State is a scientifically sound system of measures aimed at socio-legal (primary) and medical (secondary and tertiary) prevention of diseases in children age, which is implemented by public policy. The purpose of preventive pediatrics, including adolescence, is to organize and conduct an effective set of measures to preserve, improve and restore children's health, ensure normal growth and development of the child from the moment of family planning to the age of majority, providing medical care, social and mental well-being, social adaptation of the child, as well as the possibility of realizing personal potential according to age.

Prevention of diseases of people of working age is perhaps the most important task of the State, as the health of workers determines the quantity

and quality of labor potential of the country, which ensures the welfare, economic growth, defense, and independence of the State (Shevchuk et al. 2016, p. 5). The mortality of people of working age significantly reduces the average life expectancy because in Ukraine; in particular, the total mortality of the population is mainly (38%) 30 – 70 of age. One third of the population does not live to the end of their working life (60-65 years) (Saker et al. 2004). Thus, with the premature death of the population alone, the country loses about 4 million years of potential life and UAH 47.9 - 89.1 billion of the national product respectively, despite the fact that most losses are due to premature death of men. The diseases of the circulatory system, tumors, injuries, poisonings, and some other consequences of external causes are among the main causes of mortality among the working age population (Table 2).

Table 2. The causes of death in Ukraine, 2010-2019

Indicator	Рік										From 2019 to 2010, +/-
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	
Total death, including from:	698235	664588	663139	662368	632296	594796	583631	574123	587665	581114	-117121
- certain infectious and parasitic diseases	14642	14050	13922	12921	10974	9900	9326	8714	8964	8120	-6522
- neoplasm	88767	88957	92896	92337	83894	79530	78959	78324	78597	78223	-10544
- circulatory system diseases	465093	440346	436445	440369	425607	404551	392298	384810	392060	389348	-75745
- respiratory illnesses	19480	17871	17109	16540	14810	13951	13840	12166	13006	12504	-6976
- diseases of digestive system	26817	25230	27719	27953	25225	22818	22013	21999	24489	24144	-2673
- external causes	43955	42380	41713	40298	40135	34569	31746	31185	30905	30009	-13946

Developed by the Authors.

Therefore, we consider it important to prevent diseases at all stages of people's lives, which will contribute to the prevention, early detection, and timely treatment of diseases at the primary level of care, which will not only reduce the burden on the medical system but also the burden of disease.

To preserve health, standardized protocols of medical supervision are created, active prevention of diseases of all age groups is carried out (the main measures are given in Table 3), the diagnostic base is developed; there is also a constant clinical introduction of fundamentally new, effective methods of treatment, which, on the one hand, generally reduces the incidence of disease and full recovery from severe illness without disability on the other one.

Table 3. Main preventive measures for different age groups

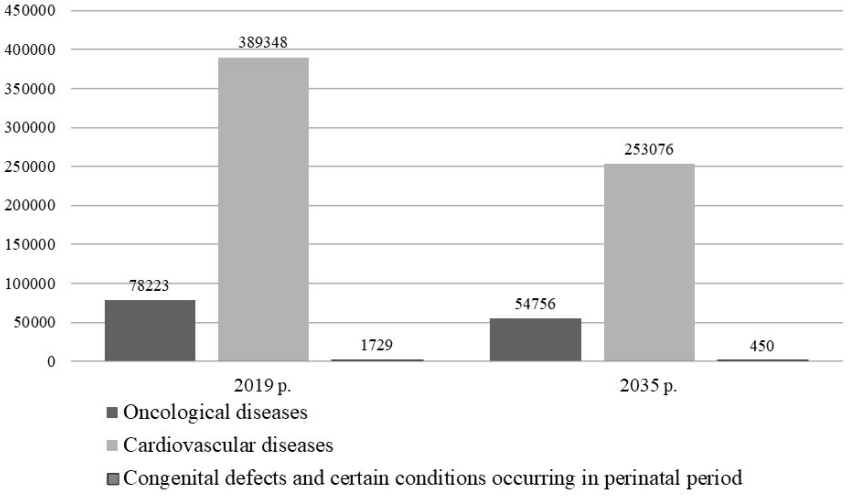
Age group	Main preventive measures
Planning and period of pregnancy	Pre-conception training includes: - examination of parents for reproductive ability; - general medical examination; - using folic acid; - HIV / AIDS screening and treatment (if necessary); - screening for sexually transmitted infections and their treatment; - therapy in case of detection of various diseases; - cessation of smoking and alcohol consumption; - elimination of obesity, etc. Prevention during pregnancy: - ultrasound screening; - hormonal background, blood, urine analysis, etc .; - detection and treatment of infectious diseases; - regular gynecological examination, etc.
0-14 years	Stages of preventive pediatrics: - antenatal and intranatal prophylaxis. - preventive work with children in the first year of life and children of early age. - preventive work with children in preschool, school, including adolescence. These measures include: - assessment of physical development. - assessment of psychomotor development.
14-21 years	Annual preventive examinations by a dentist, endocrinologist, pediatric surgeon, as well as a pediatric / adolescent gynecologist (according to the indications), child psychologist (according to the indications) include: - assessment of physical development. - assessment of body mass index. - assessment of neuropsychological development. - passing fluorography. - blood test (hemoglobin) and others according to the indications. - control of bad habits and diet, etc.

21-60 years	The main preventive measures include: 1) Oncological screening: For women: -breast examination (one clinical examination per year, one mammography every two years). - cytological diagnosis (PAP test) and human papillomavirus test (HPV test) – once every 5 years. - fibrocolonoscopy - once every 5 years. - Fibrogastroduodenoscopy - once a year and when planning a pregnancy. For men (after 40 years): - examination by urologist – once a year (PSA test if necessary); - fibrocolonoscopy – once every 5 years. - fibrogastroduodenoscopy – once a year. 2) Treatment of virus and infectious diseases. 3) Timely detection and treatment of chronic diseases. 4) Dental examination.
After 60 years	Preventive measures include: - oncological screening. - treatment of chronic diseases. - treatment of virus and infectious diseases. - sanatorium-resort and rehabilitation treatment. Additional medical examinations are prescribed on the recommendation of a family doctor.

Developed by the Authors

Based on research by McKinsey Global Institute, we are convinced that these preventive measures of the most common diseases in Ukraine over the next 15 years will help to reduce cancer fatalities by 30%, cardiovascular diseases – by 35%, birth defects and certain conditions that occur in the perinatal period – by 74% (Fig. 1).

Fig. 1. Potential for reducing mortality from major diseases in Ukraine by implementing preventive measures up to 2035



Developed by the Authors

The above preventive measures should be taken in the context of national environmental policy in order to continuously improve the environmental situation in the country for long-term synergies. One quarter of the population's health depends on the state of the environment, the harmonization of human life in the natural environment. High level of environmental pollution by harmful factors of physical, biological, chemical and other origin also causes the deterioration of the demographic situation and population health situation. Therefore, the improvement of air and drinking water quality in cities and villages, proper waste management, greening of the agro-industrial sector of the economy and other components of State environmental policy will help to reduce diseases and improve the socio-economic well-being of the population of Ukraine (Shevchuk et al., 2016).

Moreover, the improvement of health contributes to the growth of the country's economic potential due to reduced number of sick people and days of incapacity, thus, in the long run, GDP growth of the country can reach 8 per cent, that in the conditions of Ukraine could make an additional $12.3 billion until 2035-2040. In view of this, disease prevention under current conditions plays a key role in achieving the socio-economic well-being of the country along with other factors of growth of the national economy. This problem is especially acute in developing countries due to low access

of the population to health services (Giangaspero 2015). Therefore, the development of preventive medicine and primary care should play an important role in the process of transformation of the medical system. First of all, it is necessary to strengthen public administration of the country's medical system in order to:

1) create and implement targeted prevention programs with the support of the government, non-governmental organizations, private sector, and citizens of the country.
2) re-orient the health care system to identify risk groups, timely detect chronic diseases and conditions, as well as constant monitor their development.
3) introduce obligatory preventive examination of the working population with the involvement of the institution of family doctor, diagnostic centers, and social services in order to prevent the main classes of diseases.
4) improve the quality of medical services in hospitals of various forms of ownership on a market basis.
5) promote innovative and technological development of the medical sector by improving public administration, development of partnerships between the State, research organizations and medical institutions, the formation of appropriate financial and credit support and tax incentives (Paryzkyy 2018), etc.

The importance of maintaining high health status is at the forefront of research around the world (Egger 2009; Mcdaid, Sassi, and Merkur, 2015; Machalaba et al. 2017), but the considered theoretical and empirical achievements in this area relate to the analysis of the importance and forms of prevention of various diseases, which represent only a fraction of the threats to human beings, given their etiology and pathogenesis. Therefore, in contrast to the above issues, we proposed to consider a comprehensive approach to determining the importance of disease prevention for the socio-economic well-being of the population.

The problem of the impact of prevention of infectious and non-infectious diseases on the economy and general social welfare of people is thoroughly studied in the scientific literature (Parpia et al. 2016; Alfaro-Murillo et al. 2016; Palamar & Gruzeva 2018). However, different, and sometimes incomplete methodological approaches are used to determine the cost-effectiveness of disease prevention. The researchers do not pay attention to the detailed analysis of the system of preventive measures, through which it is possible to achieve high socio-economic effects in their scientific papers.

The difference between our study and the existing ones is the formation of a detailed set of preventive measures for different age groups, in

particular in the following categories: pregnancy planning and the period of pregnancy; 0-14 years; 14-21 years; 21-60 years; after 60 years. The choice of such a gradation of age periods is associated with different levels of population participation in the economic processes of the country. At the same time, special attention is paid to the prevention of diseases among the working and elderly population, on whose health the socio-economic well-being of the country depends to a greater extent; the list of mandatory examinations and their frequency are clearly defined.

The practical value of the study is the identification of the potential impact of preventive medicine. Considering the most common diseases in Ukraine (cardiovascular, cancer and congenital malformations and other pathologies that occur in the perinatal period), the potential to avoid the serious consequences of these diseases, which can reduce mortality by more than 30%, are identified.

The probable level of growth of the economic effect of improving public health due to better disease prevention is established, although the methodological support for such assessment is somewhat complicated due to the lack of international statistics on socio-demographic indicators and public health in Ukraine.

Conclusion

Preventive measures are an important priority of public administration, as they guarantee the right to healthy life, but also ensure economic growth by improving labor participation, increasing productivity, reducing the cost of therapy and care for the elderly. Global experience indicates that this achieves higher socio-economic prosperity, as it reduces the burden of disease and promotes greater domestic gross domestic product.

The main risks to the health, ability to work and life of the population in Ukraine, including diseases of the circulatory system, neoplasms, injuries, poisoning and some other external causes are identified. Therefore, it is especially important to maintain health at all stages of human life, which allows you to achieve long and prosperous life.

The authors' recommendations for the prevention of diseases of the population of different age groups, which can have a positive impact on Ukraine by reducing the effects of cardiovascular disease, cancer and birth defects and other pathologies that occur in the perinatal period, are formulated. Therefore, the systematization of the recommended preventive measures for all age groups proposed in the article has a significant practical significance and determines the empirical value of the work.

We see the prospects for further research in the detailed analysis of economic effect of maintaining public health, which lies in the development of the relevant methodological support.

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Standards of fair justice and their relationship to standards of proof in criminal proceedings

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Abstract

The purpose of the article is to define the concept, system and content of fair justice standards and outline their relationship to standards of evidence in criminal proceedings. The purpose of the study is to reveal the content of the right to a fair trial, distinguish fair justice standards and establish its relationship with standards of evidence in criminal proceedings. The research methodology consists of comparative law, structural system methods and formal legal methods. The study found that testing standards are covered by justice standards, expanding, specifying, and clarifying their content. The content of the fair justice standards "examination of the case by an independent and impartial tribunal established by law", "adversarial procedure", "equality of the parties", "frankness of the examination of evidence", "presumption of innocence" and reveals the "motivation of judicial decisions". It is concluded that each of these concepts is a heuristic contribution to test standards. As a result of the study, the author's definition of the concept of "fair justice standards" is formulated and the concept is based on its relationship with the standards of evidence in criminal proceedings.

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Estándares de justicia justa y su relación con los estándares de prueba en procesos penales

Resumen

El propósito del artículo es definir el concepto, sistema y contenido de los estándares de justicia justa y esbozar su relación con los estándares de prueba en los procesos penales. El objeto del estudio es revelar el contenido del derecho a un juicio justo, distinguir los estándares de justicia justa y establecer su relación con los estándares de prueba en los procesos penales. La metodología de investigación consiste en el derecho comparado, los métodos estructurales de sistema y los métodos legales formales. El estudio encontró que los estándares de prueba están cubiertos por los estándares de justicia, ampliando, especificando y aclarando su contenido. El contenido de las normas de justicia justa "examen del caso por un tribunal independiente e imparcial establecido por la ley", "procedimiento contradictorio", "igualdad de las partes", "franqueza del examen de las pruebas", "presunción de inocencia" y se revela la "motivación de las decisiones judiciales". Se concluye que cada uno de estos conceptos es un aporte heurístico para con estándares de prueba. Como resultado del estudio, se formula la definición del autor del concepto de "estándares de justicia justa" y se fundamenta el concepto en su relación con los estándares de prueba en los procesos penales.

Palabras clave: derecho a un juicio justo; estándares de justicia imparcial; estándares de prueba; procesos penales; Tribunal Europeo de Derechos Humanos.

Introduction

In the practice of international judicial institutions, the formation of standards of proof is largely the result of interpretation in specific cases of the provisions of international legal acts enshrining human rights and fundamental freedoms, which must be strictly observed by national authorities, including in criminal proceedings: the right to a fair trial. consideration, the right to liberty and security of person, the prohibition of torture, the right to respect for private and family life, housing and

the secrecy of correspondence, etc. At the same time, the vast majority of standards of proof are formed by international judicial institutions, in particular, the European Court of Human Rights (hereinafter – the ECHR), as a result of the interpretation of regulations that enshrine the content of the right to a fair trial.

The multifaceted nature of this right has led to the development by international judicial institutions of a wide range of rules related to its implementation and enforcement, which in the doctrine of criminal procedure are defined as standards of fair justice. Drawing attention to their important role in ensuring the proper and effective administration of justice, scholars note that fair justice standards are a necessary part of human rights ideology, which, in modern democratic society, cannot but define its basic moral, philosophical, social, political and legal values (Morshchakova, 2012). The vast majority of standards of evidence are based on standards of fair justice, which necessitates the study of their concept and system, as well as the disclosure of the content of standards of fair justice in their relationship with the standards of evidence.

1. Theoretical Framework or Literature Review

In the doctrine of the criminal process, the study of both standards of fair justice and standards of proof is given considerable attention by scholars. In particular, to disclose the concept and content of the right to a fair trial as a basis for distinguishing the system of standards of fair justice turn Alekseevskaya (2016), Berezhansky (2017), Boggs (1998), Boryslavska (2021), Brich (2017), Harris (1967), Glovyuk (2011), Langford (2009), Mahoney (2004), Morshchakova (2012), Perezhniak, Balobanova, Timofieieva, Tavlui, and Poliuk (2021), Pogoretsky & Hrytsenko (2012), Rabinovych & Ratushna (2014), Sizam (2012), Tkachuk (2016), Trubnikova (2016), and Fulei (2015). The works of Basay, Hryniuk & Kovalchuk (2019), Clermont and Sherwin (2002), Claude (2010), Kret (2020), Vapniarchuk, Trofymenko, Shylo, and Maryniv (2018), Tuzet (2021) are devoted to defining the concept, content, and system of standards of proof.

Despite the significant contribution of scholars to the development of fair justice and evidentiary standards, a significant number of its theoretical and practical aspects in the doctrine of criminal procedure have not been studied, disclosed insufficiently, or are characterized by debatable approaches to their disclosure. In particular, scholars ignore the relationship between fair justice standards and standards of proof as criminal procedural categories, the content of fair justice standards is not fully disclosed, and their system is ambiguously defined.

2. Methodology

The methodological basis of the article was different methods of scientific knowledge: the comparative-legal method, stem-structural method, formal-legal method. Thus, the comparative-legal method made it possible to compare the standards of fair justice and the standards of proof. The application of the system-structural method ensured the disclosure of the content of the right to a fair trial and the separation of standards of fair justice.

Further, using the formal-legal method, the authors managed to formulate new definitions, used in this article.

3. Results and Discussion

Standards of fair justice in relation to standards of proof in the context of ECHR practice

In the doctrine of criminal procedure, the standards of fair justice are defined in close connection with the elements of the right to a fair trial. On the one hand, the combination of these elements, according to scientists, is the standard of a fair trial (Alekseevskaya, 2016). On the other hand, the right to a fair trial is the basis for distinguishing standards of fair justice: it is the elements of the content of this right that constitute the standards of fair justice.

An analysis of the provisions of Article 6 of the Convention and a study of the case-law of the ECHR, based on it, among the standards of fair justice, which are inextricably linked with the standards of evidence, allows us to include the following:

Consideration of the case by an independent and impartial court established by law

As the analysis of Article 6 of the Convention shows, this standard of fair justice includes three aspects: the independence of the judiciary; his impartiality; the creation of a court in the manner prescribed by law (United Nations, 1950). Along with these aspects, Article 14 of the International Covenant contains a direct reference to the fourth aspect - the jurisdiction of the court. At the same time, the requirements for the jurisdiction, independence, and impartiality of the court in paragraph 19 of General Comment № 32 to Article 14 of the International Covenant are recognized as absolute rights that are not subject to any exceptions (Human Rights Committee, 2007).

Directly related to the standards of proof are two aspects of the fair justice standard under study: the impartiality of the court and its jurisdiction.

From the ECHR's point of view, impartiality means a lack of bias and commitment (paragraph 113 of the judgment of 11 July 2013 in Rudnichenko v. Ukraine) (ECHR, 2013). That is, in general, the impartiality of the court presupposes its lack of bias regarding the results of the criminal proceedings, which, in turn, leads to the formation of a corresponding belief in the minds of the participants in the criminal proceedings.

Characterizing the content of the impartiality of the court, the ECHR points to the existence of two approaches to its definition: subjective, which aims to establish the personal convictions of a particular judge in this case, and objective, which allows determining whether he has provided sufficient guarantees to rule out legitimate doubts in this regard (paragraph 41 of the judgment of 05.07.2007 in Sara Lind Eggertsdóttir v. Iceland) (ECHR, 2007). At the same time, the ECHR notes that there is no clear distinction between the two concepts, as the judge's conduct may not only raise objective doubts about the impartiality of the external observer (objective criterion) but also be related to his personal beliefs. (subjective criterion) (paragraph 119 of the judgment of 15 December 2005 in Kyprianou v. Cyprus) (ECHR, 2005).

The need to ensure the impartiality of the court has led to the development in the case-law of the ECHR of standards of evidence, taking into account the evidence to be formed by the court without a doubt in its impartiality concerning the results of criminal proceedings.

Disclosing the content of the right to a competent, independent, and impartial tribunal established by law, the Office for Democratic Institutions and Human Rights notes that "competence" usually presupposes compliance with the following three requirements: the competence of individual judges; jurisdiction of the court to make legally binding decisions and jurisdictional jurisdiction of the court. The last of these requirements are related to the standards of proof, according to which the evidence is to be formed by the court, taking into account the jurisdiction of the relevant criminal proceedings.

Adversarial proceedings

The provisions of Article 6 of the Convention do not specify the adversarial nature of the parties, although this standard of fair justice is widely used by the ECHR.

In the case-law of the ECHR, adversarial proceedings are defined as the principle of criminal proceedings, which means that in a criminal case, the prosecution and defense must be allowed to know the other party's

position and evidence and express their views on them (paragraph 103 of the judgment in case of Mukhutdinov v. Russia) (ECHR, 2010). At the same time, national courts have a corresponding obligation to ensure these rights of the parties to criminal proceedings.

An integral prerequisite for the exercise of the rights that constitute the content of adversarial proceedings is the acquaintance of one party to the criminal proceedings with the evidence obtained by the other party. First of all, it concerns the protection of the rights of the defense, in connection with which the ECHR draws attention to the need to comply with two guarantees:

1) submission of evidence in the presence of the accused (paragraph 162 of the judgment of 11.12.2008 in Mirilashvili v. Russia) (ECHR, 2008), who as a general rule should have the right to be present and directly participate in the court hearing to establish the merits of the criminal charge against him, which presupposes the very concept of adversarial proceedings and may also derive from the guarantees established by Article 6 §§ 3 (c), (d) and (e) of the Convention (paragraph 81 of the judgment of 1 March 2006 in Sejdovic v. Italy) (ECHR, 2006).

2) the disclosure to the defense of the evidence obtained by the prosecution (paragraph 36 of the judgment of 16 December 1992 in Edwards v. The United Kingdom) (ECHR, 1992) and, in the event of non-disclosure, the provision by the trial court of its compliance with Article 6 of the Convention, the balance of interests: the public interest, on the one hand, and the interests of the defense, on the other, and its establishment of the urgency that led to the non-disclosure (paragraphs 62, 63 and Davis v. the United Kingdom) (ECHR, 2000).

The need to guarantee the adversarial nature of the trial has led to the development in the practice of the ECHR of certain standards of evidence, according to which: 1) the parties to the criminal proceedings are provided with equal opportunities to review the evidence submitted by another party; 2) the parties to the criminal proceedings shall be provided with equal opportunities to express their position on the evidence submitted by the other party, including the implementation of their assessment.

Examining the case-law of the ECHR on fair justice standards, scholars note the relationship between the two: adversarial proceedings as a standard developed by the ECHR and ensuring the rights of the accused, necessary and sufficient for protection, as a standard enshrined in Article 6 § 3 of the Convention.

Thus, they point out that adversarial proceedings are seen by the ECHR as providing the party with a genuine opportunity to review the opposing party's arguments, challenge the evidence provided by it (including by personally questioning or participating in its interrogation), presenting its

evidence, and proving its position in court. a case that the court would be entitled to and obliged to take into account when deciding the case, i.e. as ensuring the real possibility of a dispute between the parties (Trubnikova, 2016).

Directly related to the standards of proof is the right of the accused person to interrogate or demand the examination of prosecution witnesses, as well as to summon and examine defense witnesses on the same terms as prosecution witnesses (Article 6 § 3 (d) of the Convention). In particular, this right of the accused person corresponds to the standard of evidence formation.

Equality of the parties

Adversarial proceedings and equality of arms are quite rightly regarded as independent standards of fair justice, as they reflect different elements of the right to a fair trial. According to scholars, the difference between the requirement of procedural equality and adversarial proceedings requires that in the first case it is about the absolute rules of examination of evidence by the defense before the court, while in the second – the relative capabilities of the two parties in the process of submitting evidence to the court and their examination (Morshchakova, 2012).

The immediacy of the evidence research

Article 6 of the Convention does not contain a direct reference to this standard of fair justice, but in the case-law of the ECHR, it is based on the requirements of that article.

Based on the content of Article 6 § 1 and subparagraph (d) of the Convention, the ECHR states that an important element of a fair criminal proceeding is also the possibility for the accused to face a witness in the presence of a judge who finally decides the case. Such a principle of immediacy is an essential guarantee in criminal proceedings, as observations made by a court concerning the conduct of a witness and the veracity of his testimony may have significant consequences for the accused (ECHR, 2002, P.K v. Finland). Concerning Article 6 § 3 (d) of the ECHR Convention, it notes that it contains references to “witnesses” and, on strict interpretation, should not be applied to other evidence.

However, this term should be interpreted autonomously. It may also include victims, expert witnesses, and others who testify in court. In addition, there is clear evidence in the case law that this provision may apply not only to “witnesses” but also to other evidence (paragraphs 158 and 159 of the judgment of 11 December 2008 in Mirilashvili v. Russia) (ECHR, 2008), including material evidence (paragraphs 31, 37 – 40 of the judgment of 09.05.2003 in the case of Georgios Papageorgiou v. Greece) (ECHR, 2003).

Given the importance of the immediacy of the examination of the evidence for further judgment, the ECHR focuses on three aspects of its content:

1) as a duty of national courts to examine the evidence directly. In his view, judgments should be based on the evidence examined by national courts during a public hearing in the presence of the accused. At the same time, the ECHR does not exclude the possibility of using derivative evidence, although it pays attention to the peculiarities of their use. Initially, he repeatedly pointed out that the conviction should not be based solely or decisively on anonymous allegations (paragraph 76 of the judgment of 26 March 1996 in Doorson v. The Netherlands) (ECHR, 1996).

While acknowledging the flexibility of this approach, the ECHR eventually noted that accepting as evidence from a witness who did not appear in court, whose testimony obtained during the pre-trial investigation was the sole or decisive evidence of the defendant's guilt, did not automatically violate 1 of Article 6 of the Convention. The court based this finding on the fact that the inflexible application of the so-called "single or decisive rule" (according to which a trial is considered unfair if the conviction is based solely or decisively on evidence provided by a witness whom the accused was unable to question at any stage proceedings) would run counter to the Court's traditional approach to examining complaints of violations of the right to a fair trial guaranteed by Article 6 § 1 of the Convention, which is to determine whether the proceedings as a whole were fair. However, the adoption of such evidence, given the imminent risks to the fairness of the trial, is an important factor to be taken into account in balancing interests (paragraphs 146, 147 of the judgment of 15 December 2011 in Al-Khawaja and Tahery v. the United Kingdom») (ECHR, 2011).

To determine whether Article 6 § 1 (1) (d) of the Convention complied with a trial in which the testimony of witnesses who did not appear in court and were not questioned by the court was used as evidence, the ECHR carried out a three-stage test consistently providing them with answers to the following questions: i) whether there were good reasons for the witness not to appear in court and, accordingly, to accept as evidence the unverified testimony of the witness who did not appear; (ii) whether the testimony of a witness who did not appear was the sole or decisive basis for the conviction of the accused; (iii) whether there were sufficient balancing factors, including important procedural safeguards, to compensate for the difficulties encountered by the defense as a result of the admission of unverified evidence and to ensure the fairness of the trial as a whole (paragraph 107 of 15.12. 2015 in Case of Schatschaschwili v. Germany) (ECHR, 2015).

2) as requirements for the examination of evidence in this particular criminal proceeding. According to the ECHR, given the principle of the

presumption of innocence and the right of the defendant to challenge any evidence against him, the criminal court must conduct a full, independent and comprehensive examination and assessment of the admissibility and reliability of evidence relating to the determination of the defendant's guilt, regardless of how the same evidence may be assessed in any other proceedings against other defendants (paragraph 212 of the judgment of 26 July 2011 in Huseyn and Others v. Azerbaijan) (ECHR, 2011).

3) as requirements for the invariability of the composition of the court. According to the ECHR, a change in the composition of the court of the first instance after hearing an important witness should normally lead to the re-examination of that witness (decision of 09.07.2002 in the case of P.K. v. Finland) (ECHR, 2002).

The need to guarantee the immediacy of the examination of evidence has led to the development in the practice of the ECHR of certain standards of proof, according to which:

1) evidence is subject to the formation by the court with the participation of the parties to the criminal proceedings, provided that the composition of the court remains unchanged.
2) data provided by absent witnesses will be carefully examined by national courts, taking into account all the circumstances of the case.
3) data provided by anonymous persons cannot be decisive for a court decision.
4) the evaluation of evidence is a function of national courts.
5) the appellate instance may not evaluate the evidence examined by the lower court if it does not carry out their direct examination.

Presumption of innocence

This standard of fair justice is enshrined in Article 6 § 2 of the Convention (United Nations, 1950).

The ECHR draws attention to the important role of the presumption of innocence in criminal proceedings, in the practice of which it is considered as an independent element of the right to a fair trial, which must be taken into account in any assessment of the fairness of the trial as a whole (paragraph 35 of 10.02. 1995 in the case of Allenet de Ribemont v. France) (ECHR, 1995).

These provisions are based on a wide range of elements of the studied standard of fair justice, which include:

1) imposing on the prosecution the burden of proving the guilt of a person in committing a criminal offense.

2) inadmissibility of imposing on the accused the obligation to prove his innocence in committing a criminal offense.
3) ensuring the proof of a person's guilt in committing a criminal offense beyond a reasonable doubt.
4) inadmissibility of substantiation of accusation based on inadmissible evidence.
5) interpretation of all doubts in favor of the accused.
6) treatment of a person accused of committing a criminal offense as innocent.

The need to ensure the presumption of innocence has led to the use in the practice of the ECHR of one of the standards of formation of the level of persuasion required for a procedural decision – the standard of proof "beyond reasonable doubt", as well as other standards of evidence.

Motivation of court decisions

This standard of fair justice is not provided for in the provisions of Article 6 of the Convention but has found its application in the practice of the ECHR.

Recalling the importance of ensuring that national courts give reasons for judgments, the ECHR emphasizes that judgments of courts and litigation bodies must properly set out the grounds on which they are based (paragraph 26 of the judgment of 21 January 1999 in García Ruiz v. Spain) (ECHR, 1999). Although Article 6 § 1 of the Convention obliges courts to state reasons for their decisions, this cannot be construed as requiring a detailed answer to every argument (paragraph 107 of the judgment of 08 April 2008 in Grădinar v. Moldova) (ECHR, 2008).

The extent to which the obligation to state reasons for a decision applies may vary depending on the nature of the decision itself and should be determined by the circumstances of the case (paragraph 272 of the judgment of 21 April 2011 in Nechiporuk and Yonkalo v. Ukraine) (ECHR, 2011). At the same time, from the ECHR's point of view, courts have to consider arguments that the parties can present in court, as well as the differences between the High Contracting Parties in their laws, customs, legal doctrines, content and drafting. court decisions (paragraph 34 of the judgment of 1 July 2003 in Suominen v. Finland) (ECHR, 2003).

According to the ECHR, as scholars point out, a court decision can be considered motivated, which not only provides proper and sufficient reasons and grounds for its adoption but also provides an answer to the significant arguments of the criminal proceedings. This answer should not be formal, superficial, and abstract, but specific and reasoned on issues of

both fact and law, relating to criminal-legal qualification, application of measures of criminal-legal nature, and the field of proof (Brich, 2017).

In this regard, the motivation of court decisions provides for the reasons and grounds for their adoption, including the reasons on which the court took into account the evidence submitted by one party to the criminal proceedings and rejected the evidence submitted by the other.

Conclusions

The standards of fair justice are a system of rules enshrined in the provisions of international legal acts and established in the practice of international judicial institutions, ensuring the proper administration of justice based on the right to a fair trial with strict observance of universally recognized human rights. Among the standards of fair justice are: 1) the right of access to justice; 2) consideration of the case by an independent and impartial court established by law; 3) ensuring a reasonable time for consideration of the case; 4) the right to a public hearing (publicity of the trial); 5) adversarial proceedings; 6) equality of the parties; 7) the immediacy of the study of evidence; 8) presumption of innocence; 9) ensuring the rights of the accused, necessary and sufficient for the exercise of protection; 10) guarantees of the right to question witnesses set out in Article 6 § 3 (d) of the Convention; 11) motivation of court decisions; 12) legal certainty.

The interdependence of the right to a fair trial and the standard of fair justice is that the elements of this right are the standards of fair justice. An analysis of the provisions of the Convention and the case-law of the ECHR shows the close interrelationship and interdependence of several fair justice and evidentiary standards. On the other hand, standards of evidence are covered by the standards of fair justice, expanding, specifying and clarifying their content in terms of forming by the subject of evidence the appropriate amount of relevant evidence and achieving a sufficient level of conviction sufficient to make a procedural decision.

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Anti-corruption mechanism in Ukraine: content actualization under the conditions of normative innovations

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Abstract

The aim of the investigation was to determine the most appropriate avenues for further implementation of the European concept of anti-corruption. To carry out this article, general and special research methods have been applied, such as systems analysis, dialectical, formal logical and structural functional methods, as well as a series of empirical methods. Statistical analysis has been used to demonstrate anti-corruption measures, undertaken in 2016 - 2020. The anti-corruption mechanism has been analyzed through the prism of combined institutional and instrumental systems, with the aim of preventing corruption. The priorities for transforming the anti-corruption mechanism have been defined as follows: (a) increased accountability for corruption offences; (b) introduction and appropriate application of corruption detection tools. It is concluded that the current trend demonstrates a decline in the implementation of anti-corruption preventive tools in Ukraine due to the following factors: change of the vector of public interest towards compliance with anti-Covid-19 measures, destabilization of authority and lack of collaboration between authorized subjects in solving corruption problems.

Keywords: anti-corruption mechanism; measures to combat corruption; institutional system; public sector; lifestyle of the reporting subjects.

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Mecanismo anticorrupción en Ucrania: actualización de contenidos bajo las condiciones de innovaciones normativas

Resumen

El objetivo de la investigación fue determinar las vías más adecuadas para una mayor implementación del concepto europeo de lucha contra la corrupción. Para llevar a cabo el presente artículo se han aplicado métodos de investigación generales y especiales, como el análisis de sistemas, los métodos dialécticos, lógicos formales y funcionales estructurales, así como una serie de métodos empíricos. El análisis estadístico se ha utilizado para demostrar las medidas anticorrupción, emprendidas en 2016 - 2020. El mecanismo anticorrupción se ha analizado a través del prisma de sistemas institucionales e instrumentales combinados, con el objetivo de prevenir la corrupción. Las prioridades para transformar el mecanismo anticorrupción se han definido de la siguiente manera: a) aumento de la responsabilidad por delitos de corrupción; b) introducción y aplicación adecuada de herramientas de detección de corrupción. Se concluye que la tendencia actual demuestra un declive en la implementación de herramientas preventivas anticorrupción en Ucrania debido a los siguientes factores: cambio del vector de interés público hacia el cumplimiento de las medidas anti-Covid-19, desestabilización de la autoridad y la falta de colaboración entre sujetos autorizados en resolver problemas de corrupción.

Palabras clave: mecanismo anticorrupción; medidas para combatir la corrupción; sistema institucional; sector público; estilo de vida de los sujetos declarantes.

Introduction

The need to discover effective tools to counteract corruption is primarily determined by the following factors: 1) reducing the negative impact from corruption on the country's economy; 2) boosting the population's trust in public sector; 3) improving Ukraine's image as a democratic, rule-of-law and social state, seeking EU membership. The latter factor is further substantiated by the necessity to fulfill the commitments provided for by the Association Agreement between Ukraine and the European Union (2014).

The anticipated effect in counteracting corruption has failed to occur despite the legislative changes of basic character introduced in 2014 [(Law No. 1700-VII. 2014), legalization of lustration to protect and reinforce democratic values (Law No. 1682-VIII, 2014), as well as institutional [the establishment of: the National Agency for the Prevention of Corruption

as the central body of executive power with a special status (Resolution No. 118, 2015), the National Anti-Corruption Bureau of Ukraine (Law No. 1698-VII, 2014), Specialized Anti-Corruption Prosecutor's Office of the Office of the Prosecutor General (Order No. 125, 2020), the Supreme Anti-Corruption Court (Law No. 2447-VIII. 2018.)]. However, it should be noted that the available positive trends in the formation of effective anti-corruption mechanism is essential for the further intensification of work in this direction.

The need for specifying the national model of anti-corruption mechanism in correlation with the generally recognized European standards is conditioned by the absence of anti-corruption strategy, accounting for challenges of Covid-19 pandemic (Kivalov, 2020), rapid development of IT technologies and application thereof for administration and management (Hnatovska, Manzhosova, Marushchak, & Oleksiy, 2019), and the national archetype of the civil society in Ukraine (Bila-Tiunova, Bilous-Osin, Kozachuk, & Vasylkivska, 2019).

The lack of approved anti-corruption strategy serves as the destabilizing factor for the formulation of effective anti-corruption mechanism. The latest document of this nature was formally and legally approved in 2014 (Law No. 1699, 2014); the similar document for 2018-2020 has been drafted but not adopted instead (Draft Law No. 2017, 2017).

Presently, a new draft of state anti-corruption policy for 2020-2024 is available although it has not been approved either (Draft Law No. 2020, 2020). Accounting for the above-mentioned, the lack of unity in the relations of public authorities should be mentioned: President of Ukraine is in favor of stricter liability for corruption (Office of the President of Ukraine, 2021) whereas the National Agency for the Prevention of Corruption insists on the intensification of the available anti-corruption means. Thus, corruption prevention remains an acute problem for Ukraine and the current challenges dictate the rules to secure constant improvement of the chosen anti-corruption preventive approaches.

1. Theoretical Framework or Literature Review

The sphere of anti-corruption activities is characterized by its special significance for the state and the operation of its bodies as well as for the society at large.

The aim, pursued in this sphere determines the scope of the relations of the entities engaged in anti-corruption activities, the need in the most flexible instruments tested by the international community (Organization of American States, 1996; General Assembly, 1996; United Nations, 1997;

United Nations, 2003). The combating corruption issue and the formulation of an efficient anti-corruption mechanism is an on-going issue; however, the constant evolution of social relations requires taking into consideration the new challenges posed by digitalization and humanization.

The main idea of corruption prevention dialectically lies in the following domain: 1) prevention of an offense; 2) prevention of arbitrariness on the part of officials, authorized to perform the functions of state power and local self-government. The former presumes the following criminological postulates: corruption offenses are rational (a non-deliberate corruption offense is impossible); prevention of corruption becomes possible due to the elimination of potential profit from corruption; reducing the effect from profit may occur due to the risk of the offense being revealed and the forthcoming bringing to liability (Khamkhodera, 2020b).

Thus, the corruption preventive mechanism may eventually be transformed through the following: a) enhanced liability for corruption: b) introduction and proper implementation of anti-corruption tools. The present research is focused on the latter.

Investigation of the issue of anti-corruption mechanism requires clarity in the approaches to its component parts, which is common to the activities in public sphere and non-managerial sphere Mykhailenko, 2017; 112). They include: 1) state anti-corruption policy, aimed at the creation of efficient detection of preconditions for the prevention, counteraction and removal of consequences of corruption offenses (Hudkov, 2018), which will facilitate the emergence of positive archetypes of the society; non-tolerance of corruption; 2) anti-corruption declaring as a complex of organizational and formal legal actions to secure the obligation of financial reporting, detection of violations of financial discipline and the implementation of administrative liability to physical persons, responsible for the violation of financial control requirements (Khabarova, 2017); 3) conflict of interests as the means of corruption prevention; 4) institutional system of combating corruption, based on the operation of specialized bodies of public authority, focused on anti-corruption measures; 5) lifestyle monitoring, aimed at revealing the correspondence between the living standards and the incomes, stated in the declaration.

Certain conclusions of academic nature might be of interest. They concern criteria of acceptability, contextual and applied motivation, exemption from liability for minor violations related to the conflict of interest (Khamkhodera, 2020a); specificity of anti-corruption declaring in Ukraine, manifested in: aiming at the prevention and detection of corruption and violation of anti-corruption requirements, prohibitions and restrictions; it is aimed at the verification of the financial status of the entities liable to anti-corruption laws; failure to observe anti-corruption declaring stipulates enforcement of liability measures, etc., (Kornuta *et al.*, 2020).

The present article researches into the anti-corruption mechanism as a combination of institutional and instrumental systems, aimed at counteracting corruption in public and private sectors. For consistent highlighting of the problem the author indicates the key aspects, which characterize the homogeneous group of social relations, dealing with combating corruption, establishing the model of anti-corruption mechanism; defining content features of lifestyle monitoring and the procedure of its implementation; defining the institutional system of corruption counteracting.

2. Methodology

General and special methods of academic cognition have been applied in this research, namely system analysis, dialectical method, formal logical and structural functional methods, as well as a number of empirical methods.

The method of systematic analysis was used by the author of the article to carefully study the current anti-corruption legislation of Ukraine in terms of its effectiveness. It is this method that led to the conclusion about the gaps in the current legislation of Ukraine, due to which the reduction of corruption is not fast enough. In particular, there is a lack of a clear procedure for monitoring the lifestyle of the subjects of the declaration.

The dialectical method, as a way of knowing objective activity in its development, allowed the author to study such a phenomenon as corruption in its development in accordance with the stages of state and society, and to propose tools to combat corruption, based on the modern period of social development. In particular, it is said that the normative consolidation of responsibility for corrupt acts alone is no longer enough, and the mechanism for detecting and counteracting corrupt acts in accordance with the best world standards needs to be improved.

Formal-logical method, as one that provides logical consistency and consistency of legal norms, helps to track the presence of the necessary internal elements in the formulation of concepts, as well as deriving logical consequences, helped the author to formulate general conclusions of the study, according to which the priority directions of transformation of the mechanism for prevention of corruption are: a) enhancement of responsibility for commission of corruption offenses; b) implementation and proper application of tools aimed at detecting corruption.

The structural-functional method, which consists in the systematic study of social phenomena and processes as a structurally dismembered integrity, where each element of the structure has a specific functional purpose, helped the author to conclude that there is no positive effect of a

modern institute of monitoring the lifestyle of civil servants.

3. Results and Discussion

The research contains statistical analysis of specific anti-corruption measures, applied by the authorized anti-corruption bodies in 2016-2020. (Decision No. 32, 2017; Decision No. 2017, 2017; Decision No. 2018, 2018; Decision No. 2019, 2019; Decision No. 2020, 2020) of the following activities: comprehensive revisions, lifestyle monitoring, detection of violations in declarations, processing of reported cases on resolving conflicts of interest and related restrictions and bringing to administrative liability for violations in declarations (Table 1).

Year	**2016**	**2017**	**2018**	**2019**	**2020**
Anti-corruption measure					
Comprehensive revisions	11	30	35	54	80
Lifestyle monitoring	-	-	-	-	47
Detection of violations in declarations	1700	18700	17000	23000	16000
Reported cases on resolving conflicts of interest and related restrictions	456	1577	1280	1500	2842
Bringing to administrative liability for declaration violations	11	49	310	371	128

Table 1. Quantity indices of the application of certain anti-corruption measures in 2016-2020, data provided by Report on the activities of the National Agency for the Prevention of Corruption, 2020.

Thus, the following tendencies have been revealed: the number of comprehensive revisions reached its maximum in 2020 and is growing every year; lifestyle monitoring was initiated in 2020 and immediately reached its average quantity level; the number of detected declaration violations is characterized by constant fluctuations, reaching its maximum in 2019, however 2020 revealed comparatively small number of such violations; reported cases of resolving conflicts of interest and related restrictions show stable growth, proving the tendency of qualitative change in applying this anti-corruption measure; cases of bringing to administrative liability for

declaration violations reached their maximum in 2019 and reduced three times in 2020, which correlates with the number of detected declaration violations.

Reduction in the positive tendencies of implementing preventive anti-corruption measures could be explained by such factors as: intensified measures against Covid-19 pandemic, which resulted in the destabilization of public authorities efficient operation; the Constitutional Court of Ukraine ruling stating that certain provisions of the Law of Ukraine "On the Prevention of Corruption" (Law No. 1700-VII, 2014) and the Criminal Code of Ukraine (Law No. 2341-III, 2001), particularly the anti-corruption declaration provisions contradict the Constitution, and provisions on amending the Law of Ukraine "On the Prevention of Corruption" concerning the specific status of judges and Constitutional Court Justices as subjects, liable to preventive anti-corruption measures (Law No. 1079-IX, 2020).

Anti-corruption declaring is an established anti-corruption mechanism; however, due to certain objective reasons it has been losing its initial significance. The pattern of revealing signs of corruption was formally changed by the Law of Ukraine «On the Amendments to the Law of Ukraine 'On the Prevention of Corruption' Concerning the Restoration of the Institutional Mechanism for the Prevention of Corruption» (Law No. 1079-IX, 2020). These amendments resulted in recognizing as anti-constitutional certain provisions of anti-corruption laws as well as the Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine Concerning Ensuring the Effectiveness of the Institutional Mechanism for Preventing Corruption» (Law No. 140-IX, 2019). The elements of the anti-corruption mechanism, which have been amended, are the following:

1) the legal status of the National Agency for the Prevention of Corruption has been changed in the part of its identity as a body, headed by Chairman, appointed by the Cabinet of Ministers, rather than a collegial body of five members as it used to be.

2) there was established a new provision involving a new subject authorized to exercise financial anti-corruption control (timely submission, correct and full declaring) who is an authorized unit (authorized official) of a state body or a military unit, exercising control over the subordinate staff, referred to Intelligence Service of Ukraine and/or whose activities involve state secrets (resulting from investigative, intelligence and counter-intelligence activity) and also over officials, seeking such positions, or those who have resigned.

3) the new provisions regarding applying anti-corruption instruments (comprehensive revision, lifestyle monitoring) to judges and Constitutional Court Justices have been made. The measures should be applied according to the following procedure: a) obtaining

approval from the Supreme Council of Justice or Constitutional Court Justices assembly; b) immediate notification of the Supreme Council of Justice and the Chairman of the Constitutional Court about the start of a comprehensive revision or lifestyle monitoring; c) submitting the results of the applied anti-corruption measures in the report, approved by the Chairman of the National Agency for the Prevention of Corruption or his/her Deputy; d) granting judges or Constitutional Court Justices an opportunity to inform about the attempts to exercise unlawful influence, pressure, or interference into judicial activity undertaken by the staff of the National Agency for the Prevention of Corruption, Supreme Council of Justice or Constitutional Court Justices assembly.

4) introduction of the order of priority for submitting declarations to ensure comprehensive revision and notifying the subject of declaring about putting him/her on the list, etc.

Altogether, the designated changes do not characterize the current model of the anti-corruption mechanism, which is aimed at detecting corruption. On the contrary, they create a temporal opportunity of continuance of the abeyance of corruption offences.

Regarding the application of such a tool to prevent corruption as monitoring the lifestyle of the declarants, the positive effect of this novelty of anti-corruption legislation has not been corroborated in practice due to the following factors: 1) since the introduction of this measure of anti-corruption financial control, the procedure for monitoring lifestyle has not been adopted; 2) the lack of differentiation of certain aspects of the application of lifestyle monitoring to specific subjects of declaration, which is associated with the specifics of their functions; 3) accompanying phenomena that indirectly affected the lack of priority in solving the issues of lifestyle monitoring (e.g., lack of constructive cooperation between anti-corruption state bodies and judicial bodies, increased social and political tensions in connection with the spread of Covid-19 pandemic, etc.).

Emphasis should be placed on the lack of the procedure of monitoring the lifestyle of the declarants. Initially, an attempt to introduce a normatively established procedure for monitoring lifestyle was recorded in 2017 in the form of a draft decision of the National Agency for the Prevention of Corruption (Draft Decision No. 13, 2017). In response to the request to the National Agency for the Prevention of Corruption regarding the existence of adopted regulations relating to the application of lifestyle monitoring of March 12, 2021, the response was provided, the text of which testifies to the following: a) monitoring the lifestyle of declaring entities is carried out in accordance with the provisions of the Law of Ukraine «On the Prevention of Corruption» in Art. 12, 13, 514 (LAW No. 1700-VII, 2014); b) by-laws on the mechanism of application of lifestyle monitoring have not been adopted (Response No, 2021, 2021)1.

This position of the National Agency for the Prevention of Corruption regarding the lack of the need to adopt a separate procedure for monitoring lifestyle can be justified by the wording of Part 3 of Art. 514 of the Law of Ukraine «On the Prevention of Corruption»: «The procedure for monitoring the lifestyle of the subjects of the declaration is determined by the National Agency» (LAW No. 1700-VII, 2014). That is, the legislator used the wording 'determined', which does not require the adoption of the relevant legal act. Instead, in the case of the use of the wording 'approved' - this is mandatory, e.g., as stated in Part 4 of Art. 14 or Part 2 of Art. 37 of the Law of Ukraine «On the Prevention of Corruption» (LAW No. 1700-VII, 2014). Evidently, this argument does not mean that the existence of a normative procedure for monitoring the lifestyle of the declarants will not promote the principles of the rule of law and good governance in the practice of preventing corruption, but allows to carry out these activities without regulatory detail.

As a result, since 2020 Ukraine has been monitoring the lifestyle of declaring entities, but with some caveats. It is a question of limited application of this anti-corruption tool to judges of general courts and Justices of the Constitutional Court of Ukraine. The groundbreaking decision of the Constitutional Court of Ukraine on the inconsistency of certain provisions of the Law of Ukraine «On the Prevention of Corruption» (Decision No. 13-r / 2020, 2020) with the Constitution did not allow for the application of lifestyle monitoring to the subjects of the declaration among the judiciary, including of the Constitutional Court of Ukraine.

An attempt to rectify the situation was embodied in a draft decision of the National Agency for the Prevention of Corruption, which approved the procedure for monitoring the lifestyle of a judge (Decision No. 281/0/15-21, 2021). However, the High Council of Justice commented on the proposed draft on the grounds of the absence of such a model of relations that would exclude undue pressure, influence or control by the executive or legislature on the judiciary and prevent the emergence of regulations that will allow to control the judiciary at the legislative level. Among the main shortcomings of the procedure are: lack of definition of a clear procedure for monitoring the lifestyle of judges, lack of indication of deadlines and requirements for verification of information on the basis of which monitoring of judges' lifestyle begins (Decision No. 281/0/15-21, 2021).

It is obvious that the substantive characteristics of monitoring the lifestyle of the subject of the declaration as a tool to prevent corruption, etymologically makes it impossible to resolve these aspects. Therefore, the tactics of positioning civil servants – representatives of the judiciary as a group of entities to which anti-corruption measures should be applied in a special and radically contradictory manner in the long run will be insignificant from the point of view of its perception by the international community. A similar situation concerns the removal of an assistant judge

from the list of subjects of declaration in general in accordance with the Law of Ukraine 'On Intelligence Service' (LAW No. 912-IX, 2020.).

Conclusions

The article investigates the anti-corruption mechanism in terms of a combination of institutional and instrumental systems aimed at preventing corruption in the public and partly private sector. It has been established that the priority directions of transformation of the mechanism for prevention of corruption are: a) enhancement of responsibility for commission of corruption offenses; b) implementation and proper application of tools aimed at detecting corruption.

The reductive tendencies of positive practice of application of preventive tools for corruption prevention in Ukraine have been revealed. Vector changes in the anti-corruption mechanism that create a temporal possibility of continuing the latency of corruption offenses are identified. It is noted that the positive effect of the introduction of monitoring the lifestyle of the subjects of the declaration has not been corroborated in practice due to the following factors: 1) from the moment of introduction of this measure of anti-corruption financial control until now, the order of carrying out monitoring of lifestyle has not been adopted; 2) the lack of differentiation of certain aspects of the application of life monitoring to specific subjects of declaration, which is associated with the specifics of their functions; 3) accompanying phenomena that indirectly affected the lack of priority in resolving problematic issues in the application of lifestyle monitoring.

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Natural population movement and COVID-19: data from Russia

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Abstract

The COVID-19 pandemic is highly infectious, so it paralyzed the health systems of many countries causing a high mortality rate. Official data on COVID-19 deaths at many sites are questioned, and the figures are considered several times higher than official data. In this sense, the objective of the study was to determine the impact of the COVID-19 pandemic on the natural movement of the population and, in addition, to evaluate the real mortality rate from COVID-19 in Russia from the construction of predictive mortality models. The study used data from the World Health Organization and the Statistical Service of the Federal State of Russia; se used linear and polynomial models to construct mortality models. The study revealed an underestimation of the official COVID-19 death rate by 2.4 to 6.8 times, depending on the data source. There was a sharp increase in mortality in Russia in 2020 among people over 50 years of age, and with the increase in age, mortality increased. The main reasons for the sharp increase in mortality were coronary heart disease, cerebrovascular diseases, and respiratory diseases, among others.

Keywords: COVID-19 pandemic; demographics; vital movement; mortality, geopolitics.

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Movimiento de población natural y COVID-19: datos de Rusia

Resumen

La pandemia de COVID-19 es altamente infecciosa, por lo que paralizó los sistemas de salud de muchos países provocando una alta tasa de mortalidad. Se cuestionan los datos oficiales sobre muertes por COVID-19 en muchos sitios, y las cifras se consideran varias veces más altas que los datos oficiales. En este sentido, el objetivo del estudio fue determinar el impacto de la pandemia de COVID-19 en el movimiento natural de la población y, además, evaluar la tasa de mortalidad real por COVID-19 en Rusia a partir de la construcción de modelos predictivos de mortalidad. El estudio utilizó datos de la Organización Mundial de la Salud y del Servicio de Estadísticas del Estado Federal de Rusia; se utilizaron modelos lineales y polinomiales para construir modelos de mortalidad. El estudio reveló una subestimación de la tasa oficial de mortalidad por COVID-19 de 2,4 a 6,8 veces, según la fuente de datos. Se produjo un fuerte aumento de la mortalidad en Rusia en 2020 entre las personas mayores de 50 años y, con el aumento de la edad, la mortalidad aumentó. Las principales razones del fuerte aumento de la mortalidad fueron las cardiopatías coronarias, las enfermedades cerebrovasculares y las enfermedades respiratorias, entre otras.

Palabras clave: Pandemia COVID-19; demografía; movimiento vital; mortalidad, geopolítica.

Introduction

In December 2019, the world learned about the emergence of COVID-19, a new infectious disease, or Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) (Huang *et al.*, 2020). The epidemic that began in December 2019 has now spread to all continents and countries of the world. As of July 15, 2021, there were 188,128,952 confirmed cases of COVID-19, including 4,059,339 deaths (World Health Organization, 2021). The mortality rate from COVID-19 is different in different countries, and there are countries with a high mortality rate (for example, Peru – 590.22 deaths per 100.000 population, Hungary – 307.21, Bosnia and Herzegovina -294.56), as well as with a low mortality rate (for example, Tanzania – 0.04 deaths per 100.000 population, Lao – 0.04, Burundi – 0.07) (World Health Organization, 2021).

Today, some countries have managed to cope with cases of the disease with a high degree of recovery, and they have developed sustainable

methods of treatment (Are and Ekum, 2020). At the end of 2020 and at the beginning of 2021, vaccines against COVID-19 were developed, which are now being actively used for vaccination all over the world. As of July 15, 2021, 3,402,275,866 doses of vaccine have been given (World Health Organization, 2021). New coronavirus strains are of particular concern today (Bollinger and Ray, 2021), however, at the moment they do not fundamentally affect the overall strategy for overcoming the crisis caused by the pandemic.

The COVID-19 pandemic has had a great impact on public relations, the economy, and the financial system of the countries of the world (Nusratullin *et al*., 2021). However, the most negative consequence of the pandemic is an increase in the death rate of the population. The increase in mortality was not only due to the disease itself, but due to the lack of bed capacity, equipment, insufficient financing of the health care system, and inability to provide planned medical care in the existing situation. (Gerli *et al*., 2020). The pandemic also had a negative impact on the birth rate, as due to stress in 2020, there was a decrease in marriage and birth rates. In addition, the closure of borders and tightening of the rules for crossing them led to a decrease in migration (Ryazantsev *et al.,* 2021).

If we talk about mortality from COVID-19 in Russia, then the official data are as follows. In Russian Federation, from 3 January 2020 to 15 July 2021, there have been 5 882 295 confirmed cases of COVID-19 with 146 069 deaths. As of 12 July 2021, a total of 47 572 228 vaccine doses have been administered (World Health Organization, 2021). These data indicate that the COVID-19 pandemic has greatly affected the demographic situation in Russia.

However, it should be noted that the official data on deaths from COVID-19 cannot explain the real numbers of depopulation. The natural population decline within the year in Russia in 2020 increased by 2.2 times compared to 2019 and amounted to 702,072 people, which is 0.5% of the population of all of Russia (Federal State Statistics Service of Russia, 2021). In this regard, the problem of determining the true impact of the COVID-19 pandemic on mortality in Russia has become topical.

It is quite difficult to assess the direct impact of coronavirus on mortality in a particular country since different countries apply different standards for the causes of death partition (Middelburg and Rosendaal, 2020). In this study, we will assess mortality from COVID-19 by constructing predictive mortality models based on data for 2011-2019 and forecasting for 2020 within the established trend. And then we will compare the results obtained and the official data on mortality from COVID-19.

The purpose of this study is to determine the impact of the COVID-19 pandemic on the natural population movement and to assess the real

mortality from COVID-19 in Russia based on the construction of predictive mortality models. To achieve this goal, it is necessary to solve the following tasks:

1) To analysed data on the natural population movement in Russia.
2) To build predictive models of mortality in Russia as a whole and for causes of death in particular.
3) to compare the results obtained with official data and draw conclusions.

1. Literature Review

With the spread of COVID-19 since the end of 2019, the first studies have focused primarily on the spread and dynamics of the spread of the virus. The main epidemiological, clinical and laboratory characteristics of COVID-19 disease, as well as treatment data and clinical outcomes of patients, are disclosed in the work of Huang *et al.* (2020), Liu *et al.* (2020), Ferguson *et al.* (2020).

The first predictions of the spread of the new coronavirus were made in the studies of Read *et al.* (2020), Zhao *et al.* (2020), Li *et al.*, (2020), and in addition, they draw attention to the seriousness of the problem of the rapid spread of COVID-19. The first assessment of the impact of the new epidemic on the health systems of countries was carried out in the works of Tang *et al.* (2020), Yang *et al.* (2020).

Further research was aimed at finding ways to reduce the incidence of new COVID-19 cases, as well as the causes of asymptomatic cases. A study by Wu and McGoogan (2020) and Oran and Topol (2020) confirmed that people with asymptomatic COVID-19 disease are carriers of the disease and can actively infect people around them. Adeniyi *et al.* (2020) confirm that compliance with hygiene rules and rules of conduct in the conditions of the spread of infectious diseases reduces the rate of spread of a new coronavirus infection.

Today, there are many studies on the consequences of the COVID-19 epidemic on various areas of human activity. For example, the United Nations (2020) report shows that in 2020, the world gross domestic product declined by an estimated 4.3%, and in developed countries, it dropped by 5.6%. 420 million jobs were lost in the last two quarters of 2020. This is considerably superior to the global recession in 2009, when production went down by only 1.7%.

The economic impact of COVID-19 is assessed by Chudik *et al.* (2020). The results of the analysis show that the global recession will be prolonged

and no country will escape its consequences, regardless of the strategies to mitigate the consequences of COVID-19. Iluno *et al.* (2021) found that there is a non-linear relationship between mortality from COVID-19 and economic well-being, with mortality from COVID-19 negatively affecting well-being.

You can also highlight a separate block of research related to the interpretation, analysis and modelling of data on mortality from COVID-19. In their study, Sornette *et al.* (2020) have analysed the statistics of mortality from the epidemic of a new coronavirus infection in a number of countries. According to the data obtained, it has been revealed that the highest mortality rate per million inhabitants is observed in Western countries. The main reason for the relatively more severe COVID-19 epidemic in Western countries is the large number of older people, with the exception of Norway and Japan where other factors predominate.

Ivanaj and Oukhallou (2020) have analysed the economic and institutional determinants of COVID-19 mortality in their study. As a result, it was found that economic variables do not have a direct impact on COVID-19 mortality, while institutional variables such as the quality of regulation, government effectiveness and control of corruption, etc. have a significant and consistent downward correlation with COVID-19 mortality in different countries. These results support the claim that investing in institutions enhancing helps reduce mortality from infectious diseases.

Analyzing the scientific works of Aronov *et al.* (2020), Drapkina *et al.* (2020), Ferraro *et al.* (2020) regarding the modelling of COVID-19 morbidity and mortality from it, we should note that preliminary prognoses regarding official data are overestimated. This could be due to the more efficient operation of the health care system, or due to the underestimation of the official death rate from COVID-19. Further research has shown that the second reason is much more common.

Gerli *et al.* (2020) have assessed the spread of the COVID-19 virus, described its trends in the 27 countries of the European Union, Switzerland, and Italy, and have made predictions of mortality from it. Shojaee *et al.* (2020) have estimated the number of deaths in Italy, Iran and South Korea from COVID-19. Al-Raeei (2020) has calculated the COVID-19 pandemic mortality rates for China, the United States, Russia, and the Syrian Arab Republic. Sebastiani *et al.* (2020), Chintalapudi *et al.* (2020), Onder *et al.* (2020) have done a great job assessing the spread of the new coronavirus, described the trends in the spread of Covid-19 in Italy and have made the first mortality prognoses from it. Anastassopoulou *et al.* (2020) и Gao *et al.* (2020) have built the first projections of the number of deaths from COVID-19 in China. Sánchez-Villegas and Daponte Codina (2020) have studied the COVID-19 epidemic and gave mortality prognoses in Spain. Semenova *et al.* (2020) have predicted the number of deaths from COVID-19

in Kazakhstan. Vandoros (2020) has studied the impact of COVID-19 on mortality in England and Wales.

As part of this study, we will build predictive models of mortality in Russia as a whole and then compare them with actual data for their reasons and draw conclusions about the true scale of mortality from COVID-19.

2. Methodology

The study used data from the World Health Organization, 2021 and the Federal State Statistics Service of Russia, 2021 for 2011-2020. The work used data on the number of deaths, births, data on the natural movement of the population, fertility and mortality rates including by age groups, data on causes of death, and data on life expectancy.

To build a mortality model for Russia as a whole, a polynomial model of the second degree was used. Let y be the dependent variable and x the independent variable, polynomial regression is a special case of multiple regression with one independent variable x. A one-parameter polynomial regression model with the k order can be expressed as:

$$y_i=\beta_0+\beta_1 x_i+\beta_2 x_i^2+\cdots+\beta_k x_i k+e_i,\ i=1,2,\cdots,\ n; \quad (1)$$

where k is the order of the polynomial, the βs are the unknown parameters to be estimated, and e is the error term.

If $k = 1$, then equation (1) becomes:

$$y_i=\beta_0+\beta_1 x_i+e_i;i=1,2,\cdots,n. \quad (2)$$

Equation (2) is a simple linear model.

If $k = 2$, then equation (1) becomes:

$$y_i=\beta_0+\beta_1 x_i+\beta_2 x_i^2+e_i;i=1,2,\cdots,n. \quad (3)$$

To build models of mortality due to their causes, a polynomial model of the first degree, or simply a linear model, was used (2). The choice of models for making a prognosis was carried out in the framework of their reliability.

3. Results and Discussion

Analysing the natural movement of the population in Russia over the past 10 years, it should be noted that it has a negative trend and can be characterised as depopulation. In society, the institution of the family is being transformed and value attitudes towards children are changing, women begin to give birth to fewer children and do it much later (Ryazantsev *et al.*, 2021). In Russia, simple reproduction of the population is not ensured (2.14-2.15 children per woman of the reproductive age). The total fertility rate in Russia from 2011 to 2020 is shown in Figure 1.

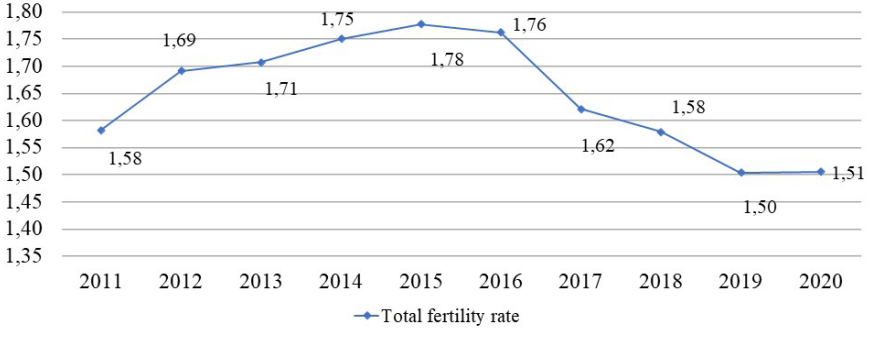

Figure 1. Total fertility rate in Russia from 2011 to 2020

Source: Federal State Statistics Service of Russia, 2021.

The total fertility rate in Russia from 2011 to 2015 grew steadily from 1.58 to 1.78, but since 2016 it has seen a sharp drop to 1.51 in 2020. The decline in the birth rate also affects the natural movement of the population in Russia. But in 2020, a new factor is added to the negative trend of declining fertility, the COVID-19 pandemic. Table 1 shows data on the number of deaths and births in Russia over the past 10 years.

Table 1. The number of births, deaths and natural increase in Russia for the period of 2011-2020

	2011	2012	2013	2014	2015
Number of births within a year	1796629	1902084	1895822	1942683	1940579
Number of deaths within a year	1925720	1906335	1871809	1912347	1908541
Natural increase within a year	-129091	-4251	24013	30336	32038
	2016	2017	2018	2019	2020
Number of births within a year	1888729	1690307	1604344	1481074	1436514
Number of deaths within a year	1891015	1826125	1828910	1798307	2138586
Natural increase within a year	-2286	-135818	-224566	-317233	-702072

Source: Federal State Statistics Service of Russia, 2021.

Table 1 clearly shows that from 2011 to 2015, there is a clear trend towards an increase in the number of births from 1.80 million to 1.94 million, but in 2016 this trend was reversed and in 2020 the number of births was 1.44 million. As for the number of deaths, its trend is clearer and there is a gradual decrease in mortality from 1.93 million to 1.80 million, but only in 2020, there is a sharp jump to 2.14 million. These trends can be traced more clearly in Figure 2.

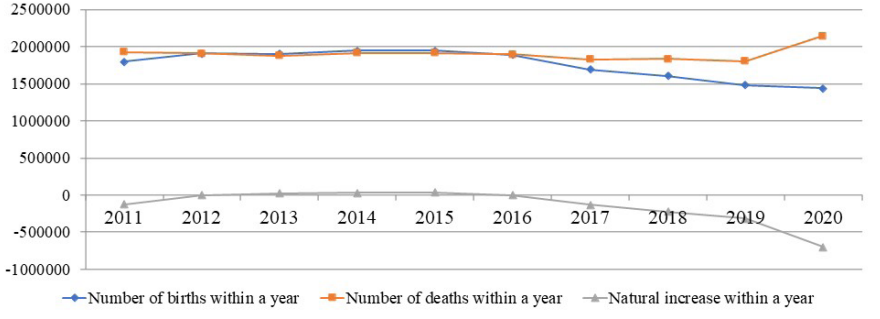

Figure 2. The number of births, deaths and natural increase in Russia for the period of 2011-2020

Source: Federal State Statistics Service of Russia, 2021

The presented dynamics of fertility and mortality in Russia led to the fact that positive population growth in 2013-2015 was replaced by negative population growth since 2016 and sharply increased in 2020 and amounted to a natural population decline of 0.7 million people in a year.

The decline in the number of births has a long-term trend that has been observed since 2016. The decrease in the total number of births is mainly explained by the decrease in the number of women giving birth at an early age (15-24 years) and mean age of childbearing (from 25-34 years). It should be noted that in recent years there has been an established trend in the number of women giving birth at the age of 35 and older (Table 2, Figure 3).

Table 2. Age-specific fertility rates (the average number of births per 1000 women aged per year, years)

	2011	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**	**2020**
15-19 years	26.70	27.30	26.60	26	24	21.50	18.39	16.10	14.60	14.10
20-24 years	87.50	91.30	89.90	89.80	90	87.20	81.20	78.40	74.80	73.59
25-29 years	99.80	106.60	107.60	110.20	112.60	111.50	100.10	96.50	91.20	92.60
30-34 years	68.20	74.30	76.20	79.80	83	84.40	77.20	76.09	71.59	70.80
35-39 years	31.40	34.90	36.79	39	39.79	41	39.20	39.70	38.70	39.20
40-44 years	6.30	7	7.40	8.10	8.30	8.80	8.69	8.90	8.90	9.19
45-49 years	0.30	0.30	0.30	0.40	0.40	0.50	0.50	0.50	0.50	0.60
50-54 years	0	0	0	0	0	0	0	0	0.10	0.10

Table 2 and Figure 3 show the demographic problem of the Russian society, when women are giving birth less and less, and the number of children in families is decreasing, of which there are mainly 1-2, rarely 3 or more. The decline in the number of births from year to year in Russia is a long-term trend and is more associated with economic problems (Nusratullin *et al.,* 2020), with changes in society and the psychology of people.

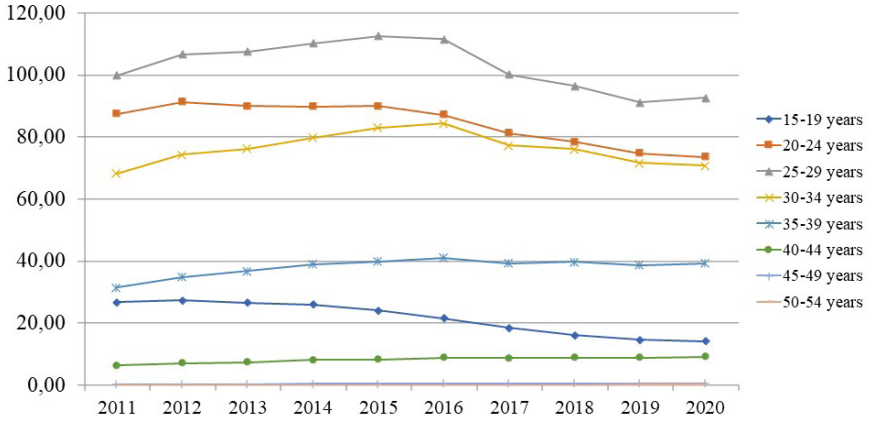

Figure 3. Age-specific fertility rates (the average number of births per 1000 women aged per year, years)

Source: Federal State Statistics Service of Russia, 2021

However, as mentioned above, the increase in mortality in 2020 to 2.13 million people compared with 1.79 million people in 2019 is not a consequence of the current trend, but it is more associated with the COVID-19 factor. But if we turn to official statistics, in 2020, 59,019 people died from COVID-19 in Russia (Starostina and Tkachev, 2021). This suggests a conclusion either about the presence of another factor in the increase in mortality, or about the underestimation of official data on mortality from the pandemic.

To answer this question, let us first find the number of "excess deaths" in 2020, and for this we will build a predictive mortality model based on data for 2011-2019. To build the trend line of the time series, the following models were tested: exponential, linear, logarithmic, and polynomial. The resulting models and the degree of their reliability are presented in Table 3.

Table 3. Mortality models in Russia and the degree of their reliability

Model type	Model	Degree of the reliability, R^2
Exponential	$y = 9\ 224\ 452\ 819\ 288.89e^{-0.01x}$	$R^2 = 0.73$
Linear	$y = -14\ 243.78x + 30\ 575\ 568.86$	$R^2 = 0.73$

Logarithmic	y = -28 695 655.05ln(x) + 220 201 611.33	R^2 = 0.73
Second-order polynomial	y = -17 655.77x^2 + 71 109 098.34x - 71 596 504 001.33	R^2 = 0.96

Source: calculated by the authors.

As can be seen from the table, the most reliable mortality model in Russia is polynomial. We will build it and predict mortality in Russia in 2020 according to the data of 2011-2019.

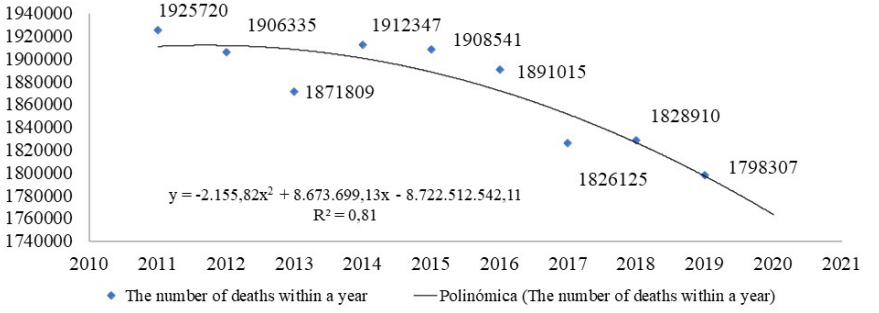

Figure 4. Polynomial mortality model in Russia according to 2011-2019 data

Source: calculated by the authors.

According to the model obtained, the number of deaths in 2020 was expected in the amount of 1,751,773 deaths, but according to the actual data, the number of deaths in Russia was 2,138,586 deaths. That is, the number of excess deaths in Russia was 386,813 deaths. These figures are in no way combined with the data on the number of deaths from COVID-19 which according to official data in 2020 amounted to 57,019 (Starostina and Tkachev, 2021). To clarify the reasons for the sharp increase in mortality, let us further consider the age at which the increase in mortality occurred and their causes.

Age-specific death rates are calculated as the ratio of the deceased people of the corresponding sex and age during the calendar time to the average annual number of people of this age per 1000 people. This indicator shows how often people of a certain age die. Usually, the older the population group, the higher the mortality rate. Let`s consider this indicator in Table 4 and Figure 5.

Table 4. Age-specific death rates

	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
1-4 years	0.50	0.50	0.40	0.40	0.40	0.40	0.30	0.30	0.30	0.30
5-9 years	0.30	0.30	0.20	0.20	0.20	0.20	0.20	0.20	0.20	0.20
10-14 years	0.30	0.30	0.30	0.30	0.30	0.30	0.30	0.20	0.20	0.20
15-19 years	0.80	0.80	0.80	0.80	0.70	0.70	0.60	0.60	0.60	0.60
20-24 years	1.60	1.50	1.50	1.40	1.30	1.10	1	1	0.90	1
25-29 years	2.70	2.50	2.40	2.29	2	1.80	1.60	1.50	1.40	1.40
30-34 years	4.09	4	3.90	3.70	3.40	3.10	2.70	2.50	2.40	2.50
35-39 years	4.90	4.80	4.80	5	4.80	4.50	4.09	4	3.80	4
40-44 years	5.90	5.60	5.60	5.70	5.70	5.50	5.09	5.20	5.20	5.70
45-49 years	8	7.50	7.30	7.30	7.10	6.80	6.30	6.40	6.40	7.30
50-54 years	10.90	10.30	9.90	9.80	9.60	9.40	8.60	8.69	8.50	9.69
55-59 years	15.50	14.70	14	13.90	13.50	13.20	12.40	12.30	12.10	13.90
60-64 years	21.80	20.80	20.10	19.80	19.50	19.10	18	18	17.60	20.60
65-69 years	28.60	27	26	26.20	26.20	26.40	25.10	25.30	24.40	29.60
70-74 years	41.50	41.20	40.10	39.10	38.40	36.70	34.29	34	34.10	42.60
75-79 years	64.40	61.80	58.40	58.20	58	57.10	56	55.70	53.40	64
80-84 years	102	101.70	98.90	96.70	95.20	92.20	87.10	84	82.70	100.70
85 years older	174.40	173.70	171.80	171.50	172.50	171.20	168.90	168.50	163.69	190.20

Source: Federal State Statistics Service of Russia, 2021.

As can be seen from the table and the figure, the greatest increase in mortality by age group occurred among the population over 50, and the older is the age group, the higher the rate of increase in mortality is. In the population aged 41 to 49, the mortality rate increased insignificantly, but in the population under the age of 41, it practically did not change.

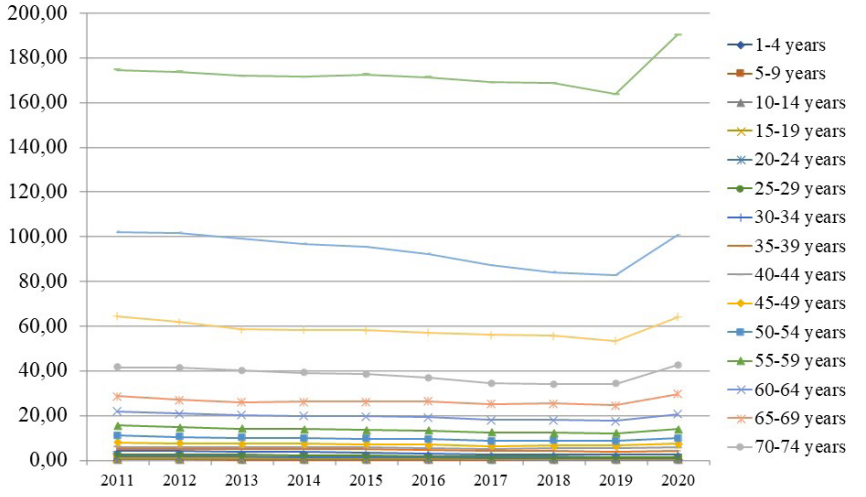

Figure 5. Age-specific death rates

Source: Federal State Statistics Service of Russia, 2021.

Mortality data by age group indirectly suggests that their causes are associated with the COVID-19 pandemic, since the main blow falls on older people (Polidori *et al,*. 2021), when the cause of death is not only the virus itself, but also its complications. Let us consider further for what main groups of causes there was an increase in mortality (Table 5, Figure 6).

Table 5. The number of deaths by main classes and individual death causes per year

	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Infectious and parasitic diseases	33672	32084	31808	32103	34372	35335	35045	34626	32918	30173
Coronary heart disease	568182	562957	529824	492303	494638	481780	461786	453306	442328	508657
Cerebrovascular diseases	332804	323003	310531	295602	290300	279818	264468	263573	260594	278618
Respiratory diseases	74219	70793	74068	78312	75813	70332	62032	61150	59188	96539
Diseases of the digestive system	88910	88867	88431	96689	101956	98215	92989	95430	98271	107399
External causes	199358	193774	185353	186779	177590	167543	152741	144612	137633	139583
Alcohol poisoning	16288	15226	14549	15400	15242	14021	12276	11045	9876	10206
Suicide	31144	29735	28779	26606	25476	23119	20278	18206	17192	16546

Murder	16795	15408	14427	12921	11984	10569	9048	7986	7302	6859
Malignant neoplasms	289535	287789	288636	286900	296476	295729	290662	293704	294400	291461
Blastemas	292445	290880	291775	290400	300232	299652	294587	297996	298699	295910
Circulatory diseases	1076458	1055592	1001799	940489	930102	904055	862895	856127	841207	938536
All types of transport accidents	29658	30203	29191	28829	24821	21610	20161	19092	17787	17041

Source: Federal State Statistics Service of Russia, 2021.

Based on the data in Table 5 and Figure 6, by groups of causes of death such as infectious and parasitic diseases, diseases of the digestive system, external causes, cases of alcohol poisoning, suicide, murder, malignant neoplasms, blastema's, all types of transport accidents, the change in mortality occurred within the established trends, and the calculations carried out confirmed this hypothesis. However, according to the groups of causes of death such as coronary heart disease, cerebrovascular diseases, respiratory diseases, diseases of the circulatory system, the situation is radically different. There is an abnormal increase in mortality for these reasons.

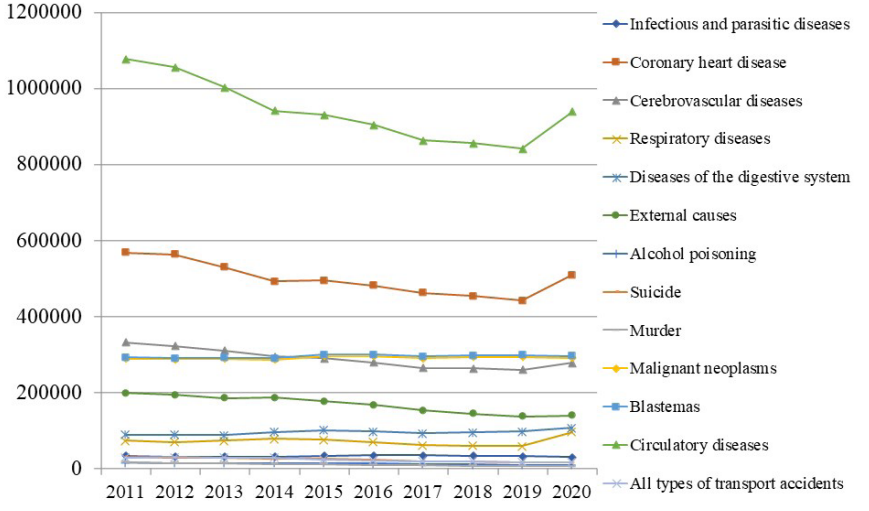

Figure 6. The number of deaths by main classes and individual death causes per year

Source: Federal State Statistics Service of Russia, 2021.

To calculate the "excess mortality" due to the indicated reasons in 2020, we will build reliable mortality rate models based on the data of 2011-2019 (Table 7). To do this, we will build polynomial models of the first degree, or simply linear models.

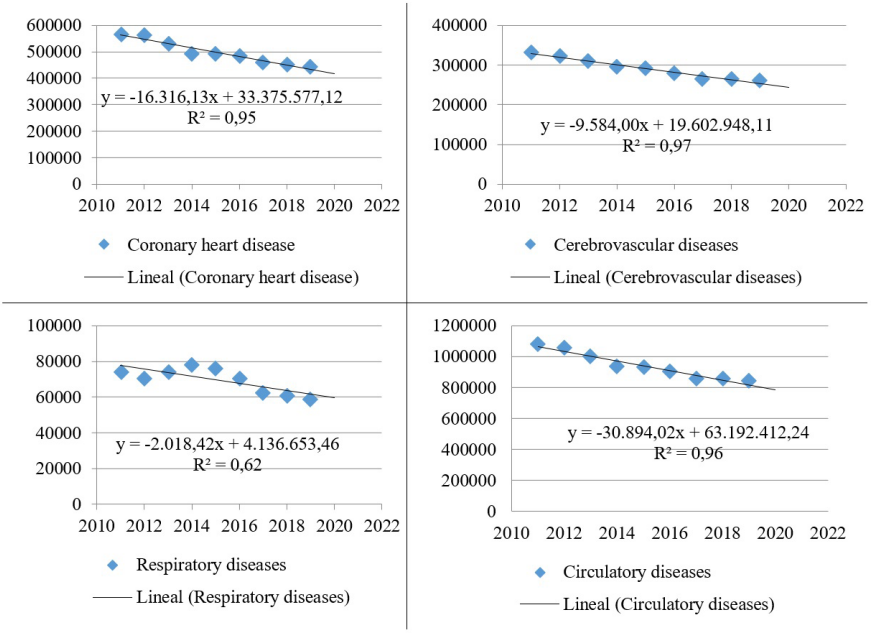

Figure 7. Polynomial models of the first degree of mortality in Russia by their causes according to 2011-2019 data

Source: calculated by the authors.

Based on the models obtained in Figure 7, we will calculate the predicted values of mortality by cause and find the number of "excess deaths" (Table 6).

Table 6. The number of "excess deaths" due to their causes in 2020.

	2020 (actual facts)	2020 (prognosis)	The number of "excess deaths" due to their causes
Coronary heart disease	508 657	416 995	91 662

Cerebrovascular diseases	278 618	243 268	35 350
Respiratory diseases	96 539	594 45,	37 094
Circulatory diseases	938 536	786 492	152 044
Total	x	x	316 150

Thus, in 2020, there were 91,662 "excess deaths" due to coronary heart disease, 35,350 – due to cerebrovascular diseases, 37,094 – due to respiratory diseases, 152,044 – due to diseases of the circulatory system, and total 316,150 "excess deaths". These data also indirectly indicate that they are associated with the COVID-19 pandemic, since the main complications in COVID-19 disease are these reasons (Polidori *et al.,* 2021).

Again, the results obtained are in no way comparable with the official data, according to which 59,019 people died from COVID-19 in Russia in 2020 (Starostina and Tkachev, 2021). They are more comparable with the results we obtained earlier, namely, 386,813 "excess deaths".

Our data on the real number of deaths in Russia from COVID-19 is also comparable with the findings of other scientists. The Ryazantsev *et al.* (2021) study also noted the excess mortality in the amount of 324,000 people in Russia in 2020. According to the authors, more than a third of these losses are associated with coronavirus infection, directly or indirectly. The Lifshits and Neklyudova (2020) econometric analysis showed that in Russia the real mortality rates were underestimated by more than 2 times, and as new data became available, the results were confirmed.

According to Lifshits and Neklyudova (2020) real indicators began to be underestimated in May 2020, both in the number of cases and in the number of deaths. Kobak (2021) argues that data on additional deaths in Russia in 2020 paint a much darker picture of the death toll from Covid-19 than the official daily updated figures. Analysis of excess mortality in Russia from April to November yielded a dismal 264,100 additional deaths from COVID-19 in Russia.

It should be noted that at the beginning of 2021 Federal State Statistics Service of Russia published statistics according to which the number of deaths from COVID-19 itself was 57,019, deaths associated with the consequences of COVID-19 amounted to 103,968 deaths, which totally works out 162,249 deaths (Starostina and Tkachev, 2021). However, these data are also not comparable with the results obtained by us and other scientists.

Conclusions

The natural population movement in Russia over the past 10 years has a negative trend and can be characterised as depopulation. The total fertility rate in Russia from 2011 to 2015 grew steadily from 1.58 to 1.78, but since 2016 it has seen a sharp drop to 1.51 in 2020. From 2011 to 2015, there is a clear trend towards an increase in the number of births from 1.80 million to 1.94 million, but in 2016 this trend is reversed and in 2020 the number of births was 1.44 million. As for the number of deaths, its trend is clearer and there is a gradual decrease in mortality from 1.93 million to 1.80 million in 2019, but only in 2020, there is a sharp spike to 2.14 million.

According to official data, the number of deaths from COVID-19 itself was 57,019 deaths, and those associated with the consequences of COVID-19 are 103,968 deaths, which is a total of 162,249 deaths. Within the framework of our study, from 316,150 to 386,813 "excess deaths" from COVID-19 were identified by constructing predictive models of mortality in general and for their reasons. Thus, an underestimation of the official mortality rate from COVID-19 was revealed from 2.4 to 6.8 times, depending on the data source.

A sharp spike in mortality in Russia in 2020 occurred among people over 50, and, with increasing age, mortality increased. The main reasons for the sharp increase in mortality were coronary heart disease, cerebrovascular diseases, respiratory diseases, and diseases of the circulatory systems. Understanding the true catastrophe of COVID-19 in Russia will allow us to critically evaluate the actions of state and municipal authorities, as well as draw the right conclusions on how to get out of this catastrophic situation.

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5. Escribir nombres y apellidos completos del o los autores, sin títulos profesionales. Indicar, al pie de página del resumen del trabajo, la adscripción institucional señalando el organismo, la institución, el centro, el instituto o la dependencia, así como sus direcciones y correos electrónicos.

6. El cuerpo del trabajo debe tener el siguiente orden: introducción, desarrollo y conclusiones. El desarrollo debe dividirse en secciones, identificadas por subtítulos. Los comentarios al pie de página se realizarán cuando sea estrictamente necesario para explicaciones adicionales, enumerados consecutivamente, y escritos a un (1) espacio.
7. Las citas bibliográficas incluidas en el texto se deben realizar por apellidos del autor y año de la obra, por ejemplo: (Contreras Portillo, 2005). Cuando la cita es textual se coloca entre comillas, y debe aparecer los apellidos del autor, año de la obra y número de página, por ejemplo: (Contreras Portillo, 2005: 56); en caso de varios autores, se colocan los apellidos del primer autor que aparece en el texto a citar y se agrega la expresión et al, por ejemplo: (Contreras Portillo et al, 2005: 24). Si la cita está constituida por varias páginas continuas deben separarse por un guión, por ejemplo: (Contreras Portillo, 2005: 54-55), cuando la cita es de páginas aisladas, no continuas, deben separarse por una coma, por ejemplo: (Contreras Portillo, 2005: 56, 58, 60). Si existen varias citas de un mismo autor publicadas en el mismo año, se distinguen con letras, por ejemplo: (Contreras Portillo, 2005a) y (Contreras Portillo, 2005b). Cuando se trate de citas de jurisprudencias, se coloca el órgano emisor, fecha de la decisión, fuente, año y página, por ejemplo: (Tribunal Supremo de Justicia, Sala Constitucional: 6-11-2001, en Pierre Tapia, 2001: 55). En caso de citas de textos normativos, se coloca el nombre del texto normativo, año y artículo, por ejemplo: (Constitución de la República Bolivariana de Venezuela, 1999: artículo 49). Las citas de internet deben contener los apellidos del autor, página web y año de la publicación, por ejemplo: (Contreras Portillo, en: www.luz.edu.ve, 2008). Las citas textuales de más de 40 palabras serán incluidas en un párrafo aparte, en bloque, y a un solo espacio. Las citas de citas deben ser utilizadas en casos estrictamente necesarios, colocando los apellidos del autor comentado, luego la expresión citado por, los apellidos del autor de la obra, año y página, por ejemplo: (Contreras Portillo, citado por: Chirinos Medina, 2009: 54).
8. Las referencias bibliográficas están constituidas por los textos citados contextual o textualmente en el trabajo, deben aparecer al final del mismo con los datos completos de los autores citados en el contenido, y escribirse a un (1) espacio y (2) dos espacios entre cada una:

- Se debe disponer en orden alfabético, atendiendo al primer apellido del autor citado. Se deben seguir las normas del sistema Harvard, así: apellidos del autor en mayúsculas (coma); nombre (punto); año de publicación (sin paréntesis)(punto); título del libro, o, de ser el caso, del capítulo de libro, artículo de la revista o artículo de periódico seguido de la palabra "En" para luego colocar el nombre del libro, de la revista o del periódico (punto); editorial (punto); lugar de la publicación (punto); en caso de tratarse de un capítulo de libro, artículo de revista o artículo de periódico debe señalarse las páginas que comprenden el artículo, por ejemplo: Pp. 250-275.
- Si se hace referencia a más de un trabajo del mismo autor, pero publicados en años diferentes, se ordenará la lista cronológicamente, es decir, en forma descendente, comenzando por el año de la última de las obras publicadas.
- Si dos (2) o más trabajos de un mismo autor tienen el mismo año de publicación se añadirá a éste un código alfabético (a, b, c,…), se ordenarán entre sí tomando en cuenta la primera letra del título de la obra y siguiendo dicho código, por ejemplo 1995a, 1995b, 1995c.
- En caso de existir varios autores de la misma obra deben colocarse los apellidos y nombres de todos, separados con punto y coma.
- En caso de referencias de jurisprudencias se colocará de la siguiente manera: órgano que emitió la decisión (punto), fecha completa (punto), caso tratado (punto), fuente (punto), lugar (punto), editorial (en caso de tenerla) (punto) y páginas.
- Las referencias de los textos normativos serán de la siguiente manera: órgano emisor (punto), año de publicación (sin paréntesis) (punto), título de la norma (punto), lugar (punto), número del órgano divulgativo (punto) y fecha.
- Las referencias tomadas de Internet deben contener los apellidos y nombre del autor (punto), año de publicación (sin paréntesis) (punto), título de la obra (punto); la palabra "En" seguida de la página web (punto); día, mes y año en que se efectuó la consulta.

9. Enviar original debidamente identificado, más tres (3) copias sin identificación alguna y un CD contentivo del trabajo y transcrito en procesador de palabra Word. El disquete debe estar etiquetado identificando al (los) autor (es) y el título del trabajo. El trabajo se

debe enviar con una comunicación dirigida a la Directora o Director de la Revista, solicitando su publicación, y manifestar que el trabajo no ha sido sometido a arbitraje y/o publicado en otra revista. Dicha comunicación debe ser suscrita por todos los autores e indicar el nombre de cada uno de los autores con su dirección, teléfono (s) y correos electrónicos.

10. Los trabajos serán considerados por el comité editor de la Revista y serán sometidos a una revisión exhaustiva por parte de un comité de árbitros, seleccionado a fin de mantener un elevado nivel académico y científico. La evaluación será realizada de acuerdo a los siguientes criterios: identificación del manuscrito; correspondencia del título con el contenido del manuscrito, así como la correcta sintaxis de los mismos; la importancia del tema estudiado, esto es su pertinencia social, académica científica; originalidad y relevancia de la discusión; medida del impacto de los planteamientos en el trabajo; diseño y metodología; valoración de la arquitectura del artículo conforme a los criterios de presentación, tanto formal como metodológicos; organización interna, claridad y coherencia del discurso que facilite su lectura; calidad del resumen, el cual debe dar cuenta de manera sintética del contenido del mismo; actualidad y relevancia de las fuentes bibliográficas.

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1. Identificación del artículo: se examina la correspondencia del título con el contenido del artículo, así como la correcta sintaxis del mismo.
2. Sobre la importancia del tema estudiado, esto es su pertinencia social y académica-científica.
3. La originalidad de la discusión, si el artículo constituye un aporte, por los datos que maneja, sus enfoques metodológicos y argumentación teórica.
4. Relevancia de la discusión, medida del impacto de los planteamientos del artículo dentro de la comunidad científica en términos de su contribución.
5. Diseño y metodología: valoración de la arquitectura del artículo conforme a los criterios razonables de presentación tanto formal como metodológica.
6. Organización Interna: el artículo debe ser presentado con un nivel de coherencia que facilitando su lectura pueda contribuir a fomentar su discusión.
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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